
THIRD AMENDED AND RESTATED OPERATING AGREEMENT

OF

HRCP II, L.L.C.

November 1, 2016

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**THIRD AMENDED AND RESTATED OPERATING AGREEMENT
OF
HRCP II, L.L.C.**

THIS THIRD AMENDED AND RESTATED OPERATING AGREEMENT is made and entered into as of November 1, 2016 by VIRGINIA INTERNATIONAL TERMINALS, LLC, a Virginia limited liability company (“VIT”), the sole member of HRCP II, L.L.C., a Virginia limited liability company (the “Company”), to set forth the terms and conditions on which the management, business and affairs of the Company shall be conducted.

**SECTION 1
ORGANIZATIONAL MATTERS**

1.01 Formation. The Company was formed as a Virginia limited liability company on March 4, 2004. The rights and obligations of the Member shall be as provided in the Act, except as otherwise expressly provided herein. In the event of any inconsistency between any terms and conditions contained in this Agreement and any non-mandatory provisions of the Act, the terms and conditions contained in this Agreement shall govern, and in the event of any inconsistency between any items and conditions contained in this Agreement and any mandatory provisions of the Act, the terms and conditions of the Act shall govern. The Company is an entity legally separate from the Member, and the Member shall not be liable for the Company’s liabilities.

1.02 Name. The name of the Company shall be HRCP II, L.L.C.

1.03 Principal Office. The principal office of the Company is 1431 International Terminal Blvd., Norfolk, VA 23505, or such other place as the Member may from time to time designate. The Company may have other offices at any place or places as may be determined by the Member.

1.04 Purpose. The primary purposes of the Company shall be:

(a) To operate, maintain, develop and improve an efficient and safe pool of intermodal chassis serving the users of the public ocean marine terminals of the ports of the Commonwealth of Virginia.

(b) To manage, as directed by the Member, empty container yards inside or outside the Commonwealth of Virginia.

(c) To have and exercise all powers conferred by the laws of the Commonwealth of Virginia upon a limited liability company formed under the Act.

(d) To carry on any activity in furtherance of any of the foregoing purposes without limitation, except such limitations, if any, as may be provided by law, provided that no part of the net earnings of the Company shall inure to the benefit of, or be distributable to, any

private persons, except that the Company shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 1.04 hereof. No substantial part of the activities of the Company shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Company shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any provision herein to the contrary, the Company shall not carry on any other activities not permitted to be carried on by a limited liability company under the Code.

(e) To engage in any and all other lawful activities as may be necessary, incidental or convenient to carrying out the business of the Company as contemplated by this Agreement. The Company may also pursue any other lawful activity that is approved by the Member.

The purpose of the Company shall be carried out in accordance with the key standing policies of the Company, as determined by the Authority, including but not limited to the Company's Procurement Policy, copies of which policies are attached hereto as Exhibit A. No rights of third party beneficiaries are created by attaching the aforesaid policies.

Notwithstanding anything herein to the contrary, the Company shall not incur any Indebtedness, as such term is defined in the Resolution.

1.05 Certificate of Formation; Filings. The Company executed and filed Articles of Organization with the Virginia State Corporation Commission at the time of its initial formation. The General Manager may execute and file any amendments to the Articles of Organization authorized by the Member from time to time in a form prescribed by the Act. The General Manager also shall cause to be made, on behalf of the Company, such additional filings and recordings as the General Manager shall deem necessary or advisable.

1.06 Fictitious Business Name Statements; Qualification in Other States. Following the execution of this Agreement, fictitious business name statements and qualifications in various states may be filed and published as deemed necessary by the General Manager.

1.07 Registered Office and Registered Agent. The Company shall continuously maintain a registered office and a designated and duly qualified agent for service of process on the Company in the Commonwealth of Virginia. As of the date of this Agreement, the address of the registered office of the Company is 600 World Trade Center, Norfolk, Virginia 23510, and the registered agent of the Company is James W. Noel, III, who is a resident of Virginia, a member of the Virginia State Bar and whose business address is identical with the registered office of the Company. The registered office and registered agent may be changed from time to time by action of the Member.

1.08 Term. The Company commenced on March 4, 2004, and shall continue until terminated pursuant to this Agreement.

SECTION 2

DEFINITIONS

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) “Act” shall mean the Virginia Limited Liability Company Act, Va. Code Section 13.1-1000 et seq., as amended and in force from time to time.

(b) “Affiliate” means, with respect to the Member or the General Manager or employee of the Company, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Member, General Manager or employee and shall include any relative or spouse of such Member, General Manager or employee or any relative of such Member’s, General Manager’s or employee’s spouse. As used in the foregoing sentence, the term “control” means possession, directly or indirectly, of the power to direct or cause a direction of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

(c) “Articles” shall mean the Articles of Organization of the Company as filed with the State Corporation Commission of Virginia and as amended from time to time.

(d) “Authority” shall mean Virginia Port Authority.

(e) “Budget” shall mean an annual operating and capital budget for the Company and all of its Subsidiaries, approved in each case by the Member and the Authority.

(f) “Code” shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding federal revenue laws.

(g) “Company” shall mean HRCP II, L.L.C., a Virginia limited liability company.

(h) “Entity” shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association.

(i) “Fiscal Year” shall mean the Company’s fiscal year, which shall be concurrent with the fiscal year of the Member and the Authority, commencing each year on July 1 and ending on June 30.

(j) “General Manager” shall mean a manager as defined in the Act and the General Manager as specified in Section 3.

(k) “Member” shall mean VIT.

(l) “Third Amended and Restated Operating Agreement” or “Agreement” shall mean this Third Amended and Restated Operating Agreement as originally executed and as amended from time to time.

(m) “Payment Agreement” shall mean that certain Payment Agreement dated of even date herewith, as amended and restated from time to time, between the Member and the Authority and acknowledged by the Company. The Member hereby acknowledges and authorizes the execution of the Payment Agreement by the Company.

(m) “Person” shall mean any natural person or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

(n) “Resolution” means Resolution 16-9 of the Board of Commissioners of the Authority, adopted September 21, 2016, as such may be amended or restated from time to time.

(o) “Subsidiary” means, with respect to the Company, 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 the Company or one or more of the other Subsidiaries of the Company 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 the Company or one or more Subsidiaries of the Company or a combination thereof and for this purpose, the Company owns a majority ownership interest in such a business entity (other than a corporation) if the Company or one or more Subsidiaries of the Company 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.

SECTION 3 **MANAGEMENT**

3.01 Manager. The Company shall be managed under the direction of one (1) manager, who shall be called the “General Manager”. The General Manager shall be an individual who shall be appointed and may be removed at any time, with or without cause, and whose compensation shall be determined, by the Chief Operations Officer of the Member with approval of the Executive Director of the Authority. The General Manager shall exercise general supervision over the day-to-day business operations of the Company. The General Manager shall report on such operations to the Member and the Chief Operations Officer of the Member at such times and in such manner as required by the Member from time to time. The current General Manager of the Company is Arthur Ellermann.

3.02 General Powers of the Manager.

(a) Except as otherwise limited in this Operating Agreement, the General Manager shall have the exclusive right to manage the Company and to make all decisions regarding the business of the Company. The General Manager shall carry out the policies, directions, orders and resolutions of the Member in the manner described in this Operating Agreement and as authorized and directed by the Member from time to time. The General Manager may delegate prescribed functions to any employee, officer, agent or consultant.

(b) The General Manager is granted the right, power and authority to do in the name of, and on behalf of, the Company all things that, in his sole judgment, are necessary, proper or desirable to carry out the purposes of the Company. Third parties may rely on the authority of the General Manager, without further inquiry, including, but not limited to, the right, power and authority of the General Manager to:

(i) Enter into, make and perform contracts, agreements and other undertakings binding the Company that may be necessary, appropriate or advisable in furtherance of the purposes of the Company, except as otherwise limited herein.

(ii) Open and maintain bank accounts, investment accounts and other arrangements, draw checks and other orders for the payment of money, and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements; provided, that Company funds shall not be commingled with funds from other sources and shall be used solely for the benefit of the Company.

(iii) Collect funds due to the Company.

(iv) Acquire, utilize for the Company's purposes, maintain and dispose of any assets of the Company, with the express exception of disposal of real property, as otherwise restricted herein.

(v) Pay Indebtedness of the Company which has been approved by the Authority, to the extent that funds of the Company are available therefor.

(vi) Employ from time to time persons, firms or corporations for the operation and management of the Company, including, without limitation, managing agents, contractors, subcontractors, architects, engineers, laborers, suppliers, accountants and attorneys, on such terms and for such compensation as the General Manager shall determine, notwithstanding the fact that the General Manager or the Member may have a financial interest in such firms or corporations.

(vii) Make elections available to the Company under the Code.

(viii) Obtain general liability, property and other insurance for the Company, as the General Manager deems proper.

(ix) Take such actions as may be directed by the Member in furtherance of the approval of any matter set forth in Section 5 hereof.

(x) Do and perform all such things and execute, acknowledge and deliver any and all such instruments as may be in furtherance of the Company's purposes and necessary and appropriate to the conduct of its business.

(c) Notwithstanding the foregoing, the General Manager must obtain the express written consent of the Member and the Executive Director of the Authority prior to taking the following actions on behalf of the Company:

(i) Adopting the Budget.

(ii) Entering into any contract involving the commitment or expenditure of funds not contemplated by, or outside the scope of, the Budget for the then-current fiscal year approved by the Member.

(iii) Leasing, selling or disposing of any real property of the Company.

(iv) Modifying any chassis pool rate structure previously established or approved by the Executive Director.

(v) Creating or acquiring any Subsidiary.

(d) The General Manager shall be responsible for directing and managing all activities of the Company's chassis pool, including but not limited to finance, operations, maintenance and repair, and administrative functions. The General Manager is also responsible for ensuring all local, state and federal guidelines relating to the Company's chassis pool are adhered to and shall, without limitation:

(i) Develop the Budget to ensure operating and maintenance and repair costs are accurately forecasted.

(ii) Ensure financial results are managed to profitable levels and reported accurately.

(iii) Oversee all operations to ensure good order chassis are available.

(iv) Oversee all empty container yards in which the Authority or the Member has a possessory interest.

(v) Directly and indirectly manage all staff of the Company, including establishing and achieving goals and objectives.

(vi) Improve effectiveness of staff by recruiting, selecting, training, coaching and counseling as required.

(vii) Ensure maintenance and repair costs are managed within the Budget.

(viii) Develop clear standards and strategies to ensure continuous improvement regarding all activities pertaining to the Company's chassis pool.

(ix) Communicate policies and procedures to internal and external customers.

(x) Maintain industry and technical knowledge through trade related organizations and benchmarking best practices.

(xi) Promote safety awareness and regulatory compliance.

(xii) Ensure up-to-date understanding of all regulations affecting the Company chassis pool.

(e) All actions taken by the General Manager on behalf of the Company from the date of its organization to the execution of this Agreement are ratified and confirmed.

3.03 Tenure. The General Manager shall hold office until his death, resignation, disqualification or removal.

3.04 Expense Reimbursement. The General Manager shall be entitled to reimbursement for expenses incurred by him in performing his duties, according to the policies set by the Authority from time to time.

SECTION 4

LIMITATION OF LIABILITY; INDEMNIFICATION

4.01 Limitation of Liability of Manager. In any proceeding brought by or in the right of the Company or brought by or on behalf of the Member, the General Manager (in his capacity as General Manager) or any of his Affiliates shall not be liable to the Company or its Member for any monetary damages arising out of any transaction, occurrence or course of conduct, unless in such proceeding the General Manager or any of his Affiliates was adjudged to have engaged in willful misconduct or a knowing violation of the criminal law.

4.02 Indemnity of Manager. The General Manager shall be indemnified by the Company under the following circumstances and in the manner and to the extent indicated:

(a) Every Person, and his heirs, executors and administrators, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or

proceeding of any kind, whether civil, criminal, administrative, arbitrative or investigative, or was or is the subject of any claim, and whether or not by or in the right of the Company, by reason of his being or having been a General Manager, or by reason of his serving or having served at the request of the Company as a director, officer, manager, employee or agent of another Entity, or at the request of the Company in any capacity that under Federal law regulating employee benefit plans would or might constitute him a fiduciary with respect to any such plan, whether or not such plan is or was for employees of the Company, shall be indemnified by the Company against expenses (including attorneys' fees), judgments, fines, penalties, awards, costs, amounts paid in settlement and liabilities of all kinds, actually and reasonably incurred by him in connection with, or resulting from, such action, suit, proceeding or claim, if he acted in good faith and in the manner he reasonably believed to be in, or not opposed to, the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, provided that no indemnification shall be made in respect of any claim, issue or matter as to which he shall have been adjudicated to be liable to the Company for willful misconduct or a knowing violation of the criminal law in the performance of his duty to the Company unless, and only to the extent, that the court in which such action, suit or proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, he is fairly and reasonably entitled to indemnity. The termination of any such action, suit or proceeding by judgment, order or conviction, or upon a plea of nolo contendere or its equivalent, or by settlement, shall not of itself create a presumption that any such Person did not act in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Company.

(b) Any indemnification under Section 4.02(a) (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of such Person is proper in the circumstances because the General Manager had met the applicable standard of conduct set forth in such paragraph. Such determination may be made either (i) by independent legal counsel in a written opinion, if the Member so directs, or (ii) by the Member.

(c) Reasonable expenses (including attorneys' fees) incurred by or in respect of any such Person in connection with any such action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative, shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking by, or on behalf of, such Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Company.

(d) The General Manager of the Company shall have the power, generally and in specific cases, to indemnify his employees and agents to the same extent as provided in this Section with respect to its General Manager.

(e) The provisions of this Section are in addition to, and not in substitution for, any other right to indemnity to which any Person who is or may be indemnified by or pursuant to this Section may otherwise be entitled, and to the powers otherwise accorded by law to the Company to indemnify any such Person and to purchase and maintain insurance on behalf

of any such Person against any liability asserted against or incurred by him in any capacity referred to in this Section or arising from his status as serving or having served in any such capacity (whether or not the Company would have the power to indemnify against such liability).

(f) If any provision of this Section shall be adjudicated invalid or unenforceable, such adjudication shall not be deemed to invalidate or otherwise affect any other provision hereof or any power of indemnity which the Company may have under the laws of the Commonwealth of Virginia.

(g) No amendment or repeal of this Section shall limit or eliminate the right to indemnification provided hereunder with respect to acts or omissions occurring prior to such amendment or repeal.

4.03 No Personal Liability to Member. Notwithstanding any provision of Section 4.02 above, the indemnification provided in Section 4.02 shall in no event cause the Member to incur any liability to the Company, nor shall it result in any liability of the Member to any third party.

SECTION 5

ACTION BY THE MEMBER

5.01 Action by Consent. Any action required or permitted by law to be taken at a meeting of the members of a limited liability company may be taken without a meeting if one or more written consents to such action are signed by the Member. Action taken under this Section is effective when the Member signs the consent or consents, unless the consent or consents specifies a different effective date.

5.02 Limitations on Powers of the Member. Notwithstanding anything herein to the contrary, the Member may not take any of the following actions on behalf of the Company unless it has obtained the express written consent of the Executive Director of the Authority:

- (i) Making any amendment to this Operating Agreement.
- (ii) Entering into or approving any material contract, agreement or undertaking, or any amendment thereto, that has a material effect on the Company's Budget or operations in any respect.

SECTION 6

DISTRIBUTIONS

Distributions shall be made by the Company to the Member at such times and in such amounts as the Member shall determine in its sole discretion; provided, however, the Company's obligation, and the General Manager's authority, to make any distribution is subject to the restrictions governing distributions under the Act and such other pertinent governmental restrictions as are now and may hereafter become effective. Currently, among other prohibitions, the Act

prohibits the Company from making a distribution to the extent that, after giving effect to the distribution, liabilities of the Company exceed the fair value of the assets of the Company.

SECTION 7

DISSOLUTION AND TERMINATION

7.01 Events of Dissolution. The Company shall be dissolved upon the occurrence of any of the following events:

(a) The written determination by the Member and the Authority to dissolve the Company;

(b) The sale, transfer or assignment of substantially all of the assets of the Company;

(c) The adjudication of the Company as insolvent within the meaning of insolvency in either bankruptcy or equity proceedings, or the filing of an involuntary petition in bankruptcy against the Company (which is not dismissed within ninety (90) days), or the filing against the Company of a petition for reorganization under the federal bankruptcy code or any state statute (which is not dismissed within ninety (90) days), or a general assignment by the Company for the benefit of creditors, or the voluntary claim (by the Company) that it is insolvent under any provisions of the federal bankruptcy code (or any state insolvency statutes), or the appointment for the Company of a temporary or permanent receiver, trustee, custodian or sequestrator, and such receiver, trustee, custodian or sequestrator is not dismissed within ninety (90) days; or

(d) As otherwise required by Virginia law.

7.02 Distribution. Upon the dissolution of the Company, it shall wind up its affairs by distributing the Company's net assets to the Member.

7.03 Orderly Liquidation. A reasonable time as determined by the General Manager (or the Person or Persons carrying out the liquidation) not to exceed eighteen (18) months shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to the creditors so as to minimize any losses attendant upon dissolution.

7.04 Certificate of Cancellation.

(a) Within a reasonable time following the completion of the liquidation of the Company, there shall be supplied to the Member a statement which shall set forth the assets and the liabilities of the Company as of the date of complete liquidation. Upon completion of the liquidation of the Company and the distribution of all the Company's assets, the Company shall terminate, and the Member shall execute and record a Certificate of Cancellation of the Company, as well as any and all other documents required to effectuate the dissolution and termination of the Company.

(b) Upon the issuance of the filing of the Certificate of Cancellation, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act. The General Manager shall thereafter be trustee for the Member and creditors of the Company and as such shall have authority to distribute any Company property discovered after dissolution, convey real estate, if any, and take such other action as may be necessary on behalf of and in the name of the Company.

SECTION 8 MISCELLANEOUS PROVISIONS

8.01 Bank Accounts. The Company shall maintain such bank accounts as the General Manager may determine to be appropriate from time to time.

8.02 Books of Account and Records. Proper and complete records and books of account shall be kept or shall be caused to be kept by the General Manager in which shall be entered fully and accurately all transactions and other matters relating to the Company in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. The books and records shall at all times be maintained at the principal office of the Company, which initially shall be located at 1431 International Terminal Boulevard, Norfolk, VA 23505, and shall be open to inspection and examination of the Member or its duly authorized representatives during reasonable business hours.

8.03 Application of Virginia Law. This Operating Agreement, and the interpretation hereof, shall be governed exclusively by its terms and by the laws of the Commonwealth of Virginia, without reference to its choice of law provisions, and specifically the Act.

8.04 Amendments. This Operating Agreement may be amended by the Member at any time.

8.05 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.

8.06 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

8.07 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

8.08 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

8.09 Severability. If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

8.10 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company. The specific intent of the undersigned is that there shall be no third-party beneficiaries of this Agreement.

8.11 Entire Agreement. This Agreement sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and supersedes all negotiations, conversations, discussions, correspondence, memoranda and agreements between the parties concerning such subject matter.

[Signature on following page]

The undersigned, being the sole Member of the Company, hereby agrees, acknowledges and certifies that the foregoing Operating Agreement constitutes the sole and entire Operating Agreement of HRPC II, L.L.C., adopted as of the date first written above.

MEMBER:

VIRGINIA INTERNATIONAL TERMINALS, LLC

By: VIRGINIA PORT AUTHORITY,
its sole member

By: _____

Name: John F. Reinhart

Title: Executive Director

SEEN AND CONSENTED TO:

Executive Director of
Virginia Port Authority

[Signature page to Third Amended and Restated Operating Agreement of HRCF II, L.L.C.]

EXHIBIT A

KEY POLICIES

[Attached]