OCEAN HIGHWAY & PORT AUTHORITY

NASSAU COUNTY

AGENDA – Revised v.2

Monday, September 10, 2018

9:00 AM

Office of John Drew
OHPA Conference Room
86130 License Road #9, Fernandina Beach FL 32034

9:00 AM Special Meeting Called to Order – Chairman

- **Invocation**
- **Pledge to Allegiance**

Roll Call- Robert Sturgess, District 1; Danny Fullwood, District 2; Adan Salzburg, District 3; Carrol Franklin, District 4; Lissa Braddock, District 5

1. **Adoption of Resolution 2018-7 – Bridge Loan to purchase the Liebherr Harbor Mobile Crane.**
2. **Discussion regarding the Proposed Operating Agreement between OHPA and Worldwide Terminals.**

3. **Adjourn**

RESOLUTION NO. 2018-7

A RESOLUTION OF THE OCEAN HIGHWAY AND PORT AUTHORITY AUTHORIZING A LOAN IN A PRINCIPAL AMOUNT OF NOT TO EXCEED $2,000,000 TO PROVIDE A BRIDGE LOAN TO PURCHASE THE LIEBHERR HARBOR MOBILE CRANE, TOGETHER WITH ALL ATTACHMENTS, PARTS, ONSITE TRAINING AND RELATED EXPENSES, AND TO PAY THE COSTS OF SUCH LOAN; APPROVING THE FORM OF LOAN AGREEMENT AND THE FORM OF NOTE; DELEGATING TO THE CHAIRMAN OR THE VICE-CHAIRMAN; PLEDGING THE FUNDS FROM THE FDOT GRANT AND OTHER LEGALLY AVAILABLE REVENUES; PROVIDING OTHER DETAILS WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE COMMISSIONERS OF THE OCEAN HIGHWAY AND PORT AUTHORITY (the "Issuer") that:

Section 1. Authority for this Resolution. This Resolution is adopted pursuant to the Charter of the Issuer (Chapter 2005-293 Laws of Florida, as amended) and other applicable provisions of law.

Section 2. Definitions. Words and phrases used herein in capitalized form and not otherwise defined herein (including, without limitation, in the preamble hereto) shall have the meanings ascribed thereto in the hereinafter defined Loan Agreement and, in addition, the following words and phrases shall have the following meanings:

"Authorized Signatory" means the Chairman or the Vice-Chairman of the Issuer.

"Bank" means Branch Banking and Trust Company.

"Loan Agreement" means that certain Loan Agreement between the Issuer and the Bank in substantially the form of Attachment 1 hereto.

"Loan Amount" means not to exceed $2,000,000.

"Note" means the Issuer's Note in substantially the form attached as Exhibit "A" to the Loan Agreement.

"Project" means the acquisition of a used Liebherr harbor mobile crane, Type LHM400, serial number 140.439, YOM 2005 with approximately 31,000 operational hours and transportation costs, assembly costs, attachments, parts, onsite training and related expenses.

Section 3. Authorization of Transaction. In order to obtain funds to (i) finance on a temporary basis (in anticipation of receipt from FDOT of the Grant) the acquisition of the Project and (ii) pay the costs of issuance of the Note, the Issuer is authorized to obtain a loan (the "Loan") and to borrow an amount up to the Loan Amount from the Bank, the Bank having been selected through a request for proposals process.

Because of prevailing and anticipated market conditions and the nature of the Loan, it is not feasible, cost effective or advantageous to enter into the Loan through a competitive sale and it is in the best interest of the Issuer to accept the terms of the Loan from the Bank in a principal amount of up to the respective Loan Amount, at a negotiated sale upon the terms and conditions outlined herein and in the Loan Agreement (as hereinafter defined) and as determined by the Authorized Signatory executing the respective Loan Agreements in accordance with the terms hereof.

Prior to its execution and delivery of the Loan Agreement, the Issuer shall have received from the Bank a disclosure statement containing the information required by Section 218.385(6), Florida Statutes, and a Truth-in-Bonding Statement pursuant to Section 218.385(3), Florida Statutes, and no further disclosure is or shall be required by the Issuer. Further, prior to the delivery of the Note to the Bank, the Issuer shall be satisfied that the condition of the crane shall have been inspected to confirm that it is in acceptable condition prior to shipment thereof to the Issuer's port. Such satisfaction shall be conclusively evidenced by the execution of the Note by an Authorized Signatory and the delivery of the Note to the Bank.

Section 4. Loan Agreement and Note. With respect to the Loan, the Issuer is authorized to execute the Loan Agreement with the Bank in substantially the form attached hereto as Attachment 1 and to make and deliver to the Bank the Note in the form attached to the Loan Agreement as Exhibit A thereto.

The forms and terms of the Loan Agreement and the Note (collectively, the "Loan Documents") are hereby approved, and the Authorized Signatory is authorized on behalf of the Issuer to execute and deliver the same, with such changes (including adjusting the Loan Amount, but not to exceed $2,000,000), insertions, omissions and filling of blanks as may be approved by the Authorized Signatory, such approval to be conclusively evidenced by the execution thereof by the Authorized Signatory signing the same. The Authorized Signatory is hereby delegated the authority to execute the Note in the amount not exceeding the Loan Amount. The Secretary of the Issuer may authenticate or attest the signature of the Authorized Signatory on the Loan Documents.

Section 5. Loan Agreement and Note Not to be General Obligations or Indebtedness of the Issuer. The Loan Agreement and the Note shall not constitute a general obligation or a pledge of the faith and credit of the Issuer, the State, Nassau County or any other political subdivision of the State within the meaning of any constitutional, legislative or charter provision or limitation, but shall be payable solely from the Grant and any other legally available revenues of the Issuer. Further, there shall be no encumbrance, mortgage or pledge of property of the Issuer within the meaning of the Issuer's charter.

Section 6. Pledge. The payment of the principal of, premium, if any, and interest under the Note and other payments due under the Loan Agreement shall be secured forthwith equally and ratably by an irrevocable lien on the Grant and any other legally available revenues of the Issuer. The Issuer hereby pledges such Grant and the Issuer's legally available revenues to the payment of the principal of and interest on the Note and the Loan Agreement Obligations.

Section 7. Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect

any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

Section 8. Applicable Provisions of Law. This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

Section 9. Authorizations. The Authorized Signatory is hereby authorized to execute and deliver on behalf of the Issuer the Loan Documents as provided hereby. All officials and employees of the Issuer, including, without limitation, the Authorized Signatory, are authorized and empowered, collectively or individually, select a verification agent and to take all other actions and steps and to execute all instruments, documents, and contracts on behalf of the Issuer as they shall deem necessary or desirable in connection with the completion of the Loan and the carrying out of the intention of this Resolution.

Section 10. Repealer. All resolutions or parts thereof in conflict herewith are hereby repealed.

Section 11. Effective Date. This Resolution shall take effect immediately upon its adoption.

RESOLVED, FURTHER THAT the Ocean Highway and Port Authority hereby adopts the foregoing Resolution, dated this ——12th day of September, 2018.

OCEAN HIGHWAY AND PORT AUTHORITY

By:_____
Adam Salzburg
Chairman

ATTEST

_____
Lissa Braddock
Secretary

Attachment 1

FORM OF LOAN AGREEMENT
(WITH ATTACHED FORM OF NOTE)

Summary Report

September 04, 2018 8:38 AM

	Document	Location
Original	Resolution V2_2603546_2	RTLAW-DMS1:JAX (2603546,2:)
Revised	Resolution V3_2603546_3	RTLAW-DMS1:JAX (2603546,3:)

	Number of Changes	Markup
Insertions	3	Sample Text
Deletions	2	~~Sample Text~~
Moves	0	Move From ~~Move To~~
Formatting	0	Sample Text
Comments	0	
Total	**5**	

RT DRAFT
08/29/2018

LOAN AGREEMENT

Dated as of September 1, 2018

between

OCEAN HIGHWAY AND PORT AUTHORITY

and

BRANCH BANKING AND TRUST COMPANY

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LOAN AGREEMENT

This **LOAN AGREEMENT** (this "Agreement") is dated as of September 1, 2018, by and between **OCEAN HIGHWAY AND PORT AUTHORITY**, an independent special district of the State of Florida and a body politic and corporate and a political subdivision of such State (the "Borrower") and **BRANCH BANKING AND TRUST COMPANY,** a North Carolina banking corporation (the "Bank").

Recitals

The Borrower has requested the Bank to make a credit facility available to the Borrower to provide bridge financing for the acquisition of a used Liebherr harbor mobile crane, Type LHM400, serial number 140.439, YOM 2005 with approximately 31,000 operational hours (together with transportation costs, assembly costs, attachments, parts, onsite training and related expenses, the "Project") as more particularly described herein, and the Bank has agreed to make such credit facility so available to the Borrower on the terms and conditions set forth herein.

Agreement

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein, the Borrower and the Bank hereby agree as follows:

ARTICLE 1

DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(1) The terms defined in this Article have the meanings assigned to them in this Article. Singular terms shall include the plural as well as the singular and vice versa.

(2) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.

(3) All references in this instrument to designated "articles," "sections" and other subdivisions are to the designated articles, sections and subdivisions of this instrument as originally executed.

(4) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section or other subdivision.

Act of Insolvency shall mean, with respect to any Person, the appointment of a receiver, liquidator or trustee of such Person or any of its Property or assets; or a general assignment by such Person for the benefit of the creditors thereof; or the commencement of proceedings by or against such Person under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or any jurisdiction, now or hereafter in effect.

Actual/360 Basis shall mean a method of computing interest or other charges hereunder on the basis of an assumed year of 360 days for the actual number of days elapsed, meaning that interest or other

charges accrued for each day will be computed by multiplying the rate applicable on that day by the unpaid principal balance (or other relevant sum) on that day and dividing the result by 360.

Adjusted LIBOR Rate shall mean a rate of interest per annum equal to the sum obtained (rounded upwards, if necessary, to the next higher 1/100th of 1.00 percent) by adding (i) One-Month LIBOR and (ii) 1.25 percent per annum. The Adjusted LIBOR Rate shall be adjusted (i) monthly on the first day of each LIBOR Interest Period and (ii) for any change in the LIBOR Reserve Percentage so that the Bank shall receive the same yield.

Applicable Law shall mean all applicable provisions of all constitutions, statutes, rules, regulations and all binding orders, judgments and decrees of any Governmental Authority.

Bank shall mean Branch Banking and Trust Company, and its successors and assigns.

Business Day shall mean a day upon which commercial banks are open for the transaction of business of the nature contemplated by this Agreement in Jacksonville, Florida.

Change in Law means the occurrence, after the date of this Agreement, of: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided*, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

Conditional Default shall mean any event or condition which with notice, passage of time or any combination of the foregoing, would constitute an Event of Default.

Crane Seller shall mean Liebherr USA, Co., NCCTEC Division-Maritime Cranes.

Default Rate means the greater of (i) a variable rate of interest equal to the Prime Rate plus two percent and (ii) 12 percent.

Event of Default shall have the meaning assigned to that term in Article 6 of this Agreement.

FDOT means the Florida Department of Transportation.

Financing Documents shall mean collectively each of the following documents, as any of the same may at any time be amended, supplemented or restated, related to the Loan:

(i) this Agreement; and
(ii) the Note.

Fiscal Year shall mean the 12-month period ending on September 30 of each year or such other fiscal year of the Borrower has established from time to time.

Grant means the maximum participation of the FDOT as provided in the Joint Participation Agreement including any payments made by or at the direction of FDOT thereunder to the Borrower.

Grant Account means the Borrower's Account No. _____ at the Bank.

Joint Participation Agreement shall mean that certain Public Transportation Joint Participation Agreement bearing contract number G0ZO2 dated July 26, 2018 between FDOT and the Borrower.

LIBOR Interest Period means the period commencing on the date of the Note and ending on the day that is immediately prior to the numerically corresponding day of each month thereafter; *provided*, that (i) any LIBOR Interest Period which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such LIBOR Interest Period shall end on the next preceding Business Day and (ii) any LIBOR Interest Period which begins on a day for which there is no numerically corresponding day in the subsequent month shall end on the last Business Day of each subsequent month.

LIBOR Reserve Percentage means the maximum aggregate rate at which reserves (including, without limitation, any marginal supplemental or emergency reserves) are required to be maintained under Regulation D by member banks of the Federal Reserve System with respect to dollar funding in the London interbank market. Without limiting the effect of the foregoing, the LIBOR Reserve Percentage shall reflect any other reserves required to be maintained by such member banks by reason of any applicable regulatory change against (i) any category of liability which includes deposits by reference to which One-Month LIBOR is to be determined or (ii) any category of extension of credit or other assets related to One-Month LIBOR.

Loan has the meaning set forth in Section 2.01(a) hereof.

Loan Agreement Obligations shall mean all of the undertakings and promises of the Borrower in the Financing Documents including, without limitation, (i) the payment of principal of and interest on the Note and (ii) the payment and performance of all other obligations, liabilities and indebtedness pursuant to the agreements, representations, warranties and covenants contained in the Financing Documents.

Material Adverse Effect shall mean any act or circumstance or event which (i) causes an Event of Default or Conditional Default, or (ii) if determined or resolved adversely to the Borrower would have a material and adverse effect upon the financial condition or business operations of the Borrower, or (iii) would adversely affect the validity or enforceability of any of the Financing Documents.

Note shall mean the Borrower's note in the form attached hereto as Exhibit "A."

One-Month LIBOR means the average rate quoted by Bloomberg Finance L.P., or any quoting service or commonly available source utilized by the Bank, on the determination date for deposits in U. S. Dollars offered in the London interbank market for one month determined at approximately 11:00 a.m. London time two Business Days prior to the commencement of the applicable LIBOR Interest Period; provided that if the above method for determining One Month LIBOR shall not be available, the rate quoted in *The Wall Street Journal*, or a rate determined by a substitute method of determination agreed on by the Borrower and the Bank; *provided*, if such agreement is not reached within a reasonable period of time (in Bank's sole judgment), a rate reasonably determined by Bank in its sole discretion as a rate being paid, as of the determination date, by first class banking organizations (as determined by Bank) in the London interbank market for U. S. Dollar deposits; *provided*, *further*, that if One Month LIBOR

determined as provided above would be less than zero percent, then One Month LIBOR shall be deemed to be zero percent.

Person shall include natural persons, sole proprietorships, corporations (which shall be deemed to include business trusts), limited liability companies and partnerships, unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships, governments (whether national, federal, state, county, city, municipal or otherwise) and any governmental instrumentality, division, agency, body or department.

Prime Rate means the interest rate charged by the Bank from time to time as its Prime Rate. Any change in the Prime Rate shall be effective as of the date such change is announced by the Bank.

Project Purchase Agreement means that certain Equipment Purchase Contract between the Borrower and the Crane Seller dated August 9, 2018 as it may be amended from time to time.

Property shall mean any and all rights, titles and interests in and to all property, real, personal, or mixed, or tangible or intangible, and wherever situated.

Standard Rate means, for any day, a rate per annum equal to the Prime Rate minus 1.00 percent per annum, and each change in the Standard Rate shall be effective on the date any change in the Prime Rate is publicly announced as being effective.

State shall mean the State of Florida.

ARTICLE 2

THE LOAN

Section 2.01 The Loan.

(a) Amount. Subject to the terms and conditions of this Agreement, the Bank hereby agrees to make to the Borrower a loan of up to $1,790,000 (the "Loan").

(b) Note and Purpose. The Loan shall be evidenced by the Note. The proceeds of the Loan shall be advanced by the Bank to the Borrower in installments corresponding to payments required to be made by the Borrower (or reimbursements to the Borrower for such payments that have heretofore been made by it pursuant to the terms of the Project Purchase Agreement for the purchase of the Project or for related costs necessary to the Project). Advances under the Loan may be made by the Borrower by written request to the Bank identifying the amount requested and the provision under the Project Purchase Agreement to which such advance relates or, in the case of payments to a Person other than the Crane Seller, identifying the specific purpose of the Advance and describing why it is necessary to the Project. The Bank shall not be required and shall have no obligation to make any advance under the Loan if an Event of Default hereunder has occurred and is continuing. Amounts borrowed under the Loan may not be reborrowed. At closing, the Borrower will pay with its own funds the commitment fee of $15,000 owed to the Bank and the legal fees of counsel for the Bank.

(c) Rate of Interest. The principal balance outstanding under the Loan and the Note shall bear interest at the Adjusted LIBOR Rate.

(d) Repayment. Interest on the outstanding principal balance of the Loan and the Note shall be due and payable monthly, in arrears, on the fifth day of each month, commencing on October 5, 2018, until the unpaid principal balance of the Loan and the Note has been paid in full. Principal shall be due monthly commencing July 5, 2019. Principal and interest on the Note shall be computed on a fully amortizing basis with a maturity of September _, 2023. Monthly principal payments shall be computed by dividing the total amount of the Loan advanced through and including July _, 2019 by 50 months. The Bank shall periodically provide the Borrower with a statement of debt service due, and such statement shall be deemed correct, absent manifest error. Notwithstanding the foregoing, the principal balance of the Loan shall be immediately due in the amount of and to the extent of the receipt by or for the account of the Borrower of any portion of the Grant. Further, in no case, shall a principal amount greater than $150,000 remain outstanding under the Note after the Grant has been paid to the full extent thereof. **[Blanks to be filled in with the day coincident with the closing day.]**

The entire principal balance and all accrued unpaid interest under the Loan the Note shall be due and payable in full on September 1, 2023, or such earlier date as may be required hereunder.

(e) Representations and Warranties. Upon each borrowing made under the Loan, the Borrower shall be deemed to certify to the Bank that the representations and warranties contained in Article 4 of this Agreement shall be true and correct as of such date.

(f) Advances. Subject to Section 2.01(a) hereof, advances with respect to the Loan may occur from time to time upon written request of the Borrower made prior to 10:30 a.m. on the date on which such advance is to be made. In no case shall advances be made later than 10 months from the date of the Note. All advances shall be made by the Bank by deposit or credit of such sum to the Borrower's Account No. _____ with the Bank. Notwithstanding the preceding sentence, all advances for payment to the Crane Seller shall be wired directly by the Bank to the Crane Seller in accordance with wire transfer instructions provided to the Bank from the Crane Seller.

Section 2.02 Interest and Payments.

(a) Computation. Interest shall be computed on an Actual/360 Basis. The Bank shall determine the interest rate applicable to the Loan hereunder and, on request, shall promptly notify the Borrower of such rate in writing (or by telephone, promptly confirmed in writing). Any such determination shall be conclusive and binding for all purposes, absent manifest error.

(b) Default Interest. While an Event of Default exists, the Borrower shall pay interest with respect to the Loan at the rate equal to the Default Rate. All interest that has accrued at the Default Rate shall be payable on demand.

(c) Inability to Determine Rate. In the event that the Bank shall have determined, which determination shall be final, conclusive and binding, that by reason of circumstances occurring after the date hereof affecting the London interbank market, adequate and fair means do not exist for ascertaining One-Month LIBOR on the basis provided for in this Agreement, the Bank shall give notice (by telephone confirmed in writing or by telecopy) to the Borrower of such determination, whereupon (i) the Loan and the Note shall bear interest at the Standard Rate until the Bank notifies the Borrower that the circumstances giving rise to such notice no longer exist, and (ii) any request by the Borrower for an advance shall be deemed to be a request for an advance bearing interest at the Standard Rate.

(d) Illegality; Impracticability. In the event that the Bank shall determine, which determination shall be final, conclusive and binding, that the making, maintaining or continuance of the Loan (i) has become unlawful as a result of compliance by the Bank with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any of the same not having the force of law even though the failure to comply therewith would not be unlawful) or (ii) has become impracticable, or would cause the Bank material hardship, as a result of contingencies occurring after the date hereof materially and adversely affecting the London interbank market or the Bank's ability to make loans bearing interest at the Adjusted LIBOR Rate generally, then, and in any such event, the Bank shall give notice (by telephone confirmed in writing or by telecopy) to the Borrower of such determination. Thereafter, (x) the obligation of the Bank to make any advance bearing interest at the Adjusted LIBOR Rate shall be suspended until such notice shall be withdrawn by the Bank, (y) any request by the Borrower for an advance bearing interest at the Adjusted LIBOR Rate shall be deemed to be a request for an advance at the Standard Rate and (z) until the Bank gives the Borrower notice to the contrary, the Loan and the Note shall bear interest at the Standard Rate.

(e) Payments Generally; Prepayments. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, or of amounts payable hereunder) prior to 12:00 noon, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of Bank, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to Bank at its payment office. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be made payable for the period of such extension. All payments hereunder shall be made in U.S. dollars. Principal on the Loan may be prepaid in whole or in part at any time by the Borrower upon no less than five Business Days' written notice delivered by the Borrower to the Bank. All partial prepayments will be applied to principal installments in inverse order of maturity.

(f) Late Charges. The Borrower shall pay to the Bank a late fee on any payment past due for 15 or more days in the amount of four percent of the amount of payment past due. Where any payment is past due for 15 or more days, subsequent payments shall first be applied to past due balances. This provision for late charges shall not be deemed to extend the time for payment or be a "grace period" or "cure period" that gives the Borrower a right to cure such default. Imposition of late charges is not contingent upon the giving of any notice or lapse of any cure period provided for in the Loan Agreement.

Section 2.03 Conditions Precedent.

The obligation of the Bank to extend the Loan and make any advances is subject to the continuing accuracy of all representations and warranties with respect to the Borrower contained herein and in the other Financing Documents and the performance of all agreements by the Borrower contained herein and therein, the other requirements set forth herein and the following:

(i) Financing Documents. An executed copy of each of the Financing Documents.

(ii) Opinion of Counsel for Borrower. An opinion of counsel for the Borrower in form and of content satisfactory to the Bank.

(iii) Organization of the Borrower and Approvals. A certified copy of (i) the charter of the Borrower and (ii) the resolution of the Borrower authorizing the execution and delivery of the Financing Documents and the consummation of the transactions contemplated thereby.

(iv) Certificate of Borrower. A certificate by an authorized signatory of the Borrower to the effect that, as of the date of closing and after giving effect thereto: (i) no Event of Default or Conditional Default shall have occurred and be continuing and (ii) the representations and warranties made by the Borrower in the Financing Documents shall be true on and as of such date with the same force and effect as if made on and as of such date.

(v) Additional Evidence. Such additional legal opinions, certificates, proceedings, instruments and other documents (including written assurances from FDOT) as the Bank or its counsel may reasonably request to evidence (i) compliance by the Borrower with legal requirements, (ii) the truth and accuracy, as of the closing date of delivery of the respective representations of the Borrower contained in the Financing Documents, and (iii) the due performance or satisfaction by the Borrower, at or prior to the closing date, of all agreements then required to be performed and all conditions then required to be satisfied pursuant to the Financing Documents.

(vi) Incumbency Certificate: Certificate of the Secretary [or an Assistant Secretary] of the Borrower certifying the names and true signatures of the officers authorized to sign the Financing Documents and the other documents contemplated hereby and thereby.

(vii) Fees Payable: Payment by the Borrower to (i) the Bank of a commitment fee equal to $15,000, and (ii) counsel to the Bank, of its reasonable fees and disbursements incurred in connection with this transaction.

(viii) Insurance Certificates: Evidence of insurance (cargo and permanent) of the Borrower relating to the Project.

Section 2.04 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Bank (except any reserve requirement reflected in the Adjusted LIBOR Rate);

(ii) subject the Bank to any tax of any kind whatsoever with respect to this Agreement, or the Loan, or change the basis of taxation of payments to the Bank in respect thereof (except for the imposition of, or any change in the rate of, any income or franchise taxes payable by the Bank); or

(iii) impose on the Bank or the London interbank market any other condition, cost or expense affecting this Agreement or the Loan;

and the result of any of the foregoing shall be to increase the cost to the Bank of making or maintaining the Loan (or of maintaining its obligation to make any Loan, or to reduce the amount of any sum received or receivable by the Bank hereunder (whether of principal, interest or any other amount) then, upon request of the Bank, the Borrower will pay to the Bank such additional amount or amounts as will compensate the Bank for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If the Bank determines that any Change in Law affecting the Bank or any lending office of the Bank or the Bank's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on the Bank's capital or on the capital of the Bank's holding company, if any, as a consequence of this Agreement or the Loan to a level below that which the Bank or the Bank's holding company could have achieved but for such Change in Law (taking into consideration the Bank's policies and the policies of the Bank's holding company with respect to capital adequacy), then from time to time the Borrower will pay to the Bank such additional amount or amounts as will compensate the Bank or the Bank's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of the Bank setting forth the amount or amounts necessary to compensate the Bank or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay the Bank the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of the Bank to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Bank's right to demand such compensation; *provided*, that the Borrower shall not be required to compensate the Bank pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that the Bank notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of the Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.05 Registration and Exchange of Note.

The Note shall initially be owned by the Bank. The ownership of the Note may only be transferred, and the Borrower will transfer the ownership of the Note, in whole upon written request of the Bank to the Borrower specifying the name, address and taxpayer identification number of the transferee, and the Borrower will keep and maintain at all times a record setting forth the identification of the owner of the Note. The Note can only be transferred to an "accredited investor," as defined in Rule 501(A)(1),(2) or (3) under Regulation D of the Securities Act of 1933, as amended, or a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended.

The Person in whose name the Note shall be registered shall be deemed and regarded the absolute owner thereof for all purposes, and payment of principal and interest on such Note shall be made only to or upon the written order of such Person. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Section 2.06 Note Mutilated, Destroyed, Stolen or Lost.

In case the Note shall become mutilated, or be destroyed, stolen or lost, the Borrower shall issue and deliver a new Note, in exchange and in substitution for such mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Bank furnishing the Borrower proof of ownership thereof, an affidavit of lost or stolen instrument and indemnity reasonably satisfactory to the Borrower and paying such expenses as the Borrower may reasonably incur in connection therewith.

ARTICLE 3

SECURITY

Section 3.01 Pledge.

The payment of the principal of and interest on the Note and the Loan Agreement Obligations shall be secured by an irrevocable lien on the Grant and any other legally available revenues of the Borrower, all in the manner and to the extent provided herein and in the Resolution. The Borrower does hereby pledge such Grant and its legally available revenues to the payment of the principal of and interest on the Note and the Loan Agreement Obligations.

Section 3.02 Deposit of Grant.

The Borrower covenants to request and direct FDOT to deposit all amounts that constitute the Grant into the Grant Account. Once such Grant is deposited in the Grant Account, the Bank is hereby authorized to debit the Grant Account in the amount of such deposit, such debits to be applied to the payment of principal of and interest on the Loan (such allocation between principal and interest to be made in the absolute discretion of the Bank). The Borrower hereby directs the Bank to block the Borrower's ability to debit the Grant Account until (i) the principal of and interest on the Note is paid in full and (ii) no further advances may be made under this Agreement.

Section 3.03 No Pledge of Credit.

Neither this Agreement nor the Note shall constitute a general obligation or a pledge of the faith and credit of the Borrower, the State, Nassau County or any other political subdivision of the State within the meaning of any constitutional, legislative or charter provision or limitation, but shall be payable solely from the Grant and any other legally available revenues of the Borrower. Further, there shall be no encumbrance, mortgage or pledge of property of the Borrower within the meaning of the Borrower's charter.

ARTICLE 4

GENERAL REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants to the Bank, as follows:

Section 4.01 Organization, Corporate Powers.

(a) The Borrower is duly organized and validly existing as an independent special district of the State;

(b) the Borrower has the power and authority to own its properties and assets and to carry on its business as now being; and

(c) the Borrower has the power to execute and perform this Agreement and the Note.

Section 4.02 Authorization of Borrowing.

The execution, delivery and performance of the Financing Documents and the borrowings under the Loan (a) have been duly authorized by all requisite governmental action and (b) will not violate any provision of law, any order of any Governmental Authority, the charter of the Borrower or any indenture, agreement or other instrument to which the Borrower is a party, or by which the Borrower or any of the Property of the Borrower are bound, or result in a breach of or constitute (with due notice or lapse of time or both) a default under, any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the Property of the Borrower, except as contemplated by this Agreement.

Section 4.03 Financial Condition; Taxes; Title; Insurance.

(a) The Borrower has heretofore furnished to the Bank the financial information requested by the Bank, including without limitation its audited financial statements. Such financial statements present fairly the financial condition of the Borrower as of the date thereof and the result of its operations for the periods covered. Since the date of such financial statements so provided to the Bank, no material adverse change in the financial condition, business or operations of the Borrower has occurred.

(b) There is no liability, direct or contingent, of the Borrower which is material in amount and which is not reflected in the financial statements.

Section 4.04 No Litigation; No Defaults.

(a) There are no actions, suits or proceedings (whether or not purportedly on behalf of the Borrower) pending or, to the best knowledge of the port director of the Borrower, threatened against or affecting the Borrower, at law or in equity or by or before any Governmental Authority, domestic or foreign, which involve any of the transactions contemplated in this Agreement or the possibility of any judgment or liability that may result in any Material Adverse Effect.

(b) The Borrower is not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any Governmental Authority.

Section 4.05 Agreements.

The Borrower is not a party to any agreement or instrument, or subject to any charter or other governmental restriction, which materially and adversely affects the business, property, operations or condition, financial or otherwise, of the Borrower and the Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which the Borrower is a party, which default would have a Material Adverse Effect.

Section 4.06 Compliance with Laws.

The Borrower is in full compliance with all laws, rules, regulations and orders of any governmental or regulatory authority applicable to any of its properties, assets and operations unless noncompliance would not cause a Material Adverse Effect.

Section 4.07 No Untrue Statements.

No reports, schedules or certificates heretofore or simultaneously with the execution of this Agreement delivered to the Bank by or on behalf of the Borrower contains any misrepresentation or untrue statement of a material fact or omits to state any material fact necessary to make any of such reports, schedules or certificates, in the light of the circumstances under which they were made or delivered, not misleading.

ARTICLE 5

GENERAL COVENANTS

The Borrower hereby covenants and agrees with the Bank as follows:

Section 5.01 Reporting Requirements.

The Borrower shall furnish to the Bank each of the following:

(a) Annual Financial Statements. As soon as available, and in any event within 365 days after the close of each Fiscal Year of the Borrower, the complete, unqualified financial statements of the Borrower, all in reasonable detail, audited and prepared by an independent certified public accountant consistently applied and fairly presenting the financial condition of the Borrower as of the end of such Fiscal Year, and stating that in making the examination necessary to such audit such independent certified public accountant shall have obtained no knowledge, except as specifically stated, of any Event of Default or Conditional Default.

(b) Other Information. Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the Borrower, as the Bank may from time to time reasonably request.

Section 5.02 Banking Relationship.

The Borrower shall maintain at all times its principal banking relationship and deposit accounts with the Bank for all of the Borrower's traditional banking services, including checking and treasury services.

Section 5.03 Notices.

The Borrower shall provide to the Bank:

(a) Notice of Default. Immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default or Conditional Default.

(b) Litigation. Within 30 days after service of process, written notice of all actions, suits and proceedings before any Governmental Authority, domestic or foreign, against (i) the Borrower or (ii) Property of the Borrower which, if such litigation were determined adversely, could have a Material Adverse Effect.

(c) Material Adverse Effect. Prompt (within 15 days) written notice of any event which has or is reasonably anticipated to have a Material Adverse Effect.

Section 5.04 Compliance with Joint Participation Agreement.

The Borrower shall comply in all respects with its obligations under the Joint Participation Agreement in order to assure that the full amount of the Grant will be paid to the Borrower by FDOT. Further, the Borrower will not amend in any way the Joint Participation Agreement without the written consent of the Bank. The Borrower agrees to promptly provide to the Bank copies of all communications, notices and documentation it either provides to or receives from FDOT under the Joint Participation Agreement.

Section 5.05 General Negative Covenants.

The Borrower shall not take any action that would adversely affect its right to obtain the Grant or enter into any transaction which materially and adversely affects its ability to repay the Loan.

Section 5.06 Further Assurances.

The Borrower shall, at the Borrower's cost and expense, upon request of the Bank, duly execute and deliver, or cause to be duly executed and delivered, to the Bank such further instruments (including, without limitation, financing statements, agreements, and other instruments) and do and cause to be done such further acts as may be reasonably necessary or proper in the reasonable opinion of the Bank or its counsel to carry out more effectively the provisions and purposes of this Agreement.

ARTICLE 6

EVENTS OF DEFAULT

Section 6.01 Events of Default.

An "Event of Default" shall exist under this Agreement if any of the following occurs and is continuing (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) failure of the Borrower to pay any amount due under the Note within 10 days of the date when due, or to pay any other amount due under this Agreement; or

(b) failure of the Borrower to observe or perform any of the covenants, conditions or provisions of Article 5; or

(c) violation of, or default in the observance or performance of, any term, agreement, covenant, condition or stipulation contained or referred to in this Agreement or in any document executed in connection with this Agreement or the Joint Participation Agreement, and the continuance of such default or breach for a period of 30 days after there has been given, by

registered or certified mail, to the Borrower by the Bank a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, unless the nature of the default is such that it can be remedied but cannot be remedied within the 30-day period and the Bank agrees in writing to an extension of time and the Borrower institutes corrective action within the period agreed upon and diligently pursues such action until the default is remedied; or

(d) any warranty, representation, financial statement (specifically not including projections or estimates of financial performance or results), report, schedule, certificate, statement or other document heretofore, now, or hereafter, made or furnished to the Bank by or on behalf of the Borrower shall prove to be intentionally false or misleading in any material respect; or

(e) an Act of Insolvency occurs with respect to the Borrower; or

(f) any material provision of any of the Financing Documents shall at any time for any reason cease to be the legal, valid and binding obligation of the Borrower or shall cease to be in full force and effect, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the Borrower or the Borrower shall renounce the same or deny that it has any further liability hereunder or thereunder; or

(g) the independent certified public accountant retained by the Borrower delivers an opinion on the financial statements of the Borrower which expresses concern over the ability of the Borrower to continue to operate as a going concern and the Bank shall not have delivered, within 15 days of the receipt of such opinion of such accountant, to the port director of the Borrower a waiver of any Conditional Default or Event of Default under this paragraph; or

(h) the occurrence of an event of default as defined in any other agreement or contract under which the Borrower is now or hereafter obligated to the Bank; or

(i) the Borrower acts in any manner that may cause the Bank to reasonably believe that the Borrower has engaged in or intends to engage in any suspicious activity as described in or contemplated under the Bank Secrecy Act, the USA Patriot Act, or any other similar or related law, whether now or hereafter in effect, or under any regulation issued pursuant to any such law, or if the name of the Borrower appears on a list of suspects issued to financial institutions by the Office of Foreign Assets Control, the Financial Crimes Enforcement Network, the Federal Reserve Board, or any other Governmental Authority.

ARTICLE 7

REMEDIES

Section 7.01 Remedies.

(a) If any Event of Default shall have occurred and be continuing, the Bank may exercise any one or more of the following remedies:

(1) it may, declare the entire principal and all interest accrued on the Note then outstanding to be, and such Note shall thereupon become, forthwith due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note or the other

Financing Documents to the contrary notwithstanding, and the Borrower will forthwith pay to the holder of the Note the entire principal of and interest accrued on the Note; or

(2) it may proceed to protect its interests by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of the Borrower herein contained or in aid of the exercise of any power or remedy granted to the Bank under any of the other Financing Documents.

(b) Notwithstanding the foregoing, if a default under Section 6.01(e) shall occur, then all Loan Agreement Obligations, all accrued interest in respect thereof, all accrued and unpaid fees and other indebtedness or obligations owing to the Bank hereunder or under the Note, as applicable, shall immediately become due and payable without the giving of any notice or other action by the Bank.

(c) All sums received by the Bank for application upon the Note may be applied by the Bank to late charges, expenses, costs, interest, principal and other amounts owing to the Bank in connection with the Note, in the order selected by the Bank in its sole discretion.

Section 7.02 Default Rate of Interest.

Upon and after the occurrence of an Event of Default, the Note shall bear interest at a per annum rate equal to the Default Rate.

Section 7.03 Rights and Remedies of Bank in the Event of Act of Insolvency of the Borrower.

In case of the occurrence of any Act of Insolvency with respect to the Borrower, the Bank (irrespective of whether there has been a default under this Agreement or any of the other Financing Documents) shall be entitled and empowered to intervene in such proceedings, to file and prove a claim or claims for the whole amount owing and unpaid and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Bank (including any claim for reasonable compensation to the Bank, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities reasonably incurred, and all advances made, by the Bank except as a result of its negligence or bad faith) allowed in such judicial proceedings, to collect and receive any moneys or other property payable or deliverable on any such claims, and to take such other action therein as the Bank may deem necessary or appropriate to protect its interests.

Section 7.04 Agreement to Pay Attorneys' Fees.

If the Borrower should default under any of the provisions of this Agreement and the Bank should employ attorneys or incur other expenses for the collection of any payments due hereunder or the enforcement of performance or observance of any agreement or covenant on the part of the Borrower herein contained, the Borrower will on demand therefor pay to the Bank the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 7.05 Waivers by Bank

(a) If any agreement contained in this Agreement should be breached by the Borrower and thereafter waived by the Bank, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(b) Neither any failure nor any delay on the part of the Bank in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege.

Section 7.06 Remedies Subject to Applicable Law.

All rights, remedies and powers provided by this Article may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Agreement invalid or unenforceable.

Section 7.07 Waiver by Borrower.

To the extent permitted by law, the Borrower hereby waives, as to the enforcement of this Agreement, (i) presentation and demand for payment (or protest of nonpayment) of the Loan Agreement Obligations or any part thereof, and (ii) until the Note and all obligations under this Agreement have been fully paid, any rights of subrogation it may have against others by reason of performance under this Agreement.

Section 7.08 Continuance of Proceedings.

In case the Bank shall proceed to invoke any right, remedy or recourse permitted hereunder and shall thereafter elect to discontinue or abandon the same for any reason, the Bank shall have the unqualified right so to do and, in such event, the Borrower and the Bank shall be restored to their former positions with respect to the Note and all obligations under this Agreement, and otherwise, and the rights, remedies, recourse and powers of the Bank hereunder shall continue as if the same had never been invoked.

ARTICLE 8

PROVISIONS OF GENERAL APPLICATION

Section 8.01 Notices and Addresses.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with, the Borrower or the Bank (collectively the "Notices") shall be sufficient for every purpose hereunder if in writing and (i) delivered personally to the party or, if such party is not an individual, to an officer or other legal representative of the party to whom the same is directed, at the address specified below, (ii) mailed by first-class, registered or certified mail, postage prepaid, return receipt requested, addressed as specified below, or (iii) sent by telex or telecopy or other facsimile transmission system to the number specified below.

(b) Addresses of Borrower and Bank are as follows:

Borrower: Ocean Highway and Port Authority
86130 License Road, Suite 9
Fernandina Beach, FL 32034
Attn: Chief Financial Officer

Telecopy No.: (904) 432-0229

Bank: Branch Banking and Trust Company
200 West Forsyth Street
Jacksonville, FL 32202
Attn: Jennifer Gardell
Telecopy No.: (904) _____

(c) Any of such parties may change the address or number for receiving any such notice or other document by giving notice of the change to the other parties named in this Section.

(d) Any notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer or other legal representative of the party) at the address specified pursuant to this Section, or, if sent by telecopy, upon confirmation of receipt at the number specified pursuant to this Section, or, if sent by registered or certified mail, the earlier of the date upon which such notice is delivered or the date upon which delivery is not accepted.

Section 8.02 Successors and Assigns.

Whenever in this Agreement any party hereto is referred to, such reference shall be deemed to include the successors and assigns of such party, except that the Borrower may not assign or transfer this Agreement without the prior written consent of the Bank; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Agreement shall bind the Borrower's successors and assigns and shall inure to the benefit of the successors and assigns of the Bank.

Section 8.03 Costs and Indemnification.

(a) To the extent permitted by law, the Borrower shall promptly reimburse the Bank for any and all reasonable costs, out-of-pocket expenses and attorneys' fees which the Bank may incur in connection with (1) the extension of the Loan and the negotiation and preparation of the Financing Documents, (2) the enforcement of the rights of the Bank in connection with this Agreement including but not limited to, the reasonable fees and disbursements of counsel to the Bank, (3) the protection or perfection of the Bank's rights and interest hereunder (4) the exercise by or for the Bank of any of the rights or powers herein conferred upon the Bank and (5) in the prosecution or defense of any action or proceeding by or against the Bank or the Borrower concerning any matter arising out of, connected with or related to this Agreement or any of the Loan Agreement Obligations. Notwithstanding the foregoing, the Borrower shall not be required to reimburse the Bank to the extent of any costs, expenses or fees occasioned by the Bank's gross negligence or willful misconduct.

(b) The Borrower covenants and agrees to pay and to indemnify and hold the Bank and each officer, director, employee or agent thereof (collectively the "Indemnified Parties") harmless against, any and all liabilities, losses, expenses, damages, claims or actions (including all reasonable attorneys' fees and expenses of the Indemnified Parties), of any nature whatsoever incurred by the Indemnified Parties without negligence or willful misconduct on their part arising from or in connection with (i) performance or observance of any covenant or condition under any of the Financing Documents, (ii) any injury to, or the death of, any person or any damage to property in any manner arising from or connected with the use, nonuse, condition or occupation

of the Property of the Borrower or any part thereof, and (iii) any other act or event occurring upon, or affecting, any part of the Property of the Borrower.

(c) Nothing in this Section 8.03 is intended to limit the Borrower's obligations contained in this Agreement.

(d) Without prejudice to the survival of any other obligation of the Borrower hereunder, the indemnities and obligations of the Borrower contained in this Section 9.03 shall survive the payment in full of the Note and the cancellation of the Note and shall remain in full force and effect until the commencement of an action based thereon shall be prohibited by law.

Section 8.04 Governing Law.

This Agreement and any other documents executed in connection herewith or related hereto, shall be construed in accordance with and governed by the laws of the State.

Section 8.05 Modification; Amendment.

No modification, amendment or waiver of any provision of this Agreement, and no consent to any departure by the Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in the same, similar or other circumstances.

Section 8.06 Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 8.07 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but when taken together shall constitute but one agreement, and any party may execute this Agreement by executing any one or more of such counterparts.

Section 8.08 Service, Waiver of Jury Trial.

(A) THE BORROWER HEREBY (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY, AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY, BY THE BORROWER, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. BANK IS HEREBY AUTHORIZED AND REQUESTED TO SUBMIT THIS AGREEMENT FOR RESOLUTION, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF THE BORROWER'S WAIVER OF THE RIGHT TO JURY TRIAL. FURTHER, THE BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF

BANK (INCLUDING BANK'S COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO THE BORROWER THAT BANK SHALL NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.

(B) SERVICE OF PROCESS IN ANY ACTION SHALL BE DULY SERVED IF MAILED BY REGISTERED MAIL, POSTAGE PREPAID, TO THE BORROWER AT ITS ADDRESS DESCRIBED IN SECTION 8.01 AND RECEIVED, OR IF SERVED BY ANY OTHER MEANS PERMITTED BY APPLICABLE LAW.

Section 8.09 Article and Section Titles.

The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

Section 8.10 Loan Agreement Obligations of Borrower Absolute.

(a) The obligations, covenants and agreements of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and the Borrower covenants and agrees to timely pay in full in strict accordance herewith all amounts which may become due and owing hereunder and to timely observe and perform all other agreements and covenants to be observed and performed by the Borrower hereunder, such payment, observance and performance to be made hereunder under all circumstances whatsoever, including, without limitation, the following:

(1) any lack of validity or enforceability of any Financing Documents;

(2) any amendment or waiver of or any consent to departure from all or any of the Financing Documents;

(3) the existence of any claim, set-off, defense or other rights which the Borrower may have at any time against any Person, whether in connection with this Agreement or the Note, or any unrelated transaction; or

(4) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, provided the same shall not have constituted negligence or willful misconduct by the Bank.

(b) No act of commission or omission of any kind at any time on the part of the Bank in respect of any matter whatsoever shall in any way affect or impair any right, power or benefit of the Bank under this Agreement and, to the extent permitted by applicable law, no setoff, claim, reduction, diminution of any obligation shall be available against the Bank in any suit or action brought by the Bank to enforce any right, power or benefit under this Agreement. Nothing herein shall preclude the Borrower from defending an action brought by the Bank against the Borrower alleging breach of or default under this Agreement, or the bringing of any compulsory counterclaim which, under the law of the State, would result in a waiver of such compulsory counterclaim.

Section 8.11 Duration.

All representations and warranties of the Borrower contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this

Agreement. All covenants and agreements of the Borrower contained herein shall continue in full force and effect from and after the date hereof until payment in full of the Note and all amounts due under this Agreement.

Section 8.12 Preferences.

To the extent that the Bank receives any payment from or on behalf of the Borrower which payment or any part thereof is subsequently: (a) invalidated; (b) declared to constitute a fraudulent conveyance or preferential transfer; (c) set aside; or (d) required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause; then, to the extent of such payment received, the obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment has not been received by the Bank.

Section 8.13 No Course of Conduct or Waiver.

The agreement of the Bank to use, or its use of, its discretion in any instance shall not waive its right, with or without notice to the Borrower, to use its discretion differently in other similar instances and shall not establish a course of conduct on which the Borrower may rely in any other instances under this Agreement.

Section 8.14 Disclosure of Transaction by Bank in Promotional Literature.

The Borrower agrees and permits the Bank to issue an announcement of this transaction in the Bank's promotional literature and communications of the Bank.

Section 8.15 Right of Set-off.

(a) Upon the occurrence of any Event of Default, the Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Bank to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now and hereafter existing under this Agreement, irrespective of whether or not the Bank shall have made any demand hereunder and although such obligations may be contingent or unmatured.

(b) The Bank agrees promptly to notify the Borrower after any such set-off and application referred to in subsection (a) above, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Bank under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Bank may have.

IN WITNESS WHEREOF, the Borrower has caused this Agreement to be signed in its name and on its behalf by its duly authorized officer and the Bank has caused this Agreement to be executed in its name by an officer thereof duly authorized thereunto, all as of the day and year first above written

OCEAN HIGHWAY AND PORT AUTHORITY

By:_____

Adam Salzburg
Chairman

ATTEST:

By: _____
Lissa Braddock
Secretary

BRANCH BANKING AND TRUST COMPANY

By:_____
Jennifer Gardell
Vice President

EXHIBIT "A"

FORM OF NOTE

This Note is exempt from Florida documentary stamp taxes pursuant to Section 10 of Chapter 2005-293, Laws of Florida.

NOTE

The OCEAN HIGHWAY AND PORT AUTHORITY (the "Borrower"), an independent special district of the State of Florida and a body politic and corporate and a political subdivision of such State, for value received, promises to pay, but solely from the sources hereinafter provided, to the order of BRANCH BANKING AND TRUST COMPANY or registered assigns (together with any other registered owner of this Note, hereinafter, the "Bank"), the principal sum of One Million Seven Hundred Ninety Thousand Dollars ($1,790,000) or such lesser amount as shall be outstanding hereunder, together with interest on the principal balance outstanding at the rate of interest described in that certain Loan Agreement dated as of September 1, 2018 between the Borrower and the Bank (the "Loan Agreement") (defined below), calculated as described in the Loan Agreement such amounts to be payable as provided in the Loan Agreement. This Note is issued pursuant to Resolution No. 2018-7 adopted by the Borrower on September __, 2018 (the "Resolution") and is subject to all the terms and conditions of the Loan Agreement. All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto, or referenced in the Loan Agreement.

Principal of and interest on this Note are payable in immediately available funds constituting lawful money of the United States of America at the office of the Bank prescribed for notices in the Loan Agreement.

The Borrower shall pay the Bank interest on the outstanding principal balance of this Note in arrears, on October 5, 2018, and on the fifth day of each month thereafter to and including the final maturity date of September _, 2023. Principal and interest shall be paid on this Note as described in the Loan Agreement. A late fee is also due in respect of certain past due payments hereunder as described in the Loan Agreement.

The Note shall be prepayable at any time, in whole or in part, upon five Business Days' prior written notice of the Borrower to the Bank, such prepayment to be with no premium or charge.

Upon the occurrence of an Event of Default under the Loan Agreement, the Bank may declare the entire debt then remaining unpaid hereunder immediately due and payable; and in any such default and acceleration, the Borrower shall also be obliged to pay (but only from the Grant and other legally available revenues of the Borrower) as part of the indebtedness evidenced by this Note, all costs of collection and enforcement hereof, including such fees as may be incurred on appeal or incurred in any proceeding under bankruptcy laws as they now or hereafter exist, including specifically but without limitation, claims, disputes and proceedings seeking adequate protection or relief from the automatic stay. Upon the occurrence of an Event of Default the Interest Rate shall be adjusted to the Default Rate.

The Borrower to the extent permitted by law hereby waives presentment, demand, protest and notice of dishonor.

This Note is payable solely from the Grant and other legally available revenues of the Borrower to the extent provided in the Loan Agreement and subject to the pledge thereof as more specifically provided in the Resolution and the Loan Agreement. Notwithstanding any other provision of this Note, the Borrower is not and shall not be liable for the payment of the principal of and interest on this Note or otherwise monetarily liable in connection herewith from any property other than as provided in the Loan Agreement and the Resolution.

This Note shall not constitute a general obligation or a pledge of the faith and credit of the Borrower, the State, Nassau County or any other political subdivision of the State within the meaning of any constitutional, legislative or charter provision or limitation, but shall be payable solely from the Grant and any other legally available revenues of the Borrower. Further, there shall be no encumbrance, mortgage or pledge of property of the Borrower within the meaning of the Borrower's charter.

All terms, conditions and provisions of the Loan Agreement are by this reference thereto incorporated herein as a part of this Note.

This Note may be exchanged or transferred but only as provided in the Loan Agreement.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Note is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed in its name as of the date hereinafter set forth.

The date of this Note is September __, 2018.

OCEAN HIGHWAY AND PORT AUTHORITY

By:_____
Adam Salzburg
Chairman

ATTEST:

By: _____
Lissa Braddock
Secretary

Summary Report

August 31, 2018 2:17 PM

	Document	Location
Original	Loan Agreement V4_2603304_4	RTLAW-DMS1:JAX (2603304,4:)
Revised	Loan Agreement V5_2603304_5	RTLAW-DMS1:JAX (2603304,5:)

	Number of Changes	Markup
Insertions	2	Sample Text
Deletions	1	~~Sample Text~~
Moves	0	Move From ~~Move To~~
Formatting	0	Sample Text
Comments	0	
Total	**3**	