

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into and effective as of [REDACTED] ("Effective Date"), by and between the **BOARD OF TRUSTEES OF THE GALVESTON WHARVES** ("Lessor"), a separate utility of the City of Galveston, Texas (the "City"), and [REDACTED] ("Lessee"), a Texas corporation. Lessor and Lessee hereby agree as follows:

### ARTICLE 1 – RIGHTS GRANTED

Section 1.01 – Lease of Property. Lessor, for and in consideration of the fees, charges and other sums payable by Lessee hereunder and the covenants and premises contained in this Agreement and to be kept, performed and observed by Lessee, and subject to the conditions, reservations, and restrictions contained in this Agreement, does hereby lease and demise to Lessee, and Lessee does hereby lease and accept from Lessor, the warehouse at the Port of Galveston, Galveston, Texas (the "Port") known as the [REDACTED], all as outlined on Exhibit A, which is attached to this Agreement and incorporated by reference (the "Land"), and all permanent improvements in existence on the Land as of the Effective Date, including without limitation any sheds, buildings, tanks, docks, wharves, bulkheads, piers, pilings, dolphins, ramps, warehouses, structures, paving, fences, or other fixtures or improvements owned by Lessor (the "Existing Improvements"). The Land and the Existing Improvements, together with any Lessee Improvements (defined below) that may be constructed by Lessee are collectively defined in this Agreement as the "Leased Premises". The Existing Improvements and any Lessee Improvements are collectively defined in this Agreement as the "Improvements".

TO HAVE AND TO HOLD the Leased Premises, together with all rights, privileges, easements, appurtenances and other interests belonging to or in any way pertaining to the Leased Premises, subject to the terms of this Agreement. This Agreement, and the rights of the Lessee hereunder, are subject, however, to (i) all federal, state and local law, (ii) all restrictions, covenants, conditions, reservations, encumbrances, and easements, if any, relating to the Leased Premises, but only to the extent they are still in effect and shown of record in the Galveston County real property records or apparent from visual inspection, and (iii) any rights reserved herein to Lessor.

Section 1.02 – Lessor's Reserved Rights. Lessor reserves the right to (i) use any street or roadway constructed by Lessee or located on the Leased Premises, (ii) relocate or make changes in and additions to any easements, right-of-way dedications, limitations, reservations, and grants for the purpose of most efficiently and economically developing the Port, and (iii) locate, relocate, construct, erect, and maintain, in and on any streets or roadways, sewer lines, water lines, electrical lines, and conduits maintained by the Lessor, as well as other pipelines, conduits, wires, and utility functions beneath or above the surface of the ground, with the right of access to the same at any time for the purposes of repair and maintenance; provided, however, that in exercising any of these reserved rights Lessor must not unreasonably interfere with Lessee's use of the Leased Premises, and must comply with Lessee's standard engineering requirements for such uses. Lessor has the right to use third parties to exercise the rights reserved to Lessor under this Section, and the right to grant easements or rights of way reserved to Lessor in this Section to other parties to exercise these reserved rights.

Section 1.03 – Relocation. At any time during the Term (defined below), Lessor may relocate Lessee to other property at the Port to be used as the Leased Premises if, in Lessor's sole determination, the property to which Lessee will be relocated contains approximately the same square feet of space and provides the same or similar advantages as provided by the Leased Premises described in Section 1.01. Lessor must provide written notification of any such relocation to Lessee at least 60 days before Lessee is required to occupy the substituted space. Lessor must pay for all of Lessee's reasonable costs and expenses associated with the relocation of Lessee to such substituted property. Any property substituted for the areas described as the Leased Premises in Section 1.01 above will be considered the Leased Premises for all purposes under this Agreement beginning on the date it is occupied by Lessee, and its occupancy by Lessee is subject to all the terms of this Agreement. After Lessee occupies the new property, the property formerly occupied by Lessee will no longer be considered the Leased Premises, Lessee will have no right of occupancy therein, and such property will be treated as if it had been surrendered by Lessee under Section 8.04 of this Agreement. In addition, the provisions of Article 11 and Sections 8.03, 13.01, 13.11, 17.09, 17.25, and 17.31 of this Agreement, as well as any other provisions that expressly survive the termination of this Agreement, will continue in effect for the property formerly occupied by Lessee as the Leased Premises with respect to the period of time it was so occupied by Lessee.

Section 1.04 - Ingress and Egress. Lessee has the non-exclusive right to use any designated road on Port property to obtain ingress and egress between the Leased Premises and Harborside Drive in the City, subject to the other provisions of this Agreement.

## **ARTICLE 2 - TERM OF AGREEMENT**

Section 2.01 - Commencement and Termination Date. This Agreement is for a period [REDACTED] ("Term"), commencing on the Effective Date and terminating on [REDACTED], unless sooner terminated as provided herein. Either party may terminate this Agreement, with or without cause, by giving the other party thirty (30) days' advance written notice.

Section 2.02 - Holding Over. If Lessee holds over after the termination of this Agreement, such tenancy is from month to month under all terms, covenants and conditions contained in this Agreement, except that rent will be equal to 150% of the rental amount in force immediately prior to termination. No holding over by Lessee will be construed as an extension of the Term.

Section 2.03 - Effective Date and Approval. The Effective Date of this Agreement is set forth in the introductory paragraph. However, if this Agreement or any amendments or modifications thereto are required to be submitted to the applicable governmental agency (the "Agency"), pursuant to 46 U.S.C. App. §1704, then the Effective Date of this Agreement is such date as designated by the Agency, or if the Agency declines to designate an effective date, the Effective Date is as set forth in the introductory paragraph of this Agreement. Any extension of this Agreement, and the terms and conditions thereof, will promptly be filed with the Agency for its review and approval, if required.

### **ARTICLE 3 – RENT**

Section 3.01 - Commencement of Rent. Rent under this Agreement commences on the Effective Date.

Section 3.02 - Amount of Rent. Lessee will pay Lessor rent, in advance, in a sum equal to [REDACTED] for each month during the Term, subject to adjustment as provided in Section 3.05 below ("Rent").

Section 3.03 - Payment of Rent. Rent is payable monthly, in advance, on the first day of each month during the Term of this Agreement. If the Term does not commence on the first day of a calendar month, Rent will be prorated for that month and is payable on the Effective Date.

Section 3.04 - Delinquency. All amounts payable under this Agreement that are not paid when due bear interest from the due date thereof until paid at the lesser of (i) the rate contained in the then current tariff circular governing the Port, as it may from time to time be amended (the "Tariff"), or (ii) the maximum nonusurious rate allowed by law.

Section 3.05 - Rent Escalation. Beginning on the first anniversary of the Effective Date of this Agreement and on each anniversary of such date during the Term, the Rent shall increase 3% per annum over the rate charged for the immediately preceding twelve (12) months.

### **ARTICLE 4 - TARIFFS AND OTHER CHARGES**

Lessor has the full right and power to assess and collect all charges now published in its tariffs or regulations, or that it may publish in the future, against any commodities moving over, or vessels berthing at, any dock or wharf adjacent to the Leased Premises, and no such charge may be assessed or collected by Lessee. Lessor has the right to collect all switching charges on rail cars moved to or from the Leased Premises. This Agreement covers only the Leased Premises and does not give Lessee any right or privileges to the aprons, slips, channel or the property adjacent to the Leased Premises except as expressly herein provided, and the usual and customary Tariff charges will accrue against and be paid by Lessee thereon, as on any other goods, wares and merchandise moving thereover by or for Lessee the same as if there were no Agreement. Except as specifically provided herein to the contrary, Lessee must strictly comply with all Tariff provisions and Lessor's rules and regulations governing the Port. Lessor and Lessee acknowledge their intent that this Agreement does not delegate to Lessee any governmental powers or duties vested in Lessor. To the extent that any provision of this Agreement is alleged or construed to grant to Lessee any power to exercise a governmental or legislative function of Lessor, including without limitation the authority to (i) fix and levy dockage or wharfage, (ii) establish and enforce rules and regulations in the operation of the Leased Premises, or (iii) maintain and publish rates and charges relating to the operation of the Leased Premises, such power will be ineffective until specifically approved in writing by Lessor.

### **ARTICLE 5 - IMPOSITIONS**

Section 5.01 - Impositions. As additional rent during the Term, Lessee will pay all Impositions as and when they become due. The term "Impositions" means all taxes, assessments, use and occupancy taxes, excises, levies, license and sales and permit fees and taxes, and other charges by any public authority, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind or nature whatsoever, which is or may during the Term be assessed, levied, charged, confirmed, or imposed by any public authority upon, or which accrue or become due or payable out of or on account of, or to become a lien on the Leased Premises or any part thereof, the appurtenances thereto, or the sidewalks, streets, or other public ways adjacent thereto, for any use or occupation of the Leased Premises, and such franchises, licenses and permits as may be appurtenant to the use of the Leased Premises, or any documents to which Lessee is a party, creating or transferring an interest or estate in the Leased Premises.

Section 5.02 - Contest of Impositions. Lessee may, in good faith at its sole cost and expense, contest Impositions and Lessee is obligated to pay the contested amount only when finally determined to be due, unless otherwise required by law.

Section 5.03 - Payment by Lessor. Subject to the right of the Lessee to contest Impositions, as provided for in this Article, Lessor may at any time that the payment of any Imposition that Lessee is obligated to pay remains unpaid, give written notice to Lessee of its default, specifying the same, and if Lessee continues to fail to pay such Imposition or to contest it in good faith, then at any time after ten days from such written notice, Lessor may pay the items specified in the notice and Lessee agrees to reimburse Lessor, upon Lessor's demand, any amount paid on the items specified in the notice.

## **ARTICLE 6 - UTILITIES**

Lessee will cause all services for water, heat, gas, electricity, sewer, and any and all other utilities used on the Leased Premises by Lessee throughout the Term of this Agreement, including any connection fees (the "Utilities") to be separately metered and billed to Lessee, and Lessee must pay all charges for such Utilities. Lessee further agrees to pay as additional rent all fees for security services requested by Lessee.

## **ARTICLE 7 - USE OF PREMISES**

Section 7.01 - Permitted Uses. The Leased Premises may be used by Lessee only for the following purpose (each, a "Permitted Use"): to store supplies and equipment related to stevedoring services performed by Lessee and to repair and service Lessee's stevedoring equipment, and for no other purpose. Any other use of the Leased Premises requires the prior written consent of Lessor.

Section 7.02 - Prohibited Uses. The Leased Premises must not be used for:

- (a) The docking or berthing of any floating vessel containing a "gambling place", a "gambling device", or "gambling paraphernalia", as those terms are defined in Section 47.01 of the Texas Penal Code or any similar or successor statute;

- (b) Any illegal, obnoxious or offensive activity;
- (c) The sale or consumption of alcoholic beverages; or
- (d) The handling or storage of explosive, nuclear, radioactive or hazardous materials, unless such materials are handled and stored in compliance with applicable law.

Section 7.03 - Permits, Certificates, etc. Lessee must obtain and maintain all permits, certifications, licenses and fees required for its activities on or about the Leased Premises.

Section 7.04 - No Interference. Lessee must not interfere with the operations of Lessor, its tenants, or any other permitted user of Lessor's property. Lessee must not interfere with, restrict or prevent any person or entity ("Person") from using navigable waters.

Section 7.05 – Security. Lessee must, at its own cost and expense, keep the Leased Premises and the adjacent areas in a clean, orderly, secure, and safe condition, free of rubbish and trash, and be responsible for the security on, of, and to the Leased Premises, and all entrance areas for any contractors, suppliers, vendors, and other permitted vehicles or pedestrians permitted to enter the Leased Premises. All employees, contractors, suppliers, or vendors of Lessee that enter upon the Leased Premises or any other property under the management or control of the Lessor must (i) comply with all laws, ordinances, rules, regulations, and codes (as each of them may from time to time be enacted or amended) of the United States, the State of Texas, the City, or any other lawful authority having jurisdiction over the Leased Premises or any other property under the management and control of Lessor ("Governmental Authority"), and (ii) abide by all security requirements and applicable provisions of the Tariff, including without limitation any insurance requirements. Upon direction by Lessor, Lessee may be required for security reasons to access the Leased Premises only through certain defined security access points that may be established from time to time as part of the overall security plan for the Port, which direction Lessee must follow. In addition, Lessee's use and possession of the Leased Premises may be limited from time to time because of security conditions or alerts issued by Governmental Authority and Lessee must act in compliance therewith. Lessee must cooperate with Lessor with respect to participation in any exercise or drill that may be required of other tenants or users of Port property. Lessee acknowledges that Lessor is in the process of installing certain security devices and implementing certain identification and access procedures at the Port, and Lessor and Lessee will work cooperatively with each other as standards for such devices and procedures are finalized.

## **ARTICLE 8 - CONSTRUCTION BY LESSEE**

Section 8.01 - General Conditions. Upon the prior written consent of Lessor, and provided Lessee is in compliance with all terms of this Agreement, and subject to the terms of this Agreement, Lessee may, at its sole cost, erect, maintain and construct improvements on the Leased Premises necessary for its permitted activities at its sole cost ("Lessee's Improvements"). Any new construction or any alteration to any Improvements must comply with all laws. Lessee must submit to Lessor information regarding its planned improvements, modifications, major repairs, additions and fixtures upon Lessor's request. However, Lessor's review and approval of the plans will not relieve Lessee of its obligation to comply with applicable law. Any demolition or removal of Improvements or

excavation or removal of any soil, sand or other fill from the Leased Premises also requires the prior written approval of Lessor.

Section 8.02 - Governmental Approvals. Lessee must, at its expense, obtain and maintain all licenses, permits and approvals required for its activities under this Article.

Section 8.03 - Ownership of Improvements. Except as hereinafter provided, title to and ownership of all Improvements, and any additions, alterations and replacements installed or constructed on the Leased Premises by Lessee, is in Lessor as and when installed or constructed during the Term and upon termination of this Agreement must remain on the Leased Premises as part of the land; subject, however, to the other sections of this Article.

Section 8.04 - Surrender of Leased Premises. Upon termination of this Agreement, Lessee must surrender the Leased Premises, including Improvements thereon, in the same condition and state of repair as they existed on the Effective Date, or on the date of completion with respect to any Lessee Improvements, reasonable wear and tear excepted, and must return all keys to the Leased Premises to Lessor. Lessor may require Lessee to remove any Lessee Improvements and restore the Leased Premises to the condition it was in on the Effective Date. If Lessor requests Lessee to remove any Lessee Improvements and restore the Leased Premises and Lessee fails to do so, Lessor may remove the Lessee Improvements and restore the Leased Premises to its condition on the Effective Date, and Lessee must reimburse Lessor on demand for all removal and restoration costs incurred by Lessor.

## **ARTICLE 9 - MAINTENANCE AND REPAIRS**

Section 9.01 - Lessee's Duty to Repair, Maintain, or Replace. Lessee, at its own cost and expense at all times during the Term agrees to (i) repair any damage it causes to, or is caused by its operations at, the Leased Premises, any Improvements, or to any other property at the Port, (ii) keep, maintain, or replace when needed the Leased Premises and all Improvements in a good state of appearance and repair, reasonable wear and tear excepted, and in a clean, sanitary, and safe condition, all in accordance with Lessor's standards for the Port, and in a condition sufficient to accommodate and accomplish the conduct of the Permitted Use, and (iii) modify any Improvements if necessary to cause the Leased Premises to conform with all laws applicable thereto. All maintenance, repair, or replacement required by this section must be performed promptly and so as not to cause depreciation in the value of the Leased Premises or its improvements.

Section 9.02 - Lessee's Failure to Maintain, Repair, or Replace. If Lessee fails to repair, maintain, or replace as required by this Article, Lessor may enter the Leased Premises and make the repairs or perform the maintenance or replacements, or have the repairs made or maintenance or replacements performed, and Lessee must immediately reimburse Lessor for all costs incurred by Lessor under this section, together with interest at the highest legal rate from the date Lessor demands reimbursement until the date paid by Lessee.

Section 9.03 - Condition of Leased Premises. Lessee accepts the Leased Premises and all Existing Improvements thereon in its condition as of the Effective Date, **AS IS**, and **WITH ALL FAULTS** and acknowledges that no warranties, either expressed or implied, have been made or will

be made by Lessor with respect to the condition of the Leased Premises or its suitability for Lessee's intended use.

### **ARTICLE 10 – CASUALTY DAMAGE**

Section 10.01 - Notice to Lessor. If the Leased Premises or any Improvements are damaged or destroyed by fire, windstorm, hurricane or other casualty, Lessee must immediately give Lessor notice of the damage or destruction, including a description of the damage and its cause.

Section 10.02 - Partial Destruction. If the Leased Premises, including any Improvements and betterments, are partially damaged or destroyed by fire, windstorm, hurricane or any other casualty, Lessor must, at its sole cost and expense, repair, reconstruct or replace the damaged or destroyed property with reasonable diligence so that the Leased Premises is restored to substantially the same condition as existed immediately prior to the casualty, subject to the requirement that such work must comply with all laws applicable to the Leased Premises. Notwithstanding the foregoing, in the event that Lessor determines, in its sole discretion, that the Leased Premises cannot be repaired or reconstructed with the available insurance proceeds or that the repair or reconstruction of the Leased Premises would not be economically feasible, then Lessor may terminate this Agreement, in which event Lessor will be entitled to all insurance proceeds payable by reason of the casualty.

Section 10.03 - Total Destruction. If Lessor determines, in its sole discretion, that the Leased Premises is totally destroyed by fire, windstorm, hurricane or any other casualty, Lessor may terminate this Agreement, in which event Lessor will be entitled to all insurance proceeds payable by reason of the casualty. If Lessor does not terminate this Agreement, Lessor must, at its sole cost and expense, repair, replace and reconstruct the Leased Premises with reasonable diligence so that the Leased Premises is restored to substantially the same condition as existed immediately prior to the casualty, subject to the requirement that such work must comply with all laws applicable to the Leased Premises.

### **ARTICLE 11 - MECHANICS' LIENS**

Lessee must not suffer or permit any mechanics' liens or other liens to be filed against the fee of the Leased Premises nor against Lessee's leasehold interest in the land nor any Improvements on the Leased Premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Lessee or to anyone holding the Leased Premises or any part thereof through or under Lessee. If any such lien is recorded against the Leased Premises, Lessee must promptly notify Lessor in writing of its existence, and must either cause it to be removed or purchase a bond acceptable to Lessor against which the lien will attach in lieu of the Leased Premises. If Lessee in good faith desires to contest the lien, Lessee may do so, but Lessee must indemnify and save Lessor harmless from all liability for damages occasioned thereby and must, in the event of a judgment of foreclosure on the lien, cause it to be discharged and removed prior to the execution of the judgment.

### **ARTICLE 12 - CONDEMNATION**

Section 12.01 - Interests of Parties. If the Leased Premises or any part thereof is taken for public or quasi-public purposes by condemnation as a result of any action or proceeding in eminent

domain, or is transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, all condemnation proceeds will be payable to Lessor and the interests of Lessor and Lessee under this Agreement are as provided by this Article.

Section 12.02 - Total Taking - Termination. If the entire Leased Premises is taken or transferred, or if the taking or transfer of a substantial part of the Leased Premises leaves the remainder of the Leased Premises in such condition or in such form, shape, or reduced size as to be not effectively and practicably usable in the opinion of Lessor for the intended purpose, this Agreement terminates on the date title to such portion of the Leased Premises so taken or transferred vests in the condemning authority.

Section 12.03 - Partial Taking - Continuation with Rent Abatement. If the taking or transfer of only an insubstantial part of the Leased Premises leaves the remainder of the Leased Premises in such condition and in such form, shape, or size as to be used effectively and practicably in the opinion of Lessor for the intended purpose, this Agreement terminates only as to the portion of the Leased Premises so taken or transferred as of the date title to such portion vests in the condemning authority, but continues as to the portion of the Leased Premises not so taken or transferred. After such date, the rent required to be paid by Lessee to Lessor will be reduced during the unexpired portion of this Agreement to that proportion of the annual rent which the value of the part of the Leased Premises not so taken bears to the value of the total of the Leased Premises, such values to be determined as of the date of the actual commencement of the physical taking of the Leased Premises when Lessee is disturbed in its possession as a result thereof but immediately before any actual taking.

Section 12.04 - Voluntary Conveyance. A voluntary conveyance by Lessor to a public utility, governmental agency, or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings, is a taking under this Article.

### **ARTICLE 13 - INSURANCE AND INDEMNIFICATION**

Section 13.01 - Indemnification of City and Lessor. **LESSEE INDEMNIFIES, DEFENDS, AND HOLDS HARMLESS LESSOR, ITS TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE "INDEMNIFIED PERSONS"), AGAINST ALL COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS OF INVESTIGATION AND DEFENSE, AS WELL AS LEGAL LIABILITY, WHETHER FROM SUIT, JUDGMENT, SETTLEMENT OR OTHERWISE ARISING OUT OF ANY OR ALL CLAIMS FOR INJURY TO ANY PERSON OR PROPERTY, INCLUDING BUT NOT LIMITED TO INJURIES RESULTING IN DEATH, ARISING FROM, OR CAUSED BY, OR INCIDENT TO ANY WRONGFUL OR NEGLIGENT ACT OR OMISSION OF LESSEE, ITS AGENTS, INVITEES, SERVANTS AND EMPLOYEES UPON THE LEASED PREMISES, OR ARISING OR RESULTING FROM ANY DEFECTIVE OR UNSAFE CONDITION FOR WHICH LESSEE IS RESPONSIBLE, OR OF ANY APPARATUS, EQUIPMENT OR OTHER PROPERTY OF LESSEE, OR IN ANY OTHER MANNER ARISING OUT OF ANY ACTION OR INACTION OF LESSEE. ANY LANGUAGE TO THE CONTRARY NOTWITHSTANDING, THE COVENANTS AND AGREEMENTS CONTAINED IN THIS PARAGRAPH SURVIVE THE TERMINATION OR EXPIRATION**



**OF THIS AGREEMENT FOR WHATEVER CAUSE. IN ADDITION THE COVENANTS AND AGREEMENTS CONTAINED IN THIS PARAGRAPH ARE VALID AND ENFORCEABLE REGARDLESS OF WHETHER ANY INDEMNIFIED PERSON IS NEGLIGENT OR WHETHER ANY INDEMNIFIED PERSON WAS IN ANY MANNER RESPONSIBLE FOR THE NEGLIGENT OR WRONGFUL ACT OR OMISSION OR THE DEFECTIVE OR UNSAFE CONDITION WHICH MAY HAVE CAUSED THE INJURY OR CLAIM.**

Section 13.02 - Property Insurance. Lessee must insure all personal property located on the Leased Premises under a commercial property insurance policy written on a "causes of loss – special form" basis. This insurance must include legal liability coverage, boiler and machinery coverage, and flood coverage. The face value of the insurance insuring the property must be in an amount not less than the full actual replacement cost, and must have a replacement cost endorsement or similar provision, an ordinance or law coverage endorsement, and an equipment floater, if necessary, to cover any equipment. The actual replacement cost must be confirmed from time to time by the insurer, at Lessor's request. Such policy must name Lessor (and any successor or assign designated by Lessor) as an additional insured and a building owner loss payee, as its interest may appear.

Section 13.03 - Commercial General Liability Insurance. Lessee must maintain commercial general liability insurance, including pollution liability coverage, covering Lessor and Lessee for liability for property damage, bodily injury, personal injury and death. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage and not less than \$1,000,000 per occurrence for personal injury, bodily injury or death. Costs of defense must be provided as an additional benefit and not included within the limits of liability. This insurance must protect against liability to any employees or servants of Lessee and to any other person or persons whose property damage, personal injury or death arises out of or in connection with the occupation, use, or condition of the Leased Premises, and must include (i) coverage for premises and operations, (ii) coverage for products liability, and (iii) contractual liability coverage. Such policy must name Lessor (and any successor or assign designated by Lessor) as an additional insured.

Section 13.04 - Workers Compensation. Lessee must maintain workers compensation insurance to protect against claims under Texas Workers Compensation laws as well as all Federal acts applicable to Lessee's operations at the Leased Premises, including but not limited to U. S. Longshoremen and Harborworkers Act, Jones Act and Federal Employer's Liability Act. The limit of liability for such coverage must at least meet applicable statutory requirements. Additionally, each policy must contain an endorsement waiving all rights of subrogation against Lessor and the City, and their respective agents and employees.

Section 13.05 - Employer's Liability. Lessee must maintain employer's liability insurance in the minimum amount of \$5,000,000 per occurrence for personal injury, bodily injury or death to any employee of Lessee who may bring a claim outside the scope of the Texas Workers Compensation laws or federal acts applicable to Lessee's operations at the Leased Premises. This insurance must contain all endorsements necessary to cover maritime operations, including admiralty benefits and damages under the Jones Act, in the minimum amount of \$5,000,000 per occurrence. Additionally,

each policy must contain an endorsement waiving all rights of subrogation against Lessor and the City, and their respective agents and employees.

Section 13.06 - Automobile Insurance. Lessee must maintain automobile liability insurance coverage on all its owned or rented vehicles in the minimum amount of \$1,000,000 combined single limit coverage per occurrence. Additionally, each policy must contain an endorsement waiving all rights of subrogation against Lessor and the City, and their respective agents and employees.

Section 13.07 - Umbrella Liability Insurance. Lessee must maintain umbrella or excess liability insurance. The insurance provided under this section must be in the amount of not less than \$5,000,000 per occurrence and be excess over and no less broad than all underlying insurance coverage required in this Article. The inception and expiration dates must be the same as the underlying insurance coverage in this Article. The policy must contain "follow form" language, an aggregate limit per location endorsement, and the coverage must "drop down" for exhausted aggregate limits under the underlying insurance coverage in this Article.

Section 13.08 - Waiver of Subrogation. Lessor and Lessee agree to waive any and all rights of recovery, claims, actions or causes of action against the other, its agents, officers and employees for any injury, death, loss or damage that may occur to any Person or to the Leased Premises, or any personal property of such party on the Leased Premises, by reason of fire, windstorm, earthquake, flood or any other risks, or any other cause which is insured under the insurance policy or policies that either party is required to provide or maintain under this Agreement, to the extent and only to the extent of any proceeds actually received by Lessor or Lessee, respectively, with respect thereto, regardless of cause or origin, including negligence of either party hereto, its agents, officers or employees, and each party covenants that no insurer will hold any right of subrogation against the other. If such waiver is not obtained, the party failing to do so indemnifies the other party for any claim by an insurance carrier arising out of subrogation.

Section 13.09 - Increase in Insurance Coverage. Lessee agrees to employ an appraiser approved by Lessor to review, at least annually, the property insurance covering the personal property located on the Leased Premises to determine the full replacement cost thereof. Lessee agrees to increase the policy limits, if necessary, to an amount equal to the full replacement cost as determined by the appraiser. Lessee is solely responsible for the payment of any appraiser fees and policy premium increases.

Section 13.10 - Insurance Requirements. The phrase "Required Policy" means each policy of insurance required to be maintained by Lessee under the terms of this Agreement. Each Required Policy must be written by a company satisfactory to Lessor, but in all events by a company with an A.M. Best Company financial rating of not less than A XII (or a similar rating by a comparable service selected by Lessor should A.M. Best Company cease providing such ratings) and be licensed to do business in Texas or, if the aforesaid is not available, by a company qualified to do business as a non-admitted insurer in Texas under current Texas surplus lines requirements. Each Required Policy must be endorsed to be primary, with the policies of Lessor or any other party being excess, secondary, and noncontributing. No Required Policy may include an endorsement restricting, limiting, or excluding coverage in any manner without the prior written consent of Lessor. All Required Policies may contain a deductible of not more than \$25,000. All deductibles and/or retentions shall be paid by and

assumed by Lessee. Such policies must be endorsed so as to require 30 days prior written notice to Lessor in the event of cancellation, material change or intent not to renew. Required Policies must contain cross-liability clauses, when applicable and available. Lessee must deliver to Lessor a certificate of insurance and copies of any additional insured, loss payee, and waiver of subrogation endorsements for any Required Policy no later than the Effective Date. If requested, Lessee must provide to Lessor on demand a certified copy of any Required Policy and applicable endorsements. All endorsements must be in form and substance acceptable to Lessor. The required evidence of coverage must always be deposited with Lessor. If Lessee fails to do so, such failure may be treated by Lessor as a default by Lessee and Lessor, in addition to any other remedy under this Agreement, may purchase and maintain such Required Policy and Lessee must immediately reimburse Lessor for any premiums paid or costs incurred by Lessor in providing such insurance. Failure of Lessee to reimburse Lessor is a default by Lessee in the payment of Rent. Lessee must notify Lessor immediately upon discovery of any fact or condition that may result in a claim covered by the insurance or indemnity provisions contained in this Agreement.

Section 13.11 - Indemnity for Noncompliance with Insurance Requirements. Lessee INDEMNIFIES, DEFENDS, and HOLDS HARMLESS Lessor from any loss it may suffer due to Lessee's failure to comply with all the above insurance requirements, including the requirement for obtaining waivers of subrogation, and due to any insurance coverage being invalidated because of Lessee's failure to comply with the terms, conditions and warranties of any Required Policy.

#### **ARTICLE 14 – SUBLETTING, ASSIGNMENT, & OTHER TRANSFERS**

Section 14.01 - Subletting. Lessee may not sublease any portion of the Leased Premises without Lessor's prior written consent.

Section 14.02 - Assignment. Lessee must not assign its rights or any interest under this Agreement without Lessor's prior written consent. Any transfer of ownership of Lessee is considered an assignment under this Article requiring Lessor's prior written consent.

Section 14.03 – Other Transfers. Lessee must not grant any license, concession, or other right of use or occupancy for any part of the Leased Premises without Lessor's prior written consent.

Section 14.04 – Violation of Article. In addition to all other rights and remedies afforded Lessor under this Agreement or at law or in equity, Lessor may (immediately and without advance notice and opportunity to cure) terminate this Agreement if Lessee violates the provisions of this Article. In addition, any sublease, assignment, or other transfer made in violation of this Article is void.

#### **ARTICLE 15 - DEFAULT AND REMEDIES**

Section 15.01 - Events of Default. Each of the following occurrences is an "Event of Default":

- (a) Lessee's failure to pay Rent within 10 days after Lessor has delivered notice to Lessee that the same is due; however, an Event of Default will occur hereunder without

any obligation of Lessor to give any notice if Lessor has given Lessee written notice under this Section on more than one occasion during the 12 month interval preceding such failure by Lessee;

(b) Lapse in required insurance coverage by Lessee or failure by Lessee to strictly comply with any provisions in this Agreement relating to insurance coverage, which Event of Default will be immediate and without advance notice;

(c) Creating or allowing any unsafe or dangerous condition to exist at or adjacent to the Leased Premises without Lessee having taken immediate, reasonable steps to cure or cause to be cured such condition, which Event of Default will be immediate and without advance notice;

(d) Lessee abandons or vacates the Leased Premises or any substantial portion thereof or fails to continuously operate its business from the Leased Premises for the permitted activities set forth herein, and such abandonment, vacation, or discontinuance of operations continues for 10 days after written notice thereof from Lessor to Lessee;

(e) Lessee fails to provide or sign any estoppel certificate, financing statement, or other document requested by Lessor and such failure continues for 10 days after written notice thereof from Lessor to Lessee;

(f) Lessee's failure to perform, comply with, or observe any other agreement or obligation of Lessee under this Agreement or any other agreement to which Lessor and Lessee are parties and the continuance of such failure for a period of more than 30 days after Lessor has delivered to Lessee written notice thereof; and

(g) The filing of a petition by or against Lessee (the term Lessee includes, for the purpose of this Section, any guarantor of Lessee's obligations hereunder) in any bankruptcy or other insolvency proceeding; seeking any relief under any state or federal debtor relief law; for the appointment of a liquidator or receiver for all or substantially all of Lessee's property or for Lessee's interest in this Agreement; or for the reorganization or modification of Lessee's capital structure; however, if such a petition is filed against Lessee, then such filing will not be an Event of Default unless Lessee fails to have the proceedings initiated by such petition dismissed within 90 days after the filing thereof.

Section 15.02 - Remedies. Upon any Event of Default, Lessor may, in addition to all other rights and remedies afforded Lessor hereunder or by law or equity, take any of the following actions:

(a) Termination of Agreement. Terminate this Agreement by giving Lessee written notice thereof, in which event Lessee must pay to Lessor the sum of all Rent accrued hereunder through the date of termination, all amounts due under Section 15.03 (a), and an amount equal to the total Rent that Lessee would have been required to pay for the remainder of the Term, discounted to present value at a per annum rate equal to the Prime Rate as published on the date this Agreement is terminated by The Wall Street

Journal, Southwest Edition, in its listing of Money Rates minus one percent, minus the then present fair rental value of the Leased Premises for such period, similarly discounted; or

(b) Termination of Possession. Terminate Lessee's right to possess the Leased Premises without terminating this Agreement by giving written notice thereof to Lessee, in which event Lessee must pay to Lessor all Rent and other amounts accrued hereunder to the date of termination of possession, all amounts due from time to time under Section 15.03 (a), and all Rent and other net sums required hereunder to be paid by Lessee during the remainder of the Term, diminished by any net sums thereafter received by Lessor through reletting the Leased Premises during such period, after deducting all costs incurred by Lessor in reletting the Leased Premises. Lessor may use reasonable efforts to relet the Leased Premises on such terms as Lessor in its sole discretion may determine (including a term different from the Term, rental concessions, and alterations to, and improvement of, the Leased Premises). Lessor will not be liable for, nor will Lessee's obligations hereunder be diminished because of, Lessor's failure to relet the Leased Premises or to collect rent due for such reletting. Lessee will not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder. Reentry by Lessor in the Leased Premises will not affect Lessee's obligations hereunder for the unexpired Term; rather, Lessor may, from time to time, bring an action against Lessee to collect amounts due by Lessee, without the necessity of Lessor waiting until the expiration of the Term, or may accelerate all Rent due during the remainder of the Term and bring an action against Lessee thereon. Unless Lessor delivers written notice to Lessee expressly stating that it has elected to terminate this Agreement, all actions taken by Lessor to dispossess or exclude Lessee from the Leased Premises will be deemed to be taken under this Section 15.02 (b). If Lessor elects to proceed under this Section 15.02 (b), it may at any time elect to terminate this Agreement under Section 15.02 (a).

Section 15.03 - Payment by Lessee; Non-Waiver.

(a) Payment by Lessee. Upon any Event of Default, Lessee must pay to Lessor all costs incurred by Lessor (including court costs and reasonable attorneys' fees and expenses) in obtaining possession of the Leased Premises, removing and storing Lessee's or any other occupant's property, repairing, restoring, altering, remodeling, or otherwise putting the Leased Premises into condition acceptable to a new tenant, if Lessee is dispossessed of the Leased Premises and this Agreement is not terminated, reletting all or any part of the Leased Premises (including brokerage commissions, cost of tenant finish work, and other costs incidental to such reletting), performing Lessee's obligations that Lessee failed to perform, and enforcing, or advising Lessor of, its rights, remedies, and recourses arising out of the Event of Default. To the full extent permitted by law, Lessor and Lessee agree the federal and state courts of Texas have exclusive jurisdiction over any matter relating to or arising from this Agreement and the parties' rights and obligations under this Agreement.

(b) No Waiver. Lessor's acceptance of Rent following an Event of Default will not waive Lessor's rights regarding such Event of Default. No waiver by Lessor of any violation or breach of any of the terms contained herein will waive Lessor's rights regarding

any future violation of such term. Lessor's acceptance of any partial payment of Rent will not waive Lessor's rights with regard to the remaining portion of the Rent that is due, regardless of any endorsement or other statement on any instrument delivered in payment of Rent or any writing delivered in connection therewith; accordingly, Lessor's acceptance of a partial payment of Rent will not constitute an accord and satisfaction of the full amount of the Rent that is due, regardless of any rule of law to the contrary.

Section 15.04 - Other Remedies. All rights, options, and remedies of Lessor contained in this Agreement are construed and held to be cumulative, and no one of them is exclusive of the other, and Lessor has the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement.

Section 15.05 - Landlord's Lien. Lessor has a lien upon all fixtures, chattels, or other property of any description belonging to Lessee that are placed in, or become a part of, the Leased Premises as security for Rent due and to become due for the remainder of the Term and any other sum Lessee owes Lessor. This lien is not in lieu of, nor in any way affects, the statutory landlord's lien but is in addition to that lien, and Lessee grants Lessor a security interest in all of Lessee's property placed in or on the Leased Premises for purposes of this contractual lien. This does not prevent Lessee from selling any merchandise in the ordinary course of business free of such lien. If Lessee is in default under this Agreement, Lessor may take possession of all of Lessee's property on the Leased Premises and sell it at public or private sale after giving Lessee reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, for cash or on credit, for the prices and terms that Lessor considers best, with or without having the property present at the sale. The proceeds of the sale will be applied first to the necessary and proper expense of removing, storing, and selling the property, then to the payment of any Rent due or to become due under this Agreement, and then to the payment of any other amount owed by Lessee to Lessor under this Agreement; any balance will be paid to Lessee. Lessor may file a UCC-1 Financing Statement or a copy of this Agreement as a financing statement or, at Lessor's request, Lessee must execute and deliver to Lessor a UCC-1 Financing Statement in form and content satisfactory to Lessor, to perfect the security interest granted in this Agreement.

## **ARTICLE 16 - LIABILITY**

Section 16.01 - Limitation of Liability of the City. The City is never liable to respond in damages or make indemnity, or contribution, or payment of any character from any source other than the property, and the income and revenues arising therefrom, operated by the BOARD OF TRUSTEES OF THE GALVESTON WHARVES by reason of, due to or caused by a breach of this Agreement.

Section 16.02 - No Personal Liability of Board. The Lessor's officers, agents and employees and the members of the BOARD OF TRUSTEES OF THE GALVESTON WHARVES, either singularly or collectively, are not personally liable on this Agreement or for any breach thereof.

Section 16.03 – Exoneration. Lessor and the City will not be responsible to Lessee or any other Person for (i) damages to property or injuries to any Person that may arise from or be incident to the use or occupation of the Leased Premises, (ii) damages to the property of Lessee, (iii) injuries

to the person of Lessee's officers, agents, servants, or employees or any other Person who may be on or at the Leased Premises; and Lessee must defend, indemnify and hold Lessor and the City harmless from any and all such claims.

## ARTICLE 17 - MISCELLANEOUS

Section 17.01 - Right of Entry and Inspection. Lessee must permit Lessor or Lessor's agents, representatives, or employees, at all reasonable times and after having given Lessee reasonable notice thereof, to enter and (i) inspect the Leased Premises and (ii) show the Leased Premises to prospective purchasers or tenants.

Section 17.02 - No Partnership. The relationship between Lessor and Lessee at all times remains solely that of landlord and tenant and is not a partnership or joint venture.

Section 17.03 - Force Majeure. Except for Lessee's obligation to pay rent and to obtain insurance as required in this Agreement, Lessor and Lessee are excused from performing any of their respective duties, obligations or undertakings under this Agreement in the event and so long as the performance of such duty, obligation or undertaking is prevented, delayed, retarded or hindered by an Act of God, epidemic, pandemic, fire, hurricane or similar weather disaster, earthquake, flood, explosion, action of civil commotion, sabotage, malicious mischief, strike, lockout, action of labor unions, condemnation, governmental restriction, order of civil or military or naval authorities, embargo, impossibility of obtaining materials, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the party in question. Either party entitled to such extension hereunder will give prompt written notice to the other party as soon as possible after the occurrence causing such delay asserting its claim of right to such extension and the reasons therefor.

In the event there is a reasonable assessment as to the safety or health personnel as a result of the COVID-19 or related coronavirus, Lessee will take appropriate actions to comply with such assessment and applicable restrictions. If the COVID-19 or related coronavirus and/or the need to mitigate the spread of such virus will impact Lessee's ability to meet its responsibilities under this Agreement, then Lessee and Lessor will confer and attempt to reach a written Amendment to this Agreement addressing such issues. If Lessee and Lessor are not able to reach agreement on these issues, then Lessor may terminate this Agreement.

Section 17.04 - No Termination on Bankruptcy. Neither bankruptcy, insolvency, assignment for the benefit of creditors, nor the appointment of a receiver will cause any termination or modification of this Agreement so long as all covenants of the Lessee or Lessor are continued in performance by Lessee or Lessor and their respective successors or legal representatives.

Section 17.05 - No Waiver. No waiver by Lessor of any default or breach of any covenant, condition, or stipulation contained in this Agreement is a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation of this Agreement.

Section 17.06 - Signage. Lessee may not install or erect any sign on or about the Leased Premises without first obtaining Lessor's written approval with regard to the size, type, shape, design, color, material, content, and method of attachment of the sign. Lessee must, at its sole expense,

remove any sign that it installs or erects on or about the Leased Premises and repair any damage done to the Leased Premises or the adjacent land by installing, erecting, or removing any sign no later than the termination of this Agreement.

Section 17.07 - Release of Lessor. In the event the City or Lessor sells or transfers the Leased Premises or any part thereof and as a part of such transaction assigns its interest in and to this Agreement, and provided such buyer, transferee or assignee agrees to perform as lessor under this Agreement, then from and after the effective date of such sale, assignment, or transfer, Lessor has no further liability under this Agreement to Lessee except as to matters of liability which accrued and are unsatisfied as of such effective date, it being intended that the covenants and obligations contained in this Agreement on the part of Lessor be binding on Lessor and its successors and assigns only during and in respect of their respective successive periods of ownership of the fee.

Section 17.08 - Joint and Several Liability. If more than one Lessee is named under this Agreement, or becomes liable hereunder, the obligation of all such Lessees is joint and several.

Section 17.09 - Risk Allocation for Hazardous Materials.

(a) Lessee is responsible for remediation of any environmental contamination of the Leased Premises caused by Lessee or Lessee's invitees or agents, or which occurs during the Term. For the purpose of this provision, the term "environmental contamination" means the presence on the Leased Premises of any hazardous, toxic, or other like material regulated under any state, federal, or local law dealing with hazardous substances, protection of the environment, or similar matters in excess of lawfully permitted levels. Responsibility for environmental contamination with respect to the Leased Premises will be allocated as follows: (i) to Lessee for environmental contamination that occurs during the Term or that is caused by Lessee or Lessee's invitees or agents, and (ii) to Lessor for environmental contamination caused by Lessor or preexisting on the Leased Premises at the Effective Date, unless caused by Lessee or Lessee's invitees or agents. This allocation of responsibility is only as between Lessor and Lessee and will be without prejudice to any rights Lessor or Lessee may have against any other party causing environmental contamination.

**(b) LESSEE AGREES TO INDEMNIFY, DEFEND AND HOLD LESSOR ITS TRUSTEES, EMPLOYEES, AGENTS, AND REPRESENTATIVES HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, LIABILITIES, COSTS AND/OR EXPENSES (INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES, AND CONSULTING FEES AND EXPENSES), FOR REIMBURSEMENT, COST RECOVERY, CONTRIBUTION OR OTHER RECOVERY BASED ON THE TEXAS SOLID WASTE DISPOSAL ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, RIVERS AND HARBORS ACTS, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, THE CLEAN AIR ACT, THE CLEAN WATER ACT AND ANY OTHER SIMILAR FEDERAL, STATE OR LOCAL LAW OR ORDINANCE, INCLUDING ANY WHERE THE IMPOSITION OF STRICT LIABILITY IS INVOLVED, WHICH MAY ARISE DUE TO ANY VIOLATION OF SUCH ACTS**



**OR RELEASES, SPILLS OR CONTAMINATION CAUSED BY ACTIVITIES INITIATED BY LESSEE OR ANY SUCCESSOR OR ASSIGN OF LESSEE ON LESSOR'S PROPERTY UNDER THIS AGREEMENT. IN ADDITION THE COVENANTS AND AGREEMENTS CONTAINED IN THIS PARAGRAPH ARE VALID AND ENFORCEABLE REGARDLESS OF WHETHER ANY INDEMNIFIED PERSON IS NEGLIGENT OR WHETHER ANY INDEMNIFIED PERSON WAS IN ANY MANNER RESPONSIBLE FOR THE STRICT STRICT LIABILITY, OR NEGLIGENT OR WRONGFUL ACT OR OMISSION OR THE DEFECTIVE OR UNSAFE CONDITION WHICH MAY HAVE CAUSED THE INJURY OR CLAIM.**

Section 17.10 - Delivery of Notices. All notices, demands, or requests from one party to another must be in writing and must be personally delivered or sent by mail, certified, registered, express or overnight, postage prepaid, or sent by facsimile transmission, to the addresses stated in this Section, or to such other address as the party may request in writing, and are deemed to have been given at the time of receipt or delivery: Lessor's address is P. O. Box 328, Galveston, Texas 77553 (for U. S. Mail), 123 Rosenberg, 8<sup>th</sup> Floor, Galveston, Texas 77550 (for express or overnight mail), or (409)766-6171 (for facsimile transmissions), in any case to the attention of the Port Director/CEO. Lessee's address is 5810 Wilson Road, Suite 220, Humble, Texas 77396 (for U.S. Mail and express or overnight mail), or (832) 615-7250 (for facsimile transmissions), in any case to the attention of R. Norman Lamb, Vice President.

Section 17.11 - Multiple Parties. If more than one Lessee is named in this Agreement, service of any notice on any one of the Lessees is deemed service on all of the Lessees, respectively.

Section 17.12 - Parties Bound. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

Section 17.13 - Texas Law to Apply and Venue. This Agreement must be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Galveston County, Texas.

Section 17.14 - Legal Construction. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability does not affect any other provision hereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, if consistent with the overall intent of this Agreement.

Section 17.15 - Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties hereto with respect to the subject matter hereof, and supersedes any prior understandings or written or oral agreements between the parties with respect thereto.

Section 17.16 - Amendment. No amendment, modification, or alteration of the terms of this Agreement is binding unless in writing, dated subsequent to the Effective Date and executed by Lessor and Lessee or their successors and permitted assigns.

Section 17.17 - Attorney's Fees. In the event Lessor or Lessee breaches any of the terms of this Agreement and the party not in default employs attorneys to protect or enforce its rights and prevails, then the defaulting party agrees to pay the non-defaulting party's reasonable attorney's fees.

Section 17.18 - Further Assurances. Lessee agrees that it will from time to time and at any reasonable time execute and deliver, or cause to be executed and delivered, to Lessor such documents and instruments, and shall take, or cause to be taken, such other actions Lessor may reasonably request to effectuate the terms of this Agreement.

Section 17.19 - Exhibits. All Exhibits attached to this Agreement are incorporated by reference.

Section 17.20 - Compliance with Laws. Lessee must comply with all laws, ordinances, rules, regulations and codes (as each of them may from time to time be enacted or amended) of the United States, the State of Texas, the City, or any other lawful authority having jurisdiction over the Leased Premises or any other property under the management and control of Lessor, or governing or in any manner applicable to this Agreement. Lessee must not use any portion of the Leased Premises for any use or purpose in violation of any law, ordinance, rule, regulation, or code (as each of them may from time to time be enacted or amended) of the United States, the State of Texas, the City, or any other lawful authority having jurisdiction over the Leased Premises, any other property under the management and control of Lessor, or this Agreement.

Section 17.21 - Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart is deemed to be an original instrument, but all such counterparts together constitute but one Agreement. A photocopy or facsimile reproduction of an original signature of a party on a copy of this Agreement binds that party to the terms, covenants and conditions of this Agreement.

Section 17.22 - Railroad Clearances. Lessee must not locate any structure or materials closer than 8 feet 6 inches from the centerline of the nearest railroad track on or adjoining the Leased Premises, or closer than 22 feet above the top of any railroad track on or adjoining the Leased Premises. Lessee must keep all railroads and passageways on and adjoining the Leased Premises free from obstruction by motor vehicles and other objects.

Section 17.23 - Remedies. Pursuit of any remedy under this Agreement does not preclude pursuit of any other remedy under this Agreement or that may be provided at law or in equity.

Section 17.24 - Limitation of Warranties. Lessor disclaims any implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this Agreement or the Leased Premises, and Lessee acknowledges the disclaimer of such warranties.

Section 17.25 - Abandoned Property. In addition to any other remedy under this Agreement or provided by law, Lessor may, without liability, retain, destroy, or dispose of any property left on the Leased Premises at the termination of this Agreement.

Section 17.26 - Abatement. Lessee's covenant to pay rent and Lessor's covenants are independent of each other and Lessee is not entitled to abate rent for any reason.

Section 17.27 - Time. Time is of the essence in this Agreement.

Section 17.28 - Headings. The headings, captions, and arrangements used in this Agreement are for convenience only and do not affect the interpretation of this Agreement.

Section 17.29 - Hurricane Plans. Lessee must submit to Lessor on the Effective Date a hurricane preparedness plan in form and substance acceptable to Lessor, and must update the plan on a periodic basis at Lessor's request. A representative of Lessee must attend each hurricane preparedness meeting called by Lessor during the Term of this Agreement.

Section 17.30 - Discrimination. In connection with its use of the Leased Premises, Lessee must not discriminate against any Person, employee, or applicant for employment because of race, religion, color, age, disability, or national origin.

Section 17.31 – No Broker. Lessee represents that it has had no dealings with any Broker (as defined in Chapter 62 of the Texas Property Code, as it may from time to time be amended) in connection with the negotiation of this Agreement and knows of no other Broker entitled to a commission in connection with this Agreement. Lessee agrees to indemnify, defend, and hold harmless Lessor and any property of Lessor from any liability or claim arising by, through, or on behalf of Lessee, whether meritorious or not, with respect to any Broker.

Section 17.32 - Safety and Security. Lessee must provide Lessor no later than the Effective Date, and thereafter if requested by Lessor or if such information or documentation changes, the following relating to the safety and security of the Leased Premises: (i) a copy of Lessee's safety and emergency management plans, (ii) a point of contact for Lessor's Director of Safety and Security, and (iii) the name and telephone number of each representative of Lessee to be contacted in case of an emergency. Lessee will provide to Lessor any information reasonably required to be included in Lessor's facility plan for the Port, as approved by the U.S Coast Guard or other appropriate Governmental Authority.

Section 17.33 - Environmental Quality Commitment. Lessor is committed to the mission of the Clean Cities partnership sponsored by the U.S. Department of Energy's FreedomCAR and Vehicle Technologies Program, which is to advance the energy, economic, and environmental security of the United States by supporting local decisions to adopt practices that contribute to the reduction of petroleum consumption in the transportation sector. In support of that mission, Lessor encourages Lessee to become a Clean Cities Stakeholder with the Houston-Galveston Clean Cities Stakeholder Coalition, which requires a voluntary commitment by Lessee to evaluate what it can do as part of the Houston-Galveston Clean Cities to reduce dependence on foreign oil and promote the use of cleaner technologies and alternative fuels. In addition, Lessee is notified that private entities are eligible to receive funding for projects that demonstrate cost effective emission reductions through the Houston-Galveston Area Council's Clean Vehicles Program, the goal of which is to reduce the emissions of nitrogen oxides, volatile organic compounds, and particulate matter emissions. Funding is available to offset costs of projects that reduce these pollutants from on-road mobile sources within the

Houston-Galveston ozone non-attainment area, which includes the Port. Lessee is reminded that its general obligation under this Agreement to comply with all laws includes the obligation to comply with those laws relating to the use of certain types of diesel fuel, such as federal laws regulating the use of ultra low sulfur diesel fuel and Texas laws regulating the use of low emission diesel fuel. The web address for information relating to the H-GAC Clean Cities/Clean Vehicles program is <http://www.houston-cleancities.org/>.

Section 17.34 – Lessor's Legal Fees. Lessee must reimburse Lessor for its reasonable attorneys' fees, costs, and expenses incurred in the preparation, drafting, and negotiation of this Agreement, which payment must be made no later than 30 days following submittal of an invoice by Lessor.

THIS AGREEMENT has been executed by the parties as of the date and year first above written.

[SIGNATURES CONTINUED ON NEXT PAGE]

**LESSOR**

**BOARD OF TRUSTEES OF  
THE GALVESTON WHARVES**

By: \_\_\_\_\_  
Rodger E. Rees, Port Director/CEO

Approved as to form:

\_\_\_\_\_  
Counsel to the Board of Trustees  
of the Galveston Wharves

**LESSEE**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE OF EXHIBITS**

Exhibit A – Description of the Land [Article 1]

**Exhibit A – Description of the Land [Article 1]**