

**O-16-45**  
**07/20/16**

AN ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON  
TO AUTHORIZE THE GRANTING OF AN EASEMENT OVER A PORTION OF INGHAM  
AVENUE TO DURAPORT RAIL TERMINAL, LLC

THE MUNICIPAL COUNCIL OF THE CITY OF BAYONNE DOES ORDAIN:

Section 1. That an easement for the right of access and entry in, to, over, under, through, upon and across that portion of Ingham Avenue comprising a 796.85 ft. by 2.5 ft. strip along the easterly side thereof totaling 1.992 sq.ft, as more particularly described in the attached "Grant of Easement", which is attached hereto and made part hereof, be granted in favor of Duraport Rail Terminal, LLC.

Section 2. That the said easement agreement be in a form approved by the Law Department.

Section 3. The Mayor and City Clerk are hereby authorized to execute a Grant of Easement granting permission access and entry in, to, over, under, through, upon and across that portion of Ingham Avenue comprising a 796.85 ft. by 2.5 ft. strip along the easterly side thereof totaling 1.992 sq. ft as more particularly described in the attached "Grant of Easement" to Duraport Rail Terminal, LLC in a form approved by the Law Department.

**GRANT OF EASEMENT**  
**(Encroachment)**

THIS GRANT OF EASEMENT (this "Easement") is made as of the \_\_\_ day of \_\_\_\_\_, 2016, by the CITY OF BAYONNE, a municipal corporation of the State of New Jersey, with an address of 630 Avenue C, Bayonne, New Jersey 07002 ("Grantor"), and DURAPORT RAIL TERMINAL, LLC, a New Jersey limited liability company, with an address of 130 Lefante Way, P.O. Box 1009, Bayonne, New Jersey 07002 ("Grantee").

**W I T N E S S E T H:**

**WHEREAS**, Grantor is the owner of certain real property designated on the Tax Map of the City of Bayonne as a 60 ft. public right-of-way known as Ingham Avenue (the "Grantor Property"); and

**WHEREAS**, Grantee is the owner of certain property that adjoins the eastern boundary of the Grantor Property, designated as Block 474.02, Lot 4 and Block 475, Lot 1 on the Tax Map of the City of Bayonne ("Grantee Property"); and

**WHEREAS**, in or about December, 2013, Grantee completed the full-depth reconstruction along the length of Ingham Avenue, including the installation of substantial drainage enhancements, which right-of-way was reconstructed up to the point of certain truck scales and related weigh station improvements (collectively, the "Grantee Improvements") previously existing on the Grantee Property; and

**WHEREAS**, the Grantee Improvements encroach upon a small portion of the Grantor Property (the "Encroachment Condition"), which Encroachment Condition has no impact on the ability of pedestrians or vehicles to travel thereon; and

**WHEREAS**, in recognition of the substantial benefits recognized by Grantor and the community following Grantee's reconstruction of the Ingham Avenue right-of-way, Grantor is willing to grant a non-exclusive, unrestricted easement to Grantee over a portion of the Grantor Property in order to permit the Encroachment Condition, in accordance with the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements set forth herein, the parties agree as follows:

1. Grant of Easement; Grantee's Rights.

(a) Grantor hereby grants unto Grantee, and Grantee acknowledges and agrees that Grantee shall have at all times hereafter, in perpetuity, the unrestricted right of access and entry in, to, over, under, through, upon and across that portion of the Grantor Property comprising a

796.85 ft. by 2.5 ft. strip along the easterly sideline thereof totaling 1.992 sq. ft. or 0.05 acres (the "Easement Area"), as more particularly depicted on Exhibit A and described on Exhibit B, annexed hereto and made a part hereof, for the purpose of: (A) permitting the continuing existence of the Encroachment Condition and the unrestricted use thereof by Grantee; and (B) pedestrian and vehicular access to, and ingress and egress to and from, the Easement Area in order to permit Grantee to operate, inspect, repair, replace, maintain and reconstruct the Grantee Improvements, subject to the terms, conditions and limitations of this Easement.

(b) In connection with the foregoing grant under Section 1(a), Grantor hereby grants to Grantee, as an easement appurtenant to the Grantee Property, a non-exclusive easement to enter upon the Grantor Property as and to the extent reasonably necessary for the purpose of performing any maintenance, repair or reconstruction of the Grantee Improvements. In connection with any such entry, Grantee and any party(ies) claiming through Grantee shall exercise commercially reasonable efforts to avoid any unreasonable, and to minimize any, interference with the ability of traffic to pass along the Grantor Property. Without limiting the foregoing, Grantor shall have no obligation to perform any such maintenance, repair or reconstruction of the Grantee Improvements, nor shall Grantor be responsible for any costs and expenses relating thereto.

2. Indemnity. Grantee shall defend and indemnify Grantor against, and shall save Grantor harmless from, and shall reimburse Grantor with respect to, any and all claims, demands, actions, causes of action, injuries, orders, losses, liabilities, obligations, damages, fines, penalties, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) incurred by or imposed upon Grantor by reason of any accident, injury (including death at any time resulting therefrom) or damage to any person or property arising out of or resulting from any acts or omissions of Grantee or by any employee, licensee, invitee or agent of Grantee within the Easement Area.

3. Warranty; Further Assurances; Quiet Possession. Grantor covenants to warrant generally the rights herein granted, to execute such further assurance of the same as may reasonably be required, and that Grantee shall have the quiet possession thereof free from all encumbrances

4. Miscellaneous.

(a) Successors and Assigns; Runs with Land. The easements, agreements, covenants, conditions, restrictions and rights hereby imposed and reserved shall be agreements, covenants, conditions, restrictions and rights running with the Grantor Property and the Grantee Property, and shall inure to the benefit of Grantee and be binding upon Grantor, and their respective heirs, legal representatives, successors and assigns.

(b) Integration; Amendment; Severability. This Easement, including the exhibits attached hereto, contains and embodies the entire Easement of the parties hereto with respect to the subject matter hereof, and no representations, inducements, or agreements, oral or otherwise, between the parties not contained and embodied in this Easement shall be of any force and effect, and the same shall not be modified, changed or terminated in whole or in part in any manner other than by an agreement in writing duly signed by all parties hereto. The unenforceability of any provision of this Easement will not affect the validity or enforceability of any other provision of this Easement.

(c) Recording; Governing Law. This Easement shall be recorded in the real property records of Hudson County, New Jersey. This Easement shall be governed by the laws of the State of New Jersey.

(d) Counterparts. This Easement may be executed and acknowledged in one or more multiple counterparts, all of which, when taken together, shall constitute one and the same instrument.

*[Signatures appear on the following page]*

IN WITNESS WHEREOF, the undersigned have executed this Easement Agreement as of the date first set forth above.

Witness/Attest:

**GRANTOR:**

**CITY OF BAYONNE**, a municipal corporation of the State of New Jersey

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

\_\_\_\_\_  
James M. Davis, Mayor

Witness:

**GRANTEE:**

**DURAPORT RAIL TERMINAL, LLC**, a New Jersey limited liability company

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

\_\_\_\_\_  
Vincent Alessi, Manager

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF HUDSON )

On \_\_\_\_\_, 2016, JAMES M. DAVIS, personally came before me and acknowledged under oath, to my satisfaction, that he is the MAYOR of the CITY OF BAYONNE, the Grantor named in the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, on behalf of said CITY OF BAYONNE, for the uses and purposes therein expressed.

\_\_\_\_\_  
Notary Public

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF HUDSON )

On \_\_\_\_\_, 2016, VINCENT ALESSI personally came before me and acknowledged under oath, to my satisfaction, that he is the MANAGER of DURAPORT RAIL TERMINAL, LLC, a New Jersey limited liability company, the Grantee named in the within instrument; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed on behalf of said Company for the uses and purposes therein expressed.

\_\_\_\_\_  
Notary Public  
My commission expires:

**EXHIBIT A**

**Map of Easement Area**

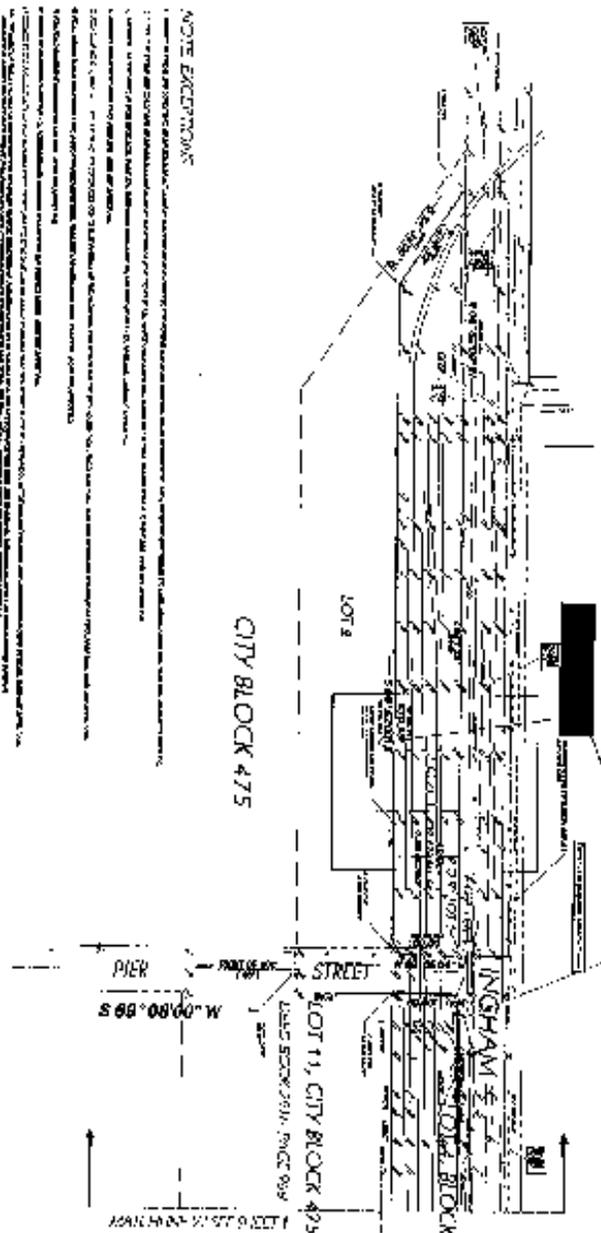
[Attached]



DATE	12/15/2011
DRAWN BY	...
CHECKED BY	...
SCALE	AS SHOWN
PROJECT	...
SHEET	...



NOT TO SCALE



REFERENCES:

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NOTE EXCEPTION:

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TOPOGRAPHIC SURVEY OF LOT 1, BLOCK 475 & LOT 4  
 BLOCK 474 08, TAX MAP OF CITY OF BAYONNE  
 HUDSON COUNTY, NEW JERSEY

ENCLOSURE TO MAP

DATE: 12/15/2011

PROJECT: ...

SHEET 2 OF 2

**EXHIBIT B**

**Legal Description of Easement Area**

[Attached]

831 First Street, Secaucus, New Jersey 07094-3432  
201-867-8044 • Fax 201-867-8864  
E-Mail: faraldigroup@comcast.net

**DESCRIPTION OF A PROPOSED 2.5 FOOT WIDE EASEMENT OVER LOT 4,  
BLOCK 474.02, TAX MAP OF THE CITY OF BAYONNE  
COUNTY OF HUDSON, STATE OF NEW JERSEY.**

COMMENCING AT A POINT FORMED BY THE INTERSECTION OF THE SOUTHERLY LINE OF **EAST 5<sup>TH</sup> STREET**, IF EXTENDED AND THE EASTERLY LINE OF **INGHAM AVENUE**, IF EXTENDED, AND RUNNING THENCE

- a) SOUTH 00° - 52' - 00" EAST, 234.62 FEET TO A POINT IN THE NORTHERLY TERMINUS OF A CONCRETE RAMP, SAID POINT ALSO BEING THE TRUE POINT OR PLACE OF BEGINNING, AND RUNNING THENCE
- 1) SOUTH 00° - 52' - 00" EAST, 796.85 FEET ALONG SAID EASTERLY LINE OF **INGHAM AVENUE**, THENCE
- 2) SOUTH 89° - 08' - 00" WEST, 2.5 FEET TO A POINT, THENCE
- 3) NORTH 00° - 52' - 00" WEST, 796.85 FEET, PARALLEL AND 2.5' WEST OF THE FIRST COURSE, TO A POINT, THENCE
- 4) NORTH 89° - 08' - 00" EAST 2.5 FEET TO THE POINT OR PLACE OF BEGINNING

CONTAINING AN AREA OF 1,992 SQUARE FEET OR 0.05 ACRES

THIS DESCRIPTION IS DEPICTED ON A MAP ENTITLED, "TOPOGRAPHIC SURVEY OF LOT 1, BLOCK 475 & LOT 4 BLOCK 474.02, TAX MAP OF THE CITY OF BAYONNE, HUDSON COUNTY, NEW JERSEY", SCALE 1" = 40', DATED JULY 25, 2012 AND LAST REVISED March 20, 2014, PREPARED BY FARALDI GROUP, INC.

Prepared by,

Albert N. Faraldi  
PLS Lic No. 29346  
PP Lic. No. 3182

<p style="text-align: center;"><b>GRANT OF EASEMENT</b></p>	<p>Dated: _____, 2016</p>
<p style="text-align: center;"><b>CITY OF BAYONNE</b>, a municipal corporation of the State of New Jersey</p> <p style="text-align: center;">Grantor,</p> <p style="text-align: center;"><b>DURAPORT RAIL TERMINAL, LLC</b>, a New Jersey limited liability company,</p> <p style="text-align: center;">Grantee.</p>	<p style="text-align: center;"><b><u>Record and Return to:</u></b></p> <p style="text-align: center;">Lowenstein Sandler LLP 65 Livingston Ave. Roseland, New Jersey 07068 Attn: John S. Stolz, Esq.</p>