MEMORANDUM

Agenda Item No. 8(J)(1)

TO:	Honorable Chairwoman Rebeca Sosa and Members, Board of County Commissioners	**DATE:**	December 17, 2013
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution approving and authorizing the County Mayor to execute Amendment No. 2 to the Terminal Operating Agreement between Miami-Dade County and Port of Miami Terminal Operating Company, L.C.

The accompanying resolution was prepared by the Port of Miami and placed on the agenda at the request of Prime Sponsor Vice Chair Lynda Bell.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: December 17, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving And Authorizing The County Mayor Or The County Mayor's Designee To Execute (1) Amendment No. 2 To The Terminal Operating Agreement Between Miami-Dade County And Port Of Miami Terminal Operating Company, L.C. And To Exercise Any Cancellation And Renewal Provisions Therein; And (2) The Restated Terminal Operating Agreement Between Miami-Dade County And Port Of Miami Terminal Operating Company, L.C. And To Exercise Any Cancellation And Renewal Provisions Therein

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RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of (1) Amendment No. 2 to the Terminal Operating Agreement between Miami-Dade County and Port of Miami Terminal Operating Company, L.C. ("Second Amendment") and (2) the Restated Terminal Operating Agreement ("Restated Agreement") between Miami-Dade County ("County") and Port of Miami Terminal Operating Company, L. C. ("POMTOC").

SCOPE

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

FISCAL IMPACT/FUNDING SOURCE

This resolution recommends the approval of two agreements: (1) the Second Amendment, which is considered a bridge agreement is for a period of nine months beginning on January 1, 2014, and ending on September 30, 2014, and (2) the Restated Agreement, which has a fifteen (15) year initial term with two (2) five-year renewal options upon meeting certain conditions. In the event of renewal, POMTOC shall notify the County in writing of its intent to exercise the first renewal 15 months prior to its initial contract expiration date. The Restated Agreement shall become effective October 1, 2014.

The approval and execution of both agreements will provide the Port with immediate and long-term increases in guaranteed revenues. Additionally, there are provisions in both agreements that stipulate a transfer of land from POMTOC's existing terminal footprint back to the Port. This agreement to give up certain land prior to the expiration of the current agreement in September 2014 allows the Port to accommodate other tenants' operational needs due to the availability of additional acreage.

With execution of the Second Amendment, the amount of revenue guaranteed to the Port from POMTOC will be approximately $3.2 million. In addition to the guaranteed revenue, there will be a positive fiscal impact to the Port in the amount of $2.5 million in fiscal year 2014. Under POMTOC's existing agreement, they operate approximately 117 acres of land at a rate of $0.37 per square foot. This amount of acres will be reduced with the execution of the Second Amendment to approximately 76 acres with rent increasing to a rate of $0.60 per square foot. While the gain in the land rental rate paid by POMTOC is offset by a smaller footprint, it allows the County to charge substantially higher rent on a portion of the approximate 41 acres to be transferred back to the County. The value of the additional rent revenue from the 41 acres that will be transferred back is estimated at $1.8 million for the remaining nine months of fiscal year 2014. These acres include the reassignment by the County of approximately 16 acres to Seaboard Marine, approximately 10 acres to Terminal Link Miami, and 15 acres (valued at existing market rates) that will be used for future business interests of the Port. Additionally, the increase in

revenue that is anticipated by delaying a tier discount on the throughput minimum annual guarantees for the Seaboard Marine and Terminal Link Miami cargo yards is estimated at $600,000 for the remaining portion of fiscal year 2014. This is achieved by incorporating the transferred acreage to Seaboard Marine and Terminal Link Miami in calculating their minimum annual guarantee per acre. In short, the increased acreage in both of these container yards translates into a higher Twenty-foot Equivalent Unit ("TEU") requirement in order to meet a tier discount.

With the approval and execution of the long-term Restated Agreement, POMTOC's lease will mirror that of Terminal Link Miami, approved by the Board in July 2008. The value of implementing the Restated Agreement will guarantee revenues in fiscal year 2015 of approximately $13 million in the form of land rent and throughput guarantees. This is valued at $6.6 million ($3.1 million in land rental revenue and $3.5 million in throughput revenue) more than what the Port would have collected if the existing lease with POMTOC would have remained status quo. In addition to the $6.6 million surplus over the previous agreement, there is a peripheral effect of collecting approximately $2.5 million with increased land rents and throughput guarantees from Seaboard Marine and Terminal Link Miami through the transfer of land to those companies (not to mention the 15 acres under the control of the Port that is valued at market land rental rates). Additionally, over the 15 year initial term of the contract, including a built in annual compounded escalation of three percent on rates for land rent and TEU throughput rates, as well as a two percent annual compounded escalation on TEU throughput per acre guarantees, the minimum value of the lease is estimated at $261 million ($93 million in land rent and $168 million in throughput revenue).

TRACK RECORD/MONITOR

There are no outstanding business issues or financial obligations between the parties except for a disputed receivable of approximately $672,000 which has been settled as part of Restated Agreement, requiring POMTOC to make two installment payments totaling $300,000. The Seaport Department staff members responsible for monitoring the agreements and the affiliated contracts are Juan Kuryla, Director Designee and Kevin Lynskey, Assistant Director, Business Initiatives.

BACKGROUND

On September 15, 1994, the County entered into an up to 20 year Terminal Agreement ("Original Agreement") with POMTOC to operate, maintain and secure a terminal area comprising of approximately 135 acres (now 117) on the Port. POMTOC functions as a common-user cargo terminal by operating, maintaining and securing its common gate, supervising and coordinating the receiving and delivery of cargo, and otherwise administering the premises to assure the efficient execution of the cargo handling operations for multiple steamship lines. Despite variations in cargo volumes, this Original Agreement has proven to be an important economic contributor to the Port as POMTOC has paid and/or generated direct revenues to the Port over the course of its existence.

On September 15, 1998, the Board approved a settlement agreement with POMTOC (R-1104-98) to, among other things, remove a contingent liability and resolve outstanding terminal issues. This settlement agreement was later amended on September 19, 2000 (R-965-00), authorizing POMTOC to increase certain rates on their tariff. This latter agreement approved by this Board is Amendment No. 1 to the Original Agreement. As part of the approved First Amendment, POMTOC agreed to reduce its terminal area from 135 acres to approximately 117 acres.

At this time, the Port and POMTOC wish to enter into a Second Amendment to the Original Agreement and also a new Restated Agreement. The Second Amendment shall serve as a bridge contract beginning January 1, 2014, through September 30, 2014, anticipating the effective date of the Restated Agreement beginning October 1, 2014.

In summary, the Second Amendment provides for POMTOC to:

- Increase its land rental rate to $0.60 per square foot from $0.37 per square foot.
- Commit to a term of nine months from January 1, 2014, through September 30, 2014.

- Reduce its cargo terminal operating footprint from 117 acres to approximately 76 acres, allowing the Port to transfer approximately 16 acres to Seaboard Marine, 10 acres to Terminal Link Miami, and the remaining 15 acres to remain under the Port's control for future Port uses.

Additionally, the proposed Restated Agreement provides for POMTOC to, among other things:

- Commit to a lease with an initial term of fifteen (15) years with two (2) five-year renewals. Upon Board approval, this Restated Agreement will take effect October 1, 2014, and terminate on September 30, 2029. POMTOC will remain as the Port's only common user terminal operator which is not affiliated to any shipping line.
- Increase its minimum guaranteed throughput from 2,000 Twenty Foot Equivalent Units ("TEUs") per acre to 3,159 commencing on year one of the Restated Agreement with a 2% annual compounded escalation;
- Commit to a throughput rate on year 1 of the Restated Agreement of $34.44 per TEU for TEUs indicated in the minimum throughput guarantee, subject to an annual compounded escalation of 3%. Discount TEU rate will be given according to contractual terms for TEUs that exceed the minimum and will be subject to an annual compounded two percent escalation as well. The discounts are ten percent, twenty percent, thirty percent, and forty percent for each increment of one-thousand TEUs per terminal acre generated beyond each year's applicable Minimum Guaranteed TEU throughput.
- Increase its land rent from $.60 per square foot during the year of the Amendment No. 2 period (FY 2014) to $1.54 per square foot in year one of the Restated Agreement in FY 2015. The land rental rate will have an annual compounded escalation rate of 3%, matching the Terminal Link Miami lease.

Among other things, the Port agrees to provide POMTOC with the following as part of the Restated Agreement:

- Preferential berthing space on 2,000 linear feet starting at Bay 117 to Bay 148, to be assigned at the Port's discretion.
- A minimum of four cranes for preferential use.
- Right to bill and retain revenues generated from refrigerated container connections.

The terms of the Restated Agreement were largely negotiated in the summer of 2013. To ensure that the County was receiving the best offer, however, on October 9, 2013, the Port advertised and invited submittals of expressions of intent (EOI) for terminal operators, stevedores, and shipping lines to enter into a cargo terminal operating agreement with the County. On November 15, 2013, the invitation period closed, and a total of two submittals were received. The submittals were from South Florida Container Terminal (SFCT), which is the neighboring terminal operator at the Port (also known as Terminal Link Miami), and Ceres Terminals, a global logistics company that currently conducts stevedoring activities at the Port.

After reviewing the two proposals, the Port recommends POMTOC. The recommendation is based on comparison of the minimum annual guarantees, short term revenue gains, and other competitive conditions. While, the two proposals offered similar long-term guarantees as the proposed POMTOC agreement, the recommendation to proceed with POMTOC as the terminal operator will generate an additional $2.5 million to the Port in FY 2014 by freeing up land for other Port tenants and requiring an immediate rent increase. Additionally, with similar minimum annual revenue guarantees from the two proposals to that of POMTOC, there is no financial incentive for the Port to expand SFCT's footprint or to choose a new terminal operator over one that has been at the Port for almost 20 years, which has served this community well and invested in our Port. Significantly, the proposal received by Ceres Terminals failed to make a binding commitment, and was contingent on closing a deal with an unidentified shipping line. The proposal by SFCT included a small crane guarantee (POMTOC does not have a crane guarantee but their actuals double what SCFT proposed as a guarantee). The Port also believes that three terminal operators will offer more competition and lower rates to third party customers than if the

amount of terminal operators were consolidated down to two, as would be the case if the proposal from SFCT were put forward as a recommendation.

Throughout the Original Agreement at the Port, POMTOC has played a significant role in the Port's expansion and has also demonstrated sound industry and business skills in adapting and managing the Port's growth and the industry's changing environment. Through joint marketing efforts with POMTOC and its other cargo partners, the Port is poised to again reach the one million TEU mark, and anticipates doubling its cargo volume within the next 6 to 8 years. The recommended Second Amendment and Restated Agreement will position the Port and POMTOC to operate a world class common user terminal, with the necessary infrastructure and technology to retain existing as well as lure new shipping lines. It is worth noting that the existence of a new 15 year term with POMTOC at the Port will enhance both POMTOC's and the Port's ability to attract new business.

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 those specific in the resolution which include the authority for the Mayor or designee to execute the Agreement and to exercise any cancellation and renewal provisions.

Jack Osterholt, Deputy Mayor

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 17, 2013

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

SUBJECT: Agenda Item No. 8(J)(1)

Please note any items checked.

_____ **"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**

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

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(J)(1)
12-17-13

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE (1) AMENDMENT NO. 2 TO THE TERMINAL OPERATING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C. AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS THEREIN; AND (2) THE RESTATED TERMINAL OPERATING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C. AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS THEREIN

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 this Board:

Section 1. Approves and authorizes the County Mayor or the County Mayor's designee to execute Amendment No. 2 to the Terminal Operating Agreement between Miami-Dade County and Port of Miami Terminal Operating Company, L.C. in substantially the form attached hereto as Exhibit 1 and made part hereof, and to exercise any cancellation and renewal provisions therein.

Section 2. Approves and authorizes the County Mayor or the County Mayor's designee to execute The Restated Terminal Agreement between Miami-Dade County Port of Miami Terminal Operating Company, L.C. in substantially the form attached hereto as Exhibit 2 and made part hereof, and to exercise any cancellation and renewal provisions therein.

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:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro	Esteban L. Bovo, Jr.
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

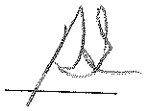
The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of December, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

Exhibit 1

AMENDMENT No 2 TO TERMINAL OPERATING AGREEMENT

This Amendment No. 2 to the Original Terminal Operating ("Second Amendment") is dated this _____ day of December, 2013 by and between MIAMI-DADE COUNTY FLORIDA, hereinafter (COUNTY) and PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C., a Florida limited liability company registered and authorized to do business in the State of Florida, hereinafter (POMTOC), by and through their authorized representatives in accordance with the terms, conditions and covenants contained herein below. The COUNTY and POMTOC are jointly referred to as "The Parties".

WITNESS

WHEREAS, The COUNTY and POMTOC are parties to a Terminal Operating Agreement dated September 15, 1994 the ("Original Agreement"), under which POMTOC is operating a cargo terminal at Dante B. Fascell Port of Miami ("PORT"); and,

WHEREAS, Amendment No. 1 to the Original Agreement was approved by the Board of County Commissioners on or about July 17, 2008 ("Amendment No. 1" and collectively referred to with the 1994 Agreement as the "Original Agreement") through Resolution 847-08; and

WHEREAS, the County and OPERATOR have a dispute as to when the Original Agreement expires, but, for the purposes of this Second Amendment, if approved, have mutually agreed that the Original Agreement expires on September 30, 2014 at 11:59 p.m, with each Party reserving its rights to dispute this expiration date in the event this Second Amendment is not approved by the Board of County Commissioners or otherwise fails to become effective for whatever reason; and

WHEREAS, the Parties mutually wish to modify certain provisions of the Original Agreement in order to assist the COUNTY in more efficiently and productively developing future cargo and cruise growth consistent with its 2035 Master Plan; and,

WHEREAS, POMTOC wishes to extend the Original Agreement beyond the present termination date and create a more efficient terminal in parity with other terminals operating at the Port; and the Parties have submitted a Restated and Amended Terminal Operating Agreement ("Restated Agreement") to the Board of County Commissioners for consideration concurrently with

this Second Amendment, and if approved, the Restated Agreement will become effective at 12:00 a.m. on October 1, 2014,

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

A. That the first paragraph of Article 4.1.A of the Original Agreement is hereby deleted in its entirety and shall provide instead: POMTOC shall continue to pay land rental rate at the same rate as of the effective date of this Amendment No. 2, but commencing January 1, 2014 or the effective date as hereinafter defined and continuing through the Original Agreement's expiration on September 30, 2014, POMTOC will increase its annual land rental rate to $.60 per gross square foot of the Terminal Area.

B. That Article 1.2 of the Original Agreement, is hereby modified to add the following paragraphs:

   On the January 1 ,2014 or effective date as hereinafter defined in this Second Amendment, land totaling 16.3 acres but subject to correction in a future formal survey (Parcel 1) as more generally identified in Exhibit A to the attached Amendment to Terminal Services Agreement (TSA) dated April 1, 2013, between POMTOC and Seaboard Marine Ltd., (Seaboard) (a copy of which is attached hereto as Exhibit A), shall permanently revert to the control of the COUNTY, and the COUNTY shall receive all revenues related thereto. Upon said transfer POMTOC shall have no further financial or minimum guarantee obligations in connection with Parcel 1, although it will continue to receive credits for throughput guarantees for throughput on the Parcel until October 1, 2014.

   On June 1, 2013, POMTOC temporarily transferred an additional 9.1 acres (inclusive of approximately 1.2 acres of access road), subject to correction in a future formal survey (Parcel 2) as generally identified in the TSA to Seaboard pursuant to the terms and conditions contained in the TSA. With respect to Parcel 2, POMTOC shall be entitled to receive all financial benefits and minimum guarantee credits relating to this property until its return to POMTOC as required by the provisions of the TSA.

   Commencing January 1, 2014 or the effective date as hereinafter defined POMTOC shall return to the County approximately 9.8 aces (Parcel 3) as more particularly identified in exhibit B. Notwithstanding the foregoing , POMTOC will continue to receive all throughput credits relating to the parcel through September 30, 2014.

C. The effective date of this Second Amendment means January 1, 2014 if prior thereto the Second Amendment is fully executed by POMTOC and an authorized representative of the COUNTY following approval of this Second Amendment by the Board of County Commissioners and the expiration of any applicable Mayoral veto period if this takes place after January 1, 2014 then the first day of the month following the requisite approvals as hereinbefore stated.

D. All terms and conditions of the Original Agreement not modified by this Second Amendment shall remain in full force and effect.

E. The County hereby approves the TSA attached hereto as Exhibit A.

F. The Parties hereby mutually agree that the POMTOC's agreement to enter into this Second Amendment is subject to the approval of the Restated Agreement which will be presented to the Board of County Commissioners simultaneously with this Second Amendment. Any failure of the Parties to reach an agreement as to the terms of the Restated Agreement and/or the Board of County Commissioners failing to approve the Restated Agreement hereby renders the terms and conditions of this Second Amendment null and void except for paragraph E above approving the TSA.

(PURPOSELY LEFT BLANK)

IN WITNESS WHEREOF, the COUNTY and POMTOC have caused this Agreement to be duly executed this ___ day of _____, 2013.

PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C.

By: _____

Name: Charles J. Rocha
(print name)

Title: COO/SA Vice President

Date: 12/4/13

Corporate Seal: _____

ATTEST:

By _____

Name: Charles O'Malley
(print name)

Title: CFO

Date: 12/4/13

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

By _____
County Mayor

Date: _____

ATTEST:

CLERK OF THE BOARD

By: _____
Deputy Clerk

Date: _____

_____
Approved as to form and legal
Sufficiency

EXHIBIT "A"

AMENDMENT TO TERMINAL SERVICE AGREEMENT

This Amendment to Terminal Service Agreement (the "Amendment") commences on the 1st day of April, 2013 and is by and between PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C. ("Operator"), whose address is 635 Australia 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 and Contractor entered into that certain Terminal Service Agreement dated January 30 2009 which expires on its own accord on March 31st, 2013 (hereinafter referred to as the "Agreement"); and,

WHEREAS, Operator is party to that certain Terminal Operating Agreement dated September 17, 1994, with Metropolitan Miami-Dade County ("County") which provides for, among other things, the operation of a marine terminal on approximately 117 acres of land located at the Port of Miami (hereinafter referred to as the "Lease"); and,

WHEREAS, Operator and Contractor desire to extend the Agreement for the reasonably foreseeable future.

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

1. The following provisions of the Agreement shall be modified/amended/added:

   a. Paragraph 1 (Dedicated Terminal Area) shall be replaced as follows: Operator agrees to make available up to, at Contractor's option, 18 dedicated acres through May 31, 2013 and, commencing June 1, 2013, up to 25.4 dedicated acres 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 from and/or to be loaded aboard Contractor's vessels (chartered, operated or owned). A sketch of the DTA is attached hereto as Exhibit "A". Contractor shall be responsible for the costs of the relocation of Chute Rd and movement of the fences necessitated by the increase in size of the DTA.

   b. Paragraph 2 (Term), shall be replaced as follows: The term of the Amendment shall be through the expiration of the current Lease or until the DTA (25.4 acres or portions thereof as Contractor may agree with County) becomes part of the premises leased by County to Contractor, whichever is sooner.

   c. Paragraph 3 (Rate and Throughput), shall be amended as follows: The rate per "full container" shall be $10.50. In the event Operator enters into an amended, restated or new Lease covering the DTA, or any part thereof, resulting in a land rent rate increase whereby Operator, during the term of this Agreement, or extension thereof, pays $1.01 per square foot or more, the "full container" rate paid by Contractor shall increase to $12.10 (at a land rent rate of $1.01) plus an additional twelve cents ($0.12) for each additional cent ($0.01) in land rent paid, over $1.01 per square foot, by Operator.

d. New Paragraph 19 shall be added: It is anticipated that on or before October 1, 2014, Contractor will directly lease from County, as part of its terminal lease with County, approximately 16.3 of the 25.4 acres, after said date, the balance of land (25.4-16.3 = 9.1) approximately 9.1 acres, shall be under the control of County or under lease. In the event the Lease of Operator is renewed or extended, or Operator enters into a new lease with County, wherein the 9.1 (approximate) acres, or any portion thererof, are subject to said Lease or new lease, Operator irrevocably agrees, it shall amend and extend this Agreement or enter into a new terminal service agreement (both collectively referred to as the "TSA") with Contractor, if necessary, on the same terms and conditions as this Agreement, as amended, providing for Contractor's use of said 9.1 (approximate) acres, or such portion thereof it leases from County, and said TSA shall continue in duration until such time Contractor relinquishes all or a portion of said land back to Operator, or until Shed E and Shed G are demolished and the underlying and surrounding land is paved by County, whichever is sooner. If neither of the two events outlined above has occurred by January 1, 2016, the parties mutually agree to discuss, in good faith, an extension, on mutually satisfactory terms, of the TSA.

II. **Approval:** The parties acknowledge this Amendment is subject to approval by the Seaport Department and/or by applicable public body. Unless the Agreement, as amended, is terminated, by a party or as otherwise provided in the Agreement, the parties shall not be relieved of their obligations under the Agreement, as amended hereby, while such approval is pending.

III. **Force and Effect:** All terms and conditions of the Agreement not modified by this Amendment shall remain in full force and effect.

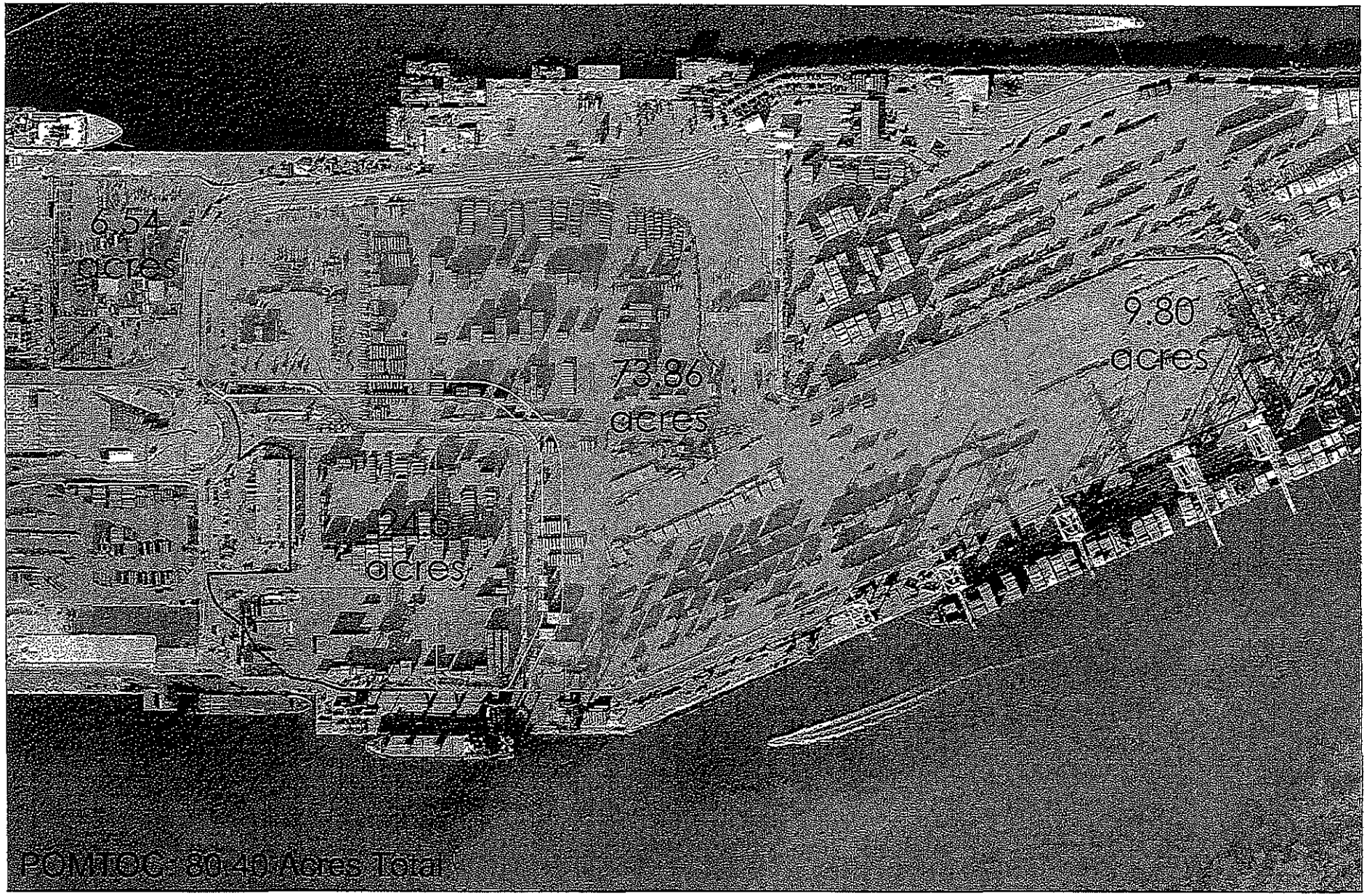
IV. **Counterparts:** This Amendment may be executed by facsimile and in counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

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

Operator:	Contractor:
PORT OF MIAMI TERMINAL OPERATING COMPANY, LLC	SEABOARD MARINE LTD.
Carlos Arocha, Chief Operating Officer	Bruce A. Brecheisen, Executive Vice President
Date: 4/1/13	Date: 7/1/13

Exhibit A
To TSA

EXHIBIT "B"



* Above numbers are approximations
* Exact acreage subject to future legal survey of areas

PORTMIAMI	Project: Exhibit B	Date: 12/03/13	
		Drawn by:	
1015 North America Way Miami, Florida 33132	Drawing:	Scale: N.T.S.	
		Page:	

Exhibit 2

AMENDED AND RESTATED TERMINAL OPERATING AGREEMENT

BETWEEN

MIAMI DADE COUNTY

AND

POMTOC

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AMENDED AND RESTATED TERMINAL OPERATING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C.

THIS AMENDED AND RESTATED TERMINAL OPERATING AGREEMENT ("Restated Agreement") is hereby made and entered into as of the __ day of _____, 2013, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida ("County"), and PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C., a Florida limited liability company registered and authorized to do business in the State of Florida (hereafter, "TERMINAL OPERATOR" OR ""OPERATOR"), by and through their authorized representatives in accordance with the terms, conditions and covenants contained herein below. The County and OPERATOR are jointly referred to as "the Parties."

WITNESSETH:

WHEREAS, the County and OPERATOR, are parties to a Terminal Agreement entered into in 1994 ("1994 Agreement"), under which OPERATOR has operated a cargo terminal at the Dante B. Fascell Port of Miami ("PORT"); and

WHEREAS, Amendment No. 1 to the Original Agreement was approved by the Board of County Commissioners on or about July 17, 2008 ("Amendment No. 1" and collectively referred to with the 1994 Agreement as the "Original Agreement") through Resolution 847-08; and

WHEREAS, the County and OPERATOR have a dispute as to when the Original Agreement expires, but, for the purposes of this Restated Agreement, if approved, have mutually agreed that the Original Agreement expires on September 30, 2014 at 11:59 p.m, with each Party reserving its rights to dispute this expiration date in the event this Restated Agreement is not approved by the Board of County Commissioners or otherwise fails to become effective for whatever reason; and

WHEREAS, OPERATOR currently has nineteen (19) years of experience operating a large third-party cargo terminal; and

WHEREAS, the Port has a limited amount of land available for cargo terminal operations and, the County through the Port wishes to promote competition through providing similar economic terms to its third-party terminal operators; and

WHEREAS, the County through the Port wishes to distribute its limited available land in an advantageous manner to best accommodate the goals of the Port of Miami's 2035 Master Plan and to efficiently and productively accommodate future cargo and cruise growth; and

WHEREAS, it is the County's and OPERATOR's desire to use their best efforts in promoting productive and efficient cargo terminal operations by optimizing inbound and outbound gate processing activities at their respective gate facilities. Accordingly, the OPERATOR, during the term of this agreement, will within its sole discretion endeavor to implement a Rubber Tired Gantry System ("RTG System") to accommodate anticipated cargo throughput growth, and if OPERATOR's agrees to undertake this commitment it further agrees to design, procure, construct, install, operate and maintain a RTG System at OPERATOR's sole cost and expense; and

WHEREAS, an Amendment No. 2 to the Original Agreement is being submitted to the Board of County Commissioners contemporaneously with this Restated Agreement; and

WHEREAS, the County and OPERATOR now desire to enter into a Terminal Operating Agreement under the terms and conditions set forth herein below;

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

E) The terms "hereunder," "herein," "hereof," "hereto" and such similar terms shall refer to this Restated Agreement in its entirety and not to individual sections or articles unless otherwise specifically stated in such section or article.

F) The Parties hereto acknowledge that neither Party was solely responsible for drafting this Restated Agreement and that both Parties have had the assistance of counsel in its drafting and, therefore, agree that this Agreement shall not be more strictly construed against either the County or OPERATOR.

Section 2. Definitions as used herein:

"Actual TEU Throughput" or "Actual Throughput" means the total number of TEUs loaded or unloaded from a waterborne Vessel to or from the Terminal Area each Fiscal Year (excluding Transshipped TEUs) as reflected in Port records. Actual TEU Throughput shall include Non-Containerized cargo which shall be calculated for purposes of Actual TEU Throughput as defined and specified herein

"Restated Agreement" means this Amended and Restated Terminal Operating Agreement between the County and OPERATOR, 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 under, 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.

"Base TEU Rate" shall have the definition set forth in Section 6.A and Exhibit A hereof and means the rate to be paid by OPERATOR to the County for the Minimum Guaranteed TEU Throughput each Fiscal Year as identified in Exhibit "A".

"Cargo" means any kind of commodities ladened or unladened, containerized or not 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 Rate" means the discount rates that are paid by the OPERATOR starting with the first TEU in each Fiscal Year (excluding Transshipped TEUs) that exceeds the number of Minimum Guaranteed TEU Throughput per Fiscal Year as identified in Exhibit "A" hereto.

"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. In this Agreement, Dockage is included in the TEU Rate as to those TEUs for which the TEU Rate is paid by OPERATOR to County as required herein.

"Effective Date" means 12:00 a.m. October 1, 2014, provided that this Restated Agreement has previously been fully executed by OPERATOR and an authorized representative of Miami-Dade County following the approval and authorization to execute this Restated Agreement by resolution of the Board of County Commissioners and expiration of any applicable Mayoral veto period.

"Expiration Date" means the date this Agreement shall expire, subject to any applicable and consummated Renewal Terms as set forth in Section 3 and subject to other terms and conditions of this Agreement.

"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.

"Gross Terminal Acres" means the total number of acres included in the Terminal Area, whether improved or unimproved, and including partial acres.

"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 Term is exercised as set forth in Section 3.

"Land Rental Rate" means the per square foot rental rate applicable to open ground leases at the Port as set by the County pursuant to Applicable Laws.

"Lay Berth" means any Vessel using a berth solely for maintenance or lay up and not for loading or discharging cargo and shall be subject to the dockage charges set forth in item no. 312 of the Tariff or any successor item in the Tariff.

"Minimum Guaranteed TEU Throughput" means the minimum number of TEUs (excluding Transshipped TEUs) OPERATOR agrees to guarantee County each Fiscal Year per acre (as set forth in

column two (2) of Exhibit A) multiplied by the number of Gross Terminal Acres, payable at the full Base TEU Rate, as set forth in column three (3) of Exhibit "A" hereto, as applicable.

"Minimum Guaranteed Annual TEU Throughput Revenue" means the product calculated by taking the minimum number of TEUs OPERATOR agrees to guarantee in a given Fiscal Year per acre (as set forth in column two (2) of Exhibit A (as applicable) multiplied by the number of Gross Terminal Acres or fraction thereof in the Terminal Area multiplied by the applicable full Base TEU Rate for that year as set forth in column three (3) of Exhibits A (as applicable). By example, the parties agree that the Minimum Guaranteed Annual TEU Throughput Revenue due the County from OPERATOR for the period from the Effective Date for the first Fiscal Year of this Restated Agreement is $7,759,327.80 (3,159 minimum TEUs per acre excluding Transshipped TEUs) x a total of 68.54 Gross Terminal Acres (size of Terminal Area on Effective Date) and sometime thereafter subject to survey 76.44 x $34.44 per TEU (minimum throughput TEU rate for applicable period =$7,456,875.00 and $8,316,363.10 respectively).

"Non-Containerized Cargo" shall mean all cargo of any type not contained or carried in a cargo container and shall include, without limitation, vehicles, vessels, boats, yachts, heavy equipment, bulk cargo, break bulk cargo and any other non-containerized cargo.

"Original Agreement" means the Terminal Agreement between Miami-Dade County and OPERATOR entered into in 1994 as amended by Amendment No. 1 and Amendment No. 2.

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

"POMTOC" means Port of Miami Terminal Operating Company, L.C., a Florida limited liability company.

"Preferential Berthing Rights" means a preferential right to use specified bays over any other similarly situated vessel, but expressly does not mean an exclusive right, as more particularly set forth in Section 4.I of this Agreement.

"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.

"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.

"Shortfall Fees" means the difference between Actual Throughput (excluding Transshipped TEUs) and the Minimum Guaranteed TEU Throughput multiplied by the Base TEU rate for any applicable Fiscal Year as set forth in Section A and shall be calculated each Fiscal Year of the Initial Term and any applicable Renewal Term.

"Superseding Terminal Agreement" shall mean this Restated Agreement, which, upon approval and execution, shall, on October 1, 2014 at 12:00 a.m., supersede and replace the Original Agreement.

"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 existing land designated in Exhibit "B" attached hereto and incorporated by reference herein, and includes existing buildings, structures, and fixtures thereon. The area consists of no less than approximately 76.44 acres of mostly-paved cargo terminal space, not including 7.9 acres of which shall be sub-Leased to Seaboard Marine Ltd. with the OPERATOR entitled to receive all revenue derived therefrom and a credit for the corresponding throughput guarantees. The Terminal Area may be subject to adjustment pursuant to Section 5.H, 5.K and 5.L hereof or upon mutual agreement by the parties and as otherwise provided in this Agreement and Amendment No. 2.

"TEU" means one twenty (20) foot equivalent unit Container, whether full or empty. Any container of thirty (30) to forty-five (45) feet in length shall count as two TEUs. All containers longer than forty-five (45) and up to forty-eight (48) feet in length shall count as two and one-half (2.5) TEUs. All containers over forty-eight (48) feet and up to sixty (60) feet in length shall count as three (3) TEUS. Containers of any other length shall be divided by twenty (20) feet to determine a TEU value. For TEU Throughput calculation purposes only, each vehicle, car, tractor trailer. boat, or other mobile equipment shall count as two thirds (2/3) of a TEU, unless such vehicle, car, tractor trailer, boat or other mobile equipment is contained in a Container or Car Rack, in which case its TEU value shall be calculated at specified in this definition.

"TEU Rate" means the rate that the County shall charge OPERATOR for each TEU (loaded or unloaded) transferred either to or from Vessels calling the Port, in lieu of the Dockage and Wharfage rates otherwise applicable in the Tariff, pursuant to Section 6.A and, if applicable, 6.B hereof, but such TEU Rate expressly does not apply to shifted or re-stowed Containers (meaning Containers temporarily

removed from a vessel solely to access other Containers and then stowed back on the vessel) or Transshipment Containers. For clarification purposes, a forty (40) foot container discharged from a Vessel to the Terminal Area and then discharged off the Port via truck, barge or rail would be billed to OPERATOR at the applicable TEU Rate multiplied by two (as a forty foot container counts as two TEUs). A forty-six (46) foot container loaded onto a Vessel from the Terminal Area would be billed to OPERATOR at the applicable TEU RATE multiplied by 2.5 (as a 46 foot container counts as 2.5 TEUs).

"Unimproved Land" means terminal acreage which is paved but is without structures or RTG Pads.

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

"Vehicle Rate" means the rate applied to vehicles not counted as TEUs loaded to or discharged from Vessels, which shall be inclusive of wharfage and dockage, as well as gate fees, reefer fees, storage fees and faulty equipment fees. The Vehicle Rate shall not include security fees, which if assumed shall be charged separately.

"Vessel" means any waterborne vessel or barge that uses the Port, including, without limitation, container vessels, RoRo vessels, bulk carriers and any other type of vessels.

"Wharfage" means the charges that the County assesses pursuant to the Tariff or otherwise 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. In this Agreement, Wharfage is included in the TEU Rate as to those TEUs for which the TEU Rate is paid by OPERATOR to County as required herein.

Section 3. Effective Date and Term

A. Initial Term. The Initial Term of this Agreement shall be fifteen years, provided that such Initial Term shall commence on the Effective Date and shall expire on September 30, 2029 (the "Expiration Date") unless a Renewal Term is fully and properly exercised and subject to the cancellation, termination and other terms and conditions contains set forth herein. The potential Renewal Terms shall consist of two (2) renewal options of five (5) years, exercisable by OPERATOR in accordance with the Renewal Term terms, conditions and procedures set forth Section 3.B below.

B. Renewal Term Procedures. OPERATOR shall notify the County in writing of its intent to exercise the renewal option no less than fifteen (15) months prior to the expiration of the Initial Term. Upon receipt of Operator's timely written notice of its intent to exercise the renewal term, each party shall within twenty calendar days select an independent Florida licensed land appraiser to undertake a certified appraisal of the then-fair market rental value of the Terminal Area (as improved) on a square footage basis. Notwithstanding and prevailing over any contrary term or implication contained herein, in no event may any of the appraisals contemplated in this Section result in a land rent square footage rate below the then-current annual land rental rate plus 3% thereof (the "Deemed Minimum Appraised Land Rental Rate"). If any appraisal results in a then-current land rental rate below the Deemed Minimum Appraised Land Rental Rate, then notwithstanding such result, the parties hereto mutually agree to nonetheless treat such appraisal result as being the Deemed Minimum Appraised Land Rental Rate. Upon completion of said appraisals, each party shall transmit a certified original appraisal to the other party no later than ten days from receipt of same, it being understood that any appraisal yielding a rental rate below the Deemed Minimum Appraised Land Rental Rate shall be treated for all purposes hereunder as having yielded the Deemed Minimum Appraised Land Rental Rate. The resulting two land rental rates shall then be averaged to produce the new land rental (square footage) rate to apply in year one of the exercised applicable renewal term, subject to subsequent annual increases pursuant to Section 5.A hereof, provided however, that should the resulting (averaged) new land rental (square footage) rate be more than 15% higher than the then-current rate, then OPERATOR shall have ten calendar days in which to rescind, via written notice to the Port Director, OPERATOR's prior notice of intent to exercise renewal option, in which case such option shall become null, void and of no further effect and OPERATOR shall have no obligation to consummate said renewal option. If no such written rescission is timely made, OPERATOR's limited right to rescind shall expire and such renewal option shall be deemed fully exercised. If following OPERATOR's timely provision of rescission in accordance with the requirements set forth above, the County completes negotiation of a new terminal agreement for the Terminal Area with a new operator prior to the earlier of (i) the expiration or (ii) early termination of the Initial Term, plus ninety (90) days, and as part of a non-competitive selection process, and if such proposed new agreement contains substantive terms such that the total amount of annual revenues guaranteed to the

County in years one through five of the proposed new agreement are more than ten percent (10%) less (in aggregate) than the total amount of guaranteed land rent and annual throughput revenues that would have been committed to County by OPERATOR in years one through five (in aggregate) of the applicable renewal term under the prior OPERATOR-rescinded renewal term extension, then, and only in such limited conditions, the OPERATOR shall have ten calendar days (from receipt of notice from the County of the proposed new agreement with a new operator) in which to match and accept the guaranteed annual land rent, annual throughput revenue terms of same, and all other guaranteed revenue provisions and other terms of such new terminal agreement in a writing (without exception, condition or qualification) delivered to the Port Director via certified mail, return receipt requested, along with contemporaneous delivery to the Port Director of a written approval and acceptance of same by OPERATOR's Guarantor (also without exception, condition or qualification), and in such event such guaranteed annual land rent, annual throughput terms, and all other guaranteed revenue provisions and other terms (from the proposed finalized agreement with the new operator) will then apply to OPERATOR in the revived Renewal Option (as modified with the substituted guaranteed annual land rent, throughput and other guaranteed revenue terms and provisions), provided in no event shall the above-described process result in any extension of the duration of the Initial Term or any renewal option period described in this Section 3.A above (hereafter, "OPERATOR Limited and Conditioned Right of First Refusal"). If OPERATOR does not timely provide County with all unqualified written approvals (including that required from Guarantor) strictly as required above, Operator's Limited and Conditioned Right of First Refusal shall expire, become null and void and be of no further force or effect. Notwithstanding the above Limited and Conditioned Right of First Refusal, whether same is exercised or not, such limited right shall not give rise to any claim by OPERATOR or any permitted-assignee of OPERATOR against the County or Port for monetary or consequential damages of any kind or nature (excluding potential equitable remedies if allowed under Applicable Laws).

In the event the resulting new land rental rate is not more than 15% higher than the then-current rate, OPERATOR shall not have a right to rescind its prior notice to exercise the applicable renewal option and such renewal option shall be deemed fully exercised, and in such event OPERATOR shall not have any right of first refusal.

In the event OPERATOR does provide timely written notice of rescission, as set forth above, the Agreement shall remain in effect for the duration of the remaining portion of the Initial Term or, if applicable, the previously exercised and consummated renewal term, and Operator shall remain responsible to County for all payment and other obligations hereunder through the end of the Initial Term or the previously in effect Renewal Term (if applicable), and Operator shall further remain liable to the County for any and all Agreement obligations, defaults, or liabilities that survive the termination or expiration of the Agreement or that exist at common law or independent of the Agreement. In no event will any delays in the renewal term land base rent issue being resolved extend the duration of the Initial Term or Renewal Term.

Section 4. County commitment to OPERATOR.

Subject to the terms and conditions of this Restated Agreement, the County agrees to allow exclusive use of the Terminal Area in conjunction with OPERATOR's marine transportation business, including the berthing of Vessels for loading, discharging, storage and efficient transfer of cargo from Vessels to either other Vessels or land-based (principally truck or rail) transport modes, logistics activities including the receipt and delivery of loose cargo to be packed or unpacked from/into containers, warehousing and related storage activities (including chassis storage), handling, packing, labeling, cargo consolidation, container repair and acquisition, installation and maintenance of additional equipment, and provision to its customers of any services ancillary to the above defined OPERATOR's marine transportation business not otherwise prohibited herein or in violation or inconsistent with Applicable Law; subject to Applicable Laws and security requirements and restrictions, OPERATOR has the right to permit access to the Terminal Area by vendors and service providers for itself and its customers and affiliates, but may not assign, sub-lease or subcontract its rights hereunder to operate a cargo terminal, except to the extent otherwise expressly authorized in Section 32 of this Restated Agreement. Any agreements in furtherance of OPERATOR's business interests which it enters into with its Owner Members shall not be considered an assignment in violation of this provision. All other uses of the Terminal Area by OPERATOR, including, but not limited to, construction of any improvements thereon, shall require the prior written approval of the Port Director, in addition to meeting all other applicable requirements, including, but not limited to, submission of a Facilities Modification Form, provided as Exhibit C, or similar

document as required by the Port for all improvements to real property at the Port and as well as compliance at all times with all Applicable Laws. The Port Director's approval may not be unreasonably withheld or delayed providing the changes or improvements sought to the area as identified in this agreement, made reasonably known to the County in writing or reasonably relate to improving the efficiency of the area for the purpose of managing and handling cargo and further provided such sought improvements will be in compliance with all Applicable Laws.

A. The County agrees to allow OPERATOR the exclusive use of the Terminal Area for the duration of this Restated Agreement, pursuant and subject to the terms and conditions contained herein and Applicable Laws. Further, OPERATOR acknowledges and agrees that from time to time County may award, create, modify, or relocate easements, in its discretion, on, through, or under all or portions of the Terminal Area for purposes of permitting the installation, modification, maintenance, repair, or relocation of utilities, roadways, or security equipment or facilities, provided the same may not block OPERATOR's ingress or egress to or from the Terminal Area or have a permanent and/or material adverse effect on terminal operations and is done with reasonable advance notice and consultation with OPERATOR. With respect to OPERATORS underground optic cables on land which is no longer part of its Terminal area the OPERATORS retains the right upon reasonable notice to access this equipment for purposes of repair or improvement as maybe required.

The County acknowledges that OPERATOR desires to conduct its terminal operations from a contiguous track 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, and such land is free from contractual or other obligations, including but not limited to previously granted rights of first refusal for the land, and not needed for general Port uses, the County shall extend to OPERATOR a right of first refusal to negotiate and enter into an Agreement for the use of such land on terms to be agreed.

Prior to the County granting, modifying or relocating an easement(s) on, within, through, under, over all or part of the Terminal Area, the County shall provide OPERATOR at least ninety (90) calendar days prior written notice of its intent to do so, unless the County is required legally to grant the easement, or the relocation or modification of an easement, in a shorter period of time and/or the easement is necessary for Port operations. Thereafter, OPERATOR shall have thirty (30) days to provide the County

with written notice of its objection to said location of said easements or facilities and the factual bases thereof, including OPERATOR recommendations for alternative locations within the Terminal Area. The failure of OPERATOR to provide such timely written notice and objections within thirty (30) days shall be deemed a waiver by OPERATOR of any objections thereto. If timely notice and objections are timely provided by OPERATOR as required, the County shall itself consider such comments and alternative recommendations or, as applicable, provide the same to the utility or entity requiring said easement or facility for its/their consideration. Thereafter, the County may submit to OPERATOR notice of an alternative proposed easement, utility or facility, or modification or relocation of an existing easement, utility or facility, or may resubmit the original submission. Such notice shall indicate to OPERATOR if it must temporarily or permanently vacate any portion of the Terminal Area to accommodate the easement, utility or facility set forth in the notice and, if so, OPERATOR shall timely comply with such directive and the costs of such compliance, to the extent incurred in, arising from, or relating to the moving and/or relocating of TEU cargo or Non-Containerized Cargo or otherwise making land available for the requested and noticed easement, utility or facility shall result in a credit against monthly payments due the County by OPERATOR, and provided further that should the County's granting, modifying, or relocating of an easement, utility or facility on, in, through, under, or over part of the Terminal Area be solely and directly responsible for rendering a portion of the Terminal Area unusable by OPERATOR for any cargo terminal or related or ancillary purpose, OPERATOR shall thereafter be entitled to a temporary pro rata abatement of Land Rent and reduction of the Minimum Annual Guaranteed TEU Throughput Revenue based pro rata on the amount of the Terminal Area which is unusable for any purpose thereby it being understood that such pro rata Land Rent abatement and pro rata Minimum Annual Guaranteed TEU Throughput Revenue reduction shall cease as soon as the Terminal Area is rendered commercially usable and returned to OPERATORS full use. Further, notwithstanding the foregoing, no pro rata Land Rent abatement or reduction of the Minimum Annual Guaranteed TEU Throughput Revenue may occur unless OPERATOR first provides written notice to County identifying the precise portions of the Terminal Area that OPERATOR contends have been rendered commercially unusable, within ten (10) calendar days of the commencement of the event(s) giving rise to same, and a period of five (5) calendar days expires without the County having mitigated the situation.

B) The County agrees to provide OPERATOR, at all times, with the right of ingress and egress leading to and from the Terminal Area, subject to any and all security requirements imposed by Applicable Laws or otherwise and subject to the County's other rights set forth herein. In the event the Port is not able to process vehicles owing to a backup caused by any other cargo terminal OPERATOR, the Port will use timely and reasonable efforts to marshal traffic to allow for the processing of OPERATOR vehicles at such suitable alternative gate (if available). In the event that the County fails to provide any ingress or egress for reasons unrelated to security, severe weather, labor disputes, strikes, or strife, or public safety, and such commercially unreasonable absence does materially affect ingress or egress which continues unabated for more than 24 continuous hours (excluding holidays and periods when the terminal is closed) OPERATOR shall have the right to the abatement of Land Rent and the reduction of the Minimum Guaranteed TEU Throughput and associated minimum Base TEU Rate charges pro rata to the period that ingress and/or egress is restricted beyond 24 continuous hours (excluding holidays and periods when the terminal is closed) for reasons other than those listed above.

C) 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 on the Terminal Area. Likewise, OPERATOR 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, partners, affiliates, contractors, subcontractors, vendors, invitees, or guests take any actions that result in any such liens, hypothecations, mortgages, collateral assignments, or encumbrances of any kind being placed on any land owned by the County, and, should any liens, mortgages, hypothecations, or encumbrances be place on any County land due to the acts or omissions of OPERATOR or any of its employees, agents, partners, affiliates, contractors, subcontractors, vendors, invitees, or guests, OPERATOR shall promptly take all steps required to remove, defend against and otherwise satisfy such liens, mortgages and encumbrances at its cost and expense.

D) Preferential Berthing. The County will provide 2,000 linear feet starting from Bay 117 to Bay 148 to be assigned at the Ports reasonable discretion for Preferential Berthing provided OPERATOR is meeting its TEU Throughput Guarantees and operating (and paying for) sixty (60) or more gross terminal acres. If OPERATOR fails to meet the TEU Throughput Guarantees, the Port Director can upon sixty (60)

Area, based on the legal description and map to be set forth in Exhibit "B", paid annually in monthly installments in advance, due on the first of each month. The initial $1.54 per square foot scheduled land rent rate shall be adjusted by the County to an automatic three percent (3%) annual increase, with such increase becoming effective on October 1 of each subsequent Fiscal Year during the Initial Term and any applicable Renewal Term, provided, however, that during the Initial Term of this Agreement, the scheduled land rent rate shall not vary by more than twenty-five cents ($0.25) per square foot in any one year than would have been charged had the annual increases been calculated, in lieu of the three percent (3%) escalator, based on the Southeast Regional CPI escalator. For example, if on the third anniversary of the Effective Date of the Initial Term, the scheduled land rent rate would be $1.68, based on the annual three percent (3%) escalator, but the land rent rate would have risen to $1.98 using the Southeast Regional CPI escalator - a difference of thirty cents ($0.30) - then because the latter number is more than 25 cents ($0.25) above the former number, pursuant to the terms of the preceding sentence, the annual land rent rate to apply at the commencement of year four would be $1.73 per gross square foot of the Terminal Area ($1.98 - $0.25 = $1.73). If for any reason the County does not increase the scheduled land rent rate in any given Fiscal Year(s), the County shall thereafter add the amount of such allowed (but not imposed) annual increase in later years but waiving its rights to any such prior increases not imposed. By example, if the County fails to impose a land rent rate increase in Fiscal Years two or three, in Fiscal Year four the County may and shall impose a land rent rate increase of nine percent (9%) (compounded) to account for the two prior years in which no annual land rent rate increase was imposed.

5.C) Minimum Guaranteed TEU Throughput Payment Terms During each Fiscal Year of the Initial Term and any Renewal Term, and irrespective of the annual Actual Throughput achieved by OPERATOR, OPERATOR shall pay the County the Minimum Guaranteed Annual TEU Throughput Revenue amount as set forth in Exhibit "A", payable on a monthly basis (1/12 per month) in advance, due on the first of each month and subject to, at the County's election, annual, semi-annual or quarterly reconciliations and adjustments to the extent the monthly TEU and other fees due the Port from OPERATOR hereunder exceed the 1/12 monthly Minimum Guaranteed Annual TEU Throughput Revenue payment required in advance pursuant to this section. The Minimum Guaranteed Annual TEU

Throughput Revenue payment requirement will commence upon the first full month after the Effective Date of this Agreement and will be adjusted pro rata to reflect any partial year

5.D) Minimum Guaranteed TEU Throughput As set forth in Exhibit A, commencing October 1, 2014, through the conclusion of the Initial Term and any Renewal Term, there shall be a shortfall calculator in which a single-tiered based TEU rate and Minimum Guaranteed TEU Throughput schedule shall apply. If a shortfall exists the OPERATOR shall pay the County annual shortfall fees identical to the base TEU rate and Minimum Guaranteed TEU Throughput schedule set forth in the Exhibit A.

5.E) Within ninety (90) days of the end of each third full Fiscal Year and through the remaining Initial Term and any applicable Renewal Term, the County shall evaluate OPERATOR's actual TEU Throughput for those three (3) Fiscal Years. If OPERATOR's applicable "actual" three-year generated TEU Throughput (in aggregate) exceeds the summation of the Minimum Guaranteed TEU Throughput requirement for the three-year period (in aggregate) plus any applicable TEU Throughput shortfalls incurred during the three-year period (in aggregate), then OPERATOR shall be eligible to receive credit(s) for prior shortfall fees, if any, paid during the applicable three-year period. The credit(s) shall be provided over the remainder of the pending County Fiscal Year against invoiced charges.

5.F) Within ninety (90) days of the end of each third full Fiscal Year and through the remaining Initial Term and any applicable Renewal Term, the County reserves the right for the Port Director using, reasonable discretion, to reduce the size of the unimproved land Terminal Area but only if it notifies, in writing, the OPERATOR with sixty (60) days of said Fiscal Year end and also if OPERATOR's aggregate actual TEU Throughput for the prior three-year period falls short of its aggregate Minimum Guaranteed TEU Throughput. The reduction in the size of the unimproved land Terminal Area shall correspond on a percentage basis to the percentage that OPERATOR's aggregate actual TEU Throughput falls short of its aggregate Minimum Guaranteed TEU Throughput for reasons other then force majeure or an action of the County that is reasonably judged by the Port Director to have reduced by ten percent (10%) or more OPERATOR's ability to meet is Minimum Annual TEU Guarantee. The reduction in the size of the unimproved land Terminal Area shall correspond on a percentage basis to the percentage that OPERATOR'S Aggregate Actual TEU Throughput falls short of its Aggregate Minimum Guarantee, for the review period. The particular part of the unimproved land terminal area that the County uses to reduce

the size of the terminal area shall be determined by the Port Director in his reasonable discretion after consultation with OPERATOR, it being understood that the Port Director shall attempt to exercise his reasonable discretion to provide for the overall efficiency of the Port and OPERATOR terminal taking into account that the unimproved land to be removed from the terminal area must have access to existing Port roads and utilities and provided further that the removal of such land may not deprive the remaining terminal area from access to existing Port roadways nor deprive it of access to Port utilities. Following the above-referenced reduction of the terminal area, OPERATOR shall vacate that portion of the terminal area designated by the Port Director, shall leave such vacated section in a clean and tidy condition free of any refuse or debris, and shall be responsible for any damages to and/or the costs of any needed repairs, cleaning, or maintenance to the vacated area, normal wear and tear excepted. Following OPERATOR vacating such designated area in compliance with the conditions and requirements set forth above, OPERATOR's land rent shall be re-calculated based on the new adjusted dimensions of the terminal area ("Revised Terminal Area") as determined by survey undertaken by the Port engineering division. Notwithstanding such land reduction, with respect to any payment, repair, indemnity, hold harmless and/or duty to defend obligation of OPERATOR or Guarantor contained in or arising from this Agreement and relating to OPERATOR's prior occupation or use of such area, or the use of same by OPERATOR's employees, agents, contractors, invitees, and/or guests, such obligations shall survive for the later of the expiration of the applicable statute of limitations period..

5.G) All Tariff rates shall govern OPERATOR activities at the Port other than those Tariff rates expressly identified in this agreement as being superseded by particular rates set forth herein.

5.H) Legal Responsibility of OPERATOR. OPERATOR is and shall be legally responsible to the County for the management, supervision, maintenance, security, and other activities, acts, omissions, misconduct, breaches of contractual obligations hereunder, and violations of Applicable Laws of or performed by OPERATOR's employees, agents, contractors, designees and their respective employees, agents, contractors, subcontractors (of any tier), invitees and guests occurring in, on, or relating to the Terminal Area or other County property. This should not be implied to include any liability and defense costs related to the negligence of the County or its employees, agents, and/or contractors. This Section

5(H) shall survive the expiration of the Initial Term and any applicable Renewal Term and shall survive any termination of this Agreement by any party hereto.

(5.I) Annual Escalator. During the initial Lease term, and, if applicable, any exercised Renewal Period, Land Rental Rates will be increased on October 1 of each year in accordance with Exhibit A. Commencing on October 1, 2014 and continuing through the expiration of the Initial Term and, if applicable, any exercised Renewal Period, TEU rates and Minimum Guaranteed TEU Throughput requirements will be adjusted annually each October 1 according to Exhibit A.

(5.J) Completion of Prior Obligations. To the extent not already completed by OPERATOR, OPERATOR shall complete its obligations under Amendment No. 2 to the Terminal Services Agreement amending the 1994 Agreement.

(5.K) Upon return of the 7.9 acres subleased to Seaboard Marine pursuant to the terms of Amendment No. 2, OPERATOR will vacate a similar sized parcel of unimproved land. The County and the OPERATOR agree to work in good faith with one another to reach agreement on the size and configuration of a final footprint which is reasonably acceptable to both parties.

(5.L) At such time as the County requires additional land for purposes of cruise construction related projects the County will work in conjunction with any affected terminal operators to create cargo Terminal areas which are reasonably in parity with one another.

Section 6. Scheduled Rates Applicable to OPERATOR

The County and OPERATOR agree that the following rates and charges shall apply to OPERATOR during the Initial Term or any applicable Renewal Term, except as otherwise provided herein:

A) Base TEU Rate: Commencing with the Effective Date hereof the annual Base TEU Rate payable by OPERATOR to County shall be $34.44 per each TEU entering or leaving the Terminal Area or otherwise receiving terminal services from OPERATOR or its designated terminal OPERATOR, agents, employees or contractors as set forth in Exhibit "A", billable to and payable by OPERATOR, it being understood that a TEU entering or leaving the Terminal Area to or from a Vessel calling the Port shall be subject to only one TEU charge per Vessel call (or crossing of the wharf). Thereafter, the annual Base TEU Rate payable by OPERATOR to County for each TEU entering or leaving the Terminal Area shall be

as set forth in Exhibit "A", "Minimum Throughput Base Rate" subject to potential volume incentive discounts thereto as set forth in Exhibit "A". Non-Containerized Cargo shall be subject to the applicable dockage and/or wharfage rates and terms set forth in the Tariff except that all such Tariff charges shall here by billed to and payable by the OPERATOR.

B) Discount TEU Rate: OPERATOR shall be eligible to receive Discount TEU Rates as set forth in Exhibit "A" to the extent certain annual TEU volume throughput incentive levels are achieved by OPERATOR, excluding Transshipped TEUs. Commencing with Effective Date and continuing through the end of the Initial Term and the Renewal Period (if properly exercised), OPERATOR shall receive discounts of ten percent (10%), twenty percent (20%), thirty percent (30%), and forty percent (40%) respectively, for each increment of one-thousand (1,000) TEUs per terminal acre generated beyond each year's applicable Minimum Guaranteed TEU Throughput (per acre) as set forth in column two of Exhibit "A".

C) Crane Charges:

1. *Crane Charges.* Rates and charges related to County-owned cranes shall be at the prevailing rates and charges as set forth in the Tariff as amended from time to time. However, the Crane Charge for the OPERATOR shall be the lesser of the Tariff rate then in effect, or the Tariff rate as of the Effective Date and annually increased with each new County Fiscal Year during the Initial Term and applicable Renewal Term by 3% compounded.

D) Lay Berth: Notwithstanding and prevailing over any other provision of this Agreement, 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 allowance of up to twenty four (24) hours after the completion of loading/discharging operations before labor tariff rates are applicable. A forty eight (48) hour, rather then a twenty four (24) hour allowance, will be granted for up to 10% of OPERATORS vessels in a fiscal year.

E) Outlets for Refrigerated Containers: OPERATOR shall keep and maintain any electrical outlets, wiring, conduit, junction and electrical boxes and connections, electrical feeders, and other related equipment in good working condition and repair, and shall replace same as needed, all at its own expense, subject to reasonable wear and tear. OPERATOR shall be responsible for, and shall pay the

County, for actual electric costs as billed plus a fifteen percent (15%) Port administrative and equipment usage fee. The County shall provide OPERATOR copies of electric utility company billings with the County's monthly billings to OPERATOR. OPERATOR shall be responsible for the installation and maintenance of any new infrastructure and equipment related to outlets for refrigerated containers and trailers.

F) Refrigerated/Empty Container Revenue: On October 1, 2014, through the conclusion of the Initial Term and any Renewal Terms, OPERATOR shall be entitled to charge terminal customers directly for refrigerated/and empty container revenue and will retain one-hundred percent (100%) of all revenues.

G) Security Charges: The Port may implement a reasonable security fee for cargo terminal operations, but only if the fee is equally implemented on all other Port cargo terminal OPERATORs whose terminals are at least 25 acres in size and expressly excluding ferry and barge operations at the Ports. The fee will not be applied to the OPERATOR if Port security costs for any one fiscal year do not exceed $22 million and compounded five percent (5%) annually at the start of each fiscal year commencing on October 1, 2013. Notwithstanding the foregoing, OPERATOR shall be solely responsible to provide, at OPERATOR's sole cost, security for and within the Terminal Area, including security for all equipment, personnel, improvements, structures, containers, and cargo located thereon.

H) Utilities. OPERATOR shall be solely responsible to pay for all utility costs and charges in connection with the Terminal Area and any improvements or equipment located thereon, including, without limitation, any and all costs and charges for electricity, water, sewer, telecommunications, fiber optics, electronic or internet services, trash and waste removal and for any other utility costs and charges relating to or in connection with the Terminal Area or any improvements or equipment located thereon, provided, however, that the cost of electricity for refrigerated containers stored in the Terminal Area shall be governed by Section 6.G hereof.

I) Applicability of New Tariff Fees and Charges. Notwithstanding and prevailing over any contrary term or implication contained herein, the County may impose new fees and charges in the Tariff and/or pursuant to Applicable Laws applicable to OPERATOR and/or its customers and invitees, and may increase existing Tariff fees and governmental charges (other than the land rent and TEU rates set forth in Sections 5.A, 6.A and 6.B hereof, which rates can only be increased in accordance with the terms and

limitations set forth herein), provided, however, that such new Tariff or other governmental fees and charges, and increases to existing fees and charges, must be equally, fairly and proportionately imposed on all cargo terminal OPERATORs at the Port with cargo terminals of at least 25 acres in size so as not to unfairly discriminate against OPERATOR, taking into account, and further providing, that the overall terms, discounts, and rate structures set forth in the County's existing and future cargo terminal agreements, either individually or in aggregate, may vary.

Section 7. Use of the Terminal Area

OPERATOR shall not use the Terminal Area for any unlawful purpose, including, without limitation, any unauthorized use, or any use prohibited by Applicable Laws. OPERATOR 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 or other governmental agency.

A) Cargo Lines Select Among Permitted Port Stevedores: Cargo lines calling the Port are free to select their stevedore among the various port-permitted stevedores. No person or entity operating on OPERATOR's behalf may condition entry into or use of the Terminal on the hiring of a stevedore affiliated with or selected by OPERATOR or OPERATOR's agent or designee. Notwithstanding the above, and to the extent not prohibited by or inconsistent with Applicable Laws, OPERATOR may deny admittance to the Terminal Area of a Port permitted stevedore only upon a bonafide determination by OPERATOR that such Port permitted stevedore (i) lacks safe, properly maintained and otherwise suitable cargo handling equipment upon which to transport TEUs or other cargo on or through the Port in a safe and proper manner, (ii) has an unsuitable safety record and/or employs inadequate employee supervision and/or employee safety procedures such that the use of such stevedore within the Terminal Area would create an undue risk of harm to human health and property or (iii) lacks proper or adequate insurance coverage. In addition to any other indemnity, hold harmless, and duty to defend obligations of OPERATOR contained in this Agreement, OPERATOR shall indemnify and hold the County harmless for, and shall defend the County from, any and all asserted claims, damages, liabilities, fines, costs, and legal fees and costs, including the cost of appellate proceedings, relating to, arising from, or in connection with, in whole or in part, OPERATOR's denial of access to or use of the Terminal Area by any Port permitted stevedore, regardless of cause.

Section 8. 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 its employees and direct (first tier) contractors (other than and expressly excluding damage caused by any act or omission of OPERATOR, and their respective contractors, subcontractors (of all tiers), invitees and guests) and subject to reasonable wear and tear, all general day-to-day maintenance and repairs of the Terminal Area shall be OPERATOR's sole responsibility and at OPERATOR's sole cost and expense. OPERATOR shall, at its own cost and expenses, keep the Terminal Area, and the improvements constructed thereon, including, without limitation, all OPERATOR security gates, OPERATOR gate complexes, OPERATOR fencing, and other OPERATOR security related facilities, in a clean, safe and orderly condition, free of rubbish and trash, and in good working order and repair. The County may provide this service if requested by OPERATOR, and accepted by the County in its discretion, at Tariff rates. If the parties cannot agree upon such rates, all maintenance and repair responsibilities shall remain OPERATOR's sole responsibility. Prior to or at the termination of this Agreement, damages done by the installation or removal of personal property of OPERATOR shall be repaired at OPERATOR's sole cost so as to restore the Terminal to its original state immediately prior to the Effective Date, subject to reasonable wear and tear and except as the Terminal may have been altered by OPERATOR with the written approval of the Port (provided such County approved OPERATOR alterations within the Terminal Area must nonetheless be at all times properly maintained and repaired by OPERATOR), and to quit and surrender up the Terminal in the same good order and condition, subject to reasonable wear and tear, as it was at the commencement of this Agreement; provided however, that such return of the Terminal under this Section shall not relieve OPERATOR of its obligations for damages to the Terminal that may be specifically provided elsewhere in this Agreement. In this regard, OPERATOR and the County shall perform a joint inspection of the Terminal at the commencement of this Agreement in order to determine the condition of the Terminal.

B) OPERATOR shall maintain and make repairs at its own expense to keep in safe and good working order and condition all buildings and structures in the Terminal Area, including, without limitation, the foundations, roofs, HVAC and other building systems, exterior walls, all access and common areas, fencing, gate complexes, lighting (except Masthead lighting the repair and maintenance

of which shall remain the responsibility of the County) and security facilities, and underground and other utilities, and OPERATOR shall be responsible for all damages to or within the Terminal Area, including damages to equipment, cargo, buildings, or structures, or personal injuries related thereto to the extent proximately caused or contributed to by OPERATOR or its partners, agents, servants, employees, contractors, subcontractors, invitees or guests. Any damage to County property or facilities caused or contributed to by OPERATOR, employees, contractors, subcontractors, invitees or guests, including but not limited to damage to paved surfaces and damage caused or contributed to by tracked or other off-road vehicles, shall be repaired by the responsible stevedore, sub-contractor or OPERATOR at their sole cost and expense. OPERATOR shall not be responsible for repair of damages to the extent proximately caused solely by the County, its authorized agents, servants, employees, or contractors (other than OPERATOR or its partners, affiliates, designees, or their respective contractors, agents, employees, invitees or guests).

C) The County, its agents and/or representatives may during normal business hours and with reasonable advance notice enter the Terminal Area to view, inspect, and/or show the Terminal Area and facilities, or for any other purpose. Sworn law enforcement officers may enter the Terminal Area at all times without notice, when lawfully allowed to do so.

D) The County shall have the responsibility to remedy any inherent defects in buildings on the Terminal Area (excluding trailers) constructed by it prior to the Effective Date (excluding any buildings or structures covered under separate written leases with the County as of the Effective Date) and excluding any defects or deterioration to the extent caused or contributed to by the acts or omissions of OPERATOR, its agents, employees, partners, contractors, invitees or guests.

E) OPERATOR shall be solely responsible for maintaining, repairing and refurbishing (as needed and at OPERATOR's sole cost and expense) all above-ground improvements and fixtures in the Terminal Area existing on the Effective Date of this Agreement or constructed by or on behalf of OPERATOR, its partners, affiliates, contractors, agents, employees, customers, or invitees during the Initial Term or applicable Renewal Term and for maintaining all paving within the Terminal Area, including, without limitation, existing and if implemented, future paving and concrete pads for rubber tire gantry operations. Notwithstanding such obligations, upon the later of the expiration or termination of this

Agreement, OPERATOR may remove its personal equipment from the Terminal Area, provided such equipment was not purchased nor maintained, in whole or in part, by the County and provided further that the removal of such personal equipment will not damage the Terminal Area or any structures, buildings, or fixtures located thereon.

F) Cleaning:

OPERATOR shall, at its sole cost and expense, perform or cause to be performed, services which will at all times keep all portions and elements of the Terminal Area and consistent with the nature of its business reasonably clean, neat, orderly, sanitary, presentable, and free of trash and debris.

G) Removal of Trash:

OPERATOR shall, at its sole cost and expense, remove on a commercially reasonable basis from the Terminal Area all trash, debris and refuse which might accumulate and arise from its use of the Terminal Area and/or the business operations of OPERATOR under this Agreement. Such trash, debris and refuse shall be stored temporarily and disposed of in a commercially reasonable manner that does not violate any Applicable Laws and is reasonably to be approved by the Port.

H) Failure to Maintain:

If it is determined by the County that OPERATOR has failed to properly clean, remove trash and refuse, maintain, repair, replace and refurbish the Terminal Area as required by this Agreement, the County shall provide OPERATOR with a list of deficiencies in writing, and providing a commercially reasonable amount of time to be reasonably allowed for OPERATOR to correct same. If OPERATOR fails to correct such deficiencies within the time allowed, the County, following thirty (30) days further written notice to OPERATOR, may enter upon the Terminal and perform all work, which, in the reasonable judgment of the County, may be necessary and the County shall charge OPERATOR for the cost of such work. Subsequent to receipt of the further notice of intent to perform repairs or cleanup from the County, and in the absence of any subsequent mutual agreement between the Parties, OPERATOR shall not undertake performance of such repairs or cleanup without specific prior written authorization from the County.

l) Environmental Protection:

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

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

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

2) OPERATOR's Failure to Comply with Environmental Laws: OPERATOR acknowledges that material non-compliance with its obligations under this Section 8(l) which is not remedied further to and within applicable cure periods (if any) constitutes a material breach of this Agreement, and that illegal discharges and violations may result in penalties, issuance of civil violation notices and penalty orders, which non-compliance and violations which may subject the OPERATOR after reasonable written notice and a reasonable opportunity to cure to termination of this Agreement.

3) OPERATOR shall comply with all Applicable Laws, including, without limitation, all those related to environmental protection and/or 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 or other County Property. OPERATOR shall indemnify, defend and hold the County, its officers, employees, agents, successors and assigns (Collectively "County Indemnities") 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 County Indemnities, by any other parties or entities (including, with limitation, a governmental entity), to the limited extent arising out of, in connection with, or relating to any environmental condition of contamination caused, created, or contributed to, in whole or in part, by OPERATOR, its, agents, employees, affiliates, designated terminal OPERATOR(s), or contractors (of any tier), or by any of its or their respective employees, agents, contractors, invitees or guests in existence as of or after the Effective Date, or any violation of any federal, state, or local environmental law with respect to the Terminal Area . This provision should not be construed so as to make OPERATOR legally liable for the acts of the County, its employees, servants, agents and contractors, and also that of third parties over whom OPERATOR does not exercise direct supervision or control. OPERATOR shall be responsible for and liable to the County hereunder, and shall indemnify, hold harmless and defend the County from and for (including mitigation and other costs and fees, damages, fines and legal fees and costs) conditions of environmental contamination and violations of environmental laws, and for violations of other Applicable Laws, occurring on, in, under, or in connection with, the Terminal Area as of and following (after) the Effective Date of this Agreement and also for conditions of environmental contamination and violations of environmental laws (and other Applicable Laws) occurring on, in or under County property other than the Terminal Area to the extent it is caused by or arises out of, or in connection with, or relating to, in whole or in part, the acts, omissions, activities or negligence of OPERATOR, or any of OPERATOR's members, agents, affiliates, employees, contractors, subcontractors (of all tiers), designated terminal OPERATOR(s), invitees or guests.

4) COUNTY 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, the Terminal Area. COUNTY shall indemnify and hold the OPERATOR, its officers,

employees, agents, successors and assigns (Collectively "OPERATOR Indemnities") 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 OPERATOR Indemnities, by any other parties (including, without limitation, a governmental entity), to the extent arising in whole or in part out of, in connection with, or relating to any environmental condition of contamination within the Terminal Area arising after the Effective Date of this Agreement that was caused by the County its agents, contractors, and employees, and expressly excluding any condition of contamination in the Terminal Area or other property to the extent caused or contributed to by OPERATOR, any of OPERATOR's members, employees, agents, contractors, subcontractors (of any tier), affiliates, partners, invitees or guests.

J) Use of Public Port Facilities: The County grants to OPERATOR, in common with all others desiring to use the Port, the non-exclusive 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 OPERATOR under this Agreement and Applicable Laws and shall be subject to the County's rights set forth herein and otherwise, including, among other rights, the County's right to modify, maintain, service, remove and/or relocate existing and future County roads, facilities, improvements and equipment which consistent with the terms of this Agreement shall not materially affect OPERATOR's business activities. Nothing contained herein shall be construed to grant OPERATOR the right to use any real or personal property that is leased or otherwise under contract to a third party.

K) Right To Search: OPERATOR agrees that its vehicles, cargo, goods and other personal property are subject to being searched when attempting to enter or leave the Terminal Area pursuant to Applicable Law. OPERATOR 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 9. Port Bond Obligations.

Notwithstanding and prevailing over any other provision of this Agreement, the County reserves the right to increase the rates of charges contained in this Agreement at a percentage increase no greater than that equally and fairly applied to other similarly situated terminal OPERATORs, upon a reasonable determination by the County's independent Financial Advisor if it is determined that Port revenues in the aggregate will not be sufficient to meet the rate covenant and/or additional bond tests on all outstanding Seaport bonds obligations or any bond coverage requirements. The County shall give OPERATOR ninety (90) days written notice of its intent to increase the rate of charges contained herein pursuant to this provision of the Agreement, and shall make reasonable efforts, within the limitations of the applicable bond documents, to provide OPERATOR more than ninety (90) days notice. OPERATOR shall have the right to terminate this Agreement, without penalty, by written notice to the County within sixty (60) days of receipt of such notice.

If OPERATOR does not terminate this Agreement within the sixty (60) day period, the increased rates shall become effective immediately and OPERATOR shall have no other recourse with respect to such increase.

Section 10. Right to Regulate

Subject to Applicable Law, 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 reasonably regulate OPERATOR's business activities or its business operations or to administer the Port. To the extent the County demands OPERATOR regulate its business activities or its business operations and the result of which would be a material alteration of the Agreement then the OPERATOR has in its sole discretion the right to terminate the Agreement, without penalty, upon giving ninety (90) days written notice to the County.

Section 11. 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, agency or board of the County, including Community Councils, to agree to or grant any zoning changes, permits or any other approvals.

Section 12. Licenses, Permits and Approvals

OPERATOR shall obtain all land use, construction, and operating permits, and all other approvals and licenses required by any and all Applicable Laws for OPERATOR's activities in the Terminal Area, all at OPERATOR's sole cost and expense. The County shall take reasonable steps to cooperate with OPERATOR with obtaining the foregoing permits and approvals provided such steps do not require the County to expend funds or become exposed to any liabilities, and provided further that nothing contained in this Agreement shall be construed as in any way waiving or limiting the County's police or regulatory powers or authority, all of which the County expressly and fully retains and preserves.

Section 13. Audits

OPERATOR agrees that the County and its duly authorized representatives or governmental agencies may, for up to three (3) years after the expiration of this Agreement and any extension thereof, and at the County's sole cost and expense have access to and the right to examine and reproduce, upon reasonable written demand, any of OPERATOR's relevant and necessary books, documents, papers and records and to the extent OPERATOR has control of such documentation of its, designees, agents, and suppliers, which apply or relate to the operation or use of the Terminal Area or the enforcement of any of County's rights or potential claims under this Agreement, Applicable Laws or otherwise.

In the ordinary course of OPERATOR business it agrees to maintain a generally accepted accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining all fees and charges due from OPERATOR under this Agreement or otherwise, including, without limitation, on an annual and monthly basis throughout the Initial Term and any applicable Renewal Term the Actual Throughput, the number of Transshipped TEUs and the amount of TEU and Non-Containerized Cargo moved, stored, or processed through or using the Terminal Area, the number of gantry crane hours used by or on behalf of OPERATOR per Fiscal Year, and also for determining the allowability and allocability of costs.

To the extent permitted by Applicable Laws, including without limitation Chapter 119, Florida Statutes, the County shall keep OPERATOR's proprietary information confidential provided OPERATOR clearly and conspicuously demarcates all such proprietary information as confidential prior to providing same to County.

Section 14. Suitability of Terminal Area.

OPERATOR 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 OPERATOR's purposes. OPERATOR further acknowledges that it has previously inspected and otherwise become familiar with the Terminal Area and the Port's gantry cranes, gate complex, and other facilities, and hereby accepts such areas, cranes and facilities in their present conditions as suitable for the purposes for which they are to be used hereunder.

Section 15. Terminal Agreement. It is agreed 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 16. Commitment on Indemnity and Insurance

A) OPERATOR shall procure and maintain throughout the Initial Term and any Renewal Term, 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) Workers Compensation Insurance to cover all persons employed by OPERATOR 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 OPERATOR, its employees, agents, customers and guests in and around the Terminal Area, General Liability Insurance (including terminal OPERATOR's liability insurance) in the minimum amount of $5,000,000 combined single limits for bodily injury and property damage. Miami-Dade County must be designated

as an additional insured with respect to this coverage subject to the liability requirements as stated herein.

3) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with OPERATOR's operations in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

4) All-risk property insurance in the amount of $7,500,000 per occurrence.

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.

All such insurance policies shall be occurrence policies and each 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 30 days in advance of such cancellation or material modification. Claims made policies are not acceptable. OPERATOR and shall promptly provide the County, certificates evidencing that insurance has been obtained meeting the requirements of this section.

(B) OPERATOR shall indemnify, defend and hold harmless the County and its officers, employees, and governmental instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, or governmental 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 only in proportion to that which can be attributable and caused by the negligence, gross negligence,

recklessness or intentional act of OPERATOR or its employees, contractors, subcontractors, invitees, or guests. OPERATOR shall pay all claims and losses proportionally in connection with its legal liability and shall investigate and defend all 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 in the same manner. OPERATOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by OPERATOR 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 but shall be used to offset OPERATOR's costs first before distribution to insured. The foregoing indemnity, defense and hold harmless obligation shall not apply to the extent caused by the negligent acts or omissions in whole or in part of the County or its employees, agents, partners, principals or subcontractors.

(C) In those situations where this Agreement imposes an indemnity obligation on OPERATOR, the County may, elect, at its sole discretion and cost, to participate in the defense if the County should so choose.

Section 17. 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 18. 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 19. Compliance with Applicable Laws

At all times throughout the Initial Term and any applicable Renewal Term, OPERATOR, its members, employees, designated terminal OPERATORs, agents, affiliates, contractors, subcontractors, invitees, and guests, shall comply with all Applicable Laws while conducting any activity in or relating to the Terminal Area or on any other County property or otherwise in its/their actions related to this Agreement and while conducting any activity in the Terminal Area or on any other County property.

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 County from 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.

OPERATOR shall comply 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 Contract.

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

d) Miami-Dade County Code, Chapter 11A, Article 3. OPERATOR shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. OPERATOR 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.

Commencing on the Effective Date of this Agreement and continuing throughout the Initial Term and any applicable renewal term, OPERATOR shall provide written notice to the County of any actual, suspected, or reported violation of any Applicable Law taking place on, within, under, or in connection with the Terminal Area or any of OPERATOR's activities on County owned property (including any activities of OPERATOR's members and affiliates and any of their respective contractors, subcontractors, agents and employees) as soon as practicable but in no event later then five calendar days from OPERATOR, any terminal OPERATOR designated by OPERATOR, or any of their respective agents, employees, contractors, or subcontractors (of any tier) receiving notice of, observing, or otherwise becoming aware of any such actual, threatened, suspected or alleged violation(s) of Applicable Law. Such written notice shall specify the type, nature, scope, date, and location of such actual, suspected or alleged violations, as well as what steps have been taken or are being taken to address, mitigate, and prevent the recurrence of same.

Section 20. Taxes and Other Charges

OPERATOR shall pay all applicable property, excise, and other taxes and other governmental charges of any kind whatsoever which are lawfully assessed, levied, or imposed with respect to the Terminal Area or any improvements placed thereon by or on behalf of OPERATOR, its partners, agents, affiliates, contractors, employees, or invitees.

Section 21. Nuisance

OPERATOR shall not commit any nuisance (as defined and construed under Florida law, taking into account the scope of OPERATOR's permitted operations hereunder) in the Terminal Area or any other County property, nor 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, nor shall OPERATOR permit its agents,

partners, affiliates, employees, contractors, invitees, or guests, to commit any nuisance in or on the Terminal Area or any other County property.

Section 22. 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 23. 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 24. Events of Default

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

(i) OPERATOR fails to timely comply with any payment obligation arising hereunder which is not cured within thirty (30) days from OPERATOR's receipt of written notice from the County of failure to meet such payment obligation, with exception to all payments reasonably disputed or that may be suspended under the terms of this Agreement.

(ii) OPERATOR fails to perform or breaches any material term, covenant, or condition of this Agreement (other than the failure to timely comply with any payment obligation hereunder, which is governed by Section 24.A(i) above) 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 does not materially interfere with the operations of the Port, OPERATOR 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 OPERATOR shall be adjudicated bankrupt, or if OPERATOR shall make a general assignment for the benefit of creditors, or if any proceedings based upon the insolvency of OPERATOR are commenced and not dismissed within 60 days of filing or a receiver is appointed for all the property of OPERATOR which is not dismissed within 60 days of such appointment.

(iv) Any default by OPERATOR may be cured by any subsidiary, affiliate or sub-OPERATOR or permitted assign or subcontractor or sub-subcontractor provided such cure takes place within the applicable cure period set forth above or herein and provided further that prior to commencement of such cure by any entity other than OPERATOR, OPERATOR provides prior written notice to the Port Director specifying the curative actions to be taken either on OPERATOR's behalf or by the non-OPERATOR entity.

(v) For the avoidance of doubt, a shortfall does not trigger an Event of Default if (i) the Shortfall Fees are fully and timely paid to the County as required hereunder and (ii) to the extent OPERATOR is required to surrender part of the Terminal Area back to the County under Section 5.F hereof or otherwise, OPERATOR timely surrenders such land as required or contemplated herein.

B) The County shall be in default under this Agreement if the County fails to perform or breaches any material term, covenant, or condition of this Agreement and such failure is not cured within sixty (60) days after receipt of written notice from OPERATOR specifying the nature of such breach (except where a longer cure period may be provided herein); provided, however, that if such breach cannot reasonably be cured within sixty (60) days (or longer period if applicable) and such breach does not materially interfere with the operations of OPERATOR 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 OPERATOR in which case OPERATOR 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 25. Obligations Surviving Termination or Expiration Hereof

Notwithstanding and prevailing over any contrary term or provision contained herein, in the event any party hereto exercises any lawful termination rights herein, or should this Agreement expire in accordance with its terms, the following obligations shall survive such termination or expiration, as applicable, and continue in full force and effect until the expiration of a one (1) year term following the later 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, hold harmless and/or duty to defend obligations hereunder of any party hereto; (iii) notwithstanding the foregoing, the exclusive venue and choice of law provisions contained herein shall never expire, 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 26. Lack of Agency Relationship

Nothing contained herein shall be construed as establishing an agency relationship between the County and OPERATOR and neither OPERATOR 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 OPERATOR.

Section 27. Force Majeure - Inability to Perform

A. OPERATOR Inability to Perform. OPERATOR shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes, conditions, acts or omissions beyond the reasonable control of, and without the fault of OPERATOR, and its members, agents, employees, contractors, subcontractors (of any tier), invitees and guests including, without limitation, acts of God, hurricanes, an act or state of war, public emergency, strikes, boycotts, picketing, work stoppages or labor troubles of any other type not within the reasonable control of any person ; providing further that

the party claiming the existence of a force majeure event delivers written notice of such event to the other party, when possible, within fifteen (15) calendar days of the commencement of such event. OPERATOR shall be entitled to a pro-rata reduction of its TEU and land rental commitments throughout the duration of any properly noticed Force Majeure event to the limited extent such timely noticed force majeure event renders a portion of the Terminal Area wholly unusable and provided further that neither such event, nor the damage or impairment resulting therefrom, could have been avoided by the exercise of due diligence by OPERATOR or its affiliates, agents, designated OPERATORs, contractors, subcontractors, invitees or guests

B. County Inability to Perform. County shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes, conditions, acts or omissions beyond the reasonable control of, and without the fault of, the County and its legally authorized Port employees, agents, contractors and subcontractors , including, without limitation, acts of God, hurricanes, an act or state of war, public emergency, strikes, boycotts, picketing, work stoppages or labor troubles of any other type not within the reasonable control of the County; providing further that the party claiming the existence of a force majeure event delivers written notice of such event to the other party, when possible, within fifteen (15) calendar days of the commencement of such event.

C. Terminal Area Catastrophic Loss. In the event that the Terminal Area is damaged or destroyed by fire or other catastrophic casualty, not caused or contributed to, in whole or in part by, by OPERATOR, or any of their respective affiliates, agents, contractors, subcontractors, designated terminal OPERATOR(s), employees, invitees, or guests, to such an extent that the Terminal Area is rendered completely and wholly unusable and beyond repair (hereafter, a "Terminal Area Catastrophic Loss Event"), then OPERATOR may upon 90 days prior written notice to the County terminate this Agreement provided each of the following pre-conditions is met: (1) such notice is delivered to County no later than sixty (60) calendar days from the commencement of such catastrophic event; (2) provided OPERATOR shall remain liable to the County for all payment and performance obligations hereunder arising prior to or through the effective date of said termination; (3) provided that, notwithstanding such termination, all obligations listed in Section 25 hereof as surviving a termination of this Agreement shall survive in accordance with the terms of that Section; and (4) provided that prior to the effective date of such

termination OPERATOR shall assign to the County any legally assignable rights to OPERATOR's policies of insurance required under Section 16 hereof pertaining to, covering, or potentially covering such noticed Terminal Area Catastrophic Loss Event(s).. This provision should not be construed so as to act as a waiver to OPERATOR's right to any insurance proceeds for personal properties and/or business interruption recoveries and/or the value of OPERATOR's interest in any of the non real property. In the event all requirements and conditions set forth in this Section 27.B are fully and timely satisfied, then in such event a proper and timely termination under this Section 27.B for a Terminal Area Catastrophic Loss Event shall not trigger OPERATOR's additional early termination payment obligation under Section 31.B (i) or (ii).

Section 28. 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 29. Sole Benefit of Parties

The County and OPERATOR 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 third party beneficiary of this Agreement. Notwithstanding and prevailing over any contrary term or implication contained in this Agreement, there are no actual or intended third party beneficiaries of or to this Agreement.

Section30. 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 31. Early Termination.

OPERATOR shall have the option to terminate this agreement for any reason or no reason, subject to the conditions set forth herein upon fulfillment of the termination payment obligations set forth below, in addition to payment of any other charges or fees due or owing hereunder or under the Tariff

through the effective date of such termination. OPERATOR shall give the County written notice of early termination ninety (90) days notice in advance of its desired termination date. OPERATOR shall pay the County upon exercise of the Early Termination option, in addition to payment of any other charges or fees due or owing hereunder or under the Tariff through the effective date of such termination, an amount equal to the lesser of (i) the sum of three (3) years of Land Rental payments plus three (3) years of Minimum Guaranteed Annual TEU Throughput Revenue payments, or (ii) the sum of aggregate Land Rental payments and Minimum Guaranteed Annual TEU Throughput Revenue payments that would have been due for and through the period remaining on the Initial Term, whichever is less. During any renewal period, the OPERATOR shall pay the County upon exercise of the Early Termination option an amount equal to the sum of one (1) year of Land Rental payments and one (1) year of Minimum Guaranteed TEU Throughput payments. For avoidance of doubt, the OPERATOR and County acknowledge that, except as otherwise provided herein, the County's contractual rights to unilaterally terminate this Agreement early (prior to expiration in accordance with its terms) are limited to (i) the exercise of available remedies in response to the failure of OPERATOR to properly fulfill payment, performance or other obligations set forth herein, including the commission of any event of default set forth in Section 24 hereof, (ii) a force majeure event under Section 27 hereof, (iii) remedies available pursuant to or under Applicable Laws, and/or (iv) pursuant to or under common law.

Section 32. Assignment

OPERATOR shall not transfer or assign its rights under this Agreement without the prior written consent of the County approved by the Board of County Commissioners and signed by the County Mayor or the Mayor's designee. Any assignment without the specified 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, sublease, terminal service agreement with another entity, or by operation of law. Should OPERATOR elect to assign this Agreement to an entity that is neither a wholly-owned subsidiary or affiliate, OPERATOR must pay the County five hundred thousand ($500,000) for each year remaining in the Initial Agreement period and both Renewal Terms. To the extent that any of the Guarantors herein described in Section 47 and/or their affiliates operate and

or transact business within the Terminal consistent with their operation of the Terminal and/or any stevedoring operations, this shall not constitute an assignment for purposes of Section 32.

Section 33. Amendments

This Agreement may be amended from time to time provided the County and OPERATOR 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 not be effective until approved by the Board of County Commissioners.

Section 34. Surrender at End of Term

During the Initial Term and any Renewal Term, OPERATOR shall not allow the Terminal Area or the rights of OPERATOR in the same to become subject to any lien, charge, or encumbrance whatsoever. OPERATOR further agrees that, at the expiration or termination of this Agreement, whichever come first, it shall peaceably yield up to the Port, the Terminal Area free of any lien or encumbrance and in the same condition as that agreed to during the joint inspection conducted prior to the Effective Date, reasonable wear and tear expected.

Section 35. 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 telex, telecopy, telegram, 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 American Way Miami, Florida 33132
With a copy to:	Miami-Dade County Attorney 111 N.W. 1st Street, Suite 2810 Miami, Florida 33132
To OPERATOR:	Port of Miami Terminal Operating Company, L.C. Attn. General Manager 1007 North America Way, Suite 400 Miami. FL 33132

With a copy to: Blanck & Cooper P.A.
Attention: Robert W. Blanck, Esq.
5730 S.W. 74th Street, Suite #700.
Miami, Florida 33143

Section 36. 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, OPERATOR 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 OPERATOR '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 OPERATOR, 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 OPERATOR in connection with this Agreement. The terms of this Section shall not impose any liability on the County by OPERATOR 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 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 OPERATOR 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 OPERATOR 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 (OPERATOR/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 OPERATOR 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 (OPERATOR/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 OPERATOR 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 OPERATOR shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and 2. The OPERATOR 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 (OPERATOR/Vendor/Consultant), its officers, agents, employees, subcontractors and suppliers. The (OPERATOR/Vendor/Consultant) shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the (OPERATOR/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 (OPERATOR/Vendor/Consultant) or third parties. 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.

Exception:

Upon written notice to OPERATOR from the Inspector General or IPSIG retained by the Inspector General and at a mutually agreeable date, time and location, OPERATOR shall make all lawfully requested records and documents available to the Inspector General or IPSIG for inspection and copying.

Section 37. Mutual Obligations

Except as otherwise expressly provided for herein, nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party.

Section 38. Disputed Land Rent Invoice Settlement and Mutual General Release

A. The parties agree that there is an amount of six hundred seventy two thousand seventy two dollars ($672,072.00) in disputed and unpaid OPERATOR land rent invoices. (collectively "the Disputed Invoices"). In order to fully and completely resolve any differences between the Parties regarding these invoices the OPERATOR agrees to pay the County three-hundred thousand dollars ($300,000), in two separate installments. The first installment to be paid within thirty (30) days of the Effective Date. The second installment to be paid 6 months after the Effective Date. The County agrees that upon receipt of the three-hundred thousand dollars ($300,000), it will consider the Disputed Invoices to be fully paid and releases OPERATOR from any further liability for unpaid land rent due or which may be due, under the prior OPERATOR Agreement relating to or arising from the Disputed Invoices. Further, the County agrees that it will waive and release OPERATOR from any late payment penalties through the Effective Date of this Agreement in connection with the aforementioned Disputed Invoices and OPERATOR will be fully and completely discharged from all past due claims and accounts of any kind for any land rental invoices.

B. Upon payment of the sums to the County specified in Section 38.A. above, the County does hereby remise, release and forever discharge the OPERATOR and its directors, officers, shareholders, members, employees for all manner of claims, demands, actions, causes of actions, suits, sums of monies, agreements, promises, demands, whatsoever, including any unpaid Gate fees, at law or in equity which the County has or may have against the OPERATOR by reason of any matter arising out of the 1994 Agreement as amended, except as to any regular and continuing charges and expenses which have been continuously paid by OPERATOR and regarding which the OPERATOR is obligated to continue to pay up to the effective date herein, and except as to continuing indemnity and warranty obligations.

C. The OPERATOR does hereby remise, release and forever discharge the County and its directors, officers, shareholders, members, employees for all manner of claims, demands, actions, causes of actions, suits, sums of monies, agreements, promises, demands, whatsoever, at law or in equity which

the OPERATOR has or may have against the County by reason of any matter arising out of the 1994 Agreement as amended except as to continuing indemnity and warranty obligations..

Section 39. Business application and forms

OPERATOR 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 OPERATOR to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 40. Nondiscrimination

By entering into this Contract with the County, OPERATOR 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 void if OPERATOR submits a false affidavit pursuant to this Resolution or OPERATOR violates the Act or the Resolution during the term of this Contract, even if OPERATOR was not in violation at the time it submitted its affidavit.

Section 41. Conflict of interest

OPERATOR and County represent 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 OPERATOR or County in this Agreement. This Agreement is entered into by OPERATOR and County 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:

i) is interested on behalf of or through OPERATOR 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 OPERATOR.

c) Neither OPERATOR nor any officer, director, employee, agency, parent, subsidiary, or affiliate of OPERATOR shall have an interest which is in conflict with OPERATOR's or County'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 OPERATOR 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 and the County thereafter provides written approval of such disclosed conflict.

d) The provisions of this Article 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 OPERATOR 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, OPERATOR shall promptly bring such information to the attention of the Port Director. OPERATOR shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions OPERATOR receives from the Port Director in regard to remedying the situation.

Section 42 <u>No Port Endorsements Permitted</u>

Except as may be required by Applicable Laws, OPERATOR, its employees, agents, contractors, subcontractors (of all tiers) and suppliers will not represent, directly or indirectly, that any product or service provided by OPERATOR or such parties has been approved or endorsed by the County or the Port.

Section 43 Guarantee of OPERATOR Obligations.

By signing below on Exhibit D hereto, the signatory guarantors, including all OPERATOR members, expressly agree to proportionately guaranty all of OPERATOR's payment, performance and other obligations arising under this Agreement. Each individual Guarantor's proportional liability for the obligations of OPERATOR hereunder shall be limited to each Guarantor's percentage of ownership in OPERATOR at the time of execution of this Agreement, which may be amended from time to time subject to the prior written permission of the Port Director which shall not be unreasonably withheld, provided that no such amendment may allow any current OPERATOR member to escape or reduce its obligations as guarantor unless such guarantee is being replaced by another written and enforceable guarantee of a new or successor OPERATOR member that provides the County with equal or greater security than the one being replaced or modified. Each of the signatories to Exhibit D hereto shall continue to serve as proportional Guarantors of all of OPERATOR's payment, performance and other obligations for the later of the expiration or termination of the Initial Term or, if applicable, the properly exercised renewal term of this Agreement. Each of the entities signing Exhibit D hereof as OPERATOR Guarantors shall provide the County with:

(i) on an annual basis, by August 30 of each Fiscal Year of the Initial Term and applicable renewal term, OPERATOR and each Guarantor shall provide a written certification of an independent certified public accounting firm licensed in Florida certifying OPERATOR and the Guarantor's combined net worth for the immediately preceding year, calculated in accordance with United States generally accepted accounting principles (hereafter, "GAAP"). OPERATOR and Guarantors combined net worth must collectively equal or exceed Ten Million dollars ($10,000,000.00) (Net Worth Floor).

If the above-required annual certifications are not timely provided to the County, or, if timely provided, any such certification ever indicates that the Guarantor's collective net worth for the applicable period, calculated in accordance with GAAP, is or was less than the then-applicable Net Worth Floor for such combined guarantors, then in such event OPERATOR through its Owners Members shall be given a reasonable opportunity to increase their respective proportional guarantees to reasonably comply with the County's Guarantee requirements. In the absence of the Owners Members agreeing in this regard then

the OPERATOR shall within sixty calendar days therefrom provide the County with supplemental security by delivering (and then maintaining) a ten million dollar ($10,000,000) irrevocable letter of credit, from an institution and in a form acceptable to the County (hereafter, the "LOC") securing the guaranty obligations undertaken in this Section 43 hereof and in Exhibit D hereto. The guarantee obligations set forth in this Section 43 shall continue consistent with the requirements of Section 25. . If after sixty (60) days of termination and/or expiration of this Agreement no written claim has been made by the County against the Guarantors then the supplemental security, if any, shall thereby be discharged. The terms of this Section 43 shall be governed by and construed in accordance with Florida law, and venue for any suit or action to construe or enforce any term or provision contained in this Agreement, expressly including, without limitation, the terms of this Section 43, shall lie exclusively in Miami, Florida, U.S.A.

IN WITNESS WHEREOF, the County and OPERATOR have caused this Agreement to be duly executed this ___ day of _____, 2013.

PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C.

By: _____

Name: Charles J. Arocha
(print name)

Title: COO / Exec. Vice President

Date: 12/4/13

Corporate Seal: _____

ATTEST:

By: _____

Name: Charles O'Malley
(print name)

Title: CFO

Date: 12/4/13

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

By _____
County Manager

Date: _____

ATTEST:

CLERK OF THE BOARD

By: _____
Deputy Clerk

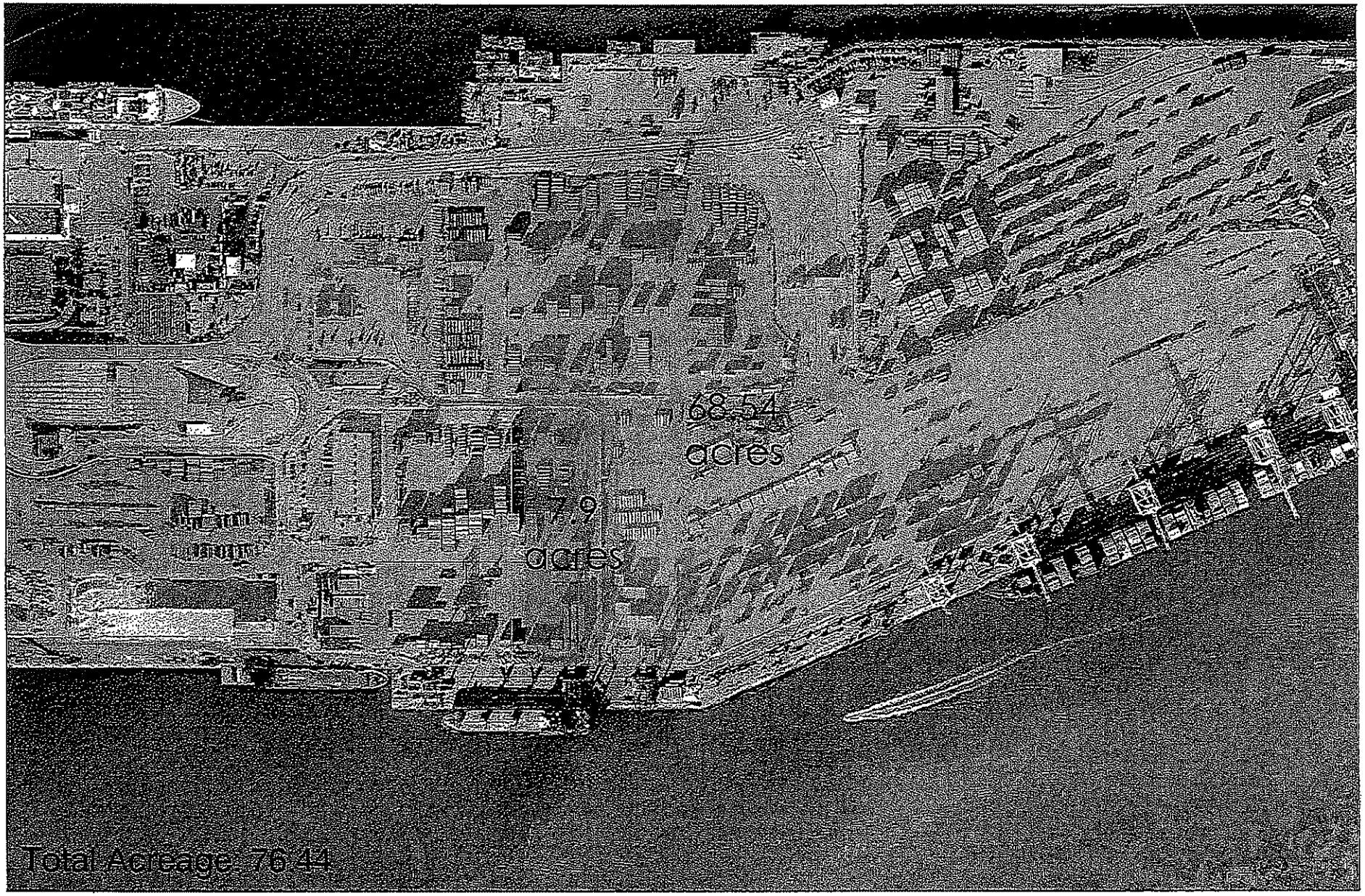
Date: _____

_____
Approved as to form and legal sufficiency

7136/POMLeasePomtoc6.22.13

POMTOC TEU Per Acre Throughput Guarantees and Land Rental Rates
Amended and Restated Terminal Operating Agreement
Exhibit A

FISCAL YEAR	ANNUAL MINIMUM TEU GUARANTEE (per acre)	TEU RATE DISCOUNT MINIMUM THROUGHPUT **	10% MIN to MIN + 1000	20% MIN +1001 to MIN + 2000	30% MIN +2001 to MIN +3000	40% MIN +3001 to ALL	LAND RENT (square foot)
2014 / 15	3,159	$34.44	$30.68	$27.55	$23.86	$20.46	$1.54
2015 / 16	3,222	$35.47	$31.92	$28.38	$24.83	$21.28	$1.59
2016 / 17	3,286	$36.53	$32.88	$29.23	$25.57	$21.92	$1.63
2017 / 18	3,352	$37.63	$33.87	$30.10	$26.34	$22.58	$1.68
2018 / 19	3,419	$38.76	$34.88	$31.01	$27.13	$23.26	$1.73
2019 / 20	3,488	$39.92	$35.93	$31.94	$27.95	$23.95	$1.79
2020 / 21	3,557	$41.12	$37.01	$32.90	$28.78	$24.67	$1.84
2021 / 22	3,628	$42.35	$38.12	$33.88	$29.65	$25.41	$1.89
2022 / 23	3,701	$43.62	$39.26	$34.90	$30.54	$26.17	$1.95
2023 / 24	3,775	$44.93	$40.44	$35.95	$31.45	$26.96	$2.01
2024 / 25	3,851	$46.28	$41.65	$37.02	$32.40	$27.77	$2.07
2025 / 26	3,928	$47.67	$42.90	$38.13	$33.37	$28.60	$2.13
2026 / 27	4,006	$49.10	$44.19	$39.28	$34.37	$29.46	$2.20
2027 / 28	4,086	$50.57	$45.51	$40.46	$35.40	$30.34	$2.26
2028 / 29	4,168	$52.09	$46.88	$41.67	$36.46	$31.25	$2.33
2029 / 30	4,251	$53.65	$48.29	$42.92	$37.56	$32.19	$2.40
2030 / 31	4,336	$55.26	$49.73	$44.21	$38.68	$33.16	
2031 / 32	4,423	$56.92	$51.23	$45.54	$39.84	$34.15	
2032 / 33	4,512	$58.63	$52.76	$46.90	$41.04	$35.18	
2033 / 34	4,602	$60.39	$54.35	$48.31	$42.27	$36.23	
2034 / 35	4,694	$62.20	$55.98	$49.76	$43.54	$37.32	
2035 / 36	4,788	$64.06	$57.66	$51.25	$44.84	$38.44	
2036 / 37	4,883	$65.98	$59.39	$52.79	$46.19	$39.59	
2037 / 38	4,981	$67.96	$61.17	$54.37	$47.57	$40.78	
2038 / 39	5,081	$70.00	$63.00	$56.00	$49.00	$42.00	
2039 / 40	5,182	$72.10	$64.89	$57.68	$50.47	$43.26	



* Above numbers are approximations
* Exact acreage subject to future legal survey of areas

PORTMIAMI

1015 North America Way
Miami, Florida 33132

Project: Exhibit B

Drawing:

Date: 12/04/13
Drawn by:
Scale: N.T.S.
Page:

EXHIBIT C

Miami-Dade Seaport Department
Property 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 Capital Development Division, 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 Seaport Capital Development Division.
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:

Fred Wong, Jr. – Cargo/Cruise Ops	Date	Elizabeth Ogden- Design Services	Date
Jay Valido – Facilities Maintenance	Date	Daigis Betancourt - Property Management	Date
Isa Nuñez – Engineering	Date	Miriam Abreu- Finance Services	Date
Art Tillberg – Construction Management	Date	Alfredo Ferrer – Safety and Security	Date

EXHIBIT D

Signatory Guarantors

The below-listed companies hereby agree to guarantee all obligations of POMTOC arising from the instant Terminal Operating Agreement pursuant to the terms and limitations of Section 43.

PORTS AMERICA FLORIDA INC.

Witness

FLORIDA STEVEDORING COMPANY

Witness

CONTINENTAL STEVEDORING AND TERMINALS, INC.

Witness