

*Excerpts From Stipulation Among Counsel
Dated December 20, 1974*

In the cities, it means that low-income groups, the handicapped, the elderly, and the young, all those who are transit dependent, cannot enjoy the quality of life shared by those who drive. In the cities, too, the existence of highways alone, without comparable mass transit facilities, serves as a dividing line dictating housing patterns, creating ethnic concentrations and preventing social mobility. . . .

“This bill is expected to provide \$170 million of the \$200 million in operating subsidies sought by New York City for this fiscal year to maintain the fare at its present level. It would also provide the city with \$125 million for capital expenditures in the same period.

“It will now be up to the new Carey administration of New York State and the Beame administration in New York City to provide the additional funds to hold the fare at 35 cents, and I am certain that they will make every effort to do so. If it is necessary to place tolls on bridges within New York City to raise the additional funds, then this should be done, but under no circumstances can the people of New York City afford to pay any more money for the basic necessity of transportation. I also support the proposal by Governor Byrne of New Jersey for an independent investigation into the finances and operations of the New York Port Authority, which should be using its huge reserves to subsidize and develop mass transit lines within the metropolitan New York area.”

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6. Tolls charged on the Port Authority's vehicular tunnels are not regulated by the Federal Government. The tolls charged on the interstate bridges of the Port Authority are subject to the terms of the Bridge Act of 1906 (34 Stat. 84, 33 U.S.C. §491 et seq.), which provides that the tolls charged "shall be reasonable and just" and that the Secretary of War [later the Secretary of the Army and still later the Secretary of Transportation] shall have the power at any time and from time to time to prescribe such rates. This power is presently delegated by the Secretary of Transportation to the Federal Highway Administrator (32 F.R. 5607, 49 C.F.R. §1.48(i) (1)).

The Secretary of War in 1937 and the Secretary of the Army in 1947, 1948, 1949 and 1950 have rejected complaints asking for a reduction of the basic \$.50 toll charged for the use of Port Authority bridges. (Stip. 274-280) * * *

7. * * * On October 16, 1974, an Administrative Law Judge issued a decision (*Matter of the Walt Whitman and Benjamin Franklin Bridge Tolls*) recommending that the Federal Highway Administrator find that the tolls presently being charged on the Delaware River Port Authority crossings are not "just and reasonable" under the General Bridge Act of 1946 and should be reduced.

The controversy over DRPA's tolls began in April of 1972 when the Authority increased the one-way automobile toll from 50 cents to 60, the commuter toll from 25 cents to 35, and the rate for buses and trucks from 50 to 75 cents per axle on its Benjamin Franklin and Walt Whitman Bridges linking New Jersey with Philadelphia.

Exercising his authority under Federal Laws to ensure reasonable tolls, the Highway Administrator ordered a public hearing held on the DRPA toll increases. There-

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after, in December, 1972, the then presiding Law Judge decided that the new tolls on the Delaware River Port Authority crossings were not just and reasonable and recommended that they be rolled back to the pre-April 1972 levels. (Stip. 281-281a) * * *

DRPA appealed to the Federal Highway Administrator who on November 5, 1973 issued an opinion and order sustaining the toll increases for commuters and trucks, but ordering the rollback to their pre-April 1972 levels of the one-way automobile toll and bus tolls.

The opinion of the Federal Highway Administrator stated:

“It is not necessary to dwell at length on the proper meaning of reasonable and just as applied to the toll schedule being considered. All parties to this proceeding agree that DRPA’s revenues should be sufficient to achieve a return sufficient to support its total activities, including the operation of the bridges, the PATCO rapid transit system, and the World Trade Division, and provide sufficient coverage for financings. Thus, a reasonable and just toll schedule would be one sufficient to support these activities and requirements.” (Stip. 281a-282) * * *

Subsequently, after negotiations with the Federal Highway Administrator, the DRPA prepared a new toll schedule to apply as of January 1, 1974, and filed a request with the Federal Highway Administrator for a stay in order to permit the institution of the new toll schedule. (Stip. 282) * * *

On December 21, 1973, the Administrator held that it would be in the public interest to grant the DRPA’s request

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and ordered the proposed new toll schedule into effect. The Authority's petition stated that the impending energy crisis and other issues of public interest have produced "a serious and substantial change of circumstances since the 1972 Toll Hearing". The Administrator agreed and stated in his opinion:

"The dimensions and scope of the present energy crisis were unforeseen at the time the evidence in the administrative record in this case was adduced. At the time the November 5 order was issued, the magnitude of the problem was only dimly perceived.

"Today, the urgent need to structure toll rates for crossings in major metropolitan areas to encourage use of mass transit and carpools is more apparent and pressing." (Stip. 282-283) * * *

7. On July 1, 1974, the United States Department of Transportation submitted to the President of the Senate and to the Speaker of the House of Representatives a Study of Federal Statutes and Regulations Governing Toll Bridges, which recommended (page 10) that federal bridge acts subsequent to the 1906 statute (which are more restrictive than the 1906 act) be modified "so as to permit the imposition of bridge tolls in urbanized areas of 400,000 or more population for the purpose of achieving a more efficient use of the urban transportation system with the revenues from such tolls used for highway or transit capital improvements or transit operating assistance in the urbanized area." The study noted (page 66) that "in some areas (New York, Philadelphia, San Francisco), bridge toll revenues provide significant support for transit capital and/or operating costs, thereby providing transit service improve-

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ments which promote decreased dependence on automobile travel. Therefore, it would appear to be in the Federal interest to permit the imposition of tolls which would promote a more efficient utilization of the urban transportation system. Such a policy would not be unjustly discriminatory but more appropriately reflect the total costs of using the facility in peak demand periods." (Stip. 285) * * *

**V. URBAN MASS TRANSPORTATION IN
METROPOLITAN NEW YORK**

1. In 1970, the Governors of Connecticut, New Jersey and New York created the Governors' Special Commission on Financing Mass Transportation. The Commission rendered its report in 1972, after an 18-month study aimed at finding long-range solutions for the financing of mass transportation. In its letter of transmittal the Commission pointed out that the problem was one of finding ways of financing the comprehensive mass transportation system which would require massive subsidies if the fares were to be kept within the reach of the users. The report stated:

"The deficit problem is huge. In the period, 1972 to 1985, the region will need \$13.6 billion to finance mass transit operating deficits. This means an average of \$1 billion annually will be required for operations alone. In the same period, the region will need at least \$7.3 billion to finance capital outlay. The Commission believes this money can be obtained to finance the system and that the region's mass transportation problems can be solved while keeping fares within the reach of all people. . . .

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“THE MASS TRANSIT DEFICIT

“DURING THE PERIOD COVERED BY THIS study, the mass transit system experienced recurring financial crises. In response to these crises, various steps were taken to make the system more viable:

- 1.) existing and newly-created public authorities took over deficit-ridden operations;
- 2.) state and local governments and, more recently, the Federal government provided various types of financial aid;
- 3.) fares were increased;
- 4.) several unprofitable operations were discontinued.

“However, these actions could not overcome the impact of the forces that have been adversely influencing mass transit for more than a decade.

“One of the most important of these was the increasing competition of the automobile. This stemmed from growing incomes, the movement of population to the suburbs, the proliferation of suburban sites of employment, the decline of downtown shopping areas, and the deterioration of mass transit services themselves.

“During the last three years, the already poor financial situation deteriorated even further because of the influence of newly-emerging forces. Among these were:

- 1.) inflation generally, but more particularly the rapidly mounting cost of labor;

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2.) the downward trend in passengers on certain facilities resulting from fare increases which were expected to raise revenues by an amount greater than that actually realized;

3.) the slow-down in economic activity;

4.) the high cost of protection against crime.

“As a result the gap between passenger revenues and operating costs and debt service of the mass transit system had grown to \$420 million by 1970 (Table II-1). This amount, shown in the table, represents an increase of \$243 million since 1963, with more than half the increase occurring over the last two years. The size of the deficit is still rising rapidly on the basis of the data now available for fiscal 1971 and 1972.

“Mass transit operations in New York City (excluding private buses) accounted for about 85 per cent of the region’s deficit. The remaining 15 per cent was mainly due to the LIRR and PATH, with New Jersey’s commuter railroads accounting for about 2.5 per cent.

“In 1963 the deficit was financed almost entirely from the general funds of state and local governments, with some contributions from surpluses of public authorities and public and private bus companies. The aid from all these sources increased markedly over the last decade.

“By 1970 the deficit, even after these injections of funds, was almost \$90 million. (Stip. 286-287) * * *

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“There was recourse to devices such as borrowing for current operations, postponement of payments to pension funds, and delay in payment of outstanding liabilities. Clearly, such methods of financing offer no long-run solution to the financial problems of the system.”

In its letter of transmittal the Commission summarized its recommendations:

“1. The Commission recommends that each city in the region impose a mass transportation tax on all individuals who live or work in that city. Moreover, the imposition of such a tax must be contingent upon a provision whereby the Federal government will grant a 100 per cent transportation income tax credit to all individuals paying the transportation tax.

“2. The Commission recommends that the Federal government and each of the States should establish a General Transportation Fund and appropriate revenue sources should be credited to that Fund.

“3. The Commission recommends that the States should have the right to use funds received from the Federal Transportation Fund for capital outlay and/or debt service on capital outlay.

“4. The Commission recommends that the Federal share of capital projects that are part of a coordinated regional plan should be increased to 90 per cent.

“5. The Commission recommends that all three states in the region should assume responsibility for

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maintaining the rights of way of mass transportation facilities.

“6. The Commission recommends that a continuing Tri-State Mass Transportation Financing Advisory Panel should be created to study and make recommendations on problems relating to all aspects of financing public mass transportation services.

“7. The Commission recommends the transit user should pay a reasonable share of the mass transportation system’s operating costs.”

3. In 1967, the New York Legislature enacted Chapter 717 of the Laws of 1967, pursuant to which the Triborough Bridge and Tunnel Authority was merged into the [Metropolitan Transportation Authority] and the transfer of surplus funds of the Triborough Bridge and Tunnel Authority to the MTA and the New York City Transit Authority was authorized in order to maintain the then current New York City subway fare of 20 cents. Claiming that these surplus funds had been pledged to secure outstanding bonds of the Triborough Bridge and Tunnel Authority, the Chase Manhattan Bank, a successor trustee for the holders of \$362 million of Triborough Bridge and Tunnel Authority bonds, instituted litigation seeking to prevent the transfer of the Triborough’s surplus funds. The complaint of the Chase Manhattan Bank alleged in part that if the transfer of surplus funds were effected without the consent of the bondholders, the New York statute authorizing the transfer would violate the Contract clause of the Constitution of the United States. On February 9, 1968, the litigation instituted by the Chase Manhattan Bank was settled pur-

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suant to a stipulation which authorized the Triborough Bridge and Tunnel Authority to adopt an amendment to its Bond Resolutions by the vote of the holders of not less than $\frac{2}{3}$ in principal amount of its outstanding bonds, which amendment would permit transfer of the Triborough's surplus funds to the MTA or the New York City Transit Authority and would authorize an increase in the interest rate of outstanding bonds of $\frac{1}{4}$ of 1%. The approval of the Triborough's bondholders to this amendment to its Bond Resolutions was obtained.

4. The tolls on the bridges and tunnels operated by the Triborough Bridge and Tunnel Authority subsequently were doubled. In the approximately 7 years since the merger of the Triborough Bridge and Tunnel Authority into the MTA, approximately \$305 million of the Triborough's surplus funds has been paid to the MTA to reduce its deficits. There has been no default with respect to any payment to any bondholder of the Triborough Bridge and Tunnel Authority, which has not attempted to issue any further bonds since the settlement of the litigation described in paragraph 3.

5. Deficits estimated to be incurred in 1975 by the Metropolitan Transit Authority have been projected at \$450 million. In September, 1974, Mayor Beame proposed that Port Authority funds be used to help reduce such deficits. This proposal prompted the adoption of the following resolution by the General Assembly of the State of New Jersey:

“BE IT RESOLVED, that the members of the General Assembly of the State of New Jersey go on record

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in opposition to the use of funds received from residents of New Jersey through bridge and tunnel tolls to offset operating deficits of the New York City subway and bus transit system; and,

“BE IT FURTHER RESOLVED, that a copy of this resolution, signed by the Speaker and attested to by the Clerk of the New Jersey General Assembly, be sent to the Governors of New Jersey and New York, the President of the New Jersey Senate, the members of the Port Authority of New York and New Jersey, the Mayor of the City of New York, and the Chief Executive Officer of the Metropolitan Transit Authority.”

6. The MTA is required to establish fares, tolls and other fees which are necessary to maintain the combined operations of the MTA and its subsidiary corporations on a self-sustaining basis.

7. The deficit nature of MTA's rail transit operations is disclosed in reports issued by its outside independent auditors. Thus, in a report dated September 28, 1973, Price Waterhouse & Co. stated that the New York City Transit Authority, which operates the New York City Subway System, received \$538 million in operating revenues for its fiscal year ending June 30, 1973 and paid operating expenses of \$713 million, leaving an operating deficit of approximately \$175 million. This \$175 million operating loss for the year ending June 30, 1973 increased the accumulated Transit Authority operating deficit to approximately \$694 million. These deficits of the City Transit Authority do not include depreciation expenses, since the Authority's capital costs are borne by the City of New

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York. Approximately \$165 million of the \$175 million operating loss for fiscal 1973 was financed by a \$73 million contribution from the Triborough Bridge and Tunnel Authority, a \$75 million contribution of revenue-sharing funds by the City of New York and \$17 million in other contributions by the City of New York. The total accumulated deficit after contributions by governmental sources increased from approximately \$325 million in 1972 to approximately \$335 million in 1973.

8. During the calendar year 1973 the MTA, as shown in reports rendered by S. D. Leidesdorf & Co. dated March 22, 1974, incurred total operating deficits on its three commuter railroads of approximately \$104 million. The Long Island Railroad's net operating deficit was in excess of \$77 million. That railroad received operating revenues totalling \$94.7 million but paid operating expenses totalling \$172.1 million and thus incurred a net operating deficit of \$77.4 million. The combined operating deficits of the Harlem/Hudson Divisions of Penn Central and the New Haven Division of Penn Central amounted to approximately \$27 million. However, the net operating deficit of the MTA for calendar 1973 was reported as approximately \$47 million, including depreciation and similar charges of approximately \$14 million. The MTA's balance sheet as at December 31, 1973, showed that the excess of its assets over its liabilities had increased to more than \$398 million at the end of 1973 from approximately \$357 million at the end of 1972. Adding the 1973 operating deficits of MTA's commuter railroads to those incurred by its subway system for the fiscal year ending June 30, 1973, produces a total operating deficit of \$279 million. (Stip. 289-294) * * *

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VI. THE FINANCIAL POSITION OF THE PORT AUTHORITY

* * *

2. In the latter part of 1970, the State of New York Department of Audit and Control prepared a report (No. NY-Auth. 8-70) concerning the Port Authority The managerial summary of that report was as follows:

“The Authority’s financial condition is very strong. As of December 31, 1969, the Authority had almost \$2.1 billion invested in facilities and had cash and investments of some \$550 million. More than \$1 billion of debt had been retired through the application of income and nearly \$1.4 billion in debt was still outstanding. Each year since 1960, except for three years, more than \$100 million of additional investment in facilities had been made by the Port. And in each of those three years, more than \$80 million was so invested.

“Net operating revenue levels experienced heretofore by the Authority appear adequate to meet existing mandatory debt repayment schedules. Furthermore, these revenues will be augmented by about \$36 million a year, perhaps in 1973, when the World Trade Center becomes fully operational. We estimate that, by that time, the Authority will have sufficient resources and cash flow to support another \$1 billion of bonding capacity for authorized facilities.

“A further indication of the Authority’s financial strength has been its ability to plow back large amounts of current operating earnings into new capital construction. During the last four years (1966

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through 1969), the Authority's net operating revenue and investment income, less interest and mandatory long term debt retirements, has averaged more than \$50 million a year. During the past ten years, the Authority has accomplished \$324.5 million of construction (about one-third of all its construction during that period) out of operating revenues. Generally, the Authority has done this by borrowing certain amounts on a short term basis at the beginning of each year, and repaying these borrowings before the end of the year. [The Port Authority saved itself about \$252 million in interest costs by the use of this technique. (Audit Report, page 21)].

“There were a number of alternatives to the practice of plowing back earnings into new construction. For example, the moneys might have been used for other activities, additional amounts might have been provided to municipalities ‘in lieu of taxes’ or its rents, tolls might have been reduced, etc., but it would have been necessary to weigh the effect of the alternatives on future revenues and on long-range capital plans, and some of the alternatives would have required Executive or Legislative approval.

“The basic point is that the Authority generates substantial net revenues beyond mandatory debt service. The purposes to which these revenues are applied involves questions of public policy and priority of such importance as to warrant the attention of the Executive and Legislative branches of the two States.” (Stip. 318-320) * * *

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4. The following chart compares financial information for 1973 and 1961 based upon the Port Authority's Annual Reports for those two years:

	<u>1973</u>	<u>1961</u>	<u>% Increase</u>
Gross Operating Revenues	\$ 373,497*	\$ 123,200*	203%
Net Operating Revenues	137,063	67,200	104
Net Revenue before Debt Service	160,678	71,588	124
Net Revenue after Debt Service	84,092	37,779	123
Total Reserves	236,764	82,400	187
Bonded Debt	1,734,867	626,000	177
Invested in Facilities	3,300,000	1,116,100	196
Cumulative Debt Retired	1,261,357	538,600	134

* All \$ in Thousands.

5. Port Authority reports to bondholders and the general public do not separately identify revenues, expenses or debt service of any particular facility. The Port Authority's 1962 Annual Report contained the following material from the report of outside auditors retained by the 1961 Special New Jersey Senate Investigating Committee:

"The Authority's financial structure is based on a single enterprise, pooling of revenues concept. Individual facilities are not financed independent of the rest of the Authority. The facilities contribute their revenues for debt service according to their earning power without regard to the amount of bonds which were issued for their construction. For these

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reasons any presentation of net revenues after debt service for individual facilities is not based on actual fact. As pointed out by the Authority in submitting its report such a presentation can only be based on arbitrary assumptions.

“One thing the Authority’s report does clearly indicate is that few of its facilities would have been financially feasible without the ability to pool revenues of all facilities.”

6. The Port Authority does prepare internal reports showing gross revenues, operating expenses and net operating revenues or deficits for each facility and the published reports of the Authority list the amounts invested in each facility. The following chart is based upon internal Port Authority reports, except that the investment figure is taken from the latest Official Statement of the Port Authority (dated October 1, 1973) :

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(In Thousands of Dollars)

<u>Facility</u>	<u>1973 Gross Revenues</u>	<u>1973 Operating Expenses</u>	<u>Net Operating Revenue (Deficit)</u>	<u>Investment of Port Authority as of June 30, 1973</u>
JFK International	\$125,369	\$ 67,698	\$ 57,671	\$ 661,330
LaGuardia	42,064	26,130	15,934	172,200
Newark International	28,501	18,698	9,803	314,500
Teterboro	558	198	360	11,400
Heliports	96	500	(404)	700
Air Terminals	<u>196,588</u>	<u>113,224</u>	<u>83,364</u>	<u>1,160,100</u>
Columbia St. Marine Terminal	325	238	87	4,300
Port Newark	11,941	5,059	6,882	145,800
Erie Basin	739	740	(1)	13,000
Hoboken	873	238	635	18,100
Elizabeth	13,135	2,309	10,826	178,000
Brooklyn	5,353	2,747	2,606	95,900
Cons. Pass. Ship Terminal ..	<u>2,625</u>	<u>3,229</u>	<u>(604)</u>	<u>2,000</u>
Maritime Terminals	<u>34,991</u>	<u>14,560</u>	<u>20,431</u>	<u>457,100</u>
P.A. Building	4,015	2,096	1,109	23,500
N.Y. Truck Terminal	743	529	214	9,900
Newark Truck Terminal	370	368	2	8,200
P.A. Bus Terminal	<u>11,709</u>	<u>9,318</u>	<u>2,391</u>	<u>60,700</u>
Terminals	<u>16,837</u>	<u>13,121</u>	<u>3,716</u>	<u>102,300</u>
Holland Tunnel	11,754	10,637	1,117	69,300
Lincoln Tunnel	18,012	12,338	5,674	198,700
George Washington Bridge ..	39,894	14,385	25,509	213,200
Staten Island Bridge	<u>15,065</u>	<u>7,008</u>	<u>8,057</u>	<u>64,600</u>
Tunnels and Bridges	<u>84,725</u>	<u>44,368</u>	<u>40,357</u>	<u>545,800</u>
PATH Corporation	9,426	27,597	(18,171)	212,400
World Trade Center	<u>30,930</u>	<u>23,564</u>	<u>7,366</u>	<u>707,400</u>
Total All Facilities	<u><u>373,497</u></u>	<u><u>236,434</u></u>	<u><u>137,063</u></u>	<u><u>3,185,100</u></u>

(Stip. 321-323) * * *

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7. The following chart, showing the application of 1973 and 1961 Port Authority net revenues, was provided by the Port Authority at the request of counsel for Plaintiff:

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(in Thousands of Dollars)

	<u>Reference</u>	<u>1973</u>	<u>1961</u>
Net Revenue Before Debt Service	(1)	\$160,678	\$ 71,588
Interest on Bonded Debt	(2)	(49,729)	(14,807)
Mandatory Long-Term Debt Retirements	(3)	(26,047)	(19,002)
Interest on Bank Loans	(4)	(6,775)	—
Bank Loan Payment	(5)	(35,000)	—
Invested in Facilities	(6)	(8,000)	—
Debt Service on Bonds Secured by Trust	(7)	(6,874)	—
Adjustment of Securities Value	(8)	(3,591)	(1,943)
Short-Term Note Maturities			(32,000)
Debt Retirement and Acceleration			(489)
Net Increase in Reserves	(9)	<u>\$ 24,662</u>	<u>\$ 3,347</u>
Reserves from Prior Years in Excess of Amount of Next Two Years' Bonded Debt Service	(10)	<u>3,675</u>	<u>1,625</u>
Available to Satisfy Reserve Requirements	(11)	<u>28,337</u>	<u>4,972</u>
Applied to Bring:			
General Reserve Fund to 10% of Bonded Debt	(12)	16,806	1,527
Total Reserves to Amount of the Next Two Years' Bonded Debt Service	(13)	<u>7,793</u>	<u>2,424</u>
Sub Total		<u>\$ 24,599</u>	<u>\$ 3,951</u>

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	<u>Reference</u>	<u>1973</u>	<u>1961</u>
Reserves at Year End in Excess of Next Two Years' (1974-1975) Bonded Debt Service—Held to Meet Obligations in the Follow- ing or Subsequent Years	(14)	\$ 3,738	\$ 1,020

NOTE: 1961 Amounts May Not Add Due to Rounding.

REFERENCES

1. 1973 Annual Report, Statement A, Line 6. The amount shown does not take into account adjustment of securities value.
2. 1973 Annual Report, Statement A, Line 7.
3. 1973 Annual Report, Statement A, Line 7.
4. 1973 Annual Report, Statement A, Line 8.
5. 1973 Annual Report, Statement A, Line 9.
6. 1973 Annual Report, Statement A, Line 11.
7. 1973 Annual Report, Statement I, Line 18.
8. 1973 Annual Report, Statement A, Line 15.
9. 1973 Annual Report, Statement A, Line 14.
10. The amount shown for 1973 was calculated by subtracting from the Total Reserve Balances at the end of 1972 (\$212,102) the total Debt Service for 1973 and 1974 (\$208,427).
11. Sum of (9) and (10).
12. The General Reserve Fund was established in 1931 by legislation adopted by the States of New Jersey and New York. Under this legislation, the Port Authority

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maintains the General Reserve Fund at 10% of the par value of all outstanding bonds secured by that Fund, including Consolidated Bonds, which were issued in order to raise moneys to finance or refinance Port Authority facilities.

13. See paragraph 9 for an explanation of this item.
14. The Bonded Debt Service for the next two years equals \$233,026.
8. The following chart shows the total reserves of the Port Authority as of December 31, 1973:

Amounts required in 1974 and 1975 for interest and amortization of bonded debt	\$233,026,000
Reserves at year end 1973 in excess of 1974 and 1975 bonded debt interest and amortization	3,738,000
Total reserves as of December 31, 1973	<hr style="width: 100%; border: 0.5px solid black;"/> \$236,764,000

9. As noted in Reference 12 to the chart in paragraph 7 above, the Port Authority maintains the General Reserve Fund at 10% of the par value of all outstanding bonds secured by that Fund including Consolidated Bonds, which were issued in order to raise moneys to finance or refinance Port Authority facilities. In addition, it has been the Port Authority's consistent practice since 1948 to maintain in reserve an amount equal to the next two years bonded debt service, which includes interest and amortization. This practice has been publicly disclosed in the Port Authority's Annual Statements (see page 58 of the 1961 Annual Report, page 68 of the 1962 Annual Report and page 58 of the 1973

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Annual Report) and was discussed by Dwight R. G. Palmer, New Jersey State Highway Commissioner, in his testimony before the Farley Committee. Mr. Palmer stated that the maintenance of this policy "strengthened [the Port Authority's] credit position" and "such reserves [the two year debt and General Reserve Fund] cannot be regarded as uncommitted funds". According to the 1971 Annual Report of the Port Authority, the Bonded Debt requirements for 1972 and 1973 totalled \$189,028,000. According to the 1973 Annual Report, revenues in 1972 and 1973 were charged with a total of \$152,124,000. The balance of the debt service was attributable to construction in progress and capitalized by the Port Authority.

VII. PORT AUTHORITY BONDS

1. From 1969 through the end of 1973, the Port Authority obtained the funds necessary for construction of its various projects from the following sources: long-term debt (Consolidated Bonds)—\$700 million; medium-term debt (6 or 7 year bank loans)—\$260 million; short-term debt (1-year notes)—\$290 million, all but \$15 million of which was refunded in medium or long-term debt; appropriations from reserves—\$61 million. The Port Authority has not issued Consolidated Bonds since October 1973, although it has continued construction work on its various projects. (Stip. 324-327) * * *

3. On October 9, 1952, the Port Authority adopted a Consolidated Bond Resolution, authorizing and establishing an issue of Consolidated Bonds "to serve as a unified medium for financing for any and all purposes for which

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the Authority is or shall be authorized to issue bonds secured by a pledge of the General Reserve Fund." The text of this resolution appears as Appendix V to the Official Statement (Exhibit II) issued in October 1973 with respect to the Forty-first Series of Consolidated Bonds, the most recent series of such bonds. Section 3 of the Consolidated Bond Resolution of October 9, 1952 prohibits the issuance of new Consolidated Bonds unless the one year net revenues of all of the Port Authority's facilities amount to 1.3 times the prospective debt service for the calendar year during which the debt service of all outstanding and proposed new bonds secured by a pledge of the General Reserve Fund would be at a maximum. Section 4 of the October 9, 1952 Consolidated Bond Resolution provided that the net revenues of all Port Authority facilities were pledged to the payment of the debt service of Consolidated Bonds subject to the pledges and liens existing with respect to the General and Refunding Bonds, Air Terminal Bonds and Marine Terminal Bonds. Section 6 of the October 9, 1952 Consolidated Bond Resolution provided that the payment of debt service upon all Consolidated Bonds "shall be further secured equally and ratably by the General Reserve Fund." Moneys in the General Reserve Fund were not to be used for any purpose if there were other moneys of the Port Authority available for that purpose, unless there were sufficient funds available to the General Reserve Fund to pay debt service upon outstanding bonds during the ensuing 24 months, in which event such excess moneys could be used for any purpose permissible under the General Reserve Fund statutes, whether or not other moneys were available for that purpose. Section 7 of the October 9, 1952 Consolidated Bond Resolution established

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a Consolidated Bond Reserve Fund into which all net revenues pledged as security for Consolidated Bonds (after payment of debt service on all Consolidated Bonds and of amounts necessary to bring the General Reserve Fund to its statutory level) were required to be paid. The moneys of the Consolidated Bond Reserve Fund could be used only for the payment of: Consolidated Bonds at maturity, retirement or redemption; debt service upon outstanding Consolidated Bonds; the deficit of any facility the net revenues of which were pledged as security for Consolidated Bonds; and "any other additional purposes for which the Authority is now or may hereafter be authorized by law to expend the revenues of its facilities." (Stip. 327-329) * * *

5. Outstanding Consolidated Bonds as of December 31, 1973 were as follows:

<u>Series</u>	<u>Interest and Maturity</u>	<u>December 31, 1973 (000 Omitted)</u>
First Series	3% due 1982	14,077
Second Series	2¾% due 1984	14,960
Fourth Series	2¾% due 1985	21,000
Fifth Series	2.90% due 1983	12,300
Sixth Series	3% due 1986	19,800
Seventh Series	3.40% due 1986	16,900
Eighth Series	3.40% due 1987	35,000
Ninth Series	3½% due 1973-1975	2,700
Tenth Series	3¾% due 1985	24,000
Eleventh Series	3% due 1973-1978	10,000
Twelfth Series	3⅜% due 1988	30,030
Thirteenth Series	Various due 1973-1978	6,250
Fourteenth Series	3⅝% due 1989	42,845

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<u>Series</u>	<u>Interest and Maturity</u>	<u>December 31, 1973 (000 Omitted)</u>
Fifteenth Series	Various due 1973-1979	10,500
Sixteenth Series	4¼% due 1989	19,475
Seventeenth Series	Various due 1973-1980	10,500
Eighteenth Series	Various due 1973-1981	16,450
Nineteenth Series	3½% due 1991	20,500
Twentieth Series	3¼% due 1993	31,500
Twenty-First Series	3.40% due 1993	22,500
Twenty-Second Series	3¾% due 1993	22,500
Twenty-Third Series	3¾% due 1994	23,000
Twenty-Fourth Series	3½% due 1994	23,000
Twenty-Fifth Series	Various due 1973-1984	16,500
Twenty-Sixth Series	3½% due 1995	33,250
Twenty-Seventh Series	3¾% due 1995	24,500
Twenty-Eight Series	3¾% due 1996	24,625
Twenty-Ninth Series	3½% due 1996	24,625
Thirtieth Series	3⅝% due 1998	24,500
Thirty-First Series	4% due 2002	99,500
Thirty-Second Series	5% due 2003	100,000
Thirty-Third Series	4¾% due 2003	100,000
Thirty-Fourth Series	5½% due 2003	100,000
Thirty-Fifth Series	6⅝% due 2005	100,000
Thirty-Sixth Series	6.40% due 2005	50,000
Thirty-Seventh Series	6% due 2006	100,000
Thirty-Eighth Series	5¾% due 2006	100,000
Thirty-Ninth Series	5.80% due 2007	150,000
Fortieth Series	6% due 2008	100,000
Forty-First Series	5½% due 2008	100,000
		\$1,697,286

(Stip. 329-330) * * *

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6. * * * The following language appeared in each Official Statement as distributed in connection with the sale of Consolidated Bonds from the time of adoption of the covenant through the Thirty-ninth Series Statement:

“In connection with the legislation which authorized the Port Authority to assume responsibility for the Hudson Tubes system, the Port Authority had advised the Legislatures of both States that the credit of the Port Authority would be impaired by such an undertaking of an anticipated perpetual deficit facility unless the States would enter into an enforceable contract with the Port Authority bondholders which would grant assurances against dilution of already pledged revenues and reserves by any additional passenger rail deficits beyond those of the basic Hudson Tubes system. The legislation as finally adopted includes such statutory covenants. The covenants are between the two States and with the holders of certain described “affected” bonds which include all Consolidated Bonds including those of the present offering. The contract prohibits the application of any revenues or reserves pledged to such bonds (which includes all existing revenues, other than rentals under the New York State’s Commuter Railroad Car Program described on pp. 18-19, and all existing reserves) for any additional passenger railroad purpose beyond the basic Hudson Tubes, as defined, without the consent of the holders of such affected bonds as provided in their contract with the Authority unless the Port Authority shall have first certified the eligibility of such additional railroad, whether it be a Hudson Tubes extension, as defined,

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or new railroad facility. To be eligible the Port Authority must determine either that the proposed additional passenger railroad facility is self-supporting or, if not, that at the end of the preceding calendar year the General Reserve Fund contained the full statutory amount and that for the ensuing ten years the estimated average annual deficits from the proposed additional passenger railroad facility and any then existing Port Authority passenger railroad facility (including the basic Hudson Tubes) would not in the aggregate exceed an amount equal to one-tenth of the amount in the General Reserve Fund at the prior year end. Certain adjustments to this figure are provided by the statute. For example, the amount equal to one-tenth of the General Reserve Fund is to be diminished by an amount equal to 1% of the principal amount of Port Authority bonds the proceeds of which shall have been applied for passenger railroad purposes; this prevents the enlargement of deficit capacity by bonds issued in connection with a deficit passenger railroad facility. Furthermore, if at some time in the future the adjusted 10% of the General Reserve Fund should be exceeded by an amount equal to 1% of the Port Authority's equity, as defined in the statutes, augmented by 1/10 of that adjusted 10%, then the augmented 1% of equity may be used as the limiting figure instead of the percentage of the General Reserve Fund. Also, the limiting figure may be enlarged to the extent of State subsidies for passenger railroad purposes. Section 6 of the 1962 legislation (see Appendix III) should be studied for the exact terms of the statutory covenant."

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The Fortieth and Forty-first Series Official Statements noted that the above statement "*does not apply to bonds of the present offering*" and also included the following language:

"The statutory covenant against dilution of pledged revenues and reserves by additional passenger railroad facilities, which is discussed in the paragraph quoted above, remains in effect with respect to affected bonds, and remains binding on the Authority although it does not apply to the bonds of the present offering. The legislation which authorized the Port Authority to assume responsibility for the Hudson Tubes system was amended, effective May 10, 1973, by the States of New York and New Jersey (Ch. 1003, Laws of New York 1972, Ch. 318, Laws of New York 1973; Ch. 208, Laws of New Jersey 1972). The New Jersey amendment, when introduced in the New Jersey Assembly, was accompanied by a statement that the bill was intended to preclude the application of the covenant to holders of bonds newly issued after its effective date, while maintaining in status quo the rights of the holders of the bonds issued after March 27, 1962 (the effective date of the covenant legislation) but prior to the effective date of the amendment."

"In a report to the Port Authority, dated December 8, 1971, The First Boston Corporation stated:

'We have been advised by our counsel Mudge Rose Guthrie & Alexander, that the '1962 Covenant' is legally binding. This covenant prohibits the application of Port Authority moneys for any 'railroad

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purposes' other than 'permitted purposes'; these 'permitted purposes' do not encompass additional passenger rail transportation projects except insofar as they are self-supporting or incur an aggregate annual deficit of less than 10% of the Port Authority's General Reserve Fund (which limitation, based on Port Authority reports, has already been exceeded by the Path operation). This precludes general credit financing of any passenger transportation project, no matter how desirable, for which projections show an operating profit below debt service requirements.

"The First Boston Corporation further stated that it considered:

'the financing (through the medium of Consolidated Bonds) of certain peripheral railroad facilities as 'adjuncts', that is, as projects which are integral to airport operation, and which serve the airport only, not commuters generally. However, such 'adjuncts' would need the benefit of a conclusive legal holding to the effect that they constitute part of an existing facility; presumably the nature of the 'adjunct' would determine the distance outside the airport boundaries that it might extend and still be legally treated as an 'adjunct' for financial purposes.'

"Should this 'adjunct' theory prevail with respect to the rail access projects to John F. Kennedy and Newark International Airports, and should the projects be authorized on such basis, it would be unnecessary for the Port Authority to certify the projects as self-supporting under the 1962 statutory covenant described above." (Stip. 330-333) * * *

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7. The Port Authority has stated in the Official Statements covering the issuance of its Consolidated Bonds (for example, page 22 of the Official Statement for the Forty-first Series of Consolidated Bonds):

“it is the present intention of the Authority that Consolidated Bonds will be the only bonds secured by a pledge of the General Reserve Fund that will be used as a medium of financing the balance of its capital requirements or long-term refunding of outstanding bonds or of Consolidated Bonds hereafter issued.”

8. Section 7 of the resolutions establishing each series of Consolidated Bonds prohibits the issuance of any Consolidated Bonds or other bonds to be secured by a pledge of the General Reserve Fund with respect to any facility or group of facilities with respect to which the Authority has not previously issued bonds unless:

“the Authority shall certify at the time of issuance its opinion that the issuance of such Consolidated Bonds or that such pledge of the General Reserve Fund as security for such bonds other than Consolidated Bonds will not, during the ensuing ten years or during the longest term of any of such bonds proposed to be issued (whether or not Consolidated Bonds), whichever shall be longer, in the light of its estimated expenditures in connection with such additional facility or such group of additional facilities, materially impair the sound credit standing of the Authority to fulfill its commitments, whether statutory or contractual or reasonably incidental thereto, including its undertakings to the holders of Consolidated Bonds.” (Stip. 336) * * *

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11. The two principal bond rating agencies, Moody's and Standard & Poor's, have commented on the 1962 Covenant and the effects of its elimination. The Moody's Report dated October 5, 1973, rating the Bonds in connection with the imminent sale of the Forty-first Series, stated in part:

“Rating: Consolidated Bonds: A

“Summary: Despite the clouded future surrounding the World Trade Center and the role, if any, which Port Authority will play in a regional mass transportation system, the Authority's financial position remains strong. Financial strength continues to accrue from the Authority's monopoly on Hudson River crossings and operations at the three important commercial airports in the New York metropolitan area.

“Although bonds of this and the previous issue are not subject to the 1962 statutory covenant barring application of Authority funds to additional deficit passenger railroad operations, the covenant remains in effect as long as any bonds issued under the legislation remain outstanding. As of December 31, 1972 the Authority had outstanding \$1,175,500,000 from 20 series of Consolidated bonds issued under the covenant, the last of which is due in 2007. A suit now in the Supreme Court of New York State seeks to permit unlimited application of surplus Authority funds to deficit passenger railroads. If the suit is successful, demands for mass transportation would probably obstruct further Authority expansion into other fields. Bondholder protection would remain

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adequate because debt service constitutes a first lien on net revenues.

* * *

“Structure: This issue of Consolidated Bonds is due in 2008. . . .

* * *

“Mass Transportation: All Authority bonds issued between March 27, 1962 and May 10, 1973 are subject to a statutory covenant against dilution of revenues pledged to the bonds. The legislation prohibits application of all revenues (other than rentals under the New York State commuter railroad car program) and all reserve for any additional passenger railroad purpose beyond the basic Hudson Tubes without consent of bondholders unless the Authority certifies 1) that the proposed facility will be self-supporting, including grants from governments, or 2) that the General Reserve contained the required amount at prior year-end, and that annual deficits from existing and proposed passenger rail facilities would not exceed 1/10 of the amount in the General Reserve Fund at the prior year-end. Although it does not apply to bonds of the Fourtieth and Forty-First Series, the restrictive covenant remains in effect as long as any bonds issued under that legislation are outstanding. As of December 31, 1972 the Authority had outstanding \$1,175,500,000 from 20 series of Consolidated bonds issued under this covenant. The final issue under this legislation was the Thirty-ninth Series, which is due in the year 2007.

“The statutes which authorize rail access to Kennedy International Airport and Newark Interna-

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tional Airport revised the definition of 'air terminals' to include mass transportation facilities between the air terminals and other points in the Port District. Hawkins, Delafield & Wood, Bond Counsel for the Authority, is of the opinion that unless such a project were to meet the requirements against dilution of pledged revenues, any financing of such a project by the Authority would be violation of the statutory covenant.

"A suit currently in the New York State Supreme Court, challenges the constitutionality of the statutory covenant and seeks to permit unlimited application of surplus Authority funds to deficit passenger rail operations. If the suit is successful, the demands for mass transportation would probably obstruct further Authority expansion into other fields. Bondholder protection would remain adequate, because debt service constitutes a first lien on net revenues.

"Legislation in 1962 authorized the Authority to undertake a project consisting of a World Trade Center and the Hudson Tubes. The Authority estimated that operations of the Hudson Tubes, including debt service and depreciation, will involve an increasing annual deficit of more than \$20 million. Depreciation, which in recent years has been excluded from public-transit-system accounting, was estimated by the Authority at \$6 million in 1972.

"In June 1973 Port Authority Commissioners from New York and New Jersey approved and PATH (Port Authority Trans-Hudson Corp.) adopted a

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fare increase from 30¢ to 50¢, but the Interstate Commerce Commission would not grant the increase without further hearings, which were scheduled to begin September 24, 1973. On September 21, 1973 the New York Commissioners, led by Governor Rockefeller, suggested that the fare increase be increased to only 35¢. On September 24, 1973 the hearings were closed after PATH requested an adjournment. On September 28, 1973 PATH filed a petition to reopen the hearings on the fare increase as adopted in June.”

The Moody's Report dated October 15, 1973 stated in part:

“Summary: Despite the clouded future surrounding the World Trade Center and the role, if any, which Port Authority will play in a regional mass transportation system, the Authority's financial position remains strong. Financial strength continues to accrue from the Authority's monopoly on Hudson River crossings and operations at the three important commercial airports in the New York metropolitan area.

“Although the two series of Consolidated bonds issued in 1973 are not subject to the 1962 statutory covenant barring application of Authority funds to additional deficit passenger railroad operations, the covenant remains in effect as long as any bonds issued under the legislation remain outstanding. As of December 31, 1972 the Authority had outstanding \$1,175,500,000 from 20 series of Consolidated bonds issued under the covenant, the last of which

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is due in 2007. A suit now in the Supreme Court of New York State seeks to permit unlimited application of surplus Authority funds to deficit passenger railroads. If the suit is successful, demands for mass transportation would probably obstruct further Authority expansion into other fields. Bondholder protection would remain adequate, because debt service constitutes a first lien on net revenues.

“Hudson Tubes Facility: The Authority estimates that operations of the Hudson Tubes, including debt service and depreciation, will involve an increasing annual deficit of more than \$20 million. Depreciation, which in recent years has been excluded from public-transit-system accounting, was estimated by the Authority at \$6 million in 1972.

“In June 1973 Port Authority Commissioners from New York and New Jersey approved and PATH (Port Authority Trans-Hudson Corp.) adopted a fare increase from 30¢ to 50¢, but the Interstate Commerce Commission would not grant the increase without further hearings, which were scheduled to begin September 24, 1973. On September 21, 1973, the New York Commissioners, led by Governor Rockefeller, suggested that the fare be increased to only 35¢. On September 24, 1973 the hearings were closed after PATH requested an adjournment. On September 28, 1973 PATH filed a petition to reopen the hearings on the fare increase as adopted in June. The petition seeking a fare increase to 50¢ was rejected by the ICC on October 10, 1973, and a request for further hearings on the subject was denied.

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“Additional Passenger Railroad Facilities: All Authority bonds issued between March 27, 1962 and May 10, 1973 are subject to a statutory covenant against dilution of revenues pledged to the bonds. The legislation prohibits application of all revenues (other than rentals under the New York State commuter railroad car program) and all reserves for any additional passenger railroad purpose beyond the basic Hudson Tubes without consent of bondholders unless the Authority certifies 1) that the proposed facility will be self-supporting, including grants from governments, or 2) that the General Reserve contained the required amount at prior year-end, and that annual deficits from existing and proposed passenger rail facilities would not exceed 1/10 of the amount in the General Reserve Fund at the prior year-end. Although it does not apply to bonds of the Fortieth and Forty-first Series, the restrictive covenant remains in effect as long as any bonds issued under that legislation are outstanding. As of December 31, 1972 the Authority had outstanding \$1,175,500,000 from 20 series of Consolidated bonds issued under this covenant. The final issue under this legislation was the Thirty-ninth Series, which is due in the year 2007.

“The statutes which authorize rail access to Kennedy International Airport and Newark International Airport revised the definition of ‘air terminals’ to include mass transportation facilities between the air terminals and other points in the Port District. Hawkins, Delafield & Wood, Bond Counsel for the Authority, is of the opinion that unless such a proj-

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ect were to meet the requirements against dilution of pledged revenues, any financing of such a project by the Authority would be violation of the statutory covenant.

“A suit currently in the New York State Supreme Court, challenges the constitutionality of the statutory covenant and seeks to permit unlimited application of surplus Authority funds to deficit passenger rail operations. If the suit is successful, the demands for mass transportation would probably obstruct further Authority expansion into other fields. Bondholder protection would remain adequate, because debt service constitutes a first lien on net revenues.

“The proposal for additional passenger railroad facilities was intended to provide for 1) PATH rail link connecting Newark International Airport and Penn Station in Newark 2) extension of PATH into Union County to Plainfield via Newark International Airport 3) direct rail service to Penn Station in Manhattan for Erie Lackawanna riders including equipment yard in Secaucus and a new Hackensack River Bridge. Total capital costs were estimated at \$650 million. The Authority has stated that the project could be effectuated on a self-supporting basis if governmental funds of \$400 million were contributed to construction funds.”

“Operations: Operating data for 1972 show moderate increases in traffic on the Authority's toll bridges and tunnels, a small increase in plane movements with a substantial rise in airport passengers

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(due to use of larger planes with greater capacities), and large increases in ship arrivals and waterborne cargo. Marine terminal operations reflect recovery from the East Coast dock strike in 1971. Financial operations improved considerably in 1972. Net revenues rose 12.4% compared to a decrease of 1.2% in 1971. Gross operating revenue rose 14.2% compared to 9.6% in 1971. Operating and maintenance expenses grew only 13.6%, down substantially from the 20.9% growth rate in 1971, and in line with growth in revenues.”

The Moody's Report dated November 1, 1973 stated in part:

“ADDENDUM

“Our sale report and review report on this unit, dated October 5, 1973 and October 15, 1973 respectively, cited a suit filed in the Supreme Court of New York State, challenging the constitutionality of 1962 legislation which prohibits application of virtually all Authority revenues and reserves to any additional deficit passenger railroad operations beyond the basic Hudson Tubes. It should be noted that if the 1962 legislation is held to be unconstitutional, Authority funds will not *automatically* become available for additional passenger railways. Such a procedure can only be established through bi-state legislation.”

The Standard & Poor's Report dated June 16, 1973, rating the Bonds in connection with the imminent sale of the Fortieth Series, stated in part:

“\$100,000,000 Bonds Rated A”

* * *

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“The Authority covenants to establish charges in connection with its facilities so that the net revenues pledged to the Consolidated Bonds or the surplus revenues from those facilities which are payable into the General Reserve Fund will be at least sufficient to provide for debt service on Consolidated Bonds. Additional parity bonds may be issued if, in general, net revenues for any 12 consecutive months out of the previous 36 months, adjusted to reflect estimated net revenues (not exceeding 25% of the 12 months’ historical net revenues) to be derived from uncompleted or recently completed facilities, are equal to 1.3 times maximum annual debt service on all Consolidated Bonds to be outstanding. It is also required (by Section 7 of the Fortieth Series bond resolution, as well as by previous Series’ resolutions) that the Port Authority, relative to the financing of any additional facility for the first time by Consolidated Bonds or other bonds sharing in the pledge of the General Reserve Fund, must first certify its opinion that such issuances will not thereby, during the ensuing ten years or during the longest term of the bonds, proposed to be issued, whichever would be longer, materially impair the sound credit standing of the Authority or the investment status of Consolidated Bonds or the ability of the Authority to fulfill its commitments, including its undertaking to the holders of Consolidated Bonds.

“The 1962 legislation authorizing the Port Authority to acquire the Hudson Tubes and construct the World Trade Center contained a statutory covenant limiting the Port Authority’s financial participation

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in additional deficit railroad facilities beyond those of the Hudson Tubes. In essence, the 1962 covenant prohibits the application of any revenues or reserves pledged to Consolidated Bonds for any additional passenger railroad purposes beyond the basic Hudson Tubes without bondholder approval unless the Port Authority and the Governors of New York and New Jersey shall certify that the proposed additional passenger railroad facility is self-supporting or, if not, that the General Reserve Fund contains its full statutory amount and that for the ensuing ten years the estimated average annual deficits from the proposed additional passenger Railroad facility and any then existing Port Authority passenger railroad facility (including the basic Hudson Tubes) would not in the aggregate exceed an amount equal to 1/10 of the amount in the General Reserve Fund at the prior year end. Certain adjustments are provided by the statute: the amount equal to 1/10 of the General Reserve Fund is to be diminished by an amount equal to 1% of Port Authority bonds the proceeds of which shall have been applied for passenger railroad purposes. This certification relates only to the Port Authority's own investment in the particular facility.

“Considerable controversy has surrounded the Port Authority's involvement in mass transit, and, in particular, the 1962 Covenant outlined above. Since the PATH deficit has been growing steadily and currently is estimated to be in excess of \$20-million annually, there is obviously no room within the 1962 Covenant restrictions for the Authority to

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take on additional deficit rail transit operations. During 1971-73 several amendments to earlier statutes, including the 1962 legislation, were passed by the Legislatures of New York and New Jersey. These amendments authorized the Authority to provide mass transportation facilities connecting with Kennedy and Newark Airports: to extend the Hudson Tubes from Newark to Plainfield, and to undertake a series of New Jersey rail improvements with respect to direct Erie-Lackawanna and Penn Central railroad service into Pennsylvania Station in New York City; and provided that the provisions of the 1962 Covenant which limits the Port Authority's financial participation in additional deficit railroad facilities shall not apply to Port Authority obligations issued after May 10, 1973. Thus, the 1962 Covenant remains in effect with respect to all bonds previously issued (which have a maximum maturity in 2007) and remains binding on the Authority so long as those bonds remain outstanding. From a practical point of view, all Consolidated Bonds, including the present Fortieth Series, will continue to enjoy the protection of the 1962 Covenant until all bonds issued prior to May 10, 1973, shall have been retired.

“The legislation authorizing rail access to Kennedy and Newark airports amended the definition of ‘air terminals’ to provide that: ‘It shall mean facilities providing access to an air terminal, consisting of rail, rapid transit or other forms of mass transportation. . . .’ There appears to be some question as to the legal necessity for the Port

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Authority to certify these particular projects as self-supporting. However, in connection with the present Fortieth Series Bonds, the Port Authority states: 'It is presently intended that passenger railroad facilities authorized by that legislation be effectuated on a self-supporting basis, including substantial amounts of governmental financial aid. Additional railroad facilities which meet the test of self-support would be permitted purposes under the 1962 covenant legislation.'

"The Port Authority has experienced a steady record of increasing operating revenues over the years, gross operating revenues growing from \$154-million in 1963 to \$320-million in 1972. With the exception of 1971, when there was a slight decline, net revenues available for debt service have shown a similar strong growth, increasing from \$79-million in 1963 to \$140-million in 1972. In all years interest and mandatory long term debt retirements have been covered in excess of two times by available net revenues. The \$140-million available net revenues for 1972 would cover estimated maximum annual debt service (\$112,478,000 in 1986) on all Consolidated Bonds to be outstanding 1.25 times. Debt service declines sharply thereafter. The improvement in net revenues from \$125-million in 1971 to \$140-million in 1972 was the largest in at least the last ten years and has been obtained despite an increasing annual PATH operating deficit. Significant additional revenues could undoubtedly be produced, if needed, through modest increases in tolls and other charges for use of Port Authority facilities.

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“Despite efforts to involve the Port Authority more deeply in mass transit, and despite statements relative to the Authority’s participation of \$250-\$300 million out of a total of \$650-million Federal, State and Authority funds for the recently authorized rail transit improvements, it is apparent that present legislation does not permit such employment of Authority funds without safeguards. It appears that present legislation does not open a ‘Pandora’s box’ of unknown adventures in the field of deficit mass transit operations, but does, in practice, continue to provide support for the credit standing of the Port Authority’s bonds by restricting the extent to which the Port Authority can become involved with deficit rail facilities. Undoubtedly, future efforts will be made to ‘tap-the-till’ of the Port Authority to finance mass transit facilities in the New York metropolitan area, and such efforts should be carefully watched as to their potential impact upon the quality of the revenues pledged to service the Authority’s bonds. It should be recognized that the ability of the Port Authority to accomplish what it has in the development of facilities vital to the metropolitan New York and New Jersey region has been in great measure dependent upon the Authority’s ability to borrow the required capital funds. Such ability to borrow at favorable interest rates depends upon the Authority’s credit standing in the financial community and efforts which would diminish this credit standing, such as the move in 1972 by the New York legislature to retroactively repeal the 1962 Covenant, should be carefully weighed by all concerned.

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“In the meantime, we are continuing our ‘A’ rating on the Port Authority’s Consolidated Bonds, including the present Fortieth Series, based upon the Authority’s strong operating, financial and management record, the prospects for a continuation of this record, and the protection afforded by current legislation from unforeseen dilution of pledged revenues and reserves by unrestricted involvement in deficit mass transit operations.”

The October 6, 1973 Standard & Poor’s Report stated: “On October 9th. THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY plans to sell at competitive bidding \$100,000,000 Consolidated Bonds, Forty-first Series, Due 2008 (First Installment). The bonds will be secured equally and ratably with outstanding Consolidated Bonds. On June 20, 1973, the Port Authority sold \$100,000,000 Consolidated Bonds, Fortieth Series, which was discussed at length in the Fixed Income Investor of June 16, 1973, beginning on page 754. We are maintaining our ‘A’ rating.”

12. On April 30, 1974 Governor Byrne of New Jersey signed into law an Act of the New Jersey Legislature (1974 Laws of New Jersey Ch. 25) repealing Section 3 of the 1972 law, quoted at page 256. Concurring legislation was signed into law by Governor Wilson of New York on June 15, 1974 (1974 Laws of New York Ch. 993).* The New York Legislation prompted the following discussion:

* The bill was introduced on February 15, 1974. The repealing legislation was enacted by both States without amendment, legislative fact-finding at the 1974 Session, extensive contemporary legislative debate, public hearing or committee reports. Part III of this Stipulation discusses the legislative history of the enactment of the 1962 Covenant and of the proposals in 1971, 1972 and 1973 to repeal the Covenant.

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“THE CLERK: Senate Bill 10607, Rules Report No. 364, Caemmerer. An Act to repeal section two of chapter one thousand three of the laws of nineteen hundred seventy-two, entitled ‘An Act to amend chapter two hundred nine of the laws of nineteen hundred sixty-two, entitled “An Act to provide for the financing and effectuation by the port of New York authority of a port development project, consisting of the Hudson tubes, the Hudson tubes extensions and a world trade center, for coordinating, facilitating and promoting the transportation of persons and the flow and exchange of trade and commerce in and through the port of New York district, and agreeing with the state of New Jersey with respect thereto”, in relation to the application of rentals, tolls, fares, fees, charges, revenues or reserves of the port authority,’ relating to the application of certain changes effected thereby.”

“MR. KOPPELL: Mr. Speaker, this is a piece of legislation which has been discussed on this floor in various forms for three years, now, and with the passage by this House and hopefully the signature of the Governor, the State of New York and New Jersey will have repealed a covenant which has prevented the use of any Port Authority funds for rail mass transportation purposes in the Port Authority district which embraces the state or portions of the state of New York and New Jersey. I and many others have been fighting since 1971 to see that these covenants are taken out of the Bond Issues to which they are addressed. I want to make clear to this House and to the record a number of things, and for

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that purpose I would like to address questions to Mr. Farrel who is the sponsor in this House. Would Mr. Farrell yield?"

"ACTING SPEAKING FIELD: The gentlemen yields."

"MR. KOPPELL: Mr. Farrell, I am right I presume, and we can say for the record, can we not, that this House is passing this legislation today because of urgent need for additional funds for mass transportation purposes, rail transportation purposes, in the Port Authority district?"

"MR. FARRELL: That is correct, Ollie."

"MR. KOPPELL: And, George, is it not also true that because of the fact that the 1972 Bond Issue was not approved by the people and because the state has already extended itself in providing over \$100 million to mass transportation that it is unlikely that at this time we can see a further contribution or at least a further major contribution of mass transportation from any other source than the Port Authority?"

"MR. FARRELL: Well, Ollie, that is correct. As you know, we have already approved in this session a much more modified mass transit bond issue in the sum of \$250 million which will be presented to the people this November,* and we all recognize that although hopefully if it is approved it will certainly be a great stimulus in terms of capital improvement

*This bond issue was adopted by the voters of New York in November, 1974 [footnote added by stipulation].

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and development with respect to mass transit, there is no question but that the overall demands of the state areas with respect to mass transportation would never be satisfied out of that Bond Issue. As a result, the ability of the Port Authority to become more intimately involved, to become more directly involved and more quickly involved in mass transit would serve to assist us with respect to on-going programs that we have in New York, that are still to be completed out of the 1967 Bond Issue although those monies have all been committed to specific projects, and also to allow our existing systems operated under M.T.A., to be concerned with those facilities that presently exist with the Port Authority, hopefully development of lines between Penn Station and Kennedy Airport. The passage of this legislation—as you know it has already passed both Houses of the Jersey Legislature and has been signed by Governor Byrne—passage of this legislation and the approval of it by the Governor could put us directly on the road towards a greater development of mass transit in the metropolitan area of New York-New Jersey.”

“MR. KOPPELL: And I agree with that, George, and would you not also say that whatever the judgment of the 1961 and 1962 Legislature may have been, it is the judgment of this Legislature that Port Authority must play a role in the development you spoke of?”

“MR. FARRELL: Yes. Well, Ollie, I think it is safer to assume although neither one of us who were here

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—as a matter of fact there are very few members who are here right now who were present in this Chamber in 1962—but at that time the urgency of mass transportation in terms of the total complexion of problems relating to transportation, had not peaked to the point that it has today in 1974, and as a result it may have been the sense of the Legislatures of New Jersey and New York at that time, but there wasn't the type of urgency that exists as it does today in 1974, and so basically what we are saying is that we are not being critical of the 1962 Legislatures of New York and New Jersey for what they have done but we are trying to say to the people and to the courts and to the bond holders and to all of us who are concerned about the bi-state area that today, 1974, mass transit must be the most important factor in the overall problem of transportation and not rubber and not concrete, and for that reason I think that what we are doing is consonant with everything else that we have done with the 1967 Bond Issue which addressed itself to the first bond sold directly to mass transportation, to the attempt that was made in 1973 for approval of the people for another bond issue in that area, and here again in 1974 with the presentation to the people of another bond issue in the amount of \$250 million the establishment for the first time in the history of this state of a real preservation act which goes to the problem of abandoned railroads in upstate New York particularly, and revitalization of freight service, that we are in a new era. The Legislature has addressed itself to that era and this is just one

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further step in addressing ourselves to a very critical problem in the hopes that monies that are available to the Port Authority can be funneled in that direction."

"MR. KOPPELL: One last question, George. You would agree I take it with Governor Rockefeller's assessment that this step of repealing these so-called covenants will not affect the security of the bond holders in their investment nor impair the ability of the Port Authority to pay when they are due installments of interest and principal."

"MR. FARRELL: Well, let me just say this, Ollie, that I don't preceive of a situation occurring in which any one holding a Port Authority Bond because of the backing that the Port Authority has received from both states, the State of New York and New Jersey, they should feel in any sense of the term that the responsibility for the payment of those bonds is in jeopardy. However, I must say to you in all fairness, Ollie, because there have been statements made by Governor Wilson, not in opposition to what we are doing here today but simply to point out something which in his mind poses a potential problem. I must say to you, Ollie, that, ladies and gentlemen of the House, that this is not something that Governor Wilson has an opinion and for which no one else shares in that opinion and concern. The concern has been expressed presently and in the past by Comptroller Levitt, and by the Attorney General of our state, but I don't think that is the point that we are discussing here today. I do not doubt that

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there will be litigation with respect to this very issue, and I submit to you that there may be some very difficult questions of law that will be presented to the courts as it relates to bonds that were issued prior to 1973 because, as everyone here knows, because of legislation passed last year in connection with the county ruling, any further bonds issued by the Port Authority will not contain the covenant, but I think the real point here is that there was a change in attitude, not just in the Legislature of both states between 1962 and 1974 but there has been a very real change in the dimension of the problems of moving people and goods both in New York and New Jersey, and that we are dealing here with a question not only of good faith. We are also dealing with the question of priorities and what may have been legislative priorities in 1962 simply are not those priorities in 1974, and it is my hope and my belief at this time, although certainly I do not profess to be an expert in both federal and state constitutional law, but a case can be made for what we are doing here today, and I would rather assume that risk than to do nothing."

"MR. KOPPELL: Thank you, George. Mr. Speaker."

"ACTING SPEAKER FIELD: Mr. Koppell."

"MR. KOPPELL: I think that Assemblyman Farrell's words are extremely accurate and appropriate to what we are doing here today. As one who has been a leader of this fight now for four years, I regard this as a most significant moment for the development of mass transportation in the metro-

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politan area. Not only does this promise to open up the financial resources of the Port Authority, which many have estimated over or up to \$100 million a year in surplus revenues to mass transportation, but it will allow the Port Authority to assume the role which was given to it back in the early 1920's when it was created, and that was as the essential coordinating force for mass transportation through the metropolitan area. That role was written into the original compact passed by the two states and ratified by the Congress of the United States, and I and many others have felt that the 1962 Legislature which we are repealing today went counter to that original compact and was in a sense contrary to the interpretation of its purposes and never really had any role, never really had any place in the statute books of this state and the state of New Jersey. In fact, I as a plaintiff in a lawsuit have argued that the 1962 legislation could never be deemed effective because it was never ratified by Congress and it represented such a radical departure from the intent of Congress in ratifying the original compact between the states, that in order for it to be effective Congress had to act on it and Congress never did. Thank goodness now Congress will never have to act upon it because we are repealing this covenant today should this bill pass, and I want to urge upon Governor Wilson that he sign it expeditiously and that the matter be given to the courts and I am confident that the court will recognize that this Legislature must have the right to provide the kind of funds that are necessary to have an efficient and reasonable in

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costs mass transportation system in the region. If anything indicates the necessity of increased funds for mass transportation, it is the energy crisis in which we are involved and which threatens our whole society. I think this legislation is critical. I think this legislation is certainly one of the most important things that we can do today, and is undoubtedly one of the most important steps that we can take to improve mass transportation. I want to commend the sponsors and the leadership of the House for bringing it forth so that finally we can make the Port Authority what it ought to be and we devote the mass resources that that Authority has to solving one of the critical problems we have in our state, that of mass transportation. I urge a unanimous house vote in support of this legislation."

"MR. MEYER: Mr. Speaker."

"ACTING SPEAKER FIELD: Mr. Meyer."

"MR. MEYER: Mr. Speaker, I recall in the winter of 1971 when I came up here as a rookie Assemblyman sitting in the corporations, authorities and commissions committee of this House and seeing another rookie Assemblyman across the table from me from Riverdale, from the Bronx, start to talk about the Port Authority of New York, an agency which I never heard of. Maybe I read about it in the papers a few times. And he kept talking about the idealism of it, kept talking about the need of public transportation in this state. Then I remember him shortly thereafter forge an ad hoc committee because he couldn't get any formal recognition of what he was

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doing from the majority party at that time, holding hearings in New York, holding many meetings, giving some due, needed publicity to this fact, and I just want to say after what I say in 1971, 1972, 1973 and 1974 from Ollie Koppell that I take my hat off to him for what he did."

"MR. STRELZIN: Mr. Speaker."

"ACTING SPEAKER FIELD: Mr. Strelzin."

"MR. STRELZIN: Will Mr. Farrell yield?"

"ACTING SPEAKER FIELD: The member yields."

"MR. STRELZIN: Mr. Farrell, I am under the impression that the New York Port Authority Charter provided that if there was a shortage of funds to make necessary payments to bond holders that money would be supplied by the State of New York on application to the governmental Comptroller. Am I right, sir?"

"MR. FARRELL: Both states."

"ACTING SPEAKER FIELD: Read the last section."

"THE CLERK: This act shall take effect immediately."

"ACTING SPEAKER FIELD: Call the roll. (Roll call.) The bill is passed. (Applause.)"

"MR. STRELZIN: Mr. Speaker."

"ACTING SPEAKER FIELD: Mr. Strelzin."

"MR. STRELZIN: Mr. Speaker, if I might, I was busily engaged in a little discussion but I want to

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pay my compliments to Assemblyman Farrell and Assemblyman Koppell on this legislation we just passed. It has been a long road and I hope that when it goes downstairs the Governor will join with us, but I think it is a step that I know will go a long way towards solving our problems in the metropolitan area, and I hope this problem doesn't spread to the rest of the state."

The statement of sponsors appended to the bill in New Jersey (A1304) provided:

"STATEMENT

This bill is designed to preclude the application of the 1962 covenant restricting port authority participation in mass transit projects. Chapter 208, P.L. 1972, precluded such application to bonds newly issued after the effective date of that act, but maintained in status quo the position of holders of bonds issued between March 27, 1962 and December 28, 1972. Since affected bonds are outstanding until the year 2007, the restrictions imposed by the covenant effectively preclude sufficient port authority participation in the development of a public transportation system in the port district. In 1972 the State of New York passed legislation precluding the application of the 1962 covenant from outstanding bonds as well as newly issued bonds. It is the purpose of this act to accomplish effective repeal of the covenant."

13. United States Trust Company of New York among others tried to persuade Governor Wilson not to sign the

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legislation. Governor Wilson issued the following statement when he signed into law the 1974 New York legislation repealing Section 3 of the 1962 Covenant.

“Coupled with action taken by the State of New Jersey, this bill retroactively repeals the 1962 statutory covenant entered into between the States of New York and New Jersey and prospective purchasers of bonds of the Port Authority of New York and New Jersey. Pursuant to that covenant, the Port Authority is prohibited from using its revenues beyond the existing Port Authority Trans-Hudson (PATH) System for rail mass transit facilities unless such facilities would be self-supporting.

“It is with great reluctance that I approve a bill that overturns a solemn pledge of the State. I take this extraordinary step only because it will lead to an end of the existing controversy over the validity of the statutory covenant, a controversy that can only have an adverse affect upon the administration and financing of the Port Authority, and because it will lead to a speedy resolution by the courts of the questions and issues concerning the validity of the statutory covenant. Because it is the province of the courts to decide questions of constitutionality, I will not prevent the covenant issue from being brought before them, especially where it is the unanimously expressed desire of the members of both houses of the New York State Legislature as well as the expressed will of the Governor and both houses of the Legislature of the State of New Jersey to do so.

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“In approving the bill, I note that the Chairman of the Port Authority has advised me that the Authority presently has invested more than \$220 million in PATH facilities and has incurred operating deficits for PATH services of approximately \$140 million. Moreover, the Authority expects to spend nearly \$130 million over the next ten years to complete the renovation of the existing PATH System and an additional \$350 million for the PATH rail extensions and high speed rail service to John F. Kennedy International Airport. Thus, the Port Authority is solidly committed to providing mass transportation facilities and services to New Yorkers.

“In response to my inquiry, the Chairman has also advised me that because of the heavy long term capital commitments for the PATH facilities and the Kennedy rail link, the Authority has no significant capacity to contribute funds for operating subsidies for commuter railroads. Hence, the plain and simple fact of the matter appears to be that the Authority has virtually no excess funds that could be channeled into operating subsidies for mass transportation facilities in the New York metropolitan area. Even if such funds were available, existing bond indenture provisions which survive despite repeal of the statutory covenant would prohibit their use except in relation to facilities owned, leased or operated by the Port Authority.

“For these reasons, my approval of the bill should not be considered as a criticism of the efforts which the Port Authority has made to provide effective

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transportation services, including mass transportation services, to the people of the New York metropolitan area, nor a panacea for the mass transportation problems plaguing the New York metropolitan area. The bill is approved.”

Governor Byrne’s office issued the following statement when he signed into law the New Jersey legislation repealing the 1962 Covenant:

“Governor Brendan Byrne Tuesday signed a bill designed to stimulate greater involvement in mass transit projects by the Port Authority of New York and New Jersey.

“The bill, A-1304, sponsored by Assemblyman Herbert C. Klein, D-Passaic, repeals the 1962 covenant which has effectively precluded the port authority from becoming involved in mass transit projects in the New York metropolitan area. The covenant restricts the authority from participation in mass transit projects which are not self-sustaining.

“‘I hope this bill, coupled with the same legislation in New York State, will clear the way once and for all for the port authority to fulfill what I believe was one of its original functions,’ said Byrne. ‘The authority was created as a transportation agency and I intend to see that it lives up to its original promise of assisting in establishment of a quality public transportation system for the metropolitan region without in any way impairing its fiscal integrity.’

“‘I hope the authority will now join with New York State, New York City and New Jersey in work-

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ing toward the realization of a viable public transportation for the port district,' he added.

"The Governor said the port authority staff has the experience, expertise and financial capability to perform a valuable function in solving the mass transit dilemma in the metropolitan region.

"This bill means that it is the public policy of the state of New Jersey that the port authority—a creation of the states of New Jersey and New York—should become a leader in improving the plight of those who rely on or choose to use mass transit,' he said.

"The Governor said he expects repeal of the covenant to provide new impetus for the proposed PATH (Port Authority Trans-Hudson) extension to Plainfield, as well as for future transit projects in New Jersey.

"Byrne emphasized he intends to do nothing that would adversely affect the authority's financial integrity, particularly its ability to meet its obligations to its bond holders.

"The State has as much at stake as the authority in maintaining the sound financial base it has enjoyed,' he said. 'Preserving the authority's outstanding reputation in the financial community can only serve to enable it to become more involved in future public transportation projects.'"

14. On November 12, 1974, the New York Times published the following article:

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“CAHILL DEFENDS PORT-UNIT STAND

“Denies His Transit Backing Caused Fund Problems

“Princeton, Nov. 11—Former Gov. William T. Cahill today defended his efforts to effect a greater involvement of the Port Authority of New York and New Jersey in mass transportation during his term in office.

“Over the weekend, Port Authority officials accused him of having precipitated the agency’s current financial problems by attempting to force it into deficit commuter rail operations.

“‘When something goes wrong’ Mr. Cahill said, ‘everybody wants to blame everybody else. When I went in there, nothing was happening. My administration got them involved in mass transportation.’

“Mr. Cahill, who now practices law here, was Governor from January, 1970, until January of this year. He was elected after repeated campaign promises to push the Port Authority into mass transportation.

“The Port Authority’s present problems, which stem from a drop in income at various facilities and difficulty in raising money, have nothing to do with administration, Mr. Cahill insisted.

“Lists Roots of Problems

“‘Their problems’, he said, ‘come from four sources—a reduction in revenues because of inflation,

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slackness in the bond market, the action of the two states in repealing the covenant with the bondholders retroactively and the lawsuit stemming from that repeal.'

"The covenant signed in 1962 when the Port Authority took over the commuter line now known as PATH, guaranteed purchasers of the authority's bonds that it would never have to take on another deficit passenger rail service. Both New York and New Jersey repealed the covenant earlier this year and a bondholders' suit was filed soon thereafter.

"Mr. Cahill said he would have vetoed any retroactive repeal during his administration.

" 'It's like telling your bondholders that your bonds don't really mean what they say they mean,' he said. 'It's like raising a red flag in the financial community.'

"Mr. Cahill said he never asked the Port Authority to take on any projects that could not have been accomplished under the restrictions of the 1962 covenants.

"The former Governor said he was suspicious of the Port Authority's assertions that it cannot sell bonds.

" 'The Sport Authority sold its bonds at 7 per cent with nothing to back them up,' he said. 'Certainly the Port Authority can do as well as that'. The New Jersey Sports and Exposition Authority is constructing a race track and stadium in the Hackensack Meadows.

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“Meadows Rail Link Sought

“Mr. Cahill conceded that there was little physical evidence that the Port Authority was acting on mass-transportation projects he had said they would undertake; an extension of PATH to Plainfield via Newark International Airport, new rail connections in the meadows and the rehabilitation of Penn Station in Newark.

“‘You’ve got to realize how long these things take,’ he said, noting that the PATH extension had been in the planning stages for almost four years.”

15. A number of bills were introduced during 1974 in the New Jersey Legislature with respect to the examination and development of various solutions to New Jersey’s transportation needs. With one exception (Assembly Joint Resolution 21) none of the bills if adopted in the form introduced would have involved the use of Port Authority funds. None of the bills was reported out of committee. (Stip. 338-361)

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*Excerpts From Stipulation Among Counsel
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The foregoing stipulation is hereby agreed to and approved.

Dated: December 20, 1974

MEYNER, LANDIS & VERDON
Gateway I
Newark, New Jersey
/s/ ROBERT B. MEYNER

CARTER, LEDYARD & MILBURN
2 Wall Street
New York, New York 10005
/s/ DEVEREUX MILBURN

WILLIAM F. HYLAND
Attorney General of the State
of New Jersey
Attorney for Defendants

By /s/ MICHAEL I. SOVERN
Michael I. Sovern

/s/ MURRAY J. LAULICHT
Murray J. Laulich

/s/ HAROLD S. H. EDGAR
Harold Edgar

(Stip. 366)

**Excerpts From Exhibit II to Stipulation Among
Counsel Dated December 20, 1974**

APPENDIX V

**CONSOLIDATED BOND RESOLUTION
(Adopted October 9, 1952)**

WHEREAS, by Chapter 48 of the Laws of New York of 1931, as amended, and Chapter 5 of the Laws of New Jersey of 1931, as amended, The Port of New York Authority (hereinafter called the Authority) has been authorized and empowered to establish and maintain a certain General Reserve Fund, and to pledge said fund as security for certain of its bonds or other securities or obligations, and

WHEREAS, there are now outstanding several issues of bonds of the Authority, which although secured by said General Reserve Fund, nevertheless differ as to form, security, terms and conditions, and

WHEREAS, the Authority has determined to authorize and establish an issue of Consolidated Bonds, and to use such Bonds (and the proceeds derived from the sale thereof) from time to time for the purpose of refunding bonds heretofore or hereafter issued and to serve as a unified medium for financing for any and all purposes for which the Authority is or shall be authorized to issue bonds secured by a pledge of the General Reserve Fund, to the exclusion of bonds of prior issues.

Now, THEREFORE, after due consideration had, be it resolved by The Port of New York Authority: (p. 55) * * *

*Excerpts From Exhibit II to Stipulation Among Counsel
Dated December 20, 1974*

SECTION 2. Establishment and Issuance.

An issue of bonds of the Authority to be known as "Consolidated Bonds" is hereby authorized and established. The bonds of said issue shall be direct and general obligations of the Authority and the full faith and credit of the Authority are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the Authority assumed by it to or for the benefit of the holders thereof. This resolution shall constitute a contract with the holders of such bonds.

Said Consolidated Bonds shall be issued only for purposes for which at the time of issuance the Authority is authorized by law to issue bonds secured by a pledge of the General Reserve Fund and only in such amounts as are permitted by Section 3 of this resolution. Said Consolidated Bonds shall be secured by revenues of the facilities of the Authority in the manner and to the extent provided in Sections 4 and 5 of this resolution and by the General Reserve Fund of the Authority in the manner and to the extent provided in Section 6 of this resolution and by the Consolidated Bond Reserve Fund in the manner and to the extent provided in Section 7 of this resolution.

Said Consolidated Bonds may be issued from time to time in such series as the Authority may hereafter determine. The bonds of each series may be issued in one or more installments as the Authority may hereafter determine.

All Consolidated Bonds constituting a particular series shall be uniform in respect of (a) dates of payment of interest, (b) place or places of payment of principal and interest, (c) medium of payment, (d) whether issuable as coupon bonds, or as registered bonds without coupons, or both, (e) provisions, if any, in respect of their exchange-

*Excerpts From Exhibit II to Stipulation Among Counsel
Dated December 20, 1974*

ability for bonds of different denominations, and of the interchangeability of coupon bonds and registered bonds without coupons, and (f) provisions, if any, for redemption and the terms and conditions thereof, *provided, however*, that bonds constituting a particular series may be made redeemable either in the direct or the inverse order of their maturities if such bonds have differing dates of maturity or by lot. All bonds constituting the whole or a part of a particular series and maturing on the same date shall be uniform in respect of interest rate or rates. All bonds of a series consisting only of bonds having the same date of maturity shall be uniform in respect of provisions, if any, in respect of amortization and retirement of bonds of such series.

Any resolution establishing a series or authorizing the issue of an installment of bonds of a series may contain terms and provisions not inconsistent with this resolution.

SECTION 3. Limitations on Amount.

The Authority shall not issue new Consolidated Bonds at any time unless one or another of the following four conditions shall exist, either * * * or, in the alternate,

(Condition 3) Unless at the time of issuance of such new Consolidated Bonds the sum of the net revenues specified in the following subdivisions i, ii, iii and iv (computed as hereinafter set forth in this Section 3) in the case of all facilities the surplus revenues of which shall be payable into the General Reserve Fund after the fulfillment of the purposes for which the new Consolidated Bonds are to be issued, to wit:

*Excerpts From Exhibit II to Stipulation Among Counsel
Dated December 20, 1974*

i. In the case of facilities which have been in operation during the entire period of thirty-six months next preceding such time of issuance,—the combined net revenues derived from all such facilities during any period of twelve consecutive months selected by the Authority out of the thirty-six months next preceding such time of issuance, plus

ii. In the case of facilities which have been in operation during the entire period of twelve months but not during the entire period of thirty-six months next preceding such time of issuance,—the net revenues derived from each such facility during any period of twelve consecutive months (which need not necessarily be the same for each such facility) selected by the Authority out of such period of operation, plus

iii. In the case of facilities which have not been in operation during the entire period of twelve months next preceding such time of issuance (including facilities under construction at such time or which are to be acquired, established or constructed with the proceeds of the sale of the new Consolidated Bonds),—the average annual net revenues which the Authority estimates will be derived from each of such facilities during the first thirty-six months after such time of issuance, but if in the opinion of the Authority any such facility will not be placed in operation until after such time of issuance, then as to each such facility, the average annual net revenues which the Authority estimates will be derived during the first thirty-

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six months of operation thereof after such time of issuance; *provided, however*, that no revenues estimated under this subdivision iii shall be included in the sum of all net revenues computed under this Condition 3 unless at the time of issuance of the new Consolidated Bonds there shall be in or available for payment into the General Reserve Fund an amount equal to the full amount prescribed in the General Reserve Fund statutes, calculated without the new Consolidated Bonds; and *provided, further*, that the amounts of any revenues estimated under this subdivision iii plus the amounts of any revenues estimated under the next following subdivision iv shall in no event exceed twenty-five per centum of the sum of all net revenues computed under the preceding subdivisions i and ii of this Condition 3, plus

iv. In the case of each capital improvement to any of such facilities if such capital improvement is either under construction at such time of issuance or has been completed less than twelve months prior to such time or, in case it has not yet been commenced, if the Authority has either issued bonds or has entered into a contract for the issuance of bonds or has authorized the issuance of the new Consolidated Bonds for the financing of all or part of such capital improvement,—the average annual amount which the Authority estimates that the net revenues of the facility to which such improvement appertains will be increased during the first thirty-six months after the completion of such improvement, over and above the amount of

*Excerpts From Exhibit II to Stipulation Among Counsel
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net revenues included for such facility in the foregoing subdivisions i, ii or iii of this Condition 3; *provided, however*, that no revenues estimated under this subdivision iv shall be included in the sum of all net revenues computed under this Condition 3 unless at the time of issuance of the new Consolidated Bonds there shall be in or available for payment into the General Reserve Fund an amount equal to the full amount prescribed in the General Reserve Fund statutes, calculated without the new Consolidated Bonds; and *provided*, further, that the amount of any revenues, estimated under this subdivision iv plus the amounts of any revenues estimated under the next preceding subdivision iii shall in no event exceed twenty-five per centum of the sum of all net revenues computed under the preceding subdivisions i and ii of this Condition 3,

shall have amounted to at least one and three-tenths times the prospective debt service (computed on the assumptions hereinafter set forth in this Section 3) for the calendar year after such time of issuance for which the combined debt service (so computed) upon the following bonds would be at a maximum, to wit:

- i. The new Consolidated Bonds,
- ii. All bonds outstanding at such time of issuance which are secured by a pledge of the General Reserve Fund, not including, however, any bonds which the resolution authorizing the issuance of the new Consolidated Bonds shall specifically

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Dated December 20, 1974*

designate are to be refunded by the new Consolidated Bonds, and

iii. Additional bonds secured by a pledge of the General Reserve Fund and having annual debt service in amounts estimated by the Authority, if estimated revenues and/or estimated revenue increases in connection with any facility or capital improvement have been included under the next preceding subdivisions iii and/or iv in the computation of the sum of the net revenues under this Condition 3 in connection with the particular new Consolidated Bonds to be issued and if the Authority is of the opinion at the time of issuance of such new Consolidated Bonds that such additional bonds will be issued in connection with such facility or improvement and will be outstanding during the thirty-six months for which the revenues and/or revenue increases have been estimated under said subdivision iii and/or iv;

or, in the alternate, (pp. 57, 59-60)***

Prospective debt service upon any bonds shall be computed for the purpose of determining the calendar year for which such debt service will be at a maximum and the amount of such debt service for such year, within the meaning of this Section 3, upon the assumptions that the principal amount of such bonds will not be paid prior to maturity except in fulfillment of contractual obligations by the Authority to the holders thereof for the redemption thereof prior to maturity, and that in those cases such redemption will be effected at the latest date permitted by such agreement.

*Excerpts From Exhibit II to Stipulation Among Counsel
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SECTION 4. Pledge of Revenues.

The payment of the debt service upon all Consolidated Bonds, regardless of the series or installment of which they form a part, and regardless of the dates of their issuance or maturity or the purposes for which issued, shall be secured equally and ratably by the net revenues of the Authority from each of the following:

i. The Holland Tunnel, the Lincoln Tunnel, the George Washington Bridge, the Bayonne Bridge, the Goethals Bridge, the Outerbridge Crossing, Port Authority Inland Terminal No. 1 (also known as the Port Authority Building), the New York Union Motor Truck Terminal, the Newark Union Motor Truck Terminal, the Port Authority Bus Terminal, La Guardia Airport, New York International Airport, Newark Airport, Teterboro Airport, the Port Authority Grain Terminal, Port Newark and the Hoboken-Port Authority Piers, and

ii. Any additional facilities, the establishment, acquisition, effectuation, construction, rehabilitation or improvement of which is financed or refinanced in whole or in part by the issuance of Consolidated Bonds;

and, except as otherwise provided herein the net revenues of each of said facilities are hereby irrevocably pledged to the payment of the debt service upon all Consolidated Bonds as the same may fall due, and shall be applied as provided in Section 5 hereof, and all Consolidated Bonds shall constitute a lien and charge thereon.

*Excerpts From Exhibit II to Stipulation Among Counsel
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The foregoing pledge and lien are, however, subject to and shall be subordinate to (but only to) the following prior pledges and liens:

(a) In the case of the revenues of the Holland Tunnel, the Lincoln Tunnel, the George Washington Bridge, the Bayonne Bridge, the Goethals Bridge, the Outerbridge Crossing, Port Authority Inland Terminal No. 1 (the Port Authority Building), the New York Union Motor Truck Terminal, the Newark Union Motor Truck Terminal, the Port Authority Bus Terminal and the Port Authority Grain Terminal,—to pledges heretofore made and liens heretofore created in favor of the aforesaid General and Refunding Bonds;

(b) In the case of the revenues of La Guardia Airport, New York International Airport, Newark Airport and Teterboro Airport,—to pledges heretofore made and liens heretofore created in favor of the aforesaid Air Terminal Bonds;

(c) In the case of the revenues of Port Newark,—to pledges heretofore made and liens heretofore created in favor of the aforesaid Marine Terminal Bonds.

Consolidated Bonds shall not be issued for any purpose in connection with any facility unless after the accomplishment of such purpose the debt service upon all Consolidated Bonds shall constitute a first lien and charge upon the net revenues of the Authority from such facility subject, however, to (but only to) the prior liens recited in the preceding paragraph.

*Excerpts From Exhibit II to Stipulation Among Counsel
Dated December 20, 1974*

SECTION 5. Application of Revenues.

Subject to the prior pledges and liens described in Section 4 of this resolution, all net revenues pledged as security for Consolidated Bonds shall be applied to the following purposes in the following order:

(a) To the payment of debt service upon all Consolidated Bonds;

(b) All remaining balances of net revenues pledged as security for Consolidated Bonds shall be paid into the Consolidated Bond Reserve Fund established by Section 7 of this resolution, except such amounts as may be necessary to maintain the General Reserve Fund in the amount prescribed by the General Reserve Fund statutes.

The pledge of net revenues made in Section 4 of this resolution (and the lien and charge of Consolidated Bonds upon such net revenues) shall be subject to the right of the Authority to make payments into the General Reserve Fund to the extent above provided in this Section 5, and to that extent only.

SECTION 6. General Reserve Fund.

The payment of the debt service upon all Consolidated Bonds, regardless of the series or installment of which they form a part, and regardless of the dates of their issuance or maturity or the purposes for which issued, shall be further secured equally and ratably by the General Reserve Fund; and the pledge thereof and of the moneys which may be or become part thereof, contained in the resolution of the Authority, adopted March 9, 1931, establishing said

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General Reserve Fund, as amended May 5, 1932, is hereby expressly extended to and made applicable to (and for such purpose the General Reserve Fund is hereby irrevocably pledged as security for) all Consolidated Bonds for the benefit of the holders thereof, in the manner and to the extent set forth in the aforesaid resolution of March 9, 1931, as amended May 5, 1932, *pari passu* with bonds heretofore issued by the Authority and with the holders of such bonds; *provided*, that nothing herein shall be construed to grant or confer greater rights in or to said General Reserve Fund upon the holders of Consolidated Bonds than are now granted or conferred upon the holders of the bonds of prior issues.

The foregoing pledge is subject to (but only to) the following separate rights which the Authority hereby reserves to itself:

(a) The right to pledge said General Reserve Fund as security for any bonds whatsoever hereafter issued by the Authority as security for which it may at the time be authorized by law to pledge the General Reserve Fund; and

(b) The right to use the moneys in said General Reserve Fund to meet, pay or otherwise fulfill any of the undertakings which it has assumed, does now assume by this resolution or shall hereafter assume to or for the benefit of the holders of any bonds as security for which said General Reserve Fund has heretofore been or is now pledged, or for which said General Reserve Fund may hereafter be pledged as above provided;

provided, that no greater rights in or to the General Reserve Fund shall hereafter be granted to or conferred

*Excerpts From Exhibit II to Stipulation Among Counsel
Dated December 20, 1974*

upon the holders of any bonds now outstanding or any bonds hereafter issued than are granted to and conferred upon the holders of all Consolidated Bonds.

Except as provided in the next sentence of this paragraph, the moneys in the General Reserve Fund shall not be used for any purpose at any time if there are any other moneys of the Authority available for that purpose at such time, and shall not be used for the payment of debt service prior to the time when the interest, sinking fund payments, redemption prices, principal amounts and other items constituting such debt service shall be required to be paid or set aside by the Authority; and the moneys in said General Reserve Fund shall be deposited in such depositories as the Authority may designate or invested in obligations of or guaranteed by the United States. If, however, there shall at any time be in or available for payment into all debt reserve funds of the Authority an aggregate amount of moneys in excess of an amount equal to two years' debt service upon all those bonds of the Authority which are secured by a pledge of the General Reserve Fund and which are outstanding at that time, to the extent that such moneys in or available for payment into such debt reserve funds will be available to pay debt service upon such bonds during the ensuing twenty-four calendar months, then and in any such event such excess moneys may be used at such time for any purpose for which said moneys may be used under the General Reserve Fund statutes, whether or not there are other moneys available for that purpose; and such excess moneys may be deposited in such depositories as the Authority may designate or invested in bonds, notes or other obligations of or guaranteed by the United States, the State of New York or the State of New Jersey, and any

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bonds of the Authority theretofore actually issued and negotiated and secured by a pledge of the General Reserve Fund. Two years' debt service, when used in this paragraph with respect to bonds outstanding at any time, shall mean the amounts which the Authority is obligated by contract with the holders of such bonds to pay as debt service upon such bonds during the ensuing twenty-four calendar months; *provided, however*, that in computing such two years' debt service on any such outstanding bonds which are short-term bonds there shall be substituted for the actual debt service on such short-term bonds during said ensuing twenty-four calendar months the debt service which would be payable during said twenty-four calendar months if such short-term bonds were forthwith refunded by bonds having the following characteristics: maturity—thirty years from such time; interest—at the same rate as upon the short-term bonds and payable semi-annually beginning six months from such time; amortization—in such annual amounts as would be required to retire the principal amount of the short-term bonds outstanding at such time by the thirtieth anniversary of such time if such annual retirement were effected at par at each anniversary of such time and if the annual debt service thereon would be equal for all years thereafter until such thirtieth anniversary.

The resolution of the Authority, adopted March 9, 1931, establishing said General Reserve Fund, as amended May 5, 1932, is hereby further amended to conform to the provisions of this Section 6; *provided, however*, that nothing contained in this Section 6 shall be construed to limit, curtail or impair any pledge of the General Reserve Fund or regarding its administration, investment and use made in favor of or for the benefit of the holders of any bonds of

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prior issues or to prevent the Authority from doing any act or thing required to be done in the fulfillment of any such pledge.

SECTION 7. Consolidated Bond Reserve Fund.

There is hereby established a special fund (herein called the Consolidated Bond Reserve Fund) the moneys in which are hereby pledged as additional security for all Consolidated Bonds, into which shall be paid all balances of net revenues pledged as security for Consolidated Bonds, remaining after deducting the amounts for which provision is made in subdivisions (a) and (b) of Section 5 of this resolution. The moneys in the Consolidated Bond Reserve Fund shall be accumulated or in the discretion of the Authority shall be applied to any of the following purposes and to such purposes only:

(a) To the payment of Consolidated Bonds at maturity, but in case a sinking fund has been established for the retirement of bonds of the series of which such bonds form a part only if the available moneys in such sinking fund are insufficient for such purpose, and in the case of other Consolidated Bonds, only if the net revenues pledged as security for Consolidated Bonds for the calendar year in which such payment shall be due and which are available for such payment are insufficient for such purpose.

(b) To the payment of debt service upon Consolidated Bonds then outstanding (other than the payment of such bonds at maturity), but only if the net revenues pledged as security for Consolidated Bonds

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for the calendar year in which such payment shall be due and which are available for such payment are insufficient for such purpose.

(c) To the purchase for retirement of Consolidated Bonds of any series as determined by the Authority at such prices as the Authority may determine to be reasonable; *provided, however*, that in case all of the bonds of such series are subject to redemption six months or less from the date on which the bonds are to be purchased for retirement, then such prices shall not exceed the highest price at which all of the bonds of such series might be redeemed at or prior to the expiration of said six months. Such purchases may be made at the discretion of the Authority, at public or private sale, with or without advertisement and with or without notice to other holders of Consolidated Bonds, and bonds theretofore issued and negotiated and then held by the Authority for investment may be purchased, as well as bonds held by others. In ascertaining whether the purchase price of any bond comes within the maximum above specified, brokerage commissions and similar items shall not be taken into consideration. The bonds so purchased shall be forthwith cancelled.

(d) To the redemption of Consolidated Bonds of any one or more series as may be determined by the Authority, if such bonds are subject to redemption. The bonds so redeemed shall be forthwith cancelled.

(e) To the payment of expenses incurred for the operation, maintenance, repair and administration

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of any facility the net revenues of which are pledged as security for Consolidated Bonds (including the expenses specified in the definition of net operating revenues in Section 1 of this resolution), but only to the extent that the gross operating revenues of such facility for the calendar year in which such payment shall be due, are insufficient or unavailable for such purpose.

(f) To the payment of debt service upon bonds other than Consolidated Bonds which are described in the last paragraph of this Section 7.

(g) To any other or additional purposes for which the Authority is now or may hereafter be authorized by law to expend the revenues of its facilities. (pp. 62-65) * * *

SECTION 12. Miscellaneous Covenants.

The Authority covenants and agrees with the holders of Consolidated Bonds, and with each such holder, as follows:

(a) Fully and faithfully to perform all duties required by the Constitutions and Statutes of the United States and of the States of New York and New Jersey, and by the Compact of April 30, 1921, between said two States, with reference to all facilities the net revenues of which are pledged as security for Consolidated Bonds,—those hereafter established, constructed or acquired by it, as well as those presently owned, leased or operated by it.

(b) Not to issue any more General and Refunding Bonds of the issue established March 18, 1935, Air

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Terminal Bonds of the issue established June 18, 1948 or Marine Terminal Bonds of the issue established November 23, 1948 in addition to the bonds of those issues outstanding at the adoption of this resolution. This covenant and agreement shall not only be with and for the benefit of holders of Consolidated Bonds but shall also be with and for the benefit of holders of outstanding bonds of prior issues and shall not be subject to modification except in accordance with the provisions of the resolutions establishing such prior issues in addition to the provisions of Section 16 of this resolution.

(c) To proceed promptly and in an economical and efficient manner with the effectuation, establishment, acquisition, construction, rehabilitation or improvement of all facilities, the effectuation, establishment, acquisition, construction, rehabilitation, or improvement whereof is financed with Consolidated Bonds.

(d) To maintain in good condition all facilities the surplus revenues of which are payable into the General Reserve Fund, and to operate them in an efficient and economical manner, making all such renewals and replacements and acquiring and using all such equipment as the Authority shall determine to be necessary or desirable for the proper and economical maintenance and operation thereof.

(e) To make such improvements as part of or in connection with facilities the surplus revenues of which are payable into the General Reserve Fund as the Authority shall determine to be necessary or

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desirable as incidental to or in connection with the operation of said facilities.

(f) To establish and collect flight fees, wharfage, dockage, rents, tolls and other charges in connection with facilities the net revenues of which are pledged as security for Consolidated Bonds, to the end that at least sufficient net revenues may be produced therefrom at all times to provide for the debt service upon all Consolidated Bonds.

(g) In the event the net revenues pledged as security for Consolidated Bonds are insufficient to provide for the debt service upon any or all Consolidated Bonds, to make good any deficiency out of the General Reserve Fund or other available revenues, moneys or funds; and for that purpose to establish, maintain and collect flight fees, wharfage, dockage, rents, tolls and other charges in connection with facilities the surplus revenues of which are payable into the General Reserve Fund (including facilities the net revenues of which are not pledged as security for Consolidated Bonds), to the end that combined surplus revenues may be produced therefrom at least sufficient to make good (through the medium of the General Reserve Fund) any deficiency in the debt service upon Consolidated Bonds, *provided, however*, that nothing herein contained shall be deemed to constitute an agreement or covenant by the Authority to make any payments into the General Reserve Fund in excess of the payments required to be made pursuant to the General Reserve Fund statutes.

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(h) To keep all facilities the surplus revenues of which are payable into the General Reserve Fund (and all structures, equipment and properties forming part thereof) insured, if such insurance is obtainable at reasonable rates and upon reasonable conditions, against such risks, in such amounts and with such deductibles as the Authority shall deem necessary for the protection of the holders of Consolidated Bonds.

(i) Duly and punctually to pay or cause to be paid the debt service upon all underlying mortgage bonds outstanding in connection with all or any part of any facility the surplus revenues of which are payable into the General Reserve Fund, in strict conformity with the terms of such bonds.

(j) To make all such expenditures as the Authority shall determine are necessary or desirable for, in connection with or incidental to the fulfillment of any of the covenants or other undertakings assumed by the Authority to or for the benefit of the holders of any Consolidated Bonds in this Section 12 or in any other section of this resolution or in any other resolution relating to Consolidated Bonds.

(k) In case any facility or any real property constituting a portion of a facility, the net revenues of which are pledged as security for Consolidated Bonds, is sold by the Authority or is condemned pursuant to the power of eminent domain, to apply the net proceeds of such sale or condemnation to capital expenditures upon facilities the net revenues of which are pledged as security for Consolidated

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Bonds, or to the retirement of Consolidated Bonds or bonds of prior issues after satisfying any prior obligations in respect of such facilities or in respect of the disposition of such proceeds; *provided, however*, that nothing herein contained shall be construed to prevent the Authority from applying the award in any condemnation proceeding in accordance with the Agreement with respect to the Newark Marine and Air Terminal between the City of Newark and the Authority, dated October 22, 1947, or the Agreement with respect to Municipal Air Terminals between the City of New York and the Authority, dated April 17, 1947, or any lease or other agreement for the use of real property heretofore or hereafter entered into by the Authority whether as landlord, tenant, licensor, licensee or otherwise. (pp. 67-68)

* * *

SECTION 16. Modifications.

(a) The Authority may from time to time and at any time, without authorization, consent or other action by any of the holders of Consolidated Bonds, modify or amend this resolution, or any other resolution relating to Consolidated Bonds, but only for the purpose of curing any ambiguity or of curing or correcting any defective or inconsistent provision, or for any other purpose not inconsistent with this resolution or with any other resolution relating to Consolidated Bonds; *provided*, that no such amendment made pursuant to this sub-section (a) shall alter or impair the obligation of the Authority, which is absolute and unconditional, to pay the principal and interest of any bond at the time and place and at the rate

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or amount and in the medium of payment prescribed therein, or shall alter or impair the security of any bond, or otherwise alter or impair any rights of any bondholder.

(b) In addition to the power given in sub-section (a) of this Section 16, any of the terms or provisions of this resolution (or of any resolution amendatory of or supplemental to this resolution) may be amended, repealed or modified in the manner hereinafter set forth in this Section 16, for the purpose of modifying or amending in any particular any of the terms or provisions (including, without the generality of the foregoing, any provisions regarding amortization and retirement) of any of the Consolidated Bonds or of any of the coupons pertaining thereto; *provided*, that no such amendment, repeal or modification shall alter or impair the obligation of the Authority, which is absolute and unconditional, to pay the principal and interest of any Consolidated Bond at the time and place and at the rate or amount and in the medium of payment prescribed therein, without the express consent of the holder of such bond.

i. Whenever the Authority shall desire any such amendment, repeal or modification of any of the provisions of this resolution (or of any resolution amendatory of or supplemental to this resolution), it shall call a meeting of the holders of Consolidated Bonds (or if the amendment, repeal or modification proposed shall affect the rights of the holders of such bonds of only one or more particular series or installments, then of the holders of all Consolidated Bonds of each such series or installment so to be affected) for the purpose of considering and acting upon any such proposed amendment, repeal or modi-

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fication. A notice specifying the purpose, place, date and hour of such meeting shall be published by the Authority in a daily newspaper of general circulation in the City of New York, State of New York, and also in one or more daily newspapers of general circulation in one or more of the following cities: the City of Boston, Commonwealth of Massachusetts; the City of Philadelphia, Commonwealth of Pennsylvania; the City of Chicago, State of Illinois; and the City of San Francisco, State of California. Such notice shall be published once a week for four consecutive weeks, the first publication to be not less than thirty days nor more than ninety days prior to the date fixed for the meeting. Such notice shall briefly set forth the nature of the proposed amendment, repeal or modification, and shall give notice that a copy thereof is on file with the Authority for inspection by the holders of the bonds. On or before the date of the first publication of the notice, a similar written or printed notice shall be mailed by the Authority, postage prepaid, to the holders of such bonds registered either as to principal or as to both principal and interest, at the addresses appearing on the registry books of the Authority, and who are to be affected by the proposed amendment, repeal or modification. The actual receipt by any bondholder of notice of such meeting shall not be essential to the validity of such meeting and a certificate by the Authority, duly executed by its Chairman or Vice-Chairman, that the meeting has been called and notice thereof given as herein provided, shall be conclusive as against all parties, and it shall not be open

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to any bondholder to show that he failed to receive notice of such meeting or to object to the form of such notice, *provided*, that such notice shall conform substantially to the provisions of this subdivision i of this sub-section (b) of this Section 16.

ii. No person shall be entitled to vote at such meeting unless he shall be a holder of a Consolidated Bond or shall hold a proxy duly executed by such a bondholder, and (1) he shall present at the meeting his Consolidated Bond or Bonds (or in the case of the holder of a proxy, the Consolidated Bond or Bonds of his principal), or (2) he shall present at the meeting a certificate of the character herein described in subdivision iii of this sub-section (b) of this Section 16, or (3) his name (or, in the case of the holder of a proxy, the name of his principal) shall appear as a registered bondholder on the list prepared and presented to the meeting by the Registrar as provided in subdivision iii of this sub-section (b) of this Section 16.

iii. Any holder of Consolidated Bonds may, prior to any such meeting, deliver his Consolidated Bond or Bonds, at his own expense, to any Registrar of Consolidated Bonds, or to such bank, banking firm or trust company as shall be satisfactory to the Authority, and thereupon shall be entitled to receive an appropriate receipt for the bonds so deposited, calling for the re-delivery of such bonds at any time after the meeting. A certificate signed by any such Registrar, or by any such bank, banking firm or trust company that the bonds have been so deposited, and

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giving the amount, denomination, series and numbers thereof, shall be sufficient evidence to permit the holder of any such certificate, including the holder of a proxy who shall produce such certificate, to be present and to vote at any meeting. The Registrar or Registrars of Consolidated Bonds shall prepare and deliver to the Authority at the time of the convening of the meeting a list of the names and addresses of the registered holders of the bonds proposed to be affected by said amendment, repeal or modification, as of the close of business on the day before the date set for the meeting, or the date to which such meeting shall have been adjourned, together with a statement of the denominations, series and numbers of the bonds registered in the name of each such registered holder.

iv. The Authority shall present to the meeting at the convening thereof a statement in writing duly executed by its Chairman or Vice-Chairman or by the Chairman or Vice-Chairman of its Committee on Finance, listing the denominations, series and numbers of all bonds of all series proposed to be affected by said amendment, repeal or modification, owned by it or held for its account directly or indirectly, including any bond registered in the name of the Authority or held for the account of any debt reserve fund of the Authority, and no person shall be permitted at the meeting to cast any vote or give any consent because of any bonds listed on such statement, and no such bonds (hereinafter referred to as Authority-owned bonds) shall be counted in determining any vote at such meeting, including the determination of whether or not a quorum is present.

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v. A representation of at least 60% in aggregate principal amount of the Consolidated Bonds then outstanding (exclusive of Authority-owned bonds) or, if the amendment, repeal or modification proposed shall only affect the rights of the holders of one or more particular series or installments of Consolidated Bonds, then 60% in aggregate principal amount of the bonds outstanding (exclusive of Authority-owned bonds) of each such series or installment so to be affected, shall be necessary to constitute a quorum at any such meeting of bondholders; but less than a quorum may adjourn the meeting from time to time and the meeting may be held as adjourned without further notice, whether such adjournment shall have been held by a quorum or by less than a quorum. The Authority shall designate a Commissioner or officer of the Authority to preside as temporary chairman, and such temporary chairman shall immediately call for nominations for a permanent chairman for such meeting. Such permanent chairman shall be some person who shall be a bondholder, or the holder of a proxy, entitled to vote at the meeting. At such meeting each person shall be entitled to one vote for each \$1,000 principal amount of such bonds held or represented by him as provided in subdivision ii of this sub-section (b) of this Section 16, and such vote shall be cast by ballot. Except as herein provided, the meeting may adopt its own rules of procedure.

vi. At any such meeting as aforesaid, the Authority shall submit for consideration and action of the holders of Consolidated Bonds or, if the amend-

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ment, repeal or modification proposed shall only affect the rights of the holders of one or more particular series or installments of Consolidated Bonds, then of the bondholders of each such series or installments to be affected, a proposed resolution embodying the amendment, repeal or modification to be considered by the meeting. If such proposed resolution shall be consented to and approved (either in person or by proxy) by the holders of at least 60% in aggregate principal amount of the bonds to be affected thereby outstanding at the time (exclusive of Authority-owned bonds), then, and in such case, the Authority shall thereby be authorized and empowered to adopt such resolution, and any such resolution so adopted by the Authority shall be binding upon all bondholders, whether or not present at such meeting in person or by proxy, *provided* that no such amendment, repeal or modification shall affect the rights of the holders of one or more series or installments of Consolidated Bonds in a manner or to an extent differing from that in or to which the rights of holders of any other series or installments of Consolidated Bonds are affected unless such resolution shall be approved (either in person or by proxy) by the holders of at least 60% in aggregate principal amount of the Consolidated Bonds then outstanding (exclusive of Authority-owned bonds) of each such series or installment so affected; and no bondholder shall have any right or cause to object to the adoption of any such resolution by the Authority or to object to any of the terms or provisions therein contained or the exercise thereof or of the authorizations con-

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tained therein, or in any manner to question the propriety of the adoption thereof or to enjoin or restrain the Authority from executing the same or from taking any action pursuant to the provisions thereof.

vii. Upon the adoption by the Authority of any resolution pursuant to the provisions of this Section 16, this resolution (and any resolution supplemental to or amendatory of this resolution) shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the Authority and all holders of outstanding bonds shall be thereafter determined, exercised and enforced subject, in all respects, to such modifications and amendments.

viii. Minutes of all resolutions adopted and proceedings had at every such meeting shall be made and duly entered in books to be from time to time provided for that purpose by the Authority, and any such minutes as aforesaid, if signed by the chairman of the meeting at which such resolutions were passed or proceedings had, shall be prima facie evidence of the matters therein stated, and until the contrary is proved, every such meeting in respect of the proceedings of which minutes shall have been so made and signed shall be deemed to have been duly held and conveyed, and all resolutions passed thereat or proceedings had thereat shall be deemed to have been duly passed and had.

As use above in this Section 16, the terms "bond" and "Consolidated Bond" shall include any interim receipt

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therefor; and the terms "bondholder" and "holder" of a "Consolidated Bond" shall include the holder of such an interim receipt.

SECTION 17. Determinations.

Whenever in this resolution it is provided that any selection, designation, determination or estimate shall or may be made by the Authority or that any action may be taken or withheld by the Authority or that any action shall or may be taken or withheld at the option of or dependent upon the opinion, discretion or judgment of the Authority, then the Authority's such selection, designation, determination, estimate, action, option, opinion, discretion or judgment expressed by its Board of Commissioners or by a committee or officer or other person duly authorized shall be conclusive for the purposes of this resolution.

APPENDIX VI

RESOLUTION ESTABLISHING FORTY-FIRST SERIES OF
CONSOLIDATED BONDS, DUE 2008
(September 13, 1973)

WHEREAS, heretofore and on the 9th day of October, 1952, The Port Authority of New York and New Jersey (formerly known as The Port of New York Authority and hereinafter called the Authority) adopted a resolution providing for the issuance of certain direct and general obligations of the Authority, hereinafter called Consolidated Bonds, from time to time, in conformity with said resolution for the purposes therein set forth, which resolution is hereinafter called the Consolidated Bond Resolution,

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and which resolution constitutes a contract with the holders of the bonds so issued; and

WHEREAS, said Consolidated Bond Resolution provides that such Consolidated Bonds shall be issued in such series as the Authority may determine, and that the characteristics of the bonds of each series shall be determined by the Authority by and in the resolution establishing such series, and that the resolution establishing any series may contain other terms and provisions not inconsistent with the Consolidated Bond Resolution; and

WHEREAS, the Authority has heretofore established various series of said Consolidated Bonds and has now determined that it is necessary, advisable and in the public interest to establish another series of said Consolidated Bonds, without prejudice to its right hereafter to establish other and additional series of such Consolidated Bonds;

NOW, THEREFORE, be it resolved by The Port Authority of New York and New Jersey: (pp. 69-72)***.

SECTION 7. The Authority shall not apply any monies in the Consolidated Bond Reserve Fund or in any special reserve fund established for the benefit of the bonds of any prior issue of bonds except for the payment of bonds secured by a pledge of the General Reserve Fund in whole or in part, the payment of debt service upon bonds so secured, the purchase for retirement of bonds so secured or the redemption of bonds so secured, or for the payment of expenses incurred for the establishment, acquisition, construction or effectuation, or for the operation, maintenance, repair or administration of any facility financed or refi-

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nanced in whole or in part by bonds secured by a pledge of the General Reserve Fund in whole or in part, or otherwise for the fulfillment of any undertakings which the Authority has assumed or may or shall hereafter assume to or for the benefit of the holders of bonds secured by a pledge of the General Reserve Fund in whole or in part; provided, however, that nothing herein contained shall be construed to permit the application by the Authority of monies in the Consolidated Bond Reserve Fund or in any special reserve fund established for the benefit of the bonds of any prior issue of bonds except for purposes and upon conditions which in the case of the Consolidated Bond Reserve Fund are authorized by the Consolidated Bond Resolution or in the case of said special reserve funds are authorized by the respective resolutions establishing such prior issues of bonds.

Consolidated Bonds proposed to be issued for purposes in connection with an additional facility or a group of additional facilities in connection with which the Authority has not theretofore issued bonds which have been secured by a pledge of the General Reserve Fund in whole or in part, may be issued, and bonds other than Consolidated Bonds proposed to be issued for purposes in connection with such an additional facility or group of additional facilities may be secured by a pledge of the General Reserve Fund in whole or in part, in each case if and only if the Authority shall certify at the time of issuance (as defined in Section 3 of the Consolidated Bond Resolution) its opinion that the issuance of such Consolidated Bonds or that such pledge of the General Reserve Fund as security for such bonds other than Consolidated Bonds will not, during the ensuing ten years or during the longest term of

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any of such bonds proposed to be issued (whether or not Consolidated Bonds), whichever shall be longer, in the light of its estimated expenditures in connection with such additional facility or such group of additional facilities, materially impair the sound credit standing of the Authority or the investment status of Consolidated Bonds or the ability of the Authority to fulfill its commitments, whether statutory or contractual or reasonably incidental thereto, including its undertakings to the holders of Consolidated Bonds; and the Authority may apply monies in the General Reserve Fund for purposes in connection with those of its bonds and only those of its bonds which it has theretofore secured by a pledge of the General Reserve Fund in whole or in part. Expenditures in connection with an additional facility or group of additional facilities shall mean the amount of the excess, if any, of the sum of all items of expense to be considered in determining the net revenues of the additional facility or group of additional facilities plus the debt service upon the bonds proposed to be issued and upon any additional bonds which in the Authority's opinion would be required to be issued to place and maintain such facility or group of facilities upon a sound operating basis, over and above the sum of all items of revenue and income to be considered in determining such net revenues. (p. 76) * * *

**Excerpts From Exhibit III to Stipulation Among
Counsel Dated December 20, 1974**

THE PORT AUTHORITY OF NY & NJ
1973 ANNUAL REPORT

* * *

“PLAINFIELD CORRIDOR SERVICE PROJECT

As authorized by the States in 1973, PATH began detailed planning for the Plainfield Corridor Service Project, an extension of PATH from Newark to Plainfield via Newark International Airport and Elizabeth, more than double the present mileage of PATH.

Primary goal of the PATH extension is the retention of rail service for approximately 8,000 riders of the Central Railroad of New Jersey (CNJ), whose rail service has been threatened with abandonment. The proposed extended service also would include a new station stop at McClellan Street, Newark, to provide rail service to Newark International Airport.

As part of this extension, a new rail line would be constructed alongside the Penn Central tracks between Penn Station-Newark and Elizabeth, including the airport station at McClellan Street.

Basic system and structural improvements would be required along the CNJ right-of-way between Elizabeth and Plainfield, including station construction at Elizabeth, Roselle/Roselle Park, Cranford, Westfield/Garwood, Fanwood/Scotch Plains and Plainfield.

Forty-four new rapid transit cars would be purchased by PATH and many existing cars would be extensively refurbished for the service. Other equipment for track, signal and power systems also would be required.

The estimated gross cost of the Plainfield Corridor Service Project is \$221,510,000, toward which an 80 percent capital grant would be required under the Federal Urban

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Mass Transportation Program. A preliminary grant application was filed in October, and public hearings called for by UMTA, the responsible Federal agency, were scheduled for January 1974.

The local share would be provided by the Port Authority and, to the extent necessary, the State of New Jersey.

The PATH extension would relieve the taxpayers of the State of New Jersey of the present operating subsidy obligations for CNJ passenger service in the area served and of the responsibility for capital improvement programs which had been identified for the CNJ in the Corridor.

Detailed planning and community contact work were under way throughout the year. Through meetings with community officials, planners and trade and civic leaders, every effort was made to acquire data and encourage citizen participation in the planning process.

"PENN STATION DIRECT ACCESS

The Plainfield Corridor Service Project is one element in a three-part metropolitan area rail transportation improvement program delegated to the Port Authority. The second is a project to provide rail service to Kennedy International Airport (see page 27). The third is the Penn Station Direct Access Project, which calls for rail connections and station improvements at Penn Station-New York to permit operation of Erie Lackawanna trains directly into New York City.

Track connections between the Penn Central and Erie Lackawanna railways in Kearney and Secaucus will permit selected Erie Lackawanna trains, carrying some 20,000 riders, to travel directly into Manhattan from areas in northern New Jersey and upstate New York. The project also includes construction of a new high-level Penn Central

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bridge over the Hackensack River and construction of yard facilities in New Jersey.

Detailed design work has been in process on the Penn Station Direct Rail Access Project throughout the year. Consultants are undertaking computer simulations of the train movements into and out of Penn Station to reach detailed engineering design decisions. They also are studying power, signal systems and communications improvements included in the plan." (pp. 12-15).***

*Excerpts from Exhibit III to Stipulation Among
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SELECTED FINANCIAL DATA

	<u>1973</u>
Net Revenues	
Gross Operating Revenues	\$ 373,497
Operating Expenses	236,434
Net Operating Revenues	<u>137,063</u>
Other Income	23,615
Net Revenues Before Debt Service	<u>160,678</u>
Interest on Bonded Debt	49,729
Balance Available for	
Debt Retirement and Reserves	<u>110,949</u>
Times, Interest Earned	3.23
Mandatory Long-Term Debt Retirements	26,047
Net Revenues after Debt Service	<u>\$ 84,902</u>
Times, Debt Service Earned	<u>2.12</u>
Net Changes in Reserves	
Transferred from Revenues (above)	\$ 84,902
Interest on Bank Loans	(6,775)
Bank Loan Payment	(35,000)
Short-Term Note Retirements	—
Long-Term Debt Retirement Acceleration	—
Invested in Facilities	(8,000)
Debt Service on Bonds Secured by Trusts	(6,874)
Adjustment of Securities Value	(3,591)
Net Change	<u>\$ 24,662</u>

*Excerpts from Exhibit III to Stipulation Among
Counsel Dated December 20, 1974*

	<u>1973</u>
Reserves—at Year End	
General Reserve	\$ 173,487
Special Reserve	16,047
Air Terminal Reserve	22,664
Marine Terminal Reserve	2,634
Consolidated Bond Reserve	21,932
Total	<u>\$ 236,764</u>
Dept—At Year End	
General and Refunding Bonds	\$ 14,586
Air Terminal Bonds	20,577
Marine Terminal Bonds	2,417
Consolidated Bonds and Notes	1,697,287
Total Bonded Debt	<u>1,734,867</u>
Bank Loans	295,000
Total	<u>\$2,029,867</u>
Invested in Facilities—	
At Year End	\$3,272,913
Debt Retirement Through	
Revenues and Reserves	
Annually	\$ 66,943
Cumulative	\$1,261,357

(p. 71) * * *

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**Exhibit V to Stipulation Among Counsel
Dated December 20, 1974**

A HISTORY OF
THE PORT OF NEW YORK AUTHORITY
FINANCIAL STRUCTURE

taken from
an extemporaneous talk
By Daniel B. Goldberg
General Solicitor of the Port Authority

before
the executive staff of
The Port of New York Authority
October 3, 1961

Published April 1964

INTRODUCTION

At the time this talk was given in 1961, the Port Authority was about to enter a new phase of its financial history. Our organization was about to be asked by the Legislatures and Governors of the two States to assume responsibility for the bankrupt Hudson and Manhattan Railroad—a completely new kind of facility and one which we were convinced would never become self-supporting—without impairing our credit standing.

As the Port Authority's brilliant General Solicitor, Mr. Goldberg has played a key role, if not *the* key role, in the development of the Authority's present financial structure. He has also helped to build and protect the Authority's enviably sound fiscal integrity upon which our future rests. And he served as the chief architect of those financial safeguards, described in this talk, which made it possible the following year for us to assume responsibility for the H&M with adequate financial safeguards. His talk there-

*Exhibit V to Stipulation Among Counsel
Dated December 20, 1974*

fore has historical value in itself as well as being a lively and lucid explanation of how our financial structure grew over the years and how it works today.

A HISTORY OF THE PORT AUTHORITY'S FINANCIAL STRUCTURE

I'm going to start with an historical approach, because the history of the Port Authority's financing is almost a history of the Port Authority itself. Engineers built bridges and airports, and plans were made and the reports were promoted and developed before the Port Authority came along, but the innovation which the Port Authority represents, aside from interstate cooperation, is its legal and financial mechanism. So, let's go back in time to 1926 when the Port Authority put out its first bonds—its Series A bonds to construct the Arthur Kill bridges. The patterns of those bonds and of the Series B bonds for the George Washington Bridge and of the Series C bonds for the Bayonne Bridge were the same, so we can group them all together and this we can call Phase I.

PHASE I

CLOSED END BONDS

The important point that distinguishes those first bonds from most that came along later was that they were not open-end bonds; they were closed-end bonds. An estimate was made of how much money it was going to take to build each bridge and that is the amount of the bonds which was authorized. We might borrow it all at one time—or at two times as in the case of the George Washington Bridge—but basically, we could not thereafter sell any more than the originally stipulated dollar amount for the originally identified facility. Those early bond issues were therefore closed-end issues.

*Exhibit V to Stipulation Among Counsel
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The Series A bonds for the Arthur Kill bridges, the Series B bonds for the George Washington Bridge and the Series C bonds for the Bayonne Bridge had an identical pattern of application of gross revenues, which you can think of as the revenue flow. To trace the revenue flow in those early days, we start with the gross revenues coming in from the operation of each of the bridges. These were to be applied first to the expenses of operation and maintenance—O&M as we call it—of that bridge. Then the balance left in the case of each bridge was to be applied to debt service on the particular series of bonds which financed that particular bridge.

Now for those who are uninitiated in these “mysteries,” debt service really means the same thing you pay as you make monthly payments on the mortgage on your home—it is a combination of interest and amortization of the principal of your loan. Debt service in the cases of our early closed-end bonds consisted of the interest on the bonds and some sinking fund requirements which were supposed to take care of repaying the principal. The setup then called for surplus revenues of each bridge after debt service on its particular bonds to go into separate statutory reserve funds, each of which was set up in the statute which authorized the financing of the particular bridge.

I needn't tell you that in fact there wasn't any surplus to take care of this statutory reserve. There was difficulty in meeting the debt service on those early bonds when the traffic estimates turned out to be more than the lean 1929-31 depression years produced.

PHASE II

The second phase was the phase in which the walls between the individual facility revenue flows and the