

Attachment C to Agenda File No. 2015-1645

SAN DIEGO UNIFIED PORT DISTRICT
LEASE TO
SAN DIEGO REFRIGERATED SERVICES, INC.
OF PROPERTY LOCATED AT
WAREHOUSE B AT THE TENTH AVENUE MARINE TERMINAL
SAN DIEGO, CALIFORNIA
FOR 12 YEARS, 13 DAYS
COMMENCING DECEMBER 18, 2015
WITH ONE 5-YEAR OPTION,
AND ONE 4-YEAR OPTION
EXPIRING DECEMBER 31, 2036

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GUARANTY

EXHIBIT "A" PARCEL MAP

EXHIBIT "B" LEGAL DESCRIPTION

DEFINITIONS

1. **"ABANDONMENT"** is herein defined to include, but is not limited to, any absence by **LESSEE** from the **LEASED PREMISES** for ten (10) consecutive days or longer. **ABANDONMENT** does not include absences caused by acts of God, war, invasion, rebellion, revolution, insurrection, riots, labor unrest or strikes impeding terminal or **LEASED PREMISES** access, or US Coast Guard, Captain of the Port preventing or impeding terminal access.
2. **"COMMENCEMENT DATE"** is defined as the 31st date after the lease is approved by the Board of Port Commissioners in Public Session.
3. **"CONSENTED-TO-LENDER"** as used in this Lease, means the lender holding an encumbrance consented to by **LESSOR**. It may include one or more lenders holding obligations of the **LESSEE** secured by a single deed of trust, mortgage, or other security instrument.
4. **"CONSUMER PRICE INDEX" ("CPI")** shall mean the index for All Urban Consumers for Los Angeles/Riverside/Orange County, CA. All Items are based on the period 1982-84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics.
5. **"CONTAINER MOVE"** shall mean any maritime cargo movement of any container over, through or under wharves or wharf premises owned by **LESSOR**.
6. **"EMERGENCY REPAIRS"** shall mean repairs to equipment, structures and facilities, the failure of which to make immediately would endanger people, cause an immediate environmental hazard, or to avoid damage to perishable cargo stored in the **LEASED PREMISES**.
7. **"HAZARDOUS MATERIAL"** shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including oil and petroleum products, which now or in the future may be within the meaning of any applicable, federal, state, or local law, regulation, ordinance, or requirement at any concentration that is or has become regulated by the United States, the State of California, or any local government authority having jurisdiction over the **LEASED PREMISES**.
8. **"LEASED PREMISES"** shall mean the land and structures as described herein.
9. **"LESSEE"** shall include SAN DIEGO REFRIGERATED SERVICES, INC., a California corporation, it is understood that the use of the collective, inclusive term **"LESSEE"** is used herein for convenience and is not intended to convey any special authority to any included person or entity beyond that which is attributed to them by contract, law or agreement.

10. **"LESSOR"** shall include the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation.
11. **"MATERIALS"** shall include, without limitation, all personal property and surplus and salvage items from the **LEASED PREMISES**. The term shall not include ammonia and other items that existed on the **LEASED PREMISES** prior to July 1, 2000.
12. **"REVENUE SHARING"** shall mean the sharing between **LESSOR** and **LESSEE** of **WHARFAGE**, as defined hereinafter, collected for cargo that is handled, shipped, received, delivered, processed and/or stored by **LESSEE** within the warehouse facility or upon the **LEASED PREMISES** including, but not limited to, Tariff charges as specifically provided for herein. With the exception of the above, **REVENUE SHARING** will not include the revenue due to **LESSOR** for any land or building rent or dockage charges or other fees paid to **LESSOR** by other **LESSEES** of **LESSOR** or other users of the Tenth Avenue Marine Terminal.
13. **RIGHT TO "EXAMINE", "AUDIT" and/or "INSPECT"** as used in various paragraphs in this Lease shall not be deemed to permit **LESSOR** to bring onto or allow entry onto the **LEASED PREMISES**, by any competitor of **LESSEE**, at any time, for any purpose, until said Lease is **TERMINATED** under the provisions herein. Moreover, at no time shall these terms be deemed to permit **LESSOR** to take, copy, reproduce, or photograph any documents owned by, or in the care and custody of, **LESSEE**, unless mutually agreed by the parties in writing.
14. **"SUBLEASE" and "SUBLETTING"** shall mean the renting of any portion of the **LEASED PREMISES** to a third party for similar uses, with the prior written consent of **LESSOR** which shall not be unreasonably withheld. **LESSEE's** storage and service provider agreements with clients will be excluded from this definition.
15. **"TERMINATION DATE"** shall mean the date this Lease expires in accordance with the provisions of Paragraph 1 herein or the date **LESSOR** exercises its right to terminate this Lease pursuant to the provisions of Paragraph 10(b) herein or the date **LESSEE** surrenders its right to possession pursuant to Paragraph 10(b) herein.
16. **"WHARFAGE"** shall mean **LESSOR's** charges under its Tariff or as agreed upon between **LESSOR** and a customer against maritime cargo for the passage of that cargo over, through or under wharves or wharf premises or when moored to a slip adjacent to a wharf or wharf premises.
17. **"80/20 RATIO"** shall mean a maritime/domestic tonnage ratio of 80/20 on all imported and exported cargo such that at least 80 percent of such cargo shall be imported or exported by waterborne vessel hereinafter.

LEASE

THIS LEASE, made and entered into this _____ day of _____, 20_____, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter "**LESSOR**," and SAN DIEGO REFRIGERATED SERVICES, INC., a California corporation hereinafter "**LESSEE**," WITNESSETH.

WHEREAS, **LESSOR** and **LESSEE**, on the 1st day of July, 2000, entered into a Lease of certain tidelands in the City of San Diego, California, which Lease is on file in the Office of the Clerk of **LESSOR** bearing Document No. 40904 which Lease was first entered into by the parties; and

WHEREAS, **LESSOR** and **LESSEE**, on the 8th day of May, 2001, entered into an Agreement for Amendment of Lease, Amendment No.1, which Amendment is on file in the Office of the Clerk of **LESSOR** bearing Document No. 42184; and

WHEREAS, **LESSOR** and **LESSEE**, on the 21st day of May, 2002, entered into an Agreement for Amendment of Lease, Amendment No. 2, which Amendment is on file in the Office of the Clerk of **LESSOR** bearing Document No. 44127; and

WHEREAS, **LESSOR** and **LESSEE**, on the 21st day of December, 2004, entered into an Agreement for Amendment of Lease, Amendment No. 3, which Amendment is on file in the Office of the Clerk of **LESSOR** bearing Document No. 48092; and

WHEREAS, **LESSOR** and **LESSEE**, on the 7th day of March, 2006, entered into an Agreement for Amendment of Lease, Amendment No. 4, which Amendment is on file in the office of the Clerk of **LESSOR** bearing Document No. 50295; and

WHEREAS, **LESSOR** and **LESSEE**, are mutually desirous of entering into a new lease which when fully executed by the parties and formally adopted by **LESSOR's** Board of Port Commissioners, shall replace and supersede the existing lease between the parties, and the four amendments thereto, as described above.

LESSOR, for the consideration hereinafter set forth, hereby leases to **LESSEE** for the term and upon the conditions hereinafter set forth, a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows:

Approximately 433,965 square feet of land area and the improvements thereon, including 317,802 square feet of refrigerated chill rooms, freezer rooms and dry storage areas within Warehouse "B" located at the Tenth Avenue Marine Terminal, 802 Terminal Street, in the City of San Diego, California, more particularly described and delineated on Drawing No. 020-091, dated August 6, 2012, attached hereto as Exhibits "A" and "B" and by this reference made a part hereof, hereinafter "**LEASED PREMISES**."

LESSOR hereby leases the **LEASED PREMISES** to **LESSEE** to have and to hold for the term of this Lease, upon the following express terms and conditions. In the event **LESSOR** in its sole discretion elects to any assignment or transfer of this Lease, or should **LESSOR** become affiliated or assign this Lease to a third party or outside terminal operator, all entities involved in such assignment, transfer, and/or affiliation will be bound by the provisions of this Lease, and all terms and conditions stated hereinwith shall apply:

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 four (4) year term through December 31, 2036. 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. Notwithstanding the foregoing, **LESSEE** shall have the right to terminate this Lease, effective December 31, 2017, upon the giving of written notice of intent to do so, on or before January 31, 2017.

2. **USE:** **LESSEE** agrees that the **LEASED PREMISES** shall be used only and exclusively for the uses listed below. **LESSOR** shall make an authorized representative available to meet with **LESSEE** on a monthly basis or as needed to discuss the Leased Premises.

(a) **LESSEE** agrees that the **LEASED PREMISES** including the refrigerated facility shall be used only and exclusively for the provision of dry and refrigerated warehouse services for the handling, shipping, receiving, delivery, processing, and/or storage of chilled and/or frozen food commodities, perishable, and/or non-perishable general cargo and non-strategic military cargo, with a service provider agreement in place prior to or not subject to the National Shipping Authority Service Priority Orders (NSPO) (as defined under US Department of Transportation, Maritime Administration, National Shipping Authority Port Planning Order No. CASD18) delivered, imported or exported by waterborne vessel at the **LESSOR's** Tenth Avenue Marine Terminal, and for no other purposes whatsoever. **LESSEE** shall, however, throughout the duration of this Lease and any extension terms, maintain the **80/20 RATIO** as defined herein. The limitations on use of the **LEASED PREMISES** set forth in this section absolutely prohibit a change or variance in use from those permissible uses set forth in this section. Nothing in this Paragraph shall be construed or interpreted in any way so as to preclude or limit **LESSOR** in seeking its own cargo importation and exportation opportunities at the Tenth Avenue Marine Terminal. **LESSOR** acknowledges, for the term of this Lease and any extensions thereafter, the

LEASED PREMISES serves as the Tenth Avenue Marine Terminal cold storage facility.

- (b) **LESSEE** shall, for a period of twelve (12) months from the end of the fiscal year end, keep or cause to be kept, accurate, legible, and complete records of all cargo tonnage by way of bills of lading, delivery notices, manifests, tallies or other such documents showing cargo descriptions weights or other measurements, used in the ordinary course and in the operation of all authorized use activities, conducted in pursuance of the rights granted herein, of all inbound domestic cargo and merchandise entering **LESSEE's** leasehold, for the purpose of determining compliance with Paragraph 2(a) herein (80/20 ratio of maritime to domestic).
- (c) Additionally, if the audit reveals a discrepancy of more than five percent (5%) between the ratio of maritime to domestic tonnage, as reported by **LESSEE** and the 80/20 ratio required by this Lease, and/or **LESSEE** has failed to maintain complete and accurate records, and documentation in accordance with this Lease, then **LESSEE** shall pay the reasonable cost of the audit, as determined by the Executive Director of **LESSOR**. In the event **LESSEE** disagrees with the 80/20 calculations resulting from the audit or cost of audit, the parties agree to submit the matter to Dispute Resolution, as discussed in Paragraph 48 herein.

2.1 INTENTIONALLY OMITTED

2.2 **UNAUTHORIZED USE CHARGE:** **LESSEE** shall pay **LESSOR** Twenty Percent (20%) of the gross receipts for any service or use that is not permitted under this Lease. This payment is subject to the due date for rent and the provisions for delinquent rent provided in Paragraph 3(d) herein. The existence of the Twenty Percent (20%) charge in this Paragraph and the payment of this charge or any part thereof, does not constitute an authorization for a particular service or use, and does not waive any **LESSOR** rights to terminate a service or use or to default **LESSEE** after a period not exceeding three (3) consecutive years for participating in or allowing any unauthorized use of the **LEASED PREMISES**. It is further agreed that at least Eighty Percent (80%) of **LESSEE's** total annual metric tonnage at the **LEASED PREMISES** shall be imported and/or exported by waterborne vessel through **LESSOR's** Tenth Avenue Marine Terminal. It is the intent of the Paragraph that **LESSEE** shall diligently pursue maritime cargoes and shall place maritime cargoes in priority of domestic cargoes for **LESSEE's** operation on the **LEASED PREMISES**. Once the Unauthorized Use Charge of Twenty Percent (20%) is paid to **LESSOR**, it shall cure the default of prior Lease year's infraction, however the Unauthorized Use Charge cure shall not exceed a period of three (3) consecutive years.

3. **RENT:** **LESSEE** agrees to pay to **LESSOR** rent in accordance with the following:

- (a) The rent ("Flat Annual Rent") for the first year of this Lease shall be in the sum of Three Hundred Thousand Dollars (\$300,000). Thereafter, and for each year thereafter for the duration of the Lease, including any term extensions, the Flat Annual Rent shall be in the sum of Four Hundred Seventy-Five Thousand Dollars (\$475,000) subject to Cost of Living Adjustment as described in Paragraph 3.1 below.
- (b) Flat Annual Rent, as described in subparagraph (a) above, shall be payable by **LESSEE** in 12 equal monthly payments in advance on or before the first (1st) day

of each and every month in which it's due. All payments shall be delivered or transmitted to **LESSOR's** Treasurer. Checks or electronic payments shall be made payable to the San Diego Unified Port District and mailed or transmitted to the Treasurer's Office, San Diego Unified Port District, Post Office Box 120488, San Diego, California 92112-0488, or delivered to the Treasurer's Office, San Diego Unified Port District, 3165 Pacific Highway, San Diego, California. **LESSOR** may change the designated place of payment and filing at any time upon ten (10) days' written notice to **LESSEE**.

- (c) **LESSEE** acknowledges that it pays 100% for the utilities; electric, natural gas, water, and storm drain maintenance fees and sewer charges incurred by **LESSEE** on **LEASED PREMISES**, except for **LESSOR** responsibilities in accordance with Paragraph 4.1 herein. Water and sewer charges to be calculated by <http://www.sandiego.gov/water/rates/index.shtml>. Payment of these utilities shall not be deemed rent.
- (d) **LESSEE** hereby acknowledges that late payment by **LESSEE** to **LESSOR** of rent and other sums defined herein this Lease due hereunder will cause **LESSOR** to incur costs not contemplated by this Lease. Accordingly, in the event **LESSEE** is delinquent in remitting to **LESSOR** the rent due in accordance with the rent provisions of this Lease, **LESSEE** shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. Payment of rent due, including the late fee of five percent (5%), if made within fourteen (14) days of the due date, shall not constitute an event of default, provided there is no more than one (1) incidence of late rent payment in any given twelve (12) calendar month period. If rent is still unpaid at the end of fifteen (15) days, **LESSEE** shall pay an additional five percent (5%) [being a total of ten percent (10%)] (collectively, "Late Charges"). The parties hereby agree that said Late Charges are additional rent and are not interest, and that said Late Charges are appropriate to compensate **LESSOR** for loss resulting from rent delinquency including, without limitation, lost opportunities and the cost of servicing the delinquent account. Acceptance of such Late Charges and any portion of the late payment by **LESSOR** shall in no event constitute a waiver of **LESSEE's** default with respect to rent payments overdue fifteen (15) days or more, nor prevent **LESSOR** from exercising any of its other rights and remedies. The Executive Director of **LESSOR** shall have the right to waive for good cause any Late Charges upon written application of **LESSEE** for any such delinquency period.
- (e) All payments by **LESSEE** to **LESSOR** shall either be by a good and sufficient check or electronic transmittal. No payment made by **LESSEE** or receipt or acceptance by **LESSOR** of a lesser amount than the correct amount of rent due under this Lease shall be deemed to be other than a payment on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and **LESSOR** may accept such check or payment without prejudice to **LESSOR's** right to recover the balance or pursue any other available remedy.

3.1 **COST OF LIVING RENT ADJUSTMENTS:**

- (a) This Lease shall provide for the following mid-term Flat Annual **CPI** Rent adjustment dates applied solely to Rent defined herein, excluding utilities and

other payments to **LESSOR**, based on the following schedule hereinafter "Adjustment Dates":

January 1, 2018

January 1, 2021

January 1, 2024

January 1, 2027

January 1, 2030

January 1, 2033

January 1, 2036

- (b) On the referenced Adjustment Dates, the Flat Annual Rent specified in Paragraphs 3(a) herein shall be adjusted by the increase in the **CPI**. The Flat Annual Rent payable pursuant to Paragraphs 3(a) of this Lease shall be multiplied by a fraction, the numerator of which shall be the **CPI** for the calendar month which is three months prior to the Adjustment Date under consideration, and the denominator of which shall be the **CPI** for the calendar month which is three months prior to commencement of the previous Adjustment Date. The sum so calculated shall constitute the new Flat Annual Rent herein, but in no event shall such new Flat Annual Rent be less than Four Hundred Seventy-Five Thousand (\$475,000) dollars.

In the event the **CPI** is no longer published, the index for the Adjustment Date shall be the one reported in the U. S. Department of Labor's comprehensive official index most nearly corresponding to the foregoing description of the **CPI**. If the herein-described Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by agreement of the parties. **LESSOR** shall advise **LESSEE** in writing, prior to adopting a substitute index, of its intention to do so, in sufficient time to allow **LESSEE** to object, if it so desires. If **LESSOR** and **LESSEE** are unable to agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

Notwithstanding the publication dates of the **CPI**, the Flat Annual Rent shall be adjusted to be effective on the Adjustment Dates. Until said Flat Annual Rent Adjustment can be reasonably determined by **CPI** publication, **LESSEE** shall continue to make rent payments pursuant to this Lease at the same rent in effect at the then-current Rental Period. Because of this provision, underpayments of rent shall be paid to the **LESSOR** within thirty (30) days of receipt by **LESSEE** of written notice of the amount of the calculated underpayment.

3.2 **RENT REVIEW:** Intentionally Omitted as not applicable to this Lease.

3.3 **REVENUE SHARING:** **REVENUE SHARING** between **LESSOR** and **LESSEE** on a 50/50 basis shall be applied to all **WHARFAGE**. **REVENUE SHARING** shall only be applied to cargo that is handled, shipped, received, delivered, processed, and/or stored by **LESSEE** within warehouse facility or upon **LEASED PREMISES**. **REVENUE SHARING** shall be applied to both

imported and exported maritime cargoes. **LESSOR** shall collect all **WHARFAGE** and make good faith efforts to collect the current published **WHARFAGE** rates and notify **LESSEE** promptly, but in no event more than ten (10) days after commencing negotiations, in the event any other **WHARFAGE** rate other than Tariff is being negotiated with another user or potential user of **LESSEE's** services. Further, **LESSOR** shall notify **LESSEE** promptly, but in no event more than ten (10) days after a rate other than Tariff is agreed to between **LESSOR** and a user or potential user of **LESSEE's** services. **LESSEE** agrees and acknowledges that **LESSOR** has exclusive right to set **WHARFAGE** rates, or modifications to **WHARFAGE** rates, in its sole discretion with no right of approval or disapproval by **LESSEE**. **REVENUE SHARING PAYMENTS** shall be payable by either check or credit memo to **LESSEE's** account on a monthly basis, within sixty (60) days of the end of the preceding month in which **WHARFAGE** was collected by **LESSOR**.

- (a) **LESSOR** shall, for a period of twelve (12) months from the end of **LESSOR's** fiscal year, keep accurate and complete records of all cargo tonnage crossing over, under or through **LESSOR's** wharves, for the sole purpose of determining **LESSOR's** compliance with Paragraph 3.3 herein (**REVENUE SHARING**). Said records shall be maintained at the administrative offices located in San Diego County.
- (b) Any late fees collected by **LESSOR** shall be subject to **REVENUE SHARING**. In the event of any disparity between **LESSOR's** calculation of **WHARFAGE** or **REVENUE SHARING** amounts and **LESSEE's** calculation of same, the parties hereto shall have co-equal rights to examine each other's records with respect to the calculation of **WHARFAGE**, **REVENUE SHARING**, and/or **CONTAINER MOVES** and equivalent charges. **LESSEE** shall have audit rights with respect to **LESSOR's** calculation of **REVENUE SHARING**.
- (c) **LESSOR** agrees to pay such amounts set forth above as being fair and just under the circumstances set forth. Any late payment by **LESSOR** of **REVENUE SHARING** which is overdue by more than fourteen (14) days and any acceptance of same by **LESSEE** shall in no event constitute a waiver of **LESSOR's** breach, with respect to said late payment, nor prevent either party from exercising any of the other rights and remedies granted in this Lease.
- (d) In the event of any disparity between **LESSOR's** calculation of **WHARFAGE** or **REVENUE SHARING** amounts and **LESSEE's** calculation of same, the parties hereto shall have co-equal rights to examine each other's books and records with respect to the calculation of **WHARFAGE**, **REVENUE SHARING**, and/or **CONTAINER MOVES** and equivalent charges. Each party shall bear their own auditing costs with respect to examining each other's books and records with respect to **WHARFAGE**, **REVENUE SHARING**, and/or **CONTAINER MOVES**.

4. **IMPROVEMENTS:**

- (a) In accordance with the procedures described herein, **LESSEE** may, at its own expense, make alterations or changes, or cause to be made, built, installed, or removed any structures, machines, appliances, utilities, signs, or other improvements necessary or desirable for the authorized use of the **LEASED PREMISES**. Provided, however, and subject to subparagraph 4(c) herein, said work shall be in accordance with plans and specifications including, but not limited to, working drawings, hereinafter "Plans," previously submitted to and

approved in writing by **LESSOR**, which such approval shall not be unreasonably withheld or delayed.

- (b) No construction, installation, or removal of any improvement upon the **LEASED PREMISES** shall commence without **LESSOR's** prior written approval, which such approval shall not be unreasonably withheld or delayed. All construction, installations, and removals shall be in accordance with Plans submitted to, and approved in writing by, **LESSOR** prior to the commencement of any such work. **LESSOR** shall use its best efforts to approve or disapprove Plans within thirty (30) days of submission by **LESSEE** in writing. All Plans are subject to changes as may be approved by **LESSOR**, in **LESSOR's** discretion. Further, all work shall be in accordance with all applicable laws, regulations, ordinances, and codes.
- (c) Notwithstanding the foregoing, within the interior of any enclosed building structure, and without **LESSOR's** prior consent, **LESSEE** shall have the right to install and/or remove machines, equipment, appliances, and trade fixtures that are necessary or desirable for the authorized use of the **LEASED PREMISES**.
- (d) **LESSOR** shall maintain in good working condition pavement of the **LEASED PREMISES** not covered by structures. **LESSOR** shall provide reasonable notice to **LESSEE** that **LESSOR** intends to perform maintenance on the pavement not covered by structures.
- (e) **LESSEE** shall notify **LESSOR** prior to submitting application(s) to any governmental regulatory agency for any development or construction permit or construction license pertaining to the **LEASED PREMISES**. **LESSEE** shall also provide **LESSOR** with a copy of all application(s) within five (5) days of making said application(s), along with copies of all Plans submitted as part of the application(s). **LESSEE** shall also provide **LESSOR**, within ten (10) days of **LESSEE's** receipt, a copy of all permits, licenses, or other authorizations subsequently issued for development or construction.
- (f) With the exception of parking control or warning signs, and signs identifying **LESSEE's** business and/or specific office locations, **LESSEE** and **LESSOR** agree that no banners, pennants, flags, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the **LEASED PREMISES** without the other's prior written consent, which such approval shall not be unreasonably withheld or delayed.
- (g) In the event **LESSEE** proposes a redevelopment of the **LEASED PREMISES** ("Redevelopment Project") to **LESSOR**, if a California Environmental Quality Act ("CEQA") document and/or Port Master Plan Amendment ("PMPA") and/or appealable Coastal Development Permit ("CDP") are deemed necessary for the Redevelopment Project in **LESSOR's** sole determination, **LESSEE** agrees to reimburse **LESSOR** for all costs and expenses incurred by **LESSOR** in obtaining any necessary entitlements for the Redevelopment Project, including but not limited to, the preparation and certification of the CEQA document by the Board of Port Commissioners of **LESSOR**, the preparation and approval of the PMPA by the Board and the California Coastal Commission ("CCC"), the preparation and issuance of an appealable CDP by the Board or, if appealed, the CCC, and any other costs and expenses arising out of the entitlement process in

LESSOR's determination as documented in appropriate invoices, cost memos or other appropriate documentation.

4.1 **LESSOR LEASEHOLD PREPARATION:** **LESSOR** at its sole expense has assumed responsibility for provisioning of water to the **LESSEE's** west exterior restrooms of Warehouse B as well as the internal eye washing station in the inspection area. Additionally, **LESSOR** has assumed responsibility for maintenance, operation and security of **LESSEE's** exterior restrooms and all water usage from restrooms. In the event **LESSEE** requests the inclusion and the assumption of the exterior restrooms, **LESSOR** shall install a separate water meter for both the exterior restrooms and the **LEASED PREMISES**. Effective September 30, 2015, **LESSOR** has completed the installation of the leasehold boundary fence.

LESSOR shall, to the fullest extent permitted by law, defend, indemnify and hold harmless **LESSEE** from any and all liability, claims, demands, judgments, damages, proceedings, orders, directives, costs (including reasonable attorney's fees) arising directly or indirectly out of the operation and use by **LESSOR** or its permitted operators of **LESSOR's** Gottwald shore crane or other equipment by **LESSOR**. It is the intent of this paragraph that **LESSOR** indemnify and hold **LESSEE** harmless for any actions of **LESSOR** or **LESSEE** relating to the use, or operation, of the Gottwald, or other equipment by **LESSOR** on the leasehold, except for those arising out of the sole negligence or willful misconduct of **LESSEE**. This indemnity obligation shall apply for the entire term that any third party can make a claim against or sue **LESSEE** for liabilities arising out of **LESSOR's** activities as described in this paragraph, except for claims or litigation arising through the sole negligence or willful misconduct of **LESSEE**.

For the purpose of keeping the restrooms and paved areas within the leasehold in a good, safe, healthy and sanitary condition for purposes of local, state, federal and third-party compliance, **LESSEE** shall maintain the right to inspect and determine the condition of, and protect **LESSEE's** interests in these areas. If inspection reasonably determines the areas are not in the condition required herein, **LESSEE** must immediately notify **LESSOR** in writing. **LESSOR** will commence maintenance work reasonably necessary to eliminate any unsafe or unsanitary conditions, and further, will use reasonable efforts to complete the work within ten (10) days of receiving notice from **LESSEE**.

With executed right of entry, scope of work, or actual work plan, provided to **LESSEE**, **LESSOR** shall be permitted to enter and temporarily occupy that portion of the **LEASED PREMISES** necessary to perform said improvements provided that **LESSOR** coordinates with **LESSEE** to minimize impacts to **LESSEE's** operations.

LESSOR shall be permitted to occupy the **LEASED PREMISES** in order to perform said improvements provided that the **LESSOR** coordinates with **LESSEE** to minimize impacts to **LESSEE's** operations.

5. INTENTIONALLY OMITTED

6. **TITLE TO IMPROVEMENTS:** For the purpose of this Paragraph, improvements shall include, but are not limited to, subsurface improvements. On the Commencement Date of this Lease, all existing structures, and buildings, located in or on the **LEASED PREMISES** as of July 1, 2000, are owned by and title thereto is vested in **LESSOR**. This Lease does not require

demolition of existing structures and buildings, located at the **LEASED PREMISES** at the date of termination of this Lease, for improvements made prior to July 1, 2000.

On the Commencement Date of this Lease, all machines, appliances, equipment, trade fixtures, installed on the **LEASED PREMISES** by **LESSEE** since July 1, 2000 are owned by and title thereto is vested in **LESSEE**. Any machines, appliances, equipment and trade fixtures installed on the **LEASED PREMISES** by **LESSOR** prior to July 1, 2000 are owned by and title is vested in **LESSOR**. Furthermore, all machines, appliances, equipment, and trade fixtures, placed on the **LEASED PREMISES** by **LESSEE** subsequent to the **COMMENCEMENT DATE** of this Lease will be deemed owned by and title thereto vested in **LESSEE**. All machines, appliances, equipment, trade fixtures, and portable public artworks owned by **LESSEE** shall be removed by **LESSEE**, at **LESSEE's** expense, within sixty (60) days after the **TERMINATION DATE** of this Lease or sooner termination thereof, whichever occurs earlier. Provided however, **LESSEE** agrees to repair any and all damage occasioned by their removal.

If **LESSEE**-owned machines, appliances, equipment, and trade fixtures, required by **LESSOR** to be removed are not removed by **LESSEE** within one hundred twenty (120) days after the **TERMINATION DATE** of this Lease the same may be considered abandoned and shall thereupon become the property of **LESSOR**, without cost to **LESSOR** and without any payment to **LESSEE**, except that **LESSOR** shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of **LESSEE**.

During any period of time employed by **LESSEE** under this Paragraph to remove machines, appliances, equipment, and trade fixtures, **LESSEE** shall continue to pay the full rent to **LESSOR** in accordance with this Lease, which said rent shall be prorated daily.

7. **LIENS:** **LESSEE** shall defend, indemnify, and hold harmless **LESSOR** against all claims and liens for labor, services, or materials in connection with **LESSEE's** improvements, repairs, or alterations made by **LESSEE** and its **SUBLESSEES**, contractors, and agents on the **LEASED PREMISES**, and the costs of defending against such claims and liens, including reasonable attorneys' fees.

In the event any such claim or lien, or any other claim(s), lien(s) or levy(ies) whatsoever of any nature caused by **LESSEE** and its **SUBLESSEES**, contractors, and agents, is filed against the **LEASED PREMISES** or the leasehold interests of **LESSEE** therein, **LESSEE** shall, upon written request of **LESSOR**, unless said liens, levies or claims have been satisfied by the time said request is received by **LESSEE**, deposit with **LESSOR** a bond conditioned for the payment in full of all claims upon which said lien(s) or levy(ies) have been filed. Such bond shall be acknowledged by **LESSEE**, as principal, and by an entity licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. **LESSOR** shall have the right to declare this Lease in default in the event the bond required by this Paragraph has not been deposited with **LESSOR** within ten (10) days after written request has been delivered to **LESSEE**.

This provision shall not apply to a foreclosure of a trust deed or mortgage encumbering the leasehold if the encumbrance has previously received **LESSOR's** consent in accordance with Paragraph 8 herein.

8. **LEASE ENCUMBRANCE:** **LESSEE** shall not encumber the Lease, leasehold estate, and/or improvements thereon by a deed of trust, mortgage, or other security instrument to assure the payment of the promissory note of **LESSEE**, without the prior express written consent by resolution of **LESSOR** in each instance. If any deed of trust, mortgage, or other security instrument encumbering the Lease, leasehold estate, and/or improvements thereon is entered into by **LESSEE** without **LESSOR's** prior express written consent, **LESSOR** shall have the right to declare this Lease in default.

In the event **LESSEE** requests **LESSOR's** consent to any Lease encumbrance, hereinafter referred to as a "transaction" in this Paragraph 8, **LESSEE** shall reimburse **LESSOR** for all **LESSOR's** reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated.

If a consented-to deed of trust, mortgage, or other security instrument should at any time be in default, before **LESSEE's** interest under said Lease may be sold as part of any foreclosure or trustee's sale, or be assigned in lieu of foreclosure, the prior express written consent by resolution of **LESSOR** shall be obtained in each instance. However, the original beneficiary of the deed of trust, original mortgagee of the mortgage, and original holder of the security instrument which **LESSOR** has consented to by resolution, may purchase **LESSEE's** interest at a foreclosure or trustee's sale, or accept assignment of the Lease in lieu of foreclosure, without the requirement of any further consent on the part of **LESSOR**, provided said party, as an express condition precedent, agrees in writing to assume each and every obligation under the Lease. Furthermore, before any said original beneficiary, mortgagee or holder of a security instrument, or any other consented-to assignee or purchaser may subsequently assign or sublease any of the leasehold or **LESSEE's** interest, it shall obtain **LESSOR's** prior express written consent by resolution. The decision of **LESSOR** as to such assignee, purchaser, or **SUBLESEE** shall be final.

9. **ASSIGNMENT – SUBLEASE:** **LESSEE** shall not, without the prior written consent of **LESSOR** which consent shall not be unreasonably withheld or delayed, subject to the conditions set forth below:

- (a) Assign or transfer the whole or any part of this Lease or any interest therein;
- (b) **SUBLEASE** the whole or any part of the **LEASED PREMISES**;
- (c) Permit transfer of the Lease or possession of the **LEASED PREMISES** by merger, consolidation, or dissolution of **LESSEE**;
- (d) Notwithstanding the provisions contained in Paragraph 8 herein, permit hypothecation, pledge, encumbrance, transfer or sale, voluntary or involuntary, in whole or in part, of this Lease or any interest therein; or
- (e) Except in connection with storage as permitted in Paragraph 2 of this Lease, permit the occupancy of the whole or any part of the **LEASED PREMISES** by any other person or entity.

It is mutually agreed that the personal qualifications of the parties controlling **LESSEE** including, but not limited to, members of any limited liability company, are a part of the consideration for granting this Lease. Said parties do hereby specifically agree to maintain active control and supervision of the operations conducted on the **LEASED PREMISES**.

In the event **LESSEE** requests **LESSOR's** consent to any Lease assignment, Lease transfer, and/or **SUBLEASE** hereinafter referred to as a "transaction," **LESSEE** shall pay for **LESSOR's** documentation filing fee.

In the event **LESSOR** consents to any Lease assignment, **SUBLEASE** or transfer, said consent shall be conditioned upon the following: (i) assignee/sublessee shall agree and assume each and every obligation under the Lease; (ii) if deemed necessary by **LESSOR**, a Lease amendment shall be executed which may include new or revised Lease provisions; and (iii) assignee/sublessee shall comply with other conditions and qualifications reasonably determined by the Board of Port Commissioners of **LESSOR**. Notwithstanding, items (ii) and (iii), shall not apply in the event of: (a) a Lease assignment, **SUBLEASE** or transfer to a third party from a **CONSENTED-TO-LENDER** which acquired title to the Lease by foreclosure or deed in lieu of foreclosure or a new Lease pursuant to the provisions of Paragraph 10 herein, or (b) assignment, **SUBLEASE** or transfer of the Lease to a **CONSENTED-TO-LENDER** by deed in lieu of foreclosure, or to a **CONSENTED-TO-LENDER** or a third party as the successful bidder at a foreclosure sale. In the event **LESSOR** consents to any **SUBLEASE**, said consent shall be conditioned upon the following: (i) if deemed reasonably necessary by **LESSOR**, a Lease amendment shall be executed which shall include new or revised Lease provisions; and (ii) **LESSEE** shall comply with other conditions and qualifications determined by the Board of Port Commissioners of **LESSOR**.

10. **DEFAULT AND/OR BREACH; REMEDIES:**

(a) Defaults. The occurrence of any one (1) or more of the following events shall constitute a default or breach hereunder:

- (1) **ABANDONMENT** of the **LEASED PREMISES**.
- (2) Failure by **LESSEE** to pay, when due, any Lease-required rent (except as provided in Paragraphs 3(d)), or utility charges, defined as 100% of electric, natural gas, water and sewer charges attributable to **LESSEE's** operations where such failure continues for a period of ten (10) days after written notice thereof is sent by **LESSOR** to **LESSEE**. Provided, however, any such notice provided in this Paragraph 10(a)(2) or in subsequent Paragraph 10(a)(3) shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.
- (3) Failure by **LESSEE** to perform any other express or implied covenants or conditions in this Lease (other than any breach under Paragraph 9, for which immediate notice of termination may be given and except for Paragraphs 19 and 20), should such failure continue for thirty (30) days after written notice thereof.

- (4) Subject to any restrictions or limitations placed on **LESSOR** by applicable laws governing bankruptcy, **LESSEE's**: (a) applying for, consenting to, or suffering the appointment of a receiver, trustee, or liquidator for all or a substantial portion of its assets; (b) making a general assignment for the benefit of creditors; (c) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (d) becoming unable to, or failing to, pay its debts as they mature; (e) being adjudged a bankrupt; (f) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization, or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (g) convening a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium, extension, or composition of its debts; or (h) suffering, or permitting to continue unstayed and in effect for ten (10) consecutive days, any attachment, levy, execution, or seizure of all or a substantial portion of **LESSEE's** assets or of **LESSEE's** interest in this Lease.

This Paragraph 10(a)(4) shall not be applicable or binding on the beneficiary of any deed of trust, mortgage, or other security instrument on the **LEASED PREMISES** which is of record with **LESSOR** and has been consented to by resolution of **LESSOR**, or to said beneficiary's successors in interest consented to by resolution of **LESSOR**, as long as there remains any monies to be paid by **LESSEE** to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously and timely pays to **LESSOR** all rent due or coming due under the provisions of this Lease and the **LEASED PREMISES** are continuously and actively used in accordance with Paragraph 14 of this Lease, and provided that said beneficiary agrees in writing to assume and perform each and every obligation under the Lease.

- (5) Knowing failure by **LESSEE** to comply with all time periods specified in this Lease, unless cured as provided herein.
- (6) Notwithstanding Paragraph 10(a)(5), failure by **LESSEE** to timely comply with all other provisions of this Lease, unless cured as provided herein.

(b) **LESSOR's Remedies.** In the event of any default defined herein by **LESSEE**, **LESSOR** may exercise the following remedies:

- (1) Termination: Terminate **LESSEE's** right to possession of the **LEASED PREMISES** whereupon this Lease shall terminate and **LESSEE** shall immediately surrender possession of the **LEASED PREMISES** to **LESSOR**. In such event, **LESSOR** shall be entitled to recover from **LESSEE**:
- (i) The "Worth at the Time of Award", as hereinafter defined, of the unpaid rent which had been earned at the time of termination;
- (ii) The "Worth at the Time of Award" of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such loss that **LESSEE** proves could have been reasonably avoided;

- (iii) The “Worth at the Time of Award” of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of such loss that **LESSEE** proves could have been reasonably avoided; and
- (iv) Any other amount necessary to compensate **LESSOR** for all the detriment proximately caused by **LESSEE’s** failure to perform its obligations under this Lease, or which would ordinarily be likely to result therefrom, including but not limited to the cost of recovering possession of the **LEASED PREMISES**, expenses of reletting (including necessary repair, renovation and alteration of the **LEASED PREMISES**), reasonable attorneys’ fees, and any other reasonable costs.

The “Worth at the Time of Award” of the amounts referred to in Paragraphs 10(b)(1)(i) and 10(b)(1)(ii) shall be computed by charging interest at ten percent (10%) per annum from the dates such amounts accrued to **LESSOR**. The “Worth at the Time of Award” of the amount referred to in Paragraph 10(b)(1)(iii) shall be computed by discounting such amount at one (1) percentage point above the Discount Rate of the Federal Reserve Bank of San Francisco at the time of the award.

- (2) Reletting: Without terminating or affecting a forfeiture of the Lease, or otherwise relieving **LESSEE** of any obligation herein, **LESSOR** shall make reasonable efforts to relet the **LEASED PREMISES** or any portion thereof, at any time or from time to time, for such terms and upon such conditions and rent as **LESSOR**, in its sole discretion, deems proper. Regardless of whether the **LEASED PREMISES** are relet, **LESSEE** shall continue to pay to **LESSOR** all Lease-required amounts up to the date that **LESSOR** terminates **LESSEE’s** right to possession of the **LEASED PREMISES**; provided, however, following a default, **LESSOR** shall not unreasonably withhold its consent to any **LESSEE**-requested assignment of this Lease or **SUBLETTING** of the **LEASED PREMISES**, unless **LESSOR** shall also elect to terminate this Lease and **LESSEE’s** right to possession of the **LEASED PREMISES**, as provided in Paragraph 10(b)(1). Such payments shall be due at the times provided in this Lease and **LESSOR** need not wait until the termination of the Lease to recover said amounts. If **LESSOR** relets the **LEASED PREMISES**, or any portion thereof, such reletting shall not relieve **LESSEE** of any obligations herein, except that **LESSOR** shall apply the rent or other proceeds actually collected for such reletting against amounts due from **LESSEE** herein, to the extent such proceeds compensate **LESSOR** for **LESSEE’s** nonperformance of any obligation herein. **LESSOR** may execute any lease made pursuant thereto in its own name. Further, **LESSOR** shall be under no obligation to reveal to new **LESSEE** how these proceeds were applied, nor shall said new **LESSEE** have any right to collect any such proceeds. **LESSOR** shall not, by any reentry or other act, be deemed to have accepted **LESSEE’s** surrender of the **LEASED PREMISES** or **LESSEE’s** interest therein, nor be deemed to have terminated this Lease or to have relieved **LESSEE** of any obligation herein, unless **LESSOR** shall have furnished **LESSEE** with express written notice of **LESSOR’s** election to do so, as set forth herein.

- (3) Other: Any and/or all other rights or remedies of **LESSOR** specified elsewhere in this Lease or provided by law.

In the event **LESSOR** has consented to an encumbrance of this Lease for security purposes in accordance with Paragraph 8 of this Lease, it is understood and agreed that **LESSOR** shall furnish copies of all notice(s) of default(s) to the beneficiary or mortgagee under said encumbrance by certified mail (provided **LESSEE** has delivered to **LESSOR** written request, therefore, together with the name and address of any such beneficiary or mortgagee) contemporaneously with the furnishing of such notices to **LESSEE**. Furthermore, in the event **LESSEE** fails to cure such default(s) within the time permitted herein, said beneficiary or mortgagee shall be permitted to cure such default(s) at any time within fifteen (15) days following the expiration of the period within which **LESSEE** may cure said default(s); provided, however, **LESSOR** shall not be required to furnish any further notice(s) of default(s) to said beneficiary or mortgagee.

In the event this Lease is terminated pursuant to the provisions of this Paragraph 10, **LESSOR** and **LESSEE** shall continue to have all rights provided in Paragraph 6 of this Lease.

Notwithstanding the foregoing provisions of this Paragraph 10, should a default not be cured within the cure periods referred to above, said Lease shall not be terminated as to said beneficiary or mortgagee unless **LESSOR** first legally offers to enter into a valid lease with said beneficiary or mortgagee, and said offer is not accepted in writing within (30) days after said offer is made. Furthermore, such new lease must be entered into as a condition concurrent with such termination for the then-remaining term of this Lease. Furthermore, the new lease must contain the same terms, conditions, and priority as this Lease, provided the mortgagee or beneficiary promptly cures all then-existing defaults under this Lease when and to the extent it is able to cure them. Such new lease may be entered into even though possession of the **LEASED PREMISES** has not been surrendered by the defaulting **LESSEE**. In such event, unless legally restrained, **LESSOR** shall promptly proceed to obtain possession of the **LEASED PREMISES** and to deliver possession to said mortgagee or beneficiary as soon as the same is obtained. Should the mortgagee or beneficiary fail to accept said offer in writing within said thirty-day (30) period, or, having so accepted said offer, should it fail promptly to cure all existing defaults under this Lease when and to the extent it is able to cure them, then such termination shall also be effective as to said mortgagee or beneficiary.

11. **BANKRUPTCY: LESSOR** shall have the right to declare this Lease in default if **LESSEE**: (i) becomes insolvent; (ii) makes an assignment for the benefit of creditors; (iii) becomes the subject of a bankruptcy proceeding, reorganization arrangement (solely as the term is used in the bankruptcy context), insolvency, receivership, liquidation, or dissolution proceeding; or in the event of any judicial sale of **LESSEE's** leasehold interest.

The conditions of this Paragraph shall not be applicable or binding on: (1) **LESSEE**; or (2) the beneficiary in any deed of trust, mortgage, or other security instrument encumbering the leasehold interest which **LESSOR** has consented to in writing; or (3) the aforesaid beneficiary's successors in interest which **LESSOR** has consented to in writing, as long as there remains any monies to be paid by **LESSEE** to such beneficiary under the terms of such deed of trust;

provided **LESSEE**, such beneficiary, or such beneficiary's successors in interest continuously pay to **LESSOR** all rent due or coming due under the provisions of this Lease, and the **LEASED PREMISES** are continuously and actively used in accordance with Paragraph 14 herein.

12. **EMINENT DOMAIN:** If any public authority takes the whole or a substantial part of the **LEASED PREMISES** under the power of eminent domain, then the term of this Lease shall cease as to the part so taken from the day the possession of that part is taken. Further, the rent shall be paid up to that day. **LESSEE** shall then have the right either to: (i) cancel this Lease and declare the same null and void; or (ii) continue in possession of the remainder of the **LEASED PREMISES** under the then-current Lease terms. Provided, however, the Flat Annual Rent shall be reduced in proportion to the value of the portion of the **LEASED PREMISES** taken, as evidenced at the time of taking that all conditions have been satisfied. All damages awarded as compensation to **LESSOR** for the taking of **LESSOR's** real property, as well as structures, appurtenances, and improvements constructed by **LESSOR**, or any other of **LESSOR's** rights for such taking, shall belong to **LESSOR** and **LESSEE** shall have no claim to such compensation. Provided, however, **LESSOR** shall not be entitled to any award made for the taking of any of **LESSEE's** rights, installations or improvements on the **LEASED PREMISES**, or elsewhere on the Tenth Avenue Marine Terminal in the event **LESSEE** shall make a claim for them against the condemning authority. Provided, however, **LESSOR** shall have no duty or obligation to pursue a claim against the condemning authority, on behalf of **LESSEE**.

13. **TERMINATION OF PRIOR LEASE AND AMENDMENTS:** The existing Lease and amendments thereto between **LESSOR** and **LESSEE** for the **LEASED PREMISES** are hereby terminated on the **COMMENCEMENT DATE** of this Lease, with the following exceptions: All existing permits issued to **LESSEE** and leasehold under the prior lease and the amendments thereto are incorporated into this Lease. All encumbrances to the prior Lease and its amendments shall be considered acceptable encumbrances to this Lease. No obligation(s) of either party are created other than as set forth in this Lease or by operation of law.

14. **USE OBLIGATION:** Unless noticed in writing of **LESSOR's** operations impeding use of **LEASED PREMISES**, or noticed in writing to **LESSOR** that **LESSEE's** business operations have a temporary closure due to seasonal fluctuations in the market, **LESSEE** shall actively and continuously use and operate the **LEASED PREMISES** for the particular exclusive use expressly provided for in Paragraph 2, herein, except for failure to so use caused by wars, strikes, riots, civil commotion, acts of public enemies, and acts of God. Said active and continuous use and operation enhances the value of the lands within **LESSOR's** jurisdiction; provides needed public service; and provides additional employment, taxes, and other benefits to the general economy of the area. **LESSEE**, however, shall not and is expressly prohibited from using the **LEASED PREMISES** for any other purpose or use whatsoever, whether it is purported to be in addition to or in lieu of the particular exclusive use expressly provided in Paragraph 2, herein, unless provided for and approved in writing by **LESSOR**.

15. **MAINTENANCE AND REPAIR:**

- (a) As part of the consideration for this Lease, and except as provided in Paragraph 4(d) and 4.1 above, and as discussed in 15(b) below, **LESSEE** shall assume full responsibility for operation and maintenance of the **LEASED PREMISES**

throughout the term and without expense to **LESSOR**. **LESSEE** shall perform all maintenance, which includes all painting, repairs, and replacements necessary to maintain and preserve the **LEASED PREMISES** in a good, safe, healthy, and sanitary condition, satisfactory to **LESSOR** and in compliance with all applicable laws. Provided, however, and with the exception of **EMERGENCY REPAIRS** as defined herein, prior to **LESSEE** performing any repairs, plans and specifications must first be submitted to **LESSOR** and receive **LESSOR's** approval, pursuant to the procedures provided in Paragraph 4 herein. Such approval shall not be unreasonably withheld or delayed. Further, **LESSEE** shall provide approved containers for trash and garbage and keep the **LEASED PREMISES** free and clear of rubbish, litter, and any other fire hazards.

For the purpose of keeping the **LEASED PREMISES** in a good, safe, healthy, and sanitary condition, in accordance and compliance with local, state and federal regulations, **LESSOR** shall maintain the right but not the duty, upon reasonable prior notice, to enter, view, inspect, determine the condition of, and protect its interests in the **LEASED PREMISES**. Provided, however, **LESSOR** or its representatives shall: conduct such entry and inspection in a manner that (a) causes the least inconvenience and disruption to **LESSEE's** operation as practicable; and (b) complies with all safety and security requirements of **LESSEE**. It is not intended, however, that **LESSEE's** safety and security requirements preclude **LESSOR's** right of inspection. Further, **LESSEE** shall provide **LESSOR** reasonable access to the **LEASED PREMISES** for such purpose, provided further that **LESSOR** shall assume full responsibility for, and shall defend, indemnify and hold **LESSEE** harmless against, any and all loss or damage (including, without limitation, any loss or damage to the **LEASED PREMISES** or any claims, judgements, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands) (collectively, "Loss") to the extent arising out of or connected directly or indirectly with **LESSOR's** maintenance and repair activities described herein, unless such Loss is due to **LESSEE's** sole negligence or willful misconduct.

If an inspection discloses the **LEASED PREMISES** are not in the condition required herein, upon any notification by **LESSOR**, **LESSEE** will use reasonable efforts to commence the necessary maintenance work, and complete said work within ten (10) days after written notice from **LESSOR**. Provided however, if the **LESSOR's** insurance risk analysis has recommendations for the **LESSOR**, those recommendations will not be imposed on the **LESSEE**. Further, if at any time **LESSOR** determines the **LEASED PREMISES** are not in the condition required herein, **LESSOR** may require **LESSEE** to file and pay for a faithful performance bond to assure prompt correction, without additional notice. The amount of said bond shall be adequate, in **LESSOR's** opinion, to correct all unsatisfactory conditions.

With executed right of entry, scope of work, or actual work plan, provided to **LESSEE**, **LESSOR** shall be permitted to enter and temporarily occupy that portion of the **LEASED PREMISES** necessary to perform said maintenance and repairs provided that **LESSOR** coordinates with **LESSEE** to minimize impacts to **LESSEE's** operations.

- (b) Except as provided in Paragraphs 4(d) above and 4.1 herein, **LESSOR** shall not be required to perform any maintenance, including painting, repairs, or

replacements; or to make any improvements whatsoever on or for the benefit of the **LEASED PREMISES**, and except for the replacement of roofs, exterior walls, utilities connections, including but not limited to acceptable maintenance and sanitary conditions of the water pump station, roadways, asphalt, and doors.

- (c) The rights reserved in this Paragraph shall not create any obligations or increase any obligations for **LESSOR** and **LESSEE** elsewhere in this Lease.

16. **PERFORMANCE BOND:** **LESSEE** shall not commence any construction having a cost of over two hundred fifty thousand dollars (\$250,000) upon the **LEASED PREMISES** until performance bonds in the amount of the total estimated construction cost of the proposed improvements have been secured and submitted to **LESSOR**. In lieu of said performance bonds, the Executive Director of **LESSOR** may, in his sole discretion, accept performance and labor and material bonds supplied by **LESSEE's** contractor or subcontractors, performance guarantees, or other satisfactory evidence that said construction will be timely completed. Said bonds must be in a form acceptable to **LESSOR** and have been issued by a company qualified to do business in the state of California.

17. **TAXES AND UTILITIES:** This Lease may result in a taxable possessory interest and be subject to the payment of property taxes. **LESSEE** shall pay before delinquency all taxes and assessments of any kind assessed or levied upon **LESSEE** or the **LEASED PREMISES** by reason of: (i) this Lease; (ii) any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by **LESSEE**; or (iii) the business or other activities of **LESSEE** upon or in connection with the **LEASED PREMISES**. **LESSEE** also shall pay any fees imposed by law for licenses or permits for any business or activities of **LESSEE** upon the **LEASED PREMISES**, or under this Lease, and shall pay before delinquency any and all charges for utilities (as defined in Paragraph 10 (a) (2) herein) at or on the **LEASED PREMISES**.

18. **CONFORMANCE WITH LAWS AND REGULATIONS:** Subject to **LESSOR's** responsibility under this Lease, **LESSEE** agrees that, in all activities on or in connection with the **LEASED PREMISES**, and in all uses thereof, including the making of any alterations, changes, installations, or other improvements, it will abide by and conform to all laws and regulations. Said laws and regulations shall include, but are not limited to those prescribed by the San Diego Unified Port District Act; any ordinances of the city in which the **LEASED PREMISES** are located, including the Building Code thereof; any published ordinances, policies, administrative practices and general rules of **LESSOR**, including tariffs; and any applicable laws of the state of California and federal government, as any of the same now exist or may hereafter be adopted or amended. In particular and without limitation, **LESSEE** jointly with **LESSOR** shall have the obligation and responsibility to comply with the requirements of: (i) Article 10 of **LESSOR** Code entitled "Stormwater Management and Discharge Control". **LESSEE** shall have the sole obligation to comply with (ii) the Americans With Disabilities Act of 1990, including but not limited to regulations promulgated thereunder.

19. **EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION:** **LESSEE** shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the Americans with Disabilities Act of 1990; and any other applicable federal, state, or local laws and regulations now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental

disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such laws, including without limitation the Americans with Disabilities Act of 1990, **LESSEE** shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between **LESSOR** and **LESSEE**.

Annually, upon written request by **LESSOR**, **LESSEE** shall formulate and file with **LESSOR** an approved: (i) "Equal Employment Opportunity and Nondiscrimination Program," and (ii) "Statement of Compliance" for the promotion of equal employment opportunities and nondiscrimination. **LESSEE** shall make such progress reports as required by **LESSOR**, and, upon **LESSOR's** reasonable notice, **LESSEE** shall make available to **LESSOR** for inspection its records relevant to compliance with this Paragraph. Provided, however, **LESSEE** is only required to file the Program and Statement, and reports and be subject to inspection when the average annual employment level operating on the **LEASED PREMISES** exceeds fifty (50) full-time employees. Provided further, should **LESSEE** be subject to a federally-mandated affirmative action program for employees, **LESSEE** may, in lieu of filing the Program and Statement, annually certify in writing to **LESSOR** that **LESSEE** is subject to such a program, and, upon **LESSOR's** request, **LESSEE** shall furnish evidence thereof.

20. **COMPLIANCE WITH EMPLOYMENT AND LABOR REQUIREMENTS:** For the purposes and provisions of this Paragraph, a **SUBLESSEE** shall be considered the **LESSEE** should the **SUBLESSEE** become the prime operator of the **LEASED PREMISES**. **LESSEE** shall comply with the Federal Fair Labor Standards Act of 1938; the Federal Labor-Management Reporting and Disclosure Act of 1959; the Occupational Safety and Health Act of 1970; the California Constitution; and any other applicable federal, state, or local laws and regulations now existing or hereinafter enacted, regarding employment and labor practices. This shall include a specific commitment to not impede or limit any employee's rights with regards to unionization, including their right to meet, seek and receive information, or elect to organize. In complying with all such laws, **LESSEE** shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between **LESSOR** and **LESSEE**. Additionally, **LESSEE** shall formulate and file with **LESSOR** a "Statement of Compliance" for the protection of employment rights. Provided, however, **LESSEE** is only required to file the Statement when the average annual employment level exceeds fifty (50) full-time employees.

21. **PARTIAL INVALIDITY:** If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

22. **HOLD HARMLESS:** Except as set forth in the provisions of Paragraphs 4(d), 4.1, 15(a), and 15(b) herein, **LESSEE** shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless **LESSOR** for any and all liability, claims, judgments, damages, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands arising directly or indirectly out of the obligations undertaken in connection with this Lease, or **LESSEE's** use, occupancy, possession or operation of the **LEASED PREMISES**, except for those arising out of the **LESSOR's** sole negligence or willful misconduct. It is the intent of this Paragraph that **LESSEE** indemnify and hold harmless **LESSOR** for any actions of **LESSEE** or **LESSOR**, except

for those arising out of the sole negligence or willful misconduct of **LESSOR**. This indemnity obligation shall apply for the entire term that any third party can make a claim against or sue **LESSOR** for liabilities arising out of **LESSEE's** use, occupancy, possession, or operation of the **LEASED PREMISES**, or arising from any defect in any part of the **LEASED PREMISES**.

LESSOR shall defend, indemnify, and hold **LESSEE** harmless against any and all loss or damage (including, without limitation, any loss or damage to the **LEASED PREMISES** or any claims, judgments, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands) (collectively "Loss") to the extent arising out of or connected directly or indirectly with **LESSOR's** activities in accordance with Paragraphs 4(d), 4.1, 15(a) and 15(b) herein, unless such loss is due to **LESSEE's** sole negligence or willful misconduct. It is the intent of this Paragraph that **LESSOR** indemnify and hold **LESSEE** harmless for any actions of **LESSOR** or **LESSEE** relating to the aforementioned activities of **LESSOR**, as set forth in Paragraphs 4(d), 4.1, 15(a) and 15(b), except for those arising out of the sole negligence or willful misconduct of **LESSEE**. This indemnity obligation shall apply for the entire term that any third party can make a claim against or sue **LESSEE** for liabilities arising out of **LESSOR's** activities in accordance with Paragraph's 4(d), 4.1, 15(a) and 15(b) herein.

23. **SUCCESSORS IN INTEREST:** Unless otherwise provided in this Lease, the terms, covenants, conditions, and agreements herein shall apply to and bind the successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

24. **EASEMENTS:** This Lease and all rights granted hereunder are subject to all easements and rights-of-way previously granted or reserved by **LESSOR** in, upon, over, and across the **LEASED PREMISES** for any purpose whatsoever for access to gas, electricity, water, sewer, drainage, telephone, telegraph, television transmission, and such other public facilities. Said Lease and granted rights shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, telegraph, television transmission, and such other **LESSOR** or public facilities as **LESSOR** may determine from time to time to be in the best interests of the development of the lands within **LESSOR's** jurisdiction. **LESSOR** agrees to make an effort to locate future easements and rights-of-way, and to install associated public facilities, so as to produce a minimum amount of interference with **LESSEE's** business. Additionally, with executed right of entry, scope of work, or actual work plan, provided to **LESSEE**, **LESSOR** shall be permitted to enter and temporarily occupy that portion of the **LEASED PREMISES** provided that **LESSOR** coordinates with **LESSEE** to minimize impacts to **LESSEE's** operations. Further, **LESSEE** shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way unless the granting of such future easements or rights of way materially interferes with the conduct of **LESSEE's** business, in which case **LESSEE's** rent will be reduced in direct proportion thereto.

25. **TITLE OF LESSOR:** **LESSOR's** title is derived from the provisions of the San Diego Unified Port District Act, Harbors & Navigation Code on file in **LESSOR's** Office of the Clerk and is subject to the provisions of said Act. This Lease is granted subject to the terms and conditions of said Act.

26. **INSURANCE:** **LESSEE** shall maintain insurance acceptable to **LESSOR** in full force and effect throughout the term of this Lease. The policies for said insurance shall, as a minimum, provide the following:

(a) Forms of Coverage

- (1) "OCCURRENCE" form Commercial General Liability policy covering the **LEASED PREMISES**, operations, and contractual liability assumed by **LESSEE** (underlying coverage) in the amount of not less than two million dollars (\$2,000,000) aggregate, one million dollar per occurrence, overlain by a five million dollar (\$5,000,000) per occurrence, umbrella policy. The policies shall provide coverage for bodily injury, personal injury, and property damage.
- (2) Fire and Extended Coverage, including water damage and debris cleanup provisions, in an amount not less than ninety percent (90%) of full replacement value of all improvements located within the **LEASED PREMISES**. The fire and extended coverage policies shall be endorsed with a Loss Payee endorsement in favor of **LESSOR**. It is agreed that any insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) resulting from a loss under said policies shall be payable jointly to **LESSOR** and **LESSEE** to ensure that said proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the **LEASED PREMISES** and any damaged or destroyed improvements located thereon. Provided, however, if there is a **LESSOR**-consented to mortgage or deed of trust encumbering the leasehold, then all fire and extended coverage policies shall be made payable jointly to the mortgagee or beneficiary and **LESSEE**, to ensure that any proceeds shall be held by said mortgagee or beneficiary for the following purposes:
 - (i) As a trust fund to pay for the reconstruction, repair, or replacement of the damaged or destroyed improvements, in kind and scope, in progress payments as the work is performed. Any funds remaining after completion of said work shall be retained by said mortgagee or beneficiary and applied to reduce any debt secured by such mortgage or deed of trust. Furthermore, any funds remaining after full payment of said debt shall be paid to **LESSEE**; or
 - (ii) In the event that this Lease is terminated with consent of both **LESSOR** and said mortgagee or beneficiary, and the improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained, without liability, by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust. Furthermore, said mortgagee or beneficiary shall hold the balance thereof to restore the **LEASED PREMISES** to a neat and clean condition. Any remaining funds shall lastly be paid to **LESSOR** and **LESSEE**, as their interests may appear.
- (3) In the event underground storage tanks are located on the **LEASED PREMISES**, **LESSEE** is required to comply with Code of Federal

Regulations, Title 40, Chapter I, Subchapter H or Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law". At the time **LESSEE** is required to comply with any provisions of UST Law requiring financial assurance mechanisms, **LESSEE** shall provide **LESSOR** with a certified copy of its Certification of Financial Responsibility. If **LESSEE's** program for financial responsibility requires insurance, then **LESSEE's** policy(ies) shall name **LESSOR** and its officers, employees, and agents as additional insureds, and all other terms of Subparagraph (b), below, shall apply. Should **LESSEE** change its financial assurance mechanisms, **LESSEE** shall immediately provide **LESSOR** with a certified copy of its revised Certification of Financial Responsibility.

- (4) Evidence of coverage for Longshoremen and **LESSEE's** Harborworkers, if applicable, either as part of Marine Insurance Coverage required in Subparagraph 26(a)(4) above, or an extension of a worker's compensation policy.

(b) General Requirements

- (1) All required insurance shall be in force the first day of the term of this Lease, and shall be maintained continuously in force throughout the term of this Lease. In addition, the cost of all required insurance shall be borne by **LESSEE**. During the entire term of this Lease, **LESSEE** shall provide **LESSOR** with Certificates, in a form acceptable to **LESSOR**, evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Paragraph. The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the forgoing, **LESSOR** reserves the right to require complete, certified copies of all required policies at any time.
- (2) All liability insurance policies shall name, or be endorsed to name **LESSOR** and its officers, employees, and agents as additional insureds and protect **LESSOR** and its officers, employees, and agents against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage will not be suspended, voided, cancelled, or reduced in coverage or in limits, except after **LESSEE** has furnished **LESSOR** with thirty (30) days' prior written notice by certified mail. All insurance policies shall be endorsed to state that **LESSEE's** insurance is primary and not excess or contributory to any insurance issued in the name of **LESSOR**. Further, all insurance companies must be satisfactory to **LESSOR**.
- (3) Any deductibles or self-insured retentions must be declared and acceptable to **LESSOR**. If the deductibles or self-insured retentions are unacceptable to **LESSOR**, then **LESSEE** shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the **LESSOR** and its officers, employees, and agents; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- (4) **LESSOR** shall retain the right at any time to review the coverage, form, and amount of insurance required herein. If, in the reasonable opinion of **LESSOR**, the insurance provisions in this Lease do not provide adequate protection for **LESSOR** using services connected with **LESSEE's** use or occupancy of the **LEASED PREMISES**, **LESSOR** may require **LESSEE** to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. **LESSOR's** requirements shall be reasonable, but shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.
- (5) **LESSOR** shall notify **LESSEE** in writing of reasonable changes in the insurance requirements. With respect to changes in insurance requirements that are available from **LESSEE's** then-existing insurance carrier, **LESSEE** shall deposit Certificates evidencing acceptable insurance policies with **LESSOR** incorporating such changes within sixty (60) days of receipt of such notice. With respect to changes in insurance requirements that are not available from **LESSEE's** then-existing insurance carrier, **LESSEE** shall deposit Certificates evidencing acceptable insurance policies with **LESSOR**, incorporating such changes, within one hundred twenty (120) days of receipt of such notice. In the event **LESSEE** fails to deposit insurance Certificates as required herein, this Lease shall be in default without further notice to **LESSEE**, and **LESSOR** shall be entitled to exercise all legal remedies.
- (6) If **LESSEE** fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, **LESSOR** has the right to declare this Lease in default and **LESSOR** shall be entitled to exercise all legal remedies.
- (7) The procuring of such required policies of insurance shall not be construed to limit **LESSEE's** liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies of insurance, **LESSEE** shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect of **LESSEE** connected with this Lease, or with the use or occupancy of the **LEASED PREMISES**.
- (8) **LESSEE** agrees not to use the **LEASED PREMISES** in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance **LESSOR** may have on the **LEASED PREMISES** or on adjacent premises, or that will cause cancellation of any other insurance coverage for the **LEASED PREMISES** or adjoining premises. **LESSEE** further agrees not to keep on the **LEASED PREMISES** or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the **LEASED PREMISES**. **LESSEE** shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the **LEASED PREMISES**.

27. **POLICY OF LESSOR:** It is **LESSOR's** policy that prevailing wage rates shall be paid to all persons employed on the lands within **LESSOR's** jurisdiction.

Unless required by statute, ordinance, or regulation of any local, state, or federal regulatory authority, **LESSOR** shall make no change in the existing 1997 Port District Fumigation Policy.

28. **WARRANTIES-GUARANTEES-COVENANTS:** Except for **LESSOR's** obligations set forth under Section 3.3, 4(d), 4.1 and 15(a) and 15(b) herein, **LESSOR** makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the **LEASED PREMISES**, including the physical condition thereof, or any condition which may affect the **LEASED PREMISES**. It is agreed that **LESSOR** will not be responsible for any loss, damage, and/or costs which may be incurred by **LESSEE** by reason of any such condition or conditions.

29. **DAMAGE TO OR DESTRUCTION OF LEASED PREMISES:** Except as to **LESSEE**-constructed improvements, should a storm, fire, act of God, or other casualty result in the destruction or partial destruction of the **LEASED PREMISES**, such that the leasehold is not reasonably useable by **LESSEE** for its normal operations, and in the event **LESSOR** cannot reasonably accommodate **LESSEE's** operations in some other means, **LESSEE's** obligations under this Lease shall terminate as to only those destroyed portions and only until such times as **LESSOR** can repair the **LEASED PREMISES** to such a condition that **LESSEE** can reasonably resume its normal operations. **LESSOR** shall, in good faith, use all reasonable efforts to repair the **LEASED PREMISES**, except for any facilities or improvements on the **LEASED PREMISES** for which the maintenance and repair are expressly the responsibility of **LESSEE**, such that **LESSEE** can resume operations thereon as soon as reasonably possible. During the period of such suspension, and in the event **LESSOR** cannot reasonably accommodate **LESSEE's** operations through some other means, Rent shall be reduced in proportion to the portion of the **LEASED PREMISES** destroyed and unavailable for **LESSEE's** normal operations, but such suspension shall not have the effect of extending the then current term of the Lease. If **LESSOR** elects not to restore, repair, or reconstruct the **LEASED PREMISES**, then this Lease shall terminate.

Should **LESSEE** constructed improvements be: (i) damaged or destroyed by fire, the elements, acts of God, or by any other cause; or (ii) declared unsafe or unfit for occupancy or use by a public entity with the appropriate authority, (i) and/or (ii) hereinafter "event," **LESSEE** shall, within ninety (90) days of such event, commence and diligently pursue to completion the repair, replacement, or reconstruction of the improvements necessary to permit full occupancy and use of the **LEASED PREMISES** for the uses required herein. Repair, replacement, or reconstruction of such improvements following their destruction in whole or substantial part, except to the extent the loss is covered by insurance required pursuant to Paragraph 27 herein (or would be covered regardless of whether such required insurance is actually in effect).

If **LESSEE** elects not to restore, repair, or reconstruct as herein required, then this Lease shall terminate. Further, **LESSOR** and **LESSEE** shall have any rights to which it would be entitled under the provisions of Paragraph Nos. 6 and 26 herein.

Except as otherwise provided above in Paragraph 12 & 29 herein, no event described herein shall relieve **LESSEE** of its obligations to pay all Rent and other amounts otherwise due hereunder. In the event the Lease terminates, **LESSEE** shall only be obligated for Flat Annual Rent or other amounts in arrears at the time of the Lease termination.

30. **QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION:** Upon termination of this Lease for any reason, including but not limited to termination because of default by

LESSEE, LESSEE shall execute, acknowledge, and deliver to **LESSOR** within one hundred twenty (120) days after receipt of written demand therefore a good and sufficient deed whereby all **LESSEE's** right, title, and interest in the **LEASED PREMISES** is quitclaimed to **LESSOR** subject to the provisions of Paragraph 6 herein. Should **LESSEE** fail or refuse to deliver the required deed to **LESSOR**, **LESSOR** may prepare and record a notice reciting the failure of **LESSEE** to execute, acknowledge, and deliver such deed. Said notice shall be conclusive evidence of the termination of this Lease and of all rights of **LESSEE**, or those claiming under **LESSEE**, in and to the **LEASED PREMISES**.

31. **PEACEABLE SURRENDER:** Upon expiration of this Lease or earlier termination or cancellation thereof, as herein provided, **LESSEE** shall peaceably surrender the **LEASED PREMISES** to **LESSOR** in as good condition as the **LEASED PREMISES** were on July 1, 2000, except as the **LEASED PREMISES** were repaired, rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease, ordinary wear and tear excepted, and subject to Paragraph 6 herein. If **LESSEE** fails to surrender the **LEASED PREMISES** at the expiration of this Lease or the earlier termination or cancellation thereof, **LESSEE** shall defend and indemnify **LESSOR** from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding **LESSEE** claims based on **LESSEE's** failure to surrender.

32. **WAIVER:** Should either **LESSOR** or **LESSEE** waive any breach by the other of any Lease covenant, condition, or agreement, such waiver shall not be, nor be construed to be, a waiver of any subsequent or other breach of the same or any other Lease covenant, condition, or agreement. Further, failure on the part of either party to require or exact the other's full and complete compliance with any of the Lease covenants, conditions, or agreements shall not be, nor be construed as in any manner changing the terms, or preventing the enforcement in full, of the provisions hereof. In addition, **LESSOR's** subsequent acceptance of rent hereunder shall not be deemed to be a waiver of any preceding **LESSEE** breach of any Lease term, covenant, or condition, other than **LESSEE's** failure to pay the particular rent so accepted, regardless of **LESSOR's** knowledge of **LESSEE's** preceding breach at the time rent is accepted.

33. **HOLDOVER:** This Lease shall terminate without further notice at the expiration of the term. Any holding over by **LESSEE** after either expiration or termination shall not constitute a renewal or extension, or give **LESSEE** any rights in or to the **LEASED PREMISES**.

If **LESSEE**, with **LESSOR's** written consent, remains in possession of the **LEASED PREMISES** after Lease expiration or termination of the term or after the date in any notice given by **LESSOR** to **LESSEE** terminating this Lease, such possession shall be deemed a month-to-month tenancy, terminable upon thirty (30) days written notice furnished at any time by either party to the other. In addition, all provisions of this Lease, except those pertaining to term, shall apply to the month-to-month tenancy, and **LESSEE** shall continue to pay all rent required by this Lease.

34. **PARAGRAPH HEADINGS:** The Table of Contents and Paragraph Headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

35. **ENTIRE UNDERSTANDING:** This Lease contains the entire understanding and agreement of the parties. **LESSOR** and **LESSEE** acknowledge that there are no other written or oral understandings or agreements between the parties other than as reflected in the Lease with respect to the **LEASED PREMISES** and that the Lease embodies and therefore supersedes all prior negotiations, discussions, obligations and rights of the parties hereto. No waiver, modification, amendment or alteration of the Lease shall be valid unless it is expressed in writing and signed by authorized representatives of the parties hereto. Each of the parties to this Lease acknowledges that no other party, agent or representative has made any promise, representation, waiver or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Lease.

36. **TIME IS OF THE ESSENCE:** Time is of the essence of each and all of the terms and provisions of this Lease. This Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of **LESSEE** as fully and to the same extent as though specifically mentioned in each instance. All covenants, conditions, and agreements in this Lease shall extend to and bind any assigns and **SUBLESSEES** of **LESSEE**.

37. **NOTICES:** All notices provided for by this Lease or by law to be given or served upon **LESSOR** or **LESSEE** shall be in writing and: (i) personally served upon **LESSOR** or **LESSEE**, or any person hereafter authorized by either party in writing to receive such notice, or (ii) served by certified letter addressed to the appropriate address hereinafter set forth, or to such other address designated in writing by the respective party.

To LESSOR

Executive Director
San Diego Unified Port District
Post Office Box 120488
San Diego, CA 92112-0488

To LESSEE

Edward F. Plant, President
San Diego Refrigerated Services, Inc.
802 Terminal Street
San Diego, CA 92101

Frank E. Plant III, Secretary/Treasurer
San Diego Refrigerated Services, Inc.
802 Terminal Street
San Diego, CA 92101

Should any consented-to assignee, consented-to purchaser, or **CONSENTED-TO-LENDER** notify **LESSOR** in writing of its desire to receive notices, such party shall also be personally served, or served by certified letter at such appropriate address designated in writing by the respective party.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the party served forty-eight (48) hours after deposit in the U.S. Mail.

38. **REMOVAL OF MATERIALS:** **LESSEE** shall, upon expiration of this Lease or sooner termination as herein provided, remove within one hundred twenty (120) days all **MATERIALS** from the **LEASED PREMISES**, so as to leave the same in the same or as good condition as when first occupied by **LESSEE**, subject to reasonable wear and tear. Provided, however, if

LESSEE fails to remove all Materials within one hundred twenty (120) days, **LESSOR** may remove, sell, or destroy said Materials at the expense of **LESSEE**. Further, **LESSEE** agrees to pay **LESSOR** the reasonable cost of such removal, sale, or destruction; or, at the option of **LESSOR**, said Materials not removed, sold, or destroyed by **LESSEE** shall become the property of **LESSOR**, without cost to **LESSOR**, and without any payment to **LESSEE**.

During any period of time required to remove said Materials, or to test for and/or remediate Hazardous Materials as required in Paragraph 43 herein, **LESSEE** shall continue to pay the full rent to **LESSOR** in accordance with this Lease, which said rent shall be prorated daily.

39. **WASTE/NUISANCE:** **LESSEE** shall not use the **LEASED PREMISES** in a manner that constitutes waste or nuisance.

40. **NUMBER AND GENDER:** Words of any gender used in this Lease shall include any other gender and each word in the singular number shall include the plural whenever the tense requires.

41. **APPLICABLE LAW:** The Lease will be governed by and construed and enforced in accordance with the laws of the State of California.

42. **ATTORNEY FEES:** Should any suit be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by **LESSOR** under the laws of the state of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.

43. **HAZARDOUS MATERIALS:** **LESSEE** shall comply with all laws regarding **HAZARDOUS MATERIALS**, materials, waste, or petroleum products or fraction thereof, relative to **LESSEE's** occupancy or use of the **LEASED PREMISES**. **LESSEE** shall be liable and responsible for any contaminants arising out of **LESSEE's** occupancy or use of the **LEASED PREMISES**. Such liability and responsibility shall include, but is not limited to: (i) removal of any **HAZARDOUS MATERIALS** from the **LEASED PREMISES** and/or obtaining site closure by all appropriate regulatory agencies based on future land use; (ii) removal of any such **HAZARDOUS MATERIALS** from any area outside the **LEASED PREMISES**, including but not limited to surface and ground water, which **HAZARDOUS MATERIALS** were generated as part of the **LESSEE's** occupancy or use of the **LEASED PREMISES**; (iii) damages to persons, property, and the **LEASED PREMISES**; (iv) all claims resulting from those damages unenumerated in (iii) above; (v) fines imposed by any governmental agency; and (vi) any other liability as provided by law.

LESSOR shall defend, indemnify, and hold harmless **LESSEE** from any and all liability, claims, demands, judgments, damages, proceedings, orders, directives and costs, including reasonable attorneys' fees arising, solely and exclusively, from the entry upon the **LEASED PREMISES** by **LESSOR**, or its designated representatives, for the purpose of making an inspection, performing tests, or making measurements arising out of **LESSOR's** determination of an emergency.

If **LESSEE**, except as provided for in Paragraph 2 herein, has in the past or continues to use, dispose, generate, or store **HAZARDOUS MATERIALS** on the **LEASED PREMISES**, **LESSOR** or its designated representatives upon notification to **LESSEE** in writing, at **LESSOR's** sole discretion, may at any time during the term of this Lease, enter upon the **LEASED PREMISES** and make any inspections, tests, or measurements **LESSOR** deems necessary to determine if a release of **HAZARDOUS MATERIALS** has occurred. **LESSOR** shall furnish **LESSEE** a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in **LESSOR's** sole judgment, a release of **HAZARDOUS MATERIALS** or emergency which is reasonably determined by **LESSOR** to pose a risk to human welfare, the environment, or the infrastructure of **LESSOR** require otherwise. Such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to **LESSEE's** operation as is practicable. If such tests indicate a release of **HAZARDOUS MATERIALS**, then **LESSOR**, at **LESSOR's** sole discretion, may require **LESSEE**, at **LESSEE's** sole expense and at any time during the term of this Lease, to have tests for such **HAZARDOUS MATERIALS** conducted by a qualified party or parties on the **LEASED PREMISES**. If **LESSOR** has reason to believe any **HAZARDOUS MATERIALS** originated from a release on the **LEASED PREMISES** have contaminated any area outside of the **LEASED PREMISES**, including but not limited to surface and groundwater, then **LESSOR**, at **LESSOR's** sole discretion, may require **LESSEE**, at **LESSEE's** sole expense and at any time during the term of the Lease, to have tests for such **HAZARDOUS MATERIALS** conducted by a qualified party or parties on said area outside the **LEASED PREMISES**.

Tests conducted by **LESSEE's** qualified party shall include, but are not limited to applicable comprehensive soil, emission, and/or groundwater sampling tests, or other procedures to determine any actual or possible contamination. **LESSEE** shall expeditiously, but no longer than thirty (30) days after **LESSOR's** request for such tests, furnish to **LESSOR** sampling plans, and results of said tests and analysis thereof, identifying any **HAZARDOUS MATERIALS** which exceed then-applicable levels permitted by federal, state, or local laws. **LESSEE** shall report such contamination to **LESSOR** within seventy-two (72) hours, and shall diligently proceed to identify the extent of contamination, how it will be remediated, when it will be remediated, by whom, and the cost of such remediation.

If **LESSEE**, except as provided for under Paragraph 2 herein the Use provision has, in **LESSOR's** sole determination, used or stored **HAZARDOUS MATERIALS** onsite during the term of this Lease, then on/or before Lease termination, **LESSEE** shall allow **LESSOR** access to the **LEASED PREMISES** and disclose all requested environmental audit information to enable **LESSOR** to complete an environmental investigation of the **LEASED PREMISES**. Upon reviewing the investigation, if **LESSOR**, in its sole discretion, determines a release of **HAZARDOUS MATERIALS** has occurred at the **LEASED PREMISES**, **LESSOR** may require **LESSEE** to obtain, at its sole expense, "site review and closure" from the County Department of Environmental Health, herein, "DEH," under a voluntary site review agreement. Once DEH; the Regional Water Quality Control Board, herein "RWQCB;" or any other designated state lead agency has determined the site is closed, **LESSEE** will have satisfied its environmental obligations under said "site review and closure."

LESSEE shall defend, indemnify, and hold harmless **LESSOR** and its officers, employees, and agents for any and all responsibilities, damages, liabilities, claims, judgments, costs, fines, expenses, and demands, including without limitation any costs, expenses, and attorney fees therefor related to environmental liabilities resulting from **LESSEE's** occupancy or use of **LEASED PREMISES**. Said liabilities shall include, but are not limited to costs for environmental assessments, costs of remediation and removal, any costs of any health assessment or health effect studies. **LESSOR** shall have a direct right of action against **LESSEE** even if no third party has asserted a claim. Furthermore, in the event this Lease is assigned, **LESSOR** shall have the right to assign said indemnity rights to the assignee, and **LESSOR** shall delegate its duty to indemnify **LESSEE** to said assignee.

44. **STORAGE TANKS:**

- (a) Underground Storage Tanks. No underground storage tanks ("USTs") shall be permitted to be installed on the **LEASED PREMISES** during the term of this Lease without the prior written consent of the **LESSOR's** Executive Director in his or her sole and absolute discretion. In the event **LESSEE** obtains such approval to install a **LESSEE** installed UST on the **LEASED PREMISES**, **LESSEE** shall be responsible for complying with all laws and regulations pertaining to such **LESSEE** installed UST, including tank monitoring of such **LESSEE** installed UST as required by the County of San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. **LESSEE** further agrees to take responsibility for reporting unauthorized releases from USTs to HMMD and the **LESSOR** within twenty-four (24) hours of such unauthorized release. **LESSEE** will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material including, but not limited to: investigative, surface and groundwater clean-up, and expert and agency fees. **LESSEE** shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from a **LESSEE** installed UST. **LESSEE** further agrees to be responsible for maintenance and repair of the **LESSEE** installed USTs; obtaining tank permits; filing a business plan with HMMD or other responsible agency; and for paying **LESSEE** installed UST fees, permit fees, and other regulatory agency fees relating to **LESSEE** installed USTs. Under no circumstances shall **LESSEE** have any liability or responsibility for maintenance and/or repair of or monitoring or reporting unauthorized releases from or investigating and cleaning up any contamination from USTs which may exist or existed prior to **LESSEE's** occupation of the **LEASED PREMISES** under this Lease or the Lease commencing July 1, 2000.

In the event **LESSEE** obtains approval from **LESSOR** and installs any **LESSEE** USTs, **LESSEE** agrees to keep complete and accurate records on the **LEASED PREMISES** for a period of not less than thirty-six (36) months from the applicable events including, but not limited to, permit applications, monitoring, testing, equipment installation, repairing and closure of the **LESSEE** installed USTs, and any unauthorized releases of Hazardous Materials. **LESSEE** also agrees to make such records available for **LESSOR** or responsible agency inspection. **LESSEE** further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between **LESSEE** and any operator of USTs other than **LESSEE**.

Furthermore, **LESSEE** shall be responsible for compliance with all other laws and regulations presently existing, or hereinafter enacted, applicable to **LESSEE** installed USTs, including without limitation any such laws and regulations which alter any of the above requirements.

- (b) Aboveground Storage Tanks. Other than existing storage tanks, or tanks necessary to provide refrigeration for the ordinary course of **LESSEE's** business, no aboveground storage tanks ("ASTs") shall be permitted to be installed on the **LEASED PREMISES** during the term of this Lease without the prior written consent of the **LESSOR's** Executive Director in his or her discretion. In the event **LESSEE** obtains such approval to install a **LESSEE** installed AST, **LESSEE** shall be responsible for complying with all laws and regulations pertaining to such **LESSEE** installed AST. **LESSEE** shall, in accordance with this Lease and applicable laws and regulations, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith, including conformance with the latest version of said applicable laws and regulations. In addition, **LESSEE** shall maintain and repair said tanks to conform and comply with all other applicable laws and regulations for ASTs, including without limitation all of the requirements of Health & Safety Code, Chapter 6.67, Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said **LESSEE** installed tanks, allowing the San Diego Regional Water Quality Control Board ("SDRWQCB"), **LESSOR**, and/or responsible agency, to conduct periodic inspections. **LESSEE** also shall comply with valid orders of the SDRWQCB, filing the required storage tank statement and payment of the fee therefore, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by law. **LESSEE** shall be responsible for all costs associated with any unauthorized release from **LESSEE** installed ASTs, including but not limited to, investigative, surface and groundwater clean-up, and expert and agency fees.

45. **"AS-IS" LEASE AND WAIVERS:** With the exception of Paragraphs 4(d), 4.1, 15(a) and 15(b) herein, **LESSEE's** execution of the Lease shall fully and finally constitute:

- (a) **LESSEE's Acknowledgment.** **LESSEE's** acknowledgment that **LESSOR** has given to **LESSEE** sufficient opportunity to consider, inspect and review, to **LESSEE's** complete satisfaction: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the **LEASED PREMISES**; (2) the physical condition of the **LEASED PREMISES**, including, without limitation, the condition of the buildings at or under the **LEASED PREMISES**; (3) the effect upon the **LEASED PREMISES** of any and all applicable federal, state or local statutes, ordinances, codes regulations, decrees, orders, laws or other governmental requirements (collectively, "Applicable Laws"); (4) the development potential of the Premises including without limitation on the preceding clause (5), the effect of all Applicable Laws concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (6) the financial prospects of the **LEASED PREMISES** and local market conditions; (7) **LESSEE's** determination of the feasibility of **LESSEE's** intended use and enjoyment of the **LEASED PREMISES**; and (8) all other

facts, circumstances, and conditions affecting, concerning or relating to the **LEASED PREMISES**. The land use; the above ground environmental, biological, physical, and legal condition of the **LEASED PREMISES**; the feasibility of **LESSEE's** intended use and enjoyment of the **LEASED PREMISES** and such other facts, circumstances and conditions being collectively referred to herein as the "Condition of the **LEASED PREMISES**"; and, without limitation on any other provision of this Lease. **LESSEE** expressly assumes the risk that adverse conditions affecting the **LEASED PREMISES** have not been revealed by **LESSEE's** investigations.

- (b) Only LESSOR's Express Written Agreements Binding. **LESSEE** acknowledges and agrees that no person acting on behalf of **LESSOR** is authorized to make, and that except as expressly set forth in this Lease, neither **LESSOR** nor anyone acting for or on behalf of **LESSOR** has made, any representation, warranty, statement, guaranty or promise to **LESSEE**, or to anyone acting for or on behalf of **LESSEE**, concerning the Condition of the **LEASED PREMISES** or any other aspect of the **LEASED PREMISES**. **LESSEE** further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any person action on behalf of **LESSOR** which is not expressly set forth in this Lease will be valid or binding on **LESSOR**.
- (c) As-Is Lease. **LESSEE** further acknowledges and agrees that **LESSEE's** execution of this Lease shall constitute **LESSEE's** representation, warranty and agreement that the Condition of the **LEASED PREMISES** has been independently verified by **LESSEE** to its full satisfaction, and that, to the extent of the express covenants of **LESSOR** set forth in this Lease, **LESSEE** will be leasing the **LEASED PREMISES** based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of **LESSEE's** representatives; and that **LESSEE IS LEASING THE LEASED PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE LESSEE'S EXECUTION OF THIS LEASE.** Without limiting the scope or generality of the foregoing, **LESSEE** expressly assumes the risk that the **LEASED PREMISES** do not or will not comply with any Applicable Laws now or hereafter in effect.
- (d) Waivers, Disclaimers and Indemnity.
 - (i) Waiver and Disclaimer. **LESSEE** hereby fully and forever waives, and **LESSOR** hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the **LEASED PREMISES**, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.
 - (ii) LESSOR's Material. **LESSEE** further acknowledges that any information and reports which have actually been furnished by **LESSOR** to **LESSEE** including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soils reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which **LESSEE** has received or may hereafter receive from **LESSOR** or its agents or consultants have been furnished without warranty of any kind and on the express condition that **LESSEE** will make its own independent

verification of the accuracy, reliability and completeness of such information and that **LESSEE** will not rely thereon.

(e) Release and Waiver.

- (i) Release. Except to the extent of Claims (as defined below) against **LESSOR** arising from any breach by **LESSOR** of its covenants and obligations expressly provided in this Lease, **LESSEE**, on behalf of **LESSEE**, its successors and assigns, hereby fully and forever releases, acquits and discharges **LESSOR** of and from, and hereby fully forever waives:

Any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, costs, expenses, losses, judgements, provisional relief, fines, penalties, and fees, including without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "Claims"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that **LESSEE** or any of **LESSEE's** successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (A) any act or omission of **LESSOR** (or any person acting for or on behalf of **LESSOR** or for whose conduct **LESSOR** may be liable), whether or not such act be the active, passive or sole negligence of **LESSOR**, in connection with prior ownership, maintenance, operation or use of the **LEASED PREMISES**; (B) any condition of environmental contamination or pollution at the **LEASED PREMISES** (including, without limitation, the contamination or pollution of any soils, subsoil media, surface waters or groundwaters at the **LEASED PREMISES**); except where such contamination was not caused by **LESSEE** (C) to the extent not already included in clause (B) above, the prior, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the **LEASED PREMISES**, (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the **LEASED PREMISES** or into any soils, subsoils, surface waters or groundwaters at the **LEASED PREMISES**); (D) the violation of, or noncompliance with, any Environmental Requirements or other Applicable Law now or hereafter in effect, however and whenever occurring; (E) the condition of the soil at the **LEASED PREMISES**; (F) the condition of the improvements located on the **LEASED PREMISES** including, without limitation, the structural integrity and seismic compliance of such improvements; (G) any matters which would be shown on an ALTA land survey of the **LEASED PREMISES** (including, without limitation, all existing easements and encroachments, if any); (H) all Applicable Laws now or hereafter in effect; (I) matters which would be apparent from a visual inspection of the **LEASED PREMISES**; or (J) to the extent not already covered by any of the foregoing clauses (A) through (I) above, the use, maintenance, development, construction, ownership or operation of the **LEASED PREMISES** by **LESSOR** or any predecessor(s)-in-interest in the **LEASED PREMISES** of **LESSOR**.

46. **JOINT AND SEVERAL LIABILITY:** If **LESSEE**, as a party to this Lease, is a partnership; joint venture; or is comprised of more than one party or entity, or a combination thereof; the obligations imposed on **LESSEE** under this Lease shall be joint and several, and each general partner, joint venturer, party or entity of **LESSEE** shall be jointly and severally liable for said obligations. Furthermore, nothing herein shall be deemed or construed as creating a partnership or joint venture between **LESSOR** and **LESSEE**, or between **LESSOR** and any other entity or party, or cause **LESSOR** to be responsible in any way for the debts or obligations of **LESSEE**, or any other party or entity.

47. **SECURITY DEPOSIT:** A security deposit in the sum of One-Hundred Thousand Dollars (\$100,000) shall be provided **LESSOR** by **LESSEE**, on or before the Commencement Date of this Lease. The security deposit shall be held by **LESSOR** and used for the purpose of remedying **LESSEE's** defaults under this Lease.

Except as provided below, the security deposit shall be in the form of an Irrevocable Stand-By Letter of Credit drawn on a bank having a branch located in San Diego County or having a Moody's Long Term Letter of Credit rating of single A or higher and a Moody's Long Term Deposit rating of single A or higher. The principal sum shall be made payable to **LESSOR**. Each Letter of Credit provided during the term of this Lease shall be valid for a minimum of twelve (12) months from date of issuance. Provided, however, when the remaining term of this Lease is one (1) year or less, the Letter of Credit shall be valid for a minimum of three (3) months beyond the **TERMINATION DATE** of this Lease. If a Letter of Credit is not valid for the entire remaining term of this Lease plus three (3) months beyond, then such Letter of Credit shall be extended or renewed at least ninety (90) days prior to its expiration.

All or any portion of the principal sum of the Letter of Credit shall be available unconditionally to **LESSOR** for the purposes and uses provided herein. The bank, and the form and provisions of the Letter of Credit shall comply with the above requirements. Notwithstanding the above, if said security deposit or the cumulative total amount of security deposits required by **LESSOR** under this Lease and other leases, permits and agreements between **LESSOR** and **LESSEE** does not exceed Twenty-Five Thousand Dollars (\$25,000), **LESSEE** may elect to provide said security deposit in the form of cash.

The amount of the security deposit may be adjusted from time to time at the reasonable discretion of the Executive Director of **LESSOR**. Following any such adjustment, the amount of the security deposit may not exceed the greater of: (i) three (3) months' flat rent, or (ii) the annual average of three (3) months' percentage rent if this Lease provides for percentage rent. In the event the amount of the security deposit is increased, **LESSEE** shall submit the additional security deposit within sixty (60) days of notification of the increase.

LESSEE shall maintain the required security deposit continuously throughout the Lease term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease in accordance with Paragraph 10 herein. The security deposit or the remaining portion thereof, shall be rebated, released, assigned, surrendered, or endorsed to **LESSEE** or order, as applicable, upon expiration or earlier termination of this Lease.

48. **DISPUTE RESOLUTION:** With respect to any and all disputes or disagreements between or among the parties to this Lease, arising out of or relating to the terms, conditions, interpretation, performance, default or any other aspect of this Lease, the parties shall first

attempt to resolve the dispute informally between themselves. In the event the dispute is not resolved informally within ninety (90) days of the date informal resolution is first requested in writing by one of the parties, the parties shall refer the dispute to mediation before Alexander S. Polsky, or a member of the Southern California Panel in the event Mr. Polsky is unavailable. The parties may mutually agree to an informal resolution period longer than ninety (90) days, but in no event shall either of the parties initiate any legal action or proceeding without first conducting mediation before JAMS.

The dispute shall be mediated through informal, nonbinding joint conferences or separate caucuses, as the mediator shall choose. The mediation proceeding shall be conducted within thirty (30) days (or any mutually agreed longer period) after referral, and shall continue until any party involved concludes, in good faith, that there is no reasonable possibility of resolving the dispute without resort to a legal action or proceeding. The mediator's fee and any associated costs imposed by JAMS shall be shared equally by the parties involved. Each party shall bear its own attorneys' fees and other costs incurred in connection with the mediation. In the event the parties are unable to resolve the dispute through mediation, either party may institute a legal action thereafter.

49. **ACKNOWLEDGMENT OF LESSOR'S IMPROVEMENTS:** **LESSEE** agrees that it has examined the **LEASED PREMISES** and the condition thereof, that the improvements thereon in their present condition are satisfactory and usable for **LESSEE's** purposes.

50. **CLEAN TRUCK POLICY:** **LESSEE** is made aware of the California Air Resources Board (CARB) regulation of drayage trucks entering California marine terminals including the **LEASED PREMISES**. The Drayage Truck Regulation is part of the Air Resources Board's ongoing efforts to reduce particulate matter (PM) and oxides of nitrogen (Nox) emissions from diesel-fueled engines and improve air quality associated with goods movement. **LESSOR** has implemented a Clean Truck Policy forbidding access by non-Drayage Rule compliant trucks to the **LEASED PREMISES**. **LESSEE** agrees to fully comply with CARB's Drayage Rule.

51. **MARINE TRANSPORTATION SECURITY ACT:** To guard against terrorist acts and other threats to marine terminals and maritime activity, the United States Coast Guard has established strict and detailed security requirements that ports, terminal operators and shipping lines must comply with. These regulations are designed to protect waterfront facilities and the Nation from potential threats. The following regulations govern the security program at the Tenth Avenue Marine Terminal; Maritime Transportation Security Act (MTSA) of 2002, 46 USC 701, Maritime Security, Title 33 CFR Parts 101-106, Transportation Security Agency, Title 49 CFR Parts 1515, 1540, 1570 and 1572, Navigation and Vessel Inspection Circular No. 03-03 Change 1, Implementation of MTSA Regulations for Facilities, Navigation and Vessel Inspection Circular No. 03-07, Guidance for the Implementation of the Transportation Worker Identification (TWIC) Program in the Maritime Sector.

Tenant acknowledges the Leasehold Premises and common area of the Tenth Avenue Marine Terminal is a secure area subject to MTSA. The MTSA requires a Facility Security Plan (FSP) which the **LESSOR** prepares and implements under the oversight of the US Coast Guard, Captain of the Port. The FSP requires **LESSEE** comply with the following security programs to comply with the MTSA:

(a) Transportation Worker Identification Credential (TWIC).

MTSA requires that individuals requiring unescorted access to secure areas of MTSA regulated facilities and vessels obtain a Transportation Worker Identification Credential (TWIC). More information on TWIC and the procedures for obtaining TWIC may be obtained through the Transportation Security Administration website at <http://www.tsa.gov/twic>.

Visitors of **LESSEE** to the Tenth Avenue Marine Terminal who do not have TWIC shall be issued a visitor's badge and shall be escorted by a TWIC holder approved by the **LESSOR's** Facility Security Officer to serve as an escort.

LESSEE is responsible for all escort responsibilities for **LESSEE's** visitors. All individuals that require an escort are required to have a government-issued photo identification card (e.g. driver's license or passport) to prove their identity before a visitor's badge may be issued. In no case shall a TWIC holder escort more than five (5) persons within the secure and restricted areas of the terminal. **LESSEE** is required to submit the names of all employees, vendors, subcontractors or individuals requiring access to secure areas of the terminal at least 24 hours in advance, whether holding a Transportation Worker Identification Credential (TWIC) or not, to the Facility Security Officer.

(b) Training

LESSEE acknowledges every person granted unescorted access to regulated marine terminals in the Port of San Diego is required to undergo security awareness training. This training is required by 33 CFR 105.215 and is provided by **LESSOR** annually.

(c) MARSEC Levels:

There are 3 Maritime Security (MARSEC) Levels that the **LESSEE** at the Tenth Avenue Marine Terminal may be required to operate under. The MARSEC Level is set by the US Coast Guard, Captain of the Port and determines security measures in place at the marine facility. As MARSEC levels increase so do the security requirements for access control, monitoring, and screening procedures. **LESSEE** acknowledges the potential for the Tenth Avenue Marine Terminal to be placed in heightened MARSEC levels at any time.

MARSEC 1: Elevated Threat – Normal operating conditions. No Specific Target Information. Security measures include: Controlled access to the Facility. Screening of all persons, vehicles and items for dangerous devices. Monitoring of security of the facility and vessels on berth.

MARSEC 2: High Threat – Increased risk of a security incident. No Specific Target Additional security measures maintained for a period of time as a result of heightened risk of a transportation security incident. Increased security patrols; increased access controls; increased lighting to operational areas; increased screening of persons, vehicles, and items; increased restrictions for visitors.

MARSEC 3: High Threat – High probability of an act of terrorism or a transportation security incident. Further specific protective security measures, including: continuous security patrols; maximum lighting of the facility; security searches of the facility; posting of additional guards to restricted areas; visitors

may be refused entry; may stop loading of passengers, cargo, stores, and baggage; evacuation of facility if warranted.

(d) Direction from the US Coast Guard, Captain of the Port

In addition to the above security program conditions and impacts on **LESSEE**, **LESSEE** acknowledges that the US Coast Guard, Captain of the Port has ultimate and absolute authority to require additional requirements, at the Tenth Avenue Marine Terminal and on **LESSEE**.

(MEMORANDUM OF LEASE FOLLOWS)



MEMORANDUM OF LEASE

52. **MEMORANDUM OF LEASE:** This is the final Paragraph and Memorandum of Lease, hereinafter "Memorandum," dated _____, 20__, between SAN DIEGO UNIFIED PORT DISTRICT, **LESSOR**, and SAN DIEGO REFRIGERATED SERVICES INC., **LESSEE**, concerning the **LEASED PREMISES** described in Exhibits "A" and "B," attached hereto and by this reference made a part hereof.

For good and adequate consideration, **LESSOR** leases the **LEASED PREMISES** to **LESSEE**, and **LESSEE** hires them from **LESSOR**, for the term and on the provisions contained in the Lease dated _____, 20__, including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of **LESSOR** in each instance, all as more specifically set forth in said Lease, which said Lease is incorporated in this Memorandum by this reference.

The term is twelve (12) years, thirteen (13) days(s), beginning December 18, 2015, and ending December 31, 2027, plus one, five (5) year option, and one, four (4) year option to extend.

This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the Lease provisions. In the event of conflict between this Memorandum and other parts of the Lease, the other parts shall control. Execution hereof constitutes execution of the Lease itself.

Port Attorney

SAN DIEGO UNIFIED PORT DISTRICT

By _____

By _____
Joel Valenzuela, Director, Maritime

EDWARD F. PLANT

By _____
Signature

PRINT NAME _____

PRINT TITLE _____

FRANK E. PLANT, III

By _____
Signature

PRINT NAME _____

PRINT TITLE _____

GUARANTY

Edward F. Plant and Frank E. Plant III, collectively hereinafter "Guarantor," whose address is _____ and _____ respectively, as a material inducement to and in consideration of the SAN DIEGO UNIFIED PORT DISTRICT, hereinafter "**LESSOR**," entering into a written Lease, hereinafter "the Lease" with SAN DIEGO REFRIGERATED SERVICES, INC., hereinafter "**LESSEE**," dated the same date as this Guaranty, pursuant to which **LESSOR** leased to **LESSEE**, and **LESSEE** leased from **LESSOR**, premises located in the city of San Diego, County of San Diego, California, in accordance with the Lease on file in the Office of the Clerk of **LESSOR**, Document No. _____, attached to this Guaranty, and made a part of it, unconditionally guarantees and promises to and for the benefit of **LESSOR**, that **LESSEE** shall perform the provisions of the Lease for which it is responsible.

If Guarantor is more than one person, Guarantor's obligations are joint and several, and are independent of **LESSEE's** obligations. A separate action may be brought or prosecuted against any Guarantor, whether the action is brought or prosecuted against any other Guarantor, **LESSEE**, or all, or whether any other Guarantor, **LESSEE**, or all are joined in the action.

As provided in the Lease, the provisions of the Lease may be changed by agreement between **LESSOR** and **LESSEE** at any time, without the consent of or without notice to Guarantor. The Guarantor shall guaranty the performance of the Lease, as changed. Assignment of the Lease (as permitted by the Lease) shall not affect this Guaranty.

The Guaranty shall not be affected by **LESSOR's** failure to delay in the enforcement of any of its rights.

If **LESSEE** defaults under the Lease, **LESSOR** can proceed immediately against Guarantor, **LESSEE**, or both, or **LESSOR** can enforce against Guarantor, **LESSEE**, or both, any rights that it has under the Lease or pursuant to applicable laws. If the Lease terminates and **LESSOR** has any rights it can enforce against **LESSEE** after termination, **LESSOR** can enforce those rights against Guarantor without giving prior notice to **LESSEE**, Guarantor, or both, or without making any demand on either of them.

Guarantor waives the right to require **LESSOR** to: (1) proceed against **LESSEE**; (2) proceed against or exhaust any security that **LESSOR** holds from **LESSEE**; or (3) pursue any other remedy in **LESSOR's** power. Guarantor waives any defense by reason of any disability of **LESSEE**, and waives any other defense based on the termination of **LESSEE's** ability from any cause.

Until all **LESSEE's** obligations to **LESSOR** have been discharged in full, Guarantor has no right of subrogation against **LESSEE**. Guarantor waives: (i) its right to enforce any remedies that **LESSOR** now has, or later may have, against **LESSEE**; (ii) any right to participate in any security now or later held by **LESSOR**; (iii) all presentments, demand for

performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; and (iv) waives all notices of the existence, creation, or incurrence of new or additional obligations.

If **LESSOR** disposes of its interest in the Lease, **LESSOR**, as used in this Guaranty, shall mean **LESSOR's** successors.

If **LESSOR** is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay **LESSOR** all costs incurred, including but not limited to reasonable attorney fees.

Guarantor's obligations under this Guaranty shall be binding on any successor of Guarantor. As used herein, a successor of Guarantor shall mean any assignee, transferee, or other person or entity succeeding lawfully, and pursuant to the provisions of said Lease, to the rights or obligations of Guarantor.

EDWARD F. PLANT

DATED: _____, 20____

By _____
Signature

PRINT NAME _____

PRINT TITLE _____

FRANK E. PLANT, III

By _____
Signature

PRINT NAME _____

PRINT TITLE _____

(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)

(STATE OF CALIFORNIA)
(COUNTY OF SAN DIEGO)

On _____ before me, _____,
Notary _____ Public, _____ personally
appeared _____, who proved to
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

----- OPTIONAL -----

Though the information below is not required by law, it may prove valuable to the person(s)
relying on the document
and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document:

Document Date: _____ Number of
Pages: _____

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

<p>Signer's Name _____</p> <p><input type="checkbox"/> Individual <input type="checkbox"/> Corporate Officer - Title(s): _____</p> <p><input type="checkbox"/> Partner -- <input type="checkbox"/> Limited <input type="checkbox"/> Gene <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____</p> <p>Signer is Representing: _____ _____ _____</p>	<p align="center">RIGHT THUMBPRINT</p> <p align="center">Top of thumb here</p>	<p>Signer's Name _____</p> <p><input type="checkbox"/> Individual <input type="checkbox"/> Corporate Officer - Title(s): _____</p> <p><input type="checkbox"/> Partner -- <input type="checkbox"/> Limited <input type="checkbox"/> Gene <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____</p> <p>Signer is Representing: _____ _____ _____</p>	<p align="center">RIGHT THUMBPRINT</p> <p align="center">Top of thumb here</p>
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(FOR USE BY LESSEE)

(STATE OF CALIFORNIA)

(COUNTY OF SAN DIEGO)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

----- OPTIONAL -----

Though the information below is not required by law, it may prove valuable to the person(s) relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

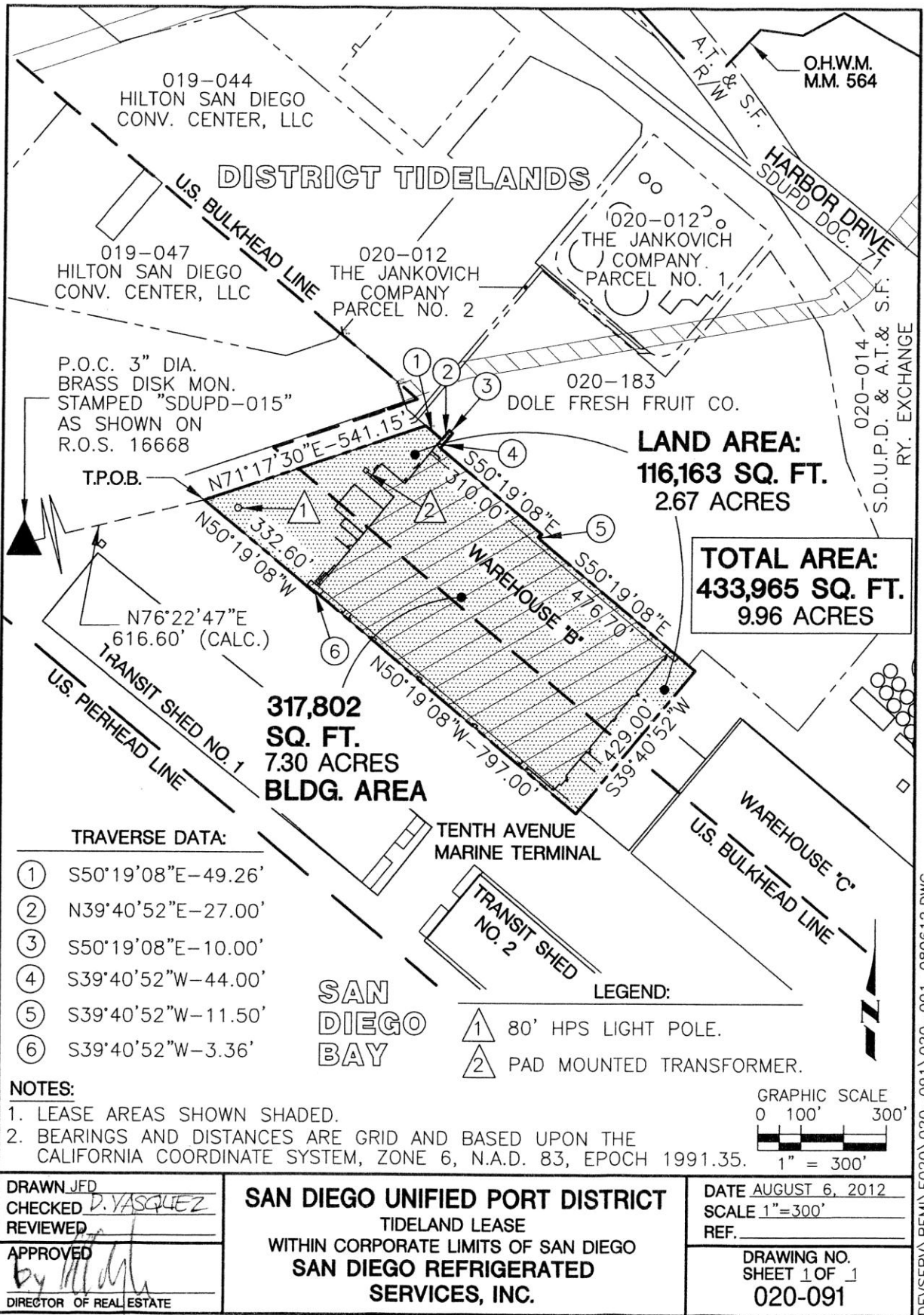
Description of Attached Document
Title or Type of Document:

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

<p>Signer's Name _____</p> <p><input type="checkbox"/> Individual <input type="checkbox"/> Corporate Officer - Title(s): _____</p> <p><input type="checkbox"/> Partner -- <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____</p> <p>Signer is Representing: _____ _____ _____</p>	<p align="center">RIGHT THUMBPRINT</p> <p align="center">Top of thumb here</p>
<p>Signer's Name _____</p> <p><input type="checkbox"/> Individual <input type="checkbox"/> Corporate Officer - Title(s): _____</p> <p><input type="checkbox"/> Partner -- <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____</p> <p>Signer is Representing: _____ _____ _____</p>	<p align="center">RIGHT THUMBPRINT</p> <p align="center">Top of thumb here</p>



DRAWN JFD
 CHECKED D. YASQUEZ
 REVIEWED _____
 APPROVED _____
 DIRECTOR OF REAL ESTATE

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF SAN DIEGO
SAN DIEGO REFRIGERATED SERVICES, INC.

DATE AUGUST 6, 2012
 SCALE 1"=300'
 REF. _____
 DRAWING NO. SHEET 1 OF 1
020-091

EXHIBIT "A"

DEVSERV\REM\020\020-091\020-091_080612.DWG

**Lease Description for
SAN DIEGO REFRIGERATED SERVICES, INC.
TIDELAND LEASE
Parcel / Drawing No. 020-091
Within Corporate Limits of San Diego**

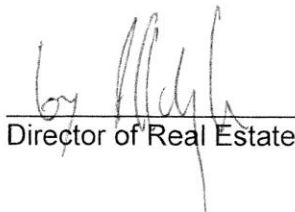
All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

Commencing at a 3" diameter brass disk monument stamped "SDUPD – 015" as shown on R.O.S. No. 16668, filed in the office of the San Diego County Recorder on July 25, 2000; thence along a tie line North 76°22'47" East a distance of 616.60 feet (calculated) to the TRUE POINT OF BEGINNING; thence North 71°17'30" East a distance of 541.15 feet; thence South 50°19'08" East a distance of 49.26 feet; thence North 39°40'52" East a distance of 27.00 feet; thence South 50°19'08" East a distance of 10.00 feet; thence South 39°40'52" West a distance of 44.00 feet; thence South 50°19'08" East a distance of 310.00 feet; thence South 39°40'52" West a distance of 11.50 feet; thence South 50°19'08" East a distance of 476.70 feet; thence South 39°40'52" West a distance of 429.00 feet; thence North 50°19'08" West a distance of 797.00 feet; South 39°40'52" West a distance of 3.36 feet; thence North 50°19'08" West a distance of 332.60 feet to the TRUE POINT OF BEGINNING, containing 433,965 square feet or 9.96 acres of Tidelands area.

The above area consists of 116,163 square feet or 2.67 acres of land area and 317,802 square feet or 7.03 acres of building area for a total of 433,965 square feet or 9.96 acres of total Tidelands area.

The above described land area is delineated on the San Diego Unified Port District Drawing No. 020-091, dated 6 August 2012 and made a part of this agreement.

All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.



Director of Real Estate

8/8/12

Date

Sheet 1 of 1

EXHIBIT "B"