

**PORT OF PALM BEACH DISTRICT  
REQUEST FOR DISCUSSION AND  
COMMISSION ACTION**

**NEW BUSINESS  
ITEM J-1**

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**PREPARED BY:** Paul J. Zielinski      Deputy Director-CFO      January 5, 2018

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**SUBJECT: Teeters Agreements**  
Amended and Restated Terminal Agreement  
Amended and Restated Line Agreement

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**BACKGROUND:** On June 30, 2016, the initial term for both the Teeters Terminal User Agreement and the Monarch Line Agreement expired. Since that time, both agreements have been extended on a month to month basis. During this time, the contractual terms of both agreements were adhered to as if in force, including the annual increases to rental rates, wharfage rates and dockage rates. Accordingly, the latest increase incurred on July 1, 2017 and raised all rates by 3%.

The attached Terminal User Agreement and Line Agreement establish 5-year contracts for both agreements, reset all rates to commence on the Effective Date, delineate annual increases in rates, reconfirm minimums needed to secure discounts from Tariff Rates, adjust minimum insurance requirements, and more clearly address berthing obligations on both parties.

Most importantly, it allows for the continued relationship between the Port and a valued tenant for years to come.

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**ADDITIONAL INFORMATION ATTACHED:** No \_\_\_\_\_ Yes  X

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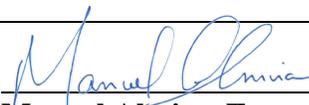
**FINANCIAL IMPACT:** Net Revenue exceeding an average of \$700,000 for each year of the five years covered by the agreements

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**RECOMMENDATIONS:** The Board of Commissioners of the Port of Palm Beach District is respectfully requested to approved the 2018 Teeters Amended and Restated Terminal User Agreement and the 2018 Amended and Restated Monarch Line Agreement and to authorize the Executive Director to execute both Agreements.

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**Respectfully Submitted By:**

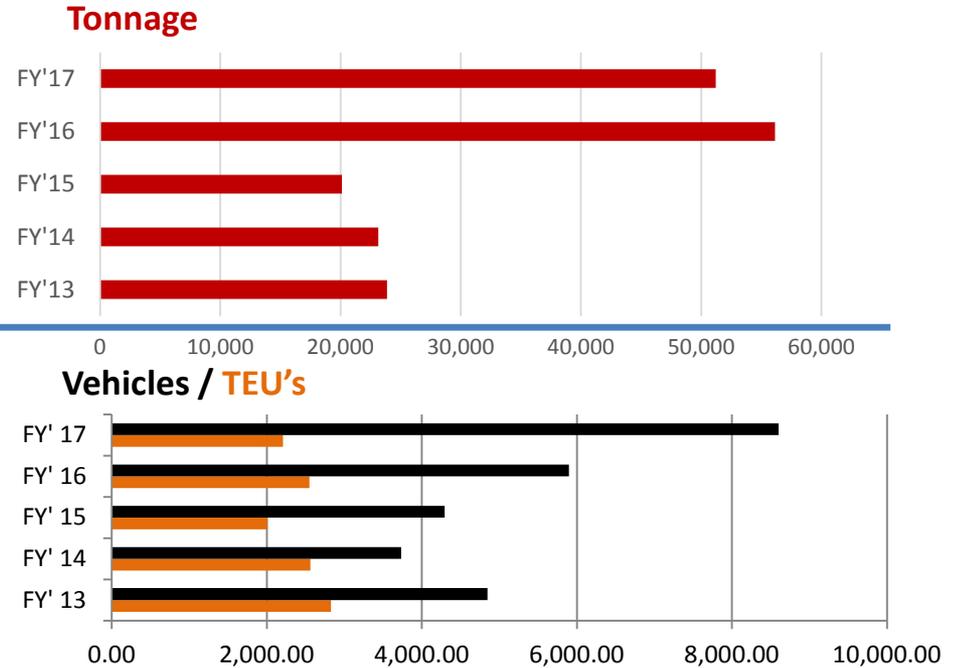
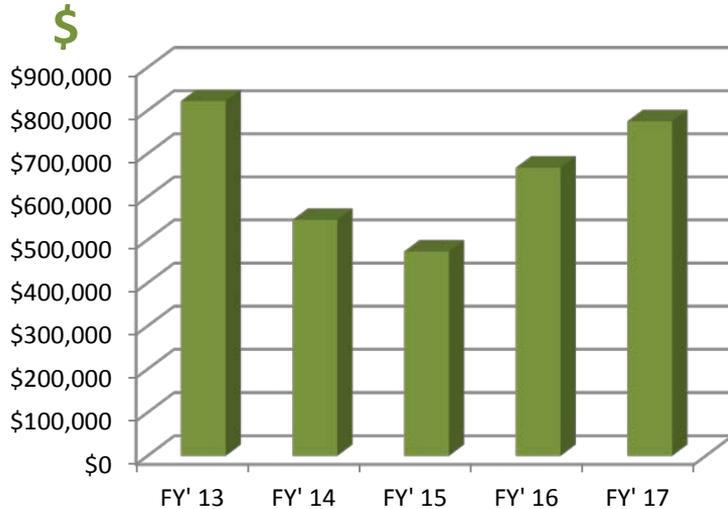
  
\_\_\_\_\_  
**Manuel Almira, Executive Director**

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<b>D DATE ACTION TAKEN:</b>	_____	Motion By:	_____
Approved:	_____	Seconded By:	_____
Disapproved:	_____	Unanimous:	Yes _____ No _____
Deferred To:	_____	By:	_____
Incorporated into Minutes:	_____		

## Teeter Agency & Stevedoring FY' 2013 To FY' 2017



	FY' 2013	FY' 2014	FY' 2015	FY' 2016	FY' 2017	Total
<b>Gross Revenue</b>	<b>\$821,972</b>	<b>\$546,405</b>	<b>\$473,087</b>	<b>\$667,443</b>	<b>\$774,984</b>	<b>\$3,283,891</b>
<b>Tonnage</b>	<b>23,866</b>	<b>23,155</b>	<b>20,107</b>	<b>56,137</b>	<b>51,195</b>	<b>174,460</b>
<b>Vehicles</b>	<b>4,846</b>	<b>3,735</b>	<b>4,296</b>	<b>5,899</b>	<b>8,601</b>	<b>27,377</b>
<b>TEU's</b>	<b>2,830</b>	<b>2,563</b>	<b>2,009</b>	<b>2,548</b>	<b>2,208</b>	<b>12,158</b>

**PORT OF PALM BEACH DISTRICT  
2018 TEETERS AMENDED AND RESTATED TERMINAL USER AGREEMENT  
2018 MONARCH AMENDED AND RESTATED LINE AGREEMENT  
SIGNIFICANT TERMS**

• **BOTH AGREEMENTS**

- **EFFECTIVE DATE – JANUARY 1, 2018**
- **INITIAL TERM – FIVE (5) YEARS**
- **RENEWAL OPTIONS – TWO FIVE (5) YEAR PERIODS**
- **ALL RATES (LEASE, WHARFAGE, DOCKAGE) RAISED 1.5%  
EFFECTIVE JANUARY 1, 2018**
- **ALL RATES ADJUSTED ANNUALLY FOR COLA**
  - **MINIMUM 3% TO MAXIMUM OF 5%**
- **AGREEMENTS PROVIDE BOTH CROSS-GUARANTEES AND  
ARE COTERMINOUS**

• **TERMINAL USER AGREEMENT**

- **PRIMARY PARCEL MAY BE RECONFIGURED IF CONVIENT TO  
DISTRICT**
- **SOUTH ROADWAY TO BE USED ONLY BY EITHER THE PORT  
OR TEETERS ( ROADWAY DEAD ENDS TO THE WEST)**

• **LINE AGREEMENT**

- **INSURANCE MINIMUM RAISED FROM \$1.0M TO \$5.0M**
- **WHARFAGE**
  - **ANNUAL MINIMUMS FOR DISCOUNT REMAIN SAME**
  - **PAYABLE MONTHLY NOT QUARTERLY**
- **DOCKAGE**
  - **ANNUAL MINIMUM FOR DISCOUNT IS 36 SHIP CALLS/YEAR**
- **DOCKAGE RELIEF ESTABLISHED**
  - **PORT TO HONOR RESERVATION WITH 4 HOURS OF  
ARRIVAL TIME**
  - **IF NOT, AND BERTH AVAILABLE PRIOR TO NOON,  
DOCKAGE CHARGED FOR ½ DAY ONLY**
  - **IF NOT, AND BERTH AVAILABLE AFTER NOON, DOCKAGE  
NOT CHARGED FOR DAY IF VESSEL NOT WORKED.**

**2018**  
**AMENDED AND RESTATED**  
**TERMINAL USER**  
**AGREEMENT**

PARTIES:

DISTRICT: PORT OF PALM BEACH DISTRICT

CORPORATION: TEETERS AGENCY & STEVEDORING, INC.

DATE \_\_\_\_\_, 2018

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**2018**  
**AMENDED AND RESTATED**  
**TERMINAL USER AGREEMENT**

This 2018 Amended and Restated Terminal User Agreement (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the PORT OF PALM BEACH DISTRICT (hereinafter referred to as "District"), a political subdivision of the State of Florida, Sixth Floor, One East Eleventh Street, Riviera Beach, Florida 33404 (E-Mail addresses, subject to change as set forth in Section 5.7 of this Agreement: almira@portofpalmbeach.com; jgary@gdr-law.com) and TEETERS AGENCY & STEVEDORING, INC., a Florida corporation (hereinafter referred to as “CORPORATION”), whose address is 333 Broadway Ave., Riviera Beach, Florida 33404 (E-Mail addresses, subject to change as set forth in Section 5.7 of this Agreement: cteeters@aol.com; teetersw@bellsouth.net; john.turner@saul.com ).

**RECITALS:**

Whereas, the DISTRICT is seeking to encourage, expand and continue container shipping and general cargo shipping at the Port, and

Whereas, the DISTRICT and the CORPORATION desire to enter into this Agreement to further the development of the DISTRICT,

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration flowing from each to the other, the receipt and sufficiency of which is hereby acknowledged, it is mutually covenanted and agreed by the DISTRICT and the CORPORATION as follows:

**ARTICLE 1**  
**AMENDMENT**

This agreement amends and restates in its entirety that certain “Amended and Restated Terminal User Agreement (Conformed for Mullins Parcel)” dated August 29, 2011 (which has been extended month to month for the convenience of the parties, by Letter Dated May 10, 2016), as the same had been amended through the date hereof. District and CORPORATION agree that this Agreement constitutes the only rights and duties that exist between the parties, and claims under prior agreements are released except as to (i) accrued charges, (ii) indemnities with regard to matters known and unknown and (iii) claims under policies of insurance.

**ARTICLE 2**  
**DEFINITIONS**

The following terms, wherever they appear in this Agreement, shall have the meanings set forth below:

- 2.1 Agreement** - shall mean and refer to this 2018 Amended and Restated Terminal User Agreement and all exhibits attached hereto;
- 2.2 CORPORATION** - shall mean and refer to TEETERS AGENCY & STEVEDORING, INC., a Florida corporation;

- 2.3 Index** - shall mean the index now known as "United States Bureau of Labor Statistics, Consumer Price Index for Urban Consumers (South 1982-84 = 100)". If the publication of the Index specified herein is discontinued, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selected by District shall be substituted. If the Index figures are not known at the time that any adjustment based thereon is due, those figures shall be reasonably estimated by District based on the most recently published monthly Index figures. If District is entitled to an increase in any amount due or to become due hereunder, District shall send a written notice to CORPORATION, together with the applicable Index figures, setting forth the computations for the increase. Failure to send any such notice of increase timely shall not constitute a waiver, or form the basis for a claim or defense of estoppel, as to any amounts due from the date that any such increase would have been otherwise applicable;
- 2.4 Demised Premises** - shall collectively mean and refer to the Primary Parcel and the Mullins Parcel;
- 2.5 Effective Date** shall mean as of January 1, 2018.
- 2.6 Lease Year** - shall mean a period of twelve calendar months commencing with the Effective Date, except that if the Effective Date is other than the first day of a calendar month, the first Lease Year shall include the number of days between the Effective Date and the end of the calendar month in which the Effective Date falls, and rent and other charges shall be prorated accordingly;
- 2.7 Mullins Parcel** - shall mean and refer to the property north of S.R. 710 and east of the F.E.C. Rail Mainline, Riviera Beach, Florida, as further identified in EXHIBIT B, attached hereto;
- 2.8 Primary Parcel** - shall mean and refer to the parcel described on EXHIBIT A, attached hereto;
- 2.9 Tariff** - shall mean DISTRICT's standard published then current tariff which is applicable to all Port Users without separate contractual agreements, as the same may be amended time to time, and any successor tariff, the now current Tariff of the District being Tariff No. 21, and shall mean (unless the term "now current Tariff of the District" is used) the Tariff of the District as in effect at the time a charge, right or obligation is claimed to have been incurred, or a right or obligation is claimed to have arisen. CORPORATION acknowledges receipt of a copy of the current Tariff of the District and agrees that the same (as succeeded by successor Tariffs) is incorporated herein and forms a part of this Agreement as completely as if set forth herein in full. Accordingly, any amounts charged at Tariff hereunder are not fixed, and will vary with the Tariff as adopted by the Port of Palm Beach District from time to time.
- 2.10 Port** - shall mean and refer to that certain real property and facilities known as the Port of Palm Beach Terminal, located in Palm Beach County, Florida;

- 2.11 Rolling Stock** - shall mean vehicles such as automobiles, trucks, trailers, buses and the like, which could travel upon interstate highways, including the contents and cargo loaded on such vehicles;
- 2.12 Utility or Utilities** - shall mean and refer to all power, telephone, television cable, gas, hydrants, lines transporting products (for example, without limitation, diesel fuel, asphalt, molasses) or other Port users or third parties, sewer and water lines either on, under or over the Premises;
- 2.13 Other Definitions** - other words and phrases used herein, the masculine shall include the feminine and neutral gender, and vice versa. The terms "hereof", "herein", or "hereunder" or similar terms shall refer to this entire Agreement. Other defined terms shall be given meaning ascribed to them in various sections throughout this Agreement. Unless assigned a specific meaning herein, terms used herein shall have the meaning assigned in the Tariff of the District (for example "ton" shall mean "short ton" of 2000 pounds). "Custom and usage" between the parties, either prior to or after the execution of this Agreement shall not be applicable to the interpretation of any term.

### **ARTICLE 3 DEMISED PREMISES**

#### **3.1 Demised Premises.**

The CORPORATION shall have sole and exclusive right of control, possession and use of the Demised Premises for the permitted uses hereinafter specified and the right of quiet enjoyment thereof during the Initial Term and any Renewal Term, except as specifically set forth herein.

Except as specifically set forth herein, all parcels are being leased in their current AS-IS condition, and the parties acknowledge that certain environmental conditions do or may exist, and that the Mullins Parcel has been the subject of certain testing and monitoring by governmental authorities.

#### **3.2 Term.**

##### **(a) Initial Term.**

This Agreement shall commence on the Effective Date and continue until five (5) years therefrom (Initial Term”).

##### **(b) Renewal Provisions.**

Upon the expiration of the Initial Term the CORPORATION shall have the right, exercisable in its sole option, to renew this Agreement for up to a total of two (2) individual Renewal Terms of five (5) years each; provided, that this Agreement can only be renewed if, when and as that certain Line Agreement referred to in Section 3.5, is renewed.. Each Renewal Term shall be upon the same terms, conditions and covenants as contained herein, ( subject to Rent and rate adjustments as provided herein), and each year thereof shall be deemed a Lease Year. If the CORPORATION elects to exercise its option to renew this Agreement upon the expiration of the

Initial Term or the then current Renewal Term, it shall furnish written notice of the exercise to the District not less than ninety (90) days prior to the expiration of the Initial Term or the then current Renewal Term; provided, however, that CORPORATION shall have no right to renew or give notice of renewal of this Agreement if (i) CORPORATION is then in default under this Agreement or any Line Agreements after notice of said default has been given and the same has not been cured during any applicable cure period or (ii) unless all existing Line Agreements are renewed contemporaneously. If all renewals have been exercised, then the District agrees that it will negotiate with the CORPORATION with respect to the terms of an extension agreement, but is not obligated to enter into any extension of this Agreement or a new agreement with CORPORATION, and does not agree that any such negotiations shall be conducted exclusively with CORPORATION.

**3.3 Rent.**

The CORPORATION shall pay to the DISTRICT as Rent for the Demised Premises as follows, as one aggregate sum (“Total Annual Rent”), payable in twelve (12) equal monthly installments (“Monthly Installment”), of \$19,891.09, subject to adjustments and changes in the Demised Premises as set forth in this Agreement, with each Monthly Installment due and payable on the first day of each and every calendar month, the following rates for the parcels indicated:

PARCEL	ANNUAL RENT PER SQUARE FOOT	SQUARE FEET	ANNUAL SUM
Primary Parcel	\$1.212	158,845	\$192,520.14
Mullins Parcel	\$0.606	76,193	\$46,172.96
TOTAL ANNUAL RENT			\$238,693.10

**3.4 Adjustment to Rent**

Commencing January 1, 2019, and each anniversary thereof, including all renewal terms, if any (subject to reset at Fair Market Rental Value at the commencement of each renewal term). Rent hereunder for that year shall be adjusted in the amount of any change in the Index from the last day of the third calendar month preceding the year just ending to the last day of the third calendar month preceding the year just commencing; provided, however, that Rent shall never be less than the Rent applicable to the year just ending, with a maximum upward adjustment of 5% and a minimum upward adjustment of 3%.

Beginning with the first day of each renewal period, Rent for each of the parcels comprising the Demised Premises shall be adjusted to Fair Market Rental Value. If the parties are unable to agree on Fair Market Rental Value, each party shall select an appraiser with the MAI designation and the two appraisers shall select a third. Fair Market Rental Value shall be the average of the three appraisals. Rental rates shall never be less than the Rent rates applicable to the year just ending.

**3.5 Quiet Enjoyment**

Upon payment by the CORPORATION of the Rent and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on the CORPORATION'S part to be observed and performed, the CORPORATION shall peaceably and quietly hold and enjoy the Demised Premises for the term hereby leased without hindrance or interruption by the DISTRICT, or any other person or persons lawfully or equitably claiming the Demised Premises subject, nevertheless, to the terms and conditions of this Agreement.

### **3.6 Sales Tax**

CORPORATION shall also pay, as additional Rent, any and all sales taxes imposed by the State of Florida or any other governmental authority, on any taxable amounts paid by CORPORATION hereunder, although the taxing statute or ordinance may purport to impose such sales tax upon DISTRICT. The payment of sales tax shall be paid by CORPORATION at the same time as payment is being made with respect to which the sales tax is imposed.

### **3.7 Real Property Taxes**

The CORPORATION shall be responsible for and shall pay all ad valorem taxes imposed upon the Demised Premises, the leasehold interest of the CORPORATION hereunder, improvements and the contents of the Demised Premises. The CORPORATION shall also pay any sales taxes imposed by the State of Florida or any other governmental authority, although the taxing statute or ordinance may purport to impose such sales tax against the DISTRICT. The payment of sales tax shall be paid by CORPORATION at the same time of payment of Rent. Ad valorem taxes shall be paid monthly, together with and in the same manner as Rent, at 1/12 th of the amount estimated, by District, to be payable for the year, to be adjusted when the actual amount is known.

(i) The DISTRICT and the CORPORATION acknowledge and agree that ad valorem real estate taxes are (or may be) currently assessed by taxing authorities (other than the District) against the Demised Premises. As set forth below, CORPORATION retains the right to contest the assessment of ad valorem taxes on the Demised Premises at CORPORATION's expense. CORPORATION agrees to provide, within five (5) days of filing or receipt (as the case may be) copies of papers and pleadings (including hearing notices) filed in the pending or any future proceedings with respect to ad valorem taxes.

(ii) The CORPORATION shall timely pay during the term of this Agreement its proportionate share of all such taxes, whether classified as ad valorem real property taxes or otherwise, and all assessments, general and special, levied or assessed for periods during the Lease Term by a lawful authority, against all of the Demised Premises, or the leasehold interest, including but not limited to the Palm Beach County Solid Waste Authority or any Water Control District. The DISTRICT shall furnish the CORPORATION with a copy of annual or other tax statements, when received. The CORPORATION shall pay such taxes or assessments and submit to the DISTRICT receipted copies of the statements evidencing such payment within ten (10) days prior to the date upon which such taxes or assessments shall become delinquent. The amount of such taxes payable by the CORPORATION shall be prorated during the first and last years of the lease term for the portion of such year during the lease term. In the event that the Demised Premises shall ultimately be held as assessable for ad valorem tax purposes by a final decision of the court

with jurisdiction thereof, then at the CORPORATION'S request, the DISTRICT and the CORPORATION shall promptly apply to the local taxing authority to have the Demised Premises assessed as a separate tax parcel, if the Demised Premises is not currently assessed as a separate tax parcel. In the event the local taxing authority will not assess the Demised Premises as a separate tax parcel, then the taxes and assessments payable by the CORPORATION shall be determined by multiplying the amount of each such tax and assessment by a fraction, the numerator of which shall be the Demised Premises on a square foot basis and the denominator of which shall be the total area on a square foot basis to which such tax and assessment is applicable.

(iii) The CORPORATION shall have the right to contest or review by legal proceedings or in such manner as the CORPORATION in its option shall deem advisable (which proceedings or other steps taken by the CORPORATION if instituted shall be conducted diligently at its own expense and free of any expense to the DISTRICT) any and all taxes or assessments levied, assessed, or imposed against the Demised Premises, or payments in lieu thereof required to be paid by the CORPORATION, provided that such contest shall not result in a tax sale of the Demised Premises, or any portion thereof. At the request of the CORPORATION, the DISTRICT will cooperate with the CORPORATION and make available to the CORPORATION upon demand any and all information which the CORPORATION may reasonably require, and execute any documents or pleadings that are reasonably required, including any agreement in settlement of any such contest or proceeding if it is necessary to do so to prosecute such proceeding, but the CORPORATION in those circumstances shall pay any direct, out of pocket costs and expenses incurred by the DISTRICT in connection therewith, and the DISTRICT shall have the right, as a condition of consenting to a settlement or judgment which imposes any monetary obligation on the DISTRICT, to require that security satisfactory to the DISTRICT be deposited with the DISTRICT to protect against such monetary obligations. In no event shall such contest defer or suspend the CORPORATION'S obligations to pay the taxes or assessments as herein provided; but if the CORPORATION is required by law to first pay the taxes or assessments and then seek a refund from the taxing authority, the CORPORATION shall do so. Nothing in this Section shall be in derogation of the DISTRICT'S right to contest or review any taxes or assessments by legal proceedings or in such other manner as may be available to the DISTRICT.

### **3.8 Personal Property And Intangible Taxes**

CORPORATION shall be responsible for and shall pay all personal property and intangible taxes imposed upon the Demised Premises and CORPORATION'S Improvements (including improvements made by a prior tenant, regardless of who may have paid for same) in the Demised Premises.

### **3.9 Amounts Collectible As Rent**

All amounts due under Sections 3.6 through 3.8 shall be deemed amounts "collectible in the same manner as Rent" under this Agreement.

### **3.10 Use of Demised Premises**

The CORPORATION shall use the Demised Premises ("Permitted Uses") for the purposes of handling, placement and storage of containers and other general cargo incoming or outgoing over the wharves at the DISTRICT, and light repair of equipment owned or leased by the

CORPORATION, and for such business use and purposes as will contribute primarily to waterborne commerce through the DISTRICT, including, but not limited to, the storage and handling of containers, container chassis and cargo operations directly related to the transfer, loading and unloading of waterborne cargo (explosive, nuclear, radioactive, or obnoxious cargo will not be handled in the DISTRICT without prior written approval of the DISTRICT). Without limiting the foregoing, any personal property owned or leased by the CORPORATION (excluding, without limitation, functional equipment, containers, supplies, parts, cargo, rolling stock and dunnage) which has been stored on the Demised Premises for more than six months shall be presumed to be not contributing primarily to waterborne commerce. The DISTRICT represents that the permitted use contemplated by this Section does not violate any existing rule or regulation of the DISTRICT. The CORPORATION shall not make use of the Demised Premises in such a manner which would void, make voidable or increase the premium for any policy of insurance covering the Demised Premises, nor which would constitute waste or mistreatment of the Demised Premises, nor shall any use of the Demised Premises be made which would constitute a nuisance or be unlawful. Condition of the Demised Premises. As of the Effective Date, the DISTRICT warrants it has no actual knowledge that the Demised Premises, or any portion thereof, violate any federal, state or local codes, regulations and ordinances for proper zoning and land use compatible with the Permitted Use.

### **3.11 Utilities**

CORPORATION shall be responsible for all utilities, including without limitation, sewer, water, electricity, gas and waste management.

### **3.12 Utility Easements**

CORPORATION acknowledges that all property hereunder is subject to all existing above- and below-ground sewer, water, drainage and utility easements. CORPORATION further consents to all hereafter created below-ground sewer, water, drainage and utility easements, provided however, that the same shall not interfere with the Permitted Use (except that CORPORATION acknowledges certain easement holders may impose height restrictions, or prohibit improvements upon or under the easement area). CORPORATION agrees that it shall, within fifteen (15) days of written request, execute such reasonable documentation as may be necessary or appropriate to confirm the subordination of its interests to such easements.

### **3.13 South Roadway**

The roadway located to the south of the Primary Parcel (“South Roadway”) dead-ends. In order to avoid traffic conflicts, during the term of the Agreement, use of the South Roadway is limited to (a) the Port of Palm Beach for its own purposes, and (b) the party in possession of the property to the immediate north of the South Roadway (subject to restrictions imposed by District from time to time, due to location of underground utilities, which may include, without limitation, restrictions on use for storage or parking).

### **3.14 Reconfiguration**

At the option of District, the Primary Parcel can be minimally reconfigured by deleting square footage and recapturing same, at any time and from time to time, if convenient to the District.

**ARTICLE 4**  
**WHARFAGE, DOCKAGE, OTHER FEES RATES AND CHARGES; BERTHING**

**(a) Tariff and Non-Tariff Rate Agreements.**

Unless otherwise specific in this Agreement, all vessels and all equipment and cargo of third party customers to which CORPORATION provides services shall be charged at Tariff, including for wharfage, dockage and storage, unless such vessels or third party customers have a separate agreement with DISTRICT governing such charges at non-Tariff rates. In that event, DISTRICT shall notify CORPORATION that such an agreement has been made and shall provide CORPORATION with the terms of such separate agreements, including all amendments and modifications thereof. Further, upon CORPORATION's request, DISTRICT shall send copies of all Port invoices for charges at non-Tariff rates to the vessel or third party with whom DISTRICT has reached the agreement. Provided, that CORPORATION shall not be charged for crane operator's licenses.

**(b) Berthing**

Corporation shall comply with Tariff procedures for requesting berth assignment, and shall simultaneously specify a departure date and time ("Departure"). Request to extend the Departure must be made not later than twelve (12) hours prior to the scheduled departure by written request by the CORPORATION. In the event that the DISTRICT schedules a vessel intended as a Working Vessel into any of the berth(s) assigned to Corporation pursuant to the Tariff procedure request, any vessel of the CORPORATION (or for which Corporation is agent) shall be moved off-berth, at the CORPORATION's cost and expense, at the request of the DISTRICT, not later than two (2) hours prior to the estimated time of arrival, at the Pilot Station, of any other vessel that has been assigned that berth, and for furthering this move-off, it shall be the responsibility of Corporation to determine the timing of the arrival at the Pilot Station. In the event that a "move-off" is required under these provisions, District shall permit Corporation to use an alternate berth, as long as such alternate berth use will not result in a vessel conflict due to prior commitment of same by District. CORPORATION acknowledges that the DISTRICT does not have control over decisions of the pilots with respect to berthing of vessels, or other matters. Communication under this Section may be by E-Mail or such other method as is approved by District.

**ARTICLE 5**  
**GENERAL PROVISIONS**

The following terms and conditions contained in this Article shall apply to the lease of the Demised Premises and the grant of control, possession, use and quiet enjoyment of the Demised Premises, as through each provision herein were separately printed within each of the preceding Articles.

## **5.1 Insurance**

### **(a) Public Liability Insurance.**

CORPORATION shall obtain public liability insurance from an insurance carrier satisfactory to DISTRICT to protect against loss from liability imposed by law for all damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever, resulting directly or indirectly from any act or activities of CORPORATION, or any person acting for it or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities of any of the foregoing.

Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Agreement, in the amount of Five Million Dollars (\$5,000,000.00) for any property damage or loss from any one (1) accident, Five Million Dollars (\$5,000,000.00) for injury to any one (1) person or Five Million Dollars (\$5,000,000.00) from any one (1) accident combined, single limit. DISTRICT reserves the right to require any increase in the amount of liability coverage, from time to time during the term of this Agreement as DISTRICT should determine to be commercially reasonable. Each such liability insurance policy shall be of the type commonly known as Owner's Landlord's and Tenant's Insurance, but provide the extended coverage required herein above.

### **(b) Casualty Insurance.**

CORPORATION shall furnish a policy of insurance providing coverage against casualty loss to the CORPORATION's Improvements (including tenant improvements made by a prior tenant, regardless of who may have paid for same). against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, vandalism and malicious mischief, civil commotion, aircraft, vehicles, smoke and such other hazards, which policy or policies shall be in an amount equal and sufficient, subject to approval by DISTRICT, to cover the replacement cost of such CORPORATION's Improvements (including tenant improvements made by a prior tenant, regardless of who may have paid for same). If additional improvements are made during the term of this Agreement or any extension or renewal thereof, additional insurance coverage will be obtained, as aforementioned, in an amount equal and sufficient to cover the replacement cost of such additional improvements.

### **(c) Miscellaneous Provisions.**

As a condition precedent to CORPORATION' rights under this Agreement, CORPORATION shall deliver to DISTRICT a copy of the binder of all insurances required of CORPORATION hereunder, an duplicate originals of the policy itself, and certificates evidencing the existence of the necessary insurance policies. All insurance policies contemplated herein to be maintained by CORPORATION shall insure DISTRICT and CORPORATION as their respective interests may appear, and shall show DISTRICT as a additional named insured. All such policies required to be maintained by CORPORATION shall be issued by companies qualified to write insurance in the State of Florida and possessing a rating of A-3A (or higher), by Best's Insurance Rating. The cost of premiums of all such policies of insurance as herein required to be maintained

by CORPORATION shall be paid by CORPORATION. Any policy required hereunder to be maintained by CORPORATION or actually maintained by CORPORATION shall contain a clause that the insurer shall not cancel or change the insurance policy without first providing ten (10) days prior written notice to DISTRICT. Not less than thirty (30) days prior to the expiration of any insurance required herein to be maintained by CORPORATION or actually carried by CORPORATION, CORPORATION shall deliver to DISTRICT a copy of the certificate of renewal thereof.

(d) **Impairment of Coverage.**

CORPORATION shall not make any use of any Demised Premises or any District property which would make void or voidable any policy of fire or extended coverage insurance covering the Demised Premises or other District property.

**5.2 Indemnities**

(a) **By CORPORATION.**

The CORPORATION shall indemnify and hold the DISTRICT harmless from and against any and all claims, actions, damages, liability and expense in connection with the loss of life, personal injury, and damage to property arising from the use or misuse of the Demised Premises, the Port, or any part thereof, and the occupancy, construction, reconstruction, repair, maintenance or use of the Demised Premises or any part thereof, occasioned wholly or in part by any action or omission by the CORPORATION or its agents, contractors, employees, servants, consultants, lessees, users, permitted invitees or concessionaires, and further agrees to indemnify, defend and save the DISTRICT harmless from and against and to promptly remedy upon notice and demand from the DISTRICT: (i) any violation of any federal, state or local environmental law or regulation, and the Port Tariff (collectively "Environmental Laws") by the CORPORATION or its employees, agents, contractors, employees, servants, consultants, lessees, users, permitted invitees or concessionaires at or with respect to any of the Demised Premises or the Port; (ii) the disposal of 'hazardous or toxic substances' (as defined in any Environmental Law) by the CORPORATION or its employees, agents, contractors, employees, servants, consultants, lessees, users, permitted invitees or concessionaires on any of the Demised Premises or the Port; (iii) any contamination of any of the Demised Premises or the Port caused by the CORPORATION or its employees, agents, contractors, employees, servants, consultants, lessees, users, permitted invitees or concessionaires, and (iv) any damage caused to Skypass or its structural supports caused by the CORPORATION or its employees, agents, contractors, employees, servants, consultants, lessees, users, permitted invitees or concessionaires. In addition, each party agrees that in connection with all new construction, and all repairs for which it is responsible, it shall comply with all Environmental Laws. The foregoing indemnity shall include all reasonable attorneys' fees incurred by the prevailing party in enforcing this indemnity or in defending a claim covered by this indemnity, whether or not suit is brought, including appeal.

(b) **By DISTRICT**

Without waiver of sovereign immunity, except to the extent of now current limitations, the DISTRICT shall indemnify and hold the CORPORATION harmless from and against any and all

claims, actions, damages, liability and expense in connection with the loss of life, personal injury, and damage to property arising from the use or misuse of the Demised Premises, the Port, or any part thereof, and the occupancy, construction, reconstruction, repair, maintenance or use of the Demised Premises or any part thereof, occasioned wholly or in part by any action or omission by the DISTRICT or its agents, contractors and employees.

### **5.3 Attorneys' Fees**

If either party pays or incurs any costs, expenses or reasonable attorneys' fees to enforce the covenants and agreements in this Agreement, the prevailing party shall be entitled to recover from the losing party all such costs, expenses and reasonable attorneys' fees arising out of or in connection with the enforcement of this Agreement, whether or not suit is brought, including appeal.

### **5.4 Default of the CORPORATION**

In addition to all other rights and remedies that the District may have, in law or in equity, the District shall have the following rights:

(A) If the CORPORATION shall violate or materially default on any of the non-monetary covenants or conditions contained in this Agreement, or if the CORPORATION, its customers, invitees, and/or employees, or anyone authorized by it shall knowingly continue to violate any of the Tariff, or reasonable rules and regulations that may be made from time to time hereinafter with respect to the use and operation of the Demised Premises or the Port facilities, and said violation and/or default shall continue for a period of at least thirty (30) days after notice of said violation from the District (“Cure Period”), then District shall have the rights and remedies provided in Subparagraph (C), below; Provided, however, that if the default is of such a nature that the same is not susceptible of cure within the Cure Period, and if CORPORATION shall have commenced cure and is diligently and continuously attempting cure, the Cure Period shall be extended for an additional sixty (60) days.

(B) If any part of the Rent, amounts collectible in the same manner as Rent or other monetary obligations shall remain due and unpaid for ten (10) days following the date on which the same shall become due and payable, and following ten (10) days written notice of same (provided, District and CORPORATION herewith agree that a billing statement or other invoice from the District shall constitute such written notice), District shall have the rights and remedies provided in Subparagraph (C), below.

(C) In addition to all other rights and remedies provided by law, the District shall have the right and option of terminating this Agreement and of declaring the balance of the entire rent and other monetary obligations called for by this Agreement to be immediately due and payable, and may proceed to collect all of the unpaid obligations by distress or otherwise; and the District may institute summary proceedings for the recovery of possession of the Demised Premises. The District may relet the Demised Premises for the account of the CORPORATION at the rates and on the terms deemed reasonable by the District and obtainable from maritime related qualified tenant(s) and for a longer period of time than fixed in this Agreement, applying any money collected first to the expense of obtaining possession, second to restoring the Demised Premises to a rentable condition, and then to the payment of rent and all of the charges due and accruing to the

District. Any surplus shall be credited to the CORPORATION, which shall remain liable for any deficiency.

(D) Notwithstanding Subparagraphs (A) – (C), above, (i) District shall have the right to impose fines for Tariff violations, and may create a Tariff item for failure to comply with berthing agreements (e.g. Article 4(b)) and (ii) matters relating to life and safety shall be cured promptly.

(E) Neither this Agreement nor any interest therein nor any estate thereby created shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law. In the event that the estate created thereby shall be taken in execution or by other process of law, or if the CORPORATION shall be adjudicated insolvent or bankrupt pursuant to the provisions of any state or federal insolvency or bankruptcy act, or if a receiver or trustee of the property of the CORPORATION shall be appointed by reason of the CORPORATION's insolvency or inability to pay its debts, or if any assignment shall be made of the CORPORATION's property for the benefit of creditors, or if any reorganization proceeding under the federal laws is instituted by or filed against the CORPORATION (and, if filed by a third party, not discharged within ninety (90) days thereafter), the District may elect to terminate this Agreement by giving to the CORPORATION thirty (30) days' notice in writing of the election of the District to terminate. The CORPORATION shall not cause or give cause for the institution of legal proceedings seeking to have the CORPORATION adjudicated bankrupt, reorganized or restrained under the bankruptcy laws of the United States, and shall not cause or give cause for the appointment of a trustee or receiver for the CORPORATION's assets, and shall not make an assignment for the benefit of creditors or become or be adjudicated insolvent. The allowance of any petition under the bankruptcy laws or the appointment of a trustee or receiver of the CORPORATION or its assets shall be conclusive evidence that the CORPORATION caused, or gave cause therefor, unless such allowance of the petition, or the appointment of a trustee or receiver is vacated within ninety (90) days after such allowance or appointment.

(F) The CORPORATION hereby expressly waives any and all rights of redemption granted by and under any present or future laws in the event the District obtains possession of the Demised Premises, by reason of the violation of any of the covenants or conditions of this Agreement.

(G) Corporation acknowledges that the Port of Palm Beach District would not have entered into an Agreement with Monarch Shipping Co., Ltd., a Bahamian corporation, but for the Guaranty, in the form attached hereto as EXHIBIT C, by TEETERS AGENCY & STEVEDORING, INC., A FLORIDA CORPORATION, and therefore agrees that, anything herein to the contrary notwithstanding, it shall be a default of this Agreement in the event of the making by the Guarantor of an assignment for the benefit of creditors or the appointment of a trustee or receiver for such Guarantor or for any property of such Guarantor under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or like law or statute.

(H) Cross-Default

This Agreement shall be co-terminus with the 2018 Amended and Restated Line Agreement, by and between DISTRICT and Monarch Shipping Co., Ltd, a Bahamian Corporation, and a default by Monarch Shipping Co., Ltd, a Bahamian Corporation under the 2018 Amended and Restated

Line shall be a default of this Agreement. CORPORATION agrees that its consent is not required for amendments to the 2018 Amended and Restated Line Agreement.

### **5.5 Repair and Maintenance**

Except as otherwise set forth herein, the CORPORATION shall be responsible for maintaining the paving within the Demised Premises and for any repaving of the Demised Premises which the CORPORATION deems necessary or appropriate. The CORPORATION shall be responsible for all maintenance of any new buildings constructed by the CORPORATION, and shall conserve, protect, preserve, clean and keep the same in good state of repair. The CORPORATION shall be responsible for all routine daily maintenance of the Demised Premises in a safe and useable condition (except that to be performed by the DISTRICT as set forth below).

### **5.6 Inspection**

The DISTRICT, or its consultants, Commissioners, guests, or employees may from time to time enter the Demised Premises for the purpose of inspection of the Demised Premises to determine the CORPORATION'S compliance with this Agreement, provided that such entry does not cause or constitute a violation of any other provision of this Agreement or an unreasonable interference with the CORPORATION'S possession of the Demised Premises or the CORPORATION'S operation of its business. The DISTRICT may, after any such entrance on the Demised Premises, upon thirty (30) days written notice to the CORPORATION, place the Demised Premises in a comparable condition of repair, sightliness, and cleanliness, ordinary wear and tear excepted, as existed at the date the CORPORATION assumed possession thereof, or as the date of being improved by the CORPORATION during the term hereof and accepted by the DISTRICT, if the CORPORATION declines to effect such repairs, cleaning and maintenance. In that event, the CORPORATION shall pay the DISTRICT, in addition to the other charges hereinabove reserved, the DISTRICT'S reasonable expenses in the repairing, cleaning or maintaining of the Demised Premises.

### **5.7 Notices**

All notices required or contemplated by this Agreement shall be in writing and shall be delivered in person, facsimile, or by United States Certified Mail (Return Receipt Requested). By giving at least ten (10) days prior written notice to the other party, either party may change its address for notices hereunder. No more than two mailing addresses can be specified at any one time.

Each such notice, request, or other communication shall be considered given and shall be deemed delivered (a) on the date delivered if by personal delivery, and (b) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed. Rejection, other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request, or other communication. Notwithstanding the foregoing, all notices, except default notices, may be given to CORPORATION by Email at the addresses given in the opening paragraph of this Agreement.

If to Corporation:

ATTN:  
C/O Arnstein & Lehr, LLP  
515 N. Flagler Drive, Suite 600  
West Palm Beach, FL 33401

With copy to: John A. Turner, Esq.  
C/O Arnstein & Lehr, LLP  
515 N. Flagler Drive, Suite 600  
West Palm Beach, FL 33401

If to Port of Palm Beach District:  
Port of Palm Beach District  
ATTN: Executive Director  
Sixth Floor, One East Eleventh Street  
Riviera Beach, Florida 33404

With copy to: Gregory C. Picken, Esquire  
C/O Gary, Dytrych & Ryan, P.A.  
701 U.S. Highway 1, Suite 402  
North Palm Beach, Florida 33408  
Fax No. 561 844-2388

## **5.8 Waiver**

The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent or other charges hereunder by the DISTRICT shall not be deemed to be a waiver of any preceding breach by the CORPORATION of any term, covenant or condition of this Agreement, other than the failure of the CORPORATION to pay the particular rental or charges so accepted, regardless of the DISTRICT'S knowledge of such preceding breach at the time of acceptance of such Rent or charges. No covenant, term or condition of this Agreement shall be deemed to have been waived by either party, unless such waiver be in writing. No payment by the CORPORATION receipt by the DISTRICT of a lesser amount of the monthly Rent or charges herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent or charges, nor shall any endorsement statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and the DISTRICT may accept such check or payment without prejudice to the DISTRICT'S right to recover the balance of such Rent or charges, or pursue any other remedy in this Agreement heretofore provided. No mention in this Agreement of any specific right or remedy shall preclude either party from exercising any other right or from having any other remedy or from maintaining any action to which it may be otherwise entitled either at law or in equity, and the failure of either party to insist in any one or more instances upon a strict performance of any covenants in this Agreement or to exercise any option right herein contained shall not be construed as a waiver or relinquishment for the future of such

covenant, right or option, but the same shall remain in full force and effect unless the contrary is expressed in writing by the parties hereto.

### **5.9 Surrender of Premises**

On the last day of the term of this Agreement or any renewal hereof, or on the earlier termination hereof, the CORPORATION shall peaceably surrender the Demised Premises in good order, condition and repair (reasonable wear and tear, and maintenance repair which is the DISTRICT'S responsibility excepted), as they were the Effective Date of this Agreement, or as they may be improved by the DISTRICT or the CORPORATION during the term hereof, and shall surrender any keys to the DISTRICT at the place then fixed for payment of Rent. All improvements made to the Demised Premises by the CORPORATION shall become the property of the DISTRICT at the time of termination. Notwithstanding the foregoing, the CORPORATION shall have the right to remove, its sole cost and expense, any of the CORPORATION'S trade fixtures at any time during the term of this Agreement and any renewal hereof; provided, however, that the CORPORATION shall repair at its expense any damage to the Demised Premises caused by such removal. Further, CORPORATION SHALL remove all of its personal property and leave the premises broom clean.

### **5.10 Exercise of Governmental Authority**

If the Federal Government, in the event of war or national emergency, shall, by the exercise of its governmental authority, whether by lawful or unlawful means, assume dominion over the facilities of the DISTRICT, or close the DISTRICT as a Port of Entry, or restrict the use of said Port to such extent so as to preclude the use of all or any portion of the Premises, then and in that event the CORPORATION shall have at its option, the right:

(a) to rescind this Agreement in total or as to any portion of the Demised Premises, if the dominion precludes use of a portion of the Demised Premises for the term of dominion, in which event both parties shall be relieved of all further liabilities and responsibilities hereunder as to the portion of the Demised Premises under governmental dominion; or

(b) to cease paying a proportionate share of Rent or any other payments required hereunder for the period of time during which the CORPORATION is precluded from using said Demised Premises or portions thereof; and/or

(c) to receive from the governmental authority precluding its use of the Demised Premises such damages as may be awarded for such taking, which shall not then relieve the CORPORATION from any provisions of this Agreement, or from payment of any of the monies required to be paid under this Agreement. The CORPORATION may select, at its option, any one of the aforesaid rights, and such election of any one right shall preclude the assertion of any of the other rights; provided, however, that if the federal government does not exercise domain over all the Demised Premises but only a portion thereof, the CORPORATION may elect its rights under subparagraphs (a) and (b) above.

### **5.11 Modification of Agreement**

None of the covenants and conditions contained herein may be modified except in writing duly executed on behalf of the CORPORATION and the DISTRICT, and no verbal waiver or

modification shall be binding upon either of the parties hereto. This Agreement and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promised, agreements, conditions, or understandings between the DISTRICT and the CORPORATION concerning the Demised Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written between them concerning the Demised Premises other than as are herein set forth or herein mentioned, except as specifically referred to herein to be in the Prior Agreement.

#### **5.12 Severability**

If any term, covenant, or condition of this Agreement or the application thereof to any person circumstances shall, to any extent, be determined to be invalid, unlawful or unenforceable, the remainder of this Agreement shall not be affected thereby and all other valid, lawful and enforceable terms, covenants and conditions of this Agreement shall continue to the fullest extent permitted by law.

#### **5.13 Discrimination**

In connection with the utilization of the Demised Premises, the CORPORATION agrees not to discriminate against any person, employee, or applicant for employment, in accordance with all applicable local, federal and state discrimination laws, as the same may be amended from time to time or on account of race, religion, color, age, gender, sexual orientation, sexual preference or national origin. This provisions shall include, not be limited to (i) employment, upgrading, demotion transfer, (ii) recruitment or advertising, layoff or termination; (iii) rates or any other form of compensation; and (iv) selection for training, including apprenticeship. Any final agency action or judicial decision finding actions by the CORPORATION to have constituted such discrimination shall constitute a default under this Agreement; provided, however, that the DISTRICT'S sole remedy for such default shall be deemed an action for monetary damages incurred by the DISTRICT due to such default, and such default shall not sustain any action for eviction, restriction removal of or against the CORPORATION. The CORPORATION agrees to indemnify and hold harmless the DISTRICT of, from and against any and all suits, losses, costs, claims, demands and judgments by reason of any discriminatory action by the CORPORATION as determined any final agency action or judicial decision.

#### **5.14 Fire Protection**

The CORPORATION acknowledges that the DISTRICT does not provide fire-fighting equipment or personnel, and does not have any fire-fighting capability. LINE shall furnish and supply all of its vessels with such portable and other fire extinguishing equipment as may be required by the District, by the City of Riviera Beach, Florida, United States Coast Guard, and other agencies of applicable jurisdiction.

#### **5.15 Liens**

The CORPORATION shall not allow, through its actions any liens or rights in rem to attach to the DISTRICT'S property, and shall promptly discharge or cause to be discharged or bonded any lien or rights in rem which may arise or exist at any time with respect to the Demised Premises or the DISTRICT'S other property. If any rights or liens do occur, it shall constitute a default by

the CORPORATION under this Agreement if said liens are not removed from record or bonded within twenty (20) days after notice thereof from DISTRICT.

#### **5.16 Time of the Essence**

It is understood and agreed by the parties hereto that time is of the essence as to all terms and conditions of this Agreement.

#### **5.17 Assignment**

Whereas the DISTRICT is specifically relying upon performance of the CORPORATION in generating Cargo Tonnage, Wharfage, Dockage and other charges pursuant to this Agreement and the DISTRICT'S Tariff, the CORPORATION shall have no right whatsoever to assign, sublet or otherwise transfer its interest in and to this Agreement or to the Demised Premises to any other person, CORPORATION or entity whatsoever.

#### **5.18 Compliance With Law**

CORPORATION's use and occupancy of the Demised Premises shall comply with all statutes, ordinances, rules, orders, regulations and requirements of the Florida Department of Law Enforcement, the United States Coast Guard, Port of Palm Beach and all other federal, state and city governments and regulatory authorities and of any and all their departments, agencies and bureaus having jurisdiction, including without limitation safety regulations, Federal Maritime regulations, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) in accordance with CFR 29 parts 1917 & 1918, the Port's Facility Security Plan as approved by the United States Coast Guard (USCG) in accordance with CFR 33 part 105, and the Tariff and obtain and maintain all licenses and permits necessary for CORPORATION's operations.

#### **5.19 Total or Partial Destruction**

If the Demised Premises shall be damaged by fire, the elements, unavoidable accident or other casualty, but are not thereby rendered untenable in whole or in part, the DISTRICT shall at its own expense promptly cause such damage, except to the CORPORATION'S equipment, improvements, inventory and trade fixtures, to be repaired. If the Demised Premises shall be rendered untenable only in part, the DISTRICT shall at its own expense cause such damage to be repaired as set forth above, and the Rent shall be abated proportionately as to the portion of the Leased Premise rendered untenable until the completion of repairs to the Demised Premises. If the Leased Premise shall be rendered wholly untenable, the DISTRICT shall at its own expense cause such damage to be repaired as set forth above, and the Rent shall be abated in whole until the complete restoration of the Demised Premises. If the repair and restoration will require more than ninety (90) days to complete, the DISTRICT shall notify the CORPORATION in writing delivered no later than sixty (60) days after said occurrence, whereafter the CORPORATION shall have the right within ten (10) days to terminate this Agreement upon notice to the DISTRICT, in which event this Agreement and the tenancy hereby created shall terminate and cease as of the date of said occurrence. If (i) the Demised Premises occupied by the CORPORATION are damaged or destroyed to the extent of fifty percent (50%) or more of the cost of replacement, or (ii) the Demised Premises are totally damaged or destroyed, then in either such event, the DISTRICT and CORPORATION shall each have the option to terminate this Agreement upon ten (10) days prior written notice to the other, given within sixty (60) days of the date of such damage or destruction.

In the event of any reconstruction of the Demised Premises under this Section, said reconstruction shall be only to the extent and condition of the Demised Premises as of the Effective Date of this Agreement, and any subsequent improvements made by the CORPORATION. The DISTRICT shall have no obligation in the event of any damage or construction to repair or replace any of the CORPORATION'S equipment, improvements, inventory or trade fixtures. The CORPORATION shall be responsible for the replacement of its stock in trade, improvements, trade fixtures, furniture, furnishings and equipment, and all costs of repair to same. If such damage or casualty is caused solely by any negligent or intentional action omission of the CORPORATION, its agents, contractors, employees and invitees, the foregoing shall continue to apply; provided, however, that the CORPORATION shall reimburse the DISTRICT for all amounts expended by the DISTRICT in repairing such damage, to the extent the DISTRICT is not reimbursed for such repairs by any insurance it has or the Demised Premises, within thirty (30) days of receipt of an invoice or invoices for such amounts from the DISTRICT. Upon any termination of this Agreement under this Section, the parties shall be released thereby without further obligation to the other party coincident with the surrender of possession of the Demised Premises to the DISTRICT, except for items which have theretofore accrued and are then unpaid.

## **5.20 Environmental Compliance**

### **(a) Definitions for Environmental Provisions.**

The following terms, as used in the environmental provisions of this Agreement, shall have the meaning indicated:

“CERCLA” means the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 USC 9601, et seq.), as amended from time, including without limitation, the Superfund Amendments and Reauthorization Act of 1986 (“SARA”).

“CERCLIS” means the Comprehensive Environmental Response Compensation and Liability Information System, or any other Information system, established pursuant to CERCLA or any other Environmental Law or Environmental Regulation.

“Environmental Law” means any applicable federal, state, or local law, statute, code, ordinance, or common law, whether now in existence or established, enacted or amended during the Agreement Term, relating to pollution, protection of the environment, health, Industrial hygiene, Hazardous Substances (including, without limitation, the manufacture, generation, distribution, use, treatment, storage, disposal, transport or handling thereof), including, but not limited to, CERCLA, SARA, RCRA, the Florida Resource Recovery and Management Act (Florida Statutes 403.701, et seq.), and Pollutant Spill Prevention and Control Act (Florida Statutes 376.011 through 376.17 and 376.19 through 376.21).

“Environmental Regulation” means any applicable regulation or rule promulgated by any Environmental Regulator.

“Environmental Regulator” means any federal, state or local governmental or quasi-governmental unit, body or agency which is charged with regulating environmental or Hazardous Substances, or which charged with enforcing any Environmental Law or Environmental Regulation, including, without limitation, the U.S. Environmental Protection Agency (“EPA”),

the Florida Department of Environmental Protection (“FDEP”), and the Palm Beach County DERM (“DERM”).

“Hazardous Substance” means asbestos, polychlorinated biphenyls, petroleum products and distillates, and any other substances, materials, and wastes which are or become regulated or controlled by any Environmental Law or Environmental Regulation applicable at any time to the use by CORPORATION, its agents or invitees of the Demised Premises during the term of this Agreement, including, without limitation, those within the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” “solid waste,” “pollutants,” “contaminants,” or “nuclear or byproduct material” in any such Environmental law or Environmental Regulation.

“National Priorities List” means the National Priorities List established pursuant to CERCLA or any other list identifying hazardous or toxic waste sites maintained or controlled by any Environmental Regulator.

“RCRA” means the Resource Conservation and Recovery Act of 1976 (42 USC 6901, et seq.), as amended from time to time.

(b) Environmental Covenants of CORPORATION

CORPORATION covenants and warrants, as applicable, that at all times during the term of this Agreement:

1. The Demised Premises shall not be used by CORPORATION, its agents or invitees for the storage or generation of any Hazardous Substance in violation of any Environmental Law, Environmental Regulation, order of an Environmental Regulator, or any permit issued by an Environmental Regulator.

2. No Hazardous Substance will be released or disposed of on the Demised Premises by CORPORATION, its agents or invitees in violation of any Environmental Law, Environmental Regulation, order of an Environmental Regulator, or any permit issued by an Environmental Regulator.

3. CORPORATION and its agents and invitees shall maintain full compliance with all permits and/or licenses issued by Environmental Regulators with respect to the conduct by CORPORATION, its agents or Invitees or operations governed by this Agreement.

4. If CORPORATION shall receive any notice regarding the Demised Premises from any Environmental Regulator of any violation or Suspected violation of any Environmental Law or Environmental Regulation, or relating to any clean-up, remediation or other response Action or threat thereof, then CORPORATION shall immediately notify the District thereof, and of subsequent developments related thereto.

(c) Covenant Not to Store Hazardous Substances In Violation of Law.

CORPORATION, for itself, its agents and invitees, covenants and agrees not to use the Demised Premises, at any time, for:

(1) the storage, generation, release or disposal of any Hazardous Substance in violation of any Environmental Law or Environmental Regulation, any order of an Environmental Regulator, or any permit issued by an Environmental Regulator;

(2) any purpose that would give rise to a clean-up, remediation or other response action; to the imposition of any fine, penalty, assessment, cost, forfeiture or imposition for violation of an Environmental Law or Environmental Regulation, or to a claim, claim of lien or lien (whether against the Demised Premises, the District, or the District's properties) for response costs, damages or other costs pursuant to any Environmental Law or Environmental Regulation; or

(3) any purpose that would cause the Demised Premises to be listed on the National Priorities List or with CERCLIS. Should the District at any time so request, CORPORATION shall execute and deliver to the District certifications, in reasonable form and content, concerning environmental covenants and warranties made by CORPORATION in this Agreement. The District may obtain such certifications, at the District's option, from CORPORATION's officers, employees, agents, invitees or other independent contractors, or other persons having knowledge of the use of the Demised Premises hereunder.

(d) Release of Hazardous Materials; Claim.

CORPORATION agrees to immediately notify the District upon the occurrence of any storage, generation, release, disposal or placing of any Hazardous Substance of any kind in, on, about or under the Demised Premises in violation of any Environmental Law, Environmental Regulation, order of an Environmental Regulator, or any permit issued by an Environmental Regulator, regardless of the source of other circumstances thereof. Further, CORPORATION shall immediately notify the District in writing of the receipt of any notice, order, correspondence, communication or reasonably reliable information that:

(1) a permit is required from any Environmental Regulator for the use or operation by CORPORATION, its agents or invitees upon the Demised Premises;

(2) a summons, citation, order directing compliance or inquiry has been or is being issued or made by any Environmental Regulator;

(3) any Environmental Regulator or third party has demanded or asserted any right of recovery for payment or reimbursement, or any claim, claim of lien or lien against the Demised Premises for clean-up costs, damages, or other costs incurred, under or pursuant to any Environmental Law, Environmental Regulation, or the common law;

(4) the Demised Premises are or will be listed on the National Priorities List or with CERCLIS;

(5) any fine, penalty, assessment, cost, forfeiture or imposition has been, is being, will be or is sought to be imposed against CORPORATION, its agents or invitees, or the District, or violation or asserted violation by CORPORATION, its agents or invitees of any Environmental Law, Environmental Regulation, an order of an Environmental Regulator or any permit issued by an Environmental Regulator; or

(6) any clean-up, remediation or other response action pursuant to any Environmental Law or Environmental Regulation has been, is being, or will be, commenced by any Environmental Regulator or third party with regard to the Demised Premises which would give rise to a claim, claim of lien or lien against the Demised Premises.

(e) Clean-up Plan.

In the event of any determination that, through actions by or attributable in any manner to CORPORATION, its agents or invitees, any Hazardous Substance has been stored, generated, located, released or disposed of in, on, about or under the Demised Premises, or that any storage facility is located in, on, about or under the Demised Premises, in violation of any Environmental Law, Environmental Regulation, order of an Environmental Regulator, or any permit issued by an Environmental Regulator, CORPORATION shall immediately so notify the District. Further, in each such instance, CORPORATION shall, at CORPORATION's sole cost and expense notify and keep the District fully informed of response actions proposed or necessary for clean-up or remediation, the details of plans and specifications therefor, and all developments related thereto. As soon as reasonably possible, after obtaining all necessary approvals, permits, and/or licenses of all appropriate governmental or quasi-governmental units, bodies or agencies, including, without limitation, Environmental Regulators, CORPORATION shall diligently prosecute the accomplishment of the response actions contemplated herein, at CORPORATION's sole cost and expense.

(f) Continuing Nature.

The environmental provisions of this Agreement shall survive the termination of the Agreement, such provisions to continue in full force and effect so long as the possibility of any environmental liability, claim, obligations or losses of the District, attributable to CORPORATION, its agents or invitees, shall exist.

(g) CORPORATION and District agree that the provisions of this Section 5.20 shall apply as to the Mullins Parcel for matters arising after the date of the Metcalf & Eddy Report under cover letter dated June 23, 2000 ("Report") a copy of which is attached hereto as EXHIBIT D, and that the Report shall be the agreed baseline as to the environmental condition of the property as of the date of the Study.

### **5.21 Environmental Indemnification**

CORPORATION agrees to and shall indemnify, defend (by counsel acceptable to the District) and hold the District harmless from and against all of the following matters which may arise by virtue of the use or occupancy of the Demised Premises, by CORPORATION, its agents or invitees hereunder:

(a) any and all liabilities, claims, demands, obligations, losses, awards, judgments, or amounts paid in settlement or compromise thereof, and costs associated therewith, including reasonable attorney's fees, by virtue of any investigation, inquiry, suit, proceeding, action, cause of action, right to recovery, assessment, claim, claim of lien or lien of or by any Environmental Regulator, or any third party, with respect to the Demised Premises or any adjoining lands, for clean-up costs, damages, (including without limitation punitive or consequential damages, whether

foreseeable or unforeseeable), or costs pursuant to any Environmental Law, Environmental Regulation, or order of an Environmental Regulator or any common law right of recovery, including without limitation those arising from personal injury, death or property damage:

(b) any and all fines, penalties, assessments, forfeitures, payments, impositions or amounts paid in settlement or compromise thereon, together with costs associated therewith, including reasonable attorney's fees, imposed or obtained by or awarded to any Environmental Regulator or third party for violation of, non-compliance with, any Environmental Law or Environmental Regulation;

(c) any and all costs required to effect any necessary remediation or response action as to the release of any Hazardous Substance in, on under or affecting the Demised Premises, or into the air, any waters, or surrounding or adjoining properties;

(d) any and all costs required to rectify any non-compliance in connection with the Demised Premises or any surrounding or adjoining properties, with Environmental Laws, Environmental Regulations, orders of Environmental Regulators or permits issued by Environmental Regulators;

(e) any breach of the environmental warranties or covenants of CORPORATION contained herein;

(f) in connection with the foregoing, any and all costs of any required engineering or other professional services, inspection or audits, and an closure or other required plans and specifications, and:

(g) CORPORATION acknowledges and agrees that the environmental indemnity provisions contained herein, and CORPORATION's obligations and liabilities arising under such provisions, are exclusive of, and in addition to, the other obligations of CORPORATION under the Agreement.

(h) CORPORATION and DISTRICT agree that the provisions of this Section shall apply as to the Mullins Parcel for matters arising after the date of a Phase II environmental study ("Study") of the Mullins Property, to be performed within promptly after execution of this Agreement, the cost of which shall be shared equally by the CORPORATION and DISTRICT, by an environmental engineering firm acceptable to both parties (the parties agree that the District's consulting engineers for environmental and geotechnical services are acceptable to both parties), and that the Study shall be the agreed upon baseline as to the environmental condition of the property as of the date of the Study; further provided, that if the Study shall show ground contamination (other than that reflected in the Metcalf and Eddy Report) either District or Corporation shall have the right to submit the issue of Corporation's responsibility for same, the amount of damages and obligations for remediation to binding arbitration in Palm Beach County under the "Regular Track" Rules of the American Arbitration Association. Corporation acknowledges that it shall be responsible for ground contamination caused by Corporation during

Corporation's prior periods of occupancy of the Mullins Property. Neither party shall be responsible for the other party's attorneys fees or costs in connection with the arbitration.

## **5.22 General Indemnification.**

In addition to the other indemnifications set forth herein, CORPORATION hereby covenants and agrees to indemnify and to save harmless the District and its Board members, officers, agents and employees, from and against any and all claims, demands, costs, damages, debts, liabilities and causes of action of every kind or character whatsoever, whether in law or in equity, and including reasonable attorneys' fees and costs, by reason of any death, injury or damage to any person(s), or any damage to or destruction of property of CORPORATION, its agents (including its employees), or of any third persons, in, upon or respecting the Demised Premises or any other properties of the District, or any use of such properties, and arising in whole or in part out of CORPORATION's wrongful or negligent acts or omissions during the term of the Agreement, or possession thereof, unless the claims, demands, costs, damages, debts, liabilities or causes of action were caused, in whole or in part, by any active negligence on the part of DISTRICT or its Board members, officers, agents or employees. Further it is expressly agreed that the terms of CORPORATION's indemnifications of the District herein shall also cover and apply to the wrongful or negligent acts or omissions of all invitees of CORPORATION, and of all agents (including employees) of such invitees, while engaged in, or having entered upon the Demised Premises or any other properties of the District in connection with, any activities allowed to CORPORATION under this Agreement, as fully as if they were the acts and omissions of CORPORATION.

The indemnifications, obligations, and liabilities of CORPORATION under this Agreement shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of the termination or expiration of the term of this Agreement or the transfer of all or any portion of the Demised Premises, or any interest in the Agreement.

## **5.23 Force Majeure.**

In the event either the DISTRICT or CORPORATION is delayed in the performance of any of its obligations hereunder as a result of strikes, lockouts, wars, unavailability of materials, floods, unusual weather conditions, government regulations and acts, or other causes beyond that party's reasonable control, then the time for the performance of any such obligation so delayed shall be extended for the period of such delay. The provisions hereof shall not constitute a basis for non-payment or deferral of any amounts due hereunder, or a basis for extension of the terms of this Agreement.

## **5.24 Consent**

At any time the other party's consent is required, said consent shall not be unreasonably withheld, unless this Agreement specifically permits that party to withhold consent in its sole discretion.

## **5.25 Signage on Mullins Parcel**

District shall have the right to install, access and maintain billboard or other type signage (“Signs”) on the Mullins Parcel (and install, access and maintain utilities to service such Signs), and to retain all of the income therefrom. Such Signs shall be towards the westernmost end of the Mullins Parcel, and District shall use reasonable efforts to minimize impact on CORPORATION’s use of the remaining property within the Mullins Parcel, and shall not reduce the useable square footage of the Mullins Parcel by more than 10%, with pro rate reduction of Rent for the Mullins Parcel.

#### **5.26 Mullins Parcel Reduction for Rail**

District shall have the right to reduce the total square footage of the Mullins Property by up to 30% of the size of the Mullins Parcel as of the Effective Date, for re-configuration of the rail lines servicing the District, provided that the 30% figure shall be reduced by any amount that may have been theretofore taken under Section 5.25; and further provided that District shall replace the square footage by adding an equivalent amount of square footage to other property then under use by Corporation hereunder (fenced, graded, paved and lighted commensurate with the parcel to which it is being added), however, the rental for such relocated square footage shall be the same as the Mullins Property from which it was taken. It is anticipated that any such reduction in size shall be from the western end of the Mullins Property, and generally parallel to the southwest boundary. In the event of such replacement, all expenses of relocation to the replacement property, including without limitation, the physical relocation of cargo or equipment or other tangible property, or computer, utility, phone or other lines or connections, shall be at the cost of Corporation.

#### **5.27 Sworn Statement**

A condition to the effectiveness of this Agreement is the truthful execution of the Sworn Statement attached as Exhibit E.

**LIST OF EXHIBITS**

The following Exhibits are incorporated herein.

- Exhibit A - Primary Parcel
- Exhibit B - Mullins Parcel
- Exhibit C Guaranty
- Exhibit D Metcalf & Eddy Report dated June 23, 2000
- Exhibit E Sworn Statement

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the date first above written.

WITNESSES:

DISTRICT:  
PORT OF PALM BEACH DISTRICT

\_\_\_\_\_

BY \_\_\_\_\_

Printed Name of  
Witness: \_\_\_\_\_

\_\_\_\_\_

Printed Name of  
Witness: \_\_\_\_\_

CORPORATION:  
TEETERS AGENCY & STEVEDORING,  
INC., a Florida corporation

\_\_\_\_\_

BY \_\_\_\_\_

Printed Name of  
Witness: \_\_\_\_\_

\_\_\_\_\_

Printed Name of  
Witness: \_\_\_\_\_

STATE OF FLORIDA ]  
COUNTY OF PALM BEACH ]

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2018 by \_\_\_\_\_, who is personally known to me or who produced Florida Driver's license \_\_\_\_\_ as identification, as \_\_\_\_\_ of PORT OF PALM BEACH DISTRICT, a Political Subdivision of the State of Florida.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

STATE OF FLORIDA ]  
COUNTY OF PALM BEACH ]

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2018 by \_\_\_\_\_, who is personally known to me or who produced Florida Driver's license \_\_\_\_\_ as identification, as President of TEETERS AGENCY & STEVEDORING, INC., a Florida corporation.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

**EXHIBIT C**  
**GUARANTY**

IN ORDER to induce Port of Palm Beach District to enter into that certain 2018 Amended And Restated Terminal User Agreement (“Terminal Agreement”) by and between the Port of Palm Beach District and TEETERS AGENCY & STEVEDORING, INC., A FLORIDA CORPORATION (“TAS”), Monarch Shipping Co., Ltd, a Bahamian Corporation (“Guarantor”) hereby covenants and agrees with the Port of Palm Beach District as follows:

1. The Guarantor hereby unconditionally and irrevocably guarantees to the Port of Palm Beach District, and to any subsequent holder of the aforementioned Terminal Agreement; (i) the due and punctual payment in full (and not merely the collectability) of all amounts due or to become due to the Port of Palm Beach District under said Terminal Agreement, in each case when due and payable; (ii) the due and punctual payment in full (and not merely the collectability) of all other sums and charges which may at any time be due and payable in accordance with, said Terminal Agreement, including any costs or reasonable attorneys' fees incurred by Port of Palm Beach District in the enforcement of the Terminal Agreement or any Guaranty, whether or not litigation is initiated, including attorneys' fees at trial, appellate and bankruptcy proceedings; and (iii) the due and punctual performance of all of the other terms, covenants and conditions contained in the said Terminal Agreement, on the part of TAS to be performed; and (iv) the unlimited payment of all other obligations and liabilities of the TAS to the Port of Palm Beach District.

2. The Guarantor expressly agrees that the Port of Palm Beach District or any subsequent holder of said Terminal Agreement may, in its sole and absolute discretion, without notice to or further assent of the Guarantor and without in any way releasing, affecting or impairing the obligations and liabilities of the Guarantor hereunder: (i) waive compliance with, or any defaults under, or grant any other indulgences with respect to, said Terminal Agreement; (ii) modify, amend or change any provisions of said Terminal Agreement and/or effect any release, compromise or settlement in connection with said Terminal Agreement; (iii) assign or otherwise transfer said Terminal Agreement or this guaranty or any interest therein or herein, and (iv) deal in all respects with TAS as if this Guaranty were not in effect. The obligations of the Guarantor under this Guaranty shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of said Terminal Agreement, or any security given therefor or in connection therewith or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor.

3. The liability of the Guarantor under this Guaranty shall be primary, direct and immediate and not conditional or contingent upon pursuit by the Port of Palm Beach District, or any subsequent holder of said Terminal Agreement, of any remedies it may have against TAS, its successors and assigns, with respect to said Terminal Agreement, whether pursuant to the terms thereof or by law. Any one or more successive and/or concurrent actions may be brought hereon against the Guarantor either in the same action, if any, brought against TAS or in separate actions, as often as the Port of Palm Beach District, or any subsequent holder of said Terminal Agreement may deem advisable. No bankruptcy or other proceedings against the TAS shall limit the right of

the Guarantor to take credit against amounts due hereunder for any offsets to which the TAS would have been entitled but for such bankruptcy or other proceedings.

4. The Guarantor hereby expressly waives: (i) presentment and demand for payment of the principal or of interest on said Terminal Agreement and protest of nonpayment; (ii) notice of acceptance of this Guaranty and of presentment, demand and protest; (iii) notice of any default hereunder or under said Terminal Agreement and of all indulgences; (iv) demand for observance of or performance of, or enforcement of, any terms or provisions of this Guaranty or said Terminal Agreement; and (v) all other notices and demands otherwise required by law which the Guarantor may lawfully waive. The Guarantor agrees that in the event this Guaranty shall be enforced by suit or otherwise, the Guarantor will reimburse Port of Palm Beach District, or any subsequent holder of said Terminal Agreement, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees.

5. If the Guarantor shall advance any sums to TAS or its successors or assigns, or if TAS or its successors or assigns shall hereafter become indebted to the Guarantor, such sums and indebtedness shall be subordinate in all respects to the amounts then or thereafter due and owing to the Port of Palm Beach District, or any subsequent holder of said Terminal Agreement, under said Terminal Agreement. Nothing herein contained shall be construed to give the Guarantor any right of subrogation in and to said Terminal Agreement or all or any part of the Port of Palm Beach District's interest therein, or the interest of any subsequent holder of said Terminal Agreement, until all amounts owing to Port of Palm Beach District, or such subsequent holder of said Terminal Agreement, have been paid in full.

6. Any notice or demand that must or may be given or made in connection with this Guaranty must be in writing and, unless receipt is expressly required, will be deemed given, delivered or made, as the case may be, when delivered by personal delivery or when mailed by Express Mail, or by certified or registered mail, return receipt requested - in any event, with sufficient postage affixed, and addressed to the parties as follows:

If to the Guarantor:  
ATTN:  
C/O Arnstein & Lehr, LLP  
515 N. Flagler Drive, Suite 600  
West Palm Beach, FL 33401

With copy to: John A. Turner, Esq.  
C/O Arnstein & Lehr, LLP  
515 N. Flagler Drive, Suite 600  
West Palm Beach, FL 33401

If to Port of Palm Beach District:  
Port of Palm Beach District  
ATTN: Executive Director  
Sixth Floor, One East Eleventh Street

Riviera Beach, Florida 33404

With copy to: Gregory C. Picken, Esquire  
C/O Gary, Dytrych & Ryan, P.A.  
701 U.S. Highway 1, Suite 402  
North Palm Beach, Florida 33408  
Fax No. 561 844-2388

Such addresses may be changed by notice pursuant to this Paragraph; but notice of change of address is effective only upon receipt. Guarantor agrees that a single notice to Guarantor in the manner provided in this Paragraph will be effective to bind said Guarantor for all purposes.

7. All rights and remedies afforded to the Port of Palm Beach District, or any subsequent holder of said Terminal Agreement, by reason of this Guaranty, said Terminal Agreement, or by law are separate and cumulative and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or remedies. No delay or omission by the Port of Palm Beach District, or any subsequent holder of said Terminal Agreement, in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any rights and remedies hereunder, and no modification or amendment hereof, shall be deemed made by the Port of Palm Beach District or any subsequent holder of said Terminal Agreement unless in writing and duly signed by the Port of Palm Beach District, or said subsequent holder of said Terminal Agreement. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right to remedy or of any other right or remedy of Port of Palm Beach District and no single or partial exercise of any right or remedy hereunder shall preclude other or further exercise thereof or any other right or remedy.

8. The Guarantor represents and warrants that it has a financial interest in the TAS, that it has examined or has had an opportunity to examine documents referred to herein, that it has full power, authority and legal right to execute and deliver this Guaranty, and that this Guaranty is a binding legal obligation of the Guarantor given for good and valuable consideration.

9. This Guaranty shall inure to the benefit of, and be enforceable by the Port of Palm Beach District, its successors and assigns, and shall be binding upon, and enforceable against the Guarantor and his/her/its heirs, personal representatives and assigns.

10. It is understood and agreed by and between the parties hereto this Guaranty includes the entire understanding between the parties with respect to this Guaranty. The Port of Palm Beach District has not made any representation of any nature whatsoever for the purpose of inducing the execution of this Guaranty other than those set forth herein. The parties hereto expressly acknowledge there are no other agreements between the parties, written or oral, express or implied with respect to this Guaranty, and further that any changes, alterations or modifications to this Guaranty must be in writing and signed by the parties.

11. This Guaranty shall be construed under the laws of the State of Florida, and any action hereunder shall be in Palm Beach County, Florida.

GUARANTOR:  
Monarch Shipping Co., Ltd, a Bahamian  
Corporation

BY \_\_\_\_\_

\_\_\_\_\_  
Printed Name of  
Witness: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of  
Witness: \_\_\_\_\_

STATE OF FLORIDA    ]  
COUNTY OF PALM BEACH ]

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2018 by \_\_\_\_\_, who is personally known to me or who produced Florida  
Driver's license \_\_\_\_\_ as identification, as \_\_\_\_\_ of Monarch Shipping  
Co., Ltd, a Bahamian Corporation.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

EXHIBIT D  
**Metcalf & Eddy Report dated June 23, 2000**

**EXHIBIT E**  
**SWORN STATEMENT**

(SECTION 287.133(3)(A)) FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES)

(NOTE: THIS MUST BE COMPLETED WITHOUT ALTERATION OR QUALIFICATION

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY  
PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn Statement is submitted to the PORT OF PALM BEACH DISTRICT (“PORT”) by \_\_\_\_\_ whose business address is \_\_\_\_\_, and (if applicable) its Federal Employer Identification Number (FEIN) is: \_\_\_\_\_. (If the entity has no FEIN, include the Social Security Number of the individual signing this Sworn Statement: \_\_\_\_\_).

I understand that a “public entity crime” as defined in Florida Statutes §287.133(1)(g), means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

I understand that a “convicted” or “conviction” as defined in Florida Statutes §287.133(1)(b), means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

I understand that an “affiliate” as defined in Florida Statutes §287.133(1)(a),

Means:

- a) A predecessor or successor of a person convicted of a public entity crime: or
- b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

I understand that a “person” as defined in Florida Statutes §287.133(1)(e), means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term

“person” includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in management of an entity.

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this Sworn Statement. [Indicate which statements apply.]

(A) \_\_\_\_\_ (No Convictions) Neither the entity submitting this Sworn Statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of this entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

(B) \_\_\_\_\_ (Convictions) The entity submitting this Sworn Statement or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of this entity, or any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989, but the entity and no such person is on the Convicted Vendor List as defined in Florida Statute §287.133. **[PORT STAFF – If this item is checked, you must consult with the District Executive Director or CFO]**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PORT IS FOR THAT PUBLIC ENTITY ONLY AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PORT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO.

\_\_\_\_\_ (Signature of person signing)

\_\_\_\_\_ (Printed name of person signing)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_(Title) of \_\_\_\_\_, a Florida \_\_\_\_\_ (Type of entity) on behalf of the entity. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

Notary Public, Commission No. \_\_\_\_\_

SEAL

\_\_\_\_\_  
Name of Notary, typed, printed or stamped

**2018**  
**AMENDED AND RESTATED**  
**LINE AGREEMENT**

This Line Agreement ("Agreement"), made and entered into this \_\_\_\_ day of January, 2018 by and between the PORT OF PALM BEACH DISTRICT (hereinafter referred to as "District"), a political subdivision of the State of Florida, Sixth Floor, One East Eleventh Street, Riviera Beach, Florida 33404 (E-Mail addresses, subject to change as set forth in Section 17 of this Line Agreement: [almira@portofpalmbeach.com](mailto:almira@portofpalmbeach.com); [jgary@gdr-law.com](mailto:jgary@gdr-law.com)) and Monarch Shipping Co., Ltd. (hereinafter referred to as "LINE"), a Bahamian corporation whose address for the purposes of this Agreement is c/o Teeters Agency & Stevedoring, Inc., 158 East Port Road, Warehouse 'A', Port of Palm Beach, Riviera Beach, FL 33404 (E-Mail addresses, subject to change as set forth in Section 17 of this Line Agreement: [cteeters@aol.com](mailto:cteeters@aol.com); [teetersw@bellsouth.net](mailto:teetersw@bellsouth.net); [john.turner@saul.com](mailto:john.turner@saul.com)).

WITNESSETH

WHEREAS, District and LINE entered into a Line Agreement effective July 1, 2011, as amended by the Amended Line Agreement dated August 29, 2011, and

WHEREAS, District and Line desire to enter into this 2018 Amended and Restated Line Agreement upon the terms set forth herein, so as to amend and restate in its entirety that certain Amended Line Agreement dated August 29, 2011 (which has been extended month to month for the convenience of the parties, by Letter Dated May 10, 2016), as the same had been amended through the date hereof. District and LINE agree that this Agreement constitutes the only rights and duties that exist between the parties, and claims under prior agreements are released except as to (i) accrued charges, (ii) indemnities with regard to matters known and unknown and (iii) claims under policies of insurance.; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained the value of which is hereby acknowledged by the parties, it is mutually covenanted and agreed by and between the District and LINE as follows:

**1. DEFINITIONS**

(a) Agreement Year - shall mean a period of twelve calendar months commencing with the Effective Date.

(b) Effective Date – shall mean January 1, 2018.

(c) Tariff - shall mean DISTRICT's standard published then current tariff which is applicable to the users of Port facilities without separate contractual agreements, as such Tariff same may be amended time to time, and any successor tariff, the now current Tariff being Tariff No. 21, and shall mean (unless the term "now current Tariff" is used) the Tariff as in effect at the time a charge, right or obligation is claimed to have been incurred, or a right or obligation is claimed to have arisen. LINE acknowledges receipt of a copy of the current Tariff and agrees that the same is incorporated herein and forms a part of this Line Agreement as completely as if set forth herein in full. Accordingly, any amounts charged at Tariff hereunder are not fixed, and will vary with the Tariff as adopted by the Port of Palm Beach District from time to time. The term "Tariff" shall include all rail and other tariffs.

(d) Index - The term "Index" shall mean the index now known as "United States Bureau of Labor Statistics, Consumer Price Index for Urban Consumers (South 1982-84 = 100)". If the publication of the Index specified herein is discontinued, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selected by District shall be substituted. If the Index figures are not known at the time that any adjustment based thereon is due, those figures shall be reasonably estimated by District based on the most recently published monthly Index figures. If District is entitled to an increase in any amount due or to become due hereunder, District shall send a written notice to LINE, together with the applicable Index figures, setting forth the computations for the increase. Failure to send any such notice of increase timely shall not constitute a waiver, or form the basis for a claim or defense of estoppel, as to any amounts due from the date that any such increase would have been otherwise applicable.

(e) LINE — shall mean Monarch Shipping Co. Ltd., and all vessels owned or chartered by that entity. The term "chartered" shall mean chartered exclusively to LINE, and shall not include a vessel sharing arrangement.

(f) Calendar Quarter shall mean the three month periods from January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31, of any calendar year.

(g) Other words and phrases used herein, the masculine shall include the feminine and neutral gender, and vice versa. The terms "hereof", "herein", or "hereunder" or similar terms shall refer to this entire Agreement. Other defined terms shall be given meaning ascribed to them in various sections throughout this Agreement. Unless assigned a specific meaning herein, terms used herein shall have the meaning assigned in the Tariff of the District (for example "ton" shall mean "short ton" of 2000 pounds). "Custom and usage" between the parties, either prior to or after the execution of this Agreement shall not be applicable to the interpretation of any term.

## **2. TERM.**

This Line Agreement shall be for a term of five (5) years ("Initial Term") commencing as of the Effective Date, and expiring five (5) years thereafter. The term "Agreement Year" shall mean a period of twelve months, with the first such period commencing on the Effective Date.

## **3. RENEWAL TERMS**

Upon the expiration of the Initial Term LINE shall have the right, exercisable in its sole option, to renew this Agreement for up to a total of two (2) individual Renewal Terms of five (5) years each; provided, that this Agreement can only be renewed if, when and as that certain 2018 Amended and Restated Terminal User Agreement referred to in Section 7, is renewed. Each Renewal Term shall be upon the same terms, conditions and covenants as contained herein, and each year thereof shall be deemed a Lease Year. If LINE elects to exercise its option to renew this Agreement upon the expiration of the Initial Term or the then current Renewal Term, it shall furnish written notice of the exercise to the District not less than sixty (60) days-prior to the expiration of the Initial Term or the then current Renewal Term; provided, however, that LINE shall have no right to renew or give notice of renewal of this Agreement if LINE is then in default under this Agreement after notice of said default has been given and the same has not been cured during any applicable cure period. If all renewals have been exercised, then the District agrees that it will negotiate with LINE with respect to the terms of an extension agreement, but is not obligated to enter into any extension of this

Agreement or a new agreement with LINE, and does not agree that any such negotiations shall be conducted exclusively with LINE.

**4. WHARFAGE, DOCKAGE, OTHER TARIFF RATES AND CHARGES; MINIMUM GUARANTIES**

(a) Rates. This Agreement is supplementary to the Tariff, and except for those charges and fees specified herein, LINE shall pay unto the District all the applicable rates and charges set forth in the Tariff, including without limitation, potable water, line handling, equipment rental, security requirements, security fees, terminal operating fees, wharfage, dockage and harbor master fees. Unless specifically set forth herein, no rates are guaranteed. All matters not addressed herein shall be governed by the Tariff, and terms used herein, whether or not capitalized shall have the meaning set forth in the Tariff. LINE acknowledges receipt of a copy of the Tariff as in effect on the date hereof, and the availability of same via the Internet.

(b) Cargo Wharfage. For all cargo not described in Section 4(c), wharfage shall be at Tariff until LINE shall have achieved 35,000 Short Tons for cargo in an Agreement Year; thereafter in the same Agreement Year, additional cargo wharfage shall be at Tariff less 8%; and after LINE shall have achieved 50,000 Short Tons for cargo in that same Agreement Year, additional cargo wharfage shall be at Tariff less 15%.

(c) Annual Minimum Vehicle Guaranty. For each Agreement Year, LINE guaranties payment of the following annual minimum vehicle wharfage ("Annual Minimum Vehicle Guaranty"), with the first year commencing on the Effective Date:

<b>RATES</b>	
AUTOMOBILES, VANS, MOTORCYCLES, PICKUP TRUCKS, SUV'S — with or without cargo, new or used	
Annual Guaranty of 2,374 vehicles per month	Payable monthly in the amount of \$2,997.18 per month
Over 2,374	\$15.15 per vehicle, payable monthly, after shipment
BUSES/MOBILE SPECIALIZED VEHICLES, COMMERCIAL TRUCKS, COMMERCIAL VEHICLES with or without cargo, new or used	
Annual Guaranty of 540 vehicles	Payable monthly in advance on the first day of each month in the amount of \$1,363.50
Over 540	\$30.30 per vehicle, payable monthly, after shipment

The above rates are subject to adjustment as provided in Section (d) (provided that the rates, as adjusted, shall not exceed Tariff less 30%). In addition to the above fees, LINE shall pay all applicable NCIB fees, Security fees based on wharfage are additional, per the Tariff.

(d) Adjustment. Beginning with first day of the second year of this Agreement, and each anniversary thereof; including all renewal terms, if any, the rate subject to adjustment under this provision ("Rate") shall be adjusted in the amount of any change in the Index from the last day of the third calendar month preceding the year just ending to the last day of the third calendar month preceding the year just commencing; provided, however, that Rate shall never be less than the Rate applicable to the year just ending, with a maximum upward adjustment of 5% and a minimum upward adjustment of 3%.

(e) Dockage. Initially, Dockage shall be billed at the Preferred Dockage Rate Table, provided that there shall be a minimum of three (3) sailings per calendar month ("Monthly Minimum Sailings Guaranty"), computed monthly, otherwise Tariff shall apply.

(1) If, in any Agreement Year, the Line makes at least 36 calls at the Port of Palm Beach, Year, then, in the succeeding Agreement Year, Dockage shall be charged in accordance with the Preferred Dockage Rate Table, for all calls at the Port of Palm Beach occurring in such succeeding year,.

(2) If, in any Agreement Year, the Corporation fails to make 36 calls at the Port of Palm Beach, then, in the succeeding Agreement Year, Dockage shall be charged at Tariff for all calls at the Port of Palm Beach occurring in such succeeding year.

Preferred Dockage Rates are as follows:

Preferred Dockage Rate Table	
LOA	\$2.303
GRT	\$0.206 per Ton W/M

The above rates are subject to adjustment as provided in Section **Error! Reference source not found.** Security fees based on dockage are additional, per the Tariff.

(f) Berthing. Per Section 0, a berth is not guaranteed, provided, DISTRICT agrees as follows:

If a Berthing Assignment, providing both arrival and departure times, is requested at least 72 hours in advance of arrival at the Pilot Station and approved by District, then:

- (A) If District is able to make a berth available at the scheduled arrival (per the Berthing Assignment) or within four hours thereafter (the "Four Hour Window"), then the dockage rates in the Preferred Dockage Rate Table shall apply.
- (B) If District does not make a berth available within the Four Hour Window, but makes a berth available by noon on the day of the scheduled arrival per the Berthing Assignment, then dockage shall be charged at 50% of the daily rate.
- (C) If District does not make a berth available within the Four Hour Window, but makes a berth available after noon on the day of the scheduled arrival per the Berthing Assignment, and Corporation does not work the vessel, then dockage shall not be charged for that day.

(g) Other charges. All other charges not specifically addressed herein shall be at Tariff.

(h) **Payment.** Payment of all charges for Wharfage, Dockage and other Tariff items shall be due and payable in accordance with the then current practices of the District, or as otherwise provided herein. LINE, or its agent, shall submit on a Wharfage statement (the "Wharfage Statement"), on a form approved by the Port of Palm Beach Finance Department, indicating the quantity and nature of all cargo loaded to and all cargo unloaded from Vessels, railcars and trucks pursuant to this Agreement, and showing the amount due to the District, which Wharfage Statement shall be accompanied by payment of the amounts due. The Wharfage Statement shall be signed and certified by LINE to be a true and correct copy. In addition, the District may request appropriate supporting documentation, at District's sole cost and expense, from a marine surveyor or other independent auditor to verify the quantity of cargo loaded to or from the terminal, and District shall have the privilege of examination of ships' manifests and shore tank gauging reports, pump flow meters and invoices used by LINE to determine the quantities of cargo involved. Failure to accurately report wharfage shall subject to LINE to wharfage penalties, audit fees, and other appropriate service charges.

(i) **Rates to Third Parties.** Nothing contained herein shall prohibit District from providing different rates to other Lines or users of the Port of Palm Beach or its facilities.

## **5. SALES TAX**

LINE shall also pay any and all sales taxes imposed by the State of Florida or any other governmental authority, on any amounts paid by LINE hereunder, although the taxing statute or ordinance may purport to impose such sales tax upon DISTRICT. The payment of sales tax shall be paid by LINE at the same time as payment is being made with respect to which the sales tax is imposed.

## **6. INSURANCE**

(a) **Public Liability Insurance.** LINE shall obtain public liability insurance from an insurance carrier satisfactory to DISTRICT to protect against loss from liability imposed by law for all damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever, resulting directly or indirectly from any act or activities of LINE, or any person acting for it or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities of any of the foregoing.

Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Line Agreement, in the amount required by Tariff, but not less than Five Million Dollars (\$5,000,000.00) for any property damage or loss from any one (1) accident, Five Million Dollars (\$5,000,000.00) for injury to anyone (1) person or Five Million Dollars (\$5,000,000.00) from any one (1) accident combined, single limit. DISTRICT reserves the right to require any increase in the amount of liability coverage, from time to time during the term of this Line Agreement as DISTRICT should determine to be commercially reasonable. If permitted by Line's insurance carrier, this coverage may be combined with coverage under the 2018 Amended and Restated Line Agreement referred to in Section 7.

(b) **Miscellaneous Provisions.** As a condition precedent to LINE' rights under this Line Agreement, LINE shall deliver to DISTRICT a copy of the binder of all insurances required of LINE hereunder, an duplicate originals of the policy itself, and certificates evidencing the existence of the necessary insurance policies. All insurance policies contemplated herein to be maintained by LINE shall insure DISTRICT and LINE as their respective interests may and shall show DISTRICT as an

additional named insured. All such policies required to be maintained by LINE shall be issued by companies qualified to write insurance in the State of Florida and possessing a rating of A-3A (or higher), by Best's Insurance Rating. The cost of premiums of all such policies of insurance as herein required to be maintained by LINE shall be paid by LINE. Any policy required hereunder to be maintained by LINE or actually maintained by LINE shall contain a clause that the insurer shall not cancel or change the insurance policy without first providing ten (10) days prior written notice to DISTRICT. Not less than thirty (30) days prior to the expiration of any insurance required herein to be maintained by LINE or actually carried by LINE, LINE shall deliver to DISTRICT a copy of the certificate of renewal thereof.

(c) Impairment of Coverage. LINE shall not make any use of any Port facilities which would make void or voidable any policy of fire or extended coverage insurance covering the Port facilities or other District property.

(d) LINE shall also provide to District for each of LINE's vessels, certificates evidencing the existence of the necessary insurance policies issued by companies qualified to write insurance in the State of Florida and possessing a rating of A-3A (or higher), by Best's Insurance Rating. The cost of premiums of all such policies of insurance as herein required to be maintained by LINE shall be paid by LINE. LINE shall also provide upon request by District for each of LINE's vessels a Certificate of Financial Responsibility (Water Pollution) issued by the Coast Guard's NPFC to a vessel operator providing evidence of financial responsibility, in accordance with the Oil Pollution Act of 1990 (OPA 90) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and all other insurances required by governmental authorities having jurisdiction.

## **7. DEFAULT OF LINE**

If:

(i) LINE shall violate or materially default on any of the monetary covenants or conditions contained in this Agreement; or

(ii) LINE shall violate or materially default on any of the non-monetary covenants or conditions of this Agreement, and said violation and/or default shall continue for a period of at least fifteen (15) days after receiving written notification of said violation from the District ("Cure Period") (Provided, however, that if the default is of such a nature that the same is not susceptible of cure within the Cure Period, and if LINE shall have commenced cure and is diligently and continuously attempting cure, the Cure Period shall be extended for an additional thirty (30) days). For purposes of this subsection (ii) a violation of the Tariff shall never be deemed to be "not susceptible of cure"; or

(iii) TEETERS AGENCY & STEVEDORING, INC. ("Teeters") shall default under that certain 2018 Amended and Restated Terminal User Agreement ("Terminal User Agreement"), as amended on the execution date of this Amended and Restated Line Agreement, for lease of certain property by District;

then, in addition to all other rights and remedies that the District may have, in law or in equity, the District shall have the right and option of terminating this Agreement and of declaring the balance of all monetary obligations provided for in this Agreement to be immediately due and

payable, including without limitation the total of all Annual Minimum Vehicle Guaranty for all remaining periods in the then unexpired term.

The provisions of the Tariff shall govern as to violations of the Tariff.

This Agreement shall be co-terminus with the 2018 Amended and Restated Terminal User Agreement between DISTRICT and TEETERS AGENCY & STEVEDORING, INC., A FLORIDA CORPORATION, and a default by TEETERS AGENCY & STEVEDORING, INC., A FLORIDA CORPORATION under the 2018 Amended and Restated Terminal User Agreement shall be a default of this Agreement. LINE agrees that its consent is not required for amendments to the 2018 Amended and Restated Terminal User Agreement.

## **8. WAIVER**

No mention in this Agreement of any specific right or remedy shall preclude the District from exercising any other right or from having any other remedy, or from maintaining any action to which it may otherwise be entitled either at law or in equity, and the failure of the District to insist in any one or more instances upon a strict performance of any covenants of this Agreement, or to exercise any option or right herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants, rights, or option, but the same shall remain in full force and effect unless the contrary is expressed in writing by the District. The waiver by the District or any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. No covenant, term or condition of this Agreement, shall be deemed to have been waived by the District unless such waiver be in writing by the District. No payment by LINE or receipt by the District of a lesser amount of the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement, statement on any check, or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and the District may accept such check or payment without prejudice to the District's right to cover the balance of such rent or pursue any other remedy in this Agreement heretofore provided.

## **9. COMPLIANCE WITH LAWS**

LINE's operations shall comply with all statutes, ordinances, rules, orders, regulations and requirements of the Florida Department of Law Enforcement, the United States Coast Guard, Port of Palm Beach and all other federal, state and city governments and regulatory authorities and of any and all their departments, agencies and bureaus having jurisdiction, including without limitation safety regulations, Federal Maritime regulations, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) in accordance with CFR 29 parts 1917 & 1918, the Port's Facility Security Plan as approved by the United States Coast Guard (USCG) in accordance with CFR 33 part 105, and the Tariff and obtain and maintain all licenses and permits necessary for Corporation's operations.

## **10. FIRE PROTECTION**

LINE shall furnish and supply all of its vessels with such portable and other fire extinguishing equipment as may be required by the District, by the City of Riviera Beach, Florida, United States Coast Guard, and other agencies of applicable jurisdiction.

**11. ASSIGNMENT** This Line Agreement is not assignable.

**12. INDEMNITY**

LINE shall indemnify and hold the District, its Commissioners, employees, consultants and agents harmless from and against any and all claims, actions, damages, liability and expense (including, without limitation, attorney's fees and costs incurred) (each a "Claim") in connection with the loss of life, personal injury and damage to property (including environmental damage) arising from LINE's operations (including, without limitation, construction performed by LINE, whether on or off District property), including claims of third parties, including, without limitation any of LINE's agents, contractors, employees, lessees, users, invitees or concessionaires against the District, occasioned wholly or in part by any action or omission of LINE, or any of its agents, contractors, employees, LINEs, users, invitees or concessionaires; provided however, any such Claim(s) shall not have arisen as a result of the gross negligence or willful misconduct of the District.

All indemnities contained herein shall survive termination until the applicable statute of limitations applicable to the Claim shall have expired.

**13. AMENDMENTS INTEGRATION**

No provision of this Agreement shall be amended or modified except by an instrument in writing signed by the parties hereto. This Agreement constitutes the whole agreement of the parties, and there are no other representations, warranties, or agreements written or oral outside of or separate from this Agreement. The captions or section headings contained in this Agreement are for convenience and reference only and in no manner alter or otherwise affect the substance hereof. This Agreement may be executed in several counterparts, each of which shall be considered an original.

**14. FEDERAL MARITIME COMMISSION**

This Agreement may be submitted to the Federal Maritime Commission pursuant to the Shipping Act of 1984, as may be amended.

**15. DRAFTER**

This Agreement has been freely and fully negotiated by the parties and no party hereto shall be deemed the drafter hereof for the purpose of construing the terms hereof.

**16. SEVERABILITY**

If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant, or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and in force to the fullest extent permitted by law

**17. NOTICES**

District and LINE herewith agree that a billing statement or other invoice from the District delivered in accordance with District's practices, shall constitute such written notice under this Agreement without the necessity of further notice under this Section. Further, a Wharfage Statement

generated by LINE in accordance with shall be sufficient notice to LINE without the necessity of further notice under this Section.

All notices required or contemplated by this Agreement shall be in writing and shall be delivered in person, facsimile, or by United States Certified Mail (Return Receipt Requested). By giving at least ten (10) days prior written notice to the other party, either party may change its address for notices hereunder. No more than two mailing addresses can be specified at any one time.

Each such notice, request, or other communication shall be considered given and shall be deemed delivered (a) on the date delivered if by personal delivery, and (b) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed. Rejection, other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request, or other communication. Notwithstanding the foregoing, all notices, except default notices, may be given to Line by Email at the addresses given in the opening paragraph of this Agreement.

If to Line:  
ATTN:  
158 East Port Road, Warehouse 'A',  
Riviera Beach, FL 33404

With copy to: John A. Turner, Esq.  
C/O Arnstein & Lehr, LLP  
515 N. Flagler Drive, Suite 600  
West Palm Beach, FL 33401

If to Port of Palm Beach District:  
Port of Palm Beach District  
ATTN: Executive Director  
Sixth Floor, One East Eleventh Street  
Riviera Beach, Florida 33404

With copy to: Gregory C. Picken, Esquire  
C/O Gary, Dytrych & Ryan, P.A.  
701 U.S. Highway 1, Suite 402  
North Palm Beach, Florida 33408  
Fax No. 561 844-2388

## **18. NO GUARANTY OF BERTH**

LINE Lessee acknowledges that no assignment of berth is guaranteed and District makes no promise or warranty that the channel will be open, that a pilot will be available, that navigational constraints will not occur or that other vessel conflicts (including without limitation, seized vessels, beam-width of other vessels in the slip, derelict vessels, disabled vessels, sunken vessels, etc.) will not occur, or other matters outside the control of the District will not occur which will prevent berthing. The release of vessels into the channel is based upon District's practices and policies then in effect and the determination of the pilots. LINE further agrees that the District shall not be liable in damages or any kind or nature, including without limitation, demurrage, for any failure to provide the Preferred Berth.

LINE shall take such steps as it deems appropriate to mitigate any damages which it might suffer as a result of the District's inability to provide berths.

## **19. SLIP DEPTH**

LINE shall not rely on any hydrographic information source, including materials published by the District. The District does not guaranty the depth of any of the District's slips, berths, approaches, channel, turning basin, or any other location, and shall not have any liability to LINE with respect to same. If, at any time, the depth of the water in the channel, turning basin or approaches is less than thirty-three (33) feet, and one of LINE's vessels strikes the bottom when attempting to come into a berth, LINE shall give the District written notice thereof. In the event the deficiency is in an area of the channel, turning basin or approaches for which the Army Corps of Engineers has responsibility and jurisdiction for dredging, the District shall notify the Army Corps of Engineers, but shall not be liable for any delay caused solely by the Army Corps of Engineers. The District shall use its best efforts to cause the applicable governmental agency to maintain Congressional mandated depths of the channel and turning basin.

## **20. GENERAL PROVISIONS**

(A) Gender: Words of any gender used herein shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

(B) Successors and Assigns: The terms, provisions, covenants, and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective successors and assigns, otherwise expressly provided in this Agreement.

(C) Authority: Each party agrees to furnish to the other, promptly upon demand, a corporate resolution, proof of due authorization by partners, or other appropriate documentation evidencing the due authorization of such party to enter into this Agreement.

(D) Captions: The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope of intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

(E) Invalidity: If any clause, provision, or portion of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable under applicable law, such event shall not affect, impart, or render invalid or unenforceable the remainder of this Agreement nor any other clause, phrase, provision, or portion hereof, nor shall it affect the application of any clause, phrase, provision, or portion hereof to other persons or circumstances, and it is also the intention of the parties to this Agreement that in lieu of each such clause, phrase, provision or portion of this Agreement that it is invalid or unenforceable, there be added as a part of this Agreement a clause, phrase, provision or portion as similar in team in such invalid or unenforceable clause, phrase, provision, or portion as may be possible and be valid and enforceable.

(F) Waiver of Trial by Jury. It is mutually agreed by and between the parties hereto that they each waive trial by injury in any action, proceeding, or counterclaim brought by either of them against the other on any matter arising out of, or in any way connected with, this Agreement.

(G) Venue and Jurisdiction: This Agreement shall be governed by and construed under the Laws of the State of Florida, and the exclusive venue for any litigation shall lie in the Courts of Palm Beach County, Florida. District and LINE agree to informal mediation of disputes hereunder prior to commencing litigation.

(H) Attorneys' Fees: The parties hereto agree that the party awarded the net judgment in any court proceeding for the enforcement, defense, or interpretation of either party's rights under this Agreement, whether it be at trial, on appeal, or in bankruptcy proceedings, shall be entitled to recover all of its costs including reasonable attorneys' fees from the non-prevailing party. It is intended by this subparagraph that only one party to this Agreement be awarded costs and attorneys' fees.

(I) Public Entity Crimes: This Agreement shall not be in effect unless and until Lessee has presented to the District a fully completed, executed, and notarized sworn statement in the form attached hereto as EXHIBIT B.

THE NEXT PAGE IS THE SIGNATURE PAGE

DRAFT

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first above written.

WITNESSES:

DISTRICT:

PORT OF PALM BEACH DISTRICT:

\_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Witness

LINE:

Monarch Shipping Co., Ltd., a Bahamian Corporation

\_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Witness

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, who is personally known to me or produced \_\_\_\_\_ as identification, as \_\_\_\_\_ of THE PORT OF PALM BEACH DISTRICT, a Political Subdivision of the State of Florida.

\_\_\_\_\_  
\_\_\_\_\_  
Signature of Notary  
State of Florida

NOTARY STAMP:

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, who is personally known to me or produced \_\_\_\_\_ as identification, as \_\_\_\_\_ of Monarch Shipping Co., Ltd., a Bahamian Corporation.

\_\_\_\_\_  
\_\_\_\_\_  
Signature of Notary  
State of Florida

NOTARY STAMP:

**EXHIBIT A**  
**GUARANTY**

IN ORDER to induce Port of Palm Beach District to enter into that certain 2018 Amended And Restated Line Agreement (“Line Agreement”) by and between the Port of Palm Beach District and Monarch Shipping Co., Ltd, a Bahamian Corporation (“Monarch”), TEETERS AGENCY & STEVEDORING, INC., A FLORIDA CORPORATION (“Guarantor”) hereby covenants and agrees with the Port of Palm Beach District as follows:

1. The Guarantor hereby unconditionally and irrevocably guarantees to the Port of Palm Beach District, and to any subsequent holder of the aforementioned Line Agreement; (i) the due and punctual payment in full (and not merely the collectability) of all amounts due or to become due to the Port of Palm Beach District under said Line Agreement, in each case when due and payable; (ii) the due and punctual payment in full (and not merely the collectability) of all other sums and charges which may at any time be due and payable in accordance with, said Line Agreement, including any costs or reasonable attorneys' fees incurred by Port of Palm Beach District in the enforcement of the Line Agreement or any Guaranty, whether or not litigation is initiated, including attorneys' fees at trial, appellate and bankruptcy proceedings; and (iii) the due and punctual performance of all of the other terms, covenants and conditions contained in the said Line Agreement, on the part of MONARCH to be performed; and (iv) the unlimited payment of all other obligations and liabilities of the MONARCH to the Port of Palm Beach District.
2. The Guarantor expressly agrees that the Port of Palm Beach District or any subsequent holder of said Line Agreement may, in its sole and absolute discretion, without notice to or further assent of the Guarantor and without in any way releasing, affecting or impairing the obligations and liabilities of the Guarantor hereunder: (i) waive compliance with, or any defaults under, or grant any other indulgences with respect to, said Line Agreement; (ii) modify, amend or change any provisions of said Line Agreement and/or effect any release, compromise or settlement in connection with said Line Agreement; (iii) assign or otherwise transfer said Line Agreement or this guaranty or any interest therein or herein, and (iv) deal in all respects with MONARCH as if this Guaranty were not in effect. The obligations of the Guarantor under this Guaranty shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of said Line Agreement, or any security given therefor or in connection therewith or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor.
3. The liability of the Guarantor under this Guaranty shall be primary, direct and immediate and not conditional or contingent upon pursuit by the Port of Palm Beach District, or any subsequent holder of said Line Agreement, of any remedies it may have against MONARCH, its successors and assigns, with respect to said Line Agreement, whether pursuant to the terms thereof or by law. Any one or more successive and/or concurrent actions may be brought hereon against the Guarantor either in the same action, if any, brought against MONARCH or in separate actions, as often as the Port of Palm Beach District, or any subsequent holder of said Line Agreement may deem advisable. No bankruptcy or other proceedings against the MONARCH shall limit the right of the Guarantor to take credit against amounts due hereunder for any offsets to which the MONARCH would have been entitled but for such bankruptcy or other proceedings.
4. The Guarantor hereby expressly waives: (i) presentment and demand for payment of the principal or of interest on said Line Agreement and protest of nonpayment; (ii) notice of acceptance of this Guaranty and of presentment, demand and protest; (iii) notice of any default hereunder or under said Line Agreement and of all indulgences; (iv) demand for observance of or performance of, or enforcement of, any terms or provisions of this Guaranty or said Line Agreement; and (v) all other notices and demands otherwise required by law which the Guarantor may lawfully waive. The Guarantor agrees that in the event this Guaranty shall be enforced by suit or otherwise, the Guarantor will reimburse Port of Palm Beach

District, or any subsequent holder of said Line Agreement, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees.

5. If the Guarantor shall advance any sums to MONARCH or its successors or assigns, or if MONARCH or its successors or assigns shall hereafter become indebted to the Guarantor, such sums and indebtedness shall be subordinate in all respects to the amounts then or thereafter due and owing to the Port of Palm Beach District, or any subsequent holder of said Line Agreement, under said Line Agreement. Nothing herein contained shall be construed to give the Guarantor any right of subrogation in and to said Line Agreement or all or any part of the Port of Palm Beach District's interest therein, or the interest of any subsequent holder of said Line Agreement, until all amounts owing to Port of Palm Beach District, or such subsequent holder of said Line Agreement, have been paid in full.

6. Any notice or demand that must or may be given or made in connection with this Guaranty must be in writing and, unless receipt is expressly required, will be deemed given, delivered or made, as the case may be, when delivered by personal delivery or when mailed by Express Mail, or by certified or registered mail, return receipt requested - in any event, with sufficient postage affixed, and addressed to the parties as follows:

If to the Guarantor:  
ATTN:  
C/O Arnstein & Lehr, LLP  
515 N. Flagler Drive, Suite 600  
West Palm Beach, FL 33401

With copy to: John A. Turner, Esq.  
C/O Arnstein & Lehr, LLP  
515 N. Flagler Drive, Suite 600  
West Palm Beach, FL 33401

If to Port of Palm Beach District:  
Port of Palm Beach District  
ATTN: Executive Director  
Sixth Floor, One East Eleventh Street  
Riviera Beach, Florida 33404

With copy to: Gregory C. Picken, Esquire  
C/O Gary, Dytrych & Ryan, P.A.  
701 U.S. Highway 1, Suite 402  
North Palm Beach, Florida 33408

Fax No. 561 844-2388

Such addresses may be changed by notice pursuant to this Paragraph; but notice of change of address is effective only upon receipt. Guarantor agrees that a single notice to Guarantor in the manner provided in this Paragraph will be effective to bind said Guarantor for all purposes.

7. All rights and remedies afforded to the Port of Palm Beach District, or any subsequent holder of said Line Agreement, by reason of this Guaranty, said Line Agreement, or by law are separate and cumulative and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or remedies. No delay or omission by the Port of Palm Beach District, or any subsequent holder of said Line Agreement, in exercising any such right or remedy shall operate as a waiver thereof. No waiver

of any rights and remedies hereunder, and no modification or amendment hereof, shall be deemed made by the Port of Palm Beach District or any subsequent holder of said Line Agreement unless in writing and duly signed by the Port of Palm Beach District, or said subsequent holder of said Line Agreement. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right to remedy or of any other right or remedy of Port of Palm Beach District and no single or partial exercise of any right or remedy hereunder shall preclude other or further exercise thereof or any other right or remedy.

8. The Guarantor represents and warrants that it has a financial interest in the MONARCH, that it has examined or has had an opportunity to examine documents referred to herein, that it has full power, authority and legal right to execute and deliver this Guaranty, and that this Guaranty is a binding legal obligation of the Guarantor given for good and valuable consideration.

9. This Guaranty shall inure to the benefit of, and be enforceable by the Port of Palm Beach District, its successors and assigns, and shall be binding upon, and enforceable against the Guarantor and his/her/its heirs, personal representatives and assigns.

10. It is understood and agreed by and between the parties hereto this Guaranty includes the entire understanding between the parties with respect to this Guaranty. The Port of Palm Beach District has not made any representation of any nature whatsoever for the purpose of inducing the execution of this Guaranty other than those set forth herein. The parties hereto expressly acknowledge there are no other agreements between the parties, written or oral, express or implied with respect to this Guaranty, and further that any changes, alterations or modifications to this Guaranty must be in writing and signed by the parties.

11. This Guaranty shall be construed under the laws of the State of Florida, and any action hereunder shall be in Palm Beach County, Florida.

GUARANTOR:  
TEETERS AGENCY & STEVEDORING, INC.,  
A FLORIDA CORPORATION

BY \_\_\_\_\_

\_\_\_\_\_  
Printed Name of  
Witness: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of  
Witness: \_\_\_\_\_

STATE OF FLORIDA ]  
COUNTY OF PALM BEACH ]

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018 by \_\_\_\_\_, who is personally known to me or who produced Florida Driver's license \_\_\_\_\_ as identification, as President of TEETERS AGENCY & STEVEDORING, INC., A FLORIDA CORPORATION.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

EXHIBIT B  
SWORN STATEMENT

(SECTION 287.133(3)(A)) FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES)  
(NOTE: THIS MUST BE COMPLETED WITHOUT ALTERATION OR QUALIFICATION  
THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC  
OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn Statement is submitted to the PORT OF PALM BEACH DISTRICT (“PORT”) by \_\_\_\_\_ whose business address is \_\_\_\_\_, and (if applicable) its Federal Employer Identification Number (FEIN) is: \_\_\_\_\_. (If the entity has no FEIN, include the Social Security Number of the individual signing this Sworn Statement: \_\_\_\_\_).

I understand that a “public entity crime” as defined in Florida Statutes §287.133(1)(g), means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

I understand that a “convicted” or “conviction” as defined in Florida Statutes §287.133(1)(b), means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

I understand that an “affiliate” as defined in Florida Statutes §287.133(1)(a),

Means:

- a) A predecessor or successor of a person convicted of a public entity crime: or
- b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

I understand that a “person” as defined in Florida Statutes §287.133(1)(e), means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in management of an entity.

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this Sworn Statement. [Indicate which statements apply.]

(A) \_\_\_\_\_ (**No Convictions**) Neither the entity submitting this Sworn Statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of this entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

(B) \_\_\_\_\_ (**Convictions**) The entity submitting this Sworn Statement or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the

management of this entity, or any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989, but the entity and no such person is on the Convicted Vendor List as defined in Florida Statute §287.133. **[PORT STAFF – If this item is checked, you must consult with the District Executive Director or CFO]**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PORT IS FOR THAT PUBLIC ENTITY ONLY AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PORT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO.

\_\_\_\_\_ (Signature of person signing)

\_\_\_\_\_ (Printed name of person signing)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ (Title) of \_\_\_\_\_, a Florida \_\_\_\_\_ (Type of entity) on behalf of the entity. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

Notary Public, Commission No. \_\_\_\_\_

SEAL

\_\_\_\_\_  
Name of Notary, typed, printed or stamped