

MISSISSIPPI PORT AUTHORITY

BOARD OF COMMISSIONERS

REGULAR MEETING

March 23, 2023

Minutes of the Mississippi State Port Authority Board of Commissioners Meeting,
Thursday, March 23, 2023, at 2510 14th Street, Suite 1450, Gulfport, Mississippi at which
the following Commissioners and staff were present:

Commissioners: John Rester, President
Cowles Symmes, Vice-President
Mark Loughman, Secretary
Robert J. Knesal, Treasurer

Staff: Jon Nass, CEO
Kim Purchner, Exec. Asst./HRO
Matthew Wypyski, Deputy Director
DeeDee Wood, CFO
Shawn Meyer, Director of Operations
Gary Pitcovich, Crane Manager
Teresa Ehrlich, Project Manager
Allison Chimanya, Marketing Analyst
Errol LaRue, In-House Counsel
Tammy Salisbury, Asst. Comptroller
Cindy Ford, Contract/Admin Asst.

Ben Stone, Legal Counsel

Others: Philip Carter, MDA (via telephone)
Nick Moody, MP Designs
Tim Lancaster, Ports America

Commissioner Rester noted the presence of a quorum and called the meeting to order at approximately 9:00 a.m.

The Pledge of Allegiance was led by Commissioner Rester.

The invocation was given by DeeDee Wood, MSPA.

PUBLIC COMMENTS:

There were no public comments.

Commissioner Symmes moved to amend the agenda to include an item under Old Business – Modification No. 19 to the Sub-Recipient Agreement R115-06-02. Commissioner Loughman seconded and the motion was unanimously approved.

Commissioner Symmes moved to approve the Minutes from the February 23, 2023 Board Meeting. Commissioner Loughman seconded, and the motion was unanimously approved.

Commissioner Symmes moved to approve travel (Feb 28) – Meyer to Washington, DC; (May 3-5) – Meyer to Galveston, TX. Commissioner Loughman seconded and the motion was unanimously approved.

Commissioner Symmes moved to approve the disbursements listed below. Commissioner Knesal seconded and the motion was unanimously approved.

DISBURSEMENTS THROUGH MARCH 3, 2023			
BILLS FOR THE MONTHS OF FEBRUARY AND MARCH 2023 APPROVED AND PAID			
FROM THE GROSS REVENUE FUND OF THE MS STATE PORT AUTHORITY AT GULFPORT			
CHK#	VENDOR	DESCRIPTION	CHK AMT
59393	Kentwood Springs	Drinking Water	358.20
59394	AGJ Systems & Networks, Inc.	Computer Maintenance	4,594.50
59395	All Safe Technologies, LLC	Fire Alarm Monitoring	319.60
59396	AT&T Corp	Website Hosting	89.96
59397	Sparklight	Internet Service	93.18
59398	CenterPoint Energy	Natural Gas Services	30.61
59399	CenterPoint Energy	Natural Gas Services	30.61
59400	City of Gulfport	Water	7,361.66
59401	Federal Express Corp.	Express Mail Services	5.07
59402	Foliage Design Systems, Inc.	Interior Plant Maintenance	279.59
59403	Newell Paper Co.	Office Janitorial Supplies	694.22
59404	MS-JS, Inc DBA Johnstone Supply of Gpt	Repair Supplies for Electrical Platform #2	1,683.52
59405	Mark Dunning Industries, Inc	Waste Removal Services	560.00
59406	Shawn Meyer	Travel Expenses	512.09
59407	Mississippi Ports Council, Inc.	Spring Legislative Sponsorship	500.00
59408	MS Pub. Employees Credit Union	Employee Deductions	445.00
59409	Pass Road Mini Storage, LLC	Storage Unit Rent	180.00
59410	The Port Employees Assoc.	Employee Deductions	108.00
59411	RJ Young Company, Inc.	Printer Maintenance	484.72
59412	South Mississippi Business Machines	Copier Maintenance	569.00
59413	Southern Admin. and Benefits	Monthly Service Fee	209.00
59414	Swetman Security Services, Inc.	Security Guard Services	32,405.25
59415	University of Southern Mississippi	Consulting Services	15,000.00
59416	Vulcan Construction Materials, LLC	Limestone for Pothole Repair	3,639.22
TRANSFERS			
02/23/23	Deferred Compensation	Employee Deductions	1,410.00
03/01/23	Federal Tax Deposit	Payroll Tax Deposit	27,024.62
03/01/23	State School Insurance Fund/DFA	03/2023 Employee Health and Life Insurance	18,568.60
Total			<u>\$117,156.22</u>

DISBURSEMENTS THROUGH MARCH 7, 2023			
BILLS FOR THE MONTHS OF FEBRUARY AND MARCH 2023 APPROVED AND PAID			
FROM THE GROSS REVENUE FUND OF THE MS STATE PORT AUTHORITY AT GULFPORT			
CHK#	VENDOR	DESCRIPTION	CHK AMT
59417	Fuelman	Fuel for MSPA Vehicles	433.93
59418	Great Southern Club	Monthly Dues and Business Expenses	299.00
95419	Monster Subs & Sandwiches, Inc.	BOC Meeting	110.82
Total			<u>\$ 843.75</u>

FINAL CHECKLIST FOR MARCH 23, 2023
 BILLS FOR THE MONTHS OF FEBRUARY AND MARCH 2023 APPROVED AND PAID
 FROM THE GROSS REVENUE FUND OF THE MS STATE PORT AUTHORITY AT GULFPORT

CHK#	VENDOR	DESCRIPTION	CHK AMT
59420	AFLAC	Employee Deductions	1,386.50
59421	AGJ Systems & Networks, Inc.	Computer Equipment	281.08
59422	AirGas Gulf States	Acetylene, Oxygen and Argon Cylinders	331.23
59423	Alimak Group USA Inc.	Quarterly Crane Elevator Inspections	2,190.00
59425	B.E.A.R.	Portable Restroom Pump	1,928.00
59427	CA Productions, LLC	Marketing Services	900.00
59428	Card Services	Equipment Parts and Business Meeting Supplies	1,159.68
59429	Card Services	Travel Expenses	5,486.49
59430	City of Gulfport	Water	4,011.70
59431	Consolidated Electrical Distributors, Inc.	gb	1,301.18
59432	Continental Battery Company	Battery for Unit 13	74.94
59433	Hannah Craig	Marketing Services	480.00
59434	C Spire Wireless	Cell Phone Service	971.34
59435	C Spire Business Solutions	Telephone/Internet Services	2,670.45
59438	Federal Express Corp.	Express Mail Service	26.60
59439	Fuelman	Fuel for MSPA Vehicles	331.23
59440	Generac Power Systems, Inc.	Diesel Light Towers	21,318.00
59441	Grainger, Inc.	Maintenance Supplies	46.46
59442	Guardian	Employee Deductions	1,798.70
59443	Gulf Coast Business Supply, Inc.	Office Supplies	149.12
59444	Gulf Ports Association	Spring Meeting Registration Fee	350.00
59445	Whitney Bank Divisional Property	April Lease for Suite 1450	26,858.43
59446	John W. Harmon	Annual Elevator Inspection	1,124.25
59447	MS State Treasurer Fund 3360900000	Telephone/Internet Services	347.64
59448	Newell Paper Co.	Copy Paper	1,371.00
59449	Jackson Supply Company	HVAC Unit, Parts and Supplies for Operations Bldg.	5,061.46
59450	Keeling Co. - Gulfport	Grounds Maintenance Supplies	4,472.42
59451	KLDiscovery Ontrack, LLC	Professional Services	1,838.00
59452	Robert J. Knesal	Per Diem	80.00
59453	Mark P. Loughman	Per Diem	80.00
59454	Lowe's Home Center, Inc.	Utility Trailer, Hand Tools and Maintenance Supplies	1,394.72
59456	Maze, LLC	Computer Equipment	785.00
59457	Shawn Meyer	Travel Expenses	67.28
59458	MS Power Company	Electricity	142,892.98
59459	MS Pub. Employees Credit Union	Employee Deductions	445.00
59460	Jon T. Nass	Travel Expenses	3,894.04
59461	NAVEX Global, Inc.	Report Line Annual Service Fee	2,079.00
59462	Paul Neumaier	Safety Shoes	114.99
59463	Pass Road Mini Storage, LLC	Storage Unit Rent	165.00
59464	Portable Services, Inc.	Portable Restroom Services	255.00
59465	Legal Shield	Employee Deductions	61.81
59466	Kim Parchner	Food and Supplies for Business Meetings	92.64
59467	Redd Pest Solutions	Pest Control Services	160.00
59468	RJ Young Company, Inc.	Printer Maintenance	484.72
59469	Ronnie's Automotive & Tow Ser.	Towing Service for Unit 11	135.00
59470	Rotolo Consultants, Inc. dba RCI	Landscape Services	1,017.73
59471	Stericycle, Inc.	Document Shredding Services	154.37
59472	Siemens Industry, Inc.	Fire Alarm System Repair for Shed 2	821.00
59473	Sorg Printing, LLC	Office Supplies	582.00
59475	Southeastern Overhead Door Inc.	Valve Solenoids for Dock Levelers	6,700.00
59476	SSA Gulf Inc.	Office Trailer Rent for Cotton Compress	850.00
59477	Sterling Solutions LLC	Professional Services	19,197.12
59478	Stribling Equipment, LLC	Repair Shuttlewagon Unit 56	1,191.69

59479	Swetman Security Services, Inc.	Security Guard Services	65,862.09
59480	Cowles Edgar Symmes	Per Diem	40.00
59481	Southern Tire Mart, LLC	Tire for Unit 18 Backhoe	672.00
59482	Tnemec Company Inc.	Maintenance Supplies	285.00
59483	Union Auto Parts	Vehicle Lift for Maintenance Shop	5,600.00
59484	Wright National Flood Ins.	Flood Insurance for Ocean Enterprise Facility	3,685.00
59485	Zoro Tools, Inc.	Safety and Maintenance Supplies	395.68
TRANSFERS			
03/07/23		Retirement Match and Withheld	59,856.06
	Public Employment Retirement		
03/10/23		Employee Deductions	1,410.00
	Deferred Compensation		
03/14/23	MS Department of Revenue	Employee Deductions	7,354.00
03/15/23			
	Federal Tax Deposit	Payroll Tax Deposit	28,510.84
03/16/23	MS Department of Revenue	Sales Tax Payment	17,448.86
Total			<u>\$463,086.52</u>

Commissioner Symmes moved to approve the Port User Licenses, pending receipt of all fees and insurance documents. Commissioner Loughman seconded and the motion was unanimously approved.

The following items were approved:

RENEWAL LICENSES:

Steamship Agency: Transmarine Navigation Corp.; Tricon Steamship Agency, Inc.

Stevedore: SSA Gulf

Commissioner Knesal left the room.

Commissioner Symmes moved to approve payment of \$458,534.44 to AnderCorp, LLC. Commissioner Loughman seconded and the motion passed unanimously.

Commissioner Knesal returned to the meeting.

Commissioner Symmes moved to approve the following progress payments: Balch & Bingham (\$64,000.65); Benecorp, Inc. (\$114,984.13); Digital Engineering (\$36,876.00); Dredging Professor, LLC (\$1,320.00); MP Design Group (\$825.00); MP Design Group (\$26,260.00); Southern Earth Sciences (\$1,409.00) and WSP, Inc. (\$34,554.27). Commissioner Loughman seconded and the motion was unanimously approved.

Commissioner Loughman moved to approve Cash Request #341 to Eley Guild Hardy for \$18,845.50. Commissioner Symmes seconded and the motion was unanimously approved.

OLD BUSINESS:

Commissioner Symmes moved to approve Modification No. 1 to Contract No. 21-EN-04 with Southern Earth Sciences. Modification No. 1 extends the contract by 1 (one) year with no change to the fee schedule. Commissioner Loughman seconded and the motion was unanimously approved.

Commissioner Symmes moved to approve Modification No. 1 to Contract No. 22-EN-04 with WSP, Inc. Modification No. 1 extends the contract to April 30, 2023, to allow for closeout. There are no changes to the cost. Commissioner Loughman seconded and the motion was unanimously approved.

Commissioner Symmes moved to approve Modification No. 19 to the CDBG Sub-Recipient Agreement R115-06-02. Modification No. 19 extends the Agreement until 12/31/2023 to complete the closeout of the HUD Restoration program as a whole by the end of the year. Commissioner Loughman seconded and the motion was unanimously approved.

NEW BUSINESS:

Commissioner Loughman moved to approve Contract No. 23-EN-06 with Covington Civil and Environmental, LLC for groundwater monitoring services. The term of the contract is 2 (two) years with a not to exceed amount of \$50,000.00. Commissioner Knesal seconded and the motion was unanimously approved.

Commissioner Symmes moved to approve a Professional Service Agreement with Sterling Solutions for Phase II of consulting services for a potential cold storage facility. The not to exceed amount is \$95,000 and the term is 5-7 months. Commissioner Knesal seconded and the motion was unanimously approved.

Commissioner Loughman moved to approve a Professional Service Agreement with SBL Strategies, LLC for consulting services related to government affairs in Washington, DC., related to the federal navigation channel. The not to exceed amount is \$120,000.00 and the duration is one year. Commissioner Symmes seconded and the motion was unanimously approved.

Commissioner Symmes moved to approve a Lease, Development and Terminal Operating Agreement between the Mississippi State Port Authority, the Mississippi Development Authority and Ports America Gulfport, Inc. The Lease term is 20 years with two 10-year extension options. Commissioner Loughman seconded and the motion was unanimously approved.

ENGINEERING UPDATE:

James Buras reported on current engineering projects.

OPERATIONS REPORT:

Matt Wypyski reported on the maritime activity for February:

Vessels	15		Vehicles	10,972
Tonnage	unavailable		Railcars	476
TEU's (short tons)	unavailable			

EXECUTIVE DIRECTOR'S COMMENTS:

MSPA hosted a one-star General from the Army Corps of Engineers. They brought their entire team in to discuss the federal navigation channel and moving forward.

GENERAL COUNSEL'S COMMENTS:

Ben Stone had no comments.

MDA'S COMMENTS:

Philip Carter, MDA, had no comments.

COMMISSIONERS' COMMENTS:

There were no Commissioner comments.

Commissioner Symmes moved to close the meeting to discuss the need for an Executive Session. Commissioner Loughman seconded and the motion was unanimously approved.

Commissioner Symmes moved to enter Executive Session to discuss pending and potential litigation and personnel matters. Commissioner Loughman seconded and the motion was unanimously approved.

(THE BOARD OF COMMISSIONERS ENTERED INTO EXECUTIVE SESSION AT APPROXIMATELY 9:25 A.M.)


Commissioner Knesal moved to come out of Executive Session. Commissioner Loughman seconded and the motion was unanimously approved.

Commissioner Rester stated that no action took place during Executive Session.

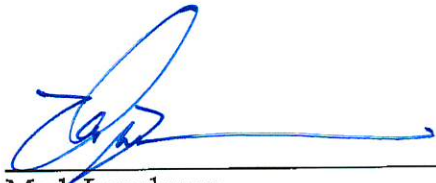
Commissioner Rester moved to adjourn.

The meeting adjourned at approximately 10:00 a.m.

Approved and Attested



John Rester
Vice-President



Mark Loughman
Secretary

LEASE, DEVELOPMENT, AND TERMINAL OPERATING AGREEMENT

by and between

**MISSISSIPPI DEVELOPMENT AUTHORITY and
MISSISSIPPI STATE PORT AUTHORITY AT GULFPORT**

and

PORTS AMERICA GULFPORT, INC.

March 24, 2023

18843931.24

LEASE, DEVELOPMENT, AND TERMINAL OPERATING AGREEMENT

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EXECUTION VERSION

LEASE, DEVELOPMENT, AND TERMINAL OPERATING AGREEMENT

This Lease, Development, and Terminal Operating Agreement (this "**Lease Agreement**") is executed this 24th day of March, 2023 (the "**Effective Date**"), by and between, the STATE OF MISSISSIPPI, appearing herein by and through its duly authorized agencies, the MISSISSIPPI DEVELOPMENT AUTHORITY ("**MDA**") and the MISSISSIPPI STATE PORT AUTHORITY AT GULFPORT ("**MSPA**") (herein collectively referred to as the "**Port Authority**") and PORTS AMERICA GULFPORT, INC., a Louisiana corporation ("**Ports America**"). Each of MDA, MSPA and Ports America are sometimes referred to individually as a "**Party**" and, collectively, as the "**Parties**."

WHEREAS, Port Authority is the owner of certain port facilities at what is commonly referred to as the Port of Gulfport, located in the City of Gulfport, First Judicial District of Harrison County, Mississippi (the "**Port**") and is statutorily charged with the advancement of the development, improvement, and expansion of, among other things, the Port;

WHEREAS, Port Authority has completed an approximately \$600 million restoration and improvement project of West Pier and is in the process of completing a strategic plan, all with the objective of modernizing the Port in order to improve operational efficiency to increase volumes of Cargo at the Port, including West Pier;

WHEREAS, both the projection and realization of increased volumes of Cargo through the Port are necessary to support Port Authority's application to key stakeholders, including the U.S. Army Corps of Engineers, to obtain requisite approvals for widening and deepening the shipping channels at the Port;

WHEREAS, Port Authority has identified a utilization of Terminal #4 of West Pier which will promote the interests of the state of Mississippi and the Port as a world-class, intermodal commercial seaport and marine terminal on the Gulf of Mexico;

WHEREAS, Ports America is the largest terminal operator and stevedore in the United States with expertise in handling container, bulk, breakbulk and project cargo; world-class cruise terminals; and intermodal facilities and quality RoRo operations;

WHEREAS, Port Authority and Ports America have mutually benefited from a long-standing relationship at the Port wherein Ports America has provided stevedoring and terminal services to Port Authority's existing tenants and other users at West Pier;

WHEREAS, the Parties desire to enter into a long-term lease for Ports America's investment in, and development and operation of, the Leased Premises as a marine terminal facility designed to maximize utilization of the Port to increase Cargo volume in order to support deepening and widening of the shipping channels at the Port;

WHEREAS, Port Authority has determined that the Transaction promotes the development, improvement, and expansion of the ports, harbors, and inland waterways of the state of Mississippi, which responsibilities and duties are prescribed to Port Authority under the State Ports and Harbors Law (Miss. Code Ann. § 59-5-1, et seq.).

WHEREAS, Ports America is desirous of leasing the area at the Port known as Terminal #4 for the purposes of developing the Leased Premises into a new marine terminal facility and operating the same once operational;

WHEREAS, Port Authority desires to develop and improve its facilities for handling water-borne domestic and foreign commerce, and to promote the shipment of freight and commerce through the Port; and

EXECUTION VERSION

WHEREAS, as additional consideration for execution of this Lease Agreement, Ports America will assume all operation, maintenance and repair, and insurance obligations associated with all of the ship-to-shore gantry cranes at the Port, together with the exclusive right to provide stevedoring and marine terminal operations within the Operating Area (as defined below).

NOW, THEREFORE, for and in consideration of the mutual covenants and stipulations herein contained, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties do hereby mutually contract and agree, each for itself and its successors and assigns, as follows:

1. DEFINITIONS: INTERPRETATION OF AGREEMENT

1.1 Definitions. Capitalized terms used in this Lease Agreement have the meanings identified in this Part 1 or in the body of this Lease Agreement. Terms defined in this Part 1 or within the body of this Lease Agreement may be singular or plural, as the context requires, and, absent an express statement otherwise, have the same meaning in all exhibits and forms incorporated as exhibits. This Lease Agreement is subject to the rules of construction described in Section 1.2 (*Lease Agreement Interpretation*).

1.1.1 Additional Crane: Any additional ship-to-shore crane procured by or on behalf of Ports America and to be used in connection with the provision of the Services.

1.1.2 Additional Fees: Collectively, all amounts payable under Section 6.4 (*Additional Fees*).

1.1.3 Additional Rent: As defined in Section 6.4.3 (*Additional Rent*).

1.1.4 Affiliate: With respect to any Person or Party, any other Person that, directly or indirectly, through one or more intermediaries, Controls or is controlled by or is under common Control with such Person.

1.1.5 After-Acquired Assets: As defined in Section 3.7.2 (*Assets Acquired During Term*).

1.1.6 Assets: As defined in Section 3.7.2 (*Assets Acquired During Term*).

1.1.7 Basic Conditions: As defined in Section 10.1.2 (*Basic Conditions*).

1.1.8 Cargo: Containers and containerized cargoes and non-containerized cargoes (including breakbulk, project cargoes, roll-on/roll-off (ro/ro), and bulk (both liquid and dry)), having a prior or subsequent movement over a pier, berth, or wharf at West Pier. Cargo does not include any passenger, crew, or personal effects of either.

1.1.9 Intentionally deleted.

1.1.10 Casualty Event: Fire, flood, or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen.

Intentionally deleted.

1.1.12 Chiquita Lease: The Lease Agreement between and among Chiquita Fresh North America, L.L.C., the MSPA, and the MDA, dated July 4, 2016.

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- 1.1.13 Claim: Any claim, liability, loss, Lien, cause of action of any kind, order, obligation, cost, royalty, fee, penalty, assessment, fine, judgment, interest, and award (including reasonable legal counsel fees and costs of litigation or non-binding mediation of the Party or Person asserting the Claim), whether arising by law, contract, tort, or voluntary settlement.
- 1.1.14 Contract Year: (i) The period of twelve (12) months from the Effective Date (which will be the "first Contract Year"); and (ii) each successive period of twelve (12) months after the end of the first Contract Year and ending on the date of the end of the Term.
- 1.1.15 Control: The possession, directly or indirectly, of the power to appoint, direct, or cause the direction of the board of directors, management, or policies of a Person or Party, whether through the ownership of voting securities, by contract, or otherwise. The term "Control" includes related terms.
- 1.1.16 Crane: The three (3) existing ZPMC ship-to-shore cranes at the Port as of the Effective Date together with any additional ship-to-shore cranes procured by or on behalf of Ports America for Services and all spare parts, replacements, component parts, and accessories thereof.
- 1.1.17 Crane Lift Fee: As defined in Section 6.4.2 (*Crane Lift Fee*).
- 1.1.18 Crane Lift Payment Threshold: Twenty thousand (20,000) individual container unit lifts (whether loaded or empty) calculated on an annual basis per Contract Year solely at the Berth 4, West Pier and the Leased Premises.
- 1.1.19 Crane Maintenance Area: As defined in Section 3.1 (*Leased Premises*), as more particularly described and depicted on Exhibit 3.1(b) (*Depiction of West Pier Access & Crane Maintenance Area*).
- 1.1.20 Crowley Agreement: The Terminal Operating Agreement and Space Assignment between Crowley Liner Services, Inc. and the MSPA, dated December 19, 2016.
- 1.1.21 Cure Period: A time period, commencing upon the earlier of actual notice of a Default or receipt by the Defaulting Party of a notice pursuant to Section 19.1 (*Default*), as is reasonably necessary to cure the Default, taking into account the nature and gravity of the failure and cure, unless otherwise expressly provided herein. The Parties agree that if the non-Defaulting Party reasonably believes that the Default constitutes or creates an event of emergency or requires an immediate Response Action or other remedial action in order to preserve the health, safety, or welfare of any Party, Person, or property (including with respect to storm preparation) or involves an act or omission which materially interferes with or obstructs efficient Port operations, the "Cure Period" will be deemed to require immediate action to remove such Default. The Parties further agree that, with respect to all other Defaults, if Defaulting Party reasonably believes that the Default cannot be cured within thirty (30) days, the Defaulting Party must give written notice to the other Parties describing in detail the actions remaining to be taken and any extenuating circumstances affecting the Defaulting Party's ability to remedy such Default.
- 1.1.22 Default: As defined in Section 19.1 (*Default*).
- 1.1.23 Default Interest Rate: An annual rate of interest equivalent to (i) three percent (3%) above the target federal funds rate, as most recently announced by the

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Board of Governors of the U.S. Federal Reserve System, or, if no such rate is being announced, (ii) three percent (3%) above the Federal Reserve Bank of New York (FRBNY) rate; in each case as in effect on the date upon which an amount first becomes overdue.

- 1.1.24 Defaulting Party: As defined in Section 19.1 (*Default*).
- 1.1.25 Development Term: As defined in Section 2.1 (*Development Term*).
- 1.1.26 Dole Lease: The Lease, Preferential Assignment and Refrigerated Warehouse Space Agreement between Dole Fresh Fruit Company and the MSPA, dated August 12, 2004, and as amended on October 11, 2007, March 27, 2015, and July 24, 2018.
- 1.1.27 Effective Date: 12:00:00 a.m. Central time on the day specified in the preamble to this Lease Agreement.
- 1.1.28 Environmental Laws: All applicable laws, statutes, ordinances, codes, rules, standards and regulations of any Governmental Authority, now or hereafter in effect, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative order, consent decree, order or judgment, imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the environment and any and all natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation). Environmental Laws include CERCLA (42 U.S.C. §§ 9601 et seq.); the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §§ 5101 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 136 et seq.); the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.); the Solid Wastes Disposal Law of 1974 (Mississippi Code §§ 17-17-1 et seq.); the Toxic Substance Control Act (15 U.S.C. §§ 2601 et seq.); the Clean Air Act (42 U.S.C. §§ 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.); the Coastal Wetlands Protection Act (Mississippi Code §§ 49-27-1 et seq.); the Mississippi Air and Water Pollution Control Law (Mississippi Code §§ 49-17-1 et seq.); the Mississippi Underground Storage Tank Act of 1988 (Mississippi Code §§ 49-17-401 et seq.) the provisions of the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.) relating to exposure to Hazardous Substances; and the Safe Drinking Water Act (42 U.S.C. §§ 300(1) et seq.), and any and all regulations promulgated thereunder, and all applicable analogous state, local and federal counterparts or equivalents.
- 1.1.29 Existing Leases: Collectively, the Dole Lease, the Chiquita Lease, and the Crowley Agreement, all of which are attached hereto as Schedule 1.1.29.
- 1.1.30 Force Majeure Event: Any event beyond the reasonable control of Ports America or Port Authority, as the case may be, that delays or interrupts the performance of the obligations or covenants of Ports America or Port Authority for a period of at least thirty (30) continuous days, including an act of God, war, act of terror, invasion, armed conflict, blockade, strike, earthquake, riot, epidemic, stop-work order or injunction issued by a Governmental Authority of competent jurisdiction, work stoppage or labor shortage, vendor delays, fire, tornado, hurricane, extraordinary tides or winds or other natural disaster; but only if such event is not the result of (i) the negligence or misconduct of the Party claiming Force Majeure, (ii) any act or omission by Ports America or its representatives in breach of the provisions of this Lease Agreement, or (iii) lack or insufficiency of funds or failure to make payment of monies on the part of Ports America.

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- 1.1.31 Governmental Authority: Any federal, state, provincial, county, regional, local, municipal, or city government, or other executive, judicial or legislative body or authority, including any governmental department, commission, board, bureau, agency or instrumentality thereof. For the avoidance of doubt, the term "Governmental Authority" includes each of MSPA and MDA.
- 1.1.32 Hazardous Substance: Any hazardous or potentially hazardous substance, material or waste that is regulated by, or forms the basis of liability now or hereafter under any Environmental Laws, including any material or substance that is (a) defined or listed in, or otherwise classified pursuant to, any applicable Environmental Laws as a "solid waste," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "contaminant," "hazardous constituent," "special waste," "toxic substance" or other similar term or phrase under any Environmental Laws, (b) petroleum or any fraction or by product thereof, asbestos, polychlorinated biphenyls (PCB's), or any radioactive substance, or (c) any solid, liquid, gas, odor, heat, sound vibration, or combination of that might impair human health, injure or damage the natural environment, or injure or damage natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation).
- 1.1.33 Hazardous Substances Contamination: The presence, Release, or threatened Release of Hazardous Substances.
- 1.1.34 Holiday: As defined in Section 1.3 (*Days; Notice or Payment on a Saturday, Sunday, or Holiday*).
- 1.1.35 Immediately Orally Notify: A verbal report of a Release of a reportable quantity (RQ) to those that need to be notified pursuant to Law or this Lease Agreement within such timeframe as required by Law, to be lodged first with the relevant Governmental Authorities (National Response Center, Harrison County Office of Emergency Management, Mississippi Emergency Management Agency, and Mississippi Department of Environmental Quality), and then with Port Authority.
- 1.1.36 Indemnitee: As defined in Section 15.1 (*Indemnification by Ports America for Losses*).
- 1.1.37 Initial Term: As defined in Section 2.2 (*Initial Term*).
- 1.1.38 Key Performance Indicators (KPI): As defined in Section 4.4 (*Key Performance Indicators*) and set forth on Schedule 4.4 (*Crane KPIs*).
- 1.1.39 Laws: All federal, state and local laws, statutes, regulations, rules, tariffs, permits, treaties, ordinances, judgments, directives, decrees, approvals, interpretations, injunctions, writs, orders, and other similar legal requirements issued by any Governmental Authority, including Environmental Laws.
- 1.1.40 Lease Agreement: As defined in the preamble.
- 1.1.41 Leased Premises: As defined in Section 3.1 (*Leased Premises*).
- 1.1.42 Lien: Any lien, garnishment, charge, claim, encumbrance, or similar right available to creditors at law to secure debts or obligations owed to them.

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- 1.1.43 Loss: As defined in Section 15.1 (*Indemnification by Ports America for Losses*).
- 1.1.44 MDA: The Mississippi Development Authority, an agency of the state of Mississippi.
- 1.1.45 Minimum Condition: The condition reasonably necessary to substantially satisfy the Basic Condition and have the operational capacity to handle (i) substantially the same types of Services that have been provided upon the Leased Premises for the prior three (3) years from the date of expiration or earlier termination of this Lease Agreement, (ii) the KPI then in effect, and (iii) be in a reasonably similar environmental condition existing as of the Effective Date, as evidenced by such environmental or other reports, assessments, or documentation as Port Authority may reasonably require, and to the extent within Ports America's reasonable control.
- 1.1.46 Minimum Investment: As defined in Section 5.1 (*Minimum Investment Schedule*).
- 1.1.47 MSPA: The Mississippi State Port Authority at Gulfport, an agency of the state of Mississippi.
- 1.1.48 MSPA Tariff: The Revised Tariff No. 7.1 as promulgated by the MSPA pursuant to its rulemaking authority under Mississippi Code Annotated § 59-5-1, *et seq.* and as published in the Mississippi Administrative Code in 28 Miss. Admin. Code Pt. 303.
- 1.1.49 Operating Area: Certain specified areas of the West Pier and North Harbor of the Port more particularly described in Exhibit 1.1.49 attached hereto.
- 1.1.50 Operating Easements: As defined in Section 3.1 (*Leased Premises*).
- 1.1.51 Option Notice: As defined in Section 2.3.1 (*Option Notice*).
- 1.1.52 Option Term: As defined in Section 2.3.1 (*Option Notice*).
- 1.1.53 Original Assets: All cranes, including the Original Cranes, vehicles, cargo handling equipment and all other material equipment and parts and items used by Ports America in connection with its operations at the Port, as of the Effective Date, as set forth on Schedule 3.7.1 attached hereto (*Inventory of Original Assets*). The schedule setting forth the Original Assets is intended to list the material Assets used by Ports America as of the Effective Date and not an exhaustive list of "tools of the trade" (i.e., wrenches, screwdrivers, etc.).
- 1.1.54 Original Cranes: The three (3) existing ZPMC ship-to-shore gantry cranes located at West Pier as of the Effective Date.
- 1.1.55 Parties: MDA, MSPA, and Ports America or the combination of any two of them.
- 1.1.56 Party: MDA, MSPA, or Ports America.
- 1.1.57 Permitted Use: The right to develop, operate and use the Leased Premises as a marine terminal facility for the purposes of handling, receipt, delivery, storage, stacking, loading and unloading of Cargo, subject to this Lease Agreement, and for any other purpose under Law reasonably necessary and incidental thereto. The "Permitted Use" does not include any development or use that would

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constitute a nuisance under, or violation of, Law or that would in any way unreasonably and materially interfere with the normal routine operation of the Port.

- 1.1.58 Person: (a) any natural person, (b) any corporation, limited liability company, partnership (general or limited), statutory trust, joint stock company, unincorporated association, joint venture or other person established to conduct business or (c) any Governmental Authority, whether domestic or foreign, not a Party to this Lease Agreement.
- 1.1.59 Plans and Specifications: All working drawings and specifications setting forth in detail and prescribing all work to be performed for any improvement or alteration, including the scope of work, schedule, and estimated hard construction cost, together with all, if and as applicable, engineering, geotechnical and design reports, general conditions, special conditions, materials, workmanship, finishes, and equipment required for the architectural, structural, life safety, mechanical, electrical, and plumbing systems, parking, landscaping, on-site amenities, and facilities, and all addenda thereto and modifications thereof, to be prepared by a qualified and licensed Person.
- 1.1.60 Port: As defined in the Recitals.
- 1.1.61 Port Authority: MDA and MSPA.
- 1.1.62 Ports America: Ports America Gulfport, Inc., a Louisiana corporation.
- 1.1.63 Ports America Contamination: A Hazardous Substances Contamination on, under, or migrating from (i) the Operating Area, including the water bodies adjacent thereto, that was caused, permitted, or authorized by Ports America or by any Ports America Responsible Person after the Effective Date; or (ii) the Leased Premises that was otherwise caused, permitted, or authorized on the Leased Premises by Ports America or any Ports America Responsible Person during the Term. A Ports America Contamination does not include (a) Hazardous Substances Contamination at the Port that occurred prior to, or exists as of, the Effective Date, or (b) Hazardous Substances Contamination that migrates to the Leased Premises or any other area under Ports America's control from an area outside of Ports America's control and that was not caused, permitted, or authorized by a Ports America Responsible Person.
- 1.1.64 Ports America Coverages: As defined in Section 14.1 (*Insurance Generally*).
- 1.1.65 Ports America Responsible Persons: Ports America or its officers, agents, representatives or employees, contractors, sub-contractors, lessees or sub-lessees, customers, invitees or licensees or any of their employees, contractors, or agents.
- 1.1.66 Preferential Berth: As defined in Section 3.2 (*Preferential Berth*).
- 1.1.67 Price Index: The Consumer Price Index U.S. City Average, all items, not Seasonally Adjusted (CPI-U), using 1982-1984 as a base of 1).
- 1.1.68 Proceeding: Any civil, criminal, or administrative action, lawsuit, or other judicial or administrative adversarial proceeding.

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- 1.1.69 Release: Any release, spill, discharge, disposal, leak, leaching, migration, or dispersal of Hazardous Substance.
- 1.1.70 Rent: The amount of annual rent payable to MSPA by Ports America under Part 6 (*Rent; Adjustments; Additional Fees*). The term "Rent" does not include costs associated with Utilities, taxes, or insurance.
- 1.1.71 Response Action: The investigation, testing, feasibility study, risk assessment, treatment, removal, disposal, reuse, handling, transport, clean up, remediation, containment, capping, encapsulating, mitigation, or monitoring of Hazardous Substances or any Release; the preparation and implementation of any health and safety plans, operations and maintenance plans or any other plans related to a Release; the demolition, reconstruction or construction of any subsurface or surface structures to implement the Response Action; and the Restoration of the Leased Premises after the completion of the Response Action whether required by Environmental Law or this Lease Agreement.
- 1.1.72 Restoration, Restoring, or Restore: With respect to any Casualty Event, to repair, restore or rebuild the affected portion of the Leased Premises to restore it to its condition prior to the Casualty Event (but in no event to less than the Minimum Condition), as the case may be, ordinary wear and tear excepted. As applicable to Ports America, the term "Restoration, Restoring, or Restore" includes the obligation to promptly and diligently pursue any available claim under the applicable Ports America Coverages for such Casualty Event.
- 1.1.73 Services: (i) All Crane procurement, assembly, operations, maintenance, and repair services, including the maintenance of insurance and (ii) all stevedoring and terminal operations, including Cargo handling and related services (but excluding bulk), each of which is provided by or on behalf of Ports America in connection with this Lease Agreement.
- 1.1.74 Site Plan: As defined in Section 5.2 (*Site Plan*).
- 1.1.75 Standard of Care: The performance of the Services and operation of the Leased Premises and Assets for the Permitted Use as a reasonable prudent Person seeking in good faith to perform its contractual obligations in accordance with good industry practice and in compliance with all applicable Laws and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances and conditions.
- 1.1.76 Term: Collectively, the Development Term, the Initial Term, and if and as applicable, any Option Term.
- 1.1.77 Transaction: The transactions contemplated and authorized in this Lease Agreement whereby Ports America will lease and develop the Leased Premises and provide Services at the Operating Area.
- 1.1.78 Utilities: All electricity, water, gas, refuse collection, sewerage, drainage, telephone, Internet access, pest control, and other services of like nature. The term "Utilities" does not include any fumigation that may be required at the Leased Premises.

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1.1.79 Vessel Fees: (i) All fees, rates, and tariffs generally applicable to vessels pursuant to the MSPA Tariff, including those set forth in the Schedule of Charges, Rules and Regulations for Port Terminal Services, as amended or otherwise updated by the MSPA from time to time; or (ii) with respect to Existing Leases, all vessel fees, wharfage, dockage fees, harbor fees, line handling fees, gate fees or other related fees payable to the MSPA. The term "Vessel Fees" does not include wharfage collected by Ports America and payable for Cargo loaded or unloaded at the Leased Premises.

1.1.80 West Pier: The area commonly known as the "West Pier" of the Port.

1.2 Lease Agreement Interpretation. In this Lease Agreement:

1.2.1 "include(in)" means "include, but are not limited to" or "including, without limitation";

1.2.2 "or" means "either or both" ("A or B" means "A or B or both A and B");

1.2.3 "e.g." means "for example, including, without limitation";

1.2.4 "written" or "in writing" includes email or facsimile communication, absent express statement otherwise;

1.2.5 the table of contents and headings in this Lease Agreement are included for convenience and do not affect the construction or interpretation of any provision of, or the rights or obligations of a Party, under this Lease Agreement;

1.2.6 "hereof," "herein," and "hereunder" and words of similar import refer to this Lease Agreement as a whole and not to any particular provision of this Lease Agreement;

1.2.7 "will" or "must" is to be interpreted with equal effect as the word "shall"; and

1.2.8 "arising" (or that "arise" or "arises") "out of this Lease Agreement" includes matters that arise in connection with this Lease Agreement or have a causal connection with, or that flow from, this Lease Agreement or that would not have arisen or occurred but for the entering into of this Lease Agreement, or the performance or failure to perform obligations under this Lease Agreement.

1.2.9 Reference to:

- (a) a Party or entity includes any permitted successor or assign thereof;
- (b) a specific Governmental Authority includes any other Governmental Authority succeeding to the same function thereof;
- (c) applicable Law, a document (including this Lease Agreement, but only to the extent permitted by this Lease Agreement), or a provision, is to the law, document, or provision as modified, restated, supplemented, or amended and then effective or current, unless otherwise indicated;
- (d) any article, section, clause, schedule, or exhibit are those of this Lease Agreement unless otherwise indicated;

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- (e) this Lease Agreement will be deemed to include all exhibits attached to this Lease Agreement;
- (f) a Lease Agreement part by heading or number includes all sections, sub-sections, and clauses within that part or number;
- (h) a Lease Agreement section by caption or number includes all subsections and clauses within that section; and
- (i) payment is to be deemed to mean the legal currency of the United States.

1.3 **Days; Notice or Payment on a Saturday, Sunday, or Holiday.** Whenever the term “day” is used in this Lease Agreement, it will refer to a calendar day unless otherwise specified. A “business day” will mean any weekday except for those weekdays that banking institutions within the state of Mississippi are authorized by applicable law to be, or in fact are, closed (a “Holiday”). Should the period to make any payment or to give or respond to a notice expire on a Saturday, Sunday, or Holiday, such period will be automatically extended through the following business day.

1.4 **Drafting.** Both Parties were actively involved in negotiating and drafting this Lease Agreement; no rule allowing construction in favor of, or against, a Party according to authorship will apply.

2. **TERM**

2.1 **Development Term.** The “Development Term” of this Lease Agreement will commence upon the Effective Date and continue thereafter until the commencement of the Initial Term.

2.2 **Initial Term.** The “Initial Term” will commence upon the fifth (5th) anniversary of the Effective Date and, unless earlier terminated in accordance with the terms of Part 19 (Default), will continue thereafter until the twentieth (20th) anniversary of the Effective Date.

2.3 **Option Term.** Ports America will have the right to extend the Term beyond the Initial Term for two (2) separate and successive ten (10) year Optional Terms, subject to the following conditions:

2.3.1 **Option Notice.** No earlier than twelve (12) months, but no later than one hundred eighty (180) days, prior to the expiration of the then-expiring Term, Ports America provides written notice (the “Option Notice”) of its election to extend the Term of this Lease Agreement for an additional ten (10) year period beyond the date of expiration of the then-expiring Term (each, an “Option Term”). In such case, the Term of this Lease Agreement will be extended.

2.3.2 **Capital Investment Targets and Key Performance Indicators:** Ports America demonstrates, to the commercially reasonable satisfaction of Port Authority, that Ports America achieved both the capital investment targets and Key Performance Indicators applicable to the then-expiring Term; and

2.3.3 **No Default.** Ports America is not a Defaulting Party under this Lease Agreement immediately prior to the commencement of the then-applicable Option Term or, in any case where Ports America is a Defaulting Party, such Default is the subject of a good faith dispute by the Parties.

In such case, the Term of this Lease Agreement will be extended.

3. LEASED PREMISES: PREFERENTIAL BERTH: MATTERS AFFECTING PREMISES

3.1 **Leased Premises**. Subject to Section 3.4 (*Matters Affecting the Leased Premises*), Port Authority hereby demises and leases to Ports America and Ports America accepts and leases from Port Authority for the Permitted Use approximately 38.02 acres, being commonly referred to as Terminal #4 and located on a portion of West Pier at the Port of Gulfport, City of Gulfport, in the First Judicial District of the County of Harrison, State of Mississippi (the "**Leased Premises**"), as more particularly described and depicted on Exhibit 3.1(a) (*Depiction of Leased Premises*), attached hereto and fully incorporated herein by this reference, together with (i) a non-exclusive easement for the reasonable rights of ingress and egress to and from the Leased Premises upon, over and through existing common driveways and thoroughfares at the Port, the Leased Premises; as well as (ii) use and possession of the Crane Maintenance Area, as more particularly described and depicted on Exhibit 3.1(b) (*Depiction of West Pier Access & Crane Maintenance Area*), attached hereto and fully incorporated herein by this reference; and (iii) a non-exclusive easement for the reasonable right of ingress and egress to the berthing area, piers, wharfs, docks and related components along and extending from the east side of the West Pier, including, without limitation, the Preferential Berth (as defined in Section 3.2 (*Preferential Berth*)), and certain designated locations for accessing the rail located on the West Pier (the "**Operating Easements**"). Easements impacting the Leased Premises are set forth on Exhibit 3.1(b) (*Depiction of West Pier Access & Crane Maintenance Area*).

3.2 **Preferential Berth**. Subject to Section 3.2.1 (*Preferential Berth Availability*), Ports America will be entitled to a preferential berthing assignment at Berth 4, West Pier (the "**Preferential Berth**"), or such other berth as may be mutually agreed upon by Ports America and the MSPA, always subject to circumstances and conditions reasonably within the control of the MSPA. Ports America will have the right to non-exclusive, preferential use of the dock and bulkhead area adjacent to such Berth 4, West Pier. Notwithstanding, nothing contained herein will be construed to preclude Port Authority or other users of the Port from periodically requesting permission from Ports America for the use of Berth 4, West Pier including the associated dock and bulkhead, if such use will not unreasonably interfere with Ports America's operations.

3.2.1 **Preferential Berth Availability**. Preferential Berth availability is subject to:

- 3.2.1.1 All prior rights granted by Port Authority under the Existing Leases, including any rights to access the Cranes during scheduled operational windows;
- 3.2.1.2 Ports America is not a Defaulting Party or, in any case where Ports America is a Defaulting Party, such Default is the subject of a good faith dispute by the Parties.
- 3.2.1.3 Notwithstanding Section 3.2.1.1, and for the avoidance of doubt, Ports America will be entitled to its Preferential Berth assignment at Berth 4, West Pier, or such other berth as may be mutually agreed upon by Ports America and the MSPA, provided the three (3) existing Cranes and the Additional Crane referenced in Section 5.1 (*Minimum Investment Schedule*), are commercially operational. Moreover, once a Crane begins stevedore operations on a vessel at Berth 4, that Crane may not be removed in favor of an operation elsewhere in the Operating Area until it has completed servicing said particular vessel at Berth 4, unless otherwise mutually agreed between the Parties.

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- 3.2.2 **Priority Utilization of Berth 4, West Pier.** Ports America will ensure that all vessels obtaining Services under this Lease Agreement, not otherwise entitled to a preferential berth under Existing Leases, will utilize Berth 4, West Pier as a priority berth subject to circumstances and conditions reasonably within the control of Ports America and provided that such priority usage of Berth 4, West Pier is available and will not unreasonably interfere with Ports America's scheduled operations for the provision of Services. Nothing contained herein will be construed to preclude Port Authority or other users of the Port from periodically requesting permission from Ports America for the use of Berth 4, West Pier including the associated dock and bulkhead, if such use will not unreasonably interfere with Ports America's operations.
- 3.3 **Survey.** Prior to the Effective Date, the MSPA procured an updated boundary survey of the Leased Premises and Operating Easements in order to prepare the exhibits described in Section 3.1 (*Leased Premises*). Within thirty (30) days of execution of this Lease Agreement, Ports America will remit payment to the MSPA for the full reimbursement for the cost of the survey, which is approximately Fifteen Thousand Dollars (\$15,000.00). The Parties agree that any additional survey work for the purposes of facilitating the development of the Leased Premises must conform to ALTA standards and will be at Ports America's expense. Any additional survey must reflect all improvements, servitudes, pipelines, utility and other rights-of-way, flood zone classifications and other matters affecting or abutting the Leased Premises and further reflect Table A items customarily depicted for marine terminal facilities.
- 3.4 **Matters Affecting the Leased Premises.**
- 3.4.1 **Acceptance of Leased Premises.** Except as otherwise provided herein, Ports America accepts the Leased Premises as of the Effective Date, after a full and complete examination and inspection thereof, in its AS-IS, WHERE-IS condition, without representation as to suitability for any purpose. Ports America accepts the Leased Premises as of the Effective Date subject to: (i) utility easements serving or reasonably necessary to serve the Leased Premises or West Pier; (ii) any other easements, use or occupancy restrictions or other matters of public record affecting the Leased Premises; and (iii) all Laws affecting the Leased Premises.
- 3.4.2 **Invitee Compliance.** Ports America must at all times, and at no cost to Port Authority, be subject to and faithfully obey and comply with all Laws and will require all users, invitees, and guests of the Leased Premises to comply with same.
- 3.5 **Reserved Easements.** Nothing in this Lease Agreement will be construed to relieve Port Authority of the right to grant easements, licenses or permits for construction, maintenance, repair, replacement, relocation or reconstruction of utilities or infrastructure reasonably necessary to serve the Leased Premises or West Pier upon reasonable notice to and coordination with Ports America (other than in the event of an emergency or to preserve the health, safety, or welfare of any Person or property (including storm preparation), in which case Port Authority's rights will be immediate). Port Authority will collaborate with Ports America regarding the location of any future easements so as to minimize disruption of Ports America's use and possession of the Leased Premises.
- 3.6 **Quiet Enjoyment.** So long as Ports America is not a Defaulting Party, Ports America will have the right to quietly enjoy the Leased Premises, subject to Port Authority's exercise of its regulatory or administrative authority and other rights as expressly provided in this Lease Agreement, and will have the right to perform the Permitted Use at the Leased Premises throughout the Term.

3.7 **Assets.**

- 3.7.1 **Original Assets.** The Original Assets to be used by Ports America in connection with the provision of Services under this Lease Agreement is set forth on Schedule 3.7.1 (*Inventory of Original Assets*), which sets forth the material Assets used by Ports America at the Port as of the Effective Date, and not its "tools of the trade".
- 3.7.2 **Assets Acquired During Term.** In addition to the Original Assets, Ports America will have the right to purchase or lease, install and use, as applicable, at its cost and expense, including appropriate modern cargo handling equipment and other equipment and parts (the "**After-Acquired Assets**" and, together with the Original Assets, the "**Assets**") on the Leased Premises. To the extent that any After-Acquired Assets require installation at the Leased Premises, Ports America will provide notice to Port Authority.
- 3.7.3 **Asset Use and Operation.** Ports America must stow, operate, and maintain the Assets at all times in good repair and operating condition and in conformance with the manufacturer's instructions and applicable Laws. Ports America must post in the operator's cab of all Cranes a written sheet containing proper Crane stowage instructions and will require that said instructions are prominently displayed in the cab at all times.
- 3.8 **Rights of First Refusal.** Port Authority will collaborate in good faith with Ports America to identify any appropriate, mutually agreeable rights of first refusal for Ports America with respect to future development opportunities for the advancement of the Port, including warehouses, distribution centers, and refrigerated storage facilities. When off-dock development opportunities arise, Port Authority agrees to employ its commercially reasonable efforts to consider Ports America for such development opportunities.
- 3.9 **Crane Personnel.** Ports America will offer at-will employment to existing MSPA Original Crane maintenance personnel, as set forth on Schedule 3.9 (*Crane Personnel*), subject to satisfying Ports America's customary employment requirements.

4. **TERMINAL OPERATING SERVICES**

- 4.1 **Appointment and Exclusivity.** Port Authority appoints Ports America as the exclusive MSPA-licensed stevedore and Crane operator at the Operating Area. In addition, Port Authority appoints Ports America as the exclusive provider of the Services at the Operating Area during the Term and Ports America agrees that Ports America must perform all of its obligations under this Lease Agreement, including the Services, consistent with the Standard of Care and accepts such appointment subject to the following terms and conditions:
 - 4.1.1 **Existing Leases.** All prior rights granted by Port Authority under the Existing Leases, including any preferential berth assignments and rights to access the Cranes during scheduled operational windows and established Crane rates;
 - 4.1.2 **Military Cargo.** Any Services related to any United States military Cargo at the Port will be subject to (i) Ports America having obtained a separate written agreement for such services, including any service performed on behalf of U.S. Transportation Command (U.S. Transcom) Surface Deployment and Distribution Command (SDDC); and (ii) any preferential berth assignments and rights to access the Cranes during scheduled operational windows in favor of any carrier of United States military Cargo. To the extent that Ports America does not have

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any such written agreement for the handling of military Cargo, Ports America will operate the Cranes on behalf of any Person authorized by Port Authority to handle such military Cargo and such usage will be at a rate no greater than Ports America's then-published rates; and

- 4.1.3 **No Compensation.** Port Authority will not owe Ports America any monetary compensation for the provision of Services.
- 4.2 **Retention of Wharfage and Crane Revenue.** Ports America will retain all wharfage collected by Ports America and payable for Cargo loaded or unloaded at the Leased Premises and operating revenue associated with the Cranes in connection with the Services, including Crane revenue generated through the Existing Leases, but not including any Crane Lift Fee. If Ports America collects any Vessel Fees, it will remit the same to Port Authority. For the avoidance of doubt, Ports America will only be obligated to remit Vessel Fees to Port Authority to the extent such fees have actually been collected by Ports America. Notwithstanding the foregoing, the Parties intention is that Port Authority will employ its best efforts to collect all Vessel Fees.
- 4.3 **Competitive Rates.** Ports America will establish and publish a tariff applicable at the Port, which will set forth reasonably competitive rates for the Services, including Crane operating rates. Nothing in this Section 4.3 (*Competitive Rates*) will be construed to supplant or substitute Port Authority's statutory power to establish charges, rules, and regulations for the Port, including the MSPA Tariff.
- 4.4 **Key Performance Indicators:** Schedule 4.4 (*Crane KPIs*) establishes certain KPI with respect to the maintenance and operation of the Cranes and associated facilities and equipment. Ports America's failure to achieve the KPI will constitute a Default.
- 4.5 **ILA Labor.** Throughout the Term, Ports America will be the exclusive provider of International Longshoremen's Association- AFL-CIO labor for the provision of stevedoring and terminal operation services at the Operating Area.
- 4.6 **No Further Appointment.** Throughout the Term and for so long as Ports America is not a Defaulting Party, Port Authority will not appoint any Person, other than Ports America, to provide stevedoring or terminal operating services within the Operating Area.

5. **MINIMUM INVESTMENT; SITE PLAN**

- 5.1 **Minimum Investment Schedule.** Schedule 5.1 (*Minimum Investment Schedule*) sets forth a schedule of the planned capital expenditures that Ports America intends to make for the benefit of the Port and the Permitted Use during the first five (5) years of the Term following the Effective Date, including development milestones for significant capital expenditures and construction events. Notwithstanding the foregoing or Schedule 5.1 (*Minimum Investment Schedule*), as a minimum capital expenditure requirement of Ports America (the "**Minimum Investment**"), Ports America will (i) spend no less than Forty-Three Million and No/100 Dollars (\$43,000,000.00) in capital expenditures for the benefit of the Port and the Permitted Use within the Development Term, (ii) within six (6) months of the Effective Date, enter into a purchase order for one (1) new Additional Crane manufactured by ZPMC (or if a ZPMC-manufactured Additional Crane is not available for any reason, including under Laws, such alternative manufacturer reasonably acceptable to the MSPA) that is substantially similar to the Original Cranes (e.g., in terms of specifications, software/firmware, spare parts, training, manuals, and other material characteristics), (iii) within twenty-four (24) months after the date of the purchase order referenced in (ii) above, deliver, assemble, and make commercially operable such Additional Crane, and (iv) throughout the Term, continue to purchase, provide, or otherwise deliver appropriate modern cargo handling equipment and terminal infrastructure development to the Leased

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Premises as is commercially reasonable to support operational efficiency and competitiveness of the Leased Premises in the market and to support the KPI. The Parties acknowledge that the Additional Crane contemplated in this Section 5.1 (*Minimum Investment Schedule*) will comprise Fourteen Million and No/100 Dollars (\$14,000,000.00) of the Minimum Investment. In the event Ports America must procure an alternative Additional Crane due to the unavailability of a ZMPC manufactured crane then Ports America will have a commercially reasonable time in order to identify, negotiate and execute a purchase order of such suitable alternative crane as mutually agreed upon by the Parties.

- 5.2 **Site Plan.** The Site Plan will set forth a proposed site plan, construction schedule, and other details for Ports America's development and construction work with respect to the Leased Premises (the "**Site Plan**"). Ports America will perform or cause to be performed all design, procurement, and construction (including oversight) in accordance with the Site Plan at its sole cost and expense. The Site Plan will outline the use of the Leased Premises as a marine terminal facility, which will be contiguous and/or complementary to the marine terminal facilities presently located at West Pier. Ports America will provide Port Authority with a Site Plan within twelve (12) months of the Effective Date.
- 5.3 **Local Procurement.** The Parties agree that, Ports America will use commercially reasonable efforts to procure any Assets or Services, including the Minimum Investment expenditures, from Mississippi-based manufacturers/vendors/suppliers; provided that Ports America shall have no obligation to procure an Asset from a Mississippi-based manufacturer, vendor or supplier to the extent that such Asset may be otherwise procured for a materially lesser cost or better quality, or to the extent that the time period for procurement and delivery from a Mississippi-based manufacturer, vendor or supplier is reasonably expected to prevent Ports America from timely meeting its obligations under this Lease Agreement.
- 5.4 **Joint Pursuit of Business and Funding Opportunities.** Ports America will lead the meaningful pursuit of commercial activity at the Port to increase Cargo volume in order to justify and support the deepening and widening of the shipping channels at the Port by Port Authority and/or one or more other Governmental Authorities. The Parties will collaborate in the pursuit of related business development opportunities, including engagement with carriers, beneficial cargo owners (BCOs), and the development of Port-related activity and supporting infrastructure. In addition, the Parties will employ their commercially reasonable efforts to jointly collaborate and dedicate resources to the pursuit of grant funding opportunities beneficial to the advancement, development, improvement, expansion, and promotion of commercial activities at the Port, including with respect to dredging, attraction of shipping lines and related opportunities, enhancement of logistical transportation methods for Cargo to and from the Port, and academic and other research.
- 5.5 **Joint Pursuit of Dredging Opportunities.** Ports America understands and acknowledges that as a result of its performance of the Services and the special knowledge it possesses, and in order to defend and explain the decisions, procedures, and standards applicable to the deepening and widening of the shipping channels at the Port, Ports America may be called upon to appear at related proceedings of a Governmental Authority. Ports America agrees that, upon reasonable prior written notice, it will cause an appropriate employee, with knowledge of such matters, to appear in such hearings when required by Port Authority. Ports America will also assist Port Authority, upon reasonable prior written notice, in the preparation of testimony, reports, or other documents required in connection with any application or proceeding related to the deepening and widening of the shipping channels at the Port when called upon to do so by Port Authority.

6. **RENT: ADJUSTMENTS: ADDITIONAL FEES**

- 6.1 **Development Term Rent.** In consideration of the Minimum Investment, Port Authority will not assess, and Ports America will not pay, Rent for the Leased Premises during the Development Term. For the avoidance of doubt, Ports America will be responsible for the payment of Additional Fees during the Development Term.
- 6.2 **Initial Term Rent.** During the Initial Term, the annual Rent will be Four Hundred Eighteen Thousand and No/100 Dollars (\$418,220.00) payable in equal monthly installments pursuant to Section 6.6 (*Due Date*).
- 6.3 **Option Term Rent.** If Ports America provides the applicable Option Notice in accordance with Section 2.3.1 (*Option Notice*), the Rent for the Leased Premises during any Option Term will be the Fair Market Value Rental Rate. The "Fair Market Value Rental Rate" will be the amount negotiated between the Parties in a commercially reasonable manner prior to the commencement of the applicable Option Term. If the Parties are unable to reach an agreement regarding the Fair Market Value Rental Rate within ninety (90) days after Port's Authority's receipt of the applicable Option Notice, then the Fair Market Value Rental Rate will be determined within an additional sixty (60) day period by an appraisal process as set forth in Sections 6.3.1 (*Appraisal for Fair Market Value Rental Rate*) through 6.3.4 (*Appraisal Costs and Expenses*).
- 6.3.1 **Appraisal for Fair Market Value Rental Rate.** Each of Ports America and Port Authority will appoint a licensed Mississippi appraiser and the two (2) appraisers will then determine the Fair Market Value Rental Rate for the then-applicable Option Term.
- 6.3.2 **Appraisal Process.** If the two (2) appraisers cannot agree as to such value, but the lower appraisal is at least ninety percent (90%) of the higher appraisal, then the Fair Market Value Rental Rate will be the average of the two appraisals. In all other cases, the appraisers will select a third independent appraiser who will separately determine the Fair Market Value Rental Rate for the then-applicable Option Term. In such case, the Fair Market Value Rental Rate for the then-applicable Option Term will be either (a) the value provided by the third independent appraiser, if such value is between the values provided by the first two appraisers, or (b) if the value provided by the third independent appraiser is not between the values provided by the first two appraisers, the average of the value provided by the third independent appraiser and the value of whichever of the first two (2) appraisers is nearer to the value provided by the third independent appraiser.
- 6.3.3 **Fair Market Value Rental Rate for Option Term.** Upon completion of the appraisal process, the Parties will complete Schedule 6.3.3 (*Fair Market Value Rental Rate for Option Term*) and the Rent set forth in Section 6.3 (*Option Term Rent*) will automatically be deemed to be revised as set forth in such Schedule 6.3.3 (*Fair Market Value Rental Rate for Option Term*).
- 6.3.4 **Appraisal Costs and Expenses.** Each Party will bear the fees and expenses for hiring their respective appraiser and will equally bear the fees and expenses for any third appraisal obtained under Section 6.3.2 (*Appraisal Process*).
- 6.4 **Additional Fees.**
- 6.4.1 **Additional Fees.** Ports America will promptly pay to Port Authority any Additional Fees, as applicable, set forth on Schedule 6.4.1 (*Additional Fees*)

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Schedule) as they may become due and payable under this Lease Agreement. Any adjustment to the Additional Fees set forth on Schedule 6.4.1 (*Additional Fees Schedule*) by Ports America must be presented to and approved by Port Authority, which approval will not be unreasonably withheld, conditioned, or delayed, prior to taking effect along with supporting documentation evidencing the proposed adjustment to the Additional Fee Schedule is in line with market rates at ports similarly situated to the Port of Gulfport.

6.4.2 **Crane Lift Fee.** During each Contract Year, and solely with respect to Berth 4, West Pier and the Leased Premises, Ports America will pay to Port Authority a fee of Eleven and No/100 Dollars (\$11.00) (the "**Crane Lift Fee**") for each individual container unit (regardless of whether any such container unit is loaded or empty) lifted by any Crane at Berth 4, West Pier and the Leased Premises in excess of the Crane Lift Payment Threshold. Such payments will be made on a monthly basis with respect to the lifts made for the previous month. For the avoidance of any confusion, Ports America shall have no obligation to pay any Crane Lift Fee prescribed by this section with respect to the initial twenty thousand (20,000) individual container units lifted by any Crane (whether loaded or empty) calculated on an annual basis per Contract Year at Berth 4, West Pier and the Leased Premises. In addition, the Crane Lift Fee is not to be deemed a rental payment for the right to operate the Cranes. In exchange for Ports America operating, maintaining, and repairing and maintaining the Cranes, including its maintaining insurance thereon, there shall be no rental payment due from Ports America to Port Authority for the former's operation of the Cranes. Ports America will ensure prioritized usage of Berth 4, West Pier pursuant to Section 3.2.2 (*Priority Utilization of Berth 4, West Pier*) for purposes of providing the Services and the calculation of crane lifts. In the event Berth 4, West Pier is unavailable due to an outage and/or maintenance of any Crane(s) servicing Berth 4, West Pier, then Ports America will count crane lifts for purposes of calculating the Crane Lift Payment Threshold and any Crane Lift Fees, as applicable, at such available substitute berth(s) that would have otherwise been lifted at Berth 4, West Pier but for the unavailability of said Crane(s). Upon the reasonable request by either Party, the Parties may in good faith revisit Ports America's priority usage of Berth 4, West Pier with the objective of maintaining orderly and efficient operations within the Operating Area.

6.4.3 **Additional Rent.** Ports America will pay to Port Authority as additional Rent all other sums of money that will become due and payable under this Lease Agreement, including any amounts owed under Sections 6.7 (*Non-Payment*), 10.2.3 (*Self-Help*), 11.3 (*Reimbursement*), 12.1 (*Utilities*), or 19.2.1.2 (*Additional Rent*).

6.5 Annual Price Index Adjustments.

6.5.1 **Adjustment for Rent.** On the first anniversary of the Initial Term and each Contract Year thereafter, Rent will be subject to a minimum annual adjustment based on the lesser of (i) the change in the Price Index and (ii) three and one-half percent (3.5%), which once applied will remain in place for such Contract Year. Each adjustment to Rent is conditioned upon Port Authority's achievement of the minimum dredged depths set forth in Section 10.3.1 (*Berths; Navigation Channel*) at the time of such adjustment.

6.5.2 **Adjustment for Additional Fees.** After the first Contract Year of the Initial Term, Additional Fees will be subject to a minimum annual adjustment based on the lesser of (i) the change in the Price Index and (ii) three and one-half percent (3.5%), which once applied will remain in place for such Contract Year. Each

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adjustment to the Additional Fees is conditioned upon Port Authority's achievement of the minimum dredged depths set forth in Section 10.3.1 (*Berths; Navigation Channel*) at the time of such adjustment.

- 6.6 **Due Date.** Payments from Ports America to MSPA under this Lease Agreement will be due and payable on the twentieth (20th) day of each month during the Term following the month during which such payment accrued. Payments must be in immediately available funds and will be considered made when an electronic funds transfer through the Automated Clearing House (EFT/ACH) to the MSPA is received by the MSPA.
- 6.7 **Non-Payment.** The obligation of Ports America to make all payments under this Part 6 (*Rent; Adjustments; Additional Fees*) during the Term is absolute and unconditional and such amounts must be paid by Ports America on or before each due date. Should payment not be received timely by the MSPA, the MSPA will notify Ports America in writing. All outstanding, unpaid amounts will accrue interest at the Default Interest Rate, excluding the date payment is received by MSPA. Such interest will be computed for the actual number of days elapsed without regard to whether any of such days are or are not business days, and such interest will be immediately due and payable as Additional Rent when incurred and will be in addition to any remedies or claims to which the MSPA may be entitled to in this Lease Agreement or under applicable Laws.

7. **INTENTIONALLY OMITTED**

8. **FORCE MAJEURE**

8.1 **Effects of Force Majeure Event.**

- 8.1.1 **Force Majeure.** If either Party is affected by a Force Majeure Event, the provisions of this Part 8 (*Force Majeure*) will apply.
- 8.1.2 **No Liability.** Neither Ports America nor Port Authority will be liable for any failure, delay, or interruption in performing their individual obligations hereunder due to a Force Majeure Event if the applicable Party complies with all notice and other requirements under this Part 8 (*Force Majeure*).
- 8.1.3 **Continued Performance.** Subject to Section 8.1.2 (*No Liability*), a Force Majeure Event will excuse a Party from whatever obligation such Party, using all commercially reasonable efforts, is not actually capable of performing or causing to be performed as a direct result of the Force Majeure Event being claimed for the applicable period stated. Notwithstanding the occurrence of a Force Majeure Event, (i) this Section 8.1.3 (*Continued Performance*) will not excuse the Party claiming a Force Majeure Event from the performance of its obligations under this Lease Agreement that, using commercially reasonable efforts, the Party is reasonably capable of performing or causing to be performed during the applicable period, and (ii) each Party must use its commercially reasonable efforts to minimize the effect and duration of the Force Majeure Event.
- 8.1.4 **Total Loss.** If a Force Majeure Event renders all or substantially all of the Leased Premises unusable for the Permitted Use and both Parties reasonably agree that Restoration is not possible by Ports America using commercially reasonable efforts within a two (2) year period from the date of the Force Majeure Event, then the Parties will enter into good faith negotiations for terms and conditions upon which this Lease Agreement can be continued and if the Parties fail to agree upon such terms, either Party may terminate this Lease Agreement and

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neither Party will have any continuing obligations other than those that arose prior to or that survive the termination of this Lease Agreement.

8.1.5 **No Extension.** The occurrence of a Force Majeure Event will not have the effect of extending the then-current Term of this Lease Agreement.

8.2 **Notice of Force Majeure Event.** The Party claiming a Force Majeure Event must give notice to the other Parties as soon as practicable and in no event later than five (5) business days following the date on which it first became aware of such Force Majeure Event. The notice of a Force Majeure Event must include (a) a statement of the basis of the Force Majeure Event claim, (b) details of the circumstances from which any delay arises, and (c) an estimate of the delay in the performance of obligations under this Lease Agreement attributable to such Force Majeure Event, including information in support thereof, to the extent known at that time.

9. MAINTENANCE; ALTERATIONS; IMPROVEMENTS; DREDGING

9.1 **Maintenance.** Ports America must, at its own cost and expense, maintain, in good working order and condition throughout the Term, satisfying the Basic Conditions described in Section 10.1.2 (*Basic Conditions*) below, the Leased Premises (including all portions of the storm water collection system that are on, in, or under the Leased Premises) and the Assets, and perform repair work or replacement work related thereto to ensure that all necessary repairs, improvements and replacements of the facilities at the Leased Premises are made, subject to all applicable Laws. Ports America will, at its sole cost and expense, keep the Leased Premises in a tidy, clean, and sanitary condition and will observe all applicable Laws throughout the Term. In addition, Ports America will be responsible for providing fumigation services at the Leased Premises as needed. Ports America's maintenance and repair obligations set forth in this Section 9.1 (*Maintenance*) apply to any Casualty Event at the Leased Premises, which is primarily comprised of Restoring (i) the Cranes and other Cargo handling equipment and (ii) the asphalt at the Leased Premises, including any future improvements. Ports America, whether or not insurance proceeds, if any, are available will proceed diligently to Restore the Leased Premises and Assets, as applicable. For the avoidance of doubt, Ports America will cover all costs for Restoration, including all costs up to the deductible and in excess of any policy limits contemplated in Section 14.1.3 (*Property Insurance*). Port Authority will cooperate with Ports America and act in a reasonable and expedited manner in connection with any Restoration from a Casualty Event by Ports America, including an expedited review and approval of all documents and requests submitted by Ports America in connection with any request for reimbursement of costs for Restoration from any insurance proceeds made available to Port Authority under Section 14.1.3 (*Property Insurance*). The Parties will cooperate and coordinate so as to minimize any interference or delay with respect to Ports America's Restoration. Following a Casualty Event should Ports America fail or neglect to pursue the diligent Restoration of the Leased Premises and/or Assets or the portion thereof so damaged or destroyed by such Casualty Event then Port Authority may, by giving sixty (60) days' prior notice to Ports America, deem such failure to Restore following a Casualty Event to be a Default and thereafter Port Authority may avail itself of any remedies provided under this Lease Agreement. For the avoidance of doubt, Port Authority is solely responsible for the timely and continued repair, maintenance and Restoration, as applicable, of the structures, roadways, and utilities in the common use areas of the Operating Area, including, without limitation, the (i) entrance/exit gates to the Port, (ii) all dock and berth structures, (iii) crane rails, (iv) cable trenches, and (v) the substructure of the Leased Premises. Following a Casualty Event should Port Authority fail or neglect to pursue the diligent Restoration of the items set forth in the preceding sentence, or the portion thereof so damaged or destroyed by such Casualty Event and should such failure or neglect materially interfere with Ports America's ability to provide Services, then Ports America may, by giving sixty (60) days' prior notice to Port Authority, deem such failure to

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Restore following a Casualty Event to be a Default and thereafter Ports America may avail itself of any remedies provided under this Lease Agreement.

- 9.2 **Spare Parts Inventory.** Throughout the Term, Ports America will maintain an adequate inventory of Crane spare parts and consumables, based on the historical data available to Ports America and Ports America's experience. Ports America will maintain a written inventory of such spare parts specifying appropriate identifying information (e.g., make, model, serial number, type, quantity, estimated current price, and line-item detail for such parts).
- 9.3 **Unobstructed Operating Easements.** Ports America must make commercially reasonable efforts to keep and maintain all Operating Easements on and adjoining the Leased Premises free from obstruction.
- 9.4 **Permits.** Ports America is responsible, with the reasonable assistance of Port Authority at Ports America's request, for obtaining all required permits, at Ports America's expense. Notwithstanding, Port Authority will use its best efforts to obtain the required permitting for dredging at the Port.
- 9.5 **Joint Inspection.** Not less frequently than once every five (5) years during the Term, and without limiting any other inspection rights of Port Authority under this Lease Agreement, Ports America and MSPA will undertake jointly an inspection of the Leased Premises and Assets to ascertain the compliance of the Leased Premises and the Assets with the Basic Condition and other applicable provisions of this Lease Agreement. If any aspect of the Leased Premises and/or Assets fail to comply substantially with the Basic Condition or any other applicable provisions of this Lease Agreement, Ports America will bring it into compliance therewith. If MSPA reasonably determines that Ports America has failed to meet its maintenance obligations under this Part 9 (*Maintenance; Alterations; Improvements; Dredging*), MSPA will notify Ports America in writing and Ports America will remedy such deficiency within (i) the Cure Period, or (ii) if such deficiencies cannot be remedied within the Cure Period, such additional time as the Parties mutually agree, provided, that Ports America commences and diligently pursues remedial work within the Cure Period.
- 9.6 **Ports America's Failure to Repair and Maintain Leased Premises.** If Ports America fails to (i) repair and maintain the Leased Premises and/or Assets in accordance with this Lease Agreement, (ii) adhere to applicable Laws (including Environmental Laws) all in accordance with this Lease Agreement, (iii) perform any Response Action, or (iv) correct deficiencies in accordance with Section 9.5 (*Joint Inspection*) within the Cure Period (other than in the event of an emergency or to preserve the health, safety, or welfare of any person or property (including storm preparation), in which case Port Authority's rights of access will be immediate), Port Authority or its designee may enter the Leased Premises (or access the Assets) at any time upon reasonable notice and make the required repairs or do the required maintenance or bring the Leased Premises and/or Assets into compliance with applicable Laws and Ports America will reimburse Port Authority for Port Authority's cost thereof (including the cost of labor, materials, and overhead). Ports America will not offer any obstruction or hindrance to any such maintenance or repairs and, in making such repairs or doing such maintenance, Port Authority and/or its agents are authorized to enter the Leased Premises and may bring and leave upon the Leased Premises all necessary materials, tools and equipment, and Port Authority will not be liable, except for the gross negligence or willful misconduct of Port Authority or its representatives, to Ports America for any inconvenience, annoyance, loss of business, or any injury suffered by Ports America by reason of MSPA effecting such repairs, maintenance, or cleaning. In addition, Ports America shall not be liable for its inability to materially satisfy its obligations hereunder to the extent Port Authority does not materially fulfill its maintenance, repair and restoration obligations set forth in Section 9.1 (*Maintenance*).

10. **IMPROVEMENTS; BASIC CONDITIONS; ACCESS AND INSPECTION; DREDGING**10.1 **Improvements; Basic Conditions.**

10.1.1 **Improvements.** Ports America will make no material improvements to the Leased Premises or perform any subsurface intrusion or soil disturbing activity (e.g., excavation, grading, removal, trenching, or filling) without first submitting and obtaining written approval from Port Authority, which approval will not be unreasonably withheld, delayed or conditioned. The Parties agree that, if Ports America seeks to install any storage tank (whether above- or under- ground) or other improvement that Port Authority reasonably believes are governed by, or could present a risk of non-compliance with Environmental Laws, Port Authority may require and Ports America will procure and maintain additional coverage for pollution insurance, including gradual pollution coverage, and the Parties further agree that such requirement will not be construed to be an unreasonable withholding, delay, or conditioning of Port Authority approval. If any such alterations or improvements are made or fixtures (other than trade fixtures which can be removed without damage to the Leased Premises) are installed by Ports America, such alterations, improvements, or fixtures must be removed by Ports America, at its expense, upon reasonable request of Port Authority and the Leased Premises Restored to its original condition, reasonable wear and tear excepted, upon the termination or earlier expiration of this Lease Agreement. Ports America will ensure that all paving at the Leased Premises is of requisite grade and thickness for the Permitted Use, including the stacking of Cargo, in accordance with the Standard of Care.

10.1.2 **Basic Conditions.** All maintenance, alterations, and improvements will be carried out in accordance with the following standards (collectively, the "Basic Conditions"):

10.1.2.1 Leasehold Improvements, maintenance and alterations must be consistent with the Permitted Use and must include sufficient infrastructure and associated maintenance for Ports America to achieve at least the KPI.

10.1.2.2 Prior to constructing, erecting, or otherwise making any leasehold improvements or alterations, Ports America must procure and pay for all necessary permits, and ascertain and comply with all applicable Laws.

10.1.2.3 Leasehold improvements and alterations may not detract from the value or the character, weaken the structural integrity, or reduce the security of the Port, the Leased Premises and/or Assets.

10.1.2.4 If any work related to leasehold improvements, maintenance, or alterations involves the replacement of fixtures or parts, all replacement fixtures or parts must have a value, useful life, quality and durability substantially or at least the same as the fixtures or parts being replaced and must be of similar or better quality and nature commonly in use at the time of replacement.

10.1.2.5 Leasehold improvements and alterations must be of first quality materials and related work must proceed in a proper, professional manner following appropriate due diligence.

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- 10.1.2.6 Ports America will promptly discharge, remove, or contest all liens filed against the Leased Premises arising out of any leasehold improvements, alterations, or maintenance.
 - 10.1.2.7 Ports America will not cause or permit any Hazardous Substances to be generated, treated, stored, or Released on or about the Leased Premises or transferred to the Leased Premises, or otherwise in contravention of applicable Environmental Laws, except where Ports America handles such Hazardous Substances in accordance with applicable Law and/or permits.
 - 10.1.3 **Performance Security.** Upon request of Port Authority, Ports America will provide or cause to be provided to Port Authority a construction bond or other performance security in such form and with such reputable surety, letter of credit, cash deposit, or other security as Port Authority may reasonably require.
 - 10.1.4 **Submission of As-Built.** Immediately following Ports America's completion of construction of any improvements or alterations under Section 10.1.1 (*Improvements*) or as may otherwise be reasonably requested by Port Authority, Ports America will deliver to Port Authority a current and accurate set of as-built survey drawings of such Improvements or alterations.
- 10.2 **Port Authority's Access and Inspection.**
- 10.2.1 **Inspection of Additional Cranes.** Port Authority, at its sole cost and expense, reserves the right, but will not be obligated, to appoint one or more inspectors to: (i) follow the progress of the work associated with the manufacture, assembly, delivery, reassembly, testing, or commissioning of any Additional Crane and Ports America will in good faith consider any inspector's proposal to reject defective or nonconforming workmanship, materials, or equipment that such inspector reasonably believes is not in accordance with this Lease Agreement or the Standard of Care. Acceptance or approval, or failure to reject, by an inspector will not be deemed to constitute acceptance by Port Authority. Ports America will not impose any charges or attempt to recover any costs in connection with Port Authority inspections.
 - 10.2.2 **Access; Inspection.** If at any time Port Authority reasonably suspects a failure of Ports America to meet the Standard of Care, Basic Conditions, or any other material obligations under this Lease Agreement, including with regard to safety and security, Port Authority will have a right to inspect the operations of the Leased Premises and Assets and the operational throughput records. Port Authority may not access the financial information of Ports America, except to the extent that such financial information is reasonably necessary to ensure that Ports America is complying with its financial and other obligations under this Lease Agreement. The failure of Port Authority to notify Ports America of any necessary maintenance or repair will not relieve Ports America of its obligation to so maintain and repair. The right to inspect reserved to Port Authority hereunder will impose no obligation on Port Authority to make inspections to ascertain the condition of the Leased Premises, and will impose no liability upon Port Authority for failure to make such inspections or for failure to discover any defect in the condition of the Leased Premises.
 - 10.2.3 **Self-Help.** Without prejudicing the rights set forth in Section 10.2.2 (*Access; Inspection*) in the event that Ports America abandons or is unable to occupy and operate the Leased Premises for a material period of time after the Development Term, Port Authority or its designee may enter upon and operate the Leased

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Premises, and the Assets thereon if reasonably necessary, in the commercially reasonable opinion of Port Authority, to continue orderly operations at the Port. If Ports America abandons or is unable to operate or otherwise fulfill its obligations to operate, maintain and insure the Cranes, then Port Authority or its designee may enter upon and operate the Cranes and the Crane Maintenance Area, if reasonably necessary, in the commercially reasonable opinion of Port Authority, to continue orderly operations at the Port. Port Authority will be entitled to recover any costs incurred by Port Authority under this Section 10.2.3 as Additional Rent.

10.3 Dredging.

10.3.1 **Berths; Navigation Channel.** Port Authority agrees to cause, at its expense, all berthing areas to be dredged on a regular basis so as to maintain depths necessary or appropriate for Permitted Use and in all events to maintain at least the following minimum depths at the Port, subject to appropriate seasonal adjustments:

10.3.1.1 **West Pier Depth.** West Pier Berths 1-4: 36 feet; and

10.3.1.2 **Channel Depth.** Navigation Channel: 36 feet.

Notwithstanding the foregoing, the failure or inability of Port Authority to achieve and maintain the minimum depths set forth in this Section 10.3.1 (*Berths; Navigation Channel*) will not constitute a Default under this Lease Agreement unless such failure or inability prevents any vessel calling at the Port for the provision of Services from safely navigating the channel and berthing at West Pier, but Port Authority's achievement of such depths will be a condition precedent to Port Authority's ability to impose any adjustment of Rent or Additional Fees pursuant to Section 6.5 (*Annual Price Index Adjustments*).

10.3.2 **Dredging Permits.** MSPA will maintain all licenses and permits required for maintenance dredging at all berths at West Pier.

10.3.3 **Dredging Collaboration.** Port Authority will keep Ports America reasonably informed as to the overall dredging management plan at the Port and Port Authority will use its commercially reasonable efforts to implement any reasonable requests made by Ports America concerning such plan to ensure that dredging at the Port is at all times being conducted in accordance with the strategic plans of the state of Mississippi and the U.S. Army Corps of Engineers.

11. ASSIGNMENT

11.1 **Conditions to Assignment.** Ports America may not assign this Lease Agreement or its rights or obligations under this Lease Agreement without the prior written consent of Port Authority, such consent not to be unreasonably withheld, conditioned, or delayed. Port Authority's consent will not be deemed to be unreasonably withheld if Ports America has not demonstrated, in Port Authority's commercially reasonable determination, that the proposed assignee: (i) possesses the experience and capability to satisfy the obligations of Ports America under this Lease Agreement; (ii) has the legal power and authority to perform and satisfy the obligations of Ports America under this Lease Agreement, and (iii) assumes and agrees to satisfy all conditions and pay and perform all obligations in favor of Port Authority then-existing or thereafter arising under this Lease Agreement. No assignment of this Lease Agreement or any rights or obligations under this Lease Agreement will relieve Ports America of liability for its obligations under this Lease

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Agreement without the written release of Port Authority. Any attempted assignment, whether outright or implied, or exercise of any rights pursuant to a collateral assignment, pledge, or grant of a security interest in this Lease Agreement or any related rights or otherwise, that is not in compliance with the terms of this Lease Agreement is voidable and ineffective, at the option of Port Authority.

- 11.2 **Conditions to Sublease.** Ports America may not sublease the Leased Premises or any part of the Leased Premises without the prior written consent of Port Authority, such consent not to be unreasonably withheld, conditioned, or delayed.
- 11.3 **Reimbursement.** In the event that Ports America requests Port Authority to consent to a sublease, assignment, or any other conveyance or other changes in the terms and conditions of this Lease Agreement thereby causing Port Authority to incur costs or expenses which Port Authority would not have otherwise incurred, then Ports America will immediately reimburse Port Authority as Additional Rent for all such additional cost or expense, including attorney and consultant fees costs, upon being invoiced by Port Authority.

12. **UTILITIES: SECURITY**

- 12.1 **Utilities.** Ports America will pay for all Utilities supplied to the Leased Premises, including all installation and connection charges. If Utilities are furnished by Port Authority for use of Ports America, Ports America will on demand and as Additional Rent, reimburse Port Authority for cost thereof attributable to Ports America. Port Authority will invoice Ports America Utilities on a pass-through basis with no markup for such Utility use.
- 12.1.1 Port Authority will provide Ports America with access to sufficient electricity to accomplish the construction and development of the Leased Premises into a marine terminal facility.
- 12.1.2 Port Authority represents that there is access to Utilities that will permit Ports America to have its Utility usage separately metered.
- 12.2 **Security.** The Parties hereto recognize that the Leased Premises is located within the Port and as such, the Leased Premises is subject to security clearance at certain MSPA-designated security gate checkpoints upon any entry and exit to access the Leased Premises and in accordance with the MSPA Tariff, as applicable. Notwithstanding the foregoing, Port Authority does not accept and specifically disclaims care, custody and control of any Cargo while located at the Port. Ports America will ensure and be solely responsible for the care, custody and control of any Cargo within the Leased Premises.

13. **TAXES**

- 13.1 **Obligation to Pay Taxes.** Ports America will pay all taxes, assessments, fees, or other charges imposed by any Governmental Authority with respect to the use and occupancy of the Leased Premises and the Assets and the performance of Permitted Use. If Ports America wishes at any time to dispute the lawfulness, applicability or amount of any taxes, Ports America must do so with the Governmental Authority imposing the tax. Port Authority hereby notifies Ports America that the interest transferred to Ports America pursuant to this Lease Agreement may be subject to property or possessory interest taxes and Ports America will be subject to the payment of property or possessory interest taxes levied on the interest. Ports America further acknowledges that the exemptions enjoyed by Port Authority for any tax, assessment, or any other fees may not be transferable to Ports America.

- 13.2 **Pursuit of Tax Incentives.** Port Authority will make reasonable efforts to assist Ports America in obtaining the full benefits of any government incentives applicable to Ports America or the Services, including tax incentives and exemptions, grants, and government matching funds throughout the Term. Notwithstanding the foregoing, in no event will Port Authority have any obligation to assist Ports America in the pursuit of any exemption under Mississippi Code Annotated Section 59-5-31.

14. **INSURANCE**

- 14.1 **Insurance Generally.** Ports America must obtain and maintain, or cause to be obtained and maintained, from the Effective Date and continuing uninterrupted throughout the Term, insurance coverages, of the types, in the form and substance, and in the amounts described in this Part 14 (*Insurance*). The policies to be obtained and maintained by Ports America in accordance with this Section are collectively referred to as "**Ports America Coverages**." Ports America will cause its contractors and subcontractors to carry levels of insurance that are necessary and appropriate for the Services being performed or the materials being provided, complying with all applicable Laws, as follows:

- 14.1.1 **Commercial General Liability Insurance.** Commercial general liability insurance with minimum coverage as provided under ISO form CG0001 or its equivalent, which insures Ports America, Port Authority, and the state of Mississippi against liability for injury to persons and property, and death of any Person occurring in, on, or about the Leased Premises and the Operating Area to the extent arising out of Ports America's management, operation, use, or occupancy thereof or arising from any use or occupancy of any portion of the Port, whether pursuant to this Lease Agreement, any sublease, license, or other agreement. In addition to the requirements of Section 14.5 (*CGL Endorsements for Construction*) as applicable in each instance, the liability policy will include minimum coverage for premises/operations, products/completed operations, personal and advertising injury as either an endorsement to the commercial general liability policy or as a separate policy. All commercial general liability policies must contain a provision that Port Authority and the state of Mississippi will be entitled to recover under the policies for any loss occasioned to it, their respective Affiliates, agents and employees, invitees, or permittees. Further, the policies must provide that their coverage is primary over any other insurance coverage available to Port Authority, its Affiliates, and agents and employees. Such insurance must afford protection of not less than \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 per location annual aggregate limit and each liability policy must be written on an occurrence basis.

- 14.1.2 **National Flood Insurance Policy.** Flood insurance on the Cranes, the Leased Premises and the leasehold improvements thereon in an amount equal to: (a) the maximum insurance available under the appropriate National Flood Insurance Administration or equivalent federal program, plus (b) such excess limits as Port Authority may require. The maximum deductible will be the minimum amount as required by the Federal Emergency Management Agency or applicable Law. Ports America will reimburse Port Authority the cost of insuring any qualifying improvements located on the Leased Premises under the appropriate National Flood Insurance Administration or equivalent federal program.

- 14.1.3 **Property Insurance.** Property insurance with the minimum coverage as provided under ISO form CP1030 Cause of Loss Special Form or its equivalent, including fire, flood, windstorm, lightning, tornado and hail, earth movement, boiler and machinery and electrical injury coverage, on the Leased Premises

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and Assets and all alterations, extensions, and replacements thereof, for the full replacement cost at the time of the loss, including any increased cost of construction (but excluding foundations and footings) and without reduction for depreciation, naming Port Authority as the sole loss payee as its interest may appear. The determination of the full replacement cost amount will be adjusted annually to comply with the requirements of the insurer and Port Authority. Such cause of loss insurance must also include coverage for debris removal, demolition, and ordinance or law in an amount equal to the greater of (a) \$10,000,000, or (b) ten percent (10%) of the total insured value of the real property and improvements thereon insured in accordance herewith, which may be obtained by separate sub-limits and endorsements or by a separate policy. In addition, each policy must contain a waiver of co-insurance provisions. Ports America will provide values to the Port on an annual basis in connection with equipment, business interruption, and real property insurances. Unless otherwise consented to by Port Authority, the maximum deductible will be: a basic deductible of \$25,000.00 all perils, three percent (3%), or within a commercially reasonable and/or market range of such percentage, of total insured value for a "named storm" wind including tidal surge, \$50,000 all other wind, \$50,000 all other flood, and \$25,000 earth movement.

- 14.1.4 **Workers Compensation & Employer's Liability Insurance.** Workers Compensation and Employer's Liability Insurance in accordance with applicable Laws, including employer's liability insurance, in the minimum amount of \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee. Notwithstanding applicable statutory exemptions, workers' compensation insurance must be maintained regardless of the number of employees employed by Ports America or the type of work performed. Prior to Ports America's acquisition or charter of any vessel in the conduct of the Services, Ports America must also be protected against claims for accident and disease or injury that may not fall under the scope of workers' compensation laws, but could fall under the scope of other applicable Laws, including the United States Longshoremen's and Harbor Workers' Compensation Act.
- 14.1.5 **Business Interruption and Extra Expense Insurance.** Business Interruption and Extra Expense Insurance, as provided within the property insurance policy, set forth in Section 14.1.3 (*Property Insurance*), in amounts sufficient to compensate Port Authority for the greater of (i) gross revenues for twelve (12) months, or (ii) twelve (12) months of continuing expenses containing an extended period of indemnity endorsement which provides that after the physical loss to any of the Operating Area and the Assets have been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration twelve (12) months from the date that the Operating Area and the Assets are repaired or replaced and operations are resumed, whichever occurs first, and notwithstanding that the policy may expire prior to the end of such period. The amount of coverage will be adjusted annually to reflect all Rent and Additional Fees payable during the succeeding twelve (12) month period based upon the average of total aggregate of all Rent and Additional Fees payable in the preceding three (3) years.
- 14.1.6 **Comprehensive Automobile Liability Insurance** including all owned, hired, leased, assigned, and non-owned vehicles, with a minimum combined single limit of \$1,000,000.
- 14.1.7 **Pollution Liability Insurance** in the form of a Site Pollution Liability policy, which policy will cover bodily injury and damage to Persons as a result of sudden and accidental pollution and related clean-up costs during the Term and for costs

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if the Operating Area or the Port are required to undergo site remediation for any Hazardous Substances in the ground or water deposited and occurring during the policy period as a result of the acts or omissions of Ports America, excluding coverage for mold, fungus, and other similar causes of loss that are normally excluded under standard property policies, with limits of not less than \$10,000,000. Such policies will include endorsements for federal and state fines in an amount no less than \$250,000 per incident. Notwithstanding the foregoing, the insurance requirements described in this Section 14.1.7 (*Pollution Liability Insurance*) may be satisfied through the Ports America Coverage described in Section 14.1.1 (*Commercial General Liability Insurance*) unless Port Authority requires additional or separate pollution coverage, carve backs, or endorsements under Section 10.1.1 (*Improvements; Basic Conditions*) and, in the latter case, will be obtained by Ports America within a commercially reasonable amount of time after request from Port Authority.

14.1.8 Excess Liability Insurance in compliance with the following:

- 14.1.8.1 Bodily injury/property in an amount as may be carried by Ports America, but in no event less than \$1,000,000 per occurrence.
- 14.1.8.2 The policy will be written on an excess "follow form" basis above the coverages described in Sections 14.1.1 (*Commercial General Liability Insurance*), 14.1.4 (*Workers Compensation & Employer's Liability Insurance*), and 14.1.6 (*Comprehensive Automobile Liability Insurance*) above. The policy will also provide a "drop down" feature in case the limits of the primary policy are exhausted.

14.2 Other Ports America Coverage Requirements

- 14.2.1 **General Requirements.** Ports America will, as soon as is reasonably practicable prior to the Effective Date, deliver to Port Authority certificates or similar evidence of insurance as confirmation that Ports America has obtained insurance policies. Ports America will pay premiums of each policy as per the payment or instalment schedule set forth in such policy. Ports America must renew or cause to be renewed all such insurance and deliver to Port Authority evidence that such insurance has been renewed as required. Certificates of insurance or other such evidence of insurance, including a list of all required endorsements evidencing the requirements for Ports America Coverage herein, will suffice as proof of coverage if signed and dated by the authorized agent of record. Ports America further agrees that each such insurance policy: (i) will provide for at least thirty (30) days prior written notice to Port Authority prior to any cancellation for any reason other than non-payment of premium and at least ten (10) days prior written notice to Port Authority prior to any cancellation due to any non-payment of premium; (ii) will waive all rights of subrogation against Port Authority and the state of Mississippi as provided under ISO Form CG 29 88 or its equivalent; (iii) will include standard primary and non-contributory clauses naming Port Authority, the state of Mississippi, and any designated Affiliates of either; (iv) in the event that any portion of the Leased Premises constitutes a legal non-conforming use under applicable zoning or land use laws or ordinances, will include an ordinance and law coverage endorsement which will contain Coverage A: "Loss Due to Operation of Law" (which a minimum liability limit equal to Replacement Cost with Agreed Value Endorsement), Coverage B: "Demolition Cost" and Coverage C: "Increased Cost of Construction" coverages with sub-limits as required by Port Authority; (v) will name Port Authority, the state of Mississippi, and their Affiliates as additional

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insureds or loss payees on each insurance policy as appropriate, as provided under ISO Form 20 11 or its equivalent; and (vi) may be in the form of a blanket policy, provided that failure to pay any portion of the premium for such blanket policy which not allocable to the Operating Area, or failure to take any other action not relating to the Operating Area which would otherwise permit the issuer of any insurance policy to cancel the coverage thereof, will not result in the cancellation of the coverage of the Operating Area, and the blanket policy must properly identify and fully protect the Operating Area as if a separate policy were issued for one hundred percent (100%) of replacement cost at the time of loss and otherwise meet all of Port Authority's applicable insurance requirements set forth in this Lease Agreement.

- 14.2.2 **Failure to Maintain Coverage.** Approval of any insurance by Port Authority will not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. If Ports America fails to provide, maintain, keep in force, or deliver and furnish to Port Authority the policies of insurance required by this Lease Agreement or evidence of their placement, replacement, or renewal as required herein, Port Authority may inform Ports America of such non-compliance and if Ports America fails to remedy such non-compliance, Port Authority may, but will not be obligated to, procure such insurance and Ports America must immediately upon demand reimburse Port Authority all amounts advanced by Port Authority therefor, together with interest thereon at the Default Interest Rate from and after the date advanced by Port Authority until actually repaid by Ports America. Port Authority will not be responsible for nor incur any liability for the failure of the insurer to perform even though Port Authority has caused the insurance to be placed with the insurer after the failure of Ports America to furnish such insurance.
- 14.2.3 **No Waiver.** None of the requirements contained herein as to types and limits of insurance coverage to be maintained by Ports America is intended to and will not in any manner limit or qualify Ports America's liabilities and obligations under this Lease Agreement. Notwithstanding requirements in agreements between Ports America and any Person, Port Authority will have no responsibilities for insurance deductibles or self-insured retentions.
- 14.2.4 **Periodic Review of Coverage.** Ports America and Port Authority each acknowledge that the minimum insurance coverages and associated deductibles required by this Lease Agreement may need to be modified from time to time during the Term as reasonably necessary in order to address changes in insurance markets, changes in applicable Laws impacting insurance, inflation, changes in the composition or nature of improvements at the Leased Premises or Assets, modifications to the scope of the Operating Area, and other factors. From time to time during the Term, but no less than once every five (5) years and in connection with any joint inspection performed under Section 9.5 (*Joint Inspection*), the Parties agree to negotiate with each other in good faith with respect to, and to modify, the minimum insurance coverages and associated deductibles required by this Lease Agreement to the extent necessary to address needed modifications, such that the respective interests of the Parties insured thereby remain reasonably protected as contemplated herein.
- 14.2.5 **Evidence of Coverage.** Acceptable evidence of Port's America Coverages must be delivered to Port Authority prior to Ports America's use of the Leased Premises or Assets or any commencement of Services.
- 14.3 **Contractor and Subcontractor Insurance Requirements.** Ports America must cause all of its contractors, subcontractors, vendors, suppliers, and service providers performing any

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services or providing any materials in or about the Operating Area at any time during the Term to maintain in effect at all times during the full term of such work, insurance coverage in accordance and full compliance with all of the requirements set forth in this Lease Agreement, including worker's compensation and protection and indemnity insurance, where applicable, but excluding insurance that is the exclusive responsibility of Ports America (e.g., flood, business interruption). During the period of any construction, renovation, or alteration of or addition to then-existing improvements at the Leased Premises which exceeds \$250,000, unless Port Authority waives such requirement in writing, a completed value, "All Risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount approved by Port Authority, may be required including completed value form, including delayed completion and soft costs.

- 14.4 **Insurer Requirements.** Ports America Coverages pursuant to this Lease Agreement must be effected under a valid and enforceable policy or policies issued by insurers of recognized responsibility authorized to do business in the state of Mississippi and which have and maintain a claims paying ability rating of "A-" or better by S&P (or equivalent acceptable to Port Authority). All policies must be for terms of at least one (1) year, with premium prepaid. Notwithstanding the foregoing sentence, Port Authority acknowledges that Ports Insurance Company, Inc., a New Jersey corporation, is an acceptable insurance carrier under this Lease Agreement.
- 14.5 **CGL Endorsements for Construction.** Prior to the commencement of development or construction, including any repair, refurbishment or renovation, for buildings, structures or other improvements within the Leased Premises and until such work is accepted as complete, Ports America will obtain and maintain or cause to be obtained and maintained an endorsement to the commercial general liability insurance provided for in Section 14.1.1 (*Commercial General Liability Insurance*) or other form of coverage acceptable to Port Authority for injury to persons and property, and death of any Person occurring in, on, or about the Leased Premises, or arising out of Ports America's development or construction thereof, whether pursuant to this Lease Agreement, any sublease, license, or other agreement.
- 14.6 **Self-Insurance.** Ports America may, in its discretion, self-insure any of the Ports America Coverages. If Ports America so elects to self-insure, Ports America must provide a letter confirming such self-insurance coverages in lieu of a certificate of insurance, which letter will be in a form reasonably acceptable to Port Authority. Nothing in this Section 14.6 (*Self-Insurance*) will waive any other requirement with respect to Ports America Coverages.

15. **INDEMNIFICATION**

- 15.1 **Indemnification by Ports America for Losses.** Ports America hereby expressly agrees to indemnify, defend, and hold harmless Port Authority and its officers, directors, commissioners, employees, agents, consultants, successors, and assigns (collectively, the "Indemnitees"), or cause Indemnitees to be indemnified, defended, and held harmless, from and against all liabilities, obligations, damages, penalties, Claims, causes of action, costs, charges, and reasonable expenses, including attorneys' fees and costs (collectively "Losses"), to the extent imposed upon or incurred by or asserted against Indemnitees during the Term by reason of the following:
- 15.1.1 any construction, restoration, alteration, repair, or other work or thing done in or on the Port or any part thereof by or on behalf of Ports America Responsible Persons or in connection with the Transaction, including any improvements, or alterations to the Leased Premises or Assets);
- 15.1.2 if and to the extent Ports America is not otherwise required to indemnify, defend, and hold harmless Indemnitees elsewhere in this Section 15 (*Indemnification by*

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Ports America for Losses), any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance, or management of the Leased Premises, the Crane Maintenance Area, or Assets or any part thereof or of any road, passageway, or space comprising a part of or adjacent to the Leased Premises, the Crane Maintenance Area, or Assets or any part thereof by or on behalf of Ports America Responsible Persons or in connection with the Transaction;

- 15.1.3 any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Port or any part thereof to the extent any such accident, injury, or damage is alleged to have been caused by the negligence or willful misconduct of any Ports America Responsible Person. Notwithstanding the foregoing and anything else in this Agreement, Ports America will not be liable for any vessel allision occurring at the Port and caused by any Ports America Responsible Person that is a "customer" of Ports America, nor any of the costs and other expenses and liabilities that may arise in connection therewith, provided such allision event was not caused by the negligence or willful misconduct of any Ports America Responsible Person (other than a "customer" of Ports America);
- 15.1.4 any alleged or actual infringement (whether or not the alleged infringement is joint or indirect) of patent rights, trademark, copyrights, or alleged misuse of trade secret information by Ports America Responsible Persons in connection with the Transaction, except for those trademarks designated for Ports America's use by Port Authority;
- 15.1.5 any failure on the part of any Ports America Responsible Person to perform or comply with any applicable Laws or with any of the covenants, agreements, terms, or conditions contained in this Lease Agreement on its part to be performed or complied with, or any breach of any representation, warranty, or covenant of this Lease Agreement which, in each case, continues after any applicable notice and Cure Period;
- 15.1.6 any Lien or Claim which may have arisen out of any act or omission of Ports America Responsible Persons against or on the Port (including the Operating Area) or any Lien or Claim created or permitted to be created by Ports America Responsible Persons in respect of the Port against any assets of any of the Indemnitees under the laws of the state of Mississippi or of any other Governmental Authority or any liability which may be asserted against any of the Indemnitees with respect thereto. Ports America will promptly pay when due all obligations for labor and material provided to and at the request of Ports America Responsible Persons and waives any right to assert any Liens or attachments, statutory, constitutional, common law, or otherwise on the Operating Area or Port and will also promptly discharge, bond, or otherwise secure against any and all Liens and attachments which are filed by its agents, contractors, subcontractors, or employees on account of labor performed for Ports America Responsible Persons or materials, equipment, and supplies furnished to and at the request of Ports America in connection with the Transaction, or any of the transactions contemplated under this Lease Agreement;
- 15.1.7 any failure on the part of any Ports America Responsible Person to keep, observe, and perform any of the material terms, covenants, agreements, provisions, conditions, or limitations contained in any contract for construction of improvements at the Leased Premises on Ports America's part to be kept, observed, or performed which, in each case, continues after any applicable notice and Cure Period; and

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- 15.1.8 any and all liabilities and Claims that may be assessed or levied against Ports America or its Affiliates in connection with their failure to comply with tax and import/export obligations arising out of this Lease Agreement, the Transaction, or under applicable Law. If Ports America's or its Affiliate's failure to comply with any such obligation results in Port Authority not receiving the full benefit of, or prejudices any available import/export exemption, or results in failure to pay any import/export charges or obtain any necessary permits, licenses, authorizations, or customs clearances, Ports America will indemnify Indemnitees against all Claims relating to such action or failure to act.
- 15.1.9 Notwithstanding the items listed above that give rise to Ports America's indemnity obligations hereunder, the Parties acknowledge and agree that Ports America's indemnity obligations will be reduced to the extent it is shown that Port Authority or its employees, contractors, or representatives were contributorily negligent or engaged in willful misconduct in connection with the same incident(s) giving rise to Ports America's indemnity obligation(s). For any Claim for which the Parties have agreed to apportion negligence under this Section 15.1.9, if the Parties are unable to reach mutual agreement on the extent of Ports America's responsibility to indemnify, defend, and hold harmless the Indemnitees, then Ports America will, upon Port Authority's demand, be responsible to indemnify, defend (if requested by Port Authority) and hold harmless the Indemnitees from and against the full amount of the Claim until such time as the Parties have in good faith resolved any such dispute, such period not to exceed an unreasonable amount of time. Within thirty (30) days of the Parties reaching an agreement as to each Party's respective fault, Port Authority will, if and as applicable, reimburse Ports America for the percentage of any Claim for which the Parties agreed that Port Authority was liable. Any dispute regarding apportionment of negligence between the Parties not resolved by negotiation may be submitted to a court of competent jurisdiction in accordance with the terms of this Lease Agreement.
- 15.2 **Liability and Indemnification for Environmental Matters.**
- 15.2.1 **Response Actions.** Ports America accepts responsibility for all environmental liability arising from any Ports America Contamination and will Immediately Orally Notify all required Persons and conduct and complete all Response Actions necessary to correct any violation of Environmental Laws arising from any Ports America Contamination.
- 15.2.2 **Environmental Indemnity.** Ports America will defend, indemnify, and hold harmless Port Authority from and against all Claims, lawsuits brought or threatened, government orders, demands, penalties, fines, liabilities, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, including attorney's and consultant fees, investigation and laboratory fees, monitoring and remediation costs, court costs, and litigation expenses, to the extent caused by (i) a Ports America Contamination or (ii) any violation by Ports America Responsible Persons of Environmental Laws.
- 15.2.3 **Environmental Liability.** Without limiting its obligations under any other section of this Lease Agreement, Ports America will be responsible for responding to and complying with any administrative order, request, or demand relating to potential or actual violations of Environmental Laws relating to Ports America Contamination. Notwithstanding any provisions of this Part 15, including this Section 15.2 (*Liability and Indemnification for Environmental Matters*) or Section 15.3 (*Defense Obligation*), Port Authority retains the right to defend itself in any action or actions which are based upon or in any way related to Ports America

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Contamination. In any such case (including any case where Port Authority is not a named party), Port Authority may select its own counsel, at Ports America's expense.

- 15.3 **Defense Obligation.** Subject to Section 15.1.9, in case any Proceeding is brought against an Indemnitee by reason of any indemnified Losses, Ports America, upon request of such Indemnitee and at Ports America's expense, will resist and defend such action or Proceeding, or cause the same to be resisted and defended, either by legal counsel designated by Indemnitee or, where such occurrence is covered by liability insurance, by legal counsel designated by the insurer if so required by such insurer, in each case subject to the Indemnitee's reasonable approval of such counsel.

16. **RECORDKEEPING AND MONITORING**

- 16.1 **Recordkeeping.** Ports America must maintain: (i) appropriate financial records, and will impose appropriate financial and accounting controls with respect to the Services; (ii) copies of all construction contracts, change orders, inspection reports, meeting minutes, construction manager files, shop drawings, product data, samples, applicable manuals and handbooks, maintenance and operating manuals and instructions, warranties, and other documents, purchase orders, contracts, agreements, approvals, correspondence, and other writings related to the Transaction; and (iii) all material management report, records, and performance data related to the Permitted Use.
- 16.2 **Management Report.** In order to assist Port Authority's evaluation of the performance of the Transaction throughout the Term as applicable, Ports America will prepare and submit to Port Authority no later than three (3) months following the close of each Contract Year a management report for the Transaction. The management report will address Ports America's compliance with the objectives of this Lease Agreement, including (i) Ports America's prior scheduled and unscheduled maintenance activities during the prior calendar year; (ii) planned scheduled maintenance activities for the forthcoming calendar year; (iii) capital expenditures at or related to the Leased Premises or Port for the prior and forthcoming calendar year including identification of any amount expended in connection with the Minimum Investment; and (iv) all improvements or alterations for the prior and planned for the forthcoming year. The management report will also include other significant activities that occurred at the Operating Area or related to the Port during the preceding calendar year and information regarding other significant future planned activities or transactions that would reasonably be expected to have a material effect on the rights or obligations of the Parties to this Lease Agreement.
- 16.3 **Monthly Crane Lift Threshold Reports.** In connection with the payment of any Rent or Additional Fees, Ports America will provide to Port Authority a monthly report confirming the cumulative number of individual container units lifted during the applicable Contract Year to date.
- 16.4 **Additional Reports.** Ports America will deliver, or procure the delivery of, such other information, records, or documents (of a statistical nature or otherwise) relating to, or connected with, the Transaction as Port Authority may reasonably request from time to time.
- 16.5 **Audit Rights.** Ports America will maintain complete and accurate records sufficient to permit Port Authority to fully and accurately audit compliance with the terms of this Lease Agreement, including the Cargo levels, the number of container crane lifts, the Minimum Investment, and Additional Fees. Ports America must retain such records for a minimum period of seven (7) years on a rolling basis. Port Authority will have the right to inspect, or to cause its representatives to inspect, such records during normal business hours following reasonable written notice to Ports America. If it is ultimately determined that Ports

America's representation to Port Authority regarding any amounts owed are in error by at least five percent (5%), then Ports America will pay the out-of-pocket audit fees incurred by Ports America for its inspection and audit of Ports America's records. Ports America must promptly correct any weaknesses, errors, or discrepancies identified in Ports America's accounting controls or recordkeeping by Port Authority's audit.

17. REPRESENTATIONS AND WARRANTIES

17.1 Representations and Warranties of Port Authority. Port Authority represents, warrants, and covenants to Ports America that:

17.1.1 **Authority.** Port Authority has all requisite power and authority to lease the Leased Premises for the maximum Term permitted hereby. Port Authority has the power and authority to enter into, deliver, and perform this Lease Agreement and carry out its obligations with respect to the Transaction. The execution, delivery, and performance of this Lease Agreement have been duly and validly approved by Port Authority and any Person whose approval is necessary to the validity hereof or thereof, and no other action on the part of Port Authority is necessary to approve this Lease Agreement or to consummate the Transactions contemplated in this Lease Agreement. The Lease Agreement has been, or as of the Effective Date, will have been, duly and validly executed and delivered by Port Authority and assuming due and valid authorization, execution, and delivery by Ports America, the Lease Agreement will constitute a valid and binding obligation of Port Authority, enforceable against Port Authority in accordance with its terms, except as enforcement may be limited by general principles of Law or equity, or bankruptcy, insolvency, moratorium, and similar Laws affecting the creditors' rights and remedies.

17.1.2 **No Violations or Defaults.** Neither the execution and delivery of the Lease Agreement by Port Authority nor the consummation by Port Authority of the transactions contemplated herein, nor compliance by Port Authority with the terms and provisions hereof will violate any of the terms or provisions of any instrument or obligation entered into by or by which Port Authority is bound.

17.1.3 **Consents and Approvals.** Except for consents and approvals, the failure of which to obtain will not have and would not reasonably be expected to have a material adverse effect on Ports America, no consents or approvals of, or filings or registrations with any Governmental Authority or with any Person are necessary in connection with the execution, delivery, and performance of this Lease Agreement by Port Authority.

17.2 Representations and Warranties of Ports America. Ports America represents, warrants, and covenants to Port Authority that:

17.2.1 **Formation.** Ports America is a corporation duly formed, validly existing, and in good standing under the laws of the state of Louisiana, and is qualified to do business and is in good standing under the laws of the state of Mississippi.

17.2.2 **Authority.** Ports America has all requisite power and authority to accept the lease of the Leased Premises together with the Assets, subject to the terms and conditions set forth in this Lease Agreement. Ports America has the power and authority to enter into, deliver, and perform this Lease Agreement and to carry out its obligations with respect to the Transaction. The execution, delivery, and performance of this Lease Agreement have been duly and validly approved by Ports America and any Person whose authority and approval is necessary to the validity or enforcement hereof or thereof, and no other action on the part of Ports

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America is necessary to approve the Lease Agreement or to consummate the Transactions contemplated in this Lease Agreement. The Lease Agreement has been, or as of the Effective Date, will have been, duly and validly executed and delivered by Ports America and assuming due and valid authorization, execution, and delivery by Port Authority, the Lease Agreement will constitute a valid and binding obligation of Ports America, enforceable against Ports America in accordance with its terms, except as enforcement may be limited by general principles of Law or equity or bankruptcy, insolvency, moratorium, and similar Laws affecting the creditors' rights and remedies.

- 17.2.3 **Qualifications.** Ports America is, and each of its employees that will be engaged in carrying out its obligations and performing the Services contemplated by this Lease Agreement will be sufficiently qualified and possess the requisite skill and professional competence, expertise, and experience to undertake the obligations imposed, and to perform the Services contemplated, by this Lease Agreement and the requirements of a project of a similar magnitude and scope as the Transaction. Ports America will perform all Services in a good and workmanlike manner.
- 17.2.4 **Governmental Requirements.** Ports America holds and will maintain at all times during the Term, all licenses, permits, authorizations, or other certifications necessary to perform its duties under this Lease Agreement, including the Permitted Use, and is in compliance with and will continue to comply with all applicable Laws.
- 17.2.5 **No Violations or Defaults.** Neither the execution and delivery of the Lease Agreement by Ports America nor the consummation by Ports America of the transactions contemplated herein, nor compliance by Ports America with the terms and provisions thereof will violate any of the terms or provisions of any instrument or obligations entered into by or by which Ports America or any Affiliate of Ports America is bound.
- 17.2.6 **Consents and Approvals.** Except for consents and approvals, the failure of which to obtain will not have and would not reasonably be expected to have a material adverse effect on Port Authority, no consents or approvals of, or filings or registrations with any Governmental Authority or with any other third party or any Affiliate of Ports America are necessary in connection with the execution, delivery, and performance of this Lease Agreement by Ports America.
- 17.2.7 **Legal Proceedings.**
 - 17.2.7.1 Neither Ports America nor any Affiliate of Ports America is a party to any, and to Ports America's actual knowledge, there are no pending or threatened Claims or Proceedings of any kind or nature whatsoever pertaining to the Permitted Use, the Transaction, or challenging the validity or propriety of the Lease Agreement; and
 - 17.2.7.2 To Ports America's actual knowledge, there is no injunction or writ or governmental order, judgment, or similar decree applicable to Ports America or any Affiliate of Ports America which imposes any restrictions on Ports America or any Affiliate of Ports America with respect to this Lease Agreement, the Permitted Use, or the Transaction.

- 17.2.8 **U.S. Patriot Act.** Neither Ports America nor any partner, member, or stockholder of Ports America is, and no legal or beneficial interest in a partner, member, or stockholder of Ports America is or will be held, directly or indirectly, by a Person that appears on a list of Persons for which transactions are prohibited by the United States Treasury Office of Foreign Assets Control or any similar list maintained by any other Governmental Authority, with respect to which entering into transactions with such Person would violate the USA Patriot Act or regulations, or any Presidential Executive Order, or any other similar applicable law, ordinance, order, rule, or regulation.

18. **SUBCONTRACTING**

- 18.1 **Subcontracting Requirements.** Ports America may perform any obligation or activity required or permitted of it pursuant to this Lease Agreement through contractors or subcontractors approved by Port Authority, which approval will not be unreasonably withheld, conditioned, or delayed. If Ports America retains the services of a contractor or subcontractor to perform any of Ports America's obligations or duties under this Lease Agreement, each such contract or subcontract will require at least the same standards and preserve to Port Authority the same controls with which Ports America would be required to observe and comply.
- 18.2 **Limitations.** In no event will Ports America enter into any contracts, agreements, subcontracts, or other undertakings in connection with the Services or this Lease Agreement, including any operating or occupancy agreement that extends beyond the Term of this Lease Agreement. All such contracts, agreements, subcontracts, or other undertakings will expressly (a) be made subject to the terms of this Lease Agreement; (b) be made subject to all applicable Laws; (c) provide for the automatic termination thereof upon the expiration or termination of this Lease Agreement, unless Port Authority, in its sole discretion, approves in writing the continuation and the assumption by Port Authority of such contract, agreement, subcontract, or other undertaking as of the date of such expiration or termination of this Lease Agreement; (d) contain commercially reasonable insurance requirements for coverages and limits not less than those which are customarily required by Port Authority of its like contractors, naming Port Authority and the state of Mississippi as additional insureds; and (e) indemnify Port Authority and the state of Mississippi against any costs or liabilities thereunder using language substantially similar to Ports America's indemnifications contained in this Lease Agreement.

19. **DEFAULT**

- 19.1 **Default.** A "Default" with respect to a Party (a "Defaulting Party") means any of the following:
- 19.1.1 The failure to perform any material covenant or obligation set forth in this Lease Agreement, including any material violation of applicable Law and only if the failure is not remedied within the Cure Period, so long as the Party promptly commences and diligently pursues the cure.
- 19.1.2 The failure of a Party to make when due any payment required under this Lease Agreement, if such failure to pay is not cured within ten (10) business days after a notice of the failure has been received from the non-Defaulting Party.
- 19.1.3 With respect to Ports America (and only Ports America), Ports America voluntarily or involuntarily through its creditors, seeks relief for protection under any chapter of the U.S. Bankruptcy Code or any similar federal or state Laws.

19.2 Remedies for Default.

- 19.2.1 **Port Authority Remedies.** Subject to Section 19.2.3 (*Good Faith Negotiations*), upon the occurrence of and during the continuance of a Default where Ports America is the Defaulting Party, Port Authority may, upon written notice to Ports America, declare Ports America to be in Default. In any such case, Port Authority may (but will have no obligation to) avail itself of the remedies set forth below. Such remedies are not exclusive, and the election of one remedy will not preclude an election of any other remedy (or no remedy) at any later time.
- 19.2.1.1 Port Authority may, at its option, terminate this Lease Agreement, including Ports America's right to occupy the Leased Premises and have the Leased Premises and other property returned to Port Authority (including, if and as applicable, transfer of title to improvements, alterations, and fixtures) by giving written notice of termination to Ports America. The foregoing is subject to Section 20.1 (*Surrender*).
- 19.2.1.2 Port Authority, without waiving or releasing Ports America from its obligations under this Lease Agreement, may observe and perform (or cause to be observed and performed) the covenant or covenants of which Ports America has Defaulted, and in that event may pay such monies as may be reasonably required or as Port Authority may reasonably deem expedient, and Port Authority may thereupon charge all monies to Ports America, together with interest thereon, at the Default Rate, from the date on which Port Authority paid the monies. Ports America will repay such monies to Port Authority on demand as Additional Rent.
- 19.2.1.3 Port Authority will have the right to recover its Losses arising from such Ports America Default and any amounts due and payable under this Lease Agreement, including any unsatisfied obligations with respect to the Minimum Investment. For the avoidance of doubt, it is the intent of the Parties that if this Lease Agreement is terminated as the result of a Ports America Default prior to Ports America's having satisfied all Minimum Investment obligations that Port Authority be entitled to recover in cash any unexpended portion of the Minimum Investment.
- 19.2.1.4 Port Authority may seek specific performance, an injunction, or other equitable remedies, it being acknowledged and agreed by Ports America that damages may be an inadequate remedy for a Ports America Default.
- 19.2.1.5 Port Authority will have any other remedy available under applicable Law or in equity.
- 19.2.2 **Ports America Remedies.** Subject to Section 19.2.3 (*Good Faith Negotiations*), upon the occurrence of and during the continuance of a Default where Port Authority is the Defaulting Party, Ports America may, upon written notice to Port Authority, declare Port Authority to be in Default. In any such case, Ports America may (but will have no obligation to) avail itself of the remedies set forth below. Such remedies are not exclusive, and the election of one remedy will not preclude an election of any other remedy (or no remedy) at any later time.

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- 19.2.2.1 Ports America may seek specific performance, an injunction, or other equitable remedies, it being acknowledged and agreed by Port Authority that damages may be an inadequate remedy for a Port Authority Default.
- 19.2.2.2 Ports America will have the right to recover its Losses arising from such Port Authority Default and any amounts due and payable under this Lease Agreement.
- 19.2.2.3 Ports America will have any other remedy available under applicable Law or in equity.
- 19.2.3 **Good Faith Negotiations.** Notwithstanding any provision in this Lease Agreement to the contrary, if either Party declares a Default under this Part 19 (*Default*), the Parties agree to first enter into good faith negotiations between the executive management of each of Port Authority and Ports America over a period not to exceed thirty (30) days in an attempt to resolve the Default following any applicable Cure Period. Such thirty (30) day period may be extended by mutual agreement of the Parties. The foregoing obligation will not apply to any failure to maintain any Ports America Coverages, any Default involving an emergency or other hazardous condition, or any non-curable Default.

20. **TERMINATION**

- 20.1 **Surrender.** Upon the earlier of the expiration or earlier termination of this Lease Agreement, Ports America must surrender and vacate the Leased Premises and turnover all leasehold improvements, including the Additional Crane, with each satisfying the Basic Condition, reasonable wear and tear excepted. Title to the Additional Crane any leasehold improvements constructed by Ports America on the Leased Premises during the Term will be transferred by Ports America to Port Authority upon the expiration or earlier termination of this Lease Agreement free and clear of any Liens and at no additional cost to Port Authority. Ports America shall be entitled to remove, at its cost, from the Leased Premises all of its moveable Assets (e.g., terminal tractors, vehicles, and other equipment, etc.), but not the Crane spare parts. Notwithstanding anything else herein, in the event of a termination of this Lease Agreement for a Port Authority Default during the Development Term or the Initial Term, Port Authority shall pay Ports America the net book value for the Additional Crane (calculated as the original cost thereof less accumulated depreciation as reflected in Ports America's books and records and maintained consistent with generally accepted accounting principles). The Parties shall negotiate in good faith for a period of thirty (30) days following any notice of termination to determine the fair market value of the Additional Crane. If an agreement regarding the fair market value of the Additional Crane cannot be reached, the Parties shall employ an appraisal process that is substantially similar to that which is set forth in Sections 6.3.1 (*Appraisal for Fair Market Value Rental Rate*) – 6.3.4 (*Appraisal Costs and Expenses*).
- 20.2 **Additional Documentation.** Ports America will, at its sole cost and expense, promptly deliver to Port Authority copies of all records and other documents relating to the Leased Premises as Port Authority may reasonably request, including all "as-built" drawings, plans, other drawings, specifications and models prepared in connection with any leasehold improvements and otherwise applicable to the Leased Premises and all permits relating to such leasehold improvements.
- 20.3 **Transfer of Warranties.** Ports America will, at its sole cost and expense and to the extent applicable and still in force and effect, assign to Port Authority all warranties and warranty obligations relating to any leasehold improvements and Assets transferred to Port Authority. Further, Ports America must provide Port Authority with copies of all building

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systems, training, operation, and maintenance manuals, software and other licenses, intellectual property rights, books, records, and other documentation that Port Authority may reasonably request or require, except licensed software, items, and intellectual property rights that are proprietary to Ports America's overall business and are not solely used at or developed for the Transaction, which (as between the Parties) will remain the sole property of Ports America.

- 20.4 **Release.** Ports America will execute and deliver to Port Authority a release or other instrument reasonably required by Port Authority to evidence the expiration or termination of this Lease Agreement.

21. **TRANSITION UPON TERMINATION OR EXPIRATION**

- 21.1 **Transition Period.** For a period of one hundred eighty (180) days prior to the scheduled expiration of the Term or during any period after a notice of termination has been delivered hereunder, but prior to the effective date of such termination, Ports America will, unless otherwise notified by Port Authority, perform those transition services or activities required to successfully transition (a) Permitted Use activities from Ports America to Port Authority or a Person designated by Port Authority and (b) the maintenance or operation of any Assets hereunder (e.g., performing any related training required to permit Port Authority to access, use, and maintain the relevant Assets until successful completion of the transition to Port Authority). Ports America will perform such transition services or activities without unreasonable interruption, delay, or degradation in quality. Any costs and expenses reasonably incurred by Ports America in providing such services will be payable by Port Authority. Port Authority may, by five (5) business days' written notice to Ports America, discontinue any transition services or activities pursuant to this Section 21.1 (*Transition Period*), and will not be liable to Ports America for any costs or expenses incurred by Ports America with respect to any such discontinued services or activities after the effective date of such discontinuation.

- 21.2 **Personal Property.** Upon surrendering the Leased Premises, Ports America must have removed any of its personal property from the Leased Premises. Any such personal property left at the Port after the expiration or termination of this Lease Agreement will automatically be deemed by the Parties to have been abandoned by Ports America and, at Port Authority's election, such personal property will either become the MSPA's property or, at Ports America's cost, be disposed of by the MSPA as it deems fit, including through destruction of same.

- 21.3 **Orderly Transition End of Term.** Ports America will assist Port Authority in such manner and with such additional assistance as Port Authority may reasonably require. Ports America will provide an updated spare parts inventory and will advise Port Authority of any actual or potential shortages or obsolescence of any parts in sufficient time to permit Port Authority to purchase replacements.

22. **MISCELLANEOUS**

- 22.1 **Responsibility for Operations.** It is expressly understood and agreed that Port Authority will have no obligation or responsibility for Ports America's business operation at the Leased Premises or for Cargo, which, as between the Parties, will be the sole responsibility of Ports America.
- 22.2 **Community Relations.** Throughout the Term, Ports America will support and enhance the reasonable research, exploration, conservation, cultural, civic, community, and education programs and objectives conducted or supported by Port Authority, its tenants (including the University of Southern Mississippi), the City of Gulfport, and other state and local stakeholders. Ports America agrees to utilize its commercially reasonable efforts to support

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Port Authority in its endeavors to promote the Port and to support the state of Mississippi and the local community.

- 22.3 **Independent Contractor.** Nothing in this Lease Agreement will be construed to create a partnership, joint venture, or agency relationship between the Parties, or be interpreted or construed as creating or establishing the relationship of employer and employee between either Party or any employee or agent thereof. Except as otherwise provided herein, each Party will be solely responsible for payment of all compensation owed to its employees and agents, and for all federal and state income tax withholding, Social Security taxes, and unemployment insurance applicable to such personnel as employees of the applicable Party. Each Party shall bear sole responsibility for any health or disability insurance, retirement benefits, or other welfare or pension benefits (if any) to which such Party's employees may be entitled.
- 22.4 **Time of Essence.** Time is of the essence in this Lease Agreement, including with respect to Section 5.1 (*Minimum Investment Schedule*) and Ports America's failure to meet any prescribed deadlines within this Lease Agreement will constitute a Default.
- 22.5 **Survival.** Notwithstanding other provisions in this Lease Agreement specifically stating intent to survive expiration or termination of this Lease Agreement, if this Lease Agreement expires or terminates for any reason, all provisions in this Lease Agreement containing perpetual waivers, disclaimers, representations, warranties, releases, defense obligations and indemnities, and all provisions related to tax, audit, compliance, insurance, limitations of liability, dispute resolution, confidentiality, retention and inspection of records, and applicable law, and all causes of action which arose prior to completion, expiration, or termination, post-termination property rights and obligations and, unless otherwise specifically provided in this Lease Agreement, all provisions which by their nature contemplate performance after expiration or termination of this Lease Agreement, survive indefinitely until, by their respective terms, they are no longer operative or are limited by an applicable statute of limitations.
- 22.6 **Remedies Cumulative.** All rights, powers, and remedies provided in this Lease Agreement are cumulative and not exclusive of any rights, powers, and remedies provided by law or in equity.
- 22.7 **Modification.** This Lease Agreement, including all Schedules and Exhibits hereto, may only be amended or modified in a written amendment signed by a duly authorized representative of each Party. Any attempt to change the terms of this Lease Agreement in any other manner will be void and unenforceable.
- 22.8 **Notices.** A Party giving notice under this section must provide the notice to the other Parties' designated contact per Exhibit 22.8 (*Notices and Administration*), with a copy as shown. Absent a specific Lease Agreement notice requirement, notice under this Section 22.8 (*Notices*) must be by: (i) personal delivery (effective that date); (ii) prepaid nationally- or internationally-recognized commercial overnight courier (effective the next business day); or (iii) first-class certified or registered U.S. mail, with proper postage (effective the following fourth (4th) business day). The Parties may, in writing, from time to time, mutually designate additional information communication methods (such as email) to facilitate routine, day-to-day communications relating to their performance of this Lease Agreement.
- 22.9 **Entire Agreement; Expense.** This Lease Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior written or oral agreements or understandings of the Parties related thereto. Each Party will bear its respective costs and expenses, including legal fees, incurred in connection with the negotiation and execution of this Lease Agreement.

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- 22.10 **Severability.** If under applicable law, or in a finding by a court of competent jurisdiction, it is determined that any provision of this Lease Agreement is unlawful and unenforceable, that determination will not affect any other provision of this Lease Agreement, and this Lease Agreement and all remaining provisions will continue in full force and effect to the extent permitted by law.
- 22.11 **No Waiver.** If any Party fails to enforce an obligation, waives a breach, elects a remedy, or waives a right in one instance, said Party does not waive a similar, or any other, breach or the right to enforce that, or any other, right, remedy, or obligation, in another instance. Acquiescence to, or acceptance of, late performance, with or without reservation, does not waive a future right to require timely performance.
- 22.12 **Further Assurances.** Each Party agrees to do such things, perform such acts and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to carry out the intent and purposes of this Lease Agreement, so long as any of the foregoing do not materially increase any Party's obligations or materially decrease any Party's rights hereunder.
- 22.13 **Successors and Assigns.** Covenants and conditions herein contained will, subject to the provisions as to assignment, apply to and bind the successors and assigns of all the Parties hereto.
- 22.14 **No Third-Party Benefit.** Nothing in this Lease Agreement will be construed to create any duty, obligation, or liability of either Port Authority or Ports America to any Person not a Party to this Lease Agreement.
- 22.15 **Confidentiality.** In connection with Ports America's performance and obligations under this Lease Agreement, Port Authority may be provided with and may accumulate documentation, data, or other information regarding Ports America and the Services that are confidential and proprietary in nature. Subject to applicable Laws, including Laws regarding open meetings and public access to the records of Port Authority, Port Authority agrees to hold and maintain all such documents and other information, including any Plans and Specifications, budgets, market reports, contracts, intellectual property such as computer programs or coding, and any other reports and data and all components thereof, in the strictest confidence, and will not disclose any such information to any Person without obtaining Ports America's prior written approval. For the avoidance of doubt, confidential information does not include information that: (i) is or becomes generally available to the public; (ii) was within the possession of Port Authority before being furnished to Port Authority, if the source of such information was not known by Port Authority to be bound by a confidentiality agreement with or other contractual, legal, or fiduciary obligation of confidentiality to Ports America regarding such information; or (iii) becomes available to Port Authority on a non-confidential basis from a source other than Ports America, if such source is not bound by a confidentiality agreement with or other contractual, legal, or fiduciary obligation of confidentiality to Ports America regarding such information.
- 22.16 **E-Verify.** Ports America represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term "employee" as used in the Employment Protection Act means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Ports America agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Ports America agrees

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to provide a copy of each such verification. Ports America further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Ports America to the following: (1) termination of this contract and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public; (2) the loss of any license, permit, certification or other document granted to Ports America by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or, (3) both. In the event of such cancellation/termination, Ports America would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

- 22.17 **Recording.** This Lease Agreement will not be recorded in the Harrison County Land Records office, but its approval will be recorded in the minutes of the Board of Commissioners of Port Authority, as required by Law. Port Authority will execute, acknowledge, and deliver to Ports America a memorandum of this Lease Agreement in recordable form, which may be recorded in the land records of Harrison County, Mississippi.
- 22.18 **Estoppel Certificates.** Port Authority and Ports America will execute and deliver to each other, promptly upon any written request therefor by the other Party (in any event within fifteen (15) days of receipt of such written request), or by any leasehold mortgagee of Ports America, a certificate addressed as indicated by the requesting party and stating (a) whether this Lease Agreement is in full force and effect, (b) whether this Lease Agreement has been modified or amended in any respect, and submitting copies of such modifications or amendments, (c) whether there are any existing defaults hereunder known to the Party executing the certificate, and specifying the nature thereof, if any, and (d) such other matters as may be reasonably requested.
- 22.19 **Governing Law and Jurisdiction.** Mississippi law governs all matters, including torts, arising under, or relating to execution, interpretation, performance, or enforcement of, this Lease Agreement, without regard to choice of law principles. In the event of any dispute or claim arising out of this Lease Agreement, the Parties agree that any claim will be filed in a state court of requisite jurisdiction located in the First Judicial District of Harrison County, Mississippi.
- 22.20 **Attorneys' Fees.** If any action at law or equity is brought to enforce or interpret the provisions of this Lease Agreement, each Party will be responsible for its own attorneys' fees and court costs.
- 22.21 **Counterparts.** This Lease Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement. The Parties may exchange such counterparts via mail or electronic mail (email). An electronic signature or a signature transmitted by portable document format ("pdf") constitutes an original signature for all purposes.

[Signature Page Follows]

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IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Lease Agreement to be effective as of the Effective Date.

PORT AUTHORITY:

MISSISSIPPI STATE PORT AUTHORITY
AT GULFPORT

By: [Signature]
Name: John Rester
Its: Commission President



PORTS AMERICA

MISSISSIPPI DEVELOPMENT AUTHORITY

By: [Signature]
Name: Laura Hipp
Its: Deputy Executive Director

PORTS AMERICA GULFPORT, INC.

By: [Signature]
Name: Richard Surett
Its: Chief Financial Officer

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EXHIBIT 1.1.49

Depiction of Operating Area

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EXHIBIT 3.1(A)

Depiction of Leased Premises

A PARCEL OF LAND SITUATED IN THE FIRST JUDICIAL DISTRICT OF HARRISON COUNTY, MISSISSIPPI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

COMMENCE AT A 3/4" IRON ROD WITH ALUMINUM CAP STAMPED "MPH MS COA 69" FOUND; THENCE RUN N 44°11'22" E FOR A DISTANCE OF 57.46 FEET TO A CAPPED 1/2" IRON ROD SET AND THE POINT OF BEGINNING. THENCE RUN S 57°39'52" W FOR A DISTANCE OF 1138.25 FEET TO A CAPPED 1/2" IRON ROD SET; THENCE RUN ALONG A CURVE TO THE RIGHT FOR 420.48 FEET TO A CAPPED 1/2" IRON ROD SET, SAID CURVE HAVING A RADIUS OF 474.64 FEET, A CHORD BEARING OF S 83°10'12" W AND A CHORD DISTANCE OF 406.86 FEET; THENCE RUN N 32°59'46" W FOR A DISTANCE OF 927.38 FEET TO A PK NAIL FOUND; THENCE RUN N 57°00'26" E FOR A DISTANCE OF 1503.85 FEET TO A CAPPED 1/2" IRON ROD FOUND; THENCE RUN S 32°58'12" E FOR A DISTANCE OF 1119.83 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINING 37.91 ACRES OR 1,651,488 SQUARE FEET, MORE OR LESS.

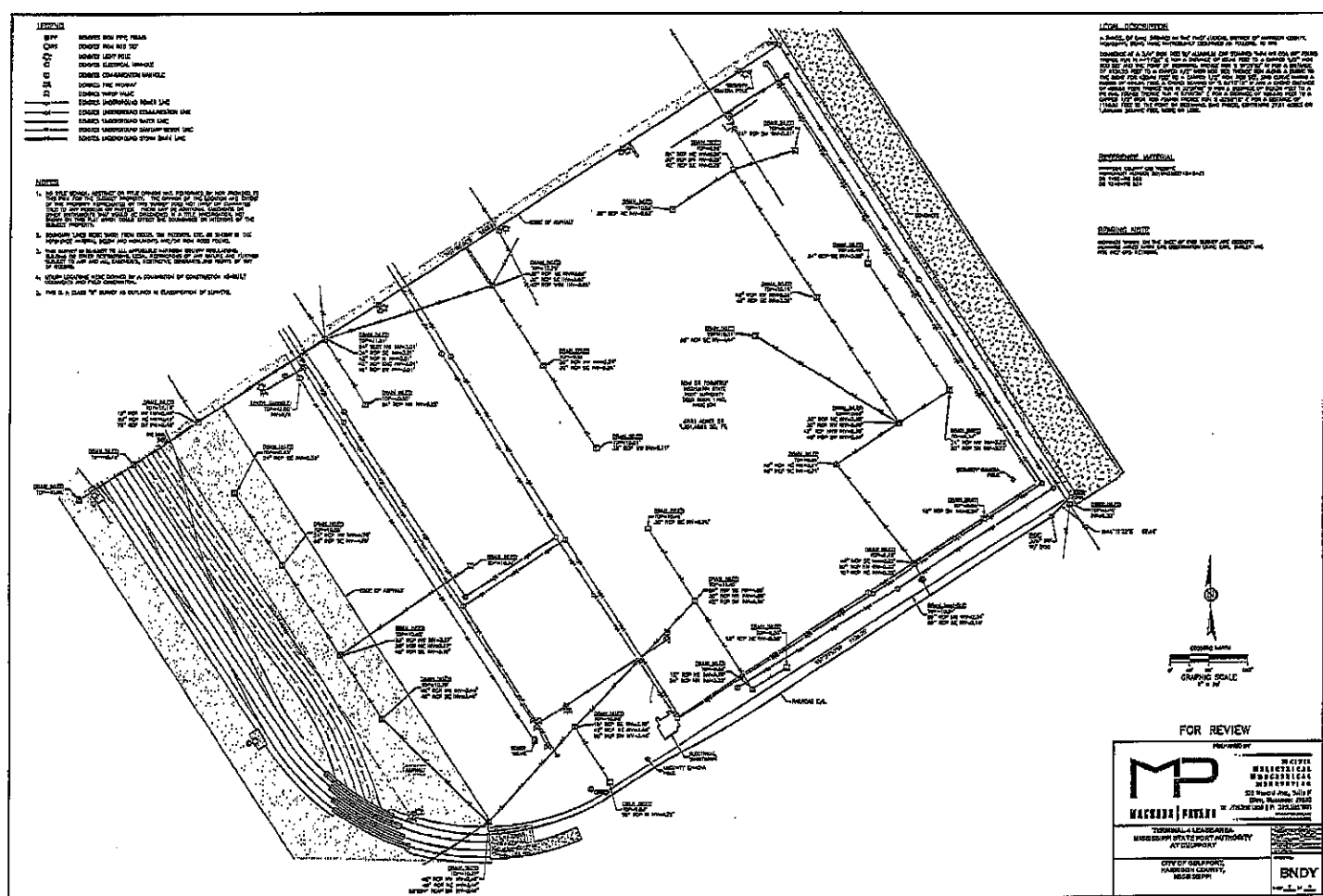


EXHIBIT 3.1(B)

Depiction of West Pier Access & Crane Maintenance Area

LEGAL DESCRIPTION OF WEST PIER ACCESS

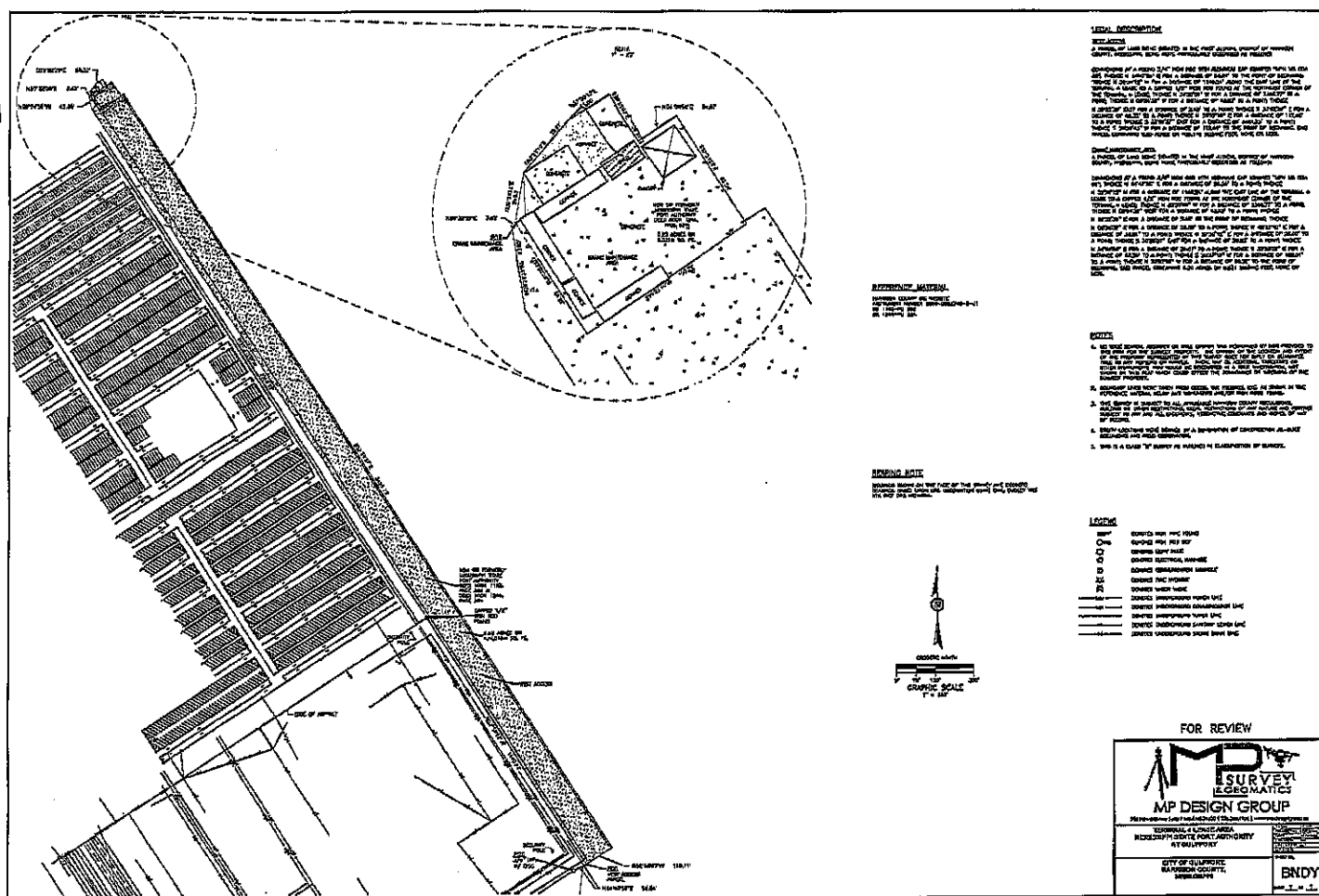
A PARCEL OF LAND BEING SITUATED IN THE FIRST JUDICIAL DISTRICT OF HARRISON COUNTY, MISSISSIPPI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 3/4" IRON ROD WITH ALUMINUM CAP STAMPED "MPH MS COA 69"; THENCE N 64°47'55" E FOR A DISTANCE OF 56.54' TO THE POINT OF BEGINNING; THENCE N 32°58'12" W FOR A DISTANCE OF 1140.24' ALONG THE EAST LINE OF THE TERMINAL 4 LEASE TO A CAPPED 1/2" IRON ROD FOUND AT THE NORTHEAST CORNER OF THE TERMINAL 4 LEASE; THENCE N 33°20'09" W FOR A DISTANCE OF 2366.77' TO A POINT; THENCE N 09°24'38" W FOR A DISTANCE OF 43.85' TO A POINT; THENCE N 59°22'39" EAST FOR A DISTANCE OF 2.43' TO A POINT; THENCE S 33°02'29" E FOR A DISTANCE OF 68.32' TO A POINT; THENCE N 55°27'19" E FOR A DISTANCE OF 112.40' TO A POINT; THENCE S 32°59'37" EAST FOR A DISTANCE OF 3481.73' TO A POINT; THENCE S 56°58'43" W FOR A DISTANCE OF 118.61' TO THE POINT OF BEGINNING. SAID PARCEL CONTAINING 9.85 ACRES OR 429,118 SQUARE FEET, MORE OR LESS.

LEGAL DESCRIPTION OF CRANE MAINTENANCE AREA

A PARCEL OF LAND BEING SITUATED IN THE FIRST JUDICIAL DISTRICT OF HARRISON COUNTY, MISSISSIPPI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 3/4" IRON ROD WITH ALUMINUM CAP STAMPED "MPH MS COA 69"; THENCE N 64°47'55" E FOR A DISTANCE OF 56.54' TO A POINT; THENCE N 32°58'12" W FOR A DISTANCE OF 1140.24' ALONG THE EAST LINE OF THE TERMINAL 4 LEASE TO A CAPPED 1/2" IRON ROD FOUND AT THE NORTHEAST CORNER OF THE TERMINAL 4 LEASE; THENCE N 33°20'09" W FOR A DISTANCE OF 2366.77' TO A POINT; THENCE N 09°24'38" WEST FOR A DISTANCE OF 43.85' TO A POINT; THENCE N 59°22'39" E FOR A DISTANCE OF 2.43' TO THE POINT OF BEGINNING; THENCE N 08°38'32" E FOR A DISTANCE OF 26.80' TO A POINT; THENCE N 40°23'10" E FOR A DISTANCE OF 35.81' TO A POINT; THENCE N 57°30'12" E FOR A DISTANCE OF 25.00' TO A POINT; THENCE S 30°55'07" EAST FOR A DISTANCE OF 28.53' TO A POINT; THENCE N 56°04'56" E FOR A DISTANCE OF 24.07' TO A POINT; THENCE S 32°53'28" E FOR A DISTANCE OF 67.54' TO A POINT; THENCE S 55°27'19" W FOR A DISTANCE OF 100.01' TO A POINT; THENCE N 33°02'29" W FOR A DISTANCE OF 68.32' TO THE POINT OF BEGINNING. SAID PARCEL CONTAINING 0.20 ACRES OR 8,521 SQUARE FEET, MORE OR LESS.



EXECUTION VERSION

EXHIBIT 22.8

Notices and Administration

If to MSPA:

Mississippi State Port Authority at Gulfport
2510 14th Street, Suite 1450
Gulfport, MS 39501
Attn: Executive Director & CEO
inass@shipmspa.com

With a copy to:

Balch & Bingham LLP
1310 25th Avenue
Gulfport, MS 39501
Attn: MSPA Counsel
bstone@balch.com

If to MDA:

Mississippi Development Authority
501 N. West Street
Jackson, MS 39205
Attn: Executive Director
lhpp@mississippi.org

If to Ports America:

Ports America Gulfport, Inc.
1000 30th Avenue
P.O. Box 4241
Gulfport, MS 39501

With a copy to:

Ports America Gulfport, Inc.
525 Washington Blvd., Suite 1660
Jersey City, NJ 07310
Attn: General Counsel
legal@portsamerica.com

SCHEDULE 1.1.29

Existing Leases

1. Chiquita Lease;
2. Crowley Agreement; and
3. Dole Lease.

SCHEDULE 3.7.1

Inventory of Original Assets

1. Three (3) ZPMC STS Gantry Cranes; and
2. Crane Parts Inventory Spreadsheet (attached).

EXECUTION VERSION

SCHEDULE 3.9

Crane Personnel

1. Gary Pitcovich,
2. Paul Neumaier,
3. Jay Signorelli, and
4. Blake Bishop.

SCHEDULE 4.4

Crane KPIs

The following Service Level Agreement (this "SLA") terms shall apply to Ports America's provision of the maintenance and repair services on the Cranes:

1. **DEFINITIONS.** In this SLA, the following terms have the meanings set forth in this Section 1. Any capitalized terms used but not defined in this SLA will have the meanings ascribed thereto in the Lease, Development, and Operating Agreement, to which this SLA is attached (the "Agreement").

1.1 "Available" means that a Crane, including all of its material functionalities, are available for operation for the Crane's intended purpose, namely the loading and unloading of containers and/or other cargo from a marine vessel in accordance with the manufacturer's specifications.

1.2 "Downtime" means the total time during which a Crane is not Available, after being ordered for vessel operations with labor standing by.

1.3 "Failure" means the failure of one or more components of a Crane to perform in accordance with the manufacturer's specifications, whether caused by defect, wear and tear, or damage.

1.4 "Failure Time" means the total time during which a vessel is berthed at a container terminal for loading and unloading of containers and/or other cargo and the applicable Crane is not Available due to a Failure.

1.5 "Maintenance Time" means the total time during which a vessel is berthed at a container terminal for loading and unloading of containers and/or other cargo that a Crane is not Available due to maintenance being performed on the Crane.

1.6 "Mean Time Between Failure (MTBF)" is a measurement of the time between a Failure of a Crane measured by dividing the total Run Hours of a Crane by the number of Failures in the given measurement period.

$$\frac{\text{Run Hours}}{\text{Number of Failures}}$$

1.7 "Mean Time to Repair (MTR)" is a measurement of the time required to repair Cranes that have a Failure. MTR is measured by dividing the total number of hours that a Crane is not Available due to a Failure of that Crane, or any component thereof, divided by the total number of Failures in the measurement period.

$$\frac{\text{Total Hours Not Available}}{\text{Number of Failures}}$$

1.8 "Operational Availability" is the measurement of time that a Crane is Available. The percentage of Operational Availability achieved shall be measured as follows:

$$\frac{\text{Total Time} - \text{Maintenance Time} - \text{Failure Time}}{\text{Total Time}} \times 100$$

1.9 "PM Schedule" shall have the meaning given such term in Section 3 below.

1.10 "Reliability" is a measurement of the reliability of the Cranes measured by the total Run Hours of the Crane divided by the Run Hours plus the breakdown hours. This result is then multiplied by 100.

EXECUTION VERSION

$$\frac{\text{Run Hours} \times 100}{(\text{Run Hours} - \text{Downtime} / \text{Run Hours})}$$

1.11 “Run Hours” means the total number of hours that the Crane is operated during a measurement period.

1.12 “Scheduled Downtime” means scheduled Downtime for maintenance and/or repairs of any one or more of the Cranes.

1.13 “Total Time” means the total time that a vessel is berthed at a container terminal for loading and unloading of containers and/or other cargo.

1.14 Availability is a measurement of the total quantity of cranes made available to be used for the loading and unloading of containers and/or other cargo from a marine vessel in accordance with the manufacturer’s specifications, divided by the total quantity of cranes; this result is then multiplied by 100.

2. **INVENTORY.** Ports America agrees to maintain an adequate supply of spare parts on the premises to enable it to timely perform all maintenance and repair services in accordance with the requirements of the Agreement and this SLA.

3. **PREVENTATIVE MAINTENANCE.** Ports America and Port Authority shall mutually develop a preventative maintenance schedule (the “PM Schedule”) for the Cranes that ensures that the Cranes are maintained in accordance with the standards and the specific needs and recommendations of the parties.

4. **REVIEW MEETINGS.** Port Authority and Ports America shall hold regular meetings to review Ports America’s performance and compliance associated with the terms of this SLA. These meetings shall be held at such frequency as the parties mutually agree.

5. **REGULAR REPORTING.** Ports America shall provide the reports detailed in the table below to Port Authority (in a format to be mutually agreed upon by the parties) at such frequency and with such content as set forth in the table. Reports with the same frequency may (and are encouraged to) be combined into a single report. The parties shall cooperate in good faith to mutually agree upon and implement an acceptable means of automating these reports and distributing these reports to Port Authority.

Name	Content	Frequency
Downtime Report	Report describing each incident of Downtime from the previous day, including the Crane number, description of the cause of Downtime (if known), and duration of Downtime.	Monthly
	Report aggregating the details of each daily report for the prior Month	Quarterly
PM Status Report	Report tracking preventive maintenance completed in the prior month against the PM Schedule.	Monthly
	Report tracking preventive maintenance completed in the prior quarter against the PM Schedule.	Quarterly

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Name	Content	Frequency
Breakdown and Expense Report	Report detailing the quantity, description, and expense of all Failures of Crane equipment or parts during the previous month, whether discovered during operations, inspections, maintenance, or otherwise.	Monthly
Mean Time Between Failures (MTBF)	Report of the MTBF for each Crane for the previous quarter.	Monthly and Quarterly
Reliability	Report of the Reliability of each Crane for the previous quarter or such other frequency as the parties mutually agree.	Quarterly
Availability	Report of the Availability of the Cranes for the previous month and quarter or such other frequency as the parties mutually agree.	Monthly and Quarterly

6. KPIs. KPI targets for the Crane maintenance and operations listed in the table below, baseline KPIs to be established during the first six months of the Agreement:

Metric	KPI
Operational Availability	<98% over any rolling three (3) month period
PM Status Report	The aggregate of incomplete preventative maintenance to improve over any six (6) month period
Mean Time Between Failures (MTBF)	The MTBF to improve over any rolling three (3) month period
Mean Time to Repair (MTR)	The MTR to improve over any rolling three (3) month period
Reliability	Reliability remains over any rolling three (3) month period below 98.5%

SCHEDULE 5.1

Minimum Investment Schedule

1. Costs associated with the purchase, transportation, installation, and making the Additional Crane operational; and
2. Costs associated with paving the Leased Premises.

SCHEDULE 6.3.3

Fair Market Value Rental Rate for Option Term

[To be inserted if Ports America provides Port Authority with the Option Notice]

SCHEDULE 6.4.1

Additional Fees Schedule

Ports America will charge Customers / Carriers the following wharfage rates for non-containerized cargo movement at Terminal 4, including Ro-Ro, Heavy Lift, Bulk, Break-Bulk and Project Cargo:

Commodity	Wharfage Rate
Roro HH	\$3.50 S.T.
POVs (including new autos)	\$6.00 Ea.
General Cargo N.O.S.	\$2.50 S.T.
Bulk Cargo	\$1.75 S.T.
Project (including wind)	\$3.00 S.T./cbm
Lumber, paper	\$2.50 S.T.

Ports America will remit to the MSPA fifty percent (50%) of the gross revenue generated from such wharfage that is collected by Ports America from the Customer / Carrier.