

PAYMENT AGREEMENT

by and between

VIRGINIA PORT AUTHORITY

and

VIRGINIA INTERNATIONAL TERMINALS, LLC

Dated as of November 1, 2016

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PAYMENT AGREEMENT

This Payment Agreement (this “Agreement”) is dated as of November 1, 2016 by and between Virginia Port Authority, a body corporate of the Commonwealth of Virginia (“VPA”) and Virginia International Terminals, LLC, a Virginia limited liability company (“VIT”).

RECITALS

- A. VIT is a Virginia limited liability company, the sole member of which is VPA, and is operated pursuant to a Second Amended and Restated Operating Agreement dated of even date herewith (“VIT’s Operating Agreement”).
- B. VPA has executed the Amended and Restated Deed of Facilities Lease Agreement by and between VPA, as lessee, and Virginia International Gateway, Inc., as lessor, dated September 21, 2016, as amended pursuant to the terms thereof (the “Senior Lease”), which shall become effective simultaneously with the execution and delivery of this Agreement.
- C. VPA has executed the Installment Sale Contract by and between VPA, as purchaser, and Virginia International Gateway, Inc., as seller, dated September 21, 2016, as amended pursuant to the terms thereof (the “Senior Installment Sale Contract”), which shall become effective simultaneously with the execution and delivery of this Agreement.
- D. VPA has executed the Construction Authority Agreement by and between VPA and Virginia International Gateway, Inc., dated September 21, 2016, as amended pursuant to the terms thereof (the “Senior Construction Authority Agreement”, and together with the Senior Lease and the Senior Installment Sale Contract, collectively, the “Senior Documents”), which shall become effective simultaneously with the execution and delivery of this Agreement.
- E. VPA, simultaneously with the execution and delivery of this Agreement, has issued its \$ _____ Port Facilities Revenue Refunding Bonds, Series 2016A (Taxable) and its \$ _____ Port Facilities Revenue Refunding Bonds, Series 2016B (AMT) (collectively, the “Refunding Bonds”) pursuant to VPA’s Resolution 16-9 (the “Resolution”) and a Series Resolutions, 16-10, (the “2016 Series Resolution”, and together with the Resolution, collectively, the “Bond Resolution”).
- F. VIT manages, operates, and conducts the business of VPA’s current Port Facilities (defined below) as an independent contractor in accordance with the rules, regulations and policies established by the Board of Commissioners of VPA pursuant to Chapter 10, Title 62.1 of the Code of Virginia of 1950, as amended (the “Act”).

- G. HRCF II, L.L.C. (“HRCF”), a Virginia limited liability company, the sole member of which is VIT, operates a chassis pool and empty container storage yards on behalf of VPA, among other things.
- H. To provide security for the Refunding Bonds and any other Indebtedness issued in the future by VPA on parity with the Refunding Bonds pursuant to the Bond Resolution, VPA has covenanted in the Bond Resolution that it will cause the Port Operators, as defined in the Bond Resolution, in existence from time to time, to make monthly transfers to VPA of certain moneys derived from the operation of VPA’s Port Facilities.
- I. The parties desire to enter into this Agreement to govern the terms and conditions of payments from VIT and its Subsidiaries as Port Operators to VPA. This Agreement supplants, supersedes, and replaces in total the Service Agreement originally dated June 1, 1997 and as last amended and restated as of November 18, 2014 among the parties (the “Original Service Agreement”).

NOW, THEREFORE, in consideration of the recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Defined Terms.

Throughout this Agreement, including the Recitals above, unless a different meaning clearly appears from the context, the following terms shall have the meanings set forth below:

- (a) “2016 Series Resolution” has the meaning given to it in the Recitals.
- (b) “Bond Resolution” has the meaning given to it in the Recitals.
- (c) “Business Day” shall mean any day other than a Saturday or Sunday, on which commercial banks are open for business in the State and in New York, New York and on which the New York Stock Exchange is open.
- (d) “Current Expenses” shall mean the reasonable and necessary current expenses of maintenance, repair and operation of the Port Facilities and shall include, without limiting the generality of the foregoing, all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, rental payments by VIT, or its Subsidiaries, pursuant to contracts not required to be capitalized under generally accepted accounting principles, premiums for insurance, fees or premiums for an Eligible Credit Facility (but not including any amounts payable as interest, whether or not characterized as a fee or premium, on draws, advances or loans), all administrative and engineering expenses relating to maintenance, repair and operation of Port Facilities, fees and expenses of depositaries, legal expenses, any taxes or service charges lawfully levied on the Port

Facilities, any reasonable payments to pension, retirement, vacation, holiday, dues or other benefits required by virtue of contracts or other agreements with employees or executives, and any other expenses required or permitted to be paid under the provisions of the Senior Documents, or required by law, but shall not include any reserves for maintenance or repair, or any allowance for depreciation or amortization, or any deposits or transfers to the credit of reserve funds required by the Bond Resolution.

(e) “Eligible Credit Facility” has the meaning set forth in Section 5.1 below.

(f) “Fiscal Year” means the annual period starting July 1 and ending on the following June 30.

(g) “Gross Revenues” for any period all revenues, including receipts, proceeds, income and other money, received by VIT or any Subsidiaries during such period from the ownership, leasing or operation of, or in connection with, the Port Facilities, or any part thereof, including, among others, revenues derived from services rendered by, or any use or occupancy of, the Port Facilities or any part thereof, or revenues derived from rents, leases, subleases, contracts, accounts receivable, insurance and other sources, proceeds derived from the sale of any interest in any property constituting a part of the Port Facilities, proceeds derived from condemnation awards and insurance, grants, appropriations and other receipts, including the income and profits therefrom, in each case lawfully available for the payment of the costs of operation, maintenance, repair or management of the Port Facilities, the payment of Senior Obligations, the payment of the principal of and redemption premium, if any, and interest on any Bonds and Parity Indebtedness, as that term is defined in the Bond Resolution, and the funding of all required reserves, but excluding certain income as described below. Gross Revenues do not include the amount of any appropriation by the General Assembly from the Transportation Trust Fund, the Commonwealth Port Fund, the Commonwealth’s General Fund or other funding sources of the Commonwealth, or the investment income thereon receivable by VIT or any Subsidiaries, which are not derived from VIT or any Subsidiaries’ operating revenues. Gross Revenues shall include other investment income received and receivable by VIT and any Subsidiaries and the income from the investment of the Liquidity Reserve Requirement (defined below) held in operating accounts.

(h) “HRCF” has the meaning set forth in the Recitals.

(i) “Liquidity Reserve Requirement” means, as to VIT or any Subsidiaries, an amount equal to the sum of (i) 1/12th of the Current Expenses of such entity for the Fiscal Year plus (ii) 1/12th of VIT Capital Expenditures, all as provided in VIT’s Annual Budget.

(j) “Liquidity Reserve Requirement Restoration Amount” has the meaning set forth in Section 4.1(c) below.

(k) “Liquidity Reserve Requirement Shortfall” means, for a Measurement Period, the amount by which Gross Revenues for VIT or any Subsidiaries is less than Current Expenses plus any Liquidity Reserve Requirement Restoration Amount for such entity.

(l) “Measurement Period” means the monthly period starting on the first calendar day of each month and ending on the last calendar day of the same month.

(m) “Net Revenue” means, for any Measurement Period, Gross Revenues received by VIT or any Subsidiaries during such period, less (i) the Current Expenses of VIT or any Subsidiaries during such Measurement Period, less (ii) the Liquidity Reserve Requirement Restoration Amount, if any, for such Measurement Period and less (iii) the VIT Capital Expenditures, if any, for such Measurement Period.

(n) “NIT” means Norfolk International Terminals.

(o) “NNMT” means Newport News Marine Terminals.

(p) “PMT” means Portsmouth Marine Terminal.

(q) “Port Facilities” means the harbors, seaports and other facilities and tangible real and personal properties, property rights and interests of VPA, whether now existing or to be constructed, installed or acquired hereafter, including, without limitation, NIT, NNMT, PMT, RMT, VIGT, and VIP.

(r) “RMT” means the Richmond Marine Terminal.

(s) “Subsidiary” means, with respect to VIT or VPA, any corporation, limited liability company, partnership, association, or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by VIT or VPA (as applicable) or one or more of the other Subsidiaries of VIT or VPA (as applicable) or a combination thereof or (ii) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by VIT or VPA (as applicable) or one or more Subsidiaries of VIT or VPA (as applicable) or a combination thereof and for this purpose, VIT or VPA (as applicable) owns a majority ownership interest in such a business entity (other than a corporation) if VIT or VPA (as applicable) or one or more Subsidiaries of VIT or VPA (as applicable) shall be allocated a majority of such business entity’s gains or losses or shall be or control any managing director or general partner of such business entity (other than a corporation). The term “Subsidiary” shall include all Subsidiaries of such Subsidiary. Notwithstanding the foregoing, the term “Subsidiary” shall not apply to any of the foregoing which is not a Port Operator (as that term is defined in the Bond Resolution).

(t) “VIGT” means Virginia International Gateway Terminal, as expanded by VPA pursuant to the Senior Lease.

(u) “VIP” means Virginia Inland Port.

(v) “VIT’s Annual Budget” means the Fiscal Year budget of VIT and all Subsidiaries as approved by VPA in accordance with VIT’s Operating Agreement and Section 718 of the Bond Resolution.

(w) “VIT Capital Expenditures” means the reasonable and necessary current expenditures of extraordinary repair and maintenance, renewal, replacement, acquisition and construction of the Port Facilities incurred by VIT or any of its Subsidiaries which are required to be capitalized under generally accepted accounting principles; provided, however, that VIT Capital Expenditures in any Fiscal Year shall not exceed six percent (6%) of the amount equal to VIT’s budgeted Current Expenses for such Fiscal Year less its budgeted administrative and general expenses for such Fiscal Year.

(x) “VIT Operating Account” has the meaning given to that term in Section 4.1.

(y) “VIT Payment Date” means the 20th calendar day of each month unless such day is not a Business Day then, in such case, no later than the next succeeding Business Day.

Section 1.2 Construction and Interpretations.

In this Agreement, unless the context otherwise requires:

(a) Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Agreement.

(b) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, or other legal entities including public bodies, as well as natural persons.

(c) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this Agreement refer to this Agreement or Sections or subsections of this Agreement and the term “hereafter” means after the date of this Agreement.

ARTICLE II TERMINATION OF ORIGINAL SERVICE AGREEMENT; TRANSFER OF EXCESS FUNDS

This Agreement hereby constitutes written notice by VPA to VIT of termination of the Original Service Agreement. On the date hereof, VIT and VPA shall cause the bond trustee under VPA's Resolution 97-5 to transfer all amounts then held by the bond trustee in VIT's Capital and Extraordinary Maintenance Account (as that term is defined in the Original Service Agreement) to VPA, and VPA shall deposit such amount, if any, to the VIT Operating Account to meet the Liquidity Reserve Requirement, and any excess, after satisfying the Liquidity Reserve Requirement, to its Operating Account (as that term is defined in the Bond Resolution) to the extent of VPA's Liquidity Reserve Requirement. VPA shall transfer the remaining balance, if any, to the credit of the Revenue Stabilization Fund (as that term is defined in the Series Resolution).

ARTICLE III TERM

This Agreement shall commence on the date first written above and shall continue until terminated. VPA shall have the right to terminate this Agreement, at its sole discretion at any time, on written notice to VIT and any joinder parties.

ARTICLE IV PAYMENTS

Section 4.1 Payment of Net Revenue.

(a) All cash collected and received by VIT (including cash received from its Subsidiaries on a monthly basis) shall be promptly deposited with a Depositary to the credit of its operating account designated "VIT Operating Account". For clarity, each of VIT's current and future Subsidiaries (including HRCF) shall maintain its own applicable Liquidity Reserve Requirement and only distribute to VIT its applicable Net Revenue.

(b) On a monthly basis, on the VIT Payment Date, VIT (and any existing or future Subsidiaries of VPA or VIT) shall pay to VPA from the VIT Operating Account an amount equal to its Net Revenue, if any, for the immediately preceding VIT Measurement Period.

(c) During any Fiscal Year, the balance in the VIT Operating Account may be less than the Liquidity Reserve Requirement, provided that the amount of any Liquidity Reserve Requirement Shortfalls is restored in accordance with this Section 4.1(c). For any Measurement Period in which a Liquidity Reserve Requirement Shortfall occurs, no payment shall be made to VPA on the immediately following VIT Payment Date. A Liquidity Reserve Requirement Shortfall shall be restored on a monthly basis over a period of up to thirty-six months beginning on the next VIT Payment Date (so long as no Liquidity Reserve Requirement Shortfall occurs for the Measurement Period applicable to such VIT Payment Date). Such amount as determined by VIT, and approved by VPA, shall be no less than 1/36th of the Liquidity Reserve Requirement Shortfall (each such monthly restoration amount, a "Liquidity Reserve Requirement Restoration Amount"). Notwithstanding the foregoing, a Liquidity Reserve Requirement Shortfall may be restored in full by VIT at any time with VPA's approval. Further, any Liquidity Reserve Requirement Shortfall may be recalculated

and combined with any additional subsequent Liquidity Reserve Requirement Shortfall at any time by VIT, if approved by VPA, provided that the recalculation of the Liquidity Reserve Requirement Restoration Amount shall not extend the restoration of any Liquidity Reserve Requirement Shortfall beyond the original permitted thirty-six month period.

(d) On the adoption of each VIT Annual Budget, if the new Liquidity Reserve Requirement is *greater than* the prior year's Liquidity Reserve Requirement, the difference shall be considered a Liquidity Reserve Requirement Shortfall for the first Measurement Period to which the new VIT Annual Budget applies and shall be restored within the first three VIT Payment Dates which occur in the Fiscal Year to which the VIT Annual Budget relates. If such Liquidity Reserve Requirement Shortfall is not restored in full in such three-month period, then it shall be restored in accordance with Section 4.1(c) above, beginning on the fourth VIT Payment Date of such Fiscal Year. On the adoption of each VIT Annual Budget, if the new Liquidity Reserve Requirement is *less than* the prior year's Liquidity Reserve Requirement, the excess amount of funds will be considered Gross Revenue for the first Measurement Period in the Fiscal Year to which the new VIT Annual Budget applies.

(e) Pursuant to the Bond Resolution, the amounts paid by VIT to VPA pursuant to this Section 4.1 shall be deposited by VPA with a Depository to the credit of its Operating Account, as that term is defined in the Bond Resolution.

ARTICLE V
PROHIBITION ON INDEBTEDNESS, ELIGIBLE CREDIT FACILITY, SUBSIDIARY
PAYMENTS

Section 5.1 Prohibition on Indebtedness; Eligible Credit Facility.

VIT and Subsidiaries shall not incur Indebtedness (as that term is defined in the Bond Resolution). Notwithstanding the foregoing, upon written approval by VPA, VIT, or any Subsidiaries, may at any time and from time to time substitute for up to and including fifty percent (50%) of the Liquidity Reserve Requirement a revolving loan facility, standby letter of credit or other credit facility issued in favor of VIT or such Subsidiary by a United States bank or financial institution or foreign bank or financial institution with a United States branch in each case having a long-term senior rating of no less than "A3" from Moody's Investors Service, Inc. and "A-" from Standard and Poor's (an "Eligible Credit Facility"). In connection with such Eligible Credit Facility, VIT or such Subsidiary may enter into a reimbursement agreement with the provider of the Eligible Credit Facility by the terms of which VIT or its Subsidiary may be obligated to repay any draw(s) on the Eligible Credit Facility on the same terms as it would restore Liquidity Reserve Requirement Restoration Amounts and to agree and arrange with VPA for the payment of any fees or expenses associated with obtaining or maintaining the Eligible Credit Facility and interest or expenses or other amounts due and payable by VIT or its Subsidiary under such reimbursement agreement from funds available to VPA, all as provided in the Bond Resolution. If the provider of the Eligible Credit Facility for any reason does not maintain a long-term senior rating as required above, VIT shall do one of the following: (a) cancel the ineligible credit facility and replenish the Liquidity Reserve Requirement in cash to the amount required by this Agreement over a period of time not to exceed 36 months as determined by VIT or its

Subsidiary and approved by VPA; (b) replace the ineligible credit facility with an Eligible Credit Facility; or (c) draw on the ineligible credit facility and repay the issuing bank or financial institution the amount so drawn over a period of time not to exceed 36 months as determined by VIT or its Subsidiary and approved by VPA.

Section 5.2 Subsidiary Payments.

VIT covenants to require all of its Subsidiaries (including but not limited to HRCP) to distribute ultimately to VIT, on a monthly basis on or before each VIT Payment Date, all Net Revenue for the immediately preceding Measurement Period. To evidence such agreement, all of VIT's current and future Subsidiaries, as well as any additional future VPA Subsidiaries, shall sign a Joinder to this Agreement in the form attached as Exhibit A.

ARTICLE VI
MISCELLANEOUS PROVISIONS

Section 6.1 Amendments.

This Agreement may be amended only in accordance with the provisions of Section 1104 or 1105 of the Bond Resolution.

Section 6.2 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and facsimile signatures shall have the same binding effect as manual signatures.

Section 6.3 Severability.

Each article, section, subsection and lesser section of this Agreement constitutes a separate and distinct undertaking, covenant or provision thereof. In the event that any one or more of the provisions of this Agreement should for any reason be held invalid, illegal, or unenforceable by any court or authority having jurisdiction over this Agreement or over the parties hereto, such provision or provisions shall be reformed to approximate as nearly as possible the original intent of the parties. It is mutually agreed that the remainder of this Agreement shall be valid and enforceable to the maximum extent possible.

Section 6.4 Governing Law.

This Agreement shall be construed under, and the legal relations between the parties hereto shall be determined in accordance with, the substantive laws of the Commonwealth, as such laws apply to contracts signed and fully performed in the Commonwealth, without giving effect to its rules pertaining to conflicts of law.

Section 6.5. Parties Bound

Except to the extent otherwise expressly provided herein or therein, this Agreement

shall be binding on and inure to the benefit of the Parties hereto and, to the extent assignable or transferable, their respective representatives, successors and assigns, and no other person or entity shall have any right, benefit or obligation hereunder or thereunder.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have caused this Payment Agreement to be signed by their duly authorized officers as of the date and year first written above.

VIRGINIA PORT AUTHORITY

By: _____
John F. Reinhart, Executive Director

VIRGINIA INTERNATIONAL TERMINALS, LLC

By: _____
Shawn Tibbetts, Chief Operations Officer

JOINDER TO PAYMENT AGREEMENT

This JOINDER TO PAYMENT AGREEMENT (“Joinder”) is made as of _____, 20__ by the undersigned and provides as follows:

RECITALS:

- A. Reference is made to that certain Payment Agreement by and between Virginia Port Authority and Virginia International Terminals, LLC (the “Payment Agreement”).
- B. The undersigned is a ‘Subsidiary’, as such term is defined in the Payment Agreement and is a ‘Port Operator’, as such term is defined in the Bond Resolution, and wishes to evidence its agreement to the obligations of Subsidiaries set forth in the Payment Agreement as set forth below.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agrees as follows:

- 1. All capitalized terms not defined in this Joinder have the meanings set forth in the Payment Agreement.
- 2. The undersigned hereby agrees to all of the obligations of a Subsidiary under the Payment Agreement. Specifically, the undersigned agrees to maintain its own applicable Liquidity Reserve Requirement. Further, pursuant to Section 5.2 of the Payment Agreement, the undersigned Subsidiary agrees to distribute to VIT, on a monthly basis on or before each VIT Payment Date, all Net Revenue for the immediately preceding Measurement Period.
- 3. This Joinder shall be construed under and determined in accordance with the substantive laws of the Commonwealth, as such laws apply to contracts signed and fully performed in the Commonwealth, without giving effect to its rules pertaining to conflicts of law.
- 4. Except to the extent otherwise expressly provided herein or therein, this Joinder shall be binding on and inure to the benefit of the undersigned and the parties to the Payment Agreement and, to the extent assignable or transferable, their respective representatives, successors and assigns, and no other person or entity shall have any right, benefit or obligation hereunder or thereunder.

[Signature Page Follows]

HRCP II, L.L.C.

By: VIRGINIA INTERNATIONAL TERMINALS,
LLC

Its: Sole member

By: _____
Shawn Tibbetts, Chief Operations Officer