

AMENDED AND RESTATED LEASE AGREEMENT

between

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS  
(*"Authority"*)

and

LONE STAR PORTS, L.L.C.,  
A Delaware Limited Liability Company  
(*"Lessee"*)

Effective: December 10, 2019

Replacing Prior Lease made effective May 15, 2019

327370  
Executed Lease 001

HIGHLY SENSITIVE  
PROTECTED MATERIALS  
PROVIDED PURSUANT TO  
PROTECTIVE ORDER ISSUED  
IN SOAH DOCKET NO. 582-20-  
3438 and TCEQ DOCKET NO.  
2020-0511-AIR

**EXHIBIT  
PAC 300**

LSP0012991

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## AMENDED AND RESTATED LEASE AGREEMENT

This **AMENDED AND RESTATED LEASE AGREEMENT** is entered into as of December 10, 2019 (the "**Amendment Date**") by and between the **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**, a navigation district operating under Article XVI, Section 59 of the Texas constitution, pursuant to authorization by its Port Commissioners (hereinafter called "**Authority**"), and **LONE STAR PORTS, LLC**, a Delaware limited liability company (hereinafter called "**LSP**" or "**Lessee**"), which is currently beneficially owned by Lone Star Ports Enterprises, LLC ("**LSPE**"). This Amended and Restated Lease Agreement together with its exhibits, appendices and schedules, and all renewals, extensions, and modifications, is referred to herein as the "**Lease Agreement**," or "**Agreement**" or "**Lease**." The Parties entered into a lease agreement ("**Original Lease**") for the Land described below effective as of May 15, 2019. The Original Lease was amended by that certain First Amendment of Lease Agreement between Authority and Lessee dated November 12, 2019 ("**First Amendment**"). The Original Lease as amended by the First Amendment is referred to herein as the "**Prior Lease**." The Parties now wish to amend and restate the Prior Lease by substituting this Agreement for it. It is the intent of the Parties that this Agreement shall replace the Prior Lease in its entirety as of the Amendment Date and that this document together with exhibits hereto will serve as the only agreement between the Parties with respect to the subject matter of this Agreement.

### RECITALS:

A. Authority entered into a Project Partnership Agreement with the Department of the Army dated September 7, 2017 for the Corpus Christi Ship Channel Project (Main Channel Deepening and Widening and Barge Lane Separable Elements), which includes deepening the Corpus Christi Ship Channel ("**Ship Channel**") from the Viola Turning Basin to the end of the jetties in the Gulf of Mexico (approximately thirty-four (34) miles) to minus fifty-four (54) feet Mean Lower Low Water ("**MLLW**").

B. Authority owns the surface estate of the approximately two hundred (200) acre tract of land on Harbor Island, in Nueces County, Texas ("**Harbor Island**"), which land is more particularly described and depicted geographically in Exhibit A attached hereto (the "**Land**"). The precise size of the Land will be confirmed by a survey made by a qualified professional surveyor appointed by the Authority. The surveyor's legal description of the Land will be attached hereto as Exhibit A-1 as soon as it is available and in any event before the Dock Delivery Date as defined herein.

C. Lessee intends to develop a crude oil export terminal on the Land. The Parties have determined that a ground lease of the Land from the Authority to Lessee is an appropriate contractual arrangement by which to accomplish their respective objectives.

D. Authority intends to construct two (2) new oil docks on the Land ("**HI Dock One**" and "**HI Dock Two**" and, collectively, the "**HI Docks**" and each, an "**HI Dock**") and install Handling Equipment (as defined in Section 1.1) thereon and on the Land in the vicinity of each HI Dock in accordance with the terms, conditions and specifications described herein.

E. Authority intends to dredge berths for each of the HI Docks (each a "**Dock Berth**" and collectively the "**Dock Berths**") in accordance with the terms, conditions and specifications described herein. Authority will dredge an approach area for each Dock Berth between such Dock

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Berth and the Ship Channel (each a "**Dock Berth Approach Area**" and collectively the "**Dock Berth Approach Areas**"). The general locations of the Dock Berths and Dock Berth Approach Areas are shown on Exhibit B. The Dock Berths and Dock Berth Approach Areas will not be part of the Leased Premises described in this Lease, but they will be for the exclusive berthing use of the Lessee hereunder during the term of this Lease Agreement.

F. The two (2) HI Docks, Dock Berths, and Dock Berth Approach Areas will be suitable for the location of two (2) docks capable of simultaneously safely mooring and conducting simultaneous cargo operations for two (2) separate Very Large Crude Carriers ("VLCCs"), taking into account all Land and water conditions, including without limitation channel, current, and environmental conditions.

G. Authority will also dredge an expansion of the improved area of the adjacent existing Corpus Christi Ship Channel Turning Basin to allow for the turning of VLCCs that call upon the HI Docks ("**Turning Basin Expansion**").

H. Lessee wishes to lease from the Authority the Land, the HI Docks and Handling Equipment, together with all improvements installed or constructed thereon by the Authority, and have exclusive use of the Dock Berths during the term of this Lease Agreement for purposes of developing, financing, constructing, commissioning, operating, maintaining and improving the Harbor Island Crude Terminal (as defined below) for receiving, storing, and transferring Crude Oil to and from oil tankers and barges berthed at the HI Docks (the "**Harbor Island Terminal Project**").

I. Authority desires to lease the Land, HI Docks and Handling Equipment, together with all improvements installed or constructed thereon by the Authority, to Lessee in accordance with the terms and conditions of this Lease and to grant Lessee the exclusive right to use the Dock Berths during the term of this Lease Agreement for the consideration provided herein.

J. Lessee hereby represents and warrants to Authority that, as of the Amendment Date (a) LSPE owns all of the membership interests in Lessee, and (b) neither CGI Lone Star Holdings, LLC nor any Affiliate of CGI Lone Star Holdings, LLC owns any membership interest in Lessee.

K. Authority and Lessee have mutually agreed to amend certain terms and conditions of this Lease in accordance with the terms and conditions of this Amended and Restated Lease Agreement.

NOW, THEREFORE, for and in consideration of the covenants and agreements set forth herein, Authority and Lessee agree as follows:

## ARTICLE 1 DEFINITIONS

Section 1.1 **Certain Definitions.** As used in this Lease, each of the following terms shall have the meaning set forth in this Section 1.1:



**“Actual Annual Throughput”** means, with respect to any Lease Year, the total number of Barrels of Crude Oil loaded on or unloaded from Vessels during that Lease Year while berthed at the HI Docks.

**“Actual Interim Period Throughput”** means the total number of Barrels of Crude Oil loaded on or unloaded from Vessels during the Interim Period while berthed at the HI Docks.

**“Affiliate”** means, with respect to any Person, any other Person which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of this definition, the term **“control”** means the power, whether direct or indirect, to direct or cause the direction of the management and policies, whether by equity ownership, contract or otherwise, of another Person.

**“Annual Base Rent”** means, with respect to any Lease Year, the annual rent for that Lease Year stated in or calculated in accordance with Section 3.2.

**“Applicable Laws”** means all applicable limitations, restrictions, conditions, standards, prohibitions and requirements of any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, or any restrictive covenant or deed restriction (recorded or otherwise) affecting the Leased Premises, including but not limited to all applicable zoning ordinances and building codes, flood disaster laws and occupational health laws and regulations.

**“Applicable Wharfage Rate”** means, as of any given day, the wharfage rate for Crude Oil published in the Authority’s Tariff on that day and applicable to all public Crude Oil docks subject to Authority’s jurisdiction.

**“Authority Parties”** means the Authority, its Port Commissioners, directors, managers, employees and agents.

**“Authority’s Actual Total Project Cost”** means, as of any stated date after the Effective Date, the sum of the following documented costs and expenses that were actually and validly paid or incurred by the Authority in connection with the Harbor Island Terminal Project from the Effective Date through the close of business on such stated date with respect to: (i) work on and materials for the Dock and Berth Facilities and the Turning Basin Expansion under the applicable Construction Contract(s), including but not limited to construction and material testing, inspection services, construction administration, and engineering during construction, (ii) engineering design work for the Dock and Berth Facilities and the Turning Basin Expansion, (iii) construction plans and specifications for the Dock and Berth Facilities and the Turning Basin Expansion, (iv) obtaining the USACE Permit(s), (v) design and construction of the Dock Mitigation Project, if any, to the extent, but only to the extent, reasonably allocable to the Dock and Berth Facilities, (vi) design and construction of placement facilities and tipping or dredge material placement area fees arising out of the dredging of the Dock Berths, the Dock Berth Approach Areas, and the Turning Basin Expansion, (vii) design, engineering, permitting, environmental assessment and remediation, or other development activities in connection with Lessee’s Supporting Facilities, any Additional Lessee Facilities and/or the Harbor Island Crude Terminal, and (viii) any other work on the Harbor Island Terminal Project.

**"Authority's Tariff"** means the Authority's Tariff 100-A naming rules, rates and regulations applying to the public and private wharves in the Port of Corpus Christi, or any successor tariff published by the Authority from time to time.

**"Authority's Total Project Revenue"** means, as of any stated date after the Effective Date, the sum of the following payments made to the Authority in connection with the Harbor Island Terminal Project from the Effective Date through the close of business on such stated date: the Development Period Rent, Annual Base Rent, Lease Wharfage, Security Surcharge on Lease Wharfage, Transfer Payments, Additional Charges, Tract 2 Dock Fees, Wharfage Deficit Payments, any Excess Project Cost Refund, dockage on all Vessels berthed at the HI Docks, and the security surcharge on such dockage.

**"Barrel"** means a forty-two (42) gallon barrel.

**"Business Day"** means any day other than Saturday or Sunday or any other day on which banks in Texas are permitted or required to be closed.

**"Claims"** means all liabilities (including strict liability), actions, demands, damages, penalties, fines, losses, claims, costs, expenses (including reasonable attorneys' and experts' fees and expenses), suits, settlements or judgments of any nature whatsoever (including claims for personal injury, bodily injury, real and personal property damage and economic loss).

**"Commencement Date"** means the first (1st) day of the calendar month next following the first to occur of: (i) Commencement of Commercial Operations or (ii) [REDACTED] after the Dock Delivery Date (or such other date that the Parties may mutually agree in writing).

**"Commencement of Commercial Operations"** means that Lessee has commenced throughputting Crude Oil to or from the Leased Premises via both of the HI Docks. Lessee will promptly give notice to Authority when the Commencement of Commercial Operations occurs.

**"Commercialization Period"** means the period beginning on the Effective Date and ending on the later of (1) [REDACTED] and (2) the last day of the calendar month in which [REDACTED] required to be provided by the Authority under the terms of the Lease have been obtained.

**"Construction Contract"** means any agreement or contract entered into by Authority or Lessee with a Contractor in connection with the construction of any of the Dock and Berth Facilities or Lessee Facilities, as applicable.

**"Contractor"** means, with respect to a Person, any contractor, with whom such Person contracts to perform work or supply materials or labor in relation to the Dock and Berth Facilities or Lessee Facilities, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a subcontract with a Contractor.

**"CPI"** means the Consumer Price Index for All Urban Consumers (CPI-U); U.S. City Average; All items, not seasonally adjusted, 1982-1984 = 100 reference base, published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics of the United States Department of Labor ceases to exist or to publish statistics concerning the

purchasing power of the consumer dollar during the Term of this Lease, then any successor index intended by the federal authority publishing such successor index to replace such Consumer Price Index shall replace CPI for the purposes of this Lease for the remainder of the Term; *provided that*, should CPI cease to exist without a known successor, then the remaining CPI adjustments called for in this Lease will be made by using the most nearly comparable statistics published by a recognized financial authority, as shall be mutually agreed by the Parties.

**"CPI Adjustment Factor"** means, with respect to any Lease Year after the First Lease Year, a fraction, the numerator of which is the most current CPI available as of the first (1st) day of such Lease Year, and the denominator of which is the CPI for the same month of the prior year; *provided, however*, that the CPI Adjustment Factor for any Lease Year shall never be less than one (1.00). **"Crude Oil"** means, for purposes of this Agreement, all grades of crude oil and petroleum condensate.

**"Design Engineer"** means any professional engineering consulting firm registered in the State of Texas engaged by either of the Parties and approved by the other Party to design the Dock and Berth Facilities and the Lessee Facilities, as applicable.

**"Development Period"** means the period beginning on the first (1st) day after the Commercialization Period and ending on the last day before the Commencement Date.

**"Discount Rate"** means the "Prime Rate" as published by The Wall Street Journal, Southwest Edition, in its listing of "Money Rates" on the date this Lease is terminated, plus eight percent (8.00%).

**"Dock and Berth Facilities"** means HI Dock One, HI Dock Two, the Handling Equipment, the Dock Berths and the Dock Berth Approach Areas, collectively.

**"Dock Mitigation Project"** means the mitigation project, if any, that Authority agrees to fund or construct as a condition of obtaining the USACE Permit(s).

**"Dock One and Related Berth Facilities"** means HI Dock One, the Handling Equipment installed on or for HI Dock One, the Dock Berth adjacent to HI Dock One, and the Dock Berth Approach Area for HI Dock One, collectively.

**"Dock Two and Related Berth Facilities"** means HI Dock Two, the Handling Equipment installed on or for HI Dock Two, the Dock Berth adjacent to HI Dock Two, and the Dock Berth Approach Area for HI Dock Two, collectively.

**"Effective Date"** means May 15, 2019.

**"Environmental History"** means the four bound volumes of environmental and remediation reports and materials assembled by Authority, which together with the Assessment, show the complete baseline environmental and remediation condition of the Land as of the Amendment Date, which are attached to and included as part of this Lease as Exhibit K.

**"FID"** means an affirmative decision by the board of directors of LSP to proceed with the Harbor Island Terminal Project, which decision shall be made at LSP's sole discretion. .

“**First CPI Adjustment Factor**” means, with respect to the First Lease Year, a fraction, the numerator of which is the most current CPI available as of the first (1st) day of the First Lease Year, and the denominator of which is the CPI for the month in which the Effective Date occurs; *provided, however*, that the First CPI Adjustment Factor for the First Lease Year shall not be less than one (1.00).

“**First Lease Year**” means the twelve (12) month period beginning on the Commencement Date.

“*force majeure*” means any cause, whether of the kind enumerated herein or otherwise, that is not reasonably within the control of the affected Party, and which, by the exercise of reasonable efforts, such Party is unable to prevent or overcome, and which wholly or partially prevents or delays a Party’s obligations under this Lease Agreement, or the benefits or enjoyment of this Lease Agreement and/or the Leased Premises, including any of the following: strikes, lockouts, labor troubles, failure of power, riots, insurrection, terrorism, war, explosions, landslides, earthquakes, tornadoes, fires, hurricanes, floods, washouts or other acts of God or other reason of like nature, any event or circumstance that would be considered *force majeure* under Lessee’s Construction Contracts, confiscation, requisition, or expropriation, orders, rules, regulations or laws of any governmental or public authorities having or asserting jurisdiction, inability to procure material, equipment, or necessary labor, or inability to obtain, or suspension, termination, adverse modification, interruption, or inability to renew, any servitude, right of way, permit, license, consent, authorization, or approval of any governmental or public authority having or asserting jurisdiction, loss of use or breakdown or destruction of facilities or equipment (except to the extent caused by normal wear and tear or the failure to comply with the manufacturer’s recommended maintenance and operating procedures), any Governmental Authority’s closing of, or placing restrictions upon the use of, mooring facilities, docks, harbors, ports, pipelines, storage tanks, or other navigational or transportation mechanisms, embargoes, priorities, or expropriation by a Governmental Authority, or interference by civil or military authorities.

“**Governmental Authority**” means any municipality, county, state, the United States of America, or any other governmental body, subdivision, agency, or authority, but expressly excluding the Port of Corpus Christi Authority of Nueces County, Texas.

“**Guarantee Agreement**” means

(a) during the Development Period (1) an irrevocable letter of credit, surety bond, insurance policy, or similar instrument authorizing a drawing thereunder by the Authority to pay the Elective Early Termination Fee when due, or (2) an irrevocable guarantee agreement in favor of the Authority guaranteeing payment of the Elective Early Termination Fee when due; and

(b) during the Initial Term (1) an irrevocable letter of credit, surety bond, insurance policy, or similar instrument authorizing drawings thereunder by the Authority to make the Guaranteed Payments when due, or (2) an irrevocable guarantee agreement in favor of the Authority guaranteeing payment of the Guaranteed Payments when due.

“**Guaranteed Payments**” means the Lease Payments, Wharfage Deficit Payments, Wharfage Deficit Termination Payment, Elective Early Termination Fee, and Dock Modification Costs accruing under the Lease during or with respect to the Initial Term.

“**Handling Equipment**” means the equipment that will be installed on HI Dock One and HI Dock Two by the Authority for purposes of loading Crude Oil on Vessels berthed at HI Dock One and HI Dock Two, including vapor collection or combustion equipment, loading arms and/or hoses with associated piping, valves, and other ancillary marine equipment, fire protection, and other safety systems for the HI Docks.

“**Interim Period**” means the period, if any, beginning when Lessee has commenced throughputting Crude Oil to or from the Leased Premises via only one of the HI Docks and ending on the day before the Commencement Date.

“**Investment Grade**” means having a long-term debt credit rating of at least “BBB-” or higher by Standard & Poor’s Corporation or a long-term debt credit rating of at least “Baa3” or higher by Moody’s Investors Service, Inc., if rated by both agencies, or by either of such agencies if only rated by one.

“**Lease Payments**” means, collectively, the Development Period Rent, Annual Base Rent, Lease Wharfage, Security Surcharge on Lease Wharfage, Transfer Payments, and Additional Charges. Lease Payments do not include the Tract 2 Dock Fees, the Dock Modification Costs, Wharfage Deficit Payments, or the Wharfage Deficit Termination Payment.

“**Lease Wharfage**” means the payments made by Lessee to the Authority in accordance with Section 3.3(a), Section 3.3(b) and Section 3.3(c).

“**Lease Year**” means the First Lease Year and each successive twelve (12) month period thereafter during the Term of this Lease.

“**Leased Premises**” means the Land, the HI Docks (including the Handling Equipment), and all rights, privileges, easements, and appurtenances to the Land and the HI Docks (including the Handling Equipment). References in this Lease to the “Leased Premises” shall be construed as if followed by the phrase “or any part thereof” unless the context requires otherwise.

“**Leasehold Estate**” means the leasehold estate and Lessee’s other rights created by this Lease.

“**Lessee Facilities**” means, collectively, all improvements on the Leased Premises constructed, installed or owned by Lessee, including the Harbor Island Crude Terminal, Lessee’s Supporting Facilities and any Additional Lessee Facilities.

“**Lessee Parties**” means Lessee, its Affiliates, and its and their respective officers, directors, managers, employees and agents.

“**MAI**” means Member of the Appraisal Institute.

“**OGV**” means any commercial ocean-going ship or commercial ocean-going barge. An inland barge is not an OGV.

“**Outgoing Barrels of Crude Oil**” means Barrels of Crude Oil being transported by pipeline from the Leased Premises to another destination.

“**Parties**” means Authority and Lessee.

“**Party**” means Authority or Lessee, as the case may be.

“**Permanent Lessee Facilities**” means all of the following Lessee Facilities, if any, on or to the Leased Premises: (i) office buildings; (ii) roads; (iii) conduit for potable water, sewer, storm water drainage, natural gas, or electricity; (iv) Lessee’s underground pipelines and supports and accessories for natural gas or other liquid cargo needed for serving the Handling Equipment, the HI Docks and Lessee Facilities; and (v) Lessee’s railroad tracks, if any.

“**Permit**” means any license, permit, certificate of authority, tender, bid, filing, registration, variance, exemption, notification, consent, approval or other authorization of, to or from a Governmental Authority, including without limitation any road crossing, building, zoning, construction, air or other permits and any environmental approvals.

“**Person**” means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other business entity.

“**Pre-FID Project Capital**” has the meaning that was given to that term in Section 5.7(c) of the Lease prior to the Amendment Date.

“**Project Commissioning Process**” means the process of verifying (by testing and inspecting) and documenting that the Handling Equipment, as a whole, and every operational component of the Handling Equipment has been installed and is operating in accordance with the final plans and specifications for Handling Equipment.

“**Qualified Disposition**” means a transfer by LSPE in a single transaction of more than fifty percent (50%) of LSPE’s membership interests in the Lessee occurring after the date that is twelve (12) months after the Commencement of Commercial Operations.

“**Qualified Disposition Transferor**” means LSPE (or any of its Affiliates) who undertake a Qualified Disposition.

“**Qualified MAI Appraiser**” means an independent appraiser who is MAI certified and has greater than ten (10) years’ experience appraising land such as the Land.

“**Qualified Maritime Shipping Representative**” means a person who has been involved in maritime shipping of Crude Oil or refined petroleum products for at least the last ten (10) years and who has never been an owner or employee of the Authority or Lessee or an Affiliate of the Authority or Lessee.

“**Removable Lessee Facilities**” means all of the Lessee Facilities on the Leased Premises, other than the Permanent Lessee Facilities.

“**Removal Period**” means the three hundred sixty-five (365) day period following the expiration or termination of this Lease during which Lessee will be required to remove the Removable Lessee Facilities from the Leased Premises.

“**Security Surcharge**” means the security surcharge published in the Authority’s Tariff.

“**Substantially Complete**” means that, in the reasonable opinion of the Authority, HI Dock One, HI Dock Two, the Handling Equipment and each Dock Berth and Dock Berth Approach Area are suitable for use for their intended purpose but may still require completion of items set forth on the Punch List.

“**Tract 2**” means those certain premises consisting of a sixty-four and eighty-six hundredths (64.86) acre tract (sometimes called the “Wood Group Tract”) and a two hundred nineteen (219.00) acre tract (sometimes called the “McDermott Tract”), in each case, of uplands and submerged lands on Harbor Island, Nueces County, Texas, and subject to commercial ground lease agreements by and between FRF Port Aransas, Inc. (as landlord) and an Affiliate or designee of Lessee (as tenant).

“**Tract 2 Dock**” means any new oil dock(s) constructed on Tract 2 after the Effective Date.

“**USACE**” means the U.S. Army Corps of Engineers.

“**USACE Permit(s)**” means all permits that must be issued by the USACE before the Authority is authorized to begin (a) the construction of HI Dock One and HI Dock Two; (b) the dredging (including maintenance dredging) and deepening of the Dock Berths and the Dock Berth Approach Areas to an ultimate water depth of minus fifty-four (54) feet MLLW, excluding advanced maintenance and allowable overdepth; (c) the dredging of the Turning Basin Expansion as described in Recital G; and (d) the placement of dredge material in one or more dredge material placement areas in the Port of Corpus Christi.

“**Vessel**” means any ship or barge using the HI Docks that does not exceed the design limitations for the Dock Berths and HI Docks.

“**Waterborne Barrels of Crude Oil**” means Barrels of Crude Oil that were transported onto the Leased Premises from a Vessel berthed at the HI Docks.

Section 1.2 **Other Definitions.** As used in this Lease, each of the following terms shall have the meaning given to it in the Recital or Section listed after such term:

<b>THIS TERM:</b>	<b>IS DEFINED IN:</b>
“ <b>Additional Charges</b> ”	Section 3.5
“ <b>Additional Lessee Facilities</b> ”	Section 6.4(a)
“ <b>Additional Lessee Facility Plans</b> ”	Section 6.4(b)
“ <b>Additional Lessee Facility Approved Plans</b> ”	Section 6.4(b)
“ <b>Adjacent Property</b> ”	Section 2.1(d)

THIS TERM:	IS DEFINED IN:
"Agreement"	Introductory paragraph
"Alteration, Improvement and Addition Approved Plans"	Section 6.6(a)
"Alteration, Improvement and Addition Plans"	Section 6.6(a)
"Amendment Date"	Introductory paragraph
"Annual Base Rent"	Sections 3.2(c)
"Applicable Environmental Laws"	Section 18.2(a)(i)
"Assessment"	Section 18.1(e)
"Assumption Agreement"	Section 13.1(a)
"Authority"	Introductory paragraph
"Authority's Standard EP Clauses"	Section 2.2(e)
"Authority's Total Project Capital"	Section 5.7(b)
"Bankruptcy Laws"	Section 15.1(a)(iv)
"Baseline Environmental Site Assessment"	Section 18.1(e)
"CERCLA"	Section 18.2(a)(i)
"Condemnation Award"	Section 11.1
"Condemning Authority"	Section 11.1
"Construction Contract Price"	Section 6.9
"Contaminant"	Section 18.2(a)(ii)
"Contamination"	Section 18.2(a)(iii)
"Development Period Rent"	Section 3.1
"Disposal"	Section 18.2(a)(iv)
"Dispose"	Section 18.2(a)(iv)
"Disposition"	Section 13.1(a)
"Dock Berth" and "Dock Berths"	Recital E
"Dock Berth Approach Area"	Recital E
"Dock Berth Approach Areas"	Recital E
"Dock and Berth Facilities Approved Plans"	Section 5.2
"Dock and Berth Facilities Plans"	Section 5.2
"Dock Delivery Date"	Section 5.5(c)
"Dock Delivery Deadline"	Section 5.8
"Dock Modification Costs"	Section 5.6
"Dock Modification Plans"	Section 5.6
"Dock Modifications"	Section 5.6
"Elective Early Termination Fee"	Section 2.3(d)
"Elective Termination Date"	Section 2.3(c)
"Environment"	Section 18.2(a)(v)
"Environmental Liabilities"	Section 18.2(a)(vi)
"Environmental Work"	Section 18.2(d)(iv)
"Event of Default"	Section 15.1(a)
"Excess Project Cost Refund"	Section 5.7(b)
"Extension Period"	Section 2.2(d)
"Extension Period Lease Year"	Section 3.3(c)
"Fail-Safe Ending Date"	Section 2.2(f)
"Final Dock and Berth Facilities Statement"	Section 5.7(a)



<b>THIS TERM:</b>	<b>IS DEFINED IN:</b>
"First Amendment"	Introductory paragraph
"First Lease Year Base Rent"	Section 3.2(a)
"Full Replacement Cost"	Exhibit G and Exhibit H
"Guaranteed Interim Period Throughput"	Section 4.1
"Harbor Island"	Recital B
"Harbor Island Crude Terminal"	Section 6.3(a)
"Harbor Island Crude Terminal Approved Plans"	Section 6.3(d)
"Harbor Island Crude Terminal Plans"	Section 6.3(d)
"Harbor Island Terminal Project"	Recital H
"Hazardous Substances"	Section 18.2(a)(vii)
"HI Dock" and "HI Docks"	Recital D
"HI Dock One"	Recital D
"HI Dock Two"	Recital D
"Indemnified Event"	Section 8.3(a)
"Initial Term"	Section 2.2(c)
"Initial Term Lease Year"	Section 3.3(b)
"Land"	Recital C
"Lease"	Introductory paragraph
"Lease Agreement"	Introductory paragraph
"Leasehold Mortgage"	Section 16.1
"Leasehold Mortgagee"	Section 16.3
"Lessee"	Introductory paragraph
"Lessee's Repair and Maintenance Obligations for Lessee Facilities"	Section 7.3(a)
"Lessee's Repair and Maintenance Obligations for the Handling Equipment"	Section 7.1(a)
"Lessee's Supporting Facilities"	Section 6.1
"Liquidated Damages Credit"	Section 5.8
"Lowest and Best Bid"	0
"LSP"	Introductory paragraph
"Mechanic's Lien" and "Mechanic's Liens"	Section 6.8
"Mineral Operator"	Section 2.5
"Minimum Annual Guaranteed Throughput"	Section 4.2
"MLLW"	Recital A
"MOU"	Recital B
"MPL"	Exhibit G and Exhibit H
"New Lease"	Section 16.7
"Notice of Final Acceptance"	Section 5.5(d)
"Original Lease"	Introductory paragraph
"Other Authority Tariff Fees"	Section 4.7
"Partial Invoice"	Section 15.2(b)
"Permitted Encumbrances"	Section 2.6
"Permitted Transfer"	Section 3.2(a)
"Permitted Transferee"	Section 3.2(a)

THIS TERM:	IS DEFINED IN:
"Permitted Uses"	Section 2.4(a)
"Pipeline Easement"	Section 2.7
"Policies"	Exhibit G and Exhibit H
"Post-Bid Estimated Project Cost"	Section 5.4
"Prior Lease"	Introductory paragraph
"Program"	Section 18.2(h)
"Project Commissioning Starting Date"	Section 5.5(c)
"Property Insurance"	Exhibit G and Exhibit H
"Punch List"	Section 5.5(d)
"RCRA"	Section 18.2(a)(i)
"Release"	Section 18.2(a)(viii)
"repairs"	Section 7.2(a)
"Request(s) for Bids"	1)a)i)(1)(b)(i)
"Required Air Permits"	Section 5.1(c)
"Resultant Entity"	Section 13.2(a)
"Review Period"	Section 18.1(f)
"RRC"	Section 18.1(c)
"Ship Channel"	Recital A
"Sublease Notice"	Section 14.1(b)
"Substantial Completion Notice"	Section 5.5(c)
"Tax Protest Deposit"	Section 9.2(b)
"Term"	Section 2.2(a)
"Termination Amount"	Section 15.2(a)
"Termination Notice"	Section 16.5
"Termination Notice Period"	Section 16.5
"Termination Trigger"	Section 2.3(a)
"TPH"	Section 18.1(e)
"Tract 2 Dock Fees"	Section 4.5(a)
"Transfer Payment"	Section 3.4(a)
"transferee"	Section 13.1(a)
"Turning Basin Expansion"	Recital G
"VLCC"	Recital F
"Wharfage Deficit Payment"	Section 4.3(b)
"Wharfage Deficit Termination Payment"	Section 4.4(c)

Section 1.3 **Number and Gender.** In this Agreement, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa and words in one gender include all genders.

Section 1.4 **Headings.** The division of this Agreement into articles, sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

**Section 1.5 References to this Agreement.** The words "herein," "hereby," "hereof," "hereto" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words "Article," "Section," "paragraph," "sentence," "clause," "Exhibit," "Schedule" and "Appendix" mean and refer to the specified article, section, paragraph, sentence, clause, exhibit, schedule or appendix of, or to, this Agreement. All Exhibits and Appendices and any other attachments to this Lease are incorporated in this Lease by this reference.

**Section 1.6 References to Any Person.** A reference in this Agreement to any Person at any time refers to such Person's permitted successors and assigns.

**Section 1.7 Meaning of Including.** In this Agreement, the words "include," "includes" or "including" mean "include without limitation," "includes without limitation" and "including without limitation," respectively, and the words following "include," "includes" or "including" shall not be considered to set forth an exhaustive list.

**Section 1.8 Consents and Approvals.**

(a) Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

(b) Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the Authority or Lessee of or to any action, Person, document or other matter contemplated by this Agreement, the following provisions shall apply: (i) such request for approval or consent must (A) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, (B) clearly set forth the matter in respect of which such approval or consent is being sought, (C) form the sole subject matter of the correspondence containing such request for approval or consent and (D) state clearly that such approval or consent is being sought; (ii) such approval or consent shall not be unreasonably or arbitrarily withheld, conditioned or delayed (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or that it may be given or provided at the discretion of the Authority or Lessee (as applicable)); and (iii) the Authority or Lessee shall within such time period set forth herein (or if no time period is provided, within thirty (30) days) after the giving of a notice by the other Party requesting an approval or consent, advise the other Party by notice either that it consents or approves or that it withholds its consent or approval.

(c) Wherever this Agreement provides that an act is to be taken or performed or approval or consent is to be given by the Authority, such act may be taken or performed or such approval or consent may be given by the Chief Executive Officer of the Authority and the Lessee may rely thereon in all respects.

**Section 1.9 Currency.** All statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

**Section 1.10 References to Time; Calculation of Time.** Unless otherwise indicated, for purposes of this Lease Agreement, a period of days shall be deemed to begin on the first (1st) day after the event that began the period and to end at 5:00 p.m. on the last day of the period. If,

however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. on the next Business Day. All references to time herein are to time in Corpus Christi, Texas.

**ARTICLE 2**  
**LEASE OF PREMISES; TERM OF LEASE; PERMITTED USES**

**Section 2.1 Lease of Leased Premises.**

(a) Authority hereby leases to Lessee and Lessee hereby leases from the Authority for the Term all of Authority's right, title and interest in and to the Leased Premises, subject to the terms, conditions and agreements in this Lease.

(b) Authority and Lessee hereby acknowledge and agree that it is the express intent of both Parties that this Lease Agreement in no way constitutes a sale of the Leased Premises for any purpose.

(c) Authority hereby grants Lessee the exclusive use of each Dock Berth during the Term of this Lease after the Authority completes construction of the Dock Berths. The Dock Berths are not, however, part of the Leased Premises. Authority further acknowledges and agrees that each HI Dock will be operated as a private dock and Lessee will not be required by Authority to operate any HI Dock as a public dock.

(d) Additionally, Authority hereby grants to Lessee the following easements with respect to any and all real property of Authority adjacent to the Leased Premises (the "Adjacent Property"): (i) the non-exclusive easement and right of ingress and egress in, and access and passage to, along and over the roads, drives, sidewalks and parking areas from time to time located on the Adjacent Property as reasonably necessary to access the Leased Premises, including to provide access from the Leased Premises to one or more public rights-of-way, (ii) a non-exclusive easement over, under and on the Adjacent Property for encroachments and subsurface support as may be reasonably necessary to accommodate footings and foundations related to the Lessee Facilities, (iii) a non-exclusive easement over, under and across the Adjacent Property to accommodate underground and above-ground piping, conduits and other facilities serving the Leased Premises and Lessee Facilities and (iv) a non-exclusive easement over, under, across and on the Adjacent Property as may be reasonably necessary for stormwater runoff and drainage from the Leased Premises.

**Section 2.2 Term.**

(a) For purposes of this Lease, "Term" means the period from the Effective Date until the earlier of (i) the date upon which this Lease ends at the expiration of the Initial Term or any applicable Extension Period, as the case may be, or (ii) the date upon which this Lease is terminated in accordance with the provisions of this Lease.

(b) The first phases of the Term are the Commercialization Period and the Development Period.

(c) The initial term of this Lease begins on the Commencement Date and ends at 11:59 p.m., Central Time, on the last day of the tenth (10th) Lease Year (“**Initial Term**”), unless this Lease is terminated in accordance with the provisions of this Lease.

(d) Subject to Section 2.2(f), Lessee shall have the right and option to extend the Term of this Lease beyond the Initial Term for (i) three (3) additional periods of ten (10) years each, and (ii) after the end of the third (3rd) Extension Period, for one (1) additional period beginning on the day after the last day of the third (3rd) Extension Period and ending on the Fail-Safe Ending Date (each such period set forth in clause (i) and (ii), an “**Extension Period**”). To exercise this right, Lessee shall give written notice thereof to Authority at least one hundred eighty (180) days prior to the end of the then effective Initial Term or Extension Period (other than the final Extension Period), as the case may be, irrevocably exercising its option to extend the Term for an additional Extension Period. Notice of Lessee’s intention to extend the Term under this Lease Agreement must, to be effective, be sent by certified mail to Authority at the address provided in Section 17.4(a) and must be postmarked no later than the latest date provided in this Section 2.2(d) for Lessee’s exercise of the option. Notwithstanding anything to the contrary contained in this Lease, Lessee may not exercise such option if at the time of exercise an Event of Default has occurred and is continuing. If Lessee affirmatively exercises its option to extend the Term, then this Lease shall continue in full force and effect under all the terms and conditions set forth herein.

(e) If, at the time of delivery of an Extension Notice, Authority reasonably believes that the environmental covenants in this Lease contained in Article 18 are no longer adequate and not commensurate with the standard environmental protection clauses in the Authority’s other reasonably analogous long-term leases in effect at such time (collectively, the “**Authority’s Standard EP Clauses**”), Authority may send written notice to Lessee evidencing such reasonable belief (in reasonable detail). Authority shall include with such notice a proposed restated Article 18 that includes the Authority’s Standard EP Clauses and any applicable restated definitions. In order for environmental protection clauses to be considered the Authority’s Standard EP Clauses, they must have been agreed to by at least five (5) other private, third-party lessees or users of the Authority’s oil docks. Upon Lessee’s receipt of such notice, Lessee shall notify the Authority whether it agrees or disagrees with the proposed restated Article 18. If Lessee agrees with the restated Article 18, the Parties shall amend this Lease effective as of the first (1st) day of the applicable Extension Period by amending Article 18 to conform to the proposed restated Article 18 (and any applicable restated definitions). If Lessee reasonably disagrees with the proposed restated Article 18, Lessee may send written notice to the Authority evidencing such disagreement (in reasonable detail), and the Parties agree that their respective executive management shall promptly negotiate to revise, amend or otherwise modify such provisions in the proposed restated Article 18 as may be reasonably necessary to correct or mitigate the issues described in the Lessee’s notice. If Lessee does not exercise the right to negotiate the terms of the proposed restated Article 18 pursuant to this Section 2.2(e) within thirty (30) days of delivery of the proposed restated Article 18 to Lessee, Lessee shall be deemed to have waived such right and this Lease shall, upon commencement of the upcoming Extension Period, continue in full force and effect under all the terms and conditions set forth herein as modified by the restated Article 18 (and any applicable restated definitions).

(f) Notwithstanding anything to the contrary contained in this Lease, if this Lease is not sooner terminated, this Lease shall end at 11:59 p.m. on the day before the fiftieth (50th) anniversary of the Effective Date ("Fail-Safe Ending Date"). In other words, under no circumstances shall the Term of this Lease exceed fifty (50) years.

Section 2.3 Termination at Lessee's or Authority's Election.

(a) Lessee may terminate this Lease in accordance with this Section 2.3 upon the occurrence of any of the following events (each a "Termination Trigger"):

(i) FID does not occur by the end of [REDACTED] or the board of directors of LSP does not vote to approve proceeding to FID before the end of the [REDACTED]

(ii) the board of directors of LSP votes after the end of the [REDACTED] and before the [REDACTED] of the Effective Date not to proceed with the Harbor Island Terminal Project, *provided*, that Lessee shall provide written notice to the Authority upon the occurrence of FID;

(iii) Lessee does not secure within [REDACTED] after the Effective Date all Permits reasonably required by Lessee to construct and operate (A) the Harbor Island Crude Terminal in accordance with its obligations under the Lease and (B) all of Lessee's other facilities located at and downstream of that certain terminal known as "Midway Junction" and relating to the throughput of Crude Oil at the Harbor Island Crude Terminal, regardless of whether such other facilities of Lessee are located on the Leased Premises;

(iv) Lessee does not secure within [REDACTED] after the Effective Date all rights-of-way and easements reasonably required by Lessee to construct and operate (A) the pipeline interconnections Lessee needs to throughput Crude Oil to the Harbor Island Crude Terminal and (B) all of Lessee's other facilities located at and downstream of that certain terminal known as "Midway Junction" and relating to the throughput of Crude Oil at the Harbor Island Crude Terminal, regardless of whether such other facilities of Lessee are located on the Leased Premises;

(v) a *force majeure* affecting the development or operation of the Lessee Facilities or the Dock and Berth Facilities has been in existence for at least three hundred sixty-five (365) consecutive days at any time during the period from and after the Effective Date until end of the Initial Term; or

(vi) a *force majeure* preventing the ability of the Harbor Island Terminal Project to throughput Crude Oil for export or import has been in existence for at least three hundred sixty-five (365) consecutive days at any time during the period from and after the Effective Date until end of the Initial Term.

(b) If the Termination Trigger set forth in Section 2.3(a)(i) occurs, Lessee may terminate this Lease upon the occurrence of such Termination Trigger by giving the Authority prior written notice of such termination within thirty (30) days after the occurrence thereof, whereupon this Lease will be deemed terminated on the date of such termination notice. If Lessee

exercises its right to terminate pursuant to this Section 2.3(b), Lessee shall not be responsible or liable to the Authority for any cost, expense, damage, liability or other amount incurred or suffered by the Authority prior to or as a result of such termination, including any Pre-FID Project Capital. Termination by Lessee pursuant to this Section 2.3(b) shall be (x) without liability of any kind to either Party, and the Parties shall be discharged from any further obligations or liabilities under this Lease and (y) without prejudice to the rights, obligations or liabilities that have accrued up to the date of termination.

(c) If any of the Termination Triggers set forth in Section 2.3(a)(ii), Section 2.3(a)(iii), Section 2.3(a)(iv), Section 2.3(a)(v) or Section 2.3(a)(vi) occurs, Lessee shall give the Authority written notice of such occurrence within thirty (30) days after the occurrence of any such Termination Trigger. Lessee may terminate this Lease upon the occurrence of any such Termination Trigger (subject to making the payment described in Section 2.3(d), if applicable) by giving the Authority prior written notice of such termination within thirty (30) days after the occurrence of any such Termination Trigger, whereupon this Lease will be deemed terminated on the last day of the month in which such termination notice was given (the “**Elective Termination Date**”). Lessee may give the Authority notice of the occurrence of any such Termination Trigger and Lessee’s election to terminate the Lease due to the occurrence of any such Termination Trigger at the same time. If the events or circumstances giving rise to such right of termination are remedied or cease to exist before the applicable Elective Termination Date, Lessee shall notify the Authority of such remedy or cessation, at which time the termination notice will be of no force and effect. Termination by Lessee pursuant to this Section 2.3(c) shall be (x) without liability of any kind to either Party, and the Parties shall be discharged from any further obligations or liabilities under this Lease and (y) without prejudice to the rights, obligations (including the obligation of Lessee to make the payment described in Section 2.3(d)) or liabilities that have accrued up to the Effective Date of Termination.

(d) If Lessee exercises its right to terminate this Lease pursuant to Section 2.3(c), then Lessee will be obligated to pay to the Authority an amount equal to (x) the sum of the Authority’s Actual Total Project Cost as of the Elective Termination Date, *less* (y) the Authority’s Total Project Revenue as of the Elective Termination Date (such amount being referred to herein as the “**Elective Early Termination Fee**”). Lessee shall pay the Elective Early Termination Fee to Authority within ten (10) Business Days after the Lessee’s receipt of the Authority’s invoice for the Elective Early Termination Fee. The obligation of Lessee to pay and the right of the Authority to receive the Elective Early Termination Fee accrued as of the Elective Termination Date shall be the sole and exclusive obligation of the Lessee and remedy of the Authority in the event Lessee terminates this Lease as a result of the occurrence of a Termination Trigger.

(e) If the Authority fails to obtain all the USACE Permit(s) on or before [REDACTED] either Party may terminate this Lease by giving the other Party written notice of such termination before the Authority obtains all the USACE Permits, whereupon this Lease will be deemed terminated on the date of such termination notice. If either Party exercises its right to terminate pursuant to this Section 2.3(e), Lessee shall not be responsible or liable to the Authority for any cost, expense, damage, liability or other amount incurred or suffered by the Authority prior to or as a result of such termination, including any Pre-FID Project Capital. Termination by either Party pursuant to this Section 2.3(e) shall be (x) without liability of any kind

to either Party, and the Parties shall be discharged from any further obligations or liabilities under this Lease and (y) without prejudice to the rights, obligations or liabilities that have accrued up to the date of termination.

**Section 2.4 Permitted and Prohibited Uses.**

(a) During the Term, Lessee may undertake any of the following activities (collectively, the "Permitted Uses"):

(i) owning, constructing, operating, maintaining, repairing, replacing, upgrading, expanding, improving and/or removing (x) all of the Lessee Facilities and (y) any renewable energy, electricity generation or other industrial facilities reasonably related to the promotion of Lessee's or its Affiliates' business activities on the Leased Premises;

(ii) accessing, and permitting third parties to access, the Ship Channel from the Leased Premises and any improvements thereon; and

(iii) all other activities expressly permitted or contemplated by this Agreement.

(b) Lessee will not use the Land or the Dock and Berth Facilities for any purpose other than the Permitted Uses without the express prior written consent of the Authority, which may be given or withheld by the Authority's Port Commission in its sole discretion. The foregoing restriction shall not prohibit the transport of any materials to or from the Leased Premises for the construction, operation, maintenance or repair of any of the Lessee Facilities.

(c) Lessee will not use, occupy or permit the use or occupancy of the Land or the Dock and Berth Facilities for any purpose or in any manner which would (i) materially violate orders, injunctions, writs, statutes, rulings, rules, regulations, directives, permits, certificates or ordinances of any Governmental Authority applicable to Lessee, the Land, the HI Docks or the Dock Berths, including zoning, environmental and utility conservation matters; (ii) violate Authority's Tariff; (iii) violate applicable insurance requirements; (iv) create or cause the imposition of any lien or encumbrance on the Leased Premises other than Permitted Encumbrances; or (v) be unreasonably dangerous to life or property outside the Leased Premises.

(d) The Parties agree that neither Party will voluntarily permit any portion of the Land to be used for the purpose of drilling an oil or gas well, and Authority acknowledges that the drilling of any oil or gas well on the surface of the Land would interfere with and be injurious to Lessee's proposed use or uses of the Land, Lessee Facilities and Dock and Berth Facilities for industrial purposes.

(e) Lessee acknowledges and agrees that it has no right to grant easements or rights-of-way on the Leased Premises, and Lessee shall not grant any easements on the Leased Premises, for gas lines, water lines, sewer lines, pipelines, power transmission lines, fiber optic cable, related poles and attachments, and the like. Without limitation of the Authority's agreements in Section 2.7, Section 2.8 and Section 9.1(d), only the Authority may grant easements on the Leased Premises.



(f) Lessee hereby represents and warrants to Authority that Lessee's construction of the Lessee Facilities and Lessee's occupancy, operation and use of the Land, Lessee Facilities and Dock and Berth Facilities will be and remain in compliance with Applicable Laws in all material respects.

(g) Authority hereby represents and warrants to Lessee that Authority's construction of HI Dock One, HI Dock Two and each Dock Berth will be in compliance with Applicable Laws in all material respects.

**Section 2.5 Quiet Enjoyment.** The Authority agrees that so long as no Event of Default has occurred hereunder, the Authority will not disturb Lessee's possession of the Leased Premises, except in accordance with this Lease. Authority represents and warrants that there are no liens, leases or purchase options affecting the Leased Premises as of the Effective Date. Authority agrees to warrant and forever defend Lessee's right to occupancy of the Leased Premises against the claims of any and all Persons whomsoever lawfully claiming the same or any part thereof, by, through or under Authority (but not otherwise), subject to the Permitted Encumbrances. However, the Authority agrees that in the event that any mineral owner of all or part of the Leased Premises or a lessee under an oil, gas or mineral lease granted by any mineral owner (each a "**Mineral Operator**") attempts to utilize any portion of the surface of Land, the Authority will take all actions available to it to prevent such use of the surface of the Land, including, but not limited to, providing the Mineral Operator with other real property upon which to conduct surface operations.

**Section 2.6 Permitted Encumbrances.** This lease of the Leased Premises is subject to all of the following: (i) the provisions of this Lease Agreement and any security interests granted by Lessee to Authority in connection herewith; (ii) the lawful use of the Leased Premises by any Mineral Operator, other than Authority; (iii) to the extent valid and enforceable as to the Leased Premises, those matters of record in Nueces County, Texas, as of the Effective Date, including, but not limited to, patents, restrictive covenants, permits, licenses, easements and rights-of-way (but expressly excluding any liens, leases or purchase options); (iv) any unrecorded easements or rights-of-way that are specifically shown in Exhibit D; (v) all Applicable Laws; (vi) the Authority's right to operate, maintain and replace any fiber optic lines installed on the Leased Premises before the Effective Date; and (vii) any Leasehold Mortgage (collectively, the "**Permitted Encumbrances**"). A map or plat of the unrecorded easements and rights-of-way on the Land known to the Authority is attached hereto as Exhibit D-1.

**Section 2.7 Future Pipeline Easements and Other Easements.** Authority will, during the Term, cooperate with Lessee in granting easements to Lessee for pipelines for the benefit of the Leased Premises, including, without limitation, for the transportation of Crude Oil that will be loaded on Vessels at the HI Docks, utilizing the Authority's current form of pipeline easement agreement at the standard rates in effect at that time (each a "**Pipeline Easement**"). Fees for a Pipeline Easement shall be due and payable within thirty (30) days after receipt of a correct invoice following the approval of the Pipeline Easement by Authority's Port Commission. A conceptual layout of the location of Lessee's supply pipeline on the Authority's property is attached hereto as Exhibit E. Authority further agrees to grant Lessee such additional non-exclusive easements and servitudes over the Adjacent Property as Lessee (or its Contractors) may reasonably require for the purpose of installing, constructing and relocating underground or above-ground facilities to serve the Leased Premises; *provided, however*, that any such easements

shall be subject to the following terms and conditions: (i) the location of any such additional easements shall be subject to the prior written approval of Authority, such approval not to be unreasonably withheld, conditioned or delayed; *provided, however*, that it shall not be unreasonable for Authority to withhold consent to installing, constructing or relocating such underground or above-ground piping, conduits or other facilities to the extent that such piping, conduits or other facilities may be located in public rights-of-way; (ii) the location of any such underground or above-ground facilities shall not unreasonably interfere with the current or intended uses of the Adjacent Property; (iii) all aspects of the installation and construction of such underground or above-ground facilities outside the Leased Premises including materials, plans, specifications, schedule and technique, as well as the impact on existing or planned utilities wherever located, shall be subject to the prior written approval of Authority, such approval not to be unreasonably withheld, conditioned or delayed; and (iv) Authority's grant of such easement or servitude shall be made utilizing the Authority's current form of easement for such facilities at the standard rates in effect at that time. In addition, the Authority shall make reasonable efforts to assist Lessee with obtaining all other easements across the property of any other Person that is necessary for the Harbor Island Terminal Project when asked to do so by Lessee. Authority further agrees that it will, during the Term, cooperate with Lessee in granting easements across Authority owned or controlled property to Lessee for pipelines for the benefit of Tract 2, utilizing the Authority's current form of pipeline easement agreement at the standard rates in effect at that time.

**Section 2.8 Rights of Authority to Access the Leased Premises.** Authority reserves the right, subject to Lessee's consent, not to be unreasonably withheld, to install, maintain, inspect and repair gas lines, water lines, sewer lines, pipelines, power transmission lines, fiber optic cable, and related poles and attachments on the perimeter of the Leased Premises and in other locations within the Leased Premises, which do not interfere (in Lessee's sole but reasonable opinion) with Lessee's intended use of the Leased Premises. Authority also reserves the right, subject to Lessee's consent, not to be unreasonably withheld, to grant easements and rights-of-way on the perimeter of the Leased Premises and in other locations within the Leased Premises, which do not interfere (in Lessee's sole but reasonable opinion) with Lessee's intended use of the Leased Premises, for gas lines, water lines, sewer lines, pipelines, power transmission lines, fiber optic cable, and related poles and attachments. The locations of any such lines, easements or rights-of-way shall be subject to Lessee's prior written approval, in its sole but reasonable discretion, *provided* in no event shall Lessee be required to approve any location that will or may interfere with Lessee's intended use of the Leased Premises. Authority has the right to use third parties for the performance of the rights reserved to Authority in this Section 2.8, *provided* Authority shall cause such third-party contractors to (a) follow all applicable safety rules and regulations, (b) comply with Lessee's access program requirements including insurance and (c) comply with other reasonable restrictions imposed by Lessee. Notwithstanding anything to the contrary, Lessee shall have exclusive use of the Dock and Berth Facilities during the Term of this Lease.

**Section 2.9 Mooring of Vessels.** Only Vessels (not to exceed the design limitations of the Dock Berths as shown on Appendix Three) being loaded or unloaded by Lessee may be moored along the water frontage of the HI Docks, together with vessels (a) providing goods or services to Lessee or such Vessels or (b) utilizing the HI Docks as a lay-berth. Mooring non-commercial ships of third parties (unrelated to Lessee's operations or unaffiliated with Lessee), including pleasure craft and houseboats, is prohibited.

Section 2.10 **Signs.** Except as may be required by Applicable Laws, Lessee may not place any signs at or on the Leased Premises nor paint any signs on any building on the Leased Premises except as may be installed as of the Effective Date or unless first approved in writing by the Director of Engineering Services of Authority, which approval shall not be unreasonably denied, delayed or conditioned. Lessee must remove all of its signs when this Lease Agreement expires or terminates and repair any damage resulting from erecting or removing the signs. Notwithstanding anything to the contrary, Lessee is hereby permitted, at Lessee's expense and subject to all Applicable Laws, to install signage identifying the HI Docks and the Lessee Facilities with Lessee's trade name and graphic logo consistent with that of occupants of dock and appurtenant facilities in the vicinity of the Leased Premises.

### ARTICLE 3 LEASE PAYMENTS

Section 3.1 **Development Period Rent.** Beginning on the first (1st) day of the Development Period, Lessee shall pay to the Authority a monthly base rent equal to the product of (a) one-twelfth (1/12<sup>th</sup>) of [REDACTED] multiplied by (b) the number of acres of land in the Leased Premises (the "Development Period Rent"). Development Period Rent shall be paid in advance on the first (1st) day of each calendar month during the Development Period.

#### Section 3.2 **Annual Base Rent during the Term.**

(a) For the First Lease Year of the Term, Lessee shall pay to Authority an Annual Base Rent equal to the product of (i) [REDACTED] multiplied by (ii) the number of acres of land in the Leased Premises, and multiplied by (iii) the First CPI Adjustment Factor.

(b) For each Lease Year of the Term after the First Lease Year, Lessee shall pay to Authority an Annual Base Rent equal to the product of (i) the Annual Base Rent for the prior Lease Year, multiplied by (ii) the CPI Adjustment Factor for the then-current Lease Year.

(c) The Annual Base Rent for each Lease Year of the Term shall be paid in equal monthly installments of one-twelfth (1/12<sup>th</sup>) of the Annual Base Rent for such Lease Year and shall be paid on the first (1st) day of each calendar month during such Lease Year, in advance, commencing on the first (1st) day of such Lease Year; *provided* that Lessee may elect to pay Annual Base Rent for multiple months within any Lease Year in advance as a lump sum, in which case Annual Base Rent will not be due again until the first (1st) day of the next month for which Lessee has not already paid in advance.

#### Section 3.3 **Lease Wharfage; Security Surcharge.**

(a) **Lease Wharfage during the Interim Period.** Lease Wharfage for the Interim Period shall equal the product of (x) the number of Barrels of Crude Oil loaded on or unloaded from Vessels while berthed at the HI Docks during the Interim Period, multiplied by (y)

one hundred percent (100%) of the Applicable Wharfage Rate when such Barrels were loaded or unloaded.

(b) **Lease Wharfage for each Lease Year during the Initial Term.** Lease Wharfage for each Lease Year during the Initial Term (each an "Initial Term Lease Year") shall equal the product of (x) the number of Barrels of Crude Oil loaded on or unloaded from Vessels while berthed at the HI Docks during such Initial Term Lease Year, *multiplied by* (y) one hundred percent (100%) of the Applicable Wharfage Rate when such Barrels were loaded or unloaded.

(c) **Lease Wharfage for each Lease Year during an Extension Period.** Lease Wharfage for each Lease Year during an Extension Period (each an "Extension Period Lease Year") shall equal the product of (x) the number of Barrels of Crude Oil loaded on or unloaded from Vessels while berthed at the HI Docks during such Extension Period Lease Year, *multiplied by* (y) one hundred percent (100%) of the Applicable Wharfage Rate when such Barrels were loaded or unloaded.

(d) **Security Surcharge.** Lessee acknowledges, understands and agrees to pay, Authority's Security Surcharge on all Lease Wharfage paid under this Lease.

(e) **Terms of Payment.** Lessee acknowledges, understands and agrees to pay, within ten (10) Business Days of Lessee's receipt of Authority's invoice with respect to such amounts, the Lease Wharfage and Security Surcharges described in this Section 3.3. The Lease Wharfage and Security Surcharges described in this Section 3.3 are in lieu of the wharfage payments and security surcharges on wharfage that would have otherwise been required under the Authority's Tariff.

#### Section 3.4 **Transfer Payments for Crude Oil Transfers.**

(a) Lessee agrees to make a payment ("Transfer Payment") to the Authority for each calendar month during the Term of this Lease based on the number of Outgoing Barrels of Crude Oil (other than Waterborne Barrels of Crude Oil) that were transported from the Leased Premises by pipeline during such calendar month. The Transfer Payment for each month shall equal the product of (i) the number of Outgoing Barrels of Crude Oil (other than Waterborne Barrels of Crude Oil) that were transported from the Leased Premises by pipeline during such month, *multiplied by* (ii) the Applicable Wharfage Rate in effect during such month.

(b) The Transfer Payment for each calendar month shall be due and payable on or before the last day of the following calendar month. Lessee shall also pay a surcharge to the Authority on each Transfer Payment equal to the Security Surcharge in effect for the month for which the Transfer Payment is made. The Transfer Payments are in addition to the Annual Base Rent. For the avoidance of doubt and notwithstanding anything to contrary in this Lease, Lessee shall not be required to pay Lease Wharfage or a Transfer Payment more than once for any Barrel of Crude Oil throughput or transferred over or upon the Leased Premises, irrespective of the mode or method of throughput for such Barrel or whether such Barrel is being delivered to or redelivered from the Leased Premises. If Lease Wharfage is assessed on any Barrel of Crude Oil, then under no circumstances shall a Transfer Payment be assessed on such Barrel of Crude Oil, and if a

Transfer Payment is assessed on any Barrel of Crude Oil, then under no circumstances shall Lease Wharfage be assessed on such Barrel of Crude Oil.

(c) During the construction of the Lessee Facilities, Lessee shall install, operate and maintain a permanently mounted ultrasonic flowmeter, turbine meter, or Coriolis meter system (inline or clamp on), having an accuracy of +/- 0.25% or better (or other comparable system with prior written approval of the Authority, such approval not to be unreasonably withheld), to enable Lessee to monitor pipeline product flow entering and exiting the Leased Premises. Such meter system and related appurtenances shall be the sole property and under the sole control of Lessee. Lessee must report in writing monthly to Authority the number of Barrels of Crude Oil throughput into or out of the Leased Premises during the prior month by any means (including ships, barges or pipelines). Lessee shall report to the Authority the volumes of Crude Oil throughput at the Harbor Island Crude Terminal on or before the tenth (10th) Business Day following each calendar month during the Term and shall keep and maintain a complete and accurate set of books and records showing all of the foregoing information (in both electronic and hard copy form) in order that the Authority may ascertain therefrom what Transfer Payments are due to the Authority from Lessee hereunder, and such books and records shall be subject to the inspection of the Authority, its agents and attorneys, at any and all reasonable times during normal hours of business operations. Lessee shall also provide the Authority with copies of this information upon request and shall maintain the information for any calendar month for at least two (2) years after the end of such month.

(d) The covenants in this Section 3.4 are material to this Lease.

**Section 3.5 Additional Charges.** Lessee shall pay or discharge the following additional payment obligations hereunder described in Section 6.8, Section 7.1(c), Section 7.2(d), Section 9.1(a), Section 12.2(a), Section 13.1(e), Section 13.3, Section 13.5, Section 14.1(b), Section 14.1(c), Section 14.3, Section 18.2(d)(iii) and Section 18.2(e) (collectively, "Additional Charges"). Lessee shall indemnify, defend and save the Authority Parties harmless from and against any and all direct loss, cost or damage, including, without limitation, reasonable attorneys' fees, incurred or sustained by any of them as a result of the failure of Lessee to timely and fully pay all such Additional Charges within ten (10) days of the date due and payable.

**Section 3.6 Late Payment Penalties.** If Lessee should fail to pay Authority any undisputed sum to be paid by Lessee to Authority hereunder within thirty (30) days after such payment is due, interest on the unpaid amount shall accrue at a rate of [REDACTED] per annum or the maximum rate allowed by law, whichever is less, from the date payment was due until the date payment is made. Failure to pay such interest within thirty (30) days after Lessee's receipt of written demand shall be an Event of Default hereunder. Following the dishonor of any check presented for payment, Authority shall have the right, at Authority's option, to require all further payments to be made by certified check or wire transfer.

**Section 3.7 Method and Place of Payment.** All Lease Payments and any other payments required to be made by Lessee to Authority hereunder shall be (i) made by electronic transfer to an account to be designated and maintained by Authority, (ii) delivered to the Authority's administrative offices at 222 Power Street, Corpus Christi, Texas 78401, or such other

physical address as Authority may designate from time to time or (iii) mailed to Authority, Attention: Chief Financial Officer, P.O. Box 1541, Corpus Christi, Texas 78403, or at such other mailing address as Authority shall designate in writing. All Lease Payments and any other payments required to be made by Lessee to Authority hereunder must be paid in legal tender of the United States of America without notice, demand, abatement, deduction or offset, except as otherwise provided herein.

Section 3.8 **Net Lease.** Authority and Lessee do each state and represent that it is their intention that this Lease be interpreted and construed as a net lease and that all Lease Payments shall be paid by Lessee without abatement, deduction, diminution, deferment, suspension or set-off unless expressly provided for herein.

Section 3.9 **Security for Guaranteed Payments.**

(a) Lessee shall deliver or cause to be delivered to the Authority on or before [REDACTED] (which date may be extended by mutual agreement of Authority and Lessee), (1) a proposed Guarantee Agreement in form and substance reasonably acceptable to the Authority (in its sole discretion) from a Person that (i) has been rated as Investment Grade for a period of not less than twelve months prior to the date of delivery of such Guarantee Agreement, or (ii) in the Authority's reasonable discretion, has demonstrated (by an independent analysis of such Person's financial statements as well as other reasonable and customary indications of creditworthiness) that it has sufficient creditworthiness to support the Guaranteed Payments, and (2) a proposed opinion of counsel to the issuer of the Guarantee Agreement satisfactory to the Authority with respect to the validity, binding effect and enforceability of the Guarantee Agreement. The Authority will review and approve or reject the proposed Guarantee Agreement and proposed opinion of counsel on or [REDACTED] (which date may be extended by mutual agreement of Authority and Lessee). If the Authority approves the proposed Guarantee Agreement and proposed opinion of counsel, these documents will constitute the "Approved Guarantee Agreement" and "Approved Legal Opinion" respectively.

(b) Lessee shall deliver the Approved Guarantee Agreement and the Approved Legal Opinion to the Authority prior to the beginning of the Development Period. The Approved Guarantee Agreement shall remain in place until the earlier to occur of (1) the date on which all the Guaranteed Payments accruing during or with respect to the Initial Term have been paid, or (2) the date on which Lessee is released and discharged from its obligations under this Lease pursuant to and in accordance with Section 13.1(c) or Section 13.2(b).

(c) If Lessee fails to satisfy the conditions described in Section 3.9(a) or Section 3.9(b), the Authority may terminate this Lease by giving Lessee prior written notice of such termination, whereupon this Lease will be deemed terminated on the date of such termination notice. If the Authority exercises its right to terminate this Lease pursuant to this Section 3.9(c), Lessee shall not be responsible or liable to the Authority for any cost, expense, damage, liability or other amount incurred or suffered by the Authority prior to or as a result of such termination, including any Pre-FID Project Capital. Termination by the Authority pursuant to this Section 3.9(c) shall be (1) without liability of any kind to

either Party, and the Parties shall be discharged from any further obligations or liabilities under this Lease, and (2) without prejudice to the rights, obligations or liabilities that have accrued up to the date of termination.

(d) The maximum amount payable under the Guarantee Agreement on any stated date during the Development Period shall equal the amount by which [REDACTED] exceeds the sum of the Lease Payments and Wharfage Deficit Payments paid to the Authority during the Development Period as of such stated date.

(e) The maximum amount payable under the Guarantee Agreement on the Commencement Date shall automatically be adjusted to [REDACTED]. The maximum amount payable under the Guarantee Agreement on any stated date during the Initial Term shall equal the amount by which [REDACTED] exceeds the sum of the Lease Payments and Wharfage Deficit Payments paid to the Authority during the Development Period and during the Initial Term as of such stated date.

#### ARTICLE 4 MINIMUM ANNUAL GUARANTEED THROUGHPUT; WHARFAGE DEFICIT PAYMENTS

Section 4.1 **Guaranteed Interim Period Throughput.** If there is an Interim Period, Lessee guarantees that at least [REDACTED] per day will be loaded on or unloaded from Vessels while berthed at the HI Docks during the Interim Period ("Guaranteed Interim Period Throughput"). If the Guaranteed Interim Period Throughput exceeds the Actual Interim Period Throughput, Lessee hereby agrees to pay, or cause to be paid, to the Authority within sixty (60) days after the end of Interim Period an amount equal to the product of (i) the number of Barrels by which the Guaranteed Interim Period Throughput exceeds the Actual Interim Period Throughput, *multiplied by* (ii) the Applicable Wharfage Rate on the last day of Interim Period.

Section 4.2 **Minimum Annual Guaranteed Throughput.** Lessee guarantees that at least [REDACTED] Barrels of Crude Oil ("Minimum Annual Guaranteed Throughput") will be loaded on or unloaded from Vessels while berthed at the HI Docks during each Lease Year.

#### Section 4.3 **Wharfage Deficit Payments for Insufficient Actual Throughput.**

(a) Subject to Section 10.1 and Section 10.2, from and after the Commencement Date, if the Actual Annual Throughput for any Lease Year is less than the Minimum Annual Guaranteed Throughput for that Lease Year, Lessee hereby agrees to pay, or cause to be paid, to the Authority within sixty (60) days after the end of such Lease Year an amount equal to the product of (A) the number of Barrels by which the Minimum Annual Guaranteed Throughput for that Lease Year exceeds the Actual Annual Throughput for such Lease Year, *multiplied by* (B) the Applicable Wharfage Rate on the last day of such Lease Year.

(b) Each amount payable to the Authority under Section 4.3(a) is referred to in this Lease as a "**Wharfage Deficit Payment.**" Lessee has agreed to make, or cause to be made, the Wharfage Deficit Payments described in Section 4.3(a) as a material inducement for the Authority to enter into this Lease Agreement.

**Section 4.4 Wharfage Deficit Termination Payment.**

(a) Notwithstanding anything to the contrary contained in Section 4.3, if, after the Commencement Date, this Lease terminates during a Lease Year in the Initial Term as a result of an Event of Default or Lessee's gross negligence or willful misconduct, Lessee hereby agrees to pay, or cause to be paid, to the Authority within ninety (90) days after the date of termination of this Lease an amount equal to the sum of the following amounts:

(i) the product of (A) the number of Barrels by which the Minimum Annual Guaranteed Throughput for the Lease Year in which termination occurs exceeds the Actual Annual Throughput for such Lease Year, *multiplied by* (B) one hundred percent (100%) of the Applicable Wharfage Rate in effect on the date of termination of this Lease; *plus*

(ii) the product of (A) [REDACTED] *multiplied by* (B) the number of Lease Years, if any, remaining in the Initial Term after the Lease Year in which termination occurs, *multiplied by* (C) one hundred percent (100%) of the Applicable Wharfage Rate in effect on the date of termination of this Lease.

(b) Notwithstanding anything to the contrary contained in Section 4.3, if, after the Commencement Date, this Lease terminates during a Lease Year in an Extension Period as a result of an Event of Default or Lessee's gross negligence or willful misconduct, Lessee hereby agrees to pay, or cause to be paid, to the Authority within ninety (90) days after the date of termination of this Lease an amount equal to the sum of the following amounts:

(i) the product of (A) the number of Barrels by which the Minimum Annual Guaranteed Throughput for the Lease Year in which termination occurs exceeds the Actual Annual Throughput for such Lease Year, *multiplied by* (B) one hundred percent (100%) of the Applicable Wharfage Rate in effect on the date of termination of this Lease; *plus*

(ii) the product of (A) [REDACTED] *multiplied by* (B) the number of Lease Years, if any, remaining in the Extension Period after the Lease Year in which termination occurs, *multiplied by* (C) one hundred percent (100%) of the Applicable Wharfage Rate in effect on the date of termination of this Lease.

(c) The amount payable to the Authority under Section 4.4(a) or Section 4.4(b), as the case may be, is referred to in this Lease as the "**Wharfage Deficit Termination Payment.**" Lessee has agreed to make, or cause to be made, the Wharfage Deficit Termination Payment described in this Section 4.4 as a material inducement for the Authority to enter into this Lease Agreement.



**Section 4.5 Fees and Rights Associated with Tract 2 Dock During the Term.**

(a) Lessee acknowledges, understands and agrees to pay during the Term, within ten (10) Business Days of Lessee's receipt of Authority's invoice with respect to such amounts, (i) a wharfage charge in an amount equal to [REDACTED] of the Applicable Wharfage Rate for each Barrel of Crude Oil moving across any Tract 2 Dock that is leased or otherwise controlled by Lessee or its Affiliates and (ii) the Authority's Security Surcharge on all such wharfage (collectively, "Tract 2 Dock Fees"). For the avoidance of doubt and notwithstanding anything to the contrary in this Lease, if Lessee is required to pay Tract 2 Dock Fees on a Barrel of Crude Oil, Lessee will not be required to pay any other fees, including Transfer Payments, under this Lease or otherwise on that Barrel of Crude Oil.

(b) In consideration of Lessee's agreement to pay Tract 2 Dock Fees to Authority relating to any Tract 2 Dock, Authority hereby acknowledges and agrees that during the Term of this Lease Lessee and its Affiliates or designees have the right to construct, dredge, maintain, improve, use and operate any Tract 2 Dock without any prior written consent or approval from Authority; *provided, however*, that nothing contained in this Section 4.5 is intended to give, nor shall it be construed as giving, Lessee the right to construct any structure beyond the north bulkhead line of the Ship Channel. Authority will cooperate with Lessee and its Affiliates in Lessee's dealings with USACE, other Governmental Authorities and any dredging or other contractors appointed by Authority to dredge, improve, construct or maintain Dock and Berth Facilities and Dock Berth Approach Areas in connection with Lessee's dredging, improvement, construction or maintenance of any Tract 2 Dock, including any dredging of any such Tract 2 dock berth and dock berth approach area to minus fifty-four (54) feet MLLW, any future dredging of any Tract 2 Dock berth and dock berth approach area to any greater depths to which any HI Dock and Berth Facilities or HI Dock Berth Approach Areas are dredged, and any future maintenance dredging of any Tract 2 Dock berth or dock berth approach area. Authority further acknowledges and agrees that any Tract 2 Dock will be a private dock wholly owned by Lessee, its Affiliates or designees (and any of its or their successors and permitted assigns), and that Lessee will not be required to operate any such Tract 2 Dock as a public dock. Authority hereby grants to Lessee, its Affiliates or designees (and any of its or their successors and permitted assigns) for the Term of this Lease the right of access to the Ship Channel from Tract 2 and any Tract 2 Dock.

(c) Notwithstanding anything to the contrary in Section 4.5(b), before commencing any dredging operations that will remove, cover, damage or otherwise adversely impact the Authority's submerged land adjacent to Tract 2, the grantee will submit plans for such work to the Authority for its approval. The Lessee shall not begin such dredging work until it has obtained the Authority's written approval of such plans, which approval shall not be unreasonably or arbitrarily withheld, conditioned or delayed.

**Section 4.6 Books and Records.** Lessee shall keep and maintain a complete and accurate set of books and records showing all information the Authority needs in order to ascertain therefrom the amount of any Wharfage Deficit Payment or Wharfage Deficit Termination Payment payable to the Authority hereunder, and such books and records shall be subject to the inspection of the Authority, its agents and attorneys, with three (3) days' prior written notice during normal hours of business operations.

Section 4.7 **Fees Payable under Authority's Tariff.** Although not part of the Lease Payments required under this Lease, from and after the Commencement of Commercial Operations, Lessee acknowledges, understands and agrees to pay, within ten (10) Business Days of Lessee's receipt of Authority's invoice with respect to such amounts, (i) Authority's dockage fees on all Vessels berthed at the HI Docks or adjacent to a Vessel berthed at the HI Docks, (ii) Authority's Security Surcharge on all such dockage and (iii) all other Authority charges except wharfage applicable to a public dock or business being conducted at a public dock under the Authority's Tariff (collectively, "**Other Authority Tariff Fees**"), as amended from time to time; *provided* that, in the event an amendment to the Authority's Tariff becomes effective during any Lease Year which increases the Other Authority Tariff Fees payable by Lessee hereunder, such amendment shall be applied in a non-discriminatory manner to all users loading Crude Oil within the Port of Corpus Christi.

## ARTICLE 5 CONSTRUCTION OF THE DOCK AND BERTH FACILITIES

### Section 5.1 **Preliminary Work on the Dock and Berth Facilities.**

(a) Subject to the terms and conditions of this Lease, HI Dock One and HI Dock Two will meet the general design criteria attached to this Agreement as Appendix One, the Handling Equipment will meet the general design criteria attached hereto as Appendix Two, and each Dock Berth and Dock Berth Approach Area will meet the general design criteria attached hereto as Appendix Three.

(b) As soon as practicable after the Effective Date, the Authority shall, at its sole cost and expense, obtain any and all Permits required in connection with the construction of the Dock and Berth Facilities and the deepening and dredging of the Dock Berths and the Dock Berth Approach Areas to a water depth of minus fifty-four (54) feet MLLW, excluding advanced maintenance and allowable overdepth including the USACE Permit; *provided, however*, that Lessee shall make reasonable efforts to assist the Authority with obtaining same when asked to do so by the Authority. Authority will follow Lessee's reasonable directions for obtaining such USACE Permit(s), if Lessee so directs. Upon receipt of the USACE Permit(s), the Authority shall provide a copy of the USACE Permit(s) to Lessee. The Authority shall consult with Lessee in the process of applying for and obtaining the USACE Permit(s) and shall take any action and follow any instruction with respect thereto that is reasonably given by Lessee.

(c) As soon as practicable after the Effective Date, Lessee will apply for all air permits required under Applicable Environmental Laws necessary for Lessee to operate the Dock and Berth Facilities and the Harbor Island Crude Terminal (the "**Required Air Permits**"); *provided, however*, that Authority shall make reasonable efforts to assist Lessee with obtaining same when asked to do so by Lessee. Upon receipt of the Required Air Permits, Lessee shall give a copy of the Required Air Permits to the Authority.

(d) As soon as practicable after the Effective Date, the Authority will collaborate with Lessee to initiate conceptual and preliminary engineering design phases for the Dock and Berth Facilities.

Section 5.2 **Final Design of the Dock and Berth Facilities.** Within a reasonable period of time after Authority and Lessee have completed the initial conceptual and preliminary engineering design phases for the Dock and Berth Facilities, the Authority will engage the services of a Design Engineer to prepare the engineering design work for the Dock and Berth Facilities and to prepare final construction plans for the Dock and Berth Facilities. The final construction plans and specifications for the Dock and Berth Facilities must be approved in writing by an authorized representative of Lessee prior to the Authority seeking competitive bids for constructing the Dock and Berth Facilities, which approval shall not be unreasonably denied, delayed or conditioned. Authority must submit to Lessee plans for the Dock and Berth Facilities (the "**Dock and Berth Facilities Plans**"). To facilitate Lessee's review, two (2) sets of formal plans that clearly define the Dock and Berth Facilities must be submitted to Lessee for its prior approval. The drawings must be prepared on a standard engineering format (24" x 36" drawings) and in an electronic file format acceptable to Lessee and show all physical features and improvements in and around the project site and must be signed and sealed by a Design Engineer. In addition, a detailed site plan (minimum 1" = 50' scale) depicting the location and physical layout of the Dock and Berth Facilities must be submitted to Lessee. Lessee will respond to the request for review of the Dock and Berth Facilities Plans within fifteen (15) Business Days after submittal. Lessee may (i) take no exception to the Dock and Berth Facilities Plans (which shall constitute written approval of the Dock and Berth Facilities Plans), (ii) take no exception subject to comments (which shall constitute written approval of the Dock and Berth Facilities Plans, subject to resolution of any issues found in the comments), (iii) request additional information or (iv) disapprove the Dock and Berth Facilities Plans, setting forth the Lessee's specific reasons for such disapproval, in which event Lessee shall engage in discussion to facilitate Authority's ability to address such deficiency. Disapproval by Lessee of such Dock and Berth Facilities Plans may only be based on such Dock and Berth Facilities Plans not being in compliance with Applicable Laws, the terms of this Lease, or Lessee's reasonable requirements for purposes of facilitating its construction of the Lessee Facilities. If Lessee fails to respond to a request for review of the Dock and Berth Facilities Plans within fifteen (15) Business Days after submittal, Lessee will be deemed to have given its written approval of the Dock and Berth Facilities Plans. The plans and specifications for the Dock and Berth Facilities as finally approved by the Authority and Lessee are referred to herein as the "**Dock and Berth Facilities Approved Plans.**"

Section 5.3 **Request(s) for Construction Bids.**

(a) Once the Authority has received the Dock and Berth Facilities Approved Plans for the Dock and Berth Facilities from the Design Engineer, the Authority will prepare requests for competitive bids for the construction of the Dock and Berth Facilities in accordance with the Dock and Berth Facilities Approved Plans ("**Request(s) for Bids**"). The Authority may prepare (i) one Request for Bids for the construction of the Dock and Berth Facilities or (ii) (A) one Request for Bids for the construction of HI Dock One, HI Dock Two and the Handling Equipment and (B) a separate Request for Bids for the construction of the Dock Berths and Dock Berth Approach Areas. The Authority may also request separate quotes or bids for purchases of equipment or materials to support the construction of the Dock and Berth Facilities. The Requests for Bids or requests for purchases must be approved in writing by an authorized representative of Lessee prior to the Authority publishing such bids, which approval shall not be unreasonably denied, delayed or conditioned. The Authority shall publish the Request(s) for Bids or requests for purchases in accordance with the requirements of Chapter 60 of the Texas Water Code as soon

as practicable after Lessee approves such Request(s) for Bids or requests for purchases. For purposes of this Section 5.3(a), "**Request(s) for Bids**" includes requests for proposals and other permitted procurement methods described in Subchapter C of Chapter 60, Texas Water Code.

(b) The Authority will notify Lessee of the dollar amount of each bid received and its preliminary determination of the Lowest and Best Bid as soon as practicable after the bids are opened. For purposes of this Lease, "**Lowest and Best Bid**" means the bid submitted by the lowest responsive and responsible bidder whose bid meets the minimum requirements stated in the bid documents, as determined by the Authority, in consultation with Lessee. If the Lowest and Best Bid for the work to be performed is reasonable, then, subject to Section 5.3(c) and the approval of the Authority's Port Commission, the Authority will award a Construction Contract to the bidder submitting the Lowest and Best Bid, and the Authority shall pay for (i) the construction of HI Dock One, HI Dock Two and the Handling Equipment and (ii) the dredging and deepening of the Dock Berths and the Dock Berth Approach Areas to a water depth of minus fifty-four (54) feet MLLW in accordance with the terms of the applicable Construction Contract(s). For purposes of this Section 5.3(b), "**Lowest and Best Bid**" includes proposals that provide the best value to the Authority.

(c) Prior to entering into any Construction Contract, the Authority shall submit such Construction Contract to Lessee in order for Lessee to (i) confirm that the work under such Construction Contract will be carried out in accordance with the Dock and Berth Facilities Approved Plans, and (ii) approve the schedule and the total cost for the work under such Construction Contract, which approval shall not be unreasonably withheld, conditioned or delayed. Upon obtaining such confirmation and approval from Lessee, the Authority shall enter into the Construction Contract(s) and cause its Contractor(s) to construct HI Dock One, HI Dock Two and the Handling Equipment in accordance with the Dock and Berth Facilities Approved Plans, Applicable Laws (including the USACE Permit(s)) and the applicable Construction Contract(s) as expeditiously as practicable.

**Section 5.4 Post-Bid Estimated Project Cost.** After the bids for the construction of the Dock and Berth Facilities have been opened, Engineers for the Authority shall direct the Design Engineer to prepare a good faith estimate of the total projected cost for designing and constructing the Dock and Berth Facilities (the "**Post-Bid Estimated Project Cost**"), such estimate to include (a) the total amount estimated to be paid to the Contractor(s) submitting the apparent Lowest and Best Bid(s) for work on and materials for the Dock and Berth Facilities, (b) the total amount estimated to be paid for the engineering, design, and contract documents for the Dock and Berth Facilities, (c) the total amount of estimated contingency to be paid for the construction of the Dock and Berth Facilities, (d) the total amount estimated to be paid for obtaining the USACE Permit(s), (e) the total amount estimated to be paid for the design and construction of the Dock Mitigation Project, if any, to the extent, but only to the extent, reasonably allocable to the Dock and Berth Facilities, (f) the total amount estimated to be paid for any tipping or dredge material placement area fees arising out of the dredging of the Dock and Berth Facilities and (g) the total amount of all other expenditures estimated to be made by the Authority in connection with the design and construction of the Dock and Berth Facilities, including but not limited to construction and material testing, inspection services, construction administration, engineering during construction, and the like; *provided, however*, that the Authority's internal costs will not be included in the Post-Bid Estimated Project Cost. The Authority shall cause the Design Engineer to provide written notice

of the Post-Bid Estimated Project Cost to the Authority and Lessee as soon as practicable after the Design Engineer determines the Post-Bid Estimated Project Cost for Lessee's review and approval. Lessee may (i) take no exception to the Post-Bid Estimated Project Cost (which shall constitute written approval of the Post-Bid Estimated Project Cost), (ii) take no exception subject to comments (which shall constitute written approval of the Post-Bid Estimated Project Cost, subject to resolution of any issues found in the comments), (iii) request additional information or (iv) disapprove the Post-Bid Estimated Project Cost, setting forth the Lessee's specific reasons for such disapproval, in which event Lessee shall engage in discussion to facilitate Authority's ability to address the reasons for such disapproval. Once the Parties resolve any such disapproval, the Authority shall submit an updated Post-Bid Estimated Project Cost to Lessee, subject to Lessee's review and approval pursuant to this Section 5.4. Authority and Lessee agree to be bound by the Design Engineer's determination of the Post-Bid Estimated Project Cost, as finally agreed between the Parties.

**Section 5.5 Construction and Commissioning of the Dock and Berth Facilities.**

(a) The Authority shall provide Lessee with regular, at least monthly, construction updates, including costs paid to-date, for the work performed under the awarded Construction Contract(s). Lessee shall have the right to attend construction progress meetings.

(b) The Authority shall cause its Contractor to dredge and deepen the Dock Berths and the Dock Berth Approach Areas to a water depth of minus fifty-four (54) feet MLLW in accordance with the Dock and Berth Facilities Approved Plans and the USACE Permit(s) and the applicable Construction Contract as expeditiously as practicable. The Authority acknowledges and understands that it will be responsible for paying any tipping or dredge material placement area fees arising out of the Authority's dredging obligations under this Section 5.5(b), but any such fees will be part of the Authority's Actual Total Project Cost.

(c) The Authority shall cause its Contractor to give the Authority and Lessee at least thirty (30) days' advance notice of the date on which it intends to begin the Project Commissioning Process (the "**Project Commissioning Starting Date**"). Lessee acknowledges that the Substantial Completion Notice could be delayed significantly if Lessee is unable to provide Crude Oil and the required OGVs in a timely fashion to perform and complete the Project Commissioning Process. Lessee agrees to pay, within ten (10) Business Days of Lessee's receipt of Authority's invoice for such amount, any delay costs the Authority incurs under the Construction Contract(s) directly resulting from Lessee's failure to provide Crude Oil and the required OGVs in a timely fashion to perform and complete the Project Commissioning Process. The Authority agrees that no dockage at the HI Docks will be charged to Lessee during the Project Commissioning Process. The Project Commissioning Process will end on the day that the Authority and Authority's Contractor determine that the HI Docks and Handling Equipment are operating in accordance with the Dock and Berth Facilities Approved Plans. As soon as the Authority determines that the Dock and Berth Facilities are Substantially Complete, which will not be before completion of the Project Commissioning Process, the Authority shall give the Lessee written notice of this determination with reasonable and customary evidence supporting the same (the "**Substantial Completion Notice**"). Lessee shall review the Substantial Completion Notice and within ten (10) Business Days shall respond to the Authority in writing stating whether it agrees, in its reasonable discretion, that the Dock and Berth Facilities are Substantially Complete,

or indicating additional work that needs to be performed before the Dock and Berth Facilities are Substantially Complete. The Authority shall undertake, or cause to be undertaken such work, or if there is a dispute as to the work that should be undertaken, the Parties shall meet as soon as reasonably practicable and shall use commercially reasonable efforts to agree on the work to be completed to cause the Dock and Berth Facilities to be Substantially Complete. In either case, once such work is complete, the Authority shall re-submit a Substantial Completion Notice to Lessee. For purposes of this Agreement, the "**Dock Delivery Date**" means the day after the first to occur of the following: (i) the date on which Lessee responds in writing to the Substantial Completion Notice that it agrees that the Dock and Berth Facilities are Substantially Complete or (ii) the tenth (10th) Business Day after the Authority submits the Substantial Completion Notice to Lessee.

(d) As soon as practicable after Authority gives Lessee the Substantial Completion Notice, Authority, in coordination with Lessee, will develop a complete punch list of unfinished items for the Dock and Berth Facilities (the "**Punch List**"). Authorized representatives for Authority and Lessee shall sign the Punch List to indicate their approval thereof, and this Punch List may be amended, as required, to better ensure the Punch List includes all the items required to be performed by the Authority's Contractor(s) to complete all work included in the Dock and Berth Facilities Approved Plans. Authority will work with the Contractor(s) to ensure completion of the Punch List items within thirty (30) days of the Dock Delivery Date or as soon thereafter as is reasonably practicable. The Lessee will continue to provide access to the Dock and Berth Facilities until the Authority's Contractor(s) and subcontractors have completed the Punch List; *provided, however*, that these Contractor(s) and subcontractors shall not interfere with Lessee's operations. Authority shall require the Authority's Contractor(s) and subcontractors working on the Punch List items to (i) follow all applicable safety rules and regulations, (ii) comply fully with Lessee's access program requirements, (iii) comply with other reasonable restrictions imposed by Lessee and (iv) comply with Applicable Laws. Upon completion of the Dock and Berth Facilities by the Authority's Contractor(s), as confirmed in writing by both Authority and Lessee, Authority will issue to the Contractor(s) a Notice of Final Acceptance ("**Notice of Final Acceptance**").

**Section 5.6 Dock Modifications.** Lessee may request modifications to the HI Docks ("**Dock Modifications**") before or after the Dock and Berth Facilities are Substantially Complete, but not after the Notice of Final Acceptance has been issued, by submitting plans for the requested modifications (the "**Dock Modification Plans**") to the Authority's Director of Engineering Services for approval. To facilitate the Authority's review, Dock Modification Plans that clearly define the Dock Modifications must be submitted to the Authority electronically for its approval. The drawings must be prepared and submitted in an electronic file format reasonably acceptable to the Authority and must be signed and sealed by a Design Engineer. The Authority will respond to the request for review of the Dock Modification Plans within fifteen (15) Business Days after submittal. The Authority may (i) take no exception to the plans (which shall constitute written approval of the Dock Modification Plans), (ii) take no exception subject to comments (which shall constitute written approval of the Dock Modification Plans, subject to resolution of any issue found in the comments), (iii) request additional information or (iv) disapprove the plans, setting forth the Authority's specific reasons for such disapproval. Disapproval by the Authority of such Dock Modification Plans may only be based on such Dock Modification Plans not being in compliance with Applicable Laws, the terms of this Lease or the Authority's generally applicable standards in effect as of the Effective Date that are made available to Lessee and that are applied on a

nondiscriminatory basis. If the Authority fails to respond to a request for review of the Dock Modification Plans within fifteen (15) Business Days after submittal, the Authority will be deemed to have given its written approval of the Dock Modification Plans. If the Dock Modification Plans are approved, the Authority will prepare additional construction contract plans and specifications and solicit bids to perform the Dock Modifications or negotiate a change order to an existing Construction Contract for the Dock Modifications in accordance with such approved plans, and will give the Contractor a notice to proceed with the Dock Modifications upon receipt of Lessee's agreement to reimburse the Authority for all costs the Authority incurs in designing, bidding and constructing the Dock Modifications (collectively, the "**Dock Modification Costs**"); *provided* that, to the extent Dock Modifications are required as a result of the failure of the HI Docks to be in compliance with Applicable Laws or the Dock and Berth Facilities Approved Plans, all Dock Modification Costs associated with such Dock Modifications shall be the sole responsibility of Authority. Except as otherwise provided in the proviso to the immediately preceding sentence, the Dock Modification Costs shall be paid by Lessee to the Authority in accordance with the terms of the applicable reimbursement agreement.

#### Section 5.7 Cost Overages.

(a) As soon as practicable after making the final payment due under the Construction Contract(s) for the Dock and Berth Facilities, the Authority will provide Lessee with a statement ("**Final Dock and Berth Facilities Statement**") showing (i) the Authority's Actual Total Project Cost and (ii) the Post-Bid Estimated Project Cost.

(b) The Authority shall commit to incur capital expenditures in an amount equal to [REDACTED] in connection with the Harbor Island Terminal Project, including the Dock and Berth Facilities (such amount, the "**Authority's Total Project Capital**"). To the extent that the Authority's Actual Total Project Cost exceeds the Authority's Total Project Capital due to any reason other than (i) change orders (except for change orders associated with delays in the achievement of the Project Commissioning Starting Date that are caused by Lessee as described in Section 5.5(c)) or (ii) changes in the scope of work, in each case, requested, directed or approved by the Authority under the Construction Contract(s) for the Dock and Berth Facilities, Lessee shall pay, or cause to be paid, to the Authority the total amount of such excess amount ("**Excess Project Cost Refund**") in a lump sum, on or before 5:00 p.m. Central Time on the fifteenth (15th) Business Day following Lessee's receipt of the Final Dock and Berth Facilities Statement.

Section 5.8 **Required Completion of Dock and Berth Facilities.** The Dock Delivery Date must occur on or before (i) the [REDACTED] the Effective Date, or (ii) [REDACTED] of the day all the USACE Permit(s) are issued, whichever is later ("**Dock Delivery Deadline**"); *provided*, that the Dock Delivery Deadline shall be extended by the number of days equal to the duration of any event of *force majeure* delaying or hindering the Authority's design, permitting, construction or installation of any Dock and Berth Facilities, and *provided, however*, that the Authority shall be entitled to an automatic thirty (30) day extension of such Dock Delivery Date if Authority requests this extension in writing before the Dock Delivery Deadline. Lessee shall be entitled to a liquidated damages credit of [REDACTED] for each day the Dock Delivery Date occurs after the Dock Delivery Deadline (collectively, the "**Liquidated Damages Credit**") unless the failure of Lessee to perform its obligations under this Agreement

was the cause of, or resulted in, the Dock Delivery Date not occurring on or before the Dock Delivery Deadline. The Liquidated Damages Credit will be used to reduce and offset the Annual Base Rent due and owing under this Lease on a dollar-for-dollar basis until the Liquidated Damages Credit has been credited in full. Prior to the end of the Commercialization Period, the Parties will meet and agree on the allocation of any liquidated damages payable under any Construction Contract, and Exhibit J shall set forth the terms and conditions whereby such allocation provides to Lessee the benefit (through either a direct payment to Lessee and/or a credit to be used by Lessee to credit or offset amounts owed under this Lease) of any liquidated damages to which the Authority becomes entitled under any Construction Contract.

**Section 5.9 Release of Liability.** The Authority hereby releases the Lessee Parties from, and waives any claim against the Lessee Parties for, any and all Claims which may be brought or instituted or asserted against the Lessee Parties based on or arising out of any of the following events: (a) the failure on the part of the Authority Parties to comply with the provisions of Applicable Laws applicable to the Land or the Dock and Berth Facilities (other than with respect to breaches of Applicable Environmental Laws, which shall be subject to the terms and conditions of Article 18); or (b) any injury to or death of or claim of injury to or death of any person or any damage to or loss of or claim of damage to or loss of property occurring on the Land or the Dock and Berth Facilities or arising out of the Authority's activities on the Land or the performance of the Authority's obligations under this Agreement, to the extent any such injury, death, damage or loss is caused by the negligence, gross negligence, willful misconduct, strict liability or other fault or breach of legal duty by any Authority Party.

## ARTICLE 6 LESSEE'S CONSTRUCTION RIGHTS AND OBLIGATIONS

**Section 6.1 Lessee's Supporting Facilities.** Authority understands and agrees that Lessee will be installing certain additional facilities necessary to operate the HI Docks, such as onsite portable restrooms; cameras to monitor dock activities; dock equipment; and portable gangways (collectively, the "Lessee's Supporting Facilities"). A more complete list of Lessee's Supporting Facilities is included in Appendix Four. The Lessee's Supporting Facilities will be owned and maintained by Lessee during the Term of this Lease.

**Section 6.2 Project Commissioning.** Lessee agrees that it will have an oil pipeline in place to deliver Crude Oil to the Handling Equipment on the Project Commissioning Starting Date. Lessee also agrees to provide an OGV at both HI Dock One and HI Dock Two on the Project Commissioning Starting Date to receive Lessee-provided Crude Oil for purposes of the Project Commissioning Process of the Handling Equipment and related loading accessories. Should additional work be required on the Handling Equipment in order to complete the Project Commissioning Process, Lessee agrees to continue providing Crude Oil and the necessary OGVs (with thirty (30) days' notice) to the HI Docks, as necessary, until the Project Commissioning Process has been completed. Lessee acknowledges that the Substantial Completion Notice could be delayed significantly if Lessee is unable to provide Crude Oil and the required OGVs in a timely fashion to perform and complete the Project Commissioning Process. Lessee will assume full responsibility for operating and managing the HI Docks and the Handling Equipment in accordance with the terms of this Lease beginning at 12:01 a.m. on the Dock Delivery Date.



Section 6.3 Construction and Ownership of the Harbor Island Crude Terminal.

(a) Subject to the terms and conditions of this Agreement, Lessee will design, build, own and operate facilities and related equipment on the Land that meet the general design criteria attached hereto as Appendix Five ("Harbor Island Crude Terminal") to be used for the staging and throughputting of Crude Oil in support of the importing and exporting of Crude Oil via Vessels. Lessee will also install pipelines on the Leased Premises connecting the Harbor Island Crude Terminal to the HI Docks.

(b) Lessee agrees that it will enter into and execute all Construction Contracts necessary to cause the design, construction and installation of the Harbor Island Crude Terminal as contemplated by this Agreement, and that Lessee will carry out, pay, supervise and enforce all such Construction Contracts. Lessee also agrees that it will require its Contractor to provide insurance coverage on and in connection with the construction and installation of the Harbor Island Crude Terminal as described in Exhibit H attached hereto, which will name the Authority and the Lessee as additional insureds on all insurance policies or coverages relating to the construction and installation of the Harbor Island Crude Terminal.

(c) Lessee shall pay all costs incurred by Lessee with respect to the engineering, design, purchase (if applicable), construction and installation of the Harbor Island Crude Terminal as provided in the applicable Construction Contract(s). The Lessee will own the Harbor Island Crude Terminal, and the Harbor Island Crude Terminal shall be for the exclusive use of Lessee and its designees.

(d) Lessee must submit to Authority plans for the Harbor Island Crude Terminal (the "**Harbor Island Crude Terminal Plans**") and they must be approved in writing by the Director of Engineering Services of Authority prior to the commencement of construction of the same, which approval shall not be unreasonably denied, delayed or conditioned. To facilitate the Authority's review, two (2) sets of formal plans that clearly define the Harbor Island Crude Terminal must be submitted to Authority for its prior approval. The drawings must be prepared on a standard engineering format (24" x 36" drawings) and in an electronic file format acceptable to the Authority and show all physical features and improvements in and around the project site and must be signed and sealed by a Design Engineer. In addition, a detailed site plan (minimum 1" = 50' scale) depicting the location and physical layout of the Harbor Island Crude Terminal must be submitted to the Authority. The Authority will respond to the request for review of the Harbor Island Crude Terminal Plans within fifteen (15) Business Days after submittal. The Authority may (i) take no exception to the Harbor Island Crude Terminal Plans (which shall constitute written approval of the Harbor Island Crude Terminal Plans), (ii) take no exception subject to comments (which shall constitute written approval of the Harbor Island Crude Terminal Plans, subject to resolution of any issue found in the comments), (iii) request additional information or (iv) disapprove the Harbor Island Crude Terminal Plans, setting forth the Authority's specific reasons for such disapproval, in which event Authority shall engage in discussion to facilitate Lessee's ability to address such deficiency. Disapproval by the Authority of such Harbor Island Crude Terminal Plans may only be based on such Harbor Island Crude Terminal Plans not being in compliance with Applicable Laws, the terms of this Lease or the Authority's generally applicable standards in effect as of the Effective Date that are made available to Lessee and that are applied on a nondiscriminatory basis. If the Authority fails to respond to a request for review of the Harbor

Island Crude Terminal Plans within fifteen (15) Business Days after submittal, the Authority will be deemed to have given its written approval of the Harbor Island Crude Terminal Plans. The final Harbor Island Crude Terminal Plans as accepted by the Authority are referred to herein as the "Harbor Island Crude Terminal Approved Plans." Neither the Lessee's delivery of, nor the Authority's acceptance of, the Harbor Island Crude Terminal Approved Plans shall be construed as a representation or implication (x) by the Lessee that the Harbor Island Crude Terminal has been properly designed or (y) by the Authority that it accepts the Harbor Island Crude Terminal as properly designed.

(e) Lessee shall, at its sole cost and expense, provide all work and materials necessary to construct the Harbor Island Crude Terminal in accordance with the Harbor Island Crude Terminal Approved Plans relating thereto. The Harbor Island Crude Terminal shall be constructed promptly, in a good and workmanlike manner and in compliance with Applicable Laws and the Harbor Island Crude Terminal Approved Plans.

(f) Lessee shall, at its sole cost and expense, obtain any and all Permits required in connection with the construction of the Harbor Island Crude Terminal, including the Required Air Permits and all other appropriate State of Texas air authorizations or permits for the Harbor Island Crude Terminal; *provided, however*, that Authority shall make reasonable efforts to assist Lessee with obtaining same when asked to do so by Lessee. Upon receipt of such Permits, Lessee shall give a copy thereof to Authority.

(g) Upon issuance of all Permits relating thereto, Lessee shall promptly undertake the construction of the Harbor Island Crude Terminal and diligently prosecute such construction to completion. The following provisions shall govern the construction of the Harbor Island Crude Terminal:

(i) during construction, Lessee shall pay for all electricity, water and other utilities consumed in performing such construction. Lessee shall be responsible for the removal of all construction debris and trash relating to the construction of the Harbor Island Crude Terminal;

(ii) meter cost fees, tapping, use and capital charges incurred by reason of supplying utilities to the Leased Premises during construction are to be paid by Lessee;

(iii) all of the Contractor(s) performing any such work shall be licensed contractors, capable of performing quality workmanship;

(iv) Lessee shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience in the area of the Leased Premises caused by such construction and make adequate provision for the safety and convenience of all persons affected thereby. Dust, noise and other effects of such construction shall be controlled using accepted methods customarily utilized in order to control such conditions. Lessee shall not permit dirt, debris, equipment, trash or the like to be located outside of the Leased Premises, except as otherwise agreed to by Authority and Lessee; and

(v) within sixty (60) days after the completion of the work depicted on the Harbor Island Crude Terminal Approved Plans, Lessee will provide Authority with one (1) set

of as-built or record drawings on a standard engineering format (24" x 36" drawings) and in an electronic file format acceptable to the Authority.

(b) The Harbor Island Crude Terminal may not be constructed nearer than eight and one-half (8.5) feet to the centerline of any existing railroad track on or adjacent to the Leased Premises, except upon the express written approval of Authority.

#### Section 6.4 Construction of Additional Lessee Facilities.

(a) With the approval of the Authority in accordance with this Section 6.4, Lessee shall be permitted to construct such other improvements on the Leased Premises as it deems necessary or desirable in connection with the uses of the Leased Premises permitted in this Lease Agreement (collectively, the "Additional Lessee Facilities"), *provided* these improvements do not include additional waterfront facilities for the transfer or shipment of cargo and do not interfere with or substantially modify the HI Docks. Any Additional Lessee Facilities will be owned by Lessee during the Term of this Lease and shall be for the exclusive use of Lessee and its designees.

(b) Lessee must submit to Authority plans for any Additional Lessee Facilities (the "Additional Lessee Facility Plans") which must be approved in writing by the Director of Engineering Services of Authority prior to the commencement of construction of the same, which approval shall not be unreasonably denied, delayed or conditioned. To facilitate the Authority's review, two (2) sets of formal plans that clearly define the Additional Lessee Facilities must be submitted to Authority for its prior approval. The drawings must be prepared on a standard engineering format (24" x 36" drawings) and in an electronic file format acceptable to the Authority and show all physical features and improvements in and around the project site and must be signed and sealed by a Design Engineer registered in the State of Texas. In addition, a detailed site plan (minimum 1" = 50' scale) depicting the location and physical layout of the Additional Lessee Facilities must be submitted to the Authority. The Authority will respond to the request for review of the Additional Lessee Facility Plans within fifteen (15) Business Days after submittal. The Authority may (i) take no exception to the Additional Lessee Facility Plans (which shall constitute written approval of the Additional Lessee Facility Plans), (ii) take no exception subject to comments (which shall constitute written approval of the Additional Lessee Facility Plans, subject to resolution of any issue found in the comments), (iii) request additional information or (iv) disapprove the Additional Lessee Facility Plans, setting forth the Authority's specific reasons for such disapproval, in which event Authority shall engage in discussion to facilitate Lessee's ability to address such deficiency. Disapproval by the Authority of such Additional Lessee Facility Plans may only be based on such Additional Lessee Facility Plans not being in compliance with Applicable Laws, the terms of this Lease, or the Authority's generally applicable standards in effect as of the Effective Date that are made available to Lessee and that are applied on a nondiscriminatory basis. If the Authority fails to respond to a request for review of Additional Lessee Facility Plans within fifteen (15) Business Days after submittal, the Authority will be deemed to have given its written approval of the Additional Lessee Facility Plans. The final Additional Lessee Facility Plans as accepted by the Authority are referred to herein as the "Additional Lessee Facility Approved Plans." The Authority's acceptance of Additional Lessee Facility Approved Plans may never be construed as representing or implying that the Additional Lessee Facilities are properly designed.

(c) Lessee shall, at its sole cost and expense, provide all work and materials necessary to construct the Additional Lessee Facilities in accordance with the Additional Lessee Facility Approved Plans relating thereto. All Additional Lessee Facilities shall be constructed promptly and in a good and workmanlike manner and in compliance with Applicable Laws and the Additional Lessee Facility Approved Plans.

(d) Lessee shall, at its sole cost and expense, obtain any and all Permits required in connection with the construction of the Additional Lessee Facilities; *provided, however*, that Authority shall make reasonable efforts to assist Lessee with obtaining same when asked to do so by Lessee.

(e) Upon issuance of all Permits relating thereto, Lessee shall promptly undertake the construction of the Additional Lessee Facilities and diligently prosecute such construction to completion. The following provisions shall govern the construction of the Additional Lessee Facilities:

(i) during construction, Lessee shall pay for all electricity, water and other utilities consumed in performing such construction. Lessee shall be responsible for the removal of all construction debris and trash relating to the construction of the Additional Lessee Facilities;

(ii) meter cost fees, tapping, use and capital charges incurred by reason of supplying utilities to the Leased Premises during construction are to be paid by Lessee;

(iii) all of the Contractor(s) performing any such work shall be licensed contractors, capable of performing quality workmanship;

(iv) Lessee shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience in the area of the Leased Premises caused by such construction and make adequate provision for the safety and convenience of all persons affected thereby. Dust, noise and other effects of such construction shall be controlled using accepted methods customarily utilized in order to control such conditions. Lessee shall not permit dirt, debris, equipment, trash or the like to be located outside of the Leased Premises, except as otherwise agreed to by Authority and Lessee; and.

(v) within sixty (60) days after the completion of the work depicted on the Additional Lessee Facility Approved Plans, Lessee will provide Authority with one (1) set of as-built or record drawings on a standard engineering format (24" x 36" drawings) and in an electronic file format acceptable to the Authority.

(f) Additional Lessee Facilities on the Leased Premises may not be constructed nearer than eight and one half (8.5) feet to the centerline of any existing railroad track on or adjacent to the Leased Premises, except upon the express written approval of Authority.

**Section 6.5 Building Code.** All of the Lessee Facilities must comply with all applicable building codes and the provisions of the Port of Corpus Christi Authority Design and Construction Guidelines found in the current Port of Corpus Christi Authority Project Manual, which may be obtained from the Authority's Department of Engineering Services and which are applicable to all

of the Authority's tenants. In instances where applicable building codes and the Port of Corpus Christi Authority Project Manual do not agree, the more stringent standard will apply.

**Section 6.6 Alterations, Improvements and Additions to the Dock and Berth Facilities.**

(a) Except as otherwise provided in Section 5.6 regarding the construction of Dock Modifications, Lessee shall have no right to and shall not make any alterations, improvements and/or additions to the Dock and Berth Facilities without first obtaining Authority's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Prior to making any such alterations, improvements or additions, Lessee shall submit to Authority plans therefor ("**Alteration, Improvement and Addition Plans**") for Authority's prior written approval. To facilitate the Authority's review, two (2) sets of formal plans that clearly define the alterations, improvements and/or additions must be submitted to Authority for its prior approval. The drawings must be prepared on a standard engineering format (24" x 36" drawings) and in an electronic file format acceptable to the Authority and show all physical features and improvements in and around the project site and must be signed and sealed by a Design Engineer. In addition, a detailed site plan (minimum 1" = 50' scale) depicting the location and physical layout of the alterations, improvements and/or additions must be submitted to the Authority. The Authority will respond to the request for review of the Alteration, Improvement and Addition Plans within fifteen (15) Business Days after submittal. The Authority may (i) take no exception to the Alteration, Improvement and Addition Plans (which shall constitute written approval of the Alteration, Improvement and Addition Plans), (ii) take no exception subject to comments (which shall constitute written approval of the Alteration, Improvement and Addition Plans, subject to resolution of any issue found in the comments), (iii) request additional information or (iv) disapprove the Alteration, Improvement and Addition Plans, setting forth the Authority's specific reasons for such disapproval, in which event Authority shall engage in discussion to facilitate Lessee's ability to address such deficiency. Disapproval by the Authority of such Alteration, Improvement and Addition Plans may only be based on such Alteration, Improvement and Addition Plans not being in compliance with Applicable Laws, the terms of this Lease, or the Authority's generally applicable standards in effect as of the Effective Date that are made available to Lessee and that are applied on a nondiscriminatory basis. If the Authority fails to respond to a request for review of the Alteration, Improvement and Addition Plans within fifteen (15) Business Days after submittal, the Authority will be deemed to have given its written approval of the Alteration, Improvement and Addition Plans. The final Alteration, Improvement and Addition Plans as accepted by the Authority are referred to herein as the "**Alteration, Improvement and Addition Approved Plans**." The Authority's acceptance of Alteration, Improvement and Addition Approved Plans may never be construed as representing or implying that the alterations, improvements and/or additions are properly designed.

(b) Lessee shall, at its sole cost and expense, provide all work and materials necessary to construct the alterations, improvements and/or additions in accordance with the Alteration, Improvement and Addition Approved Plans relating thereto. All such alterations, improvements and/or additions shall be constructed promptly and in a good and workmanlike manner and in compliance with Applicable Laws and the Alteration, Improvement and Addition Approved Plans.

(c) Lessee shall, at its sole cost and expense, obtain any and all Permits required in connection with the construction of the alterations, improvements and/or additions; *provided, however,* that Authority shall make reasonable efforts to assist Lessee with obtaining same when asked to do so by Lessee.

(d) Upon issuance of all Permits relating thereto, Lessee shall promptly undertake the construction of the alterations, improvements and/or additions and diligently prosecute such construction to completion. The following provisions shall govern the construction of the alterations, improvements and/or additions:

(i) during construction, Lessee shall pay for all electricity, water and other utilities consumed in performing such construction. Lessee shall be responsible for the removal of all construction debris and trash relating to the construction of the alterations, improvements and/or additions;

(ii) meter cost fees, tapping, use and capital charges incurred by reason of supplying utilities to the Leased Premises during construction are to be paid by Lessee;

(iii) each of the Contractor(s) performing any such work shall be licensed contractors, capable of performing quality workmanship;

(iv) Lessee shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience in the area of the Leased Premises caused by such construction and make adequate provision for the safety and convenience of all persons affected thereby. Dust, noise and other effects of such construction shall be controlled using accepted methods customarily utilized in order to control such conditions. Lessee shall not permit dirt, debris, equipment, trash or the like to be located outside of the Leased Premises, except as otherwise agreed to by Authority and Lessee; and.

(v) within sixty (60) days after the completion of the work depicted on the Alteration, Improvement and Addition Approved Plans, Lessee will provide Authority with one (1) set of as-built or record drawings on a standard engineering format (24" x 36" drawings) and in an electronic file format acceptable to the Authority.

(e) All alterations, improvements and/or additions to the Dock and Berth Facilities made or installed by Lessee shall immediately, upon completion or installation thereof, become the property of Authority without payment therefor by Authority, and shall be surrendered to Authority on the expiration of the Term (unless the Parties agree to the contrary), and if such work required a USACE Permit, such permit will be transferred to Authority; *provided* that all such alterations, improvements and/or additions shall be for the exclusive use of Lessee and its designees during the Term.

**Section 6.7 Laborers and Materials.** Lessee will pay for all labor and services performed for, materials used by, or furnished to, any Contractor employed by Lessee with respect to the Leased Premises.

**Section 6.8 Mechanic's Liens and Claims.** AUTHORITY SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES DURING ANY CONSTRUCTION ACTIVITY ON

THE LEASED PREMISES TO POST AND KEEP POSTED ON THE LEASED PREMISES SUCH NOTICES OF NON-RESPONSIBILITY AS AUTHORITY MAY DEEM NECESSARY FOR THE PROTECTION OF AUTHORITY, AND THE FEE OF THE LEASED PREMISES, FROM MECHANIC'S LIENS. If any lien purporting to extend to Authority's fee interest in the Land shall be filed against Authority or any property of Authority by reason of any work, labor, services or materials supplied or claimed to have been supplied on or to the Leased Premises by or on behalf of Lessee, any Affiliate of Lessee or anyone claiming by, through or under Lessee or any Affiliate of Lessee (each a "Mechanic's Lien" and collectively, the "Mechanic's Liens"), Lessee shall, at its cost and expense, after notice of the filing thereof but in no event less than thirty (30) calendar days prior to the foreclosure of any such Mechanic's Lien, cause the same to be satisfied or discharged of record, or effectively prevent, to the reasonable satisfaction of Authority, the enforcement or foreclosure thereof against Authority's interest in the Leased Premises, the Authority, or any property of Authority by injunction, payment, deposit, bond, order of court or otherwise. If Lessee fails to satisfy or discharge of record any such Mechanic's Lien, or effectively prevent the enforcement thereof, by the date which is thirty (30) calendar days prior to the foreclosure thereof, then Authority shall have the right, but not the obligation, to satisfy or discharge such Mechanic's Lien by payment to the claimant on whose behalf it was filed, and Lessee shall reimburse Authority as an Additional Charge within fifteen (15) calendar days after receipt of invoice for all amounts paid by Authority (including reasonable attorneys' fees, costs and expenses), together with interest on such amounts at five percent (5%) per annum from the date of demand for such amounts by Authority until reimbursed by Lessee, without regard to any defense or offset that Lessee has or may have had against such Mechanic's Lien claim. Lessee shall indemnify, defend and hold Authority harmless from and against any and all costs, expenses and liabilities, including reasonable attorneys' fees and court costs, incurred by Authority in connection with satisfying or discharging such Mechanic's Liens pursuant to this Section 6.8).

Section 6.9 **Payment and Performance Bonds.** Lessee, in any contract for the construction of improvements on the Leased Premises, will have its Contractor and a corporate surety, approved by the State of Texas, execute separate performance and payment bonds, each in the sum of one hundred percent (100%) of the accepted contract price ("Construction Contract Price") set forth in the Construction Contract. Performance bonds must be conditioned on the faithful performance of the work in accordance with the Construction Contract. Lessee shall provide Authority with the performance and payment bonds required hereunder for any Construction Contract prior to the commencement of work under the Construction Contract. Performance and payment bonds must be executed by a surety meeting the requirements of §2253.021(d) of the Texas Government Code and must name Authority as a co-obligee. However, if the Construction Contract Price is less than one hundred thousand dollars (\$100,000) then no performance bond will be required; and if the Construction Contract Price is less than twenty-five thousand dollars (\$25,000) a payment bond will not be required. In the event a contract amendment increases the Construction Contract Price to an amount in excess of one hundred thousand dollars (\$100,000), then a performance bond, meeting the requirements set forth above, will be required from that point forward. In the event a contract amendment increases the Construction Contract Price to an amount in excess of twenty-five thousand dollars (\$25,000), then a payment bond, meeting the requirements set forth above, will be required from that point forward. IT IS THE INTENT OF AUTHORITY THAT NOTHING CONTAINED IN THIS LEASE SHALL (1) BE CONSTRUED AS A WAIVER OF AUTHORITY'S LEGAL IMMUNITY AGAINST

MECHANIC'S LIENS ON AUTHORITY PROPERTY AND/OR ITS CONSTITUTIONAL AND STATUTORY RIGHTS AGAINST MECHANIC'S LIENS ON AUTHORITY PROPERTY, INCLUDING THE LEASED PREMISES, OR (2) BE CONSTRUED AS CONSTITUTING THE EXPRESS OR IMPLIED CONSENT OR PERMISSION OF AUTHORITY FOR THE PERFORMANCE OF ANY LABOR OR SERVICES FOR, OR THE FURNISHING OF ANY MATERIALS TO, LESSEE THAT WOULD GIVE RISE TO ANY MECHANIC'S LIEN AGAINST AUTHORITY'S INTEREST IN THE LEASED PREMISES OR ANY PROPERTY OF AUTHORITY OR IMPOSING ANY LIABILITY ON AUTHORITY FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE UPON CREDIT.

**Section 6.10 Additional Requirements.**

(a) *Side Yard Limits.* None of the Lessee Facilities, other than fences, may be constructed within five (5) feet of the boundary of the Leased Premises except upon the express written consent of Authority.

(b) *Floodplain.* Lessee acknowledges that Lessee has been advised by Authority that the Leased Premises is in the currently effective FEMA 100-year floodplain and that construction of improvements on the Leased Premises must conform to Applicable Laws pertaining to construction of the Lessee Facilities in a floodplain.

**ARTICLE 7  
REPAIRS AND MAINTENANCE**

**Section 7.1 Repairs and Maintenance of the Handling Equipment.**

(a) At Lessee's sole cost and expense throughout the Term, Lessee shall take good care of the Handling Equipment and shall keep the same in good order, condition and repair, ordinary wear and tear excepted. Lessee shall timely and properly repair and maintain all of the Handling Equipment in accordance with the highest of the following standards: (i) the manufacturer's recommended maintenance schedule which is necessary so as not to void, diminish or impair any warranty for such item from time to time in effect; or (ii) that which is generally recognized as the industry standard for the required maintenance and repair of each such item. If the foregoing standards cannot be achieved, Lessee at Lessee's cost will replace the item with a new item that does meet the foregoing standards. All of Lessee's obligations and requirements described in this Section 7.1 are herein collectively referred to as "**Lessee's Repair and Maintenance Obligations for the Handling Equipment.**"

(b) Authority or Authority's wharfinger, at Authority's expense, may inspect the Handling Equipment in accordance with Section 17.2 at any reasonable time to determine Lessee's compliance with this Section 7.1. In the event such inspection(s) discloses a failure on the part of Lessee to properly and/or timely perform Lessee's Repair and Maintenance Obligations for the Handling Equipment, Authority shall deliver to Lessee, in writing, a copy of such inspection(s) report. Thereafter, as part of Lessee's Repair and Maintenance Obligations for the Handling Equipment, Lessee shall promptly undertake necessary corrective action to remedy such failure. If such failure is of a material nature, upon the completion of the corrective action, at



Lessee's sole cost and expense, Lessee shall cause a further inspection report to be prepared by an independent inspector, qualified in the specific discipline, setting forth the manner in and extent to which such corrective action was taken. Such further inspection(s) report shall be promptly delivered to Authority.

(c) If Lessee does not timely or properly perform Lessee's Repair and Maintenance Obligations for the Handling Equipment as herein provided, after thirty (30) days' notice to Lessee (except in the event of an emergency or extraordinary condition, and subject to delay for *force majeure*), Authority may, but is not obligated to, make necessary and required repairs, replacements or maintenance. Lessee shall pay to Authority all of Authority's actual costs incurred in connection therewith, plus a fee of ten percent (10%) of such cost, forthwith upon being billed therefor. Authority may, but shall not be required to, enter the Leased Premises at all reasonable times upon reasonable notice (except in the instance of an emergency) to make necessary and required repairs to the Handling Equipment, as Authority deems reasonably necessary and which Lessee failed to do as required in this Lease after written notice from Authority.

#### Section 7.2 Repairs and Maintenance of the HI Docks.

(a) At Lessee's sole cost and expense, after the Dock Delivery Date and throughout the balance of the Term, Lessee shall take good care of the HI Docks and shall keep the same in good order and condition and shall make and perform all maintenance and repair thereof. Lessee's maintenance and repair responsibilities shall include, without limitation, the maintenance of HI Dock One and HI Dock Two, including the dock platforms, fender systems, breasting structures, mooring facilities, corrosion protection, shoreline erosion control relating to the HI Docks, and all structural components of the HI Docks and appurtenances thereon. When used in this Section 7.2, "repairs" shall specifically include, without limitation, all necessary replacements, renewals and alterations.

(b) When either HI Dock requires any repairs other than minor repairs, upon discovery by Lessee, it shall promptly notify the Authority of the need for such repairs and Lessee shall timely and properly make such repairs to return the applicable HI Dock to the condition that existed on the Commencement Date, ordinary wear and tear excepted. The time permitted for Lessee to effectuate these repairs shall be extended for such period as may reasonably be necessary; *provided, however*, that Lessee shall continuously, diligently and in good faith prosecute the same. All such repairs made by the Lessee shall be at least equal in quality to the original work and, in all events, shall be made by the Lessee in compliance with Applicable Laws. The necessity for such repairs shall be measured by the standards which are appropriate for improvements of similar construction and class. Notwithstanding anything to the contrary contained in this Section 7.2, if Lessee discovers a defect in either HI Dock, the repair of which is covered under a warranty the Authority received from its Contractor(s), the Authority will coordinate the necessary repairs to such HI Dock with its Contractor(s).

(c) In addition, Authority or Authority's wharfinger, at Authority's expense, may inspect the HI Docks, and the systems or segments thereof, at any reasonable time to determine whether any repairs are needed. In the event such inspection(s) disclose any necessary

repairs, Authority shall deliver to Lessee, in writing, a copy of such inspection(s) report. Thereafter, Lessee shall promptly undertake to make such repairs.

(d) If Lessee does not timely or properly perform Lessee's repair obligations under this Section 7.2 and if Lessee does not commence such repair obligations within sixty (60) days after receiving written notice from the Authority to make such repairs and continuously, diligently and in good faith prosecute the same to completion (subject to delay for *force majeure*), Authority may undertake the required repairs. Lessee shall pay to Authority all of Authority's actual costs incurred in connection therewith, plus a fee of ten percent (10%) of such cost, forthwith upon being billed therefor. Authority may enter the Leased Premises at all reasonable times upon reasonable notice to make required repairs to the HI Docks, which Lessee failed to make as required in this Lease after written notice from Authority in accordance with this Section 7.2.

### Section 7.3 Repairs and Maintenance of the Lessee Facilities.

(a) At Lessee's sole cost and expense throughout the Term, Lessee shall take good care of the Lessee Facilities and shall keep the same in good order, condition and repair, ordinary wear and tear excepted. Lessee shall timely and properly repair and maintain all of the Lessee Facilities in accordance with the highest of the following standards: (i) the manufacturer's recommended maintenance schedule which is necessary so as not to void, diminish or impair any warranty for such item from time to time in effect; or (ii) that which is generally recognized as the industry standard for the required maintenance and repair of each such item. If the foregoing standards cannot be achieved, Lessee at Lessee's cost will replace the item with a new item that does meet the foregoing standards. All of Lessee's obligations and requirements described in this Section 7.3 are herein collectively referred to as "**Lessee's Repair and Maintenance Obligations for Lessee Facilities.**"

(b) Authority or Authority's wharfinger, at Authority's expense, may inspect the Lessee Facilities, and the systems or segments thereof, at any reasonable time to determine Lessee's compliance with this Section 7.3. In the event such inspection(s) discloses a failure on the part of Lessee to properly and/or timely perform Lessee's Repair and Maintenance Obligations for Lessee Facilities, Authority shall deliver to Lessee, in writing, a copy of such inspection(s) report. Thereafter, as part of Lessee's Repair and Maintenance Obligations for Lessee Facilities, Lessee shall promptly undertake necessary corrective action to remedy such failure. If such failure is of a material nature, upon the completion of the corrective action, at Lessee's sole cost and expense, Lessee shall cause a further inspection report to be prepared by an independent inspector, qualified in the specific discipline, setting forth the manner in and extent to which such corrective action was taken. Such further inspection(s) report shall be promptly delivered to Authority.

(c) If Lessee does not timely or properly perform Lessee's Repair and Maintenance Obligations for Lessee Facilities as herein provided, after thirty (30) days' notice to Lessee (except in the event of an emergency or extraordinary condition and subject to delay for *force majeure*), Authority may, but is not obligated to, make necessary and required repairs, replacements or maintenance. Lessee shall pay to Authority all of Authority's actual costs incurred in connection therewith, plus a fee of ten percent (10%) of such cost, forthwith upon being billed therefor. Authority may, but shall not be required to, enter the Leased Premises at all reasonable

times upon reasonable notice (except in the instance of an emergency) to make necessary and required repairs to the Lessee Facilities, as Authority deems reasonably necessary and which Lessee failed to do as required in this Lease after written notice from Authority.

**Section 7.4 Maintenance Dredging of the Dock Berths and Dock Approach Areas.**

(a) The Authority will be responsible for performing or causing to be performed all maintenance dredging required for the Dock Berths and Dock Berth Approach Areas. The Authority agrees to maintain each Dock Berth and the Dock Berth Approach Area to a depth equal to the maintained depth of the portion of the Ship Channel directly adjacent to such Dock Berth, and no deeper than the permitted depth of the Dock Berth, taking into account advanced maintenance and allowable overdepth.

(b) After each Dock Berth and Dock Berth Approach Area is constructed, the Authority will include the Dock Berths and Dock Berth Approach Areas in its regular maintenance dredging program for public docks. Authority will coordinate with Lessee on dock closures to perform pre- and post-dredging underwater inspections of the HI Docks, bathymetric surveys and maintenance dredging to minimize impacts to Lessee's operations.

(c) Lessee agrees (i) *provided* that the Authority has properly maintained the depth of the Dock Berths and Dock Berth Approach Areas, to ensure the Vessels berthed by or on behalf of Lessee at the HI Docks are loaded to limits preventing them from striking the bottom due to lowering of the water level from passing vessels and (ii) to inform the Authority if Lessee becomes aware that the Dock Berths or the Dock Berth Approach Areas are in need of dredging maintenance.

(d) Authority shall be responsible for any fees and charges the Authority must pay to the USACE or the U.S. federal government for the right to use, or raise the height of the levees of, any federally designated dredge material placement area to accommodate maintenance dredge material from the Dock Berths and Dock Berth Approach Areas.

(e) If the Authority does not timely or properly perform its obligations under this Section 7.4 as and when herein provided, after one hundred twenty (120) days' notice to the Authority (except in the event of an emergency or extraordinary condition, and subject to delay for *force majeure*), Lessee may, but is not obligated to, undertake and properly perform the Authority's obligations under this Section 7.4. Authority shall pay to Lessee all of Lessee's actual costs incurred in connection therewith, plus a fee of ten percent (10%) of such cost, forthwith upon being billed therefor.

**ARTICLE 8  
LESSEE'S INSURANCE AND INDEMNITY**

**Section 8.1 Lessee's Insurance.** Lessee shall satisfy, or cause to be satisfied, the insurance requirements set forth in Exhibit G attached hereto, which is incorporated in this Lease Agreement. Lessee agrees that it will require its Contractor(s) to provide the insurance coverage described in Exhibit E1 on and in connection with the installation and construction of the Lessee Facilities, which will name the Authority and the Lessee as additional insureds on all such

insurance policies or coverages to the extent "additional insured" status for the Authority and Lessee is available with respect to such insurance

**Section 8.2 Waiver of Subrogation.**

(a) To the full extent that Lessee may do so without invalidating Lessee's insurance coverage, Lessee hereby waives any and every claim for recovery from the Authority Parties for any and all loss or damage to the extent such loss or damage is covered by any insurance policy carried by Lessee or would have been covered by any insurance policy required to be carried by Lessee pursuant to this Lease.

(b) Lessee agrees to have the insurance policies set forth in Section 8.2(a) properly endorsed, if necessary and to the full extent it may do so, to prevent the invalidation of such insurance coverage by reason of the waiver of subrogation set forth in Section 8.2(a). Lessee also agrees to cause each Contractor to furnish the Authority with a certificate of insurance (with all required endorsements attached) describing the Contractor's insurance policies required under Exhibit H.

**Section 8.3 Indemnification by Lessee.**

(a) Lessee shall defend, indemnify and hold harmless the Authority Parties from and against, and Lessee shall be responsible for, any and all Claims which may be brought or instituted or asserted against the Authority Parties based on or arising out of any of the following events (each being referred to herein as an "Indemnified Event"): (i) the failure on the part of the Lessee to comply with the provisions of Applicable Laws applicable to the Leased Premises or the Lessee Facilities (other than with respect to breaches of Applicable Environmental Laws, which shall be subject to the terms and conditions of Article 18); or (ii) any injury to or death of or claim of injury to or death of any person or any damage to or loss of or claim of damage to or loss of property occurring on the Leased Premises or the Lessee Facilities or arising out of Lessee's operations on the Leased Premises or Lessee's use of the Lessee Facilities, to the extent any such injury, death, damage or loss is caused by the negligence, gross negligence, willful misconduct, strict liability or other fault or breach of legal duty by any Lessee Parties.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN SECTION 8.3(a), IT IS EXPRESSLY PROVIDED AND AGREED BY AND BETWEEN THE PARTIES THAT LESSEE SHALL NOT BE OBLIGATED TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE AUTHORITY PARTIES FROM AND AGAINST THEIR OWN NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, STRICT LIABILITY, OR OTHER FAULT OR BREACH OF LEGAL DUTY.

(c) Notwithstanding anything to the contrary contained in Section 8.3(a), Lessee shall be relieved of its obligation of indemnity (but not its obligation to defend) with respect to any Claim to the extent, but only to the extent, of (i) the amount actually recovered from one or more insurance carriers and either paid to the Authority Parties or paid for benefit of the Authority Parties in reduction of such Claim or (ii) the percentage of responsibility attributed to the Authority Parties for causing or contributing to cause the Indemnified Event for which the Claim was made.

(d) Lessee's indemnity obligations under this Section 8.3 shall not be limited by a limitation on the amount or type of damages, compensation or benefits owed by Lessee to any employee of Lessee under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

(e) The obligations of Lessee under this Section 8.3 shall survive the expiration or any earlier termination of this Lease.

**Section 8.4 Notice of Claims.** The Authority shall give the Lessee prompt and timely notice of any Claims made or instituted against it or any other Authority Party, of which it has knowledge, relating to any matter which in any way may result in indemnification pursuant to Section 8.3(a). Subject to the prior rights, if any, of insurers, the Lessee shall be entitled to control the defense and any compromise of any such Claims to the extent of any actual or potential claim for indemnification made or reserved by the Authority, but the Lessee shall give the Authority the opportunity to participate in the defense and any compromise of any such Claim to the extent of the Authority's interest therein.

**Section 8.5 Damages for Lessee's Failure to Carry Required Insurance.** If Lessee fails to provide and keep in force the insurance required of Lessee by Section 8.1 and Exhibit G, Authority shall be entitled to recover, as damages for such breach, the uninsured amount of any loss (to the extent of any deficiency between the dollar limits of insurance required by the provisions of this Lease and the dollar limits of the insurance actually carried by Lessee), damages, costs and expenses of suit, including, without limitation, reasonable attorneys' fees, suffered or incurred by Authority by reason of damage or loss which Lessee is required to insure against hereunder, occurring during any period when Lessee shall have failed or neglected to provide the dollar limits of insurance required by this Lease. The obligations of Lessee under this Section 8.5 shall survive the expiration or any earlier termination of this Lease.

**Section 8.6 Waiver of Consequential Damages.** Notwithstanding anything to the contrary herein, Lessee shall not be liable to the Authority Parties, and the Authority shall not be liable to Lessee, for any special, punitive, exemplary, indirect or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of or in connection with this Lease Agreement.

## ARTICLE 9 UTILITIES; SECURITY; TAXES

### Section 9.1 Utilities; Security; Other Services.

(a) From and after the Dock Delivery Date and for the remainder of the Term, Lessee agrees to pay when due all charges it incurs for the following services to the Leased Premises: (i) water, gas, electricity, and any other utilities; (ii) garbage service; (iii) security or guard services; (iv) railroad services in connection with the Leased Premises; and (v) firefighting services provided by the Refinery Terminal Fire Company in response to fires at the Leased Premises or on Vessels docked at the HI Docks. Authority will not furnish any of these services to Lessee, except pursuant to a separate written agreement between the Parties. If for any reason Authority provides any such services to the Leased Premises or pays the cost for any such services,

taxes, fees or charges for such periods of time as are within the Term. Lessee may pay such taxes, fees or charges in installments as and when such installments become due. Lessee must deliver to Authority evidence of payment of all taxes, fees or charges, which Lessee is obligated to pay hereunder concurrently with making such payment.

## ARTICLE 10 DESTRUCTION AND RESTORATION

### Section 10.1 Restoration of the Dock One and Related Berth Facilities.

(a) If all or any part of the Dock One and Related Berth Facilities is destroyed or damaged by any casualty during the Term of this Lease Agreement, the Authority shall restore the damaged portions of the Dock One and Related Berth Facilities to their previous condition. Authority shall repair and restore the same with diligence and as soon as reasonably practicable under the circumstances.

(b) One-half (1/2) of the Annual Base Rent shall be abated for each day Lessee is unable to use any of the Dock One and Related Berth Facilities as a result of the destruction or damage unless the destruction or damage was caused by the gross negligence or willful misconduct of Lessee. Payment of the dockage and wharfage payments will not be abated during this period.

(c) If Lessee is unable to use any part of Dock One and Related Berth Facilities for one or more days during a Lease Year as a result of any destruction or damage or any event of *force majeure*, the Minimum Annual Guaranteed Throughput for that Lease Year will be reduced by 1/730th for each such day unless the destruction or damage (other than, for the avoidance of doubt, any destruction or damage caused by an event of *force majeure*) was caused by the gross negligence or willful misconduct of Lessee, but this reduction will not be taken into account when determining the Minimum Annual Guaranteed Throughput for the following Lease Year.

### Section 10.2 Restoration of the Dock Two and Berth Facilities.

(a) If all or any part of the Dock Two and Related Berth Facilities is destroyed or damaged by any casualty during the Term of this Lease Agreement, the Authority shall restore the damaged portions of the Dock Two and Related Berth Facilities to their previous condition. Authority shall repair and restore the same with diligence and as soon as reasonably practicable under the circumstances.

(b) One-half (1/2) of the Annual Base Rent shall be abated for each day Lessee is unable to use any of Dock Two and Related Berth Facilities as a result of the destruction or damage unless the destruction or damage was caused by the gross negligence or willful misconduct of Lessee. Payment of the dockage and wharfage payments will not be abated during this period.

(c) If Lessee is unable to use any part of Dock Two and Related Berth Facilities for one or more days during a Lease Year as a result of any destruction or damage or any event of *force majeure*, the Minimum Annual Guaranteed Throughput for that Lease Year will be reduced by 1/730th for each such day unless the destruction or damage (other than, for the avoidance of doubt, any destruction or damage caused by an event of *force majeure*) was caused by the gross

negligence or willful misconduct of Lessee, but this reduction will not be taken into account when determining the Minimum Annual Guaranteed Throughput for the following Lease Year.

**Section 10.3 Restoration of Lessee Facilities.** If all or any part of the Lessee Facilities are destroyed or damaged by any casualty during the Term of this Lease Agreement, Lessee will promptly commence and thereafter prosecute diligently to completion the restoration of those damaged or destroyed Lessee Facilities as are necessary, in Lessee's sole but reasonable discretion, to maintain the economic viability of Lessee's operations on the Leased Premises. Any restoration undertaken pursuant to this Section 10.3 shall in all respects substantially conform to the provisions of the original plans for the damaged Lessee Facilities or shall be built in accordance with such new or modified plans and specifications as may be prepared by Lessee and approved by the Authority at the time, such approval not to be unreasonably withheld, conditioned or delayed. Provided that Lessee has maintained the insurance policies required under this Lease Agreement, in the event that a casualty event occurs for which the amount of insurance proceeds (other than proceeds of any business interruption or similar insurance) received by Lessee is insufficient to restore the affected facilities as described above, then Lessee will submit a plan with respect to reasonable modifications to the affected facilities that would allow such facilities to be restored solely with the insurance proceeds made available for such purpose (including other design approaches to reduce applicable restoration costs). Lessee's plan will be subject in all respects to the Authority's approval (which shall not be unreasonably withheld), it being understood that Lessee shall not be obligated to fund any restoration costs above the amount covered by insurance (except to the extent of any deductibles or self-insured retentions).

## ARTICLE 11 CONDEMNATION

**Section 11.1 Total Taking.** Should the entire Leased Premises (meaning all or substantially all of the Leased Premises) be taken (which term, as used in this Article 11, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority or other Person (excluding the Authority) under the right of eminent domain, condemnation, or similar right, then this Lease shall terminate as of the date of taking possession by the condemning authority (the "**Condemning Authority**") and the obligations of the Lessee for Lease Payments and any other amounts accruing hereunder thereafter shall terminate on such date. Authority shall be entitled to receive the award for the taking of the Leased Premises (the "**Condemnation Award**"), however, Authority shall pay to Lessee out of the Condemnation Award an amount equal to the greater of the following amounts (with any balance to be retained by Authority):

- (a) an amount equal to the book value ("**basis**" for federal income tax purposes) of Lessee Facilities on the Leased Premises as of the date of termination of this Lease; or
- (b) the amount of the Condemnation Award.

**Section 11.2 Partial Taking; Termination.**

- (a) If a portion of the Leased Premises is taken by any Governmental Authority or other Person (excluding the Authority) under the right of eminent domain, condemnation, or

similar right, this Lease shall continue in effect as to the remainder thereof unless Lessee, in Lessee's sole but reasonable discretion, determines that so much of the Leased Premises is taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon, after Lessee provides written notice thereof to the Authority, this Lease shall terminate as provided in Section 11.1 in the same manner as if the whole of the Leased Premises had thus been taken, and the Condemnation Award therefor shall be distributed as provided in Section 11.1.

(b) In the event of a partial taking where Lessee in its sole but reasonable discretion determines that the portion of the Leased Premises taken does not render the balance economically unsound for the uses and purposes contemplated hereby, then this Lease shall only be partially terminated as to such portion taken, and the Parties shall negotiate in good faith to reduce the Annual Base Rent payable and the Minimum Annual Guaranteed Throughput applicable during the remainder of the Term after taking of possession by the Condemning Authority, such reduction to be on a just and proportionate basis taking into consideration the extent, if any, to which Lessee's use of the remainder of the Leased Premises shall have been impaired or interfered with by reason of such partial taking. If Authority and Lessee are unable to agree as to a just reduction in Annual Base Rent, this reduction shall be determined in accordance with the provisions of Section 11.4. If Authority and Lessee are unable to agree as to a just reduction in the Minimum Annual Guaranteed Throughput, this reduction shall be determined in accordance with the provisions of Section 11.5. In the event of a partial taking where this Lease is not terminated, Lessee shall be responsible for the cost to restore the remaining portion of the Lessee Facilities to an economically viable condition, and such costs (to the extent not reimbursed to Lessee as provided below) shall be considered in any such just and proportionate reduction of Annual Base Rent and the Minimum Annual Guaranteed Throughput, with condemnation award funds received by the Authority being made available to Lessee to reimburse such costs up to an amount equal to the book value of the Lessee Facilities taken as of the date of such taking. In the event of a partial taking where this Lease is not terminated, the Authority shall be responsible for the cost to restore the remaining portion of the Dock and Berth Facilities to an economically viable condition. The Annual Base Rent shall be abated for each day Lessee is effectively unable to fully use the entire Leased Premises for the Permitted Uses as a result of any such restoration work. If Lessee is unable to use either of the HI Docks for one or more days during a Lease Year as a result of any such restoration work, the Minimum Annual Guaranteed Throughput for that Lease Year will be reduced by one-half (1/2) of 1/365th for each day that an HI Dock is unavailable for use, but this reduction will not be taken into account when determining the Minimum Annual Guaranteed Throughput for the following Lease Year. If Lessee is effectively able to partially, but not fully, use the Leased Premises for such use as a result of any such restoration work, the Annual Base Rent payable and the Minimum Annual Guaranteed Throughput applicable after taking of possession by the Condemning Authority until such restoration is complete shall be reduced on a just and proportionate basis in accordance with this Section 11.2(b).

**Section 11.3 Notice of Proposed Taking.** Lessee and Authority shall promptly notify the other of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to Leased Premises upon such Party becoming aware of any such proceedings. Authority and Lessee covenant and agree to fully cooperate in any condemnation, eminent domain or similar proceeding in order to maximize the total award receivable in respect thereof.



Section 11.4 **Independent Determination of Annual Base Rent.** If Authority and Lessee are unable to agree on a just reduction in Annual Base Rent pursuant to Section 11.2, then Authority and Lessee shall each appoint a Qualified MAI Appraiser. Within twenty (20) Business Days after the selection of the two (2) Qualified MAI Appraisers, the Qualified MAI Appraisers shall determine a just and proportionate reduction in Annual Base Rent for purposes of Section 11.2. If the Qualified MAI Appraisers are unable to agree upon a just and proportionate reduction in Annual Base Rent within such time, the reductions of Annual Base Rent proposed by each Qualified MAI Appraiser shall be averaged and the average will be the reduction in Annual Base Rent. Authority and Lessee shall each bear the cost of the Qualified MAI Appraiser selected by it.

Section 11.5 **Independent Determination of Minimum Annual Guaranteed Throughput.** If Authority and Lessee are unable to agree on a just reduction in the Minimum Annual Guaranteed Throughput pursuant to Section 11.2, then Authority and Lessee shall each appoint a Qualified Maritime Shipping Representative. Within twenty (20) Business Days after the selection of the two (2) Qualified Maritime Shipping Representatives, the Qualified Maritime Shipping Representatives shall determine a just and proportionate reduction in the Minimum Annual Guaranteed Throughput for purposes of Section 11.2. If the Qualified Maritime Shipping Representatives are unable to agree upon a just and proportionate reduction in the Minimum Annual Guaranteed Throughput within such time, the reductions in the Minimum Annual Guaranteed Throughput proposed by each Qualified Maritime Shipping Representative shall be averaged and the average will be the reduction in the Minimum Annual Guaranteed Throughput. Authority and Lessee shall each bear the cost of the Qualified Maritime Shipping Representative selected by it.

## ARTICLE 12 OBLIGATIONS ON TERMINATION

Section 12.1 **Return of Leased Premises.** At the expiration or termination of this Lease, Lessee will surrender the Leased Premises to the Authority in good order and repair, except for reasonable wear and tear and except as otherwise specifically provided in this Lease. Upon the expiration or termination of this Lease Agreement, the Authority may, without further notice, enter upon, reenter, possess, and repossess itself of the Leased Premises by force, summary proceedings, ejectment or otherwise, and may dispossess and remove Lessee from the Leased Premises and may have, hold and enjoy the Leased Premises free of any claim by Lessee with respect thereto, other than Lessee's right to remove the Removable Lessee Facilities during the Removal Period. The Authority shall not be deemed to have accepted a surrender of the Leased Premises by Lessee or to have extended the Term, other than by execution of a written agreement specifically so stating.

### Section 12.2 **Removal of Removable Lessee Facilities.**

(a) During the Removal Period, Lessee shall remove or cause to be removed from the Leased Premises all of the Removable Lessee Facilities and shall repair any damage caused by the removal of such Removable Lessee Facilities. Any items of the Removable Lessee Facilities that are not removed by Lessee within the Removal Period shall be considered abandoned and shall thereupon become the property of the Authority, without cost to the Authority and without any payment to Lessee; *provided, however*, that the Authority, after notice to the

Lessee with reasonable opportunity to cure, may demolish, remove and/or dispose of any Removable Lessee Facilities which Lessee fails to remove, and Lessee shall be required to reimburse the Authority, as an Additional Charge, for the actual costs the Authority incurs in demolishing, removing and/or disposing of such Removable Lessee Facilities and repairing any damage to the Leased Premises caused by such demolition, removal and/or disposition.

(b) Trade fixtures which are installed by Lessee may be removed by Lessee, at its expense, *provided* Lessee removes the same and repairs any damage caused by such removal during the Removal Period. Any trade fixtures not removed by Lessee during the Removal Period shall be considered abandoned by Lessee and will automatically become Authority's property.

(c) Lessee shall not be obligated to pay the Annual Base Rent or Wharfage Deficit Payments that accrues during the Removal Period so long as Lessee is diligently prosecuting the removal of the Removable Lessee Facilities.

**Section 12.3 Holding Over.** If Lessee fails to surrender possession as required under Section 12.1, then, for each month, or portion thereof, after the termination of this Lease or of Lessee's rights of possession hereunder, whether by lapse of time or otherwise, during which Lessee remains in possession of the Leased Premises, or any portion thereof, after such termination, Lessee shall pay to the Authority monthly in advance a sum equal to one-twelfth (1/12th) of one hundred fifty percent (150%) of the Annual Base Rent being charged to Lessee at the end of the Term of this Lease, and Lessee will be subject to all other terms of this Lease Agreement applicable to a tenant at sufferance. The provisions of this Section 12.3 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Authority provided herein at law or at equity, and the Authority's acceptance of the additional rent in the event of a holdover by Lessee shall not act as a waiver or limitation on any such other rights or remedies.

### ARTICLE 13 LEASE DISPOSITIONS

#### Section 13.1 Dispositions of Lease with Authority's Consent.

(a) Except as provided in Section 13.2 and subject to Article 14 and Article 16, Lessee shall not assign, mortgage, pledge, transfer or otherwise encumber or dispose of this Lease, nor grant any sublease, license, concession or other right of occupancy of any portion of the Leased Premises, nor permit the transfer of this Lease by operation of law or otherwise (any such occurrence being referred to herein as a "Disposition") to any Person (each a "transferee") unless (i) the Authority approves (based upon a determination in accordance with Section 13.1(b)) the proposed transferee (unless it is the Leasehold Mortgagee permitted under Article 16) and (ii) the proposed transferee (unless it is the Leasehold Mortgagee permitted under Article 16) enters into an agreement with the Authority in form and substance reasonably satisfactory to the Authority ("**Assumption Agreement**"), acting reasonably, wherein the transferee acquires the rights and assumes the obligations of the Lessee and agrees to perform and observe all of the obligations and covenants of the Lessee under this Agreement. Any transfer made in violation of the foregoing provision shall be null and void *ab initio* and of no force and effect.

(b) The Authority's approval of a proposed transferee may be withheld if (i) such proposed transfer is prohibited by Applicable Laws, (ii) such proposed transferee's entering into this Agreement with the Authority is prohibited by Applicable Laws, (iii) such proposed transfer would result in a violation of Applicable Laws, or (iv) in the Authority's reasonable determination, such proposed transferee is not capable of performing the financial obligations and covenants of the Lessee under this Agreement, which determination shall be based upon and take into account the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates, as well as the operating experience of the proposed operator, if any, engaged by the proposed transferee.

(c) In the event Authority consents to a Disposition of all of Lessee's interest under this Lease to a transferee pursuant to Section 13.1(a), and (i) such transferee assumes, in the Assumption Agreement, all of Lessee's past, present and future obligations under this Lease and (ii) (A) in the Authority's reasonable discretion, such transferee has demonstrated (by an independent analysis of such transferee's financial statements as well as other reasonable and customary indications of creditworthiness) that it has sufficient creditworthiness to perform the obligations of Lessee under this Agreement, or (B) such transferee has agreed to provide credit support in form and substance reasonably acceptable to the Authority for such transferee's payment obligations under this Lease, Lessee shall thereafter be released and discharged from and not be liable for any obligations under this Lease. However, if at the time of the transferee's execution of the Assumption Agreement (x) the Authority reasonably determines that such transferee has not demonstrated (by an independent analysis of such transferee's financial statements as well as other reasonable and customary indications of creditworthiness) sufficient creditworthiness to perform the obligations of Lessee under this Agreement or (y) the credit support that such transferee has offered to provide with respect to its payment obligations under this Lease is not reasonably acceptable to the Authority, then Lessee shall remain liable for Lessee's entire obligations under this Lease until (I) such transferee has been rated Investment Grade for twelve (12) continuous months, (II) such transferee provides a guarantee of payment of all of Lessee's obligations under the Lease from a Person that has been rated as Investment Grade for a period of not less than twelve (12) months, (III) in the Authority's reasonable discretion, such transferee has demonstrated (by an independent analysis of such transferee's financial statements as well as other reasonable and customary indications of creditworthiness) that it has sufficient creditworthiness to perform the obligations of Lessee under this Agreement or (IV) such transferee has agreed to provide credit support in form and substance reasonably acceptable to the Authority for such transferee's payment obligations under this Lease.

(d) Within thirty (30) days after Authority's receipt of the required information and any other information reasonably requested, Authority will either consent, refuse its consent or conditionally consent to the proposed Disposition of this Lease. If Lessee does not receive written notice of Authority's decision within thirty (30) days after the later of (i) the date Authority receives written notice of the proposed Disposition or (ii) the date Authority receives all of the required information and any reasonably requested information, Authority will be deemed to have refused its consent to the proposed Disposition, leaving this Lease and any guaranty in full force and effect.

(e) Lessee will pay, on demand as Additional Charges, all reasonable and direct out-of-pocket costs and expenses (including attorneys' fees, if any) that Authority may incur in connection with Authority's review of any request for consent for a Disposition.

**Section 13.2 Disposition without Authority's Consent.**

(a) Subject to Section 13.2(b), Lessee shall have the right to cause a Disposition without the Authority's consent, (i) to any Affiliate of Lessee, (ii) to any Person which results from the merger of Lessee into or with another entity ("**Resultant Entity**"), (iii) to a Person which purchases all or substantially all of the assets of Lessee as a going concern or (iv) to a Person that has (A) been rated as Investment Grade for a period of not less than twelve (12) months prior to the date of such proposed Disposition or (B) has provided a guarantee from a Person that has been rated as Investment Grade for a period of not less than twelve (12) months prior to the date of such proposed Disposition with respect to such transferee's payment obligations under this Lease (each, a "**Permitted Transferee**" and each such transaction, a "**Permitted Transfer**").

(b) In the event Lessee causes a Disposition of all of Lessee's interest under this Lease pursuant to Section 13.2(a) to a Permitted Transferee that is not an (x) Affiliate of Lessee, or (y) a Resultant Entity, Lessee shall thereafter be released and discharged from and not be liable for any obligations under this Lease accruing from and after the effective date of such Disposition, if (i) such Permitted Transferee executes an Assumption Agreement and (ii) such Permitted Transferee (A) has been rated as Investment Grade for a period of not less than twelve (12) months prior to the date of such proposed Disposition or (B) has provided a guarantee from a Person that has been rated as Investment Grade for a period of not less than twelve (12) months prior to the date of such proposed Disposition with respect to such transferee's payment obligations under this Lease.

**Section 13.3 Notice of Disposition.** In all instances of a Disposition of this Lease, including a Disposition to a Permitted Transferee, Lessee shall advise Authority thereof, in writing, not less than fourteen (14) days before the effective date of the Disposition. Such notice shall set forth the identity of the proposed transferee and an overview of such Disposition. Authority may charge Lessee, as a part of Additional Charges, for any reasonable and direct out-of-pocket costs or expenses incurred by Authority occasioned in connection with any proposed transfer or any interest herein by Lessee.

**Section 13.4 Subsequent Dispositions.** Anything in this Lease to the contrary notwithstanding, and notwithstanding any consent by Authority to any Disposition of this Lease, no transferee shall further cause a Disposition of its interest in this Lease, except to a subsequent Permitted Transferee, without Authority's prior written consent in each instance, which consent may be given or withheld in Authority's sole discretion. No such subsequent Disposition shall relieve Lessee from any of Lessee's obligations in this Lease to the extent any such obligations remain outstanding in accordance with this Article 13.

**Section 13.5 Disposition Upside.** On a Qualified Disposition, the Qualified Disposition Transferor agrees to pay to the Authority [REDACTED] of the Disposition Upside. The "Distribution Upside" shall be calculated and paid in accordance with the principles described in Exhibit C.

Section 13.6 **Ineffective Disposition.** In consummating any Disposition, Lessee's failure to comply with all of the foregoing provisions and conditions of this Article 13, to the extent applicable to such Disposition, shall (unless the Authority consented to such Disposition in accordance with this Article 13), at Authority's sole option, render such purported Disposition null and void and of no force and effect.

Section 13.7 **Assignment of Operations.** Notwithstanding anything to the contrary contained in this Article 13, Lessee may assign responsibility for the day-to-day operations on the Leased Premises to an Affiliate of Lessee without the Authority's consent if such Affiliate is covered under Policies described in Exhibit G to the same extent as Lessee, and Lessee remains primarily liable for all of the obligations of Lessee hereunder.

Section 13.8 **Transfers of Lessee Equity.** Notwithstanding anything in this Agreement to the contrary, no transfer of any of the membership interests of LSPE (or any of its Affiliates) shall constitute a Disposition for the purposes of this Agreement, other than to the extent such transfer constitutes a Qualified Disposition, which shall be subject to the terms and conditions of Section 13.5 and Exhibit C.

#### ARTICLE 14 SUBLETTING

##### Section 14.1 **Subletting of Leased Premises with Authority's Consent.**

(a) Subject to Section 13.2, Lessee shall not sublet the Leased Premises, or any portion thereof, without first obtaining Authority's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) In all instances of a sublease of all or any portion of the Leased Premises, Lessee shall advise Authority thereof, in writing ("**Sublease Notice**"), not less than thirty (30) days prior to the proposed effective date thereof. Such notice shall set forth with reasonable specificity the identity of the proposed sublessee. Authority may charge Lessee, as a part of Additional Charges, for any reasonable out-of-pocket costs or expenses incurred by Authority occasioned in connection with any proposed sublease by Lessee.

(c) Any Sublease Notice provided by Lessee to advise the Authority of the proposed sublease and to request the Authority's consent in connection therewith, shall include: (i) the name or identity of the proposed sublessee with reasonable specificity; (ii) the nature and character of the sublessee's business; (iii) the term, use, rental rate and all other material terms of the proposed subletting; and (iv) audited financial statements or other evidence of the proposed sublessee's assets, liabilities, net cash flow, operating history and other evidence Authority may reasonably request to evaluate the financial capacity and experience of the proposed sublessee to perform its obligations.

(d) Within thirty (30) days after Authority's receipt of a Sublease Notice, Authority either will consent, refuse its consent or conditionally consent to the proposed sublease. If Lessee does not receive written notice of Authority's decision within thirty (30) days after the later of (i) the date Authority receives the Sublease Notice or (ii) the date Authority receives any

additional reasonably requested information. Authority will be deemed to have refused its consent to the proposed sublease, leaving this Lease and any guaranty in full force and effect.

(e) Lessee will pay, on demand as Additional Charges, all reasonable out-of-pocket costs and expenses (including attorneys' fees, if any) that Authority may incur in connection with Authority's review of any request for consent to a sublease.

Section 14.2 **Subsequent Subleases.** Anything in this Lease to the contrary notwithstanding, and notwithstanding any consent by Authority to any sublease of the Leased Premises, or any portion thereof, or any other permitted sublease hereunder, no sublessee shall assign its sublease nor further sublease the Leased Premises, or any portion thereof without Authority's prior written consent in each instance, which consent may be given or withheld in Authority's sole discretion. No such subsequent subleasing shall relieve Lessee from any of Lessee's obligations in this Lease.

Section 14.3 **Sublease Upside.** For any subletting of all or any portion of the Leased Premises, Lessee shall pay to Authority as Additional Charges, on the first day of each month during the term of the sublease, [REDACTED] of the amount by which (i) rent and other consideration due from the sublessee for such month exceeds (ii) that portion of the Development Period Rent, or monthly installment of Annual Base Rent, due under this Lease which is allocable to the portion of the Leased Premises subject to such sublease.

Section 14.4 **Ineffective Subletting.** In consummating any sublease, Lessee's failure to comply with all of the foregoing provisions and conditions of this Article 14, to the extent applicable to such sublease, shall (unless Authority consented to such sublease in accordance with this Article 14), at Authority's sole option, render such purported subletting null and void and of no force and effect.

Section 14.5 **Primary Obligor.** Lessee acknowledges and agrees that, notwithstanding any sublease pursuant to this Article 14, Lessee remains directly and primarily liable for the performance of all the obligations of Lessee hereunder (including, without limitation, the obligation to pay all Lease Payments), and Authority shall be permitted to enforce this Lease Agreement against Lessee or the sublessee, or both of them, without prior demand upon or proceeding in any way against any other Persons.

## ARTICLE 15 DEFAULT

### Section 15.1 **Event of Default; Rights and Remedies of Authority.**

(a) An "Event of Default" by the Lessee shall occur if:

(i) Lessee fails to pay when due (A) any of the Lease Payments payable under this Lease, (B) the unpaid portion of any Wharfage Deficit Payment payable under Section 4.3 or (C) any of the Dock Modification Costs payable under Section 5.6 and, in each case, any such default shall continue for thirty (30) days after Lessee has received written notice from the Authority specifying such failure;

(ii) Lessee fails in any material respect to keep, perform or observe any material covenant, condition, agreement or obligation under this Lease (other than the payment of Lease Payments) that is to be kept, performed or observed by Lessee, and fails to cure, correct or remedy such failure within sixty (60) days after Lessee has received written notice from the Authority specifying such failure, unless such failure cannot be cured using commercially reasonable efforts within such period of sixty (60) days, in which case such failure shall not be deemed to continue if the Lessee proceeds with due diligence to cure the failure and diligently completes the curing thereof;

(iii) Authority has exercised its right to render a purported Disposition or sublease to be null and void pursuant to and in accordance with Section 13.6 and Section 14.4, respectively;

(iv) Lessee shall be adjudicated bankrupt or be declared insolvent under the Federal Bankruptcy Code or any other Applicable Laws (as now or hereafter in effect) relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts (hereinafter collectively called "**Bankruptcy Laws**"), or if the Lessee shall (A) apply for or consent to the appointment of, or the taking of possession by, any receiver, custodian, trustee or liquidator (or other similar official under Bankruptcy Laws) of the Lessee or of any substantial portion of the Lessee's property; (B) make a general assignment for the benefit of its creditors; (C) file a petition commencing a voluntary case under or seeking to take advantage of any Bankruptcy Laws; or (D) acquiesce in writing to any petition commencing an involuntary case against the Lessee pursuant to any Bankruptcy Laws; or

(v) an order for relief against the Lessee shall be entered in any involuntary case under the Federal Bankruptcy Code or any similar order against the Lessee shall be entered pursuant to any other Bankruptcy Laws, or if a petition commencing an involuntary case against the Lessee or proposing the reorganization of the Lessee under the Federal Bankruptcy Code shall be filed in and approved by any court of competent jurisdiction and not be discharged or denied within ninety (90) days after such filing, or if a proceeding or case shall be commenced in any court of competent jurisdiction seeking (A) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of the Lessee, (B) the appointment of a receiver, custodian, trustee, or liquidator (or other similar official under Bankruptcy Laws) of the Lessee or of any substantial portion of the Lessee's property or (C) any similar relief as to the Lessee pursuant to any Bankruptcy Laws and, in each case, any such proceeding or case shall continue undismissed, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continued unstayed and in effect for ninety (90) days.

(b) Upon the occurrence of any Event of Default, Authority may, subject to any judicial process and notice to the extent required by Title 4, Chapter 24 of the Texas Property Code, as may be amended, in addition to all other rights and remedies afforded Authority hereunder or by law or in equity, take the actions described in Section 15.2.

#### **Section 15.2 Termination of Lease by Authority.**

(a) Upon the occurrence of any Event of Default, the Authority may terminate this Lease by giving Lessee written notice thereof, in which event, Lessee shall pay to the Authority

the sum of the following amounts to the extent actually incurred or accrued as of the date of termination of this Lease (collectively, the "**Termination Amount**"):

- (i) the unpaid balance of the Tract 2 Dock Fees, if any;
- (ii) the unpaid balance of the Dock Modification Costs, if any;
- (iii) the unpaid balance of the Wharfage Deficit Payments, if any;
- (iv) the unpaid balance of the Wharfage Deficit Termination Payment, if any;
- (v) all Lease Payments accrued but unpaid under this Lease through the date of termination of this Lease;
- (vi) all amounts due under Section 15.3; and
- (vii) if such Event of Default occurs during the Initial Term or any Extension Period, an amount equal to (x) the total Annual Base Rent that Lessee would have been required to pay for the remainder of such Initial Term or Extension Period, as the case may be, discounted to present value at a per annum rate equal to the Discount Rate, *minus* (y) the then present fair rental value of the Leased Premises for such period, similarly discounted.

(b) If the Authority exercises its termination right pursuant to Section 15.2(a), Lessee will be obligated to pay to the Authority the Termination Amount within ten (10) Business Days after the Lessee's receipt of the Authority's invoice for the Termination Amount; *provided, however*, that the Authority may send partial invoices (each a "**Partial Invoice**") to Lessee for one or more of the component parts of the Termination Amount with a note to that effect, and Lessee shall be obligated to pay to the Authority the amount billed in each Partial Invoice within ten (10) Business Days after the Lessee's receipt of the Partial Invoice.

(c) The Lessee hereby acknowledges that the Authority would not have entered into this Agreement without Lessee's covenants in this Section 15.2.

(d) Notwithstanding anything to the contrary contained in this Section 15.2, Lessee shall not be deemed to have waived any requirements of Authority to mitigate damages upon an Event of Default as required by Applicable Laws.

**Section 15.3 Payments on Default.** Upon the occurrence of any Event of Default, Lessee shall pay to Authority all reasonable costs incurred by Authority (including court costs and reasonable attorneys' fees and expenses) in (a) obtaining possession of the Leased Premises, (b) removing and storing Lessee's or any other occupant's property (unless the presence of such other occupant's property arose as a result of the acts or omissions of the Authority), (c) reasonably repairing, restoring or otherwise putting the Leased Premises into a reasonably marketable condition, (d) if Lessee is dispossessed of the Leased Premises and this Lease is not terminated, reletting all or any part of the Leased Premises (including brokerage commissions and other costs incidental to such reletting), (e) performing Lessee's obligations which Lessee failed to perform



as of the date of such Event of Default and (f) enforcing its rights, remedies and recourses arising out of the Event of Default.

Section 15.4 **Default by Authority.** If Authority fails to keep, perform or observe any of the covenants (including the covenant of quiet enjoyment), agreements, terms or provisions contained in this Lease that are to be kept, performed or observed by Authority, or if the Authority willfully fails to tender the Leased Premises to Lessee, and if Authority fails to remedy the same within thirty (30) days (or such additional time as is reasonably required to correct any such default) after the Authority has been given a written notice from Lessee specifying such default, then in such event Lessee may terminate this Lease and/or pursue any and all rights and remedies available to Lessee at law or in equity, including, without limitation, enforcement of the performance of this Lease by any method and in one or more claims for damages.

Section 15.5 **No Waiver.** Any waiver, expressed or implied, granted by either Authority or Lessee to any breach of any agreement, covenant or obligation contained in this Lease Agreement shall operate as such only in the specific instance granted, and shall not be construed as waiver to any subsequent breach of such agreement, covenant or obligation.

## ARTICLE 16 MORTGAGEE PROTECTIONS

Section 16.1 **Lessee's Right to Encumber.** It is agreed that Lessee shall at all times during the Term of this Lease, without the consent of Authority (*provided* written notice and a copy of the applicable security instruments are delivered to Authority), have the right to mortgage or convey by deed of trust or any other security instrument the Leasehold Estate ("**Leasehold Mortgage**"); *provided, however*, that the Leasehold Mortgage will at all times be subject to the superior right, title and interest of Authority to the fee interest underlying the Leased Premises, including the HI Docks and Handling Equipment, and to Authority's rights hereunder to require Lessee's payment of the Dock Modification Costs, the Wharfage Deficit Payments, the Wharfage Deficit Termination Payment, the Termination Amount and all Lease Payments due hereunder and Lessee's full and faithful performance of all covenants and conditions of this Lease Agreement due to Authority.

Section 16.2 **Waiver of Landlord's Lien.** Authority hereby waives any contractual or statutory landlord's lien Authority has or may have on the Lessee Facilities and any other fixture or appurtenance as well as any personal property Lessee places on the Leased Premises.

Section 16.3 **Notice to Authority.** If Lessee shall, on one or more occasions, assign or encumber Lessee's interest in the Leased Premises by a Leasehold Mortgage, and if the holder of such Leasehold Mortgage (and such Person, together with its successors, assigns or designees, a "**Leasehold Mortgagee**") shall provide Authority with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee, Authority and Lessee agree that, following receipt of such notice by Authority, the provisions of this Section 16.3 shall apply in respect to each such Leasehold Mortgage. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgage, notice of the new name and address shall be provided to Authority.

Section 16.4 **Default Notice.** Authority, upon providing Lessee any notice of (a) a default under this Lease Agreement, (b) a termination of this Lease Agreement or (c) a matter on which Authority may predicate or claim a default or Event of Default, shall at the same time send a copy of such notice to every Leasehold Mortgagee. No such notice by Authority to Lessee shall be deemed to have been duly given unless and until a copy thereof has been sent to every Leasehold Mortgagee. From and after the date such notice has been sent to a Leasehold Mortgagee, such Leasehold Mortgagee shall have at least the same period, after the giving of such notice upon it, for remedying any default or acts or omissions which are the subject matter of such notice or causing the same to be remedied, as is given Lessee after the giving of such notice to Lessee, *plus* in each instance, the additional periods of time specified in this Lease Agreement to remedy, commence remedying or cause to be remedied the defaults or acts or omissions which are the subject matter of such notice specified in any such notice. Authority shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee. Lessee authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Leased Premises by the Leasehold Mortgagee for such purpose.

Section 16.5 **Notice to Leasehold Mortgagee.** Anything contained in this Lease Agreement to the contrary notwithstanding, if any Event of Default shall occur which entitles Authority to terminate this Lease Agreement or terminate Lessee's right to possession of the Leased Premises, Authority shall have no right to terminate this Lease Agreement or to terminate Lessee's right to possession of the Leased Premises unless, following the expiration of the period of time given Lessee to cure such Event of Default or the act or omission which gave rise to such Event of Default, Authority notified every Leasehold Mortgagee of Authority's intent to so terminate this Lease or Lessee's right to possession of the Leased Premises at least thirty (30) days in advance of the proposed effective date of such termination or taking possession of the Leased Premises (such notice being referred to herein as a "**Termination Notice**," and the thirty (30) day period specified in such Termination Notice being referred to herein as the "**Termination Notice Period**"). These provisions shall apply if, during the Termination Notice Period, any Leasehold Mortgagee shall (a) notify Authority of such Leasehold Mortgagee's desire to nullify such notice, (b) pay or cause to be paid the Lease Payments, Wharfage Deficit Payments and Dock Modification Costs then due and in arrears as specified in the Termination Notice and which may become due during such Termination Notice Period and (c) comply or in good faith, with reasonable diligence and continuity, commence to comply with all non-monetary requirements of this Lease Agreement then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee; *provided, however*, that such Leasehold Mortgagee shall not be required during such Termination Notice Period to cure or commence to cure any default consisting of Lessee's failure to satisfy and discharge any lien, charge or encumbrance against the Lessee's interest in this Lease Agreement or the Leased Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee. Any notice to be given by Authority to a Leasehold Mortgagee pursuant to any provision of this Article 16 shall be deemed properly addressed if sent to the Leasehold Mortgagee at the address specified in the notice referred to above unless notice of a change of Leasehold Mortgagee ownership has been given to Authority.

#### Section 16.6 Procedure on Default.

(a) If Authority shall elect to terminate this Lease Agreement or to terminate Lessee's right to possession of the Leased Premises by reason of any Event of Default of Lessee, and a Leasehold Mortgagee shall have proceeded in the manner provided for herein, the specified date for the termination of this Lease Agreement or termination of Lessee's right to possession of the Leased Premises as fixed by Authority in its Termination Notice shall be extended for a period of six (6) months, *provided* that such Leasehold Mortgagee shall, during such six (6) month period (i) pay or cause to be paid the Lease Payments, Wharfage Deficit Payments and other monetary obligations of Lessee under this Lease Agreement as the same become due, and continue its good faith efforts to perform all of Lessee's other obligations under this Lease Agreement, excepting (A) obligations of Lessee to satisfy or otherwise discharge any lien, charge or encumbrance against Lessee's interest in this Lease Agreement or the Leased Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee, and (B) non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee and (ii) if not enjoined or stayed, take steps to acquire or sell Lessee's interest in this Lease Agreement by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(b) If at the end of such six (6) month period such Leasehold Mortgagee is complying with the terms hereof, then this Lease Agreement shall not then terminate nor shall Authority take possession of the Leased Premises, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee is enjoined or stayed from commencing or pursuing the foreclosure or assignment in lieu thereof or delayed by procedural requirements from completing the foreclosure or assignment in lieu thereof (including the pendency of any related litigation) and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Lessee's interest in this Lease Agreement by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Leasehold Mortgagee must, however, continue to pay the Lease Payments and the other monetary obligations of Lessee under this Lease Agreement to Authority during such period unless enjoined or stayed from doing so by order of a court with jurisdiction of Lessee and Leasehold Mortgagee or by operation of law. Nothing in this Section 16.6, however, shall be construed to extend this Lease Agreement beyond the Initial Term or Extension Term (if applicable) hereof nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after all monetary Events of Default and all other defaults reasonably susceptible of being cured have been cured. If all monetary Events of Default and all other defaults reasonably susceptible of being cured shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, then this Lease Agreement shall continue in full force and effect as if Lessee had not defaulted under this Lease Agreement.

(c) If a Leasehold Mortgagee is complying with this Section 16.6, then upon the acquisition of the Leasehold Estate by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise this Lease Agreement shall continue in full force and effect as if Lessee had not defaulted under this Lease Agreement, and Authority shall recognize the Leasehold Mortgagee or its designee or purchaser at a foreclosure sale or otherwise, as applicable, as the Lessee hereunder.

**Section 16.7 New Lease Agreement.** In the event of the termination of this Lease Agreement during the Initial Term or any Extension Period as a result of an Event of Default, Authority shall, in addition to providing the notices of default (or Event of Default) and termination as required above, provide each Leasehold Mortgagee with written notice that this Lease Agreement has been terminated, together with a statement of (a) all sums which would at that time be due under this Lease Agreement but for such termination, (b) all sums that are due and payable by Lessee under the Authority's Tariff and (c) all other defaults or events of default, if any, then known to Authority. Authority agrees to enter into a new lease ("**New Lease**") of the Leased Premises with such Leasehold Mortgagee or its designee for the remainder of such Initial Term or Extension Period, as the case may be, effective as of the date of termination of this Lease, at the rent and upon the terms, options to extend the Term, covenants and conditions (but excluding requirements which are not applicable or which have already been fulfilled) of this Lease Agreement, *provided*:

(a) such Leasehold Mortgagee shall make written request upon Authority for such New Lease within thirty (30) days after the date such Leasehold Mortgagee receives Authority's notice of termination of this Lease Agreement given pursuant to this Section 16.7:

(b) such Leasehold Mortgagee or its designee shall pay or cause to be paid to Authority at the time of the execution and delivery of such New Lease, (i) any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease Agreement but for such termination and (ii) any and all sums that are due and payable by Lessee under the Authority's Tariff at the time of the execution and delivery of such New Lease:

(c) such Leasehold Mortgagee or its designee shall agree to remedy any of Lessee's defaults of which said Leasehold Mortgagee was notified by Authority's notice of termination given pursuant to this Section 16.7 and which are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee:

(d) any New Lease made pursuant to this Section 16.7 shall be prior to any Leasehold Mortgage or other lien, charge or encumbrance on the fee of the Leased Premises and the lessee under such New Lease shall have the same right, title and interest in and to the Leased Premises as Lessee had under this Lease Agreement; and

(e) lessee under any such New Lease shall be liable to perform the obligations imposed on the lessee by such New Lease only during the period such Person has ownership of such the leasehold estate created by such New Lease.

**Section 16.8 New Lease Agreement Priorities.** If more than one (1) Leasehold Mortgagee shall request a New Lease, the Authority shall enter into such New Lease with the Leasehold Mortgagee whose Leasehold Mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. Authority, without liability to Lessee or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business within the State of Texas as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

Section 16.9 **Leasehold Mortgagee Need Not Cure Specified Defaults.** Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of any rights hereunder to cure any default or Event of Default of Lessee not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee, in order to comply with the provisions hereof, or as a condition of entering into the New Lease.

Section 16.10 **Cooperation with Financing Efforts; Leasehold Mortgagee's Consent**

(a) Authority shall cooperate with and provide reasonable assistance to Lessee, the Leasehold Mortgagee and their respective insurers, in relation to their due diligence, financial, technical, scientific, engineering, accounting and environmental studies, monitoring, inspections and audits of the Leased Premises and Lessee's operations thereon. Authority shall execute and deliver such further instruments and documents, including estoppel certificates, notices, acknowledgements, consents and related instruments that may be reasonably required in order to facilitate any Leasehold Mortgagee or by the Leasehold Mortgagee in order to facilitate the financing of the Harbor Island Terminal Project.

(b) If requested by Lessee, Authority shall deliver to the Leasehold Mortgagee certified copies of its resolutions pertaining to this Lease, its financial statements, evidence of insurance and such similar items as may be reasonably requested by Lessee on behalf of the Leasehold Mortgagee.

(c) Authority agrees not to enter into amendments, modifications or supplements to this Lease without the prior written consent of the Leasehold Mortgagee.

(d) Authority agrees not to accept a surrender of the Leased Premises or other voluntary termination or surrender of this Lease by Lessee without the prior written consent of the Leasehold Mortgagee.

**ARTICLE 17  
GENERAL PROVISIONS**

Section 17.1 **Compliance with Authority's Tariff.** Lessee must comply with the requirements of Item 669 of Authority's Tariff to the extent the same apply to Lessee, its agents, servants and employees. Lessee agrees to comply with all items in the Authority's Tariff, as amended from time to time, applicable to the loading and unloading of Crude Oil to and from Vessels berthed at the HI Docks except to the extent that such terms in the Authority's Tariff conflict with the terms of this Lease Agreement.

Section 17.2 **Inspection.**

(a) Lessee will permit Authority and Authority's agents, representatives or employees to enter onto the Leased Premises upon forty-eight (48) hours prior notice (or, in the event of an emergency, notice as provided in Section 17.2(b)) for the purpose of inspection to determine whether Lessee is in compliance with the terms of this Lease Agreement, so long as any such inspection does not interfere with the operations of Lessee Facilities and is done in compliance with Lessee's safety requirements. Authority's ability to perform environmental

inspections of the Leased Premises shall be governed solely by Section 18.2 of this Lease Agreement.

(b) In an emergency, Authority, its agents, servants and employees, may use any reasonable means to open any gate or door into or on the Leased Premises without any liability for doing so, except that Authority must provide notice to Lessee prior to entry or as soon as possible thereafter. Entry onto the Leased Premises by Authority as permitted herein shall not constitute a trespass or an eviction (constructive or otherwise), entitle Lessee to any abatement or reduction of rent, or constitute grounds for any claim by Lessee (and Lessee hereby waives any such claim) for damages for any injury to or interference with Lessee's business, for loss of occupancy or quiet enjoyment or for consequential damages.

**Section 17.3 No Partnership or Third-Party Beneficiaries.** The relationship between Authority and Lessee shall at all times remain solely that of lessor and lessee and not be deemed a partnership or joint venture. This Lease Agreement is for the sole benefit of Authority and Lessee and no other Person shall be entitled to any benefits hereunder unless the benefit to a Person is expressly stated in this Lease Agreement (including as provided in Article 16). Subject to Section 19.8, neither Authority or Lessee shall make any public statement or any representation to any Person, whether oral or written, that any partnership or joint venture exists between Lessee and the Authority without the prior written consent of the other Party.

#### Section 17.4 Notices

(a) All notices, demands or requests from Lessee to Authority shall be given to Authority, Attention: Chief Executive Officer, 222 Power Street, Corpus Christi, Texas 78401, or such other address as Authority shall request in writing.

(b) All payments, notices, demands or requests from Authority to Lessee shall be given to Lessee, Attention: Chief Executive Officer, 1414 Valero Way, Corpus Christi, Texas 78410, or at such other address as Lessee shall request in writing.

(c) Notices required to be given to either Party may be given by certified first-class mail, by overnight delivery to the appropriate Party at its address listed above. Notice may also be given by personal service. Any notice given by mail shall be deemed to have been given one (1) day after such notice was deposited in the United States mail, certified and postage prepaid, addressed to the Party to be served. In all other cases, notice will be considered delivered when received at the address stated for the addressee's receipt of notice. Either Party may change the address for notice by giving the other Party written notice as provided in this Section 17.4(c).

**Section 17.5 Estoppel Certificate.** On request of a Party, Lessee and Authority will each execute an estoppel certificate, in a form reasonably acceptable to such Party, that states the Effective Date and expected date of termination of the Lease, describes any rights to extend the Term of the Lease, lists any defaults by the requesting Party, and provides any other information regarding the terms of this Lease reasonably requested by the requesting Party.

**Section 17.6 Abatement.** Lessee's covenant to make Lease Payments and Authority's covenants are independent. Except as otherwise provided in this Lease, Lessee shall not be entitled to abatement of Lease Payments for any reason.

Section 17.7 **Dispute Resolution.** In the event a dispute arises between the Parties regarding the application or interpretation of, or in any way relating to, this Lease, the Parties agree to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner. If the Parties fail to resolve the dispute within ten (10) Business Days after any written notice of the dispute has been received by the other Party, then either Party may elect to refer the dispute to the respective upper management of the Parties (with authority to resolve such dispute) by notice in writing to the other Party, and the appropriate upper management of the Parties shall meet within ten (10) Business Days after the date of the notice, to resolve the dispute. If the dispute is not resolved within five (5) Business Days after such a meeting has commenced (but in any event within ten (10) Business Days after the date of the letter referring the matter to upper management), then either Party may at any time thereafter resort to mediation, under the provisions of Section 17.8.

Section 17.8 **Mediation.** Authority and Lessee agree they will, before taking any other legal action, including the filing of an action in State or Federal Court, attempt in good faith, to mediate in Corpus Christi, Texas, any controversy or claim arising out of or related to this Lease Agreement before a mediator to be agreed upon by Authority and Lessee. Authority and Lessee must agree upon a mediator within fifteen (15) Business Days after a written request for mediation by either Party, and if Authority and Lessee are unable to agree upon a mediator within such time period either Party may request that the American Arbitration Association appoint a mediator. The mediator will schedule a mediation meeting at a time and place determined by the mediator. Authority and Lessee will each pay one-half (1/2) of the costs of mediation to the mediator. Any mediation shall not extend beyond thirty (30) days after the appointment of the mediator, and should the Parties fail to resolve any dispute by mediation within such thirty (30) day period, the Parties shall have all rights available at law or in equity.

## ARTICLE 18 CONDITION AND CARE OF LEASED PREMISES

### Section 18.1 **Inspection and Acceptance of Leased Premises.**

(a) Except as otherwise provided in this Lease Agreement, as of the Effective Date of this Lease Agreement, Lessee understands and agrees that the Leased Premises are being leased in an "As Is Where Is" condition and, except as provided in Section 18.1(f) and Section 18.1(g), Lessee accepts the Leased Premises in the condition it exists on the Effective Date as reasonably suited and fit for Lessee's intended uses of the Leased Premises, but without limiting any construction, repair and/or maintenance obligations of the Authority expressly set forth in this Lease Agreement. Lessee acknowledges that Authority has made no express warranties with regard to the Leased Premises, except as expressly set forth in this Lease Agreement. To the maximum extent permitted by Applicable Laws, Authority hereby disclaims, and Lessee waives the benefit of, any implied warranties, including implied warranties of habitability, or fitness or suitability for Lessee's intended uses of the Leased Premises.

(b) Lessee further understands and agrees that improvements, grading, filling, removal of existing improvements, and relocation of utility lines in connection with the Lessee Facilities shall be made and performed by Lessee at the sole cost and expense of Lessee. Lessee

further understands and agrees that the "As-Is, Where Is" condition of the Leased Premises includes the remediated contamination on the Leased Premises as described below.

(c) Lessee understands that Leased Premises have previously operated as a crude oil terminal and soil and groundwater has been remediated to the "commercial/industrial standard" (less than ten thousand (10,000) parts per million Total Petroleum Hydrocarbons (TPH)) as required by the Railroad Commission ("RRC") of Texas and as recorded in the Nueces County, Texas deed records.

(d) Lessee understands that two (2) restrictive covenants affecting the Leased Premises have been filed of record pursuant to the authority of the RRC to control and clean up pollution caused by activities on the Leased Premises over which the RRC exercises jurisdiction in accordance with Section 91.113 of the Texas Natural Resources Code. Lessee acknowledges that it has received copies of these restrictive covenants.

(e) Authority and Lessee acknowledge that Authority has provided to Lessee a Phase I Environmental Assessment ("Assessment") performed by Ramboll US Corporation dated October, 2019. This Assessment among other things, delineated all of the previous reports and remediation efforts that have been performed on the Leased Premises and, together with the Environmental History, serves as the baseline condition of the Leased Premises ("Baseline Environmental Site Assessment"). Authority and Lessee also acknowledge that Authority has provided a Letter Report from SQ Environmental, LLC dated October 16, 2019 that summarized further soil investigation activities that were completed during September 6-11, 2019 on six locations with concentrations of Total Petroleum Hydrocarbons ("TPH") in soil above the 10,000 parts per million commercial/industrial standard. Three of the six locations demonstrated results of TPH still above the commercial/industrial standard.

The Authority agrees that it shall undertake remediation activities on these three remaining areas to meet the commercial/industrial standard. Upon completion of the remediation activities, all remaining concentrations of TPH in soil will be shown to meet the commercial/industrial standard of 10,000 parts per million. These remediation activities may include any industry-standard remediation method for these three locations in order to reduce the TPH levels to meet the commercial/industrial standard. Further reports that inform the results of this remediation effort and any subsequent Railroad Commission documentation shall form part of the Environmental History and Baseline Environmental Site Assessment as described.

Further, Authority agrees that, in the event other areas within the Leased Premises are found during the Development Period to have TPH levels exceeding the threshold, it shall perform additional remediation activities as necessary to meet the commercial/industrial standard. Subsequent reports summarizing the results will be added to the Environmental History and Baseline Environmental Site Assessment. Authority and Lessee agree that Authority will have no further obligations regarding environmental remediation or investigation activities on the Leased Premises from and after the Commencement of Commercial Operations date.

(f) The Authority has provided Lessee with copies of the Environmental History and Baseline Environmental Site Assessment in accordance with Section 18.1(c). Lessee shall have until February 29, 2019, to review the Baseline Environmental Site Assessment (the



"*Review Period*"). During the remainder of the Commercialization Period Lessee shall have the right to access the Leased Premises to conduct such examinations and inspections in Lessee's sole and absolute discretion to determine the feasibility of the Land for the Permitted Use. Lessee agrees to notify the Authority prior to each entry on the Land. Lessee may examine the physical condition and suitability of the Land, conduct environmental tests including soil borings, and conduct soil and geotechnical analysis. The foregoing list is not intended to be an exclusive list of the investigations allowed to be made by Lessee. The Authority agrees to reasonably cooperate with Lessee in connection with its due diligence activities. Lessee shall pay for all of the foregoing environmental testing and analysis. Further reports that inform the results of this testing and analysis shall form part of the Environmental History and Baseline Environmental Site Assessment as described. During the Review Period, Lessee may terminate this Lease Agreement by providing written notice to the Authority in the event that the Baseline Environmental Site Assessment or Lessee's testing reveals a condition affecting the Land requiring remediation under Applicable Environmental Laws that in the reasonable estimate of the Lessee, after consultation with the Approved Consultant, would delay Commencement of Commercial Operations beyond a reasonable period of time or that would in the reasonable opinion of Lessee cause the Leased Premises to be unsuitable for the Permitted Use.

(g) The Authority shall be responsible for, and hereby releases the Lessee Parties from, and waives any claim against the Lessee Parties for, any and all Claims for any Environmental Liabilities which may be brought or instituted or asserted against the Lessee Parties based on or arising from (i) conditions or circumstances constituting the Environmental Baseline, (ii) any other conditions or circumstances first arising or occurring on, under or which migrate from the Leased Premises prior to the Baseline Environmental Site Assessment Report Date but are discovered after the Baseline Environmental Site Assessment Report Date or (iii) any conditions or circumstances which Lessee can prove or which Authority agrees were caused by Authority, its agents, contractors, employees or invitees subsequent to the Baseline Environmental Site Assessment Report Date.

(h) Notwithstanding anything else in this Lease to the contrary and subject to Section 18.2(g)(iii), Lessee shall be responsible for any Environmental Liabilities to the extent arising from conditions or circumstances first arising or occurring on, under, or which migrate from the Leased Premises during the Term of this Lease, and that are caused by acts of Lessee, its agents, contractors, employees, or invitees, acting on Lessee's behalf or under Lessee's authority, after the Baseline Environmental Site Assessment Report Date.

## Section 18.2 Environmental Representations and Restrictions.

(a) **Definitions.** The following definitions shall apply:

(i) "**Applicable Environmental Laws**" includes, but is not limited to, all federal, state and local statutes, laws, ordinances, regulations, codes, permits, licenses, authorizations and rules, and other provisions currently having the force and effect of law, in each case as amended, and including any judicial or administrative orders, determinations, writs, injunctions, judgments and decrees relating to occupational health or safety, Hazardous Substances or the Environment, including without limitation such laws as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42, U.S.C. Section 9601 et

seq.; the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq.; the Clean Air Act and Amendments of 1990, 42 U.S.C. Section 7401 et seq.; the Clean Water Act of 1977, 33 U.S.C. Section 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2606; the Texas Solid Waste Disposal Act, Chapter 361, Texas Health and Safety Code; the Texas Clean Air Act, Chapter 382, Texas Health and Safety Code; the Oil Spill Prevention Act of 1991, Chapter 40, Texas Natural Resource Code; Chapter 26, Texas Water Code, Subchapters D, G, I and J; the Texas Hazard Communication Act, Chapter 502, Texas Health and Safety Code; the Texas Community Right-to-Know Acts, Chapters 505 - 507 Texas Health and Safety Code; and Authority's Tariff (as each relates to the Environment).

(ii) **"Contaminant"** includes, but is not limited to: any substance, material, constituent, waste, chemical or other thing defined as or included in the definition of **"hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "solid wastes," "industrial wastes," "industrial solid or hazardous wastes," "wastes"** or words of similar import, under Applicable Environmental Laws. Contaminant also includes (A) anything considered toxic, explosive, corrosive, reactive, flammable, radioactive or ignitable, (B) any lead or lead-based paint, pesticide, polychlorinated biphenyls, dioxins, hydrocarbon, petroleum, petroleum based substances, petroleum product or petroleum additive (including but not limited to lead), diesel, fuels, gasoline, natural gas or natural gas products, dry cleaning products or solvents (as well as any and all ingredients, degradation or daughter products or byproducts or constituents thereof of any of the foregoing), (C) any other chemical, material, waste or substance, (or constituent thereof), which is in any way regulated under Applicable Environmental Laws by any Governmental Authority, including mixtures thereof with other materials, and including any regulated building materials such as asbestos and lead or (D) any other substance, material, constituent, waste, or chemical that may adversely affect or pose a threat to human health or the Environment.

(iii) **"Contamination"** includes but is not limited to the presence, or threat of one or more Contaminants in the Environment (A) which has resulted or may result in pollution, degradation, adverse impact, damage, threat or injury, to worker health or the Environment or (B) which is not allowed by or in compliance with Applicable Environmental Laws.

(iv) **"Disposal"** means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of Contaminants, whether containerized or uncontainerized, into or on land or water so that the Contaminants or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the Environment in any other manner. **"Dispose"** shall be construed accordingly.

(v) **"Environment"** includes, but is not limited to, (A) the waters of the United States, the waters of any state, the contiguous zone or ocean waters, (B) any other surface water, ground water or drinking water supply, (C) any land surface or subsurface strata or sediment and (D) the ambient air or atmosphere, as well as the animals, organisms, plants or natural resources located in, under or thereon.

(vi) **"Environmental Liabilities"** includes, but is not limited to, any and all actual, potential or threatened administrative, regulatory or judicial actions, suits, allegations, demands, demand letters, claims, causes of action, proceedings, liens, notices of noncompliance or violation, investigations, obligations, actual or potential damages (including but not limited to natural resource damages), actual or potential liabilities (including strict liabilities under such statutes as, CERCLA, RCRA or other Applicable Environmental Laws), accrued or unaccrued losses, diminution of property value, injuries, costs (including but not limited to cleanup, remediation, removal, investigative, containment, restoration and/or monitoring costs), settlements, assessments, fines, penalties, interest, legal or attorneys' fees and costs of court relating in any way to or concerning the Environment, Applicable Environmental Laws, Contaminants or Contamination.

(vii) **"Hazardous Substances"** shall have the same meaning as provided to the term in CERCLA or any analogous state Laws.

(viii) **"Release"** means to dispose of, discharge, deposit, spill, leak, pump, pour, emit, empty, dump, seep, drain, run or otherwise introduce into the Environment.

(ix) To the extent the Applicable Environmental Laws establish a meaning for **"Release," "Disposal," "Dispose"** or other terms which is broader than that specified in this Lease Agreement such broader meaning will apply to such terms used in this Lease Agreement.

(b) **Representations and Warranties of Lessee.** Lessee hereby represents and warrants to Authority:

(i) that, without limiting the other provisions of this Lease, in its use of the Leased Premises, Lessee will not knowingly violate any Applicable Environmental Laws;

(ii) if a change in any Applicable Environmental Laws makes any previously acceptable activity of Lessee prohibited, Lessee must cease the prohibited activity upon the Leased Premises and come into compliance with Applicable Environmental Laws;

(iii) except in compliance with Applicable Environmental Laws in all respects, in no event will Lessee, or its agents, representatives, employees, contractors, consultants or invitees acting on Lessee's behalf or under Lessee's authority Release or Dispose of any Contaminants on, near or about the Leased Premises;

(iv) that without the prior written consent of Authority, Lessee, and its agents, representatives, employees, contractors, consultants or invitees, will not bring onto or permit to remain on the Leased Premises any asbestos, explosives or Contaminants, except that the Lessee may use, if legal and permitted, materials that will be used in the ordinary course of Lessee's business. The consent of Authority may be withheld for any reason whatsoever not in contravention with Lessee's Permitted Uses, and may be subject to reasonable conditions in addition to the minimum requirements of Applicable Environmental Laws; and

(v) that Lessee will not engage in or permit any action which would cause, suffer or allow, or fail to take any action to reasonably prevent, any Contamination requiring remediation under Applicable Environmental Laws by Lessee of or from the Leased Premises.

(c) Release Reporting; Notification; and other Responsibilities of Lessee.

(i) In the event of a Release by Lessee or anyone acting by or on behalf of Lessee of any Contaminant in violation of Applicable Environmental Laws, Lessee must immediately stop the Release and take all necessary steps required to prevent the reoccurrence of such Release; and within the time period prescribed by Applicable Environmental Laws, notify the proper Governmental Authorities, as well as Authority, of the date, time, and nature of the Release, including, but not limited to, a description of the Contaminants discharged or released. If the initial notification to Authority is not in writing, within ten (10) business days of such a Release, Lessee will provide a written explanation of the details of the Release and an SDS for each of the said Contaminants.

(ii) Lessee and Authority agree to promptly furnish the other Party with copies of all documents, reports, notices, orders or correspondence received or generated by Lessee and its agents, representatives, employees, contractors or consultants acting on Lessee's behalf or under Lessee's authority relating to any Release for which such Party is responsible as described in Section 18.2(c)(i), including, but not limited to any citation, notice of violation, notice of enforcement, enforcement action or penalty regarding the Leased Premises. This information must include a general description of the conduct that resulted in the citation, notice of violation, notice of enforcement action or penalty.

(d) Cleanup and Remediation Obligations of Lessee.

(i) Subject to Section 18.1(g), Lessee covenants, represents and warrants that it will promptly respond to and bear the sole burden, duty, responsibility and cost for any and all Environmental Liabilities associated with or arising from Contamination of the Leased Premises (or to any other location to which Contamination may have migrated) to the extent caused by the breach by Lessee of any provision of this Lease or the acts or omissions of Lessee or any of its agents, representatives, employees, contractors, consultants or invitees acting on Lessee's behalf or under Lessee's authority.

(ii) In addition to the other rights and remedies of Authority under this Lease or as may be provided by law, if Authority reasonably determines or has reason to believe that Contamination, an actual or threatened Release of Contaminants, or a violation of Applicable Environmental Laws has occurred, Authority may, at its election and at any time during the Term of this Lease, (A) cause the Leased Premises, any adjacent premises of Authority, or other location to which Contamination may have migrated to be tested, investigated, or monitored for the presence of any Contaminant, (B) cause to be performed any cleanup, removal or remediation of, or other response to, the Contamination of the Leased Premises, and any other location to which Contamination may have migrated, taking into account the use of such properties, in accordance with Applicable Environmental Laws and (C) cause to be performed any restoration of the Leased Premises, and any other location to which the Contamination may have migrated, in accordance with Applicable Environmental Laws, and the reasonable costs and expenses incurred thereof by

the Authority shall be reimbursed by Lessee to Authority within thirty (30) days after receipt of Authority's bill to the extent to which same was caused by Lessee or any of its agents, representatives, employees, contractors, consultants or invitees acting on Lessee's behalf or under Lessee's authority.

(iii) Authority may also, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work as needed to remove, remediate or cleanup any Contaminants Released by Lessee or any of its agents, representatives, employees, contractors, consultants or invitees acting on Lessee's behalf or under Lessee's authority and restore the Leased Premises and any other location to which Contaminants may have migrated as required by and in accordance with Applicable Environmental Laws, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Authority. This Section 18.2(d)(iii) shall survive the cancellation, termination or expiration of this Lease, howsoever brought about.

(iv) Lessee represents and warrants that any work performed in connection with any Release of Contaminants or the violation of any Environmental Laws (the "Environmental Work") by or at the behest of Lessee will comply with all Applicable Environmental Laws including those requiring appropriate characterization, handling, transport and disposal of materials incident to such work. Lessee further agrees to provide Authority with final work plans for any Environmental Work at least ten (10) days prior to the time it commences. Authority takes no responsibility and assumes no liability whatsoever for the Environmental Work except to the extent the circumstances and conditions necessitating such Environmental Work were caused by the Authority

(v) Also, in the event of a Release other than that for which Authority has responsibility under Section 18.1(g), Authority accepts no liability or responsibility for ensuring that Lessee's workers, including without limitation those conducting testing, construction and maintenance activities on the Leased Premises, are satisfactorily protected from residual contaminants described in 29 Code of Federal Regulations. In connection with any Environmental Work performed by or at the behest of Lessee, Lessee shall assess all human health risks as may be required under Applicable Environmental Laws from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors.

(e) **Additional Access by Authority.** In addition to any other rights of access provided herein, if Authority reasonably believes a condition constituting substantial endangerment exists in connection with the Leased Premises, Contaminants or a violation of Applicable Environmental Laws and that Lessee is not adequately addressing such conditions, Authority may enter the Leased Premises at any time without notice, take any actions it reasonably deems necessary to address the situation and the cost and expense thereof shall be reimbursed by Lessee within thirty (30) days after rendition of Authority's bill to the extent to which same was caused by Lessee or any of its agents, representatives, employees, contractors, consultants or invitees acting on Lessee's behalf or under Lessee's authority.

(f) **RELEASE AND INDEMNITY FOR ENVIRONMENTAL LIABILITIES.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS LEASE AND WITHOUT LIMITING THE PROVISIONS OF ARTICLE 8 HEREIN, LESSEE COVENANTS, REPRESENTS AND WARRANTS THAT LESSEE SHALL ASSUME AND BE RESPONSIBLE FOR, AND SHALL WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND, AND HOLD AUTHORITY, ITS PORT COMMISSIONERS, DIRECTORS, MANAGERS, EMPLOYEES, CONTRACTORS, SUB-CONTRACTORS, OWNERS, INVITEES, LICENSEES, AND AGENTS (THE "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL ENVIRONMENTAL LIABILITIES (WHENEVER AND WHEREVER THEY MAY ARISE, INCLUDING OFF-SITE LOCATIONS) CAUSED BY, ARISING OUT OF, OR RESULTING FROM: (1) LESSEE'S USE OF THE LEASED PREMISES, (2) LESSEE'S ACTS OR OMISSIONS IN CONNECTION WITH THE LEASED PREMISES OR THE LEASE, (3) ANY ACTIVITIES OR OPERATIONS CONDUCTED BY OR ON BEHALF OF LESSEE IN CONNECTION WITH OR AS A RESULT OF THE LEASE, WHETHER PERMITTED OR AUTHORIZED BY THIS LEASE (4) LESSEE'S FAILURE TO COMPLY WITH THE TERMS OF THE LEASE, (5) ANY BREACH OF ANY COVENANT OF LESSEE UNDER THIS LEASE OR (6) ANY CONTAMINATION OR ENVIRONMENTAL LIABILITIES TO THE EXTENT CAUSED, OR CONTRIBUTED TO OR EXACERBATED, BY LESSEE, AND/OR ITS AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, CONSULTANTS OR INVITEES ACTING ON LESSEE'S BEHALF OR UNDER LESSEE'S AUTHORITY, IN VIOLATION OF THIS LEASE AGREEMENT OR ANY APPLICABLE ENVIRONMENTAL LAWS. THIS PROVISION SHALL SURVIVE THE CANCELLATION, TERMINATION OR EXPIRATION OF THIS LEASE, HOWSOEVER BROUGHT ABOUT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECTION 18.2(f), IT IS EXPRESSLY PROVIDED AND AGREED BY AND BETWEEN THE PARTIES THAT LESSEE SHALL NOT BE OBLIGATED TO INDEMNIFY AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM (i) THEIR OWN NEGLIGENCE, REGARDLESS OF WHEN SUCH NEGLIGENT ACTS OCCUR OR (ii) FROM THEIR OWN VIOLATION OF APPLICABLE ENVIRONMENTAL LAWS THAT OCCURRED PRIOR TO THE EFFECTIVE DATE.

IN CLAIMS AGAINST THE INDEMNIFIED PARTIES BY OR FOR AN EMPLOYEE OF LESSEE, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, CONSULTANTS OR INVITEES ACTING ON LESSEE'S BEHALF OR UNDER LESSEE'S AUTHORITY, THE LESSEE'S INDEMNIFICATION OBLIGATION UNDER THIS SECTION 18.2(f) SHALL NOT BE LIMITED BY A LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE LESSEE, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, CONSULTANTS OR INVITEES ACTING ON LESSEE'S BEHALF OR UNDER LESSEE'S AUTHORITY, UNDER WORKERS' OR WORKMEN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. IF AN ACTION FOR DAMAGES IS BROUGHT BY AN INJURED EMPLOYEE OF LESSEE, A LEGAL BENEFICIARY, OR AN INSURANCE CARRIER AGAINST ANY OF THE INDEMNIFIED PARTIES TO PAY DAMAGES FOR THE INJURY OR DEATH OF SUCH EMPLOYEE UNDER CHAPTER 417 (THIRD-PARTY LIABILITY), TEXAS LABOR CODE, THAT RESULTS IN A JUDGMENT AGAINST ANY OF THE INDEMNIFIED PARTIES, OR A SETTLEMENT BY ANY OF THE INDEMNIFIED PARTIES, LESSEE EXPRESSLY AGREES

TO REIMBURSE AND HOLD HARMLESS THE INDEMNIFIED PARTIES, FOR THE DAMAGES BASED ON SUCH JUDGMENT OR SETTLEMENT TO THE EXTENT PROVIDED IN THIS SECTION 18.2(f).

(g) **Environmental Restoration.** Lessee covenants, represents and warrants that upon cancellation, termination or expiration of this Lease (howsoever brought about), Lessee shall at its own cost, restore the Leased Premises to substantially the same condition as it existed at the commencement of this Lease. The restoration obligations will include any remediation, cleanup or other actions necessary to address all Contaminants or Contamination that may have occurred during the Term of this Lease and any holding over by Lessee on any part of the Leased Premises as required by and in accordance with Applicable Environmental Laws, but only to the extent same was caused by Lessee or any of its agents, representatives, employees, contractors, consultants or invitees acting on Lessee's behalf or under Lessee's authority, and to address all impacts associated with such Contaminants or Contamination, but only to the extent same was caused by Lessee or any of its agents, representatives, employees, contractors, consultants or invitees acting on Lessee's behalf or under Lessee's authority. Notwithstanding anything herein to the contrary, under no circumstances will Lessee be required to remediate Contamination or Contaminants beyond the manner in which the Authority remediates Contamination or Contaminants on the Authority's property similarly situated to the Land.

(h) **Authority's Tenant Audit Program.** Upon the Effective Date, Authority shall share with Lessee a copy of the Authority's existing tenant audit program (the "Program") and any other related written materials. Lessee shall cooperate with the Program, including allowing the Authority to conduct audits of Lessee's compliance with the Program. The audit will consist of a scheduled review of Lessee's operations and activities, a review of Lessee's environmental management programs and a tour of the Leased Premises. Authority's staff involved in the Program intend to gain an understanding of Lessee's operations and activities and what measures the Lessee is utilizing to comply with the Applicable Environmental Laws, this Lease Agreement and Authority's Tariff. The Program seeks to achieve cooperative conservation between Authority and Lessee relating to the use, enhancement and enjoyment of natural resources and protection of the Environment. The audit will be conducted at a minimum annually and more frequently if determined by Authority's staff to be necessary. A letter from Authority's staff setting forth Authority's staff's observations will be provided to Lessee following the audit. If Authority's staff observe a violation of Applicable Environmental Laws, this Lease Agreement or the Authority's Tariff, Lessee will be notified of the same in writing. Upon notice, Lessee is required to promptly take action to come into compliance and must verify its compliance in writing to Authority within ten (10) days of receipt of such notice. If requested by Authority, Lessee shall cause to be performed annually at its sole cost and expense a non-invasive environmental assessment or limited compliance audit of the Leased Premises of the scope and type reasonably requested by Authority. Subject to the requirements of this Agreement, no physical or invasive testing shall be conducted on the Leased Premises by Lessee absent an express order to perform such testing by a Governmental Authority without (i) providing prior reasonable notice to Authority advising of the purpose of such testing, (ii) obtaining written approval to conduct such testing and (iii) providing the Authority with the opportunity to review and reasonably comment upon the scope and work plans for such testing. All information, verified test results or final reports that may be generated in the course of such environmental assessment and testing shall be promptly furnished to Authority. In addition, upon cancellation, termination or expiration of this Lease

(howsoever brought about), Lessee shall perform a final non-invasive environmental assessment or limited compliance audit of the Premises at its sole cost and expense pursuant to the procedures, conditions and requirements set forth in this Section 18.2(h).

(i) **Continuing Obligations.** All the obligations, warranties and representations in this Section 18.2 are continuing and must be true and correct for the entire Term of this Lease, and all of such provisions, representations and warranties will survive expiration or termination of this Lease Agreement. The obligations warranties and representations of Lessee in this Section 18.2 are binding on Lessee's successors and Permitted Transferees.

**Section 18.3 Permits Required by Applicable Environmental Laws.** Lessee must obtain and maintain in effect at all times during the Term of this Lease Agreement all necessary permits, licenses, permissions, authorizations, and consents required by Applicable Environmental Laws for Lessee's construction, installation, maintenance, use and operation of the Lessee Facilities and Lessee's use and occupancy of, and operations at, the Leased Premises. Lessee will provide Authority's Department of Environmental Planning & Compliance with a copy of these permits, licenses, permissions and authorizations obtained by Lessee within five (5) Business Days of written request to Lessee from Authority.

## ARTICLE 19 MISCELLANEOUS

**Section 19.1 Parties Bound.** This Lease Agreement binds and inures to the benefit of the Parties and their respective legal representatives, heirs, distributees, successors and assigns where assignment is permitted by this Lease Agreement.

**Section 19.2 Applicable Law.** **THIS LEASE AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS LEASE AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.** Authority and Lessee agree that if any controversy or claim arising out of or related to this Lease Agreement cannot be resolved pursuant to and in accordance with the deadlines set forth in Section 17.7 and Section 17.8, then either Party may elect to resolve the controversy or claim through litigation filed and maintained in the federal or state courts located in Corpus Christi, Nueces County, Texas. Authority and Lessee each submits to the exclusive jurisdiction of said courts and waives the right to change venue.

**Section 19.3 Severability.** If any part of this Lease Agreement is for any reason found to be unenforceable, all other portions shall nevertheless remain enforceable to the fullest extent legally permitted.

**Section 19.4 Time of Essence.** Time is of the essence with respect to each date or time specified in this Lease Agreement by which an event is to occur.

**Section 19.5 Rights and Remedies Cumulative.** The rights and remedies provided by this Lease Agreement are cumulative, and the use of any one right or remedy by either Party shall not preclude or waive either Party's right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or



otherwise. All of the rights and remedies may be exercised and enforced concurrently or whenever occasion for the exercise arises.

Section 19.6 **Attorneys' Fees.** In the event Authority or Lessee breach or default upon any of the terms of this Lease Agreement and the Party not in default employs attorneys to protect or enforce its rights hereunder and prevails, the defaulting Party agrees to pay the reasonable attorneys' fees, legal expenses and costs incurred by the prevailing Party.

Section 19.7 **Contractual Relationship.** Nothing contained in this Lease Agreement shall create a contractual relationship with or a cause of action in favor of a third party against Authority or Lessee (except to the extent provided in Article 16).

Section 19.8 **Public Disclosure**

(a) Authority is a governmental authority subject to the requirements of the Texas Open Meetings Act and the Texas Public Information Act (Texas Government Code, Chapters 551 and 552), and as such Authority may be required to disclose to the public (upon request) this Lease Agreement and certain other information and documents relating to the consummation of the transactions contemplated hereby. In this regard, Lessee agrees that the disclosure of this Lease Agreement or any other information or materials related to the consummation of the transactions contemplated hereby to the public by Authority to the extent required by the Texas Open Meetings Act, Texas Public Information Act or any other Applicable Laws will not expose Authority (or any party acting by, through or under Authority) to any claim, liability or action by Lessee.

(b) Authority agrees to keep confidential the business terms of this Lease to the extent permitted by Applicable Laws. In the event that Authority is requested to disclose any information regarding Lessee or the transactions contemplated hereby which can be withheld under the Texas Public Information Act, Authority will provide the Lessee with prompt prior notice so that the Lessee may seek a protective order or other appropriate remedy.

Section 19.9 **Brokers.**

(a) Lessee hereby warrants and represents unto Authority that it has not incurred or authorized any brokerage commission, finder's fees or similar payments in connection with this Lease Agreement, and agrees to defend, indemnify and hold harmless Authority from and against any claim for brokerage commission, finder's fees or similar payment arising by virtue of authorization by, through or under Lessee in connection with this Lease Agreement.

(b) Authority hereby warrants and represents unto Lessee that it has not incurred or authorized any brokerage commission, finder's fees or similar payments in connection with this Lease Agreement, and agrees to defend, indemnify and hold harmless Lessee from and against any claim for brokerage commission, finder's fees or similar payment arising by virtue of authorization by, through or under Authority in connection with this Lease Agreement.

Section 19.10 **Authority.**

(a) Lessee warrants and represents unto the Authority that (i) it is a duly organized and existing legal entity, in good standing in the State of Texas, (ii) it has full right and authority to execute, deliver and perform this Lease Agreement, (iii) the person executing this Lease Agreement on behalf of Lessee is authorized to do so and (iv) upon request, it will deliver to the Authority reasonable evidence of its authority to execute this Lease Agreement. This Lease Agreement has been duly and validly executed and delivered by Lessee, does not violate any agreement to which Lessee is a party, and constitutes a legal, valid and binding obligation of Lessee enforceable against Lessee in accordance with its terms.

(b) Authority warrants and represents unto the Lessee that (i) it is a political subdivision of the State of Texas, (ii) it has full right and authority to execute, deliver and perform this Lease Agreement, (iii) the person executing this Lease Agreement on behalf of the Authority is authorized to do so and (iv) upon request, it will deliver to the Lessee reasonable evidence of its authority to execute this Lease Agreement. This Lease Agreement has been duly and validly executed and delivered by Authority, does not violate any agreement to which Authority is a party, and constitutes a legal, valid and binding obligation of Authority enforceable against Authority in accordance with its terms.

Section 19.11 **Recording.** Upon the request of either Party to this Lease, Authority and Lessee shall execute a Memorandum of Lease, in the form agreed upon by the Parties, and either Party may record the Memorandum of Lease in the appropriate real property records of the applicable Governmental Authority. Neither Party to this Lease may record this Lease without the express written consent of the other Party.

Section 19.12 **Interpretation.** Both Authority and Lessee and their respective legal counsel have reviewed and have participated in the preparation of this Lease Agreement. Accordingly, no presumption will apply in favor of either Authority or Lessee in the interpretation of this Lease Agreement or in the resolution of the ambiguity of any provision hereof.

Section 19.13 **Force Majeure.**

(a) In the event either Party hereto shall be delayed or hindered in or prevented from the performance required hereunder by reason of *force majeure*, such Party shall be excused for the period of time equivalent to the delay caused by such *force majeure*.

(b) Notwithstanding Section 19.13(a), any extension of time for *force majeure* shall be conditioned upon the Party seeking an extension of time delivering written notice of such *force majeure* to the other Party within fifteen (15) Business Days of the event causing the *force majeure*.

(c) Lessee may terminate this Agreement after the Initial Term upon thirty (30) days' prior written notice to the Authority if a *force majeure* (i) affecting the operation of the Lessee Facilities or the Dock and Berth Facilities or (ii) preventing the ability of the Harbor Island Terminal Project to throughput Crude Oil for export or import, has been in existence for at least three hundred sixty-five (365) consecutive days immediately preceding the service of such written notice and exists on the date such notice is delivered. Termination by Lessee pursuant to this Section 19.13(c) shall be (x) without liability of any kind to either Party, and the Parties shall be

discharged from any further obligations or liabilities under this Lease and (y) without prejudice to the rights, obligations or liabilities that have accrued up to the date of termination.

**Section 19.14 Entire Agreement.** This Lease Agreement, including any exhibits hereto, constitutes the Parties' final and mutual agreement with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements, understandings, representations or warranties, whether written or oral. Moreover, to the extent of any written or oral agreements, understandings, representations or warranties regarding the subject matter of this Lease Agreement that are not fully expressed in this Lease Agreement, each Party hereby disclaims any reliance whatsoever on any thereof and acknowledges and agrees that in making its decision to enter into this Lease Agreement and to consummate the transactions contemplated hereby, it has relied solely on its own investigations and the agreements, understandings, representations and warranties that are fully expressed in this Lease Agreement. No change, waiver or discharge hereunder is valid unless in a writing that is signed by the Party against whom it is sought to be enforced.

**Section 19.15 No Recourse.** Except to the extent specifically set forth in this Agreement, without limiting any protection against liability that may be available at law or in equity, there shall be no recourse against any (a) Affiliate of either Party, (b) past, present or future director, officer, employee, member, partner, investor, lender, shareholder (including, in the case of Lessee, LSPE or any of LSPE's affiliates) or other owner (whether direct or indirect), agent, attorney or other representative of a Party or its Affiliates, or (c) Leasehold Mortgagee, lender or debt or equity finance provider of Lessee, in each case, for any Claims of the other Party arising out of or in connection with this Agreement whether for breach, default or non-performance of any obligation under this Agreement or for any failure to make any payment(s) required to be made hereunder or thereunder, and recourse shall be limited to the Parties and the assets of the Parties that are subject to this Agreement.

**Section 19.16 Amendment.** This Agreement may not be amended or modified except by an instrument in writing signed by each Party. Notwithstanding the foregoing, the Parties hereby acknowledge and agree that after the Effective Date (a) a metes and bounds description of the Land will be attached to the Lease as Exhibit A-1 as soon as it is available, (b) Exhibit B will be updated after the design and layout of the Dock and Berth Facilities and the Lessee Facilities have been finally agreed, to show the general locations of the HI Docks, the Dock Berths, the Dock Berth Approach Areas and the Turning Basin Expansion, and (c) Exhibit J will be updated after the Parties have agreed on the allocation of liquidated damages, as set forth in Section 5.8. It is the intent of the Parties that the Dock Berths and Dock Berth Approach Areas will not be part of the Leased Premises. Consequently, if the final agreed upon layout of the Dock Berths and Dock Berth Approach Areas encroaches on the Leased Premises, the encroachment area will be excluded from the Leased Premises and Exhibit A will be updated to show the new legal description and survey of the Leased Premises.

**Section 19.17 RELEASE.** As of the Amendment Date, Lessee and the Authority hereby each acknowledge and confirm that: (i) it does not have any grounds, and hereby agrees not to challenge (or to allege or to pursue any matter, cause, or claim arising under or with respect to the Prior Lease), in any case based upon acts or omissions of either Party occurring prior to the Amendment Date, or facts otherwise known or unknown to it as of the

Amendment Date, the effectiveness, genuineness, validity, collectability, or enforceability of the Prior Lease, or any of the terms or conditions of the Prior Lease, or any Party's performance obligations under the Prior Lease; and (ii) it does not possess (and hereby forever and irrevocably waives, remises, releases, discharges, and holds harmless the other Party and its Affiliates, Commissioners, members, directors, officers, employees, attorneys, agents, and representatives and each of their respective heirs, executors, administrators, successors, and assigns (collectively, the "Released Parties")) from and against, and agrees not to allege or pursue, any action, cause of action, suit, debt, claim, counterclaim, cross-claim, demand, defense, offset, opposition, and/or other right of action whatsoever, known or unknown, whether in law, equity, or otherwise (which it, all those claiming by, through, or under it, or its successors or assigns, have or may have) against the Released Parties, or any of them, by reason of, any matter, cause, or thing whatsoever, with respect to events or omissions occurring or arising on or prior to the Amendment Date and relating to the Prior Lease, or any of the terms and conditions of the Prior Lease, or any Party's performance obligations under the Prior Lease or any transaction relating thereto, or the relationship between Lessee and the Authority. Except as otherwise provided herein, neither the Authority nor Lessee releases the other Party to this Lease, or any other person or entity, from any action, cause of action, suit, debt, claim, counterclaim, cross-claim, demand, defense, offset, opposition, and/or other right of action whatsoever, whether in law, equity, or otherwise arising from or under this Lease and based on acts and omissions occurring after the Amendment Date.

*[Signature Pages Follow This Page]*

**AUTHORITY'S SIGNATURE PAGE TO LEASE AGREEMENT**

(Port of Corpus Christi Authority to Lone Star Ports, LLC)

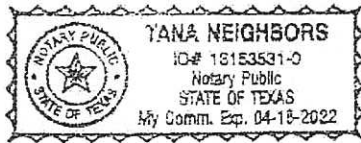
EXECUTED this 17th day of December, 2019, but to be effective for all purposes as of the Amendment Date.

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS

By: Sean C. Strawbridge  
Sean C. Strawbridge,  
Chief Executive Officer

STATE OF TEXAS       §  
                                  §  
                                  §  
COUNTY OF NUECES   §

This instrument was acknowledged before me on the 17th day of December, 2019, by SEAN C. STRAWBRIDGE, Chief Executive Officer of the Port of Corpus Christi Authority of Nueces County, Texas, on behalf of said Authority.



Tana Neighbors  
Notary Public, State of Texas

AUTHORITY'S SIGNATURE PAGE TO LEASE AGREEMENT

327370

Executed Lease 088

HIGHLY SENSITIVE  
PROTECTED MATERIALS  
PROVIDED PURSUANT TO  
PROTECTIVE ORDER ISSUED  
IN SOAH DOCKET NO. 582-20-  
3438 and TCEQ DOCKET NO.  
2020-0511-AIR

LSP0013076



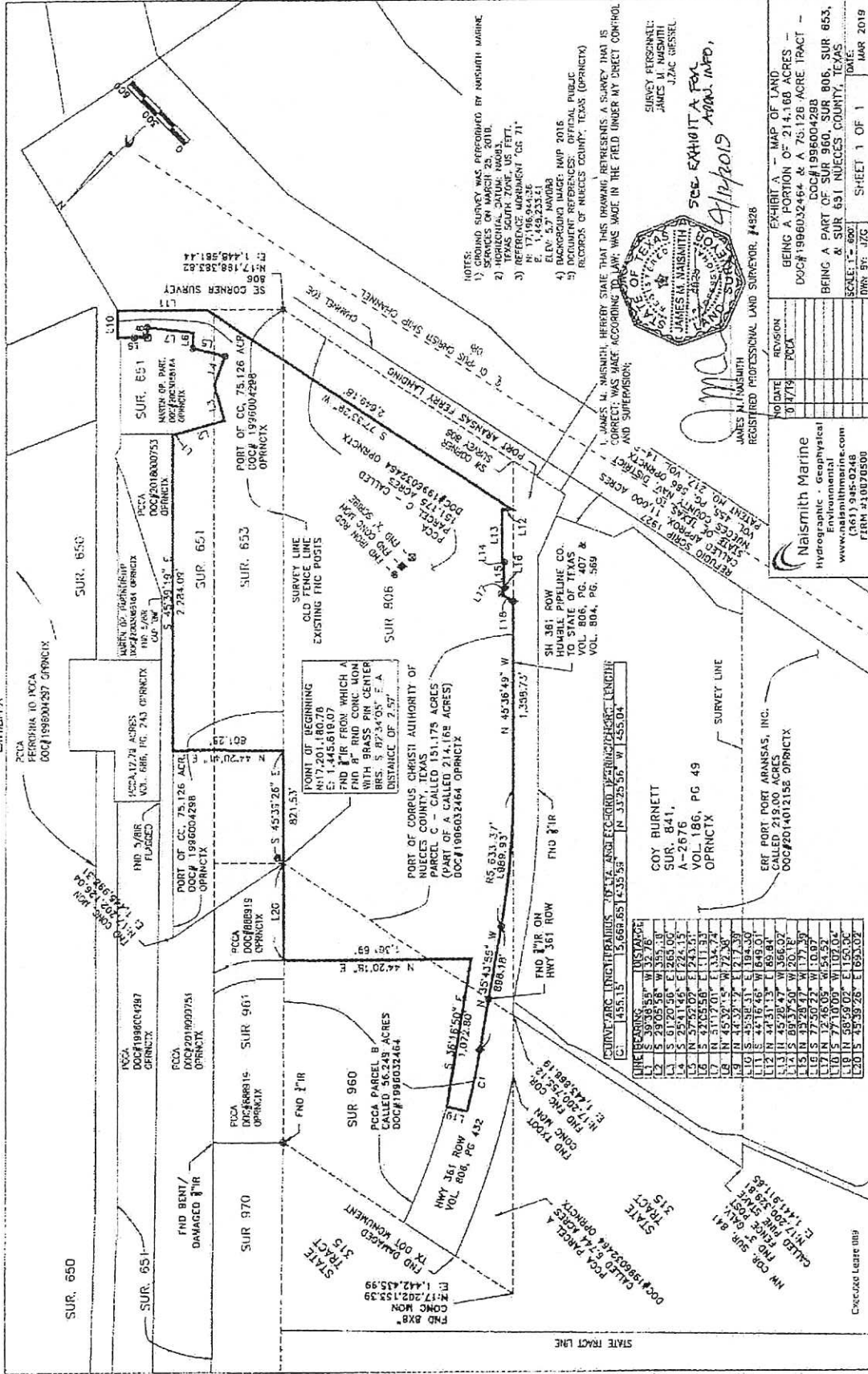
Exhibit A  
MAP OF LAND

*[Attached]*

A - 1

327370  
Executed Lease 088

EXHIBIT A



- NOTES:
- 1) GROUND SURVEY WAS PERFORMED BY NAISMITH MARINE SERVICES ON MARCH 25, 2018.
  - 2) HORIZONTAL DATUM: NAD83.
  - 3) REFERENCE WORKMAN: CGE 71.
  - 4) ELEV. 5.7 MANDRE.
  - 5) HORIZONTAL DATUM: NAD83.
  - 6) RECORDS OFFICE: OFFICIAL PUBLIC RECORDS OF NUUECS COUNTY, TEXAS (OPRNCTX).

JAMES M. NAISMITH, HERREY STATE THAT THIS DRAWING REPRESENTS A SURVEY THAT IS CORRECT, WAS MADE ACCORDING TO LAW, WAS MADE IN THE FIELD UNDER MY DIRECT CONTROL AND SUPERVISION;

SURVEY RESPONSIBLE:  
 JAMES M. NAISMITH  
 JZAC GRESSEL  
 4/19/2019  
 SEE EXHIBIT A FOR  
 FINAL MAP

JAMES M. NAISMITH  
 REGISTERED PROFESSIONAL LAND SURVEYOR, #4328

EXHIBIT A - MAP OF LAND  
 BEING A PORTION OF 214.168 ACRES -  
 DOC#1996002464 & A 75.126 ACRE TRACT -  
 DOC#1996004298  
 BEING A PART OF SUR. 960, SUR. 806, SUR. 653,  
 & SUR. 651 NUUECS COUNTY, TEXAS.  
 SCALE: 1" = 600'  
 DATE: MAR 2019  
 DWG. 51: JZG

Naismith Marine  
 Hydrographic - Geophysical  
 Environmental  
 www.naismithmarine.com  
 (261) 945-0248  
 FIRM #10076500

LINE NUMBER	BEARING	DISTANCE	LINE NUMBER	BEARING	DISTANCE
L1	N 45° 36' 49" W	1,309.73'	L11	S 45° 38' 51" E	184.40'
L2	N 45° 36' 49" W	1,309.73'	L12	N 45° 16' 48" W	849.01'
L3	N 45° 36' 49" W	1,309.73'	L13	N 45° 26' 47" W	366.02'
L4	S 75° 12' 26" E	724.15'	L14	S 75° 12' 26" E	724.15'
L5	S 75° 12' 26" E	724.15'	L15	S 75° 12' 26" E	724.15'
L6	S 75° 12' 26" E	724.15'	L16	S 75° 12' 26" E	724.15'
L7	S 75° 12' 26" E	724.15'	L17	N 45° 36' 49" W	1,309.73'
L8	S 75° 12' 26" E	724.15'	L18	S 75° 12' 26" E	724.15'
L9	S 75° 12' 26" E	724.15'	L19	S 75° 12' 26" E	724.15'
L10	S 75° 12' 26" E	724.15'	L20	S 75° 12' 26" E	724.15'

HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN SOAH DOCKET NO. 582-20-3438 and TCEQ DOCKET NO. 2020-0511-AIR

LSP0013079



Exhibit A-1  
LEGAL DESCRIPTION OF LAND

[Attached]

A-1 - 1

327370  
Executed Lease 09C

HIGHLY SENSITIVE  
PROTECTED MATERIALS  
PROVIDED PURSUANT TO  
PROTECTIVE ORDER ISSUED  
IN SOAH DOCKET NO. 582-20-  
3438 and TCEQ DOCKET NO.  
2020-0511-AIR

LSP0013080

EXHIBIT A – 1  
LEGAL DESCRIPTION OF LAND

STATE OF TEXAS  
COUNTY OF NUECES

200.0 ACRES

Being approximately 200.0 acres of submerged land situated in Nueces County, Texas, portions of which are submerged, being out of survey 960 conveyed to Humble Pipeline Company by the State of Texas in letter patent #313, recorded in volume 239, page 45, official public records of Nueces County Texas (OPRNCTX), survey 806 conveyed to Humble Oil & Refining Company by the State of Texas in letter patent #380, recorded in volume 175, page 364 OPRNCTX, survey 651 conveyed to the Aransas Pass Channel & Dock Company by the State of Texas by Refugio Scrip – 1729 patent #406, recorded in volume 94, page 529 OPRNCTX, and survey 653 conveyed to the Aransas Pass Channel & Dock Company by the State of Texas by Refugio Scrip – 1731 patent # 408 recorded in volume 94, page 532 OPRNCTX

being a portion of parcel C (called 151.175 acres) and parcel B (called 56.249 acres) which are part of a called 214.168 acre tract conveyed to Port of Corpus Christi by Koch pipeline Company and recorded in doc#1996032464 OPRNCTX, and also being a portion of a called 75.126 acre tract conveyed to the Port of Corpus Christi by Fin-Tex Pipe Line Company and recorded in doc#1996004298 OPRNCTX, the parent tract called 253.898 acres as shown on a boundary survey map of said property by Govind Development dated May 2013,

**beginning** at a 5/8" iron rod found (N:17,201,180.78, E: 1,445,819.07) for the west corner of said survey 653 and north corner of said survey 806 from which a found 8" round concrete monument with brass pin center bears S 82°34'05" E a distance of 2.57'.

thence S 45°39'26"E continuing along the common boundary of survey 653 and survey 806 a distance of 821.53' to a corner point;

thence N 44°20'41"E departing said common survey boundary a distance of 801.28' to a corner point on the south line of a 90.82 acre tract of land conveyed to the Port of Corpus Christi by Road District No. 4 Nueces County, Texas and recorded in doc#2018000753 OPRNCTX;

thence S 45°39'19"E along the common boundary of said survey 653 and 90.82 acre tract at 1,130.39' passing a found concrete monument in all a distance of 2,284.09' to a corner point of this tract (called cotton spindle) on a west line of a called 11.46 acre tract conveyed to Martin Midstream Partners by Tesoro Marine Services, LLC.;

thence S 39°36'55"W continuing along boundary of said 11.46 acres a distance of 32.78' to a found 3" galvanized fence post and for the following calls;

thence S 29°05'56"W a distance of 355.16' to a corner point (called 5/8" iron rod);  
thence S 61°20'56"E a distance of 265.00' to a corner point (called 5/8" iron rod);  
thence S 25°41'46"E a distance of 224.15' to a found 5/8" iron rod;  
thence N 57°52'02"E a distance of 243.51' to a found 5/8" iron rod;  
thence S 42°05'58"E a distance of 111.93' to a corner point (called 5/8" iron rod);  
thence N 51°12'01"E a distance of 334.74' to a found 5/8" iron rod;  
thence N 45°32'15"W a distance of 72.38' to a found etched 'X' in a cement slab;  
thence N 44°32'12"E a distance of 217.39' to a found 5/8" iron rod;

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EXHIBIT A -1  
LEGAL DESCRIPTION OF LAND

STATE OF TEXAS  
COUNTY OF NUECES

200.0 ACRES

thence S 45°58'31"E departing boundary of said 11.46 acres a distance of 194.30' to a point on the boundary of a 10,301.37 acre tract of submerged land conveyed by the State of Texas to Nueces County Navigation District No. 1 by Patent No. 217, Volume 14-B, dated January 24, 1950, and recorded in Volume 455, Pages 586-588 OPRNCTX,

thence S 44°16'46"W continuing along the boundary of said 10,301.37 acre tract a distance of 649.01';

thence S 77°33'29"W departing said common boundary a distance of 2,649.18' to a point on the north right of way of state highway 361 and Port Aransas ferry landing (document reference needed);

thence N 44°31'13"E continuing along said north right of way line a distance of 69.64' to a corner point and for the following calls;

thence N 45°28'47"W a distance of 366.02' to a corner point (called 5/8" iron rod);

thence S 89°37'50"W a distance of 20.16' to a found 5/8" iron rod;

thence N 45°28'47"W a distance of 177.39' to a found concrete TXDOT monument;

thence S 77°50'22"W a distance of 10.97' to a found concrete TXDOT monument;

thence N 12°48'09"W a distance of 54.52' to a found 5/8" iron rod;

thence S 77°10'09"W a distance of 102.04' to a found concrete TXDOT monument;

thence N 45°36'49"W a distance of 1,358.73' to a point of curvature (called 5/8" iron rod);

thence with a curve turning to the right with a radius of 5,633.37', with a chord bearing of N 40°34'4"W, and an arc length of 989.93' to a found 5/8" iron rod;

thence N 35°43'55"W a distance of 898.18' to a concrete TXDOT monument found at a point of curvature;

thence with a curve turning to the right with a radius of 5,669.65', with a chord bearing of N 33°25'56"W, with an arc length of 455.15' to a found 5/8" iron rod;

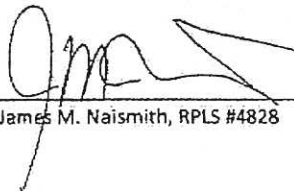
thence N 58°59'02"E a distance of 150.00' to a found 5/8" iron rod;

thence S 36°16'50"E a distance of 1,072.80' to a corner point;

thence N 44°20'18"E a distance of 1,361.69' to a 5/8" iron rod found on the southwest line of survey 961 and northeast line of survey 960;

thence S 45°39'26"E continuing along common boundary of survey 961 and survey 960 a distance of 693.02' to the point of beginning containing 8,711,150 sq ft or 200.0 acres

Bearings and distances are grid, Texas Coordinate System NAD 1983 (2011), South Zone.  
Reference plat of survey dated March 2019 for additional information.

  
James M. Naismith, RPLS #4828

4/12/2019



Executed Lease 092

Exhibit B  
MAP OF LAND, DOCK AND BERTH FACILITIES

*[To be provided pursuant to Section 19.16 of the Lease Agreement.]*

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327370  
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Exhibit C  
**DISPOSITION UPSIDE**

Disposition Upside shall be defined and established in accordance with the following principles:

- Following any Qualified Disposition the Qualified Disposition Transferor will produce a statement outlining the calculation of the Disposition Upside, which shall be reviewed by Authority.
- “*Project*” means the Harbor Island Terminal Project together with any other infrastructure, facilities and equipment connected to, associated with or necessary for the Harbor Island Terminal Project, including all of Lessee’s other facilities located at and downstream of that certain terminal known as “Midway Junction” and relating to the throughput of Crude Oil at the Harbor Island Crude Terminal, regardless of whether such other facilities of Lessee are located on the Leased Premises.
- “*Disposition Upside*” shall consist of Equity Gain multiplied by Harbor Island Share.
- “*Equity Gain*” means (x) all revenues, receipts and income of any kind in cash, equity, or other consideration as and when received, and derived, directly or indirectly, by, from, or in connection with a Qualified Disposition by a Qualified Disposition Transferor, less (y) the aggregate amount of (i) all out-of-pocket transaction costs incurred by such Qualified Disposition Transferor in connection with such Qualified Disposition, including fees and expenses of third-party advisors, consultants and closing costs and (ii) any and all taxes or charges of any kind incurred in connection with the Qualified Disposition.
- “*Harbor Island Share*” means the quotient of (a) the aggregate amount of capital invested by Lessee for infrastructure and facilities located on the Leased Premises in connection with the Harbor Island Terminal Project, divided by (b) the aggregate amount of capital invested by Lessee, LSPE, any other investor in the Project, or any of their respective Affiliates.
- “*IRR*” shall mean the annual after-tax rate, compounded quarterly, at which the net present value on the date of calculation, of all distributions to, and proceeds received by, a Qualified Disposition Transferor from all sources relating to the Project (discounted to the Effective Date at such annual rate from the dates such distributions are made to the Qualified Disposition Transferor and prior to the application of any tax payments which may be assessed on such distributions), is equal to the net present value, as of the date of calculation of the capital contributions made, or amounts loaned by such Qualified Disposition Transferor to Lessee; *provided* that the foregoing shall be calculated using the XIRR function of Microsoft Excel (or its functional equivalent).
- Once Disposition Upside has been established, the following sharing mechanism shall apply with respect to the payment of such Disposition Upside:
  - First, Disposition Upside shall be paid to the Qualified Disposition Transferor until such Qualified Disposition Transferor achieves [REDACTED]
  - Second, [REDACTED] the remaining Disposition Upside shall be paid to the Authority.
  - Third, [REDACTED] of the Disposition Upside shall be paid to the Qualified Disposition Transferor
- Notwithstanding the foregoing, Disposition Upside shall not be payable to the Authority in connection with any of the following types of transactions, regardless whether such transactions would otherwise constitute a Qualified Disposition: (A) Qualified

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Dispositions of membership interests in the Lessee among investment funds or from investment funds to any Affiliate; (B) Qualified Dispositions of membership interests by Carlyle or any of its Affiliates (i) to a pension fund or employee equity compensation plan sponsored, maintained and controlled by LSPE, any other investor in Lessee, or any of their respective Affiliates or (ii) via any stock option or other employee equity compensation plan; (C) Qualified Dispositions pursuant to the terms of any Leasehold Mortgage; (D) Qualified Dispositions of equity interests in LSPE's beneficial owners in connection with a reorganization of the beneficial owners of LSPE, any of its beneficial owners, or any of their respective Affiliates; or (E) Qualified Dispositions giving effect to the final proposed transaction structure.

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Exhibit D  
UNRECORDED EASEMENTS

[None]

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D - 1

Exhibit D-1  
MAP OF UNRECORDED EASEMENTS

*[Not applicable]*

D-1 - 1

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Exhibit E  
[INTENTIONALLY OMITTED BY THE PARTIES]

E - 1

327370  
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Exhibit F  
CONCEPTUAL LAYOUT OF LESSEE'S SUPPLY PIPELINE ON THE AUTHORITY'S  
PROPERTY

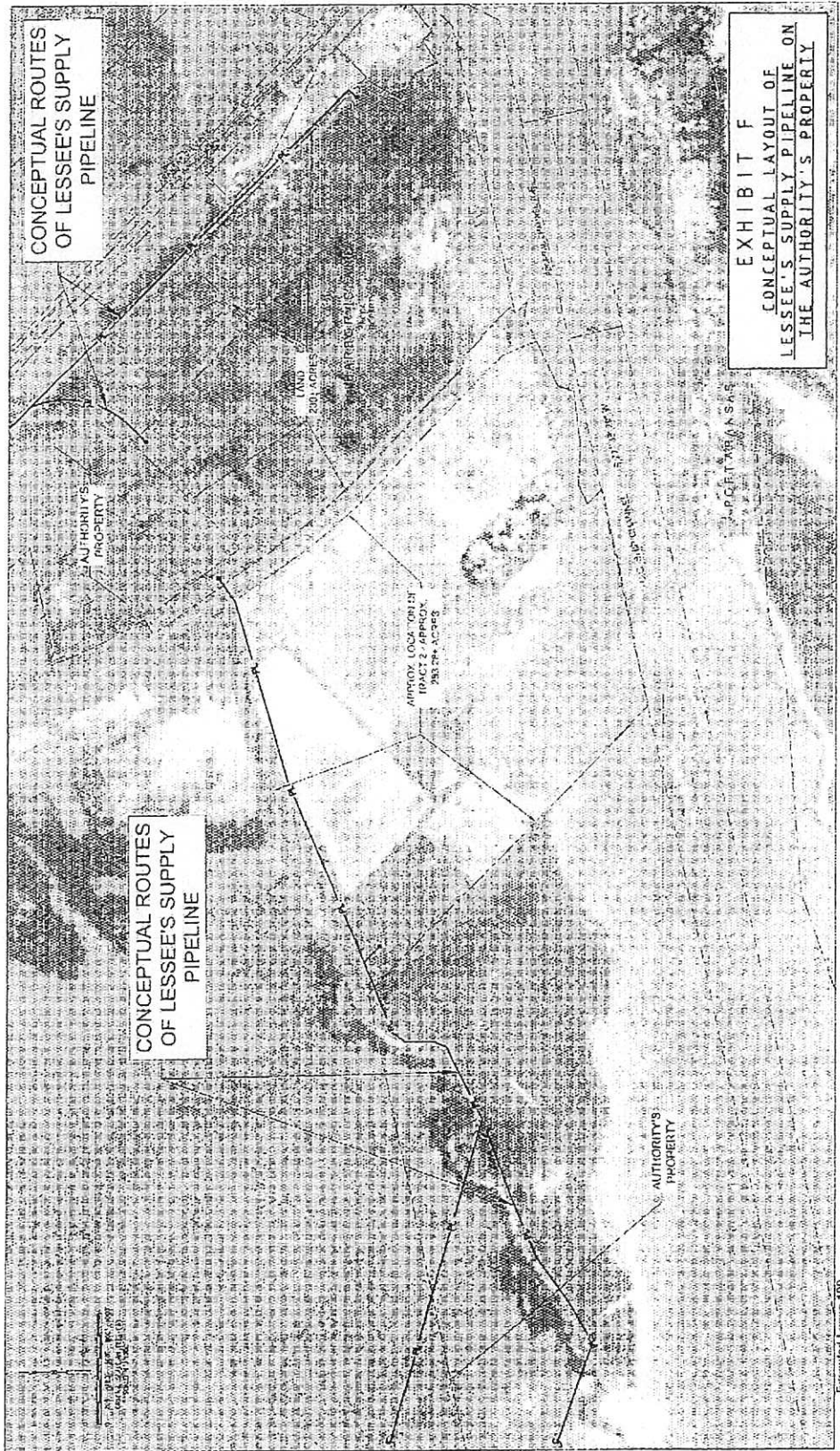
*[Attached]*

F - 1

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HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN SOAH DOCKET NO. 582-20-3438 and TCEQ DOCKET NO. 2020-0511-AIR

Executed Line# 100

Exhibit G  
**LESSEE'S INSURANCE REQUIREMENTS**

Without limiting the indemnity obligations or liabilities of Lessee or its insurers provided in the Lease Agreement, before commencing any material activities on the Leased Premises under the Lease Agreement, Lessee shall procure and maintain the policies of insurance identified below (such policies sometimes collectively referred to in this Exhibit G as the "Policies"), at its sole expense during the Term of the Lease, during any time period following expiration or termination of the Lease in which Lessee performs additional work on the Leased Premises, and in at least the minimum amounts specified below:

1. *Property Insurance.* Special form ("all risk") property insurance at Full Replacement Cost or with respect to named windstorm, the MPL (each hereinafter defined), covering HI Dock One, HI Dock Two, the Handling Equipment and all improvements installed or constructed thereon by the Authority after construction completion, and the Lessee Facilities (the "Property Insurance") both during the construction phase and after construction completion. Coverage shall include, without limitation, the following: primary and excess flood, windstorm, named storm, earthquake, all other perils, and debris removal, subject to customary sub-limits. The term "Full Replacement Cost" shall mean the actual replacement cost of HI Dock One, HI Dock Two, the Handling Equipment and all improvements, as shall be provided to Lessee by the Authority from time to time, and the Lessee Facilities, including the cost of demolition and debris removal and without deduction for depreciation. "MPL" for named windstorm, shall mean the largest loss that could occur in one common disaster occurring to HI Dock One, HI Dock Two, the Handling Equipment and the Lessee Facilities. The Authority shall be named as an additional insured on the Property Insurance. Authority shall be named as loss payee on the Property Insurance with respect to proceeds attributable to damage to HI Dock One, HI Dock Two and the Handling Equipment. Lessee shall not be a loss payee with respect to proceeds attributable to damage to HI Dock One, HI Dock Two, or the Handling Equipment, but Lessee shall be the loss payee on the Property Insurance with respect to proceeds attributable to damage to the Lessee Facilities. The proceeds of the Property Insurance shall be used for the restoration of the property so insured as provided in Section 10.1 and Section 10.2 of the Lease. Lessee shall provide to the Authority a copy of the Property Insurance policy document and any specific endorsements to the Property Insurance policy which reflect the above coverage requirements.

2. *Workers' Compensation and Employer's Liability Insurance.* For all its employees engaged in performing work on the Leased Premises, workers' compensation insurance for at least the applicable statutory limit required by the Texas Workers' Compensation Code, and Employer's Liability insurance with at least \$1,000,000 limit for each accident, and at least a \$1,000,000 limit for each employee for bodily injury by disease. Under the Worker's Compensation policy, Lessee shall provide a Waiver of Subrogation in favor of the Authority Parties on the Certificate of Insurance. In the event that the work of Lessee's employees on the Leased Premises falls within the purview of the United States Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or the Federal Employer's Liability Act, the Lessee shall extend its insurance coverage to provide insurance against the liabilities imposed under the applicable Act or Acts.

3. *Commercial General Liability Insurance.* Commercial General Liability (CGL) insurance coverage, which shall cover or be endorsed to cover bodily injury, personal injury, broad

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form property damage, operations hazard, contractual liability with endorsement which deletes the exclusion for work within 50 feet of a railroad, products and completed operations liability, marine liability, and time element pollution coverage, with a per occurrence limit of \$1,000,000 and aggregate limits of at least \$2,000,000 and endorsed to name the Authority Parties as additional insureds on a primary, non-contributory basis. Lessee shall provide a Waiver of Subrogation in favor of the Authority Parties on the Certificate of Insurance.

4. *Business Automobile Liability Insurance.* When any motor vehicles (owned, non-owned or hired by Lessee) are used in connection with work being performed on the Leased Premises, the Lessee shall provide or cause to be provided Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage and endorsed to name the Authority Parties as additional insureds on a primary, non-contributory basis. Lessee shall provide a Waiver of Subrogation in favor of the Authority Parties on the Certificate of Insurance.

5. *Umbrella Insurance.* Excess or Umbrella liability insurance coverage limits of not less than \$5,000,000 over and above the underlying primary coverage limits stated above with respect to bodily injury or death to any number of persons in any one accident or occurrence. The policy shall be endorsed to name the Authority Parties as additional insureds, non-contributory basis.

6. *Pollution Insurance.* Pollution Liability insurance covering bodily injury, property damage, including cleanup, and other losses caused by pollution conditions occurring during the Term of the Lease and arising directly from Lessee's operations at the Leased Premises, including pollution of any body of water, with limits of not less than \$10,000,000 per occurrence. If available at commercially reasonable rates, Pollution Coverage shall include environmental cleanup, remediation and disposal and may be included within the required General Liability and/or Umbrella Insurance.

7. *Protection & Indemnity (P&I) Insurance or Marine-related Insurance to include Wharfinger's Liability, Charterer's Legal Liability, and Stevedoring Liability* with limits of \$1,000,000 should any of the work require marine operations, the Lessee shall provide P&I with respect to bodily injury and/or property damage arising from marine operations. The Authority shall be designated as an additional insured either by a blanket additional insured or a specific endorsement.

Lessee shall deliver to Authority, prior to the commencement of any material activity by Lessee on the Leased Premises, as proof of the insurance required of Lessee, a certificate or certificates of insurance (and any endorsements required to provide evidence of the insurance coverages required under the Lease) describing the Policies, which certificates must be industry standard certificates including ACORD certificates and reasonably acceptable to the Authority in their form and content.

In the event that a claim is filed against the Authority and governed by the terms of the Lease, Lessee shall, upon receipt of a written request, deliver to the Authority, true and correct copies of the Policies required hereunder which may be responsive to the claim.

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Executed Lease 102

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From time to time during the Term to the extent that the Authority provides written notice to Lessee evidencing Authority's reasonable belief (in reasonable detail) that the amounts of coverage required by this Exhibit G have become insufficient to adequately protect the interests of the Authority, then upon Lessee's receipt of such notice the Parties will commence a dialog in good faith to discuss a possible adjustment to the coverage amounts herein provided, to adequately restore the protection afforded to the interests of the Authority.

Lessee shall deliver to Authority certificates of renewal prior to the expiration date of each of the Policies. The company writing each of the Policies must possess a Financial Strength Rating of no less than S&P "A-" or equivalent or must possess a current rating with A.M. Best Company of at least "A-, VII".

Notwithstanding the foregoing, Lessee may elect, with Authority's review and consent, to comply with the insurance obligations using self-insurance programs maintained by it or its corporate parent. If Lessee exercises the option to fully self-insure, then (i) Lessee shall provide written notice of its intent to self-insure accompanied with details of its self-insurance program; (ii) such self-insurance program must be permitted by Applicable Law; (iii) the self-insuring company must maintain a net worth (as shown by its most recent financial statements audited in accordance with generally accepted accounting principles) of not less than One Hundred Million Dollars (\$100,000,000); and (iv) the insuring company must maintain an "Investment Grade" financial rating by Moody's or Standard and Poor's or an equivalent rating service; and as to any of the insurance requirements which Lessee elects to self-insure, Lessee will self-insure Authority in the same manner as an additional insured using self-insurance programs maintained by Lessee or Lessee's corporate parent. If Lessee elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding \$50,000, Authority and Lessee shall maintain all rights and obligations between themselves as if Lessee maintained the insurance with a commercial insurer including any additional insured status, primary liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. Lessee or its corporate parent, whichever maintains the self-insurance program, shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including reasonable attorneys' fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Lessee had maintained the insurance pursuant to this Exhibit G. Authority shall not be responsible for payment of any deductible or self-insured retention or uninsured amount.

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Executed Lease 103

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LSP0013093

Exhibit H  
**INSURANCE REQUIREMENTS OF LESSEE'S CONTRACTORS**

Without limiting the indemnity obligations or liabilities of Lessee's Contractors or its insurers provided in the Lease Agreement, before commencing any material activities on the Leased Premises under the Lease Agreement, Lessee shall require that its Contractors procure and maintain the policies of insurance identified below (such policies sometimes collectively referred to in this Exhibit H as the "**Policies**"), at their sole expense during their work performed on Leased Premises, and during any time period following expiration or termination of the Lease in which Lessee's Contractors perform additional work on the Leased Premises, and in at least the minimum amounts specified below. Lessee reserves the right, but not the obligation, to procure a Controlled Insurance Program where the Lessee and all Lessee's Contractor's procure the required insurance from a consolidated program:

1. *Property Insurance.* Special form ("all risk") property insurance at Full Replacement Cost or MPL (each hereinafter defined), of Contractor's real and personal property. Coverage shall include, without limitation, the following: primary and excess flood, windstorm, named storm, earthquake, and debris removal, subject to customary sub-limits. The term "**Full Replacement Cost**" shall mean the actual replacement cost of Contractor's real and personal property, including the cost of demolition and debris removal and without deduction for depreciation. "**MPL**" shall mean the largest loss that could occur in one common disaster occurring to Contractor's property. The Authority shall be named as an additional insured on the Property Insurance. The proceeds of the Property Insurance shall be used for the restoration of the property so insured as provided in Section 10.1, Section 10.2 and Section 10.3.

2. *Workers' Compensation and Employer's Liability Insurance.* For all its employees engaged in performing work on the Leased Premises, workers' compensation insurance for at least the applicable statutory limit required by the Texas Workers' Compensation Code, and Employer's Liability insurance with at least \$1,000,000 limit for each accident, and at least a \$1,000,000 limit for each employee for bodily injury by disease. Under the Worker's Compensation policy, Contractor shall provide a Waiver of Subrogation in favor of the Authority Parties and Lessee on the Certificate of Insurance. In the event that the work of Contractor's employees on the Leased Premises falls within the purview of the United States Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or the Federal Employer's Liability Act, the Contractor shall extend its insurance coverage to provide insurance against the liabilities imposed under the applicable Act or Acts.

3. *Commercial General Liability Insurance.* Commercial General Liability (CGL) insurance coverage, which shall cover or be endorsed to cover bodily injury, personal injury, broad form property damage, operations hazard, contractual liability with endorsement which deletes the exclusion for work within 50 feet of a railroad, products and completed operations liability, marine liability (or appropriate marine-related insurance evidenced), and time element pollution coverage, with a per occurrence limit of \$1,000,000 and aggregate limits of at least \$2,000,000 and endorsed to name the Authority Parties and Lessee as additional insureds on a primary, non-contributory basis. Contractor shall provide a Waiver of Subrogation in favor of the Authority Parties on the Certificate of Insurance.

H - 1

327370  
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Exhibit J  
CONSTRUCTION CONTRACT LIQUIDATED DAMAGES

*[To be provided pursuant to Section 19.16 of the Lease Agreement.]*

J - 1

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Exhibit K  
ENVIRONMENTAL HISTORY

*[Environmental History is on the thumb drive in the sleeve following this page.]*

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**APPENDIX ONE  
GENERAL DESIGN CRITERIA – HI DOCKS**

General Design Criteria for the components for each HI Dock will include, but not necessarily be limited to:

(b) Marine structures will be designed to accommodate the future construction of a berth/slip having a dredged depth of a minimum -81 feet MLLW (-75 feet MLLW plus 4 feet of advanced maintenance and 2 feet of allowable overdepth);

(c) Primary dock platform will be designed to efficiently accommodate Lessee's operational needs with breasting line offset from the future projected toe of the Ship Channel;

(d) Dock will have space for loading arms, piping, and equipment and ship gangway landing area, and may include dock house. Lessee's routine dock operational and maintenance functions will be accommodated in design of dock;

(e) Dock approach or ramp capable of supporting a 20-ton mobile crane and H20 truck loading with space for petroleum based liquid bulk cargo, vapor and utility piping, conduits, and dock access;

(f) Breasting structures and fenders designed for various ocean-going vessels up to and including a VLCC;

(g) Catwalks from dock platform to the breasting structures;

(h) Ship mooring structures to be near-shore and access ladders, as necessary, and shall have design capacity for a minimum of 400-kip line loads;

(i) Security fencing around lease premises and access control gate conforming to requirements of 33 CFR 105. Lessee to provide Security Plan for site access for review and approval by PCCA port security;

(j) Limestone base parking area (approximate 100-foot x 150-foot area);

(k) Area lighting to meet USCG requirements and single-phase electrical service;

(l) Prefabricated dock house/enclosed covered shelter (minimum approximate 10-foot x 10 foot) to include video surveillance facilities, radio equipment and PIC facilities; and

(m) Equipment and facilities necessary to comply with MARPOL requirements.

Appendix One – 1

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**APPENDIX TWO  
GENERAL DESIGN CRITERIA – PRODUCT HANDLING EQUIPMENT**

General Design Criteria for Crude Oil Handling Equipment components will be in coordination to be generally designed to include, but not necessarily be limited to:

- (a) Equipment capable of accommodating the delivery of to two docks each simultaneous loading at a rate of 80,000 barrels of crude per hour;
- (b) Five loading arms per dock (3 crude and 2 vapor) with an additional loading arm in spare inventory (at least 11 total);
- (c) Dock Safety Unit Skid(s) (DSU), vapor blower skid(s), and compressed air units;
- (d) Accommodation of new power supply, step down transformers, electrical panel, and 480/240/120V power supply to equipment, as required;
- (e) Instruments and Programmable Logic Controller (PLC) controls with communication (SCADA or fiber optics) between the VCU and the DSU to terminal on leased premises;
- (f) Electrical equipment building;
- (g) Safety Instrumented/Emergency Shutdown Systems and control level evaluation;
- (h) Marine loading arms and hydraulic power unit to provide for loading and unloading inland barges to ocean going vessels from Aframax to VLCC;
- (i) Process and utility piping from onshore tie-in points and manifold area to the dock;
- (j) The manifold area will include pig launching / receiving capability, natural gas supply to DSU, control valves, steel pipelines and vapor piping;
- (k) Liquid Knock Out Vessel;
- (l) Lighting for on shore area and dock structure, per applicable NES foot candle requirements;
- (m) Electrical grounding system for ships and barges;
- (n) Firewater system including onshore fire monitors and ship to shore connections; and
- (o) Crude purging and storage facilities (from loading arms and system).

Appendix Two – 1

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LSP0013098

**APPENDIX THREE  
GENERAL DESIGN CRITERIA – DOCK BERTHS**

Design Criteria for components for each Dock Berth components will include, but not necessarily be limited to:

- (a) Each Dock Berth to be 1300 to 1400 feet long to accommodate a VLCC.
- (b) Each Dock Berth is expected to initially have a water depth of minus 54-feet MLLW, but each will be designed to be deepened to at least minus 80-feet MLLW without material structural improvements or construction undertakings beyond incremental dredging.
- (c) The dredge material disposal sites are the responsibility of the Authority and may include the Leased Premises so long as such dredged materials are not classified as hazardous wastes under the federal Resource Conservation and Recovery Act or equivalent State of Texas law.

Appendix Three – 1

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**APPENDIX FOUR  
GENERAL DESIGN CRITERIA – LESSEE’S SUPPORTING FACILITIES**

General Design Criteria for Lessee’s Supporting Facilities will include, but not necessarily be limited to:

- (a) Onsite portable restrooms;
- (b) Cameras to monitor terminal activities;
- (c) Tank containment to meet any applicable Spill Prevention Control and Countermeasure requirements (40 Code of Federal Regulations Section 112);
- (d) Office/warehouse/control room building;
- (e) Parking area and plant access roadways;
- (f) Security fencing that meets any applicable Coast Guard requirements;
- (g) Product loading pumps; and
- (h) MCC for electrical.

Appendix Four – 1

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**APPENDIX FIVE  
GENERAL DESIGN CRITERIA – HARBOR ISLAND CRUDE TERMINAL**

General Design Criteria for Harbor Island Crude Terminal will include, but not necessarily be limited to:

- (a) Crude terminal to have the necessary equipment and pipeline to safely receive and handle the crude from pipelines and dock facilities to the terminal;
- (b) Terminal assets to include crude supply pipelines, scraper traps, pressure control valves, meter skids, product sampling equipment, two 80,000 barrel utility tanks, outbound pumping capability, vapor lines, VCU skids and a natural gas supply line with scraper trap;
- (c) On-site electric power generation and fuel cell power storage equipment;
- (d) Building will include a front gate office/warehouse and separate control rooms; and
- (e) Crude terminal will be designed to receive product from both pipeline and dock.

Appendix Five – 1

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4. *Business Automobile Liability Insurance.* When any motor vehicles (owned, non-owned or hired by Lessee) are used in connection with work being performed on the Leased Premises, the Contractor shall provide or cause to be provided Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage and endorsed to name the Authority Parties and Lessee as additional insureds on a primary, non-contributory basis. Contractor shall provide a Waiver of Subrogation in favor of the Authority Parties on the Certificate of Insurance.

5. *Umbrella Insurance.* Excess or Umbrella liability insurance coverage limits of not less than \$5,000,000 over and above the underlying primary coverage limits stated above with respect to bodily injury or death to any number of persons in any one accident or occurrence. The policy shall be endorsed to name the Authority Parties and Lessee as additional insureds, non-contributory basis.

6. *Pollution Insurance.* Pollution Liability insurance covering bodily injury, property damage, including cleanup, and other losses caused by pollution conditions occurring during the Term of the Lease and arising directly from Lessee's operations at the Leased Premises, including pollution of any body of water, with limits of not less than \$1,000,000 per occurrence. If available at commercially reasonable rates, Pollution Coverage shall include environmental cleanup, remediation and disposal and may be included within the required General Liability and/or Umbrella Insurance.

7. *Protection & Indemnity (P&I) Insurance.* P&I with limits of \$1,000,000 should any of the work require marine operations, the Lessee shall provide P&I with respect to bodily injury and/or property damage arising from marine operations. The Authority and Lessee shall be designated as an additional insured either by a blanket additional insured or a specific endorsement.

Lessee shall deliver to Authority, prior to the commencement of any material activity by Lessee on the Leased Premises, as proof of the insurance required of Lessee, a certificate or certificates of insurance (and any endorsements required to provide evidence of the insurance coverages required under the Lease) describing the Policies, which certificates must be industry standard certificates including ACORD certificates and reasonably acceptable to the Authority in their form and content.

In the event that a claim is filed against the Authority and governed by the terms of the Lease, Lessee shall, upon receipt of a written request, deliver to the Authority, true and correct copies of the Policies required hereunder which may be responsive to the claim.

From time to time during the Term to the extent that the Authority provides written notice to Lessee evidencing Authority's reasonable belief (in reasonable detail) that the amounts of coverage required by this Exhibit H have become insufficient to adequately protect the interests of the Authority, then upon Lessee's receipt of such notice the Parties will commence a dialog in good faith to discuss a possible adjustment to the coverage amounts herein provided, to adequately restore the protection afforded to the interests of the Authority.

Lessee shall deliver to Authority certificates of renewal prior to the expiration date of each of the Policies. The company writing each of the Policies must possess a Financial Strength Rating

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of no less than S&P "A-" or equivalent or must possess a current rating with A.M. Best Company of at least "A-, VII".

Notwithstanding the foregoing, Contractor may elect, with Authority's review and consent, to comply with the insurance obligations using self-insurance programs maintained by it or its corporate parent. If Contractor exercises the option to fully self-insure, then (i) Contractor shall provide written notice of its intent to self-insure accompanied with details of its self-insurance program; (ii) such self-insurance program must be permitted by applicable law; (iii) the self-insuring company must maintain a net worth (as shown by its most recent financial statements audited in accordance with generally accepted accounting principles) of not less than One Hundred Million Dollars (\$100,000,000); and (iv) the insuring company must maintain an "Investment Grade" financial rating by Moody's or Standard and Poor's or an equivalent rating service; and as to any of the insurance requirements which Lessee elects to self-insure, Contractor will self-insure Authority in the same manner as an additional insured using self-insurance programs maintained by Contractor or Contractor's corporate parent. If Contractor elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding \$50,000, Authority and Contractor shall maintain all rights and obligations between themselves as if Contractor maintained the insurance with a commercial insurer including any additional insured status, primary liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. Contractor or its corporate parent, whichever maintains the self-insurance program, shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including reasonable attorneys' fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Contractor had maintained the insurance pursuant to this Exhibit H. Authority shall not be responsible for payment of any deductible or self-insured retention or uninsured amount.

H - 3

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Exhibit I  
[INTENTIONALLY OMITTED BY THE PARTIES]

1 - 1

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LSP0013104



**BUTCH BOYD**  
LAW FIRM

March 31, 2020

Via Email: [jwelder@welderleshin.com](mailto:jwelder@welderleshin.com)

Mr. Jimmy Welder  
Welder Leshin  
One Shoreline Plaza  
800 North Shoreline Blvd, Suite 300  
North Tower  
Corpus Christi, TX 78401

Via Email: [sstrawbridge@pocca.com](mailto:sstrawbridge@pocca.com)

Sean C. Strawbridge  
Chief Executive Officer  
Port of Corpus Christi  
222 Power Street  
Corpus Christi, TX 78403

**Re: Extension of Amended and Restated Lease Agreement between the Port of Corpus Christi Authority and Lone Star Ports, LLC**

Dear Gentlemen:

The purpose of this letter is to request a formal extension of the [REDACTED] deadline and the [REDACTED] deadline under Section 3.9 (a) of the December 10, 2019 Amended and Restated Lease Agreement between the Port of Corpus Christi Authority and Lone Star Ports, LLC ("Lease"). It is requested that the extension periods be extended for [REDACTED]. Thus, it is requested that the [REDACTED] deadline be extended to [REDACTED] and the [REDACTED] deadline be extended to [REDACTED].

Additionally, Lone Star Ports formally requests that the [REDACTED] deadline contained in the definition of "Commercialization Period" also be extended for ninety (90) days, to [REDACTED]. This request is based on the following issues and factors:

1. The United States Government has placed certain restrictions on the country related to the COVID-19 pandemic;
2. State and local governments have placed restrictions on many geographic areas around the country and specifically in most areas in the state of Texas;

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3. The COVID-19 pandemic has required that most workers are sheltered-in-place and that requirement has had a substantial impact causing delays in most work schedules and work results;
4. The Port Authority has yet to receive all bids for the work it has committed to per the Lease and this has impacted the Port Authority's schedule for work and ability to provide detailed budget and scheduling information to Lone Star Ports; and,
5. Because of current market conditions, potential partners in the Harbor Island project are reviewing the feasibility of investing in capital intensive energy-related projects, thus a deferral of both the [REDACTED] deadline and the [REDACTED] deadline would be appropriate.

If you agree to the foregoing extensions, we agree that the first sentence of Section 5.8 is amended to read as follows: The Dock Delivery Date must occur on or before the [REDACTED] after (i) the [REDACTED] of the Effective Date, or (ii) the [REDACTED] of the day all [REDACTED] [REDACTED] [REDACTED] whichever is later ("*Dock Delivery Deadline*"); *provided*, that the Dock Delivery Deadline shall be extended by the number of days equal to the duration of any event of *force majeure* delaying or hindering the Authority's design, permitting, construction or installation of any Dock and Berth Facilities, and *provided, however*, that the Authority shall be entitled to an automatic thirty (30) day extension of such Dock Delivery Date if Authority requests this extension in writing before the Dock Delivery Deadline.

Gentlemen, this request is not only reasonable given the unprecedented government mandated restriction on business and the impact that the pandemic and the restrictions have had on the market, but is and also beneficial to the long-term success of the project, benefitting both the Port of Corpus Christi and Lone Star Ports.

I would appreciate it if you would kindly acknowledge this agreement by signing below.

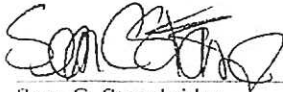
Sincerely,



Butch Boyd

EWB/lk:sm

Agree to and accepted this 31st day of March 2020.  
Port of Corpus Christi Authority



Sean C. Strawbridge,  
Chief Executive Officer

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# PORTCORPUSCHRISTI

April 20, 2020

Mr. A. Lawrence Berry  
Chief Executive Officer  
Lone Star Ports, LLC  
1414 Valero Way  
Corpus Christi, Texas 78409

Via Email

Re: The Amended and Restated Lease Agreement between the Port of Corpus Christi Authority of Nueces County, Texas ("**Authority**") and Lone Star Ports, LLC ("**Lone Star Ports**") made effective as of December 10, 2019 (the "**Lease Agreement**")

Dear Mr. Berry:

The purpose of this letter is to confirm our agreement that the Authority will not be obligated to give the Contractor(s) a notice to proceed under the Construction Contract(s) until the Authority has received the Approved Guarantee Agreement and the Approved Legal Opinion and the Development Period has begun. Capitalized terms in the preceding sentence have the meanings given to them in the Lease Agreement.

If you agree with the preceding paragraph, please sign and date one copy of this letter below on behalf of Lone Star Ports and email a scanned copy of it to me for our files. We would appreciate receiving a signed copy of the letter today, if possible. Thank you.

Sincerely,

Sean C. Strawbridge  
Chief Executive Officer

Agreed to and accepted this \_\_\_\_ day of April, 2020, by Lone Star Ports, LLC.

By: \_\_\_\_\_

A. Lawrence Berry  
Chief Executive Officer  
Lone Star Ports, LLC



222 Power Street 78401 PO Box 1541 78403 Corpus Christi, Texas T 361 882 5633 F 361 882 7110 portofcorpuschristi.com

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