



ESTADO LIBRE ASOCIADO DE PUERTO RICO
Gobierno Municipal Autónomo de Ponce

ASAMBLEA MUNICIPAL
APARTADO 1709
PONCE, PUERTO RICO 00733

104

RESOLUCION NUM. 229
SERIE DE 1996-97

“RESOLUCION PARA APROBAR CONTRATO DE ARRENDAMIENTO Y DERECHOS PREFERENCIALES ENTRE LA JUNTA ADMINISTRATIVA DEL PUERTO DE PONCE Y LUIS A. AYALA COLON SU CRS., INC.”.

PROYECTO DE ADMINISTRACION

POR CUANTO: El Puerto de Ponce es una entidad municipal creada en virtud de una Franquicia que le fue concedida al Municipio de Ponce en ell 1911, por el extinto Concejo Ejecutivo de Puerto Rico, hoy Comisión de Servicio Público;

POR CUANTO: El Puerto de Ponce y Luis A. Ayala Colón Sucrs., Inc., han negociado un contrato sobre ciertas instalaciones y derechos en el Puerto de Ponce;

POR CUANTO: El objetivo de este Contrato, lo constituye el arrendamiento de 9.5 cuerdas de terreno con un canon de arrendamiento mensual de \$7,950.83 y la concesión de derechos preferentes en el Muelle 8 para operaciones de contenedores e importación de madera que garantizan un mínimo de ingresos anuales por operaciones de \$123,000;

POR CUANTO: La Junta Administrativa del Puerto de Ponce en reunión ordinaria celebrada el 19 de marzo de 1997, aprobó la contratación de referencia;

POR CUANTO: Este Contrato dispone que Luis A. Ayala Colón Sucrs., Inc. pagará cánones de arrendamiento mensuales de acuerdo a las tarifas del Puerto en vigencia;


POR TANTO: RESUELVESE POR LA ASAMBLEA MUNICIPAL DE PONCE, PUERTO RICO:

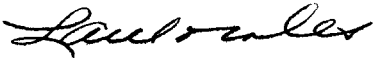
SECCION PRIMERA: Aprobar el Contrato de Arrendamiento y Derechos Preferenciales entre la Junta Administrativa del Puerto de Ponce y Luis A. Ayala Colón Sucrs., Inc., efectivo el 15 de diciembre de 1996.

Luis A. Ayala Colón
[Firma]

SECCION SEGUNDA: Esta Resolución entra en vigencia inmediatamente luego de su aprobación.

APROBADA ESTA RESOLUCION POR LA ASAMBLEA MUNICIPAL DE PONCE, PUERTO RICO, A LOS 12 DIAS DEL MES DE MAYO DE 1997.


GULLERMO JIMENEZ MONROIG
SECRETARIO ASAMBLEA MUNICIPAL


LUIS A. (WITO) MORALES
PRESIDENTE ASAMBLEA MUNICIPAL

SOMETIDA ESTA RESOLUCION A MI CONSIDERACION A LOS 13 DIAS DEL MES DE MAYO DE 1997, Y FIRMADA Y APROBADA POR MI A LOS 14 DIAS DEL MES DE MAYO DE 1997.


RAFAEL CORDERO SANTIAGO
ALCALDE

DCS/JH/^{mavc}mavc

CERTIFICACION

YO: GUILLERMO JIMENEZ MONROIG, SECRETARIO ASAMBLEA MUNICIPAL DE PONCE, PUERTO RICO:

CERTIFICO: Que la precedente **Resolución Núm. 229**, Serie de 1996-97, fue aprobada por la Asamblea Municipal en la Sesión Ordinaria el lunes, 12 de mayo de 1997 y con los votos afirmativos de los siguientes Asambleístas a saber:

Hon. Carlos L. Báez
Hon. Ruth García Ortiz
Hon. Mayra C. Colón Toledo
Hon. José A. González
Hon. Nilda González
Hon. Luis A. (Wito) Morales
Hon. Cosme A. Ortiz Alvarez

Hon. Cruz Ortolaza
Hon. Pedro Pacheco
Hon. Ana M. Pieve de Antúnez
Hon. Rafael L. Rovira
Hon. Orlando Salichs
Hon. Santos Silva
Hon. Daisy Silvagnoli

Hon. Waldemar Vélez

Ausente Excusado

Hon. Enrique A. Vicéns

Esta Resolución fue firmada por el Presidente y el Secretario de la Asamblea, el día lunes, 12 de mayo de 1997, debidamente certificada al Alcalde el día martes, 13 de mayo de 1997 y éste la firmó el día miércoles, 14 de mayo de 1997 .

CERTIFICO: Además, que de acuerdo con las Actas bajo mi custodia, aparece que todos los Asambleístas fueron debidamente citados para la referida sesión en la forma que determina la Ley.

Y PARA QUE ASI CONSTE, y a los fines procedentes, expido la presente con mi firma y el Sello Oficial del Municipio Autónomo de Ponce, hoy día miércoles, 14 de mayo de 1997.


GUILLERMO JIMENEZ MONROIG
SECRETARIO ASAMBLEA MUNICIPAL

SELLO OFICIAL

W. J. M.
 nom

LEASE AGREEMENT

In Ponce, Puerto Rico, this 1st day of April 1997.

APPEAR

AS PARTY OF THE FIRST PART: THE ADMINISTRATIVE BOARD OF THE PORT OF PONCE, in this act represented by MR. JOHNNY MORALES CALOCA, Social Security No. 581-58-6746, of legal age, married and resident of San Juan, Puerto Rico, who warrants that he is duly authorized by the Administrative Board of the Port of Ponce to execute this instrument on their behalf, hereinafter referred to as "the Board".

AS PARTY OF THE SECOND PART: LUIS A. AYALA COLON SUCRS., INC., a corporation organized and existing under the laws of the Commonwealth of Puerto Rico, with principal offices in the City of Ponce, Puerto Rico, herein represented by its Chairman of the Board and Chief Executive Officer, MR. LUIS A. AYALA PARSİ, Social Security No. 582-66-3187, of legal age, married, and resident of Ponce, Puerto Rico, who warrants that he is duly authorized to execute this instrument on behalf of Luis A. Ayala Colón Sucrs., Inc., hereinafter referred to as "Ayala".

WITNESSETH THAT

Whereas, the Board holds and administers the waterfront of the Port of Ponce, including bulkheads, wharves, piersheds, buildings, structures, improvements and among these, Berth Number 8 and the surrounding terminal facilities.

Whereas, Ayala is a maritime agent for container and non container cargo vessel operations.

Whereas, Ayala has requested the Board to demise and lease to it a large portion of the said facilities and the latter has deemed it to be in its best interest, this aiding the economic and commercial development and progress of the south area of Puerto Rico.

Whereas, Ayala will use the leased premises to service Ayala's customers engaged in cargo vessel operations, hereinafter referred to as Ayala's customers.

NOW THEREFORE, the Board, for and in consideration of the terms, covenants, conditions and rents hereinafter to be paid, performed, kept and observed hereby, leases and demises unto Ayala the premises hereinafter described for the term of five years commencing the fifteenth day of December 1996. On the following terms and

conditions, the Board and Ayala for themselves, their successors and assignees hereby covenant, promise and agree to and with each other to keep and perform:

ARTICLE I

SUBJECT PREMISES

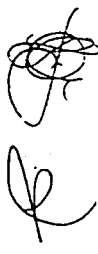
The facilities that are the subject of the present Agreement include that certain area in the Port of Ponce with improvements existing thereon more specifically described as follows:

- A. Container vessel wharf known as Berth No. 8, with a length of 610 feet and a width of 64 feet, with two approach trestles, bumpers and appurtenances, and fitted with appropriate mooring devices, fenders, fresh water, electric and drainage facilities. The said wharf with an area of 0.349 acres equivalent to 0.358 "cuerdas".
- B. The exclusive use of the premises and other marine terminal facilities designated and delineated as Parcel A and Parcel B in Exhibit A attached hereto and made a part hereof, consisting Parcel A of 5.837740 cdas. and Parcel B of 3.703 cdas.

ARTICLE II

RIGHTS GRANTED UNTO BERTH NO. 8

- A. With the exception of the U. S. Navy vessels which will have first right of use over Berth No. 8, the container vessels or barges that are owned or operated by Ayala's customers shall have first priority right for the use of said Berth No. 8 over other members of the public, such use extending only for the docking, mooring and stevedoring operations of container vessels which belong to or are operated by Ayala's customers or of the vessels which are engaged in the loading or unloading of cargo transported or to be transported by such vessels, or of supplies thereof.
- B. Non container vessels or barges that are owned or operated by Ayala's customers shall have a second priority right for the use of said Berth No. 8 over other members of the public except as provided in paragraph A hereinbefore and as provided in paragraph C hereinafter.
- C. Ayala acknowledges that a Paceco 40 tons crane is placed on Pier No. 8 for specialized container operations and agrees that a container vessel or barge not operated by Ayala will have priority for the use of Berth No. 8 over a non container

- vessel or barge covered by the rights of preference herein granted. If more than one container vessel or barge not operated by Ayala requests Pier No. 8, Ayala's non container vessels will have the right for the use of said berth immediately after the first container vessel or barge has completed its continuous discharge and/or loading operation.
- D. Ayala shall furnish to the Board by the 15th day of each month a schedule showing the expected arrival of seagoing vessels at Berth No. 8 for the following calendar month.
- E. Ayala's vessels shall have a 36-hour priority right for the use of Berth No. 8 except as provided in ARTICLE II B hereinabove, on the days shown in such schedule. The schedule is to be confirmed and/or updated seven (7) days prior to the scheduled vessels arrival or at the arrival for transit at the Panama Canal of the vessel with no effect on the priority except as provided in ARTICLE II B. Later changes may be given, however, priority right of use shall in such case be relinquished for any such specific vessel for such period the Board has fixed berthing time with another terminal user.
- F. If, at anytime, it appears likely from the schedules furnished by Ayala that any of Ayala's customers included will not use Berth No. 8, the Board shall have the right to schedule and permit the use by vessels other than Ayala's customers of all or any part of said Berth not in use at the time by Ayala.
- G. Upon the arrival of a vessel at the time scheduled by Ayala, the Board will cause the Berth to be made available for such vessel and the Board will order the berth immediately vacated for use by the scheduled vessel.
- H. Upon the arrival of a vessel otherwise entitled to the use of Berth No. 8, but not scheduled, Ayala may exercise its rights of priority only for such period as the Board is not using the said Berth, or has not scheduled the use thereof. Each such vessel must occupy the space assigned, and shall not shift elsewhere without the written consent of the Board.
- I. The Board may also require any vessel to vacate a berth when, in the judgement of the Board it shall be necessary to prevent injury or damage, or threat of injury or damage to persons or property.
- 

J. Not later than two (2) working days after departure of seagoing vessels scheduled as above provided, Ayala shall submit to the Board a cargo manifest and all other necessary documents with the following information:

- 1. Name of vessel
- 2. Its gross registered tonnage
- 3. Date and time(s) of arrival and departure
- 4. Actual tonnage of cargo discharged and actual tonnage of cargo loaded
- 5. Number of containers loaded and/or discharged, including empties

K. It is agreed by the appearing parties that the preferential rights herein granted only applies to vessels that are operated by NCS and Seaboard, who are Ayala's customers for the purpose of this Article.

ARTICLE III

TERM

A. The term of this Agreement shall be for five (5) years effective as of December 15, 1996 and subject to the cancellation and termination provisions hereinafter stated ending on December 14, 2001.

Notwithstanding anything to the contrary herein stated, if no further written Agreement is made between the parties herein, the term of this contract will be effective as herein above stated.

B. Sixty (60) days before the expiration of this Agreement, the appearing parties agree to start negotiations for a new contract. At the expiration of this Agreement, if the parties have not reached an agreement for a new contract, then this Agreement will continue and remain in effect on a monthly basis under the same terms and conditions as agreed herein.

ARTICLE IV

FEEES AND RENT

A. Rental payment shall commence on the fifteenth day of December 1996.

B. The rental and fees payable for the subject premises and rights shall be determined as follows:

- 1. For the priority rights of Berth No. 8:

- a. A fixed annual fee (12 running months) of six thousand dollars U.S. (\$6,000.00) for the first priority right stated in ARTICLE II A and
 - b. A fixed annual fee (12 running months of three thousand dollars U.S. (\$3,000.00) for the second priority right stated in ARTICLE II B.
2. Ayala shall pay the Board mooring charges as per relevant tariffs and as normally assessed at the Ponce Piers, with a minimum yearly guarantee of forty two thousand dollars U.S. (\$42,000.00) (for 12 consecutive month) for container vessel or barge operations and with a minimum yearly guarantee for the non container operations of six thousand dollars U.S. (\$6,000.00).
 3. For the exclusive use of the marine terminal hereinbefore designated under ARTICLE I B as Parcel A and Parcel B a monthly rental of \$7,950.83 (\$10,000 annually per cuerda) in accordance with applicable rates of the Port of Ponce.
 4. Ayala shall also pay the Board wharfage charges as per relevant Port of Ponce tariff and as normally assessed at the Ponce Piers per voyage with a minimum yearly guarantee of thirty thousand dollars U.S. (\$30,000.00) for container vessel or barge operations and a minimum yearly guarantee of thirty thousand dollars U.S. (\$30,000.00) for non container vessels or barges operations.
- C. The fees and rental charges payable hereunder shall be paid as follows:
1. Fixed charges under B-1 and B-3 in equal monthly installments in advance by the 10th day of each running month.
 2. Variable charges as agreed under items B-2 and B-4, on the basis of actual billing on a ship-by-ship basis with any shortfall against the yearly guaranteed minimum to be settled within thirty (30) days after the termination of the corresponding annual period.
- D. Interest shall accrue on any payment to be made, if not paid on its due date, at the rate of 9.5% per annum without need of notice of default.
- E. Ayala will not be liable for payment of the above mentioned fees and rents if the leased premises object of this Agreement cannot be provided by the Board due to war,




civil disturbance or unrest, acts of God, unsafe berth conditions, laboral unrest, or *force majeure*.

ARTICLE V

CONTINUITY OF SERVICES

- A. The parties agree that Ayala's customers continued and uninterrupted engagement in the maritime transportation business through the Port of Ponce during the term of this contract is essential.
- B. In the event that by action or decree of any government or an act of war which may prevent Ayala's customers vessels from carrying cargo from and to the Port of Ponce, and which prevents Ayala from engaging in cargo operations at the Port of Ponce, Puerto Rico, then Ayala shall have the right to terminate this Agreement without further recourse by the Board upon giving a written notice to the Board, and this Agreement shall be of no further force or effect at the expiration of said notice.
- C. If at any time during the term of this Agreement container vessels operated by Ayala terminate the service to the Port of Ponce, Ayala shall have the right to terminate its obligations under this Agreement corresponding to the first priority berthing right provided that Ayala shall pay to the Board as liquidated damages the amount of \$19,500.
- D. Ayala shall have the same right regarding its obligations under the second priority right subject to the payment of \$9,750 to the Board as liquidated damages.

ARTICLE VI

SECURITY FOR PAYMENT OF RENTALS AND OTHER CHARGES

- A. On the date of execution of this Agreement Ayala shall deliver to the Board as guarantee for the payment of rentals, fees and other charges and the faithful performance of its obligations under this Agreement:
1. A cash deposit in the amount of \$53,100.00; or
 2. A letter from a bank doing business in Puerto Rico evidencing the opening by Ayala of a pledged savings account in favor of the Board for the amount of \$53,100.00 and stating that the bank shall pay to the Board, upon demand, any

debts due under this Agreement up to the amount stated in the savings account without any need of judicial action against the bank; or

3. A letter from a bank doing business in Puerto Rico evidencing the opening by said bank of an irrevocable letter of credit in favor of the Board for the amount of \$53,100.00 stating that the bank shall pay to the Board, upon demand, any debts due under this Agreement up to the total amount of said irrevocable letter of credit without any need of judicial action against the bank; or

4. Any other acceptable security to the Board for the amount of \$53,100.00.

B. In case the terms of the letters referred to in subparagraphs two (2) and three (3) and four (4) above are not satisfactory to the Board, the Board may reject them and request modifications.

ARTICLE VII

ASSIGNMENTS

Neither this lease nor any interest herein contained shall be transferred or assigned by Ayala; and Ayala shall not sublet the premises, or any part thereof, without the prior written consent of the Board, which consent shall not be unreasonable withheld.

ARTICLE VIII

MAINTENANCE AND REPAIRS

A. Ayala, at its own cost and expense at all times during the said term, shall keep and maintain the subject premises and every part thereof in good and sufficient repair condition.

B. It is agreed that, anything contained in this ARTICLE or this lease to the contrary notwithstanding, Ayala shall not be obligated to make or pay for:

1. The normal wear and tear of the subject premises and every part thereof; any extraordinary repair needed by damages caused by acts of God, by enemy forces in case of war, or accidents caused or brought about by latent defects or by third parties except those damages caused by Ayala's employees, agents, invitees, or licensees.

ARTICLE IX

REPAIRS AND ALTERATIONS

- A. Ayala has examined and knows the conditions and state of repair of facilities, accepts them as such, and hereby acknowledges that the Board has made no Agreement or promises to alter, improve, adapt, or repair any of the facilities or any part thereof, during the term of this Agreement except as otherwise provided herein. Ayala acknowledges further that no representation concerning the condition, or state of repair of any item of the facilities, or part thereof, has been made by the Board prior to, or at the time of, the execution of this Agreement, which are not set forth herein.
- B. The Board reserves the right to make such repairs and improvements to the leased premises during the term of this Agreement as it shall deem necessary and appropriate.
- C. Ayala shall have no claim for any inconvenience, annoyance or damage to its business arising from the repairs or replacements in the leased premises, and any such repairs or replacements shall be done in such a way as to cause the least amount of inconvenience, annoyance or damage to Ayala.

ARTICLE X

LIMITATIONS TO THE BOARD'S LIABILITY

- A. Ayala acknowledges that part of all the area comprising Berth No. 8 and adjacent common use area may at times be used by other persons under various arrangements with the Board's permission.
- B. Claims for damages or losses to Ayala or to property for which Ayala is responsible occurring by reason of the presence in the said areas of any such persons, their employees, agents, licensees or persons doing business with them or by their acts or omissions thereon, should be filed directly against said other persons by Ayala.
- C. The Board agrees that at all times it will require from all other users of subject premises under various arrangements with the Board's permission, or other persons there present with the Board permission or consent, that said users and/or persons shall provide appropriate insurance coverage to cover any physical damages or property losses, including vandalism, pilferage and theft resulting from their use of said premises.



ARTICLE XI

WAIVER OF RESPONSIBILITY

Ayala agrees to save harmless, independent of liability determination, the Board and the Municipality of Ponce from all claims for property damages or personal injury of any nature or death to persons that may be caused by Ayala's utilization, occupancy and operation at any Board's facility including the premises covered by this Agreement. Ayala shall defend any court or administrative action brought against the Board and the Municipality of Ponce for the aforementioned damages, injuries or death and shall pay for any compensation or judgement resulting thereof. Pursuant to this undertaking, Ayala agrees to pay for on behalf of the Board and/or the Municipality of Ponce any amount that may be allowed thereon for any final judgement or settlement. Provided, however, that this hold harmless shall not operate in the event that the claims for property damage, personal injury or death resulted from the fault or negligence of the Board or the Municipality of Ponce, and/or from their respective agents or employees.

ARTICLE XII

INSURANCE

- A. Ayala shall carry public liability insurance with insurance companies authorized to do business in Puerto Rico and acceptable to the Board, insuring Ayala against liability for personal injury including bodily injury, and property damage caused by Ayala's use and occupancy of the premises covered by this Agreement and its operations at any other Board's facilities.
- B. The policy limits of said public liability insurance shall not be less than \$1,000,000 for any one occurrence involving personal injury, including bodily injury or death to each person; \$2,000,000 for each occurrence involving more than one person, and \$1,000,000 for property damages.
- C. The public liability insurance shall contain an endorsement reading as follows: The coverage of this policy will not be amended for the purpose of decreasing the protection below the limits specified herein, nor can it be cancelled without giving the Board thirty (30) days prior written notice. A thirty (30) days prior written notice shall also be given to the Board in the event of non renewal.
- 
- 

In addition, the public liability insurance policy shall contain an endorsement of contractual liability including the Administrative Board of the Port of Ponce as additional insured, and also a hold harmless Agreement endorsement which shall read as ARTICLE XI of this Agreement.

The public liability insurance policy shall not contain any deductible, unless Ayala provides another insurance policy and/or payment bond acceptable to the Board covering the risk in the amount not covered by the deductible.

- D. Ayala shall also maintain Workmen's Compensation Insurance under a policy issued by the Puerto Rico State Insurance Fund.
- E. Ayala further agrees that, not later than thirty (30) days prior to the expiration of any insurance policy required by this Agreement to be carried or which is actually carried by Ayala, to deliver to the Board a Certificate of Insurance or a Certified copy of each insurance policy to cover the risks mentioned above.
- F. Simultaneously with the execution of this Agreement, Ayala shall furnish the Board a copy of the aforementioned insurance policy.
- G. The Board at its discretion may fine Ayala \$1,000.00 for each and every month the Security for Payment of Rentals and Other Charges and the Insurance Policies are not submitted upon their termination.
- H. In the event that Ayala does not submit the insurance renewal advice in the term of thirty (30) days prior to their expiration, this will be considered as a violation to the terms and conditions of the present Agreement and the Board will proceed with the cancellation as established in ARTICLE XIII of this Agreement.

ARTICLE XIII

FORFEITURE PROVISIONS

In case of breach of any term as contained in this Agreement by either party, the affected party may terminate this Agreement if such breach is not cured within fifteen (15) days after requested to do so in writing by the affected party. Notice shall be given as provided in Article XII. Thereupon this Agreement and term thereof shall expire and come to an end on the date fixed in such notice as if the same be the date originally fixed in this Agreement for the expiration thereof.

ARTICLE XIV

INSTALLATION OF FIXTURES

At its own cost and expense, Ayala may install signs relating to its business and any additional fixtures necessary for its activities in such a manner as not to deface or injure the premises. Ayala shall not install such fixtures and signs without the previous approval in writing from the Board.

ARTICLE XV

REMOVAL OF FIXTURES AND CHATTELS

A. Within fifteen (15) days after the date of termination of this Agreement by any cause, Ayala shall remove from the leased premises all equipment, personal property, fixtures, signs, easily removable structures and improvements, machinery and goods or merchandise constructed, built, kept or deposited by Ayala on the leased premises and to restore the facilities to the same conditions as existed prior to the lease, all of this at the expense of Ayala.

B. If Ayala does not proceed with the removal of said property as herein provided, Ayala shall be deemed to have abandoned to the Board all said property and the Board shall have the right to dispose of same in any manner that it deems advisable or convenient at the expense of Ayala.

ARTICLE XVI

COMPLIANCE WITH THE LAW

The parties shall obey and comply with all laws and regulations of Puerto Rico; all federal laws and regulations as well as Municipal Ordinances; and Port of Ponce rules and regulations; U.S. Coast Guard regulations and any administrative judicial mandate related to the occupancy and operations of the rented facilities.

ARTICLE XVII

LIENS

Ayala shall not do or suffer anything to be done, upon or in connection with the premises, which may subject the facilities, or any part thereof, to any liens or rights *in rem*; and shall promptly discharge, or cause to be discharged, any lien or right *in rem*;



which may arise or exist at any time with respect to Ayala's use or occupancy of the leased facilities or to any alterations, additions, betterments, or modifications thereof.

ARTICLE XIII

LIABILITY FOR DAMAGES TO FACILITIES OF THE PORT

Ayala assumes all risks of loss of, or damage to, the facilities of the Board resulting from the failure of Ayala to exercise due diligence and care in complying with the provisions of this Agreement.

ARTICLE XIX

RIGHT OF ACCESS BY THE PORT

- A. The Board shall have the right to enter upon the leased premises after coordination with Ayala to make any repairs, replacements and alterations as may be deemed necessary. Such action of the Board shall not release Ayala from its obligation to maintain and repair its own facilities and equipment.
- B. The Board shall also have the right, through its duly authorized agents and representatives, to jointly inspect the premises and installation of Ayala at regular intervals, during regular business hours, to determine Ayala's compliance with its obligations under this Agreement.

ARTICLE XX

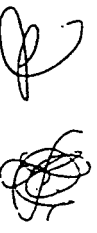
LIMITATIONS OF THE LESSEE RIGHTS

This Agreement does not constitute Ayala as an agent, officer or employee of the Board for any purpose whatsoever.

ARTICLE XXI

AGREEMENTS WITH THE UNITED STATES

This Agreement and lease shall be subordinate to the provisions of any existing or future agreement between the Board and the United States Government, relative to the operations or maintenance of the premises and other facilities, the execution of which has been or may be required as a prior condition to the expenditure of federal funds for the development of the premises and other facilities.



ARTICLE XXII

NOTICES

Notices to the Board must be in writing and either delivered by hand, or sent by fax or mail; postage prepaid, addressed to the President of Ponce Port Administrative Board, P. O. Box 125, Playa Station, Ponce, PR 00734 or fax no. 840-4681. Notices to Ayala must be in the same manner addressed to P.O. Box 7066, Ponce, PR 00732-7066 or fax no. 848-0070.

ARTICLE XXIII

ENTIRE AGREEMENT

This Agreement constitutes the entire contract between the parties on the subject matter and may not be changed, modified, discharged or extended, except by written supplement duly executed on behalf of the parties.



ARTICLE XXIV

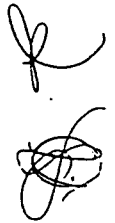
NON-DISCRIMINATION CLAUSE

In connection with the utilization of the premises covered by this Agreement, Ayala agrees not to discriminate against any person, employee or applicant for employment, because of race, religion, color, sex or national origin. These provisions shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, lay-off, or termination; rates or any other form of compensation and selection for training including apprenticeship.

ARTICLE XXV

OTHER PROVISIONS

- A. The failure of the Board to insist, in any one or more instances, upon performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of the Board's right to the past, present and future performance of any such terms, covenants, or conditions; and Ayala's obligations in respect of said performance shall continue in full force and effect; and the receipt and acceptance of rent shall not be deemed to be a waiver of any breach or default by Ayala of any provisions of this Agreement nor shall it invalidate or impair the
- 
- 

- efficacy of any termination, or notice of termination hereunder, unless expressly so agreed in writing by the Board.
- B. The covenants and conditions herein contained shall apply to the successors, executors, administrators and assigns of Ayala.
- C. This Agreement shall have no effectiveness until such date on which Ayala complies with the provisions of the Agreement requiring surety bonds, cash deposits and insurance policies and the Board does not bind itself to stand for the terms contained herein until it has been signed by the President of the Board or his duly authorized representative and approved or ratified by the Municipal Assembly of Ponce.
- D. In case Ayala has any demand or complaint relating to the activities authorized under this Agreement, or of any other nature whatsoever, Ayala shall communicate same in writing to the President of the Board by certified mail, return receipt requested.
- E. It is understood that the rentals stated in this contract have been computed on the basis of the rental charges contained in the applicable resolutions promulgated and approved by the Municipality of Ponce and such rentals are subject to readjustment in accordance with the rates, fees, rentals and other charges to be adopted from time to time pursuant to the Tariff Procedure for the Port of Ponce. Ayala agrees to pay the readjusted rental fixed by the Board and the Municipality of Ponce in accordance with pertinent legal procedures. Provided that the Board will not readjust rentals under Article IV B 3 hereinabove, during the first three years of this Agreement.
- F. In case this lease applies for exclusive use of any maritime operation Ayala shall not make or collect for its own account any charges for the use of the leased area from vessels, whether or not self-propelled or from the operators thereof, except charges on account of seagoing vessels, their passengers and cargo, for which Ayala is general agent, which it shall first have paid to the Board. Nothing herein contained shall affect the right of Ayala to make charges against shippers and consignees for demurrage, but Ayala shall pay demurrage to the Board in accordance with the applicable provisions of the Port tariff.
- G. Ayala agrees to submit to the jurisdiction and venue of the Judicial Court of Ponce, Puerto Rico for claims arising under this Agreement.
- 

- H. Ayala certifies and guarantees the filing of its income tax returns and municipal patents for the five year prior to the signing of this contract and the current year, that it has no debts for said concepts, for property or real estate taxes, excise taxes or any other type of tax or license with the Commonwealth of Puerto Rico and its municipalities or that it is fully complying with an installment plan for those purposes. It is expressly agreed that this certification is an essential condition of this contract and any material misrepresentation in same will be sufficient cause for the cancellation of this contract by the Board.
- I. The Board reserves the right, at any time during the term of this Agreement, to designate and assign to Ayala another suitable location at the same premises or at any other premises or facilities that may be constructed to serve the same area, if possible, of approximately the same measurement as the one herein leased. In the event the Board decides to relocate Ayala, then Ayala shall pay for its relocation costs.
- J. Ayala agrees to relinquish the area identified in Exhibit A within Parcel A as future easement, when so requested by the Board due to the necessity of providing access to the adjacent lot owned by the Port. At that time the aforementioned area will be deducted from the demise premises and rentals adjusted accordingly.

ARTICLE XXVI

CONVENANT TO COMPLY WITH LAWS

Both parties to this Agreement are bound and hereby agree to comply with all rules and regulations, city ordinances and public laws, state or federal, applicable to said leased premises and the operations contemplated in this contract.

ARTICLE XXVII

REMEDIES TO BE NONEXCLUSIVE

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Board at law or in equity, and neither the exercise of any remedy, nor any provision in this lease for a remedy or an indemnity shall prevent the exercise of any other remedy.

ARTICLE XXVIII

PAYMENT OF UTILITIES AND OTHER CHARGES

In addition to the rental charges specified at Article IV herein, Ayala will pay of its own account, all charges for any and all utility services rendered to it at the demised premises upon request, including, but not limited to charges for electricity, water, gas, sewerage, and telephone, as soon as and when the same shall be so assessed and imposed thereon.

ARTICLE XXIX

TITLES

The titles herein are inserted for references only and in no way define, limit or describe the scope or intent of this lease, nor affect the lease in any way.

ARTICLE XXX

RATIFICATION AND APPROVAL

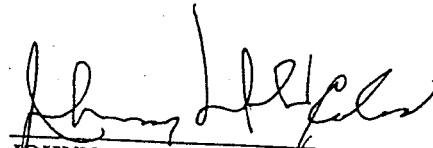
The parties hereby acknowledge that this Agreement is subject to ratification and approval by the Ponce Municipal Assembly as required by Articles 5.005(d) and 10.005 of the Puerto Rico Municipal Law, Law No. 81 of August 30, 1991 and by Section 9 of the Franchise Ordinance No. 258, granting to the Municipality of Ponce, Puerto Rico, authority to construct, maintain and operate a pier, as ordained and enacted by the Executive Council of Puerto Rico on November 20, 1911.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this

1st day of April, 1997

ADMINISTRATIVE BOARD

LUIS A. AYALA COLON SUCRS., INC.


JOHNNY MORALES CALOCA
DIRECTOR OF THE PORT


LUIS A. AYALA PARSİ
CHAIRMAN & CEO