


David Whitaker, Esq.  
*Director*  
Irvin Corley, Jr.  
*Executive Policy Manager*  
Marcell R. Todd, Jr.  
*Director, City Planning*  
*Commission*  
Janese Chapman  
*Director, Historic Designation*  
*Advisory Board*

John Alexander  
Megha Bamola  
LaKisha Barclift, Esq.  
Nur Barre  
M. Rory Bolger, Ph.D., AICP  
Elizabeth Cabot, Esq.  
Tasha Cowen

**City of Detroit**  
**CITY COUNCIL**  
**LEGISLATIVE POLICY DIVISION**  
208 Coleman A. Young Municipal Center  
Detroit, Michigan 48226  
Phone: (313) 224-4946 Fax: (313) 224-4336

George Etheridge  
Christopher Gulock, AICP  
Derrick Headd  
Marcel Hurt, Esq.  
Kimani Jeffrey  
Anne Marie Langan  
Jamie Murphy  
Kim Newby  
Analine Powers, Ph.D.  
Jennifer Reinhardt, AICP  
Rebecca Savage  
Sabrina Shockley  
Thomas Stephens, Esq.  
David Teeter  
Theresa Thomas  
Kathryn Lynch Underwood, MUP  
Ashley A. Wilson

TO: The Honorable Detroit City Council

FROM: David Whitaker, Director   
Legislative Policy Division (LPD) Staff

DATE: April 6, 2021

RE: **Port Authority Master Concession Agreement Termination**

Council Member Castañeda-López requested that the Legislative Policy Division analyze and report on the attached document from the Detroit/Wayne County Port Authority (DWCPA) entitled “Resolution to Enter into Termination Agreement Regarding the Master Concession Agreement, Discharge and Release of Promissory Note, Agreement for Purchase and Sale, Termination Agreement Regarding the Springing Interest Agreement, and Termination Agreement Regarding Subconcession Agreement”.

**Short Answer**

This document was presented by the City Clerk, as attachments to a written communication from the Detroit/Wayne County Port Authority (DWCPA), directly to City Council, apparently without any involvement of the executive branch of City Government. Numerous transactional documents were transmitted to City Council by DWCPA for its consideration and action. These documents came to City Council without first having been considered and thoroughly vetted by the executive branch of City government. This is improper. Section 5-102 of the City Charter vests the executive power of the City in the Mayor. Core parts of that Charter-mandated executive power include the powers to evaluate, prioritize, negotiate, document and draft agreements like this first, before seeking Council’s consideration and assent.

City Council, under its Charter-mandated duty to approve transactions involving City property, Sections 4-112, 4-122, etc., lacks power to independently approve transactions such as have been

proposed by the DWCPA without the Mayor's prior actual involvement in negotiation, evaluation, assessment and concurrence proposed directly to City Council, without the Mayor's involvement. Therefore, Council cannot act on the proposed document at this time, pursuant to the Charter. Council may wish to seek the Law Department's formal opinion on this issue.

### **Summary of Document**

Notwithstanding its procedural impropriety, the attached document at issue consists of 29 pages. It purports to document a real property transaction involving sale of the DWCPA's property on the Detroit River downtown to the Ambassador Port Company, one of the Maroun family companies embedded in border commerce between Detroit and Windsor. As indicated by the document's title, this real property sale would trigger termination of the Master Concession Agreement (MCA), pursuant to which the Maroun family corporations have historically been granted monopolistic power over development and commercial interests affecting border commerce.<sup>1</sup> Key material terms include:

- Termination of the MCA and discharge of the DWCPA's promissory note executed concurrently with it;
- Sale of certain specified riverfront real estate around Nicholson Terminal and Dock Company to Ambassador for \$5 million, disbursed as specified in the agreement, rather than funds received by the City. The addresses to be sold are 4300 West Jefferson, 4461 West Jefferson, and 4500 West Jefferson;
- Escrowed funds from the above sale will be applied to half the cost of demolishing the Boblo Building, and up to 35% of the cost of engineering repairs associated with the property;
- Closing on the Purchase Agreement is contingent on mutually acceptable termination agreements of the MCA, the Subconcession Agreement, and the Promissory Note;
- The resolution was approved by a 4-1 vote of the Wayne County Commission, filed with the City Clerk and submitted directly to City Council, which is improper and void under the City Charter;
- None of these copies of the agreements are signed; and
- The resolution is attached to a Termination Agreement (3 pages), a Discharge and Release of Promissory Note (1 page), and Agreement for Purchase and Sale (14 pages), another Termination Agreement of the Subconcession Agreement (3 pages), and a Termination of Springing Interest Agreement (3 pages).

These documents were carefully drafted. The main question is to whose benefit? Whether or not the City's position will be improved by such transactions is the basic issue. As LPD has previously advised Council regarding such documents, there is no substitute for the opportunity to communicate directly with the attorneys responsible for handling the transaction. If this document is ever properly submitted to Council, Your Honorable Body may wish to schedule such a discussion with DWCPA attorneys, and perhaps also a closed session with the Law Department.

---

<sup>1</sup> LPD and others have historically criticized the MCA, the springing interest and other related issues. There may well be good reasons to terminate the MCA, but the question is: Is this the way? Given the fact that we are in this position with this agreement, the proposed transaction that ultimately disentangles the City from this situation requires careful scrutiny to avoid repeating the same or similar mistakes.

However, as noted above, at this time Council cannot properly act on the proposed resolution under the Charter because it has been submitted independently to the legislative body by DWCPA, excluding the Mayor from performing his Charter-mandated role in such transactions.

If Council has any other question or concerns regarding this subject, LPD will be happy to provide further research and analysis upon request.



## DETROIT/WAYNE COUNTY PORT AUTHORITY

March 19, 2021

**Via Hand Delivery**

Janice M. Winfrey  
Clerk of the City of Detroit  
Coleman A. Young Municipal Center, Suite 200  
2 Woodward Ave.  
Detroit, MI 48226

Re: Resolution of the Detroit/Wayne County Port Authority  
Request for City Council Approval of Termination of Springing Interest Agreement

Madam Clerk:

As Chairman of the Detroit/Wayne County Port Authority (the "Port Authority"), I transmit herewith a copy of a Resolution of the Port Authority Board of Directors, authorizing the Port Authority to enter into certain agreements (the "MCA Release Agreements"), as set forth in the Resolution, copies of which are also enclosed. I also enclose a draft Termination Agreement between the City of Detroit and the Ambassador Port Company (the "Termination of Springing Interest Agreement").

Further, I hereby request that you submit this letter and all attached documents to the President of City Council, and request that City Council consider and vote to approve the Termination of Springing Interest Agreement, which is a condition precedent to the effectiveness of the MCA Release Agreements.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A blue ink signature of Jonathan C. Kinloch is written over the word "Sincerely,". The signature is stylized and appears to read "J. C. Kinloch".

Jonathan C. Kinloch  
Chairman

Detroit/Wayne County Port Authority

Encls.

RESOLUTION NO.: \_\_\_\_\_

PRESENTED: 3-19-21

ADOPTED: 3-19-21

**RESOLUTION TO ENTER INTO TERMINATION AGREEMENT REGARDING THE  
MASTER CONCESSION AGREEMENT, DISCHARGE AND RELEASE OF  
PROMISSORY NOTE, AGREEMENT FOR PURCHASE AND SALE, TERMINATION  
AGREEMENT REGARDING THE SPRINGING INTEREST AGREEMENT AND  
TERMINATION AGREEMENT REGARDING SUBCONCESSION AGREEMENT**

WHEREAS, the Ambassador Port Company, a Michigan corporation ("Ambassador"), and Detroit/Wayne County Port Authority, a Michigan public body corporate (the "Port Authority"), collectively the Parties, entered into the Master Concession Agreement (the "MCA") dated July 7, 2005;

WHEREAS, concurrently with the execution of the MCA, the Port Authority executed a Promissory Note (the "Promissory Note") in favor of Ambassador in the face amount of Two Million One Hundred Three Thousand dollars and Forty-One cents (\$2,103,000.41) and that the Promissory Note has a principal balance of Two Million Sixteen Thousand Two Hundred Eighty Two and Eighty Three cents (\$2,016,282.83) as of December 31, 2020;

WHEREAS, the Port Authority's fee interest in the Property, defined below, is subject to a conditional limitation that if the MCA is terminated, other than by mutual agreement of the Parties or if at any time the Property is no longer used as a port facility, as evidenced by that certain "Agreement Relating to Springing Interest and Master Concession Agreement" by and between the City of Detroit and Ambassador, dated July 7, 2005, then the Property will revert to the City of Detroit;

WHEREAS, Ambassador entered into an agreement with Nicholson Terminal and Dock Company ("Nicholson") to possess, manage and operate the Property, evidenced by that certain "Subconcession Agreement" dated July 7, 2005;

WHEREAS, the Port Authority's interest in the Property is limited by and subject to Ambassador's exclusive rights under the MCA to operate and manage port facilities on the Property for a term, with extensions exercisable by Ambassador, extending to 2105;

WHEREAS, the Parties agree and acknowledge that the appraised value of the Property is Five Million dollars (\$5,000,000.00);

WHEREAS, the Parties agree that it has been determined that the Boblo building on the Property will need to be demolished;

WHEREAS, the Parties agree to terminate the MCA and discharge the Promissory Note in connection with and as consideration for the sale of the Property, as set forth in the Purchase Agreement (as defined herein);

WHEREAS, the Port Authority desires to sell and Ambassador desires to purchase, all right, title and interest of the Port Authority in and to 4300 W. Jefferson, 4500 W. Jefferson and 4461 W. Jefferson, Detroit, Michigan (the "Property") in accordance with the terms and conditions set forth in the attached purchase and sale agreement (the "Purchase Agreement").

WHEREAS, the Parties desire to transfer ownership of the Property from the Port Authority to Ambassador upon the terms set forth in the Purchase Agreement.

WHEREAS, the total purchase price for the Property shall be Five Million and 00/100 (\$5,000,000.00) Dollars (the "Purchase Price"). The Purchase Price shall be due in full at the closing, and paid in immediately available funds subject to the following: (i) the amount of cash due and payable to the Port Authority shall be offset by the principle and interest due and owing to Ambassador under the Promissory Note as of the closing date; (ii) a minimum of One Million dollars (\$1,000,000.00) shall be paid to the Port Authority; (iii) an amount of the Purchase Price, which shall not exceed One Million Nine Hundred Fifty Thousand dollars (\$1,950,000.00) ("Escrowed Funds"), shall be held in escrow with the title company to be disbursed as otherwise provided in the Purchase Agreement; and (iv) the balance of the Purchase Price plus or minus prorations, credits and adjustments as provided for in the Purchase Agreement shall be paid to the Port Authority.

WHEREAS, in accordance with the Purchase Agreement, the Escrowed Funds will be held in escrow by a third party escrow agent, which will disburse the Escrowed Funds in the following manner: (i) pay up to one-half (1/2) of the cost of the demolition of the Boblo building, and in no event shall the amount due, attributable to the demolition of the Boblo building, exceed One Million Five Hundred Thousand dollars (\$1,500,000.00); and (ii) pay up to thirty-five percent (35%) of the cost of the engineering repairs associated with the Property and in no event shall the amount due, attributable to the engineering repairs associated with the Property, exceed Four Hundred Fifty Thousand dollars (\$450,000.00).

WHEREAS, the closing of the Purchase Agreement is conditioned upon, among other things,: i) the Parties entering into a mutually acceptable agreement to terminate the MCA; ii) Ambassador and Nicholson entering into a mutually acceptable agreement to terminate that certain "Subconcession Agreement" dated July 7, 2005; iii) the Parties and the City of Detroit entering into a mutually acceptable agreement to terminate that certain "Agreement Relating to Springing Interest and Master Concession Agreement", dated July 7, 2005; and iv) the Parties entering into a mutually acceptable agreement to discharge and release that certain Promissory Note dated July 7, 2005.

**NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Port Authority approves entering into the Termination Agreement regarding the Master Concession Agreement, the Discharge and Release of Promissory Note, the Agreement for**

Purchase and Sale, and the Termination Agreement regarding the Springing Interest Agreement (collectively, the "Documents"), subject to: i) Ambassador and Nicholson entering into an agreement to terminate that certain "Subconcession Agreement" dated July 7, 2005 and ii) the City of Detroit entering into an agreement to terminate that certain "Agreement Relating to Springing Interest and Master Concession Agreement", dated July 7, 2005.

**FURTHER, BE IT RESOLVED**, that the Purchase Price, in accordance with the Purchase Agreement, shall be held in escrow by a third party escrow agent, which will use the Escrowed Funds in the following manner: (i) pay up to one-half (1/2) of the cost of the demolition of the Boblo building, and in no event shall the amount due, attributable to the demolition of the Boblo building, exceed One Million Five Hundred Thousand dollars (\$1,500,000.00); and (ii) pay up to thirty-five percent (35%) of the cost of the engineering repairs associated with the Property and in no event shall the amount due, attributable to the engineering repairs associated with the Property, exceed Four Hundred Fifty Thousand dollars (\$450,000.00).

**FURTHER, BE IT RESOLVED**, that the Chairman of the Board of Directors or the Executive Director of the Port Authority, upon instruction from the Chairman of the Board of Directors, are authorized to transmit the Documents to the City of Detroit.

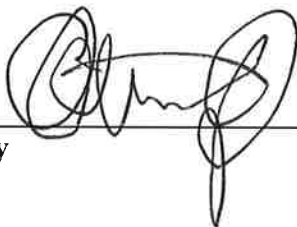
**FURTHER, BE IT RESOLVED**, that the Chairman of the Board of Directors, the Executive Director of the Port Authority and their designees are authorized to take such other actions, including communicating with the City of Detroit officials regarding the Documents.

**FURTHER, BE IT RESOLVED**, that the Chairman of the Board of Directors, or the Executive Director of the Port Authority, upon instruction from the Chairman of the Board of Directors, shall have the authority to execute the Documents, together with such ancillary documents and make immaterial modifications to the Documents as he shall deem necessary or advisable in order to effectuate these resolutions.

**FURTHER, BE IT RESOLVED**, that all lawful conduct and actions of the officers, the Executive Director, employees, contractors and/or agents of the Port Authority to effectuate this resolution are hereby ratified, adopted, affirmed and approved.

**FOR THE DETROIT/WAYNE COUNTY PORT AUTHORITY**

Secretary

A handwritten signature in black ink, appearing to be "G. M. J.", is written over a horizontal line. The signature is stylized with loops and a long tail.

**Board of Directors Vote on the RESOLUTION TO ENTER INTO  
TERMINATION AGREEMENT REGARDING THE MASTER  
CONCESSION AGREEMENT, DISCHARGE AND RELEASE OF  
PROMISSORY NOTE, AGREEMENT FOR PURCHASE AND SALE,  
TERMINATION AGREEMENT REGARDING THE SPRINGING  
INTEREST AGREEMENT AND TERMINATION AGREEMENT  
REGARDING SUBCONCESSION AGREEMENT.:**

Board of Directors	Yea	Nay
Jonathan C. Kinloch	X	
Bryan Powell	X	
Andrew S. Doctoroff		X
Bryan C. Barnhill	X	
Monique Baker McCormick	X	

## TERMINATION AGREEMENT

This Termination Agreement (this "**Termination Agreement**") is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Effective Date**") by and between AMBASSADOR PORT COMPANY (the "**Master Concessionaire**"), and DETROIT/WAYNE COUNTY PORT AUTHORITY (the "**Authority**"). Master Concessionaire and Authority are sometimes each referred to as a "**Party**", and collectively, as the "**Parties**".

### WITNESSETH:

WHEREAS, Master Concessionaire and Authority entered into that certain Master Concession Agreement dated effective as of July 7, 2005 (the "**Agreement**") with respect to the operation of the Facility, as such term is defined in the Agreement, located at 4300, 4461 and 4500 W. Jefferson Ave. in the City of Detroit, Michigan;

WHEREAS, the Agreement has not expired;

WHEREAS, Authority and Master Concessionaire wish to Terminate the Agreement as hereinafter set forth;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in consideration of the mutual covenants and agreements of the Parties herein set forth, the Parties hereto agree as follows:

1. Recitals; Defined Terms. The foregoing recitals are true and correct and are incorporated herein by this reference. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Agreement.
2. Early Termination. As of the Effective Date, the Agreement is hereby terminated and of no further force or effect. Without limitation, Master Concessionaire shall have no further obligation or right to operate or manage Facilities (as defined in the Agreement) or the Premises (as defined in the Agreement), or perform Facility Work (as defined in the Agreement).
3. Indemnities. Nothing herein releases Authority from any indemnity, defense and hold harmless obligations Authority has under the Agreement with respect to matters occurring prior to the Termination Date. Further, notwithstanding the foregoing, nothing herein releases Master Concessionaire from any indemnity, defense and hold harmless obligations Master Concessionaire has under the Agreement with respect to matters occurring prior to the Termination Date.
4. Release. The Master Concessionaire hereby unconditionally relieves, waives, releases and forever discharges the Authority, its agents, directors, former directors, employees, former employees, attorneys, insurers, successors and assigns, from any and all claims, debts, liabilities, demands, obligations, promises, agreements, costs, expenses (including, but not limited to, attorney fees), damages, actions and causes of action arising out of the Agreement or the Premises.

5. Conflicts. In the event of any conflicts between the terms of this Termination Agreement and the terms of the Agreement, the terms of this Termination Agreement shall control.

6. Governing Law/Modifications. This Termination Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Michigan, without giving effect to its conflicts of law provisions. This Agreement sets forth the entire agreement and understanding between the Parties with respect to the termination of the Agreement. This Agreement may not be terminated, modified or otherwise changed except pursuant to written agreement signed by Master Concessionaire and Authority.

7. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which when taken together shall constitute one original. Delivery via facsimile or PDF transmission of a counterpart of this Agreement as executed by the Parties making such delivery shall constitute good and valid execution and delivery of this Agreement for all purposes.

8. Binding Effect. This Termination Agreement shall be binding upon and shall inure to the benefit of both Master Concessionaire and Authority and their respective successors, assigns and legal representatives.

9. Consent of Other Parties/Authority. Master Concessionaire and Authority each represent and warrant to the other that it is not required to obtain consent or approval from any other party in order for the termination of the Agreement to take effect, or if such consent is required, such Party has obtained it. Master Concessionaire and Authority represent that (i) the individuals executing this Termination Agreement on behalf of Master Concessionaire and Authority, respectively, have full authority and power to execute and deliver this Termination Agreement, and (ii) this Termination Agreement constitutes a valid and binding obligation on the parties hereto.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Termination Agreement to be executed by their duly authorized officers on the day, month, and year first-above written.

**MASTER CONCESSIONAIRE:**

AMBASSADOR PORT COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**AUTHORITY:**

DETROIT/WAYNE COUNTY PORT  
AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## DISCHARGE AND RELEASE OF PROMISSORY NOTE

This indenture (the "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between **AMBASSADOR PORT COMPANY**, hereinafter referred to as "APC" having offices at 12225 Stephens Rd., Warren, MI 48089, and **DETROIT/WAYNE COUNTY PORT AUTHORITY**, hereinafter referred to as "DWCPA" having offices at 130 E. Atwater Street Detroit, Michigan 48226

### RECITALS:

WHEREAS, APC made a loan to DWCPA in the original principal amount of \$2,103,000.41 (the "Loan") as evidenced by a promissory note dated December ---, 2005 (the "Note"), which has a current outstanding balance of \$ \_\_\_\_\_ (the "Outstanding Balance");

WHEREAS, the Outstanding Balance shall be paid from the proceeds of APC's purchase of a certain property owned by DWCPA, which shall be governed by that certain Agreement for Purchase and Sale dated \_\_\_\_\_, 202\_\_.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, pursuant to Section 2.1 of the Note, the parties mutually agree as follows:

1. Release and Discharge of Loan and Note. APC hereby release and discharge DWCPA, its agents, directors, former directors, employees, former employees, attorneys, insurers, successors and assigns from any and all manner of actions, cause and causes of action, suits, debts, sums of money, accounts, bonds, bills, covenants, controversies, agreements, promises, damages, liabilities, judgments, claims, obligations and demands whatsoever, in law or in equity, whether known or unknown, arising out of the Loan or Note, and the execution and delivery thereof.

2. Counterparts. This instrument may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this instrument on the day and year first above written.

**Detroit/Wayne County Port Authority**

**Ambassador Port Company**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

## AGREEMENT FOR PURCHASE AND SALE

This **Agreement for Purchase and Sale** (this "Agreement") dated as of December [●], 2020 (the "Effective Date") sets forth the binding agreement of **Ambassador Port Company, a Michigan corporation** ("Purchaser"), and **Detroit/Wayne County Port Authority, a Michigan public body corporate** ("Seller") with respect to the purchase and sale (the "Purchase Transaction") of 4300 W. Jefferson, 4500 W. Jefferson and 4461 W. Jefferson, Detroit, Michigan (the "Property"). Purchaser and Seller are sometimes referred to herein as a "Party" and collectively as the "Parties."

### RECITALS:

WHEREAS, the Parties entered into the Master Concession Agreement (the "MCA") dated July 7, 2005;

WHEREAS, concurrently with the execution of the MCA, Seller executed a Promissory Note (the "Promissory Note" in favor of Purchaser in the face amount of Two Million One Hundred Three Thousand dollars and Forty-One cents (\$2,103,000.41) and that the Promissory Note has a principal balance of Two Million Sixteen Thousand Two Hundred Eighty Two Dollars and Eighty Three cents (\$2,016,282.83) as of December 31, 2020;

WHEREAS, the Seller's fee interest in the Property, defined below, is subject to a conditional limitation that if the MCA is terminated, other than by mutual agreement of the Parties or if at any time the Property is no longer used as a port facility, as evidenced by that certain "Agreement Relating to Springing Interest and Master Concession Agreement" by and between the City of Detroit and the Purchaser, dated July 7, 2005, then the Property will revert to the City of Detroit;

WHEREAS, Purchaser entered into an agreement with Nicholson Terminal and Dock Company ("Nicholson") to possess, manage and operate the Property, evidenced by that certain "Subconcession Agreement" dated July 7, 2005;

WHEREAS, Seller's interest in the Property is limited by and subject to the Purchaser's exclusive rights under the MCA, defined below, to operate and manage port facilities on the Property for a term, with extensions exercisable by the Purchaser, extending to 2105;

WHEREAS, the Parties agree and acknowledge that the appraised value of the Property is Five Million dollars (\$5,000,000.00);

WHEREAS, the Parties agree that it has been determined that the Boblo building will need to be demolished;

WHEREAS, Seller desires to sell and Purchaser desires to purchase, all right, title and interest of Seller in and to the Property located in the City of Detroit, Wayne County, Michigan, more particularly described on the attached **Exhibit A**, in accordance with the terms set forth below.

### **AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual covenants, recitals and agreements contained herein, the Parties agree as follows:

1. **The Property.** The "**Property**" is 4300 W. Jefferson, 4500 W. Jefferson and 4461 W. Jefferson, Detroit, Michigan consisting of industrial buildings and approximately 34.272 acres of land (the "**Land**"), owned by Seller and more particularly described in attached **Exhibit A**. The Property includes all buildings, structures and improvements on the Land (the "**Building**").

2. **Purchase and Sale.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller all right, title and interest of Seller in and to the Property, subject to the terms of this Agreement. The Purchase Transaction shall be consummated by delivery of a recordable quit claim deed (the "**Deed**"), subject to the Permitted Exceptions (as later defined).

3. **Purchase Price; Escrow.** The purchase price shall be Five Million dollars (\$5,000,000.00) (the "**Purchase Price**"). The Purchase Price shall be due in full at the Closing, and paid in immediately available funds subject to the following: (i) the amount of cash due and payable to the Seller shall be offset by the principle and interest due and owing to Purchaser under the Promissory Note as of the Closing Date; (ii) a minimum of One Million dollars (\$1,000,000.00) shall be paid or distributed to Seller; (iii) an amount of the Purchase Price, which shall not exceed One Million Nine Hundred Fifty Thousand dollars (\$1,950,000.00) ("Escrowed Funds"), shall be held in escrow with the Title Company to be disbursed as otherwise provided herein; and (iv) the balance of the Purchase Price plus or minus prorations, credits and adjustments as provided for herein shall be paid to Seller.

(a) The Escrowed Funds will be used in the following manner (as collectively described herein as the "Escrowed Work"):

(i) Boblo Building - the demolition of the Boblo building is estimated to cost Three Million dollars (\$3,000,000.00), Seller will pay up to one-half (1/2) of the cost of the demolition of the Boblo building, from the Escrowed Funds, and in no event shall the amount due from the Escrowed Funds attributable to the demolition of the Boblo building exceed One Million Five Hundred Thousand dollars (\$1,500,000.00); and

(ii) Engineering Repairs – Seller will pay up to thirty-five percent (35%) of the cost of the engineering repairs associated with the Property, from the Escrowed Funds, and in no event shall the amount due from the Escrowed Funds attributable to the engineering repairs associated with the Property exceed Four Hundred Fifty Thousand dollars (\$450,000.00).

Upon monthly presentation of (i) draw requests reasonably acceptable to Purchaser, Seller, and the Title Company and (ii) supporting documentation for such draw request reasonably acceptable to the Seller describing the completed Escrowed Work which is the subject of each draw request, the Title Company shall make monthly disbursements of the Escrowed Funds in the amount of the draw request as Purchaser completes the Escrowed Work. All work associated with the Escrowed Funds must be completed within twenty-four (24) months of the Closing, subject to force majeure. In the event that the Escrowed Work costs exceed the amount of the Escrowed Funds, Seller shall not be responsible or obligated to provide any additional proceeds. In the event that the Escrowed Work costs are less than the amount of the Escrowed Funds, any remaining funds shall be immediately remitted to Seller. In the event that the work associated with the Escrowed Funds is not completed within the twenty-four (24) month time period subject to force majeure, Purchaser shall pay to Seller, out of the Escrowed Funds, a fee of Five Thousand dollars (\$5,000.00) per month until the Escrowed Funds are exhausted or until the work is completed, whichever comes first. Seller shall not be responsible to replenish the Escrowed Funds and will be relieved of any further obligations in connection with the Escrowed Work.

**4. Title and Possession.** Seller shall deliver full possession and title to Purchaser at Closing (as later defined) of the Property. The term “Permitted Exceptions” shall mean the following: (i) all building and use restrictions of record and easements of record as of the date hereof (unless they are objected to by Purchaser and Seller agrees to remove the same as provided in Section 4(c) below); (ii) exceptions to title set forth in the Title Commitment (as later defined) that are accepted or deemed to have been accepted by Purchaser in accordance with the provisions of Section 4(c) below; provided, however, such exceptions shall not include any Mandatory Cure Items (as later defined); (iii) the standard preprinted exception set forth in the binder to the Title Commitment for matters that would be shown by an accurate survey of the Property, unless Purchaser elects to have the Survey (as later defined) prepared and provided to the Title Company (as later defined), and (iv) zoning ordinances.

(a) Title Commitment. As soon as reasonably practical after the Effective Date but no later than fifteen (15) days after the Effective Date, Purchaser, at its sole cost, shall order from Chicago Title, located at 711 Third Ave., New York, NY 10017 (the “Title Company”), a commitment for an owner’s policy of title insurance dated after the Effective Date and meeting the requirements set forth in this Section 4 (the “Title Commitment”). The Title Commitment shall provide for the issuance of a title insurance policy at the Closing (the “Title Policy”) that will: (i) be in the standard form approved by the American Land Title Association (ALTA) without standard preprinted exceptions, subject to the above paragraph of this Section 4; (ii) be in the amount of the Purchase Price; (iii) insure good and marketable title to the Property and naming Purchaser as the insured and including gap-coverage for the period of time between Closing and the recording of the Deed; and (iv) contain such endorsements as Purchaser may require at its own expense.

(b) Survey. During the Due Diligence Period (as later defined), Purchaser, at its sole cost, shall have the right to order a current, “as-built” survey (the “Survey”) of the Land and the Building, and prepared by a licensed professional engineer or surveyor.

(c) Defects and Cure. The Title Commitment together with copies of all recorded documents evidencing title exceptions raised in Schedule B, Section II of the Title Commitment and the Survey, if obtained, are collectively referred to herein as, the "Title Evidence." The term "Defects" shall mean any claims, liens, exceptions, conditions or encroachments that adversely affect Purchaser's proposed use or operation of the Property, as determined in Purchaser's sole discretion. If Purchaser determines that the Title Evidence (or subsequent updates thereof) discloses any Defects, Purchaser may deliver written notice to Seller at any time within ten (10) days following Purchaser's receipt of the last document, which shall be received no later than thirty (30) days from the Effective Date, representing the Title Evidence (the "Objection Notice"), specifying any Defects that render title unacceptable to Purchaser. Seller shall not have any obligation to cure any Defects. However, Seller may elect to advise Purchaser in writing (the "Cure Notice") within ten (10) business days after Purchaser delivers any Objection Notice, which (if any) of the Defects specified in the applicable Objection Notice Seller is willing to cure (the "Cure Items"), and if Seller so elects such Cure Items shall be satisfied by Seller within thirty (30) days after the delivery of the Objection Notice to Seller, but in no event less than seven (7) days prior to Closing. In the event Seller fails to timely deliver a Cure Notice as to any or all Defects, or if Seller is unable or elects not to cure items identified in the Cure Notice, Seller shall be deemed to have refused to cure any of such Defects and Purchaser shall have the option to either: (x) terminate this Agreement by written notice to Seller, in which event no Party shall have any further liability to another Party except as expressly provided in Section 5(b) below; or (y) proceed to close with title to the Property in its then existing condition and the applicable Defect(s) shall be deemed to be Permitted Exceptions.

(d) Mandatory Cure Items. Notwithstanding anything to the contrary contained herein, but provided that none of the following were caused or attributable to the actions or inaction of the Purchaser or Nicholson or either of their contractors, agents, or employees Seller shall be obligated to cure or remove, the following: (i) any liens securing a mortgage, deed of trust or similar instrument; and (ii) any other monetary lien, encumbrance, judgment lien, tax lien, brokers' lien, and mechanics/supplier/materialmen lien against Seller. The items described in (i) and (ii) are collectively referred to herein as, the "Mandatory Cure Items". Prior to Closing, Seller shall cure or remove all Mandatory Cure Items such that the same do not appear on the Title Policy. Notwithstanding anything to the contrary set forth herein, if, prior to Closing, Seller fails or elects not to cure or remove all Mandatory Cure Items in accordance with the foregoing, then Purchaser may, at its option, elect to (x) terminate this Agreement by written notice to Seller, in which event no Party shall have any further liability to another Party hereunder, except as expressly provided in Section 5(b) below; or (y) proceed to close after discharging the Mandatory Cure Item and to set off the cost of doing so against the Purchase Price.

## **5. Due Diligence.**

(a) The term "Due Diligence Period" shall mean the period commencing on the Effective Date and expiring as of 5:00 p.m. Eastern Time on April 30, 2021. During the Due Diligence Period, Purchaser and their respective contractors, consultants and representatives shall have unfettered access to the Property to conduct investigations of and tests on the Property, including Phase I and Phase II environmental investigations, structural studies and asbestos testing. At any time prior to the expiration of the Due Diligence Period, Purchaser shall have the right to terminate this Agreement in its sole discretion for any reason or for no reason at all, by providing

Seller with written notice of the termination, in which event no Party shall have any further liability to another Party hereunder, except as expressly provided in Section 5(b) below.

(b) Subject to and upon compliance with the terms of this Section 5, during the Due Diligence Period, Seller grants to Purchaser and persons designated by Purchaser, subject to the rights of tenant, licensee, utility or other third party occupying any portion of the Property, permission to enter upon the Property in order to make surveys, bores, soil bearing tests and other tests (collectively, the "Tests") Purchaser deems necessary or appropriate; provided, however, that Purchaser, and/or persons designated by Purchaser to enter the Property, hereby assumes all risks of such entry and agrees to defend, indemnify and save Seller harmless from and against any claim, cost or expense resulting from any damage to or destruction of any property (including the Property or any improvements thereon) and any injury to or death of any person(s), arising from the acts or omissions of Purchaser and/or persons designated by Purchaser to enter the Property in the exercise of this right-of-entry. Purchaser agrees to do no act which would encumber title to the Property in exercising this right-of-entry. Any drilling and coring holes shall be filled upon completion of testing. All investigation-derived waste, including without limitation drilling waste, ground water and cuttings, shall be promptly handled, characterized and disposed of properly and in accordance with all local, State and Federal requirements, all at Purchaser's sole cost. The Tests shall be so conducted so as to avoid or minimize any permanent damage to the Property. Following the termination of this Agreement, Purchaser hereby agrees to indemnify, defend and hold Seller harmless from and against any and all damages, liens, injuries, actions, claims or costs, including reasonable attorney fees, arising in any manner, directly or indirectly, from Purchaser's or its designees' activities on the Property with respect to the Tests. The provisions of this Section shall survive Closing or termination of this Agreement. Prior to the Closing, Purchaser shall keep all information, data and reports concerning or arising from any of the Tests confidential and shall not otherwise disclose or divulge the results of the Tests to any third party; provided, in any event Purchaser may make disclosures of such information, data, reports or the results of any Tests as follows: (i) to the extent required by applicable laws; (ii) to the extent necessary to comply with Purchaser's or any of Purchaser's affiliates' financial reporting requirements; (iii) to potential lenders who might be involved in financing the purchase or improvement of the Property; (iv) to attorneys, architects, engineers, consultants, contractors and affiliates involved in analyzing the Property or the results of the Tests; (v) as may be required in connection with submission of the results and/or reports of the Tests to applicable governmental authority(ies) with respect to approvals and environmental submissions, including a Baseline Environmental Assessment; and (vi) as may be necessary in Purchaser's judgement in connection with an application for or approval of any zoning or site plan approvals or for any local, state and/or federal grants, tax credits, tax abatements or other development inducements. Purchaser agrees to provide, at no cost to Seller, copies of all such information, data and reports to Seller upon written request therefor from Seller.

#### **6. Seller's Representations, Warranties and Covenants; AS-IS SALE.**

(a) Representations and Warranties of Seller. Seller, to the best of its knowledge, represents and warrants to Purchaser that the following matters, related specifically and

exclusively to the Property, are true as of the Effective Date and shall be true as of the date of Closing:

(i) Seller is the owner in fee simple of the Property and has full power, authority and legal right, and has obtained all approvals and consents required to enter into this Agreement and to carry out all of Seller's obligations under this Agreement (including the consummation of the Purchase Transaction contemplated herein); and this Agreement constitutes the valid and binding obligation of Seller in accordance with its terms;

(ii) Except as otherwise disclosed by Seller, no person or legal entity (other than the Purchaser, its agent, the City of Detroit, Nicholson or an agent of Nicholson) is using or has any right to use, or is in, or has any right to possession or occupancy of, the Property or any part thereof;

(iii) Except for the City of Detroit's "Springing Interest" as defined in the "Agreement Relating to Springing Interest and Master Concession Agreement" by and between the City of Detroit and the Purchaser, dated July 7, 2005, there are no options, contracts or other obligations outstanding for the sale, exchange or transfer of the Property or any portion thereof;

(iv) Seller is not and has never been a "foreign person," "foreign corporation," "foreign partnership," "foreign trust," or "foreign estate" as those terms are used in Section 1445 of the Internal Revenue Code of 1986, as amended;

Absent an express written statement to the contrary, the execution and delivery by Seller of the Deed shall constitute confirmation by Seller that the foregoing representations and warranties are true and correct on and as of the date of Closing as though made on and as of such time. If, prior to the date of Closing, Seller discovers that one or more of the foregoing are untrue or inaccurate, it will immediately inform Purchaser in writing of Seller's discovery. It is expressly agreed that no examination or investigation of the Property pertaining thereto by or on behalf of Purchaser shall in any way modify, affect or diminish the representations and warranties of Seller contained herein.

(b) **Covenants of Seller Pending Closing.** As of the Effective Date and thereafter, until the Closing, Seller hereby covenants with Purchaser as follows:

(i) **No Assignment or Other Transfer.** From and after the Effective Date and prior to Closing, Seller shall not assign, alienate, lien, encumber or otherwise transfer all or any part of the Property or any interest therein;

(ii) **Operation.** Seller agrees to operate the Property in the normal course and consistent with past practice; and

(iii) **Representations, Warranties and Covenants.** Seller will not take any action or omit to take any action, which action or omission would have the effect of violating any of the representations and warranties of Seller contained in this Agreement. On the date of Closing, all of Seller's representations and warranties shall be true and correct and Seller shall have performed each covenant to have been performed by Seller hereunder prior to Closing.

(c) AS IS SALE. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER SELLER NOR ANY OTHER AFFILIATED ENTITY OR PERSON IS MAKING AND EACH SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY PART THEREOF. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, PURCHASER IS RELYING SOLELY ON ITS OWN EXPERTISE AND FAMILIARITY WITH THE PROPERTY AND ON THE EXPERTISE OF THEIR INSPECTORS AND CONSULTANTS. UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS," AND "WHERE IS," WITH ALL FAULTS, AND WITH NO ADJUSTMENTS FOR PHYSICAL, FUNCTIONAL, ECONOMIC CONDITIONS, AND THERE ARE NO ORAL AGREEMENTS, REPRESENTATIONS OR WARRANTIES RELATED OR COLLATERAL TO OR AFFECTING THE PROPERTY. PURCHASER REPRESENTS AND WARRANTS TO SELLER THAT UPON EXPIRATION OF THE DUE DILIGENCE PERIOD, PURCHASER WILL HAVE HAD AMPLE OPPORTUNITY TO MAKE A PROPER INSPECTION, EXAMINATION AND INVESTIGATION OF THE PROPERTY. THE TERMS AND CONDITIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING AND THE CONVEYANCE OF THE PROPERTY.

7. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Purchaser that the following matters are true as of the Effective Date and shall be true as of the date of Closing:

(a) Purchaser is duly organized and existing in the State of its organization, and is in good standing in the State of Michigan;

(b) Purchaser represents and warrants that Purchaser has the full power, authority and legal right, and has obtained all approvals and consents required to enter into this Agreement and to carry out all of Purchaser's obligations under this Agreement (including the consummation of the Purchase Transaction contemplated herein); and this Agreement will constitute the valid and binding obligation of Purchaser in accordance with its terms;

(c) Except for the City of Detroit's "Springing Interest" as defined in the "Agreement Relating to Springing Interest and Master Concession Agreement" by and between the City of Detroit and the Purchaser, dated July 7, 2005, to Purchaser's knowledge there are no options, contracts or other obligations outstanding for the sale, exchange or transfer of the Property or any portion thereof;

(d) To Purchaser's knowledge, and except as otherwise disclosed by Purchaser, no person or legal entity (other than the Purchaser, its agent, the City of Detroit, Nicholson or an agent of Nicholson) is using or has any right to use, or is in, or has any right to possession or occupancy of, the Property or any part thereof; and

(e) Except for Nicholson's subconcession rights as defined in the "Subconcession Agreement" by and between Purchaser and Nicholson, dated July 7, 2005, there are no other subconcession rights, subconcessionaires or subconcession agreements.

7.1 **Covenants of Purchaser Pending Closing.** As of the Effective Date and thereafter, until the Closing, Purchaser hereby covenants with Seller as follows:

(i) **No Assignment or Other Transfer.** From and after the Effective Date and prior to Closing, Purchaser shall not assign, alienate, lien, encumber or otherwise transfer all or any part of the MCA or any interest therein;

(ii) **Operation.** Purchaser agrees to operate the Property in the normal course and consistent with past practice; and

(iii) **Representations, Warranties and Covenants.** Purchaser will not take any action or omit to take any action, which action or omission would have the effect of violating any of the representations and warranties or obligations of Purchaser contained in this Agreement or the MCA. On the date of Closing, all of Purchaser's representations and warranties shall be true and correct and Purchaser shall have performed each covenant to have been performed by Purchaser hereunder prior to Closing.

8. **Additional Conditions Precedent.** In addition to the other conditions precedent enumerated in this Agreement, the following will be additional "conditions precedent" to Purchaser's and Seller's obligations to close hereunder:

(a) Purchaser and Seller shall have entered into a mutually acceptable agreement to terminate the Master Concession Agreement (the "MCA") by and between Purchaser and Seller, dated July 7, 2005, attached hereto as Exhibit A.

(b) Purchaser shall have entered into an agreement to terminate the Subconcession Agreement by and between Purchaser and Nicholson Terminal and Dock Company ("Nicholson"), dated July 7, 2005; such agreement to be mutually acceptable to Seller, Purchaser and Nicholson, attached hereto as Exhibit B.

(c) Purchaser and the City of Detroit shall have entered into a mutually acceptable agreement to terminate the "Agreement Relating to Springing Interest and Master Concession Agreement" by and between the City of Detroit and the Purchaser, dated July 7, 2005; such agreement to be mutually acceptable to Seller, attached hereto as Exhibit C.

(d) Seller and the City of Detroit shall have entered into an agreement to terminate the Springing Interest of the City of Detroit in the Property as defined in the "Agreement Relating to Springing Interest and Master Concession Agreement" by and between the City of Detroit and the Purchaser, dated July 7, 2005; such agreement to be mutually acceptable to Seller, Purchaser and the City of Detroit, a draft attached hereto as Exhibit C.

(e) Purchaser and Seller shall have entered into a discharge and release of the Promissory Note, including the unpaid principal balance and any and all accrued and outstanding interest due thereunder as of the Closing Date, attached hereto as Exhibit D

If the conditions precedent have not been satisfied on or before the date of the Closing, Seller and/or Purchaser shall have the right to either waive such conditions, except for Sections 7(c) and 8(c), and proceed to the Closing, or either party may terminate this Agreement by providing Seller

or Purchaser with written notice to such effect. If Purchaser or Seller elects to terminate this Agreement, no Party shall have any further liability to another Party hereunder, except as expressly provided in Section 5(b) above.

**9. Closing; Closing Deliveries; Costs.** Seller and Purchaser agree that the closing of the transaction contemplated herein shall be consummated within seven (7) business days of the expiration of the Due Diligence Period (the "Closing"). On the date of Closing, the Parties (as applicable) shall deliver, or cause to be delivered, to the Title Company and/or the other Party (as applicable) the following:

(a) Seller shall deliver the Deed duly executed and acknowledged by Seller in the form described herein, conveying title to the Property subject only to Permitted Exceptions;

(b) The Title Policy (or a marked-up Title Commitment or proforma Title Policy) in accordance with the requirements specified in Section 4 above and insuring fee simple and marketable title to the Property subject only to Permitted Exceptions;

(c) An owner's affidavit in a form approved by the Title Company to enable the Title Company to remove all standard preprinted exceptions (except the standard preprinted exception requiring the Survey unless Purchaser provides the Survey to the Title Company, in which event such survey-related standard preprinted exception shall be deleted);

(d) A Non-Foreign Affidavit from Seller, or its appropriate officers, sworn and entered into under penalty of perjury, stating the Seller is not and has never been a "foreign person," "foreign corporation," "foreign partnership," "foreign trust," or "foreign estate" as those terms are used in Section 1445 of the Internal Revenue Code of 1986, as amended;

(e) Seller shall deliver possession of the Property to Purchaser;

(f) Purchaser shall deliver to Seller the Purchase Price, as adjusted per the terms of this Agreement;

(g) Seller and Purchaser shall execute and deliver a closing statement reflecting any necessary adjustments and prorations as described below; and

(h) Each Party also shall provide to the other or to the Title Company, or both, whatever documentation may be reasonably requested or required in order to confirm the proper authority of such Party to consummate the Purchase Transaction and to issue the Title Policy in accordance with the terms of this Agreement.

**10. Prorations and Closing Costs.** The following shall be apportioned on the closing statement at Closing:

(a) All taxes and assessments of whatever nature and kind which have become due and payable or are delinquent as of Closing shall be paid and discharged by Purchaser. Real estate taxes for the year in which Closing occurs shall be prorated using the "due date" method as customary in Southeast, Michigan;

(b) Purchaser shall pay all federal, state and local documentary stamp, transfer, sales, recording, excise and other taxes, if any, related to the sale and conveyance of the Property or required to be paid upon recording of the Deed;

(c) Purchaser shall pay any and all costs related to the Title Commitment, the Title Policy (including the cost of the premium) and any other fees charged in connection with any endorsements to the Title Policy requested by Purchaser;

(d) Purchaser shall pay the cost of any closing escrow fees charged by the Title Company;

(e) Purchaser will pay the cost to record the Deed and the cost of the Survey; and

(g) Purchaser shall be responsible for all other items related to the Closing of this transaction.

Each Party shall be responsible for the fees charged by its respective attorneys. Any and all prorations made pursuant to this Agreement on Closing shall be deemed final.

**11. Default and Remedies.** If Purchaser defaults on its obligations, Seller shall be entitled to: a) specific performance or b) recoup its out of pocket costs (inclusive of appraisals and attorney fees) in pursuing this transaction up to \$150,000 with a reduction in the amount outstanding under the Promissory Note equal to such out of pocket costs up to \$150,000 but no less than \$50,000. If Seller defaults on its obligations under this Agreement, Purchaser shall be entitled to pursue any and all legal or equitable remedies, including, without limitation, the right to seek specific performance.

**12. Casualty and Condemnation.** If, prior to the Closing, all or any part of the Property shall be destroyed or damaged by fire or any other casualty (each, a "Casualty Event") or shall be condemned or be subject to any pending or threatened condemnation by governmental or other lawful authority (each, a "Condemnation Event"), Purchaser shall have no liability for any such destruction or damage and at its option may either:

(a) complete the purchase, in which event all of the insurance proceeds or condemnation proceeds shall be payable to Purchaser, or if such proceeds are not then available, Seller shall assign all claims therefor and all right, title and interest therein to Purchaser, or

(b) terminate this Agreement and all obligations of Purchaser hereunder, at which time this Agreement shall be deemed null and void and neither party shall have any further claim against the other by reason hereof, except for any obligations under Section 5(b) above.

Purchaser shall provide written notice to Seller within forty-five (45) days after Purchaser is given notice of a Casualty Event or Condemnation Event as to whether it elects the option set forth in Subsection (a) or (b) of this Section and failing which Purchaser shall be deemed to have exercised the option set forth in Subsection (a). In the event the Casualty Event is reasonably determined to cost less than two hundred fifty thousand dollars (\$250,000.00) to repair, Purchaser must elect the option set forth in Subsection (a) of this Section.

### **13. Liabilities.**

(a) The Seller and Nicholson have been sued by the Detroit Water and Sewage Department in Wayne County Circuit Court, Case Number 20-004781 (the "Case"), for allegedly failing to pay for certain storm water services. Purchaser hereby agrees to protect, defend and indemnify the Seller from and against any and all damages, losses, liabilities, obligations, penalties, claims, costs, and/or expenses arising from the Case. Various violations are alleged to have occurred on the Property while the Purchaser and Nicholson have been in control of the Property. Some of these violations are outstanding, but being contested by Purchaser and Nicholson. Purchaser hereby agrees to protect, defend and indemnify the Seller from and against any and all damages, losses, liabilities, obligations, penalties, claims, costs, and/or expenses arising from the alleged violations.

### **14. Miscellaneous.**

(a) Entire Agreement. This Agreement constitutes the entire contemplated agreement among the Parties with respect to the transactions contemplated herein, and it supersedes all prior oral and written understandings or agreements among the Parties.

(b) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, devisees, successors and permitted assigns. Purchaser shall not assign this Agreement without Seller's prior written consent; nor may Seller assign this Agreement without Purchaser's prior written consent. Notwithstanding the foregoing, Purchaser may assign this agreement to an affiliate.

(c) Waiver; Modifications. Failure by a Party to insist upon or enforce any of its rights shall not constitute a waiver thereof. A Party may waive the benefit of any provision or condition for its benefit contained in this Agreement. No oral modification hereof shall be binding upon the Parties, and any modification shall be in writing and signed by the Parties.

(d) TIME IS OF THE ESSENCE. Time is of the essence with respect to the performance of the Parties' obligations hereunder.

(e) Drafting. Each Party hereby acknowledges that all Parties participated equally in the drafting of this Agreement, and that, accordingly, no court construing this Agreement shall construe it more stringently against one Party than any other.

(f) Governing Law. This Agreement is executed in and shall be governed by, and construed under, the laws of the State of Michigan.

(g) Notices. Any notice or consent required to be given pursuant to this Agreement or otherwise desired to be delivered to a Party shall be effective only if it is in writing and is either (a) personally delivered to such Party at its address set forth below; (b) sent by Federal Express or other similar next business day air courier; or (c) delivered by electronic transmission (e-mail), provided that the transmission is completed no later than 5:00 p.m. on a business day. Notice shall be deemed given upon personal delivery, upon proper e-mail transmission or one (1) business day

following deposit with an air courier. Notices shall be deemed properly addressed if given at the following:

If to Purchaser:

Dan Stamper  
Ambassador Port Company  
12225 Stephens Road  
Warren, MI 48089

If to Seller:

Jonathan C. Kinloch – Chairman  
Mark Schrupp, Executive Director  
Detroit/Wayne County Port Authority  
130 E. Atwater Street  
Detroit, Michigan 48226

Either Party may change the address or e-mail address to which notices to it are to be delivered or sent by providing notice of such change to the other Party in the manner specified above.

(h) Performance. Whenever this Agreement requires that something be done within a period of days, such period shall (i) not include the day from which such period commences, (ii) include the day upon which such period expires, (iii) expire at 5:00 p.m. eastern prevailing time on the date by which such thing is to be done, and (iv) be construed to mean calendar days; provided that if the final day of such period falls on a Saturday, Sunday or legal holiday in the State of Michigan, such period shall extend to the first business day thereafter.

(i) Counterparts. It is understood and agreed that this Agreement may be executed in several counterparts, each of which, for all purposes, shall be deemed to constitute an original and all of which counterparts, when taken together, shall be deemed to constitute one and the same agreement, even though all of the parties hereto may not have executed the same counterpart. To facilitate execution of this Agreement, the Parties may execute and exchange by facsimile transmission or by electronic delivery of a PDF copy of executed Agreement, which facsimile or PDF copy shall be deemed valid and binding.

(j) Use of Headings. The use of headings within this Agreement are for ease of reference and convenience only and shall not be used or construed to limit or enlarge the interpretation of the language hereof or the enforcement of this Agreement.

(k) Attorney Fees. If a dispute arises out of this Agreement, then the prevailing Party will be entitled to recover its actual attorney fees and costs from the other Party.

(l) No Offer. This Agreement does not constitute an offer and shall not be binding on the Parties unless and until executed by all of them.

(m) No Brokers. No brokers were used in this Transaction and no brokerage commissions are owed by any Party.

**IN WITNESS WHEREOF**, authorized representatives of the Parties have executed this Agreement as of the Effective Date.

**SELLER:**  
**Detroit/Wayne County Port Authority**

**PURCHASER:**  
**Ambassador Port Company**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit A**  
**Legal Description**

In the City of Detroit, Wayne County Michigan:

**PARCEL I:**

All that portion of Private Claims 47 and 583 lying South of the South line of Jefferson Avenue, City of Detroit, Wayne County, Michigan.

**PARCEL II:**

All that portion of Private Claim 583 lying South of the South Line of the Wabash Railway right of way and North of the North line of Jefferson Avenue, excepting therefrom a parcel 25 feet square on the Northwest corner of said parcel owned by United States of America, and Lots 15, 16, 17, 18, 21 and 22 and vacated alley adjoining Lots 15 through 10, Subdivision of Private Claim 563 for heirs of J. B. Campau recorded in Liber 1 on Pages 94 and 95 of Plats, Wayne County Records.

**PARCEL III:**

The West 555.88 feet of Private Claim 77, fronting on Jefferson Avenue lying South of the South line of Jefferson Avenue.

**PARCEL IV:**

Lots 1 to 11 inclusive, subdivision of Private Claim 583 for heirs of J. B. Campau, as recorded in Liber 1 on Pages 94 and 95 of Plats, Wayne County Records.

**PARCEL V:**

Also, that part of Lots 6 to 10 inclusive of Riverside Subdivision described as follows: South 1.22 feet on West line being South 23.72 feet on East line of Lot 10, South 23.72 feet on West line being South 56.45 feet on East line of Lot 9, South 56.45 feet on West line being South 102.87 feet on East line of Lot 8 and Lots 6 and 7 excepting triangular part of Lot 7 being North 15.83 feet on West line and being West 6.20 feet on North line, also East 43.80 feet of West 193.10 feet on South line being East 31.83 feet of West 182.62 feet on North line of vacated alley lying North and adjacent said lots, also West 1/2 of vacated North and South alley excepting 220.21 feet thereof. Riverside Liber 1, Page 191, of Plats, Wayne County Records Also part of Private Claim 47, City of Detroit, being a strip of land 20 feet wide lying West and adjacent West line of said North and South alley measuring 457.33 feet Northerly along center line said strip from North line of East and West alley to point of curve; thence continuing along center line of said strip on a 330 feet radius curve to left on 150 feet; thence continuing along center line of said strip on a 135 feet radius curve to left to Intersection of South line Wabash Right of Way Railroad with East line of McKinstry Avenue, which strip is to be used for railway purposes and subject to the right of the adjoining owners to share in such use.

Ward 14, Item 000004-12, Parcels I,III, IV; 4461 W. Jefferson

Ward 14, Item 000017, Parcel II; 4300 W. Jefferson

Ward 14, Item 000014, Parcel V; 4500 W. Jefferson

## TERMINATION AGREEMENT

This Termination Agreement (this "**Termination Agreement**") is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Effective Date**") by and between AMBASSADOR PORT COMPANY (the "**Master Concessionaire**"), and NICHOLSON TERMINAL AND DOCK COMPANY (the "**Sub Concessionaire**"). Master Concessionaire and Sub Concessionaire are sometimes each referred to as a "**Party**", and collectively, as the "**Parties**".

### WITNESSETH:

WHEREAS, Master Concessionaire and Sub Concessionaire entered into that certain Subconcession Agreement dated effective as of July 7, 2005 (the "**Agreement**") with respect to the operation of the Facility, as such term is defined in the Agreement, located at 4300, 4461 and 4500 W. Jefferson Ave. in the City of Detroit, Michigan;

WHEREAS, the Agreement has not expired;

WHEREAS, Sub Concessionaire and Master Concessionaire wish to Terminate the Agreement as hereinafter set forth;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in consideration of the mutual covenants and agreements of the Parties herein set forth, the Parties hereto agree as follows:

1. Recitals; Defined Terms. The foregoing recitals are true and correct and are incorporated herein by this reference. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Agreement.

2. Early Termination. As of the Effective Date the Agreement is hereby terminated and of no further force or effect.

3. Indemnities. Nothing herein releases Sub Concessionaire from any indemnity, defense and hold harmless obligations Sub Concessionaire has under the Agreement with respect to matters occurring prior to the Termination Date. Further, notwithstanding the foregoing, nothing herein releases Master Concessionaire from any indemnity, defense and hold harmless obligations Master Concessionaire has under the Agreement with respect to matters occurring prior to the Termination Date.

Sub Concessionaire further covenants and agrees, at its sole cost and expense, to indemnify, defend, and hold harmless Master Concessionaire and the Detroit/Wayne County Port Authority from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, reasonable attorneys' and experts' fees and expenses) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against Master Concessionaire and/or Detroit/Wayne County Port Authority arising out of (i) any blight and or property violations issued from the City of Detroit, including, but not limited to those set forth on Exhibit A, and (ii) Wayne County (Michigan) Circuit Court, Case Number 20-004781.

4. Third Party Beneficiary. The Parties acknowledge and agree that a) the Detroit/Wayne County Port Authority (the "Authority") is a third party beneficiary to this Termination Agreement and b) the Authority shall have the right to enforce this Termination Agreement, directly, to the extent the Authority deems such enforcement necessary or advisable to protect the rights, interests, obligations or remedies of the Authority.

5. Payment. Concurrent with the execution of this Termination Agreement Sub Concessionaire shall pay to Master Concessionaire the amount of \$156,240.17 for the payment of amounts due and owing under the Agreement for September – December, inclusive, of 2019.

6. Conflicts. In the event of any conflicts between the terms of this Termination Agreement and the terms of the Agreement, the terms of this Termination Agreement shall control.

7. Governing Law/Modifications. This Termination Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Michigan, without giving effect to its conflicts of law provisions. This Agreement sets forth the entire agreement and understanding between the Parties with respect to the termination of the Agreement. This Agreement may not be terminated, modified or otherwise changed except pursuant to written agreement signed by Master Concessionaire and Sub Concessionaire.

8. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which when taken together shall constitute one original. Delivery via facsimile or PDF transmission of a counterpart of this Agreement as executed by the Parties making such delivery shall constitute good and valid execution and delivery of this Agreement for all purposes.

9. Binding Effect. This Termination Agreement shall be binding upon and shall inure to the benefit of both Master Concessionaire and Sub Concessionaire and their respective successors, assigns and legal representatives.

10. Consent of Other Parties/Sub Concessionaire. Master Concessionaire and Sub Concessionaire each represent and warrant to the other that it is not required to obtain consent or approval from any other party in order for the termination of the Agreement to take effect, or if such consent is required, such Party has obtained it. Master Concessionaire and Sub Concessionaire represent that (i) the individuals executing this Termination Agreement on behalf of Master Concessionaire and Sub Concessionaire, respectively, have full Sub Concessionaire and power to execute and deliver this Termination Agreement, and (ii) this Termination Agreement constitutes a valid and binding obligation on the parties hereto.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Termination Agreement to be executed by their duly authorized officers on the day, month, and year first-above written.

**MASTER CONCESSIONAIRE:**

AMBASSADOR PORT COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SUB CONCESSIONAIRE:**

DETROIT/WAYNE COUNTY PORT SUB  
CONCESSIONAIRE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

This Termination  
of  
Springing Interest  
Agreement

as of the \_\_\_\_ day of \_\_\_\_  
AMBASSADOR PORT CO  
("City"), a Michigan muni  
AUTHORITY (the "Authorit  
referred to as a "Party", and collectively, as the "Parties".

## MENT

ation Agreement") is made effective  
"Effective Date") by and between  
cessionaire"), CITY OF DETROIT  
TROIT/WAYNE COUNTY PORT  
Concessionaire and Authority are sometimes each

### WITNESSETH:

WHEREAS, Master Concessionaire and Authority entered into that certain Master Concession Agreement dated effective as of July 7, 2005 (the "Agreement") with respect to the operation of the Facility, as such term is defined in the Agreement, located at 4300, 4461 and 4500 W. Jefferson Ave. in the City of Detroit, Michigan (the "Premises");

WHEREAS, Master Concessionaire and City entered into that certain Agreement Relating to Springing Interest and Master Concession Agreement dated effective as of July 7, 2005 (the "Springing Agreement") with respect to the operation of the Facility, as such term is defined in the Agreement and the Springing Agreement;

WHEREAS, the Agreement has not expired;

WHEREAS, Authority and Master Concessionaire wish to Terminate the Agreement and to sell to the Master Concessionaire the Premises;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in consideration of the mutual covenants and agreements of the Parties herein set forth, the Parties hereto agree as follows:

1. Recitals; Defined Terms. The foregoing recitals are true and correct and are incorporated herein by this reference. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Agreement and the Springing Agreement.

2. Early Termination. As of the Effective Date the Springing Agreement is hereby terminated and of no further force or effect.

3. Release. The City hereby waives and releases all right title and interest it may have in the Premises, including any springing rights or defeasible interest (either determinable or subject to a condition subsequent) and hereby consents, without reservation to the sale of the Premises to the Master Concessionaire. The Master Concessionaire hereby waives and unconditionally releases the City, its agents, employees, former employees, attorneys, successors and assigns, from any and all claims, debts, liabilities, demands, obligations, promises, agreements, costs, expenses (including, but not limited to, attorney fees), damages, actions and causes of action arising out of the Springing Agreement or the Premises.

4. Conflicts. In the event of any conflicts between the terms of this Termination Agreement and the terms of the Agreement or Springing Agreement, the terms of this Termination Agreement shall control.

5. Governing Law/Modifications. This Termination Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Michigan, without giving effect to its conflicts of law provisions. This Agreement sets forth the entire agreement and understanding between the Parties with respect to the termination of the Agreement.

6. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which when taken together shall constitute one original. Delivery via facsimile or PDF transmission of a counterpart of this Agreement as executed by the Parties making such delivery shall constitute good and valid execution and delivery of this Agreement for all purposes.

7. Binding Effect. This Termination Agreement shall be binding upon and shall inure to the benefit of the City, Master Concessionaire and Authority and their respective successors, assigns and legal representatives.

8. Consent of Other Parties/Authority. City, Master Concessionaire and Authority each represent and warrant to the other that it is not required to obtain consent or approval from any other party in order for the termination of the Agreement to take effect, or if such consent is required, such Party has obtained it. City, Master Concessionaire and Authority represent that (i) the individuals executing this Termination Agreement on behalf of City, Master Concessionaire and Authority, respectively, have full authority and power to execute and deliver this Termination Agreement, and (ii) this Termination Agreement constitutes a valid and binding obligation on the parties hereto.

9. Expenses. To the extent the City has engaged outside counsel for the review of this Agreement, the Master Concessionaire shall reimburse the City for such costs up to an amount of \$10,000.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Termination Agreement to be executed by their duly authorized officers on the day, month, and year first-above written.

**MASTER CONCESSIONAIRE:**

AMBASSADOR PORT COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**AUTHORITY:**

DETROIT/WAYNE COUNTY PORT  
AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY:**

CITY OF DETROIT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_