

## **EXPLANATION OF CONSENT AGENDA ITEM E.2.c. (9) March 23, 2016**

### **ITEM:**

Consideration of approving consent of assignment of Lease Agreement dated March 30, 2010 by and between Canaveral Port Authority and Port Canaveral Marine Center, LLC to Midland States Bank. The consent to assignment has been reviewed and approved by General Counsel and the Port Attorney. (Denig/Shepard)

### **EXPLANATION:**

Port Canaveral Marine Center, was assigned by Special Warranty Deed and Assignment to HB Realty Corporation (HB Realty) on December 10, 2010.

On December 31, 2014, Heartland Bank (Heartland) merged with Midland States Bank (Midland). The Merger was approved by the United States Federal Reserve Board, pursuant to Federal Reserve Bank and the State of Illinois, Department of Financial and Professional Regulation.

HB Realty was a wholly owned subsidiary of Heartland as of the Merger.

On May 20, 2015, Midland elected to dissolve and terminate HB Realty pursuant to Plan of Complete Liquidation dated May 22, 2015, and assign all of its assets, including without limitation all leases, to its sole shareholder, Midland.

Midland States Bank is the current Lessee under the Lease, effective as of May 21, 2015

Pursuant to Section 14(a) of the Lease Midland is requesting the Port's consent to assignment of the Lease from HB Realty Corporation to Midland States Bank.

Approval of this agenda item has no monetary impact and actually cleans up the ownership trail and replaces the dissolved company with a Bank as owner.

**Staff recommends approval.**

**Prepared by Diane Denig/Scott Shepard**

*dd/ss*

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# THOMPSON BURTON PLLC

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A T T O R N E Y S A T L A W  
A PROFESSIONAL LIMITED LIABILITY COMPANY

One Franklin Park  
6100 Tower Circle, Suite 200  
Franklin, Tennessee 37067  
www.thompsonburton.com

William W. Burton  
[walt@thompsonburton.com](mailto:walt@thompsonburton.com)

Direct Dial: 615-465-6002  
\*Licensed in GA, IL, and TN

March 9, 2016

**VIA ELECTRONIC MAIL**

Craig Langley  
General Counsel  
Canaveral Port Authority  
445 Challenger Road Ste 301  
Cape Canaveral, Florida 32920

Re: Assignment of Lease Agreement by and between Canaveral Port Authority (the "Port Authority") and Port Canaveral Marine Center LLC dated March 30, 2010, recorded in Official Records Book 6138, Page 2709 of the public records of Brevard County, Florida, as assigned from Port Canaveral Marine Center, LLC to HB Realty Corporation, a Missouri corporation ("HB Realty"), by Special Warranty Deed and Assignment dated December 10, 2010 recorded in Official Records Book 6298, Page 723, of the public records of Brevard County, Florida (collectively, the "Lease")

Craig:

As you know, this law firm represents Midland States Bank ("Midland"). As set forth in the Title Affidavit attached hereto as **Schedule 1**, Midland is the successor in interest to HB Realty, lessee under the Lease. The purpose of this letter is to evidence the Port Authority's consent in accordance with Section 14(a) of the Lease to the assignment of the Lease from HB Realty to Midland as described in the Affidavit.

Please coordinate the acknowledgment of this letter where indicated below by Port Authority to confirm the contents of this letter, and thereafter return the signed letter to my attention via electronic mail. The parties agree that this letter agreement may be signed in counterparts.

Feel free to contact me with any questions. Thank you.

Very truly yours,

William W. Burton

*[Signatures Continue on the Following Page]*

**ACKNOWLEDGED AND AGREED  
TO BY AN AUTHORIZED REPRESENTATIVE**

**CANAVERAL PORT AUTHORITY**

By: \_\_\_\_\_  
Jerry W. Allender, Chairman

ATTEST: \_\_\_\_\_  
Thomas W. Weinberg, Secretary

(CORPORATE SEAL)

cc: Glory Breese (via E-mail)  
Chris Rubino, Esq. (via E-mail)

**Schedule 1**

Title Affidavit

**TITLE AFFIDAVIT**

STATE OF ILLINOIS

COUNTY OF EFFINGHAM

I, Glory Breese, Special Assets Officer at Midland States Bank, an Illinois state chartered bank ("Midland"), after first being duly sworn, do hereby state and depose, under penalties of perjury and upon oath, as follows:

1. I am over the age of 18 years, have not been known by any name other than that shown above, and have personal knowledge of the facts and circumstances as herein set forth;
2. Canaveral Port Authority (the "Port Authority") and Port Canaveral Marine Center LLC entered into Lease Agreement dated March 30, 2010, recorded in Official Records Book 6138, Page 2709 of the public records of Brevard County, Florida, as assigned from Port Canaveral Marine Center, LLC to HB Realty Corporation, a Missouri corporation ("HB Realty"), by Special Warranty Deed and Assignment dated December 10, 2010 recorded in Official Records Book 6298, Page 723, of the public records of Brevard County, Florida (collectively, the "Lease") with respect to certain real property described in **Exhibit "A"** attached hereto;
3. Effective on December 31, 2014, Heartland Bank, a Missouri banking corporation ("Heartland"), merged with Midland ("Merger"). The Merger was approved by the United States Federal Reserve Board, pursuant to Federal Reserve Bank Order No. 2014-22, and the State of Illinois Department of Financial and Professional Regulation, pursuant to Certificate of Merger No. 3542;
4. HB Realty was a wholly owned subsidiary of Heartland as of the Merger;
5. On May 20, 2015, Midland elected to dissolve and terminate HB Realty pursuant to Plan of Complete Liquidation dated May 22, 2015 as shown on **Exhibit "B"** attached hereto ("Plan of Complete Liquidation"), and assign all of its assets, including without limitation all leases, to its sole shareholder, Midland, pursuant to Assignment and Assumption Agreement dated May 21, 2015, which is attached hereto as **Exhibit "B"** (the "HB Assignment");
6. Pursuant to Section 14(a) of the Lease, the Port Authority has provided the requisite consent to the assignment of the Lease from HB Realty to Midland;
7. Midland States Bank is the current Lessee under the Lease, effective as of May 21, 2015.

*[Signatures Commence on the Following Page]*

Executed by me this \_\_\_\_\_ day of March 2016.

\_\_\_\_\_  
Glory Breese

STATE OF ILLINOIS

COUNTY OF EFFINGHAM

The foregoing instrument was sworn to, subscribed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by Glory Breese, who is personally known to me or has produced \_\_\_\_\_ as identification.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
(Typed or Printed Name of Notary Public)

## EXHIBIT "A"

### Legal Description of the Property

**Parcel A:**

A parcel of land lying in Section 9, Township 24 South, Range 37 East, Brevard County, Florida, and more particularly described as follows:

Commence at the Southeast corner of said Section 9, thence North 88 degrees 25'40" West, along the South line of said Section 9, a distance of 1,027.83 feet; thence run North 01 degrees 34'20" East, a distance of 159.48 feet to a point on the North right-of-way line of Mullet Road, thence run North 85 degrees 23'20" West along said North right-of-way line, a distance of 191.52 feet; thence run North 78 degrees 27'20" West along said North right-of-way line, a distance of 525.84 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING, thence run North 00 degrees 04'30" West, a distance of 229 feet to a point at the internal corner of the Bulkhead cap, thence run North 24 degrees 25'50" West, along said Bulkhead cap, a distance of 400 feet, thence run South 65 degrees 34'10" West, a distance of 249.5 feet, more or less, to the North right-of-way of Mullet Road; thence Southeasterly along the North right-of-way line of Mullet Road on a curve concave to the Northeast, a distance of 323 feet, more or less, to a point of tangency; thence South 45 degrees 58'30" East, along said North right-of-way, a distance of 279.38 feet, thence South 78 degrees 27'20" East, continuing along said North right-of-way line, a distance of 82.99 feet to the POINT OF BEGINNING (said property being also designated as Lots W-25, W-26, W-27, W-28, T-1 and T-2 on that certain map by the Canaveral Port Authority designated as "Lease Parcels-South-Job No. 55-1-WO-45")

Said parcel being subject to the following easements. Commence at the POINT OF BEGINNING of the fore-described parcel, thence North 00 degrees 04'30" West, a distance of 25.52 feet; thence North 89 degrees 27'20" West, a distance of 117.12 feet, to a point on the North right-of-way line of Mullet Road; thence South 45 degrees 58'30" East, along said North right-of-way line, a distance of 46.55 feet, thence South 78 degrees 27'20" East, a distance of 82.99 feet to the POINT OF BEGINNING; and a 15 foot drainage easement being the North 5 feet of Lot W-27 and the South 10 feet of Lot W-28 of the above described parcel and being subject to any other easements and/or rights-of-way of record

**Parcel B.**

A parcel of land lying in Section 9, Township 24 South, Range 37 East, Brevard County, Florida, and being more particularly described as follows:

Commence at the Southeast corner of said Section 9, thence North 88 degrees 25'40" West along the South line of said Section 9, a distance of 1,225.5 feet; thence North 00 degrees 04'50" West, a distance of 495.34 feet to a point on the external face of the Bulkhead Cap, thence South 89 degrees 55'30" West, along said Bulkhead Cap, a distance of 200.0 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING, thence continue South 89 degrees 55'30" West, along said Bulkhead Cap, a distance of 200.0 feet, thence South 00 degrees 04'50" East, a distance of 249.57 feet to the North right-of-way line of Mullet Road; thence South 78 degrees 27'20" East, along said North right-of-way line, a distance of 203.97 feet; thence North 00 degrees 04'50" West, a distance of 290.72 feet to the POINT OF BEGINNING. (Said property being also designated as Lots W-22 and W-23 on that certain map by the Canaveral Port Authority as "Lease Parcels - South - Job No. 55-1-WO45").

Said parcel being subject to the following easements. A 30 foot wide easement for emergency access and bulkhead maintenance along the North 30 feet of the above described parcel, a 5 foot wide drainage easement being the West 5 feet of the above described parcel, a 25 foot wide utility easement along the South property line parallel to Mullet Road, and being subject to any other easements and/or rights-of-way of record.

**Parcel C:**

A parcel of land lying in Section 9, Township 24 South, Range 37 East, Brevard County, Florida, and more particularly described as follows:

Commence at the Southeast corner of said fractional Section 9, thence North 88 degrees 25'40" West, along the South line of said Section 9, a distance of 1,027.83 feet, thence run North 01 degrees 34'20" East, a distance of 159.48 feet to a point on the North right-of-way line of Mullet Road; thence run North 85 degrees 23'20" West along said North right-of-way line, a distance of 191.52 feet; thence run North 78 degrees 27'20" West along said North right-of-way line, a distance of 525.84 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING, thence North 00 degrees 04'30" West a distance of 229.0 feet to a point on the face of a bulkhead; thence run North 89 degrees 55'30" East along the face of said bulkhead a distance of 100 feet; thence South 00 degrees 04'30" East a distance of 249.57 feet to a point on the North right-of-way line of Mullet Road; thence North 78 degrees 27'20" West, along said North right-of-way line, a distance of 101.98 feet to said POINT OF BEGINNING

(Said property being subject to a 30 foot easement for emergency access and bulkhead maintenance, being the North 30 feet of the above described parcel).

Together with:

**1. WATER RIGHTS EASEMENT.**

Commence at monument "CPA-11", having a Northing of 1480540.0923, and an Easting of 774412.9794, thence N 83 degrees 50' 42" E, a distance of 950.44 feet to a point on the North right-of-way line of Mullet Road; thence run N 00 degrees 04' 50" W, a distance of 288 21 feet to the Point of Beginning; thence run South 89 degrees 55' 30" West, a distance of 300.00 feet; thence run North 24 degrees 23' 06" West, a distance of 409.20 feet; thence run North 65 degrees 34' 04" East, a distance of 41.48 feet; thence run North 24 degrees 23' 06" West, a distance of 256.09 feet; thence run North 89 degrees 41' 10" East, a distance of 536.04 feet; thence run South 00 degrees 04' 50" East, a distance of 625.65 feet to the Point of Beginning.

And

Together with:

**2. WATER INGRESS & EGRESS EASEMENT & USE RIGHT:**

An easement over and a right to use the water area described below for the purpose of ingress and egress for boats coming to, and going from, the PCMC docks, to wit:

Commencing at monument "CPA-11", having a Northing of 1480540.092, and an Easting of 774412.9794, thence run N 83 degrees 50' 42" E, a distance of 950.44 feet to a point on the North right-of-way line of Mullet Road, thence S 00 degrees 04' 50" E, a distance of 288 21 feet, thence S 89 degrees 55' 30" W, a distance of 300.00 feet, thence N 24 degrees 23' 06" W, a distance of 409.20 feet to the Point of Beginning, thence N 65 degrees 34' 04" E, a distance of 41.48 feet, thence N 24 degrees 23' 06" W, a distance of 256.09 feet, thence N 89 degrees 41' 10" E, a

distance of 45.45 feet, to the East boundary line of Ports End Park, thence N 24 degrees 23' 22" E, along said boundary line, a distance of 274.67 feet to the Point of Beginning.

And

Together with:

**1. DRAINAGE AND LANDSCAPE EASEMENT.**

Commencing at monument "CPA-11", having a Northing of 1480540.092, and an Easting of 774412.9794, thence run North 83 degrees 50' 42" East, a distance of 950.44 feet to a point on the North right-of-way line of Mullet Road and the Point of Beginning; thence South 00 degrees 04' 50" East, a distance of 17.51 feet, thence North 78 degrees 16' 50" West, a distance of 297.00 feet; thence North 74 degrees 41' 32" West, a distance of 53.49 feet; thence North 64 degrees 39' 38" West, a distance of 43.19 feet; thence North 57 degrees 12' 53" West, a distance of 62.82 feet; thence North 46 degrees 35' 24" West, a distance of 105.05 feet; thence North 46 degrees 04' 39" West, a distance of 133.87 feet; thence North 44 degrees 35' 05" West, a distance of 73.76 feet; thence North 28 degrees 49' 23" West, a distance of 65.47 feet; thence North 11 degrees 35' 23" West, a distance of 74.59 feet; thence North 00 degrees 58' 13" West, a distance of 75.32 feet; thence North 07 degrees 23' 03" East, a distance of 21.42 feet; thence North 65 degrees 34' 04" East, a distance of 11.33 feet; thence South 00 degrees 03' 13" East, a distance of 101.71 feet to the beginning of a curve tangent to said line; thence Southerly and Southeasterly a distance of 138.83 feet along the curve concave to the Northeast, having a radius of 173.53 feet and a central angle of 45 degrees 50' 19"; thence South 45 degrees 53' 32" East tangent to said curve, a distance of 368.10 feet, thence South 78 degrees 31' 57" East, a distance of 384.01 feet to the Point of Beginning.

**NOTE: Parcel A, Parcel B, and Parcel C are also described as follows:**

**COMMENCING AT MONUMENT "CPA-11", HAVING A NORTHING OF 1480540.092, AND AN EASTING OF 774412.9794, THENCE RUN N83°50'42"E, A DISTANCE OF 950.44 FEET TO THE POINT OF BEGINNING; THENCE RUN NORTH 78°31'57" WEST, A DISTANCE OF 384.01 FEET; THENCE RUN NORTH 45°53'32" WEST, A DISTANCE OF 368.10 FEET TO THE BEGINNING OF A CURVE TANGENT TO SAID LINE; THENCE NORTHWESTERLY AND NORTHERLY A DISTANCE OF 138.83 FEET ALONG THE CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 173.53 FEET AND A CENTRAL ANGLE OF 45°50'19"; THENCE RUN NORTH 00°03'13" WEST TANGENT TO SAID CURVE, A DISTANCE OF 101.71 FEET; THENCE RUN NORTH 65°34'04" EAST, A DISTANCE OF 246.19 FEET; THENCE RUN SOUTH 24°23'06"E EAST, A DISTANCE OF 409.20 FEET; THENCE RUN NORTH 89°55'30" EAST, A DISTANCE OF 300.00 FEET; THENCE RUN SOUTH 00°04'50" EAST, A DISTANCE OF 288.21 FEET TO THE POINT OF BEGINNING. CONTAINING 215180.47 SQUARE FEET OR 4.94 ACRES, MORE OR LESS.**

**TOGETHER WITH INGRESS AND EGRESS OVER MULLET ROAD, A 40 FOOT RIGHT-OF-WAY TO STATE ROAD 528.**



## EXHIBIT "B"

### Plan of Complete Liquidation of HB Realty and Assignment to Midland States Bank

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#### PLAN OF COMPLETE LIQUIDATION OF HB REALTY CORPORATION, a Missouri corporation

1. This Plan of Complete Liquidation of HB Realty Corporation, a Missouri corporation dated as of May 22, 2015 (this "Plan"), is intended to accomplish the complete liquidation and dissolution of HB Realty Corporation, a Missouri corporation (the "Company"), in accordance with Section 332 and 337 of the Internal Revenue Code of 1986, as amended. The plan is that the Company shall completely liquidate on or before December 31, 2015, or as soon as practicable after receiving any necessary approvals (the "Liquidation Date"), by distributing all of its assets to its sole shareholder (the "Shareholder") pursuant to the terms of an Assignment and Assumption Agreement in the form attached hereto as *Appendix A* (the "Assignment Agreement").

2. Upon the adoption of this Plan of Complete Liquidation, the Company shall commence to wind up its business, and to pay and discharge or otherwise satisfy or provide for the satisfaction of all of its obligations, liabilities and commitments. Except to the extent required prior to the distribution of the operating assets of the Company, the Company shall cease to conduct an active business other than the consummation of this Plan.

3. One or more distributions shall be made to the Shareholder in cash or other property pursuant to the terms of the Assignment Agreement at such time or times and in such amounts as shall be determined by the president and chief executive officer of the Company provided that all of the assets of the Company remaining after the payment or satisfaction of or making provision for all of the obligations, liabilities and expenses of and claims against the Company shall in any and all events be distributed on or before the Liquidation Date.

4. Upon the final distribution in complete liquidation by the Company to its Shareholder of all of its remaining assets as provided in paragraph 3 above, the Shareholder shall surrender to the Company for retirement and cancellation all shares of the Company owned by the Shareholder and any certificates representing the same.

5. Following the distribution by the Company of all of its assets remaining after satisfying, discharging or making provisions for all of its liabilities, obligations and expenses, the Company shall voluntarily dissolve and surrender its charter as soon as the same can reasonably be effected.

6. This Plan of Complete Liquidation of the Company shall become effective upon its adoption and approval by the Shareholder on this date.

7. The Company shall file an Internal Revenue Service Form 966 with the IRS not later than thirty (30) days following the date of adoption and approval of this Plan by the Shareholder on this date.

**APPENDIX A**

**Assignment and Assumption Agreement**

KNOW ALL MEN BY THESE PRESENTS, that HB REALTY CORPORATION, a Missouri corporation ("Assignor"), does hereby grant, assign, transfer, set over and deliver to Midland States Bank, an Illinois state bank with its main office located in Effingham, Illinois, and sole shareholder of Assignor ("Assignee"), forever, all and singular Assignor's business, goodwill, properties and rights, of every kind and description, real or personal and wheresoever situated; and Assignor's right, title and interest in, to or under any and all real estate, buildings, structures and improvements, machinery, tools and equipment, fixtures, vehicles, all replacement and repair parts, all office equipment and supplies of every character, furniture, furnishings and supplies, all contracts, leases, agreements, conditional sale contracts, options, licenses of whatever character, franchises and franchise agreements and rights therein or thereunder, permits, deposits, prepaid items, insurance policies, orders, commitments, bonds, notes, shares of stock, all accounts receivable, all claims, actions, causes of action, in law or in equity, rights to damages, rights to accounting, advances, loans, credits, off-sets, counterclaims and recoupments, all inventories, goods in transit or in storage, labels, stamps, designs, all trademarks, trade names, copyrights and patents and applications therefor, rights therein, and all goodwill associated therewith, all trade secrets, books of account, invoices, original records, minute books, stock registers, correspondence and all other books and records, and all property, rights, assets and privileges of every kind and description which as of the date hereof are owned by Assignor or to which Assignor now is or may hereafter become entitled.

TO HAVE AND TO HOLD the same and each and all thereof unto said Assignee, its successors and assigns, to its own use and benefit, from this day forward.

Assignor hereby covenants and agrees that it will duly execute and deliver all such other and further instruments of transfer, assignments or conveyances to Assignee, its successors or assigns, as may be requested at any time or from time to time by Assignee, its successors or assigns, by way of further assurance or more particular description of the property and assets hereby intended to be conveyed, assigned or otherwise transferred, or any of the same.

All of the foregoing properties, assets, rights, franchises and privileges are conveyed, assigned, transferred and delivered by Assignor to Assignee, subject to all unsatisfied liabilities and obligations directly associated therewith as of the date hereof; all of which liabilities and obligations Assignee hereby assumes and undertakes to pay, satisfy and discharge.

IN WITNESS WHEREOF, the parties hereto have set its respective hand as of this 21<sup>ST</sup> day of May, 2015.

**HB REALTY CORPORATION,**  
a Missouri corporation

**MIDLAND STATES BANK,**  
an Illinois state bank

By: [Signature]  
Name: Doug Tucker  
Title: Sec VP, Corp Counsel

By: [Signature]  
Name: Doug Tucker  
Title: Sec VP Corp Counsel