

ADDITIONAL MATERIAL

Regular Meeting
DECEMBER 1, 2020

SUBMITTED AT THE REQUEST OF

PORT EVERGLADES




PORT EVERGLADES DEPARTMENT – Chief Executive/Port Director's Office
1850 Eller Drive, Fort Lauderdale, Florida 33316
954-468-0140 FAX 954-523-8713

MEMORANDUM

DATE: November 23, 2020

TO: Mayor and Members
Broward County Board of County Commissioners

FROM: Jonathan T. Daniels, Chief Executive & Port Director 

RE: Additional Material – Agenda Item No. 11 – December 1, 2020, Commission Meeting – Horizon Terminal Services LLC

The attached substitute Exhibit 2 replaces Exhibit 2 attached to Agenda Item No. 11. Substitute Exhibit 2 is the correct executed version of the proposed lease amendment for the Board's consideration. The Monday Night Memo will provide that the Board's consideration of this item is based on the substitute Exhibit 2 distributed as additional material.

Attachment

FIRST AMENDMENT TO MARINE TERMINAL LEASE AND OPERATING AGREEMENT BETWEEN
BROWARD COUNTY AND HORIZON TERMINAL SERVICES LLC

This First Amendment to Marine Terminal Lease and Operating Agreement (the "First Amendment") is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and Horizon Terminal Services LLC, a Delaware limited liability company authorized to transact business in the state of Florida ("Horizon") (individually referred to as a "Party" and collectively referred to as the "Parties").

RECITALS

A. County and Horizon entered into a Marine Terminal Lease and Operating Agreement dated January 29, 2018 (the "Agreement").

B. The Parties desire to effectuate changes to the Agreement to provide for a revision to the Demised Premises, extension of the Term, and related adjustments to the annual rental and minimum guaranteed payment provisions.

C. Horizon has requested County's consent to the sale and transfer of all its membership interests from Höegh Autoliners B.V. to APS East Coast, Inc. (the "Transaction"), which Transaction would result in a change of control of Horizon requiring County's prior written consent under the terms and conditions of the Agreement.

Now, therefore, in consideration of the mutual terms, conditions, promises, and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. The above recitals are true and correct and are incorporated herein as if set forth in full hereunder.
2. Amendments made to the Agreement by this First Amendment are indicated by use of strikethroughs to indicate deletions and underlining to indicate additions, unless otherwise stated.
3. Article 1, entitled DEMISED PREMISES, is hereby amended as follows (original underlining omitted):

1. DEMISED PREMISES

A. DEFINED

Effective January 1, 2021 ~~on the Commencement Date hereof~~, County does hereby demise and lease to Horizon on the terms and conditions herein set forth that

certain real property ~~totaling ±8.67~~ comprised of ±13.6 acres of land located at Port Everglades, Broward County, Florida, together with all improvements thereon and with all appurtenances, rights, privileges, and hereditaments thereto, and all improvements thereon, comprising a ±5.67 acre parcel of land and all improvements thereon, owned by County, located as more particularly described in Revised Exhibit "A-1," and 27,560 square feet of warehouse space, ~~owned by County, located~~ as more particularly described in Exhibit "A-2," and ~~±3.0~~ acres of land, and all improvements thereon ~~owned by County, located~~ as more particularly described in Exhibit A-3, (collectively referred to herein as the "Demised Premises.") County covenants with Horizon that it is possessed of good and marketable fee simple title to the Demised Premises, free and clear of all encumbrances, and that it will defend the same against the lawful claims of all persons whomsoever. County covenants with Horizon that Horizon shall peacefully enjoy the Demised Premises leased hereunder.

...

4. Article 2, entitled TERM AND COMMENCEMENT DATE, is hereby amended as follows (original underlining omitted):

2. TERM AND COMMENCEMENT DATE

The lease term of this Agreement ~~shall begin~~ commenced retroactively to ~~on~~ January 1, 2018 (the "Commencement Date"), ~~and shall run~~ running for a period of five (5) years ("Term"), unless sooner terminated as provided herein. Effective January 1, 2023, the Term of this Agreement is extended for an additional three (3) year period, and shall continue through December 31, 2025, unless sooner terminated as provided herein. "Lease Year" as used in this Agreement, shall mean each consecutive twelve (12) month period over the Term hereof, beginning on the Commencement Date. Before June 30, 2025, County, through its Chief Executive & Port Director and Horizon representatives shall meet to discuss the potential to renew this Agreement for a duration and under terms and conditions acceptable to both Parties.

5. Article 5, entitled RENTALS, FEES AND CHARGES, is hereby amended as follows (original underlining omitted):

5. RENTALS, FEES, AND CHARGES

A. PAYMENTS

The total annual rental ~~fee~~ amount payable for each ~~year~~ Lease Year over of the Term, subject to adjustment as hereinafter provided, shall be paid by Horizon in twelve (12) equal monthly installments, ~~together with all~~ plus applicable sales taxes thereon, on

the first day of each and every month, without demand, set off, or deduction, beginning on the Commencement Date and continuing for the remainder of the Term.

1) Commencing on the Commencement Date, Horizon's total annual rental for the first Lease Year of the Term is in the amount of Four Hundred Twenty-nine Thousand Five Hundred Forty-one Dollars and Sixty-eight Cents (\$429,541.68), plus applicable sales taxes, which amount is made up of Twenty-nine Thousand Two Hundred Thirteen Dollars and Sixty Cents (\$29,213.60) for the warehouse space and Four Hundred Thousand Three Hundred Twenty-eight Dollars and Eight Cents (\$400,328.08) for the improved land. Rent shall be paid in twelve (12) monthly rental installments of Thirty-five Thousand Seven Hundred Ninety-five Dollars and Fourteen Cents (\$35,795.14), plus applicable sales taxes. Effective January 1, 2021, Horizon's total annual rental payable for the fourth Lease Year of the Term is in the amount of Seven Hundred Forty-six Thousand Twenty Dollars and Thirty-two Cents (\$746,020.32), plus applicable sales taxes, which amount is made up of Thirty-three Thousand Seventy-two Dollars (\$33,072.00) for the warehouse space, and Seven Hundred Twelve Thousand Nine Hundred Forty-eight Dollars and Thirty-two Cents (\$712,948.32) for the improved land.

2) County and Horizon agree that the total annual rental amounts (established in subparagraph {1} hereinabove), shall be adjusted ~~yearly~~ annually over the Term, on the annual anniversary of the Commencement Date (the "Adjustment Date"), as set forth below, ~~and each adjusted annual rental amount (together with applicable sales taxes thereon) for the Demised Premises shall be payable in twelve (12) monthly installments for that Lease Year.~~

...

6. Article 22, entitled PER UNIT RATES AND ANNUAL MINIMUM GUARANTEED PAYMENT, is hereby amended as follows (original underlining omitted):

22. PER UNIT RATES AND ANNUAL MINIMUM GUARANTEED PAYMENT

A. PER UNIT RATES

Effective January 1, 2018~~21~~, County and Horizon acknowledge and agree to the Per Unit Rate Schedule for each Lease Year over the Term attached hereto as set forth in Revised Composite Exhibit "B," and made a part hereof. A Unit, for the purposes of this Agreement, is derived utilizing the Tons to Unit Conversion Schedule ~~attached hereto as set forth in Revised~~ Composite Exhibit "B." The ~~P~~per Unit ~~R~~ates do not include Port Everglades Tariff charges for dockage, harbor master charges, security fees, electricity, water, line handling services, container crane rental charges and container crane standby charges, or any other Port Everglades Tariff charges not specifically identified herein as

being included within the ~~Per Unit Rates~~, all of which shall be billed separately by County to Horizon. The Per Unit Rate Schedule is based on Horizon agreeing to make ~~Annual Minimum Guaranteed Payments~~ to County based on the number of ~~Annual Minimum Guaranteed Units~~ to be handled by Horizon on the Demised Premises for each Lease Year ~~over the Term of this Agreement~~, as set forth in Revised Composite Exhibit "B," attached hereto. The ~~Per Unit Rates~~ are in addition to all other ~~required~~ payments ~~under this Agreement~~, including, ~~the rental payments required to be made by Horizon hereunder to County~~ and are inclusive of Port Everglades Tariff charges for cargo wharfage.

B. ANNUAL ADJUSTMENT

Horizon's ~~Per Unit Rates~~ shall be ~~is~~ adjusted annually on the Adjustment Date as defined in Article 5 herein, as set forth in Revised Composite Exhibit "B," over the Term of this Agreement, on the Adjustment Date. The Per Unit Rates shall be increased to an amount equal to the lesser of: ~~the product of the existing Per Unit Rates in place during the immediately preceding Lease Year multiplied by the "CPI Multiplier," as provided in Article 5 herein, or three percent (3%).~~

C. ANNUAL MINIMUM GUARANTEE PAYMENT

1) Effective upon the Commencement Date ~~hereof~~, and for each and every ~~successive~~ Lease Year over the Term ~~hereof~~, Horizon shall make an Annual Minimum Guarantee Payments ("MGP") to County in an amount equaling the product of the per unit rate and the number of based on Annual Minimum Guaranteed Units in effect for each Lease Year as set forth in Revised Composite Exhibit "B," attached hereto. For the first Lease Year of this Agreement, Horizon's MGP is shall pay County the sum of Two Hundred Twenty-one Thousand Two Hundred Fifty Dollars (\$221,250), as Minimum Guaranteed Payment ("MGP"). ~~The Parties hereto expressly acknowledge and agree that~~ The amount of Horizon's annual MGP shall be is adjusted annually on the Adjustment Date as defined in Article 5 herein for each and every successive Lease Year thereafter over the Term, on the Adjustment Date, in accordance with as set forth in Revised Composite Exhibit "B," attached hereto. Horizon's MGP obligation is in addition to all other payments including rental payments required to be made by Horizon to County.

...

7. Article 27, entitled ENVIRONMENTAL IMPAIRMENT; CONTAINMENT AND REMOVAL, is hereby amended as follows (original underlining omitted):

27. ENVIRONMENTAL IMPAIRMENT; CONTAINMENT AND REMOVAL

A. Horizon acknowledges and agrees that County makes no representations or warranties whatsoever as to whether Pollutants (as hereinafter defined) exist on or under the Demised Premises or the improvements thereon in violation of any federal, state, or local law, rule or regulation or in violation of any order or directives of any federal, state, or local court or entity with jurisdiction of such matter. The term "Pollutants" refers to and includes all derivatives or by-products of any one or more of the following terms as defined by applicable local, state, or federal laws or regulations: hazardous substances, hazardous materials, hazardous waste, toxic substances, toxic pollutants; or such other pollutants, contaminants, substances, materials and wastes as are or become regulated under applicable local, state, or federal laws or regulations. Horizon acknowledges, represents, and warrants to County that it has made sufficient inspection of the Demised Premises and the improvements thereon to satisfy itself as to the presence or absence of any such Pollutants. Horizon shall have no liability for any preexisting environmental impairments, liabilities, or conditions related to the Demised Premises and the improvements thereon not caused by Horizon, its agents, employees, or invitees. As of ~~the Commencement Date of this Agreement~~ January 1, 2021, the Parties hereto acknowledge and agree that the environmental condition of the Demised Premises is as ~~set forth and~~ described in the environmental baseline report set forth in Revised Exhibit "D," attached hereto and made a part hereof. Horizon shall not be liable for any migration of Pollutants and/or rise in the level of any Pollutants related to the Demised Premises not caused by Horizon, its agents, employees, or invitees. ~~In the event Horizon is relocated to a new location as provided herein, the environmental baseline report for the relocated portion of the Demised Premises shall be prepared by County's Port Everglades Department not less than thirty (30) calendar days after the date Horizon is to take occupancy of same. The completed environmental baseline report for the new location, shall be incorporated into this Agreement by an amendment to Exhibit D, approved by County's Port Everglades Department Chief Executive/Port Director and Horizon, and made a part hereof by reference hereto.~~

...

8. Article 39, entitled COUNTY'S RIGHT TO RELOCATE HORIZON, is hereby deleted in its entirety.

~~**39. COUNTY'S RIGHT TO RELOCATE HORIZON**~~

~~County's Port Everglades Department, at its sole discretion, shall have the right to relocate Horizon, its personnel, equipment, and operations from either or both the ± 5.67 acre parcel depicted in Exhibit A-1 attached hereto, or the ± 3.0 acre parcel depicted in~~

~~Exhibit A-3 attached hereto, to new location(s) at Port Everglades. In such case(s), County's Port Everglades Department shall provide Horizon with a new location of equivalent size and use to the then existing location(s). County's Port Everglades Department shall provide Horizon with written notice of its election to relocate Horizon, and description of the new location(s) ("Relocation Notice"), no less than ninety (90) calendar days prior to the date on which such relocation is to become effective. County shall be required to pay all reasonable expenses associated with its relocation of Horizon from the ±5.67 acre parcel depicted in Exhibit A-1 attached hereto, pursuant to this section. Horizon shall be required to pay all reasonable expenses associated with its relocation from the ±3.0 parcel depicted in Exhibit A-3 attached hereto, pursuant to this section. In the event of such relocation(s), all provisions of this Agreement will apply with respect to the new location(s), excepting the description of the Demised Premises hereunder, which shall be revised by amending Exhibits A-1 and A-3, as applicable. All amended exhibits shall be approved by County's Port Everglades Department Chief Executive/Port Director and Horizon and made a part of this Agreement by reference hereto.~~

9. County hereby consents to the Transaction and acknowledges and agrees that the Transaction will not constitute a breach, default, or termination event under the Agreement.
10. Horizon acknowledges that County, in providing the consent set forth in Section 9 above, is relying on that certain Membership Interest Purchase Agreement, dated as of October 2, 2020, by and among APS East Coast, Inc., AMPORTS, Inc., and Höegh Autoliners B.V., and further warrants and represents that same is accurate and complete.
11. Exhibit "A-1" is hereby deleted in its entirety and replaced by Revised Exhibit "A-1," attached hereto and incorporated into and made part of the Agreement.
12. Exhibit "A-3" is hereby deleted in its entirety.
13. Composite Exhibit "B" is hereby deleted in its entirety and replaced by Revised Composite Exhibit "B," attached hereto and incorporated into and made part of the Agreement.
14. Exhibit "D" is hereby deleted in its entirety and replaced by Revised Exhibit "D," attached hereto and incorporated into and made part of the Agreement.
15. This First Amendment has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.
16. Except as expressly modified herein, all other terms and conditions of the Agreement remain in full force and effect.

17. This First Amendment may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
18. This First Amendment is effective upon complete execution by the Parties.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Parties hereto have made and executed this First Amendment: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 2020, and HORIZON TERMINAL SERVICES LLC, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

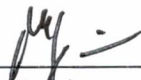
BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 2020


Approved as to form by
Andrew J. Meyers
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 502
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404
Telecopier: (954) 468-3690

By  11/16/2020
Russell J. Morrison (Date)
Senior County Attorney




**FIRST AMENDMENT TO MARINE TERMINAL LEASE AND OPERATING AGREEMENT BETWEEN
BROWARD COUNTY AND HORIZON TERMINAL SERVICES LLC**

WITNESSES:


(Signature)

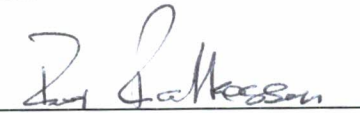
Candice Albers
(Print Name)


(Signature)

Ashley Jones
(Print Name)

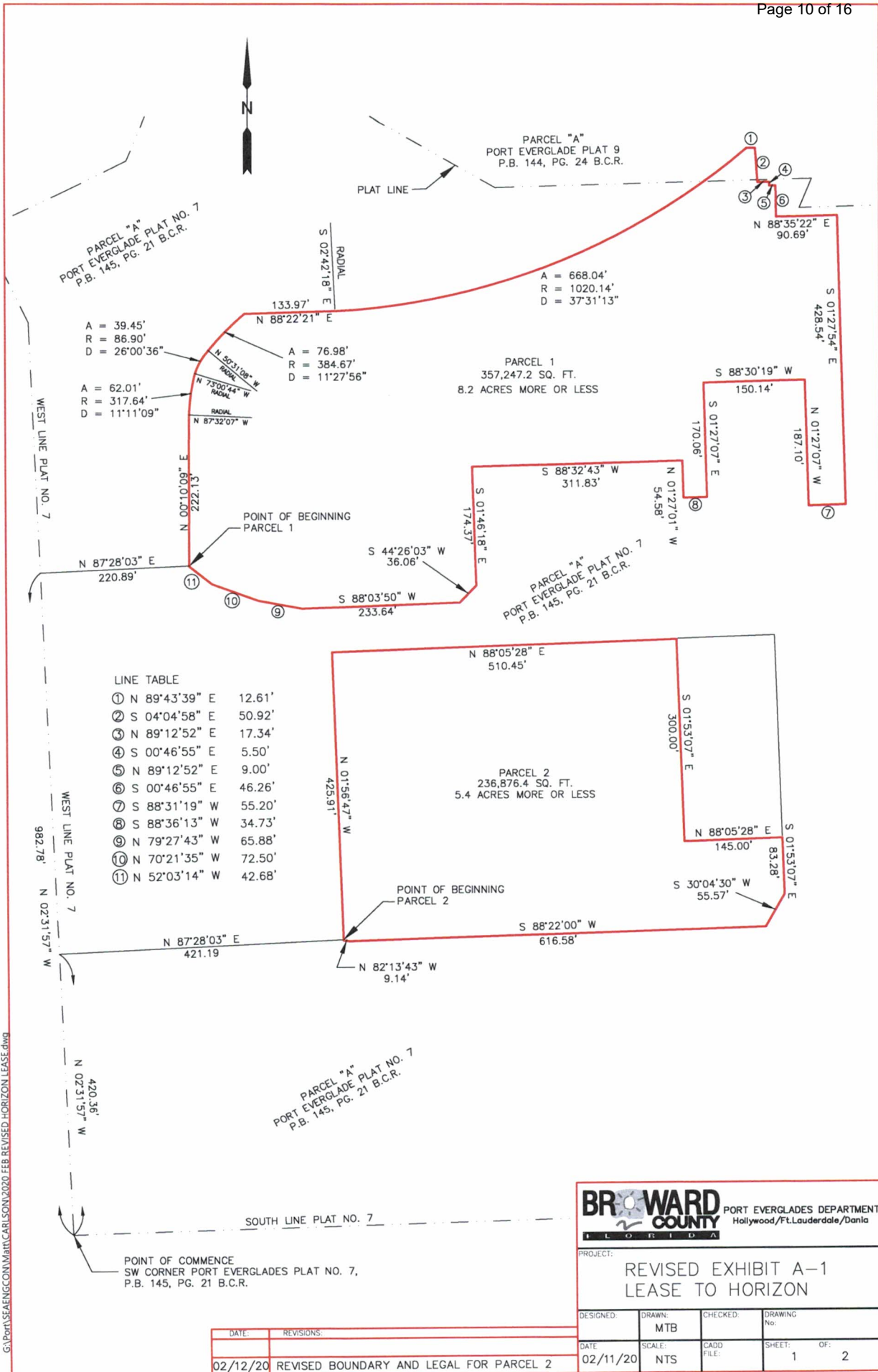
HORIZON:

HORIZON TERMINAL SERVICES LLC, a
Delaware limited liability company
authorized to transact business in the state
of Florida

By: 
(Managing member)

PER FOLKESSON
(Print Name and Title)

13th day of November, 2020



PARCEL "A"
PORT EVERGLADE PLAT NO. 7
P.B. 145, PG. 21 B.C.R.

PARCEL "A"
PORT EVERGLADE PLAT 9
P.B. 144, PG. 24 B.C.R.

A = 39.45'
R = 86.90'
D = 26°00'36"

A = 76.98'
R = 384.67'
D = 11°27'56"

A = 668.04'
R = 1020.14'
D = 37°31'13"

A = 62.01'
R = 317.64'
D = 11°11'09"

LINE TABLE

①	N 89°43'39" E	12.61'
②	S 04°04'58" E	50.92'
③	N 89°12'52" E	17.34'
④	S 00°46'55" E	5.50'
⑤	N 89°12'52" E	9.00'
⑥	S 00°46'55" E	46.26'
⑦	S 88°31'19" W	55.20'
⑧	S 88°36'13" W	34.73'
⑨	S 79°27'43" W	65.88'
⑩	N 70°21'35" W	72.50'
⑪	N 52°03'14" W	42.68'

BRWARD COUNTY PORT EVERGLADES DEPARTMENT
Hollywood/FL/Lauderdale/Dania

PROJECT:
**REVISED EXHIBIT A-1
LEASE TO HORIZON**

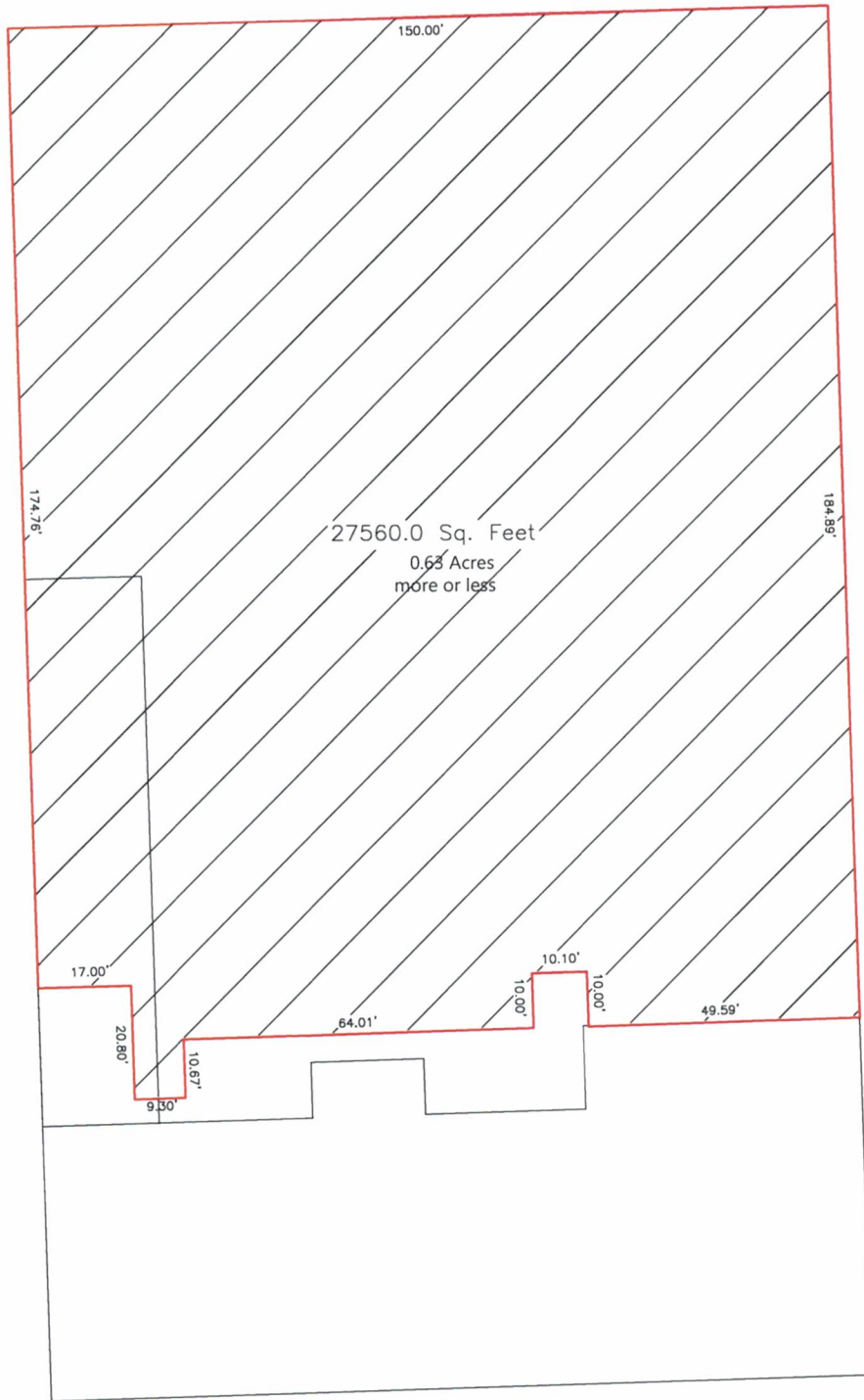
DATE:	REVISIONS:
02/12/20	REVISED BOUNDARY AND LEGAL FOR PARCEL 2

DESIGNED:	DRAWN: MTB	CHECKED:	DRAWING No.:
DATE: 02/11/20	SCALE: NTS	CADD FILE:	SHEET: 1 OF: 2

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BROWARD COUNTY
FLORIDA

PORT EVERGLADES DEPARTMENT
Hollywood/Ft.Lauderdale/Dania

PROJECT:
EXHIBIT A-2
PORTION OF BUILDING 28
LEASE TO HORIZON

DESIGNED:	DRAWN:	CHECKED:	DRAWING No:
DATE 11/29/17	SCALE NTS	CADD FILE:	SHEET: 1 OF: 1

REVISIONS:		
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Revised Composite Exhibit "B"

Per Unit Rate Schedule

Lease Year	Per Unit Rate	Annual Minimum Guaranteed Units	Annual Minimum Guaranteed Payment
1	\$7.50	29,500	\$221,250
2	\$7.69	29,500	\$226,855
3	\$7.83	29,500	\$230,985
4	\$8.03	46,408	\$372,459
5	\$8.23	46,408	\$381,770
6	\$8.43	46,408	\$391,315
7	\$8.64	46,408	\$401,098
8	\$8.86	46,408	\$411,125

Revised Composite Exhibit B

Tons to Unit Conversion Schedule

Short Tons	Units
0.00-2.00	1
2.01-4.00	2
4.01-6.00	3
6.01-8.00	4
8.01-10.00	5
10.01-12.00	6
12.01-14.00	7
14.01-16.00	8
16.01-18.00	9
18.01-20.00	10
20.01-22.00	11
22.01-24.00	12
24.01-26.00	13
26.01-28.00	14
28.01-30.00	15
30.01-32.00	16
32.01-34.00	17
34.01-36.00	18
36.01-38.00	19
38.01-40.00	20
40.01-42.00	21
42.01-44.00	22
44.01-46.00	23
46.01-48.00	24
48.01-50.00	25

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11



Port Everglades Department
SEAPORT ENGINEERING AND FACILITIES MAINTENANCE DIVISION
1850 Eller Drive, Fort Lauderdale, Florida 33316-4201 • 954-468-0142 • FAX 954-468-3436

**REVISED EXHIBIT D
MEMORANDUM**

Date: September 10, 2020

To: Josh Miller, Property Manager

From: Erik Neugaard, Environmental Program Manager

Subject: Horizon Terminals Lease - Environmental Baseline

On November 21, 2017, and on September 9, 2020, visual inspections of the Horizon Terminals site were conducted by Erik Neugaard, Port Everglades Environmental Program Manager, to identify obvious environmental concerns.

The inspection included the red-bounded areas shown below. Most observations were made from a pickup truck, except all accessible storm drains were visually inspected from above for obvious signs of surface water contamination, such as globules of free floating product or sheen, and the interior of the warehouse area was inspected while walking through it. Historical aerial photographs from 12/31/03, 11/30/05, 02/28/06, 01/19/07, 05/07/07, 12/30/08, 03/31/10, 12/31/09, 03/26/11, 10/19/12, 03/06/13, 01/18/14, 04/02/14, 12/15/14, 01/23/16, 03/21/17, 04/06/17, 6/25/18, 12/10/18, 12/16/18 and 12/3/19, were also reviewed to identify obvious environmental concerns.

Background and Discussion

A Preliminary Phase I Environmental Site Assessment (ESA) and Limited Phase II ESA Recommendations for red-bounded area south of Eller Drive were completed on 08/04/03. It contains a historical assessment of activities that occurred prior to 2003. Subsequently, a Limited Phase II ESA was completed in 09/03, which included soil and groundwater analytical result. Copies of these documents as well as related correspondence between Port Everglades and Chiquita Brands Company of North America are available upon request from the Seaport Engineering and Facilities Maintenance Division.

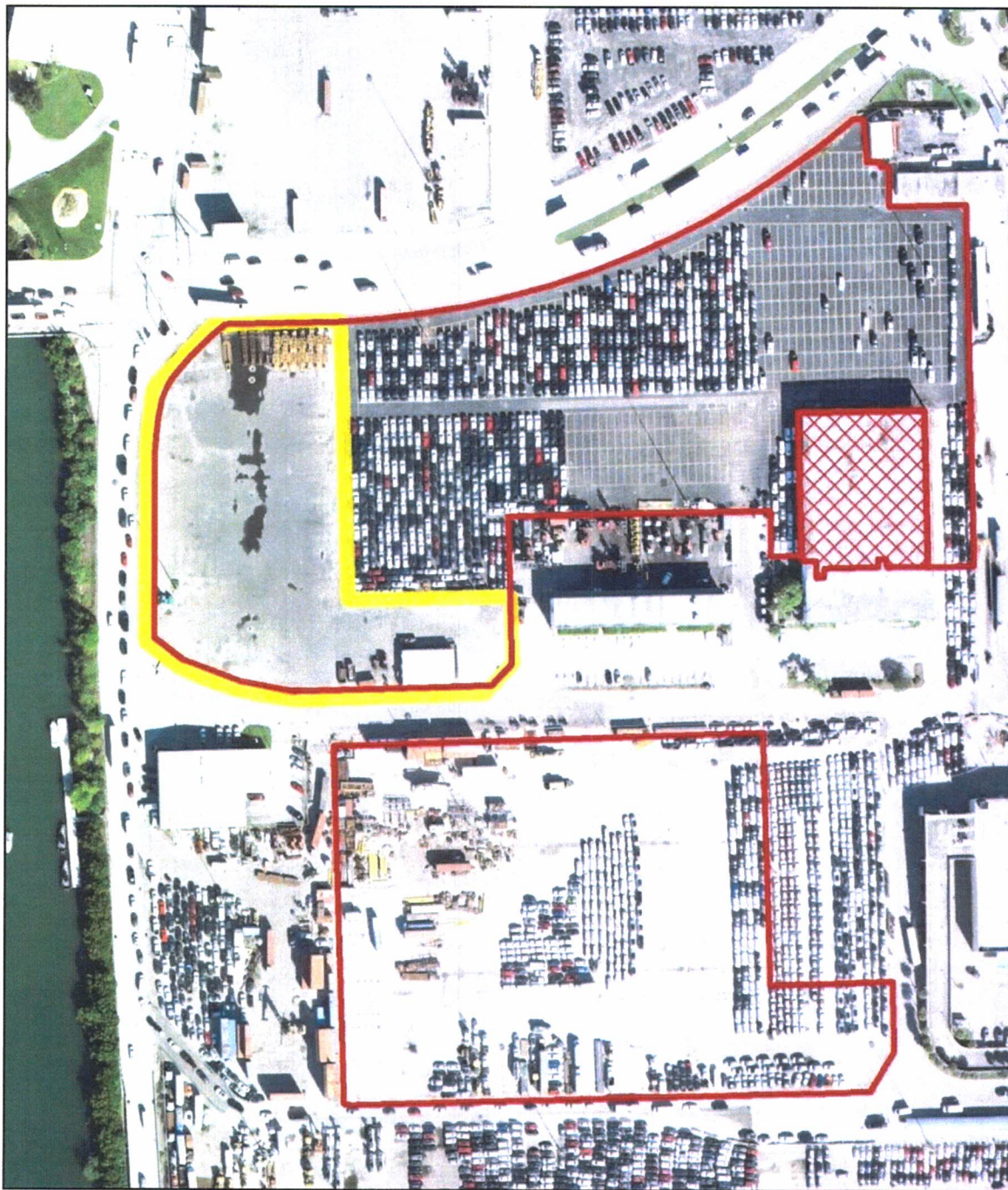
The Limited Phase II ESA concluded:

- Analysis of the groundwater sample collected from Soil Boring 3 at 6 feet - 10 feet below land surface revealed a concentration of 9.69 ug/L vinyl chloride, which exceeded the Groundwater Cleanup Target Level (GCTL) of 1 ug/L, but did it not exceed the Natural Attenuation Default Source Concentration (NADSC) of 100 ug/L.
- The presence of low concentrations of vinyl chloride in one shallow groundwater sample at a parcel of land does not provide sufficient information by which a conclusion can be drawn regarding the quality of groundwater beneath that parcel. Additional investigation is recommended to further assess the area surrounding this point.

On 10/23/03, Port Everglades sent an email to Chiquita Brands Company of North America stating:

- Port staff has reviewed the document referenced above and has noted the limited presence of vinyl chloride in shallow groundwater well SB-3. As the concentration is limited in value (9.69ug/L), it does not appear to pose a major concern. The level does exceed the GCTL but is considerably lower than the NADSC.

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Horizon Terminals Lease - Environmental Baseline
September 10, 2020
Page 3

- Your consultant offers the suggestion of providing more monitoring wells to delineate the extent of the area exhibiting the vinyl chloride. The Port does not know how this material has gotten to this area but believes, that over time, the levels will be reduced in concentration as a result of natural attenuation. It should be realized that there are no potable drinking water sources within the boundaries of the Port and that this material is prevented from entering the surrounding waterways as a result of our bulkheads, therefore posing a very low health risk, if any.
- Therefore, the Port offers the suggestions that there is no need for additional sampling or monitoring and, if acceptable to you, would note the presence of this substance but will not hold Chiquita Brands liable for its presence at this location.

The red-cross hatched area shown above, which is known as Building 28, at 2051 SE 35th Street, is licensed by the Broward County Department of Environmental Protection and Growth Management Department (EPGMD) as a Hazardous Material Management Facility (Former Chiquita Brands, POSSEE Facility Number 07958) and is regularly inspected by EPGMD. The latest inspection report, dated 10/05/17, which did not identify any significant contamination concerns, is available upon request from the Seaport Engineering and Facilities Maintenance Division.

The yellow-bounded area shown above was previously occupied by Portus-PEV LLC, an EPGMD Hazardous Material Management Facility with multiple addresses of:

- 2019 Eller Drive (POSSEE Facility Number 16800 – last inspected December 20th, 2018)
- 2049 SE 35th Street (POSSEE Facility Number 03028 – last inspected March 26th, 2018)
- 3450 SE 19th Avenue, and 3503 NE 19th Street (ERROR - Should be SE 19th Avenue),
- 3505 SE 19th Avenue (POSSEE Facility Number 20018 – license withdrawn June 3rd, 2019)

The latest inspection report for each Facility Number did not identify any significant contamination concerns, and are available upon request from the Seaport Engineering and Facilities Maintenance Division

The purpose of the inspections conducted on November 21, 2017, and September 10, 2020, as well as the review of aerial photographs taken after September 2003, was to determine if any significant contamination concerns has occurred on the site since the Preliminary Phase I ESA and Limited Phase II ESA was completed in 2003.

Representative photos from the visual inspection of the site conducted November 21, 2017, and September 10, 2020, are available upon request from the Seaport Engineering and Facilities Maintenance Division.

Findings

No indication of significant contamination was observed, and no additional action is required.