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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

BEFORE THE
FEDERAL MARITIME COMMISSION

R. O. WHITE & COMPANY, INC.,	)	
CERES MARINE TERMINALS, INC.,	)	
	)	
Complainants	)	
	)	
versus	)	**DOCKET NO. 06-11**
	)	
PORT OF MIAMI TERMINAL OPERATING	)	
COMPANY, L.L.C.,	)	
CONTINENTAL STEVEDORING &	)	
TERMINALS, INC.,	)	
FLORIDA STEVEDORING, INC.,	)	
P&O PORTS NORTH AMERICA, INC.,	)	
P&O PORTS FLORIDA, INC.,	)	
ELLER-ITO STEVEDORING COMPANY	)	
L.L.C.,	)	
DANTE B. FASCELL PORT OF MIAMI –	)	
DADE, *aka* MIAMI-DADE COUNTY	)	
SEAPORT DEPARTMENT	)	
	)	
Respondents.	)	

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FEDERAL MARITIME COMMISSION

COMPLAINT

1. This complaint is filed pursuant to section 11 of the Shipping Act of 1984, as amended ("the Act"), 46 U.S.C. §41301.[1] It alleges numerous Shipping Act violations by respondents, individually and/or collectively, including, *inter alia,* that the Port of Miami Terminal Operating Company, L.L.C. ("POMTOC") has been operating unlawfully under agreements that should have been, but were not, filed with the Federal Maritime Commission

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[1] This complaint includes for convenience citations to the provisions of the Shipping Act of 1984, which was repealed and codified by Pub. Law. No. 109-304, 120 Stat. 1485 (2006). The corresponding new provisions of the U.S. Code are also cited. Citations to a Shipping Act section should be understood to include reference to the corresponding U.S. Code section(s).

and that POMTOC is unlawfully being used as a device for denying complainant R.O. White & Company, Inc. the ability to perform stevedoring services for vessels using the POMTOC terminal. The complaint seeks both reparations and orders directing respondents to comply with the requirements of the Act and Federal Maritime Commission ("FMC" or "Commission") regulations in connection with the matters described below.

PARTIES

2. The complainants are:

a. R. O. White & Company, Inc., 2550 Eisenhower Blvd., Suite 308, Fort Lauderdale, FL 33316 ("R.O. White"). R.O. White holds a permit issued by the respondent Miami-Dade County Seaport Department ("the Port" or "Port of Miami") authorizing it to perform stevedoring services at the Port, and has entered into a lease with the Port for office space and for an area to store its stevedoring equipment.

b. Ceres Marine Terminals, Inc., 1200 Harbor Blvd., 8th Floor, Weehawken, NJ 07087 ("Ceres"). Ceres and its corporate affiliates perform stevedoring and/or marine terminal services at numerous ports in the United States and Canada.

3. R.O. White is a wholly owned subsidiary of Ceres. Ceres is ultimately wholly owned by the ocean common carrier Nippon Yusen Kaisha of Japan, which is a member of vessel sharing agreements that call the Port and also calls the Port with vessels in its individual services.

4. The respondents are:

a. Port of Miami Terminal Operating Company, L.L.C., 1007 N. America Way, Suite 400, Miami, FL 33132 ("POMTOC").

b. Continental Stevedoring & Terminals, Inc., 701 S.E. 24th Street, Fort Lauderdale, FL 33136 ("Continental Stevedoring"), in its individual capacity and in its capacities as a member of POMTOC, a party to FMC Agreement No. 224-200616, and a member of Eller-ITO Stevedoring Company, L.L.C.

c. Florida Stevedoring, Inc., 125 N.E. 9th Street, Miami, FL 33101 ("Florida Stevedoring"), in its individual capacity and in its capacities as a member of POMTOC and a party to FMC Agreement No. 224-200616.

d. P&O Ports North America, Inc., 99 Wood Avenue South, 8th Floor, Iselin, NJ 08830 and P&O Ports Florida, Inc., 1007 N. America Way, Suite 310, Miami, FL 33132 (individually and jointly "P&O Ports"), in their individual capacities and in their capacities as members of POMTOC, parties to FMC Agreement No. 224-200616, and members of Eller-ITO.

e. Eller-ITO Stevedoring Company, L.L.C. ("Eller-ITO"), 899 S. America Way, Miami, FL, 33132.

f. Dante B. Fascell Port of Miami–Dade *aka* Miami-Dade County Seaport Department, 1015 N. America Way, 2nd Floor, Miami, FL 33132 ("the Port" or "Port of Miami").

5. All of the above-named respondents are "marine terminal operators" as defined in section 3(14) of the Act, 46 U.S.C. §40102(14).

POMTOC

6. POMTOC is the only public, multi-user cargo terminal at the Port. In consequence, the vast majority of ocean common carriers of cargo calling the Port must obtain marine terminal services from POMTOC. POMTOC holds itself out to provide such services to ocean common carriers in POMTOC's public Tariff No. 200.

7. The Port and POMTOC have entered into a Terminal Operating Agreement with respect to the POMTOC terminal. A purported copy of the Terminal Operating Agreement is appended hereto as Exhibit A.

FILED AND UNFILED POMTOC AGREEMENTS

8. POMTOC was established and purportedly operates under the authority of FMC Agreement No. 224-200616. The parties to Agreement No. 224-200616 are Continental Stevedoring, Florida Stevedoring, and P&O Ports.

9. A copy of Agreement No. 224-200616, as it is filed with the Commission, is appended hereto as Exhibit B. Agreement No. 224-200616 as filed refers to five Exhibits (A through E) that are part of the Agreement, but which are not (and on information and belief were not) filed with the Commission.

10. The body of filed Agreement No. 224-200616 is dated as of February 15, 1993. Aside from non-substantive modifications to the cover page to reflect changes in names and addresses, no amendments to Agreement No. 224-200616 have been filed with the Commission since 1993.

11. On information and belief, in or about May 1999 the parties to Agreement No. 224-200616 entered into an amended and restated agreement ("1999 Unfiled Agreement") that, according to its terms, expressly amended and superseded the agreement on file with the Commission. The 1999 Unfiled Agreement was not filed with the Commission, and the superseded 1993 agreement remains on file. A copy of the 1999 Unfiled Agreement is appended hereto as Exhibit C.[2]

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[2] The 1999 Unfiled Agreement was included as an exhibit to the complaint in *Continental Stevedoring & Terminals, Inc, et al.* v. *P&O Ports Florida, Inc.*, Docket 2006-3238-CA-01 (Fla. Cir. Ct. 11, 2006).

12. The 1999 Unfiled Agreement (p. 1) identifies that between 1994 and 1998 there were five amendments to the 1993 filed agreement. On information and belief, these amendments were not filed with the Commission and were expressly superseded by the 1999 Unfiled Agreement.

13. The 1999 Unfiled Agreement states (p. 2) that it is the sole source of the relationship among the parties and that it shall govern the parties even when inconsistent with, or different than, the provisions of any statute other than the U.S. tax code or the Florida Limited Liability Company Act.

14. The terms of the 1999 Unfiled Agreement differ substantively in a number of respects from the terms of filed Agreement No. 224-200616 which it purported to supersede. *Inter alia*, the 1999 Unfiled Agreement deleted the provision in the filed agreement that specifically states that the purpose and business of POMTOC exclude the stevedoring business of any POMTOC member or its affiliate or related entity.[3]

STEVEDORING AT POMTOC

15. As a "marine terminal operator" within the meaning of the Act, POMTOC provides marine terminal services to ocean common carriers whose vessels call the Port. However, POMTOC, as such, does not provide stevedoring services to these vessels. Instead, ocean common carriers using POMTOC contract separately with Port-licensed stevedores for the provision of stevedoring services.

16. POMTOC and its members have adopted policies and practices that require ocean common carriers using POMTOC to obtain stevedoring services from a POMTOC member (Florida Stevedoring) or from a joint venture owned and controlled by the other POMTOC

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[3] E.g., compare Article 1.2 of Agreement No. 224-200616 with Article 3.1 of the 1999 Unfiled Agreement.

members (Eller-ITO, which is owned and controlled by Continental Stevedoring and P&O Ports).

17. On information and belief: The terminal and stevedoring businesses at POMTOC have been and continue to be "inextricably entwined."[4] In addition to restricting the right to stevedore to a POMTOC member and a joint venture of the other POMTOC members, there is, *inter alia*, pervasive overlap between the senior management of POMTOC and the senior management of the stevedore companies, as well as significant overlap in the equipment used in the terminal and stevedoring businesses.

18. On information and belief, Continental Stevedoring and P&O Ports have not filed an agreement with the Commission concerning their establishment or operation of Eller-ITO.

REFUSAL TO ALLOW R.O. WHITE/CERES TO STEVEDORE AT POMTOC

19. The Port's Tariff No. 10 provides for use of the Port's container gantry cranes by any authorized stevedore. A current copy of Item 550 of that Tariff is appended hereto as Exhibit D.

20. In March 2005, Ceres acquired R.O. White, which holds a Port permit to perform stevedoring. Since that time, R.O. White — backed by Ceres' resources and organization — has sought to exercise its right as a licensed stevedore to perform stevedoring services for ocean common carriers that use POMTOC's terminal and that want to engage R.O. White/Ceres to perform stevedoring. R.O. White/Ceres have been supported in this regard by the ocean common carrier Nippon Yusen Kaisha of Japan ("NYK") and its wholly owned subsidiary NYK Line (North America), Inc. (also "NYK"), which enters into terminal and stevedoring contracts for NYK vessels in the United States.

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[4] The quotation is from the complaint in *Continental Stevedoring & Terminals, Inc, et al.* v. *P&O Ports Florida, Inc.*, supra.

21. R.O. White's/Ceres' attempts to perform stevedoring at POMTOC have been refused by POMTOC at every turn. The dispute regarding R.O. White's right to perform stevedoring at POMTOC initially arose in the context of R.O. White's nomination by NYK and Hapag-Lloyd Container Line ("Hapag") to stevedore the ships in their vessel sharing agreement ("VSA") operating between Miami and ports in South America (FMC Agreement No. 011891). Beginning no later than June 2005, NYK and Hapag repeatedly informed POMTOC and its members that they wanted to exercise their right as vessel operators to contract with R.O. White to stevedore the vessels in their VSA at the POMTOC terminal. However, POMTOC consistently refused to allow R.O. White to stevedore the NYK/Hapag vessels calling the POMTOC terminal.

22. On August 18, 2005, counsel for R.O. White/Ceres sent a letter to POMTOC and its members (with a copy to the Port), setting forth R.O. White's and Ceres' position that, unless R.O. White was allowed to stevedore the NYK/Hapag vessels calling POMTOC, the above-mentioned circumstances would give rise to numerous and ongoing violations of the Shipping Act. A copy of the August 18, 2005 letter is appended hereto as Exhibit E.

23. POMTOC responded to the August 18, 2005 letter by requesting a meeting between counsel for POMTOC and counsel for Ceres/R.O. White, which, however, did not resolve the dispute. Thereafter, counsel for R.O. White/Ceres sent a letter to counsel for POMTOC, dated November 15, 2005, elaborating on R.O. White'/Ceres' positions. A copy of the November 15, 2005 letter is appended hereto as Exhibit F.

24. By letter of November 30, 2005, counsel for POMTOC responded to the November 15, 2005 letter from counsel for Ceres/R.O. White. A copy of the November 30, 2005 letter is appended hereto as Exhibit G. POMTOC's letter flatly rejects Ceres'/R.O. White's

position and states that R.O. White is not entitled, and will not be allowed by POMTOC, to stevedore vessels using the POMTOC terminal. The position taken in POMTOC's November 30, 2005 letter is broad and unqualified, and makes clear that POMTOC will not allow R.O. White/Ceres to perform stevedoring, not only for the NYK/Hapag service, but for any vessels operated by NYK, its VSA partners, or any other ocean common carriers that use the POMTOC marine terminal.

25. Subsequent to POMTOC's November 30, 2005 letter, R.O. White/Ceres engaged in protracted discussions with the Port — including with the former, acting and new Port Directors — seeking the Port's assistance in allowing R.O. White to perform stevedoring services for vessels using POMTOC. On information and belief, POMTOC and its members were aware of the existence of these discussions. To date, however, the discussions with the Port have not resulted in a resolution.

THE INTERESTS OF R.O. WHITE'S/CERES' CORPORATE AFFILIATE, NYK

26. R.O. White/Ceres have an interest in protecting and furthering, not only their own rights, but also the rights of their corporate affiliate NYK. NYK strongly supports the efforts of R.O. White/Ceres to perform stevedoring at POMTOC and has made it clear to them that it would use R.O. White/Ceres to stevedore the NYK vessels currently calling the Port as well as other NYK vessels doing so in the future.

27. POMTOC's November 30, 2005 letter states that POMTOC controls the area within the boundaries of its terminal and that R.O. White will not be allowed access to that area to move containers between a vessel and the containers' point of rest within the terminal. However, moving the container between the vessel and a point of rest on the marine terminal is part of an ocean common carrier's transportation obligation to its shippers under the Shipping Act. An

ocean common carrier has the right, by law and according to industry custom and practice, to select the stevedore that will perform that portion of its transportation obligation.

28. The ocean common carrier pays POMTOC for the use of the terminal area as the container's point of rest. Such use is part of the marine terminal services that POMTOC provides to carriers and, as such, is specifically covered by the rates in POMTOC's terminal tariff, which are paid by the carriers (including NYK) that use POMTOC for terminal services.

29. The ocean common carrier (not POMTOC) enters into a contract with a stevedore to perform stevedoring for its vessels using the POMTOC terminal.

30. NYK is an ocean common carrier with longstanding connections to the Port, and, as such, has a substantial interest in ensuring that it and its VSA partners can exercise their right to select the licensed stevedore that will perform stevedoring for their vessels at POMTOC. NYK regularly participates in VSA strings that call the Port. For example, in addition to the above-referenced NYK-Hapag vessel service (which called the Port for 12 months until it was recently redeployed), NYK is a member of the Grand Alliance — a major global alliance that operates numerous vessel services in the U.S. foreign trades and currently calls the Port with a transatlantic service that operates to Northern Europe. In addition, NYK calls the Port with two Ro/Ro vessel services that it alone operates. All of these vessels necessarily use the POMTOC terminal, where NYK and its VSA partners continue to be denied the ability to use R.O. White/Ceres to perform stevedoring.

ACCESS TO THE POMTOC TERMINAL BY OTHER ENTITIES

31. Although refusing to allow R.O. White to move containers between the berths/cranes and the point of rest on the POMTOC terminal, POMTOC regularly allows Eller-ITO (which is not a member of POMTOC) free access to the terminal to perform that function.

On information and belief, POMTOC has in the past allowed Oceanic Stevedoring Company and APM Terminals to perform stevedoring operations at the POMTOC terminal even though they were not at the time a POMTOC member or an affiliate of a POMTOC member.

32. POMTOC regularly allows truckers, without charge other than the gate charges that are paid by the ocean common carrier under POMTOC's tariff, to traverse the terminal between the gate and the place in the terminal where the container is picked up or dropped off.

THE PORT AND POMTOC

33. Under the 1994 Terminal Operating Agreement between the Port and POMTOC, *inter alia*, the Port retains the exclusive right to assign all berths and cranes at the Port; POMTOC must obtain prior Port approval for amendments to its tariff; POMTOC is required to abide by the terms of the Port's tariff, which includes a provision allowing use of the Port's gantry cranes by any authorized stevedore; POMTOC is required to abide by the terms of all federal laws, rules, and regulations; and POMTOC must obtain prior Port approval for any material change to its corporate structure or majority ownership. These provisions, among other factors, give the Port substantial influence and/or control over POMTOC's practices and policies concerning stevedoring.

34. Since POMTOC was established as the only public, multi-user cargo terminal at the Port more than 12 years ago, transportation conditions have changed dramatically at POMTOC and at the Port generally. *Inter alia*, both the number of ocean carriers using POMTOC's terminal and the number of containers handled there have greatly increased since POMTOC was established. POMTOC's website asserts that the past decade "has shown remarkable growth in numbers of customers utilizing POMTOC's terminal as well as the number of containers

handled. We are now serving over 30 ocean carriers and handling over 500,000 TEU's annually."

35. This growth has not been accompanied by an increase in the number of competitors or degree of competition in stevedoring. On information and belief, four stevedores operated at POMTOC after it was created. Currently, POMTOC's policies and practices reserve to two stevedores the entire market for stevedoring at the Port's only public, multi-user cargo terminal. One of those stevedores (Florida Stevedoring) is a POMTOC member and the other (Eller-ITO) is a joint venture owned by the other POMTOC members. A POMTOC member estimated in a February 2006 court filing that Eller-ITO handles approximately 74 percent of all container moves at the Port of Miami.[5]

36. Notwithstanding its control over all berths and cranes, notwithstanding its other influence and/or control over POMTOC's practices and policies concerning stevedoring, notwithstanding the greatly changed transportation conditions since POMTOC was established, and notwithstanding attempts by ocean common carriers such as NYK to choose the Port-licensed stevedore that will stevedore their vessels at POMTOC, the Port — at least to date — has not taken action to remedy the unreasonable conditions and practices identified above.

COUNT I

37. Based on the above allegations and other facts that will be established at hearing, the parties to FMC Agreement No. 224-200616 have violated, and continue to violate, sections 5(a), 10(a)(2) and 10(a)(3) of the Act, 46 U.S.C. §§ 40302(a), 41102(b)(1) & (b)(2), by, *inter alia,*

a. failing to file their actual agreements;

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[5] Complaint in *Continental Stevedoring & Terminals, Inc, et al.* v. *P&O Ports Florida, Inc.*, supra.

b. operating pursuant to agreements that were required to be filed, but were not filed;

c. operating outside and/or contrary to the terms of their filed agreement, including, *inter alia*, the provision in the filed agreement that specifically excludes from the business of POMTOC the stevedoring business of POMTOC members or their related parties; and

d. collectively agreeing to refuse R.O. White permission to perform stevedoring at POMTOC.

COUNT II

38. Based on the above allegations and other facts that will be established at hearing, POMTOC and/or its members have violated, and continue to violate, sections 10(b)(10), 10(d)(1), 10(d)(3) and 10(d)(4) of the Act, 46 U.S.C. §§ 41104(10), 41102(c), 41106(3), & 41106(2), by, *inter alia,*

a. using POMTOC as a device to exclude Port-licensed stevedores from competing for the business of ocean common carriers using the POMTOC terminal;

b. precluding ocean common carriers, including NYK, from exercising their right to use R.O. White as the stevedore for their vessels using POMTOC;

c. refusing to allow R.O. White to use its Port-granted stevedoring license to perform stevedoring services for vessels calling POMTOC;

d. conditioning an ocean common carrier's use of the only public, multi-user cargo terminal at the Port on use of a POMTOC member or its related party as stevedore; and

e. denying R.O. White access to the POMTOC terminal while allowing access to other entities for the same or similar purposes.

COUNT III

39. Based on the above allegations and other facts that will be established at hearing, the Port of Miami has violated, and continues to violate, sections 10(b)(10), 10(d)(1), 10(d)(3) and 10(d)(4) of the Act, 46 U.S.C. §§ 46 U.S.C. 41104(10), 41102(c), 41106(3), & 41106(2) by, *inter alia,*

a. failing to prevent the other respondents from engaging in the unlawful conduct alleged in Counts I and II above;

b. failing to ensure access by qualified stevedores to the only public, multi-user cargo terminal at the Port; and

c. failing to evaluate, after more than a decade during which transportation conditions at the Port and at POMTOC greatly changed, whether there is any justification for the continuation of a monopoly public, multi-user cargo terminal at the Port, which has been used to deny such public users a choice of licensed stevedores.

Statement concerning ADR procedures. As reflected in paragraphs 22-25 above, there has been extensive discussion of the issues raised in the Complaint between Complainants and Respondents and between their counsel. In light of those discussions, informal dispute resolution procedures have not been used prior to the filing of the Complaint; nor have Complainants consulted with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution under the Commission's ADR program.

WHEREFORE, Complainants pray that Respondents be required to answer the charges herein; and that after due hearing, an order be made commanding said Respondents (and each of them) to cease and desist from the aforesaid violations; to establish and put in force such practices and policies as the Commission determines to be lawful and reasonable; to pay to

Complainants reparations for the unlawful conduct above described in amounts to be determined after hearing, with interest and attorney's fees; and to make such other and further order or orders as the Commission determines to be proper in the premises.

Complainants designate Washington, D.C. as the place at which hearing is desired.

Dated at Weehawken, N.J. this 21st day of November, 2006.

R. O. White & Company, Inc.
2550 Eisenhower Blvd.
Suite 308
Fort Lauderdale, FL 33316

By: _____
President

Ceres Marine Terminals, Inc.
1200 Harbor Blvd.
8th Floor
Weehawken, NJ 07087

By: _____
President

_____
Robert T. Basseches
David B. Cook
Richard L. Matheny, III
Eric C. Jeffrey
Goodwin Procter, LLP
901 New York Avenue, NW
Washington, DC 20001
(202) 346-4000

Attorneys for Complainants R. O. White & Company, Inc. and Ceres Marine Terminals, Inc.

VERIFICATION

STATE OF NEW JERSEY)
) ss:
COUNTY OF HUDSON)

Thomas B. Simmers, being first duly sworn on oath deposes and says that he is President of Ceres Marine Terminals, Inc.; that he signed the foregoing Complaint; that he has read the Complaint and the facts stated therein, upon information personally known to him and received from others, he believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of New Jersey, County of Hudson, this 21 day of November, 2006.

[SEAL]

Notary Public

SUSAN AGLIPAY
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 6, 2008

My Commission Expires: February 6, 2008

Exhibit A to Complaint

A G R E E M E N T

BETWEEN

PORT OF MIAMI TERMINAL OPERATING COMPANY
(POMTOC)

AND

METROPOLITAN DADE COUNTY
SEAPORT DEPARTMENT

September 15, 1994

TERMINAL OPERATING AGREEMENT

THIS AGREEMENT is hereby made and entered into as of the 15 day of September, 1994, by and between METROPOLITAN DADE COUNTY, FLORIDA, pursuant to the provisions of Chapter 125.35 Florida Statutes 1992, hereinafter sometimes designated or referred to as the "County" or the "Port", and PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C. (POMTOC), a Florida limited liability company hereinafter sometimes designated or referred to as the "Operator" or "POMTOC", by and through their authorized representatives in accordance with the terms, conditions and covenants contained hereinbelow. The terms "POMTOC" and "Operator" may be used interchangeably and the terms "County" and "Port" may be used interchangeably from time to time, as may be necessary for purposes of clarity and intent.

W I T N E S S E T H

WHEREAS, Dade County operates the Seaport Department (the "Port of Miami"); and

WHEREAS, Dade County, Florida, owns certain lands located in Dade County, Florida, on which the Port of Miami is located; and

WHEREAS, the Port has a need to expand and improve its facility to provide maximum container throughput on Dodge and Lummus Islands within the next five years; and

WHEREAS, creation of a common terminal will more efficiently service current and future shipping lines calling on the port; and

WHEREAS, in order to achieve maximum container throughput in one common terminal yard, the Port requested the Stevedore companies currently operating terminal cargo handling facilities at the Port, to consolidate their customer bases and move cargo through the common terminal yard, currently under development; and

WHEREAS, the Stevedore companies operating terminal cargo handling facilities at the Port of Miami: Continental Stevedoring operating since 1985 partially owned by Eller and Company operating since 1963, and Harrington & Company since 1964; Florida Stevedoring operating since 1973; S.E.L. Maduro (Florida) operating since 1983, owned by Maduro Companies established since 1880; and Oceanic Stevedoring operating since 1976, agreed to form the Port of Miami Terminal Operating Company, L.C. (POMTOC) and combine their terminal customer bases to maximize the cargo throughput through the one common terminal yard; and

WHEREAS, each member of POMTOC currently holds a County Stevedore permit ("Permit") and is in the business of conducting activities normally carried out in a marine cargo terminal as well as incidental activities related thereto at the Port of Miami; and

WHEREAS, POMTOC is in the business of operating cargo handling facilities utilized by its members and customers; and

WHEREAS, POMTOC desires the use of designated open ground storage area at the Port of Miami, together with warehouse, gates, maintenance sheds and other facilities as outlined herainbelow; and

WHEREAS, POMTOC has agreed to operate, maintain and secure the premises designated herein, at its sole cost and expense; and

WHEREAS, the Port and POMTOC desire to enter into the following Operating Agreement;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements hereinafter contained, the parties hereto do and hereby mutually covenant, agree and bind themselves as follows:

ARTICLE I

1.1 RULES OF CONSTRUCTION. For all purposes of this agreement, unless otherwise expressly provided:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning ordinarily given to it by accountants in accordance with generally accepted accounting principles;

(c) words in the singular include the plural, and words in the plural include the singular; and

(d) a pronoun in one gender includes and applies to other genders as well.

(e) the terms "hereunder," "herein," "hereof," "hereto," and such similar terms shall refer to the instant Terminal Operating Agreement in its entirety and not to individual sections and articles.

1.2 DEFINITIONS: Each term or expression set forth below has the meaning stated immediately after it, unless otherwise expressly provided.

"Agreement" means the instant Terminal Operating Agreement in its entirety, including all exhibits attached hereto.

"County" means Dade County, a political subdivision of the State of Florida, and all departments, and instrumentalities thereof.

"Existing Terminal Operator" means any company supplying labor, equipment, and land to receive and deliver containers or other cargo for one or more steamship carriers calling on the Port, as of the Effective Date of this Agreement.

"Gate Move" means each move of a container or trailer into or out of either the Interim or Common Gate, as the case may be.

"Interim Gate" means the temporary gatehouse to be constructed on the Premises by the Port.

"Maximum Allowance" shall have the meaning given in Article 4.1(C).

"New Steamship Line" means any steamship line commencing operations at the Port after the Effective date hereof.

"Outside Lighting" means all lighting required to perform any and all nighttime operations in the Terminal Area.

"Port" means the Metropolitan Dade County Seaport Department, also known as the Port of Miami.

"Port Director" means the Director of the Metropolitan Dade County Seaport Department.

"Premises" means the Terminal Area.

"Street Lighting" means existing lighting supplied by the Port, outside of the Terminal Area, along public rights of way located on the Port.

"Terminal Area" means the land designated in Exhibit A, attached hereto and incorporated by reference herein, plus the use of the facilities thereon.

"TEU" means one twenty-foot equivalent container. For all purposes of this agreement, a 40, 45, or 50-foot container shall count as two TEU's.

"Throughput" means the total number of TEUs discharged to the Terminal Area or loaded from the Terminal Area for export or Trans-shipment. By example, a forty-foot TEU off-loaded from a vessel and discharged to the Terminal Area and then removed from the Terminal Area would constitute a Throughput of four.

"TIR" or "EIR" means trailer or equipment interchange report.

"TOS" means the Terminal Operating System (excluding hardware) to be purchased by POMTOC from Maher Terminals Inc., as more fully described in Article 9.4 hereof.

"Trans-shipment" or "Trans-shipped" means the transfer of a TEU from one vessel at the Port to another vessel at the Port.

1.2 PREMISES:

Under this Agreement, Dade County hereby grants to the Operator the exclusive use of approximately 135 acres as the Premises, more specifically described on the survey attached hereto as Exhibit A (the "Premises"), for a limited term defined herein and in accordance with the terms, limitations and conditions hereinafter contained.

1.2 TITLE:

The Port hereby represents and warrants that it is the Fee Simple Owner of the Premises which can be used for the purpose intended in this Agreement.

1.3 QUIET ENJOYMENT:

Upon payment by Operator of the rates and charges herein provided, and upon observance and the performance of all of the

covenants, terms and conditions on Operator's part to be observed and performed hereunder, Operator shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without unreasonable hindrance or interruption by Port or any other person or persons lawfully or equitably claiming by, through or under Port, subject nevertheless to the terms and conditions of this Agreement; provided however, that the Port shall have the right to enter the Premises including buildings, land and equipment, without notice, at any time.

ARTICLE II

2.1 USE OF PREMISES:

The Operator and its members shall use the premises for the purpose of handling cargo and all related activities. Operator shall be entitled to utilize the Improvements and the Equipment, as such terms are defined in Article VIII below, for the purpose of operating a marine cargo terminal area, including activities normally carried out in a marine cargo terminal, provided all of its members hold at all times material hereto, in good standing, a current County Stevedore Permit. In the event any member of POMTOC ceases to have a valid and current County stevedore permit, POMTOC may exclude such member; provided, however, that POMTOC first receives written authorization to do so from the Seaport Director or his designee, said authorization shall not be unreasonably withheld or delayed. Except as otherwise provided, Operator shall not utilize any portion of the Premises for purposes other than those expressly authorized herein except to the extent permitted in writing by the Port. Further, notwithstanding any other provision contained herein, no member of POMTOC may operate on the Port without a valid and current County Stevedore permit.

2.2 REALLOCATION OF LAND:

In consideration of POMTOC's exclusive use of the Premises (refer to Section 1.1.) POMTOC agrees to guarantee to the Port of Miami as follows:

POMTOC guarantees, through the steamship lines that the stevedoring companies represent, a minimum annual Throughput of 2000

TEUs per acre for 98 acres of the Terminal Area as per Exhibit A (196,000 TEUs). These units may be full or empty. The basis for the TEU count will be all containers loaded onto or discharged from vessels of those steamship lines for which POMTOC performs terminal service.

In the event POMTOC does not meet the minimum guarantee, POMTOC shall, at its election, either (i) pay the Port of Miami $19.50 for each TEU of Throughput under the annual guarantee referred to in the preceding paragraph, or (ii) give up the equivalent amount of land from the Terminal Area based on 2000 TEU's per acre. By example, if POMTOC's annual Throughput is 10,000 TEUs beneath the 195,000 minimum guarantee, POMTOC shall, at its election, either Pay the Port $195,000 or give up 5 acres of the Terminal Area or a combination of both. In the event that POMTOC chooses to give up the land, the Port agrees any land reassignment will be only to a new steamship line calling on the Port or to any Existing Terminal Operator, and that the land rental rate will be reduced proportionately.

2.3 BERTH ASSIGNMENTS:

It is recognized and agreed to by both parties that the Port retains exclusive right and discretion to assign all berths and cranes at the Port of Miami.

ARTICLE III

3.1 TERM OF AGREEMENT:

Except as otherwise provided herein, the Operator shall have and hold said Premises and the rights and privileges granted herein, for a term of five years with 3 additional five year Renewal options commencing on the Effective Date. For the purposes of this Agreement, the term "Effective Date" shall mean the date on which the Interim Gate is opened.

3.2 RENEWAL OPTIONS:

Unless written notice is given by Operator to Port at least ninety (90) days prior to the expiration of the initial or any subsequent term of this Agreement notifying Port of Operator's

intention to vacate the Premises at such expiration, POMTOC shall have the right to renew this Agreement for each of the 3 additional five-year renewal periods except as otherwise provided herein.

If POMTOC does not notify the Port in writing at least ninety (90) days, prior to the expiration of the initial or any subsequent term of this Agreement of its intent to renew or to allow the Agreement to terminate, then this Agreement shall be considered as automatically renewed and binding in all its provisions for five years, after the expiration of such initial or any subsequent term except as otherwise provided herein.

ARTICLE IV

4.1 RATES AND CHARGES:

A. Land Rent Charges

The Operator shall pay the Port as rent an annual amount equal to an annual rate, as set forth in Exhibit B, plus applicable tax for the improved area available for use by the Operator, payable in monthly payments in advance on the first (1st) day of each and every month of the term of the Agreement, commencing on the Effective Date. The actual square footage included within the area available for use by the operator shall be calculated by the Port engineer as the land is developed in accordance with the master plan and subject to Operator verification.

It is understood and agreed by both parties that the land rental rate may be reviewed and revised annually, in the Port's sole discretion. However, no land rental rate increase for any one year period shall exceed the consumer price index (CPI), attached hereto and made a part of Exhibit B, for the previous year. It is understood by the parties that if the Port does not exercise its right to increase the land rate during one or more years that, at the time the Port elects to exercise its right to increase the land rate, the increased rate may be established by adding together the CPI percentages for the previous years during which there was no land rental increase in the determination of the new rental rate. All other rates and charges under Article IV, except equipment

rental rates, may be [illegible]ewed and revised annually, in the Port's sole discretion, provided any annual increase not to exceed the prior year's CPI plus 2%. Equipment rental rates under Article IV may be increased annually, at the Port's sole election, in an amount reasonably necessary to cover increases in <u>any and all</u> Port expenses for acquisition, maintenance, and or operation of such equipment.

If the parties cannot agree on proposed rate and charge increases, the Port, in its sole discretion, may terminate this Agreement upon ninety (90) days written notice, or opt to continue with the rates and charges at the prior year's level.

B. Other Charges as Set Forth in Exhibit B.

C. <u>Empty Container Policy</u>

POMTOC and the Port agree that the Port, in its sole discretion, will establish a maximum quantity of empty containers allowed on a monthly basis by steamship lines to be stored on the Premises free of charge (the "Maximum Allowance"). Any empty containers stored at the Port in excess of the Maximum Allowance will be charged at a mutually agreed rate established by both POMTOC and the Port of Miami, which collected gross revenue will be shared equally between the Port and POMTOC.

D. <u>Indemnity Bond</u>

The Operator shall furnish to the Port an Indemnity Bond or an Irrevocable Letter of Credit equivalent to <u>$350,000</u> to cover any and all charges in Article IV, to remain in full force and effect throughout the term of the Agreement; said Indemnity Bond or Irrevocable Letter of Credit to be approved by the Risk Management Department of Dade County.

4.2 <u>TERMINATION CLAUSE</u>:

In the event said premises are vacated by Operator for reasons other than default by Port and items listed in Article XXII, or this Agreement is terminated by either party, prior to the expiration date of the Agreement, the Operator shall promptly

pay the Port, in addition to all monies then due and owing hereunder, the lesser of all rental charges for the unexpired period or for that period the premises have been vacant until said premises are re-let on a permanent basis to a new operator, not to exceed one year. These charges are in addition to any other Port remedies arising under this Agreement, common law, or elsewhere.

ARTICLE V

5.1 MANAGEMENT/OWNERSHIP OF POMTOC:

Since the ownership, control, experience and key managerial personnel of POMTOC are material considerations to the County in the entering into of this Agreement, POMTOC shall take no actions which shall serve to materially change its corporate structure or change majority ownership or control of POMTOC, without the prior written approval of the Port Director; provided such approval is not unreasonably withheld or delayed. Further, POMTOC and its members represent that its members hold in good standing current County Stevedore Permits and hereby agree to maintain such Permits current and in good standing at all times they maintain an interest in POMTOC.

Prior to the execution of this Agreement, POMTOC must complete and submit a Metro-Dade County Disclosure Affidavit in accordance with Dade County Ordinance 88-121, a Metro-Dade County South Africa/Namibia Affidavit, Cuba Affidavits in accordance with Dade County Resolution No. 1044-88 and OMBD certification and a Sworn Statement under Section 287.133(3)(a) Florida Statutes on Public Entity Crimes.

ARTICLE VI

6.1 GUARANTORS OF POMTOC OBLIGATIONS:

The Signatory Guarantors, including all POMTOC members hereto, expressly agree to proportionately guaranty all of the obligations of POMTOC arising from this Agreement. Each individual Guarantor's proportionate liability for the obligations of POMTOC shall be limited to each Guarantor's percentage of ownership in POMTOC at the time of execution of this Agreement, as signatured on this

Agreement, Exhibit B, which may be amended from time to time subject to the prior written approval of the Port. Each POMTOC member's liability for any breach of any warranty, term, representation, or obligation contained herein shall survive both this Agreement and such member's participation in POMTOC. If after the execution hereof, POMTOC Members wish to change their ownership interest in POMTOC and or their proportionate share of liability for any POMTOC breach of this Agreement, such change(s) may only be accomplished by agreement of all POMTOC Members and the prior written approval of the Seaport Director.

ARTICLE VII

7.1 SUBLETTING AND ASSIGNMENT:

POMTOC shall not assign, transfer, sublet, mortgage, pledge nor otherwise encumber this Agreement, nor any portion thereof, nor any Port property, improvements thereon orPort equipment associated with this Agreement. This Article does not apply to POMTOC-owned equipment. Any unapproved assignment, transferring, subletting, mortgaging or encumbering of this Agreement, or any portion thereof, by any person or entity other than Dade County, shall be void and shall be grounds for immediate termination of this Agreement in the sole discretion of the Port.

It is agreed that all terms and conditions of this Agreement shall extend to, and be binding on, Operator's assignees, sublessees and other successors that may be approved by the Port Director in writing. POMTOC agrees to incorporate this Agreement as it may be amended, from time to time, into any assignments, subleases or other similar agreements that are agreed to in writing, in advance, by the Port Director.

ARTICLE VIII

8.1 GENERALLY:

Except as otherwise provided in this Agreement, the parties agree that the Port shall be responsible for and shall cause the Premises to be improved largely in accordance with the Master Plan, as may be amended from time to time by the Board, (the "Improvements"),

at its sole cost and expense, provided sufficient funds are available and appropriated by the Board of County Commissioners ("BOARD") for such purpose. POMTOC shall continue to participate in and shall advise the Port, without charge, in connection with the design and implementation of the Master Plan, and the development and approval of the plans and specifications for the Improvements.

8.2 IMPROVEMENTS:

Except as otherwise provided herein, and subject to sufficient Board appropriations being made in the future, Phase I shall include the development of the overall Master Plan for the Premises, expansion of the Gantry Crane Complex, the development and installation of lighting, electrical, fire, water and mechanical utilities for the Premises, the construction of the Interim Gate Complex and Interim Office Complex, and the Maintenance and Repair Building currently existing on site. In addition, Phase I shall include the development by Operator and its members, at Operator's sole cost and expense, of an automated Terminal Operating System (excluding hardware).

8.3 OWNERSHIP OF IMPROVEMENTS AND EQUIPMENT:

POMTOC agrees that the Port, in its sole discretion, has the right to purchase and place yard equipment within the Premises which equipment shall be available for POMTOC for lease as required. It is expressly understood and agreed that any and all Improvements and Equipment contemplated by this Agreement, including buildings, trailers, temporary structures, fixtures, machinery and equipment at any time constructed, placed or maintained by the Port or its agents upon any part of the Premises, shall be and remain the property of the Port. Equipment and machinery purchased and placed on the Port by POMTOC shall remain the property of POMTOC. Upon the expiration or termination of this Agreement or any extension or renewal thereof, Operator, without further notice shall deliver up to Port, ordinary wear and tear excepted, the possession of the Port land, Improvements and equipment thereon or placed thereon in accordance with the Master Plan.

If any part of the Premises or any Improvement or any piece of equipment shall be damaged or destroyed during the Agreement Term by POMTOC, its agents, guests, employees or third parties other than any damage caused by the Port, Operator shall, within a reasonable period of time repair and/or replace the same, or construct an equivalent building or buildings at Operator's sole cost and expense to at least the condition existing immediately prior to such damage or destruction, including the Terminal Operating System (TOS). If termination occurs during the first five (5) years of the Agreement, the Port shall pay to POMTOC the book value of the initial investment in TOS, including the cost of software amortized enhancements. After the initial five (5) year term, the parties shall negotiate a fair and reasonable price for the TOS. In the event of failure to negotiate a fair and reasonable price, a third party shall be engaged to establish such fair and reasonable price. The cost of these services shall be shared equally by the parties.

The Port shall have the right to operate the TOS commencing upon the termination or expiration date and continue operating the system during and through the time period for which the amortized book value is being determined or the price is being negotiated.

ARTICLE IX

9.1 FUNCTIONS AND OBLIGATIONS OF OPERATOR:

Operator shall, at its sole cost and expense, operate, maintain and secure the Premises, the Improvements and the CARGO HANDLING Equipment as a common cargo terminal for the use of its members, for the duration of the lease term and any properly exercised option term. Operator shall use its best efforts to: (i) operate, maintain and secure the common gate; (ii) supervise and coordinate the receiving and delivery of container and breakbulk cargo,;and (iii) otherwise administer the Premises to promote efficient and safe cargo handling operations; all at Operator's sole cost and expense.

9.2 OPERATOR'S EQUIPMENT:

Operator, at its sole cost and expense, shall cause its members to make available to it, the Operator's container handling equipment described on the attached Exhibit C (the "Operator's Equipment")

as amended from time to time; provided, however, that all such amendments must be mutually agreed to in writing by both parties.

9.3 TITLE TO OPERATOR'S EQUIPMENT:

Operator or its members, as the case may be, shall, at all times, retain ownership to the Operator's Equipment, except as otherwise provided herein. Operator shall maintain and keep in good working condition all equipment utilized on the premises.

9.4 TERMINAL OPERATING SYSTEM (SOFTWARE):

In order to be assured that POMTOC will maximize the use of its leased land and to provide for a gate system, that is productive and efficient thus preventing delays, POMTOC will acquire a computerized "Terminal Operating System" (TOS) from Maher Terminals Inc. This TOS at a minimum will:

1. Automate the Gate Complex and provide for the fluid passage of both inbound and outbound traffic.

2. Provide for a cargo booking system that will integrate the various ship agencies with the terminal.

3. Provide for "live" yard inventory control thus maximizing the utilization of the terminal and increasing the number of containers handled per acre.

4. Provide interface with U.S. Customs' Automatic Cargo Systems ("ACS") program.

5. Make available statistical data relating to Trailer Interchange Reports, the number of units handled and other appropriate reports.

The Seaport will provide access to a Computer Platform compatible with the TOS, sufficient in size and capacity to successfully drive the system. Access can be through an On-site System or a Remote Platform via high speed data lines.

It will become the responsibility of the Seaport to provide the connectivity with this Computer Platform and the maintenance of the system to ensure its reliability.

The Port Director, at his sole discretion, will determine the size, type and location of the computer system as long as it is capable of providing the required job functionalities and will continue to do so for the term of this lease.

Operator and members shall, at their sole cost and expense, develop and maintain the Terminal Operating System ("TOS"). The TOS shall be developed by means of a joint study to be conducted by Operator and Port which shall include a review of equipment costs, operating and maintenance expenses, applicable software available, and any other areas deemed appropriate. The TOS shall be the sole property of Operator and its members and shall be operated and maintained by the Operator at its sole cost and expense. After development, approval by the Port and initial implementations, any material changes effected to the TOS at the sole request of Port shall be paid for by Port; all other changes shall be at Operator's sole cost and expense and shall be subject to Port approval, not unreasonably withheld or delayed. Upon expiration or termination of this Agreement, the TOS shall become the sole property of the Port, after a fair and reasonable transfer fee is established by the parties for the value of the Terminal Operating System, pursuant to Article 8.3.

9.5 <u>MEMBERSHIP IN POMTOC:</u>

POMTOC hereby agrees to admit as members, any duly Board-licensed stevedoring company, which obtains a Port permit to operate within the Port of Miami on such terms and conditions as shall be reasonably established by POMTOC and approved by the Port Director. Such terms and conditions may include, but shall not be limited to, requiring payment to POMTOC or its members for the fair market value of the interest acquired by such new member, which is agreed to be calculated as a percentage of a valuation figure no greater than the net book value of the corporate assets, less liabilities, plus an amount for goodwill, to be calculated at three times the average of

the past three years' net profits before income tax and assuming and guaranteeing such obligations as are generally assumed or guaranteed by the members of POMTOC. Furthermore, POMTOC agrees that it shall not admit a new member, and its members agree that they shall not transfer any interest in POMTOC without the prior written approval of the Port Director; such approval shall not be unreasonably withheld or delayed. Such new member shall be required to accept in writing, the obligations imposed on members of POMTOC under the terms of this Agreement.

9.6 POMTOC/OPERATOR TARIFFS:

Operator and its members agree that they will not amend their operating tariffs filed with the Federal Maritime Commission (i) without giving Port at least thirty (30) days prior written notice of its intent to change such tariffs and filings with the Federal Maritime Commission (FMC) and (ii) without obtaining prior Port approval of such proposed amendments, provided that such approval will not be unreasonably withheld.

ARTICLE X

10.1 In the event the beginning or termination date of this Agreement falls on a date other than the first day or last day, respectively, of the calendar month, the applicable rates for that month shall be prorated on a daily basis for the portion of the month during which this Agreement is in effect.

ARTICLE XI

11.1 OPERATOR'S RESPONSIBILITIES:

A. Security

It is recognized by all parties that the premises described in Exhibit A provides multiple means of access by individuals or companies not having a direct relationship with POMTOC.

The Port will continue to provide a main gatehouse for the limited purpose of checking drivers' identification, issuing gate passes and providing directions when requested. The provision of such gatehouse, however, is expressly not an assumption by the Port, in whole or in part, of security responsibility for the Premises

described in Exhibit A. Further, the Port shall not be responsible for any loss relating to cargo occurring in or from the Premises, whether caused by theft, vandalism, accident, weather, fire or any other cause. POMTOC will be solely responsible for providing adequate security on the Premises, including without limitation, operating the Interim Gate and providing, at a minimum, a mobile patrol unit on a twenty-four (24) hour basis.

B. Operations

Functions of Operator: Operator shall, at its sole cost and expense, operate, maintain and secure the Premises, the Improvements and the Cargo Handling Equipment as a common cargo terminal for the use of its members, for the duration of the lease term and any properly exercised option term. Operators shall operate, maintain and secure the common gate, supervise and coordinate the receiving and delivery of container and breakbulk cargo, and otherwise administer the Premises to assure the efficient execution of the cargo handling operations, all at Operator's sole cost and expense.

C. Maintenance

It is understood and agreed by both parties that POMTOC will be responsible as follows:

Maintain the appearance of Premises in a clean, orderly manner acceptable to both parties, including, without limitation, pickup and trash removal (trash is defined as discarded material or debris) and maintenance of line striping as required.

In the event that Operator fails to maintain the Premises, Improvements or Equipment in accordance with the terms of this Agreement, and fails to cure such default within the Grace Period as defined in Article XVII below, the Port, in its sole option, shall be entitled to perform such repairs and maintenance not performed by Operator and Port shall be reimbursed on demand by Operator for the reasonable full cost of such repairs and maintenance.

The Port will maintain the leased area and buildings, including office space, inbound/outbound TIR lanes. This maintenance will include but not be limited to: Painting, Light fixture/bulb replacement, Air conditioning, Sub-structure, structural repairs and replacement of items as a result of normal wear and tear and all building maintenance.

D. Utilities

POMTOC will be responsible for payment of electricity, telephone and water bills for the Common or Interim Gate, as the case may be, the Maintenance and Repair Facility building, all Outside Lighting, and the Administration Building (only for POMTOC occupied area). All utility costs for lights needed for nighttime operations in the Terminal Area will be the responsibility of POMTOC.

The Port of Miami, Seaport Department, will be responsible for payment of electricity for the following items 1 through 4:

1. Reefer - The cost of utilities associated with reefer plugs will be paid by the Port. In consideration of paying these charges, the Port will invoice the respective steamship lines as per established tariff rates.

2) Street Lighting - The cost of all utilities associated with Security Lighting will be included in the land rental.

3). Office Space - The cost of all utilities associated with office space rental shall be included in a separate office space rental agreement.

E. Trash Removal

The Operator, at its sole cost and expense, will be responsible for trash removal associated with normal terminal operations.

F. Personal Property

All personal property including cargo, brought upon, placed in, or located upon the Premises above described shall be at the risk of the Operator or owner thereof, and the Port shall not be liable for any loss of or damage to said personal property, including any loss or damage due to, without limitation, theft, fire, severe weather, water damage, movement or transit, or any other cause, nor shall the Port be liable to the Operator, its agents, employees, contractors, customers or guests, for damages or personal injuries arising, in whole or in part, from any act, omission, or negligence of any other tenants at the Port of Miami, or of any other person, entity, or Port user.

ARTICLE XII

12.1 The Operator shall conduct its operations in an orderly, lawful and proper manner so as not to annoy, disturb or be offensive to others on the Premises; Operator shall control the conduct, demeanor and appearance of its members' officers, employees, agents and representatives, and upon written or verbal objection from the Port concerning the conduct, demeanor or appearance of any such person, shall immediately take all steps necessary to remove the cause of the objection. It is understood and agreed that the Operator's exclusive right to the use of the Premises described in the survey attached hereto and made a part of this Agreement as Exhibit B does not grant or imply exclusive right by Operator or its agents to the use of any surrounding or contiguous areas.

ARTICLE XIII

13.1 OPERATOR INDEMNIFICATION:

The Operator shall indemnify and hold the County, its officers, representatives, employees and agents ("Indemnitee"), harmless from, and assumes any and all liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, litigation, costs, charges and expenses (including but not limited to fines, penalties, reasonable attorneys' fees, engineers' fees, architects' fees and the costs and expenses of appellate action, if any), imposed on, incurred by or asserted against Indemnitee which arise out of or relate to, in whole or in part, the acts or

omissions of the Operator, its officers, agents, employees, independent contractors, customers or guests ("Indemnitor"), in the lfillment of this Agreement or in the conduct of activities on or near the Premises or Improvements by Indemnitor of any nature, whether foreseen or unforeseen, ordinary or extraordinary- in connection with the use, occupancy, operation, maintenance or repair of the Premises or the Improvements thereon. Any and all claims brought under the authority of or with respect to any local, state or federal environmental statute or regulation shall be governed by Article XIV (Environmental Indemnification).

ARTICLE XIV

14.1 ENVIRONMENTAL INDEMNIFICATION:

The Operator, its employees, officers, agents, contractors, customers and invitees shall comply with all federal, state and local environmental laws and regulations applicable to the use, storage and handling of hazardous substances, hazardous materials, industrial wastes and hazardous wastes in, on, or near the Premises or the Improvements thereon.

The Operator shall indemnify and hold the County, its officers, employees, agents, successors and assigns (the "Indemnitee") harmless from, and assumes any and all liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, litigation, costs, charges and expenses (including, but not limited to, reasonable attorneys' fees, engineers' fees, architects' fees, environmental response and remediation costs and the costs and expenses of appellate action, if any), imposed on, incurred by or asserted against Indemnitee, by any party or parties (including, but not limited to, a governmental entity), arising out of, in connection with, or relating to, in whole or in part:

A. Any environmental condition of contamination caused or created by the Operator, its agents, employees, independent contractors, invitees or guests except to the extent that such condition of contamination is caused or created by the County, its independent contractors, or

employees; or

B. Any violation by the Operator, its agents, employees, independent contractors, invitees or guests of any federal, state, or local environmental law or regulation with respect to the facility occurring after the date hereof and caused by the Operator's operations or facilities, or those of the Operator's agents, employees, officers, independent contractors, invitees or guests; or

C. Any breach by Operator, its agents, employees, contractors, guests or invitees of a covenant, requirement or warranty contained in this Agreement.

14.2 COUNTY ENVIRONMENTAL INDEMNIFICATION

The County has no knowledge that, at the time of the execution of this Agreement, the Project Site contains any condition of contamination giving rise to liability of the Operator for remediation, cleanup, damages, penalties or costs of any kind. County agrees to indemnify and hold the Operator, its officers, employees, agents, successors and assigns (the "Indemnitee") harmless from and assumes any and all liability for, any and all claims, causes of action, obligations, damages, penalties, litigation, costs, charges and expenses (including, but not limited to, reasonable attorneys' fees, engineers' fees, architects' fees and the costs and expenses of appellate action, if any) (collectively, "Claims"), imposed on, incurred by, or asserted against Indemnitee by any other party or parties (including, without limitation, a governmental entity), to the extent arising out of:

a. the County's breach of the covenant set forth above in this Section;

b. any environmental condition of contamination existing on the Project Site, or under property contiguous to the Project Site that migrates onto the Project Site, as of

the Effective Date, that gives rise to liability, even if not discovered until after the date thereof; provided such condition was not caused or contributed to by any POMTOC members, or any POMTOC agents, employees, independent contractors, invitees, or guests;

c. any violation of any existing law or regulation with respect to the Project Site existing as of or prior to the execution date of this Agreement, even if not discovered until after the date hereof, regardless of cause except to the extent that such conditions or violations were caused, created, or contributed to by the Operator's operation or facilities or those of the Operator's members, agents, employees, officers, independent contractors, invitees or guests.

14.3 SURVIVAL OF INDEMNIFICATION:

The foregoing indemnities shall survive the term of this Agreement and shall be in addition to any of either party's obligations for breach of a representation, warranty or requirement contained herein, and shall be in addition to and not in lieu of, any other rights or causes of action that the parties may have by statute, under common law, or otherwise.

ARTICLE XV

15.1 Neither party shall commit any nuisance on the Premises, or do, or permit to be done, anything which may result in the creation of or commission of a nuisance on the Premises.

ARTICLE XVI

16.1 INSURANCE TO BE CARRIED BY OPERATOR:

Prior to execution of the Contract by the County and commencement of work, the Operator shall obtain all insurance required under this Section and submit same to the County for approval. All insurance shall be maintained throughout the term of this Agreement.

The Operator shall furnish to the County's Risk Management Division:

1. Certificate(s) of Insurance which clearly indicated that he has obtained the insurance coverages required in paragraphs a; b, c, and d.

Certificates shall indicate no modification or change in insurance will be made without thirty (30) days written advance notice to Metropolitan Dade County, c/o the Manager of the Risk Management Division.

a. Worker's Compensation Insurance - as required by Chapter 440, Florida Statutes and, where applicable, coverage for the U.S. Longshoremen's and Harbor Worker's Act and the Jones Act.

b. Public Liability Insurance - on a Comprehensive basis, in an amount not less than $5,000,000 per occurrence for Bodily Injury and Property Damage combined. Metropolitan Dade County must be shown as additional insured with respect to this coverage.

c. Contractual Liability Insurance - covering all liability arising out of the terms of the Contract Documents in an amount not less than $5,000,000 per occurrence.

d. Automobile Liability Insurance - covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $500,000 per occurrence for Bodily Injury and Property Damage combined.

The Public Liability Insurance coverage as required in paragraph (b) above shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the Operator in the performances of this Contract.

All _nsurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subje to the approval of the County Risk Management Division.

Compliance by the Operator with the foregoing requirements to the carrying of Insurance shall not relieve the Operator of i liability and obligations under this section or any portion of tl Agreement.

ARTICLE XVII

17.1 CANCELLATION BY COUNTY:

Notwithstanding any termination rights contained elsewhere this Agreement, the occurrence of any of the following shall give cause for this Agreement to be terminated by the County, at its discretion, upon the terms and conditions set forth below:

1. Institution of proceedings in voluntary bankruptcy by POMTOC.

2. Institution of proceedings in involuntary bankruptcy against POMTOC if such proceedings continue for a period of ninety (90) days, or longer.

3. Assignment by POMTOC of its operating interest in this Agreement for the benefit of creditor.

4. Abandonment or discontinuation of operations hereunder, for a period of thirty (30) days.

5. Change of ownership interest in POMTOC occurring

without compliance with this Agreement and/or failure to submit ownership list within three (3) days upon the receipt of a written request by the Port.

6. Failure to promptly cease any activity upon receipt of Notice from the County which may cause unreasonable limitation of County's or others' use of the POMTOC facility. However, this clause may not be exercised by the County for the sole purpose of re-apportioning or re-allocating any portion of the lease property.

7. Misrepresentation of any material fact by Operator, or its agents or employees.

8. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if POMTOC makes the required payment(s) during the fourteen (14) calendar day period, following receipt of written Notice.

9. Any violation of any provision of this Agreement provided herein which remains uncured for a period of fifteen (15) calendar days or more, upon receipt of written Notice by the County, or longer, if cure being undertaken in good faith and requires additional time.

ARTICLE XVIII

18.1 The Operator, its employees, agents, contractors, invitees, and guests shall abide by the Terms and Conditions as contained in the Port of Miami Tariff No. 10 and subsequent tariffs or amendatory provisions, and with all applicable Coast Guard regulations governing the use and occupancy of the Premises, and all applicable local, state, and federal laws, rules, regulations, and orders.

ARTICLE XIX

19.1 The Operator covenants and agrees to yield and deliver peaceably to the Port, possession of the Premises on the date of the cessation of the letting, whether cessation be by termination, expiration or otherwise.

ARTICLE XX

20.1 The Operator shall not assign or transfer any terminal operating rights or privileges granted to it under the terms and conditions of this Agreement, without the prior written approval of the Port. Notwithstanding, the immediately preceding sentence, Operator shall be entitled to permit its members to utilize the Premises for their intended purpose, and to conduct their business within the Premises, and to charge its members charges and fees, all subject to the Port's prior approval, which shall not be unreasonably withheld or delayed, as may be established for such utilization.

The Port shall have the right to terminate this Agreement and the letting hereunder, whenever the Operator fails to keep, perform or observe any material agreement, covenant or provision set forth in this Agreement. In the event of a breach of any covenant of this Agreement on the part of the Operator, the Port shall advise the Operator in writing of the default and the Operator will have a period of thirty (30) days from receipt of such Notice (the "Grace Period"), except as otherwise provided, to correct the default. If such default is not corrected within the Grace Period (or if such default is not capable of being corrected within the Grace Period, or if Operator does not promptly commence to remedy such default within the Grace Period and diligently pursue such remediation efforts), the Port may give written notice to the Operator terminating this Agreement. In the event of termination pursuant to this Article, this Agreement shall cease and expire as of the date that Notice of Termination is dispatched. Operator shall be responsible for all unpaid rent and other charges up to the date of termination of this Agreement after notification to vacate has been issued by the Port in the manner as provided in Article IV.

ARTICLE XXI

21.1 NOTICES:

All Notices and other communications provided for hereunder shall be in writing, delivered certified mail, return receipt requested, to the following:

(a) If to POMTOC:
with a copy to:
Executive Director
Port of Miami Terminal Operating Company, L.C.
1007 North America Way, Suite 301
Miami, Florida 33132

(b) If to the County:
Board of County Commissioners
of Dade County, Florida
111 N.W. 1st Street, 2nd Floor
Miami, Florida 33128

with a copy to:

Metropolitan Dade County Seaport Department 1015 North America Way Miami, Florida 33132 Attn: Seaport Director	&	Metropolitan Dade County Office of County Attorney 111 NW 1st Street, Ste 2800 Miami, Florida 33128 Attn: Seaport Item

ARTICLE XXII

22.1 FIRE OR OTHER CASUALTY:

If the Premises, the Improvements or the Equipment shall be damaged by fire or other casualty not attributable, in whole or in part, to Operator, its agents, employees, contractors or guests, but are not thereby rendered untenantable, Port may, at its own expense, forthwith proceed to repair such damage and restore the Premises, not including any of Operator's trade fixtures and or improvements, to substantially restore their condition to that prior to the time of such damage, where practicable and providing sufficient funds are appropriated for such purpose by the Board of County Commissioners. If fifty percent (50%) or more of the Premises, the Improvements and the Equipment shall be rendered untenantable or otherwise unfit for

their intended use by reason of such occurrence, Operator shall have the right, to be exercised by notice in writing, delivered to the Port within sixty (60) days from said occurrence, to elect to terminate this Agreement, and in such event, this Agreement and the tenancy hereby created shall cease as of the date of the said occurrence, the Rent, and all other charges due hereunder, to be adjusted as of such date and to remain due and owing by Operator.

ARTICLE XXIII

23.1 FORCE MAJEURE:

Either party hereto shall be excused from performing any of its respective obligations or undertaking provided in this Operating Agreement, excepting any of its respective obligations or undertakings to pay any sums of money under the applicable provisions hereof owed as of the date of the force majeure event,, for so long as the performance of such obligations are prevented or significantly delayed, retarded or hindered by act of God, fire, flood, hurricane, acts of war (declared or undeclared), invasion, or insurrection, labor strike, not within the reasonable control of the respective party, if such party hereto gives written notice of such delay or hindrance to the other party within twenty (20) calendar days of the occurrence of such event. For purposes of this Section 23.1, a force majeure event shall include, without limitation, any event or occurrence, beyond the control of Operator, its employees, agents, independent contractors, invitees, or guests, that result in a reduction of Throughput into or out of the Premises, in any given year, of more than 50% from the preceding year.

If the Premises, the Improvements or the Equipment are rendered untenantable or unfit, in whole or in part, for the purpose for which intended, by an act of God or other hazard not attributable, in whole or in part, to Operator, its employees, agents, independent contractors, or guests, and Operator does not elect to terminate the Agreement as above provided, the Port shall make a proportionate abatement of the rental fees, charges and the minimum annual guarantee provisions contained within Section 2.2 provided for herein during the period of time that the Premises remain

untenantable or unfit, and this Agreement may, in the Port's discretion, be extended for a like period of time.

ARTICLE XXIV

24.1 RIGHT TO INSPECT PREMISES

Port shall have the right, through its duly authorized agents and representatives, to inspect the Premises at any time without notice, the Improvements and the Equipment at reasonable intervals to determine compliance by Operator with its obligations under this Agreement, provided that the Port does not unreasonably interfere with operations. The Board of County Commissioners and its designated officers, officials, agents and employees, and all law enforcement officers shall have free and full access to and from all areas of the Port of Miami, including the Premises, as well as all piers, waterfront terminals and port terminal facilities, for the purpose of making inspections and enforcement of all federal, state and county laws, ordinances, regulations and tariff provisions, subject to Rules and Regulations regarding U.S. Customs seals and bonded warehouses.

ARTICLE XXV

25. ADDITIONAL PROVISIONS

25.1 Rules of Construction

This agreement shall not be more strictly construed against County or Operator. Except as otherwise provided in this agreement, the singular includes the plural and the plural includes the singular; a reference to a law, ordinance, code, or rule, includes any amendments or supplements thereto.

25.2 Severability

The invalidity of any portion, paragraph, provision or clause of this Agreement shall have no effect upon the validity of any other part or portion thereof.

25.3 Compliance with Applicable Laws, Codes etc.

While conducting any activity on the Premises or on any other County property, Operator shall comply with all applicable local,

State, and federal laws, codes, rules, ordinances, tariffs, schedules, and permits.

25.4 No Exclusive Remedies

No remedy or election given by any provision in this agreement shall be deemed exclusive unless so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

25.5 Governing Law; Venue

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida. Venue shall lie exclusively in Dade County, Florida.

25.6 Entire Agreement

This Agreement, including all exhibits, codes, tariffs, and other attachments referred to herein, contains the entire agreement of County and Operator with respect to the matters stated herein, and may not be modified except by an instrument in writing signed by both parties and delivered by each to the other.

25.7 Taxes and Other Charges

Operator shall pay all applicable property and excise taxes and other governmental charges of any kind whatsoever which are at anytime lawfully assessed or levied with respect to the Premises or any improvements placed thereon by Operator.

25.8 Nuisance

Operator shall not commit any nuisance on the Premises or do or permit to be done anything that may result in the creation or commission of a nuisance on the Premises.

25.9 Radon

Operator accepts and understands that Radon is a naturally occurring radioactive gas which, when it has accumulated in a building in sufficient quantities, may present health risks to

persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding Radon and radon testing may be obtained from you county public health unit.

ARTICLE XXIV

24.1 During the period between the execution of this Agreement and the Effective Date, the members of POMTOC shall continue to operate their businesses within the Port of Miami, subject to and in accordance with their respective leases.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed in their respective corporate names by their appropriate officers, and have their respective corporate seals to be affixed hereto, all as of the day and year first above written.

ATTEST:
HARVEY RUVIN
Clerk of the Board

By: _____
Deputy Clerk

DADE COUNTY, FLORIDA, Owner
By its BOARD OF
COUNTY COMMISSIONERS

By: _____
County Manager

PARTY OF THE FIRST PART

ATTEST:

_____
(Signature)

_____
(Secretary)

PORT OF MIAMI TERMINAL
OPERATING COMPANY, L.C.

By: _____
President, Don T. Quinn

CORPORATE SEAL
PARTY OF THE SECOND PART

EXIBIT A

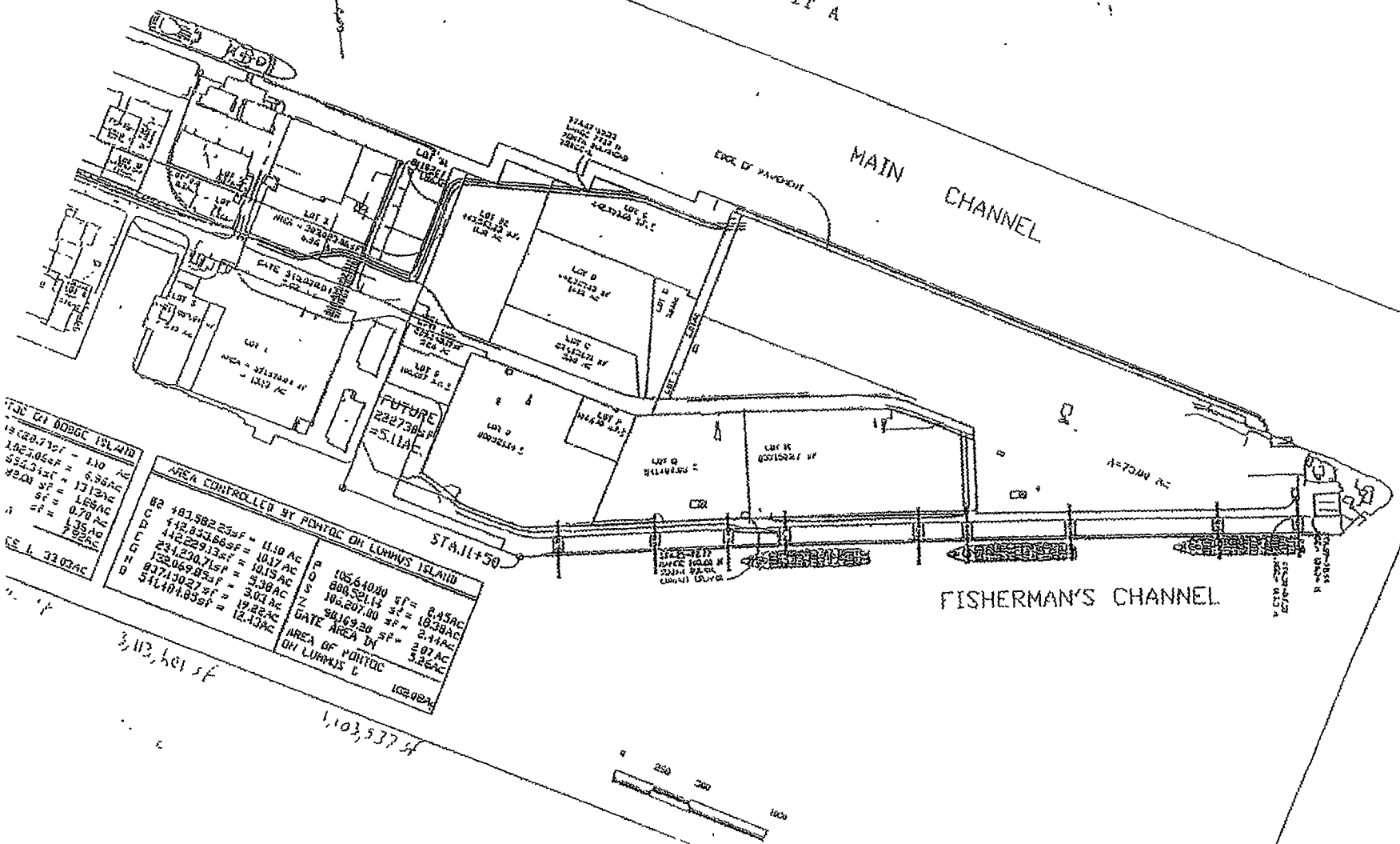
MAIN CHANNEL
FISHERMAN'S CHANNEL
EDGE OF PAVEMENT
FUTURE
=5.11AC
STA.11+50
AREA CONTROLLED BY PONTOC ON LUMMUS ISLAND
AREA OF PONTOC ON LUMMUS I
GATE AREA IN
3,113,461 sf
1,103,537 sf

EXHIBIT B

SUMMARY OF CHARGES

Gate charge	-	$ 3.00 per ~~TER~~ Gate Move each way
Land Rental (135 acres guarantee on 98 acres)	-	0.25 per square foot
Office Trailer	-	8.50 per square foot
Maintenance & Repair Building	-	7.50 per square foot
Rate per TEU	-	19.50 (Only on short fall required to meet TEU per acre guarantee).

All rates are subject to annual review by the Port pursuant to the terms of Art. IV.

EXHIBIT C

OPERATOR'S CONTAINER HANDLING EQUIPMENT

Operator agrees to provide, operate, and maintain container handling equipment sufficient to meet all of its obligations and responsibilities arising under this Agreement. The parties may mutually agree to update this Exhibit from time to time in the future.

EXHIBIT D

Signatory Guarantors

The below-listed companies hereby agree to guarantee all obligations of POMTOC arising from the instant Terminal Operating Agreement pursuant to the terms and limitations of Article 6.1 hereof.

OCEANIC STEVEDORING COMPANY

Donald T. Quinn - President

Witness

FLORIDA STEVEDORING COMPANY

Frank L. Rovirosa, Jr. - President

Witness

S.E.L. MADURO (Florida), INC.

~~[illegible]~~ - President

Witness

CONTINENTAL STEVEDORING AND TERMINALS, INC.

Neal L. Harrington - Director

Witness

EXHIBIT E
CONSUMER PRICE INDEX ADJUSTMENT

FIRST ADJUSTMENT . The Initial Rent for the Premises shall be adjusted after the first twelve (12)-month period of the Term in the manner hereafter set forth. The Base Rent for the twelve (12)-month period subsequent to the first complete twelve (12)-month period of the Term of this Lease shall be computed by multiplying the Initial Base Rent as set forth hereunder, by a fraction, the numerator of which shall be the Consumer Price Index For All Urban Consumers, U.S. City Average (1982-84 = 100), All Items, Bureau of Labor Statistics of the United States Department of Labor for the month, two (2) months prior to the month in which the anniversary of the Effective Date falls, and the denominator of which shall be the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-84 = 100), All Items for the three (3) months prior to the month in which the Effective Date falls; provided, however, that in no event shall the Base Rent, as adjusted, be less than the Initial Base Rent.

SUBSEQUENT ADJUSTMENTS The Base Rent for each twelve (12)-month period subsequent to the first complete twenty (24)-four month period during the Term of this Lease, or any renewal thereof, shall be computed by multiplying the Base Rent, as adjusted, for the prior twelve (12)-month period, by a fraction, the numerator of which shall be the Consumer Price Index For All Urban Consumers, U.S. City Average (1982 -84 = 100), All Items, Bureau of Labor Statistics of the United States Department of Labor for the month, two (2) months prior to the month in which an anniversary of the Effective Date falls, and the denominator of which shall be the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-84 = 100), All Items, for the month, fourteen (14) months prior to the month in which the anniversary of the Effective Date falls; provided, however, that in no event shall the Base Rent for any twelve (12)-month period be less than the Base Rent for any prior twelve (12)-month period.

Exhibit B to Complaint

PORT OF MIAMI TERMINAL OPERATING COMPANY, L.L.C.

POMTOC

1007 N. AMERICAN WAY, SUITE 315
MIAMI, FLORIDA 33132

EFFECTIVE
JUN 25 2003
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

MARINE TERMINAL AGREEMENT
FMC NO. 224-200616-03

1. This Non-substantive modification to **MARINE TERMINAL AGREEMENT FMC-No 224-200616-02,** is filed pursuant to CFR 46 part 535.302 (2), to reflect the change of names of parties to this agreement, the change of names of persons in the agreement and changes in mailing addresses of parties to this agreement.

2. PORT OF MIAMI TERMINAL OPERATING COMPANY, L.L.C., herein known as POMTOC, is a company incorporated in the state of Florida. Pomtoc is owned by four (4) marine terminal operators in the Port of Miami, Florida and are parties to this agreement.

Continental Stevedoring & Terminals, Inc.
701 SE 24th Street
Ft. Lauderdale, FL 3316

Florida Stevedoring, Inc.
125 NE 9th Street
Miami, FL 33132

P&O Ports North America, Inc.
99 Wood Avenue South, 8th Floor
Iselin, NJ 08830

P&O Ports Florida, Inc.
1007 N. America Way, Suite 103
Miami, FL 33132

3. POMTOC is located at: 1007 N. America Way
Suite 315
Miami, Florida 33132

4. This modification is to register the names of new members of POMTOC.

5. Pursuant to Article 7.3 of FMC 224-200616-002 I.T.O. Corporation of Florida and Ocean Stevedoring Company have voluntarily withdrawn from POMTOC.

6. I.T.O. Corporation of Florida and Ocean Stevedoring Company, have been replaced by P&O Ports North America, Inc. And P&O Ports Florida, Inc.

7. Mr. Neal Harrington, will no longer represent Continental Stevedoring & Terminals, Inc. Mr. Frank Rovirosa Jr. Will no longer represent Florida Stevedoring, Inc.

Mr. Louie L. Wainwright, Jr.
Continental Stevedoring & Terminals, Inc.

Mr. Frank V. Rovirosa, III
Florida Stevedoring, Inc.

Mr. Christopher Morton
P&O Ports North America, Inc.

Mr. Christopher Morton
P&O Ports Florida, Inc.

224-200616-002

PORT OF MIAMI TERMINAL OPERATING COMPANY, L.L.C.

RECEIVED

'95 APR 24

POMTOC
1007 N. AMERICA WAY, SUITE 315
MIAMI, FLORIDA 33132

MARINE TERMINAL AGREEMENT
FMC NO. 224-200616

1. This Non-substantive modification to **MARINE TERMINAL AGREEMENT FMC-NO. 224 - 200616,** is filed pursuant to CFR 46 part 572.302 (2) to reflect the change of a name of one of the parties to this agreement, the change of the name of a person in the agreement and mailing address of the company.

2. PORT OF MIAMI TERMINAL OPERATING COMPANY, L. L. C., herein known as POMTOC, is a company incorporated in the state of Florida which is owned by four marine terminal operators in the Port of Miami, Florida and are party to this agreement.

Continental Stevedoring & Terminals, Inc.
Florida Stevedoring, Inc.
I.T.O. Corporation of Florida
Oceanic Stevedoring Company

EFFECTIVE
APR 2 4 1995
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

3. POMTOC is located at: 1007 North America Way
Suite 315
Miami, Florida 33132

4. This modification is to register the name of a new member of POMTOC. Pursuant to Article 7.3 of FMC 224 - 200616 - 001 S.E.L. MADURO (Florida), Inc. has voluntarily withdrawn from POMTOC. S.E.L. MADURO (Florida) has been replaced by I.T.O. Corporation of Florida.

5. R.O. White, Jr. will no longer represent Continental Stevedoring & Terminals, Inc. He is replaced by Neal Harrington, Director

Neal Harrington
Director
Continental Stevedoring & Terminals, Inc.

Frank L. Rovirosa, Jr.
President
Florida Stevedoring, Inc.

James S. Field
President
I.T.O. Corporation of Florida

Donald T. Quinn
President
Oceanic Stevedoring Company

224-200616-001

GENERAL INDEX

OPERATING AGREEMENT AMONG CONTINENTAL STEVEDORING & TERMINALS, INC., FLORIDA STEVEDORING, INC., OCEANIC STEVEDORING, INC., and SEL MADURO (Florida), INC. for PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C.

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UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

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PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C.
OPERATING AGREEMENT

AGREEMENT, dated as of February 15, 1993, by and among Continental Stevedoring & Terminals, Inc., a Florida corporation, ("CST"), Florida Stevedoring, Inc., a Florida corporation ("FS"), Oceanic Stevedoring, Inc., a Florida corporation ("OS"), and SEL Maduro (Florida), Inc., a Florida corporation ("SEL "); CST, FS, OS and SEL being hereinafter sometimes referred to individually as a "Member" and collectively as the "Members".

W I T N E S E T H:

WHEREAS, the parties hereto desire to contribute certain of their contracts, equipment leases, good will, skills, etc. to further develop their collective businesses at the Port of Miami or other location(s) in Dade County, Florida; and

WHEREAS, the parties hereto have determined it is in their best interest to form and invest in the limited liability company contemplated hereby, and desire to enter into this Agreement, setting forth the terms and conditions thereof.

NOW THEREFORE, in consideration of the agreements set forth herein, the parties hereto agree as follows:

1. The Company.

1.1 Formation. The Members hereby agree to organize and form a limited liability company, under the laws of the State of Florida, for the purpose set forth in subsection 1.2 hereof (the "Company"). The name of the Company shall be "Port of Miami Terminal Operating Company, L.C." ("POMTOC") or such other name as may be agreed upon by the Members. The Certificate of Organization

of the Company (the "Certificate of Organization") shall be substantially in the form of Exhibit "A" hereto.

1.2 Purpose. The purpose and business of the Company shall be to conduct, in the Port of Miami or other locations in Dade County, Florida cargo handling, container stuffing and stripping, maintenance and repair, handling equipment (containers, trailers, chassis and related equipment), management of pooled cargo handling equipment, trucking and incidental activities related thereto, at a terminal(s) the Company operates and/or is operated by other parties. Such activities as setforth above conducted by each Member or any affiliate thereof (as defined in subsection 3.4 hereof), in the Port (but excluding, in any event, any stevedoring or agency business of such Member or affiliate and any Member's or related entities present or future trucking operations) are sometimes referred to herein as the "Business" of such Member or the Company.

1.3 Principal Place of Business. The principal place of business of the Company shall be located in Dade County, Florida.

1.4 Certificates, Etc. The Members agree to cause to be filed the Certificate of Organization and such other appropriate certificates and instruments, and shall take and all other action as may be required, to organize and continue the Company as contemplated in this Agreement.

1.5 Commencement Date. The date on which the Company shall commence business shall be not later than February 15, 1993 and the date on which the Members shall make their respective capital contributions pursuant to Section 2 hereof, shall be

February 15, 1993 or such other date as the Members shall agree (the "Commencement Date"), but in no event later than February 28, 1993. Provided however, the Commencement Date may be postponed in accordance with subsection 2.5 and Section 10 hereof. Additional contributions in the amount, kind and time shall be as agreed upon.

2. Capitalization, Participation and Contributions.

2.1 Capitalization. The authorized capitalization of the Company shall not exceed One Hundred Thousand ($100,000) Dollars and shall be evidenced by Certificates of Membership evidencing each Member's Participation, as defined in the Articles of Organization (individually a "Certificate" and collectively the "Certificates"), which Certificates shall be unrestricted as to voting, distribution, liquidation rights and transferability, except as more fully set forth herein or in the Articles of Organization.

2.2 Payment for Participation; Issuance of Certificates. In payment for the Certificates to be issued for Participation, each Member shall pay to the Company the sum of Five Thousand ($5,000) Dollars. Such payments shall be made in accordance with the times setforth in subsection 1.5 and the Certificates issued upon such payment.

2.3 Transfer of Non-Owned Assets of Each Business. On the Commencement Date, CST, FS, OS and SEL shall convey and contribute to the Company as an additional capital contribution, and they shall have the right to convey and contribute, at the time of transfer of the Certificates pursuant to subsection 2.2 hereof, in each case free and clear of any adverse claims or encumbrances,

(except as set forth in the Instruments of Assumption pursuant to subsection 2.6) all right, title and interest in and to all of the businesses, rights, properties and assets leased, employed or used by each Member (excluding owned assets), respectively, in connection with its Business to be transferred, personal, tangible and intangible, of every kind and nature, as the same exists on the date hereof, including, but not limited to; all machinery, equipment, furniture, supplies and other personal property; all contracts and agreements with third parties and rights and claims against third parties; all rights to customers, customer lists and business opportunities relating to its Business; all good will, trade names, brands and marks and other intangibles used in connection with its Business; and all books and records relating to said Business. Notwithstanding the foregoing, none of the following assets of any Business are being contributed hereby: (i) assets placed in the equipment rental pool pursuant to subsection 3.1 hereof, (ii) assets owned, (iii) cash and cash items; (iv) accounts receivable or similar rights to payment; (v) real property; (vi) the business headquarters of any Member; and (vii) any records or other assets required to be retained by any Member under applicable law. The assets to be contributed and conveyed hereunder are more fully set forth in the respective Instruments of Transfer referred to in subsection 2.4 hereof. Provided however, the transfer time setforth herein may be postponed in accordance with subsection 2.5 and Section 10 hereof.

2.4 Instruments of Transfer. The Members shall deliver such duly executed, assignments and/or other Instruments of

Transfer as are necessary in order to convey and transfer to the Company full and marketable right, title and interest in and to the assets assigned or contributed by them pursuant to subsection 2.3 hereof. Any and all sales, use, transfer or similar taxes, if any, on said contributions shall be paid by the Company. Copies of the fully executed Instruments of Transfer when executed will be attached hereto as Composite Exhibit "B".

2.5 Consents, Approvals, Etc. of Third Parties For Asset Transfer. Notwithstanding any of the foregoing provisions to the contrary, if the assignment and transfer under this Section 2 of any assets, business, rights or properties require the consent, approval or other action with respect to the Federal Maritime Commission or any other governmental or regulatory authority, or any other third party, the Member required to transfer the same shall use its best efforts to obtain such consent or approval or take such other action, and shall enter into any lawful arrangement necessary to provide the Company with the benefits of such assets, business, rights or properties, and no such transfer or assignment shall be deemed made until such consent, approval or other action shall have been duly obtained or taken.

2.6 Assumption of Contracts; No Other Assumption of Liabilities. Concurrently herewith, the Company shall, by an appropriate Instrument of Assumption, assume the performance of all obligations under the contracts described therein and relating to any Business which arise or accrue after the date of transfer. Except as aforesaid, the Company is not assuming any of the obligations or liabilities of any Member including, without

limitation, any of the liabilities of or related to the Business of such Member. Each Member hereby agrees to indemnify and hold harmless the Company,and each of the other Members, from and against any and all losses, liabilities, claims and expenses relating to the Business of such Member and arising prior to the date of contribution. Copies of the Instruments of Assumption when executed will be attached hereto as Composite Exhibit "C".

2.7 Additional Capital Contributions; Guarantees. Each Member agrees to make from time to time additional capital contributions or loans to the Company when and as requested by the Members of the Company provided, however, that such contributions or loans shall be made according to each Member's Participation as set forth in the Company's books and records, as may be amended from time to time. Presently the payment for each Participation shall be equal; therefore, the Participation of each Member shall be equal. The Members further agree to enter into such guarantees of bank indebtedness or similar loans made from time to time to the Company, when and as requested by the Members, provided however, that the Members shall share in proportion to their Participation all liability with respect to such guarantees and that each Member shall promptly reimburse each other Member for its proportionate share of any payment made by any Member pursuant to such guarantees. Notwithstanding anything herein to the contrary, no Member shall be required to make any capital contribution, loan or guaranty if the aggregate outstanding amount thereof (whether absolute or contingent), together with the value of its capital contributions pursuant to subsections 2.2 and 2.3 hereof and any

and all other investments in or advances to the Company, would exceed Two Hundred Thousand ($200,000) Dollars.

3. Additional Agreements of the Members.

3.1 Pooled Assets. It is contemplated that within ninety (90) days of the Commencement Date the parties hereto shall endeavor to enter into a separate equipment pooling agreement ("Pooling Agreement") whereby certain Members' assets (the "Pooled Assets") shall be available for use in the respective businesses and operations of the Company and its Members, upon such terms and conditions as may be provided in such Pooling Agreement; provided however, the use of the Pooled Assets by any Member shall not in any manner unreasonably interrupt the Company's operations. A copy of the Pooling Agreement shall be attached as Exhibit "D" hereto when fully executed.

3.2 Non-Competition.

Each Member agrees that throughout the term of existence of the Company and of any successor business permitted by subsection 7.6 hereof, it will not, directly or indirectly engage in or conduct, at the Port, or any other location within Dade County, Florida, any of the Business activities conducted by the Company or any successor permitted by subsection 7.6 hereof, including without limitation, the Business theretofore conducted by such Member, such agreement to survive any transfer or other disposition by any Member of its Certificates but to terminate upon the first to occur of: (i) three (3) years after the purchase of such Member's Certificates pursuant to the provisions of subsections 7.3, 7.4 or 7.5 hereof; or (ii) the dissolution of the

Company where no Member has the right, under subsection 7.6 hereof, to continue the Business of the Company. Provided however, if in the event a Court of competent jurisdiction shall determine any provision of this subsection 3.2 to be invalid or unenforceable by reason of the time period set forth therein, then said subsection shall be enforced to extent it shall not be in conflict with the laws of the State of Florida. Each Member shall cause each of its affiliates to comply with the terms of this subsection 3.2. As used herein, an "affiliate" shall mean any corporation or other entity which, directly or indirectly, controls, is controlled by, or is under common control with, such Member. For purposes of the foregoing sentence, "control" shall mean the direct or indirect power, either alone or in conjunction with others, to direct the management or policies of a corporation or other entity.

3.3 Confidentiality. Each Member agrees that during the existence of the Company and, for the non-compete period set forth in subsection 3.2 herein, it shall, except as may be otherwise required by applicable law or the Business of the Company, keep confidential all material information relating to the Company, its assets and Business which are not generally known to the public.

4. Management of the Company.

4.1 Managers (Agents). The overall management and control of the business and affairs of the Company shall be vested in the Members who shall appoint eight (8) Agents or Managers (the "Managers"), two (2) of whom shall be appointed annually by each of CST, FS, OS and SEL, so long as the Participation of each shall be equal to that of all other Members. The Managers shall act

pursuant to specific revocable written instruction of limited duration. It is acknowledged, that while each Member will appoint two (2) Managers, a particular Member's Managers must vote the same on all issues. The Managers, with the consent and approval of the Members, shall adopt the initial Regulations substantially in the form of Exhibit "E" hereto (the "Regulations") with respect to the conduct of Business of the Company. Each Member shall also appoint one (1) alternate Manager in the event an appointed Manager is unable to attend and/or act at any meeting.

4.2 Voting. Each Member agrees to and/or will direct its Managers to vote its Participation and any and all other securities of the Company having voting rights held by it, as follows: (i) for the election of eight (8) Managers of the Company two (2) of whom shall be appointed from time to time by each Member; (ii) upon any vacancy among the Managers for any reason (whether by death, removal with or without cause, or otherwise), for the election of a successor thereto appointed by the Member entitled to designate the Manager as to which such vacancy has occurred; (iii) for any dissolution and liquidation of the Company,when and as required by any of the provisions of Section 7 hereof; (iv) upon amendments to the Certificate of Organization or the Regulations for the Company only to the extent the same are consistent with the provisions of this Agreement; and (v) for such other action, consistent with applicable law, as may further the intents and purposes of this Agreement. The Members acknowledge that the agreement set forth in this subsection 4.2 shall be effective for a period of ten (10) years. However, the Members agree that on or about eight (8)

years from the date hereof, the Members shall extend the duration of this Agreement herein for an additional ten (10) year period. Provided however, should the laws of the State of Florida, now in force or hereafter enacted, or a court of competent jurisdiction determine that the time period set forth in this subsection are too long, then the time periods set forth herein shall be automatically amended to comply therewith. Should for any reason the Participation of the Members not be equal, then the makeup and rights to appoint Managers shall be governed by subsection 4.3 hereof. Such agent(s) or manager(s) shall act pursuant to a specific revocable written instruction of limited duration.

4.3 Redistribution of Withdrawing Member's Participation. The Members agree should there be a redistribution of the Participation due to withdrawal of a Member for any reason, conveyance of Certificate due to a Member's reorganization, bankruptcy or similar event, etc., on other than a prorata basis, the redistribution of the Participation of the Withdrawing Member shall be based on the Participation each remaining Member owns of the total Participation of the remaining Members other than the Withdrawing Member and the Members will amend the Articles of Organization, the Regulations and this Agreement to reflect such changes, including but not limited to the voting and distribution rights and number of Managers each shall have. If no agreement can be reached within ninety (90) days of the first notice of the event causing the need to amend this Agreement, the provisions of subsection 4.7 shall apply.

4.4 Action by the Managers. As more fully provided in the Regulations, all actions of the Managers shall require the affirmative vote of at least six (6) Managers, it being acknowledged that the intent hereof is to require the affirmative vote of at least a majority of the Managers appointed by the four (4) Members.

4.5 Executive Director. The Managers shall appoint an Executive Director for the Company, who shall be its chief executive officer and shall have general charge of the Business and affairs of the Company and shall exercise such other powers and perform such duties as may be from time to time assigned by the Managers or as provided for in the Regulations.

4.6 Major Decisions by the Members. Notwithstanding the provision of the other subsections hereof, no act shall be taken, sum expended, decision made or obligation incurred by or on behalf of the Company with respect to any matter referred to below ("Major Decisions"), unless such Major Decisions shall have been approved by the act of the Members in accordance with this Agreement which requires the unanimous affirmative vote of all the Members. The following shall be deemed to be Major Decisions:

(a) any sale, transfer or other disposition by the Company of any of its securities or of any right to acquire any such securities;

(b) any change in the purpose or scope of the Company as set forth in subsection 1.2 hereof;

(c) any acquisition by the Company, directly or indirectly, of an ongoing business, whether by acquisition of stock or assets;

(d) any change of name of the Company;

(e) any pledge, mortgage or encumbrances, sale, lease, transfer or other disposition of any material portion of the assets or business of the Company, except pursuant to a dissolution in accordance with the provisions hereof, and except in the ordinary course of business. Material shall be defined for the purpose of this subsection to mean Ten Thousand ($10,000) Dollars or more;

(f) any direct or indirect merger or consolidation of the Company with or into any other person or entity;

(g) the creation or implementation of any committee of the Managers.

(h) authorizing the distribution of any cash or property to any Member except distributions expressly required pursuant to this Agreement (as defined herein);

(i) authorizing the occurrence of indebtedness, other than trade payables incurred in the ordinary course of business (except for indebtedness, the material terms and amount of which was provided for in a budget previously approved by the Managers).

(j) requesting or requiring additional capital contributions, loans or guarantees from any Member;

(k) approving the annual business plan of the Company;

(l) approving the annual budget of the Company;

(m) selecting or varying any depreciation or other accounting methods, changing the fiscal year of the Company, selecting or changing the auditors retained by the Company, or making any other major policy decisions with respect to the treatment of transactions for accounting or tax purposes;

(n) executing any contract, agreement or other instrument, making any expenditures or incurring obligations involving a sum in excess of Ten Thousand ($10,000) Dollars for any transaction or group of similar or related transactions (except for expenditures made and obligations provided for in a budget previously approved by the Managers);

(o) authorizing the initiation, adjustment, settlement or compromise of any material claim, obligation, debt, demand, suit or judgment by or against the Company;

(p) authorizing any matter relating to the employment of the Executive Director or the hiring of any person whose annual base salary is expected to be in excess of Forty Thousand ($40,000) Dollars or whose employment is other than terminable at will;

(q) authorizing any disposition or acquisition of capital assets of or by the Company in excess of Ten Thousand ($10,000) Dollars, (except for expenditures made and obligations provided for in a budget previously approved by the Managers);

(r) approving any employee benefit plans or arrangements to be offered by the Company to its employees generally;

(s) authorizing any investment in, loan to or guaranty of the obligations of any person or other entity other than in the ordinary course of business, except for investments in obligations of the United States, and in short-term certificates of deposit or similar instruments issued by commercial banks having capital and surplus of at least Five Million ($5,000,000) Dollars, to utilize temporary cash surpluses of the Company;

(t) authorizing any transaction with any person, corporation or other entity which is affiliated with any Member, except for transactions in the ordinary course of business which involves the receipt or payment by the Company of Five Thousand ($5,000) Dollars or less;

(u) creating any subsidiary or affiliate of the Company;

(v) appointing or removing any officers of the Company or any officer or director of any subsidiary or affiliate of the Company; and

(w) approving any other decision or action which materially affects the Company or the assets or operations thereof (including, but not limited to, the appointment or termination of, or material modification of any arrangement with, any supplier, labor union, shipper, terminal agent or similar person with respect

to the services of the Company), or which is not in the ordinary course of business of the Company.

4.7 Unanimity Requirements; Procedure on Deadlock. Each of the Members acknowledges that the intended purpose and effect of subsection 4.6 hereof and of certain provisions of the Regulations is to require unanimity with respect to any and all decisions having a material effect upon the Business and affairs of the Company. It is understood that each Member shall use its best efforts to reach mutual agreement on matters affecting the Company, having due regard for the best interests of the Company and the other Members. However, if notwithstanding such efforts, the Members shall be unable to take action or otherwise agree with respect to any matter material to the affairs of the Company, it is agreed that each Member shall have the right to seek arbitration pursuant to subsection 9.7 hereof. For such purpose, the Members agree that all matters described in subsection 4.6 hereof shall be deemed to be material, unless the nature thereof, or other circumstances, indicate otherwise. It is further agreed that any dispute by the parties as to whether a matter is material, shall be submitted to arbitration in accordance with subsection 9.7 hereof.

4.8 Selection of Senior Manager. The Members agree that the right to nominate a Senior Manager shall rotate among them on an annual basis, in such order as they shall determine.

5. Employees.

The Managers in their sole discretion may employ and/or retain such employees of the Company as the Managers after

consultation with the Executive Director, shall determine from time to time.

5.1 Compensation and Reimbursement of Members. Except as expressly provided for herein, or as determined by the Members no payment shall be made by the Company to any Member for the services of such Member or any stockholder, director or employee thereof, and none shall be entitled to any compensation or reimbursement from the Company or any other Member for expenses incurred in connection with the Business of the Company.

6. Distributions, Returns, Accounting Matters, Etc.

6.1 Distributions. Distributions to the Members shall be made at such time or times as the Members shall determine, but in no event less often than quarterly, after taking into account the current and projected financial requirements of the Company's Business.

The Members agree that management fees and/or distributions will not be based only on a Member's Participation in the Company, but will also relate to the revenue throughput of each of the Members. Accordingly, the Members agree that the issue of management fees and/or distributions will be the subject of a separate agreement among the Members, as they may agree from time to time.

6.2 Tax Returns. The Executive Director shall cause to be prepared all tax returns and statements required to be filed on behalf of the Company with any taxing authority and shall submit such returns and statements to the Managers for their approval at

least thirty (30) days prior to the date the same are required to be filed and when so approved, the Executive Director shall cause such returns and statements to be filed in a timely manner. In addition, the Executive Director shall furnish each Member, at such times as any Member may reasonably request, and in any event within forty-five (45) days after the end of each fiscal year, with a report setting forth in sufficient detail all such data and information regarding the Company as shall enable the Company and each Member to prepare its Federal, state and local tax returns.

6.3 Tax Matters Partner. The Members shall annually appoint a Tax Matter Partner with such responsibility and authority as setforth in the Regulations. The initial Tax Matters Partner shall be Donald T. Quinn.

6.4 Fiscal Year. The fiscal year of the Company shall be the year ending December 31.

6.5 Books of Account; Inspections. The books of account and records of the Company (the "Books") shall be kept and maintained at all times at the principal place of business of the Company or such other place as may be approved by the Managers. The Books shall show all items of income and expense and shall be maintained in accordance with generally accepted accounting principles consistently applied, with such exceptions, if any, as shall be approved by the Managers. Each Member shall have the right, upon one (1) day written notice, during usual business hours to audit, examine and make copies from the Books. Such right may

be exercised by any agent or employee of such Member appointed in writing and shall be at such Member's expense.

6.6 Financial Statements. The Executive Director shall cause to be prepared and furnished to each Member: (i) within twenty (20) days after the end of each month, a statement of operations of the Company for such month; (ii) within sixty (60) days after the end of each fiscal year, a balance sheet of the Company and related statements of income or loss and changes in financial position as of the end of and for such year, audited by a firm of independent certified public accountants selected by the Members; and (iii) such other financial statements or other reports as the Members or Managers shall request from time to time.

7. Term; Transfers; Sales of Certificates; Dissolution.

7.1 Term. The Company shall continue until the first to occur: (i) December 31, 2021; or (ii) dissolution pursuant to the provisions of the Florida Limited Liability Law or the Regulations of the Company; or (iii) the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a Member or any other event which terminates the continued membership of a Member in the Company (unless the Business of the Company shall be continued upon written consent of a majority of the remaining Members). No Member shall have the right to dissolve, wind up or liquidate the Company or to petition a court for the dissolution, winding up or liquidation of the Company, except as provided in this Agreement.

7.2 Restrictions on Transfer. Except as provided in subsections 7.3, 7.4 and 7.5 hereof, no Member may, directly or

indirectly, sell, transfer, assign, dispose, pledge or otherwise encumber (whether by operation of law or otherwise) any or all of its Participation, Certificates, or other securities of the Company (for purposes of this Section 7, collectively referred to as "Interest") held by such Member, without the prior written consent of the other Members and any attempt to do so shall be void; provided, however, that any Member may, without such consent, transfer such Interest to a person or entity controlling, controlled by, or under common control with such Member, but only if such transferee agrees in writing to be bound by this Agreement, and provided, further, that such transfer shall not operate to release such Member of its obligations hereunder or constitute an assignment of its rights under this Agreement.

7.3 Voluntary Withdrawal. At any time: (i) the Company shall have a net loss, in any fiscal year in excess of Eight Hundred Thousand ($800,000) Dollars; or (ii) on or after February 15, 1998 (but provided, in each such event, that there is no outstanding offer pursuant to subsection 7.4 hereof), any Member (the "Withdrawing Member") shall have the right to terminate its Interest in the Company by giving written notice thereof to the Company, which notice shall constitute an irrevocable offer by the Withdrawing Member to sell all its Interest to the Company, at the purchase price provided for herein (the "Withdrawal Price") and the other terms of this subsection. Within sixty (60) days after receipt of such notice, the Company shall give written notice to the Withdrawing Member as to whether or not it elects to acquire

such Interest of the Withdrawing Member. If the Company elects not to acquire the Interest of the Withdrawing Member, then the Company shall be dissolved, wound up and liquidated, and its assets shall be distributed as promptly as practicable, in accordance with the terms of this Agreement and applicable law. As used herein, the Withdrawal Price shall mean a price equal to One Hundred Ten (110%) Percent of the net book value (determined as hereinafter provided) of the Interest as of the last day of the month in which written notice is received by the Withdrawing Member hereunder. Net book value shall be determined by the firm of independent certified public accountants regularly retained by the Company, who shall submit to the Company and each Member, within forty-five (45) days following the giving of the aforesaid notice by the Withdrawing Member, a report setting forth in reasonable detail its determination thereof. Net book value shall be determined in accordance with generally accepted accounting principles, with such exceptions and on the same basis as is applied in preparing the audited financial statements of the Company. In the event that the Withdrawing Member also holds indebtedness of the Company, such indebtedness shall be satisfied by the Company upon its purchase of the Interest of the Withdrawing Member and any indebtedness of the Withdrawing Member held by the Company shall be credited toward the Withdrawal Price paid by the Company, such credit being equal to the unpaid principal amount thereof plus accrued and unpaid interest to the date of purchase. The closing for any sale of Interest pursuant hereto shall take place at the principal office

of the Company on a date forty-five (45) days after the delivery by the accountants of its report as to the Withdrawal Price, or at such other place and date as the Withdrawing Member and the Company shall agree.

Notwithstanding anything contained herein to the contrary, no Member shall be entitled to so offer its Interest hereunder more than once in any twelve (12) month period.

7.4 Right of First Refusal. If any Member (the "Selling Member") shall receive a bona fide good faith offer (other than an offer pursuant to subsection 7.3 hereof) from an unaffiliated third party to purchase all (but not less than all) of its Interest, which such Member in good faith wishes to accept, it shall first give not less than ninety (90) days prior written notice thereof to the Company which notice shall describe all the terms and conditions of said offer and identify the proposed purchaser, and shall constitute an irrevocable offer to sell all the Selling Member's Interest to the Company on the terms set forth in such notice. Within forty-five (45) days after its receipt of such notice, the Company shall give written notice to the Selling Member as to whether or not it has elected to purchase the Selling Member's Interest. Such purchase shall be made upon the terms and conditions described in the aforesaid notice by the Selling Member, within sixty (60) days after receipt by it of the aforesaid notice from the Company at a closing at the principal office of the Company or at such other place and date as the Selling Member and the Company shall agree. Any indebtedness between the Company and

the Selling Member shall be satisfied or credited, pursuant to the terms of subsection 7.3 hereof. In the event that such offer involves the payment of consideration other than cash, the Company shall have the right to substitute for such consideration an amount of cash which, unless otherwise agreed by the parties to the transaction, shall be determined by an appropriate expert retained by the Company and reasonably satisfactory to the Selling Member and the Company.

In the event that the Company elects to not purchase the Selling Member's Interest, as herein provided, the Selling Member shall be free, during the ninety (90) day period following receipt by it of the aforesaid notice from the Company to sell its Interest to the unafilliated third party, in the manner and at the price set forth in the aforesaid Selling Member's notice, provided that said purchaser executes and delivers to the Company and each of the Remaining Members, at or prior to the time of such transfer, an agreement to be bound by the terms and provisions of this Agreement and any other documents necessary to bind purchaser hereunder. In the event of such sale, any indebtedness of the Company held by the Selling Member shall be assumed by the purchaser upon the closing of such sale and any indebtedness of the Selling Member held by the Company shall be satisfied by the Selling Member upon the closing of any such sale hereunder. In the event that the Selling Member's Interest is not sold within such ninety (90) day period, the sale of such Interest shall once more become subject to all the provisions of this subsection 7.4.

Notwithstanding anything contained herein to the contrary, no Member shall be entitled to so offer its Interest hereunder more than once in any twelve (12) month period.

7.5 Default. If any Member fails to perform any of its obligations hereunder or violates in any material respect the terms of this Agreement or any agreement delivered pursuant hereto, and such default is not cured within thirty (30) days after such Member receives written notice of the same from the Company or one or more of the non-defaulting Members, then the Company shall have the right to: (i) bring any proceeding in the nature of specific performance, injunction or other remedy, it being acknowledged that damages at law may be inadequate for a default or threatened breach of this Agreement; (ii) bring any action at law by or on behalf of the Company or the non-defaulting Member(s) as may be permitted in order to recover damages; (iii) institute and/or cause to be instituted such proceedings as may be appropriate under applicable law to secure an accounting and to dissolve, wind up and liquidate the Company; (iv) require the defaulting Member to sell all of its Interest to the Company, for a price equal to the net book value of such Interest, (determined pursuant to subsection 7.3 hereof), and in accordance with the terms and conditions contained in subsection 7.4 hereof less any indebtedness the Selling Member may have to the Company as if such Member had given notice of its intent to withdraw from the Company as of the time of notice of such default; or (v) pursue any other remedy it may have under applicable law. Should the Company fail to take action in

accordance with one of the foregoing alternatives within a reasonable period of time, then one or more of the non-defaulting Members shall have the right to pursue one or more of the alternatives set forth in subsection 7.5 (i), (ii), (iv) and (v).

7.6 Events of Dissolution. In the event that any of the following events ("Events of Dissolution") shall occur: (i) the dissolution, liquidation or termination of a Member; (ii) the withdrawal of any Member pursuant to subsection 7.3 hereof whereby the Company does not elect to acquire the Interest of the Withdrawing Member; (iii) the occurrence of any default with respect to a Member giving the remaining Members a right to dissolve the Company pursuant to subsection 7.5 hereof; or (iv) if any Member shall file a voluntary petition in bankruptcy or be adjudicated a bankrupt or insolvent, or shall otherwise seek any relief for debtors, or shall seek or acquiesce in the appointment of any trustee or receiver for any substantial part of its property, or if a bankruptcy petition or other petition or order shall be entered under any bankruptcy or insolvency statute and such Member shall acquiesce in the same, or such order or petition shall be unstayed or undismissed for a total of sixty (60) days; or if a Member shall be insolvent or unable to pay its debts as they mature; then, upon the affirmative vote of all of the remaining Members, other than the Member as to which the Event of Dissolution has occurred (the "Dissolving Member"), and immediately upon written notice to all Members: (i) the remaining Members(s) shall take all action necessary to dissolve and liquidate the Company, as

promptly as practicable, and may send such notices of the dissolution to such persons and entities as it or they may deem appropriate; (ii) the remaining Members shall settle the Business of the Company as expeditiously as practicable and account for the interest of all Members; (iii) except as otherwise contemplated hereby, the goodwill of the Company (including records and files) shall belong to and remain solely vested in the Company; and (iv) except in the event of a dissolution pursuant to subsection 7.3 hereof, the remaining Member(s) shall have the right to continue the Business and affairs of the Company, in such form as they shall agree.

7.7 Liquidation. In the event of a liquidation and distribution of the assets of the Company as a result of an Event of Dissolution pursuant to subsection 7.6 hereof, the Dissolving Member shall assist the remaining Members in the dissolution of winding up of the Company and the distribution of the assets thereof. Upon such distribution and winding up, the parties hereto shall be relieved of all obligations hereunder except as expressly contemplated hereby and except for obligations, duties or rights which have not been determined or ascertained as of the date of such termination, and for such other rights or remedies which a non-defaulting Member(s) may have against a defaulting Member(s) at law or equity. During the period of such winding up, the Business and affairs of the Company shall be conducted so as to maintain and preserve the assets of the Company in manner consistent with the winding up of the affairs thereof.

Should there be a disagreement as to the procedures for or manner and amount of any distribution, it shall be submitted for determination by Arbitration in accordance with subsection 9.7, with the direction to the Arbitrators to apply partnership distribution guidelines to the extent they are not inconsistent with the provisions hereof.

Upon any liquidation or winding up, and after duly paying or providing for all amounts due to third parties, in accordance with applicable law, the Company shall, in distributing the remaining assets to the Members, and to the extent practicable, reassign and convey to each Member the respective assets, properties, rights and interests contributed by such Member to the Company pursuant to Section 2 hereof, insofar as the same remain assets of the Company at the time of such distribution and to the extent each Member is lawfully entitled to receive the value thereof.

8. Representations and Warranties of the Members. Each Member represents and warrants to the other Members and to the Company, with respect to itself and its Business, as follows:

8.1 Standing. Such Member is a corporation duly organized, validly existing in good standing under the laws of the state of its incorporation and qualified to conduct business in Florida, with full corporate power and authority to enter into this Agreement and carry out the transactions contemplated hereby.

8.2 Authorization, Enforceability, Etc. This Agreement and the other agreements to be executed by it hereunder have been

duly authorized by all necessary corporate action and are valid and binding obligations of such Member enforceable in accordance with their terms, and neither the execution and delivery thereof nor the consummation of the transactions contemplated thereby will conflict with or result in a breach of the provisions of its charter documents or any material agreement to which it is a party or the terms of any order, writ, injunction, decree, law, statute, rule or regulation applicable to it, or interfere with or adversely affect the ability of the Company to carry on the Business of such Member, substantially on the same basis as heretofore conducted.

8.3 Title. Such Member has good and marketable title to all of its assets, leases and properties to be contributed to the Company pursuant hereto, free and clear of all adverse claims and encumbrances, except as set forth on the Instruments of Assumption set forth as Exhibit "C" hereto.

8.4 Litigation. There are no suits, actions or governmental proceedings pending, or to the best of such Member's knowledge, threatened, against or relating to the Business of such Member which may materially and adversely affect such Business or any of its properties, assets or business. To the best of such Member's knowledge, neither it nor its Business has engaged in any activity or omitted to take any action, as a result of which it is in violation in any material respect of any law, rule, regulation, statute, order, injunction or decree, or any other requirement of any court or governmental or regulatory body, applicable to it or

its properties, business or employee benefit plans or labor practices.

8.5 Consents. Each Member and its Business have all consents, permits, appointments, approvals, licenses, certificates and franchises necessary for the operation of such Business and the continuing operation thereof by the Company on substantially the same basis.

8.6 Disclosure. To the best of such Member's knowledge, there is no material fact relating to its Business, or the assets, business, operations or prospects of the Company, which has not been disclosed in writing to the other Members or otherwise known to them.

8.7 Securities Act, Etc. The Participation and Certificates to be acquired by each Member pursuant hereto are being acquired for its own account, for investment and not with a view toward any public offering thereof, within the meaning of the Securities Act of 1933, as amended (the "Act"). Such Member acknowledges that such Certificates have not been registered under the Act, that the Company is under no obligation to so register such Certificates and that in the absence of such registration, or an exemption therefrom, such Certificates may be required to be held for an indefinite period of time. Such Member further confirms that the Company may affix appropriate legends to the Certificates intended to assure compliance with the provisions of the Act, with applicable Florida limited liability law and with the restrictions upon transfer imposed by this Agreement.

THE CERTIFICATES AND PARTICIPATION PURCHASED IN THIS COMPANY EACH MEMBER WILL BE SOLD TO, AND ACQUIRED BY EACH MEMBER IN A TRANSACTION EXEMPT UNDER SECTION 517.061(12) OF THE FLORIDA SECURITIES ACT. THE CERTIFICATES AND PARTICIPATION HAVE NOT BEEN REGISTERED UNDER SAID ACT IN THE STATE OF FLORIDA. IN ADDITION, ALL FLORIDA RESIDENTS SHALL, PURSUANT TO SECTION 517.061(12)(a)(5), HAVE THE PRIVILEGE OF CANCELLING AND TERMINATING THE PURCHASE BY DELIVERING WRITTEN NOTICE TO LOUIS STINSON, JR. AGENT OF THE COMPANY OF THEIR INTENT TO CANCEL THIS AGREEMENT WITHIN THREE (3) DAYS OF THE DATE OF EXECUTION OF AND TENDERING OF PAYMENT TO THE COMPANY.

9. Miscellaneous Matters.

9.1 Entire Agreement, Etc. This Agreement (together with the Exhibits and Schedules hereto, or agreements provided for herein, which constitute a part hereof, and the other documents delivered pursuant hereto) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings of the parties with respect to the subject matter hereof.

9.2 Expenses. Except as otherwise expressly provided herein, each Member shall bear its respective costs and expenses in connection with the execution and delivery of this Agreement and the consummation of the transaction contemplated hereby.

9.3 No Broker;Indemnity. Each Member represents and warrants that no agent, broker, person or firm acting on its behalf will be entitled to an advisory, brokerage, finder's fee or other like payment in connection with any of the transactions contemplated hereby. Each Member hereto shall indemnify and hold one another harmless from and against any and all liabilities and expenses in connection with any claim for any commission, compensation, and other amount otherwise alleged to be due any

broker, finder or other agent claiming to have brought about this Agreement by or through said indemnifying party.

9.4 Survival of Representations and Warranties. All representations, warranties, covenants and agreements set forth herein or any agreement or instrument delivered pursuant hereto shall survive the delivery of this Agreement and the consummation of the transactions contemplated hereby.

9.5 Notices. All notices, requests, demands and other communications which are required or may be given pursuant to the terms hereof shall be in writing and shall be deemed duly given when delivered by hand or by registered or certified mail, postage pre-paid, return receipt requested, or facsimile as follows: If to CST, to it at P. O. Box 015269, Miami, FL 33101, attention: Arthur C. Novacek (Fax No. 1-305-524-2644) and Neal L. Harrington (Fax No. 305-358-0611); if to FS, to it at 125 N.E. 9th Street, Miami, FL 33132, attention: Frank L. Rovirosa (Fax No. 305-374-7231); if to OS to it at 1007 North America Way, Miami, FL 33132, attention: Donald T. Quinn (Fax No. 305-379-5009), and if to SEL to it at 1080 Port Blvd., Miami, FL 33132, attention: Jack McGovern (Fax No. 305-374-0686), or to such other address as any party shall designate by notice given as provided herein.

9.6 Amendments and Waivers. The provisions of this Agreement may be modified, supplemented, amended or waived only by a written instrument signed by the Member or party(s) to be bound thereby. Any waiver of any provision of this Agreement shall not be construed as a waiver of any subsequent or different breach.

Any and all remedies which any party may have hereunder shall be in addition to, and not in lieu of, any other remedies which such member or party may have, all such remedies being cumulative.

9.7 Arbitration. Any dispute or controversy arising under the Articles of Organization, Regulations or this Agreement, the transactions contemplated hereby or the conduct of the Business and affairs of the Company, shall be settled by arbitration in Dade County, Florida, by a panel of not less than three (3) arbitrators, with maritime terminal experience in accordance with the rules then in effect of the American Arbitration Association, and judgment upon any award rendered by such arbitration shall be final and binding and may be entered in the highest court, state or federal having jurisdiction. Notwithstanding the foregoing, any Member shall be entitled to seek equitable relief, in any court having jurisdiction, to enjoin or prevent any breach or threatened breach of this Agreement, to the extent that it is lawfully entitled to the same.

9.8 Applicable Law. This Agreement and the legal relations among the parties hereto shall be governed by the laws of the State of Florida, applicable to agreements made and wholly performed therein.

9.9 Assignment; Binding Effect, Etc. Except as otherwise expressly provided herein, this Agreement may not be assigned by any Member without the prior written consent of all the remaining Members. This Agreement shall be binding upon and inure

to the benefit of the parties hereto and their respective successors and permitted assigns.

9.10 Captions. The descriptive headings contained herein are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

9.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which taken together shall constitute one and the same instrument.

10. Consents or Approvals.

Notwithstanding anything contained herein to the contrary, the commencement of business hereunder shall not be effective until any required consent(s) or approval(s), thereto shall have been obtained including that of the Federal Maritime Commission or any local, state or federal governmental agency, commission or other authority, and the Company's Articles of Organization have been accepted for filing by the State of Florida. The Members shall use their best efforts and take such action as they deem necessary to obtain such consent(s) or approval(s).

11. Savings Clause.

Notwithstanding anything to the contrary contained herein, it is the intent of the Members hereto that should any provision, term, or condition contained herein be contrary to law (present or future), or affect the status of the Company as a limited liability company under the laws of the State of Florida, or to affect the Company's tax status so that it is taxed as a corporation rather than as a partnership, then that provision, term or condition is hereby rendered null and void ab nitio, however,

such shall not affect the validity and forceability of the other provisions, terms and conditions herein.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the date first above written.

CONTINENTAL STEVEDORING AND TERMINALS, INC.

By: _____
Title: Director

FLORIDA STEVEDORING, INC.

By: _____
Title: PRESIDENT

OCEANIC STEVEDORING, INC.

By: _____
Title: PRESIDENT

SEL MADURO (FLORIDA), INC.

By: _____
Title: VICE-PRESIDENT

Pomtoc\Operating.Agr

224-200616

PORT OF MIAMI TERMINAL OPERATING CO., INC.

P.O. Box 014077
Miami, Florida 33101

Telephone (305) 374-6400 Fax (305) 381-6512

'92 FEB -5

MARINE TERMINAL AGREEMENT

FMC NO._____

EFFECTIVE
MAR 21 1992
Federal Maritime Commission

1. PORT OF MIAMI TERMINAL OPERATING CO., INC., known as POMTOC, is a company incorporated in the state of Florida which is owned by four marine terminal operators in the Port of Miami, namely, CONTINENTAL STEVEDORING & TERMINALS, INC., FLORIDA STEVEDORING INC., S.E.L. MADURO (FLORIDA), INC., and OCEANIC STEVEDORING COMPANY. The purpose of POMTOC is to provide marine freight handling services in the Port of Miami, Florida. Currently, each of the shareholders of this new corporation perform these activities.

The purpose of this agreement is to enable the parties hereto to meet, discuss and agree as to how POMTOC is to be organized to carry on activities as a marine terminal operating company. Also, it is the intention of the undersigned parties to commence discussions with the Port of Miami for the purpose of securing the necessary land, warehouses and other Port provided facilities.

III. The undersigned parties have agreed that POMTOC would serve as the operating vehicle for performing all of the terminal and freight handling activities currently being provided individually by each of the parties.

IV. The activities described in Paragraph II will not be carried out until this agreement has been processed by the Federal Maritime Commission pursuant to the Shipping Act of 1984.

R. O. White, Jr.
Senior Vice President
Continental Stevedoring
& Terminals, Inc.

Frank L. Rovirosa, Jr.
President
Florida Stevedoring, Inc.

Jack Mc Govern
President
S.E.L. Maduro (Florida), Inc.

Donald T. Quinn
President
Oceanic Stevedoring Company

Exhibit C to Complaint
Note: Handwritten markings were on copy obtained from Florida state court.

AMENDED AND RESTATED REGULATIONS
OF
PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C.

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AMENDED AND RESTATED REGULATIONS

OF

PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C.

THESE AMENDED AND RESTATED REGULATIONS of PORT OF MIAMI TERMINAL OPERATING COMPANY, L.C. (the "Regulations") are made and entered into as of 25 May, 1999, by and among Continental Stevedoring & Terminals, Inc., a Florida corporation ("CST"), Florida Stevedoring, Inc., a Florida corporation ("FS"), Oceanic Stevedoring, Inc., a Florida corporation ("OS"), and ITO Corporation of Florida, a Florida corporation ("ITO"). (CST, FS, OS and ITO being hereinafter sometimes referred to individually as a "Member" and collectively as the "Members").

RECITALS

A. Port of Miami Terminal Operating Company, L.C. ("POMTOC"), a Florida limited liability company, was formed by its Articles of Organization being filed with the Florida Secretary of State on January 28, 1993.

B. The Members of POMTOC adopted:

(i) An Operating Agreement on or about February 15, 1993 ("Operating Agreement");

(ii) Regulations during or about February, 1993 ("Original Regulations");

(iii) a First Amendment to the Operating Agreement during or about December 1994 ("First Amendment");

(iv) a Second Amendment to the Operating Agreement on or about August 2, 1996 ("Second Amendment");

(v) a Third Amendment to the Operating Agreement as of February 25, 1997, on or about March 18, 1997 ("Third Amendment");

(vi) a Fourth Amendment to the Operating Agreement as of April 21, 1998, on or about May 11, 1998 ("Fourth Amendment");

(vii) a Fifth Amendment to the Operating Agreement during or about December, 1998 ("Fifth Amendment"); and

(viii) Resolutions during or about December, 1998 ("Resolutions").

C. The Members desire to simplify the array of documents that govern POMTOC by adopting Amended and Restated Regulations that combine, amend and supersede the Operating Agreement, the Original Regulations, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, and the Resolutions (the documents referred to immediately above from the Operating Agreement through the Resolutions, inclusive, are referred to as the "Prior Governance Documents.").

NOW, THEREFORE, the Members, intending to be legally bound, hereby agree that the limited liability company regulations of the POMTOC, which combine, amend and supersede the Prior Governance Documents, shall be as follows:

ARTICLE I

Formation

Section 1.1 Organization. POMTOC has been organized as, and is, a Florida limited liability company pursuant to the Act.

Section 1.2 Regulations, Effect of Inconsistencies with the Act. The Members agree to the terms and conditions of these Regulations, as they may from time to time be amended, supplemented or restated according to their terms. The Members intend that these Regulations shall be the sole source of the relationship among the parties, and, except to the extent a provision of these Regulations expressly incorporates federal income tax rules by reference to sections of the Code or Treasury Regulations, or is expressly prohibited or ineffective under the Act, these Regulations shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law. To the extent any provision of these Regulations is prohibited or ineffective under the Act, these Regulations shall be considered amended to the smallest degree possible in order to make such provision effective under the Act. If the Act is subsequently amended or interpreted in such a way as to validate a provision of these Regulations that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. Each Member shall be entitled to rely on the provisions of these Regulations, and no Member shall be liable to POMTOC or to any other Member for any action or refusal to act taken in good faith reliance on these Regulations.

Section 1.3 Name. The name of POMTOC is Port of Miami Terminal Operating Company, L.C., and such name shall be used at all times in connection with the conduct of POMTOC's business.

Section 1.4 Effective Date. These Regulations shall become effective upon the date of execution of these Regulations by the last of the Members to sign them.

Section 1.5 Term. POMTOC shall have perpetual existence until it is dissolved and its affairs wound up in accordance with these Regulations and the Act.

Section 1.6 Registered Agent and Office. At the time of the adoption of these Regulations, POMTOC's registered agent for service of process and its registered office in the State of Florida is Adorno and Zeder Registered Agent Corporation at 2601 South Bayshore Drive, Suite 1600, Miami, Florida 33133.

Section 1.7 Principal Place of Business. At the time of the adoption of these Regulations, POMTOC's principal place of business is located at 1007 North American Way, Suite 315, Miami, Florida 33132. The Members may change the location of POMTOC's principal place of business from time to time. The General Manager shall make any filing and take any other action required by applicable law in connection with any such change and shall give notice to all Members of the new location of POMTOC's principal place of business promptly after any such change becomes effective. The Members may establish and maintain additional places of business for POMTOC.

ARTICLE II

Definitions

Section 2.1 General Interpretive Principles. For purposes of these Regulations, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Section have the meanings assigned to them in this Section and include the plural as well as the singular, and the use of any gender in these Regulations shall be deemed to include the other gender; (ii) the word "including" means "including, but not limited to," and (iii) the headings in these Regulations are for convenience only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of any of the provisions of these Regulations.

Section 2.2 Defined Terms. As used in these Regulations, the following terms shall have the following respective meanings (unless otherwise expressly provided):

Act: The Florida Limited Liability Company Act, Chapter 608, Florida Statutes, in its present form or as amended from time to time.

Adjusted Basis: The basis for determining gain or loss for federal income tax purposes from the sale or other disposition of property, as defined in Section 1011 of the Code.

Adjusted Capital Account: The capital account maintained for each Member as provided in Section 5.3 (adjusted by the following, to the extent that such adjustment is not then already accounted for in the Member's Capital Account) (a) increased by (i) the amount of any unpaid Capital Contributions agreed to be contributed by such Member under Article V, if any, (ii) an amount equal to such Member's allocable share of Minimum Gain as computed on the last day of such fiscal year in accordance with the applicable Treasury Regulations, and (iii) the amount of POMTOC liabilities allocable to such Member under Section 752 of the Code with respect to which such Member bears the economic risk of loss to the

extent such liabilities do not constitute Member Nonrecourse Debt, and (b) reduced by the adjustments provided for in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4)-(6).

Affiliate: When used with reference to any Person, (i) any Person that, directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with, or owns a greater than fifteen percent (15%) interest in the specified Person (the term "control" for this purpose shall mean the ability, whether by the ownership of shares or other equity interest, by contract or otherwise, to elect a majority of the directors of a corporation, independently to select the managing partner of a partnership or a manager of a limited liability company, or otherwise to have the power independently to remove and then select a majority of those Persons exercising governing authority over an entity, and control shall be conclusively presumed in the case of the direct or indirect ownership of 50% or more of the equity interests); and (ii) a parent, sibling or issue of such Person.

Assignee: A person to whom a Membership Interest is transferred in compliance with Article IX.

Capital Account: The capital account of a Member maintained in accordance with Section 5.3.

Capital Contribution: Any property (including cash) from time to time contributed by a Member to POMTOC.

Capital Proceeds: The cash proceeds received by POMTOC from a Capital Transaction (excluding the proceeds of rental or business interruption insurance) which are not used by POMTOC to pay for the costs and expenses incurred in connection with the Capital Transaction, including, in the case of casualty or condemnation, the costs and expenses of collecting the insurance proceeds or the condemnation award, as the case may be. Capital Proceeds shall include all payments of principal of, and interest on. any promissory note or other obligation received by POMTOC in connection with a Capital Transaction and shall be increased by any reduction of reserves previously established out of Capital Proceeds.

Capital Transaction: A transaction in which POMTOC (i) borrows money, (ii) sells, exchanges or otherwise disposes of any part of its property, including a sale or other disposition pursuant to a condemnation, or (iii) receives the proceeds of property damage insurance, or any other transaction that, in accordance with generally accepted accounting principles, is considered capital in nature.

Carrying Value: Carrying Value means, with respect to any asset, the Adjusted Basis of the asset, except as follows:

(i) the initial Carrying Value of an asset contributed by a Member to POMTOC shall be the gross fair market value of the asset, as determined by the Members at the time the asset is contributed;

(ii) The Carrying Values of POMTOC's assets shall be adjusted to equal their respective gross fair market values, as mutually determined by the Members, as of the following times: (a) the acquisition of an additional interest in POMTOC by any new or existing Assignee or Member in exchange for more than a de minimis Capital Contribution; (b) the distribution by POMTOC to a Member or an Assignee of more than a de minimis amount of property as consideration for all or part of a Membership Interest or an Assignee's Economic Rights; and (c) the liquidation of POMTOC within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); but adjustments pursuant to clauses (a) and (b) above shall be made only if the Members determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in POMTOC.

(iii) The Carrying Value of an asset of POMTOC distributed to a Member shall be adjusted to equal the gross fair market value of the asset on the date of distribution as determined by the Members; and

(iv) The Carrying Values of POMTOC's assets shall be increased (or decreased) to reflect any adjustments to the Adjusted Basis of those assets pursuant to Sections 734(b) or 743(b) of the Code, but only to the extent that those adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m); but the Carrying Values shall not be adjusted pursuant to this clause (iv) to the extent the Members determine that an adjustment pursuant to clause (ii) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv).

if the Carrying Value of an asset is determined or adjusted pursuant to clauses (i), (ii) or (iv), such Carrying Value shall thereafter be adjusted by the depreciation taken into account with respect to the asset for purposes of computing Profit and Loss.

Code: The Internal Revenue Code of 1986, as in effect and hereafter amended.

Economic Rights: An Assignee's rights to receive allocations of income, gain, loss, deductions, and credits; distributions; and a return of capital.

Effective Date: As defined in Section 1.4.

Fiscal Year: The fiscal year of POMTOC, which shall be the [calendar] year.

General Manager: The Person appointed by the Voting Members as the General Manager. and who is responsible for the duties as determined by the Voting Members.

Major Decisions: As defined in Section 6.5.

Management Rights: The rights of a Voting Member to appoint Managers and to participate in the management of POMTOC, including the right to receive information, to inspect and audit the books and records, and to vote on, consent to, or approve actions of POMTOC, in each instance as may be set forth or limited by Sections 5.6 and 6.1.

Managers: As defined in Section 6.1.

Member Nonrecourse Debt: Any nonrecourse debt of POMTOC (or portions thereof) for which any Member bears the economic risk of loss.

Member Nonrecourse Deductions: The amount of deductions, losses and expenses equal to the net increase during the year in Minimum Gain attributable to a Member Nonrecourse Debt, reduced (but not below zero) by proceeds of such Member Nonrecourse Debt distributed during the year to the Members who bear the economic risk of loss for such debt, as determined in accordance with applicable Treasury Regulations.

Members: The Persons listed on Exhibit A and such other Persons who may be admitted as New Members of POMTOC from time to time.

Membership Interest: With respect to a Member, the Member's ownership interest in POMTOC, including the Member's rights to receive allocations of profits and losses, distributions and a return of capital, but excluding any Management Rights, if any.

Minimum Gain: (a) With respect to POMTOC Nonrecourse Liabilities, the amount of gain that would be realized by POMTOC if it disposed of (in a taxable transaction) all properties that are subject to POMTOC Nonrecourse Liabilities in full satisfaction of such liabilities, computed in accordance with applicable Treasury Regulations, or (b) with respect to each Member Nonrecourse Debt, the amount of gain that would be realized by POMTOC if it disposed of (in a taxable transaction) the property that is subject to such Member Nonrecourse Debt in full satisfaction of such debt, computed in accordance with applicable Treasury Regulations.

Net Cash Flow: For any specified period, an amount equal to the sum of (i) all cash revenues received by POMTOC during the period from any source (including proceeds of rental or business interruption insurance and Capital Proceeds, but excluding funds received as Capital Contributions or Terminating Capital Proceeds and funds received from grants or other subsidies), and (ii) amounts set aside by the Members as reserves during earlier periods where, and to the extent, the Members determine, during the period that such reserves are no longer reasonably necessary for the efficient conduct of POMTOC's business, reduced by the sum of

(w) cash expenditures by POMTOC during the period for taxes, salaries, goods and services, fees, and other costs and expenses in connection with the normal conduct of POMTOC's business, (x) all payments by POMTOC during the period of principal of and interest on loans and other obligations of POMTOC for borrowed money, (y) all cash expenditures by POMTOC during the period for the acquisition of property, for construction period interest and taxes and for loan fees, whether or not capitalized, and for capital improvements and/or replacements, and (z) such reserves for maintenance, repairs, replacements, capital improvements, contingent or unforeseen liabilities or obligations and to meet anticipated expenses as the Members determine during the period are reasonably necessary for the efficient conduct of POMTOC's business.

New Member: A Person admitted as a Member of POMTOC after the Effective Date.

Nonrecourse Deductions: As defined in Treasury Regulations Section 1.704-2(b)(1).

Person: An individual, corporation, trust, association, unincorporated association, estate, partnership, joint venture, limited liability company or other legal entity, including a governmental entity.

POMTOC Nonrecourse Liabilities: Nonrecourse liabilities (or portions thereof) of POMTOC for which no Member bears the economic risk of loss.

Regulations: shall mean the limited liability company regulations adopted by the Members for the regulation and management of the affairs of POMTOC (including the Original Regulations until the Effective Date, and from and after the Effective Date it shall mean these Amended and Restated Regulations), not inconsistent with applicable law or the Articles of Organization of POMTOC.

Tax Matters Partner: As defined in Section 7.3.

Terminating Capital Proceeds: Capital Proceeds received by POMTOC from a Terminating Capital Transaction.

Terminating Capital Transaction: A Capital Transaction involving the sale, exchange or other disposition of all or substantially all of the property of POMTOC.

Treasury Regulations: The permanent and temporary regulations, and all amendments, modifications and supplements thereof, from time to time promulgated by the Department of the Treasury under the Code.

Voting Member: A Member having equal Management Rights. OS, ITO, FS and CST are Voting Members. A New Member admitted to POMTOC shall be either a Voting Member with Management Rights generally provided to all other

Voting Members, or shall be a Member without Management Rights, in both instances as provided by Section 5.6(e).

ARTICLE III

Business, Purposes and Powers

Section 3.1 Business and Purposes. The purpose and business of POMTOC shall be to conduct in Miami-Dade County, Florida, marine terminal operations and all activities permitted by law which are incidental thereto.

Section 3.2 Powers. POMTOC shall have all powers of a limited liability company under the Act, and the power to do all things necessary or convenient to operate its business and accomplish its purposes as described in Section 3.1.

Section 3.3 Limitations on Scope of Business. Except for the authority granted to the Members in these Regulations, no Member shall have any authority to bind or act for POMTOC or any other Member in the carrying on of their respective businesses or activities.

ARTICLE IV

Assets, Non-Competition and Confidentiality

Section 4.1 Transfer of Business by Voting Members. Each Voting Member, either directly or through its predecessor in interest, has transferred and contributed as additional capital contributions to POMTOC (a) the entirety of its marine terminal operations and business at Port of Miami, except for container freight station business (collectively, the "Business"), and (b) all of its customers, customer lists, contract rights, business opportunities, good will, trade names, brands, marks, intangibles, books and records, and cash and/or machinery, equipment, supplies and personal property in lieu of cash, relating to the Member's Business.

Section 4.2 No Assumption of Liabilities. Unless otherwise agreed to in writing by POMTOC, POMTOC has not and shall not assume any of the obligations or liabilities of any Members including, without limitation, any of the obligations or liabilities of or related to the Business of such Member. Each Member hereby agrees to indemnify and hold harmless POMTOC, and each of the other Members, from and against any and all losses, liabilities, claims and expenses relating to the Business of such Member and arising prior to the date of contribution.

Section 4.3 Non-Competition. Each Member agrees that throughout the term of existence of POMTOC and of any successor business, it will not directly or indirectly engage in or conduct at the Port of Miami, or any other location within Miami-Dade County, Florida, any of the business activities conducted by POMTOC as of the Effective Date of these Regulations, such agreement to survive any transfer or other disposition by any Member of its Membership Interest, but to terminate upon the first to occur of: (i) two years following any such transfer or disposition of the respective Member's Membership Interest; or (ii) the dissolution of POMTOC where no Member has the right,

hereunder, to continue the business of POMTOC; provided, however, if in the event a court of competent jurisdiction shall determine any provision of this Section 4.3 to be invalid or unenforceable by reason of the time period set forth herein, then the restrictive covenant contained in this Section 4.3 shall be enforced to the extent that it shall not be in conflict with the laws of the State of Florida. Each Member shall cause each of its Affiliates to comply with the terms of this Section 4.3.

Section 4.4 Confidentiality. Each Member agrees that during the existence of POMTOC and for the non-compete period set forth in Section 4.3 herein, it shall, except as may be otherwise required by applicable law or the business of POMTOC, keep confidential all material information relating to POMTOC, its assets and business which are not generally known to the public.

ARTICLE V

Members, Capital Contributions, and New Members

Section 5.1 Identity of Members and Membership Interests.

(a) Members. The Members of POMTOC shall be as set forth on Exhibit A, as amended from time to time.

(b) Membership Interests. The Membership Interests of the Members shall be as set forth on Exhibit A, as amended from time to time. The Membership Interests exclude any Management Rights, if any.

Section 5.2 Capital Contributions. The Members have made Capital Contributions to POMTOC. The Capital Contributions made by those Members of POMTOC as of the Effective Date of these Regulations shall be the maximum capital contribution to POMTOC that such Members shall be required to make.

Section 5.3 Capital Accounts.

Each Member's Capital Account shall be maintained in accordance with the following provisions:

(1) Each Member's Capital Account shall be credited with the amounts of such Member's Capital Contributions, such Member's distributive share of income, gains and credits, and any items in the nature of income or gain which are specially allocated to the Member pursuant to Section 7.1;

(2) Each Member's Capital Account shall be charged with the amounts of cash and the Carrying Value of any property distributed by POMTOC to such Member pursuant to any provision of these Regulations, such Member's distributive share of costs, expenses, deductions and losses, and any items in the nature of

expenses, costs, deductions or losses which are specially allocated to the Member pursuant to Section 7.1; and

(3) If all or a portion of a Member's Membership Interest is transferred in accordance with the terms of these Regulations, the Assignee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Membership Interest.

This Section 5.3 and other provisions of these Regulations relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Treasury Regulations. If the Members determine that it is prudent to modify the manner in which the Capital Accounts, or any charges or credits thereto (including charges or credits relating to liabilities which are secured by contributions or distributed property or which are assumed by POMTOC or by Members), are computed in order to comply with such Treasury Regulations, the Members may make such modification, but only if it is not likely to have a material effect on the amounts to be distributed to any Member pursuant to Section 7.2. The Members also shall (i) make any adjustments that may be necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on POMTOC's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause these Regulations not to comply with Treasury Regulations Section 1.704-1(b).

Section 5.4 Return of Capital Contributions. Except as otherwise provided in these Regulations, no Member or Assignee shall be entitled to demand the return of the Member's or Assignee's Capital Account or Capital Contribution at any particular time, except upon dissolution of POMTOC. Except as otherwise provided in these Regulations, no Member or Assignee shall be entitled at any time to demand or receive property other than cash. Unless otherwise provided by law, no Member or Assignee shall be personally liable for the return or repayment of all or any part of any other Member's Capital Account or Capital Contribution, it being expressly agreed that any such return of capital pursuant to these Regulations shall be made solely from the assets (which shall not include any right of contribution from a Member or Assignee) of POMTOC.

Section 5.5 No Third Party Beneficiary Rights. The provisions of this Article V are not intended to be for the benefit of any creditor or any other Person (other than a Member in his, her or its capacity as such) to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) POMTOC or any of the Members; and no such creditor or other Person shall obtain any right under any of such provisions or shall by reason of any of such provisions make any claim in respect of any debt, liability or obligation (or otherwise) against POMTOC or any of the Members.

Section 5.6 New Members.

(a) A prospective New Member must agree to provide and must provide POMTOC with all the information reasonably requested by POMTOC in regards to determining i

said New Member can comply with the requirements for membership, including but not limited to complete financial information.

(b) A New Member must agree in writing to be bound by all terms and conditions of the Regulations as amended and the Article of Organization as amended, and assume and guarantee each of the obligations as are generally assumed or guaranteed by the Members.

(c) A New Member must be a duly board-licensed stevedoring company and have obtained a Port of Miami-Dade County operating permit.

(d) A New Member must accept, in writing, the obligations imposed on Members of POMTOC under the terms of the Terminal Operating Agreement between Metropolitan Dade County and POMTOC dated September 15, 1994.

(e) For a New Member to become a full Member of POMTOC with an equal share in POMTOC and the same Management Rights as an existing Member, the New Member must contribute new business to POMTOC in accordance with the following formula:

> The minimum new business to be contributed by a New Member (and which must continue during the first 12 months after the New Member becomes a Member, or the New Member's distributive share of allocations and distributions shall be reduced to the distributive amount that such new business represents -- hereinafter referred to as a "First Anniversary Adjustment") shall be not less than the POMTOC annual volume during the immediately preceding 12 months prevailing at the time the New Member is admitted, multiplied by a factor, the numerator of which is one and the denominator is the number of POMTOC Members immediately prior to the admission of the New Member.
>
> For a New Member who cannot achieve the requirement for full membership, the New Member may qualify for limited membership if the New Member contributes new business at not less than 10% of the POMTOC annual volume prevailing at the time the New Member is admitted. In such instances, the New Member will become a non-voting Member, and will have a share in the allocations and distributions of POMTOC with the percentage of the allocations and distributions being determined by the new Member's annual gate moves at the Port of Miami for the immediately preceding 12 months (numerator) being divided by the amount which is POMTOC's aggregate annual gate moves for the immediately preceding 12 months plus the New Member's contributed business, subject to a First Anniversary Adjustment. By way of example:

(i) If POMTOC has 220,000 gate moves during the immediately preceding 12 months; and

(ii) The New Member that is to contribute all of its terminal operating business to POMTOC has 22,000 gate moves during the immediately preceding 12 months; then

(iii) The new projected total is 242,000 gate moves per year. The New Member's Membership Interest would be equal to 22,000 divided by 242,000, or 9.09% of the prospective allocations and distributions of POMTOC.

Section 5.7 New Member Purchase Price. Should the Members vote to admit a New Member to POMTOC, the purchase price to be paid to the Members (who are Members immediately prior to the entry of the New Member) by the New Member for participation in POMTOC shall be equal to POMTOC's then-current net book value plus POMTOC's then-immediately-past three years' pre-tax net profits (such amounts to be consistent with determinations of such amounts under generally accepted accounting principals), multiplied by a fraction, the numerator of which is one and the denominator of which is the total number of Members of POMTOC including the New Member.

ARTICLE VI

Governance

Section 6.1 Managers (Agents). The overall management and control of the business and affairs of POMTOC shall be vested in the Voting Members who shall appoint agents (the "Managers"), two (2) of whom shall be appointed annually by each of the Voting Members, with the Managers for each Voting Member having equal Management Rights. It is acknowledged that while each Voting Member will appoint two (2) Managers, a particular Member's Managers must vote the same on all issues. Each Voting Member shall also appoint one (1) alternate Manager in the event an appointed Manager is unable to attend and/or act at any meeting.

Section 6.2 Voting. Each Voting Member agrees to and will direct its Managers to vote its Management Rights as follows: (i) for the election of Managers of POMTOC, two (2) of whom shall be appointed from time to time by each Voting Member; (ii) upon any vacancy among the Managers for any reason (whether by death, removal with or without cause, or otherwise), for the election of a successor thereto appointed by the Member entitled to designate the Manager as to which such vacancy has occurred; (iii) for any dissolution and liquidation of POMTOC, when and as required by any of the provisions of Section 12.1 hereof; and (iv) upon amendments to the Articles of Organization of POMTOC only to the extent the same are consistent with the provisions of these Regulations.

Section 6.3 Redistribution of Withdrawing Member's Participation. The Members agree should there be a redistribution of the Membership Interests due to withdrawal of a Member for any reason, the redistribution of the Membership Interest of the withdrawing Member shall be based on the Membership Interest of each remaining Member, and the Members will take all reasonable actions to effect such changes.

Section 6.4 Action by the Managers. As may be more fully provided in these Regulations, all actions of the Managers shall require the affirmative vote of at least a majority of the Managers.

Section 6.5 Major Decisions by the Managers. Unless ~~specifically provided otherwise~~ in these Regulations, no act shall be taken, sum expended, decision made or obligation incurred by or on behalf of POMTOC with respect to any matter referred to below ("Major Decisions"), unless such Major Decisions shall have been approved by all Managers. The following shall be deemed to be Major Decisions:

(a) any sale, transfer or other disposition by POMTOC or approval of such sale, transfer or other disposition by any Member, of any Membership Interest or of any right to acquire any Membership Interest;

(b) any change in the purpose or scope of POMTOC as set forth in Section 3.1 hereof;

(c) any acquisition by POMTOC directly or indirectly, of an ongoing business, whether by acquisition of stock, assets, or otherwise;

(d) any change of name of POMTOC;

(e) any pledge, mortgage or encumbrances, sale, lease, transfer or other disposition of any material portion of the assets or business of POMTOC. Material shall be defined for the purpose of this Section 6.5(e) to mean Ten Thousand Dollars ($10,000) or more;

(f) any direct or indirect merger or consolidation of POMTOC with or into any other Person;

(g) the creation or implementation of any committee of the Managers;

(h) authorizing the distribution of any cash or property to any Member, except distributions expressly required pursuant to these Regulations;

(i) authorizing the occurrence of indebtedness, other than trade payables incurred in the ordinary course of business (except for indebtedness, the material terms and amount of which was provided for in a budget previously approved by the Members);

(j) requesting or requiring additional capital contributions, loans or guarantees from any Member;

(k) approving any annual business plan of POMTOC;

(l) approving any annual budget of POMTOC;

(m) selecting or varying any depreciation or other accounting methods, changing the fiscal year of POMTOC, selecting or changing the auditors or legal counsel retained, by POMTOC, or making any other major policy decisions with respect to the treatment of transactions for accounting or tax purposes;

(n) executing any contract, agreement or other instrument, making any expenditures or incurring obligations involving a sum in excess of Ten Thousand ($10,000) Dollars for any transaction or group of similar or related transactions (except for expenditures made and obligations provided for in a budget previously approved by the Members);

(o) authorizing the initiation, adjustment, settlement or compromise of any material claim, obligation, debt, demand, suit or judgment by or against POMTOC;

(p) authorizing any matter relating to the employment of a General Manager or the hiring of any person whose annual base salary is expected to be in excess of Forty Thousand Dollars ($40,000) or whose employment is other than terminable at will;

(q) authorizing any disposition or acquisition of capital assets of or by POMTOC in excess of Ten Thousand Dollars ($10,000) (except for expenditures made and obligations provided for in a budget previously approved by the Members);

(r) approving any employee benefit plans or arrangements to be offered by POMTOC to its employees generally;

(s) authorizing any investment in, loan to or guaranty of the obligations of any Person other than in the ordinary course of business, except for investments in obligations of the United States, and in short-term certificates of deposit or similar instruments issued by commercial banks having regulatory capital and surplus of at least Five Million Dollars ($5,000,000), to utilize temporary cash surpluses of POMTOC;

(t) authorizing any transaction with any person, corporation or other entity which is an Affiliate of any Member, except for transactions in the ordinary course of business which involve the receipt or payment by POMTOC of less than Ten Thousand Dollars ($10,000);

(u) creating any Affiliate of POMTOC;

(v) appointing or removing any officers or directors of any Affiliate of POMTOC; and

(w) approving any other decision or action which materially affects POMTOC or the assets or operations thereof (including, but not limited to, the appointment or termination of, or

material modification of any arrangement with, any supplier, labor union, shipper, terminal agent or similar person with respect to the services of POMTOC), or which is not in the ordinary course of business of POMTOC.

Section 6.6 Unanimity Requirements; Procedure on Deadlock. Each of the Members acknowledges that the intended purpose and effect of Section 6.5 hereof is to require unanimity among the Managers with respect to any and all decisions having a material effect upon the business and affairs of POMTOC. It is understood that each Manager shall use its best efforts to reach mutual agreement on matters affecting POMTOC having due regard for the best interests of POMTOC and the Members other than the Member that appointed him. However, if notwithstanding such efforts, the Managers shall be unable to take action or otherwise agree with respect to any matter material to the affairs of POMTOC, it is agreed that each Voting Member shall have the right to seek arbitration pursuant to Section 14.5 hereof. For such purpose, the Members agree that all matters described in Section 6.5 hereof shall be deemed to be material, unless the nature thereof, or other circumstances, indicate otherwise. It is further agreed that any dispute by the parties as to whether a matter is material shall be submitted to arbitration in accordance with Section 14.5 hereof.

Section 6.7 Senior Manager. The Members agree to appoint a Senior Manager and to rotate the right to designate the Senior Manager among the Voting Members on an annual basis, in such order as the Members shall determine. The Senior Manager's duties and responsibilities shall be to call, notice and conduct meetings of the Members and Managers, including necessary preparation and distribution of materials for prior review and/or action by the Members or Managers at the meetings, and to promptly prepare and distribute minutes reflecting the actions taken at such meetings. Additionally, the Senior Manager shall act as the liaison between the Members/Managers and POMTOC's General Manager and staff to facilitate communications and provide clarification of prior Member/Manager actions and/or directions. To the extent possible, established reporting guidelines will be observed. The Senior Manager shall report to the Managers on a not less often than monthly basis. The Senior Manager's position shall be rotated each January, with the Senior Manager being appointed by each respective Member in the following order: OS, ITO, CST, FS, and then each additional Voting Member, if any, and then repeated in the same order, unless the incumbent Senior Manager's term is extended for an additional year by the affirmative vote of a majority of the Members.

ARTICLE VII

Allocations and Distributions

Section 7.1 Allocations.

(a) Except as otherwise provided in this Section 7.1 or as may be required by section 704(c) of the Code and Treasury Regulations § 1.704-1(b)(2)(iv)(f)(4), all items of income, gain, loss, deduction and credit of POMTOC shall be allocated among the Members in accordance with their respective Membership Interests.

(b) Notwithstanding any of the foregoing provisions of this Section 7.1 to the contrary:

(i) If during any fiscal year of POMTOC there is a net increase in Minimum Gain attributable to a Member Nonrecourse Debt that gives rise to Member Nonrecourse Deductions, each Member bearing the economic risk of loss for such Member Nonrecourse Debt shall be allocated items of POMTOC deductions and losses for such year (consisting first of cost recovery or depreciation deductions with respect to property that is subject to such Member Nonrecourse Debt and then, if necessary, a pro rata portion of POMTOC's other items of deductions and losses, with any remainder being treated as an increase in Minimum Gain attributable to Member Nonrecourse Debt in the subsequent year) equal to such Member's share of Member Nonrecourse Deductions, as determined in accordance with applicable Treasury Regulations.

(ii) If for any fiscal year of POMTOC there is a net decrease in Minimum Gain attributable to POMTOC Nonrecourse Liabilities, each Member shall be allocated items of POMTOC income and gain for such year (consisting first of gain recognized from the disposition of POMTOC property subject to one or more POMTOC Nonrecourse Liabilities and then, if necessary, a pro rata portion of POMTOC's other items of income and gain, and then, if necessary, for subsequent years) equal to such Member's share of such net decrease (except to the extent such Member's share of such net decrease is caused by a change in debt structure with such Member commencing to bear the economic risk of loss as to all or part of any POMTOC Nonrecourse Liability or by such Member contributing capital to POMTOC that POMTOC uses to repay a POMTOC Nonrecourse Liability), as determined in accordance with applicable Treasury Regulations.

(iii) If for any fiscal year of POMTOC there is a net decrease in Minimum Gain attributable to a Member Nonrecourse Debt, each Member bearing the economic risk of loss of such Member Nonrecourse Debt shall be allocated items of POMTOC income and gain for such year (consisting first of gain recognized form the disposition of POMTOC property subject to Member Nonrecourse Debt. and then, if necessary, a pro rata portion of POMTOC's other items of income and gain, and if necessary, for subsequent years) equal to such Member's share of such net decrease (except to the extent such Member's share of such net decrease is caused by a change in debt structure or by POMTOC's use of capital contributed by such Member to repay the Member's Nonrecourse Debt) as determined in accordance with applicable Treasury Regulations.

(c) The net losses allocated pursuant to this Article VII shall not exceed the maximum amount of net losses that can be allocated to a Member without causing or increasing a deficit balance in the Member's Adjusted Capital Account. All net losses in excess of the limitations set forth in this Section 7.1 shall be allocated to Members with positive Adjusted Capital Account balances remaining at such time in proportion to such balances.

(d) In the event that a Member unexpectedly receives any adjustment, allocation or distribution described in Treasury Regulations section 1.704-1(b)(2)(ii)(d)(4)-(6) that causes or increases a deficit balance in such Member's Adjusted Capital Account, items of POMTOC income and gain shall be allocated to that Member in an amount and manner sufficient to eliminate the deficit balance as quickly as possible.

(e) The allocations set forth in subsections (b), (c) (last sentence), and (d) (collectively, the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations that are made be offset either with other Regulatory Allocations or with special allocations pursuant to this Section 7.1(e). Therefore, notwithstanding any other provisions of this Article VII (other than the Regulatory Allocations), POMTOC shall make such offsetting special allocations in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Adjusted Capital Account balance is, to the extent possible, equal to the Adjusted Capital Account balance such Member would have had if the Regulatory Allocations were not part of these Regulations and all POMTOC items were allocated pursuant to the remaining sections of this Article VII.

(f) In accordance with Section 704(c) of the Internal Revenue Code and the Treasury Regulations thereunder, income and deductions with respect to any property contributed to POMTOC shall, solely for federal income tax purposes, be allocated among the Members in a manner to take into account any variation between the adjusted tax basis of such property to POMTOC and its fair market value at the time of contribution. In making such allocations, POMTOC shall use such method as it determines to be reasonable and in accord with applicable Treasury Regulations.

(g) All items of income, gain, loss, deduction and credit allocable to any Membership Interest that may have been transferred shall be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest, without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under section 706 of the Code and the regulations thereunder.

Section 7.2 Distributions. At least quarterly, all cash funds of POMTOC (exclusive of Capital Contributions or any borrowed funds) that the Members reasonably determine are not needed for the payment of current costs, expenses and liabilities of POMTOC (including a reasonably adequate reserve for working capital and contingencies) shall be distributed to the Members in accordance with their respective Membership Interests. Payment of all distributions made by POMTOC to each Member shall be made in accordance with such determination as may be made by the Members from time to time. All distributions in liquidation of a Member's Membership Interest shall be made in accordance with Article XII.

Section 7.3 Tax Matters Partner. The Members shall appoint a "tax matters partner" of POMTOC pursuant to Section 6231(a)(7) of the Code (the "Tax Matters Partner"). The Members may, from time to time, or at any time, change the Tax Matters Partner for POMTOC. The Tax Matters Partner shall be authorized and required to represent POMTOC (at the expense of POMTOC) in connection with all examinations of the affairs of POMTOC by any federal, state or local tax authorities, including any resulting administrative and judicial proceedings, and to expend funds of POMTOC for professional services and costs associated therewith. The Tax Matters Partner shall take all actions necessary to preserve the rights of the Members with respect to audits and shall provide all Members with notices of all such proceedings and other information as required by law.

The Tax Matters Partner shall obtain the prior written consent of each Voting Member before settling, compromising or otherwise altering the defense of any proceeding before the Internal Revenue Service if such Member or any of its constituent partners or members could be affected thereby. Each Member agrees to cooperate with the Tax Matters Partner and to do or refrain from doing any or all things reasonably required by the Tax Matters Partner in connection with the conduct of all such proceedings.

Section 7.4 Election to be Taxed as Association. POMTOC shall be treated as a partnership for federal and state income tax purposes (subject to Florida law regarding intangible taxes). No Member shall cause POMTOC to elect to be treated as a corporation for federal or state income tax purposes, unless such election is approved in writing by all Voting Members.

ARTICLE VIII

Certain Rights of and Restrictions on Members

Section 8.1 Liability of Members. No Member shall be obligated to make Capital Contributions to POMTOC except as provided in Article V. No Member shall have any personal liability with respect to the liabilities or obligations of POMTOC. The failure of POMTOC to observe any formalities or requirements relating to the exercise of its powers or the management of its business or affairs under these Regulations or the Act shall not be grounds for imposing personal liability on the Members for liabilities or obligations of POMTOC.

Section 8.2 Limitations on Powers of Members. Except as expressly authorized by these Regulations, no Member shall, directly or indirectly, (i) resign, retire or withdraw from POMTOC, (ii) dissolve, terminate or liquidate POMTOC, (iii) petition a court for the dissolution, termination or liquidation of POMTOC, or (iv) cause any property of POMTOC to be subject to the authority of any court, trustee or receiver (including suits for partition and bankruptcy, insolvency and similar proceedings).

Section 8.3 Prohibition Against Partition. Each Member irrevocably waives any and all rights the Member may have to maintain an action for partition with respect to any property of POMTOC.

ARTICLE IX

Transfers of Membership Interests; Withdrawal

Section 9.1 Restrictions on Transfer:

(a) Except as provided in Sections 9.1, 9.2, 9.3, and 9.4 hereof, no Member may sell, transfer, assign, dispose, pledge or otherwise encumber (whether by operation of law or otherwise) any or all of its Membership Interest or other interest regarding POMTOC (for purposes of Title IX, collectively referred to as "POMTOC Interest") held by such Member, without the prior written consent of all Voting Members, and any attempt to do so shall be void. Unless transfer is

permitted pursuant to Section 9.4, should any Member attempt to sell, transfer, assign, dispose, pledge or otherwise encumber a POMTOC Interest without all of the Voting Members' prior written consent, POMTOC shall have the right to purchase such POMTOC Interest in accordance with and upon the terms and conditions set forth in Section 9.3 herein; provided, however, that any Member may, without such consent, transfer its POMTOC Interest to a Person wholly owned by such Member or which wholly owns such Member, but only if such transferee agrees in writing to be bound by these Regulations and POMTOC's Articles of Organization, and assume Member obligations and guarantees as set forth in Section 5.6, and provided, further, that such transfer shall not operate to release such Member of its obligations hereunder or constitute an assignment of its rights under these Regulations.

(b) Notwithstanding the foregoing, the restrictions on transfer set forth in Sections 9.1 and 9.3 hereof shall not apply if the transfer is (i) to the heirs of a Member's owner or a trust established for such heirs' primary benefit; (ii) the result of a reorganization in which the ultimate control and ownership of, and beneficial interest in, either the Member or its owner is not changed; or (iii) permitted pursuant to the Section 9.4. In the event of any of the foregoing permitted transfers, such transferee must agree in writing to be bound by these Regulations and, in the event of a transfer pursuant to subsections (i) or (ii) of this Section 9.1, any such transfer shall not operate to release the transferring Member or its owner of the obligations hereunder nor constitute an assignment of the transferring Member's or its owner's rights under these Regulations.

Section 9.2 Voluntary Withdrawal. At any time (provided that there is no outstanding offer pursuant to Section 9.3 hereof), any Member (the "Withdrawing Member") shall have the right to terminate its POMTOC Interest by giving written notice thereof to POMTOC, which notice shall constitute an irrevocable offer by the Withdrawing Member to sell all its POMTOC Interest to POMTOC at the purchase price provided for herein (the "Withdrawal Price") and pursuant to the other terms of this Section 9.2. Within sixty (60) days after receipt of such notice, POMTOC shall give written notice to the Withdrawing Member as to whether or not it elects to acquire the POMTOC Interest of the Withdrawing Member. If POMTOC elects to acquire the POMTOC Interest of the Withdrawing Member, then the Withdrawal Price shall be equal to One Hundred Ten Percent (110%) of the net book value (determined as hereinafter provided) of the POMTOC Interest as of the last day of the month in which written notice is received by the Withdrawing Member hereunder. Net book value shall be determined by the firm of independent certified public accountants regularly retained by POMTOC who shall submit to POMTOC and each Member, within forty-five (45) days following the giving of the aforesaid notice by the Withdrawing Member, a report setting forth in reasonable detail its determination thereof. Net book value shall be determined in accordance with generally accepted accounting principles, with such exceptions and on the same basis as is applied in preparing the audited financial statements of POMTOC. In the event that the Withdrawing Member also holds indebtedness of POMTOC, such indebtedness shall be satisfied by POMTOC upon its purchase of the POMTOC Interest of the Withdrawing Member. The closing for any sale of a POMTOC Interest pursuant hereto shall take place at the principal office of POMTOC on a date forty-five (45) days after the delivery by the accountants of its report as to the Withdrawal Price, or at such other place and date as the Withdrawing Member and POMTOC shall agree.

Notwithstanding anything contained herein to the contrary, no Member shall be entitled to so offer its POMTOC Interest hereunder more than once in any twelve (12) month period.

Section 9.3 Right of First Refusal. Subject to the last sentence of this Section 9.3, if any Member (the "Selling Member") shall receive a bona fide good faith offer (other than an offer pursuant to Section 9.2 hereof) from an unaffiliated third party to purchase all (but not less than all) of its Membership Interest, which such Member in good faith wishes to accept, it shall first give not less than ninety (90) days prior written notice thereof to POMTOC which notice shall describe all the terms and conditions of said offer and identify the proposed purchaser (the "Notice"), and shall constitute an irrevocable offer to sell all the Selling Member's Membership Interest to POMTOC on the terms set forth in the Notice. Within forty (40) days after its receipt of the Notice, POMTOC shall give written notice to the Selling Member as to whether or not it has elected to purchase the Selling Member's Membership Interest. Such purchase shall be made upon the terms and conditions described in the Notice, within sixty (60) days after receipt by it of the aforesaid notice from POMTOC at a closing at the principal office of POMTOC or at such other place and date as the Selling Member and POMTOC shall agree. At the closing, any indebtedness between POMTOC and the Selling Member shall be satisfied. In the event that such offer involves the payment of consideration other than cash, POMTOC shall have the right to substitute for such consideration an amount of cash which, unless otherwise agreed by the parties to the transaction, shall be determined by an appropriate expert retained by POMTOC and reasonably satisfactory to the Selling Member and POMTOC.

In the event that POMTOC elects to not purchase the Selling Member's Membership Interest as herein provided, and subject to the last sentence of this Section 9.3, the Members other than the Selling Member (the "Non-Selling Members") may purchase the Selling Member's Membership Interest on the same terms as POMTOC could have purchased such Membership Interest pursuant to this Section 9.3; provided, however, that: (i) the Non-Selling Members shall have until fifty-five (55) days after POMTOC's receipt of the Notice to give written notice to the Selling Member as to whether or not they have elected to purchase the Selling Member's Membership Interest; (ii) the purchase shall be made within sixty (60) days after receipt by the Selling Member of the notice of purchase by the Non-Selling Members or at such other time as the Selling Member and the Non-Selling Members shall agree; and (iii) the Non-Selling Members shall provide a single notice to the Selling Member whether or not they intend to purchase. If the Manager(s) designated by a Non-Selling Member vote against POMTOC's purchase of a Selling Member's Membership Interest, that Non-Selling Member may not then participate in that purchase of the Selling Member's Membership Interest (unless a majority of the Managers voted against that purchase of the Selling Member's Membership Interest).

Purchase by the Non-Selling Members pursuant to this Section 9.3 shall be pro-rata based on the Members' rights to allocations and distributions from POMTOC.

In the event that neither POMTOC nor the Non-Selling Members elect to purchase the Selling Member's Membership Interest as provided herein, the Selling Member shall be free, during the ninety (90) day period following receipt by it of the aforesaid notice from the Non-Selling Members, to sell its Membership Interest to the unaffiliated third party, in the manner and at the

price set forth in the aforesaid Selling Member's Notice, provided that said purchaser executes and delivers to POMTOC and each of the remaining Members, at or prior to the time of such transfer, an agreement to be bound by the terms and provisions of these Regulations and POMTOC's Articles of Organization, and assume Member obligations and guarantees, as set forth in Section 5.6, and following the purchase of the Selling Member's Membership Interest the purchaser will be in compliance with the requirements for a New Member set forth in Section 5.6 (b)-(d). In the event of such sale, any indebtedness of POMTOC held by the Selling Member shall be assumed by the purchaser upon the closing of such sale and any indebtedness of the Selling Member held by POMTOC shall be satisfied by the Selling Member upon the closing of any such sale hereunder. In the event that the Selling Member's Membership Interest is not sold within such ninety (90) day period, the sale of such Membership Interest shall once more become subject to all the provisions of this Section 9.3.

Notwithstanding anything contained herein to the contrary, no Member shall be entitled to so offer its Membership Interest hereunder more than once in any twelve (12) month period.

This Section 9.3 shall not apply to a transfer permitted pursuant to Section 9.4.

Section 9.4 Original Member Transfer. Notwithstanding anything to the contrary contained in Article IX or elsewhere in the Regulations, CST, FS and OS each shall be entitled once to sell, transfer or assign its Membership Interest (each such instance being a "Transfer Right"). A Transfer Right may be exercised in a single; or series of related, sales, transfers, or assignments. A Transfer Right may not be assigned or transferred. A Member shall provide POMTOC with written notice which includes information describing the transfer and the Assignee, including any additional information reasonably requested by POMTOC, at least 15 business days prior to the exercise of a Transfer Right. The Assignee of a Membership Interest pursuant to this Section 9.4 shall, prior to the exercise of the Transfer Right, deliver to POMTOC and each Member an agreement to be bound by the terms and provisions of these Regulations and POMTOC's Articles of Organization, and assume Member obligations and guarantees, as set forth in Section 5.6. No transfer pursuant to this Section 9.4 shall occur unless and following the transfer of the Membership Interest, the New Member will be in compliance with the requirements for a New Members set forth in Section 5.6 (b)-(d). In the event of the transfer of a Membership Interest pursuant to this Section 9.4, any indebtedness of POMTOC held by the Member exercising a Transfer Right shall be assumed by the Assignee upon the consummation of such transfer, and any indebtedness held by POMTOC of the Member exercising a Transfer Right shall be satisfied by the transferring Member at the consummation of the transfer.

Section 9.5 Default. If any Member fails to perform any of its obligations hereunder, violates in any material respect the terms of these Regulations or any agreement delivered pursuant hereto, or commits an act set forth in provisions (x) or (y) of this Section 9.5, and such action or default is not cured within thirty (30) days after such Member receives written notice of the same from POMTOC or one or more of the non-defaulting Voting Members, then POMTOC shall have the right to: (i) bring any proceeding in the nature of specific performance, injunction or other remedy, it being acknowledged that damages at law may be inadequate for a default or threatened breach of these Regulations; (ii) bring any action at law by or on behalf of POMTOC or the non-

defaulting Member(s) as may be permitted in order to recover damages; (iii) require the defaulting Member to sell all of its Membership Interest to POMTOC for a price equal to the net book value of such Membership Interest (determined pursuant to Section 9.2 hereof), and, other than as to the sale price, in accordance with the terms and conditions contained in Section 9.3 hereof less any indebtedness the Selling Member may have to POMTOC as if such Member had given notice of its intent to withdraw from POMTOC as of the time of notice of such default; or (iv) pursue any other remedy it may have under applicable law. Without limiting the generality of the foregoing, the designated rights of POMTOC referred to above shall become effective upon: (x) the making of an assignment for the benefit of creditors, the filing of a petition under the U.S. Bankruptcy Code or under any similar law or statute of the United States or any State thereof, or the adjudication of the Member as a bankrupt or insolvent in proceedings filed against such Member under any such act or statute which is not dismissed within thirty (30) days; or (y) any unlawful act causing damage to POMTOC.

ARTICLE X

Employees; Compensation; Meetings; Books and Records; Financial Statements

Section 10.1 Employees. The Managers in their sole discretion may employ and/or retain such employees of POMTOC as the Managers after consultation with the General Manager shall determine from time to time.

Section 10.2 Compensation and Reimbursement of Members. Except as expressly provided for herein, or as determined by the Managers, no payment shall be made by POMTOC to any Member for the services of such Member or any stockholder, director or employee thereof, and, subject to the provisions of Section 7.3, none shall be entitled to any compensation or reimbursement from POMTOC or any other Member for expenses incurred in connection with the business of POMTOC.

Section 10.3 Books of Account; Inspections. The books of account and records of POMTOC (the "Books") shall be kept and maintained at all times at the principal place of business of POMTOC or such other place as may be approved by the Managers. The Books shall show all items of income and expense and shall be maintained in accordance with generally accepted accounting principles consistently applied, with such exceptions, if any, as shall be approved by the Managers. Each Member shall have the right, upon one (1) day written notice, during usual business hours, to audit, examine and make copies from the Books. Such right may be exercised by any agent or employee of such Member appointed in writing, and shall be at such Member's expense.

Section 10.4 Financial Statements. The General Manager shall cause to be prepared and furnished to each Member: (i) within twenty (20) days after the end of each month, a statement of operations of POMTOC for such month; (ii) within sixty (60) days after the end of each fiscal year, a balance sheet of POMTOC and related statements of income or loss and changes in financial position as of the end of and for such year, audited by a firm of independent certified public

accountants selected by the Managers: and (iii) such other financial statements or other reports as the Members or Managers shall request from time to time.

Section 10.5 Meetings of Managers.

(a) Meetings:

(i) Annual. The Annual Meeting of the Managers shall be held within one hundred twenty (120) days of the close of the fiscal year of PQMTOC or at such other time and place, within or without the State of Florida, as selected by the Managers. No change in the date fixed for the Annual Meeting shall be made within seven (7) days before the date stated in the notice of that meeting. Notice of any change of the date fixed for the Annual Meting shall be given to all Managers at least seven (7) days before the new date fixed for such meeting. If the Annual Meeting is not held as herein provided, a Special Meeting of the Managers may be held in place thereof, with the same force and effect as the Annual Meeting, and in such case all references in these Regulations, except in this section, to the Annual Meeting of Managers shall be deemed to refer to such Special Meeting. Any such Special Meeting shall be called and notice shall be given as provided herein.

(ii) Regular. Regular Meetings of the Managers may be held at such places, within or without the State of Florida, and at such times as the Managers may determine.

(iii) Special. Special Meetings of the Managers may be held at any time and at any place within or without the State of Florida. Special Meetings of the Managers shall be called by notice upon the written demand of the Managers appointed by Members holding more than twenty-five percent (25%) of the Membership Interests.

(b) Call. No call or notice shall be required for Annual or Regular Meetings of Managers, provided that notice of the first Regular Meeting following the determination by the Managers of the times and places for Regular Meetings shall be given to absent Managers. Notwithstanding this provision, notice shall be given:

(i) Of an Annual Meeting held other than at the principal office of POMTOC;

(ii) If contracts or transactions of POMTOC with interested persons, agents, Members or Managers, or amendments to the Articles of Organization of POMTOC or to these Regulations are to be considered at the meeting;

(iii) If the meeting is to consider the resignation, withdrawal or expulsion of a Member or Manager; or

(iv) As otherwise required by law, the Articles of Organization of POMTOC, these Regulations, an operating agreement or resolutions.

(c) Waiver. Notice shall not be required if a written waiver of notice is executed by the Manager before or after the meeting. A waiver of notice need not specify the purposes of the meeting unless such purpose is required to be stated pursuant to the Articles of Organization of POMTOC or these Regulations.

(d) Quorum. At any meeting of the Managers, a majority of the Managers appointed by Voting Members then in good standing shall constitute a quorum. Any meeting may be adjourned to such date or dates not more than ninety (90) days after the first session of the meeting by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

(e) Vote. The Managers appointed by each Voting Member collectively posses one vote, regardless of whether one or both Managers attend a meeting. Only Managers will have a vote. Subject to the voting provisions contained in Section 6.5, when a quorum is present at any meeting, a majority of the votes properly cast by the Managers present in person shall decide any question, unless otherwise provided by law, the Articles of Organization or these Regulations.

(f) Consent. Any action required or permitted to be taken at a meeting of the Managers may be taken without a meeting if all Managers entitled to vote on the matter consent to the action in writing and the written consents are filed with the records of the meetings of the Managers. Such consents shall be treated for all purposes as a vote at a meeting.

ARTICLE XI

Representations and Warranties of the Members

Each Member represents and warrants to the other Members and to POMTOC, with respect to itself and its business, as follows:

Section 11.1 Standing. Such Member is a corporation duly organized, validly existing in good standing under the laws of the state of its incorporation and qualified to conduct business in Florida, with full corporate power and authority to provide its commitment to comply with these Regulations and carry out the activities as contemplated hereby.

Section 11.2 Authorization, Enforceability, Etc. Such Member's commitment to comply with and be bound by these Regulations have been duly authorized by all necessary corporate action, and is the valid and binding obligation of such Member. Such Member's commitment to comply with these Regulations and its compliance pursuant thereto will not conflict with or result in a breach of the provisions of its charter documents or any material agreement to which it is a party or the terms of any order, writ, injunction, decree, law, statute, rule or regulation applicable to it, or interfere with or adversely affect the ability of POMTOC to carry on the business of such Member, substantially on the same basis as heretofore conducted.

Section 11.3 Title. Such Member has good and marketable title to all of its assets, leases and properties to be contributed to POMTOC pursuant hereto, free and clear of all adverse claims and encumbrances, except as set forth on the instruments of assumption provided to POMTOC.

Section 11.4 Litigation. There are no suits, actions or governmental proceedings pending, or to the best of such Member's knowledge, threatened, against or relating to the business of such Member which may materially and adversely affect such business or any of its properties or assets. To the best of such Member's knowledge, neither it nor its business has engaged in any activity or omitted to take any action, as a result of which it is in violation in any material respect of any law, rule, regulation, statute, order, injunction or decree, or any other requirement of any court or governmental or regulatory body, applicable to it or its properties, business or employee benefit plans or labor practices.

Section 11.5 Consents. Each Member and its business has all consents, permits, appointments, approvals, licenses, certificates and franchises necessary for the operation of such business and the continuing operation thereof by POMTOC on substantially the same basis.

Section 11.6 Disclosure. To the best of such Member's knowledge, there is no material fact relating to its business, or the assets, operations or prospects of the Member which has not been disclosed in writing to the other Members or otherwise known to them.

Section 11.7 Securities Act, Etc. The Membership Interest that was acquired by each Member, or that will be acquired by any New Member pursuant hereto, is being acquired for its own account, for investment and not with a view toward any public offering thereof, within the meaning of the Securities Act of 1933, as amended (the "Securities Act"). Such Member acknowledges that its Membership Interest has not been registered under the Securities Act or any state's securities laws, that POMTOC is under no obligation to so register such Membership Interest, and that in the absence of such registration, or an exemption therefrom, such Membership Interest may be required to be held for an indefinite period of time.

ARTICLE XII

Dissolution

Section 12.1 Events Causing Dissolution. POMTOC shall be dissolved and its affairs wound up upon the occurrence of any of the following events:

(a) the sale, exchange, or other disposition by POMTOC of all or substantially all of its assets; provided, however that if in connection with such sale or other disposition, POMTOC receives a promissory note or notes evidencing all or a part of the purchase price of such property, POMTOC shall not be dissolved until such promissory note(s) is (are) satisfied, sold or otherwise disposed of, or

(b) the determination in writing by the Voting Members that POMTOC shall be dissolved.

POMTOC shall not be dissolved by the death, resignation, withdrawal, bankruptcy or dissolution of a Member.

Section 12.2 Winding Up. If POMTOC is dissolved, then the Senior Manager shall proceed with dispatch and without any unnecessary delay to cause the sale of or otherwise liquidate all property of POMTOC.

Section 12.3 Application of Assets in Winding Up. In winding up POMTOC, after paying or making provision for payment of all of its liabilities and paying all other costs and expenses incurred in connection with winding up and terminating POMTOC, the Senior Manager shall distribute the remaining net proceeds and liquid assets among the Members in the manner specified in Article VII.

Section 12.4 Negative Capital Accounts. If, after the allocation of the income, gains, losses, deductions and credits from a Terminating Capital Transaction and the distribution of the Capital Proceeds from the Terminating Capital Transaction among the Members, and upon final liquidation of POMTOC, the Capital Account of any Member is negative, the Member shall not be obligated to restore the negative balance in its Capital Account.

Section 12.5 Termination. POMTOC shall terminate, except for the purpose of suits, other proceedings, and appropriate action as provided in the Act, when all of its property shall have been disposed of and the net proceeds and liquid assets, after satisfaction of liabilities to POMTOC creditors, shall have been distributed among the Members. As soon as practicable after the termination of POMTOC, the Senior Manager shall cause Articles of Dissolution to be filed with the Secretary of State. The Senior Manager shall have authority to distribute any POMTOC property discovered after dissolution, convey real estate, and take such other action as may be necessary on behalf of and in the name of POMTOC.

ARTICLE XIII

Amendments

These Regulations may not be amended or modified by the Members without the consent of all Voting Members.

ARTICLE XIV

Miscellaneous Provisions

Section 14.1 Notices. All notices, including demands, consents, approvals or other communications provided for in these Regulations or required by law shall be delivered personally by overnight delivery service (e.g., Federal Express or DHL) or private courier service or sent by certified or registered mail, return receipt requested, first class postage prepaid, addressed to the Member at the address for notices on file with POMTOC. Time periods shall commence on the date three (3) business days after the date of mailing of a notice sent by mail, or on the date of receipt of a notice delivered by courier, or on the date of receipt of a confirmed facsimile. Any notice sent by mail which is required to be given within a stated period of time shall be considered timely if postmarked before midnight of the last day of such period. Notices given by counsel for any Member shall be deemed valid notices if addressed and sent in accordance with the provisions of this section.

Section 14.2 Integration. These Regulations sets forth all (and is intended by all parties hereto to be an integration of all) of the promises, agreements, conditions, understandings, warranties and representations among the parties hereto with respect to POMTOC, POMTOC's business and the property of POMTOC, and there are no promises, agreements, conditions, understanding, warranties, or representations, oral or written, express or implied, among them other than as set forth herein.

Section 14.3 Governing Law. It is the intention of the parties that all questions with respect to the construction of these Regulations and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State of Florida.

Section 14.4 Binding Effect. These Regulations shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors and assigns.

Section 14.5 Arbitration. Any dispute or controversy arising under the Articles of Organization or these Regulations, or the conduct of the business and affairs of POMTOC, shall be settled by arbitration in Miami-Dade County, Florida, by a panel of not less than three (3) arbitrators with reasonable knowledge of maritime terminal operations, in accordance with the rules then in effect of the American Arbitration Association, and judgment upon any award rendered by such arbitration shall be final and binding and may be entered in the highest court, state or federal, having jurisdiction. Notwithstanding the foregoing, any Member shall be entitled to seek equitable relief in any court having jurisdiction, to enjoin or prevent any breach or threatened breach of these Regulations, to the extent that it is lawfully entitled to the same.

Section 14.6 Savings Clause. Notwithstanding anything to the contrary contained herein, it is the intent of the Members hereto that should any provision, term, or condition contained herein be contrary to law (present or future), or affect the status of POMTOC as a limited liability company under the laws of the State of Florida, or affect POMTOC's tax status so that it is taxed as a

corporation rather than as a partnership, then that provision, term or condition is hereby rendered null and void ab initio, however, such shall not affect the validity and enforceability of the other provisions, terms and conditions herein.

Section 14.7 Counterparts. These Regulations may be executed in two or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned parties have signed this Regulation as of the day and year first above written.

CONTINENTAL STEVEDORING & TERMINALS, INC.

By: Arthur C. Novacek
Name: ARTHUR C. NOVACEK
Title: PRESIDENT

FLORIDA STEVEDORING, INC.

By:
Name: FRANK L. POVIROSA
Title: PRESIDENT

OCEANIC STEVEDORING, INC.

By:
Name: D.T. QUINN
Title: PRESIDENT

ITO CORPORATION OF FLORIDA

By:
Name: JAMES S. FIELD
Title: PRESIDENT

FOR EXPLANATION OF SYMBOLS, SEE PAGE 0-A (AFTER TITLE PAGE)

CONTAINER GANTRY CRANE FACILITY		ITEM
Any authorized stevedore (crane user) wishing to use container gantry crane(s), including all attached and ancillary parts and equipment [hereinafter referred to as "crane(s)"] shall make application for crane(s) rental use 12 hours prior to start-up time. Such applications shall specify the date and time of proposed use, the estimated length of use and number of cranes needed. The crane user shall return the crane(s) without delay, upon completion of his operations. The crane user shall provide all necessary operators and perform all stevedoring required in connection with container crane(s) use. When the crane(s) is/are ordered but not used, and orders are not modified or canceled within 6 hours, standby time for maintenance personnel will be assessed at the current labor rates, subject to a minimum charge of two hours straight time or four hours overtime. Any incurred cost is the responsibility of the user; such as balance of guarantees, meal hours, or any other costs not covered under rental fee or start-up and secure. It shall be the ship's responsibility to stow all of its cranes in an offshore position prior to the time that the container gantry cranes are put into service. In the event that it is necessary to use the ship's cranes for any reason while the container gantry cranes are still in use at any time prior to the container gantry cranes' complete removal from the vessel, the container gantry cranes shall have the absolute right of way and all movements of the ship's cranes will be subservient to the container gantry cranes' movements and operations. Accordingly, it will be the responsibility and obligation of the ship and its stevedores to keep a proper lookout and to ensure that the movements or operation of the ship's cranes do not interfere with the operations or movements of the container gantry crane. The ship will not begin to move its cranes into sea position until after the container gantry crane has fully completed its operations and movements and is fully clear from the ship and its cranes. It shall be the stevedore's responsibility to assure that the ship is aware of and complies with its responsibilities to stow and operate its cranes in conformance with these regulations.	CONTAINER GANTRY CRANE RULES AND REGULATIONS (C)	550

Exhibit E to Complaint

GOODWIN PROCTER

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August 18, 2005

ALL BY FEDERAL EXPRESS – PRIORITY OVERNIGHT DELIVERY

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Vice President
P&O Ports Florida
1007 North America Way
Suite 310
Miami, FL 33132

Mr. Arthur C. Novacek
President & CEO
Eller & Company, Inc.
701 S.E. 24th Street
Fort Lauderdale, FL 33316

Mr. Jorge P. Rovirosa
Executive Vice President
Farovi Shipping Corporation
125 N. East 9th Street
Miami, FL 33132-1798

Mr. Robert Scavone
Executive Vice President
P&O Ports North America Inc.
99 Wood Ave. South
Iselin, NJ 08830

Gentlemen:

We are writing to you in your capacities as Managers of the Port of Miami Terminal Operating Company ("POMTOC") and/or as representatives of the individual members of POMTOC.

We represent Ceres Marine Terminals Inc. ("Ceres") and its wholly owned subsidiary, R.O. White & Company Inc. ("R.O. White Co."), which holds a permit to operate as a stevedore at the Port of Miami ("Port"). We write to make sure that there is no misunderstanding concerning Ceres' and R.O. White Co.'s position and intentions with respect to R.O. White Co.'s right to perform stevedoring services for the vessels in the NYK Line and Hapag Lloyd Container Line South America service which call at the POMTOC terminal at the Port. The relevant background includes, *inter alia*:

> POMTOC, its members, and the Port are all "marine terminal operators" for purposes of the Shipping Act of 1984 ("Shipping Act"). §3(14).
>
> The agreement establishing POMTOC was filed with Federal Maritime Commission ("FMC") under the Shipping Act. That Act prohibits the parties to the filed POMTOC agreement from operating in a manner that is beyond the scope, or contrary to the terms, of that agreement.[1]

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[1] FMC Agreement No. 224-200616; Shipping Act §§10(a)(2-3).

Each of the parties to the POMTOC agreement operates, individually or through a joint venture involving another party, as a stevedore at the Port of Miami. However, the filed POMTOC agreement specifically excludes stevedoring from the purpose and business of POMTOC. §1.2.

The Shipping Act does not confer immunity from the antitrust laws for the POMTOC parties' activities or agreements involving stevedoring.[2]

POMTOC's agreement with the Port recognizes that the Port retains the exclusive right and discretion to assign all berths and cranes at the Port, including within the POMTOC terminal area. Art. II.2.3. The agreement between POMTOC and the Port also requires POMTOC to abide by the terms of the Port's Tariff No. 10. Art. XVIII.

The Port's Tariff No. 10 provides for use of the Port's container gantry cranes by "[a]ny authorized stevedore." Item 550.

Except in unusual circumstances, it is the vessel operator's right to select the stevedore that will work its vessels. This is not only the custom and practice of the industry, but a legal right that has repeatedly been enforced by the FMC and courts.[3]

The right is especially strong in the case of vessels calling the POMTOC terminal, because POMTOC is the only public user terminal for container vessels at the Port of Miami. For the vast majority of container operators, this means that, if they are precluded from selecting their stevedore at POMTOC, they are precluded from selecting their stevedore at the entire Port. The Port is a major port and plays an important role in United States foreign trade.

NYK Line and Hapag-Lloyd Container Line have informed POMTOC, including via letters of June 21, 2005 and July 22, 2005 to Mr. Fred Castonguay, POMTOC's Senior Vice President and General Manager, that they want to exercise their right as vessel operators and engage R.O. White Co. to stevedore their South America service vessels at the POMTOC terminal.

R.O. White Co. is fully qualified and able to perform such stevedoring services at the POMTOC terminal. R.O. White Co. holds a permit to stevedore at the Port, and has entered into a lease with the Port for office space and for an area to store its stevedoring equipment. As noted, R.O. White Co. is a wholly owned subsidiary of Ceres. Ceres, a wholly owned subsidiary of NYK Line, is a large and well-established company that

---

2 Shipping Act §7(a)(2). Given the explicit exclusion of stevedoring from the purpose and business of the agreement, the parties cannot have a reasonable basis to conclude that such agreements or activities are pursuant to the filed agreement.

3 The Port's tariff (Item 550) recognizes that stevedoring functions can directly impact the vessel and its operations, and that there needs to be a close working relationship between the vessel and "its stevedores" — factors which (among others) support the vessel operator's right to select the stevedore.

performs stevedoring and/or terminal services at 13 ports in the United States and Canada.

Notwithstanding the attempt by NYK and Hapag to assert their right to select R.O. White Co. to stevedore their ships, and notwithstanding R.O. White Co.'s qualification and ability to do so, POMTOC and its members have, to date, refused to allow R.O. White Co. access to the POMTOC terminal to perform stevedoring for NYK and Hapag. As viewed by Ceres and R.O. White Co., the decision to refuse – taking the form of both a direct rejection and a failure to respond to R.O. White Co.'s requests – has been made and communicated to Ceres and R.O. White Co. (i) by POMTOC the entity acting through its Senior Vice President and General Manager (a POMTOC employee) as well as through employees of POMTOC parties acting in their capacity as POMTOC officials. (ii) by the parties to the POMTOC agreement acting collectively and (iii) by the parties to the POMTOC agreement acting individually. Among other things, it is Ceres' and R.O. White Co.'s information and belief that:

> As summarized in a January 26, 2005 e-mail from Mr. Thomas Simmers, Ceres' President and CEO, to Mr. Christopher Morton, on that date Mr. Morton, acting in his capacities as Senior Manager of POMTOC and an employee of a POMTOC member, informed Mr. Simmers that POMTOC would refuse to permit Ceres to perform stevedoring services at POMTOC even after Ceres became properly credentialed. While Mr. Morton responded that the e-mail "does not correctly summarize my remarks" and that the issue would be discussed at the "next monthly POMTOC member meeting," no further response was received from Mr. Morton.
>
> In February 2005, Mr. Simmers also spoke with employees of the POMTOC members, Mr. Arthur Novacek, Mr. Jorge Rovirosa and Mr. Robert Scavone, concerning Ceres' access to the POMTOC terminal to perform stevedoring for NYK and Hapag. They rebuffed Mr. Simmers, questioning Ceres' legal right to access the terminal.
>
> On April 20, 2005, following finalization of Ceres' acquisition of R.O. White Co., Mr. Simmers again spoke with Mr. Scavone; but Mr. Scavone responded as before.
>
> By letter of June 21, 2005 from Mr. R. O. White to Mr. Castonguay, POMTOC was informed that R.O. White Co. had been nominated by NYK and Hapag to provide stevedoring services to the vessels in their South America service. Although Mr. Castonguay acknowledged in an e-mail dated July 7, 2005 that he had received the letter, to date neither Mr. Castonguay nor any other representative or member of POMTOC has responded substantively to that letter.
>
> By letter of July 22, 2005 to Mr. Castonguay from Mr. William Payne and Mr. John Nardi, NYK and Hapag-Lloyd confirmed and reiterated their position, as stated in the above-mentioned June 21, 2005 letter, that R.O. White Co. should

be allowed access to the POMTOC terminal so that it can begin providing stevedoring services to their vessels. To date, there has been no response to that letter or to the June 21 letter

The ships in the NYK/Hapag South America service have been calling POMTOC since March 2005. NYK and Hapag have been, and continue to be, denied their right to use R.O. White Co. to stevedore those ships; and R.O. White Co. has been, and continues to be, denied its right to provide such stevedoring services.

In contrast to the denial by POMTOC and its members of the right of NYK and its subsidiary R.O. White Co. to have R.O. White Co. perform stevedoring for NYK and the containership operator with which NYK shares vessels, POMTOC has allowed access to its terminal by another stevedore, APM Terminals, in order to provide stevedoring services to the containership operators with which APM's corporate parent, Maersk Sealand, shares vessels.

It is Ceres' and R.O. White Co.'s belief that, unless R.O. White Co. is immediately allowed access to the POMTOC terminal to perform stevedoring, the circumstances described above would give rise to numerous and ongoing violations of both the Shipping Act and the antitrust laws, as follows:

1. POMTOC has unreasonably refused to honor NYK and Hapag's designation of R.O. White Co. as the stevedore of the vessels in their South America service and R.O. White Co.'s request to POMTOC to perform the stevedoring of those vessels, with the result that POMTOC the entity, a marine terminal operator, will have violated and will continue to violate the following provisions of the Shipping Act among others:

(i) Section 10(b)(10) – made applicable to POMTOC by Section 10(d)(3) – which prohibits unreasonable refusals to deal;

(ii) Section 10(d)(1), which prohibits the failure by a marine terminal operator to establish, observe and enforce just and reasonable regulations and practices; and

(iii) Given POMTOC's authorization to APM Terminals to stevedore vessels at POMTOC, POMTOC's refusal to permit R.O. White Co. to stevedore NYK and Hapag vessels also will have violated and will continue to violate Section 10(d)(4), which prohibits undue or unreasonable preferences.

2. The parties to the FMC-filed POMTOC agreement, which are marine terminal operators, will have individually violated and will continue to violate the Shipping Act provisions identified in point 1 for the reasons stated in point 1. In addition, by agreeing to refuse and refusing to permit R.O. White Co. to stevedore the NYK and Hapag vessels at POMTOC, even though the POMTOC agreement by its terms excludes stevedoring from the purpose and business of the POMTOC, the parties to the POMTOC agreement,

as well as POMTOC, will have violated and will continue to violate the following additional provisions of the Shipping Act among others:

(i) Section 10(a)(2), which prohibits marine terminal operators from operating under an unfiled agreement; and

(ii) Section 10(a)(3), which prohibits marine terminal operators that are parties to a filed agreement from operating except in accordance with its terms.

3. The parties to the FMC-filed POMTOC agreement will have violated and will continue to violate the antitrust laws in that (i) they have conspired with each other and with POMTOC to violate the Sherman Act's prohibition against conspiracies in restraint of trade, including tying arrangements, by agreeing that POMTOC will require that carriers that call at the POMTOC terminal must use one of POMTOC's members for stevedoring services and (ii) have conspired to violate the Sherman Act's prohibition against monopolization and conspiracies to monopolize by that same conduct.

4. POMTOC the entity (i) will have violated and will continue to violate the Sherman Act's prohibition against conspiracies in restraint of trade, including tying arrangements, by requiring that carriers that call at the POMTOC terminal must use one of POMTOC's members for stevedoring services, and (ii) will have violated and will continue to violate the Sherman Act's prohibition against conspiracies in restraint of trade and conspiracies to monopolize by the conspiracies with its members that are described in point 3 above.

It is Ceres' and R.O. White Co.'s additional belief that the Port – which is a marine terminal operator and is the owner and lessor of the POMTOC premises – would itself be in violation of many of the above-referenced provisions of the Shipping Act should it fail to require POMTOC to give R.O. White Co. access to POMTOC, the only public user container facility at the Port, pursuant to a designation of R.O. White Co. as stevedore by NYK and Hapag Lloyd.

We trust that with this explanation of the relevant background events and the governing legal requirements, POMTOC will promptly cooperate with R.O. White Co. to comply with the designation of R.O. White Co. by NYK and Hapag Lloyd as stevedore at Miami of the vessels in the NYK/Hapag South America service. It is Ceres' and R.O. White Co.'s intention to enforce that designation by all legal means available should that prove necessary.

Sincerely yours,

Robert T. Basseches

David B. Cook

cc: Mr. Charles A. Towsley (by Federal Express – Priority Overnight Delivery)
Mr. Fred Castonguay (by Federal Express – Priority Overnight Delivery)

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November 15, 2005

Exhibit F to Complaint
Note: In order to avoid potential confusion, the first four lines on page 2 of this exhibit have been redacted. They resulted from a word processing error that duplicated the last four lines on page 1.

BY HAND DELIVERY

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Matthew J. Thomas, Esq.
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Re: POMTOC

Gentlemen:

This responds to your request at our meeting of November 3, 2005 for "clarification" of the position and intentions of Ceres Marine Terminals Inc. ("Ceres") and its wholly owned subsidiary, R.O. White & Company Inc. ("R.O. White") on the matters identified in our letter of August 18, 2005 to the managers and members of your client, the Port of Miami Terminal Operating Company ("POMTOC").

A. Stevedoring The NYK/Hapag South America Ships

Our August 18, 2005 letter addressed POMTOC's refusal to allow R.O. White to perform stevedoring services for the vessels in the NYK Line and Hapag Lloyd Container Line South America service for which POMTOC functions as a "marine terminal operator" under the Shipping Act of 1984. With all due respect, we do not see how there could be any need for clarification concerning R.O. White's intentions in that regard, given, *inter alia*, R.O. White's June 21, 2005 letter to POMTOC's Senior Vice President and General Manager (specifically

[redacted]

referenced in our August 18 letter) which spelled out those intentions in detail. Nevertheless, in response to POMTOC's questions, please be advised as follows:

1. You stated that POMTOC is unclear as to whether R.O. White would move containers between the NYK/Hapag vessels and a place of rest on the POMTOC terminal. As specifically stated in R.O. White's June 21 letter, POMTOC will continue to function as the marine terminal operator for the NYK/Hapag ships. Necessarily, then, R.O. White will move containers between the ships and a point of rest on POMTOC's terminal, as the June 21 letter identifies

Contrary to POMTOC's position as you conveyed it, this fact does not require or warrant a complex commercial negotiation between R.O. White and POMTOC before R.O. White can stevedore the NYK/Hapag vessels. R.O. White is entitled to commence this function immediately (and should have been allowed to do so months ago).

- The use of the terminal area as the container's point of rest is part of the marine terminal services that POMTOC provides to NYK/Hapag and, as such, is paid for as part of the marine terminal rates that POMTOC charges NYK/Hapag, as POMTOC's tariff identifies.[1] Given this, POMTOC cannot reasonably or lawfully impose a duplicative charge on the carriers' contractor-stevedore based on the fact that the terminal is the point of rest. Nor can a claimed right to impose such a charge be used as an excuse for a protracted commercial negotiation that would only delay this matter further.

- R.O. White's position in this regard is consistent with, and supported by, POMTOC's rules and practice concerning the terms on which truckers access POMTOC's terminal to pick up and drop off containers. Under POMTOC's tariff, all charges — including gate charges — are assessed against the steamship line (Rule 34.3, Item 4; Rule 34.5). Because the steamship line is responsible for paying POMTOC's gate charges, POMTOC does not (and legally could not) require the trucker to pay an additional charge for the ability to enter and traverse the terminal between the gate and the place where the container is picked up or dropped off. There is similarly no basis for POMTOC to charge R.O. White for the ability to enter and traverse the terminal between the container's point of rest (use of which is paid for by the steamship line) and the berth/cranes (which are exclusively controlled by the Port).

- In addition, R.O. White's position is consistent with, and supported by, the fact that POMTOC does not impose a charge on other stevedores who enter and traverse POMTOC's terminal in order to move containers between a vessel and point of rest. This includes, for example, Eller-ITO Stevedoring Company, LLC — a separate legal entity which is not a member of POMTOC and whose stevedoring business is excluded

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[1] See POMTOC Terminal Tariff No. 200: Rule 34.3, Item 1; Rule 34.4, Items 17-18; Rule 34.5

from the lawful business of POMTOC under FMC Agreement No. 224-200616-03 (Article 1.2).

The foregoing is not to say that R.O. White has completely ruled out the possibility of making some form of payment to POMTOC in connection with its stevedoring of the NYK/Hapag ships. Although not legally required, in the interest of resolving this matter R.O. White would be willing to talk with POMTOC about reimbursing *bona fide*, additional out-of-pocket costs (if any) that POMTOC incurs as a direct result of R.O. White's performance of such stevedoring, such as the cost (if any) of software modifications necessary to allow R.O. White to input and retrieve data from the Spinnaker system, as described in R.O. White's June 21 letter. However, this would be in the nature of a technical accounting rather than a major commercial negotiation.

2. You stated that POMTOC questions why R.O. White does not stevedore the NYK/Hapag ships by using the APM terminal or Seaboard Marine terminal as the containers' point of rest. It is difficult to believe that POMTOC advances this question seriously. Among other things:

- Because POMTOC is the marine terminal operator for the NYK/Hapag South America vessels, the containers on those vessels must — by definition — be stevedored to/from a place of rest on POMTOC's terminal. To suggest otherwise is a non sequitur.

- It is doubly a non sequitur given the fact that POMTOC is the Port's "only public, multi-user cargo terminal," as recognized by POMTOC in the Port of Miami's 2005 Official Directory (p. 23).

3. Moving the container between the vessel and a point of rest on the terminal is part of an ocean common carrier's transportation obligation to its shippers under the Shipping Act, as the FMC has repeatedly recognized. Except in unusual circumstances, the ocean carrier has a legal right to select the stevedore with which it will contract to perform that portion of its transportation obligation, as the FMC has also repeatedly recognized. It would be difficult to conceive of circumstances in which that right could be stronger than it is here. Among other things, as referenced above and/or in our August 18 letter:

- POMTOC is the only public user terminal at the Port of Miami. For the vast majority of container operators, if they are precluded from selecting their stevedore at POMTOC, they are precluded from doing so anywhere at this important U.S. port.

- The Port — not POMTOC — controls the berths and cranes used in connection with POMTOC's marine terminal operation. The Port's tariff provides that any authorized stevedore can use the cranes; and POMTOC's lease with the Port requires it to abide by the tariff.

- POMTOC does not provide, or contract with stevedores to provide, stevedoring services for the ocean carriers for which it provides marine terminal services. The carriers do.

- Indeed, the FMC-filed agreement establishing POMTOC specifically excludes the stevedoring business of POMTOC members and their affiliates from the purpose and business of POMTOC.[2]

In these circumstances, the members of POMTOC and their affiliates — in their individual capacities and without collusion — are free to compete with other licensed stevedores for the stevedoring business of the carriers calling POMTOC. But they are not free, and in fact are prohibited by the Shipping Act and antitrust law provisions cited in our August 18 letter, from using POMTOC as a device to exclude other stevedores from competing for that business, by having POMTOC condition a carrier's use of the only public container terminal at the Port on use of a POMTOC member or affiliate as stevedore. Yet as Ceres and R.O White understand it, that is precisely what POMTOC and its members are doing today.[3]

In sum, with respect to stevedoring the NYK/Hapag South America ships, it is the position of Ceres and R.O. White that (i) this matter has already dragged on far too long, as documented in our August 18 letter; (ii) NYK/Hapag's legal right to use R.O. White as their stevedore, and R.O. White's legal right to perform that function, cannot and should not be further delayed by a POMTOC demand that Ceres/R.O. White enter into a complex commercial negotiation that is inconsistent both with POMTOC's statutory obligations and with the structure of POMTOC's terminal charges and its treatment of truckers and other stevedores (see above); and (iii) R.O. White should immediately be allowed to commence stevedoring the NYK/Hapag ships as outlined in its June 21 letter to POMTOC.

B. Longer Term Issues Going Beyond Stevedoring

Any future plans of Ceres/R.O. White that are limited to performance of traditional stevedoring services (such as the type of services identified in the June 21 letter concerning the NYK/Hapag ships) would, legally and logically, be governed by the same legal analysis as above.

As discussed at our meeting, however, while the above dispute has dragged on, Ceres/R.O. White have been considering longer term possibilities at the Port which would go beyond stevedoring and include the provision of marine terminal services. This could take various forms, possibly including becoming a member of POMTOC pursuant to Article 9.5 of the Port's lease agreement with POMTOC, or possible development of Ceres/R.O. White's own marine terminal.

As to these longer term issues that go beyond stevedoring, Ceres/R.O. White would agree that there is a need for a commercial negotiation, not only with POMTOC, but also with the Port. Ceres/R.O. White propose that such discussions commence promptly.

By acknowledging that there is a valid commercial component to such negotiations, we in no way imply that they would not involve regulatory issues as well. To the contrary, issues might

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2 FMC Agreement No. 224-200616-03 (Article 1.2).

3 Stevedoring at POMTOC is being limited to Florida Stevedoring , Inc. (a member of POMTOC) and Eller-ITO Stevedoring Company (a company owned and controlled by the other three members of POMTOC).

arise concerning the Shipping Act duties of POMTOC's members to deal reasonably with qualified entities seeking to become a party to their agreement, and possibly also concerning whether current competitive and economic conditions justify continuation of POMTOC's monopoly over public user marine terminal facilities at the Port. Ceres/R.O. White are committed to pursuing the commercial discussions diligently and in good faith, but necessarily must reserve their positions on those or any other regulatory issues that may possibly become relevant.

In closing, we stress Ceres/R.O. White's position that the longer term issues going beyond stevedoring are entirely distinct from the stevedoring issues discussed in Part A above, which must be resolved without further delay, as required by the Shipping Act and antitrust provisions identified in our August 18 letter.

If the issue of stevedoring the NYK/Hapag ships is not satisfactorily resolved by November 30, R.O. White will be forced to consider appropriate action to enforce its (and the vessel operators') legal rights.

Very truly yours,

Robert T. Basseches
David B. Cook

cc: Mr. Charles A. Towsley (By Federal Express)

Exhibit G to Complaint

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET, N W - SUITE 1000
WASHINGTON, D C 20004-2134
www troutmansanders com
TELEPHONE 202-274-2950

C. Jonathan Benner
jonathan.benner@troutmansanders.com

Direct Dial: 202-274-2880
Fax 202-654-5647

November 30, 2005

BY HAND DELIVERY

Robert T. Basseches, Esquire
David B. Cook, Esquire
Goodwin Proctor LLP
901 New York Avenue, NW
Washington, DC 20001

Gentlemen:

Thank you for your letter of November 15, 2005, regarding the intentions of your client, Ceres Marine Terminals, Inc. ("Ceres") and its subsidiary, R.O. White & Co. Inc. ("R.O. White") with regard to the Port of Miami Terminal Operating Company ("POMTOC"), a privately leased marine terminal in the Port of Miami ("Port"). POMTOC has asked that we respond to your letter on its behalf.

Your letter addresses two issues: first, a demand that R.O. White be allowed to operate in and make use of POMTOC's leased terminal for the stevedoring of vessels for Ceres' parent company NYK Line ("NYK") and its vessel sharing partner, Hapag Lloyd Container Line ("HLCL"), and, second, certain "longer term issues," including potential POMTOC membership for R.O. White. We address each of these topics below.

R.O. White's Proposed Operations Inside POMTOC's Leased Facility

You have conveyed R.O. White's demand that it be allowed to operate inside the POMTOC terminal, moving cargo between POMTOC's container yards and NYK/HLCL vessels. POMTOC has no objection to, or control over, R.O. White's provision of stevedoring services for vessels in the Port. However, POMTOC's facility does not contain any vessel berths or container cranes; all of the Port's berth areas and container cranes are outside POMTOC's leased premises, are controlled entirely by the Port, and POMTOC in no way restricts access to these public areas. Your demand that R.O. White operate inside POMTOC's leased facility, staging and storing boxes in POMTOC's container yard on the terms you set forth, is unacceptable to POMTOC. We have no doubt that Ceres would decline a request by POMTOC or any of its principals to make use of a Ceres facility on similar terms.

POMTOC is not a "public" marine terminal. It is, rather, a private facility operating on land leased from Miami-Dade County.

POMTOC's lease agreement with Miami-Dade County provides POMTOC with exclusive use of the facility; the POMTOC lease with the County states clearly, in several articles, that the POMTOC facility shall be operated and maintained "for the use of its members."

Based on your letters, it appears that R.O. White, unlike the POMTOC members, has made little or no investment in the Port's infrastructure, much less improvements to that infrastructure. Nor has it apparently made any investment in attracting new business to the Port, or developing a container yard in which to stage and store cargo. While NYK and Hapag may prefer other stevedores, that preference does not compel POMTOC to cede the use of its terminal facilities.

Accordingly, your demand that POMTOC simply allow R.O. White to use the POMTOC facility on an "out-of-pocket cost" basis without bearing any of the investment, commitment and potential liabilities that the POMTOC members have shouldered in developing and operating the terminal is unfair to POMTOC, would establish a ruinous precedent for POMTOC's operations and is, as noted above, commercially unacceptable.

Other "Longer Term Issues"

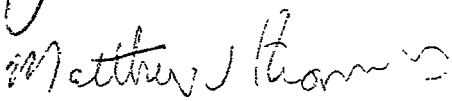
In your letter, you mention that Ceres and R.O. White are now in the process of "considering longer term options at the Port." These options include Ceres/R.O. White seeking POMTOC membership. POMTOC will carefully consider any proposal that appears to meet POMTOC's criteria for membership, as approved by the Port. We believe your client is fully acquainted with these requirements, given Mr. Simmers' former position as an executive of a POMTOC member company.

If you have any questions regarding the foregoing, please feel free to contact us.

With best personal regards, we remain

Yours very truly,

C. Jonathan Benner



Matthew J. Thomas

cc: Joseph O. Click, Esquire
Blank Rome, LLP

Charles A. Towsley
Director, Dante B. Fascell Port of Miami-Dade

CC: OS / OGC
Pub
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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

BEFORE THE
FEDERAL MARITIME COMMISSION

R. O. WHITE & COMPANY, INC.,	)	
CERES MARINE TERMINALS, INC.,	)	
	)	
Complainants	)	
	)	
versus	)	**DOCKET NO. 06-11**
	)	
PORT OF MIAMI TERMINAL OPERATING COMPANY, L.L.C., CONTINENTAL STEVEDORING & TERMINALS, INC., FLORIDA STEVEDORING, INC., P&O PORTS NORTH AMERICA, INC., P&O PORTS FLORIDA, INC., ELLER-ITO STEVEDORING COMPANY L.L.C., DANTE B. FASCELL PORT OF MIAMI – DADE, *aka* MIAMI-DADE COUNTY SEAPORT DEPARTMENT	)	
	)	
Respondents.	)	

SERVED
NOV 30 2006
FEDERAL MARITIME COMMISSION

COMPLAINANTS' INITIAL DISCOVERY REQUESTS TO ALL RESPONDENTS

I.

DEFINITIONS

A. **"1999 Regulations"** means the 1999 Amended and Restated Regulations of Port of Miami Terminal Operating Company, L.L.C., or any portion(s) thereof, which is included in Exhibit C to the Complaint in this Docket.

B. "**And**" or "**or**" shall be construed in the conjunctive or disjunctive as necessary to make the discovery request inclusive rather than exclusive.

C. The words "**any**" and "**all**" shall be construed so as to make the discovery request inclusive rather than exclusive.

D. The term "**communication**" means any oral or written contact, direct or indirect, including, but not limited to, conversations, meetings, telephone calls, letters, e-mails, or transmittal of documents.

E. "**Document(s)**" shall include, without limitation, the full range of things discoverable under the Federal Rules of Civil Procedure.

F. "**FMC**" refers to the Federal Maritime Commission and includes the Chairman of the FMC, any FMC Commissioner, and any official of the FMC or person on the staff of the FMC.

G. **"FMC Agreement No. 224-200616"** means the Operating Agreement, or any portion(s) thereof, which is included in Exhibit B to the Complaint in this Docket, including all amendments, exhibits, and supplements thereto (whether or not filed with the FMC).

H. Whenever in these discovery requests there is a request to "**identify**" a document, set forth a description of the document, the names of the sender(s), recipient(s), person(s) who received copy(ies), date, subject matter, and any unique identification number that has been assigned to the document.

I. The words "**include**" and "**including**" shall be construed to mean without limitation.

J. "**POMTOC**" and "**the Port**" have the meanings assigned to them in paragraph 4 of the Complaint.

K. **"Referring or relating to"** and variants of that phrase, as used in connection with a document, shall include referencing, describing, mentioning, evidencing, or comprising.

II.

INSTRUCTIONS

These discovery requests are addressed individually to each Respondent named in the Complaint, and are to be answered individually by each Respondent to the extent that the Respondent has responsive information or documents in its possession, custody, or control. If a particular Respondent has no responsive information or documents with respect to a particular discovery request, its response to the discovery request should so state.

Any document as to which a claim of privilege is or will be asserted should be identified by author, recipient, description (*e.g.*, letter, memorandum, e-mail, recording, etc.), title (if any), date, general subject matter, present custodian, and a statement of the ground for the claim of privilege should be set forth.

If any of the documents cannot be produced in full, produce to the extent possible, specifying the reasons for the inability to produce the remainder.

The requests herein are continuing and impose the duty seasonably to supplement responses pursuant to 46 C.F.R. § 502.201(j).

III.

INTERROGATORIES

1. With respect to FMC Agreement No. 224-200616 as defined above:

a. Identify FMC Agreement No. 224-200616 in the form in which it was originally filed with the FMC pursuant to the Shipping Act of 1984 and all other documents that were included in or related to the original filing, including prior drafts of the Agreement or any portions thereof.

b. Identify all subsequent filings with or submissions to the FMC referring or relating to the Agreement, including any amendments made to the Agreement subsequent its original filing, and all documents that were included in or related to such filings or submissions.

c. Identify Exhibits A through E listed on the page headed EXHIBITS in FMC Agreement No. 224-200616.

d. Identify any other exhibits, appendices, or attachments that were part of, or referred to in, FMC Agreement No. 224-200616 as it existed at any time.

e. Identify all documents covered by the following phrase in Section 9.1 of the FMC Agreement No. 224-200616: "the Exhibits and Schedules hereto, or agreements provided for herein, which constitute a part hereof, and the other documents delivered pursuant hereto."

f. State whether, and if so when, each document identified in response to the preceding subparts (c)–(e) of this paragraph was filed with the FMC pursuant to the Shipping Act of 1984, and identify all documents that were included in or related to any such filings.

g. Identify all documents referring or relating to Article 1.2 of FMC Agreement No. 224-200616, or any draft thereof or amendment thereto, or to the section of any prior or subsequent draft or version of such Agreement concerning the purpose or business of POMTOC.

h. Except to the extent specifically identified pursuant to the above, identify all communications between POMTOC or any of its current or former members (or the attorney or agent of POMTOC or any of its current or former members) and the FMC referring or relating to FMC Agreement No. 224-200616.

2. With respect to the 1999 Regulations as defined above:

a. Identify all documents referenced in items (i) through (viii) of paragraph B of the "Recitals" on page 1 of the 1999 Regulations.

b. State whether, and if so when, each document identified in response to subpart (a) of this paragraph was filed with the FMC pursuant to the Shipping Act of 1984, and identify all documents that were included in or related to any such filings.

c. Identify all documents created on or prior to the later of May 25, 1999, or the latest date on which the 1999 Regulations were actually signed by any signatory, referring or relating to the 1999 Regulations, including all prior drafts of all or any portion of the 1999 Regulations.

d. Identify all communications on or prior to the later of May 25, 1999, or the latest date on which the 1999 Regulations were actually signed by any signatory, involving at least one current or former member of POMTOC and referring or relating to the 1999 Regulations or any prior or subsequent draft or version of the 1999 Regulations.

e. Except as identified above, identify all documents (regardless of date) referring or relating to (i) Section 1.2 of the 1999 Regulations, or the section of any prior or subsequent draft or version of such Agreement concerning the effect or significance of the Regulations regarding the relationship among the parties; (ii) Section 3.1 of the 1999 Regulations, or the section of any prior or subsequent draft or version of such Agreement concerning the purpose or business of POMTOC; or (iii) Section 5.6 of the 1999 Regulations, or the section of any prior or subsequent draft or version of such Agreement concerning new members of POMTOC.

f. Were the 1999 Regulations, or any draft or portion thereof, provided to the Port by POMTOC or any current or former POMTOC member at any time? If so, identify the document(s) provided and all communications between POMTOC or any current or former POMTOC member and the Port concerning the documents provided.

g. Is it your position that the 1999 Regulations, in whole or part, were not required to be filed with the FMC under the Shipping Act of 1984? (i) If yes, explain in detail the basis for your position, and identify all documents referring to or supporting your position or otherwise referring to the question or possibility of filing the 1999 Regulations in whole or part. (ii) Identify any such filing and all documents relating thereto.

h. Identify all documents and communications between any Respondent or any former member of POMTOC (or the attorney or agent of either) and the FMC concerning the 1999 Regulations or any draft thereof.

i. Were the 1999 regulations subsequently amended or supplemented? If yes, identify all such amendments or supplements and all documents referring or relating thereto.

3. Was any filing made with the FMC concerning the establishment or operation of Eller-ITO Stevedoring Company, L.L.C.? Identify any such filing(s) and any communications by or on behalf of any Respondent with the FMC relating to whether such a filing was necessary.

4. Identify all written agreements, leases, memoranda of understanding, or other arrangements between the Port and POMTOC concerning the respective rights, obligations, or relationships of the Port and POMTOC with respect to POMTOC or the POMTOC terminal, including the Agreement Between Port of Miami Terminal Operating Company (POMTOC) And Metropolitan Dade County Seaport Department, entered into as of September 15, 1994, which is Exhibit A to the Complaint, and all drafts or versions of or amendments to any such documents.

5. Identify all written agreements, leases, memoranda of understanding, or other arrangements between the Port and Maersk, Inc., AP-Moller, or APM Terminals (or any affiliate) concerning the respective rights, obligations or relationships of the Port and one or more of those entities with respect to the marine terminal facility operated by one or more of them, and any drafts or versions of or amendments to any such document.

6. Identify all written agreements, leases, memoranda of understanding, or other arrangements between the Port and Seaboard Marine, Ltd. (or any of its affiliates)

concerning the respective rights, obligations or relationships of the Port and Seaboard Marine with respect to the marine terminal facility operated by Seaboard Marine, and all amendments to any such document.

7. Identify all entities or persons who hold a currently effective stevedoring permit issued by the Port.

8. Identify the Port's tariff(s) or marine terminal operator schedule(s) as they existed on January 1, 2004 and all subsequent changes thereto.

9. Identify POMTOC's tariff(s) or marine terminal operator schedule(s) as they existed on January 1, 2004 and all subsequent changes thereto.

10. Identify any document created, modified, or received on or after January 1, 2005 by one or more Respondents that refers, directly or indirectly, to one or more of the following:

a. Ceres Marine Terminals, Inc., or any affiliated company in the business of providing marine terminal or stevedoring services on the East or Gulf coasts of North America;

b. R.O. White & Company, Inc.;

c. Any of the following individuals

Bruce Cashon
Thomas Simmers
James White
R.O. White

11. Identify all agendas or minutes, and any drafts thereof, relating to any meeting of the POMTOC Board of Managers or POMTOC Members on or after January 1, 2004.

12. Identify all documents submitted by any Respondent to, or received by any Respondent from, the FMC on or after January 1, 2004 referring or relating to POMTOC.

13. Identify all editions of the Port of Miami Official Directory (or any similar document with a different title) for the years 1992 to present.

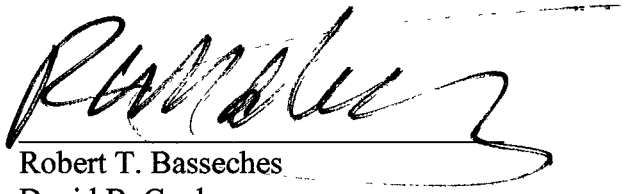
14. Have any documents requested to be identified above been destroyed since January 1, 2005? If so, then for each such document (or type or category of document), identify the document (or type or category), provide a full explanation of the circumstances of its destruction, and identify any communication or document referring or relating to such destruction or possible destruction.

IV.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce complete and legible copies of, or make available for inspection and copying, all documents requested to be identified pursuant to the above interrogatories. For each such document, identify the specific interrogatory (including subpart) to which it is responsive.

Respectfully submitted,



Robert T. Basseches
David B. Cook
Richard L. Matheny, III
Eric C. Jeffrey
Goodwin Procter LLP
901 New York Avenue, N.W.
Washington, DC 20001
202-346-4000

Attorneys for Complainants R.O. White & Company, Inc. and Ceres Marine Terminals, Inc.

November 22, 2006

06-11

FEDERAL MARITIME COMMISSION

Office of the Secretary
800 North Capitol Street, N.W.
Washington, DC 20573-0001

Phone: (202) 523-5725
Fax: (202) 523-0014
E-mail: Secretary@fmc.gov

November 30, 2006

David B. Cook, Esq.
Goodwin Procter, LLP
901 New York Avenue, NW
Washington, D.C. 20001

Re: Docket No. 06-11 - R.O. White & Company, Inc., Ceres Marine Terminals, Inc. v. Port of Miami Terminal Operating Company, L.L.C., Continental Stevedoring & Terminals, Inc., Florida Stevedoring, Inc., P&O Ports North America, Inc., P&O Ports Florida, Inc., Eller-ITO Stevedoring Company L.L.C., Dante B. Fascell Port of Miami-Dade, aka Miami-Dade County Seaport Department

Dear Mr. Cook:

This is to advise that the complaint which you filed on behalf of R.O. White & Company, Inc. and Ceres Marine Terminals, Inc. has been assigned Docket No. 06-11.

Service of the complaint and Initial Discovery Requests were made upon respondents as of this date and an answer is due to be filed with the Commission within twenty (20) days, unless additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure. See also Rules 2, 41, 42, 101 and 111 to 118.

Very truly yours,

Bryant L. VanBrakle
Secretary

cc: Office of Administrative Law Judges

FEDERAL MARITIME COMMISSION
Office of the Secretary
800 North Capitol Street, N.W.
Washington, DC 20573-0001

Phone: (202) 523-5725
Fax: (202) 523-0014
E-mail: Secretary@fmc.gov

November 30, 2006

Eller-ITO Stevedoring Company, L.L.C.
899 S. America Way
Miami, FL 33132

Re: Docket No. 06-11 - R.O. White & Company, Inc., Ceres Marine Terminals, Inc. v. Port of Miami Terminal Operating Company, L.L.C., Continental Stevedoring & Terminals, Inc., Florida Stevedoring, Inc., P&O Ports North America, Inc., P&O Ports Florida, Inc., Eller-ITO Stevedoring Company L.L.C., Dante B. Fascell Port of Miami-Dade, aka Miami-Dade County Seaport Department

Gentlemen:

Enclosed is a copy of the above-numbered complaint in which Eller-ITO Stevedoring Company, L.L.C. has been named a respondent. Also enclosed is the Complainants' Initial Discovery Requests.

An answer to the complaint is due to be filed with the Commission within twenty (20) days after the date of service stamped on the complaint, unless additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure. See also Rules 2, 41, 42, 101 and 111 to 118.

Very truly yours,

Bryant L. VanBrakle
Secretary

Enclosure

cc: Office of Administrative Law Judges

FEDERAL MARITIME COMMISSION
Office of the Secretary
800 North Capitol Street, N.W.
Washington, DC 20573-0001

Phone: (202) 523-5725
Fax: (202) 523-0014
E-mail: Secretary@fmc.gov

November 30, 2006

Dante B. Fascell Port of Miami-Dade,
aka Miami-Dade County Seaport Department
1015 N. America Way, 2nd floor
Miami, Florida 33132

Re: Docket No. 06-11 - R.O. White & Company, Inc., Ceres Marine Terminals, Inc. v. Port of Miami Terminal Operating Company, L.L.C., Continental Stevedoring & Terminals, Inc., Florida Stevedoring, Inc., P&O Ports North America, Inc., P&O Ports Florida, Inc., Eller-ITO Stevedoring Company L.L.C., Dante B. Fascell Port of Miami-Dade, aka Miami-Dade County Seaport Department

Gentlemen:

Enclosed is a copy of the above-numbered complaint in which Dante B. Fascell Port of Miami-Dade, aka Miami-Dade County Seaport Department has been named a respondent. Also enclosed is the Complainants' Initial Discovery Requests.

Answer to the complaint is due to be filed with the Commission within twenty (20) days after the date of service stamped on the complaint, unless additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure. See also Rules 2, 41, 42, 101 and 111 to 118.

Very truly yours,

Bryant L. VanBrakle
Secretary

Enclosure

cc: Office of Administrative Law Judges

FEDERAL MARITIME COMMISSION
Office of the Secretary
800 North Capitol Street, N.W.
Washington, DC 20573-0001

Phone: (202) 523-5725
Fax: (202) 523-0014
E-mail: Secretary@fmc.gov

November 30, 2006

P&O Ports Florida, Inc.
1007 N. Amnerica Way, Suite 310
Miami, FL 33132

Re: Docket No. 06-11 - R.O. White & Company, Inc., Ceres Marine Terminals, Inc. v. Port of Miami Terminal Operating Company, L.L.C., Continental Stevedoring & Terminals, Inc., Florida Stevedoring, Inc., P&O Ports North America, Inc., P&O Ports Florida, Inc., Eller-ITO Stevedoring Company L.L.C., Dante B. Fascell Port of Miami-Dade, aka Miami-Dade County Seaport Department

Gentlemen:

Enclosed is a copy of the above-numbered complaint in which P&O Ports Florida, Inc. has been named a respondent. Also enclosed is the Complainants' Initial Discovery Requests.

Answer to the complaint is due to be filed with the Commission within twenty (20) days after the date of service stamped on the complaint, unless additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure. See also Rules 2, 41, 42, 101 and 111 to 118.

Very truly yours,

Bryant L. VanBrakle
Secretary

Enclosure

cc: Office of Administrative Law Judges

FEDERAL MARITIME COMMISSION
Office of the Secretary
800 North Capitol Street, N.W.
Washington, DC 20573-0001

Phone: (202) 523-5725
Fax: (202) 523-0014
E-mail: Secretary@fmc.gov

November 30, 2006

P&O Ports North America, Inc.
99 Wood Avenue South, 8th floor
Iselin, NJ 08830

Re: Docket No. 06-11 - R.O. White & Company, Inc., Ceres Marine Terminals, Inc. v. Port of Miami Terminal Operating Company, L.L.C., Continental Stevedoring & Terminals, Inc., Florida Stevedoring, Inc., P&O Ports North America, Inc., P&O Ports Florida, Inc., Eller-ITO Stevedoring Company L.L.C., Dante B. Fascell Port of Miami-Dade, aka Miami-Dade County Seaport Department

Gentlemen:

Enclosed is a copy of the above-numbered complaint in which P&O Ports North America, Inc. has been named a respondent. Also enclosed is the Complainants' Initial Discovery Requests.

Answer to the complaint is due to be filed with the Commission within twenty (20) days after the date of service stamped on the complaint, unless additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure. See also Rules 2, 41, 42, 101 and 111 to 118.

Very truly yours,

Bryant L. VanBrakle
Secretary

Enclosure

cc: Office of Administrative Law Judges

FEDERAL MARITIME COMMISSION
Office of the Secretary
800 North Capitol Street, N.W.
Washington, DC 20573-0001

Phone: (202) 523-5725
Fax: (202) 523-0014
E-mail: Secretary@fmc.gov

November 30, 2006

Florida Stevedoring, Inc.
125 N.E. 9th Street
Miami, FL 33101

Re: Docket No. 06-11 - R.O. White & Company, Inc., Ceres Marine Terminals, Inc. v. Port of Miami Terminal Operating Company, L.L.C., Continental Stevedoring & Terminals, Inc., Florida Stevedoring, Inc., P&O Ports North America, Inc., P&O Ports Florida, Inc., Eller-ITO Stevedoring Company L.L.C., Dante B. Fascell Port of Miami-Dade, aka Miami-Dade County Seaport Department

Gentlemen:

Enclosed is a copy of the above-numbered complaint in which Florida Stevedoring, Inc. has been named a respondent. Also enclosed is the Complainants' Initial Discovery Requests.

Answer to the complaint is due to be filed with the Commission within twenty (20) days after the date of service stamped on the complaint, unless additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure. See also Rules 2, 41, 42, 101 and 111 to 118.

Very truly yours,

Bryant L. VanBrakle
Secretary

Enclosure

cc: Office of Administrative Law Judges

FEDERAL MARITIME COMMISSION
Office of the Secretary
800 North Capitol Street, N.W.
Washington, DC 20573-0001

Phone: (202) 523-5725
Fax: (202) 523-0014
E-mail: Secretary@fmc.gov

November 30, 2006

Continental Stevedoring & Terminals, Inc.
701 S.E. 24th Street
Fort Lauderdale, FL 33136

Re: Docket No. 06-11 - R.O. White & Company, Inc., Ceres Marine Terminals, Inc. v. Port of Miami Terminal Operating Company, L.L.C., Continental Stevedoring & Terminals, Inc., Florida Stevedoring, Inc., P&O Ports North America, Inc., P&O Ports Florida, Inc., Eller-ITO Stevedoring Company L.L.C., Dante B. Fascell Port of Miami-Dade, aka Miami-Dade County Seaport Department

Gentlemen:

Enclosed is a copy of the above-numbered complaint in which Continental Stevedoring & Terminals, Inc. has been named a respondent. Also enclosed is the Complainants' Initial Discovery Requests.

Answer to the complaint is due to be filed with the Commission within twenty (20) days after the date of service stamped on the complaint, unless additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure. See also Rules 2, 41, 42, 101 and 111 to 118.

Very truly yours,

Bryant L. VanBrakle
Secretary

Enclosure

cc: Office of Administrative Law Judges

FEDERAL MARITIME COMMISSION
Office of the Secretary
800 North Capitol Street, N.W.
Washington, DC 20573-0001

Phone: (202) 523-5725
Fax: (202) 523-0014
E-mail: Secretary@fmc.gov

November 30, 2006

Port of Miami Terminal Operating
Company, L.L.C.
1007 N. America Way, Suite 400
Miami, FL 33132

Re: Docket No. 06-11 - R.O. White & Company, Inc., Ceres Marine Terminals, Inc. v. Port of Miami Terminal Operating Company, L.L.C., Continental Stevedoring & Terminals, Inc., Florida Stevedoring, Inc., P&O Ports North America, Inc., P&O Ports Florida, Inc., Eller-ITO Stevedoring Company L.L.C., Dante B. Fascell Port of Miami-Dade, aka Miami-Dade County Seaport Department

Gentlemen:

Enclosed is a copy of the above-numbered complaint in which Port of Miami Terminal Operating Company, L.L.C. has been named a respondent. Also enclosed is the Complainants' Initial Discovery Requests.

Answer to the complaint is due to be filed with the Commission within twenty (20) days after the date of service stamped on the complaint, unless additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure. See also Rules 2, 41, 42, 101 and 111 to 118.

Very truly yours,

Bryant L. VanBrakle
Secretary

Enclosure

cc: Office of Administrative Law Judges

GOODWIN | PROCTER

David B. Cook
202.346.4189
dcook@
goodwinprocter com

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November 22, 2006

By Hand Delivery

The Honorable Bryant L. VanBrakle
Secretary
Federal Maritime Commission
800 North Capitol Street
Room 1046
Washington, DC 20573

Re: R.O. White & Company et al. v. Port of Miami Terminal Operating Company et al.

Dear Mr. VanBrakle:

Enclosed for filing are (i) an original and 15 copies for use by the Commission of the Complaint in the above-referenced proceeding; (ii) seven additional copies of the Complaint for service by the Commission upon all respondents; (iii) complainants' initial discovery requests to all respondents, in sufficient number for filing, use by the Commission and service by the Commission upon respondents; and (iv) a check in the appropriate amount for the filing fee.

We are sending via Federal Express courtesy copies of the complaint and discovery requests to the Chief Executive Officer of each respondent at the addresses listed in Paragraph 4 of the Complaint and to C. Jonathan Benner, Esq., Troutman Sanders LLP, 401 9th Street, NW, Washington, DC 20004.

Sincerely,

David B. Cook

DBC:gll
Enclosures