

**AGREEMENT FOR AMENDMENT OF LEASE
AMENDMENT NO. 1**

THIS AMENDMENT NO. 1 ("**Amendment**"), made and entered into this ____ day of _____, 20____, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "**LESSOR**," and SAN DIEGO REFRIGERATED SERVICES, INC., a California corporation hereinafter called "**LESSEE**," WITNESSETH:

WHEREAS, **LESSOR** and **LESSEE**, on the 18th day of December, 2015, entered into a lease of certain tidelands in the City of San Diego, California ("**Lease**"), which Lease is on file in the Office of the Clerk of Lessor bearing Document No. 64269; and

WHEREAS, **LESSOR** and **LESSEE** are mutually desirous of amending said Lease;

NOW THEREFORE, for valuable consideration, said Lease is hereby amended in the following respects and no others, and except as expressly amended, all terms, covenants, and conditions of said Lease shall remain in full force and effect:

A. Said Lease is hereby amended by adding the following to the Definitions section:

18. "**DOLE CARGO**" shall be defined as cargo processed by and through the Dole Fresh Fruit Company leasehold/facility, pursuant to the lease between the **LESSOR** and the Dole Fresh Fruit Company, ("**DOLE**") a Nevada corporation, Port Lease Document No. 59299, filed September 4, 2012, as such document may be amended, restated, or renewed.

B. Said Lease is also hereby amended by replacing Section 1, TERM, in its entirety as follows:

1. **TERM:** The term of the Lease shall be for a period of up to twelve (12) years, thirteen (13) day(s), commencing on the 18th day of December, 2015, hereinafter called the "**COMMENCEMENT DATE**," and ending on the 31st day of December 2027, hereinafter called the "**TERMINATION DATE**," unless sooner terminated as herein provided. **LESSEE** shall, however, have the option to extend this Lease for one five (5) year term through December 31, 2032, and one seven (7) year term through December 31, 2039. Each additional term for which this option is exercised shall commence at the expiration of the immediately preceding term, and upon the express condition precedent that **LESSEE** shall give written notice to **LESSOR** of an extension for any such additional term at least five (5) months prior to the expiration of the immediately preceding term. Solely by way of example, and in reference to the first extension option, **LESSEE**

shall provide **LESSOR** with written notice on or before July 31, 2027, of its intention to extend the Lease for the five year extension term commencing on January 1, 2028 and ending on December 31, 2032. Time is of the essence for the five (5) month notification period required for the exercise of each extension option.

C. Said Lease, Section 3.3, REVENUE SHARING, is also hereby amended by adding new subsection 3.3(e):

- (e) Applying to the time period beginning January 1, 2023 through the expiration or earlier termination of the **LEASE**, any and all **DOLE CARGO** shall be excluded from any **REVENUE SHARING**, and **LESSOR** has no obligation whatsoever to **LESSEE** regarding **WHARFAGE** on **DOLE CARGO**, and **LESSEE** shall have no right to any portion of any **WHARFAGE** on **DOLE CARGO** regardless of whether charged, collected, or otherwise received by **LESSOR** from any entity for **DOLE CARGO**. Notwithstanding the foregoing, **DOLE CARGO** shall still be counted as maritime cargo when assessing **LESSEE's** compliance with the **80/20 RATIO** (Section 2 – USE,) and/or any other requirements under the Lease regarding percentage of cargo imported or exported by waterborne vessel. This Amendment Section (e) relating to **WHARFAGE** on **DOLE CARGO** is not, and is not intended to be, applicable to **REVENUE SHARE** on **WHARFAGE** due **LESSEE** from **LESSOR** relating to any cargo other than **DOLE CARGO**.

Furthermore, **LESSEE** agrees and acknowledges that **LESSOR** has exclusive right to set **WHARFAGE** rates, or modifications to **WHARFAGE** rates, or to not charge **WHARFAGE** rates, all of which are within **LESSOR'S** sole and absolute discretion with no right of approval or disapproval by **LESSEE**, as stated above, including, without limitation, **LESSOR's** sole and absolute discretion to determine what amount of **WHARFAGE**, if any, it charges, invoices, and collects from any of its customers, including, without limitation, charging less than Tariff rates, changing Tariff rates, establishing thresholds before which no **WHARFAGE** is charged, or charging no **WHARFAGE** on cargo, and subject to new subsection 3.3(f) below, that **LESSEE** shall only be entitled to **REVENUE SHARING** in accordance with this Section 3.3, if any, on **WHARFAGE** actually charged AND collected by **LESSOR**.

D. Said Lease, Section 3.3, REVENUE SHARING, is also hereby amended by adding new subsection 3.3(f):

- (f) The following shall set forth **LESSEE's** sole and exclusive remedy for **LESSOR's** failure to give timely notice as required by Section 3.3, and all other remedies or damages are hereby explicitly waived by **LESSEE**. If **LESSOR** fails to give **LESSEE** timely notice as required by Section 3.3 in the manner

required by Section 37 and **LESSEE** enters into a binding contract with the applicable customer prior to receiving notice from **LESSOR**, then, for the term of the **LESSEE's** binding agreement that is in effect at the earlier of the time **LESSEE** becomes aware that **LESSOR** is charging less than Tariff Wharfage or the time **LESSOR'S** notice of such is given to **LESSEE**, **LESSEE's REVENUE SHARE** shall be calculated based on applicable Tariff rates for **WHARFAGE** and not the amount actually charged by **LESSOR**, but in no event shall **LESSEE's REVENUE SHARE** on such customer's cargo in any given calendar year exceed the total **WHARFAGE** actually collected by **LESSOR** on such customer's cargo in that given calendar year, except that if **LESSOR** charged no **WHARFAGE**, the amount actually collected shall not limit the **REVENUE SHARE** payable to **LESSEE**. The terms of Paragraph 48, Dispute Resolution, shall still apply to any dispute regarding this subparagraph 3.3(f).

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, LESSOR AND LESSEE HAVE EXECUTED THIS AMENDMENT
NO. 1 AS OF THE DATE FIRST SET FORTH ABOVE.

SAN DIEGO UNIFIED PORT DISTRICT

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: _____
Simon Kann
Assistant General Counsel

By: _____
Anthony Gordon
Assistant Vice President, Real Estate

**SAN DIEGO REFRIGERATED SERVICES, INC.,
a California corporation.**

By: _____
Edward F. Plant
President

By: _____
Frank E. Plant
Secretary-Treasurer