

or used for purposes other than the Permitted Uses and Tenant shall not permit any portion of the Lease Premises to be occupied or used for any business or purpose which is unlawful, or in violation of any federal, state, city or local rules, regulations, ordinances or any of the Legal Requirements set forth in Section 4.2., in whole or in part. Further, Tenant shall not permit any use deemed to be disreputable in any manner or hazardous or permit anything to be done which will in any way increase the rate of fire and extended coverage insurance on said Lease Premises or would otherwise justify any insurance carrier in cancelling the insurance policies maintained by Owner or Tenant on the Leased Premises. In the event that there shall be an increase in the rate of such insurance on the Lease Premises or its contents resulting from the Tenant's act or conduct of business, then Tenant hereby agrees to pay such increase upon demand by Owner.

44. Specifically Prohibited Uses. Tenant will not (a) use, occupy or permit the use of occupancy of the Leased Premises for any purpose or in any manner is or may be, (i) violative of the requirements of Section 4 hereof, (ii) violative of the requirements of any Legal Requirements, or (iii) prevent the lawful activities of any other tenant or occupant of the property adjacent to the Leased Premises, (b) commit or permit to remain any waste to the Leased Premises or (c) commit, or permit to be committed, any action or circumstance in or about the Leased Premises which causes any insurance carrier in canceling the insurance policies maintained by Owner on the Leased Premises and improvements thereon. Tenant shall not use Leased Premises for storage of excess equipment, parts or gear that are non-operable and in a state of disrepair or that are not otherwise readily useable and in good-working order in the performance of Tenant's stevedoring and loading and unloading operations. Tenant shall not allow dilapidated structures or accumulation of any type of debris within the Lease area deemed in non-compliance with the "state of good repair" standards of Owner set forth in Section 6.2 of this Lease. Upon written notice by Owner to Tenant of non-operable equipment or gear storage, dilapidated structure, accumulation of debris, or other violations of the terms of this Lease, Tenant shall have thirty (30) days to cure the prohibited use and remove any non-operable equipment, gear and debris from Port property. In the event Tenant fails to cure the prohibited use within the 30-day notice period, Owner shall assess the sum of FIVE HUNDRED DOLLARS (\$500.00) per day against Tenant (the "Assessment") for each day until the prohibited use is cured. Determination of cure of prohibited use by Tenant shall be at the sole discretion of the Owner's Port Director. Further, failure of Tenant to cure the prohibited use within 60-days, or failure of Tenant to pay the Assessment to Owner within 30 days of invoicing by Owner, shall constitute an Event of Default under this Lease and this Lease shall be terminated by Owner with 30-days written notice. Upon termination of this Lease, Tenant shall be responsible to Owner for any Rent or Assessment incurred by Tenant during the Term of the Lease.

5. Hazardous Materials. Tenant shall not cause or permit any hazardous materials to be generated, treated, stored on or about the Lease Premises or transferred to the Lease Premises in contravention of Owner's tariffs or any other legal requirement. Without the prior written consent of Owner, Tenant shall not construct, operate or maintain underground storage tanks or related facilities. Any use of hazardous materials by any person on the Lease Premises shall be in strict conformance with all legal requirements. The term "Hazardous Materials" shall mean any "hazardous substance," "hazardous wastes," or "toxic substances," as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et. seq. the Resources Conservation and Recovery Act, 42 U.S.C. § 6901, et. seq., the Toxic Substance Control Act, as amended, 15 U.S.C. § 2601 et. seq., Landlord's Tariffs; the Texas

Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. Art. 4477-7; or any other legal requirement.

6. Condition of Premises.

61. Acceptance by Tenant. Tenant acknowledges that Tenant has independently and personally inspected the Leased Premises and that Tenant has entered into this Lease based upon such examination and inspection Tenant accepts the Leased Premises in its present condition, "AS IS, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED," (other than the warranty of quiet enjoyment under Section 20 hereof); specifically (without limiting the generality of the foregoing) without any warranty of (i) the nature or quality of any construction, structural design or engineering of any improvements currently located at or constituting a portion of the Leased Premises, (ii) the quality of the labor and materials included in any such improvements, or (iii) the soil and environmental conditions existing at the Leased Premises and (iv) the suitability of the Leased Premises for any particular purpose. Owner shall not be required to make any improvements to the Leased Premises or to repair any damages to the Leased Premises

62. Condition of Premises/State of Good Repair. Tenant accepts the Lease Premises in the condition as found on the date of delivery of possession and subject to any and all defects, whether patent or latent, known or unknown, and Tenant is given the opportunity to become familiar with the Lease Premises and agrees that the Lease Premises are received by Tenant upon the date of possession in a good state of repair and ready for occupancy. Owner shall not be responsible to Tenant or its agents, employees, invitees, customers, or visitors for any damage to persons or property due to the condition, design or defect in any improvements in or upon the Lease Premises which to exist or may hereafter exist. Tenant accepts the Lease Premises as suitable for the purpose for which the Lease Premises have been leased and assumes all risk of damage to persons or property. Tenant agrees to surrender the Lease Premises at the end of the term of this Lease and any extension thereof in the same condition as of the date of possession, reasonable wear and tear consistent with Tenant's intended use excepted.

63. Maintenance and Repairs. Tenant agrees to be responsible during the Term and any extension thereof for any and all repairs in or about the Lease Premises due to Tenant's occupancy and/or use of the Lease Premises, including those caused by normal wear and tear as herein defined. Owner or its agents may enter upon and inspect the Lease Premises at any time during the Term during regular hours to ensure compliance with the maintenance and repair obligations of Tenant. Repairs shall be reported promptly by Tenant to Owner in writing and shall be performed by Owner within a reasonable time. Tenant shall notify Owner immediately of any emergency repairs. Tenant shall pay for any property damage and/or the full cost of repair to the Lease Premises caused by the negligence or improper use by Tenant or Tenant's business invitees or other occupants. If in Owner's judgment there is substantial damage to the Lease Premises, Owner may terminate this Lease by giving written notice to Tenant. In no case shall Owner be liable for the incidental or consequential damages that result from failure to make repairs.

7. Ownership/Removal of Improvements. At the expiration of the term, Tenant may remove its improvements to the extent that such may be done without damage to the Leased Premises and at Tenant's sole cost and expense. Tenant shall not remove any of the improvements to (or constituting a part of) the Leased Premises without the prior written consent of the Owner, but such consent shall not be unreasonably withheld. Tenant shall remove the

portions of the Tenant's improvements designated by Owner to be removed (the "Removable Property") upon the expiration or earlier termination of the term, and Tenant shall repair all damage to the leased Premises caused by such removal. If Tenant fails to remove the Removable Property within ten (10) days after the expiration or earlier termination of the term, then, at Owner's election, (i) Tenant's rights, title, and interest in and to such Removable Property shall be vested in Owner (without the necessity of executing any conveyance instruments) or (ii) Owner shall be entitled to remove and store such Removable Property (without any liability for loss, theft, damage, or destruction thereto) at Tenant's sole cost and expense.

8. Operating Expenses. Tenant shall pay all costs and expenses of its operations on the Leased Premises and the cost of all utilities, such as gas, water, electricity, telephone, telegraph, and cable service used by Tenant, except as specified in Section 10, Utilities, and for all taxes and assessments on the Leased Premises.

9. Permits. Tenant, at its own cost and expense, shall procure and maintain any and all permits and licenses which may be required by and from any governmental authority or agency in order that Tenant may conduct its business in, upon, at or from the Lease Premises.

10. Utilities. Tenant shall provide and pay for all utilities to the Lease Premises including but not limited to gas, electricity, water, telephone, and other utility or telecommunications facility required by Tenant.

11. Taxes.

11.1. Tenant shall promptly pay all taxes, charges, assessments, and levies, assessed and levied by any governmental taxing authority during the effective term of this Lease, against any leasehold interest or personal property of the Tenant as well as all taxes charges and assessments attendant to its business operations.

11.2. Tenant shall pay promptly, before becoming delinquent, additional rent, all real estate taxes assessments, water rates and charges, and other governmental charges, general or special, of any kind or nature whatsoever due upon the Lease Premises or any part thereof pertaining to the Term or any extension thereof, notwithstanding the fact that said taxes may be charged by such taxing authority to Owner.

11.3. Any imposition of tax that is payable by law or by Owner on account of the lease of the Lease Premises shall be reimbursed to Owner by Tenant, as additional rent, and Owner shall notify Tenant of the imposition and request such tax to be paid or reimbursed to Owner. Tenant agrees to furnish to Owner the official receipts or other evidence satisfactory to Owner that all such taxes and charges have been paid.

11.4. To the extent required, whenever less than a full calendar year of any imposition of any tax may be involved, such tax impositions shall be prorated equitably between Owner and Tenant.

12. Assignment and Subletting. Tenant shall not assign this Lease or any part of the Lease and Tenant shall not sublet the Lease Premises or any part thereof, without the prior written consent of the Owner.

13. Entry/Use by Owner. Owner or other persons engaged to do so by Owner may

enter the Lease Premises during reasonable times and reasonable purposes, including but not limited to the following purposes: inspections, repairs, extermination, preventive maintenance, emergency safety or fire inspections, prevention of property damage, prevention of waste of utilities furnished by Owner (if any), enforcement of Owner's landlord's lien, showing Lease Premises to prospective tenants or purchasers, building inspectors, fire marshals, or insurance agents.

14. Liability and Indemnity. OWNER SHALL NOT BE LIABLE TO TENANT, TENANT'S GUESTS OR OTHER OCCUPANTS OR PERSONS ON THE LEASE PREMISES FOR PERSONAL INJURY, PROPERTY DAMAGE OR OTHER LOSSES TO SUCH PERSONS OR THEIR PROPERTY CAUSED BY TENANT, OTHER PERSONS, THEFT, BURGLARY, ASSAULT, OTHER CRIMES, FIRE, WEAR, WIND, RAIN, SMOKE, OR ANY OTHER CAUSES. TENANT AGREES TO INDEMNIFY AND HOLD OWNER FREE AND HARMLESS FROM ANY AND ALL LIABILITY FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO PROPERTY ARISING FROM THE USE AND OCCUPANCY OF THE LEASE PREMISES BY TENANT, (II) THE ACT OR OMISSION OF ANY PERSON OR PERSONS, INCLUDING TENANT, IN OR ABOUT THE LEASE PREMISES WITH THE EXPRESS OR IMPLIED CONSENT OF TENANT OR (III) THE ACT OR OMISSION OF ANY PERSON OR PERSONS, INCLUDING TENANTS WHILE ON THE PROPERTY OF THE OWNER TRAVELING TO OR FROM THE LEASE PREMISES AND WHILE PERFORMING DUTIES OR SERVICES IN ANY MANNER ASSOCIATED WITH THE LEASE PREMISES. OWNER RECOMMENDS THAT TENANT SECURE INSURANCE FOR TENANT'S OWN ACCOUNT TO PROTECT TENANT FROM THE HAZARDS OF SUCH LOSSES AS ARE DESCRIBED ABOVE.

15. Owner's Exculpation. Except for any obligations Owner may have under applicable environmental laws. Owner shall have no responsibility of liability to Tenant or to Tenants' officers, director, shareholder, partners, employees, agents, contractors, or invitees for bodily injury, death, property damage business interruption, loss of profits, loss of trade secrets, or other consequential damages occasioned by (a) Force majeure, (b) vandalism, theft, burglary and other criminal acts (other than those committed by Owner or its employees, officers, agents and assigns), or (c) the condition repair, replacement, maintenance, damage, destruction or relocation of the Leased Premises.

16. Waiver. Except for contribution rights Tenant may have under applicable environmental laws of for breach of any other warranties or representations contained in this Lease, Tenant hereby waives all claims, rights of recovery, and causes of action that Tenant or any party claiming by, through, or under Tenant may now or hereafter have by subrogation or otherwise against Owner and Owner's commissioners, officers, directors, partners, and employees for any loss or damage that may occur to all or any portion of the Leased Premises, by reason of fire or other casualty, or by reason of any other cause except Owner's gross negligence or willful misconduct (this expressly including simple negligence of Owner and Owner's commissioners, officers, directors, partners, and employees).

17. Insurance.

17.01. Tenant, at its sole cost and expense, shall keep all business and/or improvements

on or hereafter located upon the Lease Premises insured for the benefit of Owner and the Tenant against loss or damage by fire and against those casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks as are customarily covered with respect to buildings and improvements of similar construction, general location, use and occupancy as the buildings and improvements now on the Lease Premises. Such insurance shall be an amount which at all times shall be sufficient to prevent the Owner or the Tenant from becoming a co-insurer of any loss within the meaning of any co-insurance clauses, but in no event in an amount less than eighty percent (80%) of the full insurable value of said buildings and improvements.

17.02. Tenant, at its sole cost and expense, shall affect and maintain a policy or policies of insurance providing public liability and property damage coverage with respect to the premises and the business conducted by Tenant upon the Lease Premises in which the limits of public liability coverage shall be as stated herein.

(a) General liability insurance naming the Owner as additional insured and including the following coverage per occurrence: General aggregate - \$1,000,000; products - comprehensive/ops aggregate \$1,000,000; personal and advertising injury \$500,000; medical expense (any one person) \$5,000.

(b) Combined single limit automobile coverage in the amount of \$500,000 each occurrence.

(c) Umbrella liability insurance with bodily injury and property damage combined limit of \$2,000,000.

(d) Tenant agrees to furnish Owner certificates of insurance evidencing compliance with the above insurance requirements and providing that such policies cannot be canceled or terminated without thirty (30) days' notice to Owner.

(e) Neither the requirement for insurance coverage above provided nor the policy limits contained therein shall in any way be construed as a limitation upon Tenant's legal liability or Tenant's liability under the indemnity clause of Section 13, or any other provisions of this Lease.

(f) The coverage required in Section 14.02 of this Lease, and the policies of such insurance shall (i) provide that no policy of insurance will be canceled or reduced in coverage without thirty (30) days prior written notice to Owner, (ii) insure performance of the indemnities of Tenant contained in Section 13 and elsewhere in this Lease, and (iii) be primary coverage so that any insurance coverage obtained by Owner shall be in excess thereto. Tenant shall deliver to Owner certificates of renewal prior to the expiration date of each policy of insurance obtained and copies of new policies prior to terminating any such policies. All policies of insurance, required to be obtained and maintained by Tenant, shall provide the usual and standard coverage provided in such policies of insurance written in the State of Texas and shall be issued by insurance carriers authorized to do business in the State of Texas.

17.03. Such insurance policies shall provide coverage for Owner's contingent liability on such claims for losses and each certificate of insurance provided shall name the Owner as an

additional named insured. Tenant shall furnish Owner, within thirty (30) days from the execution date of this Lease, a certificate of insurance or other evidence of insurance required by Tenant as set forth above, and Tenant agrees to obtain in writing from its insurers the obligation that the insurers will notify Owner in writing at least fifteen (15) days prior to cancellation or refusal to renew any policy of insurance.

17.04. All property of every kind and character which Tenant may keep or store in, at or upon the Lease Premises shall be kept and stored at the sole risk, cost and expense of the Tenant.

17.05. Owner shall not be liable to Tenant or any other person for any injury, loss or damage to any person or property, in, upon, at, from or about the premises, or any part thereof resulting from fire, explosion, falling objects or materials, steam, gas, electricity, water, rain, wind, snow, or other substance which may leak or flow from or onto or into the Lease Premises, or the breakage, leakage, obstruction or other defects of pipes, wires, conduits, tubes, appliances, equipment, plumbing, lighting or heating and/or any fixtures forming a part of the premises, or the condition of the Lease Premises or any part hereof, or the condition of any improvements, structure, sidewalk, parking area drive, entrance, exit, landscaped area or common service area forming a part of the Lease Premises, or operations by or for governmental agencies on the construction of any public or quasi- public work or works, or any act or negligence of the Tenant or any other Tenant or occupant of the Lease Premises or properties adjoining the Lease Premises or any person therein or thereon, or the public generally, or any other source or cause whatsoever, EXCEPTING ONLY, however, any injury, loss or damage due to the actionable negligence of the Owner.

17.06. Tenant agrees that, if such insurance policies are not kept in force during the entire term of this Lease and any extension thereof, Owner may procure the necessary insurance, pay the premium therefore, and such premiums shall be repaid to Owner as an additional rent installment for the month following the date on which such premiums are paid.

18. Contractual Lien.

18.1. All personal property on the Lease Premises (except property exempt by statute) is hereby subject to a contractual landlord's lien in favor of Owner to secure payment of delinquent rent and other sums due and unpaid under this Lease. In order to enforce said lien, Owner or its representative, may peacefully enter the Lease Premises and remove and store all non-exempt property therein. Owner shall be entitled to reasonable charges for packing, removing and storing property taken hereunder. If Tenant is not present when property is removed hereunder, written notice of Owner's entry shall be left in a conspicuous place at the Lease Premises stating the amount of the delinquent rent, containing an itemized list of the items removed, stating the name, address and telephone number of the person Tenant must contact regarding the amount owed and stating that the property will be returned on full payment of the delinquent rent. If the Lease Premises are abandoned, Owner or his representative may enter the Lease Premises and remove and store all property of every kind found in them. Owner may sell all property subject to Owner's lien at public or private sale after giving Tenant thirty (30) days written notice by both first class mail and certified mail, return receipt requested, of the date, time and place of such sale to Tenant's last known address, and stating the other things required by Section 54.045 of the Texas Property Code, as it has been and may hereafter be amended. Sale shall be to the highest

cash bidder and Owner shall credit the proceeds thereof first to delinquent rents and then to reasonable costs and expenses of packing, removal, storage and sale of the property, and any excess shall be mailed to Tenant at such address as Tenant may furnish.

182. The foregoing lien rights may be exercised by Owner with or without resort to judicial proceedings, and Owner's exercise thereof shall not subject Owner to liability.

183. The contractual lien provided herein is in addition to, and not in lieu of, any landlord's or other lien provided by law.

19. Nonwaiver. Failure by Owner or Tenant to enforce or demand performance of any obligation of Tenant or Owner hereunder as the case may be, or to seek remedy for breach thereof, shall not operate to waive or excuse defaults of other obligations nor further defaults of the same obligation.

20. Holdover. If Tenant holds over and fails to vacate on or before the contracted move-out date (end of Lease term, termination by either party), none of Tenant's deposit, if any, will be refunded and Tenant shall be liable to pay double rents (i.e., two times the rent for the month before the holdover period starts) plus the Assessment, (if assessed by Owner prior to the termination of the Lease) for the holdover period and shall indemnify Owner and/or perspective tenants or purchasers for damages (i.e., lost rentals or profits of sale lodging expenses and attorney's fees). Rents and Assessments during the holdover period shall be due on a daily basis.

21. Quiet Enjoyment. Owner hereby warrants that he has good and marketable title and fee simple to the Lease Premises, and full right and authority to lease same in accordance with the terms hereof. Owner covenants and agrees that in the event Tenant shall perform all covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during said term have peaceable and quiet enjoyment and possession of a Lease Premise without any manner of hindrance from Owner or any other person or entity.

22. Abandonment. If Tenant (i) is absent from the Lease Premises for thirty (30) consecutive days while in default of this Lease, (ii) has been evicted by judicial process, or (iii) leaves personal property after the termination of the Lease, all personal property found in the Lease Premises may be deemed by Owner to be abandoned and Owner or its representatives may peaceably enter, remove and dispose of such personal property as Owner sees fit without any liability or duty to account for such personal property to Tenant whatsoever. Tenant shall be responsible to Owner for any costs incurred by Owner for cleanup, removal/demolition of Tenants personal property or improvements, and/or any environmental remediation on the Leased Premises.

23. Notices. Except as may be otherwise required herein or specified by law, all notices required or permitted hereunder to be given to Tenant shall be given, at Owner's election, by regular mail, or personally delivered to, provided, however, that Tenant may give notice by regular mail of any change to such address. All written notices required or permitted to be given to Owner shall be made to our mailing address at P.O. Box 2297, Beaumont, Texas 77704 or by personal delivery at 1225 Main Street, Beaumont, Texas 77701.

24. Subordination. This Lease and Tenant's leasehold interest hereunder are and shall be subject, subordinate, and inferior to any lien or encumbrances now or hereafter placed on the

Lease Premises by Owner, to all advances made under such lien or encumbrances, to the interest payable on any such lien or encumbrances, and the rights of such lienholders.

25. Laborers and Mechanics. Tenant shall pay for all labor and services performed for, materials used by or furnished to Tenant, or used by or furnished to any contractor employed by Tenant with respect to the Leased Premises and hold Owner and the Leased Premises harmless and free from any liens, claims, encumbrances, or judgments created or suffered by Tenant. If Tenant elects to post a payment or performance bond or is required to post an improvement bond with a public agency in connection with the above, Tenant agrees to include Owner as an additional obligee thereunder.

26. Security, Rail Service, and Utilities. Tenant may, at its sole cost and expense, provide for security services for the Leased Premises and for the servicing of the Leased Premises with water, gas, electricity, telephone, sewage treatment and drainage and any other utilities or similar services used in or on the Leased Premises. Access to the port facilities of Owner shall be limited to authorized employees, representatives, maintenance contractors, or vehicles of Tenant, and Tenant agrees to comply with any security rules and regulations as currently in force or hereafter adopted by Owner.

27. Default.

27.1. Events of Default. Each of the following occurrences shall constitute an “Event of Default” by Tenant under this Lease:

(a) The failure of Tenant to pay rental as and when due hereunder and the continuance of such failure of ten (10) days after transmittal of written notice to Tenant thereafter;

(b) The failure of Tenant to perform, comply with or observe any other agreement, obligation, covenant, condition, or undertaking of Lease, or any other term, condition or provision, in this Lease, and the continuance of such failure for a period of ten (10) days after written notice from Owner to Tenant specifying the failure;

(c) The filing of a petition by or against Tenant (i) in any bankruptcy or other insolvency proceeding, (ii) seeking any relief under the code or any similar debtor relief law, (iii) for the appointment of a liquidator or receiver for all or substantially all of Tenant’s property or for Tenant’s interest in this Lease or (iv) to reorganize or modify Tenant’s capital structure;

(d) If the interest of Tenant under this Lease shall, by operation of law, be transferred or passes to or devolve upon any other person, firm, or corporation without Owner’s written consent in cases in which such written consent is required hereunder;

(e) If Tenant shall voluntarily abandon, desert, vacate the Leased Premises, or discontinue its operation thereon for a period of more than thirty (30) days, then upon the occurrence of any such event of default Owner may terminate this Lease and Tenant’s rights hereunder by written notice to Tenant, such termination to be effective immediately upon the serving of such notice; and

(f) The admission by Tenant in writing that it cannot meet its obligations as they become due or the making by Tenant of an assignment for the benefit of its creditors.

27.2. Remedies of Landlord. Upon any Event of Default, Owner may, at Owner’s option and in addition to all other rights, remedies and recourses afforded Owner hereunder or by law or equity, terminate this Lease by the giving of written notice to Tenant, in which even

Tenant shall pay to Owner upon demand the sum of (i) all rent and other amounts accrued hereunder to the date of termination, (ii) all amounts due under Paragraph 26.3 and (iii) damages in an amount equal to (a) the total rent that Tenant would have been required to pay for the remainder of the term of this Lease discounted to present value at a discount rate reasonably designated by Owner minus (b) the then present fair rental value of the leased Premises for such period.

273. Payment by Tenant. Upon any Event of Default and after any applicable cure period provided in Paragraph 26.1(a) or (b) of this Lease, Tenant shall also pay to Owner all reasonable costs and expenses incurred by Owner, including court costs and reasonable attorney's fees in (i) retaking or otherwise obtaining possession of the Leased Premises, (ii) removing and storing Tenant's or any other occupant's property (iii) reletting all or any part of the Leased Premises, (iv) paying or performing the underlying obligation which Tenant failed to pay or perform and (v) enforcing any of Owner's rights, remedies or recourses arising as a consequence of the Event of Default.

274. Landlord's Right to Pay or Perform. If Tenant fails to perform or observe any of its covenants, agreements, or obligations hereunder for a period of ten (10) days after written notice of such failure is given by Owner, then in addition to all other rights of Owner provided herein Owner shall have the right, but not the obligation, at its sole election (but not as its exclusive remedy), to perform or observe the covenants, agreements, or obligations which are asserted to have not been performed or observed at the expense of Tenant and to recover all costs or expenses incurred in connection therewith. Any performance or observation by Owner pursuant to this Section 26.4 shall not constitute a waiver of Tenant's failure to perform or observe.

275. Injunctive Relief, Remedies Cumulative. Owner may restrain or enjoin any Event of Default or threatened Event of Default by Tenant hereunder without the necessity of proving the inadequacy of any legal remedy or irreparable harm. The rights, remedies and recourses of Owner, whether exercised by Owner or not, shall be deemed to be in exclusion of any other.

276. No Waiver, No Implied Surrender. Provision of this Lease may not be waived orally or impliedly, but only by the party entitled to the benefit of the provision evidencing the waiver in writing. Thus, neither the acceptance of rental by Owner following the Event of Default (whether known to Owner or not), nor any other custom practice followed in connection with this Lease, shall constitute a waiver of Owner of such Event of Default or any other Event of Default. Further, the failure by Owner to complain of any action or inaction by Tenant, or to assert that any action or inaction by Tenant constitutes (or would constitute, with the giving of notice and the passage of time) an Event of Default, regardless of how long such failure continues, shall not extinguish, waive or in any way diminish the rights, remedies and recourses of Owner with respect to such action or inaction. No waiver by Owner of any provision of this Lease or of any obligation of Tenant hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by Tenant of this Lease. Owner's consent to any act by Tenant requiring Owner's consent shall not be deemed to render unnecessary the obtaining of Owner's consent to any subsequent act of Tenant. No act or omission by Owner (other than Owner's execution of a document acknowledging such surrender) or Owner's agents, including the delivery of the keys to the Leased Premises, shall constitute an acceptance of a surrender of the Leased Premises.

27.7 Lease Premises Condition. Failure of Tenant to maintain the Lease Premises in a State of Good Repair as set forth in Section 4. Use of Leased Premises and/or Section 6. Condition of Premises, shall constitute and Event of Default, and Owner shall have the right to

exercise its remedies under Section 26.2, or as otherwise provided for herein.

28. Miscellaneous.

28.1. Relation of the Parties. It is the intention of the parties to create hereby the relationship of landlord and tenant, and no other relation is hereby created. Nothing in this Lease shall be construed to make the parties partners or joint venturers or to render either party liable for any obligation of the other.

28.2. Public Disclosure. Owner is a governmental authority subject to the requirements of the Texas Open Meetings Act and the Texas Open Records Act (Tex. Rev. Civ. Stat. Ann. Arts. 6252-17 and 17a, Vernon Supp. 1989), and as such Owner is required to disclose to the public (upon request) this Lease or any other information or materials related to the consummation of the transactions contemplated hereby. In this regard, Tenant agrees that the disclosure of this Lease or any other information or materials related to the consummation of the transactions contemplated hereby to the public by Owner as required by the Texas Open Meetings act, Texas Open Records Act, or any other legal requirement will not expose Owner (or any party acting by, through or under Owner) to any claim, liability, or action by Tenant.

28.3. Force Majeure. Tenant shall be entitled to rely upon force majeure as an excuse for timely performance hereunder only as expressly provided herein and shall not be entitled to rely upon force majeure as an excuse for timely performance unless Tenant (a) uses its best efforts to overcome the effects of the event of force majeure, (b) gives written notice to Owner within five (5) days after the occurrence of the event describing with reasonable particularity the nature thereof, (c) commences performance of its obligation hereunder immediately upon the cessation of the event and (d) gives written notice to Owner within five (5) days after the cessation of the event advising Owner of the date upon which the event ceased to constitute an event of force majeure.

Force majeure shall mean:

(a) acts of God, landslides, lightning, earthquakes, hurricanes, tornadoes, blizzards and other adverse and inclement weather, fires, explosions, floods, acts of public enemy, wars, blockades, insurrection, riots or civil disturbances;

(b) labor disputes, strikes, work slowdowns, or work stoppages but nothing herein contained shall require the party subject to such disputes, strikes, work slowdowns, or work stoppages to settle or otherwise resolve same;

(c) orders or judgments of any federal, state or local court, administrative agency or governmental body, if not the result of willful or negligent action of the party relying thereon;

(d) power failure and outages affecting the Leased Premises; and

(e) any other similar cause or event, provided that the foregoing is beyond the reasonable control of the party claiming force majeure.

29. General. This Lease contains the entire agreement of the parties. No oral agreements or representations have been made. This Lease may be modified only in writing signed by all parties. Owner has relied upon every part of Tenant's rental application, and any false or misleading statement therein shall be cause for termination of this Lease by Owner. Judicial declaration of the invalidity of any part of this Lease or any attachment hereto shall not invalidate the remainder. In any legal proceeding pursuant to this Lease, including a suit to enforce this Lease or to collect damages for its breach, the prevailing party shall be entitled to recover attorney's fees, costs of court and interest at the rate of twelve percent (12%) per annum upon all sums due from due date from the non-prevailing party. Tenant may not withhold rent or

offset against rent. This Lease shall be construed under and in accordance with the laws of the State of Texas. Any clause in this Lease or any attachment to it which is declared invalid by law or judicial decision shall be deemed excised from this Lease and such law or judicial decision shall not affect any other part of this Lease or such attachment. This Lease shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

30. Documents. This Lease is executed in multiple copies, one for Tenant, one for Owner.

31. Attorney's Fees. Any signatory to this Lease who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this Lease or transaction shall be additionally entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.

OWNER:

PORT OF BEAUMONT NAVIGATION DISTRICT OF
JEFFERSON COUNTY, TEXAS

 3/16/20

David C. Fisher

ITS: PORT DIRECTOR & CEO

TENANT:

SSA GULF INC.



Pat Downey

ITS: VICE PRESIDENT U.S. GULF OPERATIONS

EXHIBIT A

