

LEASE AGREEMENT

Between

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

And

**ARACOR, INC. d/b/a
ARANSAS-CORPUS CHRISTI PILOTS**
(*“Lessee”*)

November 1, 2017

TABLE OF CONTENTS

	Page
ARTICLE 1 - DEFINITIONS.....	1
SECTION 1.01. CERTAIN DEFINITIONS.....	1
SECTION 1.02. OTHER DEFINITIONS.....	3
SECTION 1.03. TERMINOLOGY.....	3
ARTICLE 2 – LEASE OF PREMISES	3
SECTION 2.01. LEASED PREMISES.....	3
SECTION 2.02. PERMITTED AND PROHIBITED USES	3
SECTION 2.03. QUIET ENJOYMENT	4
SECTION 2.04. RIGHT OF AUTHORITY TO ACCESS THE LEASED PREMISES.....	4
SECTION 2.05. PERMITTED ENCUMBRANCES	4
SECTION 2.06. RESERVATION OF MINERALS.....	5
SECTION 2.07. EARLY TERMINATION BY AUTHORITY	5
ARTICLE 3 – TERM.....	5
SECTION 3.01. TERM	5
SECTION 3.02. HOLDING OVER.....	6
ARTICLE 4 - RENT.....	6
SECTION 4.01. ANNUAL BASE RENT	6
SECTION 4.02. TOTAL PROJECT COST AND CAPITAL RECOVERY PAYMENTS	7
SECTION 4.03. LATE PAYMENT PENALTIES.....	8
SECTION 4.04. PLACE OF PAYMENT.....	8
SECTION 4.05. NET LEASE.....	8
ARTICLE 5 – CONDITION AND CARE OF LEASED PREMISES	8
SECTION 5.01. INSPECTION AND ACCEPTANCE OF LEASED PREMISES	8
SECTION 5.02. ENVIRONMENTAL REPRESENTATIONS AND RESTRICTIONS	9
ARTICLE 6 – IMPROVEMENTS, ALTERATIONS, MAINTENANCE AND DREDGING	15
SECTION 6.01. MAINTENANCE OF LEASED PREMISES.....	16
SECTION 6.02. ALTERATION OF IMPROVEMENTS.....	16
SECTION 6.03. PERMIS.....	16
SECTION 6.04. OWNERSHIP OF LESSEE’S EQUIPMENT	16
SECTION 6.05. OWNERSHI OF LESSEE FACILITIES.....	16
SECTION 6.06. SIGNS	16
SECTION 6.07. DREDGING RESPONSIBILITIES	16
SECTION 6.08. LABORERS AND MATERIALS	16
SECTION 6.09. BUILDING CODE	17
ARTICLE 7 – UTILITIES, SECURITY AND TAXES	17
SECTION 7.01. UTILITIES, SECURITY AND OTHER SERVICES	17
SECTION 7.02. TAXES	17
ARTICLE 8 - INSURANCE	18
SECTION 8.01. INSURANCE	18
SECTION 8.02. WAIVER OF SUBROGATION.....	18
ARTICLE 9 - INDEMNITY	19
SECTION 9.01. INDEMNIFICATION BY LESSEE	19
SECTION 9.02. NOTICE OF CLAIMS.....	19

ARTICLE 10 – PROPERTY LOSS	19
SECTION 10.01. NOTICE OF DAMAGE	19
SECTION 10.02. RESTORATION OF IMPROVEMENTS.....	20
ARTICLE 11 - CONDEMNATION.....	20
SECTION 11.01. TOTAL TAKING.....	20
SECTION 11.02. PARTIAL TAKING; TERMINATION.....	20
SECTION 11.03. NOTICE OF PROPOSED TAKING.....	21
SECTION 11.04. INDEPENDENT DETERMINATION OF VALUES.....	21
ARTICLE 12 – OBLIGATIONS ON TERMINATION	21
SECTION 12.01. SURRENDER OF LEASED PREMISES.....	21
SECTION 12.02. REMOVAL OF LESSEE’S EQUIPMENT	21
SECTION 12.03. REMOVAL OF REMOVABLE LESSEE FACILITIES	22
SECTION 12.04. REPAIR OF PERMANENT IMPROVEMENTS	22
SECTION 12.05. RENT DURING THE REMOVAL PERIOD	23
ARTICLE 13 – ASSIGNMENTS, SUBLEASES AND TRANSFERS	23
SECTION 13.01. RESTRICTIONS ON ASSIGNMENTS, SUBLEASES AND TRANSFERS.....	23
SECTION 13.02. CONDITIONS.....	23
ARTICLE 14 -- DEFAULT	24
SECTION 14.01. EVENT OF DEFAULT	24
SECTION 14.02. RIGHTS AND REMEDIES OF AUTHORITY.....	25
SECTION 14.03. PAYMENTS ON DEFAULT	26
SECTION 14.04. DEFAULT BY AUTHORITY.....	26
SECTION 14.05. NO WAIVER	27
ARTICLE 15 – DISPUTE RESOLUTION AND MEDIATION.....	27
SECTION 15.01. DISPUTE RESOLUTION.....	27
SECTION 15.02. MEDIATION.....	27
ARTICLE 16 – GENERAL PROVISIONS.....	28
SECTION 16.01. COMPLIANCE WITH AUTHORITY’S TARIFF	28
SECTION 16.02. INSPECTION.....	28
SECTION 16.03. NO PARTNERSHIP OR THIRD PARTY BENEFICIARIES	28
SECTION 16.04. PAYMENTS AND NOTICES.....	28
SECTION 16.05. ESTOPPEL CERTIFICATE	29
SECTION 16.06. ABATEMENT.....	29
ARTICLE 17 - MISCELLANEOUS.....	29
SECTION 17.01. PARTIES BOUND.....	29
SECTION 17.02. APPLICABLE LAW.....	29
SECTION 17.03. SEVERABILITY	29
SECTION 17.04. TIME OF ESSENCE.....	30
SECTION 17.05. RIGHTS AND REMEDIES CUMULATIVE	30
SECTION 17.06. ATTORNEYS’ FEES.....	30
SECTION 17.07. CAPTIONS.....	30
SECTION 17.08. PUBLIC DISCLOSURE	30
SECTION 17.09. BROKERS.....	31
SECTION 17.10. AUTHORITY	31
SECTION 17.11. RECORDING	31
SECTION 17.12. INTERPRETATION	31
SECTION 17.13. <i>FORCE MAJEURE</i>	31
SECTION 17.14. CONTRACTUAL RELATIONSHIP	32
SECTION 17.15. ENTIRE AGREEMENT.....	32

ATTACHMENTS:

Exhibit “A”	Map or Plat of Land
Exhibit “B”	Total Project Cost
Exhibit “C”	Lessee’s Insurance

LEASE AGREEMENT

This **LEASE AGREEMENT** is made this 1st day of November, 2017 (the “*Effective Date*”), by and between the **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**, a political subdivision of the State of Texas (hereinafter called “*Authority*”), and **ARACOR, INC., d/b/a ARANSAS-CORPUS CHRISTI PILOTS**, a Texas corporation (hereinafter called “*Lessee*”). This Lease Agreement together with all renewals, extensions, and modifications is referred to herein as the “*Lease Agreement*”, or the “*Lease*”.

RECITALS:

(a) Authority owns the surface estate of a tract of land in San Patricio County, Texas, containing .62 acres, more or less, of upland and submerged lands being out of that 12.79 acre tract described in Volume 686, Page 243 of the Nueces County Records (the “*Land*”). Said .62 acres, more or less, is on the North side of Harbor Island located on the Aransas Channel. A map or plat of the Land is attached hereto as **Exhibit A**.

(b) Lessee will lease the Land from the Authority in accordance with the terms and conditions of this Lease Agreement for purposes of operating and maintaining a private parking area and pier for performing pilotage services on the Corpus Christi Ship Channel.

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

ARTICLE 1 DEFINITIONS

Section 1.01. Certain Definitions

As used in this Lease, each of the following terms shall have the meaning set forth or referred to in this Section:

“*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 4.01.

“*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 health laws and regulations.

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

“*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.

“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).

“Extension Period” has the meaning given to it in Section 3.01(c).

“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.

“Initial Term” has the meaning given to it in Section 3.01(b).

“Inspection Period” means the thirty (30) day period beginning on the day after the expiration or termination of this Lease.

“Land” has the meaning given to it in part (a) of the Recitals.

“Lease Year” means the twelve-month period beginning on the Effective Date and each successive twelve-month period thereafter during the Term of this Lease.

“Leased Premises” has the meaning given to it Section 2.01

“Lessee’s Equipment” has the meaning given to it in Section 6.04

“Lessee Facilities” means all improvements on the Leased Premises constructed or owned by Lessee.

“Parties” means Authority and Lessee.

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

“Permanent Improvements” means all of the following Improvements, if any, on or to the Leased Premises: (i) security fencing, (ii) parking area, (iii) security lighting, (iv) the pier, (v) pipelines or conduit for water, sewer, storm water drainage, natural gas, or electricity, and (vi) any other public utilities.

“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.

“Recitals” means the recitals at the beginning of this Lease Agreement.

“Removal Period” means the sixty (60) day period beginning on the day after the expiration or termination of this Lease.

“Rent” means, collectively, the Annual Base Rent, Capital Recovery Payments, and any other payments called rent herein.

“Required Repairs” means the repairs needed to put the Permanent Improvements in good operating condition, reasonable wear and tear excepted.

“Term” means the period from the Effective Date until the date on which this Lease expires or is terminated in accordance with the provisions of this Lease

Section 1.02. Other Definitions

Capitalized terms in this Lease which are not defined in Section 1.01 are defined in the text of this Lease.

Section 1.03. Terminology

The terms defined in Section 1.01 or in the text of this Lease shall apply throughout this Lease. All references in this Lease to ***“Section”*** or ***“Article”*** shall refer to a section or article of this Lease, unless otherwise expressly stated. All references to ***“Exhibits”*** shall mean the exhibits attached to this Lease. All such Exhibits and any other attachments to this Lease are incorporated in this Lease by this reference. All references to herein, hereof, hereto, hereunder or similar terms shall be deemed to refer to this Lease in its entirety. As used in this Lease, the term ***“including”*** shall mean “including but not limited to.” The headings of Articles and Sections in and Exhibits to this Lease shall be for convenience only and shall not affect the interpretation hereof.

ARTICLE 2 LEASE OF PREMISES

Section 2.01. Leased Premises

Effective as of the Effective Date, Authority hereby leases to Lessee and Lessee hereby leases from Authority, upon the terms and conditions of this Lease, the surface estate of the Land and all rights, privileges, and appurtenances to the surface estate of the Land and the Authority’s Facilities (herein collectively called the ***“Leased Premises”***).

Section 2.02. Permitted and Prohibited Uses

(a) The Leased Premises may be used for the following purposes (which are collectively referred to in this Lease Agreement as the ***“Permitted Uses”***):

For operating and maintaining a parking area and pier for conducting pilotage services on the Corpus Christi Ship Channel, for transporting pilots to and from Vessels transiting the Corpus

Christi Ship Channel, and for no other purpose without the written permission of Authority being first had and obtained.

(b) Lessee will not use the Leased Premises 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.

(c) Lessee will not use, occupy or permit the use or occupancy of the Leased Premises for any purpose or in any manner which violates: (i) orders, injunctions, writs, statutes, rulings, rules, regulations, directives, permits, certificates or ordinances of any Governmental Authority applicable to Lessee or the Leased Premises, including zoning, environmental and utility conservation matters; (ii) Authority's Tariff; (iii) applicable insurance requirements; or (iv) the Permitted Encumbrances.

(d) The Parties agree that neither Party will voluntarily permit any portion of the Leased Premises 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 Leased Premises would interfere with and be injurious to Lessee's proposed use or uses of the Leased Premises for industrial purposes.

(e) Lessee hereby represents and warrants to Authority that Lessee's occupancy, operation or use of the Leased Premises will be and remain in compliance with Applicable Laws in all material respects.

Section 2.03. 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.

Section 2.04. Rights of Authority to Access the Leased Premises

Authority reserves the right to grant 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, to the extent reasonably necessary to lay mains for gas, water or sewers on the Leased Premises, to place poles and necessary wires and attachments for electricity or for telephone and fiber optic lines over and across any part of the Leased Premises, and to lay, or grant easements or rights of way to other parties for the laying of fiber optics over, under and upon the Leased Premises. Authority has the right to use third parties for the performance of the rights reserved to Authority in this Section, provided Authority shall cause such third-party contractors to follow all safety rules and regulations and other reasonable restrictions imposed by Lessee.

Section 2.05. Permitted Encumbrances

This lease of the Leased Premises is subject to all of the following (collectively, the "*Permitted Encumbrances*"): (i) the provisions of this Lease Agreement, (ii) the lawful use of

the Leased Premises by any mineral owner, other than Authority, of part or all of the Leased Premises or a lessee in an oil, gas or mineral lease granted by any mineral owner, other than Authority, of all or part of the Leased Premises, (iii) to the extent valid and enforceable as to the Leased Premises, all matters of record in Nueces County, Texas, as of the Effective Date, including, but not limited to, restrictive covenants, permits, licenses, easements, and rights-of-way, (iv) any unrecorded restrictive covenants, permits, licenses, easements or rights-of-way expressly consented to in writing by Lessee, and (v) all Applicable Laws.

Section 2.06. Reservation of Minerals

The Leased Premises was patented to the Authority by the State of Texas when the Leased Premises was still submerged land. Under the terms of the patent, the State of Texas reserved the minerals in, on and under the Leased Premises.

Section 2.07. Early Termination by Authority

(a) Lessee acknowledges that the Authority may in the future develop the Leased Premises for commercial or other purposes and that Authority may, at Authority's sole discretion, terminate this Lease Agreement by giving Lessee written notice of termination and Lessee shall have one hundred eighty (180) days from the date of said notice to vacate and surrender the Leased Premises to Authority.

(b) In the event of termination of the Lease Agreement under this Section 2.07, Authority will make a reasonable effort to provide Lessee an alternate location; however, Lessee shall have no recourse or claim against Authority for the cost of relocation or any other cost or expense incurred by Lessee arising out of the termination of this Lease Agreement by Authority.

ARTICLE 3 TERM

Section 3.01. Term

(a) For purposes of this Lease, "***Term***" means the period from the Effective Date until the earlier of (1) 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 (2) the date upon which this Lease is terminated in accordance with the provisions of this Lease.

(b) The "***Initial Term***" of this Lease shall begin on the Effective Date and end at 11:59 p.m., Central Time, on the last day of the fifth (5th) Lease Year ("***Initial Term***"), unless the Term is extended or terminated in accordance with other provisions of this Agreement.

(c) Lessee shall have the right and option to extend the Term of this Lease for five (5) additional periods of five (5) years each as provided in this Section 3.01(c) (each an "***Extension Period***"). Such Extension Periods shall automatically occur unless Lessee shall give written notice to Authority at least one hundred eighty (180) days prior to the end of the Initial Term or the then effective Extension Period (the "***Notice Deadline***"), irrevocably stating that Lessee does not elect to extend this Agreement for an additional five-year period (the "***Termination of Extension***").

Notice”). Notwithstanding anything to the contrary contained in this Lease, this Lease shall not be automatically extended and Lessee shall be deemed to have given a Termination of Extension Notice, if on the Notice Deadline, Lessee is (1) in default of any material obligation in this Lease, (2) notice of such default has been provided to the Lessee, and (3) any applicable grace period provided in this Lease Agreement for curing such default has expired. Except as otherwise provided in this Lease Agreement, if Lessee does not send the Termination of Extension Notice, then this Lease shall continue in full force and effect under all the terms and conditions set forth herein.

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

Section 3.02. Holding Over

If the Leased Premises are not vacated and surrendered in accordance with this Lease on the expiration or termination of this Lease Agreement, Lessee shall be liable to Authority for (a) all liabilities or losses incurred by Authority in connection with such holdover, including liabilities or losses incurred in connection with any summary proceedings, action or proceeding to recover possession of the Leased Premises from Lessee, and (b) per diem use and occupancy charge in respect of the Leased Premises equal to two (2) times the Annual Base Rent being charged Lessee at the expiration or termination of the Lease, and (c) all damages incurred by Authority in connection with such holdover, including any lost opportunity damages incurred by Authority. If only a portion of the Leased Premises is timely vacated and surrendered, Lessee shall nevertheless remain liable for per diem use and occupancy with respect to the entire Leased Premises, but any reletting proceeds received by Authority during the period of Lessee’s holdover shall be credited against Lessee’s liability for use and occupancy for the entire Leased Premises. In no event shall this Section be construed as permitting Lessee (or other occupants) to remain in possession of the Leased Premises after the expiration or termination of this Lease. **Lessee shall indemnify, defend and hold harmless Authority against all Claims made by any succeeding tenants to the extent such claims arise by reason of the failure of Lessee timely to vacate and surrender the Leased Premises (or any portion thereof) in accordance with this Lease. Authority may recover amounts due it under this Section in any summary proceeding and/or any separate action or proceeding.**

ARTICLE 4 RENT

Section 4.01. Annual Base Rent

(a) For each Lease Year of the Initial Term or any Extension Period, Lessee shall pay to Authority an Annual Base Rent of Two Thousand and 0/100 Dollars (\$2,000.00).

(b) The Annual Base Rent for each Lease Year shall be paid in equal monthly installments of one-twelfth of the Annual Base Rent for such Lease Year and shall be paid on the first day of each calendar month during such Lease Year, in advance, commencing on the first day of such Lease Year.

Section 4.02. Total Project Cost and Capital Recovery Payments

(a) Within thirty (30) Business Days after making the final payments due under the Construction Contract(s) awarded by the Authority to construct the develop the Leased Premises, the Authority will provide the Lessee with a statement showing the total amount the Authority actually paid to the Contractor(s) under the Construction Contract(s), together with all other expenditures made by the Authority in connection with the development of the Leased Premises as set forth on **Exhibit B**, attached hereto and by reference made a part hereof, including but not limited to grading costs, the costs of constructing and installing a pier, a parking area, a security fence, lighting, drainage facilities, other site work and the like (collectively, the “***Total Project Cost***”); provided, however, that the Authority’s internal costs will not be included in the Total Project Cost. The amounts set forth in **Exhibit B** are estimates as of the Effective Date, which estimates may and almost certainly will change, and which estimates do not and shall not be deemed to set either minimum or maximum limits for such elements or for the Total Project Cost.

(b) For purposes of this Lease Agreement, the term “***Capital Recovery Payment***” means a payment equal to the result of (i) the Total Project Cost, divided by (ii) forty-eight (48). For example, using the estimated Total Project Cost in **Exhibit B** of Two Hundred One Thousand Five Hundred Twenty Dollars (\$201,520.00), the Capital Recovery Payment would be Four Thousand One Hundred Ninety-Eight and 33/100 Dollars (\$4,198.33).

(c) As a material inducement for the Authority to enter into this Agreement and develop the Leased Premises, Lessee hereby agrees to make forty-eight (48) monthly Capital Recovery Payments to the Authority on or before the first (1st) day of each and every calendar month during the four-year period beginning November 1, 2018, and ending October 31, 2022. The first Capital Recovery Payment shall be due and payable on or before November 1, 2018, and the last Capital Recovery Payment shall be due and payable on or before October 31, 2022.

(d) If the Total Project Cost has not been finally determined by November 1, 2018, the Parties will use the Estimated Project Cost in **Exhibit B** for purposes of determining the amount of the Capital Recovery Payments until the Total Project Cost has been finally determined, at which time Lessee and the Authority will true-up the Capital Recovery Payments made to date and determine the exact amount of the remaining Capital Recovery Payments. In any case, the sum of the Capital Recovery Payments shall equal the Total Project Cost.

(e) If this Lease or Lessee’s right to possession of the Leased Premises terminates due to an Event of Default by Lessee before Lessee has paid the Total Project Cost as required under this Section 4.02, Lessee shall pay to the Authority within ten (10) Business Days after the date of such termination an amount equal to the amount by which the Total Project Cost exceeds the sum of the Capital Recovery Payments actually made to the Authority on or before such termination.

(f) If this Lease or Lessee’s right to possession of the Leased Premises terminates in accordance with Section 2.07, then Lessee’s obligation for payment of the remaining balance of the Total Project Cost will also terminate as of the date of termination of the Lease Agreement.

Section 4.03. Late Payment Penalties

If Lessee should fail to pay Authority any 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 ten percent (10%) 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. For purposes of this Section, any adjustment payment made by Lessee to correct a prior underpayment shall be treated as due on the date such underpayment was due.

Section 4.04. Place of Payment

All payments of Annual Base Rent, Capital Recover 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 by Authority, (ii) delivered to the Authority's administrative offices at 222 Power Street, Corpus Christi, Texas, or such other physical address as Authority may designate from time to time, or (iii) mailed to Authority, Attention: Executive Director, P.O. Box 1541, Corpus Christi, Texas 78403, or at such other mailing address as Authority shall designate in writing. All payments of Annual Base Rent 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 4.05. Net Lease

Unless otherwise stated in this Lease Agreement, this is a net lease; and Authority shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Lease Agreement or the financing, ownership, construction, reconstruction, maintenance, operation, or repair or replacement of the Leased Premises or the improvements thereon. It is expressly understood and agreed that this is a completely net lease intended to assure Authority the rentals herein reserved on an absolute net basis.

ARTICLE 5 CONDITION AND CARE OF LEASED PREMISES

Section 5.01. Inspection and Acceptance of Leased Premises

(a) Lessee has inspected the Leased Premises and has conducted any environmental site assessment it desired. 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 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. 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 law, 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 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 any contamination on the Leased Premises, including structures, surface soil or subsurface strata, groundwater, surface water and any adjacent channel or bay water and sediment, and that information received from Authority regarding such matters may not be complete or accurate and should not be accepted as such and by entering into this Agreement, Lessee acknowledges that it is relying solely on its own inspection and investigation into the condition of the Leased Premises.

Section 5.02. Environmental Representations and Restrictions

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

(1) **"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 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 human 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; Texas Hazard Communication Act, Chapter 502, Texas Health and Safety Code; Texas Community Right-to-Know Acts, Chapters 505 – 507 Texas Health and Safety Code; and Authority's Tariff (as they relate to the Environment.)

(2) **"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 ("PCBs"), 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 the Applicable Environmental Laws by any Governmental Entity, 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 and the Environment.

(3) **“Contamination”** includes but is not limited to the presence, or threat of one or more Contaminants in the Environment: (a) which has or may result in pollution, degradation, adverse impact, damage, threat or injury, to human health or the Environment, or (b) which is not allowed by or in compliance with Applicable Environmental Laws.

(4) **“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.

(5) **“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 and (b) any other surface water, ground water, drinking water supply, and (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.

(6) **“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 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, remedial, investigative, containment, closure or post-closure, restoration and/or monitoring costs), settlements, assessments, fines, penalties, interest, legal or attorney’s fees and costs of court relating in any way to or concerning the Environment, Environmental Laws, Contaminants or Contamination.

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

(8) 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. Lessee hereby represents and warrants to Authority:

(1) That, without limitation of Section 2.02, in its use of the Leased Premises, Lessee will not violate any Applicable Environmental Laws.

(2) If a change in any Applicable Environmental Law makes any previously acceptable activity of Lessee prohibited, Lessee must immediately cease the prohibited activity upon the Leased Premises and notify Authority in writing within five (5) days.

(3) In no event will Lessee, or its agents, representatives, employees, contractors, consultants or invitees (i) Release or Dispose of any Contaminants on, near or about the Leased Premises, or (ii) construct, install, maintain, use or otherwise operate on the Leased Premises any petroleum or chemical underground storage tank.

(4) 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, petroleum or petroleum products, explosives or Contaminants, except that the Lessee may use, if legal and permitted, commercially reasonable amounts of materials such as adhesives, lubricants and cleaning fluids used in the ordinary course of Lessee’s business. The consent of Authority may be withheld for any reason whatsoever, and may be subject to conditions in addition to the minimum requirements of Applicable Environmental Laws.

(5) 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 of or from the Leased Premises.

(c) Release Reporting, Notification and other Responsibilities:

(1) In the event of a Release of any Contaminant, Lessee must immediately stop the Release and cease any activities which may be resulting in such Release; and within 24 hours, or earlier if proscribed by Applicable Environmental Law, 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 five (5) days of a Release, Lessee will provide a written explanation of the details of the Release and an MSDS for each of the said Contaminants.

(2) Lessee agrees to promptly furnish Authority copies of all documents, reports, notices, orders, or correspondence received or generated by Lessee and its agents, representatives, employees, contractors or consultants relating to any Release described in Section 5.02(a)(1), 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:

(1) 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) caused, in whole or in part, by the breach of any provision of this Lease or the acts or omissions of Lessee or any of its predecessors, agents, representatives, employees, contractors, consultants or invitees whether under this Lease or any prior lease for all or any portion of the Premises.

(2) 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 Law has occurred or may occur, Authority may, at its election and at any time during the Term of this Lease or thereafter, (i) 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, (ii) 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, and (iii) cause to be performed any restoration of the Leased Premises, and any other location to which the Contamination may have migrated, as Authority reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Authority within thirty (30) days after receipt of Authority's bill.

(3) Authority may also, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work as needed to investigate, test, monitor for, remove, remediate, or cleanup any Contaminants and restore the Leased Premises and any other location to which Contaminants may have migrated as Authority reasonably may deem necessary or desirable, 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 shall survive the cancellation, termination or expiration of the Lease, howsoever brought about.

(4) Lessee represents and warrants that any work performed by or at the behest of Lessee in connection with any Release of Contaminants or the violation of any Environmental Laws (the “**Environmental Work**”) 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.

(5) Also, in the event of a Release, 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. Lessee shall assess all human health risks 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 believes a condition constituting substantial endangerment exists in connection with the Leased Premises, Contaminants or a violation of Applicable Environmental Law, Authority may enter the Leased Premises at any time without notice, take any actions it 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.

(f) **RELEASE AND INDEMNITY FOR ENVIRONMENTAL LIABILITIES.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS LEASE AND WITHOUT LIMITING THE PROVISIONS OF ARTICLE 9 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 PRESENCE OR OCCUPANCY ON 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 THE LEASE, (4) LESSEE’S FAILURE TO COMPLY WITH THE TERMS OF THE LEASE, (5) ANY BREACH OF ANY COVENANT, REPRESENTATION OR WARRANTY OF LESSEE UNDER THE LEASE, OR (6) ANY CONTAMINATION OR ENVIRONMENTAL LIABILITIES CAUSED IN WHOLE OR PART, OR CONTRIBUTED TO OR EXACERBATED, BY LESSEE AND/OR ITS AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, CONSULTANTS OR INVITEES. THIS PROVISION SHALL SURVIVE

THE CANCELLATION, TERMINATION OR EXPIRATION OF THIS LEASE, HOWSOEVER BROUGHT ABOUT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECTION 5.02(f), IT IS EXPRESSLY PROVIDED AND AGREED BY AND BETWEEN THE PARTIES THAT LESSEE SHALL NOT OBLIGATED TO INDEMNIFY AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM THEIR OWN NEGLIGENCE.

IN CLAIMS AGAINST THE INDEMNIFIED PARTIES BY OR FOR AN EMPLOYEE OF LESSEE, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, CONSULTANTS OR INVITEES, THE LESSEE'S INDEMNIFICATION OBLIGATION UNDER THIS SECTION 5.02(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, 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 AS PROVIDED IN THIS SECTION 5.02(f).

(g) **Environmental Restoration.** Lessee covenants, represents and warrants that upon cancellation, termination or expiration of the Lease (howsoever brought about), Lessee shall at its own cost, restore the Premises to substantially the same condition as it existed at the commencement of the Lease or, if an earlier lease existed between Lessee, or its predecessors and Authority for all or any part of the Leased Premises, the restoration obligation will require that the Premises be restored to the same condition as of commencement of the earliest lease. The restoration obligations will include any remediation, cleanup or other actions necessary to remove all Contaminants or Contamination that may have occurred during any of the lease terms between Lessee, or its predecessors, and Authority for all or any part of the Leased Premises, and to address all impacts associated with such Contaminants or Contamination.

(h) **Authority's Tenant Audit Program:** Lessee will cooperate with the Authority's Tenant Audit Program (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 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 staff to be necessary. A letter from Authority staff setting forth staff's observations will be provided to Lessee following the audit. If Authority 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 immediately take action to cease the activity and to come into compliance, and must verify its compliance in writing to Authority within three (3) days. If requested by Authority, Lessee shall cause to be performed annually at its sole cost and expense an environmental assessment or audit of the Leased Premises of the scope and type requested by Authority. Except as may be requested by Authority, no physical or invasive testing shall be conducted on the Leased Premises without: (1) providing prior reasonable notice to Authority advising of the purpose of such testing, (2) obtaining written approval to conduct such testing, and (3) obtaining advance approval of the scope and work plans for such testing. All information, test results or 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 the Lease (howsoever brought about), Lessee shall perform a final environmental assessment or audit of the Premises at its sole cost and expense pursuant to the procedures, conditions and requirements set forth in this paragraph. The Program may be modified from time to time as operations progress at the sole discretion of Authority; however, such modifications shall not unreasonably interfere with Lessee's use and enjoyment of the Leased Premises.

(i) **Continuing Obligations.** All of the obligations, warranties and representations in this Section 5.02 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 in this Section 5.02 are binding on Lessee's successors and Transferees (as defined in Section 13.02).

ARTICLE 6

REPAIRS, MAINTENANCE AND DREDGING

Section 6.01. Maintenance of Leased Premises

(a) Lessee will, throughout the Lease Term, at its own expense and risk, maintain the Leased Premises and all Lessee Facilities in good order and condition, including but not limited to making all repairs and replacements necessary to keep the Leased Premises and Lessee Facilities in that condition. All maintenance, repairs, and replacements required by this Section must be performed promptly when required.

(b) Authority shall have absolutely no obligation to make any repairs, replacements or improvements in and to the Leased Premises or to maintain the same.

Section 6.02. Alteration of Improvements

Lessee shall not have the right to make any alterations, improvements and/or additions to the Improvements without first obtaining Authority's prior written approval. Prior to making any such alterations, improvements or additions, Lessee shall submit to Authority plans and specifications therefor for Authority's prior written approval. Lessee shall not make any alterations, improvements or additions the Improvements prior to receiving Authority's prior written approval.

Section 6.03. Permits

Lessee must obtain and maintain in effect at all times during the Term of this Lease Agreement all permits, licenses, permissions, authorizations, and consents required by Applicable Environmental Laws and/or necessary for the 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 Engineering Services with a copy of its permits, licenses, permissions, authorizations and within three (3) days of their receipt by Lessee.

Section 6.04. Ownership of Lessee's Equipment

During the Term of the Lease all furnishing, moveable equipment, trade fixtures, signs, and other items of tangible personal property installed by Lessee on the Leased Premises during the Term (collectively, the "*Lessee's Equipment*") shall remain the property of Lessee.

Section 6.05. Ownership of Lessee Facilities

During the Term of the Lease all Lessee Facilities will be solely the property of Lessee.

Section 6.06. Signs

Lessee may not place any signs at or on the Leased Premises nor paint any signs on any building on the Leased Premises 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 its signs when this Lease Agreement expires or terminates and repair any damage resulting from erecting or removing the signs.

Section 6.07. Dredging Responsibilities

Lessee will be responsible for performing or causing to be performed all dredging, both new work and maintenance dredging, required for any slip on or adjacent to the Leased Premises and for access to the Aransas Channel from the Leased Premises. Any slip on or adjacent to the Leased Premises must be maintained by Lessee at a sufficient depth to prevent vessels berthed at the dock from striking bottom due to lowering of the water level from passing vessels.

Section 6.08. 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 and defend, indemnify and hold Authority and the Leased Premises harmless and free from any liens, claims, encumbrances or judgments created or suffered by Lessee's failure to pay for labor or materials provided to the Leased Premises at the direction of Lessee by, through or under Lessee. If Lessee elects to post a payment or performance bond or is required to post an improvement bond with a public agency in connection with such labor, services or materials, Lessee agrees to include Authority as an additional obligee thereunder.

Section 6.09. Building Code

All Lessee Facilities constructed on the Leased Premises by Lessee must comply with all applicable building codes unless they are modified by 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 Authority's Department of Engineering Services.

ARTICLE 7 UTILITIES, SECURITY AND TAXES

Section 7.01. Utilities, Security and Other Services

(a) 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, and (iii) security or guard services. Authority will not furnish any of these services to Lessee except pursuant to a separate written agreement between the Parties. If at Lessee's request or because of Lessee's failure to pay for services to the Leased Premises Lessee has contracted for, Authority (following written notice to Lessee and an opportunity to cure for at least thirty (30) days after such notice) provides any such services to the Leased Premises or pays the cost for any such services, Lessee will pay to Authority the cost of such services as additional rent upon receiving Authority's invoice. Payment shall be made pursuant to the terms of said invoice.

Section 7.02. Taxes

(a) During the Term of this Lease, Lessee must pay or cause to be paid when due all taxes, assessments, fees or charges imposed on the Lessee's Facilities on the Leased Premises by virtue of Lessee's tenancy or upon Lessee's property on the Leased Premises or upon Lessee's leasehold interest in the Leased Premises.

(b) Lessee may, at its expense, contest any tax, assessment, fee or charge for which it is responsible under this Section. Except as provided in Section 7.02(c), Lessee need not pay the tax, assessment, fee or charge while the contest is pending. Except as provided in Section 7.02(c), Lessee may prevent Authority from paying any tax, assessment, fee or charge that Lessee is contesting under this Section, pending resolution of the contest, by depositing with Authority the full amount of the tax, assessment, fee or charge plus the amount of any penalty that might be imposed for failing to make timely payment and one (1) year of interest at the rate imposed by the entity levying the tax, assessment, fee or charge (the "Tax Protest Deposit"). When the contest is resolved, Lessee must pay the tax, penalty and interest imposed and may use the Tax Protest Deposit to pay any tax, assessment, fee or charge, plus any penalty or interest, due under the final resolution and keep any balance of the Tax Protest Deposit. If the Tax Protest Deposit is insufficient to pay these amounts, Lessee must immediately pay the balance due to the entity imposing the tax, assessment, fee or charge. In all cases of a tax protest, the Tax Protest Deposit is the property of Lessee and the Authority shall hold the Tax Protest Deposit in escrow for the benefit of Lessee and release the monies as directed by Lessee at any time.

(c) Notwithstanding the provisions of Section 7.02(b), Authority may pay, or require Lessee to pay, any tax, assessment, fee or charge for which Lessee is responsible under this

Section, pending resolution of Lessee's contest of the tax, assessment, fee or charge, if payment is demanded by a holder of a mortgage on the Leased Premises or if failing to pay will subject all or part of the Leased Premises to forfeiture or loss.

(d) Any of said taxes, fees or charges that are payable by Lessee for the tax year in which the Term of this Lease begins, as well as during the year in which this Lease Agreement expires or is terminated, shall be apportioned so that Lessee shall pay its proportionate share of the taxes, fees or charges for such periods of time. 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 8 INSURANCE

Section 8.01. Lessee's Insurance

Lessee shall satisfy the insurance requirements set forth in **Exhibit C** attached hereto, which is incorporated in this Lease Agreement.

Section 8.02. Waiver of Subrogation

To the full extent that Lessee may do so without invalidating Lessee's insurance coverage, Lessee hereby waives any and every Claim which arises or may arise in its favor against the Authority during the Term of the Lease for any and all loss of, or damage to, any of its property located within or upon, or constituting part of, the Leased Premises, to the extent that such loss or damage is covered by any property insurance policy carried by Lessee, or would have been covered by any property insurance policy required to be carried by Lessee pursuant to this Lease. Lessee agrees to have such insurance policies properly endorsed as set forth in **Exhibit C** attached hereto.

ARTICLE 9 INDEMNITY

Section 9.01. 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 or relating to any of the following events (each being referred to herein as an "*Indemnified Event*"): (i) the failure on the part of the Lessee or any of its sublessees or their respective owners, officers, managers, employees, agents, invitees, guests, contractors, subcontractors or licensees ("*Lessee Parties*") to comply with the provisions of Applicable Laws applicable to the Leased Premises or the Lessee Facilities on the Leased Premises, 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 (iii) 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 arising out Lessee's operations on the Leased Premises or Lessee's use of the Lessee Facilities.

(b) Notwithstanding anything to the contrary contained in Section 9.01(a), it is expressly provided and agreed by and between the Parties that Lessee shall not be obligated to indemnify and hold harmless the Authority Parties from and against their own negligence.

(c) Notwithstanding anything to the contrary contained in Section 9.01(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 (1) 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 (2) the percentage of responsibility attributed to the Authority Parties with respect to causing or contributing to cause the Indemnified Event for which the Claim was made.

(d) Lessee's indemnity obligations under this Section 9.01 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 the Lessee under this Section 9.01 shall survive the expiration or any earlier termination of the term of this Lease.

Section 9.02. 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 9.01(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.

**ARTICLE 10
PROPERTY LOSS**

Section 10.01. Notice of Damage

Lessee shall notify Authority within a reasonable period of any destruction of or damage to the Improvements in excess of Ten Thousand Dollars (\$10,000).

Section 10.02. Restoration of Improvements

(a) If all or any part of the Improvements are destroyed or damaged by any casualty during the Term of this Lease Agreement, Lessee shall fully restore, repair, replace or rebuild the same as nearly as practicable to its condition, quality and class immediately prior to such damage or destruction. The reconstruction or repair of the damaged or destroyed improvements shall be

commenced within a commercially reasonable period of time after the damage was sustained, and Lessee shall diligently prosecute such reconstruction or repair to completion.

(b) Any restoration undertaken of the Lessee Facilities pursuant to this Section 10.02 shall in all respects substantially conform to the provisions of the Section 6.02 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.

(c) Lessee's obligation hereunder shall not be affected by the unavailability or insufficiency of any insurance proceeds.

ARTICLE 11 CONDEMNATION

Section 11.01. 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 entity 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 Rent 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 lesser of the following amounts (with any balance to be retained by Authority):

- (1) an amount equal to for the book value ("basis" for federal income tax purposes) of Lessee Facilities on the Leased Premises as of the lease termination date; or
- (2) the amount of the Condemnation Award.

Section 11.02. Partial Taking; Termination

(a) If a portion of the Leased Premises is taken by any Governmental Authority or other entity 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 this Lease shall terminate as provided in Section 11.01 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 11.01.

(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 Annual Base Rent payable during the remainder of the Term after taking of possession by the Condemning Authority shall be reduced 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 11.04. 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 Improvements to an economically viable unit, and such costs shall be considered in any such just and proportionate reduction of Base Rent.

Section 11.03. 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. 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 11.04. Independent Determination of Values

If Authority and Lessee are unable to agree on a just reduction in Annual Base Rent pursuant to Section 11.02, then Authority and Lessee shall each appoint a Qualified MAI Appraiser. The two Qualified MAI Appraisers shall then, within ten days after their designation, select a third Qualified MAI Appraiser. If the two appointed appraisers are unable to agree on a third appraiser within such ten-day period, either Authority or Lessee, by giving five-days' prior written notice thereof to the other, may apply to the then presiding judge of any of the Nueces County District Courts for selection of a third appraiser. Within twenty (20) Business Days after the selection of the third appraiser, a majority of the appraisers shall determine a just and proportionate reduction in Annual Base Rent for purposes of Section 11.02. If a majority of the appraisers is unable to agree upon a just and proportionate reduction in Annual Base Rent within such time, the two closest reductions of Annual Base Rent shall be averaged and the average will be the reduction in Annual Base Rent. Authority and Lessee shall each bear the cost of the appraiser selected by it and shall share equally the cost of the third appraiser.

ARTICLE 12 OBLIGATIONS ON TERMINATION

Section 12.01. Surrender of Leased Premises

Upon the expiration or termination of this Lease Agreement, Lessee shall peaceably and quietly surrender the Leased Premises to the Authority in good order, condition and repair, excepting reasonable wear and tear and damage that is not Lessee's obligation to repair. 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. 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 12.02. Removal of Lessee's Equipment

During the Removal Period, Lessee shall remove or cause to be removed all of the Lessee's Equipment from the Leased Premises. Any items of the Lessee's Equipment that are not removed by Lessee during 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 remove and/or dispose of any items of the Lessee's Equipment which Lessee fails to remove, and Lessee shall be required to reimburse the Authority for the actual costs the Authority incurs in removing and/or disposing of such items of the Lessee's Equipment.

Section 12.03. 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 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 and/or removal.

(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.

Section 12.04. Repair of Permanent Improvements

(a) Upon the expiration or termination of this Lease Agreement, all of the Permanent Improvements shall be in good operating condition, reasonable wear and tear excepted, and shall remain on and be surrendered with the Leased Premises as a part thereof. If during the Inspection Period the Authority should determine that any of the Permanent Improvements are not in good operating condition (taking into account reasonable wear and tear), the Authority may give Lessee written notice of a list of the Required Repairs on or before the tenth (10th) day after the last day of the Inspection Period and Lessee shall promptly commence and thereafter diligently prosecute to completion the Required Repairs at its own expense. In the event of a dispute regarding the Required Repairs, the Parties shall resort to the dispute resolution provisions herein provided.

(b) The Authority, after notice to the Lessee with reasonable opportunity to cure, may make any of the Required Repairs which Lessee fails to make, and Lessee shall be required to reimburse the Authority for the actual costs the Authority incurs in making the Required Repairs.

Section 12.05. Rent During the Removal Period

Lessee shall not be obligated to pay any Rent during the Removal Period, but Lessee may not use the Leased Premises during the Removal Period for any purpose other than those specifically described in Sections 12.02 and 12.03.

ARTICLE 13 ASSIGNMENTS, SUBLEASES AND TRANSFERS

Section 13.01. Restrictions on Assignments, Subleases and Transfers

Lessee may not assign this Lease Agreement in whole or in part nor any interest therein nor sublease the Leased Premises nor any part thereof, nor grant any 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 without the prior written consent of Authority, which approval shall not be unreasonably denied, delayed or conditioned. Consent of Authority to one or more assignments or subleases does not operate as a waiver of Authority's rights concerning any subsequent assignments or subleases. If this Lease Agreement is assigned, or if any of the Leased Premises, or any part thereof, is subleased or occupied by anyone other than the Lessee, then Authority may, after default by the Lessee, collect rent from the assignee, subtenant or occupant and apply the net amount collected, after the deduction of any costs of collection, including, but not limited to, reasonable and necessary attorneys' fees or other costs incurred by Authority, to Lessee's Rent provided for in this Lease Agreement. No assignment, sublease, occupancy or collection of Rent waives the obligations of Lessee under this Lease Agreement.

Section 13.02. Conditions

The following conditions automatically apply to each sublease, assignment or transfer by Lessee or any sublessee without the necessity of same being stated in or referred to in Authority's written consent:

(a) Lessee must execute, have acknowledged and deliver to Authority and cause the sublessee, assignee or other transferee (each a "***Transferee***") of any portion of Lessee's interest in this Lease Agreement, the leasehold estate created hereby or the Leased Premises to execute, have acknowledged and deliver to Authority, an instrument in form and substance reasonably acceptable to Authority in which:

(1) The Transferee adopts this Lease Agreement and assumes and agrees to perform, jointly and severally with Lessee, all of the obligations of Lessee hereunder, as to the interest transferred to it;

(2) Lessee and any guarantor of this Lease Agreement agrees with Authority that, if the rent or other consideration due by the Transferee exceeds the Rent for the

transferred portion of the Leased Premises, then Lessee shall, and any guarantor guarantees that Lessee shall, pay Authority as additional rent hereunder all such excess rent and other consideration immediately upon Lessee's receipt thereof;

(3) The Transferee agrees to use and occupy the transferred portion of the Leased Premises solely for the Permitted Uses under Section 5.01 and otherwise in strict accordance with this Lease Agreement; and

(4) Lessee and any guarantor acknowledge and agree in writing that, notwithstanding the sublease, assignment or transfer, Lessee and any guarantor remain directly and primarily liable for the performance of all the obligations of Lessee hereunder (including, without limitation, the obligation to pay all Rent), and Authority shall be permitted to enforce this Lease Agreement against Lessee, any guarantor or the Transferee, or all of them, without prior demand upon or proceeding in any way against any other persons.

(b) Lessee must deliver to Authority a counterpart of all instruments executed in connection with the sublease, assignment or other transfer executed by all parties to such transaction (except Authority); and

(c) Lessee shall pay or cause to be paid to Authority, at the time of the execution and delivery of the documents, the sum of Ten Thousand Dollars (\$10,000) to cover Authority's administrative and legal costs for each sublease, assignment or transfer requested from Authority by Lessee or any sublessee.

ARTICLE 14 DEFAULT

Section 14.01. Event of Default

An "*Event of Default*" by the Lessee shall occur:

(1) if the Lessee fails to pay when due the Rent payable under this Lease, and any such default shall continue for thirty (30) days after the receipt of written notice thereof by the Lessee; or

(2) if the 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 Rent) that is to be kept, performed or observed by Lessee, and shall fail to cure, correct or remedy such failure within sixty (60) days after Lessee has received written notice 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; or

(3) if the Lessee abandons the Leased Premises; or

(4) if the Lessee shall be adjudicated bankrupt or be declared insolvent under the Federal Bankruptcy Code or any other federal or state law (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 (i) 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; (ii) admit in writing its inability to pay its debts generally as they become due; (iii) make a general assignment for the benefit of its creditors; (iv) file a petition commencing a voluntary case under or seeking to take advantage of any Bankruptcy Law; or (v) acquiesce in writing to, any petition commencing an involuntary case against the Lessee pursuant to any Bankruptcy Law; or

(5) if 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 Law, 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 (i) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of the Lessee, (ii) 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 (iii) any similar relief as to the Lessee pursuant to any Bankruptcy Law, and 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.

Section 14.02. Rights and Remedies of Authority

(a) 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 equity, take any one or more or a combination of the following actions:

(1) Terminate this Lease by giving Lessee written notice thereof, in which event, Lessee shall pay to Authority the sum of (i) all Rent accrued hereunder through the date of termination, (ii) all amounts due under Section 14.03, and (iii) an amount equal to (A) the total Rent that Lessee would have been required to pay for the remainder of the term of this Lease discounted to present value at a per annum rate equal to the “Prime Rate” as published on the date this Lease is terminated by The Wall Street Journal, Southwest Edition, in its listing of “Money Rates”, minus (B) the then present fair rental value of the Leased Premises for such period, similarly discounted; or

(2) Terminate Lessee's right to possession of the Leased Premises without terminating this Lease by giving written notice thereof to Lessee, in which event Lessee shall pay to Authority (i) all Rent and other amounts accrued hereunder to the date of termination of possession, (ii) all amounts due from time to time under Section 14.03, and

(iii) on the applicable due dates all Rent and other sums required hereunder to be paid by Lessee during the remainder of the Term of this Lease, reduced by any net sums thereafter received by Authority through reletting the Leased Premises during such period. Authority shall use reasonable efforts to relet the Leased Premises on such terms and conditions as Authority in its sole discretion may determine (including a term different from the term of this Lease, rental concessions, and alterations to, and improvement of the Leased Premises); however, Authority shall not be obligated to relet the Leased Premises before leasing other portions of the Authority's real estate. Authority shall not be liable for, nor shall Lessee's obligations hereunder be diminished because of, Authority's failure to relet the Leased Premises or to collect rent due for such reletting. Lessee shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder. Re-entry by Authority in the Leased Premises shall not affect Lessee's obligations hereunder for the unexpired Term of the Lease; rather, Authority may, from time to time, bring action against Lessee to collect amounts due by Lessee, without the necessity of Authority's waiting until the expiration of the term of the Lease. Unless Authority delivers written notice to Lessee expressly stating that it has elected to terminate this Lease, all actions taken by Authority to exclude or dispossess Lessee of the Leased Premises shall be deemed to be taken under this Section 14.02(a)(2). If Authority elects to proceed under this Section 14.02(a)(2), it may at any time thereafter, upon written notice to Lessee, terminate this Lease and, in such event, neither Authority nor Lessee shall have any further rights, obligations or liabilities hereunder after the date of termination, except to the extent that any covenants of this Lease are expressly said to survive termination of this Lease.

(b) Notwithstanding anything to the contrary contained in this Section 14.02, Lessee shall not be deemed to have waived any requirements of Authority to mitigate damages upon an Event of Default as required by law.

Section 14.03. Payments on Default

Upon the occurrence of any Event of Default, Lessee shall pay to Authority all costs incurred by Authority (including court costs and reasonable attorneys' fees and expenses) in (i) obtaining possession of the Leased Premises, (ii) removing and storing Lessee's or any other occupant's property, (iii) reasonably repairing, restoring, altering, remodeling, or otherwise putting the Leased Premises into a reasonably marketable condition, (iv) 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, cost of tenant finish work, and other costs incidental to such reletting), (v) performing Lessee's obligations which Lessee failed to perform, and (vi) enforcing its rights, remedies, and recourses arising out of the Event of Default.

Section 14.04. Default by Authority

Authority shall in no event be charged with default in the performance of any of its obligations hereunder, unless and until Authority shall have failed to correct any such default within thirty (30) days (or such additional time as is reasonably required to correct any such default) following delivery of written notice from Lessee to Authority properly specifying any obligations Authority has failed to perform. If Authority fails to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept,

performed or observed by Authority, and if Authority fails to remedy the same within thirty (30) days after the Authority has been given a written notice specifying such default, then in such event Lessee may enforce the performance of this Lease by any method provided by law or equity.

Section 14.05. No Waiver

Any waiver, expressed or implied, 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, and shall not be construed as waiver to any subsequent breach of such agreement, covenant or obligation.

ARTICLE 15 DISPUTE RESOLUTION AND MEDIATION

Section 15.01. 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 shall have failed to resolve the dispute within the 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 by notice in writing to the other Party, and the appropriate upper management of the Parties shall meet within the 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 15.02.

Section 15.02. 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 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 30-day period, the Parties shall have all rights available at law or in equity.

ARTICLE 16

GENERAL PROVISIONS

Section 16.01. Compliance with Authority's Tariff

Lessee must comply with Authority's Tariff to the extent applicable to Lessee's tenancy or operations on the Leased Premises. Lessee must comply with the requirements of Item 669 of Authority's Tariff 100-A to the extent the same apply to Lessee, its agents, servants and employees.

Section 16.02. Inspection

Lessee will permit Authority and Authority's agents, representatives or employees to enter on the Leased Premises 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 Lessee's business operations on the Leased Premises.

In an emergency, Authority, its agents, servants and employees, may use any 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 as soon as possible thereafter. Entry into the Leased Premises by Authority for any purpose permitted herein shall not constitute a trespass nor an eviction (constructive or otherwise), nor entitle Lessee to any abatement or reduction of rent, nor 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 16.03. No Partnership or Third Party Beneficiaries

The relationship between Authority and Lessee at all times shall remain solely that of landlord and tenant 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, entity or third party unless the benefit to a person, entity or third party is expressly stated in this Lease Agreement.

Section 16.04. Payments and Notices

(a) Unless Lessee has made arrangements to make payments to the Authority by wire transfer or other means, all payments, from Lessee to the Authority shall be mailed or delivered to the Authority, Attention: Executive Director, 222 Power Street, Corpus Christi, Texas 78401. All notices, demands or requests from Lessee to Authority shall be mailed or delivered to the Authority, Attention: Executive Director, 222 Power Street, Corpus Christi, Texas 78401, or faxed to the Authority, Attention: Executive Director at fax number (361) 882-7110.

(b) All notices, demands or requests from Authority to Lessee shall be mailed or delivered to the Lessee, Attention: Presiding Officer at P.O. Box 2767 Corpus Christi, Texas 78403, or faxed to the Lessee, Attention: Presiding Officer at fax number (361) 884-1659.

(c) Notices required to be given to either Party may be given by certified first-class mail, by overnight delivery or by fax, to the appropriate Party at its address or fax number listed

above. Notice may also be given by personal service. Any notice given by mail shall be deemed to have been given one day after such notice was deposited in the United States mail, certified and postage prepaid, or on the next Business Day (if delivered by overnight delivery) addressed to the Party to be served. In all 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 or fax number for notice by giving the other Party written notice as provided in this Section.

Section 16.05. Estoppel Certificate

On request, Lessee will execute an estoppel certificate that states the Effective Date and termination date of the Lease, describes any rights to extend the Term of the Lease, lists any defaults by Authority, and provides any other information regarding the terms of this Lease reasonably requested by the Authority.

Section 16.06. Abatement

Lessee's covenant to pay Rent and Authority's covenants are independent. Except as otherwise expressly provided in this Lease, Lessee shall not be entitled to abatement of Rent for any reason.

**ARTICLE 17
MISCELLANEOUS**

Section 17.01. Parties Bound

This 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 17.02. 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. Venue of any action arising out of this Lease Agreement will be in Nueces County, Texas.

Section 17.03. Severability

If any part of this Lease Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable.

Section 17.04. 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 17.05. 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 its 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 the rights and remedies may be exercised and enforced concurrently or whenever occasion for the exercise arises.

Section 17.06. 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, then the defaulting Party agrees to pay the reasonable attorneys' fees incurred by the prevailing Party.

Section 17.07. Captions

All captions in this Lease Agreement are for reference and convenience only and shall not modify or affect the provisions of this Lease Agreement in any manner.

Section 17.08. 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 is 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 as required by the Texas Open Meetings Act, Texas Public Information Act or any other law will not expose Authority (or any party acting by, through or under Authority) to any claim, liability or action by Lessee. Authority agrees to keep confidential the business terms of this Lease to the extent permitted by law. Authority shall provide immediate notice to Lessee of any open records request and allow Lessee to seek protective order within the statutory time limits.

(b) 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 and/or waive the right to have the information withheld.

Section 17.09. Brokers

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.

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 17.10. Authority

Each of Lessee and Authority warrants and represents unto the other Party that (a) (if applicable) it is a duly organized and existing legal entity, in good standing in the state of Texas, (b) it has full right and authority to execute, deliver and perform this Lease Agreement, (c) the person executing this Lease Agreement on behalf of Lessee and Authority was authorized to do so, and (d) upon request, it will deliver to the other Party reasonable evidence of its authority to execute this Lease Agreement.

Section 17.11. Recording

Upon the request of either Party, 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. Neither Party to this Lease may record this Lease without the express written consent of the other Party.

Section 17.12. 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 17.13. 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*, which includes strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the Party delayed in performing work or doing acts (herein "*force majeure*"), such Party shall be excused for the period of time equivalent to the delay caused by such *force majeure*.

(b) Notwithstanding the foregoing, 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 five (5) Business Days of the event causing the *force majeure*. The maximum period of time which a Party may delay any act or performance of work due to *force majeure* shall be sixty (60) days unless repairs cannot reasonably be completed or

commenced within such 60 days, then such time shall be extended as reasonably necessary to complete the repairs due to the force majeure event.

Section 17.14. 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.

Section 17.15. Entire Agreement

This Lease Agreement, including any exhibits hereto, constitutes the Parties' final and mutual agreement with respect to the subject matter hereof. There are no written or oral representations or understandings regarding the subject matter of this Lease Agreement that are not fully expressed in this Lease Agreement. No change, waiver or discharge is valid unless in a writing that is signed by the Party against whom it is sought to be enforced.

[Signature page follows this page]

AUTHORITY'S SIGNATURE PAGE

EXECUTED this ____ day of October 2017, but effective for all purposes as of the Amendment Date.

AUTHORITY:

**PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS**

By: _____
John P. LaRue
Executive Director

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on the ____ day of October 2017, by John P. LaRue, the Executive Director of the Port of Corpus Christi Authority of Nueces County, Texas, on behalf of the Authority.

NOTARY PUBLIC, STATE OF TEXAS

(Seal)

LESSEE'S SIGNATURE PAGE

EXECUTED this ____ day of October 2017, but effective for all purposes as of the Amendment Date.

LESSEE:

**ARACOR, INC.,
d/b/a ARANSAS-CORPUS CHRISTI PILOTS**

By: _____

Printed Name: _____

Title: _____

**STATE OF TEXAS §
 §
COUNTY OF _____ §**

This instrument was acknowledged before me on the ____ day of October 2017, by _____, the _____ of _____, a _____ corporation.

NOTARY PUBLIC, STATE OF TEXAS

(Seal)

EXHIBIT A

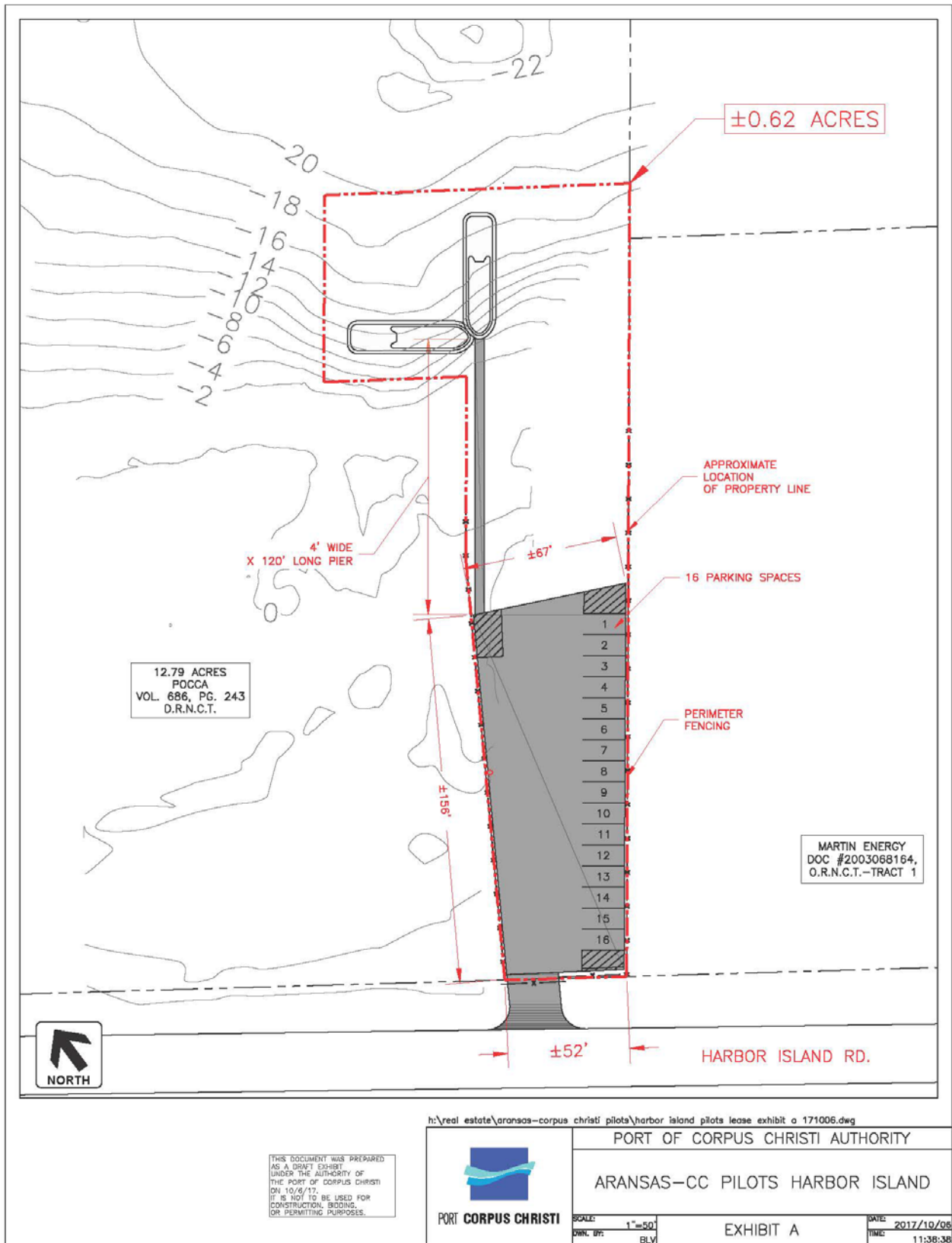


EXHIBIT B

DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL
Mobilization/Bonds	1	LS	\$20,000.00	\$20,000
Site Excavation	1,210	SY	\$5.00	\$6,050
Demolish Existing Fencing	52	LF	\$10.00	\$520
Compact Subgrade	1,210	SY	\$5.00	\$6,050
Geogrid	1,210	SY	\$4.00	\$4,840
6" Crushed Limestone Base	387	CY	\$18.00	\$6,966
2" HMA Type D	1,210	SY	\$15.00	\$18,150
Pavement Markings	1	LS	\$2,000.00	\$2,000
24" Reinforced Concrete Pipe Culvert	30	LF	\$100.00	\$3,000
24" RCP Pipe SET	2	EA	\$1,500.00	\$3,000
6' Chainlink Fence (east and south boundary only)	256	LF	\$30.00	\$7,680
4' Wide Timber Walking Pier	120	LF	\$300.00	\$36,000
Piles/Bracing/Guards at end of pier for breasting	1	LS	\$3,000.00	\$3,000
Light Pole in parking lot	1	LS	\$10,000.00	\$10,000
Light Pole on Walking Pier	2	EA	\$5,000.00	\$10,000
Automatic Gate with PIN pad	1	LS	\$10,000.00	\$10,000
			Subtotal	\$147,256
			15% Contingency	\$22,088
			ESTIMATED CONSTRUCTION TOTAL	\$169,344
Engineering Design (8%)				\$13,548
Topographic Survey (3%)				\$5,080
Geotechnical Investigation (3%)				\$5,080
Permitting (5%)				\$8,467
			ESTIMATED PROJECT TOTAL	\$201,520
Note: These costs do not include bid phase services or construction phase services.				

EXHIBIT C

LESSEE'S INSURANCE REQUIREMENTS

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

(1) *Property Insurance.* Special form (“all risk”) property insurance with no exclusions, except the standard printed exclusions, at Full Replacement Cost (hereinafter defined), covering Improvements on the Leased Premises and Lessee Facilities on Leased Premises (the “**Property Insurance**”). 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 the Improvements and Lessee Facilities, including the cost of demolition and debris removal and without deduction for depreciation. The Authority shall be named as an additional insured on the Property Insurance to the extent “additional insured” status for the Authority is available with respect to such insurance. The proceeds of the Property Insurance shall be used for the restoration of the property so insured as provided in Section 10.01 and Section 10.02. Lessee shall provide to the Authority a certificate of the Property Insurance which reflects 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 for bodily injury by 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, property damage, operations hazard, owner's protective coverage, contractual liability, products and completed operations liability, 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.

(4) *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 Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

(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.

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 this Lease) describing the Policies, which certificates must be in their form and content, reasonably acceptable to the Authority.

In the event that a claim is filed against the Authority and governed by the terms of this 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. In addition, to the extent that during the Term there shall occur any material changes in any of the Policies required hereunder, Lessee shall notify the Authority of such changes. In the event that Lessee fails to obtain or maintain any of the insurance required by this **Exhibit C**, the Authority retains the right to procure such insurance coverage and charge the Lessee the premium cost plus an additional 10% administrative fee.

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 C** 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 at least thirty (30) days prior to the expiration date of each of the Policies. The company writing each of the Policies, except for Lessee's captive insurance company, must possess a Financial Strength Rating of no less than "A-" and a Financial Size Category rating of at least "VI" by A.M. Best Company (or any successor rating agency or entity reasonably selected by Authority if A.M. Best Company discontinues publishing ratings of insurance companies or if the rating system is changed). Lessee shall deliver to Authority a copy of the most recent audited financial statements of Lessee's captive insurance company before commencing any material activities on the Leased Premises under this Lease Agreement. Lessee represents and warrants to the Authority that the financial statements of Lessee's captive insurance company are audited annually by a certified public accountant. Lessee shall submit a copy of the audited financial statements of Lessee's captive insurance company to the Authority annually within one hundred eighty (180) days after the close of the captive insurance company's fiscal year.