

OPERATING
AGREEMENT

THIS AGREEMENT, made and entered into as of the ___ day of [Month], 2018, by and between NASSAU TERMINALS, LLC., (“NASSAU TERMINALS LLC”, or “OPERATOR”), whose address is 2345 Friendly Road, Fernandina Beach, FL, 32034 and the OCEAN HIGHWAY AND PORT AUTHORITY OF NASSAU COUNTY, a body politic and corporate and a political subdivision under the Constitution and laws of the State of Florida, having its principal office at Nassau County Annex, 86130 License Road, Ste. 9, Fernandina Beach, Florida 32034 (“PORT AUTHORITY” or “OHPA”):

WITNESSETH:

Whereas, Nassau Shipping Company, Inc. and the PORT AUTHORITY entered into an Operating Contract (“Original Operating Contract”) dated December 4, 1985, whereby Nassau Shipping Company, Inc. would perform functions necessary to load, unload, transfer, store and handle cargo of all types in and out of the Port of Fernandina, Florida (the “Port”), and also to include the collection of all fees and all services such as stevedoring, warehousing, storage and reclaim; and

WHEREAS, Nassau Shipping Company, Inc. and the PORT AUTHORITY entered into a First Amendment to the Original Operating Contract on April 26, 1986; and

WHEREAS, on October 11, 1986, Nassau Shipping Company, Inc. and Fernandina Marine Management, Inc. merged, with Fernandina Marine Management, Inc. being the surviving corporation pursuant to Amended and Restated Articles of Merger filed with the Florida Secretary of State on October 15, 1986; and

WHEREAS, Fernandina Marine Management, Inc. and the PORT AUTHORITY entered into a Second Amendment to the Original Operating Contract on October 25, 1986, pursuant to which Fernandina Marine Management, Inc. and the PORT AUTHORITY amended and restated the Original Operating Contract (“First Restated Operating Contract”);

WHEREAS, also on October 25, 1986, Fernandina Marine Management, Inc. sold a fifty percent (50%) interest in the First Restated Operating Contract to Van Ommeren Port Terminals, South Atlantic Inc. (“VOPT”) and concurrently therewith, Fernandina Marine Management, Inc. and VOPT formed a Delaware general partnership under the name Nassau Terminals (“Partnership”), and adopted Articles of Partnership whereby, inter alia, the First Restated Operating Contract and other assets were assigned by Fernandina Marine Management, Inc. and VOPT to the Partnership; and

WHEREAS, the Partnership and Fernandina Marine Management, Inc., on October 19, 1989, with the consent of the PORT AUTHORITY, assigned to VOPT all of their right, title and interest under the First Restated Operating Contract, including all instruments or documents relating to such First Restated Operating Contract, as a result of which VOPT became the operator under the First Restated Operating Contract; and

WHEREAS, during November, 1989, VOPT changed its name to "NASSAU TERMINALS, INC."; and

WHEREAS, on April 9, 1990, NASSAU TERMINALS, INC. and PORT AUTHORITY entered into the Third Amendment to the Original Operating Contract; and

WHEREAS, on July 19, 2001, NASSAU TERMINALS, INC. amended its business form and changed itself into "NASSAU TERMINALS, LLC", a Delaware limited liability company authorized to do business in the State of Florida; and

WHEREAS, the OPERATOR and PORT AUTHORITY desire to further amend and restate the Original Operating Contract as heretofore amended and restated and, for such purpose, are executing and delivering this Operating Contract ("Operating Contract" or "this Agreement"), which supersedes all prior versions thereof; and

WHEREAS, PORT AUTHORITY desires to contract for services to have OPERATOR perform all functions necessary to load, unload, transfer, store and handle cargo of all types in, out and through the facilities of the Port of Fernandina, Florida, and to include the collection of all fees. All services such as stevedoring, warehousing, storage and reclaim are part of OPERATOR's responsibility and OPERATOR is willing to provide such services necessary ("Services").

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein set forth, the parties hereto agree as follows:

1. DURATION OF OPERATING CONTRACT

Section 1.1 The term of this Operating Contract shall be for a period of thirty-five (35) years, commencing upon execution by the Parties. Upon execution PORT AUTHORITY will file this Operating Contract with the Federal Maritime Commission. This Operating Contract shall be reviewed after a period of fifteen (15) years, and may be amended at that time, but only by mutual written agreement of the Parties.

Section 1.2 If, prior to or during a period of one year following the expiration of

the term (including renewals) of this Operating Contract as provided above, the PORT AUTHORITY shall desire to enter into a contract relating to all or any substantial part of the subject matter hereof, the PORT AUTHORITY shall in good faith negotiate the terms of such contract with the OPERATOR. Failing any agreement OHPA shall utilize the competitive process for procuring services found in Florida Statutes consequent upon the negotiations described in clause (a), and if the PORT AUTHORITY shall within such period negotiate the terms of such a contract with a third party, the PORT AUTHORITY shall offer to enter into a contract with the OPERATOR upon terms and conditions approved by the PORT AUTHORITY and such third party ("Successor Operating Contract"). The PORT AUTHORITY shall promptly advise the OPERATOR of the terms of the proposed Successor Operating Contract with such third party and the OPERATOR shall have 60 days from receipt of notice of the terms thereof to accept or reject the same. If the OPERATOR accepts the terms thereof, the PORT AUTHORITY and the OPERATOR shall, within 60 days thereafter, execute and deliver an agreement having the terms of the Successor Operating Contract with such variations as the parties shall mutually accept. The OPERATOR shall have no liability to the PORT AUTHORITY by reason of its failure to accept the Successor Operating Contract.

2. SCOPE OF WORK

Section 2.1 OPERATOR shall provide the necessary labor, machinery and equipment to accomplish cargo handling and warehousing functions in the Port. It is understood by and between the parties hereto that labor may be supplied either directly or indirectly. Machinery may be purchased or leased on a long or short term basis. Procurement of and payment for the Machinery and Equipment set forth in "Exhibit 1" will be the responsibility of PORT AUTHORITY. To the extent PORT AUTHORITY cannot fully fund Machinery and Equipment set forth in Exhibit 1, OPERATOR will make all reasonable efforts to fund any deficiencies, with the repayment structure to be determined on a project-by-project basis, and as mutually agreed to by both Parties. Port Authority shall have no obligation for any purchase as to which no identifiable funding source exists for either a purchase or repayment of any loan used to fund any purchase. Revenue streams not contemplated by this agreement, shall they arise, will be brought before OHPA for mutual consent.

Section 2.2 OPERATOR at its own expense will provide skilled personnel to maintain and operate equipment set forth in Exhibit 1.

Section 2.3 Throughout the ~~base~~ term of this Contract and every ~~renewal or~~ extension period thereafter, OPERATOR shall perform all ordinary day to day repairs and maintenance to port facilities and equipment owned by PORT AUTHORITY. However, if the cost of any single repair, preventative maintenance

job or refurbishment of PORT AUTHORITY owned facilities or equipment exceeds \$15,000 (adjusted annually after the first six (6) years following the execution of this Operating Contract for inflation based on the United States Department of Labor Consumer Price Index ("CPI") calculated from the CPI at the beginning of year 7), the excess costs shall be submitted to the PORT AUTHORITY, and the PORT AUTHORITY shall reimburse OPERATOR to the extent such costs are reasonable and not caused by the negligence of OPERATOR and funds are available.

OPERATOR shall maintain current all maintenance logs and records, together with all repair reports, and shall, on July 1 of each year, provide the PORT AUTHORITY with a written maintenance report and account on each piece of equipment owned by the PORT AUTHORITY and utilized by OPERATOR, together with each building, shed, shack, scale, and warehouse owned by the PORT AUTHORITY and utilized by OPERATOR, together with the projected expenses for the maintenance, replacement or repair of such item for the next fiscal year. If the OPHA property is destroyed or damaged by any accident, neglect, or failure to maintain by the Port Operator, then the Port Operator shall pay the full cost of replacement or repair as necessary.

Section 2.4 OPERATOR shall maintain an office in Nassau County, Florida. CP1 to be adjusted at year one.

Section 2.5 OPERATOR, in such manner as it shall deem advisable in its sole judgment, shall advertise and solicit shipping business through the Port.

1. PORT AUTHORITY AND OPERATOR REVENUES

Section 3.1 The PORT AUTHORITY shall set tariffs, negotiate rates, and collect all dockage and wharfage fees, in consultation with and subject to the approval of OPERATOR, which approval shall not unreasonably be withheld, subject to the schedule of distribution, compensation and reimbursement set forth herein. All amounts due to OPERATOR under this Operating Contract, plus all other revenues, fees or charges collected by OPERATOR resulting from the rendering by OPERATOR of services, shall be the property of OPERATOR ("Operator Revenues").

Both parties agree that wharfage and dockage fees be charged at competitive rates and shall not exceed those charged at neighboring ports North and South of the Port of Fernandina Beach.

1. INSURANCE AND INDEMNIFICATION

Section 4.1 OPERATOR shall, at its own expense, commencing when the date work under this Operating Contract begins and at all times during this Operating Contract, maintain insurance coverages in such amounts and covering such contingencies as would be maintained by a reasonable and prudent operator of a port similar to the Port, including the following:

Section 4.2 WORKERS' COMPENSATION INSURANCE as prescribed by law with a limit per accident of not less than \$500,000.00.

Section 4.3 COMPREHENSIVE GENERAL LIABILITY INSURANCE including a contractual liability provision to cover the liability assumed by OPERATOR under this Operating Contract, and automobile liability, all with a combined single limit for bodily injury and property damage liability of not less than \$1,000,000.00 per person and not less than \$3,000,000.00 with respect to any one occurrence. If any of the work is subcontracted, OPERATOR shall require each subcontractor to maintain insurance as previously described.

Section 4.4 PROPERTY INSURANCE – The reasonable cost of Property Insurance for the PORT AUTHORITY premises and property including physical damage, and all hazard insurance shall be paid by the Operator but shall be for the account of PORT AUTHORITY and shall be reimbursed to OPERATOR on a current basis through OPERATOR's retention of Facility Use Fees that would otherwise be payable by OPERATOR pursuant to Section 6. **NOTE: CONTRARY TO REPRESENTATIONS AT PREVIOUS MEETING, THIS PROVISION IS NOT PART OF THE EXISTING AGREEMENT. IT WAS INSERTED AFTER NEGOTIATIONS COMMENCED BUT WITHOUT NOTATION OR REDLINE. I SUGGEST THAT IT BE DELETED IN ITS ENTIRETY.**

Section 4.5 OPERATOR agrees to indemnify and hold harmless PORT AUTHORITY, its agents and employees, from and against any and all losses, expenses, damages, demands and claims, including attorney's fees, arising out of injury or alleged damages to any property to the extent due to, and proportional to, the negligence or willful act or omission of OPERATOR, its employees, agents, representatives or subcontractors resulting from or occurring in connection with the OPERATOR's performance under this Operating Contract.

1. COMPLIANCE WITH LAWS; TAXES

Section 5.1 OPERATOR will comply with all applicable laws and regulations, and all taxes validly assessed against OPERATOR for the operation of its Port business, as well as the cost of any permits and licenses for said business. PORT AUTHORITY shall bear and pay all ad valorem or real estate taxes of any kind or nature, if applicable.

1. COMPENSATION

Section 6.1 OPERATOR agrees to pay to PORT AUTHORITY \$251,675.00 per annum, in equal and consecutive quarterly payments of \$62,918.75 (adjusted annually for inflation based on the CPI) toward the annual operating budget of PORT AUTHORITY for the entire term of this Operating Contract.

Section 6.2 In addition to the foregoing, OPERATOR agrees to contribute to the PORT AUTHORITY the amounts of \$50,000.00 in 2019 and \$50,000.00 in 2020 toward the annual DRI (Development of Regional Impact) payments due from the PORT AUTHORITY to the City of Fernandina Beach. Such contributions shall be paid by OPERATOR to the PORT AUTHORITY no later than July 31 of 2019 and 2020, respectively.

Section 6.3 OPERATOR also agrees to pay PORT AUTHORITY, on a quarterly basis, Facility Use Fees as follows:

- a. For Container and Breakbulk cargo:
 1. \$1.50 per short ton up to 549,999 tons per annum;
 2. \$1.25 per short ton from 550,000 tons up to 649,999 tons per annum; and
 3. \$1.00 per short ton over 650,000 tons per annum.
- b. For Bulk and general cargo, OPERATOR shall pay Facility Use Fees of \$.91 per short ton, respectively.

Section 6.4 For the first six (6) years from the execution of this Agreement, the OPERATOR agrees to allocate \$5,000 per month to fund the Capital Improvements and Maintenance Reserve Fund, and all Facility Use Fees that would otherwise be payable by OPERATOR under Section 6.3 shall be retained by OPERATOR.

Section 6.5 Commencing in year seven (7) from the execution of this Agreement, the OPERATOR agrees to continue to fund \$5,000 to the Capital Improvements and Maintenance Reserve Fund per month. In addition, a percentage of the Facility Use

Fees calculated according to Section 6.3 will be paid by OPERATOR to the PORT AUTHORITY as follows, to be applied according to Section 6.6:

- i. - Years 7-9 - 25%
- ii. - Years 10-12 - 50%

Upon completion of Year 12:

- All Facility Use Fees calculate under Section 6.3 will be paid by the OPERATOR to the PORT AUTHORITY to be applied according to Section 6.6;
- The agreement by the OPERATOR to fund \$5,000 per month to the Capital Improvements and Maintenance Reserve Fund will continue; and
- In addition to Facility Use Fees, OPERATOR agrees to continue provide a maximum annual budgetary allocation of \$251,675,000 adjusted for inflation, to fund the operations of the PORT AUTHORITY.

The dollar amounts (but not the percentages) in Sections 6.3, 6.4, and 6.5 shall be adjusted annually after the first six (6) years following the execution of this Operating Contract for inflation based on the CPI calculated from the CPI at the beginning of year 7.

Section 6.6 The Facility Use Fees paid by OPERATOR to the PORT AUTHORITY under Sections 6.3, 6.4, and 6.5 will be applied as follows: **Sufficient Facility Use Fees shall be paid by Operator to Port Authority in Year 1 to meet the financial obligation incurred for interest, costs, and attorney fees incurred in the BB&T bridge loan utilized in the crane purchase not otherwise covered by grant funding.** In Year 7, the first Facility Use Fees paid by OPERATOR to the PORT AUTHORITY will be directed into an OHPA Reserve Fund (“OHPA Reserve Fund”), until such time as it reaches \$50,000. Thereafter, all Facility Use Fees paid by OPERATOR to the PORT AUTHORITY in Year 7 will be directed first to fund the then-current Capital Improvements Program as described in Section 6.8 below, or to the Capital Improvements and Maintenance Reserve Fund (“CIMR Fund”) as provided in Section 6.7. In each year after year 7, three percent (3%) of the Facility Use Fees paid by OPERATOR to the PORT AUTHORITY will be directed into the OHPA Reserve Fund, with all additional Facility Use Fees paid by OPERATOR to the PORT AUTHORITY directed first to fund the then-current Capital Improvements Program as described in Section 6.8 below, or to the CIMR Fund as provided in

Section 6.7 3% use fees to operating budget to replenish maintenance reserve back to \$50,000, then to Capital Improvement Fund.

Section 6.8 Facility Use Fees not needed to fund the then-current year Capital Improvements Program will be directed to the CIMR Fund until such time as it reaches a balance of \$1,000,000. Facility Use Fees not required to fund the then-current ~~or required~~ or required Capital Improvements or to maintain the balance of \$1,000,000 in the CIMR Fund shall be paid to the PORT AUTHORITY to be used at its discretion. **NOTE: PER TAPE, PIERRE SUGGESTED THAT WE DE-LINK FUNDS FROM ANY "REQUIRED" CAPITAL IMPROVEMENT.**

Section 6.9 The PORT AUTHORITY and OPERATOR agree to meet annually throughout the term of this Operating Contract to mutually develop a plan and budget for capital improvements and repairs for the subsequent five (5) years on a rolling basis (the "Capital Improvements Program"). The Capital Improvements Program may address by mutual agreement the protection of Port facilities from natural disasters, hazard mitigation, and repair or restoration of Port facilities damaged by natural or man-made causes. The Capital Improvements Program may take into account any need to fund specific capital projects matched by FDOT grants necessary for the long-term function and viability of the terminal, supplemented by monies made available in the Capital Improvements and Maintenance Reserve Fund, with repayment structure to be determined on a mutually agreeable project-by-project basis. Ultimate decision on any spending shall lay with OHPA.

Section 6.10 This is an agreement for cargo handling and warehousing only.

Regardless of how developed, or by which party, all new or additional revenue streams not contemplated by this Agreement, such as the provision of electricity, shall be divided between PORT AUTHORITY and OPERATOR as mutually agreed.

Section 6.9 Notwithstanding this agreement, as mutually agreed, the PORT AUTHORITY will have the ability, but shall not be required, to work with the OPERATOR on other projects outside of the scope of NASSAU TERMINALS [**word smithing: I suggest that we substitute "this agreement" for "Nassau Terminals"**] on a case-by-case basis.

1. PERFORMANCE

Section 7.1 OPERATOR shall not be liable for any delay in or inability to complete the performance of the Operating Contract by reason of any of the following

causes: Acts of the PORT AUTHORITY, or their representatives, or failures of the PORT AUTHORITY, or their representatives, to act as required under the Operating Contract, including without limitation, approval of tariff rates, fees and all other charges, furnishing of information, or work in connection with provision of machinery and equipment, acts of God; acts of the public enemy; terrorism; riot; civil commotion; insurrection; vandalism; looting; sabotage; acts (including delay or failure to act), orders, rules, regulations, suspensions or requisitions of any kind of any governmental authority (de jure or de facto); war (declared or undeclared); revolution; priorities; epidemics; strikes or other stoppage of labor or shortage in the supply thereof; inability to obtain fuel, power, material or parts or shortage in the supply thereof; fire casualties, or accidents; failure of or shortage in the supply of shipping facilities; or any cause or causes whether of the same or a different character beyond the OPERATOR's control. The duration of this Operating Contract shall be extended for a period equal to the time lost by reason of any of the above delays. Nothing in this Section 7.1 shall be deemed to be a waiver or election of any rights or remedies under law or equity.

Section 7.2 In case an event such as that described above in Section 7.1 occurs, OPERATOR shall not be required to incur additional expenses in order to continue to render the services required of OPERATOR under this Operating Contract. Nevertheless, if OPERATOR decides to incur such additional expenses, as soon as practicable after incurring such expenses, OPERATOR shall submit invoices for such expenses to the PORT AUTHORITY, and the PORT AUTHORITY shall reimburse OPERATOR to the extent such expenses are reasonable, with reasonableness to be judged based upon the exigencies of the circumstances.

Section 7.3 OPERATOR undertakes to devote to the performance of this Operating Contract the efforts and experience of one reasonably skilled in the field of port operations. In no event shall OPERATOR be liable for any loss of profits, incidental damages or consequential damages not caused by OPERATOR's intentional torts, criminal acts, or gross negligence. Nothing contained in this Section 7.3 shall limit OPERATOR's liability for any loss or destruction of or damage to the machinery and equipment referred to in Exhibits 1 and 2 annexed hereto.

Section 7.4 OPERATOR shall be required to notify the PORT AUTHORITY at each monthly meeting – or sooner to the PORT AUTHORITY's director, attorney or chairman, as circumstances demand – any and all of the following:

Initiation of process that is otherwise needed to invoke a proceeding for civil, administrative or criminal liability, including but not limited to a trespass,

negligence, Longshore and Harbor Workers' Compensation Act violation, or workers' compensation;

Breach of security at the Port otherwise needed for reporting to another governmental authority or insurer;

Arrival or expected arrival of any Certain Dangerous Cargo as defined in U.S. Code of Federal Regulations Title 33, Chapter I, subchapter P, Part 160, Subpart C, Section 160.202 (appended) to the extent known to OPERATOR; and

Inspections of the port facility or off-loaded cargo conducted by any state or federal governmental entity residing in the United States, and local public safety/fire inspections. and the written results thereof,

Notices in this regard must comply with – and may be withheld on the basis of – confidentiality or security restrictions of the federal government or the Captain of the Port, although the withholding of notice based on such restriction(s) shall be communicated to the PORT AUTHORITY's director, attorney or chairman on a monthly basis, or sooner as circumstances demand. Such notices shall further include an update of existing matters previously presented by OPERATOR as described above. OPERATOR shall have a duty to defend, indemnify, and hold harmless the PORT AUTHORITY in any action alleged or found to be the sole and exclusive fault or negligence of the OPERATOR, its contractors or subcontractors.

Section 7.5 PORT AUTHORITY agrees, in further consideration of the obligations of OPERATOR and Facility Use Fees paid to it pursuant to Section 6 of this Contract, and in consideration of guarantees and assurances OPERATOR must provide to customers of the Port, to grant OPERATOR first priority access to and use and operation of all land, buildings, docks wharves and equipment owned or leased by the PORT AUTHORITY, comprised of the marine terminal, warehouses, and appurtenances that are the subject of this Agreement. When OPERATOR is providing services to the public users of the Port, PORT AUTHORITY agrees to take no action which would impede OPERATOR's ability to fully perform its obligations pursuant to this Operating Contract or its obligations to service the customers of the Port. So long as OPERATOR is performing its obligations pursuant to this Operating Contract, the PORT AUTHORITY agrees not to engage another entity to provide such services at the Port.

1. ACCOUNTS AND RECORDS

Section 8.1 OPERATOR shall maintain its accounts and all records pertaining to the **Port Authority Revenues** [the preceding was deleted and “dockage and wharfage fees” substituted by the Port Operator after our meeting. Nothing on the tape indicated any consensus for that change] and Operator Revenue and compensation in accordance with general accepted accounting principles and practices, and shall retain such accounts and records, including all documents received from the PORT AUTHORITY and/or any third party in connection with **Port Authority Revenues** [the preceding was deleted and “dockage and wharfage fees” substituted by the Port Operator after our meeting. Nothing on the tape indicated any consensus for that change] or Operator Revenues and compensation. OPERATOR shall permit duly authorized representatives of the PORT AUTHORITY for the duration of this Operating Contract and for a period of ten (10) years thereafter to have access to all accounts, books, documents, papers and records of the OPERATOR relating to the **Port Authority Revenues** [the preceding was deleted and “dockage and wharfage fees” substituted by the Port Operator after our meeting. Nothing on the tape indicated any consensus for that change] and Operator Revenues for the purpose of audit, examination and inspection, and agrees to make available adequate facilities for such purposes and to permit duplication of any records that are subject to such inspection.

Section 8.2 Notwithstanding the foregoing, OPERATOR shall not be required to retain any business, corporate or financial records in excess of ten (10) years from the end of the calendar year to which such records relate, except as provided in Section 8.3hereinbelow.

Section 8.3 PUBLIC RECORDS: PUBLIC RECORDS COMPLIANCE

- a. OPERATOR, as an independent contractor, is required to comply with public records laws, and specifically, to:
 1. Keep and maintain public records required by OHPA, as the public agency, to perform the services for OHPA;
 2. Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
 3. Ensure that the public records that are exempt or confidential

and exempt from public records disclosures requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to OHPA as the public agency;

4. Upon completion of the contract, transfer, at no cost to OHPA, as the public agency all public records in possession of the contractor or keep and maintain public records required by OHPA, as the public agency, to perform the services. If the contractor transfers all of the public records to the agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all requirements of retaining public records. All records stored electronically must be provided to OHPA, as the public agency, upon request from the OHPA custodian of public records, in a format that is compatible with the information technology systems of the public agency.

b. Statement required by F.S. 119.0701(2)(a)

1. IF THE CONTRACTOR HAS A QUESTION REGARDING THE APPLICATION OF CHAPTER 119 FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF RECORDS AT 904/491-7422

1. DREDGING AND MAINTENANCE OF ACCESS CHANNEL, TURNING BASIN, AND WATER DEPTH ALONGSIDE BERTHS

Section 9.1 The PORT AUTHORITY acknowledges the benefit of improving the access channel and the turning basin to a depth of 38 feet mean low water presently, and eventually 42 feet mean low water. At such time that the Corps of Engineers has approved such improvements, the PORT AUTHORITY will make every possible effort to accomplish such improvements.

Section 9.2 The PORT AUTHORITY shall thereafter be responsible for maintaining a minimum water depth of 38 feet at mean low water alongside the berths, until such time that permitting is obtained for increasing the depth to 42 feet mean low

water. Thereafter the PORT AUTHORITY will be responsible for maintaining a depth of 42 feet mean low water alongside the berth, provided that a funding source is identified and secured.

Section 9.3 Maintenance and deepening of the berths and the access channels, if any, as well as any dredging of any nature shall under no circumstances ever be the responsibility of OPERATOR, subject to a funding source being identified and secured.

Section 9.4 Whenever any dredging, including maintenance dredging or maintenance or deepening of access channels is required, the PORT AUTHORITY and OPERATOR will cooperate with each other to obtain any and all requisite federal, state, and local permits and approvals at the expense of the party obligated under this Agreement to carry out such dredging. The PORT AUTHORITY AND OPERATOR agree to coordinate all dredging activities in the best interest of a sustainable long-term port operation.

1. FUTURE CAPITAL EXPENDITURE PROJECTS & GOVERNMENT GRANTS

Section 10.1 OPERATOR will work with PORT AUTHORITY to determine certain capital improvements to the Facility, including the Capital Improvements Plan described above, and will support PORT AUTHORITY in any attempts to secure government grants for capital improvements based on an updated STRATEGIC PORT MASTER PLAN, to be conducted every ten (10) years. Amendment of an existing plan may take place at any time as circumstances dictate and as mutually agreed and a new STRATEGIC PORT MASTER PLAN may be developed at any time as circumstances dictate and as mutually agreed, which may include the identification of funding sources for such plan.

Section 10.2 The PORT AUTHORITY recognizes that certain equipment and facilities will become obsolete because of normal wear and tear or because of changing needs of the Port. In such cases, OPERATOR may arrange for the sale, trade or disposal of such equipment on commercially reasonable terms and subject to the prior approval of the PORT AUTHORITY inclusive of equipment of fixtures owned and/or provided by the PORT AUTHORITY pursuant to this Agreement. Such approval shall not be unreasonably withheld and shall include specification of adequate measures to secure continuation of Port operations on at least the current levels of performance. The proceeds from any such sale, trade or disposal of equipment or fixtures of the PORT AUTHORITY shall remain the property of the PORT AUTHORITY pursuant to this Operating Contract, after reimbursement of the

OPERATOR for the costs and expenses incurred by OPERATOR in arranging and carrying out such sale, trade or disposal.

Section 10.3 EXISTING CRANES and EQUIPMENT – It is hereby acknowledged and agreed that notwithstanding the PORT AUTHORITY’s obligations hereunder with respect to the provision of Cranes and Machinery set forth in Exhibit 1 affixed hereto, the existing cranes currently in place at the Port, known as “The Clyde” and “The Hitachi”, are set forth in Exhibit 3 affixed hereto, are the property of the OPERATOR and not subject to Section 10.2.

11. MISCELLANEOUS

Section 11.1 This Operating Contract, including the exhibits and other writings referred to herein or delivered pursuant hereto, contains the entire understanding of the parties with respect to its subject matter, all negotiations, discussions and agreements prior hereto between or among the parties being merged and integrated herein and superseded hereby. There are no restrictions, agreements, promises, representations, warrants, covenants or undertakings other than those expressly set forth herein. This Operating Contract may be amended only by a written instrument duly executed by duly authorized representatives of each of the parties hereto.

Section 11.2 The section headings contained herein are for reference purposes only and will not affect in any way the meaning or interpretation of this Contract.

Section 11.3 All notes, reports, requests, demands and other communications hereunder will be in writing and will be deemed to have been duly given and delivered if delivered or mailed (registered or certified mail, postage prepaid) as follows:

to PORT AUTHORITY:	Ocean Highway and PORT AUTHORITY 86130 License Road, Suite 9 Fernandina Beach, FL 32034
to OPERATOR:	Nassau Terminals. LLC; Care of: Worldwide Terminals Fernandina, LLC 2345 Friendly Road Fernandina Beach, FL, 32034

or to such other address as such person may have furnished to the others in writing in the manner set forth above.

Section 11.4 This Operating Contract will be governed by, construed and enforced in accordance with the laws of the State of Florida.

Section 11.5 No waiver by either party of any breach by the other of any provision hereof shall be deemed to be a waiver of any later or other breach or as a waiver of any such or other provision of this Operating Contract.

Section 11.6 This Operating Contract is being executed simultaneously in several counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.

Section 11.7 This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

NOTE: Restriction on assignment of the contract found in the existing agreement was removed without negotiation or notice. I recommend the following language be included: This agreement may not be assigned without the consent of Port Authority. Such consent may not be unreasonably withheld but Port Authority reserves the right to impose reasonable terms and conditions thereon.

In the event that a firm offer is received for a transaction or series of transactions that in the aggregate would result in a transfer of more than fifty percent (50%) of the ownership of OPERATOR to parties that in the aggregate do not hold at least fifty percent (50%) of the ownership of OPERATOR prior to such transaction (a "Change of Control Offer"), OPERATOR will give the PORT AUTHORITY written notice of such Change of Control Offer, specifying the price and other terms and conditions thereof in reasonable detail, and providing supporting evidence in reasonable detail that following such change of control the new proposed OPERATOR will have the financial and operational resources and reputation as are necessary to carry out OPERATOR's obligations under this Agreement.

The PORT AUTHORITY shall have ten (10) business days within which to notify OPERATOR in writing whether or not the PORT AUTHORITY consents to the Change of Control Offer, with such consent not to be unreasonably withheld or conditioned as per the provision noted above.

If the PORT AUTHORITY does not notify OPERATOR IN writing prior to the expiration of such seven-day period that the PORT AUTHORITY consents to the Change in Control Offer, then the PORT AUTHORITY shall have an additional sixty (60) days within which to provide (i) a binding offer or memorandum of agreement from a third party to carry out an equivalent transfer of ownership of OPERATOR

for 100% of the price in the Change of Control Offer and on other terms and conditions substantively equivalent to those of the Change of Control Offer, and (ii) written evidence satisfactory to OPERATOR that such third party has the financial capacity or resources sufficient to carry out its offer.

During this sixty (60) day period, the OPERATOR agrees to fully cooperate with PORT AUTHORITY during the RFP process.

If the PORT AUTHORITY provides neither its written consent within the ten-business days period, nor such third-party offer plus evidence satisfactory to OPERATOR of the financial capacity or resources sufficient to carry out such offer within such further sixty-day period, then upon the expiration of the further sixty-day period the PORT AUTHORITY may consent to the Change in Control Offer, such consent not to be unreasonably withheld.

OPERATOR agrees to give the PORT AUTHORITY notice of any sale or transfer of equity interests representing less than fifty percent (50%) in the aggregate of the ownership of OPERATOR.

[The following page is the signature page.]

IN WITNESS WHEREOF, the parties hereto have caused this Operating Contract to be duly executed the day and year first above written.

Nassau Terminals LLC
By: _____

OCEAN HIGHWAY AND PORT AUTHORITY OF NASSAU COUNTY
By: _____
Chairman

ATTEST

(SEAL)

Secretary

Exhibit "1"

TO OPERATING CONTRACT

All Cranes, to include, but not limited to:

1. Rail Mounted cranes
2. Rail Mounted Container Gantry Cranes
3. Rubber-tired Gantry Cranes
4. Harbor Cranes

EXHIBIT "2"

TO OPERATING CONTRACT

Machinery and Equipment to be procured by and paid for by OPERATOR:

Such machinery and equipment as OPERATOR, in its sole judgement, shall determine is needed in performance of its "Services", as provided for in the Operating Contract.

EXHIBIT "3"
TO OPERATING CONTRACT

[Description of cranes "The Clyde" and "The Hitachi" to be provided.]