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**MARINE TERMINAL LEASE AND OPERATING AGREEMENT**

**BETWEEN**

**BROWARD COUNTY**

**AND**

**FLORIDA INTERNATIONAL TERMINAL, LLC**

**AND**

**COMPANIA SUD AMERICANA DE VAPORES S.A.**

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**MARINE TERMINAL LEASE AND OPERATING AGREEMENT**

This Marine Terminal Lease and Operating Agreement ("Agreement") made and entered into by and between:

BROWARD COUNTY,  
a political subdivision of the State of Florida,  
acting by and through its Board of County Commissioners  
(hereinafter called the "COUNTY"),

and

FLORIDA INTERNATIONAL TERMINAL, LLC  
a Florida Limited Liability Company,  
(hereinafter called the "TERMINAL OPERATOR"),

and

COMPANIA SUD AMERICANA DE VAPORES S.A.  
a Chilean corporation,  
(hereinafter called the "GUARANTOR")

**WITNESSETH:**

WHEREAS, COUNTY owns and has jurisdiction over the development, operation and maintenance of Port Everglades in the County of Broward; and

WHEREAS, subject to Bankruptcy Court and County Commission approval, TERMINAL OPERATOR has purchased South Stevedoring, Inc.'s ("South") rights, obligations and interests in South's Marine Terminal Management Agreement with Broward County, and has agreed to assume the same as modified in this Agreement; and

WHEREAS, TERMINAL OPERATOR desires to lease and operate a container

terminal yard at Port Everglades; and

WHEREAS, COUNTY and TERMINAL OPERATOR desire to enter into this Agreement with respect to the Premises hereinafter described,

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, and the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. PREMISES

A. DEFINED

COUNTY does hereby lease to TERMINAL OPERATOR and TERMINAL OPERATOR hereby agrees to take occupancy from COUNTY on the terms and conditions hereinafter set forth certain real property comprised of ±36.03 acres and improvements thereon, located at Port Everglades, Broward County, Florida and more particularly described on Exhibits "A" attached hereto and made a part hereof, hereinafter referred to as the ("Premises").

B. CONDITION OF PREMISES

COUNTY makes no representations or warranties whatsoever as to: (i) the condition of the Premises, or (ii) whether the Premises are in compliance with applicable federal, state, and local laws, ordinances, rules, or regulations. The Premises are hereby demised in "AS IS CONDITION" and "WITH ALL FAULTS," subject to COUNTY's repair obligations as provided in Section 14, subsection G herein and subject to the environmental conditions as set forth in the Environmental Audit and the Environmental Base Line Audit as provided herein. The parties agree that the condition of the Premises as of the date of TERMINAL

OPERATOR's execution of this Agreement is as described in the Environmental Audit which is attached hereto as Exhibit "B" and in the Environmental Base Line Audit which shall be conducted as set forth herein. Prior to or within thirty (30) calendar days of the Commencement Date hereof, TERMINAL OPERATOR shall conduct an Environmental Base Line Audit (the "Base Line Audit") of the Premises to be performed by a reputable environmental consultant acceptable to COUNTY, in COUNTY's reasonable discretion. The Base Line Audit shall update the Environmental Audit, and shall be incorporated and referenced herein as Exhibit "E." The scope and estimated cost for the Base Line Audit shall be approved by COUNTY's Port Director in advance of any work being initiated on the Premises. The Base Line Audit will be contracted for and paid by TERMINAL OPERATOR. Notwithstanding, COUNTY shall provide TERMINAL OPERATOR with a one-time rent credit in an amount not to exceed Twenty Thousand Seven Hundred Thirty-seven Dollars and Twenty-Four Cents (\$20,737.24). This rent credit represents COUNTY's share of the costs and expenses incurred by TERMINAL OPERATOR relating to the Base Line Audit of the Premises. The rent credit shall be given in the month next succeeding the period in which the TERMINAL OPERATOR's Base Line Audit is completed and all supporting documentation evidencing such expenditures made by TERMINAL OPERATOR is supplied to COUNTY's Port Director. TERMINAL OPERATOR represents, acknowledges and agrees that it has had sufficient opportunity to inspect the Premises and hereby accepts the Premises in "AS IS CONDITION" and "WITH ALL FAULTS," subject to COUNTY's repair obligations as set forth in Section 14, subsection G herein and subject to the environmental conditions set forth in the Environmental Audit and Base Line Audit as

provided herein. TERMINAL OPERATOR hereby releases COUNTY from any and all claims and liabilities on account of the condition of the Premises and the improvements thereon, or any failure of any of the component parts to be in good or working order as of the Commencement Date, excluding COUNTY's repair obligations set forth in Section 14, Subsection G and excluding the environmental conditions as identified in the Environmental Audit and Base Line Audit as provided herein.

**2. TERM AND COMMENCEMENT DATE**

The term of this Agreement shall begin on the Commencement Date and shall be for an initial period of Ten (10) years ("Initial Term"), subject to the rights of termination provided herein.

"Commencement Date", as used in this Agreement, shall be not later than thirty (30) calendar days from the date this Agreement is executed by COUNTY. TERMINAL OPERATOR shall have the option to extend the Initial Term of this Agreement for two (2) additional five (5) year periods each an ("Option Term") provided it has kept and remains in compliance with all the terms and conditions of this Agreement. TERMINAL OPERATOR shall give COUNTY's Port Director written notice of its intent to exercise its option to extend the term of the Agreement not less than twelve (12) months prior to the expiration date of the Initial Term and if applicable, the expiration date of the first five (5) year Option Term ("Option Notice"). Unless COUNTY, through its Board of County Commissioners, waives the required Option Notice, failure of TERMINAL OPERATOR to provide COUNTY's Port Director with timely written notice of its exercise of any option, shall result in the forfeiture by TERMINAL OPERATOR of its option to extend the then existing term of this Agreement,

such Option Term shall be null and void.

**3. FILING WITH FEDERAL MARITIME COMMISSION**

Once fully executed, this Agreement shall be filed with the Federal Maritime Commission and shall become effective in accordance with the terms of Section 5 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1996.

**4. RENTAL, FEES AND CHARGES**

**A. RENTAL PAYMENTS.**

The annual rental, subject to adjustment as hereinafter provided, shall be paid by TERMINAL OPERATOR in twelve (12) equal monthly installments, together with all applicable sales taxes thereon, in advance and without demand, set off or deduction. Rent shall be paid on that date ("Payment Date") which is the first day of the month following the month in which the Commencement Date occurs, or on the Commencement Date if it occurs on the first day of a month. Thereafter monthly installments of rental shall be payable in advance on the 1st day of each and every month. If the Commencement Date does not occur on the first day of a month, then on the Payment Date a partial payment of rent shall be due, which shall be an amount equal to the first monthly rental payment, prorated based on the number of calendar days occurring between the Commencement Date and the Payment Date, together with all applicable sales taxes thereon.

(1) Effective on the Payment Date or Commencement Date (as applicable), TERMINAL OPERATOR's initial total annual rental is Five Hundred Ninety Thousand Five Hundred Sixty Dollars and Fifty-six Cents (\$590,560.56) for the Premises, which amount shall be paid in twelve (12) equal monthly rental

installments of Forty-nine Thousand Two Hundred Thirteen Dollars and Thirty-eight Cents (\$49,213.38). Said monthly rental amount is calculated by multiplying One Thousand Three Hundred Sixty-five Dollars and Ninety Cents (\$1,365.90) per acre by the number of acres described on the Exhibit "A" Premises.

(2) COUNTY and TERMINAL OPERATOR agree that the initial total annual rental amount established in subparagraph (1) hereinabove, shall be adjusted on January 1, 2006 and each and every January 1, thereafter over the term hereof, including any Option Term, (each such date being referred to as an "Adjustment Date") as set forth below, and such adjusted rental (together with applicable sales taxes thereon) shall be the new annual rental for the Premises (subject to adjustment as hereinafter provided) together with all applicable sales taxes thereon, and shall be payable in twelve equal monthly installments in advance and without demand, setoff or deduction.

(3) On each "Adjustment Date" (except the January 1, 2016, and January 1, 2026) Adjustment Dates, which is subject to the provisions of subparagraph [4], below), the annual rental shall be increased to an amount equal to the greater of either: (i) the product of the annual rental paid during the immediately preceding twelve month period, multiplied by the "CPI Multiplier" (as hereinafter defined); or (ii) the product of the annual rental paid during the immediately preceding twelve month period, multiplied by 1.03. The product of such multiplication shall be the amount of the annual rental payment to be made during the next succeeding twelve month period, commencing January 1. Upon determining such rental adjustment,

COUNTY shall advise TERMINAL OPERATOR of the new annual rental amount and the corresponding adjusted monthly installment payment of rent. In no event shall any adjusted annual rental established pursuant to this subparagraph (3) be less than the total annual rental paid during the immediately preceding twelve (12) month period.

(i) The "CPI Multiplier" is a fraction, the numerator of which shall be the "CPI Index Number" (as hereinafter defined) indicated for the month that is three (3) months prior to the Adjustment Date and the denominator of which shall be the CPI Index Number indicated for the month that is fifteen (15) months prior to the Adjustment Date.

(ii) The "CPI Index Number" is the index number of retail commodity prices designated "CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS - UNITED STATES CITY AVERAGE - ALL ITEMS" (1982-1984 =100) ("Consumer Price Index") issued by the Bureau of Labor Statistics, United States Department of Labor. The rental and the adjustment made based upon the provisions of this section shall be made solely by COUNTY. Any publication by either the United States Department of Labor or the United States Department of Commerce in which such Index numbers are published shall be admissible in evidence in any legal or judicial proceeding involving this Agreement without further proof of authenticity or authentication. Should the Bureau of Labor Statistics cease publishing the above-described Index, then such other Index as may be published by the

United States Department of Labor that most nearly approximates the discontinued Index shall be used in making the adjustments described above. Should the United States Department of Labor discontinue publication of an Index approximating the Index contemplated, then such Index as may be published by another United States governmental agency which most nearly approximates the Index first above referenced shall govern and be substituted as the Index to be used.

(4) On the January 1, 2016 and January 1, 2026 Adjustment Dates, the annual rental shall be adjusted (up or down) to an amount equal to the market rent of the Premises as determined by an appraisal as hereinafter provided. Such adjusted rental shall commence on the Adjustment Date as defined in this Section. Upon determining such rental adjustment, COUNTY shall advise TERMINAL OPERATOR of the new annual rental and the new monthly installment payment of rent. The "market rent of the Premises" is the market value of the rights of use of the leased fee, given the restrictions of this Agreement. Market rent shall be established as follows:

(i) The market rent of the Premises shall be equal to the "Land and Improvements MR" (as hereinafter defined). The "Land and Improvements MR" shall be determined based upon the market value of the leased fee together with the improvements as encumbered by this Agreement to which shall be applied the Percentage Adjustment Factor then being used by COUNTY.

(5) The annual rental shall be adjusted upwards by adding to the then existing annual rental, the market rent of the improvements to the Premises, as established in subparagraph (ii), below.

(i) Upon determining such rental adjustment, COUNTY shall advise TERMINAL OPERATOR of the new annual rental and the new monthly installment payment of rent, which shall continue in effect until the next Adjustment Date.

(ii) The market rent of the improvements to the Premises shall be determined based upon the market value of the improvements to the leased fee as encumbered by this Agreement, to which shall be applied the Percentage Adjustment Factor then being used by COUNTY.

(6) Notwithstanding anything to the contrary herein contained, if at a future time COUNTY adopts as policy for Port Everglades (pursuant to a resolution adopted by its Board of County Commissioners), a requirement that rental adjustments shall be made on the same date for all leases, then the adjustments of rental based on appraisals and the other annual adjustments of rental shall be made in accordance with and at the uniform times established pursuant to said policy. This provision shall not adjust the appraisal Adjustment Dates of January 1, 2016 and January 1, 2026.

(7) The "Percentage Adjustment Factor" shall be the percentage factor being utilized by COUNTY, in its sole discretion at the time of the adjustment, to establish rentals for leases at Port Everglades.

(8) The appraisals obtained by COUNTY shall be made not less than one hundred twenty (120) calendar days before each applicable Adjustment Date. The appraisal reports will follow the narrative format suggested by the American Institute, the content of which will conform to the Uniform Standards of Professional Appraisal Practice. Should an appraisal finding result in a projected total rent for the remaining term of this Agreement which exceeds \$2,000,000.00, then a second appraisal will be obtained, and in such case, the final market rent value shall be determined either by COUNTY, through its Department of Public Works, Real Property Section (or successor thereto) acting as the review appraiser, or by a review appraiser selected by either the Real Property Section or Broward County's Port Everglades Department, or any successor. Broward County's Port Everglades Department shall send TERMINAL OPERATOR written notice of the adjusted rent amount based on COUNTY's appraisal(s), or review appraisal, as appropriate, which notice shall include copies of the appraisal(s) and review appraisal, if any. If TERMINAL OPERATOR is not in agreement with the adjusted rent amount, TERMINAL OPERATOR may hire its own appraiser; provided that TERMINAL OPERATOR's appraisal must be obtained within sixty (60) calendar days following receipt of Broward County's Port Everglades Department's notice of the adjusted rent and COUNTY appraisal. TERMINAL OPERATOR shall provide Broward County's Port Everglades Department with a copy of any such appraisal. If TERMINAL OPERATOR fails to obtain an appraisal within said sixty (60) day period, then TERMINAL OPERATOR shall thereafter have no further rights to

dispute the adjusted rent amount as set forth in Broward County's Port Everglades Department's notification of the adjusted rent. If TERMINAL OPERATOR does obtain an appraisal within said (60) calendar days and if such appraisal's finding of market rent value does not agree with Broward County's Port Everglades Department's notice as to the adjusted rent, then the appraiser(s) selected by the COUNTY and the appraiser selected by TERMINAL OPERATOR shall together select another appraiser ("Dispute Resolution Appraiser") within fifteen (15) calendar days following completion of TERMINAL OPERATOR's appraisal. If the appraiser(s) selected by COUNTY and the appraiser selected by TERMINAL OPERATOR fail to select a Dispute Resolution Appraiser within fifteen (15) calendar days following completion of TERMINAL OPERATOR's appraisal, then TERMINAL OPERATOR shall thereafter have no further rights to dispute the rent amount as set forth in Broward County's Port Everglades Department's notification of the adjusted rent. Any Dispute Resolution Appraiser must complete its appraisal ("Dispute Resolution Appraisal") within thirty (30) calendar days of its employment. The finding of market rent value set forth in a timely obtained Dispute Resolution Appraisal shall be binding on both parties. The Dispute Resolution Appraiser shall provide copies of the Dispute Resolution Appraisal to both Broward County's Port Everglades Department and TERMINAL OPERATOR.

(i) TERMINAL OPERATOR shall be required to reimburse COUNTY for the cost of the appraisals obtained by COUNTY in connection with each applicable rental adjustment, and such expense shall be spread

evenly over the period of time between the adjustments of rent based on appraisal, with payments being made monthly to COUNTY, on the first date of each month. The expense of any Dispute Resolution Appraisal shall be borne equally by the parties, with TERMINAL OPERATOR's portion of such expense being spread evenly over the period of time between the adjustments of rent based on appraisal, with payments being made monthly to COUNTY, on the first date of each month.

(ii) Any appraisal conducted hereunder must contain a determination of market rent value, using the methodology required by subparagraphs (4) and (5), above. Any appraiser retained by any of the parties to prepare an appraisal hereunder must be an M.A.I. Appraiser or a State of Florida Certified General Appraiser (or a member of a professional group of similar stature, that has been approved by Broward County's Port Everglades Department), having an office in Palm Beach, Broward, or Miami-Dade County.

(9) It is understood and agreed that if a rental adjustment is required hereunder, the previous rental then being paid shall continue until Broward County's Port Everglades Department provides notice of the adjusted rent amount, and the adjustment shall be retroactive to the Adjustment Date. The sum constituting the adjustment for the months of the period which have passed prior to the determination of the amount of the adjustment shall be due and payable within thirty (30) calendar days after such determination. In the event TERMINAL OPERATOR

disputes the amount of any adjustment of the rental payments, TERMINAL OPERATOR shall continue paying the rent to COUNTY under the last preceding rental adjustment until such time as the dispute has been settled, at which time an adjustment (with interest at the rate of ten percent (10%) per annum) will be made retroactive to the beginning of the adjustment period in which the dispute arose.

(10) Upon determining a rental adjustment, Broward County's Port Everglades Department shall advise TERMINAL OPERATOR of the new monthly rental installment for such period, which shall be accompanied by evidence supporting the manner in which the new adjusted rent was determined, which evidence shall be in sufficient detail to enable TERMINAL OPERATOR to verify the calculations.

5. CASH SECURITY DEPOSIT, PAYMENT BOND AND DRAWDOWN BY COUNTY

A. CASH DEPOSIT

COUNTY acknowledges receipt of the sum of Fifty Thousand Dollars (\$50,000.00) from TERMINAL OPERATOR as a cash security deposit.

B. PAYMENT BOND

In addition to the cash security deposit provided in Section 5(A) hereinabove, TERMINAL OPERATOR shall provide COUNTY, on or before the execution of this Agreement with a Payment Bond or irrevocable letter of credit in a form approved by COUNTY's Port Director in the amount of Four Hundred Fifty Thousand Dollars (\$450,000.00) guaranteeing to COUNTY the payment of all its financial obligations as provided hereunder. Such Bond or irrevocable letter of credit shall be with a Surety

company or financial institution of recognized standing, authorized to transact business in the state of Florida as a surety, having a resident agent in the state of Florida and having been in business with a record of successful continuous operation for at least five (5) years ("Surety").

The Surety shall hold a current certificate of authority as acceptable Surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the Surety shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 CFR Section 223.10 Section 223.111), as amended. Further, the Surety shall provide COUNTY with evidence satisfactory to COUNTY, that such excess risk has been protected in an acceptable manner.

The Surety shall have at least a B+ minimum rating in the latest revision of Best's Insurance Report.

C. INCREASE IN AMOUNT OF SECURITY DEPOSIT FOR DEFAULT

In the event that TERMINAL OPERATOR is in default under this Agreement more than two (2) times within any twelve-month period, irrespective of whether or not such default is cured, then, without limiting COUNTY's other rights and remedies provided for in this Agreement or at law or equity, COUNTY shall have the right to automatically increase the cash security deposit to three times the original cash security deposit or three months' minimum compensation, whichever is higher. The security deposit increase shall be

effective automatically upon the third notice of default and TERMINAL OPERATOR shall pay the increased cash security deposit to COUNTY within thirty (30) business days after its receipt of such written notice.

D. DRAW DOWN OF CASH SECURITY DEPOSIT AND PAYMENT BOND

COUNTY shall have the right to use the cash security deposit and Payment Bond or irrevocable letter of credit as guarantee of TERMINAL OPERATOR's performance of the terms of this Agreement, and same shall be used to reimburse COUNTY for any costs or expenses which COUNTY elects, in its sole discretion, to pay on TERMINAL OPERATOR's behalf in the event TERMINAL OPERATOR fails to make payments of any sums required hereunder. All or any part of the cash security deposit and/or Payment Bond or irrevocable letter of credit applied by COUNTY under this Section shall be repaid by TERMINAL OPERATOR within fifteen (15) calendar days after written demand therefor is sent so that the cash security deposit and Payment Bond or irrevocable letter of credit are maintained at their respective required amounts as provided in this Agreement. All amounts not paid within said time frame shall accrue interest and late charges in accordance with Section 6 hereof. Failure by TERMINAL OPERATOR to repay under this subsection shall constitute a Triggering Event hereunder.

E. NO INTEREST PAID BY COUNTY

It is understood that no interest shall be paid on the cash security deposit, but that if TERMINAL OPERATOR has not defaulted hereunder, then COUNTY shall return all amounts then held as said cash deposit to TERMINAL OPERATOR within thirty (30) calendar days after the expiration of the Agreement term.

**6. INTEREST AND LATE CHARGES**

If TERMINAL OPERATOR fails to make all payments which TERMINAL OPERATOR is obligated to pay COUNTY under the terms of this Agreement within fifteen (15) calendar days of their due date, TERMINAL OPERATOR shall pay COUNTY, in addition to the amount otherwise due, a late charge equal to ten percent (10%) of such overdue amount. Interest shall accrue on all delinquent amounts and other amounts as is provided for in COUNTY's rules, regulations and ordinances, including published Tariff No. 11, amendments thereto and reissues thereof, provided such assessments shall be applied uniformly to all customers of COUNTY similarly situated.

TERMINAL OPERATOR and COUNTY agree that the late charge set forth herein represents a reasonable estimate of such costs and expenses and is fair compensation to COUNTY for the loss suffered from such nonpayment by TERMINAL OPERATOR. No acceptance by COUNTY of fees, charges or other payments in whole or in part for any period or periods after a default by TERMINAL OPERATOR of any of the terms, covenants and conditions hereof shall be deemed a waiver of any right on the part of COUNTY to terminate this Agreement. Any and all amounts due and payable under this Section shall be payable to COUNTY within thirty (30) calendar days of their due date.

**7. PLACE OF PAYMENTS**

All payments required to be made by TERMINAL OPERATOR under this Agreement shall be made payable to: BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS, and shall be delivered to: Port Everglades, Attn: Finance Division, 1850 Eller Drive, Fort Lauderdale, FL 33316, or to such other office or address as may be

substituted therefor.

8. **TAXES**

A. Nothing herein shall prevent TERMINAL OPERATOR from challenging any assessment or any tax to the same extent and in the same manner as may any other property owner or resident of Broward County.

Throughout the Agreement Term hereunder, TERMINAL OPERATOR agrees to pay as required herein, all taxes levied and assessed upon the Premises including all improvements thereon, together with all special assessments of any kind levied and assessed against the Premises and improvements thereon, together with sales tax. Further, TERMINAL OPERATOR agrees to pay when due and before the same becomes delinquent, all personal property taxes which may be levied and assessed against all tangible personal property situated on the Premises and subject to taxation, or against TERMINAL OPERATOR's intangible personal property subject to taxation in Broward County, Florida. Additionally, TERMINAL OPERATOR agrees to pay all sales or use taxes which might hereafter be lawfully assessed or imposed arising out of the execution of this Agreement. Notwithstanding any provision of this Agreement to the contrary, **NO** obligation, which accrued but has not been satisfied under any prior agreements between the parties, shall terminate or be considered canceled upon the execution of this Agreement. Rather, such obligation shall continue as if it had accrued under this Agreement until the obligation is satisfied.

B. In addition, TERMINAL OPERATOR agrees to pay, as compensation, to COUNTY at least thirty (30) calendar days prior to expiration of the Agreement term hereof

or immediately upon termination of this Agreement, a pro rata amount of the tax obligation, together with sales tax, for the calendar year in which such expiration or termination occurs ("Exit Year"), provided that the tax obligation for such year has not been paid in accordance with the foregoing paragraph. In the event the actual tax obligation for the Exit Year has not yet been determined, then the amount due to COUNTY shall be estimated based on the tax obligation levied and assessed against the Premises and improvements thereon for the prior calendar year. Thereafter, if the estimated amount paid by TERMINAL OPERATOR based on the prior year's obligation is less than the actual tax obligation for the Exit Year, then TERMINAL OPERATOR shall pay the shortfall to COUNTY within fifteen (15) calendar days after written demand therefor is made. If the estimated amount paid by TERMINAL OPERATOR based on the prior year's obligation is greater than the actual tax obligation for the Exit Year than that paid by TERMINAL OPERATOR as required in this Section, then COUNTY shall refund such amount to TERMINAL OPERATOR within sixty (60) calendar days.

C. The parties hereto acknowledge and agree that there are no prior agreements between them for the use and occupancy of marine terminal facilities at Port Everglades, Florida.

D. The provisions of this Section shall survive the termination or expiration of this Lease.

9. **USE; COMPLIANCE WITH LAWS; FAILURE TO COMPLY**

A. **USE**

The Premises as described on Exhibit "A" shall be used solely as a modern

container terminal yard facility with related storage and office space uses and for ancillary or related uses, and for no other use or purpose, without the prior written consent of the Port Everglades Department of Broward County by its duly authorized representative (the "Port Director").

Under no circumstances shall TERMINAL OPERATOR allow or permit others to use any portion of the Premises in competition with any business conducted by COUNTY.

TERMINAL OPERATOR shall conduct its operations in an orderly and commercially reasonable manner considering the nature of its operations. TERMINAL OPERATOR shall not unreasonably annoy, disturb (whether via vibrations, noise or otherwise), endanger or be offensive to others at Port Everglades. TERMINAL OPERATOR shall commit no waste or injury on or about the Premises and shall not do or permit to be done anything which may result in the creation or commission or maintenance of such waste or injury on the Premises. TERMINAL OPERATOR shall use and maintain the Premises in such manner so as to avoid the creation of any nuisance from obnoxious odors, smoke, noxious gases, vapors, dust, noise or otherwise, and TERMINAL OPERATOR shall not keep or store any explosives on the Premises.

It is understood that TERMINAL OPERATOR will not conduct any welding or burning on the Premises until it has obtained all required permits from COUNTY, City of Hollywood, and the U.S. Coast Guard. COUNTY agrees that it will not unreasonably withhold issuance of any welding or burning permits required by COUNTY.

TERMINAL OPERATOR shall maintain a five foot clear zone from the perimeter fencing of the Premises at all times.

B. COMPLIANCE WITH LAWS

TERMINAL OPERATOR, in its use, occupation, alteration and/or construction of the Premises and in the use of property or facilities and services at Port Everglades, shall, at its sole expense, comply with and be governed by all laws, ordinances, rules, regulations and directives of the federal, state, county and municipal governmental units or agencies having jurisdiction over the Premises and the business being conducted thereon, including, compliance with Section 255.20 Florida Statutes by competitively awarding any construction work required hereunder, the Americans with Disabilities Act of 1990 ("ADA") and COUNTY's published Tariff No. 11, amendments thereto and reissues thereof. Within fifteen (15) calendar days after receipt by either party of a notice of non-compliance, or of a regulatory investigation or enforcement action relating to such non-compliance, the receiving party shall advise the other party in writing and provide copies of same. Once such notice is received, COUNTY shall have, in addition to all rights provided by law and by the provisions herein, the right to terminate this Agreement and/or require TERMINAL OPERATOR, at its sole expense, to make any repairs, alterations and additions to the Premises and take all corrective measures as may be necessary to bring same into compliance.

C. USE OR COMPLIANCE VIOLATION

Should TERMINAL OPERATOR fail to comply with the provisions of this Section, then COUNTY shall provide TERMINAL OPERATOR with written notice of such violation, and the opportunity to correct and cure same within a reasonable time period not exceeding thirty (30) calendar days of the sending of the notice. If the use or compliance

violation is not cured within this time period, then COUNTY shall have the right to (i) stop all operations on the Premises until the use or compliance violations are eliminated to COUNTY's satisfaction, and/or (ii) terminate this Agreement in accordance with Section 27 (A) herein.

**10. TARIFF CHARGES**

Except as otherwise provided herein, nothing contained in this Agreement shall be construed to confer upon TERMINAL OPERATOR and its third party user(s) of its facilities and services, any special right with respect to payment of charges imposed by Port Everglades Tariff No. 11, amendments thereto and reissues thereof. Except as otherwise provided herein, TERMINAL OPERATOR shall pay COUNTY for the utilization of facilities and services at Port Everglades including, but not limited to, wharfage and dockage in accordance with the charges imposed by COUNTY's published Tariff No. 11, amendments thereto and reissues thereof.

**11. PER CONTAINER (SHIPMOVES) RATES AND ANNUAL MINIMUM GUARANTEED PAYMENT**

**A. PER CONTAINER (SHIPMOVES) RATES**

COUNTY and TERMINAL OPERATOR acknowledge and agree to the following per container (shipmoves) rates (such rates do not include applicable sales tax on crane rental usage) on TERMINAL OPERATOR CARGO handled through TERMINAL OPERATOR's marine terminal facility (Premises) at Port Everglades, Florida, in lieu of payment of dockage, cargo and container unit wharfage charges, crane rental fees to include crane setup, shutdown, and crane standby of up to one (1) hour, and harbormaster fees. The per

container (shipmoves) rates are based on TERMINAL OPERATOR guaranteeing to COUNTY a minimum of 60,000 container (shipmoves) of TERMINAL OPERATOR CARGO annually over the term hereof, provided however, that the minimum guaranteed number of container (shipmoves) in the first year of this Agreement shall be 40,000 container (shipmoves). For the purposes of this Agreement, the phrase "TERMINAL OPERATOR CARGO" means loaded or discharged container (shipmoves) at Port Everglades which is:

- i) proprietary to Compania Sudamericana De Vapores, S.A. ('CSAV') and/or Compania Chilena de Navegacion Interoceanica S.A. ('CCNI') and/or proprietary to a company which is at least fifty-one percent (51%) owned and controlled directly or indirectly by CSAV and/or CCNI (an "Affiliated Company") and/or ii) from a vessel calling at Port Everglades which vessel, is subject to a Vessel Sharing Agreement ("VSA") and/or Slot Charter Agreement ("SCA") between CSAV, CCNI and/or an Affiliated Company, and a third party steamship line(s) filed with the Federal Maritime Commission (FMC).

COUNTY and TERMINAL OPERATOR acknowledge and agree that as of the Commencement Date of this Agreement, CSAV, CCNI and/or their Affiliated Companies, have filed with the FMC, VSA(s) and SCA(s) applicable to this Agreement, as set forth in Exhibit "D" attached hereto and made a part hereof. TERMINAL OPERATOR shall over the term of this Agreement timely provide COUNTY's Port Director with a copy of any additional VSA and/or SCA filing(s) applicable to this Agreement and/or documentation evidencing CSAV and/or CCNI's fifty-one percent (51%) ownership interest and control in an Affiliated Company claiming TERMINAL OPERATOR CARGO status hereunder. Upon COUNTY's Port Director's review of and concurrence with the VSA and/or SCA filing(s)

submitted by TERMINAL OPERATOR, Exhibit "D" shall be amended accordingly (by action of the COUNTY's Port Director) to reflect any new Affiliated Companies, VSA(s) and/or SCA(s) applicable to this Agreement.

1) Beginning on the Commencement Date hereof, for the first year (12 months) of this Agreement, the first 40,000 container (shipmoves) of TERMINAL OPERATOR CARGO shall be charged at the rate of Forty-three Dollars (\$43.00) per container (shipmoves), and all TERMINAL OPERATOR CARGO in excess of 40,000 container (shipmoves) shall be charged at the rate of Forty-one Dollars (\$41.00) per container (shipmoves);

2) For the second year of this Agreement, the first 60,000 container (shipmoves) of TERMINAL OPERATOR CARGO shall be charged at a rate of Forty-six Dollars and Fifty Cents (\$46.50) per container (shipmoves), and all TERMINAL OPERATOR CARGO in excess of 60,000 container (shipmoves) shall be charged at a rate of Forty-four Dollars (\$44.00) per container (shipmoves);

3) For the third year of this Agreement and each year thereafter on the anniversary over the Commencement Date of the Agreement term hereof, TERMINAL OPERATOR CARGO per container (shipmoves) rates shall be adjusted as follows:

a) 1-60,000 container (shipmoves) rate shall be increased to an amount equal to the product of the 1-60,000 container (shipmoves) rate during the immediately preceding year multiplied by the CPI multiplier, as provided in Article 4 herein, subject to an annual cap of 3%.

b) 60,001 and greater container (shipmoves) rate shall be increased to an amount equal to the product of the 60,001 and greater container (shipmoves) rate during the immediately preceding year multiplied by the CPI multiplier, as provided in Article 4 herein, subject to an annual cap of 3%.

4) TERMINAL OPERATOR CARGO per container (shipmoves) rate provided in this Section, does not include Tariff charges for breakbulk cargo, electricity, water, line handling services, and container crane standby of more than one (1) hour or any other Tariff charges not specified in Section 11A above, all of which shall be billed by COUNTY and paid by TERMINAL OPERATOR at full published Tariff rates. In no event, shall the adjusted per container (shipmoves) rates established pursuant to this Section be less than the per container (shipmoves) rates in effect during the immediately prior twelve (12) month period.

In determining the number of container (shipmoves) handled by TERMINAL OPERATOR (throughput) on the Premises for the purpose of determining the applicable rate for TERMINAL OPERATOR CARGO, i.e., 1-60,000 container (shipmoves) rate and 60,001 or greater container (shipmoves) rate, TERMINAL OPERATOR shall receive credit for both TERMINAL OPERATOR CARGO and third party container (shipmoves) handled through the Premises.

B. ANNUAL MINIMUM GUARANTEE PAYMENT

Effective upon the Commencement Date, and for each and every successive year over the term hereof, TERMINAL OPERATOR shall guarantee and make payments to

COUNTY (apportioned monthly pro-rata, as applicable) the following sums as Minimum Guaranteed Payment ("MGP").

i) For the first year of this Agreement, TERMINAL OPERATOR shall pay COUNTY the sum of One Million Seven Hundred Twenty Thousand Dollars (\$1,720,000.00) as MGP.

ii) For the second year of this Agreement, TERMINAL OPERATOR shall pay COUNTY the sum of Two Million Seven Hundred Ninety Thousand Dollars (\$2,790,000.00) as MGP.

iii) For the third year of this Agreement, and each and every successive year thereafter on the anniversary of the Commencement Date over the term hereof, TERMINAL OPERATOR's annual MGP amount shall be increased to an amount equal to the product of the MGP sum required to be paid during the immediately preceding year, multiplied by the CPI Multiplier as provided in Article 4 herein, subject to an annual cap of 3%.

TERMINAL OPERATOR shall pay COUNTY the applicable year's MGP amount in twelve (12) equal monthly installments in advance on the first day of each and every month, without demand, setoff or deduction. In no event, shall any adjusted MGP amount established pursuant to this section be less than the MGP amount in effect during the immediately prior twelve (12) month period.

C. MGP required to be paid by TERMINAL OPERATOR hereunder, shall be subject to the payment terms and conditions of this Agreement, including Port Everglades Tariff No. 11, amendments thereto and reissues thereof, and shall include applicable

Florida sales tax. In addition to manifests and cargo reports required by Item 135 of the Port Everglades Tariff (which shall be provided by TERMINAL OPERATOR to Broward County's Port Everglades Department within five (5) business days of a vessel call), TERMINAL OPERATOR shall report to Broward County's Port Everglades Department on a monthly basis, the total amount of container (shipmoves) throughput on the Premises (including, all containers (shipmoves) handled by TERMINAL OPERATOR on the Premises for its third party clients. The reports shall be provided to said Department within five (5) business days following the end of each month over the term hereof. The Tariff Item 135 report and the monthly reports shall be in the forms attached hereto as composite Exhibit "C" and made a part hereof . The COUNTY's Port Director reserves the right to request TERMINAL OPERATOR to periodically provide the Port Everglades Department Finance Division with such other cargo reports/records in order to maintain its statistical database.

D. TERMINAL OPERATOR CARGO containers (shipmoves) will be invoiced at the rates established above for the first 40,000 containers (shipmoves) for the first year and 60,000 in years two through the remainder of the contract. TERMINAL OPERATOR CARGO individual container (shipmoves) starting at 40,001 the first year and 60,001 in years two through the remainder of the contact will be invoiced at the excess rates established above per container (shipmoves).

The invoices for container (shipmoves) handled through the premises will be off set by the monthly MGP installment payments paid by TERMINAL OPERATOR to the County.

Accordingly, all container (shipmoves) fees for TERMINAL OPERATOR CARGO billed each month which are in excess of the monthly MGP installment amount paid by

TERMINAL OPERATOR will be due and payable within 30 days to COUNTY in accordance with the billing procedures and requirements of Port Everglades Tariff No. 11, amendments thereto and reissues thereof. At the end of each year of this Agreement, County shall recognize as revenue and retain any MGP balance which has not been offset by container (shipmoves) charges for TERMINAL OPERATOR CARGO during the related year of the Agreement.

**12. TERMINAL OPERATOR'S OBLIGATIONS**

TERMINAL OPERATOR shall, at its expense:

A. Observe and obey, and require its employees, guests, invitees and those doing business with it, to observe and obey such reasonable rules and regulations of Broward County (including amendments and supplements thereto) governing the conduct and operations of TERMINAL OPERATOR and others on the Premises as may from time to time be promulgated.

B. Pay all license and permit fees and charges for the conduct of any business on the Premises before such amounts become delinquent.

C. Not cause or permit any welding or burning on the Premises until all required permits have been obtained from COUNTY and the United States Coast Guard.

D. Not overload any paved area on the Premises beyond the road limits specified by the COUNTY's Port Director in writing from time to time, and shall repair any paved area damaged by such overloading.

E. Provide COUNTY with immediate notice of any and all spills, leaks or discharges of any size whatsoever of Pollutants (as defined in Section 26.A. hereof) arising

from its operations on the Premises or in Port Everglades, and further provide COUNTY with not less than one (1) business day prior notice of all curative measures, remediation efforts and/or monitoring activities to be effected.

F. As required by law, provide the relevant regulatory authorities with notice of spills, leaks or discharges of Pollutants on the Premises or in Port Everglades, and have an updated contingency plan in effect for such discharges.

G. Provide COUNTY the right to inspect all documents relating in any way to the Premises and all activities thereon, including but not limited to writings regarding environmental issues, remediation efforts, etc. (such as manifests evidencing proper transportation and disposal of Pollutants, site assessments, sampling and test results, etc.).

H. Install, at its sole expense, shrubbery or screening around the Premises as may be required by COUNTY to mitigate the potentially unattractive appearance of the Premises, which installation shall occur within thirty (30) calendar days after written demand therefor is sent and cause its truck traffic to queue within the marine terminal facility to avoid to the greatest extent possible, truck traffic queue on public roads and rights of way within Port Everglades.

**13. ASSIGNMENT; SUBLETTING; SUBORDINATION**

**A. COUNTY CONSENT REQUIREMENTS; FACTORS AND STANDARD**

TERMINAL OPERATOR shall not (i) sublet the Premises or any part thereof, or (ii) permit any transfer, assignment, pledge or encumbrance of any sublease or (iii) transfer, assign, pledge, or otherwise encumber or subordinate this Agreement, and/or obligations

hereunder, or (iv) allow same to be assigned by operation of law or otherwise (any such action being called an "Assignment") without COUNTY's prior written consent; which consent may be granted or withheld by COUNTY in the exercise of its sole discretion and conditioned upon such additional terms and conditions as COUNTY deems necessary. The factors upon which COUNTY may base its decision on whether to grant such consent shall include, but not be limited to: (i) an assessment of whether the proposed assignee meets standards of creditworthiness, (ii) whether the Premises will be used in connection with the maritime industry for the purposes described herein, and (iii) an assessment of the ability of the proposed assignee to perform TERMINAL OPERATOR's obligations under this Agreement. In the event of any Assignment, the assignee shall be required, at COUNTY's option, to execute a written assumption agreement, agreeing to assume and abide by all of the terms and provision of this Agreement, which assumption agreement must be acceptable to COUNTY. All consents which may be given by COUNTY under this Section shall not be unreasonably withheld.

B. NO RELEASE

In the event of any Assignment, TERMINAL OPERATOR shall not be released of any liability hereunder. COUNTY, as a condition of approving any Assignment or subletting, may increase the rent and fees payable hereunder, and may require modification of any other terms or conditions of this Agreement and/or execution of additional documents, including an irrevocable Guaranty of Payment and Performance.

C. CHANGE IN TERMINAL OPERATOR'S STATUS

For purposes of this Section, an "Assignment" shall include: (i) any transfer of this

Agreement by merger, consolidation or liquidation, or by operation of law, or (ii) if TERMINAL OPERATOR is a corporation, any change in ownership of or power to vote a majority of the outstanding voting stock of TERMINAL OPERATOR from those controlling the power to vote such stock on the date of this Agreement, or (iii) if TERMINAL OPERATOR is a limited or a general partnership or joint venture, any transfer of an interest in the partnership or joint venture which results in a change in control of such partnership or joint venture from those controlling such partnership or joint venture on the date of this Agreement.

Notwithstanding the foregoing, the following shall not be deemed an "Assignment" for purposes of this Section, (i) a transfer of stock or interests in TERMINAL OPERATOR among its current owners and/or their immediate families, (ii) a transfer of stock or interests in TERMINAL OPERATOR resulting from the death of a stockholder, partner or joint venturer, or (iii) any transfers of stock in TERMINAL OPERATOR where same is publicly traded on a national stock exchange.

D. VOIDING OF ASSIGNMENT OR SUBLEASE; RIGHT TO COLLECT RENT

In the event TERMINAL OPERATOR shall take any action specified under this Section without COUNTY's prior written consent, then any such assignment or other action shall be null and void, and of no force or effect, and in addition to all other available remedies, COUNTY shall be entitled to immediately terminate this Agreement. In no case may the activities, uses, privileges and obligations authorized herein regarding the Premises or any portion thereof be assigned for any period or periods after a default shall have occurred hereunder and remain uncured.

In addition, if the Premises are occupied by any entity without COUNTY's prior written consent in violation of this Section, then COUNTY may collect rent from any assigns, sublessee or anyone who claims a right to this Agreement or who occupies the Premises, and COUNTY shall apply the net amount collected to the rent herein reserved; but no such collection shall be deemed a waiver by COUNTY of the provisions of this Section or any acceptance by COUNTY of any such assignee and/or sublessee.

E. SUBORDINATE TO COUNTY

TERMINAL OPERATOR acknowledges and agrees that each sublessee of TERMINAL OPERATOR is subject to all of the terms and provisions of this Agreement, including but not limited to the requirement that each such sublessee must comply with all federal, state and local laws, ordinances, rules, regulations and orders that now or at any time during the term of this Agreement are applicable to the operations, use and enjoyment of such sublessee at the Premises. Notwithstanding any Assignment and/or sublease of the Premises to which COUNTY has consented, TERMINAL OPERATOR shall remain responsible for insuring that each and every term and provision of this Agreement is abided by and complied with and, in that regard, any failure by any assignee and/or sublessee to abide by and/or comply with any terms or provisions of this Agreement shall be deemed a default by TERMINAL OPERATOR, entitling COUNTY to any and all remedies available hereunder. Each sublease of the Premises to which COUNTY has consented shall be subordinate in all respects to all terms and provisions of this Agreement and upon any termination of this Agreement, all such subleases of the Premises shall terminate contemporaneously with this Agreement.

F. MORTGAGE ON LEASEHOLD

No mortgage of this Agreement shall be binding upon COUNTY without its prior written consent, in the enforcement of its rights under this Agreement. However, COUNTY will accept performance by the holder of any leasehold mortgage to which COUNTY has consented of any term of this Agreement required to be performed by TERMINAL OPERATOR, with the same force and effect as though performed by TERMINAL OPERATOR; if at the time of such performance, COUNTY shall be furnished with evidence satisfactory to COUNTY of the interest in the leased property claimed by the person or entity tendering such performance or payment. The holder of such mortgage shall have ten (10) calendar days after the date on which COUNTY may otherwise terminate this Agreement as to the defaulting TERMINAL OPERATOR, to cure any default in the payment of rent or other payments required to be paid under this Agreement and a reasonable time not to exceed thirty (30) calendar days within which to cure any other default.

The Broward County's Port Everglades Department shall, from time to time, upon reasonable written request, provide a leasehold mortgagee or TERMINAL OPERATOR with an estoppel certificate stating whether TERMINAL OPERATOR is in default, whether this Agreement is in full force and effect, and whether this Agreement has been modified. Notwithstanding any information or consent provided by COUNTY hereunder, no Assignment shall give TERMINAL OPERATOR or its assignee any lien or encumbrance upon the fee simple ownership interest in the Premises which is vested in COUNTY.

14. ALTERATIONS; FIXTURES; IMPROVEMENTS AND REQUIRED APPROVALS

A. GENERAL

TERMINAL OPERATOR shall not design, develop, construct nor make any alterations, modifications or replacements to the Premises or portion thereof, without the prior written consent of the Port Director or designee. In the event any such action is taken or made without said prior written consent being given, then, upon notice in writing so to do, TERMINAL OPERATOR shall remove same to Port Everglades Department's satisfaction. In the case of any failure on the part of TERMINAL OPERATOR to comply with such notice, said Department may take the required removal or actions and TERMINAL OPERATOR shall pay the cost thereof to COUNTY within fifteen (15) calendar days after written demand therefor is sent.

B. TITLE TO IMPROVEMENTS AND FIXTURES; REMOVAL

All fixtures, structures, facilities, pavements and other permanent improvements, and any additions and alterations made to the Premises (including those that are nailed, bolted, stapled, or otherwise affixed to the Premises) by TERMINAL OPERATOR, or at TERMINAL OPERATOR's direction, shall be and remain TERMINAL OPERATOR's property until the termination of this Agreement (whether by expiration or otherwise), at which time said improvements shall, at COUNTY's option, either (i) become COUNTY's property and shall be surrendered with and remain on the Premises, or (ii) be removed by TERMINAL OPERATOR at the Port Everglades Department's direction.

C. LIENS

TERMINAL OPERATOR shall not do or permit to be done anything which shall

result in the imposition of any liens, claims or encumbrances on the Premises or portion thereof. If any lien or notice of lien shall be filed against the Premises or portion thereof or any improvements thereon, TERMINAL OPERATOR shall cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction within thirty (30) calendar days after notice of the filing thereof. TERMINAL OPERATOR shall not be deemed to be COUNTY's agent so as to confer upon any contractor or subcontractor providing labor and/or materials to the Premises, a mechanic's lien upon COUNTY's estate under the provisions of Chapter 713, Florida Statutes, as amended from time to time. The provisions of this subsection shall not apply to any mortgage of TERMINAL OPERATOR's interest in this Agreement to which COUNTY has consented as provided herein. TERMINAL OPERATOR shall not create or permit any lien on any fixtures affixed to the Premises without obtaining in each instance, the prior written approval of COUNTY excluding, however, any purchase money security interest in any movable trade fixtures of the TERMINAL OPERATOR installed at the Premises.

Unless COUNTY, through its Board of County Commissioners, provides otherwise in writing, all of TERMINAL OPERATOR's assets which are brought onto the Premises and used in connection with its business conducted on the Premises, shall be subject to COUNTY's landlord's lien on such assets.

D. CONSTRUCTION REQUIREMENTS

(i) The parties hereto as of the date this Agreement is executed by COUNTY, do not contemplate the need or requirement for TERMINAL OPERATOR to commence construction of improvements on the Premises. Notwithstanding, if

TERMINAL OPERATOR so requires during the term hereof to make improvements to the Premises, all construction shall be performed in such a manner as to provide that TERMINAL OPERATOR's Improvements shall: (i) be safe and free from any hazards, and (ii) comply all terms and provisions of this Agreement.

All improvements constructed by TERMINAL OPERATOR, its agents, or contractors, including but not limited to, the plans and specifications relating to same, shall conform to all applicable state, federal, county and local statutes, ordinances, building codes, fire codes, and rules and regulations; provided, however that consent by the Port Director to any plans, specifications, or designs shall not constitute a representation or warranty as to such conformity, and the responsibility therefor shall at all times remain with TERMINAL OPERATOR. Any additions, alterations or modifications to the Premises shall be in conformity and consistent with the Americans with Disabilities Act of 1990, as may be amended from time to time.

(ii) Upon COUNTY's Port Director's review and consent to TERMINAL OPERATOR's plans, specifications and construction schedules, TERMINAL OPERATOR shall, following its receipt of the written Notice to Proceed from the Port Director, immediately begin construction and installation of its improvements to the Premises. TERMINAL OPERATOR shall coordinate and install all such improvements in accordance with all permitting agency requirements as well as Florida, Power & Light company. TERMINAL OPERATOR and its architect/engineer and contractor agree to meet with COUNTY's Port Director's

representatives in periodically scheduled meetings to assess the current status of completion of the improvements to the Premises undertaken by TERMINAL OPERATOR as provided herein.

E. IMPROVEMENTS COMPLETED

Within sixty (60) calendar days after the final completion date of any container terminal yard improvements to the Premises, TERMINAL OPERATOR shall provide to Port Everglades Department at TERMINAL OPERATOR's sole expense: (i) a complete set of "as-built" plans and specifications for all improvements, (ii) a certificate or acknowledgment of completion from all permit agencies reflecting that TERMINAL OPERATOR's improvements are complete and all permits are closed out, and (iii) a certified statement from the construction contractor(s) and architect stating that the improvements are free and clear of all liens, claims or encumbrances by any suppliers, subcontractors, or laborers.

F. CONSTRUCTION PERFORMANCE AND PAYMENT BONDS

TERMINAL OPERATOR shall furnish to COUNTY within seven (7) calendar days of its receipt of the Notice to Proceed from the Port Director, the following:

a. Performance Bond and Payment Bond (Surety):

(1) A performance bond and payment bond in a form acceptable to the COUNTY.

(2) The Bonds shall be in the amount of one hundred percent (100%) of the construction amount guaranteeing to COUNTY, the completion and performance of the construction and development of the Premises as well as full payment of all suppliers, vendor, contractors, laborers, or

subcontractors employed by TERMINAL OPERATOR. Such Bonds shall be with a Surety company which is qualified pursuant to the COUNTY's standards for Surety's on COUNTY construction projects as follows:

(a) Qualifications of Surety:

i) A separate performance bond and payment bond must be executed by a Surety company of recognized standing, authorized to do business in the state of Florida as Surety, having a resident agent in the state of Florida and having been in business with a record of successful continuous operation for at least five (5) years.

ii) In addition to the above-minimum qualifications, the Surety company must meet at least one of the following additional qualifications:

iii) The Surety company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297,

revised September 1, 1978 (31 CFR Section 223.10 Section 223.111). Further, the Surety company shall provide COUNTY with evidence satisfactory to COUNTY, that such excess risk has been protected in an acceptable manner.

iv) The Surety company shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

<u>Size Amount of Bond</u>	<u>Ratings</u>	<u>Category</u>
500,001 to 1,000,000	B+	Class I
1,000,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

(3) Such Bonds shall continue in effect for one year after completion and acceptance of the work with liability equal to one hundred percent (100%) of the construction price, or an additional bond shall be conditioned that TERMINAL OPERATOR will, upon notification by COUNTY, correct any defective or faulty Work or materials which appear within one year after completion of the construction work.

- OR -

b. Performance and Payment Guaranty:

In lieu of a performance bond and payment bond, TERMINAL OPERATOR may furnish an alternate form of security which may be in the form of cash, money

order, certified check, cashier's check or irrevocable letter of credit. Such alternate forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable above and shall be held by COUNTY for one year after completion and acceptance of the work.

It is understood and agreed that TERMINAL OPERATOR shall be responsible for all costs and expenses relating to (i) TERMINAL OPERATOR's improvements, including but not limited to the design, permitting and construction thereof, and (ii) all other improvements necessary to TERMINAL OPERATOR's use of the Premises, including but not limited to improvements mandated by any governmental authority having jurisdiction over the Premises.

G. COUNTY'S REPAIR OBLIGATIONS

COUNTY shall, at its sole expense, repair, as needed, storm drainage system (clean), fencing, protective bollards, guard rails, and the asphalt pavement and storm grates located on the Premises and effectuate the removal of a concrete utility pole, such repairs/cleaning required as a result of South Stevedoring, Inc.'s prior use and occupancy of the Premises. Such repair/cleaning work shall be completed within one hundred twenty (120) days from the Commencement Date of this Agreement, and shall not materially interfere with TERMINAL OPERATOR's use of the Premises.

15. MAINTENANCE AND REPAIR OF PREMISES

A. TERMINAL OPERATOR'S RESPONSIBILITY

As provided in Section 1(B) hereof, TERMINAL OPERATOR hereby accepts the Premises in its present condition subject to COUNTY's repair obligations and agrees to

maintain the Premises in good condition except for reasonable wear and tear. TERMINAL OPERATOR shall throughout this Agreement's term assume the entire responsibility and shall relieve COUNTY from responsibility for all repair and maintenance whatsoever on the Premises (which shall include, without limitation all improvements thereon), whether such repair or maintenance be ordinary or extraordinary, structural or otherwise but excluding repairs required by Section 14(G). TERMINAL OPERATOR shall be required to keep the Premises in good, tenantable, useable condition throughout this Agreement's term, and without limiting the generality thereof, shall:

1) Maintain the Premises in a safe and neat manner, free from garbage, debris or other unsightly or unsanitary waste matter (whether solid or liquid). Any of such garbage, debris or other waste matter as may be temporarily stored in the open shall be kept in suitable garbage and waste receptacles. TERMINAL OPERATOR shall use extreme care when effecting removal of all such waste matter and shall comply with all laws, ordinances, rules, regulations, and procedures of all applicable governmental authorities in so doing.

2) Maintain the Premises in a clean, orderly and safe condition so as to avoid injury to persons and property.

3) Repair any damage to the paving or other surface of the Premises caused by settlement, overloading, or by any oil, gasoline, grease, lubricants or other liquids or substances having a corrosive or detrimental effect thereon.

4) Provide and maintain all obstruction lights and similar devices, fire protection and safety equipment and all other equipment of every kind and nature

required by any law, rule, order, ordinance, resolution or regulation of any applicable governmental authority.

5) Repair all damage to the Premises (including but not limited to any fencing, gates, lighting or pavement) within thirty (30) calendar days which is the result of any act, omission, negligence or misconduct on the part of TERMINAL OPERATOR, its employees, agents, contractors or invitees.

In the event TERMINAL OPERATOR fails in any material respect (i) to commence so to maintain, clean, repair, replace, rebuild or paint within a period of thirty (30) calendar days (except seven (7) calendar days for maintenance items) after notice from COUNTY to do so is given, or (ii) to continue to completion in a diligent manner the maintenance, repair, replacement, rebuilding or painting of the Premises required to be maintained, repaired, replaced, rebuilt or painted under the terms of this Agreement, then the Port Everglades Department may, at its option, and in addition to any other remedies which may be available to it, maintain, repair, replace, rebuild or paint all or any part of the Premises included in the said notice and the cost thereof shall be payable by TERMINAL OPERATOR within fifteen (15) calendar days after written demand therefor is sent.

B. COUNTY'S RESPONSIBILITY

COUNTY, at its sole expense, shall maintain and repair all underground utilities which now or may be subsequently located at the Premises described on Exhibit "A" provided, however, that for repairs necessitated by any act, omission, negligence, or misconduct on the part of TERMINAL OPERATOR, its employees, agents, contractors or invitees, TERMINAL OPERATOR, at COUNTY's option, shall make all such repairs or

reimburse COUNTY within fifteen (15) calendar days after written demand therefor is sent.

**16. INGRESS AND EGRESS**

TERMINAL OPERATOR, its invitees, licensees, agents, guests, contractors, suppliers of material and furnishers of services, shall have the right of ingress and egress via appropriate public ways to be used in common with others having rights of passage within Port Everglades, provided that COUNTY may, from time to time, substitute other suitable means (considering TERMINAL OPERATOR's business operations) of ingress and egress so long as an alternate adequate means of ingress and egress is available.

COUNTY may at any time temporarily or permanently close or consent to or request the closing of any such roadway and or other area at Port Everglades presently or hereafter used as such, so long as an alternate adequate means of ingress and egress is made available to the Premises (considering TERMINAL OPERATOR's business operations). TERMINAL OPERATOR hereby releases and discharges COUNTY, its successors and assigns, of and from any and all claims, demands or causes of action which TERMINAL OPERATOR may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway or other area used as such, whether within or outside Port Everglades, provided that COUNTY makes available to the Premises an adequate means of ingress and egress (considering TERMINAL OPERATOR's business operations).

**17. EASEMENT(S)**

COUNTY reserves the right to maintain such easements on the Premises as may now or in the future be determined to be necessary to serve the needs of Port Everglades,

and TERMINAL OPERATOR agrees to take the Premises subject to said easement requirements. Such easements will be used for, among other things, ingress and egress for other Port users, the installation of water distribution, sewage collection, underground electrical and telephone conduits, above ground street lighting and power poles. However, it is understood and agreed that COUNTY will restore any improvements which TERMINAL OPERATOR has made, if such improvements are damaged by any installation made by COUNTY. Furthermore, COUNTY take reasonable steps to insure that any such installation be the least disruptive to TERMINAL OPERATOR's operations.

18. SIGNAGE

A. PRIOR CONSENT

TERMINAL OPERATOR will not place, suffer to be placed, or maintain on the Premises any sign, awning, canopy, or advertising matter without prior written consent of the Port Director, which consent shall not be unreasonably withheld. If such consent is granted by the Port Director, TERMINAL OPERATOR shall maintain such item(s) in good condition at all times.

B. REMOVAL OF SIGNS

Upon the expiration or termination of this Agreement, TERMINAL OPERATOR shall remove, obliterate or paint out, as the Port Director may direct, any and all signs on the Premises and, in connection therewith, shall restore the portion of the Premises affected by such signs to the same condition as the same existed prior to the placing thereon of such signs. In the event of a failure on the part of TERMINAL OPERATOR to so remove, obliterate or paint out each and every sign and to so restore the Premises, the Port

Everglades Department may perform the necessary work, deduct the costs thereof from the security deposit, and TERMINAL OPERATOR shall pay the shortfall, if any, to COUNTY within fifteen (15) calendar days after written demand therefor is sent.

**19. PARKING**

TERMINAL OPERATOR's use of parking spaces(s) in Port Everglades shall be subject to and in accordance with COUNTY's traffic and parking regulations set forth in Section 23-29, et seq., Broward County Code, Port Tariff No. 11. TERMINAL OPERATOR shall be responsible for providing adequate parking facilities on the Premises to include but not be limited to, its employees, operators and invitees.

**20. UTILITIES**

**A. GENERALLY**

COUNTY shall provide water distribution and sanitary sewer collection infrastructure to the Premises. TERMINAL OPERATOR shall coordinate with electric and telephone service providers, and Port Everglades Department of Broward County to obtain electric service, telephone service, water service and sewer service, respectively to facilities constructed or placed upon the Premises by TERMINAL OPERATOR. It shall be the sole responsibility of TERMINAL OPERATOR to coordinate and provide meter and service connection for electric service, telephone service, water service and sewer service on the Premises. COUNTY shall not be obligated to perform or furnish any services in connection with the Premises, or any services at any time while TERMINAL OPERATOR remains in default hereunder, after the period to cure such default has expired. No failure, delay or interruption in supplying electric services or other utilities shall be construed as an eviction

of TERMINAL OPERATOR, or a grounds for any abatement of payments required to be made hereunder or claims by TERMINAL OPERATOR against COUNTY for damages.

B. CHARGES

TERMINAL OPERATOR shall make the appropriate direct billing arrangements with the appropriate utility providers within thirty (30) days following its occupancy of the Premises.

Notwithstanding, TERMINAL OPERATOR shall pay to COUNTY on a monthly basis as billed by COUNTY, its pro rata portion of the common use electric charges based on total square footage occupied by TERMINAL OPERATOR, and water and sewer charges for the number of gallons consumed on the Premises, or TERMINAL OPERATOR's facilities, along with applicable Florida sales tax. All such charges shall be paid to COUNTY and/or other entity providing such utility services, within fifteen (15) calendar days of invoice date (demand therefor).

21. SECURITY

TERMINAL OPERATOR, at its sole cost, shall be responsible for security of the Premises and all improvements thereon and shall take and require others to take as required, whatever legal precautions are necessary to protect the Premises, improvements thereon, and all persons and property thereon. In addition, TERMINAL OPERATOR and COUNTY acknowledge that security measures at Port Everglades will be increased and that such efforts will likely impact the Premises. In this regard, TERMINAL OPERATOR agrees to cooperate with COUNTY's efforts to increase security and agrees to comply with all security rules and regulations (whether imposed by the United States Custom Service,

the United States Coast Guard, or COUNTY). TERMINAL OPERATOR, at its sole cost, shall be responsible for complying with all security-related measures that impact the Premises, TERMINAL OPERATOR and/or its employees, representatives, contractors, guests and invitees.

**22. RIGHT TO ENTER TO INSPECT, REPAIR AND EXHIBIT**

A. INSPECTION

COUNTY, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Premises for the purpose of inspecting the same, for observing the performance by TERMINAL OPERATOR of its obligations under this Agreement and for the doing of any act or thing which COUNTY may be obligated or have the right to do under this Agreement or otherwise.

B. REPAIR

Without limiting the generality of the foregoing, COUNTY, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right, at its own cost and expense, for its own benefit or for the benefit of others at Port Everglades, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations thereto as may, in the opinion of COUNTY, be deemed necessary or advisable and from time to time to construct or install over, in or under the Premises such systems or parts thereof and in connection with such maintenance to use the Premises for access to other parts of Port Everglades otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair,

alteration or new construction COUNTY shall not unreasonably interfere with the actual use and occupancy of the Premises by TERMINAL OPERATOR.

C. REMOVAL OF OBSTRUCTIONS

In the event that any personal property of TERMINAL OPERATOR shall obstruct the access of COUNTY, its officers, employees, agents or contractors to any of the existing or future utility, mechanical, electrical and other systems and thus shall interfere with the inspection, maintenance or repair of any such system, TERMINAL OPERATOR shall move such property, as directed by COUNTY, in order that access may be had to the system or part thereof for its inspection, maintenance or repair, and if TERMINAL OPERATOR shall fail to so remove such property after direction from COUNTY to do so, COUNTY may move it and TERMINAL OPERATOR hereby agrees to pay COUNTY's costs of such moving upon demand.

D. NO EVICTION CONSTRUED

The exercise of any or all of the foregoing rights by COUNTY or others shall not be or be construed to be an eviction of TERMINAL OPERATOR nor be made the grounds for any abatement of payments nor any claim or demand for damages, consequential or otherwise.

23. SURRENDER AND ACCEPTANCE; REMOVAL OF PROPERTY

A. SURRENDER

TERMINAL OPERATOR covenants and agrees to promptly yield and deliver peaceably to COUNTY, at the conclusion of the Agreement Term or as otherwise provided herein, the Premises or portion thereof as applicable in good condition, reasonable wear

and tear excepted.

B. ACCEPTANCE OF SURRENDER

No agreement of surrender or to accept a surrender of this Agreement shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of COUNTY and of TERMINAL OPERATOR in a document of equal dignity and formality herewith. Except as expressly provided in this Agreement, neither the doing of nor any omission to do any act or thing by any of the officers, agents or employees of COUNTY shall be deemed an acceptance of a surrender.

C. REMOVAL OF PROPERTY

TERMINAL OPERATOR shall have the right at any time during the Agreement Term to remove its inventories and other personal property from the Premises. If TERMINAL OPERATOR shall fail to remove its personal property by the termination or expiration date of this Agreement or as otherwise required herein, then TERMINAL OPERATOR shall be considered to be holding over under Florida law. In such event, COUNTY shall pursue its legal options, including, but not limited to: (i) title to personalty shall vest in COUNTY, at no cost to COUNTY, or (ii) COUNTY may remove such property to a public warehouse for deposit, or (iii) COUNTY may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale; second, to any sums owed by TERMINAL OPERATOR to COUNTY with any balance remaining to be paid to TERMINAL OPERATOR. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, TERMINAL OPERATOR shall pay such excess to COUNTY within fifteen (15) calendar days after written demand

therefor is sent. The provisions of this Section shall survive the termination or expiration of this Agreement.

**24. INDEMNITY**

TERMINAL OPERATOR shall at all times hereafter indemnify, hold harmless and, at the option of the Broward County Attorney, defend or pay for an attorney selected by the Broward County Attorney to defend COUNTY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of TERMINAL OPERATOR, its employees, agents, servants, or officers, or accruing, resulting from, or related to the Premises or the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. TERMINAL OPERATOR agrees to bind specifically every terminal user on the Premises, contractor, subcontractor and consultant it engages for the performance of its obligations hereunder to the applicable terms and conditions of this Agreement including this indemnity provision for the benefit of COUNTY. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Port Everglades Department and the Broward County Attorney, any sums due TERMINAL OPERATOR under this Agreement (including without limitation the cash Security Deposit and Payment Bond) may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by COUNTY.

25. INSURANCE

A. TERMINAL OPERATOR shall provide at its own expense and keep in continuous force and effect: (i) commercial general liability insurance and it necessary umbrella liability with minimum total limits of Five Million Dollars (\$5,000,000.00) for single limit bodily injury and property damage, and (ii) business automobile insurance (including owned/leased, non-owned and hired vehicles) with a minimum limit of Five Hundred Thousand Dollars (\$500,000.00). In addition, TERMINAL OPERATOR shall provide, at its own expense, Worker's Compensation and Employee Liability Coverage in the amount of One Hundred Thousand Dollars (\$100,000.00) (each accident) required to comply with Chapter 440, Florida Statutes, and United States Longshore and Harbor Workers Compensation Act, Jones Act, and Maritime Coverages Endorsement, as required by applicable federal, state and local laws. The aforesaid minimum limits of insurance shall be reviewed from time to time by COUNTY and may be adjusted if COUNTY determines that such adjustments are necessary to protect COUNTY's interest.

The commercial general liability insurance policy shall, at TERMINAL OPERATOR's sole expense, be written so as to protect both COUNTY as an additional insured and TERMINAL OPERATOR. TERMINAL OPERATOR shall furnish COUNTY with insurance certificates to demonstrate the continuous coverage required by this Section, and TERMINAL OPERATOR shall be responsible for assuring that such insurance certificates remain in force for the duration of this Agreement's term. Certificates of insurance must provide COUNTY with thirty (30) day prior written notice of cancellation. TERMINAL OPERATOR shall provide evidence of the required coverages herein, by presentation of

certificates or other evidence of insurance prior to the execution of this Agreement. TERMINAL OPERATOR shall deliver to COUNTY certificates of insurance for renewal or expiring policies at least thirty (30) calendar days in advance of any renewal, expiration or anniversary date. The insurance shall be written by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida or by insurers known to do business in the state.

When such policies or certificates have been delivered by TERMINAL OPERATOR to COUNTY as aforesaid and at any time or times thereafter, COUNTY may notify TERMINAL OPERATOR in writing that, in the opinion of COUNTY, the insurance represented thereby does not conform to the provisions of this Section either because of the amount or because of the insurance company or for any other reason, and TERMINAL OPERATOR shall have fifteen (15) calendar days or reasonable time period as dictated by the marketplace in which to cure any such defect. Compliance with the foregoing requirements shall not relieve TERMINAL OPERATOR of its liability and obligations under any other provision of this Agreement.

B. ENVIRONMENTAL REQUIREMENTS

TERMINAL OPERATOR covenants and agrees to provide and keep in force for the term hereof, environmental impairment liability insurance in the minimum amount of One Million Dollars (\$1,000,000.00) per claim, subject to a maximum deductible of Twenty-five Thousand Dollars (\$25,000.00) per claim. Such policy shall include a One Million Dollars (\$1,000,000.00) annual policy aggregate and name COUNTY as additional insured. In the event environmental impairment liability insurance is not purchased, TERMINAL

OPERATOR may elect one of the following options:

(1) Self-Insurance in the minimum amount of One Million Dollars (\$1,000,000.00) certified by TERMINAL OPERATOR's Chief Financial Officer. TERMINAL OPERATOR's Chief Financial Officer shall provide not less than thirty (30) calendar days prior notice to COUNTY in the event self-insurance funds are reduced below the specified limit. The certification shall warrant such notice and shall be in form and substance satisfactory to COUNTY; or

(2) TERMINAL OPERATOR shall provide COUNTY with an irrevocable letter of credit drawn on a bank approved by COUNTY or a Financial Guaranty Bond in the amount of One Million Dollars (\$1,000,000.00) specifically based on the conditions and performance of this Agreement. COUNTY's prior approval must be obtained as to the form and substance of the letter of credit and bond, and as to the bank issuing the letter of credit. The surety writing such bond shall maintain a minimum rating of A- by A.M. Best Company Rating Guide, and must be admitted to conduct business in the continental United States.

**26. ENVIRONMENTAL IMPAIRMENT; CONTAINMENT AND REMOVAL**

A. TERMINAL OPERATOR acknowledges and agrees that COUNTY makes no representations or warranties whatsoever as to whether Pollutants (as hereinafter defined) exist on or in the Premises or the improvements in violation of any federal, state or local law, rule or regulation or in violation of any order or directive of any federal, state or local court or entity with jurisdiction of such matter. "Pollutants" refer to and include all derivatives or by-products of any one or more of the following terms as defined by

applicable local, state or federal laws or regulations: hazardous substances, hazardous materials, hazardous waste, toxic substances, toxic pollutants; or such other pollutants, contaminants, substances, materials and wastes as are or become regulated under applicable local, state or federal laws or regulations. TERMINAL OPERATOR acknowledges, represents and warrants to COUNTY that it has made or will make sufficient inspection of the Premises and the improvements to satisfy itself as to the presence or absence of any such Pollutants, including undertaking the Base Line Audit as provided herein, to satisfy itself as to the presence or absence of any such Pollutants. COUNTY, notwithstanding, Paragraph 24, INDEMNITY, shall have no liability for any pre-existing environmental impairments, liabilities or conditions or any other environmental impairments or liabilities or conditions, not caused by COUNTY, its agents, employees or invitees. As established by the Environmental Audit and the Base Line Audit to be performed as provided herein, TERMINAL OPERATOR shall have no liability for any pre-existing environmental impairment, liabilities or conditions or any other environmental impairments or liabilities or conditions not caused by the TERMINAL OPERATOR, its agents, employees or invitees. TERMINAL OPERATOR shall not be liable for any migration of Pollutants and/or rise in the level of any Pollutants on the Premises as a result of any migration of Pollutants and/or rise in the level of the Pollutants on the Premises as a result of any migration on or under the Premises which were not caused by the TERMINAL OPERATOR, its agents, employees or invitees. The TERMINAL OPERATOR shall only be liable for the release of Pollutants during the term of this Agreement, caused by TERMINAL OPERATOR, its agents, employees or invitees.

B. The discharge of any Pollutants on the Premises or in Port Everglades in violation of any federal, state or local law, rule or regulation or in violation of an order or directive of any federal, state, or local court or entity is prohibited. Any such discharge by TERMINAL OPERATOR, its sublessees, or any of their officers, employees, contractors, subcontractors, invitees, or agents, whether committed prior to or subsequent to the date of execution of this Agreement, shall be, at TERMINAL OPERATOR's expense, and upon COUNTY's demand, immediately contained, removed and abated to the satisfaction of COUNTY and any court or regulatory entity having jurisdiction of the discharge. If TERMINAL OPERATOR does not take action immediately to have such Pollutants contained, removed and abated, COUNTY may undertake the removal of the discharge; however, any such action by COUNTY shall not relieve TERMINAL OPERATOR of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either TERMINAL OPERATOR or COUNTY to contain or remove Pollutants, or to abate a discharge, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its discharge.

C. If COUNTY arranges for the removal of any Pollutants in Port Everglades that were caused by TERMINAL OPERATOR, its sublessees, or any of their officers, employees, contractors, subcontractors, invitees, or agents, the costs of such removal incurred by COUNTY shall be paid by TERMINAL OPERATOR to COUNTY immediately upon COUNTY's written demand, with interest as is provided for under COUNTY's rules, regulations and ordinances, including its published Tariff No. 11, amendments thereto and

reissues thereof.

D. TERMINAL OPERATOR shall not be liable for the discharge of any Pollutants caused by the negligence or willful misconduct of the COUNTY. Nothing herein shall relieve TERMINAL OPERATOR of its general duty to cooperate with COUNTY in ascertaining the source and, containing, removing and abating any Pollutants at the Premises. COUNTY, its employees, contractors, and agents, shall have the right at all times to enter the Premises for the purposes of the foregoing activities and/or conducting such environmental inspections, audits, testing or sampling as it deems appropriate. In addition, TERMINAL OPERATOR hereby agrees that upon any Assignment of this Agreement and at anytime during the term, COUNTY shall have the right to have a "Phase I" audit of the Premises conducted at TERMINAL OPERATOR's expense, and if such "Phase I" audit indicates that further testing and/or studies should be conducted, to include but not be limited to soil samples and water samples, then COUNTY shall have the right to have such further testing and studies conducted at TERMINAL OPERATOR's expense. TERMINAL OPERATOR shall reimburse COUNTY for the cost of such testing and studies within fifteen (15) calendar days after written demand therefor is sent.

E. In the event COUNTY shall arrange for the removal of Pollutants on the Premises that are not TERMINAL OPERATOR's responsibility to correct, and if COUNTY's remediation activities prevent TERMINAL OPERATOR from using the Premises for its intended purposes, then from the date that the use of any portion of the Premises for its intended purposes is precluded and until said portion again becomes available for TERMINAL OPERATOR's use, compensation shall be abated based on the rate applicable

to that pro rata portion of the Premises so taken. In no event shall TERMINAL OPERATOR be entitled to any amount on account of lost profits, lost rentals, or other damages as a result of COUNTY's remediation activities.

F. The provisions of this Section shall survive the expiration or termination of this Agreement.

**27. DEFAULT; TERMINATION**

**A. TERMINATION AFTER NOTICE**

If any one or more of the following Triggering Events defined in Section B. below shall occur, or at any time thereafter during the continuance of such event, same shall be an event of default under this Agreement and COUNTY may, at its option, terminate the rights of TERMINAL OPERATOR hereunder by giving fourteen (14) calendar days written notice thereof, which termination shall be effective upon the date specified in such notice, and/or COUNTY may exercise any and all other remedies available to COUNTY hereunder or at law or in equity.

In the event of any termination by COUNTY, TERMINAL OPERATOR shall have no further rights under this Agreement and shall cease forthwith all operations upon the Premises, and COUNTY, its agents, employees and representatives shall have the right to enter the Premises and remove all property therefrom, and to accelerate and declare immediately due and payable all unpaid amounts due and other sums required to be paid under this Agreement. In addition, TERMINAL OPERATOR shall be liable for all damages incurred by COUNTY in connection with TERMINAL OPERATOR's default or the termination of this Agreement upon such a default, including without limitation, all direct

damages, such as collection costs and reasonable attorney's fees, as well as indirect, consequential, and all other damages whatsoever. The exercise by COUNTY of any right of termination shall be without prejudice to any other such rights and remedies. No remedy herein confirmed upon or reserved to COUNTY is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative.

B. TRIGGERING EVENTS

Any one or more of the following events shall constitute a Triggering Event:

1) TERMINAL OPERATOR shall voluntarily abandon, desert or vacate the Premises for a period of thirty (30) consecutive calendar days; or

2) Any lien, claim or other encumbrance which is filed against the Premises is not removed or if COUNTY is not adequately secured by bond or otherwise, within thirty (30) calendar days after TERMINAL OPERATOR has received notice thereof; or

3) TERMINAL OPERATOR shall fail to pay the rentals within fifteen (15) calendar days following the date on which such payments are due to COUNTY; or

4) TERMINAL OPERATOR shall fail to make any other payment required hereunder when due to COUNTY and shall continue in its failure to make any such other payments required hereunder for a period of fifteen (15) calendar days after demand for payment is sent; or

5) TERMINAL OPERATOR shall take any action described by Section 13 hereof without the prior written consent of COUNTY; or

6) The discovery of any material misrepresentation or fraudulent statement made to COUNTY in connection with any application or forms submitted to COUNTY in connection with the Agreement or the Premises, following notice by COUNTY and a failure by TERMINAL OPERATOR to explain the matter to COUNTY's satisfaction within thirty (30) calendar days after such notice is sent; or

7) TERMINAL OPERATOR shall fail to keep, perform and observe each and every promise, covenant and term set forth in this Agreement on its part to be kept, performed or observed within thirty (30) calendar days after notice to cure default is sent by COUNTY (except where fulfillment of its obligation requires activity over a greater period of time and TERMINAL OPERATOR shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after notice is sent and continues such performance without interruption).

8) By or pursuant to, or under authority of any legislative act, resolution or rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of TERMINAL OPERATOR, and such possession or control shall continue in effect for a period of thirty (30) calendar days; or

9) Any business is conducted, or service is performed, or product is sold from the Premises that is not specifically authorized by this Agreement, and such activity does not cease within ten (10) calendar days after receipt of notice to that effect.

C. Then upon the occurrence of any event set forth in (B), above, or at any time thereafter during the continuance thereof, COUNTY may, at its option, immediately terminate this Agreement, and all rights of TERMINAL OPERATOR hereunder by giving written notice thereof, which termination shall be effective upon the date specified in such notice and/or COUNTY may exercise any and all other remedies available to COUNTY hereunder or at law or in equity. In the event of any such termination, TERMINAL OPERATOR and its sublessee(s) shall immediately quit and surrender the Premises to COUNTY and shall cease operations at Port Everglades. Any such termination shall be without prejudice to any remedy for arrears of payments due hereunder or breach of covenant, or damages for the balance of the Rent payable hereunder through the full term of this Agreement, or any other damages or remedies whatsoever.

D. HABITUAL DEFAULT

Notwithstanding the foregoing, in the event TERMINAL OPERATOR defaults in the performance of or breaches any of the terms, covenants and conditions required herein to be kept and performed by TERMINAL OPERATOR two (2) or more times in two (2) consecutive months, and regardless of whether TERMINAL OPERATOR has cured each individual condition of breach or default, TERMINAL OPERATOR may be determined by Broward County's Port Everglades Department to be a "habitual violator." At the time that such determination is made, said Department shall issue to TERMINAL OPERATOR a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise TERMINAL OPERATOR that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent

breaches or defaults of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, COUNTY may terminate this Agreement upon the giving of written notice of termination to TERMINAL OPERATOR, such termination to be effective upon delivery of the notice to TERMINAL OPERATOR.

E. TERMINATION WITHOUT NOTICE

The occurrence of any of the following during this Agreement's term shall immediately confer upon COUNTY the right to terminate this Agreement without notice, in its sole discretion upon the terms and conditions set forth below:

1) If TERMINAL OPERATOR or an officer, director, executive, partner, shareholder, employee or agent who is active in the management of TERMINAL OPERATOR is found guilty or convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, entry of a plea of guilty or nolo contendere where the illegal conduct or activity (i) is considered to be a public entity crime as defined by Ch. 287, Florida Statutes, as amended, (ii) is customarily considered to be a "white collar crime" or theft-related crime such as fraud, smuggling, embezzlement or misappropriation of funds, (iii) involves an act of moral turpitude meaning conduct or acts that tend to degrade principals or owners in society or bring them into public hatred, contempt, scorn or ridicule, or that tends to shock, insult or offend the community or ridicule public morals or decency or harm the image of COUNTY by virtue of its association with TERMINAL

OPERATOR or (iv) results in a felony conviction. TERMINAL OPERATOR understands and agrees that resignation of the offending person from TERMINAL OPERATOR before conviction does not impair COUNTY's right to terminate without notice under this Section; or

2) Suspension or revocation of TERMINAL OPERATOR's operations by a governmental unit or agency having jurisdiction over the Premises and/or the business being conducted thereon, regardless of the length of such suspension or revocation.

F. NO WAIVER

No waiver by COUNTY of any default on the part of TERMINAL OPERATOR in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by TERMINAL OPERATOR shall be or be construed to be a waiver by COUNTY of any other or subsequent default in performance of any of the said terms, covenants and conditions.

28. DAMAGE BY CASUALTY

If the Premises are damaged by casualty not caused by an act attributable to TERMINAL OPERATOR or COUNTY, and thereby become untenable, COUNTY may elect to repair within ninety (90) calendar days. If COUNTY does not elect to repair, TERMINAL OPERATOR shall make the required repairs and request the applicable insurance proceeds be released as required to make timely payments for such needed repairs. If the Premises are not repaired within ninety (90) calendar days and remain untenable, either party may cancel this Agreement and compensation shall be charged

only to the date the Premises became untenable.

It is expressly agreed and understood that COUNTY shall not be liable for any damage or injury by water, which may be sustained by TERMINAL OPERATOR or any other person or for any other damage or injury resulting from carelessness, negligence or improper conduct on the part of any other party in Port Everglades from breakage, leakage or obstruction of water, sewer or soil pipes or other leakage in or about the Premises.

**29. NOTICES**

Any notices required by this Agreement or by law shall be given in writing and shall be sent by registered or certified mail by depositing the same in the United States Mail in the continental United States, postage prepaid, or by hand delivery or by overnight courier. Any such notice mailed as provided hereunder shall be deemed effective and served as of the date of the mailing. Any notice given by hand delivery or overnight courier shall be deemed to have been given upon receipt. Either party shall have the right, by giving written notice to the other, to change the address as which its notices are to be received. Until any such change is made, notices to COUNTY shall be delivered as follows:

Broward County, Port Everglades Department  
ATTN: Port Director  
1850 Eller Drive  
Fort Lauderdale, Florida 33316

With a copy to:  
County Administrator  
Governmental Center  
115 S. Andrews Avenue  
Fort Lauderdale, Florida 33301

Until any such change is made, notices to TERMINAL OPERATOR shall be delivered as follows:

TERMINAL OPERATOR:

George I. Platt, Esquire  
Shutts & Bowen, LLP  
200 E. Broward Blvd., #2000  
Fort Lauderdale, FL 33301

With a copy to:  
GUARANTOR:

George I. Platt, Esquire  
Shutts & Bowen LLP  
2000 E. Broward Blvd, #2000  
Fort Lauderdale, FL 33301

Jose A. Diaz, Project Director  
CSAV, USA  
Florida International Terminal, LLC (LAD)  
201 S. Biscayne Blvd., Suite 1500  
Miami, FL 33131

Mario Da-Bove, President  
CSAV, USA  
99 Wood Avenue South, 9<sup>th</sup> Floor  
Iselin, New Jersey 08830

**30. INSOLVENCY**

If TERMINAL OPERATOR becomes insolvent or bankruptcy proceedings are begun by or against TERMINAL OPERATOR, and within thirty (30) days thereof TERMINAL OPERATOR fails to secure a discharge thereof, or if TERMINAL OPERATOR should make an assignment for the benefit of creditors before the end of the term of this Agreement, COUNTY is hereby irrevocably authorized, at its option, to forthwith cancel this Agreement as for a default. COUNTY may elect to accept rent and other required compensation from the receiver, trustee or other judicial officer during the term of their occupancy in their fiduciary capacity without affecting COUNTY's rights under this Agreement, but no receiver, trustee or other judicial officer shall have any right, title or interest in the Premises.

**31. TENANCY AFTER AGREEMENT TERM EXPIRES**

It is agreed and understood that any holding over of TERMINAL OPERATOR after the termination of this Agreement shall not renew and extend same but shall operate and be construed as a tenancy from month to month and TERMINAL OPERATOR agrees to pay to COUNTY the annual compensation and all other charges required to be paid

hereunder during any such period. COUNTY at its option may impose a higher compensation during any holdover period as permitted by Florida law. TERMINAL OPERATOR shall be liable to COUNTY for all loss or damage on account of any such holding over against COUNTY's will after the termination of this Agreement, whether such loss or damage may be contemplated at the execution of this Agreement or not. It is expressly agreed that acceptance of the foregoing payments by COUNTY in the event that TERMINAL OPERATOR fails or refuses to surrender possession shall not operate or give TERMINAL OPERATOR any right to remain in possession nor shall it constitute a waiver by COUNTY of its right to immediate possession, except as provided in this Section 31.

**32. NON-LIABILITY OF INDIVIDUALS**

No commissioner, director, officer, agent or employee of COUNTY shall be charged personally or held contractually liable by or to TERMINAL OPERATOR under any term or provisions of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**33. COOPERATION AMONG PARTIES**

A. TERMINAL OPERATOR acknowledges that COUNTY is, or may be, subject to Development Orders issued pursuant to Chapter 380, Florida Statutes collectively, "Development Orders"). COUNTY will be seeking regulatory approvals (collectively "Regulatory Approvals") consistent with its 1994 Fort Lauderdale-Hollywood International Airport Master Plan ("Master Plan") and FAR Part 150 Update ("Part 150 Update"), and the implementation of such plans, which may include the following: (1) amendment of existing

Development Orders, (2) Preliminary Development Agreements from the Department of Community Affairs, (3) land use and zoning amendments, (4) preparation of Environmental Impact Statements, (5) such environmental permitting as may be required by federal, state, County or local regulations, and (6) any other Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of the Master Plan and the Part 150 Update.

TERMINAL OPERATOR agrees to cooperate with COUNTY in connection with COUNTY's efforts to obtain the Regulatory Approvals. From and after the date of execution of this Agreement, TERMINAL OPERATOR covenants and agrees (i) to support the COUNTY's efforts to obtain the Regulatory Approvals; and (ii) to execute any document(s) or instrument(s) reasonably requested by COUNTY in order to assist COUNTY in obtaining the Regulatory Approvals, provided that TERMINAL OPERATOR shall not be required to bear any expense in connection therewith and TERMINAL OPERATOR shall not be deemed an agent of the COUNTY.

B. COUNTY agrees to cooperate with TERMINAL OPERATOR as may be reasonably required in order to assist TERMINAL OPERATOR in its design and construction obligations as provided herein. COUNTY in providing such cooperation, shall not be required to bear any expenses.

**34. GUARANTY**

GUARANTOR hereby unconditionally guarantees to COUNTY full and punctual performance of and observance of all monetary and non-monetary obligations, covenants, conditions and agreements required in this Agreement to be performed by TERMINAL

OPERATOR, its successors and assigns. GUARANTOR expressly agrees that their respective liability pursuant to this Guaranty provision will not be terminated, affected or impaired by: (i) COUNTY's asserting its rights or remedies against TERMINAL OPERATOR hereunder, or (ii) COUNTY's acts or omissions consisting of a wavier or failure by COUNTY to enforce any of the terms hereof, or (iii) COUNTY's granting of any indulgences or extensions of time to TERMINAL OPERATOR, or (iv) the giving of any consent to any matter relating to the Agreement, all of the foregoing of which may be given or done without notice to GUARANTOR, or (v) the release or discharge of TERMINAL OPERATOR from its obligations, or the impairment or modification of TERMINAL OPERATOR's liability under the Agreement in any creditors' receivership or other proceedings. GUARANTOR further covenants and agrees that this Guaranty provision shall remain and continue in full force and effect as to any extension, amendment or modification of this Agreement, as well as to any holdover periods. No Assignment of this Agreement shall operate or extinguish or diminish the liability of GUARANTOR under this Guaranty provision.

**35. PREFERENTIAL BERTHING AND CRANES**

COUNTY shall, upon receipt of Harbormaster Access to Port Application ("Berth Application") filed timely in accordance with the provisions of Port Everglades Tariff No. 11, provide a preferential berth and one (1) rail mounted container gantry crane at Southport on Fridays and Saturdays each week to a vessel carrying TERMINAL OPERATOR CARGO as defined in this Agreement. When TERMINAL OPERATOR achieves seventy thousand (70,000) container (shipmoves) in any given year, a second (2<sup>nd</sup>) rail mounted

container gantry crane for the balance of any such contract year (in which the seventy thousand (70,000) container (shipmoves) is achieved) shall be provided in accordance with this Section. Upon receipt of a container gantry crane order placed by TERMINAL OPERATOR in accordance with the provisions of Port Everglades Tariff No. 11, one (1) or two (2) container gantry crane(s) as applicable will be furnished on a preferential basis. While it is agreed that Berth 30 is the favored berth for preferential assignment, COUNTY, through its Port Everglades Department, reserves the right to assign an alternate berth at Southport, when it determines such assignment to be in the best interest of COUNTY. No berth and/or container crane preferential assignment applies to third party users of TERMINAL OPERATOR's marine terminal facility or to vessels which do not load/discharge TERMINAL OPERATOR CARGO at Port Everglades, for which TERMINAL OPERATOR provides stevedoring and/or terminal cargo handling services.

**36. TERMINAL OPERATOR'S EARLY TERMINATION**

TERMINAL OPERATOR may terminate this Agreement for its convenience upon the giving of prior written notice to COUNTY's Port Director of its intent to terminate ("Termination Notice") as follows: a) no Termination Notice shall be sent in the first year of the Initial Term hereof, b) in the second, third, fourth or fifth years of the Initial Term of this Agreement, Termination Notice shall be sent not less than thirty-six (36) months prior to the effective termination date, c) in the sixth, seventh or eighth years of the Initial Term of this Agreement, Termination Notice shall be sent not less than twenty-four (24) months prior to the effective termination date, and d) for the remainder of the Initial Term and any Option Term of this Agreement, Termination Notice shall be sent not less than twelve (12) months

prior to the effective termination date. The effective termination date shall be the first day of the month following the last day in the applicable Termination Notice period. TERMINAL OPERATOR shall remain liable for its payments of its applicable MGP, annual rental, and TERMINAL OPERATOR CARGO container (shipmoves) charges due over the period from the date of the Termination Notice to the applicable effective termination date, in accordance with the terms and conditions of this Agreement, except that during such period the applicable MGP shall be reduced to ninety percent (90%) of the MGP in effect on the date of the Termination Notice.

**37. MISCELLANEOUS**

**A. TIME OF ESSENCE**

It is understood and agreed between the parties hereto that time is of the essence of this Agreement and shall apply to all terms and conditions contained herein.

**B. INDEPENDENT CONTRACTOR/RELATIONSHIP OF PARTIES**

TERMINAL OPERATOR is an independent contractor under this Agreement. Services provided by TERMINAL OPERATOR pursuant to this Agreement shall be subject to the supervision of TERMINAL OPERATOR. In providing such services, neither TERMINAL OPERATOR nor its agents shall act as officers, employees, or agents of the COUNTY. This Agreement shall not constitute or make the parties a partnership or joint venture.

**C. TERMINAL OPERATOR'S WAIVER OF CLAIMS**

TERMINAL OPERATOR hereby waives any claim against COUNTY, and its officers, or employees for loss of anticipated profits caused by any suit or proceedings directly or

indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof, from being carried out.

D. AMENDMENTS

No modifications, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or formality and of equal dignity as this Agreement and executed by the COUNTY and TERMINAL OPERATOR.

E. MATERIALITY AND WAIVER OF BREACH

COUNTY and TERMINAL OPERATOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

F. EXECUTION AUTHORITY

The individuals executing this Agreement on behalf of TERMINAL OPERATOR personally warrant that they have full authority to execute this Agreement on behalf of TERMINAL OPERATOR for whom they are acting herein.

G. CAPTIONS, HEADINGS, AND TERMS

The section and paragraph headings in this Agreement are inserted only as a matter

of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section of this Agreement, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is made to a particular subsection or subparagraph of such Section. Captions and Section headings used in this Agreement are for the convenience of reference of the parties and shall not be deemed to define, limit or in any way affect the meaning of any provisions of this Agreement.

H. GENDER

All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires.

I. INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. All attached exhibits are incorporated into and made a part of this Agreement.

J. SEVERABILITY

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or TERMINAL OPERATOR elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding

by the court becomes final.

K. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision or any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 37 of this Agreement shall prevail and be given effect.

L. SUCCESSORS AND ASSIGNS BOUND

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

M. AGENT FOR SERVICE OF PROCESS

It is expressly understood and agreed that if TERMINAL OPERATOR and/or GUARANTOR are not residents of the State of Florida, or associations or partnerships without a member or partner resident of said State, or are foreign corporations, then in any such event TERMINAL OPERATOR and GUARANTOR will designate a local agent acceptable to COUNTY, in Broward County, Florida as their agent for the purpose of service of process in any court action with COUNTY arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Florida for service upon a non-resident, who has designated a local agent as its agent for service of process. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, TERMINAL OPERATOR and GUARANTOR may be personally served with such

process out of this State by certified mailing to TERMINAL OPERATOR and GUARANTOR at the addresses set forth herein. Any such service out of this State shall constitute valid service upon TERMINAL OPERATOR and GUARANTOR as of the date of mailing. It is further expressly agreed that TERMINAL OPERATOR and GUARANTOR are amenable to and hereby agrees to the process so served, submits to the jurisdiction of the State of Florida, and waives any and all objections and protests thereto.

N. CUMULATIVE RIGHTS

All rights and remedies of COUNTY and TERMINAL OPERATOR hereunder or at law or in equity are cumulative and shall be in addition to any other rights and remedies available. The exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other. Failure by COUNTY or TERMINAL OPERATOR to promptly exercise any of their respective rights shall not operate to forfeit or be treated as a waiver of any such rights.

O. SPECIFIC PERFORMANCE

TERMINAL OPERATOR agrees that in addition to all other remedies, its obligations contained herein shall be subject to the remedy of specific performance by appropriate action commenced in a court of proper jurisdiction.

P. JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting

document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

Q. APPLICABLE LAW AND VENUE; WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. **TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION THAT MAY ARISE HEREUNDER, EACH PARTY HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY SUCH LITIGATION.**

R. UNCONTROLLABLE FORCES

Neither COUNTY nor TERMINAL OPERATOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, earthquakes, hurricanes, tornadoes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

S. NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AMERICANS WITH DISABILITIES ACT

1) TERMINAL OPERATOR shall not unlawfully discriminate against any person in its operations, activities or expenditure of funds in fulfilling its obligations under this Agreement. TERMINAL OPERATOR shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA, including Titles I and II of the ADA regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, TERMINAL OPERATOR shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

2) TERMINAL OPERATOR shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 161/2) in performing any services pursuant to this Agreement.

3) In addition, TERMINAL OPERATOR shall take affirmative steps to ensure nondiscrimination in employment against disabled person. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

4) By execution of this Agreement, TERMINAL OPERATOR that it has

not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement in accordance with the Default; Termination provision herein. TERMINAL OPERATOR shall take affirmative steps to ensure that minority and women business enterprises have a fair opportunity to be awarded TERMINAL OPERATOR vendor and supplier contracts through TERMINAL OPERATOR's purchasing activity in this market area.

T. PUBLIC ENTITY CRIMES

TERMINAL OPERATOR represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to County, may not submit a bid on a contract with County for the construction or repair of a public building or public work, may not submit bids on Agreements of real property to County, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with County, and may not transact any business with County in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from County's competitive procurement

activities.

U. PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 37 D. herein.

V. THIRD PARTY BENEFICIARIES

Neither COUNTY nor TERMINAL OPERATOR intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third party or entity under this Agreement.

W. RADON

Pursuant to Florida Statutes, COUNTY hereby advises TERMINAL OPERATOR of the following: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed federal and state guidelines have been found

in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

X. MULTIPLE ORIGINALS

This Agreement may be fully executed in eight (8) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(THIS SPACE INTENTIONALLY LEFT BLANK)

A handwritten signature in black ink, consisting of a stylized, cursive 'S' followed by a vertical line.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor authorized to execute same by Board action on the 14<sup>th</sup> day of June, 2005, FLORIDA INTERNATIONAL TERMINAL, LLC, signing by and through its President, duly authorized to execute same, and CSAV, signing by and through its SVP., duly authorized to execute same.

**COUNTY:**

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

R. Ruby  
Broward County Administrator, as  
Ex-Officio Clerk of the Broward County  
Board of County Commissioners

By: Kristin D. Jacobs  
KRISTIN D. JACOBS, Mayor

Approved as to Insurance  
Requirements by  
RISK MANAGEMENT DIVISION



14<sup>th</sup> day of June, 2005

Approved as to form by  
Office of the County Attorney  
Broward County, Florida  
Jeffrey Newton, County Attorney  
1850 Eller Drive, Suite 502  
Fort Lauderdale, Florida 33316  
Telephone: (954) 523-3404  
Facsimile: (954) 523-2613

May M. Morrison

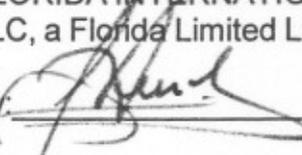
By: Russell J. Morrison  
Russell J. Morrison  
Assistant County Attorney

*[Handwritten initials]*

MARINE TERMINAL LEASE AND OPERATING AGREEMENT BETWEEN  
BROWARD COUNTY AND FLORIDA INTERNATIONAL TERMINAL, LLC  
AND COMPANIA SUD AMERICANA DE VAPORES S.A.

TERMINAL OPERATOR:

FLORIDA INTERNATIONAL TERMINAL,  
LLC, a Florida Limited Liability Company,

By: 

ALEJANDRO GARZA-HUIDOBRO OCHA 64 119  
(Print Name of Pres./Vice-Pres.)

PRESIDENT

(Print Title)

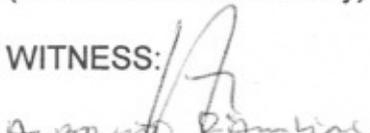
25 day of APRIL, 20 05

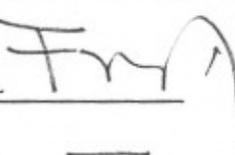
ATTEST:

Corporate Secretary

(Print Name of Secretary)

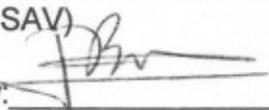
WITNESS:

  
(Signature)

FELIPE RIOJA   
(Signature)

GUARANTOR:

COMPANIA SUD AMERICANA DE  
VAPORES S.A., a Chilean corporation,  
(CSAV)

By:  

FERNANDO BUSTAMANTE RAFAEL FERRADA  
(Print Name of Pres./Vice Pres.)

SVP

SVP

(Print Title)

26 day of APRIL, 20 05

ATTEST:

Corporate Secretary

Alexander Torres Ch.  
(Print Name of Secretary)

WITNESS:

  
(Signature) COSIANO JARAMA

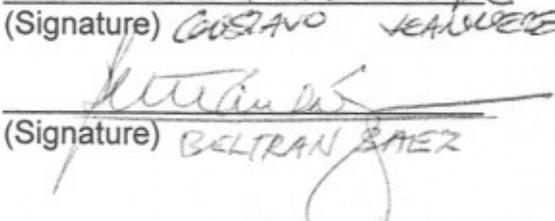
  
(Signature) BELTRAN BAEZ



EXHIBIT 'B'  
ENVIRONMENTAL AUDIT

I. LIMITATION OF LIABILITY OF TERMINAL OPERATOR

TERMINAL OPERATOR shall have no liability for any pre-existing environmental impairments, liabilities or conditions not caused by TERMINAL OPERATOR, its agents, employee, invitees, contractors, sub-contractors, and sub-lessees. TERMINAL OPERATOR shall not be liable for any migration and/or rise in the level of Pollutants as a result of any migration on or under the subject property leased hereunder, which Pollutants are not attributable to its operations on the subject property. TERMINAL OPERATOR shall only be liable for the release of Pollutants (as such term is defined in the Agreement), during the Agreement's term, which is caused by or otherwise attributable to TERMINAL OPERATOR and/or its agents, employees, contractors, sub-contractors, sub-lessees and invitees.

II. DESCRIPTION OF PRE-EXISTING ENVIRONMENTAL CONDITIONS

In 1992, the then, Port Everglades Authority properly closed a forty acre landfill as per the direction of the then Broward County Office of Natural Resource Protection (BCONRP). At the time of closure, and as referenced in letters dated October 5, 1992, and October 22, 1992, from the County's Office of Natural Resource Protection, the Department concluded that due to the fact that the site was over salt water and over a mile away from the nearest public supply well, that any contamination on the property had a low probability of migrating to a location that would pose a public health and safety risk. The following chemicals had been identified at that time to have exceeded County groundwater

standards. These chemicals are: manganese, BOD, ammonia and phosphorus. In addition, low levels of lead attributed to the former gun range was identified as well as a detectable amount of chlorobenzene.

A limited Phase II audit was conducted by URS, a consultant for a proposed tenant, in November, 2004. One of the groundwater samples again revealed the presence of lead and it is thought to be a result of the former use as a gun range. In addition, another ground water sample indicated that presence of arsenic which possibly could be a result of the former usage as a metal recycling facility.

These are the historical and present day results of the ground water sampling for this 40 acre site. As such, it appears that little has changed with the regard to materials historically presence and those found today. The land use of the area will continue to be for the movement and storage of cargo and as mentioned in the County's closure report, there would be some concern by the agency if the land use changed to schools, parks, churches or residential use, however, this area will be maintained as it is today.





**BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS  
PORT EVERGLADES DEPARTMENT  
VSA AGREEMENTS FILED WITH THE FEDERAL MARITIME COMMISSION**

<u>FMC AGREEMENT #</u>	<u>VSA / Slot Charter Name</u>	<u>Effective Date</u>	<u>Listed Parties</u>
203-011463-006	East Coast North America to West Coast South America and Caribbean Working Agreement	December 29, 2004	CSAV CCNI Hamburg-Sud
11759	CSAV/CMA CGM Space Charter	May 24, 2001	CMA-CGM

<u>FMC AGREEMENT #</u>	<u>VSA NAME</u>	<u>Effective Date</u>	<u>Listed Parties</u>
001872	CSAV Group / CMA CGM Cross Space Charter, Sailing, and Cooperative Working Agreement	April 26, 2004	CSAV Libra Montreal CMA-CGM

**EXECUTIVE SUMMARY OF BASELINE ASSESSMENT REPORT FOR  
FLORIDA INTERNATIONAL TERMINAL, LLC**

The following is a summary of a baseline assessment for the proposed leasehold's environmental conditions at an approximate 40-acre site identified as Parcels A and B, Southport Phase V, located at 3800 McIntosh Road, Port Everglades, Florida, conducted by URS for Florida International Terminal, LLC.

URS Corporation, an environmental consultant for the proposed tenant, conducted a site visit, a Phase I Environmental Site Assessment, and a Limited Phase II Environmental Investigation of this site. In addition, URS identified former uses of the property that included: a former non-municipal solid waste landfill, a pistol range, metal recycling facility, tire recycling facility and a gypsum storage facility. URS also identified several contamination assessments and site remediation activities by various parties performed in the early 1990's.

A total of eight shallow micro monitoring wells were installed within the site. The parameters sampled and analyzed were: EPA Test Method 8260 (VOH/VOA), eight RCRA metals (ammonia, barium, cadmium, chromium, lead, mercury, selenium and silver), EPA Test Method 8270 (PAHs), Total Chloride, Total Dissolved Solids and Total Ammonia.

The results indicated that of the eight RCRA metals analyzed all but one well exhibited the presences of barium, however, all levels identified were below the Groundwater Cleanup Target Levels (GCTL), as per Chapter 62-777 of the Florida Administrative Code. Results further indicated that five of the wells exceeded FDEP GCTL levels for ammonia, two samples were below GCTLs and one well had results below detectable limits. Six of the samples indicated that levels for total dissolved solids were above the GCTLs, and two wells were below detectable levels. Lastly, chlorobenzene and one, 4-dichlorobenzene were detected in two samples but were below the GCTLs limit, and other wells were below detectable level.

Many of the results can be expected due to the fact the abandoned landfill has been in existence for many years and the parcel sits over tidally influenced land. The consultant indicates, based on the baseline sampling activities, that "there is evidence of a landfill leachate plume underneath the site, but the levels and nature of contaminants found in the samples collected by URS do not appear to warrant any further action".

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