

CHARTER AREA BERTHING LEASE

THIS CHARTER AREA BERTHING LEASE ("Agreement") is made and entered into and effective this 1st day of September, 2021 ("Effective Date"), by and between the **BOARD OF TRUSTEES OF THE GALVESTON WHARVES** ("Lessor"), a separate utility of the City of Galveston, Texas (the "City"), and _____ ("Lessee"), owner/operator of the boat _____ registration no. _____ (the "Vessel"). Lessor and Lessee hereby agree as follows:

WHEREAS, Lessor has under its management and control the property in Galveston, Galveston County, Texas, known as the Pier 19 Charter Area (the "Charter Area"); and

WHEREAS, Lessor operates the Charter Area pursuant to the provisions of Article XII of the City Charter (the "Charter") of the City; and

WHEREAS, Lessor and Lessee desire to enter into this Agreement for the lease by Lessee of certain property in the Charter Area.

ARTICLE 1 - DEMISE OF LEASED PREMISES

Section 1.01 - General. Lessor, for and in consideration of the fees, charges and other sums payable by Lessee hereunder and the covenants and premises contained in this Agreement and to be kept, performed and observed by Lessee, and subject to the reservations and restrictions contained in this Agreement, does hereby lease and demise to Lessee, and Lessee does hereby lease and accept from Lessor, the property described, outlined or marked on Exhibit A, attached to this Agreement, known as **Slip No. 8-W** and incorporated by reference ("Leased Premises"). The only vessel that may operate from or be docked at the Leased Premises is a seaworthy, operationally ready vessel suitable, in Lessor's sole discretion, to conduct a permitted activity under the terms of Article VI of this Agreement.

TO HAVE AND TO HOLD the Leased Premises, together with all rights, privileges, easements, appurtenances and other interests belonging to or in any way pertaining to the Leased Premises, subject to the terms of this Agreement. This Agreement, and the rights of the Lessee hereunder, are subject, however, to (i) all federal, state and local law, (ii) all restrictions, covenants, conditions, reservations, encumbrances, and easements, if any, relating to the Leased Premises, but only to the extent they are still in effect and shown of record in the Galveston County real property records or apparent from visual inspection, and (iii) any rights reserved herein to Lessor.

Section 1.02 – Lessor's Reserved Rights. Lessor reserves the right to (i) use any street or roadway constructed by Lessee or located on the Leased Premises, (ii) relocate or make changes in and additions to any easements, right-of-way dedications, limitations, reservations, and grants for the purpose of most efficiently and economically developing the Port of Galveston, Galveston, Texas (the "Port"), and (iii) locate, relocate, construct, erect, and maintain, in and on any streets or roadways, sewer lines, water lines, electrical lines, and conduits maintained by the Lessor, as well as other pipelines, conduits, wires, and utility functions beneath or above the surface of the ground, with the

right of access to the same at any time for the purposes of repair and maintenance; provided, however, that in exercising any of these reserved rights Lessor must not unreasonably interfere with Lessee's use of the Leased Premises. Lessor has the right to use third parties to exercise the rights reserved to Lessor under this Section, and the right to grant easements or rights of way reserved to Lessor in this Section to other parties to exercise these reserved rights.

Section 1.03 - Substitution of Space. At any time during the Term (defined below), Lessor may substitute other premises in the Charter Area for the Leased Premises described in Section 1.01 if the substituted premises includes approximately the same square footage of space as the premises described in Section 1.01, and provides the same or similar advantages as provided by the premises described in Section 1.01. Lessor must provide written notification of any such substitution to Lessee at least 10 days before Lessee is required to occupy the substituted premises. Any premises so substituted for the premises described in Section 1.01 will be considered the Leased Premises for all purposes under this Agreement, and their occupancy is subject to all the terms of this Agreement. Any property substituted for the areas described as the Leased Premises in Section 1.01 above will be considered the Leased Premises for all purposes under this Agreement beginning on the date it is occupied by Lessee, and its occupancy by Lessee is subject to all the terms of this Agreement. After Lessee occupies the new property, the property formerly occupied by Lessee will no longer be considered the Leased Premises, Lessee will have no right of occupancy therein, and such property will be treated as if it had been surrendered by Lessee under Article 9 of this Agreement. In addition, the provisions of Article 11 and Sections 8.03, 14.01, 14.08, 18.09, 18.25, and 18.32 of this Agreement, as well as any other provisions that expressly survive the termination of this Agreement, will continue in effect for the property formerly occupied by Lessee as the Leased Premises with respect to the period of time it was so occupied by Lessee.

Section 1.04 - Ingress and Egress. Lessee has the non-exclusive right to use any designated road on Port property to obtain ingress and egress to and from the Leased Premises between the Leased Premises and Harborside Drive in the City, subject to Lessor's right to exercise police powers with respect to such road or roads and subject to the other provisions of this Agreement..

Section 1.05 - Parking. Lessee has the non-exclusive right to use any designated parking area (the "Parking Area") in the Charter Area pursuant to the provisions of Article XII, Section 4 of the Charter. The Parking Area is outlined or marked on Exhibit A, attached to this Agreement and incorporated by reference. Lessor covenants to operate the Parking Area in the manner required by the Charter, and will use commercially reasonable efforts to assure that the Parking Area is operated in a manner designed to accommodate the needs of Lessee and all other authorized users of the Parking Area. Lessee will be allotted, and must pay for, one parking tag, which will allow the vehicle that displays the tag to park in the Parking Area. The cost per month per parking tag to be paid by Lessee as of the Effective Date is **\$20.00**. The fee for the parking tag will be payable in monthly installments in the manner described in Section 3.03 below. On the first day of each Renewal Term, Lessor may increase the cost per month per parking tag to be equal to no more than 103% of the fee payable during the Primary Term or the previous Renewal Term, whichever is applicable.

ARTICLE 2 - TERM OF LEASE

Section 2.01 - Commencement and Termination Date. This Agreement is for a term of ___ year[s] ("**Primary Term**") commencing on the Effective Date and terminating on the day before the ___ anniversary of the Effective Date, unless sooner terminated as provided herein. The word "**Term**" includes the Primary Term and any properly exercised renewal term, if renewal options are granted in this Agreement to Lessee. Either party may terminate this Agreement, with or without cause, by giving the other party 60 days advance written notice.

Section 2.02 - Holding Over. If Lessee holds over after the termination of this Agreement, such tenancy is from month to month under all terms, covenants and conditions contained in this Agreement, except that rent will be equal to 150% of the rental amount in force immediately prior to termination. No holding over by Lessee will be construed as an extension of the Term or the proper exercise of any Renewal Term (defined below).

Section 2.03 - Renewal Options. As long as (i) all Rent (defined below), fees, charges, and other sums payable by Lessee are current and Lessee is not in default under this Agreement, and (ii) Article XII, Section 4 of the Charter contains language mandating that the Charter Area is dedicated to be used, rented, or leased exclusively as boat slips, berths or docks for shrimp boats, party boats, fishing boats, retail and commercial fish-sales outlets and fuel docks and public parking relating to all such uses, Lessee has the option to renew this Agreement for 1 additional 3 year period[s] (each a "**Renewal Term**"), to commence at the expiration of the Primary Term or the previous Renewal Term, whichever is applicable. Lessee must exercise this option to renew by delivering written notice of such election to Lessor at least 30 days prior to the expiration of the Primary Term or the immediately preceding Renewal Term, whichever is applicable. The renewal of this Agreement is upon the same terms and conditions of this Agreement, but without any additional option to renew, and except as is otherwise herein provided, and except that Rent in each Renewal Term will be calculated in accordance with section 3.07 (Rent Escalation)

ARTICLE 3 – RENT AND SECURITY FOR PAYMENT

Section 3.01 - Commencement of Rent. Rent under this Agreement commences on the Effective Date.

Section 3.02 - Amount of Rent. Lessee will pay Lessor Rent in a sum equal to **\$ 133.00** for each month during the first year of the Primary Term ("**Rent**").

Section 3.03 - Payment of Rent. Rent is payable monthly, in advance, on the first day of each month during the Term of this Agreement. If the Term does not commence on the first day of a calendar month, Rent will be prorated for that month and is payable on the Effective Date.

Section 3.04 - Delinquency. All amounts payable under this Agreement that are not paid when due bear interest from the due date thereof until paid at the lesser of (i) the rate contained in the

then current tariff circular governing the Port, as it may from time to time be amended (the "Tariff"), or (ii) the maximum nonusurious rate allowed by law.

Section 3.05 – Letter of Credit. Lessor, in its sole discretion, may require Lessee (or an entity acceptable to Lessor of which Lessee is a member) to maintain in full force and effect and deliver to Lessor an irrevocable, clean letter of credit in an amount up to \$8,000 (the "Letter of Credit") as security for Lessee's full and complete performance of the terms of this Agreement. If required, the Letter of Credit must be delivered to Lessor no later than the Effective Date and must be issued by a bank, and in form and substance, acceptable to Lessor. Lessor may apply all or any part of the funds represented by the Letter of Credit to cure any default of Lessee under this Agreement. In that event, Lessee (or an entity acceptable to Lessor of which Lessee is a member) must increase the amount of funds represented by the Letter of Credit by the amount applied to cure any default immediately on notice from Lessor of the nature and amount of the application of funds, so that at all times the amount of the Letter of Credit equals the original Letter of Credit required. Lessor will return the Letter of Credit to Lessee no later than 30 days after termination of this Agreement, provided Lessee is not then in default under the terms of this Agreement.

Section 3.06 – Calculation of Rent. Rent will be calculated on a vessel by vessel basis determined by the length (in feet) of the vessel as stated on the vessel's Certificate of Documentation. Vessel length is measured in feet and in tenths (1/10) of a foot, and rounded to the next highest length in feet for the purpose of calculating Rent. For the Primary Term, Rent will be calculated at a rate of \$3.50 per foot. For example a vessel with a length of 42.5 feet will pay a (monthly) Rent of \$150.50 ($\$3.50 \times 43 \text{ ft.} = \150.50).

Section 3.07 – Rent Escalation. Beginning on the first anniversary of the Effective Date, the Rent will be adjusted on that date and on each anniversary of such date during the Term (each an "Adjustment Date") to reflect increases in the Consumer Price Index for All Urban Consumers (CPI-U) for Houston-Galveston-Brazoria, Texas, All Items (1982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor (the "Index"), or such other economic index as the parties may agree to use as a reference base as provided herein. If the Index is converted to a different standard reference base or otherwise revised, the determination of the Index will be made with the use of such conversion factor, formula, or table for converting the Index as may be published by the agency or authority that establishes the Index or, if one is not published by such agency or authority, then with the use of such conversion factor, formula, or table as may be published by any nationally recognized publisher of similar statistical information. If the Index ceases to be published, then within 30 days after such Index ceases to be published the parties will substitute a new index of similar type to be used as the Index for determining future Rent escalation. If the parties fail to agree upon a substitute Index during the 30 day period, Lessor and Lessee will jointly designate a qualified independent third party who will select as a substitute Index any independently published index of similar type. If the parties fail to jointly designate a qualified independent third party to select the Index, then Lessor may select the new index to be used as the Index for determining future ground rent escalation. On each Adjustment Date, the Rent will be recalculated to be equal to the product of the Rent in effect the day before the Adjustment Date multiplied by the lesser of (i) 1.03 or (ii) 0.015 plus a fraction, the numerator of which is the Index number for the last reporting period before the Adjustment Date and the denominator of which is the Index number for the last reporting period before (i) the Effective

Date (with respect to the first adjustment of Rent) or (ii) the immediately preceding Adjustment Date (with respect to each subsequent adjustment), whichever is applicable. If the product is greater than the Rent in effect the day before the then current Adjustment Date, Lessee must pay the greater amount until the next Adjustment Date. The Rent as calculated in this Section must never be less than the amount of Rent set forth in Section 3.02 above. Lessor will provide Lessee with notice of each adjustment to Rent and the calculation of the adjustment no later than 60 days after each Adjustment Date.

Section 3.08 – Leasing an Empty Slip. In the event Lessee ceases to dock the Vessel at the Leased Premises and Slip No. 8-W is therefore empty, Rent will be calculated by the length of the dock at the Leased Premises, with a minimum dock length of 40 feet. Lessee will immediately notify Lessor if Lessee commences docking any other vessel in Slip No. 8-W, so that (1) the new vessel may be identified as “the Vessel” under this Lease, and (2) Rent may be adjusted according Section 3.06 (Calculation of Rent). If Lessee does not notify Lessor as required herein, and Lessor discovers a new vessel owned or operated by Lessee is occupying the Leased Premises without giving Lessor notices as required herein, Lessee will be required to pay monthly Rent based on twice the actual length of the vessel occupying the Leased Premises for each month prior to delivery of actual notice of the new occupancy the Leased Premises required herein.

ARTICLE 4 - TARIFFS AND OTHER CHARGES

Lessor has the full right and power to assess and collect all charges now published in its tariffs or regulations, or that it may publish in the future, against any commodities moving over, or vessels berthing at, any dock or wharf adjacent to the Leased Premises, and no such charge may be assessed or collected by Lessee. Lessor has the right to collect all switching charges on rail cars moved to or from the Leased Premises. This Agreement covers only the Leased Premises and does not give Lessee any right or privileges to the aprons, slips, channel or the property adjacent to the Leased Premises except as expressly herein provided, and the usual and customary Tariff charges will accrue against and be paid by Lessee thereon, as on any other goods, wares and merchandise moving thereover by or for Lessee the same as if there were no Agreement. Except as specifically provided herein to the contrary, Lessee must strictly comply with all Tariff provisions and Lessor's rules and regulations governing the Port. Lessor and Lessee acknowledge their intent that this Agreement does not delegate to Lessee any governmental powers or duties vested in Lessor. To the extent that any provision of this Agreement is alleged or construed to grant to Lessee any power to exercise a governmental or legislative function of Lessor, including without limitation the authority to (i) fix and levy dockage or wharfage, (ii) establish and enforce rules and regulations in the operation of the Leased Premises, or (iii) maintain and publish rates and charges relating to the operation of the Leased Premises, such power will be ineffective until specifically approved in writing by Lessor.

ARTICLE 5 - UTILITIES

Lessor will provide electricity and water lines to the perimeter of the Leased Premises. The electrical service will be delivered to the Charter Area on a master meter for Lessor's account. Lessor will periodically bill Lessee and each other user of the electrical service for an equitable portion of the cost of the service to the Charter Area. Water service will be installed at Lessee's

expense and separately metered and billed to Lessee by the utility company. If Lessee wants any other utilities at the Leased Premises, Lessee must first obtain Lessor's consent, which will not be unreasonably withheld, and the utilities must be installed at Lessee's expense and separately metered and billed to Lessee. Lessee must pay all charges for any utilities used at the Leased Premises, including installation fees, tap fees, and hookup expenses, as and when they are billed.

ARTICLE 6 - USE OF PREMISES

Section 6.01 - Permitted Activities. The Leased Premises may be used only by Lessee and only for the berthing or docking of the Vessel, and no other vessel. The Vessel may be used only as a shrimp boat, a fishing boat, or a party boat vessel used to conduct fishing trips and other marine excursions, all as defined in the Opinion and Judgment entered February 15, 1984 in Cause No. 125,840 in the 122nd Judicial Court of Galveston County, Texas, styled *The Board of Trustees of the Galveston Wharves v. Galveston Party Boats, Inc., et al*, the terms of which are incorporated by reference (the "Judgment"), and any other use is prohibited. Any other activity or use requires the prior written approval of Lessor. Lessee agrees to comply with all reasonable regulations established or to be established by Lessor for the use of any common areas or roadways serving the Leased Premises. Lessee may obtain a copy of the Judgment upon request from Lessor.

Section 6.02 - Prohibited Activities. The Leased Premises must not be used for:

- (a) The docking or berthing of any floating vessel containing a "gambling place", a "gambling device", or "gambling paraphernalia", as those terms are defined in Section 47.01 of the Texas Penal Code or any similar or successor statute;
- (b) The installation or use of container cranes, or the loading, unloading, or dockage of container vessels;
- (c) Any illegal, obnoxious or offensive activity;
- (d) The sale or consumption of alcoholic beverages;
- (e) The handling or storage of explosive, nuclear, radioactive or hazardous materials, unless such materials are handled and stored in compliance with applicable law;
- (f) The docking or berthing of any floating vessel used in any manner other than as a shrimp boat, a fishing boat, or a party boat vessel used to conduct fishing trips and other marine excursions, all as defined in the Judgment; or
- (g) Any use inconsistent with or prohibited by Article XII, Section 4 of the Charter, as it may from time to time be amended, or the Judgment.

Lessee must not allow any trash or debris of any kind to accumulate and remain on the Leased Premises. Lessee must properly dispose of all oil, spent oil, oil filters, and other permitted hydrocarbon related products in containers designed for such disposal, and must comply with all directives of Lessor related thereto. Lessee understands that Lessor, the U.S. Coast Guard, and/or

the Fire Marshall may close the Leased Premises or adjacent property if it determines that fire hazards exist that endanger any vessel or wharf.

Section 6.03 - Permits, Certificates, etc. Lessee must obtain and maintain all permits, certifications, licenses and fees required for its activities on or about the Leased Premises.

Section 6.04 - No Interference. Lessee must not interfere with the operations of Lessor, its tenants, or any other permitted user of Lessor's property. Lessee must not interfere with, restrict or prevent any person or entity ("Person") from using navigable waters.

ARTICLE 7 - BERTHING REQUIREMENTS

Section 7.01 - Sunken Vessels. Should any vessel owned or operated by Lessee, or any vessel berthed at or from the Leased Premises, sink or partially sink either in the Leased Premises, the Charter Area basin, or the Galveston Channel, Lessee agrees to remove or cause to be removed the vessel as quickly as possible, but no later than 10 days after sinking. If Lessee has not removed the sinking or sunken vessel within such time, Lessee authorizes Lessor, its agents, employees and assigns to remove and salvage the vessel, if possible, and Lessee hereby grants Lessor a maritime lien against the vessel to secure the cost and expense of removal, salvage and/or storage or berthing of the vessel until it is sold or otherwise disposed.

Section 7.02 - Right to Move Vessels. Whenever in the sole discretion of Lessor it is deemed necessary or advisable in order to facilitate navigation or commerce, or for the protection and safety of any vessel or other property, that any vessel docked or berthed at the Leased Premises be temporarily moved or the position thereof temporarily changed, Lessor may order and enforce the removal or shifting of such vessel at Lessee's expense to such place as may be assigned for the vessel. Written or oral notice of any order may be given the master or the person in charge of the vessel, who shall comply with the order. If Lessee fails to comply with the order, Lessor has the right to cause the vessel to be so moved or removed as ordered at the expense and risk of Lessee, the vessel, her owners, charterers, agents and/or contractors, and Lessee hereby grants Lessor a maritime lien against the vessel to secure payment of such charges.

Section 7.03 - Proper and Safe Mooring of Vessels. Vessels moored at the Leased Premises shall use a sufficient number of lines (no more than one steel cable per bit or two rope lines per bit) in good condition and of adequate size and strength to ensure that the vessel is properly and safely moored, and shall be berthed against the berthing structure as closely as possible with mooring lines taut at all times. Lessee is responsible for the safe mooring of all vessels at the Leased Premises. Mooring lines shall not be made fast in any way to any other portion of the Leased Premises other than docks or piers, including supporting piles or fender piles, or any bulkhead.

Section 7.04 - Reporting Accidents. Any fire, accident, or other casualty of any kind whatsoever occurring aboard a vessel moored at the Leased Premises shall be reported immediately to Lessor by telephone [at (409) 766-6176, or such other emergency number as may be designated by Lessor], radio, or by any other means available designed to give Lessor immediate notification.

Section 7.05 - Hazardous Conditions. If hazardous conditions of any kind whatsoever develop at the Leased Premises, Lessor shall be immediately notified by telephone [at (409) 766-6176, or such other emergency number as may be designated by Lessor], radio, or by any other means available designed to give Lessor immediate notification. Unintentional, infrequent violations of this covenant will not operate as an event of default under this Agreement, but intentional violations or repeated failures to report are an event of default.

Section 7.06 - Precautions to Prevent Pollution of Waterways. Lessee and other users of the Leased Premises shall take every reasonable precaution to prevent pollution of the waterways. Vessel personnel and/or persons aboard any such vessel must notify the Coast Guard [at (409) 766-3890, or such other emergency number as may be designated by the Coast Guard], the Texas General Land Office, and Lessor immediately of any pollution of the waterways, the dock, the Leased Premises, or any vessel. Discharge of unlawful waste of any kind or form whatsoever, including without limitation dirty ballast, into the waterways or upon any part of the Leased Premises is prohibited.

Section 7.07 - Right of Inspection. Any vessel docked at the Leased Premises must permit representatives of Lessor to board the vessel at any time to carry out the business of Lessor and to determine if Lessee is in compliance with the terms of this Agreement.

ARTICLE 8 - SEAWORTHINESS OF VESSELS

All vessels entering the waterways of the Port of Galveston or the Charter Area basin, or berthing at the Leased Premises must be seaworthy and not in danger of sinking. Lessee must abide by all rules and regulations promulgated by Lessor and the U. S. Coast Guard and take every safety precaution possible to prevent the vessel from sinking.

ARTICLE 9 - SURRENDER OF LEASED PREMISES

Upon termination of this Agreement, Lessee must surrender the Leased Premises in the same condition and state of repair as they existed on the Effective Date, reasonable wear and tear excepted. Lessor may require Lessee to remove any improvements constructed by Lessee and restore the Leased Premises to the condition it was in on the Effective Date. If Lessor requests Lessee to remove its improvements and restore the Leased Premises and Lessee fails to do so, Lessor may remove the improvements and restore the Leased Premises to its condition on the Effective Date, and Lessee must reimburse Lessor for all removal and restoration costs incurred by Lessor.

ARTICLE 10 - MAINTENANCE AND REPAIRS

Section 10.01 - Lessee's Duty to Repair and Maintain. Lessee, at its own cost and expense at all times during the Term agrees to (i) repair any damage it causes to, or is caused by its operations at, the Leased Premises, any improvements, or to any other property at the Port, and (ii) keep, maintain, or replace when needed the Leased Premises and all improvements in a good state of appearance and repair, reasonable wear and tear excepted, and in a clean, sanitary, and safe condition,

all in accordance with Lessor's standards for the Port, and in a condition sufficient to accommodate and accomplish the conduct of a permitted activity. Lessee is responsible for remediation of any environmental contamination of the Leased Premises or the Charter Area caused by Lessee or Lessee's invitees or agents, which remediation will be deemed a repair for purposes of this Article. Lessee's obligation to keep the Leased Premises in a good state of appearance and repair includes performance of its obligations under Section 7.01 of this Agreement with respect to sinking or sunken vessels. Lessee will not be responsible for that portion of any repairs resulting solely from the lack, if any, of structural integrity of the bulkhead, docks, or finger piers on the Leased Premises. Maintaining the Leased Premises in a good state of appearance and repair includes an obligation by Lessee to conform to reasonable architectural standards imposed by Lessor to enhance the atmosphere of the area and promote conformity with the surrounding area. Lessee will maintain the decking of the finger piers adjacent to Lessee's berth on the Leased Premises in a safe condition. All maintenance and repairs required by this section must be approved in advance by Lessor and performed promptly and so as not to cause depreciation in the value of the Leased Premises or its improvements (all as determined by Lessor, in its sole discretion). Lessee agrees to keep the Vessel in good condition and repair and current on all required inspections. Lessee must suspend operations from the Leased Premises at any time Lessee is in default in the provisions of this Section, and must obtain Lessor's approval of any repairs or maintenance made prior to resuming operations after they have been suspended.

Section 10.02 - Lessee's Failure to Maintain or Repair. If Lessee fails to repair or maintain as required by this Article, Lessor may enter the Leased Premises and make the repairs or perform the maintenance, or have the repairs made or maintenance performed, and Lessee must immediately reimburse Lessor for all costs incurred by Lessor under this section, together with interest at the highest legal rate from the date Lessor demands reimbursement until the date paid by Lessee.

Section 10.03 - Condition of Leased Premises. Lessee accepts the Leased Premises in its condition as of the Effective Date, AS IS, and WITH ALL FAULTS and acknowledges that no warranties, either expressed or implied, have been made or will be made by Lessor with respect to the condition of the Leased Premises or its suitability for Lessee's intended use.

ARTICLE 11 – CASUALTY DAMAGE

Section 11.01 - Notice to Lessor. If the Leased Premises or any improvements thereto are damaged or destroyed by fire, windstorm, hurricane or other casualty, Lessee must immediately give Lessor notice of the damage or destruction, including a description of the damage and its cause.

Section 11.02 - Partial Destruction. If the Leased Premises, including any improvements, are partially damaged or destroyed by fire, windstorm, hurricane or any other casualty, Lessor will repair, reconstruct, or replace the Leased Premises and those improvements and, if necessary, temporarily relocate Lessee in accordance with the provisions of Section 1.03 hereof. In any event, Lessor will be entitled to all insurance proceeds payable by reason of the casualty to the property.

Section 11.03 - Total Destruction. If Lessor determines, in its sole discretion, that the Leased Premises is totally destroyed by fire, windstorm, hurricane, or any other casualty, Lessor may either repair, reconstruct, or replace the Leased Premises and those improvements or, if Lessor reasonably determines that it would be uneconomical to cause the same to be repaired, reconstructed, or replaced, permanently relocate Lessee in accordance with the provisions of Section 1.03 hereof. Lessor will be entitled to all insurance proceeds payable by reason of the casualty to the property.

Section 11.04 – Reconstruction. During any period of time that the Leased Premises is being repaired, reconstructed, or replaced pursuant to the provisions of Sections 11.02 or 11.03 above, and Lessee has not been relocated in accordance with Section 1.03 hereof, the Rent payable hereunder will be equitably adjusted.

ARTICLE 12 - MECHANICS' LIENS

Lessee must not suffer or permit any mechanics' liens or other liens to be filed against the fee of the Leased Premises nor against Lessee's leasehold interest in the land nor any improvements on the Leased Premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Lessee or to anyone holding the Leased Premises or any part thereof through or under Lessee. If any such lien is recorded against the Leased Premises, Lessee must promptly notify Lessor in writing of its existence, and must either cause it to be removed or purchase a bond acceptable to Lessor against which the lien will attach in lieu of the Leased Premises. If Lessee in good faith desires to contest the lien, Lessee may do so, but Lessee must indemnify and save Lessor harmless from all liability for damages occasioned thereby and must, in the event of a judgment of foreclosure on the lien, cause it to be discharged and removed prior to the execution of the judgment.

ARTICLE 13 - CONDEMNATION

Section 13.01 - Interests of Parties. If the Leased Premises or any part thereof is taken for public or quasi-public purposes by condemnation as a result of any action or proceeding in eminent domain, or is transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, all condemnation proceeds will be payable to Lessor and the interests of Lessor and Lessee under this Agreement are as provided by this Article.

Section 13.02 - Total Taking - Termination. If the entire Leased Premises is taken or transferred, or if the taking or transfer of a substantial part of the Leased Premises leaves the remainder of the Leased Premises in such condition or in such form, shape, or reduced size as to be not effectively and practicably usable in the opinion of Lessor for the intended purpose, this Agreement terminates on the date title to such portion of the Leased Premises so taken or transferred vests in the condemning authority.

Section 13.03 - Partial Taking - Continuation with Rent Abatement. If the taking or transfer of only an insubstantial part of the Leased Premises leaves the remainder of the Leased Premises in such condition and in such form, shape, or size as to be used effectively and practicably in the opinion of Lessor for the intended purpose, this Agreement terminates only as to the portion of the

Leased Premises so taken or transferred as of the date title to such portion vests in the condemning authority, but continues as to the portion of the Leased Premises not so taken or transferred.

Section 13.04 - Voluntary Conveyance. A voluntary conveyance by Lessor to a public utility, governmental agency, or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings, is a taking under this Article.

ARTICLE 14 - INSURANCE AND INDEMNIFICATION

Section 14.01 - Indemnification of City and Lessor. Lessee INDEMNIFIES, DEFENDS, and HOLDS HARMLESS Lessor, its trustees, officers, agents and employees, and the City, its officers, agents and employees (collectively, the "Indemnified Persons"), against all costs and expenses, including, without limitation, attorneys' fees and costs of investigation and defense, as well as legal liability, whether from suit, judgment, settlement or otherwise arising out of any or all claims for injury to any Person or property, including but not limited to injuries resulting in death, arising from, or caused by, or incident to any wrongful or negligent act or omission of Lessee, its agents, invitees, servants and employees upon the Leased Premises, or arising or resulting from any defective or unsafe condition for which Lessee is responsible, or of any apparatus, equipment or other property of Lessee, or in any other manner arising out of any action or inaction of Lessee. Any language to the contrary notwithstanding, the covenants and agreements contained in this paragraph survive the termination or expiration of this Agreement for whatever cause. **IN ADDITION THE COVENANTS AND AGREEMENTS CONTAINED IN THIS PARAGRAPH ARE VALID AND ENFORCEABLE REGARDLESS OF WHETHER ANY INDEMNIFIED PERSON IS NEGLIGENT OR WHETHER ANY INDEMNIFIED PERSON WAS IN ANY MANNER RESPONSIBLE FOR THE NEGLIGENT OR WRONGFUL ACT OR OMISSION OR THE DEFECTIVE OR UNSAFE CONDITION WHICH MAY HAVE CAUSED THE INJURY OR CLAIM.**

Section 14.02 - Commercial General Liability Insurance. Lessee must maintain commercial general liability insurance, including pollution liability coverage, covering Lessor and Lessee for liability for property damage, bodily injury, personal injury and death. The insurance provided under this section must be in the amount of not less than \$300,000 per occurrence for property damage and not less than \$300,000 per occurrence for personal injury, bodily injury or death. Costs of defense must be provided as an additional benefit and not included within the limits of liability. This insurance must protect against liability to any employees or servants of Lessee and to any other person or persons whose property damage, personal injury or death arises out of or in connection with the occupation, use, or condition of the Leased Premises, and must include (i) coverage for premises and operations, (ii) coverage for products liability, and (iii) contractual liability coverage. Such policy must name Lessor (and any successor or assign designated by Lessor) as an additional insured.

Section 14.03 - Workers Compensation. If Lessee has any employees, Lessee must maintain workers compensation insurance to protect against claims under Texas Workers Compensation laws as well as all Federal acts applicable to Lessee's operations at the Leased Premises, including but not limited to U. S. Longshoremen and Harborworkers Act, Jones Act and Federal Employer's Liability Act. The limit of liability for such coverage must at least meet applicable

statutory requirements. Additionally, each policy must contain an endorsement waiving all rights of subrogation against Lessor and the City, and their respective agents and employees.

Section 14.04 - Employer's Liability. If Lessee has any employees, Lessee must maintain employer's liability insurance in the minimum amount of \$1,000,000 per occurrence for personal injury, bodily injury or death to any employee of Lessee who may bring a claim outside the scope of the Texas Workers Compensation laws or federal acts applicable to Lessee's operations at the Leased Premises. This insurance must contain all endorsements necessary to cover maritime operations, including admiralty benefits and damages under the Jones Act, in the minimum amount of \$1,000,000 per occurrence. Additionally, each policy must contain an endorsement waiving all rights of subrogation against Lessor and the City, and their respective agents and employees.

Section 14.05 - Automobile Insurance. Lessee must maintain automobile liability insurance coverage on all its owned or rented vehicles that enter upon the Charter Area in the minimum amount of (i) \$1,000,000 combined single limit coverage per occurrence for all vehicles used for commercial purposes, and (ii) the applicable statutory minimums for vehicles not used for commercial purposes. Additionally, each policy with respect to commercial vehicles must contain an endorsement waiving all rights of subrogation against Lessor and the City, and their respective agents and employees.

Section 14.06 – Protection & Indemnity Insurance. Lessee must maintain Protection and Indemnity insurance coverage in form and substance acceptable to Lessor in the minimum amount of \$1,000,000 combined single limit coverage per occurrence. Such policy must name Lessor (and any successor or assign designated by Lessor) as an additional insured. Additionally, each policy must contain an endorsement waiving all rights of subrogation against Lessor and the City, and their respective agents and employees.

Section 14.07 - Waiver of Subrogation. Lessor and Lessee agree to waive any and all rights of recovery, claims, actions or causes of action against the other, its agents, officers and employees for any injury, death, loss or damage that may occur to persons or to the Leased Premises, or any personal property of such party on the Leased Premises, by reason of fire, windstorm, earthquake, flood or any other risks, or any other cause which is insured under the insurance policy or policies that either party is required to provide or maintain under this Agreement, to the extent and only to the extent of any proceeds actually received by Lessor or Lessee, respectively, with respect thereto, regardless of cause or origin, including negligence of either party hereto, its agents, officers or employees, and each party covenants that no insurer will hold any right of subrogation against the other. If such waiver is not obtained, the party failing to do so indemnifies the other party for any claim by an insurance carrier arising out of subrogation.

Section 14.08 - Insurance Requirements. The phrase "Required Policy" means each policy of insurance required to be maintained by Lessee under the terms of this Agreement. Each Required Policy must be written by a company satisfactory to Lessor, but in all events by a company with an A.M. Best Company financial rating of not less than A XII (or a similar rating by a comparable service selected by Lessor should A.M. Best Company cease providing such ratings) and be licensed to do business in Texas or, if the aforesaid is not available, by a company qualified to do business as a non-admitted insurer in Texas under current Texas surplus lines requirements. Each Required Policy must

be endorsed to be primary, with the policies of Lessor or any other party being excess, secondary, and noncontributing. No Required Policy may include an endorsement restricting, limiting, or excluding coverage in any manner without the prior written consent of Lessor. All Required Policies may contain a deductible of not more than \$25,000. Such policies must be endorsed so as to require 30 days prior written notice to Lessor in the event of cancellation, material change or intent not to renew. Required Policies must contain a standard separation of insureds provision, when applicable and available. Lessee must deliver to Lessor a certificate of insurance and copies of any additional insured, loss payee, and waiver of subrogation endorsements for any Required Policy no later than the Effective Date. If requested, Lessee must provide to Lessor on demand a certified copy of any Required Policy and applicable endorsements. All endorsements must be in form and substance acceptable to Lessor. The required evidence of coverage must always be deposited with Lessor. If Lessee fails to do so, such failure may be treated by Lessor as a default by Lessee and Lessor, in addition to any other remedy under this Agreement, may purchase and maintain such Required Policy and Lessee must immediately reimburse Lessor for any premiums paid or costs incurred by Lessor in providing such insurance. Failure of Lessee to reimburse Lessor is a default by Lessee in the payment of Rent. At Lessor's option, Lessor may draw on the Letter of Credit to reimburse itself for any premiums paid or costs incurred by Lessor in providing such insurance. Lessee must notify Lessor immediately upon discovery of any fact or condition that may result in a claim covered by the insurance or indemnity provisions contained in this Agreement.

Section 14.09 - Indemnity for Noncompliance with Insurance Requirements. Lessee INDEMNIFIES and HOLDS HARMLESS Lessor from any loss it may suffer due to Lessee's failure to comply with all the above insurance requirements, including the requirement for obtaining waivers of subrogation, and due to any insurance coverage being invalidated because of Lessee's failure to comply with the terms, conditions, and warranties of any Required Policy.

ARTICLE 15 - SUBLETTING, ASSIGNMENT, & OTHER TRANSFERS

Section 15.01 - Subletting. Lessee may not sublease any portion of the Leased Premises without Lessor's prior written consent.

Section 15.02 - Assignment. Except as may be permitted under Section 18.29 below, Lessee must not assign its rights or any interest under this Agreement without Lessor's prior written consent. Any transfer of ownership of Lessee is considered an assignment under this Article requiring Lessor's prior written consent.

Section 15.03 – Other Transfers. Lessee must not grant any license, concession, or other right of use or occupancy for any part of the Leased Premises without Lessor's prior written consent.

Section 15.04 – Violation of Article. In addition to all other rights and remedies afforded Lessor under this Agreement or at law or in equity, Lessor may (immediately and without advance notice and opportunity to cure) terminate this Agreement if Lessee violates the provisions of this Article. In addition, any sublease, assignment, or other transfer made in violation of this Article is void.

ARTICLE 16 - DEFAULT AND REMEDIES

Section 16.01 - Termination on Default. If Lessee fails to pay any rent or other charges when due, or if Lessee defaults in performing any covenant or term of this Agreement and does not correct the default within 10 days for a default in payment of rent and 30 days for other default, after receipt of written notice from Lessor to Lessee, Lessor may declare this Agreement, and all rights and interest created by it, terminated. If Lessor elects to terminate, this Agreement will cease as if the day of Lessor's election were the day originally fixed in the Agreement for its expiration. Upon termination, Lessor may re-enter the Leased Premises and remove all persons and property, including the Vessel, therefrom, without prejudice to any remedies which may be used for the collection of rent, all and every claim for damages, by reason of such re-entry, being hereby expressly waived by Lessee.

Section 16.02 - Other Remedies. Termination of this Agreement under this Article does not relieve Lessee from paying any sum or sums due and payable to Lessor under this Agreement at the time of termination, or any claim for damages then or previously accruing against Lessee under this Agreement. Any such termination will not prevent Lessor from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Lessee for any default under the Agreement. All Lessor's rights, options, and remedies under this Agreement are cumulative, and no one of them is exclusive of the other. Lessor may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this Agreement. No waiver by Lessor of a breach of any of the covenants or conditions of this Agreement is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this Agreement.

Section 16.03 - Contractual Lien. Lessee grants Lessor a contractual lien upon all fixtures, chattels, or other property of any description belonging to Lessee that are placed in, or become a part of, the Leased Premises as security for Rent due and to become due for the remainder of the Term and any other sum Lessee owes Lessor. This lien is not in lieu of, nor in any way affects, the statutory landlord's lien but is in addition to that lien, and Lessee grants Lessor a security interest in all of Lessee's property placed in or on the Leased Premises for purposes of this contractual lien. This does not prevent Lessee from selling any merchandise in the ordinary course of business free of such landlord's lien. If Lessee is in default under this Agreement, Lessor may take possession of all of Lessee's property on the Leased Premises and sell it at public or private sale after giving Lessee reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, for cash or on credit, for the prices and terms that Lessor considers best, with or without having the property present at the sale. The proceeds of the sale will be applied first to the necessary and proper expense of removing, storing, and selling the property, then to the payment of any rent due or to become due under this Agreement, and then to the payment of any other amount owed by Lessee to Lessor under this Agreement; any balance will be paid to Lessee. Lessor may file a copy of this Agreement as a financing statement or, at Lessor's request, Lessee must execute and deliver to Lessor a UCC-1 Financing Statement in form and content satisfactory to Lessor to perfect the security interest granted in this Agreement.

ARTICLE 17 - LIABILITY

Section 17.01 - Limitation of Liability of the City. The City is never liable to respond in damages or make indemnity, or contribution, or payment of any character from any source other than the properties, income, and revenues arising from the property under the management and control of the BOARD OF TRUSTEES OF THE GALVESTON WHARVES by reason of, due to, or caused by a breach of this Agreement.

Section 17.02 - No Personal Liability of Board. The members of the BOARD OF TRUSTEES OF THE GALVESTON WHARVES, either singularly or collectively, are not personally liable on this Agreement or for any breach thereof.

Section 17.03 - Limitation on Lessor's Liability. Lessor has no personal liability with respect to any obligation arising from or in connection with this Agreement, and Lessee must look solely to Lessor's equity or interest in the Leased Premises for satisfaction of any remedies of Lessee arising from this Agreement. In no event will any deficiency judgment or money judgment of any kind be sought or obtained against Lessor.

ARTICLE 18 - MISCELLANEOUS

Section 18.01 - Right of Entry and Inspection. Lessee will permit Lessor or Lessor's agents, representatives, or employees to enter and inspect the Leased Premises and the Vessel at reasonable times and upon having given Lessee reasonable notice of the inspection. In the case of emergency or disaster (as determined by Lessor, in its sole discretion) Lessor may immediately and without notice enter and inspect the Leased Premises and the Vessel for the preservation of life or property.

Section 18.02 - No Partnership. The relationship between Lessor and Lessee at all times remains solely that of landlord and tenant and is not a partnership or joint venture.

Section 18.03 - Force Majeure. Except for Lessee's obligation to pay Rent and to obtain insurance as required in this Agreement, Lessor and Lessee are excused from performing any of their respective duties, obligations or undertakings under this Agreement in the event and so long as the performance of such duty, obligation or undertaking is prevented, delayed, retarded or hindered by an Act of God, epidemic, fire, hurricane, earthquake, flood, explosion, action of civil commotion, sabotage, malicious mischief, strike, lockout, action of labor unions, condemnation, governmental restriction, order of civil or military or naval authorities, embargo, impossibility of obtaining materials, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the party in question. Any party entitled to such extension hereunder will give prompt written notice to the other party as soon as possible after the occurrence causing such delay asserting its claim of right to such extension and the reasons therefor.

Section 18.04 - No Termination on Bankruptcy. Neither bankruptcy, insolvency, assignment for the benefit of creditors, nor the appointment of a receiver affects this Agreement so long as all covenants of the Lessee or Lessor are continued in performance by Lessee or Lessor and their respective successors or legal representatives.

Section 18.05 - No Waiver. No waiver by Lessor of any default or breach of any covenant, condition, or stipulation contained in this Agreement is a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation of this Agreement.

Section 18.06 - Use Clause and Compliance with Laws. Lessee agrees not to use any part or all of the Leased Premises for any use or purpose in violation of any law, regulation, or ordinance of the United States, the State of Texas, or the City, or other lawful authority having jurisdiction over the Leased Premises. Lessee must comply with all laws, ordinances, rules, regulations and codes governing or in any manner applicable to this Agreement.

Section 18.07 - Release of Lessor. In the event the City or Lessor sells or transfers the Leased Premises or any part thereof and as a part of such transaction assigns its interest in and to this Agreement, and provided such buyer, transferee or assignee agrees to perform as Lessor under this Agreement, then from and after the effective date of such sale, assignment, or transfer, Lessor has no further liability under this Agreement to Lessee except as to matters of liability which accrued and are unsatisfied as of such effective date, it being intended that the covenants and obligations contained in this Agreement on the part of Lessor be binding on Lessor and its successors and assigns only during and in respect of their respective successive periods of ownership of the fee.

Section 18.08 - Joint and Several Liability. If more than one Lessee is named under this Agreement, or becomes liable hereunder, the obligation of all such Lessees is joint and several.

Section 18.09 - Risk Allocation for Hazardous Materials. Lessee is responsible for remediation of any environmental contamination of the Leased Premises caused by Lessee or Lessee's invitees or agents, or which occur during the Term. For the purpose of this provision, the term "environmental contamination" means the presence on the Leased Premises of any hazardous, toxic, or other like material regulated under any state, federal, or local law dealing with hazardous substances, protection of the environment, or similar matters in excess of lawfully permitted levels. Responsibility for environmental contamination with respect to the Leased Premises will be allocated as follows: (i) to Lessee for environmental contamination that occurs during the Term or that is caused by Lessee or Lessee's invitees or agents, and (ii) to Lessor for environmental contamination caused by Lessor or preexisting on the Leased Premises at the Effective Date, unless caused by Lessee. This allocation of responsibility is only as between Lessor and Lessee and will be without prejudice to any rights Lessor or Lessee may have against any other party causing environmental contamination.

Section 18.10 - Delivery of Notices. All notices, demands, or requests from one party to another must be in writing and must be personally delivered or sent by mail, certified, registered, express or overnight, postage prepaid, or sent by facsimile transmission, to the addresses stated in this Section, or to such other address as the party may request in writing, and are deemed to have been given at the time of receipt or delivery. Lessor's address is P. O. Box 328, Galveston, Texas 77553 (for U. S. Mail), or 123 Rosenberg, 8th Floor, Galveston, Texas 77550 (express or overnight mail), or (409)766-6171 (for facsimile transmissions), in any case to the attention of the Port Director. Lessee's address is **6528 Conveyor Dr. Cleburne, Texas 76031** (for U. S. Mail, express or overnight mail), to the attention of **Mr. Houston Fullerton**.

Section 18.11 - Multiple Parties. If more than one Lessee is named in this Agreement, service of any notice on any one of the Lessees is deemed service on all of the Lessees.

Section 18.12 - Parties Bound. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

Section 18.13 - Texas Law to Apply and Venue. This Agreement must be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Galveston County, Texas.

Section 18.14 - Legal Construction. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability does not affect any other provision hereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, if consistent with the overall intent of this Agreement.

Section 18.15 - Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties.

Section 18.16 - Amendment. No amendment, modification, or alteration of the terms of this Agreement is binding unless in writing, dated subsequent to the Effective Date and executed by Lessor and Lessee or their successors and assigns.

Section 18.17 - Attorney's Fees. In the event Lessor or Lessee breaches any of the terms of this Agreement and the party not in default employs attorneys to protect or enforce its rights and prevails, then the defaulting party agrees to pay the non-defaulting party's reasonable attorney's fees.

Section 18.18 - Further Assurances. Lessee agrees that it will from time to time and at any reasonable time execute and deliver, or cause to be executed and delivered to Lessor such documents and instruments, and shall take, or cause to be taken, such other actions Lessor may reasonably request to effectuate this Agreement.

Section 18.19 - Exhibits. All Exhibits attached to this Agreement are incorporated by reference.

Section 18.20 - Signage. Lessee may not install or erect any sign on or about the Leased Premises without first obtaining Lessor's written approval with regard to the size, type, shape, design, color, material, content, and method of attachment of the sign. Lessee must, at its sole expense, remove any sign that it installs or erects on or about the Leased Premises and repair any damage done to the Leased Premises or the adjacent land by installing, erecting, or removing any sign no later than the termination of this Agreement.

Section 18.21 - Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart is deemed to be an original instrument, but all such counterparts together constitute but one Agreement. A photocopy or facsimile reproduction of an original signature of a party on this Agreement binds that party to the terms, covenants and conditions of this Agreement.

Section 18.22 - Railroad Clearances. Lessee must not locate a structure or materials closer than 8 feet 6 inches from the centerline of the nearest railroad track on or adjoining the Leased Premises, or closer than 22 feet above the top of any railroad track on or adjoining the Leased Premises. Lessee must keep all railroads and passageways on and adjoining the Leased Premises free from obstruction by motor vehicles and other objects.

Section 18.23 - Remedies. Pursuit of any remedy under this Agreement does not preclude pursuit of any other remedy under this Agreement or that may be provided at law or in equity.

Section 18.24 - Limitation of Warranties. Lessor disclaims any implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this Agreement or the Leased Premises, and Lessee acknowledges the disclaimer of such warranties.

Section 18.25 - Abandoned Property. In addition to any other remedy under this Agreement or provided by law, Lessor may retain, destroy, or dispose of any property left on the Leased Premises at the termination of this Agreement.

Section 18.26 - Abatement. Lessee's covenant to pay rent and Lessor's covenants are independent of each other and, except as otherwise provided in this Agreement, Lessee is not entitled to abate rent for any reason.

Section 18.27 - Time. Time is of the essence in this Agreement.

Section 18.28 - Headings. The headings, captions, and arrangements used in this Agreement are for convenience only and do not affect the interpretation of this Agreement.

Section 18.29 - Sale and/or Transfer of Vessel. If Lessee sells, replaces or otherwise transfers ownership of the Vessel, the following provisions apply:

(a) If Lessee assigns the Leased Premises with the Vessel, Lessee must notify Lessor of the date of transfer, and name and address of the new Vessel owner. Lessee's assignment requires Lessor's prior approval, which shall not be unreasonably withheld, and Lessee's assignment must include a provision requiring the assignee to execute within 10 days of the transfer a written assumption of this Agreement in form and substance acceptable to Lessor.

(b) If Lessee transfers ownership of the Vessel and does not intend to replace it, Lessee must notify Lessor of the date of transfer and give notice of termination of the Agreement.

(c) If Lessee transfers ownership of the Vessel and intends to substitute a replacement vessel in the Leased Premises, Lessee must notify Lessor of the date of the transfer and of Lessee's intent to replace the Vessel. If Lessee wants to retain the Leased Premises to berth the replacement vessel, Lessee must obtain such replacement vessel within 30 days of the transfer of ownership of the Vessel and furnish in writing to Lessor within 10 days of purchase satisfactory evidence of the ownership and length of the replacement vessel, which upon Lessor's approval of the replacement vessel will become the Vessel as defined in this Agreement, subject to all terms and conditions of this Agreement. A replacement vessel shall be only a vessel of the type authorized under this Agreement to berth at the Leased Premises of a length and width which can be reasonably accommodated by the Leased Premises, in Lessor's sole opinion. Upon approval of the replacement vessel this Agreement will be amended to reflect the proper name and registration number of the replacement vessel and to adjust the rent to the new keel length.

If Lessee fails to comply with all applicable provisions of this Section, then this Agreement will terminate effective 30 days from the date of the transfer, notwithstanding all other provisions of this Agreement.

Section 18.30 - Hurricane Plans. Lessee must submit to Lessor on the Effective Date a hurricane preparedness plan in form and substance acceptable to Lessor, and must update the plan on a periodic basis at Lessor's request. A representative of Lessee must attend each hurricane preparedness meeting called by Lessor during the Term of this Agreement.

Section 18.31 - Discrimination. In connection with its use of the Leased Premises, Lessee must not discriminate against any Person, employee, or applicant for employment because of race, religion, color, or national origin.

Section 18.32 – No Broker. Lessee represents that it has had no dealings with any Broker (as defined in Chapter 62 of the Texas Property Code, as it may from time to time be amended) in connection with the negotiation of this Agreement and knows of no other Broker entitled to a commission in connection with this Agreement. Lessee agrees to indemnify and hold harmless Lessor and any property of Lessor from any liability or claim arising by, through, or on behalf of Lessee, whether meritorious or not, with respect to any Broker.

Section 18.33 - Safety and Security. Lessee must provide Lessor no later than the Effective Date, and thereafter if requested by Lessor or if such information or documentation changes, the following relating to the safety and security of the Leased Premises: (i) a copy of Lessee's safety and emergency management plans, (ii) a point of contact for Lessor's Director of Safety and Security, and (iii) the name and telephone number of each representative of Lessee to be contacted in case of an emergency.

This Agreement has been executed by the parties on the date and year first above written.

LESSOR

**BOARD OF TRUSTEES OF
THE GALVESTON WHARVES**

By: _____
Rodger Rees, Port Director

Approved as to form:

Counsel to the Board of Trustees
of the Galveston Wharves

LESSEE

By: _____
Name: _____
Title: _____

SCHEDULE OF EXHIBITS

Exhibit A – Description of Leased Premises and Parking Area [Sections 1.01 and 1.05]