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COMMISSION
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AMENDED AND RESTATED

AGREEMENT AND LEASE

By and Between

JACKSONVILLE PORT AUTHORITY

and

TRAILER BRIDGE, INC.

EFFECTIVE
NOV 3 1997
Federal Maritime Commission

TABLE OF CONTENTS

Article	Title	Page
I.	Description of Premises	02
II.	Term of Agreement	02
	2.01 Term	02
	2.02 Holding Over	02
III.	Use of Leased Premises	03
IV	Fees and Charges	03
	4.01 Rental Fees	03
	4.02 Throughput and Dockage	04
	4.03 Annual Increases in Fees	05
	4.04 Other Fees and Charges	05
V.	Preferential Berthing	05
VI.	Utilities and Other Services	05
VII.	Taxes and Assessments	06
VIII.	Indemnification/Hold Harmless	06
IX.	Insurance	07
	9.01 Procurement and Maintenance of Insurance	07
	9.02 Review and Adjustment of Insurance	08
	9.03 Authority's Self Insurance	08
	9.04 Other Insurance Requirements	08
	9.05 Damage or Destruction to Premises	09
X.	Relocation of Lessee	09
XI.	Maintenance and Repairs	09
	11.01 Maintenance and Repairs of Premises by Authority	09
	11.02 Authority's Inspection and Entry Rights	10
	11.03 Effect of Entry	11
	11.04 Authorities Maintenance Responsibilities	11
XII.	Alterations and Improvements	11
	12.01 Consent Required	11
	12.02 "As-Builts" to be Provided	12

XIII.	Access to Premises	12
	13.01 Ingress and Egress	12
	13.02 Common Access	12
	13.03 Modification of Access	12
XIV.	Assignment, Subletting and Transfer	13
XV.	No Individual Liability	13
XVI.	Law, Ordinance and Rules and Regulations To Be Observed	13
	16.01 Permitted Uses	13
	16.02 Unlawful Purposes Prohibited	14
	16.03 Compliance with the Law	14
	16.04 Responsibility for Environmental Damage	14
	16.05 Permits and Licenses	14
	16.06 Fines and Penalties	14
	16.07 Inspection of Premises to Verify Compliance	15
XVII.	Security	15
XVIII.	Surrender of Leased Premises	15
	18.01 Condition of the Premises and Improvements	15
	18.02 Title to Improvements	15
	18.03 Damage to Property	16
	18.04 Leasehold Improvement Liens	16
XIX.	Events of Default	16
	19.01 Events of Default by Lessee	16
	19.02 Remedies for Authority if Default by Lessee	17
	19.03 Events of Default by Authority	18
	19.04 Remedies for Lessee if Default by the Authority	19
	19.05 Time of Termination	20
	19.06 Interruption of Services or Facilities	20
XX.	Waivers	21
	20.01 Waivers	21
	20.02 No Impairment of Rights	21
	20.03 Options, Rights, Powers and Remedies	22
XXI.	General Provisions	22
	21.01 Modifications	22
	21.02 Severability	22
	21.03 Exhibits	22
	21.04 Withholding Required Approvals	23
	21.05 Notices, Consents and Approvals	23
	21.06 Place of Payment	24
	21.07 Headings	24
	21.08 Counterparts	24

21.09 Independent Contractors 24
21.10 Non-Discrimination 24
21.11 Warranties and Representation 25
21.12 Force Majeure 25
21.13 Governing Law 26
21.14 Construction 26
21.15 Inspection of Records 26
21.16 Entire Agreement 26

Signature Page

Exhibit A - Drawing
Exhibit B - Schedule of Fees and Charges
Exhibit C - Schedule of Insurance Requirements

AMENDED AND RESTATED
AGREEMENT AND LEASE
TRAILER BRIGE, INC.

THIS AGREEMENT made and entered into as of this 30th day of October, 1997, by and between the **JACKSONVILLE PORT AUTHORITY**, a body politic and corporate created and existing under Chapter 63-1447, Laws of Florida, as amended, hereinafter referred to as "**Authority**", and **TRAILER BRIDGE, INC.**, a company authorized to do business in the State of Florida, hereinafter referred to as "**Lessee**".

W I T N E S S E T H :

WHEREAS, Authority is the owner and operator of vessel berthing, cargo handling and storage facilities at Blount Island Marine Terminal ("Terminal Facilities") located in Jacksonville, Florida; and

WHEREAS, Authority and **Lessee** entered into an agreement and lease dated August 1, 1991, for the lease and use of a certain real property and facilities on the Terminal Facilities; and

WHEREAS, In consideration of **Authority's** agreement to construct a permanent Triple Deck Loading Facility ("Loading Facility") on the Terminal Facilities for **Lessee's** non-exclusive use, **Authority** and **Lessee** agree upon the need to enter into this amended and restated agreement and lease, hereinafter referred to as "Agreement", for **Lessee's** use of this Loading Facility and other facilities more specifically described herein. This Agreement shall supercede and cancel the agreement dated August 1, 1991.

NOW, THEREFORE, for and in consideration of the mutual covenants and benefits herein contained, the **Authority** and the **Lessee** do hereby mutually undertake and agree, each for itself and its successors and assigns, as follows:

ARTICLE I

DESCRIPTION OF PREMISES

The **Authority** agrees to lease to the **Lessee**, during the term and for the uses as established and set forth in this Agreement, and upon and subject to the provisions and conditions hereinafter specified, the premises ("Premises") indicated on Exhibit A attached to this Agreement.

ARTICLE II

TERM OF AGREEMENT

2.01 **Term**: This Agreement shall be filed with the Federal Maritime Commission ("FMC") and shall become effective on the date designated by the FMC. However, if there is (i) a ruling from the FMC disclaiming jurisdiction over this Agreement, or (ii) a ruling by an appropriate authority that the FMC has no jurisdiction over this Agreement, then this Agreement shall become effective as of the date of such ruling ("Commencement Date"). Upon such Commencement Date, the term ("Term") of this Agreement shall be for the period set forth on Exhibit B, subject to termination contained herein.

2.02 **Holding Over**: In the event the **Lessee** continues its operations on the Premises after expiration of this Agreement without any written Renewal Term, such continuation shall not be

deemed to operate as a Renewal Term of this Agreement, but shall be deemed only a tenancy at sufferance, and in such case, the **Authority** may invoke any remedy provided under Florida Law, including but not limited to terminating this Agreement upon sixty (60) days written notice to the **Lessee**. If the **Authority** does not terminate this Agreement, the **Lessee's** occupation of the Premises and its operation thereon shall be governed by the provisions of this Agreement.

ARTICLE III

USE OF PREMISES

The **Lessee** shall have the right to use the Premises for Roll on/Roll off, or Lift-on/Lift-off container/trailer handling facility and related services. The **Lessee** shall be prohibited from using any portion of the Premises for any purpose not contemplated by this Agreement without prior written approval from the **Authority**.

ARTICLE IV

RENTALS, FEES AND CHARGES

4.01 **Rental Fees**: The **Lessee** shall pay rent to the **Authority** in the amount of the monthly rental rate indicated on Exhibit B, plus applicable tax.

A. **Payments**: All monthly payments for use and occupancy of the Premises shall be due in advance on the first day of each month without demand.

B. **Delinquent Fees**:

1. A late fee of five percent (5%) will be charged on all rental payments not made within ten (10) days after the due date thereof, and shall become additional rent due and payable. This provision shall not Preclude **Authority** from terminating this Agreement for default for the non-payment of rent or fees or from enforcing any other provisions contained herein or provided by law.

2. If any rent required by this Agreement is not paid within thirty (30) days of its due date, the **Authority** reserves the right to terminate this Agreement upon the date so specified in the **Authority's** written notice to the **Lessee**, in accordance with Article 19.05. Upon said date, the **Lessee** shall have no further rights under this Agreement and the **Authority** may take possession of the Premises by any lawful means. In such event the **Authority** has the right to recover all expenses incurred by reason of the breach, including but not limited to, reasonable attorneys fees and court costs.

C. **Proration of Rent**: Should this Agreement commence on any day other than the first of the month, or terminate on any day other than the last day of the month, the monthly rental payment will be prorated in proportion according to the actual number of days the **Lessee** occupied the Premises during that month. This prorated amount will be determined by the **Authority**.

4.02 **Throughput And Dockage**:

A. Rates: The **Lessee** shall pay the **Authority** the Throughput and Dockage rates established on Exhibit B.

B. Reporting and Payment: The **Lessee** shall submit the vessel manifest no later than three (3) days after each vessel sails. Payment of the **Authority's** invoice therefor, shall be assessed and handled in accordance with the **Authority's** published tariff or its reissue.

C. Delinquent Fees: Delinquent fee assessments for Throughput and Dockage, shall be assessed and handled in accordance with the **Authority's** published tariff or its reissue.

4.03 **Annual Increases In Fees**: The above rates shall receive annual increases as established on Exhibit B.

4.04 **Other Fees and Charges**: Any other fees and charges due and payable to the **Authority** by the **Lessee** shall be assessed as established on Exhibit B.

ARTICLE V

PREFERENTIAL BERTHING

Lessee shall have preferential berthing as provided for in Exhibit B.

ARTICLE VI

UTILITIES AND OTHER SERVICES

The **Lessee** shall be responsible for promptly paying those persons or entities furnishing or providing utilities or related services to the **Lessee**. Those utilities or related services include, but are not necessarily limited to, electricity, water, sewer, gas, janitorial service, trash removal and telephone service.

ARTICLE VII

TAXES AND ASSESSMENTS

During the entire Term of this Agreement, the **Lessee** shall bear, pay and discharge, on or before the last day on which payment may be made without penalty or interest, all ad valorem taxes or other taxes, which are charged, levied, assessed, imposed against the Premises, or become due and payable, or become liens upon, or arise in connection with the ownership, use, occupancy or possession of the Premises or any part thereof. None of the provisions, covenants or conditions of this Agreement shall constitute or be construed as a release or waiver on the part of any lawfully empowered taxing authority of its right or obligation to assess, levy and collect from the **Lessee** any license, personal, intangible, occupation, ad valorem or other tax which shall be lawfully imposed on the business or property of the **Lessee**, or upon the Premises and the improvements located thereon.

ARTICLE VIII

INDEMNIFICATION/HOLD HARMLESS

Lessee agrees to indemnify and hold the **Authority**, its agents, servants and employees harmless, and defend the **Authority** with counsel acceptable to it, from and against all liabilities, judgments, costs, damages and expenses which may accrue against, be charged to or recovered from the **Authority** by reason of or on account of damage to the property of, injury to, or death of any person, arising from the **Lessee's** use, occupancy and operation of the Premises, use of the **Authority's** equipment or the Terminal

Facilities, including leakage or spillage of any substance used or handled by the **Lessee**, and including acts of **Lessee's** agents, employees, contractors and subcontractors, except when caused by the negligence of the **Authority**, its agents, employees, contractors or subcontractors. Each party shall give to the other notice of any claim made or suit instituted which, in any way, affects the **Lessee** or its insurers. The **Lessee** or its insurers shall have the right to compromise and defend the same to the extent of their own interest.

ARTICLE IX

INSURANCE

9.01 **Procurement and Maintenance of Insurance:** Throughout the Term of this Agreement, the **Lessee** shall procure and maintain, at its expense, insurance policies of the type and with minimum limits as the **Authority** may require. The insurance policies must be issued by a company or companies of sound and adequate financial responsibility, acceptable to the **Authority** and licensed to do business in the State of Florida. This insurance must insure the **Lessee** and the **Authority** against all liabilities for death, injuries or damages arising out of or in connection with the **Lessee's** use, occupancy and operation of the Premises by the **Lessee**, including fire and extended coverage on all equipment and improvements in the amount of the full insurable value of such equipment and improvements. The **Lessee** shall furnish to the **Authority** certificates evidencing such insurance, naming and endorsing the **Authority** as an additional insured thereunder.

Certificates or binders evidencing the existence thereof, all in such form as the **Authority** may require, shall be delivered to the **Authority's** Risk Manager upon the execution of this Agreement. Each such policy or certificate shall contain a valid provision or endorsement that:

> "This policy will not be canceled or materially changed or altered without first giving thirty (30)days written notice in advance thereof to the Risk Manager, Jacksonville Port Authority, P.O. Box 3005, Jacksonville,Florida 32206."

9.02 **Review and Adjustment of Insurance:** The insurance requirements on Exhibit C shall be subject to periodic review and adjustment by the **Authority** to maintain current industry standards. Adjustment of insurance requirements shall apply without the necessity of formal amendment of this Agreement. The **Authority** may also require the **Lessee** to provide new policies if the carrier(s) issuing its policies shall be or become unsatisfactory to the **Authority**.

9.03 **Authority's Self Insurance**: The **Authority**, as a body politic and corporate, chartered by the State of Florida, is subject to Florida Statutes, Section 768.28, and maintains a program of self-insurance which will respond to any liability of the **Authority** under this Agreement.

9.04 **Other Insurance Requirements:** The **Lessee** understands that the insurance coverage under this Article will not cover physical damage, theft or other loss of the cargo or equipment of the **Lessee** stored or used on the Premises, except to the percentage

or extent such losses, damages, demands, and claims are caused by the sole negligence or fault of the **Authority**. It is incumbent upon the **Lessee** to carry such types and amounts of insurance coverage it deems necessary to protect its cargo or equipment.

9.05 Damage or Destruction to Premises: The **Lessee** must replace or repair the Premises in the event of damage or casualty by the **Lessee's** use of the Premises.

ARTICLE X

RELOCATION OF LESSEE

The **Authority** reserves the sole and unilateral right to assign or relocate the **Lessee** to a comparable location on the **Authority's** facilities during the Term of this Agreement, should it become necessary, so long as **Lessee's** operation is not adversely affected by such relocation. **Authority** shall pay for the reasonable costs for such relocation, unless relocation is requested by **Lessee**.

ARTICLE XI

MAINTENANCE AND REPAIRS

11.01 Maintenance and Repairs of Premises: During the Term of this Agreement, the **Lessee** shall perform maintenance on the Premises and the Loading Facility at its own expense. The **Lessee** shall keep the Premises and any improvements thereon in a good and clean state of repair and preservation, making all necessary and proper replacements thereof and repairs thereto. The accumulation of trash, discarded equipment or parts shall be prohibited.

case of an emergency, to enter upon the Premises for the following purposes:

A. To inspect the Premises to determine whether the **Lessee** has complied and is complying with the terms and conditions of this Agreement. This right of inspection reserved to the **Authority** imposes no obligation on the **Authority** to make inspections to ascertain the condition of repair or preservation of the said Premises and improvements thereon and imposes no liability upon the **Authority** for failure to make such inspections.

B. To perform maintenance and make repairs and replacements in any case where the **Lessee** is so obligated and has failed to do within thirty (30) days after written notice from the **Authority** to act. The entire cost of said repair, maintenance and replacement, shall be reimbursed to the **Authority** by the **Lessee** within fifteen (15) days following the **Lessee's** receipt of an invoice for such costs.

C. To perform any emergency repairs deemed necessary by the **Authority** to eliminate any dangerous condition to which the **Lessee** does not immediately respond. The entire cost of such repair, maintenance and replacement, shall be reimbursed to the **Authority** by the **Lessee** within fifteen (15) days following the **Lessee's** receipt

of an invoice for such cost presented by the **Authority**.

11.03 **Effect of Entry:** No method of entry as set forth in Article 11.02 on behalf of the **Authority** shall cause or constitute a termination of this Agreement or be deemed to constitute an interference with the possession of the Premises by the **Lessee**.

11.04 **Authorities Maintenance Responsibilities**: **Authority** shall be responsible for the structural integrity of the pavement on the Premises and the Triple Deck Loading Facility. In the event either is damaged by an act of negligence or fault of **Lessee**, **Lessee** shall (i) repair the Premises or the Triple Deck Loading Facility or (ii) **Authority** shall repair the Premises or the Triple Deck Loading Facility and shall invoice **Lessee** for the costs for said repair, plus fifteen percent (15%) of the total costs thereof as an administrative fee. **Lessee** shall pay **Authority's** invoice within fifteen (15) days of the date of said invoice.

ARTICLE XII

ALTERATIONS AND IMPROVEMENTS

12.01 **Consent Required:** The **Lessee** shall make no improvement to the Premises without prior agreement and written consent of the **Authority**. Should the **Lessee** desire to make alterations or improvement to the Premises, the **Lessee** shall present its request to the **Authority**, together with plans and specifications for construction of the proposed improvement or alteration. The **Lessee** may only commence construction upon receipt of both the **Authority's** written approval and Notice to Proceed.

12.02 "As Builts" to be Provided: After construction is completed, the **Lessee** shall provide a set of as-built drawings to the **Authority** at no cost to the **Authority**.

ARTICLE XIII

ACCESS TO PREMISES

13.01 Ingress and Egress: The **Lessee**, its officers, employees, and all other persons or firms doing business with it shall have unimpeded and unobstructed right of ingress to, and egress from, the Premises by means designated and provided by the **Authority**.

13.02 Common Access: The **Lessee's** use of access roads or railroads shall, without exception, be in common with such persons, including the general public, as the **Authority** may authorize or permit, and shall be subject to and utilized in accordance with all applicable local laws and ordinances and such reasonable rules and regulations as may be adopted by the **Authority** for the regulation and control of the users thereof.

13.03 Modification of Access: The **Authority** may, at any time, close, relocate, reconstruct or modify any or all such means of access, either temporarily or permanently; provided, however, that at all times, a reasonably convenient and adequate alternative means of access is made available to the **Lessee**.

ARTICLE XIV

ASSIGNMENT, SUBLETTING AND TRANSFER

The **Lessee** shall not assign, sublet or transfer any of the rights granted in this Agreement, nor shall the **Lessee** assign or otherwise transfer any interest in or to the Premises without the prior written consent of the **Authority**. Any change in ownership involving twenty-five percent (25%) or more of the **Lessee's** outstanding voting share shall be considered a transfer of this Agreement, however, transfer of ownership to or within the estate of a shareholder shall not be deemed a change in ownership. No assignment, sublet or transfer will release the **Lessee** from any of its obligations or responsibilities under this lease unless the **Authority** grants a release in writing.

ARTICLE XV

NO INDIVIDUAL LIABILITY

No appointed member of the **Authority**, or officer, agent, director of employee of either party hereto shall be held contractually or personally liable under this Agreement because of any breach of the Agreement or because of its execution or attempted execution.

ARTICLE XVI

LAWS, ORDINANCES AND RULES AND REGULATIONS TO BE OBSERVED

16.01 **Permitted Uses:** The **Lessee** shall not use, or permit the use of, the Premises for any purposes or use other than those authorized by this Agreement, except as may be otherwise mutually agreed upon in writing.

16.02 **Unlawful Purposes Prohibited:** The **Lessee** shall not use or occupy the Premises or permit same to be used or occupied for any unlawful purpose or for any purpose that is determined to be hazardous by the **Authority**.

16.03 **Compliance with the Law:** The **Lessee** shall comply with and shall cause its officers, employees and any other persons over whom it has control to comply with the Oil Pollution Act of 1990, and the laws, ordinances, or rules and regulations of any municipal, state and federal agencies, including but not limited to Occupation Safety and Health Administration, United States Customs, United States Coast Guard, Environmental Protection Agency, Department of Environmental Regulation, Department of Natural Resources, Department of Transportation and the **Authority's** published tariff.

16.04 **Responsibility for Environmental Damage**: The **Lessee** shall be responsible for all investigative, clean up or restoration costs resulting from the spill or leakage of any substance used or handled by the **Lessee** in its operation.

16.05 **Permits and Licenses**: The **Lessee** shall be responsible for obtaining all local, state and federal permits and/or licenses as may be necessary for it to operate under this Agreement, and shall maintain said permits and/or licenses throughout the entire Term of this Agreement.

16.06 **Fines or Penalties**: The **Lessee** will hold harmless and reimburse the **Authority** for any fine or penalty assessed against the **Authority** that is imposed as a result of the **Lessee's** failure

to comply with any law, ordinance, rule or regulation.

16.07 Inspection of Premises to Verify Compliance: The **Authority** and its duly authorized officers, employees, agents or assigns have the right, at reasonable times and upon reasonable notice, during normal working hours, or at any time in case of an emergency, to enter upon any of the Premises to verify the **Lessee's** compliance with applicable laws and regulations, and the provisions and conditions of this Agreement.

ARTICLE XVII

SECURITY

The **Authority** shall provide a twenty-four (24) hour per day, seven (7) days per week, roving guard service on the Terminal Facilities. Any additional security deemed necessary by the **Lessee** on the Premises shall be the responsibility of the **Lessee** and provided by the **Lessee** at its expense.

ARTICLE XVIII

SURRENDER OF LEASED PREMISES

18.01 Condition of the Premises and Improvements: The **Lessee** covenants that, at the expiration of the Term of this Agreement, or any Renewal Term or hold over period, or at any earlier termination, it will surrender the Premises in good state of repair and condition to the **Authority**, reasonable wear and tear excepted.

18.02 Title to Improvements: All buildings, fixtures and other improvements built on, or made to, the Premises by the **Lessee** shall remain on the Premises and shall immediately become exclusive property of the **Authority**. Upon surrender of the Premises, the

Lessee shall remove all equipment, trade fixtures and personal property belonging to it which have not assumed the characteristics of a fixture.

18.03 Damage to Property: Any damage caused to the **Authority's** property by the removal of any of the **Lessee's** equipment, trade fixtures and/or personal property shall be repaired by the **Lessee** at its expense.

18.04 Leasehold Improvement Liens: The **Lessee** shall not pledge, assign or grant any liens or encumbrances arising out of the use and occupancy of the Premises by the **Lessee**, or any improvements made thereon by the **Lessee**.

ARTICLE XIX

EVENTS OF DEFAULT

19.01 Events of Default by Lessee: **Lessee** shall be in default of this Agreement upon the happening of any one or more of the following events:

A. If the fees, charges or other payments which the **Lessee** herein agrees to pay or is obligated to pay under any other Agreement with the **Authority**, or any part thereof, are not received by the **Authority** within thirty (30) days of due date; or

B. If the **Lessee** files a voluntary petition for bankruptcy, or makes a general assignment for the benefit of creditors; or

C. If the **Lessee** is adjudicated bankrupt; or

D. If any act occurs which deprives the **Lessee** permanently of the rights, powers and privileges necessary for the proper conduct and operation of its business; or

E. If at any time the **Lessee** abandons and ceases to use the Premises for a period of sixty (60) consecutive days, except when such abandonment and cessation is due to fire, earthquake, strike, action of any government, default of the **Authority**, or other cause beyond the **Lessee's** control; or

F. If the **Lessee** uses or permits the use of the Premises at any time for any purpose which has not been authorized by this Agreement or by a subsequent written Agreement between the **Lessee** or the **Authority**; or

G. The **Lessee** uses or permits the use of the Premises in violation of any law, rules or regulation; or

H. If the **Lessee** violates any of the provisions of this Agreement.

19.02 **Remedies for Authority If Default by Lessee**: In the event **Lessee** shall be in default under this Agreement, the **Authority** may, at its discretion, take any one or more of the following actions:

A. After thirty (30) days written notice to **Lessee**, the **Authority** may declare all rental payments payable under this Agreement for the remainder of the Term of this Agreement to be immediately due and payable.

B. After thirty (30) days written notice to **Lessee** the **Authority** may re-enter and take possession of the Premises without terminating this Agreement and sublease the interest of the **Lessee** to any party, holding the **Lessee** liable for the difference, if any, between the rents and other amounts payable by **Lessee** hereunder and

the rents and other amounts payable by such subleasing.

C. **Authority** may also exercise its rights under the Irrevocable Bond or the Letter of Credit, or draw against the Cash Deposit as provided for on Exhibit B in the event this Agreement is terminated during the first ten (10) years of the Term hereof by reason of **Lessee's** default under this Agreement.

D. After thirty (30) days written notice to **Lessee**, the **Authority** may terminate this Agreement, exclude the **Lessee** from possession of the Premises, and use its best effort to lease **Lessee's** interest therein to another party for the account of **Lessee**, holding **Lessee** liable for all rents and other amounts due under this Agreement and not paid by such other party.

E. The **Authority** may take whatever other action at law or in equity that it may deem necessary to collect any amounts then due and thereafter to become due from **Lessee**, or to enforce performance and observance of any obligations of **Lessee** under this Agreement.

19.03 <u>**Events of Default by Authority**</u>: **Authority** shall be in default of this Agreement upon the happening of any one or more of the following events:

A. If a court of competent jurisdiction issues an injunction against the **Authority** or any successor thereto preventing or restraining the use of the Premises in its entirety, or any part thereof which may be vital to the **Lessee** for its operation; provided, however, that such injunction must remain in full force for a period of sixty (60) days or more before the **Lessee** can declare this Agreement terminated; or

B. If the Premises become unusable in whole or substantial part for the purposes specified herein through no fault or omission of the **Lessee**, and the **Authority** does not proceed as promptly as reasonably practicable with the repairs necessary to restore the Premises to a usable condition prior to the occurrence of the damage; or

C. If the **Authority** fails to provide and maintain means for unobstructed ingress and egress to and from the Premises in accordance with the provisions of this Agreement; or

D. If by reason of any willful act or omission in violation of this Agreement, the **Authority** shall substantially interfere with the use by the **Lessee** of the Premises for the purposes authorized by this Agreement.

E. If any part of the Premises are taken or condemned under power of eminent domain by any governmental authority during the Term of this Agreement which is vital to the **Lessee** in its operation, then this Agreement shall terminate as to the part so taken from the date of the possession of the part so taken with thirty (30) days written notice to the **Lessee**. The **Lessee** shall have no claim or interest in or to any award of damages for such taking.

19.04 **Remedies for Lessee If Default By the Authority**: The **Lessee** may take whatever action at law or in equity to enforce performance and observance of any obligations of the **Authority** under this Agreement.

19.05 **Time of Termination**: Notwithstanding anything to the contrary contained in this Agreement, no termination declared by either party shall be effective unless and until thirty (30) days have elapsed after written notice to the other party specifying that such termination shall take effect and the cause for which it is being terminated. If such termination is by reason of a default for which termination is authorized under this Agreement, that default must be specified. No termination shall be effective if such cause or default shall have been cured during such thirty (30) day period, such termination shall not be effective if correction of the cause or default is commenced within said thirty (30) days and completed as promptly as reasonably practicable. Provided, however, if this Agreement is to be terminated for failure of the **Lessee** to pay rental fees specified in Article 4 within a thirty (30) day period of the date due, the **Authority** may give the **Lessee** notice of its intent to terminate this Agreement fifteen (15) days after said thirty (30) day period has expired. However, if payment is made within this fifteen (15) day period, this Agreement shall not terminate.

19.06 **Interruption of Services or Facilities**: The **Authority** does not warrant that any of the utilities, services or facilities mentioned herein will be free from interruptions caused by repairs, renewals, improvements or alterations; strikes or lockouts; accidents; electrical failures, interruptions or surges; inability of the **Authority** to obtain utilities or supplies; or any other cause beyond the reasonable control of the **Authority**. Except as otherwise provided, no such interruption of utilities, services or

facilities shall be deemed termination of this Agreement for the use or possession of the Premises or any part thereof by the **Lessee**, or render the **Authority** liable to the **Lessee** for damages or relieve the **Lessee** from performing its obligations under this Agreement.

ARTICLE XX

WAIVERS

20.01 No waiver by either party of any of the provisions, conditions, covenants, or agreements herein shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor as a waiver of the strict and prompt performance thereof.

20.02 **No Impairment of Rights:** No delay, failure or omission of the **Authority** to re-enter the Premises, and no subsequent acceptance by the **Authority** of fees then or thereafter accrued, and no delay, failure or omission of either party to exercise any right, power, privilege or option arising from any default, shall impair any such right, power, privilege or option or be construed to be a relinquishment thereof, or a waiver of such default or acquiescence therein. No notice by either party is required to restore or revive any option, right, power, remedy or privilege after waiver by such party of default in one or more instances. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances.

20.03 Options, Rights, Powers and Remedies are Independent: Each of the options, rights, powers, or remedies given to either party by this Agreement shall be cumulative, and no one of them shall be exclusive of the other or exclude any remedies provided by law. The exercise of one option, right, power or remedy shall not preclude the exercise of any other option, right, power or remedy, except in those cases where it is expressly so provided.

ARTICLE XXI

GENERAL PROVISIONS

21.01 Modifications: No change in, modification of or supplement to this Agreement shall be valid or enforceable unless it is enacted in writing and signed by the duly authorized representatives of the **Authority** and the **Lessee**.

21.02 Severability: In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall not materially prejudice either party thereto in its respective rights, and all other obligations and provisions in this Agreement shall remain in full force and effect.

21.03 Exhibits: All exhibits or schedules referenced in this Agreement, or which from time to time may be referenced in any duly executed amendment to this Agreement, are by such reference incorporated herein and shall be deemed a part of this Agreement as if fully set forth herein. Any exhibit or schedule attached to this Agreement may be adjusted without the necessity of formal amendment to the body of this Agreement. Upon adjustment of any exhibit or schedule, a revised exhibit or schedule shall be

prepared by the **Authority** and submitted to the **Lessee**. Each successive exhibit or schedule, as it supersedes the previous exhibit or schedule as to its effective date, shall constitute a formal amendment, and as such shall be deemed a part of this Agreement. Any revised exhibit or schedule shall be filed with the FMC unless such revision is for annual increases in fees and charges as provided for in this Agreement.

21.04 **Withholding Required Approvals:** Whenever approval by the **Authority** and the **Lessee** is required by the provisions of this Agreement, no such approval shall be unreasonably withheld or denied.

21.05 **Notices, Consents and Approvals:**

A. All notices, consents and approvals required or authorized by this Agreement shall be given by either party in writing and signed by a duly designated representative of the party on whose behalf they are given. Such notice, consent or approval shall be deemed to be validly and sufficiently served at the time a registered or certified letter, properly addressed, is deposited in any U.S. Post Office.

1. Notice to the **Authority** shall be addressed to:

   Vice President, Marine Division
   Jacksonville Port Authority
   Post Office Box 3005
   Jacksonville, Florida 32206

2. Notice to the **Lessee** shall be addressed to:

   Trailer Bridge, Inc.
   10405 New Berlin Road E.
   Jacksonville, Florida 32226

   Copy To: W.G. Gotimer
   500 Park Avenue
   5th Floor
   New York, New York 10022

21.06 **Place of Payment:** Payments required pursuant to this Agreement shall be made to:

Jacksonville Port Authority
Vice President, Corporate Services
Post Office Box 3005
Jacksonville, Florida 32206

21.07 **Headings:** The headings of the articles of this Agreement are included only as a matter of convenience and for reference. These headings in no way define or limit the scope or intent of the provisions and shall not be construed to affect the provisions of this Agreement.

21.08 **Counterpart:** This Agreement may be signed in any number of counterparts, each of which shall be deemed an original so long as it bears the signature of both parties.

21.09 **Independent Contractors**: The parties hereto agree that in the performance of this Agreement, the **Lessee** shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or associate of the **Authority**. This Agreement shall not be construed so as to establish a joint venture or partnership between the parties hereto.

21.10 **Non-Discrimination:** The **Lessee** covenants, and agrees that (i) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities, (ii) in the construction of any improvements on, over, or under such land and the furnishing or services thereon, no person on the grounds of race, color or national origin shall be excluded

from participation in, denied benefits of or be otherwise subjected to discrimination, and (iii) the **Lessee** shall use the Premises in compliance with all other requirements imposed by or pursuant to any applicable federal, state or local law.

21.11 **Warranties and Representations:**

A. The **Lessee** warrants and represents that it has corporate power to enter into this Agreement, to perform all acts required to be performed by the **Lessee** and that its execution and delivery hereof have been duly authorized by all necessary corporate action.

B. The **Authority** warrants and represents that it has corporate power to perform all acts required of it in this Agreement, that the execution and delivery hereof have been duly authorized by all necessary corporate action, and that the **Authority** has the right to enter into this Agreement for the use of the Premises and appurtenances together with all facilities, rights, licenses and privileges granted herein.

21.12 **Force Majeure:** Neither the **Authority** nor the **Lessee** shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to boycotts, shortages or materials, labor disputes, shipwrecks or obstructions to navigation, acts of God, acts of public enemy, acts or superior governmental authority, floods, riots, rebellion, sabotage by third parties, or any other similar circumstances for which they are not reasonably responsible and which are not within their control.

21.13 **Governing Law:** This Agreement is to be read and construed in accordance with the laws of the State of Florida. Any disputes relating to this Agreement must be resolved in accordance with the laws of the State of Florida.

21.14 **Construction:** Both parties acknowledge that they have had meaningful input into the provisions and conditions contained in this Agreement. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this Agreement. The rule sometimes referred to as "Fortius Contra Proferentum" shall not be applied to the interpretation of this Agreement.

21.15 **Inspection of Records:** Each party hereto, at its expense and upon reasonable notice shall have the right to inspect the books, records and other data of the other party relating to the provisions and requirements hereof, provided such inspection is made during regular business hours.

21.16 **Entire Agreement**

The parties hereto understand and agree that this instrument contains the entire Agreement for the Premises between the **Authority** and the **Lessee**. The parties further understand and agree that neither party nor its agents have made representation or promises with respect to this Agreement except as expressly set forth herein; and that no claim or liability shall arise for any representations or promises not expressly stated in this Agreement. Any other written or oral agreement regarding the Premises with the other party is expressly waived.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized officers and their official corporate seals to be affixed hereto and attested as of this 30th day of October, 1997.

JACKSONVILLE PORT AUTHORITY

Attest _____
(Signature)

Susan Soltys
Name (Please type or print)

Secretary to the Pres + CEO
Title

_____
(Signature)

K. R. Krauter
Name (Please type or print)

Pres + CEO
Title

TRAILER BRIDGE, INC.

Attest _____
(Signature)

Joseph E. Morley
Name (Please type or print)

VP operations
Title

_____
(Signature)

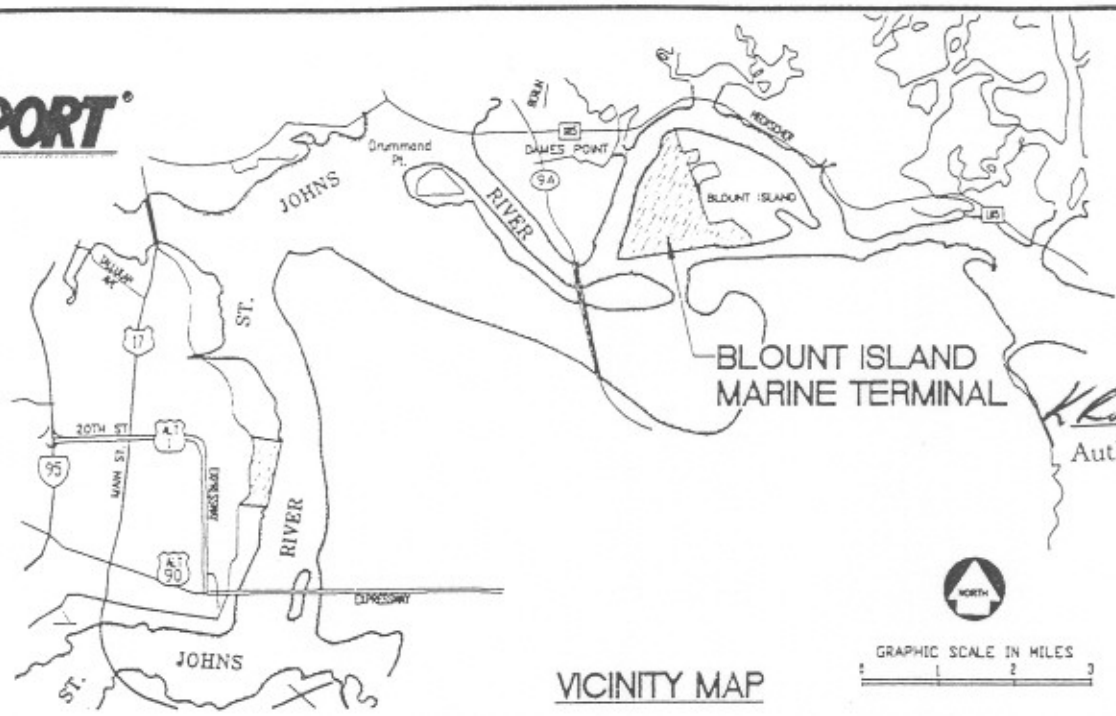
Ralph W. Hein
Name (Please type or print)

President
Title

Approved for the Jacksonville Port Authority

_____
Counsel for the
Jacksonville Port Authority

JAXPORT®

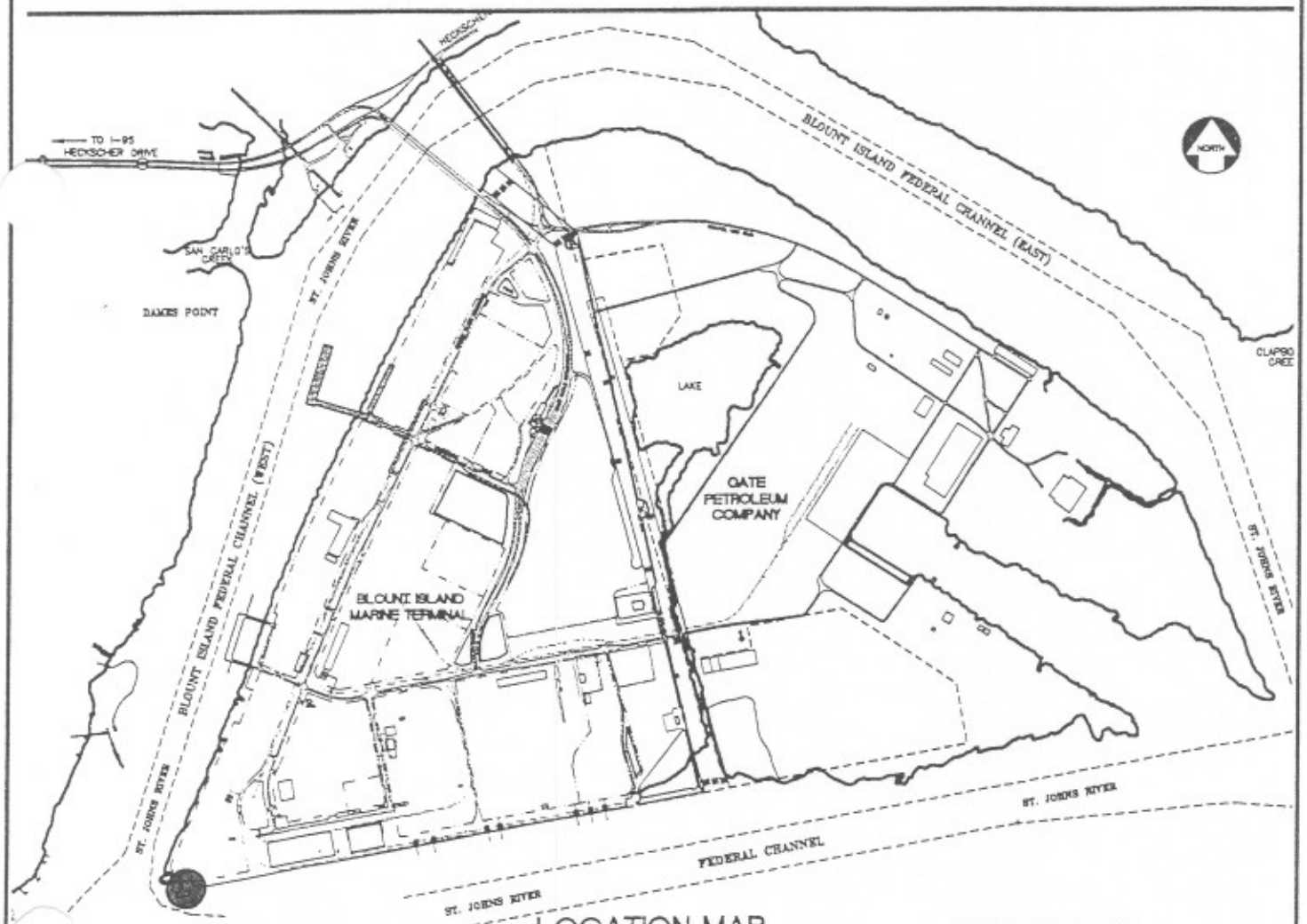


VICINITY MAP

Initials

KRK Authority

BJK Lessee



LOCATION MAP

☐ 17.13 ACRES

■ TRIPLE DECK LOADING FACILITY LOCATION

EXHIBIT "A"
TRAILER BRIDGE, INC.

EFFECTIVE DATE: _____

EXHIBIT B
SCHEDULE OF FEES AND CHARGES
TRAILER BRIDGE, INC.
Effective Date of this Exhibit B _____

I. **Construction:** A. **Authority** has commenced design and will construct a Triple Deck Roll-on/Roll-off Loading Facility on the Terminal Facilities. In consideration thereof, **Lessee** will deliver to **Authority**, upon execution of this Agreement, an Irrevocable Bond, Letter of Credit or Cash Deposit in the amount of Six Hundred and Fifteen Thousand and No/100 Dollars ($615,000.00) ("The Performance Guarantee") in order to guarantee the full and faithful performance by **Lessee** of all its obligations under this Agreement. The Irrevocable Bond or Letter of Credit shall be in a form acceptable to **Authority** and shall be issued by a company acceptable to **Authority**. Said Bond, Letter of Credit or Cash Deposit shall be kept in full force and effect during the period of construction for the Triple Deck Loading Facility, and for a period of ten (10) years after the Commencement Date of this Agreement as defined in Section II of this Exhibit. If any default occurs which is enumerated in Article XIX titled "Events of Default", or if this Agreement is terminated for any reason by **Lessee**, or if the Agreement dated August 1, 1991 is terminated by **Lessee** except as provided for in this Agreement, **Authority** shall have the right to draw the entire Bond, Letter of Credit or Cash Deposit upon certification by **Authority's** Vice President, Corporate Services, or his designee, of said default to the issuer of said Bond, Letter of Credit or Cash Deposit.

B. The Performance Guarantee is based upon fifteen percent 15% of the estimated design and construction costs. When construction is complete, and all costs are known, this Exhibit B will be revised to reflect a performance guarantee which is 15% of the actual design and construction costs. **Lessee** shall then provide the **Authority** with the revised performance guarantee within thirty (30) days of such revision and shall maintain same under the provisions stipulated above.

II. **Term:** The Term of this Agreement shall commence on the date when **Lessee** takes beneficial occupancy of the Triple Deck Loading Facility ("Commencement Date"), and thereafter shall continue for a period of Fifteen (15) years. When the Commencement Date is known, this Exhibit B shall be revised to reflect said Commencement Date, along with the provisions of Paragraph I.B of this Exhibit.

III. Lease Rental:		Monthly Rental	Annual Rental
A.	17.13 acres @ $14,901.64 per acre per year.	$21,272.09	$255,265.09

B. First Right of Refusal: **Lessee** shall have a first right of refusal on any property contiguous to **Lessee's** Premises that may become available during the Term of this Agreement. In the event any property becomes available, **Lessee** shall have five (5) working days to exercise its First Right of Refusal in writing to **Authority**. If the **Lessee** elects to lease said parcel, this Exhibit B shall be revised to reflect the inclusion of the contiguous parcel into the Premises at the then current rental rate reflected in III.A above.

IV. **Throughput Rates:** Throughput rates includes wharfage and terminal use.

A. Trailer/Containers

0 - 15,000 loads -	$35.00 per load
15,001 - 20,000 loads -	$30.00 per load
20,001 - 25,000 loads -	$25.00 per load
Over 25,000 loads -	$20.00 per load

B. Autos - $5.50 per unit

C. All other cargos shall be assessed rates contained in Authority's published FMC Tariff.

V. **Dockage Rates:**

A. CARGO BARGE

1. Dockage during Stevedoring Operations - Cargo Barges shall be assessed dockage at a rate of $3.24 per linear foot of vessel for the first 24 hours that a vessel is berthed at **Authority's** dock. Thereafter, the above dockage rate shall be assessed during stevedoring operations and billed in quarter day increments.

2. Idle Dockage - A Cargo Barge shall be assessed $1.62 per linear foot of vessel while the vessel is in idle status. Idle dockage shall be billed in quarter day increments.

B. TUGS - Tugs shall be assessed $310.25 per tug per port call. A port call is based on a tug at berth for an average of three (3) days. In the event a tug's port call extends beyond 3 days for any one tug, dockage for such tug shall be the rate in **Authority's** published tariff or its reissue.

VI. **Increases In Rates**: All of the above rates shall be increased on every anniversary of the Commencement Date of this Agreement by the percent of increase in the Consumer Price Index (CPI) during the previous 12 month period. The CPI increase will be computed based on the latest available monthly index two (2) months prior to the anniversary of the Commencement Date of this Agreement. The CPI used for such increase calculations shall be the U.S. Urban Wage Earners and Clerical Workers, All Items, 1982-84=100.

VII. **Minimum Annual Guarantee**: Throughout the Term of this Agreement, **Lessee** shall guarantee total annual revenues to **Authority** of One Million, Five Hundred Thousand and No/100 Dollars ($1,500,000.00) each lease year. In the event **Lessee** does not meet the annual minimum guarantee, **Authority** shall invoice **Lessee** the difference between the actual amount paid to **Authority** during the lease year and the minimum annual guarantee. **Lessee** shall pay said invoice within thirty (30) days of the date of said invoice.

VIII. **Preferential Berthing**: **Lessee** may use the Triple Deck Loading Berth on a preferential basis on two (2) designated days per week. Said designation shall be made by **Lessee** and furnished to **Authority** in writing. Said designation may be changed by **Lessee** with thirty (30) days prior written notice to the **Authority**, and shall be approved as long as said change does not conflict with other berthing agreements.

IX. **Other Fees and Charges**: Any other fees and charges due and payable to **Authority** by **Lessee**, and not stipulated by this Agreement, shall be assessed and handled in accordance with **Authority's** published tariff or its reissue, unless otherwise agreed to in writing.

TRAILER BRIDGE, INC.

JACKSONVILLE PORT AUTHORITY

FMC Approval Date _____ of FMC Number _____.

EXHIBIT B

EXHIBIT C
SCHEDULE OF INSURANCE REQUIREMENTS
TRAILER BRIDGE, INC.
Effective Date:_____

1. **WORKERS COMPENSATION**

PART I	
PART II	STATE REQUIREMENT
Each Accident	$500,000.00
Disease-Policy Limit	$500,000.00
Disease-Each Employee	$500,000.00

2. **COMMERCIAL GENERAL LIABILITY: Authority** shall be named and endorsed as an additional insured.

Combined Single Limit of Liability

General Aggregate	$2,000,000.00
Each Occurrence	$2,000,000.00

3. **PROTECTION AND INDEMNITY LIABILITY (P&I)**

Minimum Requirement	$5,000,000.00

4. **TERMINAL OPERATORS AND STEVEDORES LIABILITY:** In such form and amounts as the **Authority** may require. The **Authority** shall be named and endorsed as an additional insured.

COMPREHENSIVE AUTOMOBILE LIABILITY

Coverage shall include owned, non-owned and hired automobiles.

Combined Single Limit of Liability $1,000,000.00

5. **PROPERTY INSURANCE/FIRE AND EXTENDED COVERAGE**
In the amount of the full insurable value of cargo under the **Lessee's** care and custody.

TRAILER BRIDGE, INC.

JACKSONVILLE PORT AUTHORITY