

**FIRST RENEWAL
of
LICENSE AND OPERATING AGREEMENT
(Warehouse)**

This FIRST RENEWAL OF LICENSE AND OPERATING AGREEMENT (the "Renewal Agreement") is entered into this 18th day of March, 2014, by and between the MAINE PORT AUTHORITY, a body corporate and politic and an instrumentality of the State of Maine created pursuant to 23 M.R.S.A. §4420, with its office located in Augusta, Maine ("Authority" or "Licensor"), and SPRAGUE OPERATING RESOURCES LLC, a Delaware limited liability company, with its office at 185 International Drive, Portsmouth, New Hampshire 03801 ("Licensee" or "Sprague").

1 BACKGROUND

License and Operating Agreement. The Authority and Merrill Marine Terminal Services, Inc. ("Merrill") entered into a certain License and Operating Agreement dated June 28, 2002 (the "Original License") to operate and maintain a warehouse (the "Warehouse") constructed on the Merrill Marine Terminal property in Portland, Maine (the "Terminal").

1.1 *Warehouse Site; Easement.* The Authority acquired an easement to use a portion of the Terminal property for construction and operation of the Warehouse, together with certain appurtenant rights ("Easement Area") pursuant to an Easement Deed dated June 28, 2002, recorded in the Cumberland County Registry of Deeds in Book 17793, Page 222, from Merrill Industries, Inc. ("Merrill Industries") to the Authority (the "Easement").

1.2 *Lease and Purchase Option.* Pursuant to a certain Lease and Purchase Option dated November 8, 2004, between Sprague and Merrill, Merrill leased to Sprague the Terminal and granted Sprague the right to purchase the Terminal on certain terms and conditions.

Assignment and Assumption Agreement. Pursuant to an Assignment and Assumption Agreement dated November 8, 2004, Merrill assigned to Sprague all of its right, title and interest in and to the Warehouse and the Original License. The Authority approved such assignment in a Consent Agreement in November of 2004.

1.3 *Renewal.* The Original License expired December 31, 2012, and the Authority and Sprague desire to renew for another ten (10) year term subject to the terms and conditions set forth below.

1.4 *Public Purpose.* This First Renewal of License and Operating Agreement is entered into for the public purpose of making the Warehouse available to the commercial and industrial public for marine transportation and cargo-handling purposes as part of the State of Maine's goal to provide three strategic, publicly accessible deep-water ports on the coast of Maine.

1.5 *Operating License.* The operating license granted by this Renewal Agreement is granted by the Authority to Sprague for the purpose of assuring the operation and maintenance of the Warehouse by Sprague.

2 DEFINITIONS

- 2.1 "Effective Date" of this Renewal Agreement: January 1, 2013.
- 2.2 "Hazardous Materials" means and includes asbestos, flammable materials, explosives, radioactive or nuclear substances, polychlorinated biphenyls, other carcinogens, oil and other petroleum products, radon gas, urea formaldehyde, chemicals, gases, solvents, pollutants or contaminants that could be a detriment or pose a danger to the environment or to the health or safety of any person, and any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such in any past, present or future federal, state or local laws, by-laws, rules, regulations, codes or ordinances or any judicial or administrative interpretation thereof. Hazardous Materials shall not be deemed to include newsprint and baled wood pulp.
- 2.3 "Hazardous Waste" means waste which has been or is in the future designated as hazardous waste by the State of Maine or which has been or is in the future designated as hazardous waste under any present or future law or regulation by the United States Environmental Protection Agency, or its successors including, without limitation, laws governing the existence, use, storage, treatment, discharge, release, containment, transportation, generation, manufacture, refinement, handling, production, disposal or management of any Hazardous Materials, or otherwise regulating or providing for the protection of the environment, and further including, without limitation the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Public Health Service Act (42 U.S.C. §300(f) et seq.), the Pollution Prevention Act (42 U.S.C. §13101 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Federal Clean Water Act (33 U.S.C. §1251 et seq.), the Federal Clean Air Act (42 U.S.C. §7401 et seq.), the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, or any similar state or local law, or in any regulations promulgated pursuant thereto; or in any other applicable law.
- 2.4 "Operating License" means the license granted by this Renewal Agreement.
- 2.5 "Net Proceeds" means the gross proceeds from any insurance award with respect to which that term is used remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such gross proceeds and the distribution therefrom of any portion thereof attributable to Licensor's fee interest in the Premises.
- 2.6 "Premises" means the Warehouse and the appurtenant easement areas granted by the Easement.
- 2.7 "Terminal" means the marine cargo terminal on the Fore River in Portland, Maine, commonly known as Merrill's Marine Terminal and more particularly described in the Easement.
- 2.8 "Warehouse" means the warehouse constructed on the Easement Area, together with (where the context so requires) Licensor's rights and easements comprising or appurtenant to the Easement Area.

3 GRANT OF LICENSE

- 3.1 *License.* The Licensor hereby grants to the Licensee, and the Licensee accepts from the Licensor, an exclusive irrevocable license and exclusive irrevocable right to operate and maintain the Warehouse for all lawful purposes subject to the terms and conditions hereof. Except as

expressly provided herein, the Operating License may not be terminated by Licensor or by Licensee.

4 TERM; FEE PROVISIONS; RENEWAL TERMS

4.1 *Term.* This Operating License shall become effective as of the Effective Date. Upon expiration of the renewal term of this Operating License, the Licensee shall have the following options:

- (a) Provided Licensee is not in default beyond any applicable cure period, to extend the license on a year to year basis with ongoing monthly payments to be agreed upon by the parties, or on other terms mutually agreeable to both parties, or
- (b) Not extend the license and allow the Authority reasonable time to remove, sell, or dispose of the Warehouse (unless Sprague shall have exercised its right to purchase the Warehouse as provided below).

Licensee shall notify Licensor at least six (6) months prior to the scheduled expiration date of the term whether Licensee elects to exercise its right under clause (a) above, failing which notice Licensee shall be deemed to have elected the option in clause (b). In removing the Warehouse upon expiration of this Operating License (in the event Sprague shall not have elected to purchase the Warehouse), Licensor shall have the right but not the obligation to remove the foundations and footings associated therewith.

As set forth in the Project Funding Agreement, Licensee shall have the right at any time during the renewal term of this Operating License to purchase the Warehouse for \$1.7 million less the sum of License Fees paid to the Authority, provided that Licensee shall have notified Licensor of such election at least six (6) months prior to the scheduled expiration date of the renewal term. Closing shall occur within thirty (30) days of said notice. From and after the conveyance of the Warehouse to Licensee, Licensor shall be released from any further liability or obligations hereunder.

4.2 *Delivery and Acceptance of Possession.* The Licensee hereby accepts possession of the Easement Area and Warehouse during the renewal term for the purposes set forth herein. However, the Licensor shall be the owner of the warehouse unless Licensee chooses to exercise its option under Section 4.1 in which case title would be transferred to Licensee.

4.3 *License Fee.* The Licensee shall pay a License Fee of \$8,916.67 per month during the renewal term.

4.4 *Payment Schedule.* Payments of License Fees shall be made on or before the fifteenth (15th) day of each month (the "Payment Date") for that particular month. Partial months, if any, shall be prorated based on the actual number of days.

4.5 *Late Fee.* The Authority may charge a late fee of Five Percent (5%) of the payment due for any License Fee payment which is fifteen (15) days or more past due. In addition, interest shall accrue at the rate of eighteen percent (18%) per annum on any amount which is more than thirty (30) days past due.

4.6 *Direct Charges.* Licensee shall pay directly for all telephone service and other utilities (for example, electricity, water, and gas or oil), which are separately metered, to the Premises and shall, upon demand, pay its proportionate share of any utilities which are not separately metered.

Licensor shall not be responsible for payment of any utility charges or for damages or loss due to the interruption of these utilities, which are not caused by any act, or omission of Licensor.

5 REPRESENTATIONS OF LICENSOR

- 5.1 *Exclusivity.* Provided Licensee observes and performs all of the terms, covenants and conditions of this Renewal Agreement, Licensee shall peaceably and quietly have, hold, and enjoy an exclusive license and rights in and to the Premises for the terms set forth herein without any manner of hindrance from Licensor or any person or entity claiming by, through, or under Licensor. Licensee acknowledges that some of Licensor's rights in the Premises are non-exclusive in nature, and that Licensee shall be entitled to only such rights as Licensor has been granted therein.
- 5.2 *Authority.* The Licensor represents and warrants that the Licensor has full power and authority to enter into this Renewal Agreement and has been duly authorized to execute and deliver this Agreement.
- 5.3 *Other Renewal Agreement, etc.* The Licensor represents and warrants that neither the execution of this Renewal Agreement, the delivery of this Renewal Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment or compliance with the terms and conditions of this Renewal Agreement, conflict with or will result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Licensor is now a party, or by which it is bound or constitute a default under any of the foregoing, or conflict with the terms of any instrument or agreement by which the Licensor is bound, including its charter and other organizational documents and governing statutes.

6 REPRESENTATIONS BY LICENSEE

- 6.1 *Authority.* The Licensee represents and warrants that the Licensee has full power and authority to enter into this Renewal Agreement and has been duly authorized to execute and deliver this Renewal Agreement.
- 6.2 *Other Agreement, etc.* The Licensee represents and warrants that neither the execution of this Renewal Agreement, the delivery of this Renewal Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment or compliance with the terms and conditions of this Renewal Agreement, conflict with or will result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Licensee is now a party, or by which it is bound or constitute a default under any of the foregoing, or conflict with the terms of any instrument or agreement by which the Licensee is bound, including its charter and other organizational documents and governing statutes.
- 6.3 *Use of Premises.* The Licensee agrees to use the Premises only for the operation, maintenance and use of a commercial and industrial marine cargo warehouse and other lawful uses approved by Licensor (the "Permitted Use"). The Permitted Use may include warehousing of domestic cargo during periods when the Warehouse is not fully utilized for the storage of inbound or outbound marine cargoes despite Licensee's best efforts to do so; provided, however, the Warehouse shall be given first priority for storage of marine cargo within the Terminal, and all other suitable available warehouse space at the Terminal shall be utilized for domestic cargo prior to use of the Warehouse for such purposes. Licensee agrees not to permit any nuisance in or on the Premises, nor to use or permit any use which is (a) contrary to or not ordinarily conducted within a commercial and industrial marine cargo warehouse, or (b) contrary to law or ordinance.

Licensee shall not permit any manner of use which will invalidate insurance coverage for the Premises or buildings located thereon, or any use that will materially and adversely affect the value of the Premises as a commercial and industrial marine cargo warehouse. Licensee shall not permit any use of the Premises which shall create an unreasonable fire hazard, or be unlawful, improper, noisy or offensive or which constitutes a nuisance or which is contrary to any law, rule, regulation or requirement of any governmental authority or the fire insurance rating association having jurisdiction, or which is injurious to any person or property, or commit waste, whether voluntary or involuntary, or permit anyone else to do any of the foregoing.

7 MAINTENANCE, TAXES AND INSURANCE

- 7.1 *Operating Expenses.* Licensee shall pay all costs and other expenses of every kind or character, foreseen or unforeseen, arising out of or relating to the operation of the Premises. It is the purpose and intent of Licensors and Licensee that all costs, expenses and obligations of every kind and nature, relating to any buildings or improvements located on the Premises, which may arise or become due during the Operating License Term, including but not limited to local property taxes assessable with respect to any machinery, equipment and other assets owned by Licensee thereon, shall be paid by Licensee. Licensors shall not be obligated to pay any expenses or obligations related to the Premises or building or improvements located thereon. Licensee shall pay absolutely net during the Operating License Term the payments and fees required hereunder, free of any deductions without abatement, deduction or set-off other than those herein expressly provided.
- 7.2 *Maintenance of the Premises by Licensee.* The Licensee agrees that it will, at its own cost and expense, (i) keep the Premises in a safe condition, and (ii) keep the Premises in good repair, ordinary wear and tear excepted, making from time to time all necessary repairs, renewals and replacements necessary therefor, including, without limitation, both interior and exterior, structural and non-structural improvements and components, including, without limitation, the heating, ventilating, air conditioning, plumbing, sewage, electric, sprinkler and lighting systems therein, the roof, structural supports, foundations, walls, floors, driveways, parking areas, grounds, all doors, door frames and door openers and all windows, window frames and plate glass, in good, clean and safe repair, order and condition, and will make all alterations, improvements, restoration, repairs, replacements or renovation thereto required by laws, rules, regulations or requirements of all governmental authorities and the fire insurance rating association having jurisdiction, all replacements to be of the same kind and quality as what is replaced, and (iii) make all repairs (whether interior, exterior, structural, non-structural, ordinary or extraordinary) made necessary by the actions or inactions of the Licensee, its agents, employees, customers or invitees.
- 7.3 *Modifications of the Premises by Licensee.* The Licensee may, with the prior written consent of the Licensors, which consent shall not be unreasonably withheld, at Licensee's own expense make from time to time any additions, modifications or improvements to the Premises desirable for the purposes allowed under this License that do not adversely affect the Premises or substantially reduce its value as a marine general purpose public warehouse. As a condition to receiving Licensors' consent to any changes, Licensee shall submit plans and specifications detailing such changes. Licensors shall have the right, prior to granting any consent, to review said changes and to require such reasonable additions, deletions or changes thereto as Licensors shall deem necessary to preserve and protect the Premises. All such additions, modifications and improvements so made by the Licensee shall become a part of the Premises at no cost to Licensors; provided, that any personal property, and any movable machinery, equipment, furniture or trade fixtures installed by the Licensee as part of the Premises without expense to the Licensors,

may be removed by the Licensee at any time and from time to time while it is not in default under the Renewal Agreement and so long as said removal does not affect the use of the Premises for the purposes permitted under this Renewal Agreement; and provided further, that any damage to the Premises occasioned by such removal shall be repaired by the Licensee at its own expense. Licensors acknowledge that a Cranston unitizer purchased by Licensee with its funds shall be deemed to be movable equipment of Licensee notwithstanding its potential attachment to the Premises. The Licensee will not permit any mechanic's lien, security interest or other encumbrance to remain against the Premises for labor or materials furnished in connection with any additions, modifications, improvements, repairs, renewals or replacements so made by it.

7.4 ***Business Equipment Taxes.*** The Licensee shall promptly pay as the same becomes due all taxes and governmental charges that may at any time be lawfully assessed or levied against the furnishings, equipment or other business property installed or brought by Licensee on the Premises. The Licensee agrees to waive its right to claim, apply for, or receive any reimbursement on business property provided for by 36 M.R.S.A. §6651 or similar rebates with respect to any property purchased or financed with funds provided by the Licensors. The parties hereto hereby acknowledge that the Maine Bureau of Revenue Services is a third party beneficiary to this waiver.

7.5 ***Insurance Required.*** During the Operating License Term, Licensee will secure at its expense and pay one hundred percent (100%) of the premiums necessary to maintain, and Licensee shall keep the Premises continually insured as herein set forth below.

- (a) Property insurance (including loss of rental value coverage in an amount needed to satisfy one year of License Fees) in an amount equal to the full insurable current replacement value of the Warehouse, against loss or damage by fire, lightning and other perils covered by the "Cause of Loss - Special Form" insurance policy, limited only as may be provided in the standard form of "Cause of Loss - Special Form" insurance policy at the time in use in Maine, and against loss or damage by flood. All property insurance required herein shall name the Licensors as an additional loss payee.
- (b) Comprehensive Marine liability insurance in an amount of Five Million Dollars (\$5,000,000.00) per occurrence and Ten Million Dollars (\$10,000,000.00) annual aggregate covering liability for bodily injury, including death resulting therefrom, and liability for damage to property, including loss of use thereof, occurring on the Premises or any part thereof with the Licensors named as an additional insured. Such policy shall also include hazards of operations, independent contractors, and contractual liability coverage and shall be written on an occurrence basis.
- (c) If at any time petroleum or hazardous materials cargoes are handled at the Terminal (other than bunkering of fuel oil to vessels), pollution and remediation legal liability insurance for the risk of discharge of pollutants in an amount not less than Ten Million Dollars (\$10,000,000.00) covering: (a) bodily injury and property damage both on and off the Premises from pollution, including economic loss, (b) clean-up costs on and off the Premises, (c) liability for and financial responsibility in respect to pollution under all applicable federal and state statutes and regulations including, but not limited to the Oil Pollution Act of 1990, 33 U.S.C. §2700 et. seq. the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et. seq. (CERCLA), the Federal Water Pollution Prevention and Control Act, 33 U.S.C. § 1251 et seq. (FWPCA), and the Oil Discharge Prevention and Pollution Control Act, 38 M.R.S.A. §541 et seq. The Licensors shall be named as an additional insured under said policy.

- (d) Warehouseman's legal liability insurance with limits of Five Million Dollars (\$5,000,000.00) per occurrence and annual aggregate. Licensors shall be named as additional insured under said policy or policies.
- (e) Licensee shall be solely responsible for any and all claims made by its employees under Maine's workers' compensation laws and shall maintain appropriate insurance in respect to such claims in compliance with all applicable laws including coverage for claims under the United States Longshoreman's and Harbor Workers' Compensation Act. Licensee shall indemnify and hold harmless the Licensors for any claims of any employee at or arising in connection with operations at the Premises, Licensee hereby waiving for the benefit of Licensors for purposes of this indemnity any immunity under the Workers' Compensation Acts to which it might otherwise be entitled.

7.6 *Additional Provisions Respecting Insurance.* All insurance required in this Article shall be taken out and maintained in generally recognized responsible insurance companies qualified to do business in the State of Maine. In the event that inflation or any other cause, in the Licensors' reasonable opinion, requires the aforesaid insurance coverages to be increased during the term of this Renewal Agreement, Licensee agrees to increase said limits to the levels reasonably required by Licensors. Licensee may insure to the required limits with such primary or excess limits, as it deems appropriate. All aforesaid policies shall include a waiver of subrogation endorsement in favor of Licensors.

7.7 *Neglect by Licensee.* In the event the Licensee fails to keep the Premises in safe condition, or fails to keep the Premises in good repair and good operating condition as set forth in this Renewal Agreement, and such failure is not cured within 30 days of written notice by Licensors (or such longer period as may reasonably be required to cure, provided Licensee shall commence the cure within such 30 day period and diligently pursue the cure to completion), or fails to pay the insurance premiums as set forth in this Renewal Agreement, the Licensors may (but shall be under no obligation to) make the required repairs, renewals and replacements or pay such premiums; and all amounts so advanced therefor by the Licensors shall become additional License Fee due from the Licensee to the Licensors, which License Fee, together with interest from the date of payment by Licensors at a rate of eighteen percent (18%) per annum, Licensee agrees to pay to Licensors on demand. Failure to pay insurance premiums within 10 days of demand shall constitute default under this Renewal Agreement.

7.8 *Certificate(s) of Insurance.* A certificate of insurance as set forth in this Section showing that the required coverage is in force and effect shall be mailed to the Licensors by the Licensee's Insurance Representative and within seven (7) days after the expiration of any such policy, Licensee's Agent shall furnish Licensors with evidence that the policy has been renewed or replaced. All such policies shall provide that no policy shall be terminated, canceled or adversely modified adversely affecting the requirements herein (including cancellation for nonpayment of premiums) unless thirty (30) days prior written notice is given to Licensors.

8 DAMAGE AND DESTRUCTION

8.1 In the case of damage or destruction of the Premises from any cause whether or not it is rendered unusable, Licensee shall rebuild the Premises to a condition as good or better than which existed prior to such damage or destruction. Regardless of the amount of any such damage or destruction, this Renewal Agreement shall be unaffected thereby and Licensee shall not be entitled to any diminution or abatement of any License Fee or its obligations hereunder. Any Net

Proceeds received due to such damage or destruction shall be paid to Licensor and applied to repairs, rebuilding, restorations or alterations in accordance with the disbursement procedures used for initial construction of the Premises pursuant to the Project Funding Agreement, and such repairs, rebuilding, restorations or alterations (including temporary repairs for the protection of property pending permanent repairs, rebuilding, restorations or alterations) shall be commenced within ninety (90) days after such damage or destruction and prosecuted to completion with reasonable diligence. Upon (i) completion of all work in a good and workmanlike manner and substantially in accordance with the plans and specifications therefore; (ii) receipt by Licensor of satisfactory evidence that the work has been completed and paid for in full; and (iii) that there are no mechanic's, laborer's, materialmen's or other liens, then any balance of Net Proceeds in excess of the cost of repair, rebuilding, restoration or alteration shall be paid to Licensee.

9 SPECIAL COVENANTS

- 9.1 *Limited Warranty of Condition or Suitability by the Licensor.* Licensor makes no warranties or representations, either express or implied, to Licensee and Licensor hereby licenses the Premises to Licensee on an "AS IS" basis, and Licensee assumes the risk of the use and operation thereof. Notwithstanding the foregoing, Licensee shall have the benefit of such warranties, guaranties, performance and completion bonds, proceeds of insurance maintained by third parties, permits and other assurances as may be available to Licensor from and against third parties and other vendors engaged by or through Licensor in the permitting, design and construction of the premises and the improvements now or hereafter thereon.
- 9.2 *Licensor's Right of Access to the Premises.* The Licensee agrees that the Licensor, and its duly authorized agents, shall have the right at all reasonable times upon notice to Licensee to enter upon the Premises and to examine and inspect the Premises and buildings and improvements located thereon. The Licensee further agrees that the Licensor and its duly authorized agents shall have such rights of access to the Project as may be reasonably necessary for the proper maintenance of the Project in the event of failure by the Licensee to perform its obligations hereunder.
- 9.3 *Release and Indemnification Covenants.* Licensee agrees to defend, save harmless and indemnify Licensor from any liability for entry, loss, accident, expense, injury to any person or damage to any property and from any claims, actions, proceedings and expenses and costs in connection therewith (i) arising from the omission, fault, any act (whether willful or negligent or otherwise) occurring on or about the Premises or any misconduct of Licensee, (ii) any use of the Premises, or (iii) resulting from the failure of Licensee to perform and discharge its covenants and obligations under this Renewal Agreement, provided that this indemnity shall not include damages which result solely and exclusively from Licensor's negligent or intentional acts.
- 9.4 *Estoppel Certificates.* Licensee and Licensor further agree at any time and from time to time, upon not less than ten (10) days prior written request by the other, to execute, acknowledge and deliver a statement in writing certifying that this Renewal Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), that it has or does not have claims against the other arising under this Renewal Agreement and listing any such claims, that Licensee is in possession under this Renewal Agreement and the date to which the License Fee and other charges have been paid in advance, if any, it being intended that any such statement delivered to either party pursuant to this Section may be relied upon by any prospective purchaser, lender or assignee of any interest of said party hereunder.

- 9.5 ***Hazardous Waste and Materials.*** Licensee agrees that Licensee shall not use, permit or suffer the use, storage, treatment or release of Hazardous Waste or Hazardous Materials on or about the Premises except incidental quantities of substances used in the cleaning and maintenance of the Premises and then only in conformance with applicable law and manufacturer guidelines, and shall indemnify and hold Licensors harmless from and against any and all claims, losses, damages, liabilities, costs and expenses arising from: (i) any use of the Premises or the conduct of any business in or on the Premises, including, but not limited to, the storage, treatment or release of Hazardous Waste or Hazardous Materials by Licensee, its agents, employees, representatives or independent contractors; and (ii) any activities, work or things done, committed or suffered by Licensee in or about the Premises, including, but not limited to, the release of Hazardous Waste or Hazardous Materials while Licensee is in possession of the Premises; and (iii) any and all reasonable costs and expenses, reasonable attorneys' fees, and liabilities incurred by Licensors in the defense of any such claim or any action or proceeding brought thereon.

10 PROHIBITIONS AGAINST ASSIGNMENT; SUBLICENSING AND MORTGAGING

- 10.1 ***Assignment by Licensee; Sublicensing.*** This Renewal Agreement, and all of Licensee's rights hereunder, may not be assigned in whole or in part under any circumstances, by operation of law or otherwise, and may not be sublicensed by Licensee in whole or in part, without the prior written consent of Licensors, which consent shall not be unreasonably withheld or delayed provided that such assignment is for the Permitted Use. A change in ownership interest so as to result in a change in the present control of Licensee or a change in the present control of any controlling entity shareholder of Licensee by the person or persons now owning a majority of the ownership interest shall constitute an assignment for purposes of this Section; provided, however, a change in control occasioned by death of the person or persons owning a majority of the ownership interest shall not require the prior written consent of Licensors, so long as Licensors is promptly notified of the identity of the person or persons succeeding to such ownership interest. No assignment and no sublicense, permitted or otherwise, shall relieve the Licensee from primary liability for any of its obligations hereunder, and in the event of any such attempted assignment or any such sublicense, permitted or otherwise, the Licensee shall continue to remain primarily liable for the performance and observance of all obligations, covenants, warranties, representations and agreements on its part herein to be performed and observed by it to the same extent as though no assignment or sublease had been made.
- 10.2 ***Transfer of Ownership by Licensors.*** Licensors agrees not to transfer ownership of the Premises to any party that is not exempt from ad valorem taxation unless Licensee shall have consented to such transfer in writing. The restriction contained in this Section 10.2 shall not apply if an Event of Default shall have occurred. In connection with any transfer permitted hereunder the transferee shall assume in writing all obligations of Licensors under this Renewal Agreement and all related agreements.

11 EVENTS OF DEFAULT AND REMEDIES

- 11.1 ***Events of Default Defined.*** The following shall be "Events of Default" under this Operating License and the terms "Events of Default" and "default" shall mean, whenever they are used in this Operating License, any one or more of the following events:
- (a) Failure to make any License Fee payment when due, unless such failure is cured by paying the overdue fees and all late fees and interest within ten (10) days of written demand; provided, however, Licensee shall be entitled to no more than two such written demands in

any twelve month period, after which a failure to make any such payment shall constitute an immediate Event of Default;

- (b) Failure to make any other payment required of Licensee pursuant to this Renewal Agreement and such failure is not cured within 10 days of written demand; provided, however, Licensee shall be entitled to no more than two such written demands in any twelve month period, after which a failure to make any such payment shall constitute an immediate Event of Default;
- (c) Failure to pay for costs of insurance premiums incurred by the Licensor due to neglect by the Licensee as provided above;
- (d) The breach by Licensee of any other obligation under this Renewal Agreement, and such breach shall not have been cured within 30 days after the sending of notice identifying the breach from the Licensor to Licensee thereunder, provided that if such breach cannot with due diligence be cured within 30 days, and if Licensee shall commence the cure within such 30 day period, the time within which such default may be cured shall be extended for such period of time reasonably necessary to cure the default with all due diligence;
- (e) Except with the prior consent of the Licensor, (a) any sale or transfer of all or substantially all of the assets of Licensee or Sprague; or (b) any sale or transfer of all or substantially all of the assets of Licensee or Sprague at or relating to the Terminal; or (c) any merger or consolidation in which Licensee or Sprague is a participant corporation, or any vote by the shareholders of Licensee to approve such a merger or consolidation; or (d) the sale, transfer or removal without replacement of any asset which would materially adversely affect the operation of either the Warehouse or the Terminal. After completion of construction of the Warehouse such consent shall not be unreasonably withheld or delayed as to clauses (a) through (c), provided that Licensee's or Sprague's transferee or successor shall assume in written form satisfactory to Licensor all obligations of Licensee and/or Sprague, as the case may be, under this Renewal Agreement and all related agreements (including without limitation the Guaranty of Sprague), and provided that the sale, transfer, merger or consolidation shall not materially adversely affect the operation of the Warehouse or Terminal; provided, further, that any sale, transfer, merger or consolidation by Licensee or Sprague in violation of this paragraph shall be null and void. In evaluating any request for consent pursuant to clauses (a) through (c) after completion of construction of the Warehouse, Licensor may withhold its consent if it is not reasonably satisfied that the proposed transferee or successor (i) possesses substantial experience in marine terminal operations; (ii) has a sound financial status and creditworthiness; and (iii) will not have an adverse effect on competition within the marine industry. Any request for consent pursuant to clauses (a) through (c) shall be submitted to Licensor in writing at least sixty (60) days prior to the date on which the sale, transfer, merger or consolidation is to take effect, together with documentation evidencing that the criteria in clauses (i) through (iii) are satisfied. Licensee shall provide such additional information as Licensor shall reasonably request in order to make its determination, but Licensor shall have the right independently to obtain and consider information in addition to the information obtained from Licensee. Notwithstanding any sale or transfer of assets pursuant to clauses (a) or (b) above, Licensee and Sprague shall remain liable for the performance of their respective obligations under this Renewal Agreement and all related agreements unless the Authority agrees otherwise.
- (f) The filing by Licensee of a voluntary petition for relief under the United States Bankruptcy Code, as amended from time to time, or any bankruptcy, reorganization, arrangement,

insolvency, readjustment of debt, receivership, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or the Licensee shall be adjudicated insolvent or bankrupt by decree of a court of competent jurisdiction; or Licensee shall petition or apply for or acquiesce in, or consent to the appointment of, any receiver or trustee for all or any part of its property; or Licensee shall make an assignment for the benefit of creditors; or Licensee shall admit in writing its inability to pay its debts as they mature;

- (g) Licensee shall cease business operations for the Permitted Use at the Terminal (other than as may be necessary or desirable for seasonal purposes or capital improvements and other than as a result of act of God, civil unrest, strike, shortage of materials, or other cause beyond the control of Licensee); or Licensee's abandonment of or discontinuation of business for the Permitted Use at the Terminal for a period in excess of sixty (60) consecutive days (other than as a result of act of God, civil unrest, strike, shortage of materials, or other cause beyond the control of Licensee), whether or not accompanied by the non-payment of the License Fee or the failure to perform its other duties and obligations hereunder.
- (h) There shall be filed against Licensee any involuntary petition for relief under the United States Bankruptcy Code, as amended from time to time, or there shall be commenced against Licensee any proceeding relating to Licensee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, and such petition or any such proceeding shall remain undismissed for a period of 60 days or Licensee by any act indicates its consent to, approval of, or acquiescence in, such petition or any such proceeding; or a receiver or trustee shall be appointed for Licensee or for all or a substantial part of the property of the Company and such receivership or trusteeship shall remain undischarged for a period of 60 days; or a writ of attachment, execution, or similar process shall be issued against any material part of Licensee's property or assets relating to the Terminal and the same shall not be dismissed or bonded or reserved for within 30 days.

- 11.2 *Remedies on Default.* Upon the occurrence of an Event of Default, the Licensor shall have the option at its sole discretion to effect the following remedies: (a) terminate this Renewal Agreement and remove the Warehouse; (b) terminate this Renewal Agreement, take possession of the Warehouse for a period coinciding with the balance of the initial ten (10) year term (if then in effect) of this Renewal Agreement and license the Warehouse to another operator, and the Authority, for itself, such other operator and any purchaser of the Warehouse are hereby granted a right of direct access to deliver or receive cargo "under hook" on the pier to and from the Warehouse, and Licensee agrees to charge commercially reasonable fees for loading and discharging of such cargo from vessels; provided, however, the new operator may, at its sole discretion, contract with Licensee for services between the pier and the Warehouse for which Licensee agrees to charge commercially reasonable fees, (c) exercise its rights on property under and around the Warehouse and any/all access to the Warehouse pursuant to the Easement, (d) sue for damages, or (e) pursue all other remedies provided herein or otherwise by law or equity. The election of one remedy shall not preclude the Licensor from subsequently pursuing a different remedy. Should Licensor elect to take possession as set forth above or should it take possession through legal proceedings, pursuant to any notice provided for by law or otherwise, it may terminate this Operating License as aforesaid and make such alterations, additions and repairs as may be necessary to relicense the Premises, and relicense the Premises or any part thereof for such term or tariffs and at such rates and upon such other terms and conditions (including without limitation for any lawful marine or non-marine use) as Licensor in its sole discretion deems

advisable. The Authority shall not be obligated to pay any rent, license fees or other charges for occupancy by the Authority or a new operator. Notwithstanding the termination of this Renewal Agreement, Licensee shall remain liable for any overdue License Fees, for all of Licensor's costs and expenses in connection with the relicensing of the Premises, and for the License Fees that would otherwise be payable by Licensee for the remainder of the term then in effect, but Licensee shall be credited with any license fees received by Licensor from the relicensing of the Premises up to but not in excess of the License Fees otherwise payable by Licensee.

- 11.3 *Self-Help.* If either party shall at any time default in the performance of any obligation under this Renewal Agreement, the other party shall have the right after reasonable advance notice to the defaulting party, but shall not be obligated, to perform such obligation notwithstanding the fact that no specific provision for such substituted performance is made in this Renewal Agreement with respect to such default. In performing such obligation, the curing party may make any payment of money or perform any other act. All sums so paid (together with interest at the rate of eighteen percent (18%) and all necessary incidental costs and expenses in connection with the performance of any such act), shall be payable immediately on demand. Either party may exercise the foregoing rights without waiving any other of its rights or releasing the defaulting party from any of its obligations under the Renewal Agreement.
- 11.4 *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Licensor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Renewal Agreement and Operating License, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Licensor to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.
- 11.5 *Agreement to Pay Attorneys' Fees and Expenses.* In the event that either party should default under any of the provisions of this Renewal Agreement and the non-defaulting party should employ attorneys or incur other expenses for the collection of License Fees or the enforcement of performance or observance of any obligation or agreement on the part of the other, the defaulting party agrees that it will pay on demand to the prevailing party the reasonable fees of such attorneys and such other cost and expenses so incurred.
- 11.6 *No Additional Waiver Implied by One Waiver.* In the event any agreement, condition or representation contained in this Renewal Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- 11.7 *Nonrecourse Nature of Obligations.* The liability of the Licensee under this Renewal Agreement shall be limited to the License Fees payable hereunder together with its interest in the real and personal property comprising the Terminal and all rents, profits, revenues, insurance proceeds and eminent domain awards attributable thereto. The Authority shall look solely to the Terminal and all rents, profits, revenues, insurance proceeds and eminent domain awards attributable thereto, in satisfaction of the obligations identified herein. Sprague is guarantying the obligations of Licensee in recognition of the fact that fee title to the Terminal is owned by Sprague.

12 MISCELLANEOUS

- 12.1 **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when (a) mailed by registered or certified mail, postage prepaid, or (b) delivered by nationally recognized private courier or overnight delivery service, charges prepaid, to the following addresses or to such other addresses as the parties shall, by like notice, notify one another:

If to the Licensee:

Sprague Operating Resources LLC
Attention: James A. Therriault, Vice President Materials Handling
185 International Drive
Portsmouth, NH 03801-6809
Phone: (603) 431-1000
Facsimile: (603) 766-7448

If to the Licensors:

Maine Port Authority
Attention: Executive Director
16 State House Station
Augusta, Maine 04333-0016
Phone: (207) 624-3000
Facsimile: (207) 624-3001.

- 12.2 **Binding Effect.** This Renewal Agreement shall inure to the benefit of and shall be binding upon the Licensors, the Licensee, and their respective permitted successors and assigns.
- 12.3 **Severability.** In the event any provision of this Renewal Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or by any future legislative action, such holding or such action shall not invalidate or render unenforceable any other provision hereof.
- 12.4 **Amendments; Changes and Modifications.** This Renewal Agreement may be amended, changed, modified, altered or terminated only by an instrument in writing signed by the parties hereto.
- 12.5 **Submission of Renewal Agreement; Execution Counterparts.** The submission of this Renewal Agreement for examination does not constitute an offer to license the Premises and this Renewal Agreement becomes effective only upon the full execution of this Renewal Agreement by the parties. This Renewal Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 12.6 **Applicable Law.** This Renewal Agreement shall be governed exclusively by the applicable laws of the State of Maine.
- 12.7 **Surrender of the Premises.** Except as otherwise provided in this Renewal Agreement, Licensee shall, upon the expiration or termination of this Renewal Agreement for any reason whatsoever, surrender the Premises to the Licensors in good order, condition and repair, except for reasonable wear and tear. All buildings and improvements then on the Premises including, without limitation, if applicable, the heating, ventilating, air conditioning, plumbing, sewage, electric, sprinkler and lighting systems therein, the roof, structural supports, foundations, walls, floors, driveways, parking areas, grounds, all doors, door frames and door openers and all windows, window frames and plate glass, shall be surrendered in good, clean and safe repair, order and

condition, and all alterations, improvements, restoration, repairs, replacements or renovation thereto shall upon any such expiration or termination become the property of Licensor, unless upon the request of Licensor, Licensee shall be required to remove the same.

- 12.8 *Survival.* The provisions of this Agreement relating to indemnification from one party to the other party shall survive any termination or expiration of this Renewal Agreement. Additionally, any provisions of this Renewal Agreement which require performance subsequent to the termination or expiration of this Renewal Agreement shall also survive such termination or expiration.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first above written.

Signatures Continued on Following Pages


MAINE PORT AUTHORITY, LICENSOR

Kim King
Witness

JHE
By:






Signatures Continued on Following Pages

SPRAGUE OPERATING RESOURCES LLC, LICENSEE



Witness

By: 
James A. Theriault
Vice President Materials Handling

Contract Admin		Ops Acctg	TST
Credit	N/A	Mat. Handling	
Insurance	OSA	HSE	
Legal	KB	Tax	
Terminal Ops		Other	