

FEDERAL MARITIME COMMISSION  
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FEDERAL MARITIME COMMISSION

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**MARINE TERMINAL LEASE**  
**BETWEEN**  
**BROWARD COUNTY**  
**AND**  
**SHERWOOD LUMBER CORP.**



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**MARINE TERMINAL LEASE**

This Marine Terminal Lease ("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 "COUNTY"),

and

SHERWOOD LUMBER CORP.,  
a New York corporation  
authorized to transact business in the state of Florida,  
(hereinafter called "TERMINAL OPERATOR"),

**WITNESSETH:**

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

WHEREAS, TERMINAL OPERATOR has assumed terminal operation of the Premises from Gulf Atlantic Lumber Sales, Inc., the current month-to-month tenant; and

WHEREAS, Gulf Atlantic Lumber Sales, Inc. requests an assignment to TERMINAL OPERATOR; and

WHEREAS, COUNTY consents to the assignment and recognizes TERMINAL OPERATOR as the tenant of the Premises pursuant to the terms and conditions provided herein; 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 the mutual covenants contained herein, the parties agree as follows:

comprising ± 4.07 acres located at Port Everglades, Broward County, Florida as described on Exhibit A attached hereto and made a part hereof, subject to easements and rights-of-way of record, together with all improvements located thereon, such as fencing, gates, paving, drainage and high mast yard lighting (hereinafter referred to as the "Premises.") COUNTY covenants with TERMINAL OPERATOR that it is possessed of a good and marketable fee simple title to the above described Premises, free and clear of all encumbrances and that it will defend the same against the lawful claims of all persons whomsoever.

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 except that COUNTY is not aware of any current hazards or defects on the Premises as of the date of its execution of this Agreement. The Premises are hereby demised in "**AS IS CONDITION**" and "**WITH ALL FAULTS.**" 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.**" TERMINAL OPERATOR hereby releases COUNTY of any and all claims and liabilities on account of the condition of the Premises or any failure of any of the component parts to be in working order.

2. **TERM AND COMMENCEMENT DATE**

The term of this Lease shall be for a period of one (1) year beginning on the 1st day of July, 2006 ("Commencement Date"), and ending on the 30th day of June, 2007 ("Lease Term"), unless sooner terminated as provided herein.

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. **RENTALS, FEES AND CHARGES**

A. **Annual Rental.** The annual rental, subject to adjustment as hereinafter provided, shall be paid by the TERMINAL OPERATOR in twelve (12) equal monthly installments, together with all applicable sales taxes thereon, in advance and without demand, set off or deduction. The first monthly installment of 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. The annual rental payable during the Term of this Agreement shall be Two Hundred Thirty-nine Thousand Three Hundred Forty

Dollars and Forty-two Cents (\$239,340.42), plus applicable sales taxes. Said sum shall be paid in monthly installment payments of rent in the amount of Nineteen Thousand Nine Hundred Forty-five Dollars and Four Cents (\$19,945.04) each, plus applicable sales taxes.

**5. SECURITY DEPOSIT; ADVANCES BY COUNTY**

A. COUNTY acknowledges receipt of the sum of Thirty-nine Thousand Eight Hundred Ninety Dollars and Eight Cents (\$39,890.08) from TERMINAL OPERATOR as a cash security deposit.

B. 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 rent, whichever is higher. The cash security deposit increase shall be effective automatically upon the occurrence of a third default within the time period provided in this Section and TERMINAL OPERATOR shall pay the increased cash security deposit to COUNTY within fifteen (15) business days after posting of such notice.

C. COUNTY shall have the right to use the cash security deposit as a guarantee of TERMINAL OPERATOR's performance of the terms of this Agreement, and said deposit shall be used to reimburse COUNTY for any sums, costs and/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 security deposit 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 security deposit is maintained at its original agreed amount as may be adjusted by the terms provided hereinabove. 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.

D. 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 deposit to TERMINAL OPERATOR within sixty (60) calendar days after the expiration of the term of this Agreement.

**6. INTEREST AND LATE CHARGE**

If TERMINAL OPERATOR fails to pay rent or other amounts which TERMINAL OPERATOR is obligated to pay 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 rent 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 rent, 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 considered additional rent payable to COUNTY.

**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: Broward County's Port Everglades Department, 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.

For each Agreement Year hereunder, TERMINAL OPERATOR agrees to pay, as rent, as required herein, all taxes levied and assessed upon the Premises, all improvements thereon and TERMINAL OPERATOR's leasehold, together with all special assessments of any kind levied and assessed against the leasehold property and improvements thereon, together with sales tax. Further, TERMINAL OPERATOR agrees to pay, as rent, 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, as rent, 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. "Agreement Year" shall be defined as the twelve (12) month period following the Commencement Date of this Agreement and each twelve (12) month period thereafter.

B. In addition, TERMINAL OPERATOR agrees to pay, as rent, to COUNTY at least thirty (30) calendar days prior to expiration of the term of this Agreement 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 amount paid by TERMINAL OPERATOR based on the prior calendar year's tax 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

amount paid by TERMINAL OPERATOR based on the prior calendar year's tax obligation is greater than the actual tax obligation for the Exit Year then COUNTY shall refund such amount to TERMINAL OPERATOR in accordance with applicable state and local laws.

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

9. **USE; COMPLIANCE WITH LAWS**

A. **USE**

TERMINAL OPERATOR shall use the Premises to store, stack, crosscut, repackage and sort imported lumber products which have been imported into Port Everglades by water or by commercial vehicle, or are destined for export or delivery from Port Everglades by water or commercial vehicle and for ancillary or related uses. TERMINAL OPERATOR shall not put the Premises to any other use or purpose without the prior written consent of the Port Department (as hereinafter defined). Under no circumstances shall TERMINAL OPERATOR lease or permit others to use the Premises in competition with any business conducted by COUNTY, including the storage of cargo for other parties thereon. The Port Department shall mean the Broward County's Port Everglades Department and its duly authorized representatives.

TERMINAL OPERATOR shall conduct its operations in an orderly and commercially reasonable manner, considering the nature of such operations so as not to unreasonably annoy, disturb (whether via vibrations, noise or otherwise), endanger or be offensive to others at Port Everglades. 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 take all

reasonable measures to avoid same; provided, however, that fumes resulting from the normal operations of properly maintained trucks, equipment and other vehicles shall be excepted from this provision. TERMINAL OPERATOR shall not do or permit to be done any acts on or about the Premises which: (i) commit waste or injury on or about the Premises or any improvements thereon, or (ii) invalidate or conflict with any hazard, liability or other insurance policies covering the Premises or any part thereof or other contiguous property in Port Everglades, or which will increase the premiums thereof.

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 thirty (30) calendar days of the sending of the notice. If the use violation is not cured within this time period, then COUNTY shall have the right to (i) stop all operations on the Premises until the cause(s) or use violations are eliminated to COUNTY's satisfaction, and/or (ii) terminate this Agreement. COUNTY shall have the right to seek such remedies in a court of law as are available to address the alleged wrong.

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.

B. COMPLIANCE WITH LAWS

TERMINAL OPERATOR in the use, occupation or alteration of the Premises and in the use of property or facilities and services at Port Everglades, shall, at its sole expense,

comply with 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 the Americans with Disabilities Act of 1990 ("ADA") and COUNTY's published Tariff No. 11, amendments thereto and reissues thereof; provided however, any such laws, ordinances, rules or regulations imposed by COUNTY shall be imposed and operate uniformly with respect to all who avail themselves of similar services or facilities at Port Everglades. 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.

**10. TERMINAL OPERATOR'S PERMIT RESPONSIBILITIES; RELEASE OF COUNTY**

TERMINAL OPERATOR, at its sole expense, shall obtain any required approval, including but not limited to construction, use and environmental permits, licenses, etc., from all agencies having jurisdiction over the Premises, proposed improvements and uses, including but not limited to departments, divisions or offices of the City, Broward County, the State of Florida, and the federal government. TERMINAL OPERATOR expressly agrees to obtain all such permits and approvals (including but not limited to a National Environmental Pollution Discharge Elimination System permit and a Storm water Pollution

Prevention Plan) as required by the regulating agencies prior to its performance of any cleaning activities on the Premises, and agrees that it shall, at its sole expense, install any facilities (such as oil/water storm water separating systems) which may be required by said agencies, provided further that all requirements of Section 14 hereunder are met regarding improvements on the Premises. Additionally, TERMINAL OPERATOR shall, at its sole expense, pay all license and permit fees and charges for the conduct of any business on the Premises before such amounts become delinquent, and obtain and keep in full force and effect during the term of this Agreement all applicable governmental licenses and permits required to occupy and operate TERMINAL OPERATOR's business on the Premises.

TERMINAL OPERATOR understands that it is solely responsible for obtaining the required permits, licenses, etc. However, COUNTY, in its capacity as owner of the Premises, agrees to cooperate fully with TERMINAL OPERATOR's efforts to obtain such permits, licenses, etc., and in order to facilitate same, agrees to sign appropriate documents which require the signature of the property owner.

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 COUNTY relating in any way to or stemming from TERMINAL OPERATOR's inability or failure to obtain the necessary permits, licenses, etc. (whether due to the condition of the Premises or otherwise).

**11. DOCKAGE AND OTHER TARIFF CHARGES**

Nothing contained in this Agreement shall be construed to confer upon TERMINAL OPERATOR any special right with respect to charges imposed at Port Everglades. TERMINAL OPERATOR shall pay COUNTY for the utilization of facilities and services at Port Everglades including, but not limited to, dockage in accordance with the charges imposed by COUNTY's published Port Everglades Tariff No. 11, amendments thereto and reissues thereof. TERMINAL OPERATOR shall not be charged applicable Tariff charges for wharfage for the first thirty (30) million Board feet of lumber discharged/loaded via ships calling at Port Everglades and handled through the Premises. Applicable Tariff charges for wharfage shall apply to all lumber exceeding the thirty (30) million Board feet threshold. TERMINAL OPERATOR shall provide Port Everglades Department with a monthly reporting schedule of lumber as provided in Exhibit "B" attached hereto.

**12. TERMINAL OPERATOR 'S OBLIGATIONS**

TERMINAL OPERATOR shall, at its expense:

- 1) 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, provided that the same are not inconsistent with TERMINAL OPERATOR's rights under this Agreement or do not preclude TERMINAL OPERATOR's right to operate its business at the Premises.
- 2) Pay all license and permit fees and charges for the conduct of any

business on the Premises before such amounts become delinquent.

3) 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.

4) Not overload any paved area on the Premises and shall repair any paved area damaged by such overloading.

5) Provide COUNTY with immediate notice of any and all spills, leaks or discharges of any size whatsoever of Pollutants (as defined in Section 27A 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.

6) 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 of which TERMINAL OPERATOR has notice, and have an updated contingency plan in effect for such discharges.

7) 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.).

**13. ASSIGNMENT; SUBLETTING; SUBORDINATION**

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

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

**B. NO RELEASE**

In the event of any Assignment, TERMINAL OPERATOR shall not be released of any liability hereunder and 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 provisions of this Agreement, which assumption agreement must be acceptable to COUNTY. All consents which are required by COUNTY under this Section shall not be unreasonably withheld. 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, or (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 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 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 sublessee to abide by and/or comply with any term 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.

F. MORTGAGE ON LEASEHOLD

No mortgage of this Agreement shall affect the interest of COUNTY and no leasehold mortgage 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 the Agreement as to the defaulting TERMINAL OPERATOR to cure any default in the payment of rent or additional rent 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 Port Department shall, from time to time, upon reasonable written request, provide a leasehold mortgagee with an estoppel certificate stating whether TERMINAL OPERATOR is in default, whether the Agreement is in full force and effect, and whether the 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 or make any alterations, modifications or replacements to the Premises or portion thereof, without the prior written consent of the Port Department, which written consent shall not be unreasonably withheld. In the event any improvement is made without the Port Department's approval then, upon notice in writing so to do, TERMINAL OPERATOR shall remove the same, or at the Port Department's option, cause the same to be removed to said Department's satisfaction. In the case of any failure on the part of TERMINAL OPERATOR to comply with such notice, the Port Department may effect the removal or change 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 of the term 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 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 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 leasehold mortgage of TERMINAL OPERATOR's interest in this Agreement to which COUNTY has consented as provided in this Agreement. 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 for TERMINAL OPERATOR to commence construction improvements on the Premises. Notwithstanding, if TERMINAL OPERATOR so requires during the term hereof to make improvements to the Premises, all of TERMINAL OPERATOR's construction on the Premises, 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 with 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 review and consent by the COUNTY's Port Director of 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 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, and TERMINAL OPERATOR shall pursue same to substantial completion within the designated time frame agreed to by TERMINAL OPERATOR and COUNTY, by and through its Port Director. 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.

iii. Within sixty (60) calendar days after the final completion date of TERMINAL OPERATOR's improvements on the Premises, TERMINAL OPERATOR shall provide to Broward County's 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 permitting 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.

iv. Except in instances involving repair work that does not require the creation of construction plans, specifications, schedules, etc., TERMINAL OPERATOR shall furnish to COUNTY within seven (7) calendar days following the COUNTY's Port Director's review and consent to TERMINAL OPERATOR's

construction plans, specifications, and construction schedule as provided herein, the following:

(1) Performance Bond and Payment Bond (Surety):

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

(b) 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 on the Premises as provided in this Agreement, as well as full payment of all suppliers, materialpersons, 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:

(i) Qualifications of Surety:

1) 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.

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

additional qualifications:

3) 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.

4) 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

(c) 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 -

(2) 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.

v. 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.

E. COUNTY'S IMPROVEMENTS

None required.

F. TERMINAL OPERATOR'S IMPROVEMENTS

None required.

**15. MAINTENANCE AND REPAIR OF PREMISES**

A. TERMINAL OPERATOR 'S RESPONSIBILITY

Subject to the terms of this Agreement, TERMINAL OPERATOR hereby accepts the Premises in its present condition and agrees to maintain the Premises in the same condition as exists at the beginning of this Agreement's term except for reasonable wear and tear. TERMINAL OPERATOR shall throughout the 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. TERMINAL OPERATOR shall be required to keep the Premises in good, tenantable, useable condition throughout the term, and without limiting the generality thereof, shall:

1) Keep the Premises and all of the fixtures, equipment and personal property which are located in any part of the Premises which is open to or visible by the general public in a clean orderly condition and appearance.

2) Maintain the Premises in a safe and neat manner, free from garbage, debris or other unsightly or unsanitary waste matter (whether solid or liquid), and 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.

3) Provide and maintain all 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.

4) Maintain and repair the fence and gates around the perimeter of the Premises.

5) Maintain the Premises, including any improvements (such as signage) thereon, in a good state of repair and in a clean, orderly and safe condition so as to avoid injury to persons and property.

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

7) Repair all damage to the Premises (including but not limited to any fencing, gates, lighting or pavement) within fifteen (15) 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 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 (i) replace all high mast yard light bulbs on the Premises, (ii) maintain and repair all underground utilities, and (iii) repair terminal paving arising from settlement and normal wear and tear provided, however, that for any and all repairs to the Premises necessitated by an act, omission, negligence, or misconduct on the part of TERMINAL OPERATOR, its employees, agents, contractors or invitees, then TERMINAL OPERATOR, at the Port Department's option, shall make all such repairs or shall reimburse COUNTY for making same within fifteen (15) calendar days after written demand therefor is sent.

**16. INGRESS AND EGRESS**

TERMINAL OPERATOR, its sublessees, 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 provided that the same do not materially interfere with TERMINAL OPERATOR's use of the Premises subject to general operations at Port Everglades. 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 shall take reasonable steps to insure that any such installation be the least disruptive to TERMINAL OPERATOR's operations and will not materially interfere with TERMINAL OPERATOR's use of the Premises.

**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 Department, which consent shall not be unreasonably withheld. If such consent is granted by the Port Department, TERMINAL OPERATOR shall maintain such item(s) in good condition at all times, and install same pursuant to the Port Everglades Development District Zoning Classification.

**B. REMOVAL OF SIGNS**

Upon the expiration or termination of this Agreement, TERMINAL OPERATOR shall remove, obliterate or paint out, as the Port Department 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 Broward County's Port Everglades Department may perform the necessary work, deduct the reasonable 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 space(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 Everglades 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 only such utilities and other services as are presently provided to the Premises. COUNTY shall not be obligated to perform or furnish any other services (including but not limited to garbage services) in connection with the Premises, or any services at any time while TERMINAL OPERATOR is in default hereunder after the period to cure such default has expired. No failure, delay or interruption in supplying electric services or utilities shall be construed as an eviction of TERMINAL OPERATOR, or a grounds for any abatement of payments or claim by TERMINAL OPERATOR for damages.

**B. CHARGES**

TERMINAL OPERATOR shall make arrangements directly with the utility company for electric services to the Premises and shall pay said company directly for all charges, including applicable Florida sales tax, for electricity consumed therefrom. Additionally, if

COUNTY determines that TERMINAL OPERATOR is utilizing water on the Premises, TERMINAL OPERATOR shall make arrangements directly with the utility company or governmental entity for water services to the Premises, and shall pay same directly for all charges (including applicable Florida sales tax), for water services provided to the Premises.

**21. SECURITY**

TERMINAL OPERATOR, at its sole cost, shall be responsible for security on the Premises and shall take whatever legal precautions are necessary to protect the Premises, 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, COUNTY, or any other governmental agency). 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; and except as set forth in the Port Everglades Tariff No. 11, amendments thereto and reissues thereof, TERMINAL OPERATOR is not responsible for the areas outside the Premises.

**22. RIGHT TO INSPECT**

**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 and 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 than TERMINAL OPERATOR 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 the reasonable cost 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, if performed in accordance with the terms hereof.

23. SURRENDER AND ACCEPTANCE; REMOVAL OF PROPERTY

A. SURRENDER

TERMINAL OPERATOR covenants and agrees to yield and deliver peaceably to COUNTY, at the conclusion of the term hereof or as otherwise provided herein, the Premises or portion thereof as applicable in the same good condition as provided to TERMINAL OPERATOR as of the Commencement Date, 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 with the same formality and equal dignity 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 this Agreement's 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 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 reasonable 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. The provisions of this Section shall survive the expiration or earlier termination of this Agreement. This Agreement does not require TERMINAL OPERATOR to indemnify COUNTY, its employees, officers, agents or servants from any liability, damages, loss, claim, action or proceeding caused by negligent act or intentional misconduct of COUNTY. TERMINAL OPERATOR agrees to bind its sublessee(s) and every terminal user on the Premises, contractor, subcontractor and consultant it employs for the performance of its obligations hereunder to the applicable terms and conditions of this Agreement, including this indemnity provision for the benefit of the COUNTY. To the extent considered necessary by the Port Department and the Broward County Attorney, any sums due TERMINAL OPERATOR under this Agreement (including without limitation the Security Deposit) 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. APPLICABILITY OF TARIFF**

Except as otherwise provided for herein, TERMINAL OPERATOR, in its use of property, facilities and/or services at Port Everglades, shall comply with and be governed

by all provisions of Port Everglades Tariff No. 11, and any amendments thereto or reissues thereof.

**26. INSURANCE**

**GENERAL REQUIREMENTS**

TERMINAL OPERATOR shall provide at its own expense and keep in continuous force and effect: (i) commercial general liability insurance and if necessary, umbrella liability with minimum limits of Five Million Dollars (\$5,000,000.00) for single limit bodily injury and property damage, and (ii) business automobile insurance for all vehicles in TERMINAL OPERATOR's name (including owned/leased, 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 Employer Liability Coverage in the amount of One Hundred Thousand Dollars (\$100,000.00) (each accident) required to comply with Florida Statutes Chapter 440, 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 the term. 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.

Certificates of Insurance: TERMINAL OPERATOR agrees to provide COUNTY a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. Said Certificate of Insurance shall include a minimum of thirty (30) days endeavor to notify the COUNTY due to cancellation or non-renewal of coverage. 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.

Right to Revise or Reject: COUNTY reserves the right, but not the obligation, to review and revise any insurance requirements at the time of contract renewal and/or any amendments, not limited to deductibles, limits, coverages, and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the TERMINAL OPERATOR's use of the Premises or its operations within Port Everglades affecting the applicability of coverage. Additionally, COUNTY reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein.

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.

**27. 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 sufficient inspection of the Premises and the improvements to satisfy itself as to the presence or absence of any such Pollutants.

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 sublessee's, 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 sublessee's, 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 or at anytime during this Agreement's term in the event of a discharge of any Pollutants, 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, the rent shall be abated based on the rent 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.

Notwithstanding, in the event part of the Premises is unavailable for TERMINAL OPERATOR's use pursuant to this Section, COUNTY agrees to use its best efforts to provide TERMINAL OPERATOR with land comparable in size to that which is unusable during any such remediation. In the event TERMINAL OPERATOR opts to relocate part of its operations, all provisions of this Agreement will apply with respect to the new area, excepting the definition of the Premises hereunder which shall be amended in a document of equal dignity and formality herewith. TERMINAL OPERATOR shall be responsible for all costs and expenses associated with any relocation pursuant to this Section.

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

**28. 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 the giving of written notice, 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 further covenants and agrees to yield and deliver peaceably and promptly to COUNTY, possession of the Premises on the date of cessation of the letting, whether such cessation be by termination, expiration or otherwise. On the date of cessation of letting, TERMINAL OPERATOR 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 rents 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 and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. 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 or discontinue its operations at Port Everglades 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 any 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 notice is given to make such payment(s); 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 lease application or forms submitted to COUNTY in connection with this 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; or

7) TERMINAL OPERATOR shall fail to keep, perform and observe each and every non-monetary promise, covenant and term set forth in this Agreement on its part to be kept, performed or observed within thirty (30) calendar days after receipt of notice of default hereunder (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);or

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 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 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 Lease. In the event of any such subsequent breach or default, COUNTY may terminate this Lease 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 the term hereof, 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, or (ii) is customarily considered to be a "white collar crime" or theft-related crime such as fraud, smuggling, embezzlement or misappropriation of funds, or (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 neither the resignation nor the termination of the offending person 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.

29. DAMAGE BY CASUALTY

If the Premises are damaged by casualty not caused by an act attributable to TERMINAL OPERATOR, and thereby become untenable, COUNTY may repair within ninety (90) calendar days. If the Premises are not repaired within ninety (90) calendar days and remain untenable, and COUNTY using its best efforts, is unable to temporarily relocate TERMINAL OPERATOR to another location having substantially similar size and convenience for its use and occupancy, during a period of extended repair work, either party may cancel this Agreement and rent shall be charged only to the date the Premises became untenable. If COUNTY is unable, using its best efforts to temporarily relocate TERMINAL OPERATOR as provided hereinabove, and thereafter, neither COUNTY nor TERMINAL OPERATOR elects to terminate this Agreement, TERMINAL OPERATOR's rental payments shall be abated on a pro-rata basis (based on the unusable portion of the Premises) *vis a vis* the whole Premises beginning on the date the Premises or such portion thereof becomes 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.

**30. 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:

**COUNTY:**

Broward County's Port Everglades Department  
ATTN: Director of Administration  
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:  
Sherwood Lumber Corporation  
Attn: Guy Hannum, Operations Manager  
300 Corporate Plaza  
Islandia, NY 11749

**31. 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.

**32. TENANCY AFTER TERM OF THIS AGREEMENT 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 rent and all other Tariff charges including, but not limited to, dockage, wharfage on all Board feet of lumber discharged/loaded via ships calling at Port Everglades and handled through the Premises during any such period. COUNTY at its option may impose a higher rent 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.

**33. 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.

**34. COOPERATION WITH COUNTY**

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.

**35. COUNTY'S RIGHT TO AUDIT**

If requested by the Port Everglades Department, TERMINAL OPERATOR shall at its sole cost and expense, retain an independent Certified Public Accountant (CPA) approved by the Port Everglades Department to conduct an audit to verify the throughput of lumber on the Premises. The resultant audit must be issued to the Port Everglades Department.

The audit shall be filed with the Port Everglades Department within thirty (30) calendar days from the date the request is made.

**36. RIGHT TO CONSTRUCT**

If at any time during the term of this Agreement it is necessary for COUNTY to enter the Premises for the purpose of constructing utility or pipeline facilities or making repairs or

other needed improvements, TERMINAL OPERATOR agrees that COUNTY may enter the Premises for such purposes during reasonable hours and under conditions that will not unreasonably interfere with TERMINAL OPERATOR's use of the Premises.

**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 and the relationship of County and TERMINAL OPERATOR hereunder is that of lessor and lessee only. 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 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 Article, 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, section or Article where they appear, unless the context otherwise requires. Whenever reference is made to an Article of this Agreement, such reference is to the Article as a whole, including all of the sections, subsections and subparagraphs of such Article, unless the reference is made to a particular subsection or subparagraph of such Article. Captions and Article 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 of 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 Sections 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 is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event TERMINAL OPERATOR does designate the Secretary of State, State of Florida, its agent for the purpose of service of process in any court action between it and 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 the Secretary of State as his agent for service. 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 may be personally served with such process out of this State by certified mailing to TERMINAL OPERATOR at the address set forth herein. Any such service out of this State shall constitute valid service upon TERMINAL OPERATOR as of the date of mailing. It is further expressly agreed that TERMINAL OPERATOR is amenable to and hereby agrees to the process so

served, submits to the jurisdiction, and waives any and all objections and protest thereto.

N. CUMULATIVE RIGHTS

All rights and remedies of COUNTY 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 to promptly exercise any of its 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

TERMINAL OPERATOR shall not unlawfully discriminate against any person in its operations and activities or in its use 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.

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.

By execution of this Agreement, TERMINAL OPERATOR represents 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.

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 leases 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. above.

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 The Broward County Health Department.

X. MULTIPLE ORIGINALS

This Agreement may be fully executed in four (4) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

**[THIS SPACE LEFT BLANK INTENTIONALLY]**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: 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 26<sup>th</sup> day of June, 2006, and SHERWOOD LUMBER CORP., signing by and through its Secretary, duly authorized to execute same.

COUNTY:

ATTEST:

BROWARD COUNTY, by and through  
the Board of County Commissioners

[Signature]  
Broward County Administrator, as  
Ex-officio Clerk of the Broward  
Board of County Commissioners



[Signature]  
Mayor

By [Signature] day of June, 2006

Approved as to Insurance  
Requirements by  
RISK MANAGEMENT DIVISION

Approved as to form by  
Office of County Attorney  
Broward County, Florida  
JEFFREY J. NEWTON, County Attorney  
1850 Eller Drive, Suite 502  
Fort Lauderdale, Florida 33316  
Telephone: (954) 523-3404  
Telecopier: (954) 523-2613

By [Signature]

By: [Signature]  
Russell J. Morrison (6/6/2006)  
Senior Assistant County Attorney

MARINE TERMINAL LEASE AND OPERATING AGREEMENT BETWEEN  
BROWARD COUNTY AND SHERWOOD LUMBER CORP.

TERMINAL OPERATOR:

SHERWOOD LUMBER CORP., a New York  
corporation

ATTEST:

[Signature]

Corporate Secretary  
(SEAL)

By: [Signature]

DENNIS J Schlosser, Secretary  
(Print Name and Title)

WITNESSES:

[Signature]

(Signature)

Janice Bohne

(Print Name)

[Signature]

(Signature)

RICHARD SARRIN

(Print Name)

2 day of June, 2006



