Memorandum

MIAMI-DADE COUNTY

Date:	March 3, 2009
To:	Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners
From:	George M. Burgess County Manager
Subject:	Resolution Authorizing Execution of Amendment No. 1 to the Amended and Restated Terminal Agreement between Miami-Dade County and Seaboard Marine, Ltd., and approving a Terminal Services Agreement between Port of Miami Terminal Operating Company, L.C., and Seaboard Marine, Ltd.

Agenda Item No. 8(Q)(1)(A)

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of Amendment No. 1 ("Amendment") to the Amended and Restated Terminal Agreement ("Agreement") (attached as Exhibit 1) between Miami-Dade County ("County") and Seaboard Marine, Ltd., ("Seaboard") for marine terminal operations at the Port of Miami ("Port"); and authorizing a Terminal Services Agreement ("TSA") (attached as Exhibit 2) between Port of Miami Terminal Operating Company, L.C., ("POMTOC") and Seaboard.

SCOPE

The Port of Miami is located within District 5 – Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide as the Port of Miami is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

This Amendment does not have a direct fiscal impact to the Port; however, it will likely have several beneficial outcomes. By approving the attached TSA, Seaboard, which currently operates at or near full capacity, will be able to maintain and potentially grow its business. The utilization of the acres described in the TSA by Seaboard may generate up to an additional 500 to 600 hours of gantry crane rental revenues to the Port – approximately $250,000 to $300,000 per year as the terminal area described in the TSA is in close proximity to the Port's gantry cranes; as well as initially increase Seaboard's minimum annual guarantee to the Port from $9.6 million to $10.1 million. Additionally, the Amendment extends the established construction deadlines for Phases I – V as set forth in Exhibit C of the Agreement for a period of six months, allowing the Port to defer, if needed, the capital costs associated with these improvements. This time extension would also push back potential rent reductions to Seaboard and make it more likely that the Port will receive each of five, one million dollar infrastructure contributions required of Seaboard as the Port successfully completes each phase.

TRACK RECORD/MONITOR

The Seaport Department staff members responsible for monitoring the Agreement are Juan Kuryla, Assistant Port Director, Maritime Services and Kevin Lynskey, Manager, Business Initiatives. Seaboard has operated at the Port of Miami since 1987 and has no outstanding financial issues with the Port.

BACKGROUND

On May 20, 2008, the Board approved the Agreement. The Agreement provides for, among other things, a 20 year (initial term) commitment by Seaboard to conduct operations at the Port and maintain minimum guaranteed incremental volume throughputs. In return, the County agreed to provide Seaboard certain

discounts off of Port of Miami Terminal Tariff No. 010 ("Tariff") rates and to make certain infrastructure improvements within the container yard used by Seaboard pursuant to the Agreement.

In connection with the infrastructure improvements, the Agreement establishes deadlines for the construction and completion of these projects and provides for penalties via rent reductions to Seaboard and reduced capital contributions by Seaboard should the County fail to meet the deadlines. The proposed Amendment provides for a six month extension to the construction deadlines set forth in Exhibit C of the Agreement as follows: Phase I - container yard paving and drainage (in progress) from December 31, 2009 to June 30, 2010; Phase II - container yard paving and drainage and Rubber Tire Gantry ("RTG") runways (under design) from September 30, 2010 to March 31, 2011; Phase III - container yard paving and drainage and RTG runways from September 30, 2011 to March 31, 2012; Phase IV - container yard paving and drainage and RTG runways from September 30, 2012 to March 31, 2013; and Phase V - container yard paving and drainage and RTG runways from September 30, 2014 to March 31, 2015. To date, however, the Port's implementation of the improvement projects described in the Agreement is on schedule.

In return for the above time extension, the County agrees to extend Seaboard's use of the Port's truck scales from November 1, 2010 to June 1, 2011. Section 4Q of the Agreement acknowledges that the on-Port acreage dedicated to the Port of Miami Tunnel Project impacts Seaboard's operation more than any other Port user and will cause Seaboard to relocate its current truck gate and entrance. Thus, the County agreed to allow Seaboard to use the Port's scales while they built a new gate complex after confirmation of the Tunnel Project; originally anticipated in July 2008. As confirmation of the Tunnel Project is still pending, Seaboard has requested to extend the use of the Port's scales until June 1, 2011.

To timely effectuate these improvements with the least possible service interruption within the Seaboard container yard, Section 4(K) of the Agreement also requires the County to undertake commercially reasonable efforts to make up to ten (10) acres of land available to Seaboard that is not otherwise under lease to other Port tenants. This requirement does not apply, however, if Seaboard subleases or otherwise obtains use of ten (10) or more acres from another Port tenant. In this regard, the attached TSA with POMTOC allows Seaboard to utilize up to 18 acres of land currently under lease to POMTOC for an initial term of three years, with a possible one year renewal period. During this time, Seaboard cargo handled through the up to 18 acres shall also count towards POMTOC's minimum TEU throughput guarantee. Section 7.1 of the September 15, 1994 Terminal Operating Agreement between POMTOC and the County ("POMTOC Agreement") requires County approval of certain agreements such as this type of TSA in order for such agreements to be effective. The POMTOC Agreement is currently in the final year of its second of three five year renewal option periods. Should POMTOC exercise its third five year renewal option, its agreement with the County will expire in September 2014. As requested by the Board at its meeting of July 1, 2008, Port staff met with POMTOC representatives throughout the summer to negotiate terms for a contract extension. Towards this end, the Port has proposed new terms to POMTOC and continues its interest to finalize a long term contract.

Authorization of this resolution will ensure uninterrupted operations within the Seaboard yard during the construction periods for infrastructure improvement projects. Both the proposed Amendment and the TSA provide for Seaboard's funding of the costs associated with the relocation of an existing Port access road ("Chute Road"). Chute Road currently divides the Seaboard and POMTOC yards. The TSA contemplates moving Chute Road to the eastern boundary of the 18 acres (attached as Exhibit 3) in the POMTOC yard to be used by Seaboard pursuant to the TSA. In connection with this relocation, the Agreement and TSA require Seaboard to fund the costs of, and implement, the necessary infrastructure changes as required by the Port to relocate the existing access and security check point presently

provided at Chute Road. Additionally, Seaboard has agreed to contribute up to fifty thousand dollars ($50,000) towards the installation of fiber optics to the security check point and connection to the existing Seaport network should the County elect to proceed with said connection. The existing Chute Road checkpoint does not have fiber optic connections.

Although under the existing Agreement Seaboard pays land rent on 81.19 acres, due to obstructions within its yard, Seaboard's minimum volume guarantee is based on 65 throughput acres. These acres will increase as the certain improvement projects are completed and such land becomes operable for container stacking and handling operations. This Amendment will provide for an immediate increase to the throughput acres by the difference of the actual acres used under the TSA minus ten acres. For example, if in year one of the TSA Seaboard utilizes the maximum 18 acres; their volume guarantee will be based on 73 acres (65+8). Notwithstanding the above, Seaboard's first tier discount rate will continue to be based on 65 acres until such time that certain improvements are completed.

Seaboard remains the Port's largest container line with more than 75 monthly sailings at the Port, generating approximately $13 million of annual revenue to the Port. Should the Board approve this resolution, Seaboard's $9.6 million annual revenue guarantee to the County will increase to approximately $10.1 million, as eight (8) additional acres of land will now be considered throughput acres. Authorization of the Amendment and the TSA will position the Port and Seaboard to better withstand these difficult economic times and continue their plans for growth and increased efficiencies.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond that specified in the resolution which include the authority for the Mayor or designee to execute Amendment No. 1 and to exercise any cancellation and renewal provisions.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: March 3, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(Q)(1)(A)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Mayor's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(Q)(1)(A)
3-3-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE AMENDED AND RESTATED TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND SEABOARD MARINE, LTD.; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE AMENDMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY; AND AUTHORIZING THE TERMINAL SERVICES AGREEMENT BETWEEN PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C. AND SEABOARD MARINE, LTD.

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying Memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. Authorizes the Mayor or his designee to execute Amendment No. 1 to the Amended and Restated Terminal Agreement between Miami-Dade County and Seaboard Marine Ltd. in the form attached hereto and made part hereof, and to exercise any cancellation and renewal provisions therein.

Section 2. Authorizes and approves the Terminal Services Agreement between Port of Miami Terminal Operating Company, L.C. and Seaboard Marine Ltd. attached as Exhibit 2 to the accompanying Memorandum.

The foregoing resolution was offered by Commissioner ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of March, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Richard Seavey

AMENDMENT NO.1 TO AMENDED AND RESTATED TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND SEABOARD MARINE, LTD. FOR MARINE TERMINAL OPERATIONS

THIS AMENDMENT NO. 1 is entered this __ day of March, 2009, by and between Miami-Dade County, Florida, a political subdivision of the State of Florida ("County") Seaboard Marine Ltd., a Liberian Corporation, authorized to do business in the State of Florida ("Seaboard"), by and through their authorized representatives in accordance with the terms, conditions and covenants contained herein below. The County and Seaboard are jointly referred to as the "Parties."

WHEREAS, the County owns certain lands located in Miami-Dade County, Florida, on which the Dante B. Fascell Port of Miami-Dade (hereinafter the "Port") is located;

WHEREAS, on May 20, 2008, by Resolution No. R-599-08, the County's Board of County Commissioners approved the Amended and Restated Terminal Agreement between Miami-Dade County and Seaboard Marine Ltd. (the "Seaboard Agreement") amending, restating and extending the "Terminal Agreement between Miami-Dade County and Seaboard Marine Ltd. for Marine Terminal Operations" dated October 1, 1998;

WHEREAS, the Seaboard Agreement provides for, among other things, minimum cargo throughput guarantees by Seaboard and commitments by the County to complete certain infrastructure improvements by certain dates which the Parties seek to modify; and

WHEREAS, Seaboard and the Port of Miami Terminal Operating Company, L.C., ("POMTOC") have entered into a Terminal Services Agreement ("TSA") subject to, and conditioned upon, approval by the Miami-Dade County Board of County Commissioners providing for, among other things, Seaboard's utilization of up to 18 acres of terminal space at the Port currently under lease to POMTOC pursuant to the September 15, 1994 Terminal Operating Agreement between POMTOC and the County ("POMTOC Agreement");

NOW, THEREFORE, in consideration of the mutual covenants, and agreements herein contained, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Seaboard Agreement shall be amended as follows:

   A. The Recitals Section of the Seaboard Agreement shall be amended to include the Recitals set forth above in this Amendment No. 1.

   B. Section 2 of the Seaboard Agreement providing for definitions shall be amended to add the following definition:

   "TSA" means the Terminal Services Agreement between Seaboard and the Port of Miami Terminal Operating Company, L.C. attached as Exhibit 1 to this Amendment No. 1.

   C. Subsection 4(K) of the Seaboard Agreement is amended to add the following sentences:

   "The County shall have no obligation to undertake commercially reasonable efforts to make up to ten (10) acres of land available to Seaboard during the time the County is making improvements as set forth in Exhibit 7 and Exhibit C of this Agreement while the

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TSA is in effect and Seaboard utilizes ten (10) or more acres pursuant to the TSA. Any land in excess of ten (10) acres utilized by Seaboard pursuant to the TSA shall be included as Throughput Acres and shall be subject to the Minimum Guaranteed TEU Throughput as set forth in the Agreement. Any land utilized by Seaboard Pursuant to the TSA shall not be included in determining any entitlement Seaboard may have to a discount from the Tier 1 TEU Rate set forth in Exhibit A to the Agreement."

D. Subsection 4(Q) of the Seaboard Agreement shall be amended to delete the date "November 1, 2010" in the second sentence and replace it with the date "June 1, 2011."

E. Section 7 of the Seaboard Agreement shall be amended to add the following subsection:

"G) Seaboard shall pay the costs to erect and relocate fencing as required to implement the TSA, the relocation of the existing Port access road ("Chute Road") to the location contemplated in the TSA, the relocation of the existing access and security check point presently provided at Chute Road, and any other improvements Seaboard and POMTOC deem necessary to implement the TSA, and shall contribute up to fifty thousand dollars ($50,000) towards the fiber installation of fiber optics to the security check point and connection to existing Seaport network should County, after notice to Seaboard, elect to proceed with said connection. Seaboard shall not be obligated to relocate Chute Road or relocate the security check point at the conclusion of the TSA or any of the costs associated therewith."

F. Exhibit C to the Seaboard Agreement shall be amended as follows:

"(1) The completion date for Phase I improvements - container yard paving and drainage will be extended from December 31, 2009 to June 30, 2010;

(2) The completion date for Phase II improvements - container yard paving and drainage and RTG runways will be extended from September 30, 2010 to March 31, 2011;

(3) Phase III improvements - container yard paving and drainage and RTG runways will be extended from September 30, 2011 to March 31, 2012;

(4) Phase IV improvements - container yard paving and drainage and RTG runways from September 30, 2012 to March 31, 2013; and

(5) Phase V improvements - container yard paving and drainage and RTG runways from September 30, 2014 to March 31, 2015.

The Parties agree that any delays in implementation of the improvements in the Phases above occurring before January 31, 2009 are not attributable to either Party, and shall not be the basis for any extension of any deadline above."

2. All terms and conditions of the Seaboard Agreement not modified by this Amendment No. 1 shall remain in full force and effect.

3. This Amendment No.1 shall be governed by Florida Law.

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IN WITNESS WHEREOF the parties have caused this Amendment No. 1 to be executed in their respective corporate names by their appropriate officers, and have their respective corporate seals affixed thereto, all as of the day and year first written above.

SEABOARD MARINE LTD.

By _____
Name: Bruce A. Brecherson
Title: Exec VP
Date: Jan. 30, 2009

ATTEST:

By _____
Name: SHARON A. NELSON
Title: PARALEGAL
Date: JAN. 30, 2009

MIAMI-DADE COUNTY

By _____
Name:
Title:
Date:

Approved as to legal form and sufficiency:

_____

ATTEST:
Clerk of the Board

_____
Deputy Clerk

Exhibit 1

TERMINAL SERVICE AGREEMENT

This Terminal Service Agreement (the "Agreement") is by and between PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C. ("Operator"), whose address is 1007 North American Way, Suite 301, Miami, Florida 33132, and SEABOARD MARINE LTD. ("Contractor"), whose address is 8001 N.W. 79 Avenue, Miami, Florida 33166.

RECITALS

WHEREAS, Operator is a marine terminal operator at the Port of Miami; and,

WHEREAS, Contractor is an ocean carrier and also operates a marine terminal at the Port of Miami, at a terminal facility located adjacent to Operator's marine terminal; and,

WHEREAS, due to construction in Contractor's terminal, Contractor desires to form a relationship for terminal services with Operator for the placement of loaded and empty containers, and other equipment, in Operator's terminal.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, Operator and Contractor agree as follows:

1. **Dedicated Terminal Area:** Operator agrees to make available up to 18 dedicated acres (784,080 sq. ft.), at Contractor's option, of its terminal facility adjacent to Contractor's marine terminal (the "DTA") for exclusive use as terminal area for Contractor's containers and related equipment discharged and/or to be loaded in or aboard Contractor's vessels (chartered or owned). A sketch of the DTA is attached hereto as Exhibit "A". On the one year anniversary of the Commencement Date, or any 6 month period thereafter during the Initial Term, or any renewal term, Contractor may at its option increase (but never beyond the allotted original 18 acres) or decrease the size of the DTA. The Parties agree to work with one another in terms of an understanding regarding which land is the most convenient to both Parties to be returned.

2. **Term:** This Agreement shall commence upon mutual written consent of the parties, but no later than March 31, 2009 (the "Commencement Date") and shall continue for a period of three (3) years (the "Initial Term") from the Commencement Date (the Parties agree to attach as an addendum hereto the agreed Commencement date when mutually agreed), unless terminated sooner as provided herein. Provided Contractor is not in default in the performance of this Agreement, Contractor with the mutual written consent of Operator may renew this Agreement for a period of one additional year by giving notice of such intent to renew in writing to Operator at least ninety (90) days prior to the expiration of the Initial Term.

3. **Rate and Throughput:** For the term of this Agreement, including any option term or extension thereof, Contractor shall pay Operator $10.00 per "full container". A "full container" shall be defined as a loaded, import or export, container, and shall not include vehicles, empty containers or chassis, that passes through the "south gate" of the DTA, as noted on Exhibit "A". Contractor shall guarantee a minimum of 6,000 full containers per month for use of the DTA. Contractor shall pay Operator on the first business day of the month (for the first month that this Agreement is in effect the amount to be paid will be the minimum guarantee) for the "full container" volume or the minimum guarantee whichever is greater, at the rate set forth herein. Payments made hereunder shall be subject to an annual (subject to proration for partial year) adjustment, based on total minimum annual volume of loaded containers of 72,000. Operator's tariff shall not apply to this Agreement. Additional services, equipment

or otherwise requested of Operator by Contractor shall be at rates and on terms to be mutually agreed upon by the parties. The Contractor shall have full access to the DTA including any fixed structures and utilities located thereon, save and accept for the security cameras which are not compatible with Contractor's equipment. The minimum guaranteed "full container volume" as set forth herein is based on an 18 acre DTA and is subject to proration based on permitted adjustments to the size of the DTA.

4. **Segregation of DTA:** (A) Subject to the conditions set forth in subpart 4(B) below, Operator shall: (i) permit Contractor to erect a fence enclosing the DTA and segregating the DTA from the remainder of Operator's terminal facility, (ii) permit Contractor to connect such fence line to Contractor's existing terminal, at the points identified on Exhibit "A", (iii) Contractor to establish a gate for direct access (apart from Operator's main gate complex) between Contractor's existing terminal facility and the DTA, and (iv) Contractor to temporarily relocate the existing roadway, known as "Chute Road," (the "Existing Roadway") to a point on the eastern side of the DTA. To the extent that Contractor reduces its need for certain acreage as provided herein, Contractor agrees to promptly move the fences and make any other changes required to return the full and unabated use of the remaining property to Operator.

   (B) It is expressly understood by Contractor that Operator's agreement to the provision of section 4(A) above are subject to the following conditions: (i) Contractor shall obtain the written consent of the Miami-Dade County Seaport Department (the "Seaport Department"), in the manner provided by the Seaport Department, for the modifications set forth in Section 4(A) prior to the commencement of the permitted actions, and to the extent that Contractor fails to secure full and unconditional approval for this agreement from the Seaport Department then Operator shall have the right at any time during any term of this Agreement to cancel within thirty (30) days written notice to Contractor (ii) Contractor shall be solely liable for payment of the actions permitted under section 4(A), and (iii) no action permitted under section 4(A) shall be undertaken by Contractor, and Operator shall not be required to allow any such action, until such time as both Contractor's and Operator's Facilities Security Plan (the "FSP") are modified to take into account the permitted actions and both FSP's are duly approved by the applicable regulating entity.

   (C) At Operator's discretion, Contractor shall be obligated at the expiration of any term or authorized cancellation of this Agreement , including any renewal terms, or termination of this Agreement to remove any modifications, alterations, additions, and improvements; and restore the DTA to its original condition as existed on the date of execution of this Agreement, including but not limited to removing any fencing segregating the DTA, returning any change in the Existing Roadway to its path and location as existing prior to the Commencement Date. Contractor further agrees that Contractor will pay all liens of contractors, subcontractors, mechanics, laborers, materialmen and other items of like character for alterations or improvements undertaken by or on behalf of Contractor, and will indemnify Operator against all legal costs and charges, including counsel fees reasonably incurred in and about the defense of any suit in discharging the said DTA or any part thereof. Contractor will continue to pay its monthly guarantee or any pro rata part thereof until the DTA has been fully returned to Operator in the same condition, normal wear and tear excepted, which existed before this Agreement went into effect.

5. **Operation and Security:** Contractor shall be solely responsible for providing the necessary manpower, equipment and security to utilize the DTA and acknowledges and agrees that Operator shall have no obligation to maintain, operate or secure the DTA in any respect. Contractor shall maintain, operate and secure the DTA in accordance with applicable rules, regulations (both Federal and State) and ordinances. On a monthly basis, Contractor shall provide Operator a report of the monthly full container throughput (as defined in Section 3

above) and Operator has the right to audit Contractors books and records in this regard within thirty days receipt of any monthly report.

6. **Insurance:** Contractor and Operator shall at all times maintain insurance coverage(s) as follows: (i) workers compensation as required by Florida law, and coverage applicable under U.S. Longshoreman's and Harbor Worker's Compensation Act as applicable, (ii) comprehensive general liability insurance in an amount not less than $5,000,000.00 per occurrence for bodily injury and property damage combined, (iii) contractual liability insurance covering all liabilities under this Agreement in an amount not less than $5,000,000 per occurrence, and (iv) automobile liability insurance covering all owned, non-owned and hired vehicles in an amount not less than $500,000 per occurrence for bodily injury and property damage combined. Contractor shall name Operator as an additional insured under each policy of insurance identified above, except coverage set forth in subpart (i) and shall provide a certificate of insurance upon executing this Agreement, and from time to time as may be requested by Operator.

7. **Assignment:** Contractor shall not sell, assign, or transfer this Agreement (any or all of the foregoing actions is, hereafter, a "Transfer") and any such Transfer shall be void.

8. **Indemnification:**

I. In addition to any other indemnities to Operator provided in this Agreement or by law, Contractor shall defend, indemnify and hold Operator, its officers, directors, shareholders, partners, members, agents, employees, invitees and licensees of Operator, harmless from and against any and all damages, claims, demands, actions, causes of action, liabilities, judgments, penalties, losses, costs and expenses (including, without limitation, attorneys' fees at trial and appellate levels) howsoever caused, excluding the negligence of Operator, arising out of, or as a result of, or which may be imposed upon or incurred by or asserted against Operator, by reason of any of the following matters or events:

a. any work or thing done in, on or about the DTA or any part thereof;
b. any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the DTA by Contractor and/or its agents, employees, contractors or any part thereof;
c. any accident, injury (including death) or damage to any person or property occurring in, on or about the DTA or any part thereof, and caused, in whole or part, by Contractor and/or its agents;
d. any failure on the part of Contractor to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement;

The provisions of this paragraph and all other indemnity provisions elsewhere contained in this Agreement shall survive the expiration or earlier termination of this Agreement.

II. In addition to any other indemnities to Contract provided in this Agreement or by law, Operator shall defend, indemnify and hold Contractor, its officers, directors, shareholders, partners, members, agents, employees, invitees and licensees of Contractor, harmless from and against any and all damages, claims, demands, actions, causes of action, liabilities, judgments, penalties, losses, costs and expenses (including, without limitation, attorneys' fees at trial and appellate levels) howsoever caused, excluding the negligence of Contractor arising out of, or as a result of, or which may be imposed upon or incurred by or asserted against Contractor, by reason of any of the following matters or events:

a. any accident, injury (including death) or damage to any person or property occurring in, on or about the DTA or any part thereof, and caused, in whole or part, by Operator and/or its agents;
b. any failure on the part of Operator to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement;

The provisions of this paragraph and all other indemnity provisions elsewhere contained in this Agreement shall survive the expiration or earlier termination of this Agreement

9. **Default:** Each of the following shall constitute a default under this Agreement: (i) Contractor fails to make any payment required under this Agreement (or any portion thereof) as and when due; or (ii) Contractor or Operator fails to perform any other obligation under this Agreement and such default is not cured within ten (10) days after written notice, or in the case of a default by Contractor, in such shorter period as may be required of Operator under or by virtue of any of its existing agreements; or (iii) Contractor becomes bankrupt or insolvent or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act, or if any debtor proceedings be taken by or against Contractor or any guarantor; or (iv) a receiver or trustee in bankruptcy is appointed for all or any of the Contractor 's property; or (v) Contractor or any trustee rejects this Agreement in any bankruptcy, insolvency, reorganization, or arrangement proceedings under the Bankruptcy Code or any State insolvency laws; or (vi) Contractor Transfers its interest in this Agreement, or effects any other Transfer, in violation of the terms hereof.

   In the event of a default by either party in its obligations hereunder, after expiration of applicable notice and cure periods, if any, the non-defaulting party may, at its option: (i) cancel this Agreement; and/or (ii) in the case of a default by Contractor in the payment of sums due hereunder, Operator may sue Contractor as each minimum monthly payment becomes due; and/or (iii) exercise such other rights and remedies as may be available hereunder, at law, or in equity.

   The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement.

10. **Approval:** This Agreement shall not be effective unless all of the conditions as set forth in 4(B)(i), above are approved by the Seaport Department and/or by applicable public body. If the necessary approvals have not been secured by Contractor by March 31, 2009, then this Agreement shall be null and void. Upon the execution of this Agreement, and as may be required from time to time thereafter, the parties hereto shall promptly modify/amend and seek approval of their respective Facility Security Plan.

11. **Notices:** Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.

12. **No Implied Waiver:** Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof

13. **Governing Law/Venue:** This Agreement shall be governed and construed in accordance with the laws of the State of Florida and the parties consent to the exclusive jurisdiction of the state courts and U.S. federal courts located in Miami-Dade County, Florida for any dispute arising out of this Agreement. THE PARTIES HEREBY KNOWINGLY,

VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH ANY OR ALL DOCUMENTS, INSTRUMENTS OR AGREEMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO.

14. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes and replaces all prior agreements concerning the subject matter, and, except as otherwise expressly provided herein, it may be amended or modified only by a written instrument signed by both parties hereto.

15. **Construction:** This Agreement shall not be construed more strictly against one party than against the other by virtue of the fact that one party or its counsel may have drafted same, both parties and their counsel having had the opportunity to participate in the negotiation and drafting of this Agreement.

16. **Binding Effect:** This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

17. **Headings:** The captions of this Agreement are for convenience of reference only and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect this Agreement.

18. **Master Agreement:** Contractor acknowledges Operator is party to that certain agreement dated September 15, 1994 with Metropolitan Dade County Seaport Department, commonly referred to as the Terminal Operating Agreement (hereinafter the "TOA") under which Operator operates the marine terminal facility which includes the DTA and Contractor agrees to observe the terms of the TOA, as amended, to the extent applicable to this Agreement, if at all. It is understood this Agreement is not a lease or sublease, and Operator is not assigning, nor is Contractor assuming, any of Operator's obligations under the TOA, as amended.

Operator and Contractor have executed this Agreement on the date set forth below.

Operator:	Contractor:
PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C.	**SEABOARD MARINE LTD.**
By: _____	By: _____
Date: January 30, 2009	Date: January 30, 2009

Exhibit I

AMENDED AND RESTATED TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND SEABOARD MARINE LTD. FOR MARINE TERMINAL OPERATIONS

THIS AMENDED AND RESTATED TERMINAL OPERATING AGREEMENT is hereby made and entered into as of the 30 day of May, 2008, by and between MIAMI-DADE COUNTY, FLORIDA, ("County"), and SEABOARD MARINE LTD., a Liberian Corporation, authorized to do business in the State of Florida ("Seaboard"), by and through their authorized representatives in accordance with the terms, conditions and covenants contained herein below. The County and Seaboard are jointly referred to as "the Parties."

WITNESSETH:

WHEREAS, the County and Seaboard are parties to a "Terminal Agreement between Miami-Dade County and Seaboard Marine Ltd. for Marine Terminal Operations" dated October 1, 1998; and

WHEREAS, Seaboard's vessels now carry over forty percent (40%) of the total cargo and nearly sixty percent (60%) of the total exports that pass through the Port of Miami; and

WHEREAS, Seaboard has operated at the Port of Miami since 1987 and for more than twenty years has contributed to the economic health and growth of the County; and

WHEREAS, the County and Seaboard now desire to enter into an Amended and Restated Terminal Operating Agreement, which extends the term of the Agreement and makes various other changes to the Agreement;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements hereinafter contained, the parties hereto do and hereby mutually covenant, agree and bind themselves as follows:

Section 1. Rules of Construction.

For all purposes of this Agreement, unless otherwise expressly provided:

A) A term has the meaning assigned to it;

B) An accounting term not otherwise defined has the meaning ordinarily given to it by accountants in accordance with generally accepted accounting principles;

C) Words in the singular include the plural, and words in plural include the singular;

D) A pronoun in one gender includes and applies to other genders as well; and

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E) The terms "hereunder," "herein," "hereof," "hereto" and such similar terms shall refer to the instant Terminal Agreement in its entirety and not to individual sections or articles.

F) The Parties hereto agree that this Agreement shall not be more strictly construed against either the County or Seaboard.

Section 2. Definitions as used herein:

"Actual TEU Throughput" means the number of TEUs each Fiscal Year that Seaboard loads on and/or discharges from its Vessels and/or the Vessels of other carriers calling at the Port berths, as well as TEUs moved through the Terminal Area from third party terminal services (as described in Section 5(L)) and multi-terminal ships (as described in Section 6(K)).

"Agreement" means this Amended and Restated Terminal Agreement between Miami-Dade County and Seaboard, including all attachments and exhibits, and any documents incorporated by reference herein.

"Applicable Laws" means any and all federal, state, and County laws, rules, ordinances, resolutions, administrative orders, implementing orders, and tariffs, including, but not limited to Port of Miami-Dade Terminal Tariff No. 010, that apply to the conduct of operations at the Port and the Parties' conduct thereunder, arising out of or related to this Agreement, all as such may be amended from time to time, including but not limited to all federal, state and County security requirements.

"Berths" means bays 149 to 182 at the Dante B. Fascell Port of Miami-Dade (as hereinafter defined), or as may be modified under the terms of Section 4(A).

"Cargo" means freight ladened or unladened from a vessel.

"Container" means a marine cargo container or a trailer, flatbed, lowboy, platform, or flatrack. If empty flatracks, flatbeds or platforms are bundled, each bundle shall count as one (1) container.

"County" means Miami-Dade County, a political subdivision of the State of Florida, and all departments, agencies and instrumentalities thereof, including but not limited to the Miami-Dade County Seaport Department.

"Discount TEU Rates" means the rates that apply to that portion of the Actual TEU Throughput in each Fiscal Year that exceeds the Tier 1 TEU Throughput for that Fiscal Year as set forth in Exhibit "A", which shall be inclusive of Wharfage and Dockage, as well as gate fees, reefer fees, storage fees, and

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facility improvement fees. Discount TEU Rates shall not include Security Fees as identified in Section 6(I) which if assessed shall be charged separately.

"Dockage" means the charges the County assesses pursuant to the Tariff against a vessel for berthing at a wharf, pier, bulkhead structure, or bank, or for mooring to a vessel so berthed.

"Effective Date" means the effective date of the Board of County Commissioners' resolution that approves this Agreement as set forth in Section 3.

"Expiration Date" means the date this Agreement shall expire, subject to any Renewal Terms as set forth in Section 3.

"Fiscal Year" means the County fiscal year, which runs from October 1 through September 30.

"FMC" means the Federal Maritime Commission or any other federal agency that might act as successor to or in the capacity of the Federal Maritime Commission.

"Initial Term" means the time during which this Agreement shall be in effect between the Effective Date and the Expiration Date but before any Renewal Terms are exercised as set forth in Section 3.

"Land Rental Rate" means the per square foot rental rate agreed upon by the parties and reflected in Section 5(A) hereof.

"Lay Berth" means any Vessel using a berth for maintenance or lay up and not for loading or discharging cargo.

"Minimum Guaranteed TEU Throughput" means the minimum number of TEUs per Throughput Acre that Seaboard agrees to load on and/or discharge from its Vessels and/or the Vessels of other carriers calling at the Port of Miami during a Fiscal Year as shown in Exhibit "A.".

"Non-throughput Acres" means acres within the Terminal Area that will be excluded from the calculation of the Minimum Guaranteed TEU Throughput, identified as Parcels "B1" and "B2" in Exhibit "B", but will be subject to Land Rental Rates. Such acreage may become Throughput Acres subject to its improvement consistent with Section "7" and Exhibit "C."

"Original Agreement" means the "Terminal Agreement between Miami-Dade County and Seaboard Marine Ltd. for Marine Terminal Operations" approved by the Board of County Commissioners in November 1998.

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"Preferential Berthing Rights" means a preferential right to use specified berths as set forth in Section 4(A) over any other similarly situated vessel, but expressly does not mean an exclusive right.

"Port" means the Miami-Dade County Seaport Department, also known as the Dante B. Fascell Port of Miami-Dade, or its successors or assigns.

"Port Director" means the Director of the Miami-Dade County Seaport Department or designee, or anyone acting in the capacity of Port Director as designated by the Mayor or designee.

"Rail Line" means the railroad tracks near the northern boundary of the Terminal Area, the land beneath such railroad tracks, and such land adjoining the railroad tracks that is necessary for the effective and efficient movement of cargo.

"Renewal Term" means the time during which this Agreement shall be in effect in the event any renewal option is exercised as set forth in Section 3.

"Seaboard" means Seaboard Marine Ltd., and shall include all affiliates and majority-owned subsidiaries.

"Security Fees" means a fee that may be included as a future Tariff charge to help pay for expenses associated solely with increases in the Port's operating security costs as identified in Section 6(I).

"Shortfall Fees" means the difference between Actual Throughput and the Minimum Guaranteed TEU Throughput multiplied by the Tier 1 TEU Rate for any applicable Fiscal Year as set forth in Exhibit "A" and in Section 5(E).

"Tariff" means the Port of Miami-Dade Terminal Tariff No. 010, Rates, Rules, and Regulations for the Seaport Facilities of Miami-Dade County, Florida, as such may be amended from time to time.

"Terminal Area" means the seventy-six and sixty-nine hundreths (76.69) acres of land designated in Exhibit "B", attached hereto and incorporated by reference herein, as Parcel "A", Parcel "B1" and Parcel "B2", and including those buildings and structures that are currently vacant, those currently occupied by Seaboard, and those currently occupied by other non-Seaboard tenants as well as 14.16 subleased acres of land within Parcel "A.". The Terminal Area is subject to adjustment pursuant to Sections 4(F), 4(G), 4(H), 4(K) and 5(G).

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"TEU" means one twenty (20) foot equivalent unit Container, whether full or empty. Any Container thirty (30) feet or less in length shall count as one TEU. Any Container over thirty (30) feet in length but less than fifty (50) feet in length shall count as two TEUs. Any container fifty (50) feet in length but less than sixty-five (65) feet in length shall count as three TEUs. All Containers more than sixty-five (65) feet in length shall be divided by twenty (20) feet to determine a TEU value. For TEU throughput calculation purposes only, each Vehicle shall count as two-thirds (2/3) of a TEU.

"Throughput Acres" means acreage that is suitable for vertically stacking of more than two loaded containers, as shown in Exhibit "B" and identified as Parcel "A", which represents approximately 65 (including the 14.16 subleased acres) acres at the Effective Date of this Agreement and is subject to revision.

"Tier I TEU Rate" means the rate that applies to the number of TEUs for each Fiscal Year as set forth in Tier 1 of Exhibit "A", which shall be inclusive of Wharfage and Dockage, as well as gate fees, reefer fees, storage fees, and facility improvement fees. The Tier I TEU Rate shall not include Security Fees as identified in Section 6(I), which if assessed shall be charged separately.

"Trans-Shipment" means the transfer of a Container or Vehicle from one vessel at the Port to any other vessel at the Port.

"Trans-Shipment Rate" means the rate that the County applies to Trans-Shipment Containers discharged from vessels docked at the Port as set forth in Section 6(D). This rate shall include Wharfage and Dockage, as well as gate fees, reefer fees, storage fees, and facility improvement fees. The Trans-shipment Rate shall not include Security Fees as identified in Section 6(I), which if assessed shall be charged separately.

"Tunnel" means the Port of Miami Tunnel, inclusive of improvement to the Port's road system that is planned for construction from Watson Island to Dodge Island and is subject to a tri-party agreement among the Florida Department of Transportation, County and the City of Miami.

"Vehicle" means a motorized wheeled conveyance used for transporting persons or cargo on land.

"Vehicle Rate" means the rate that applies to Vehicles loaded to or discharged from Vessels at the Berths as forth in Section 6(H), which shall be inclusive of Wharfage and Dockage, as well as gate

fees, reefer fees, storage fees, and facility improvement fees. The Vehicle Rate shall not include Security Fees as identified in Section 6(I), which if assessed shall be charged separately.

"Vessel" means any waterborne vessel or barge that uses the Terminal Area and that is either (i) owned or exclusively chartered, leased, managed, operated or controlled by Seaboard or trading under the name of Seaboard Marine and/or (ii) any vessel and/or barge which are part of VSAs, if legally required, as defined below, covering vessels trading under the name of Seaboard Marine.

"VSA" means an FMC or other similar governing entity approved vessel sharing arrangement with other shipping lines.

"Wharfage" means the charges the County assesses pursuant to the Tariff against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at a wharf or when moored in a slip adjacent to the wharf. Wharfage is solely the charge for the use of the wharf and does not include charges for any other service.

Section 3. Effective Date and Term

The Effective Date of this Agreement shall be the effective date of the Board of County Commissioners' resolution approving this Agreement. The Expiration Date shall be September 30, 2028, unless Renewal Terms are exercised, and subject to the cancellation and other terms and conditions contained herein. Subject to the conditions below, Seaboard shall have the sole option to renew this Agreement on the terms and conditions contained herein for two (2) Renewal Terms of five (5) years each. Seaboard's renewal option for the first Renewal Term requires it to meet either one of the following two (2) conditions: (i) Seaboard's aggregate average TEU Throughput per Throughput Acre for the final five (5) Fiscal Years of the Initial Term exceeds the aggregate average per acre TEU Throughput for all Port cargo terminal operators combined during those same five (5) Fiscal Years, or (ii) Seaboard's total payments ("Total Payments") to the Port for any and all charges and fees (including those in this Agreement and the Tariff) other than County-owned crane fees (described in Section 6C), electric outlet charges (described in Section 6F), and/or payments associated with rental, lease or development agreements entered into after the Effective Date exceed one hundred and ten million ($110,000,000) for the final five (5) Fiscal Years of the Initial Term, which sum shall be adjusted on a pro rata basis for changes in Throughput Acres acreage. Seaboard shall have the same two (2) conditions for its option to

exercise the second Renewal Term except the required amount of the Total Payments shall be one hundred and twenty-eight million dollars ($128,000,000) for the five (5) Fiscal Years of the first Renewal Term. For purposes of the options, Seaboard's Total Payments shall be adjusted for force majeure, failure of the County to fulfill its commitments, or actions by the County that reduce Seaboard's ability to reach the Total Payments requirement. Should Seaboard wish to enter into a Renewal Term after having met either of the two (2) conditions listed above, Seaboard shall notify the County of its intent to exercise the first renewal option no less than ninety (90) days prior to the expiration of the Initial Term, and shall notify the County of its intent to exercise the second renewal option no less than ninety (90) days prior to the expiration of the first Renewal Term. Should Seaboard fail to meet both of the conditions listed above for the first Renewal Term and the Parties do not agree to enter into the first Renewal Term or a successor contract, the County agrees to reimburse Seaboard for the unamortized portion of useful capital improvements made by Seaboard within the Terminal Area during the final five (5) years of the Initial Term. Any such reimbursement shall be equal to the value of the asset's scheduled amortization over the five (5) year period following the Initial Term, calculated using asset lives in accordance with generally accepted accounting principals

Section 4. County Commitment to Seaboard.

A) The County agrees to allow Seaboard Preferential Berthing Rights at the Berths at 149 through 182. In the event the Port no longer has obligations with the current user of Berth 183, the Port Director shall assign Berth 183 to Seaboard for its preferential use. The Port shall provide Seaboard the use of one (1) operable container gantry crane and up to an additional one-thousand (1,000) feet of Preferential Berthing Rights at a berth located west of Bay 135. Seaboard's usage of such bays west of Bay 135 is subject to Seaboard utilizing the Port's operable and available gantry crane(s).

B) The County agrees to allow Seaboard exclusive use of the Terminal Area in conjunction with Seaboard's marine transportation business, including the preferential berthing of Vessels for loading, discharging and efficient transfer of cargo from Vessels to either other Vessels or land-based (principally truck or rail) transport modes and for storage of cargo. The Port will allow other uses consistent with Seaboard's marine transportation business, including, but

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not limited to, construction of any improvements thereon, subject to the prior written approval of the Port Director, such approval not to be unreasonably withheld. Seaboard shall comply with other applicable requirements, including, but not limited to, submission of a Facilities Modification Form (Exhibit "D") or similar document as required by the Port for all improvements to real property at the Port.

C) The County agrees to allow Seaboard the exclusive use of the Terminal Area for the duration of this Agreement, pursuant to the terms and conditions contained herein.

D) The County agrees to provide Seaboard with the right of ingress and egress leading to and from the Terminal Area, subject to any and all security and other requirements imposed by Applicable Laws. In the event the Port's main terminal gate complex is not able to process vehicles owing to a backup at a non-Seaboard terminal, the Port will promptly use reasonable efforts to marshal traffic to allow for the prompt processing of Seaboard vehicles at the Port's main terminal gate complex.

E) The County represents and warrants that it has good title to the Terminal Area free and clear of mortgages, liens or encumbrances and the County covenants that it will not grant any mortgage liens or encumbrances on the Terminal Area.

F) The County acknowledges that Seaboard desires to conduct its terminal operations from a contiguous tract of land on the Port. In this regard, the County agrees that if additional land contiguous to the Terminal Area becomes available for permanent use, other than acreage to the west of the Terminal Area, and such land is free from contractual or other obligations and not needed for general Port uses, the County shall extend to Seaboard a right to negotiate to enter into an agreement for use of such land on terms to be agreed upon. Under Seaboard's right to negotiate, the Parties agree to work in good faith regarding such land and improvements thereto. However, Seaboard shall have a first right of refusal to lands adjacent to the northern boundary of the Terminal Area, which are designated as areas Parcels "C" and "D" and on Exhibit "B" and the "1790 Building". Should the lands designated as "C" and "D" and "1790 Building" become available, the Port shall offer them to Seaboard prior to offering them to any other third party.

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G) The County and Seaboard also acknowledge that the Terminal Area will be adjusted by mutual written agreement during and subsequent to the construction of improvements relating to the Tunnel. Any such adjustment of the Terminal Area may be performed administratively by the Port Director, so long as any such adjustments do not cumulatively change Seaboard's terminal by ten (10) or more acres. Any adjustment resulting in a cumulative change to Seaboard's acreage by more than ten (10) acres will require Board of County Commissioners approval. Notwithstanding any other provision of this Agreement, the County reserves the right to use available lands for any lawful purpose.

H) The County may offer Seaboard land for temporary rental if land becomes available, at the Land Rental Rate then-applicable under this Agreement. Temporary lands at the time of the Effective Date include both land designated as Parcels "C" and "D" in Exhibit "B". Unless otherwise agreed to by the parties, Seaboard shall not pay land rent on Parcel "D".

I) The Parties agree to make certain improvements to the Terminal Area during the term of this Agreement as set forth in Exhibit "C" and Section 7. Any improvements to the Terminal Area that are not expressly addressed in this Agreement shall not be the responsibility of either the County or Seaboard and shall be subject of future negotiations.

J) The County acknowledges that it is responsible for bulkhead repair and maintenance and that failure to adequately repair or maintain bulkheads, inclusive of the scheduled construction of the bulkhead located between bay 155 and bay 160 ("East Bulkhead"), could negatively impact Seaboard's use of the Terminal Area. The County commits to substantially complete the East Bulkhead by December 31, 2010. Should the County fail to substantially complete the East Bulkhead by June 30, 2011 then the County will contribute an additional one million dollars ($1,000,000) toward the improvements described in Section "7" and Exhibit "C". For every six month interval delay thereafter, the County will contribute an additional one million dollars ($1,000,000) up to a maximum of five million dollars ($5,000,000) towards its improvement commitments described in Section "7" and Exhibit "C". For example, if the East Bulkhead is completed after December 31, 2012 but before June 30, 2013, the County will

contribute an additional four million dollars ($4,000,000) toward the improvements as described in Section 7 and Exhibit "C".

K) During the time the County is making the improvements as set forth in Section 7 and Exhibit "C", including but not limited to the Tunnel, the County shall undertake commercially reasonable efforts to make up to ten (10) acres of land available to Seaboard that is not otherwise under lease agreements with other Port tenants. If such land is available, it will be subject to the Land Rental Rate and Minimum Guaranteed TEU Throughput as set forth in this Agreement, but only on the amount of acreage made available that exceeds the acreage rendered unavailable because of improvements and only during the time of such improvements. Should Seaboard sublease ten (10) or more acres (excluding the 14.16 subleased acres described in Section 4(P) from any other terminal operator, the Port will not have an obligation to provide acreage. If no additional lands are available to Seaboard from the Port or through sublease of cargo lands at the Port, the Port will temporarily reduce Seaboard's Minimum Guaranteed TEU Throughput and its TEU Throughput under Tier 1 of Exhibit "A" by the affected acreage until improvements are completed.

L) Seaboard may not provide terminal services for third parties at the Port prior to January 1, 2014. After this date, Seaboard may provide terminal services for third parties providing that: (i) for each third party, the third party's vessels have not called at the Port more than five (5) times in the twelve (12) months prior to the date Seaboard first begins to provide terminal services to such third party, (ii) third party business will not represent more than twenty-five percent (25%)of Seaboard's then current TEU throughput, and (iii) the TEU rate for third party cargoes will be charged at the higher of the then applicable Tier I TEU rate charged to Seaboard in this Agreement or the average of the highest Base (or Tier I) TEU rates of the other cargo terminal operators at the Port. The TEUs from Seaboard's third party terminal services will count towards Seaboard's Minimum Guaranteed TEU Throughput.

M) The parties agree that existing leases between Seaboard and the County for buildings and structures in the Terminal Area, which are within the Terminal Area as identified in Exhibit "B", currently are terminated as of the Effective Date. The County agrees that Seaboard shall

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no longer have rent payment obligations for these buildings and structures once terminated, but Seaboard shall be responsible for all maintenance, repairs and demolition costs.

N) The County agrees that currently all unoccupied buildings in the Terminal Area, located within Parcels "B1" and "B2" in Exhibit "B"., can be utilized by Seaboard for any lawful business relating to its terminal operation until such buildings are demolished by the County. The County shall have no obligations related to or liability for Seaboard's use of said unoccupied buildings, and Seaboard shall indemnify the County pursuant to the indemnity provisions of this Agreement related to any claim arising out of or related to Seaboard's use of these buildings. The County shall have no obligation to maintain said buildings.

O) The County agrees that the leases on all buildings, structures, and land in the Terminal Area, located within Parcels "B1" and "B2" in Exhibit "B" that are currently occupied and leased by tenants other than Seaboard ("Third Party Leases"), shall be terminated as soon as reasonably possible. Such buildings, including those referenced in Section 4(N) and the warehouse located at 1470 Port Boulevard, shall be demolished on or before September 30, 2010 by the County. Should the demolition of all of the referenced buildings occur by September 30, 2010, one-hundred percent (100%) of the aggregate demolition cost shall count toward the County's Funding Cap described in Section 7(F). For every month the demolition is delayed beyond September 30, 2010, ten percent (10%) of the aggregate demolition cost shall not be counted toward the County's Funding Cap. In connection with such demolitions, the County shall remove all debris and leave the ground properly graded. The County then intends for this acreage to become Throughput Acres subject to its improvement consistent with Section "7" and Exhibit "C". The County also hereby agrees that:

1. the County shall remain responsible for all of its current obligations under the Third Party Leases, including but not limited to, any maintenance and environmental obligations.

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2. the County shall assume any and all liability associated with the Third Party Leases until the Third Party Lease is terminated by the County and the tenant vacates the Third Party Area.

3. The County, as landlord, shall collect any and all rent associated with the Third Party Leases until their termination.

4. The County shall ensure that none of the Third Party Leases are renewed or extended and shall terminate them as soon as possible pursuant to the terms of the leases.

5. The County shall ensure that each property subject to a Third Party Lease is prepared for demolition upon its termination.

P) The County acknowledges that Seaboard currently subleases 14.16 acres of land on the Port from Port of Miami Terminal Operating Company (POMTOC). Such acreage is included within the Terminal Area and shall be subject to the then current Land Rental Rate and counted toward the calculation of Seaboard's Minimum Guaranteed TEU Throughput regardless of whether these lands are assigned to Seaboard during this Agreement. For purposes of calculating the Land Rental Rate owed the County on this 14.16 acres, Seaboard shall be fully credited by the County for the amount paid to POMTOC for its sublease of the 14.16 acres. Should the County gain possession of this land through assignment prior to, concurrent with, or after the Effective Date of this Agreement, the County agrees to transfer these 14.16 acres to Seaboard, at which time Seaboard shall pay the County the then applicable Land Rental Rate.

Q) The County acknowledges that acreage dedicated to the Tunnel impacts Seaboard's operation more than any other Port user and will force Seaboard to relocate its terminal truck gates and entrance. Due to the uncertainty of timing and costs of such relocation and construction of a new truck gate structure, the Port agrees that Seaboard may use the Port's existing scales at no charge but only until Seaboard's new truck gate structure is completed and operational which shall not be later than November 1, 2010, subject to the transfer of the subleased 14.16 acres described in Section 4(P).

Section 5. Seaboard Commitment to the County.

A) Land Rent. Beginning on the Effective Date and continuing throughout the Initial Term and any Renewal Terms, Seaboard agrees to pay one dollar ($1.00) per square foot annually on all land in the Terminal Area paid in monthly installments subject to an annual increase of not more than three percent (3%), starting on October 1, 2009. If for any reason the County does not increase the Land Rental Rate in any given Fiscal Year(s), the County may thereafter add the amount of such allowed (but not imposed) annual increase in later years but only in the then current term. For example, if the County elects not to impose a Land Rental Rate increase in Fiscal Years two or three, in Fiscal Year four the County could impose a Land Rental Rate increase of approximately 9.3% (the 3% compounded for three years) to account for the two prior Fiscal Years in which no annual Land Rental Rate increase was imposed provided, however, that the foregoing annual increase shall not apply during the first year of any Renewal Term in which land rent has been changed resulting from an appraisal. During the Initial Term of the Agreement, the Land Rental Rate may not vary by more than 38 cents per square foot in any one year than would have been charged in that year had the Southeast Regional CPI escalator been applied from October 1, 2009 in place of a 3% annual increase. The calculation comparing the cumulative effect of having used a 3% escalator as opposed to the CPI escalator shall be performed each year during the Initial Term only. For example, if on October 1, 2018, the Land Rental Rate would be $1.34 per square foot based on the annual 3% escalator, but the Land Rental Rate would have risen to $1.82 per square foot using the Southeast Regional CPI escalator—a difference of 48 cents--then because the latter number is more than 38 cents above the former number, pursuant to the terms of the this section, the Land Rental Rate to apply at the commencement of Fiscal Year starting October 1, 2018 would be $1.44 per gross square foot of the Terminal Area ($1.82 - .38 = $1.44).

B) Renewal Term. At the beginning of each Renewal Term, the Land Rental Rate shall be adjusted to reflect any increase in value pursuant to independent appraisals of comparable land at Florida's five (5) busiest container ports. Such adjustment shall apply to the relevant

Renewal Term in addition the annual increase not to exceed three percent (3%) applicable to the Renewal Term(s) (other than the initial year of each Renewal Term). Each Party shall, within ten (10) calendar days of the County's receipt of Seaboard's intent to renew this Agreement, select an independent Florida licensed land appraiser to undertake the "Appraisal" of the then fair-market value, using the aforementioned criteria, of the Terminal Area on a square footage basis (collectively "Appraisals"). Upon completion of the Appraisals, each party shall transmit a certified original appraisal to the other party no later than thirty (30) days from the date Seaboard's written notice of intent to renew was received by the County. If the Appraisals are within ten percent (10%) of each other and do not reflect a decrease from the then applicable Land Rental Rate, the Appraisals shall be averaged and the resulting rate shall become the base Land Rental Rate for year one of the applicable Renewal Term, and which shall be subject in subsequent years to annual Land Rental Rate increases pursuant to Section 5 hereof. If, however, the two square footage rates vary by more than ten percent (10%), the two appraisers shall jointly select a third independent Florida licensed land appraiser to calculate the then fair market rental value of the Terminal Area. The third appraiser's then fair market rental value (per square foot) shall be averaged with the original Appraisals to determine the new base Land Rental Rate, but only if the calculation results in an increase in the Land Rental Rate. In no event shall the Land Rental Rate in the initial year of a Renewal Term be less than the Land Rental Rate of the previous Fiscal Year; however, the three percent (3%) annual increase shall not apply in the initial year of each Renewal Term.

C) Infrastructure Fee. Seaboard shall initially pay the County a one-time Infrastructure Fee of one million one-hundred and fifty thousand and three-hundred and fifty dollars ($1,150,350), which is the equivalent of $15,000 per acre for seventy-six and sixty-nine hundredths (76.69) acres included within the Terminal Area within sixty (60) days of the Effective Date, which Infrastructure Fee shall be used to help fund the Port's financial commitment for improvements to the Terminal Area. The Infrastructure Fee shall apply to partial acres on a pro rata basis.

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D) Minimum Annual Throughput. During each Fiscal Year of the Initial Term and any Renewal Term, Seaboard shall provide the Minimum Guaranteed TEU Throughput as set forth in Exhibit "A", subject to force majeure or the failure of the County to comply with this Agreement, hereunder. The Minimum Guaranteed TEU Throughput will be adjusted pro rata to reflect any partial year. For TEU throughput calculation purposes only, each Vehicle shall count as two-thirds of a TEU. Seaboard cargo on a non-Seaboard vessel as part of a VSA shall count towards Seaboard's Minimum Guaranteed TEU Throughput totals, but any non-Seaboard cargoes on a non-Seaboard vessel, which is part of a Seaboard VSA, although counting towards the Minimum Guaranteed TEU Throughput, shall be assessed at the higher of the then-applicable Seaboard Tier I TEU Rate or the average of the highest Base or Tier I TEU Rates of the other cargo terminal operators at the Port. Trans-shipped TEUs will count towards TEU throughput calculations, but only if future rates for Trans-shipped TEUs are equal to or greater than the then-applicable Tier I TEU Rate. However, notwithstanding the manner of calculation of TEU throughput, Seaboard will be responsible for paying to the Port the equivalent full TEU Rate for all TEUs falling under Tier I in Exhibit "A".

E) In any Fiscal Year in which Seaboard fails to meet the Minimum Guaranteed TEU Throughput, Seaboard shall pay the County Shortfall Fees within sixty (60) days of the receipt of an invoice from the County after the end of the Fiscal Year. Shortfall Fees shall be the difference between Actual TEU Throughput and the Minimum Guaranteed TEU Throughput multiplied by the Tier I TEU rate for the applicable Fiscal Year.

F) Within ninety (90) days of the end of each third full Fiscal Year during the Initial Term and any Renewal Term, the County shall evaluate Seaboard's Actual TEU Throughput for those three (3) Fiscal Years. If Seaboard's aggregate Actual TEU Throughput exceeds its aggregate Minimum Guaranteed TEU Throughput for those three (3) years, then Seaboard will be eligible to receive a full credit for Shortfall Fees paid. The credit will be evenly provided over the remainder of the Fiscal Year against invoiced charges, and in subsequent Fiscal Years if the entire credit is not used in the remainder of the Fiscal Year in which it is granted.

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G) At the end of each third full Fiscal Year during the Initial Term and any Renewal Term, the County reserves the right for the Port Director using, reasonable discretion, to reduce the size of the Terminal Area but only if it notifies Seaboard within sixty (60) days of said Fiscal Year end. The Port Director may reduce the size of the Terminal Area only if Seaboard's aggregate Actual TEU Throughput for a three (3) year period falls short of its aggregate Minimum Guaranteed TEU Throughput for reasons other than force majeure or an action by the County that is reasonably judged by the Port Director to have reduced by ten percent (10%) or more Seaboard's ability to meet its Minimum Annual TEU Guarantee. The reduction in the size of the Terminal Area shall correspond on a percentage basis to the percentage that Seaboard's aggregate Actual TEU Throughput falls short of its aggregate Minimum Guaranteed TEU Throughput over the three (3) year period, or as adjusted owing to an action by the County that is reasonably judged by the Port Director to have reduced by ten percent (10%) or more Seaboard's ability to meet its Minimum Annual TEU Guarantee. The particular part of the Terminal Area that the Port Director uses to reduce the size of the Terminal Area shall be determined in the Port Director's sole discretion; provided however, that Seaboard shall have the right to provide the Port Director recommendations that minimize the impact on Seaboard's operations. In the event the size of the Terminal Area is reduced in accordance with this Section 5(G), the Minimum Guaranteed TEU Throughput and the TEU Throughput under Tier 1 shall be adjusted downward and the land rent as set forth in Section 5(A) shall not be payable with respect to land that is removed from or no longer available in the Terminal Area.

H) Seaboard acknowledges that a Rail Line runs along the northern boundary of the Terminal Area. In the event the County, in the exercise of its reasonable discretion after prior consultation with Seaboard, desires that the Rail Line be used within the Port for the movement of cargo, then Seaboard shall use commercially and operationally reasonable efforts to provide other terminal operators either access to cargoes carried on the Rail Line if the rail terminus is in Seaboard's Terminal Area, or Seaboard will handle such cargoes on a reasonable cost basis as agreed to by Seaboard and the Port Director. The County reserves

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the right to modify the Terminal Area to exclude the Rail Line. In this event, the County agrees to use commercially-reasonable efforts to work with Seaboard to minimize the adverse impacts upon Seaboard from the use and location of the Rail Line. Seaboard agrees that it will not construct permanent structures on the Rail Line or its right of way during the term of the Agreement unless the County and Seaboard mutually agree.

I) Except as otherwise provided herein, the use of the Terminal Area shall be subject to the Port Tariff. In the event of a conflict between this Agreement and the Port Tariff, this Agreement shall prevail.

J) The use by Seaboard of its own mobile harbor cranes and/or rubber tire gantries within the Terminal Area and/or bays inclusive and west of bay 149 to load and discharge Vessels or ships shall not be subject to any fees or charges imposed by the County.

Section 6. Scheduled Rates Applicable to Seaboard

The County and Seaboard agree that the following rates and charges shall apply during the Initial Term and any Renewal Terms, except as otherwise provided:

A) Tier I TEU Rate: The Tier I TEU Rate payable by Seaboard shall be as set forth in Exhibit "A".

B) Discount TEU Rates: Discount TEUs Rate payable by Seaboard shall be as set forth in Exhibit "A".

C) Crane Charges: Rates and charges related to County-owned cranes shall be the lesser of:

(1) the prevailing rates and charges as set forth in the Tariff; or

(2) Tariff crane rates as of the Effective Date of this Agreement escalated by no more than 4% each Fiscal Year; or

(3) any crane rate or charge agreed to by the Parties pursuant to Section 6 (L).

D) Trans-shipments. From the Effective Date through September 30, 2013, the County will charge Seaboard the following Trans-shipment Rates for Trans-shipment containers it discharges each Fiscal Year: ten dollars ($10.00) per TEU for TEUs 1 – 15,000; fifteen dollars ($15.00) per TEU for TEUs 15,001 – 30,000; and fourteen dollars ($14.00) per TEU for all Trans-shipped TEUs beyond 30,000. Starting on October 1, 2009, these rates are

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subject to an annual increase of not more than three percent (3%) per Fiscal Year. Seaboard and the Port agree to enter into negotiations by June 1, 2013 regarding the Trans-shipment Rates to be charged after September 30, 2013. Should Seaboard and the Port fail to agree on a new Trans-shipment Rate schedule, the lesser of the then Tariff rate for Trans-shipments or the then Current Tier I Rate shall apply.

E) Lay Berth: The rates that apply to any Lay Berth Dockage shall be the Tariff rates, except that when repairs are undertaken concurrent with the loading or discharging operations there shall be an allowance of up to twenty-four (24) hours after the completion of loading/discharging operations before Lay Berth Tariff rates are applicable. A forty-eight (48) hour, rather than a twenty-four (24) hour allowance, will be granted for up to ten percent (10%) of Seaboard's Vessels in a Fiscal Year.

F) Outlets for Refrigerated Containers: Seaboard shall have the right at its own expense to place all existing electrical outlets for powering refrigerated containers within the Terminal Area on separate electrical meters, subject to inspection and audit by the County. Seaboard shall maintain any County constructed electrical outlets used for powering refrigerated containers within the Terminal Area in good working condition and repair at its own expense until such time as these outlets are removed or demolished consistent with the improvements described in Section 7. For all electrical outlets constructed by the County, Seaboard shall be responsible for electric usage costs as actually billed the County plus an additional $1.35 daily availability fee for each electrical outlet, whether or not Seaboard uses each electrical outlet. The County shall provide Seaboard copies of any electric utility company billings owed the County under this Agreement as part of its delivery of the County's monthly invoices to Seaboard. Seaboard shall be responsible for the cost of installation, recurring utility payments for usage and maintenance of any infrastructure related to Seaboard's construction of new electrical outlets for refrigerated containers. Any new outlets that are not invoiced by the electric utility to the County will not be subject Seaboard to any County fees. The County shall issue Seaboard a credit of thirty-two thousand and six hundred dollars ($32,600) by October 31, 2008. Seaboard acknowledges that this credit represents the final

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County granted credit under the Original Agreement as reimbursement for Seaboard's costs for constructing refrigerated container electrical outlets at the Port..

G) Non-Containerized and Non-Trailerized Cargo: Non-Containerized and Non-Trailerized Cargo, excluding Vehicles and cargo loaded on flatbeds, platforms or flatracks shall be at the prevailing rates and charges as set forth in the Port Tariff.

H) Vehicle Rate: The rate payable by Seaboard for wharfage and dockage on Vehicles shall be $4.50 per Vehicle, subject to an annual increase of no more than three percent (3%), starting on October 1, 2009. In no case shall such Vehicle Rate be higher than the Tariff rate in effect at that time.

I) Security Fee: The Port may implement a reasonable Security Fee on Seaboard, but only if the Security Fee is equitably implemented on all other Port cargo terminal operators whose terminals are fifteen (15) acres in size or greater. The Security Fee shall not be applied to Seaboard if the Port's operating budget, as calculated consistent with the Port's accounting policies and practices as of the Effective Date, for security costs for any one Fiscal Year does not exceed twenty-two million dollars ($22,000,000), compounded five percent (5%) annually at the start of each Fiscal Year commencing on October 1, 2008.

J) All Tariff rates shall govern Seaboard's activities at the Port other than those identified in this Agreement, subject to specifically mentioned exclusions for gate fees, reefer fees, storage fees, facility improvement fees, and Security Fees identified in Section 6(I). Seaboard shall not be subject to scale fees at the Port's main terminal gate complex unless it requests to use such scales or as provided in Section 4(Q).

K) Dockage for Multi-Terminal Ships. In this Agreement, Dockage is included in the Tier I or Discount TEU Rates, Trans-shipment Rate, and Vehicle Rate. To the extent TEUs and/or non-TEU cargo are loaded on and/or discharged from a ship to or from a Port cargo terminal other than Seaboard's Terminal Area, then Dockage shall be due the County from such ship pro rata to the percentage of total TEUs and non-TEU cargo loaded on and/or discharged from said ship to or from a cargo terminal other than Seaboard's Terminal Area. By example, if sixty percent (60%) of the TEUs and non-TEU cargo loaded and/or discharged on or from a

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ship is processed to or from Seaboard's Terminal Area and the other forty percent (40%) is processed to or from a cargo terminal at the Port other than Seaboard's Terminal Area, then in such event the ship would be charged forty percent (40%) of the Dockage due under the Tariff.

L) Future Crane Rate Agreements. Should the Port execute a crane rate discount agreement with any other Port user of County-owned cranes, the Port shall within forty-five (45) days offer Seaboard similar terms and conditions, which may include requirements for crane usage guarantees.

Section 7. Improvements to Seaboard Terminal Area It is the County's and Seaboard's desire to improve the Terminal Area so that it is suitable for using a rubber tire gantry (RTG) system of handling cargo containers and that appropriate and reasonable marine terminal construction standards be utilized in making such improvements. In addition, the parties recognize that construction sequencing must be cooperatively planned and coordinated in an effort to contain the costs of improving the terminal while minimizing the impact to Seaboard's operation.

A) Construction Phasing. While an exact construction phasing plan does not yet exist, it is agreed by Parties that Seaboard will provide input to the County for its review and approval. Seaboard shall have the right to review and provide comment on any architectural and engineering proposals and work performed by a contractor on behalf of the County within the Terminal Area. In addition to Seaboard's preferences for project phasing, Seaboard shall provide a "Basis of Design" plan for the Terminal Area that will contain, but not be limited to, a fully dimensioned Terminal Area layout and circulation. It may also include preferred sequencing of demolition activities, lighting, access, and RTG runway locations, as well as critical spot paving elevations, slope limitations, horizontal and vertical configuration of wharves for Berths, and performance criteria for critical construction components.

B) Minimum Criteria. Although it will be up to the County to determine minimum criteria for paving and drainage in the Terminal Area, the County does commit to making improvements consistent with RTG operations. Preliminarily, Seaboard has expressed a preference for design criteria that includes runway rigid pavements designed to accommodate channelized multi-wheeled RTG's with lifting capacities of 50 tons and yard flexible pavements designed for a combination of RTG's, top-picks, reach

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stackers and 18 kip axle loads. Seaboard will also present information relating to the appropriate grading for RTG operations and standards for discharge of surface drainage.

C) Phasing. It is agreed by the Parties that the above generally described improvements will be designed and constructed in five (5) phases as shown in Exhibit "C". Seaboard agrees that it will pay the County one million dollars ($1,000,000) for each of the five (5) phases upon final acceptance by the Parties of the work for that defined phase. If there is more than one project for each phase, then Seaboard's payment will be made based upon final acceptance by the Parties for the work for the last project in that phase.

D) Failure to Meet Phasing Completion Dates. Should the County fail to substantially complete the phased improvements by the respective target dates shown in Exhibit "C", subject to force majeure, Seaboard's contribution for each phase will decrease by one-hundred thousand dollars ($100,000.00) for every month past the targeted completion date for that respective phase. If the improvements are completed more than ten (10) months past the respective target date for any phase, then Seaboard will not make any payment towards that respective phase. Further, if the improvements are not completed for each phase by the respective target date, the County agrees to decrease the then Land Rents and the Minimum TEU Guaranteed Throughput for the impacted acreage according to Exhibit "C".

E) Improvement Phases. For those improvements that are the responsibility of the County, Exhibit "C" defines the amount of phased acreage to be improved by the County. The actual locations and limitations of the acres to be developed and the construction phases will be defined later taking into account Seaboard's "Basis of Design" document. However, such modification does not change the minimal amount of acreage to be improved by the County, but could change the location and configuration of such improvements.

F) County Funding Cap. The County agrees to fund the allowable demolition costs set forth in Section 4(O) and phased improvements set forth in Exhibit "C" up to a cap of twenty-one million dollars ($21,000,000) (the "County Funding Cap"), plus whatever funds the County receives from Seaboard from its commitment to contribute funds to completed phases. The County's twenty-one million dollars ($21,000,000) funding commitment could be increased by a maximum of five-million dollars ($5,000,000)

if the County fails to meet East Bulkhead construction deadlines as set forth in Section 4(J). Should the County complete the improvements identified in Section "7" and Exhibit "C" for an amount less than its maximum funding commitment, the County shall not be obligated to expend the remaining funds. The County agrees that the following costs will not count toward its Funding Cap: contract administration, permitting (excluding contractor costs), environmental review, and time spent by County employees.

Section 8. Use of the Terminal Area

Seaboard shall not use the Terminal Area for any unlawful purpose, including, without limitation, any unauthorized use, or any use prohibited by Applicable Laws. Seaboard agrees not to abandon or cease service to the Terminal Area, unless expressly permitted to do so by another provision of this Agreement or authorized to do so by the County.

Section 9. Maintenance and Repair of Terminal Area

A) Subject to subsection (B) below, except for damage caused by the act or omission of the County and agents, employees and contractors of the County, or which is the responsibility of the County pursuant to Section 4(N), all general day-to-day maintenance and repairs of the Terminal Area shall be Seaboard 's sole responsibility. Seaboard shall, at its own expense, keep the Terminal Area and the improvements constructed thereon (if any) in a clean and orderly condition, and in good working order. Prior to or at the termination of this Agreement, damage done by the installation or removal of personal property of Seaboard shall be repaired so as to restore the Terminal Area to its original state, except in cases where the Terminal Area may have been altered by Seaboard with the approval of the Port. At the termination of this Agreement, Seaboard agrees to quit and surrender up the Terminal Area in the same good order and condition as it was at the commencement of this Agreement; provided however, that such return of the Terminal Area under this Section shall not relieve Seaboard of its obligations for damages to the Terminal Area that may be specifically provided elsewhere in this Agreement. In this regard, Seaboard and the County shall perform a joint inspection of the Terminal Area at the commencement of this Agreement in order to determine the condition of the Terminal Area.

B) Any damage to County property or facilities caused by Seaboard, including but not limited to damage to paved surfaces and damage caused by tracked vehicles, shall be repaired by Seaboard at its sole cost and expense. Seaboard shall not be responsible for repair caused by normal wear and tear.

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C) The County, its agents and/or representatives may at all times and with reasonable advance notice enter the Terminal Area to view and inspect, the Terminal Area and facilities, or for any other purpose; provided, however, that any such entry and/or inspection will be conducted at a time and in a manner that will minimize its impact on Seaboard's operations. Sworn law enforcement officers may enter the Terminal Area at all times without notice, as may County personnel solely for reasons of safety, security and construction management.

D) The Port shall be responsible for maintaining lighting, bulkheads and drainage and any obligations referenced under Section 4(O). Seaboard shall be responsible for maintaining above-ground improvements (except for lighting) constructed by Seaboard for Seaboard's use, and for maintaining all paving inclusive of concrete pads for rubber tire gantry operations.

E) Removal of Trash:

Seaboard shall, at its sole cost and expense, remove from the Terminal Area all trash and refuse which might accumulate and arise from its use of the Terminal Area and the business operations of Seaboard under this Agreement. Such trash and refuse shall be stored temporarily and disposed of in a manner that complies with all Applicable Laws and is approved by the Port.

F) Failure to Maintain:

If it is determined by the County that Seaboard has failed to properly clean, remove trash and refuse, maintain, repair, replace and refurbish the Terminal Area as required by this Section and not caused by the County or its affiliates, employees and subcontractors, the County shall provide Seaboard a list of deficiencies in writing, reflecting the amount of time to be reasonably allowed for Seaboard to correct same. If Seaboard fails to correct such deficiencies within the time allowed and has not registered an objection as to its obligation to do so, the County, following thirty (30) days further notice to Seaboard, may enter upon the Terminal Area and perform all work, which, in the judgment of the County, may be necessary and the County shall charge Seaboard for the cost of such work, plus twenty-five (25%) for administrative costs. Subsequent to receipt of the further notice of intent to perform repairs or cleanup from the County, Seaboard shall not undertake performance of such repairs or cleanup without specific prior written authorization from the County.

G) Environmental Protection:

1) Seaboard's Obligations: At all times during the term of this Agreement, Seaboard shall comply with the following:

a) Disposal of Wastes: Seaboard shall dispose of all industrial, domestic, hazardous, and solid wastes generated by it in accordance with all Applicable Laws, it being Seaboard's responsibility to determine the approved method of disposal of its wastes and take action accordingly.

b) Records: Seaboard shall maintain such records as are reasonably necessary to adequately assess environmental compliance in accordance with all Applicable Laws.

c) Monitoring Equipment: Seaboard agrees at its expense, to the extent required by Applicable Law, or by environmental or law enforcement officials of the County or other governmental environmental entity having regulatory authority and then only to the extent required by applicable regulations, to install monitoring equipment in a number and type sufficient to monitor Seaboard's activities in its use of the Terminal, and to assign appropriate personnel to monitor such equipment and provide periodic reports to the County.

2) Seaboard's Failure to Comply with Environmental Laws: Seaboard acknowledges that material non-compliance with its obligations under this section constitutes an event of default pursuant to Section 25 of this Agreement, and that illegal discharges and material violations may result in penalties, issuance of civil violation notices and penalty orders, which material non-compliance and material violations are also subject to Section 25 of this Agreement.

3) Seaboard shall comply with all Applicable Laws related to environmental protection and regulations applicable to the use, storage and handling of hazardous substances, hazardous materials, industrial wastes and hazardous wastes in, on, or near the Terminal Area. Seaboard shall indemnify and hold the County, its officers, employees, agents, successors and assigns (collectively "Indemnitees") harmless from, and assumes any and all liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, costs, charges and expenses (including, but not limited to reasonable attorney's fees, environmental response and remediation costs and the costs and expenses of appellate action, if any), imposed on, incurred by, or asserted against Indemnitees, by any other parties

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(including, with limitation, a governmental entity), in the event arising out of, in connection with, or relating to any environmental condition of contamination caused or created in whole or in part by Seaboard, or any violation of any federal, state, or local environmental law with respect to the Terminal Area created and caused solely by Seaboard.

4) County Responsibility for Pre-Occupancy Environmental Events:

a) Responsibility and Indemnity: To the extent allowed by law and subject to the limitations contained in Section 768.28, Florida Statutes, the County shall be responsible for and does hereby agree to indemnify, defend and save harmless Seaboard and its officers, employees, agents, directors, and stockholders from and against any and all claims, actions, demands, costs, damages, loss, fines, judgments, liabilities of any kind, and expenses, including reasonable attorney's fees, relating to or in any way arising out of:

i) The use, storage, disposal, discharge or release of any Hazardous Material (as defined below) at, in, on, under above, originating from, or generating at the Terminal Area prior to the date of the Original Agreement or Seaboard's occupancy or use of the Terminal Area, whichever came first, whether or not originating outside the Terminal Area, so long as not caused by any action or inaction of Seaboard; or

ii) Any violation, accrual or alleged, of any Environmental Law (as defined below) on, under, or above the Terminal Area, or relating to or arising from operations or activities at the Terminal Area prior to the date of the Original Agreement or Seaboard's occupancy or use of the Terminal Area, whichever came first, so long as not caused by the action or inaction of Seaboard.

For these purposes, the term "Hazardous Materials" shall include, but not be limited to, any substance defined as "hazardous substances,"

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"hazardous air pollutant," "pollutants," "contaminants," "hazardous materials," "hazardous wastes," "toxic chemicals," petroleum or petroleum products," "toxics," "hazardous chemicals," "extremely hazardous substances," "pesticides" or related materials, including, but not limited to, radon and asbestos, as defined in any applicable federal, state, or local law, regulation or ordinance, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 42 U.S.C. 9601 et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. 1101 et seq., the Resource Conservation and Recovery Act, 12 U.S.C. 6901 et seq., the Hazardous Materials Transportation Act of 1974, 49 U.S.C. 1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Clean Air Act, 42 U.S.C. 4701 et seq., the Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq., the Safe Drinking Water Act, 42 U.S.C. 2601 et seq., and any laws regulating the use of biological agents or substances, including medical or infectious wastes (collectively "Environmental Laws").

b) Remediation: The County agrees that it will take or cause to be taken appropriate steps to cause the remediation of all Hazardous Materials covered by the indemnity set forth in this section, above, as shall be required in order for the Terminal Area to be in compliance with Environmental Laws.

c) Seaboard's Obligations during Pre-Occupancy Remediation Efforts by County: Seaboard agrees to cooperate with the County in such remediation steps by assigning appropriate personnel of Seaboard to coordinate the remediation steps with the party or parties actually

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performing the remediation access to and use of the portion of the Terminal Area involved in such remediation steps.

d) No Liability to Seaboard: Seaboard acknowledges that remediation steps taken to correct any environmental contamination may extend over a number of years and may cause inconvenience and business interruption to Seaboard. The County shall not be liable to Seaboard in any manner for such inconveniences and disruption, but will exercise reasonable efforts to minimize them to the extent reasonably possible.

5. Environmental Indemnities:

a) The County agrees that Seaboard shall have no liability for, and provided Seaboard demonstrates that an event was a pre-occupancy event for which Seaboard is not liable hereunder, that the County, to the extent allowed by law, will indemnify and hold Seaboard harmless from, all costs and expenses (including, without limitation, all attorney's fees and costs) associated with any environmental contamination of the premises arising out of a pre-occupancy event which was not caused by Seaboard. Notwithstanding and prevailing over the foregoing, such environmental indemnity shall not extend to, and Seaboard shall be solely responsible for all such costs and expenses which arise out of environmental contamination for which the County may be held liable caused in whole or in part by Seaboard, Seaboard's agents, employees, contractors, or invitees, including, but not limited to, any environmental contamination committed by Seaboard, its agents, employees, contractors, or invitees during any prior or current tenancy or occupancy of the Terminal Area or any portion thereof.

b) The parties' responsibilities, obligations and liabilities pursuant to this Section Environmental Indemnities shall survive the expiration or early termination of this Agreement.

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6) No waiver: Nothing in this Agreement or otherwise shall be deemed to be a waiver of the County's or Seaboard's right to take action against responsible parties for remediation of or payment for environmental deficiencies on the Terminal, nor be deemed to be an assumption by the County of the responsibility for such remediation or payment, except as may be imposed on the County as a matter of law.

H) Use of Public Port Facilities: The County grants to Seaboard, in common with all others desiring to use the Port, the nonexclusive privilege to use the roads of ingress and egress, service roads and such other facilities and improvements as may be now in existence or hereafter constructed for the use of persons lawfully using the Port. Such grant of use shall only be to the extent necessary to carry out the rights granted Seaboard under this Agreement and Applicable Laws and only so long as such use does not conflict with the County's operation of the Port in the County's reasonable discretion. Nothing contained herein shall be construed to grant Seaboard the right to use any real or personal property that is leased to a third party except any acreage subleased to Seaboard, including the 14.16 acres subleased from POMTOC.

I) Right To Search: Subject to Applicable Laws, Seaboard agrees that its vehicles, cargo, goods and other personal property are subject to being searched when attempting to enter or leave the Terminal Area. Seaboard further agrees that, to the extent consistent with Applicable Laws, the Port has the right to prohibit any individual, agent or employee of Seaboard from entering the Port, based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, sabotage or other unlawful activities. Seaboard acknowledges and understands that these provisions are for the protection of all users of the Port and are intended to reduce the incidence of thefts, cargo tampering, sabotage and other unlawful activities at the Port.

Section 10. Port Bond Obligations.

Notwithstanding and prevailing over any other provision of this Agreement, the County reserves the right to increase the rates contained in this Agreement at a percentage increase no greater than that applied to other cargo operators upon a reasonable determination by the County's independent Financial Advisor that Port revenues in the aggregate will not be sufficient to meet the rate covenant and/or

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additional bonds tests on all outstanding Port bonds obligations or any bond coverage requirements. The County shall give Seaboard ninety (90) days written notice of its intent to increase the rates pursuant to this provision of the Agreement, and shall make reasonable efforts, within the limitations of the applicable bond documents, to provide Seaboard more than ninety (90) days notice. Seaboard shall have the right to terminate this Agreement by written notice to the County within sixty (60) days of the date of such notice. If Seaboard does not terminate this Agreement within the sixty (60) day period, the increased rates shall become effective immediately and Seaboard shall have no other recourse with respect to such increase.

Section 11. Right to Regulate

Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate Seaboard or its operations.

Section 12. Zoning Changes and Approvals

Notwithstanding any rights under this Agreement this Agreement shall not bind the Miami-Dade Board of County Commissioners, the Zoning Appeals Board, the Building Department, the Planning and Zoning Department, any successor board or department, or any other department or board of the County, including Community Councils, to agree to or grant any zoning changes, permits or any other approvals.

Section 13. Licenses, Permits and Approvals

Seaboard shall obtain all land use, construction and operating permits and approvals required by all Applicable Laws for Seaboard's activities in the Terminal Area at Seaboard's sole cost and expense. Seaboard shall not require the Port to take any action or perform any tasks within the Terminal Area to enable Seaboard to obtain such permits and approvals.

Section 14. Audits

Seaboard agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of Seaboard's books, documents, papers and records, and those of its subcontractors and suppliers acting on Seaboard's behalf, which relate to Seaboard's performance of its obligations under this Agreement..

Section 15. Suitability of Terminal Area.

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Seaboard acknowledges that the County has made no representations, except as provided in this Agreement, as to the Terminal Area, the condition of the Terminal Area or the suitability of the Terminal Area for Seaboard's purposes.

Section 16. Terminal Agreement

It is agreed that this Agreement is not a lease, and that no interest or estate in real property or the improvements located in or on the Terminal Area is created by this Agreement.

Section 17. Commitment on Indemnity and Insurance

A) Seaboard shall procure and maintain throughout the Initial Term and any Renewal Terms, at its sole cost and expense, the following insurance policies on which the County shall be named as an additional insured, with not less than the limits specified for each policy below:

1) Workmen's Compensation Insurance to cover all persons employed by Seaboard in and about the Terminal Area (including longshoremen and harbor workers coverage) as required by Florida Statute 440 or any successor thereto. Whenever applicable, protection shall also be provided for liability under the Jones Act, 46 U.S.C. Section 688, and under General Maritime Law.

2) General Liability Insurance - With respect to the use and activities of Seaboard, its employees, agents, customers and guests in and around the Terminal Area, General Liability Insurance in the minimum amount of one million dollars ($1,000,000) combined single limits for the death of or personal injury to one or more persons and for property damage for each occurrence in connection with the use thereof or the activities of Seaboard thereon.

3) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with Seaboard's operations in an amount not less than five-hundred thousand dollars ($500,000) combined single limit per occurrence for bodily injury and property damage.

4) Terminal Operator's Liability Insurance shall be for the amount of at least four million dollars ($4,000,000) per occurrence.

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5) All insurance policies required by this section shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division, or companies holding a valid Florida Certificate or Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to do Business in Florida," issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Such insurance policies shall contain a provision to the effect that the insurance company shall not reduce coverage or cancel such policy without first giving written notice thereof to the additional insured at least thirty (30) days in advance of such cancellation or material modification. Seaboard and the County shall promptly provide to the other, certificates evidencing that insurance has been obtained meeting the requirements of this section.

B) Seaboard shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement and caused by the negligence of Seaboard or its employees, agents, partners, principals, contractors or subcontractors. Seaboard shall pay all such claims and losses in connection therewith and shall investigate and defend all such claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Seaboard expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Seaboard shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. The foregoing indemnity

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shall not apply to the extent caused by the negligent acts or omissions of the County or its employees, agents, partners, principals or subcontractors.

C) In those situations where this Agreement imposes an indemnity obligation on Seaboard, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or, after consulting with Seaboard, reasonably settle any such claims if Seaboard fails to diligently defend such claims, and thereafter seek indemnity for costs from Seaboard.

Section 18. Choice of Law and Exclusive Venue

The parties agree that this Agreement was entered into in the State of Florida and that the laws of Florida, and any applicable federal law, shall govern its interpretation, application and enforcement. Venue for any suit or dispute arising under this Agreement shall lie exclusively in Miami-Dade County, Florida.

Section 19. Entirety of Agreement; No Oral Change or Termination

This Agreement is the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof. No change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought and, in the case of the County, such change is approved by the Board of County Commissioners. This Agreement cannot be changed or terminated orally.

Section 20. Compliance with Applicable Laws

Seaboard, its employees, agents, affiliates, contractors, and guests shall comply with all Applicable Laws in its action related to this Agreement and while conducting any activity in the Terminal Area or on any other County property. If any renewal option is exercised, Seaboard shall comply with all Applicable Laws in effect at the time of such renewal.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade

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County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

Seaboard agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the services required under this Agreement, including but not limited to:

a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Agreement.

c) Environmental Protection Agency (EPA), as applicable to this Agreement.

d) Miami-Dade County Code, Chapter 11A, Article 3. Seaboard shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Seaboard agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f) Miami-Dade County Code Section 10-38 "Debarment".

g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Seaboard shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of Seaboard, constitute a violation of any law or regulation to which Seaboard is

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subject, including but not limited to laws and regulations requiring that Seaboard conduct its operations in a safe and sound manner.

Section 21. Taxes and Other Charges

Seaboard shall pay all taxes, fees, charges, including interest and late charges assessed pursuant to all Applicable Law, with respect to Seaboard's operations as part of this Agreement.

Section 22. Nuisance

Seaboard shall not commit any nuisance in the Terminal Area or on any other County property or do or permit to be done anything that may result in the creation or commission of a nuisance in the Terminal Area or any other County property.

Section 23. No Exclusive Remedies

No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

Section 24. Failure to Exercise Rights Not A Waiver

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein.

Section 25. Events of Default

A) Seaboard shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:

(i) Seaboard fails to timely comply with any payment obligation arising hereunder which is not cured within thirty (30) days from Seaboard's receipt of written notice from the County of failure to meet such payment obligation.

(ii) Seaboard fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within sixty (60) days after receipt of written notice from the County specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days, and such breach

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does not materially interfere with the operations of the Port, Seaboard shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.

(iii) If Seaboard (excluding subsidiaries and/or affiliates not involved in the performance of this Agreement) shall be adjudicated bankrupt, or if Seaboard (excluding subsidiaries and/or affiliates not involved in the performance of this Agreement) shall make a general assignment for the benefit of creditors, or if any proceedings based upon the insolvency of Seaboard (as defined in this sub-Section) are commenced and not dismissed within sixty (60) days of filing or a receiver is appointed for all the property of Seaboard which is not dismissed within sixty (60) days of such appointment.

B) The County shall be in default under this Agreement if the County fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within sixty (60) days after receipt of written notice from Seaboard specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days and such breach does not materially interfere with the operations of Seaboard at the Port, the County shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.

C) Upon the occurrence of a default under this Agreement not cured within the applicable grace period, the non-defaulting party may pursue all remedies available at law or in equity, including but not limited to specific performance of this Agreement, termination of this Agreement, and, as to the County, the right to re-enter the Terminal Area and expel Seaboard in which case Seaboard shall remain liable for all charges due at the time of such termination under the terms of this Agreement and any repairs and alterations necessary to prepare the Terminal Area for further Port use.

Section 26. Obligations Surviving Termination Hereof

Notwithstanding and prevailing over any contrary term or provision contained herein, in the event any party hereto exercises any lawful termination rights herein, the following obligations shall survive such termination and continue in full force and effect until the expiration of a one year term following the

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earlier of the termination date or the expiration of this Agreement: (i) any and all outstanding payment obligations hereunder of any party hereto arising prior to termination; (ii) any and all indemnity obligations hereunder of any party hereto; (iii) the exclusive venue and choice of law provisions contained herein, and (iv) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

Section 27. Lack of Agency Relationship

Nothing contained herein shall be construed as establishing an agency relationship between the County and Seaboard and neither Seaboard nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the County for any purpose hereunder, and the County, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of the Seaboard.

Section 28. Force Majeure - Inability to Perform

County and Seaboard shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond the reasonable control of the County, Seaboard, and their agents, employees, contractors, subcontractors, and guests including, without limitation acts of God, an act of state or war, public emergency, strikes, boycotts, picketing, work stoppages or labor troubles of any other type, providing that the party claiming the existence of a force majeure event delivers written notice to the other party of such event within fifteen (15) calendar days of the commencement of such event. Seaboard shall be entitled to a pro-rata reduction of the Minimum Guaranteed TEU Throughput and a temporary waiver of any land rent resulting from any Force Majeure.

Section 29. Severability

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term of provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

Section 30. Sole Benefit of Parties

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The County and Seaboard intend that the mutual covenants contained in this Agreement shall be for their sole benefit and that no other person, corporation or other entity is intended to be a beneficiary of this Agreement.

Section 31. Representations.

Each party represents and warrants that it is empowered to enter into this Agreement and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this Agreement.

Section 32. Early Termination.

Seaboard shall have the option to terminate this Agreement for any reason or no reason, subject to the conditions set forth herein. Seaboard shall give the County written notice of early termination six (6) months in advance of its desired termination date. At the desired termination date, Seaboard shall pay the County upon exercise of the Early Termination option, as follows: (i) if the desired termination date is on or before September 30, 2013: twenty million dollars ($20,000,000); (ii) if the desired termination date is after September 30, 2013 but on or before September 30, 2028: fifteen million dollars ($15,000,000); and (iii) if the desired termination date is during any Renewal Term after September 30, 2028: nine million dollars ($9,000,000).

Section 33. Assignment

Seaboard shall not transfer or assign its rights under this Agreement without the prior written consent of the County, which consent shall not to be unreasonably withheld. Any assignment without prior written consent shall be void. An "Assignment" shall include any transfer of this Agreement, including but not limited to a transfer of this Agreement by sale, merger, consolidation or liquidation, or by operation of law. Notwithstanding anything in this Section 33 to the contrary, Seaboard may assign this Agreement to any wholly-owned subsidiary or wholly-owned affiliate upon notice to, and without prior consent of, the County. Should Seaboard elect to assign this Agreement to an entity that is neither a wholly-owned subsidiary or affiliate, Seaboard must pay the County two-hundred and fifty thousand dollars ($250,000) for each year remaining on the Agreement and both Renewal Terms.

Section 34. Amendments

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This Agreement may be amended from time to time provided the County and Seaboard mutually agree to such amendment and the amendment is stated in writing, executed by both parties and attached to the original executed copies of this Agreement. Any amendment to this Agreement shall be approved by the Board of County Commissioners.

Section 35. Encumbrances

The County represents and warrants that it has good title to the Terminal Area free and clear of mortgages, valid liens or encumbrances and the County covenants that it will not grant any mortgage liens or encumbrances on the Terminal Area. Likewise, Seaboard will not grant any mortgage, collateral assignment, hypothecation or any other liens or encumbrances on the Terminal Area and shall ensure that none of its employees, agents, vendors or other affiliates take any actions that result in any such liens, hypothecations, mortgages, collateral assignments, or encumbrances being placed on any land owned by the County without first obtaining the County's written consent, and that any action contrary to this general prohibition shall be void ab initio. However, should any such liens, mortgages, hypothecations, or encumbrances be placed on any County land due to the acts or omissions of Seaboard or any of its employees, agents, vendors or other affiliates, Seaboard shall promptly take all steps required to remove, defend against and otherwise satisfy such liens, mortgages and encumbrances at its cost and expense.

Section 36. Surrender at End of Term

Seaboard agrees that, at the expiration or lawful termination of this Agreement, whichever comes first, it shall peaceably yield the Terminal Area to the Port.

Section 37 Notices

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing, delivered by personal service, or shall be sent by, telecopy, United States Registered or Certified Mail, return receipt requested, postage prepaid, to the parties at the following addresses:

To the County: Seaport Director
Miami-Dade Seaport Department, Suite 200
1015 North America Way
Miami, Florida 33132

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With a copy to:	Miami-Dade County Attorney 111 N.W. 1st Street, Suite 2810 Miami, Florida 33128-1930
To Seaboard:	President Seaboard Marine Ltd. 8001 N.W. 79th Avenue Miami, Florida 33166-2100
With copies to:	ATTENTION - Legal Department Seaboard Marine Ltd. 8001 N.W. 79th Avenue Miami, Florida 33166-2100
	General Counsel Seaboard Marine Ltd. 9000 West 67th Street Merriam, Kansas 66201

Section 38. Inspector General Reviews.

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, Seaboard shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall Seaboard's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to Seaboard, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of Seaboard in connection with this Agreement. The terms of this Section shall not impose any liability on the County by Seaboard or any third party.

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL REVIEW

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General (IG) which may, on a random basis, perform audits, inspections, and reviews of all County/Trust contracts. This random audit is separate and

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distinct from any other audit by the County. To pay for the functions of the Office of the Inspector General, any and all payments to be made to the Contractor under this contract will be assessed one quarter (1/4) of one (1) percent of the total amount of the payment, to be deducted from each progress payment as the same becomes due unless, as stated in the Special Conditions, this Contract is federally or state funded where federal or state law or regulations preclude such a charge. The Contractor shall in stating its agreed process be mindful of this assessment, which will not be separately identified, calculated or adjusted in the proposal or bid form. The audit cost shall also be included in all change orders and all contract renewals and extensions.

The Miami-Dade Office of Inspector General is authorized to investigate County affairs and empowered to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the (Contractor/ Vendor/ Consultant), its officers, agents and employees, lobbyists, County and Public Health Trust staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon ten (10) days written notice to the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General shall have the right to inspect and copy all documents and records in the (Contractor/Vendor/Consultant's) possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

1. If this contract is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

2. The Contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

The provisions in this section shall apply to the (Contractor/Vendor/Consultant), its officers, agents, employees, subcontractors and suppliers. The (Contractor/Vendor/Consultant) shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the (Contractor/Vendor/Consultant) in connection with the performance of this contract.

Nothing in this section shall impair any independent right to the County to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the County by the (Contractor/Vendor/Consultant) or third parties.

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Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Trust; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. Notwithstanding the foregoing, the Trust may authorize the inclusion of the fee assessment of one-quarter (1/4) of one percent in any exempted contract at the time of award.

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Trust contracts including, but not limited to, those contracts specifically exempted above.

Section 39. Mutual Obligations

Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

Section 40. Disputed Invoice Settlement

The Parties agree that there are approximately nine-hundred and seventy thousand dollars ($970,000) in disputed and unpaid Seaboard invoices dated before January 1, 2008 (collectively "the Invoices"). Seaboard agrees to pay the Port five-hundred thousand dollars ($500,000) within fifteen (15) days of the Effective Date to settle any and all financial claims made on such Invoices. The Port agrees that upon receipt of the five-hundred thousand dollars ($500,000), it will consider the Invoices to be fully paid and releases Seaboard from any other payment obligations. Further, the Port agrees that it will waive and release Seaboard from any late payment penalties through the Effective Date of this Agreement.

Section 41. Business application and forms

Seaboard shall be a registered vendor with the Miami-Dade County, Department of Procurement Management, for the duration of this Agreement. It is the responsibility of Seaboard to file the appropriate

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Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any Renewal Terms.

Section 42. Nondiscrimination

During the performance of this Agreement, Seaboard agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Agreement with the County, Seaboard attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. This agreement shall be voidable by the County if Seaboard submits a false affidavit pursuant to this Resolution or Seaboard violates the Act or the Resolution during the Initial Term and any Renewal Term of this Agreement, even if Seaboard was not in violation at the time it submitted the affidavit.

Section 43. Conflict of Interest

Seaboard represents that:

a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

b) There are no undisclosed persons or entities interested with Seaboard in this Agreement. This Agreement is entered into by Seaboard without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

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i) is interested on behalf of or through Seaboard directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

ii) is an employee, agent, advisor, or consultant to Seaboard.

c) Neither Seaboard nor any officer, director, employee, agency, parent, subsidiary, or affiliate of Seaboard shall have an interest which is in conflict with Seaboard's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided Seaboard provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

d) The provisions of this Section are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

e) In the event Seaboard has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Seaboard shall promptly bring such information to the attention of the County's Project Manager. Seaboard shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Seaboard receives from the Project Manager in regard to remedying the situation.

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IN WITNESS WHEREOF, the County and Seaboard have caused this Agreement to be duly executed.

SEABOARD MARINE LTD.

By: _____

Name: Bruce A. Brecheisen

Title: Exec. VP

Date: 5 May 2008

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the
State of Florida

By _____
Mayor or Designee

Date: June 2, 2008

ATTEST:

Name: CHARLES J. ANDERS

By: _____

Title: VICE PRES. OPS

Date: 5 MAY 2008

ATTEST:

CLERK OF THE BOARD

By _____
Deputy Clerk

Date: June 2, 2008

Approved as to form and legal sufficiency

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EXHIBIT A:

SEABOARD-PORT OF MIAMI
TEU MINIMUM THROUGHPUT GUARANTEES AND RATES

	FISCAL YEAR ENDED	ANNUAL MINIMUM TEU THROUGHPUT GUARANTEE (per Throughput Acre)	TIER 1		DISCOUNT TEU RATES		
			TEU THROUGHPUT (per Throughput Acre)	TEU Rate	TIER 1 to TIER 1 + 1000	TIER 1 +1001 to TIER 1 + 2000	TIER 1 +2001 and over.
	2009*	4,000	4,000	$24.00	$15.00	$12.00	$10.00
	2010	4,080	4,000	$24.72	$15.45	$12.36	$10.30
	2011	4,160	4,000	$25.46	$15.91	$12.73	$10.61
	2012	4,240	4,000	$26.23	$16.39	$13.11	$10.93
	2013	4,320	4,000	$27.01	$16.88	$13.51	$11.26
	2014	4,400	4,000	$27.82	$17.39	$13.91	$11.59
	2015	4,400	4,000	$28.66	$17.91	$14.33	$11.94
	2016	4,400	4,000	$29.52	$18.45	$14.76	$12.30
	2017	4,400	4,000	$30.40	$19.00	$15.20	$12.67
	2018	4,400	4,000	$31.31	$19.57	$15.66	$13.05
	2019	4,400	4,000	$32.25	$20.16	$16.13	$13.44
	2020	4,400	4,000	$33.22	$20.76	$16.61	$13.84
	2021	4,400	4,000	$34.22	$21.39	$17.11	$14.26
	2022	4,400	4,000	$35.24	$22.03	$17.62	$14.69
	2023	4,400	4,000	$36.30	$22.69	$18.15	$15.13
	2024	4,480	4,100	$37.39	$23.37	$18.70	$15.58
	2025	4,560	4,100	$38.51	$24.07	$19.26	$16.05
	2026	4,640	4,100	$39.67	$24.79	$19.83	$16.53
	2027	4,720	4,100	$40.86	$25.54	$20.43	$17.02
	2028	4,800	4,100	$42.08	$26.30	$21.04	$17.54
RENEWAL #1	2029	4,880	4,200	$43.35	$27.09	$21.67	$18.06
	2030	4,960	4,200	$44.65	$27.90	$22.32	$18.60
	2031	5,040	4,200	$45.99	$28.74	$22.99	$19.16
	2032	5,120	4,200	$47.37	$29.60	$23.68	$19.74
	2033	5,200	4,200	$48.79	$30.49	$24.39	$20.33
RENEWAL #2	2034	5,280	4,300	$50.25	$31.41	$25.13	$20.94
	2035	5,360	4,300	$51.76	$32.35	$25.88	$21.57
	2036	5,440	4,300	$53.31	$33.32	$26.66	$22.21
	2037	5,520	4,300	$54.91	$34.32	$27.46	$22.88
	2038	5,600	4,300	$56.56	$35.35	$28.28	$23.57

* Fiscal Year 2009 will cover the period from Effective Date through September 30, 2009.

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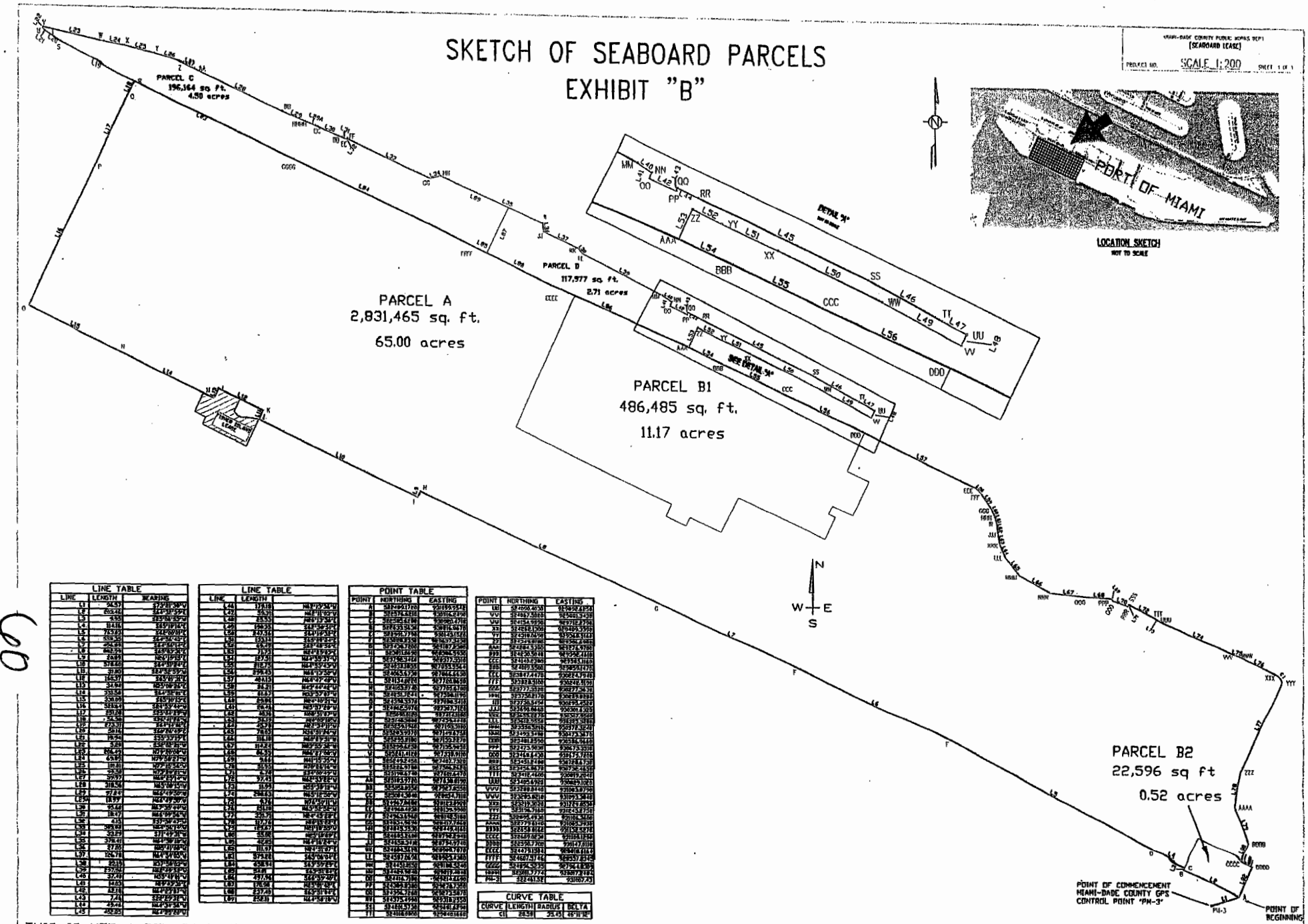
SKETCH OF SEABOARD PARCELS
EXHIBIT "B"

MIAMI-DADE COUNTY PUBLIC WORKS DEPT
(SEABOARD LEASE)
PROJECT NO. SCALE 1:200 SHEET 1 OF 1



LINE TABLE		
LINE	LENGTH	BEARING
L1	24.57	S73°01'38"W
L2	202.42	S24°01'59"E
L3	3.55	S89°06'57"W
L4	114.16	S65°19'14"E
L5	75.00	S24°00'00"E
L6	559.30	S64°04'02"E
L7	204.91	S64°04'02"E
L8	140.76	S65°13'36"E
L9	24.81	N60°19'38"E
L10	578.60	S64°59'02"E
L11	39.80	S83°52'39"W
L12	166.57	S65°18'26"E
L13	34.94	N25°08'30"E
L14	353.56	S64°58'16"E
L15	230.05	S65°10'05"E
L16	589.43	S65°09'49"E
L17	231.00	S25°07'19"W
L18	24.58	S25°07'19"W
L19	723.70	S64°10'08"E
L20	26.16	S29°06'49"E
L21	19.94	S35°37'19"E
L22	3.04	S39°05'38"W
L23	836.49	N29°09'09"E
L24	63.00	N29°09'09"E
L25	19.81	N29°09'09"E
L26	97.54	N29°09'09"E
L27	20.97	N64°09'09"E
L28	318.54	N65°09'09"W
L29	97.84	N64°09'09"W
L30	18.99	N64°09'09"W
L31	95.64	N64°09'09"W
L32	18.47	N64°09'09"W
L33	2.15	S37°09'09"E
L34	380.00	N64°09'09"W
L35	23.29	S71°07'21"W
L36	378.41	N64°09'09"W
L37	27.20	N85°07'08"W
L38	126.76	N64°09'09"W
L39	22.16	S71°07'21"W
L40	237.97	N64°09'09"W
L41	32.49	N85°49'08"W
L42	19.63	N89°13'39"W
L43	42.16	N64°09'09"W
L44	7.74	S29°09'09"W
L45	45.46	N64°09'09"W
L46	48.25	N64°09'09"W

LINE TABLE		
LINE	LENGTH	
L47	17.18	N64°09'09"W
L48	24.50	N64°09'09"W
L49	23.00	N64°09'09"W
L50	59.33	S64°09'09"E
L51	59.33	S64°09'09"E
L52	24.00	S64°09'09"E
L53	7.93	N64°09'09"W
L54	187.50	N64°09'09"W
L55	312.75	N64°09'09"W
L56	238.65	N64°09'09"W
L57	40.15	N64°09'09"W
L58	24.41	N64°09'09"W
L59	21.92	N25°07'19"W
L60	23.94	N64°09'09"W
L61	24.41	N25°09'09"W
L62	21.92	N25°07'19"W
L63	74.03	N25°07'19"W
L64	51.18	N64°09'09"W
L65	31.24	N65°09'09"W
L66	84.55	N64°09'09"W
L67	5.44	N64°09'09"W
L68	33.33	N29°09'09"E
L69	31.98	S29°09'09"W
L70	97.41	N64°09'09"W
L71	19.94	N35°09'09"W
L72	234.63	N65°11'50"W
L73	5.76	N76°09'09"W
L74	23.33	N65°09'09"W
L75	235.71	N65°09'09"W
L76	31.74	N65°11'50"W
L77	180.57	N65°09'09"W
L78	33.00	N65°09'09"W
L79	42.25	N64°09'09"W
L80	111.47	N65°31'07"W
L81	57.93	N65°06'09"W
L82	23.00	S65°09'09"E
L83	497.98	S64°09'09"E
L84	170.98	N65°09'09"W
L85	237.28	S65°11'19"E
L86	252.31	S64°58'19"W

POINT TABLE		
POINT	NORTHING	EASTING
A	524951.780	938999.9548
B	524974.4318	939142.8396
C	524952.6148	939080.1476
D	524953.5534	939116.9670
E	524998.7798	939124.0103
F	525000.0000	939123.0000
G	525756.7300	937187.2300
H	525801.0400	937088.5900
I	525762.7410	937237.5000
J	525833.8000	937133.5000
K	524965.5798	937844.6630
L	525133.6700	937788.0498
M	524965.9780	937765.6700
N	524965.7840	937558.3190
O	524953.5370	937594.3710
P	524962.5974	937507.1100
Q	525000.0000	937507.1000
R	525756.4500	937234.4170
S	525756.7600	937103.3100
T	525833.5700	937103.3100
U	525833.8100	937103.3170
V	525833.6200	937105.9610
W	525833.0100	937105.9700
X	525833.0100	937140.5000
Y	525833.9100	937166.6470
Z	525833.9100	937202.6470
AA	525833.9100	937238.8100
BB	525833.9100	937274.8100
CC	525833.9100	937309.4700
DD	525833.9100	937343.7100
EE	525833.9100	937378.3100
FF	525833.9100	937412.5500
GG	525833.9100	937446.8100
HH	525833.9100	937481.4700
II	525833.9100	937515.7100
JJ	525833.9100	937549.9700
KK	525833.9100	937584.6300
LL	525833.9100	937618.8700
MM	525833.9100	937653.5300
NN	525833.9100	937687.7800
OO	525833.9100	937722.4400
PP	525833.9100	937756.7000
QQ	525833.9100	937791.3600
RR	525833.9100	937825.6200
SS	525833.9100	937860.2800
TT	525833.9100	937894.5400

POINT	NORTHING	EASTING
UU	525833.9100	937929.2000
VV	525833.9100	937963.4600
WW	525833.9100	937997.7200
XX	525833.9100	938032.3800
YY	525833.9100	938066.6400
ZZ	525833.9100	938101.2900
AAA	525833.9100	938135.5500
BBB	525833.9100	938170.2100
CCC	525833.9100	938204.4700
DDD	525833.9100	938239.1300
EEE	525833.9100	938273.3900
FFF	525833.9100	938307.6500
GGG	525833.9100	938342.3100
HHH	525833.9100	938376.5700
III	525833.9100	938411.2300
JJJ	525833.9100	938445.4900
KKK	525833.9100	938480.1500
LLL	525833.9100	938514.4100
MMM	525833.9100	938548.6700
NNN	525833.9100	938583.3300
OOO	525833.9100	938617.5900
PPP	525833.9100	938652.2500
QQQ	525833.9100	938686.5100
RRR	525833.9100	938721.1700
SSS	525833.9100	938755.4300
TTT	525833.9100	938789.6900
UUU	525833.9100	938824.3500
VVV	525833.9100	938858.6100
WWW	525833.9100	938893.2700
XXX	525833.9100	938927.5300
YYY	525833.9100	938962.1900
ZZZ	525833.9100	938996.4500
AAAA	525833.9100	939031.1100
BBBB	525833.9100	939065.3700
CCCC	525833.9100	939100.0300
DDDD	525833.9100	939134.2900
EEEE	525833.9100	939168.5500
FFFF	525833.9100	939203.2100
GGGG	525833.9100	939237.4700
HHHH	525833.9100	939272.1300
PM-3	524413.52	938087.73

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	28.38	35.45	45°51'18"

THIS IS NOT A BOUNDARY SURVEY

DATE	BY	DESCRIPTION	DATE	BY	DESCRIPTION

REVISIONS

PORT OF MIAMI - SEABOARD LEASE AGREEMENT

DESIGNED BY
DRAWN BY
CHECKED BY
SUPERVISED BY

PUBLIC WORKS DEPARTMENT
HIGHWAY DIVISION
SIDNEY F. BAILEY, P.E.
DIRECTOR
WILLIAM DOUGLAS SHAW
DIRECTOR

MICHAEL J. WHITLING, PLS#4688

EXHIBIT "B"

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AMENDED AND RESTATED TERMINAL AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND SEABOARD MARINE LTD.
FOR MARINE TERMINAL OPERATIONS

EXHIBIT "C"

PHASE [1]	APPROXIMATE ACREAGE	COMPLETION DATE [1]	GENERAL DESCRIPTION
I	13	December 31, 2009	Container yard paving and drainage [2]
II	12	September 30, 2010 [3]	Container Yard paving and drainage And RTG runways
III	11	September 30, 2011	Container Yard paving and drainage And RTG runways
IV	11	September 30, 2012	Container Yard paving and drainage And RTG runways
V	15	September 30, 2014	Container Yard paving and drainage And RTG runways

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Note (1): Should the County complete each phase by the date indicated above, Seaboard agrees that it will pay the County one million dollars ($1,000,000) for each of the five (5) phases upon final acceptance by both parties of the work for that defined phase. Should the County fail to complete any phase by the dates indicated above, then Seaboard will reduce its one million dollar ($1,000,000) payment by one-hundred thousand dollars ($100,000) for every month past the target date for that respective phase. If the improvements are completed more than ten (10) months past the respective target date for any of phase, then Seaboard will not make any payment towards that respective phase.

Months After Completion Date	Percentage Rent Reduction
10	33%
20	66%
30	100%

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AMENDED AND RESTATED TERMINAL AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND SEABOARD MARINE LTD.
FOR MARINE TERMINAL OPERATIONS

EXHIBIT "C"
(cont.)

In addition to the above Land Rental Rate reduction, failure by the County to complete construction of the phases identified above within 30 months of the dates indicated will reduce the acreage upon which the Minimum Guaranteed TEU Throughput is calculated for the uncompleted portion of any phase.

The Land Rental Rate reduction and the reduction of acreage from Minimum Guaranteed TEU Throughput calculation will remain in place until such time as individual phases are completed.. or until the County has completed its obligation as described in Section 7(F), whichever comes first.

Note (2): It is recognized by both parties that the construction plans for Phase I have already been prepared and permitted. These plans may need to be modified in the future as both Parties desire for eventual RTG runways in the acreage included within Phase 1.

Note (3): The Phase II completion date may be extended, but only due to environmental permitting delays as described below. Should the County (or its designee) apply for an environmental permit for the Phase II work, and an approved permit is not received within twelve (12) months, then the completion date may be extended by one-half the delay period which extended beyond the initial twelve (12) months. For example, if the County applies for the environmental permit on January 1, 2009, and an approved permit is not granted until March 1, 2010 (a period of two months), the completion deadline shall be extended one month to October 31, 2010. In no event shall the completion date be extended beyond June 30, 2011.

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Exhibit "D"

Miami-Dade Seaport Department
Engineering & Construction Management Division

Installation or Modification of Facilities
Port Authorization Application

Submit the following with this application: 1. Two (2) sets signed and seal plans, 2. Miami-Dade County Permit application signed and notarized by applicant's contractor, 3. Specifications, 4. Pertinent Bond (If applicable), 5.. Copy of all permits from other agencies.

Location: _____ Date: _____

Applicant: _____ Phone: _____

Representative: _____ Address: _____

Description of facilities to be installed or modified (attach plans and sketch as required) :

_____

_____

_____

_____

Work to be performed by: _____ Est. Cost: _____

Address: _____ Phone: _____

Est. Start Date: _____ Est. Completion Date: _____

Remarks: _____

_____

Applicant hereby certifies above information to be correct to the best of his knowledge and that all other required permits have been or will be obtained.

Date: _____ Applicant's Representative: _____

Special Conditions (attached additional pages if required)

_____

_____

_____

_____

Final Approval

This permit application is approved subject to the compliance with the following general conditions:

1. The applicant shall comply with all permit requirements as required by the County, State and Federal agencies, as well as being compliant with all applicable code, rules and regulations whether it is for this project or resulting from said work and/or as agreed with the Seaport.
2. Copies of said permits must be provided to the Seaport's Engineering & Construction Management Division ("Engineering"), prior to any commencement of work.
3. Any additional required upgrades or improvements of any Seaport facility as a result of this tenant's improvements are the responsibility of the applicant. Applicant shall submit the additional upgrade(s) for permit to the Seaport and as required by the regulating agency jointly with this application prior to receiving the Seaport's authorization to proceed with proposed work.
4. The applicant shall provide written notice of commencement to Engineering.
5. The Seaport Project Manager may stop work if deemed necessary due to unexpected operational requirements or any other event(s).
6. Applicant may be required to modify or remove facilities at a later date at the request of the Seaport Department.
7. The area must be cleaned and the applicant shall be responsible for damages to other facilities impacted by the applicant's work.
8. Provide written notice of completion to Engineering with copies of as-built drawings, Certificate of Occupancy and/or other applicable final approvals.

Approved by:

Marketing	Date	Facilities Maintenance	Date
Operations	Date	Property	Date
Security	Date	Engineering	Date
Asst. Director of Engineering & Development	Date		

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Exhibit 2

TERMINAL SERVICE AGREEMENT

This Terminal Service Agreement (the "Agreement") is by and between PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C. ("Operator"), whose address is 1007 North American Way, Suite 301, Miami, Florida 33132, and SEABOARD MARINE LTD. ("Contractor"), whose address is 8001 N.W. 79 Avenue, Miami, Florida 33166.

RECITALS

WHEREAS, Operator is a marine terminal operator at the Port of Miami; and,

WHEREAS, Contractor is an ocean carrier and also operates a marine terminal at the Port of Miami, at a terminal facility located adjacent to Operator's marine terminal; and,

WHEREAS, due to construction in Contractor's terminal, Contractor desires to form a relationship for terminal services with Operator for the placement of loaded and empty containers, and other equipment, in Operator's terminal.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, Operator and Contractor agree as follows:

1. **Dedicated Terminal Area:** Operator agrees to make available up to 18 dedicated acres (784,080 sq. ft.), at Contractor's option, of its terminal facility adjacent to Contractor's marine terminal (the "DTA") for exclusive use as terminal area for Contractor's containers and related equipment discharged and/or to be loaded in or aboard Contractor's vessels (chartered or owned). A sketch of the DTA is attached hereto as Exhibit "A". On the one year anniversary of the Commencement Date, or any 6 month period thereafter during the Initial Term, or any renewal term, Contractor may at its option increase (but never beyond the allotted original 18 acres) or decrease the size of the DTA. The Parties agree to work with one another in terms of an understanding regarding which land is the most convenient to both Parties to be returned.

2. **Term:** This Agreement shall commence upon mutual written consent of the parties, but no later than March 31, 2009 (the "Commencement Date") and shall continue for a period of three (3) years (the "Initial Term") from the Commencement Date (the Parties agree to attach as an addendum hereto the agreed Commencement date when mutually agreed), unless terminated sooner as provided herein. Provided Contractor is not in default in the performance of this Agreement, Contractor with the mutual written consent of Operator may renew this Agreement for a period of one additional year by giving notice of such intent to renew in writing to Operator at least ninety (90) days prior to the expiration of the Initial Term.

3. **Rate and Throughput:** For the term of this Agreement, including any option term or extension thereof, Contractor shall pay Operator $10.00 per "full container". A "full container" shall be defined as a loaded, import or export, container, and shall not include vehicles, empty containers or chassis, that passes through the "south gate" of the DTA, as noted on Exhibit "A". Contractor shall guarantee a minimum of 6,000 full containers per month for use of the DTA. Contractor shall pay Operator on the first business day of the month (for the first month that this Agreement is in effect the amount to be paid will be the minimum guarantee) for the "full container" volume or the minimum guarantee whichever is greater, at the rate set forth herein. Payments made hereunder shall be subject to an annual (subject to proration for partial year) adjustment, based on total minimum annual volume of loaded containers of 72,000. Operator's tariff shall not apply to this Agreement. Additional services, equipment

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or otherwise requested of Operator by Contractor shall be at rates and on terms to be mutually agreed upon by the parties. The Contractor shall have full access to the DTA including any fixed structures and utilities located thereon, save and accept for the security cameras which are not compatible with Contractor's equipment. The minimum guaranteed "full container volume" as set forth herein is based on an 18 acre DTA and is subject to proration based on permitted adjustments to the size of the DTA.

4. **Segregation of DTA:** (A) Subject to the conditions set forth in subpart 4(B) below, Operator shall: (i) permit Contractor to erect a fence enclosing the DTA and segregating the DTA from the remainder of Operator's terminal facility, (ii) permit Contractor to connect such fence line to Contractor's existing terminal, at the points identified on Exhibit "A", (iii) Contractor to establish a gate for direct access (apart from Operator's main gate complex) between Contractor's existing terminal facility and the DTA, and (iv) Contractor to temporarily relocate the existing roadway, known as "Chute Road," (the "Existing Roadway") to a point on the eastern side of the DTA. To the extent that Contractor reduces its need for certain acreage as provided herein, Contractor agrees to promptly move the fences and make any other changes required to return the full and unabated use of the remaining property to Operator.

   (B) It is expressly understood by Contractor that Operator's agreement to the provision of section 4(A) above are subject to the following conditions: (i) Contractor shall obtain the written consent of the Miami-Dade County Seaport Department (the "Seaport Department"), in the manner provided by the Seaport Department, for the modifications set forth in Section 4(A) prior to the commencement of the permitted actions, and to the extent that Contractor fails to secure full and unconditional approval for this agreement from the Seaport Department then Operator shall have the right at any time during any term of this Agreement to cancel within thirty (30) days written notice to Contractor (ii) Contractor shall be solely liable for payment of the actions permitted under section 4(A), and (iii) no action permitted under section 4(A) shall be undertaken by Contractor, and Operator shall not be required to allow any such action, until such time as both Contractor's and Operator's Facilities Security Plan (the "FSP") are modified to take into account the permitted actions and both FSP's are duly approved by the applicable regulating entity.

   (C) At Operator's discretion, Contractor shall be obligated at the expiration of any term or authorized cancellation of this Agreement , including any renewal terms, or termination of this Agreement to remove any modifications, alterations, additions, and improvements; and restore the DTA to its original condition as existed on the date of execution of this Agreement, including but not limited to removing any fencing segregating the DTA, returning any change in the Existing Roadway to its path and location as existing prior to the Commencement Date. Contractor further agrees that Contractor will pay all liens of contractors, subcontractors, mechanics, laborers, materialmen and other items of like character for alterations or improvements undertaken by or on behalf of Contractor, and will indemnify Operator against all legal costs and charges, including counsel fees reasonably incurred in and about the defense of any suit in discharging the said DTA or any part thereof. Contractor will continue to pay its monthly guarantee or any pro rata part thereof until the DTA has been fully returned to Operator in the same condition, normal wear and tear excepted, which existed before this Agreement went into effect.

5. **Operation and Security:** Contractor shall be solely responsible for providing the necessary manpower, equipment and security to utilize the DTA and acknowledges and agrees that Operator shall have no obligation to maintain, operate or secure the DTA in any respect. Contractor shall maintain, operate and secure the DTA in accordance with applicable rules, regulations (both Federal and State) and ordinances. On a monthly basis, Contractor shall provide Operator a report of the monthly full container throughput (as defined in Section 3

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above) and Operator has the right to audit Contractors books and records in this regard within thirty days receipt of any monthly report.

6. **Insurance:** Contractor and Operator shall at all times maintain insurance coverage(s) as follows: (i) workers compensation as required by Florida law, and coverage applicable under U.S. Longshoreman's and Harbor Worker's Compensation Act as applicable, (ii) comprehensive general liability insurance in an amount not less than $5,000,000.00 per occurrence for bodily injury and property damage combined, (iii) contractual liability insurance covering all liabilities under this Agreement in an amount not less than $5,000,000 per occurrence, and (iv) automobile liability insurance covering all owned, non-owned and hired vehicles in an amount not less than $500,000 per occurrence for bodily injury and property damage combined. Contractor shall name Operator as an additional insured under each policy of insurance identified above, except coverage set forth in subpart (i) and shall provide a certificate of insurance upon executing this Agreement, and from time to time as may be requested by Operator.

7. **Assignment:** Contractor shall not sell, assign, or transfer this Agreement (any or all of the foregoing actions is, hereafter, a "Transfer") and any such Transfer shall be void.

8. **Indemnification:**

I. In addition to any other indemnities to Operator provided in this Agreement or by law, Contractor shall defend, indemnify and hold Operator, its officers, directors, shareholders, partners, members, agents, employees, invitees and licensees of Operator, harmless from and against any and all damages, claims, demands, actions, causes of action, liabilities, judgments, penalties, losses, costs and expenses (including, without limitation, attorneys' fees at trial and appellate levels) howsoever caused, excluding the negligence of Operator, arising out of, or as a result of, or which may be imposed upon or incurred by or asserted against Operator, by reason of any of the following matters or events:

a. any work or thing done in, on or about the DTA or any part thereof;
b. any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the DTA by Contractor and/or its agents, employees, contractors or any part thereof;
c. any accident, injury (including death) or damage to any person or property occurring in, on or about the DTA or any part thereof, and caused, in whole or part, by Contractor and/or its agents;
d. any failure on the part of Contractor to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement;

The provisions of this paragraph and all other indemnity provisions elsewhere contained in this Agreement shall survive the expiration or earlier termination of this Agreement.

II. In addition to any other indemnities to Contract provided in this Agreement or by law, Operator shall defend, indemnify and hold Contractor, its officers, directors, shareholders, partners, members, agents, employees, invitees and licensees of Contractor, harmless from and against any and all damages, claims, demands, actions, causes of action, liabilities, judgments, penalties, losses, costs and expenses (including, without limitation, attorneys' fees at trial and appellate levels) howsoever caused, excluding the negligence of Contractor arising out of, or as a result of, or which may be imposed upon or incurred by or asserted against Contractor, by reason of any of the following matters or events:

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a. any accident, injury (including death) or damage to any person or property occurring in, on or about the DTA or any part thereof, and caused, in whole or part, by Operator and/or its agents;
b. any failure on the part of Operator to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement;

The provisions of this paragraph and all other indemnity provisions elsewhere contained in this Agreement shall survive the expiration or earlier termination of this Agreement

9. **Default:** Each of the following shall constitute a default under this Agreement: (i) Contractor fails to make any payment required under this Agreement (or any portion thereof) as and when due; or (ii) Contractor or Operator fails to perform any other obligation under this Agreement and such default is not cured within ten (10) days after written notice, or in the case of a default by Contractor, in such shorter period as may be required of Operator under or by virtue of any of its existing agreements; or (iii) Contractor becomes bankrupt or insolvent or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act, or if any debtor proceedings be taken by or against Contractor or any guarantor; or (iv) a receiver or trustee in bankruptcy is appointed for all or any of the Contractor 's property; or (v) Contractor or any trustee rejects this Agreement in any bankruptcy, insolvency, reorganization, or arrangement proceedings under the Bankruptcy Code or any State insolvency laws; or (vi) Contractor Transfers its interest in this Agreement, or effects any other Transfer, in violation of the terms hereof.

   In the event of a default by either party in its obligations hereunder, after expiration of applicable notice and cure periods, if any, the non-defaulting party may, at its option: (i) cancel this Agreement; and/or (ii) in the case of a default by Contractor in the payment of sums due hereunder, Operator may sue Contractor as each minimum monthly payment becomes due; and/or (iii) exercise such other rights and remedies as may be available hereunder, at law, or in equity.

   The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement.

10. **Approval:** This Agreement shall not be effective unless all of the conditions as set forth in 4(B)(i), above are approved by the Seaport Department and/or by applicable public body. If the necessary approvals have not been secured by Contractor by March 31, 2009, then this Agreement shall be null and void. Upon the execution of this Agreement, and as may be required from time to time thereafter, the parties hereto shall promptly modify/amend and seek approval of their respective Facility Security Plan.

11. **Notices:** Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.

12. **No Implied Waiver:** Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof

13. **Governing Law/Venue:** This Agreement shall be governed and construed in accordance with the laws of the State of Florida and the parties consent to the exclusive jurisdiction of the state courts and U.S. federal courts located in Miami-Dade County, Florida for any dispute arising out of this Agreement. THE PARTIES HEREBY KNOWINGLY,

VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH ANY OR ALL DOCUMENTS, INSTRUMENTS OR AGREEMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO.

14. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes and replaces all prior agreements concerning the subject matter, and, except as otherwise expressly provided herein, it may be amended or modified only by a written instrument signed by both parties hereto.

15. **Construction:** This Agreement shall not be construed more strictly against one party than against the other by virtue of the fact that one party or its counsel may have drafted same, both parties and their counsel having had the opportunity to participate in the negotiation and drafting of this Agreement.

16. **Binding Effect:** This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

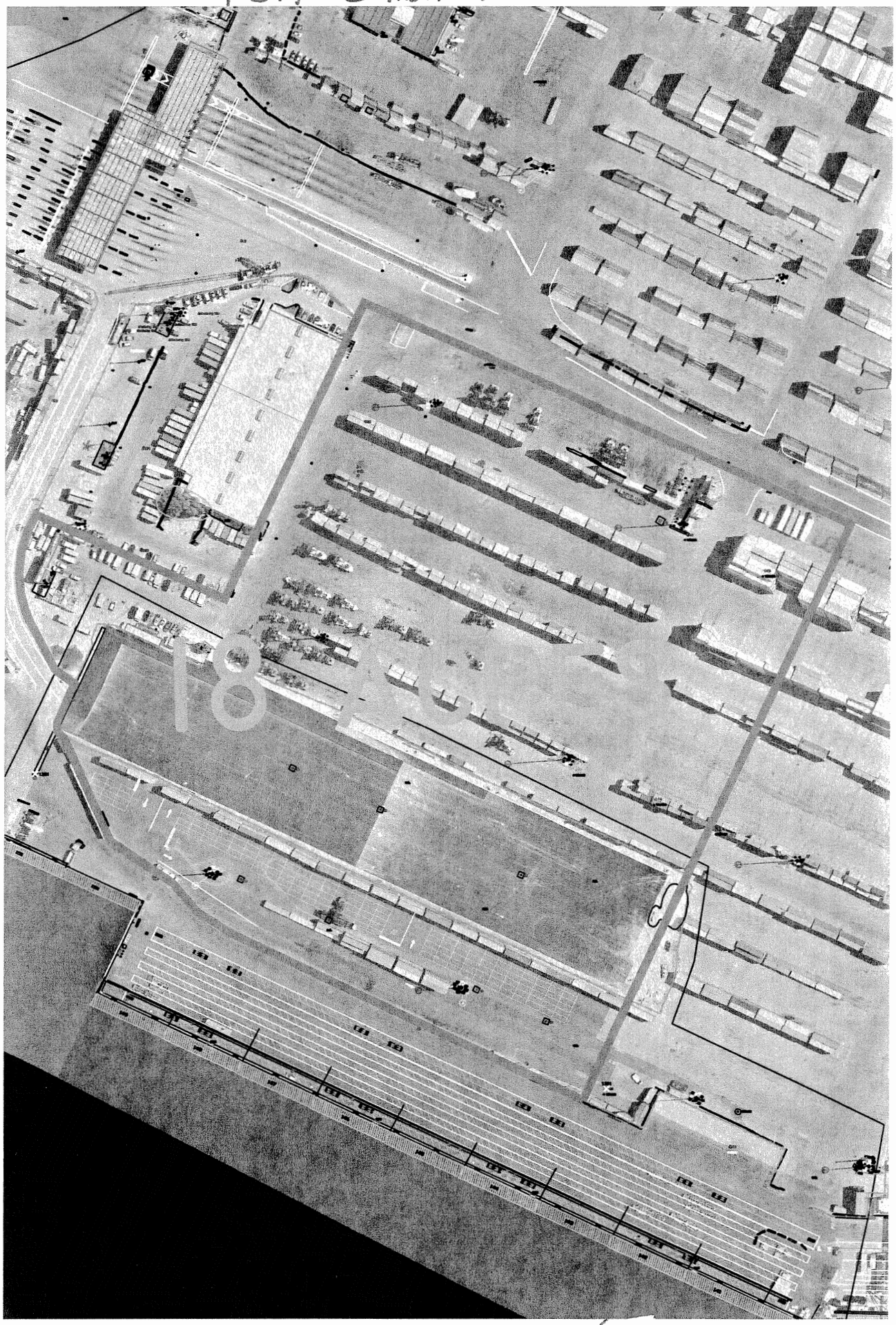
17. **Headings:** The captions of this Agreement are for convenience of reference only and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect this Agreement.

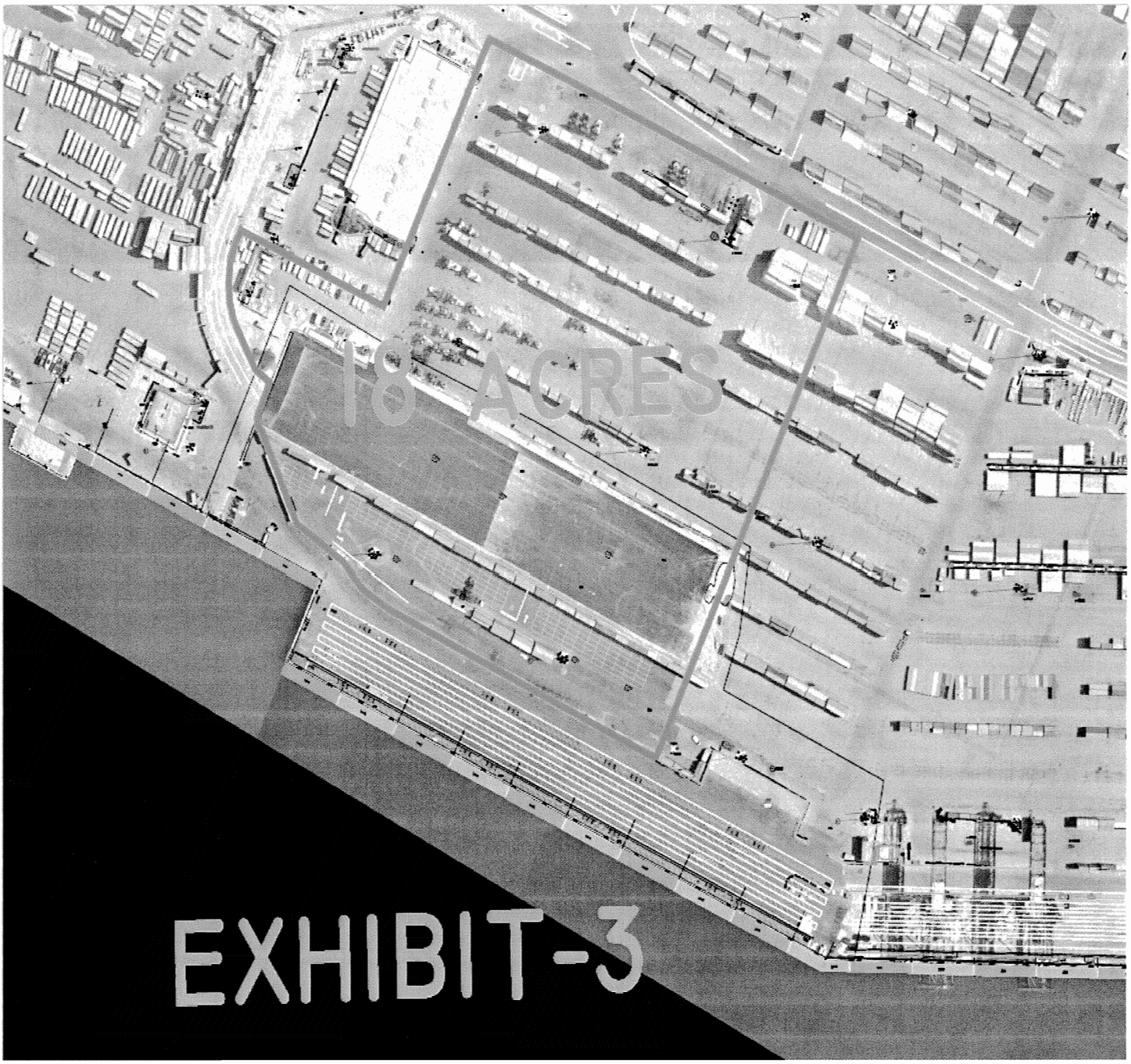
18. **Master Agreement:** Contractor acknowledges Operator is party to that certain agreement dated September 15, 1994 with Metropolitan Dade County Seaport Department, commonly referred to as the Terminal Operating Agreement (hereinafter the "TOA") under which Operator operates the marine terminal facility which includes the DTA and Contractor agrees to observe the terms of the TOA, as amended, to the extent applicable to this Agreement, if at all. It is understood this Agreement is not a lease or sublease, and Operator is not assigning, nor is Contractor assuming, any of Operator's obligations under the TOA, as amended.

Operator and Contractor have executed this Agreement on the date set forth below.

Operator:	Contractor:
PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C.	**SEABOARD MARINE LTD.**
By: _____	By: _____
Date: _____, 2009	Date: January 30, 2009

TSA "Exhibit A"




18 ACRES
EXHIBIT-3