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LEASE BETWEEN \* UNITED STATES OF AMERICA  
 \*  
 THE BOARD OF COMMISSIONERS \* STATE OF LOUISIANA  
 \*  
 OF THE PORT OF NEW ORLEANS \* PARISH OF ORLEANS  
 \*  
 AND \*  
 \*  
 NEW ORLEANS COLD STORAGE & \* *Free Agreement No. 201139*  
 WAREHOUSE COMPANY, LTD. \*  
 \*  
 \* \* \* \* \*

THIS LEASE AGREEMENT (hereafter "Lease"), made and entered into on the dates written below and effective as provided hereafter, between the Board of Commissioners of the Port of New Orleans (hereafter "Board" or "Lessor"), a political subdivision of the State of Louisiana, having its principal place of business located at 1350 Port of New Orleans Place, represented herein by Gary P. LaGrange, its Executive Director, by virtue of a resolution of said Board taken at a duly constituted public meeting on May 22, 2002, a certified copy of which is annexed hereto as Exhibit "A", and New Orleans Cold Storage & Warehouse Company, LTD., (hereafter "Lessee"), a corporation organized and existing under the laws of the State of Louisiana, having its principal place of business located at 3401 Alvar Street, New Orleans, Louisiana 70126, represented herein by Gary Escoffier, its President, by virtue of a resolution of the Board of Directors of said company, a certified copy of which is annexed hereto as Exhibit "B", and

WITNESSES

WHEREAS, Board and Lessee desire to enter into an agreement whereby Lessee will lease from Board the facility commonly known as the Jourdan Road Shed and six acres adjacent thereto; and

WHEREAS, Lessee, at its cost and expense, intends to fully renovate the facility to provide for increased handling of maritime and domestic cold storage cargo; and

WHEREAS, Lessee requires a reduced rental charge to be applied during the period of time necessary to construct and renovate the Board's facility; and

WHEREAS, on acceptance of the construction, all improvements to the existing facility shall become the property of the Board; and

WHEREAS, expansion and renovation of the aforementioned facility will increase the capacity of the Port of New Orleans to handle maritime and domestic cold storage cargo; and

WHEREAS, in the event that the Mississippi River-Gulf Outlet should become impassable to certain vessels calling at the Leased Premises and the present Inner Harbor-Navigation Canal lock is impassable to the same vessels during the term of this Lease and it becomes necessary for Lessee to move its cargo through Board facilities on the Mississippi River, Lessee will incur additional drayage costs; and

WHEREAS, Board intends to offset this additional drayage cost



through a rental credit and thereby reduce the competitive impact such an interruption of access would have on Lessee's operations in the port of New Orleans; and

**WHEREAS**, it is in the Board's and Lessee's interest to enter into this Lease on the terms and conditions contained herein;

**THAT, IN CONSIDERATION** of the covenants and agreements to be kept and performed by the parties hereto and on the terms and conditions herein set forth, the parties hereto agree as follows

### **1. DESCRIPTION OF LEASED PREMISES**

(A) Board as Lessor hereby leases to Lessee a portion of Board's Jourdan Road Facility located on the Inner-Harbor Navigation Canal in New Orleans, more particularly described as the Jourdan Road Shed and six acres of marshaling yard, all as more fully described and highlighted in green on Board Drawing No. M14-1307, dated July 1, 2002, attached to and hereby made part of this Lease as Exhibit "C", together with all improvements, buildings, machinery, and equipment located thereon.

(B) Board hereby grants to Lessee a prior claim to the use of the area shaded in red (the "First Call Area") on Exhibit C. This grant shall not be construed as allowing to Lessee exclusive use or absolute control of the First Call Area. Board may at any time when Lessee is not using the First Call Area assign other vessels to use it. Board agrees to use any and all operational and/or legal means available to remove any vessel moored by or with the authority of the Board at the Leased Premises if said vessel overstays its allotted time or berth application or whose berth otherwise conflicts with Lessee's right of First Call.

(C) Board and Lessee acknowledge that Lessee has agreed as one of its obligations under this Lease to renovate the Jourdan Road Shed and develop the Jourdan Road Shed into a cold storage facility. Furthermore, Board and Lessee acknowledge that, after the construction of the new cold storage facility and its acceptance by Board and Lessee, the term "Leased Premises" as used herein shall include the new cold storage facility. Lessee agrees to substitute a revised lease drawing, which drawing will show the renovated facility and will replace Exhibit C to this Lease. If Lessee fails to substitute the revised lease drawing, however, none of the parties' rights or obligations hereunder shall be affected.

### **2. PEACEABLE POSSESSION**

Lessor binds itself to cause Lessee to be maintained in peaceable possession of the Leased Premises during the continuance of this Lease. Should Lessee be disturbed by any person or persons claiming a right to the Leased Premises or should Lessee be sued by any person or persons claiming the whole or any part of the Leased Premises or claiming a servitude on them, Lessee shall call Lessor in warranty, and Lessor hereby obligates itself to defend any such action at its costs, provided that this Section shall not apply to disturbances by trespassers.

### **3. TERM**

(A) The term of this Lease shall be for a primary term of thirty (30) years ("Primary Term"), and shall commence on the 1st day of October, 2002 (the "Effective Date"), and shall terminate on the 30th day of September, 2032. If the Lease commences other than on the first day of a month, the Base Rent (as defined below) shall be prorated for that month.

(B) Lessee shall have the option to extend the term of this Lease for two additional ten (10) year periods (each of which shall be known hereafter as an "Extended Term") on the same terms and conditions as set forth in this Lease, except the rental shall be adjusted in accordance with Section 4 (C) below. If Lessee desires to exercise either of its renewal options, Lessee must give irrevocable



notice in writing to Board at least one (1) year before the expiration of the Primary Term or of the first Extended Term of this Lease. Such exercise shall, at Board's option, be void if an Event of Default (as hereafter defined) has occurred and is continuing or if an event has occurred that may, with the passage of time or the giving of notice or both, become an Event of Default at the time of the giving of said notice or at any time thereafter and before the Extended Term may begin.

#### 4. RENT

(A) This Lease is made for and in consideration of an annual rental of Two Hundred Thousand Dollars and No Cents (\$200,000.00)(the "Base Rent"). Rent shall be payable in equal monthly installments of Sixteen Thousand, Six Hundred Sixty Seven Dollars (\$16,667.00) in advance on the first day of each month at the offices of Board, 1350 Port of New Orleans Place or mailed to P.O. Box 60046, New Orleans, Louisiana 70160. Rent not received by Board on the due date shall be deemed delinquent and shall bear interest at the rate of five hundredths percent (.05%) per day from the date due until paid, reserving to Board the right to take such action as is provided for under Section 21 ("Default") below. The Base Rent shall be adjusted every five years by the Consumer Price Index for All Urban Users, U.S. City Average (CPI-U), according to the following calculation: By using information available from the U.S. Department of Labor, Bureau of Labor Statistics, or successor, the value of a fraction shall be determined by dividing the numerator thereof by the denominator thereof, the denominator of which shall be the Consumer Price Index figure for All Urban Consumers, U.S. City Average, All Items (hereinafter the CPI-U) for the month occurring sixty-three (63) months prior to the adjustments date and the numerator of which shall be the CPI-U figure for the month occurring three (3) months prior to the adjustment date. The annual rent then in effect shall be multiplied by the value of the fraction as determined above, and the product thereof shall be the annual rent. In no event shall the annual rent be less than is then currently being paid.

(B)(i) As additional rent hereunder, for all Lessee's cargo loaded or discharged from vessels calling at the Leased Premises or the First Call Area, Lessee shall collect and remit to Lessor all rate/assignment fees for uncovered space as provided in Section 301 of the Board's Dock Department Tariff, FMCT-No.2 (hereinafter "Tariff") as it may be amended from time to time hereafter. During each Lease Year, for the first 250,000 short tons loaded or discharged from a vessel calling at the Leased Premises or the First Call Area, Lessee shall collect and remit one hundred (100%) percent of the said charges. Lessee hereby acknowledges receipt of a copy of the Tariff. Lessee shall report to the Board in writing, on a monthly basis, in a form and manner acceptable to Board, the type of vessel, vessel length overall (LOA), and the tonnage of maritime cargo loaded or discharged per vessel. Said written report and the payment of this additional rent shall be submitted to the Board no later than the tenth day of the month following the month to which the report pertains.

(ii) During each Lease Year, Lessee shall pay to Board for each short ton loaded or discharged from a vessel calling at the Leased Premises or the First Call Area in excess of 250,000 short tons, but not greater than 300,000 short tons, eighty (80%) percent of the charges pursuant to Section 301 of the Tariff and for each short ton in excess of 300,0000 seventy-five (75%) percent of such charges. A short ton shall be defined as two thousand (2,000) pounds. Lessee acknowledges that all applicable Tariff charges shall be collected and retained by Board, except the stevedore use fee and charges pursuant to Section 301 of the Tariff, which Lessee shall collect and remit to Board pursuant to Section 4(B)(i)("Rent") above.

(C)(i) If Lessee exercises its option to extend the Lease granted to it in Section 3(B) ("Term") above, the Base Rent as set out in Section 4(A) shall be adjusted as calculated as set out in Section 4(A) above, the numerator of which shall be the last published CPI-U figure just prior to the effective date of the Extended Term. In no event shall the annual rent be less than is then currently being paid.

(ii) In addition to the annual Base Rent for the Extended Terms, Lessee shall pay Lessor an additional payment of Two Hundred Seventy-Five Thousand Dollars and No Cents (\$275,000.00) per year for each year of the Extended Term(s), which shall become, together with the then current rent, the Base Rent subject thereafter to CPI adjustment pursuant to Section 4(A) above.



(D) During the period of time (the "Interim Period") from the Effective Date of this Lease until the date of acceptance of the improvements contemplated in Section 13 ("Improvements; Construction") below or the date Lessee begins operations in the cold storage warehouse, whichever first occurs, Lessee shall pay One Thousand Dollars and Zero Cents (\$1,000.00) per month for the Leased Premises. During the Interim Period, Lessee shall have full access to the property twenty-four (24) hours per day for the purposes of performing its obligations under Section 13 ("Improvements; Construction") below. At no time during the Interim Period shall the Lessee operate or otherwise conduct business on the Leased Premises. Furthermore, in no event shall the Interim Period extend beyond one year from the Effective Date of this Lease. If the Interim Period extends beyond one (1) year, Lessee shall pay rent in an amount as provided for in Section 4 ("Rent") above. Notwithstanding any provision to the contrary herein, during the Interim Period Lessee may continue operations under that certain letter agreement dated May 23, 1997 between Board and Lessee. When Lessee begins operations in the cold storage warehouse on the Leased Premises, the said letter agreement shall terminate. Any use of the new cold storage facility which Lessee is required to construct under this Lease shall be considered full use of the cold storage facility unless otherwise agreed in writing at that time.

(E) If access to the Leased Premises via the Mississippi River Gulf Outlet (MRGO) is reduced to less than a thirty-two foot (32') draft and/or eighty foot (80') beam for more than five (5) consecutive days, and if vessels must divert from the Leased Premises because of reduced channel dimensions, and if vessels can not transit the Inner Harbor Navigation Canal lock, and if vessels can not be accommodated elsewhere in the Port without additional cost to Lessee, Board will provide rental credits of five dollars (\$5.00) per net metric ton (2,204.6 lbs.) on diverted cargo up to a cumulative maximum in any one Lease Year in an amount not to exceed one Lease Year's Base Rent. Said per net metric ton rental credit shall be subject to adjustment every five years pursuant to the formula contained in Section 4(A) above. This rental credit provision shall not apply after completion of any new Inner Harbor Navigation Canal Lock as currently or in the future authorized by Congress, provided any new lock shall meet the aforementioned requirements of draft and beam, or if any vessel is loaded or discharged at any non-Board facility or if any impediment to access through the MRGO is not naturally occurring or is impeded because of the actions of a third party or the result of actions or operations of Lessee, its employees, agents, or assigns. Lessee shall notify the Board in writing within (15) days of each instance in which Lessee claims rental credits pursuant to this Subsection and shall produce and maintain all records in support of any such claim in order to qualify for such credit.

##### 5. MINIMUM ANNUAL TONNAGE GUARANTEE

(A) Lessee shall be obligated, during the Primary Term of this Lease and any Extended Term(s), to move through the Leased Premises a minimum of 100,000 short tons of maritime cargo loaded or discharged from vessels at the First Call Area or other Board facility for each Lease Year of the Lease. This obligation will be referred to in this Lease as the "Minimum Annual Tonnage Guarantee". A Lease Year shall run for a period of time equal to three hundred sixty-five days. The first Lease Year shall begin on the Effective Date of this Lease. For purposes of the Minimum Annual Tonnage Guarantee, the required tonnage for the period of time between the last day of the Interim Period and the first day of the second Lease Year shall be prorated.

(B) If Lessee fails to meet the Minimum Annual Tonnage Guarantee, Lessee shall pay to the Lessor \$3.00 per short ton (in addition to the Base Rent) for any shortfall below the Minimum Annual Tonnage Guarantee in any Lease Year. The per ton shortfall payment shall be adjusted every five (5) years according to the formula set out in Section 4(A) ("Rent") above.

(C) Failure of Lessee to meet the Minimum Annual Tonnage Guarantee shall not constitute an Event of Default as set forth in Section 21 ("Default") below. Failure to pay any shortfall shall, however, constitute an Event of Default.



**6. RIGHT OF FIRST REFUSAL**

If the Board has entered into negotiations with or received from a third party a proposal to operate a public cold storage facility on property or in facilities owned by Board, the Board shall notify Lessee in writing, and Lessee shall, for thirty (30) days after receipt of said notice, have the right to lease the facility or property under negotiation, provided that the rent to be paid by Lessee is equal to or greater than the rent to be paid under the pending proposal by or agreement with said third party. This right of first refusal must be exercised in writing within the aforementioned thirty (30) day period. This right of first refusal shall expire on the expiration of the tenth Lease Year or if Lessee should fail in any Lease Year to meet the Minimum Annual Tonnage Guarantee set out in Section 5(A) above. All other terms and conditions of this Lease shall apply to any such agreement for an additional cold storage facility. This right of first refusal shall not apply to any proprietary facilities or operations.

**7. LIMITATION OF OPERATIONS ON LEASED PREMISES**

(A) A consideration for the Board's entering into this Lease is that the operations conducted on the Leased Premises shall contribute to the domestic or foreign waterborne commerce of the Port of New Orleans. Lessee shall use the Leased Premises primarily for the purpose of a public cold storage facility and related activity. The Leased Premises may also be used for domestic cold storage cargo. Lessee shall not use the Leased Premises for any other purpose without first obtaining the written approval of the Board acting through its executive director in his discretion. In no event shall Lessee use the Leased Premises for any activities which could result in an adverse environmental impact on the Leased Premises or any adjacent property, whether owned by Board or not.

(B) Lessee agrees that it will maintain and operate the Leased Premises in an efficient manner as a public maritime cargo terminal open to any and all shippers or receivers of cargo that may be suitably handled at the facility on a fair and reasonable basis, free of any unreasonable or unjust discrimination to all persons desiring to avail themselves of such facilities, it being understood that the Leased Premises are designed and intended for use as a maritime cargo terminal. Lessee further agrees that an essential consideration for the Board's entering into this Lease is the agreement of Lessee to use its best efforts to promote and develop commerce at the Leased Premises in order to achieve their maximum utilization as a public maritime cargo terminal, and that it shall at all times give foremost consideration to this objective, consistent with sound business practices, in its manner of operation, in the services and equipment it provides, in establishing its rates and charges and in its compliance with its maintenance and other obligations under this Lease.

(C) Lessee agrees that, in connection with the maintenance and operation of such public maritime cargo terminal, it will provide terminal services for the transportation, receipt, delivery, interchange, storage and documentation of maritime cargoes by the general public over the Leased Premises, and that it will provide all other services which, under prevailing practices, in the usual manner and in the ordinary course of business, are normally furnished in connection with public maritime cargo terminals similar to the Leased Premises.

(D) Lessee shall be the exclusive terminal operator on the Leased Premises, but Lessee agrees that it shall not have the exclusive right to perform stevedoring services on the Leased Premises, and Lessee shall permit any qualified stevedore to operate on or use the Leased Premises when requested to do so by any ship operator or agent using the Leased Premises. Lessee has the right to allow others to conduct on the Leased Premises specialty operations as set out in Lessee's tariff, filed with the Federal Maritime Commission pursuant to Section 31 ("Tariff of Rates and Charges; Rules and Regulations; Discrimination") below, and to require stevedores and others to provide evidence of insurance in acceptable amounts and under reasonable terms and conditions and with Lessee named as an additional insured before they are permitted to operate on the Leased Premises.



(E) To the extent not inconsistent with the terms of the Lease herein, Lessee agrees that it shall not have the sole and exclusive right to maintain and operate a public terminal and marshaling area and to provide terminal services therefor in the Port of New Orleans. Lessee acknowledges and agrees that the Board has reserved and shall always have the right to grant, at Board's sole discretion, leases, permits and assignments affecting other Board-owned or -administered lands and facilities to any other persons, firms or corporations, for the maintenance and operation of other multi-purpose terminals and marshaling areas, whether public or private and whether of the same nature or character as the herein leased facilities or not, and for the providing of terminal services thereon or in connection therewith.

#### 8. MAINTENANCE; SUNKEN OBJECTS; OBSTRUCTIONS TO NAVIGATION

(A) Lessee shall be responsible for and shall at its own cost, risk and expense perform and pay all costs of maintenance and repairs attributable to Lessee's operations on and use of the Leased Premises, including but not limited to any wharf substructure and any facilities and improvements situated or to be situated thereon, so that at the termination of this Lease, and at all times during this Lease, the same will be in as good condition as at the commencement of the Lease or, for the improvements contemplated under Section 13 ("Improvements; Construction"), in as good condition as on the date when Board accepted them, normal wear and tear excepted. All repairs shall be equal in quality to the original in material and workmanship. During the term of this Lease, Board shall have no responsibility whatsoever to perform any maintenance or repair work on the Leased Premises. Board shall repair any damages caused by the Board, its employees and agents. Board shall provide to Lessee copies of any and all pre-construction plans of the substructure of the Leased Premises in its possession.

(B) Should Lessee fail to begin maintenance or repairs as required in Subsection (A) above within thirty (30) days after having been notified in writing by Board to perform such obligations or to pursue continuously and without interruption, the completion of such repairs, in addition to such remedies as may be afforded to Board by law, Board is hereby authorized by Lessee to perform or have the work performed at Lessee's cost, risk and expense, and Lessee shall, on demand, pay to Board the actual expenses, including overhead, incurred by Board or paid to Board's contractor, which shall be defined as recoverable costs. In the event Board has to discharge Lessee's obligations under this Section, Lessee agrees to pay to Board all Board's recoverable costs plus an additional twenty (20) percent as compensation for discharging one of Lessee's obligations hereunder. Failure of Lessee to reimburse Board for said recoverable costs plus the additional twenty percent within thirty (30) days after written demand therefor by Board shall be cause for immediate cancellation of this Lease by Board, provided, however, that this right of cancellation shall not constitute a waiver by Board of any remedies now or hereafter given to Board by the laws of Louisiana, it being expressly understood that Board reserves the right to avail itself of any and all such remedies. In the event Board elects to file legal action to enforce the performance by Lessee of the herein above obligations or to recover its said recoverable costs, Lessee herein agrees to pay to Board all court costs, including reasonable attorney's fees so incurred by Board.

(C) All maintenance, repair and replacement of the Leased Premises, inclusive of the substructure and any buildings, equipment or facilities thereon, shall be the sole responsibility of Lessee. Before the Effective Date of the Primary Term, a joint survey will be conducted by representatives of both parties and conditions noted and agreed to in writing by both parties, each party to bear its own costs. Lessee shall be required to maintain all equipment and the dock in the same condition as surveyed, less normal wear and tear.

(D) In the event any vessel or other floating craft or equipment, including any logs or lumber assembled in rafts, or separated therefrom or any sinkable object, in the care, custody and control of Lessee shall sink or in any manner obstruct navigation and/or dredging in the navigable waters or mooring areas of the Leased Premises, the Mississippi River, the Mississippi River-Gulf Outlet, the



Inner-Harbor Navigation Canal, or in any other navigable waters or mooring areas owned by or under the jurisdiction of Board, Lessee shall promptly remove same. In case Lessee fails for any cause to so remove any such sunken vessel, craft or object promptly on demand, Board may remove same or cause same to be removed at the cost, risk and expense of Lessee. In the event Board has to discharge Lessee's obligations under this Section, Lessee agrees to pay to Board all Board's actual costs and expenses plus an additional twenty (20) percent as compensation for discharging one of Lessee's obligations hereunder. Failure of Lessee to reimburse Board for said cost and expense within thirty (30) days after written demand therefor by Board shall be cause for immediate cancellation of this Lease by Board, provided, however, that this right of cancellation shall not constitute a waiver by Board of any remedies now or hereafter given to Board by the laws of Louisiana, it being expressly understood that Board reserves the right to avail itself of any and all such remedies. In the event Board elects to file legal action to enforce the performance by Lessee of the herein above obligations or to recover its said cost and expense in the removal of any such sunken objects, Lessee herein agrees to pay to Board all court costs, including reasonable attorneys fees so incurred by Board.

#### 9. CONDITION OF LEASED PREMISES

(A) Lessee acknowledges that it has inspected the Leased Premises and agrees to accept them in their present condition without any obligation on Board to make any changes or improvements or to do construction of any kind, whether in connection with access, utilities or otherwise. Before Lessee begins operations on the Leased Premises, Board and Lessee shall conduct a joint move-in survey, which shall be committed to writing and accepted by signatures of representatives of both parties. Lessee shall make or cause to be made such improvements as necessary or appropriate to place the Leased Premises in a safe and usable condition for conducting its business, provided that no such work shall be undertaken without Lessee's first having submitted the plans and specifications for the proposed work to and securing the written approval of Board as provided in Section 13 ("Improvements; Construction") below.

(B) Notwithstanding any other provision or interpretation to the contrary, Lessee, from the time of its occupancy and until the Leased Premises are vacated by Lessee, shall have complete "garde" over and assume sole liability for the condition and operation of the Leased Premises and any and all defects therein, both latent and apparent, as well as, of any constructions, equipment, utilities, access or other improvements which currently exist on or may be built, placed on, or serve the Leased Premises during the term of this Lease.

#### 10. LOSS, DAMAGE AND DESTRUCTION

(A) Except as provided herein, the occurrence of any loss, damage or destruction of the Leased Premises, however caused, and whether covered by insurance or not, shall not be grounds for cancellation or termination of this Lease or for reduction or abatement of rent. Board shall be under no obligation to repair, replace or restore any of the Leased Premises which may be the subject of such loss, damage or destruction, and its failure to do so shall not be grounds for cancellation of this Lease.

(B) Except as provided herein, Lessee agrees that it shall at its own cost, risk and expense promptly and with due diligence repair, replace or restore any or all of the Leased Premises which may become the subject of such loss, damage or destruction, however caused. Lessee shall obtain the written consent of Board to the plans for any repairs, replacement, or restorations, and this consent shall not be unreasonably withheld. The proceeds derived from Lessee's or any tortfeasor's insurance policies and amounts recovered from third parties shall be applied toward such repair, replacement or restoration.

(C) Lessee shall have the option to terminate this Lease in the event of any loss, damage or destruction of the Leased Premises which renders them substantially unusable for the purposes of



this Lease unless caused by Lessee, in which case Lessee shall be liable for the damages caused, together with rent, until the Leased Premises can be repaired or rent for one year after the date of the casualty, whichever occurs earlier. If Lessee elects such option, Lessee shall give Board prompt written notice of such election no later than forty-five (45) days from the date of occurrence of such loss, damage, or destruction, and failure to give such notice shall be deemed an election to continue this Lease. Such termination shall be effective (for purposes of the payment of rent) as of the date of such loss, damage, or destruction, provided Lessee's operations on the Leased Premises ceased at the time of the casualty, and Board shall have no obligation to Lessee for any payment as a consequence of such termination. If Lessee continued operations after the said casualty, then rent shall be due until the day that operations ceased. Any rent paid in advance shall be prorated as of such termination date. In the event said loss, damage, or destruction was covered by Lessee's insurance, before Lessee may exercise its option to cancel this Lease as set out in this Subsection, and except as provided in Subsection (E) below, Lessee shall pay over to Board all such insurance proceeds which Lessee has been paid or for which Lessee has or may have a claim and any deductibles Lessee maintained under the terms of the insurance policies.

(D) In the event of any loss, damage or destruction to the Leased Premises caused by third parties, whether partial or not, it shall be the obligation of Lessee to take the necessary legal action immediately to protect the rights of Lessee and Board against such third parties for the recovery of damage.

(E) In the event of termination of this Lease pursuant to this Section, Lessee shall be entitled to receive from Lessee's insurance proceeds Lessee's insurable leasehold interest in those improvements on the Leased Premises approved by Board and paid for and owned by Lessee. Board shall be entitled to receive insurance proceeds for those improvements the title to which is in or vests in the Board by virtue of this Lease. In the event Lessee receives any insurance proceeds for damage to improvements owned by Board, Lessee shall immediately tender said proceeds to the Board. Lessee's right to receive payment shall be conditioned on prior receipt by Board of its insurance settlement. Lessee shall remove from the Leased Premises the remains of any of its improvements.

## 11. INSURANCE REQUIREMENTS

### (A) **General Insurance Requirements**

(i) **Insurance Companies:** All insurance shall be written with insurance companies authorized and licensed to do business in the State of Louisiana and acceptable to the Board (Best's rating A+, IV, or better). Self-insurance programs authorized by the Commissioner of Insurance of the State of Louisiana for workers' compensation insurance are acceptable, provided Lessee submits to Board a certified copy of the Lessee's authority to self insure.

(ii) **Primary Insurance:** All insurance required herein shall be primary to any similar insurance that may be carried by Board for its own protection.

(iii) **Insurance Certificates:** Before this Lease becomes effective, Lessee shall furnish to the Board's risk manager original, manually signed certificates evidencing that it has procured the insurance herein required and shall provide to the Board's risk manager updated certificates during the term of this Lease.

(iv) **Named Insured:** Except for the workers' compensation insurance, Board shall be named as an additional insured on all policies required of Lessee herein.

(v) **Waiver of Subrogation:** All insurance policies required of Lessee, as well as any other insurance carried by Lessee for its protection or the protection of its property



on the Leased Premises, shall provide that the insurers waive in favor of Board any rights of subrogation.

(vi) **Notice of Cancellation:** All policies required herein shall provide for thirty (30) days' written notice of cancellation or material change to be sent to the Board at P.O. Box 60046, New Orleans, LA 70160, Attention: Risk Manager.

(vii) **Subject to Revision:** The amounts and types of insurance required herein shall be subject to revision at any time at the discretion of the Board.

(viii) **No Representation or Warranty:** Board makes no representation or warranty that the insurance set forth in this Section will be sufficient to protect Lessee's interests.

(ix) **Term:** All insurance required in this Section shall remain in effect during the entire term of this Lease, including any extensions.

(x) **Deductibles:** Lessee shall be liable to Board for all deductibles maintained under any of the insurance coverages required below.

(xi) **Combination of Coverages:** A combination of primary and excess liability insurance may be used to satisfy the requirements of this Section.

- B. **Comprehensive General Liability Insurance** - Lessee shall procure and maintain at Lessee's sole cost and expense comprehensive general liability insurance (on an occurrence basis) with limit of liability of not less than five million dollars (\$5,000,000) for all injuries or deaths resulting to any one person or from any one occurrence. The aggregate limit for products and completed operations shall be not less than two million dollars (\$2,000,000). The limit of liability for property damage shall be not less than two million dollars (\$2,000,000) for each occurrence and aggregate. Coverage under such insurance shall also include damage hazards. This insurance shall also include coverage for explosion, collapse and underground property damage hazards, completed operations and "broad form contractual endorsement". Where Lessee's operations include the use of watercraft, the watercraft exclusion in the comprehensive general liability policy shall be eliminated.
- (C) **Comprehensive Motor Vehicle Liability Insurance** - Lessee shall procure and maintain at Lessee's sole cost and expense comprehensive motor vehicle liability insurance which shall include hired car and non-ownership coverage with limit of liability of not less than one million dollars (\$1,000,000) for all injuries or deaths resulting to any one person or from any one occurrence. The limit of liability for property damage shall be not less than one million dollars (\$1,000,000) for each occurrence and aggregate.
- (D) **Workers' Compensation Insurance** - Lessee shall procure and maintain at Lessee's sole cost and expense workers' compensation insurance as will protect Lessee from claims under the Louisiana Workers' Compensation Act as well as under the Federal Longshoremen's and Harbor Workers' Compensation Act, if applicable. The limit of liability under the employer's liability section of the workers' compensation insurance policy shall be not less than one million dollars (\$1,000,000). Whenever applicable, protection shall also be provided for liability under the Jones Act and under general maritime law in an amount not less than one million dollars (\$1,000,000).
- (E) **Property Insurance** - (i) Lessee shall procure and maintain, at Lessee's sole cost and



expense, broad form property insurance on the Leased Premises in favor of the Board in an amount equal to the deductibles of the Board's property insurance policy as it may be. Board and Lessee acknowledge that the deductible is currently \$100,000 for general perils and \$750,000 for perils caused by windstorm. However, Lessee shall be required to carry property insurance for named windstorm perils only to the amount of \$250,000.00. Such insurance shall be written in the name of Lessee, but shall provide that any loss payable under the policy shall be adjustable with and payable to the Board. Board reserves the right to increase the amount of property insurance Lessee is required to maintain hereunder to the full extent of the Board's deductible or self-insured retention under its blanket wharves and sheds property insurance policy.

(ii) To insure the amount of Board's deductibles, Lessee shall have the option to substitute for the broad form property insurance required above a form of security acceptable to and approved in writing in advance by the Board. If Lessee chooses to satisfy its obligation to insure the deductibles with a letter of credit, the provisions of Section 36 ("Security Requirement") below shall apply as to the form of the letter of credit except that this letter of credit to satisfy the property insurance deductible shall provide that it is unconditionally available by draft of Board at sight to be accompanied by the signed statement of the Board acting through its executive director or his designee certifying that the Board has sustained a property loss to the Leased Premises, the claim for which falls within the Board's deductible under its property insurance.

(iii) With regard to the property insurance required above, Board shall have the right to increase the amount of insurance required of Lessee under this Subsection if its deductible under its blanket wharves and sheds policy increases. The amount of the increased insurance required of Lessee may be equal in Board's discretion to its increased deductible, and Lessee shall be required to increase its insurance required under this Subsection.

## **12. COSTS, RISKS AND EXPENSES; UTILITIES**

(A) Lessee shall pay all costs and assume all risks in doing work, or carrying on operations, now or hereafter permitted or required under the terms and conditions of this Lease, except as may be otherwise specifically designated in this Lease or in written instructions given or agreements made by proper authority under the terms and conditions of this Lease. Lessee shall pay all costs, reasonable attorneys' fees and other expenses incurred by Board in enforcing the covenants of this Lease, should Lessee be found in violation of it.

(B) The application for and installation of any water, gas, sewerage and drainage lines, electric power cables and telephone cables shall be made by Lessee at no cost, risk or expense to Board. The metering of all such utilities shall be in the name of Lessee, and all bills rendered for the consumption of said utilities shall be in the name of and shall be payable by Lessee. Board shall be under no obligation either for the cost of installation, maintenance or removal or for the bills for consumption of any utilities at the Leased Premises. Within thirty (30) days of the termination of this Lease, Lessee shall remove any such installation at Board's request for any reason.

## **13. IMPROVEMENTS; CONSTRUCTION**

(A) Lessee agrees at its own cost to redevelop the structure known as the Jourdan Road Shed as a cold storage facility under plans and specifications approved by Board. For this purpose and at Lessee's expense, Board agrees to use reasonable efforts (to the extent permissible under state law, state bonding capacity, and state bond commission authority) under its tax-exempt bond authority to issue non-recourse, tax-exempt bonds ("Bonds") payable by Lessee, under terms and conditions



agreeable to Lessee and Board, and agrees to make available to Lessee the proceeds of any Bonds, but only in strict compliance with all of the Bond documents. However, Lessee shall be obligated to complete the redevelopment required below notwithstanding whether the proceeds of the Bonds are adequate to cover all costs. Said redevelopment shall be accomplished under the following terms and conditions:

(i) Redevelopment of the Leased Premises shall begin within 15 days of the effective date of this Lease and continue without interruption so that redevelopment is completed within 270 days of the Effective Date of this Lease.

(ii) Before commencing any redevelopment of the Leased Premises, Lessee shall submit a complete set of the plans and specifications for the redevelopment and final construction drawings to Board for review and permitting at least thirty (30) working days prior to commencement of any work. Construction drawings shall be signed and stamped by a Louisiana registered engineer. Lessee shall obtain or cause to be obtained all necessary permits and approvals for the redevelopment of the Leased Premises as well as any necessary permits for the operation and maintenance of the Leased Premises. The Board's review and approval period shall begin only after Lessee submits all documents requested for Board's review, and Board shall have a period of time not to exceed thirty (30) days to conduct such review.

(iii) The newly developed Jourdan Road Shed shall be constructed in accordance with a site plan approved in advance in writing by Board.

(iv) Lessee shall enter into a standard building contract (with such changes as may be approved by the Board in its discretion) with a Louisiana licensed contractor of its choice for the redevelopment of the improvements on the Leased Premises. The contract shall provide for a payment and performance bond for labor and materials in the full amount of the contract price. Board shall be named as a co-indemnitor or co-obligee under the bond. However, nothing contained herein or in the bond shall create any liability on the part of Board under the building contract. The bond shall be provided by a surety licensed to do business in the State of Louisiana that qualifies as a surety under the Louisiana Public Works Act, La. R.S. 9:4812. The contract shall further provide that the improvements belong to the contractor until they are accepted by Lessee and that the improvements are covered by contractor's builder's risk insurance during construction.

(v) Lessee agrees that, during all phases of design and construction of the redevelopment, Lessee will employ a Louisiana licensed professional engineer who is independent of the construction contractor who will act as a daily construction administrator to ensure that the construction conforms to the plans and specification permitted by Board and who will oversee the normal testing of all materials by an accredited testing laboratory. Lessee shall hire the engineer with Board approval, and Board will reimburse Lessee for its share of the engineer's cost on the submission of statements from the engineer after the statements are approved and paid by Lessee. The cost of said engineer will be borne equally by the Board and Lessee. The Board's construction administration team will review the reports and will periodically meet with the construction administration engineer and physically inspect the construction in progress. At the completion of construction, but before the Board accepts the improvements, the construction administration engineer will issue a report certifying that the completed construction is in accordance with the plans and specifications permitted by Board and with all applicable codes and regulations. This report will form the basis of the joint move-in survey for the Leased Premises as required above.



(vi) Board, its employees, consultants, and any other designees shall have the right to inspect the construction on the Leased Premises at any time. Lessee agrees that, by inspecting the project or accepting the progress reports required above, Board shall not assume any liability of any nature for the construction of the improvements nor shall any such inspection by or on behalf of Board constitute a waiver by Board of any warranties or obligations of Lessee under this Lease, nor shall any inspection by Board serve to make Board a guarantor of the safety or adequacy of the improvements.

(vii) During all phases of construction, Lessee shall ensure that the entire work site shall be adequately barricaded and posted twenty-four (24) hours per day to prevent the general public from gaining access to the work site.

(viii) Lessee shall not begin operation and occupancy of the improvements approved in this Section until the improvements are substantially completed in accordance with the plans and specifications and accepted by Board.

(ix) Lessee shall not finally accept the improvements until it has been inspected by Board and Board has given its approval to the improvements. Any pre-approval inspection shall be conducted jointly with Lessee on notification at least five (5) working days prior to said inspection.

(x) As soon as Lessee accepts the improvements in accordance with subsection (ix) above, the improvements shall become property of the Board without further formality or any deed transferring title and free and clear of all mortgages, liens, and encumbrances. Lessee shall formally notify the Board in writing in a delivery made by hand on the date of Lessee's acceptance of the improvements in order that Board may be certain of the acceptance date. Until such acceptance, the improvements shall remain the property of the contractor. If any liens or mortgages are recorded against the improvements or the Leased Premises, Lessee shall remove them within thirty (30) days.

(xi) Within thirty (30) days after substantial completion, certified reproducible as-built vellum drawings must be submitted to the Board as well as electronic formats of all drawings and specifications. All engineering data collected and all work product prepared for this redevelopment project, including all drawings, renderings, documents, material testing data, calculations, notes, files, inspections, reports, specifications and software collected or prepared in connection with this project, except legal, personnel or administrative files, shall be retained and become and be the property of the Board as it is collected or prepared, and Board shall not be restricted in its use of such material. Lessee shall deliver all such original hard copy documents and electronic media to Board at Board's request at any time during or after completion of construction. Final contract documents drawings must be stamped and signed by a Louisiana-licensed engineer (civil, electrical and mechanical as appropriate).

(B) Lessee contemplates that the redevelopment of the Leased Premises and construction of a new cold storage facility may be financed with tax-exempt revenue bonds issued by the Board and further warrants that:

(i) Lessee agrees to cause the redevelopment of the Leased premises to be completed as soon as practicable but no later than set out in Subsection 13(A)(i) above and to cause all proceeds of the Bonds, including investment earnings, to be expended no later than three (3) years from the issue date of the Bonds.



(ii) Each disbursement for the payment of the costs of the redevelopment and construction required in this Section shall be made only on receipt by the trustee of the Bonds, and on Board's written request, by Board of a requisition and certificate in an agreed form signed by a representative of Lessee. Lessee agrees to inform the Board each and every time it obtains bonds proceeds from the trustee by providing a copy of the draw request to the Board's designated representative.

(iii) If funds available through the Bonds for payment of the costs of the redevelopment required in this Section are not sufficient to pay the costs in full, Lessee agrees to pay directly such costs of completing the requisite redevelopment and construction as may be in excess of the funds available from the Bonds. Board makes no warranty (either express or implied) that the bond funds available for payment of the costs of the requisite redevelopment or construction will be sufficient to pay all costs of the redevelopment and/or construction. If, after exhausting the Bond funds for any reason (including without limitation losses on investments made by the trustee under the Bond Indenture), Lessee pays any additional funds for the completion of the redevelopment, Lessee shall not be entitled to reimbursement thereof from the Board.

(iv) Board makes no warranty, either express or implied, as to the improvements required under this Section, including without limitation, title to them or the actual or designed capacity of them, as to the suitability or operation of the improvements for the purposes specified in this Lease, as to the condition of the improvements or as to their suitability for Lessee's purposes or needs or as to compliance of the improvements with applicable laws and regulations.

(C) In addition to the cold storage facilities and improvements authorized in Subsection (A) above, Lessee may, at its own risk and expense, make or cause to be made on the Leased Premises such improvements as may be necessary or appropriate for conducting the business authorized there, provided that no such work on the Leased Premises shall be undertaken without Lessee's first having submitted to Board the drawings/blueprints and specifications for such work signed and sealed by a registered professional engineer licensed in the State of Louisiana and securing the prior written approval of Board. Lessee shall forward to Board a complete set of "as-built" or "record drawings" within ten (10) days after substantial completion of the project. At Board's option, Board may provide oversight of said construction. At Board's option, on completion of the improvements and acceptance thereof by Board, all of Lessee's rights, title and interest in the improvements therein shall vest in Board, free and clear of all mortgages, liens or encumbrances, and without the necessity of the execution by Lessee of any deed transferring title in this respect.

#### 14. AUDITS

(A) Lessee shall maintain complete and accurate records at its New Orleans office with regard to the rental provisions of this Lease. Lessee shall afford to the Legislative Auditor and/or the Board's auditors at reasonable times access to all records and facilities necessary to permit evaluation and audit of the performance of all Lease requirements. This access will include inspection and reproduction of any and all information, including, but not limited to, berth applications, invoices, invoice registers, vessel files, bills of lading, dray receipts, subleases, construction contracts, accounting records, cancelled checks, pre-bid estimates, invitations to bid, instructions to bidders, bid set of drawings/blueprints, bidder proposals, bid tabulations, change orders, on-site representative daily logs, shop drawings, contractor payment applications and any other supporting evidence of the Lessee, and any sublessee, deemed necessary by the Legislative Auditor and/or the Board's auditors to support the rental charges, rental credits, tariff charges and compliance requirements as set forth in the Lease. If Board retains outside auditors for this purpose and these auditors report discrepancies in the information which cause rent or other charges to be underpaid by more than five percent (5%) on an annual basis, then Lessee shall promptly pay to Board on demand any rent



deficiency as well as the cost of such an audit. If the auditors report that the Lessee has overpaid the rent, then the Board shall pay the cost of the audit and Board shall promptly repay to Lessee any overpayment which may have been made by Lessee. Any deficiency in rent required under this Lease to be paid by Lessee to Board shall include a delinquency fee as set forth in Section 4 ("Rent") above, from the date originally due until paid. Board's rights under this Section are in addition to any other remedies it may have.

(B) Lessee shall afford to the Board's representative access to all facilities to oversee construction of any improvements on the Leased Premises and to inspect workmanship, conduct tests, and perform other quality control procedures necessary to ensure compliance with the Board approved plans and specifications as required in Section 13 ("Improvements; Construction") above.

(C) Lessee shall afford access to all records pursuant to the provisions of this Section through the Term of this Lease and for a period of three (3) years after termination of this Lease, or longer if required by law.

#### 15. DREDGING

At its cost, risk and expense, Board shall be responsible for all dredging at the wharf-face necessary for Lessee to conduct its operations at the First Call Area and the Leased Premises.

#### 16. INSPECTION

In order that Board may carry out the obligations imposed on it by law, by this Lease or otherwise, and to ascertain whether or not Lessee's covenants are being observed, Board shall have the right at all reasonable times to enter on and to inspect the Leased Premises.

#### 17. LEVEES

In order that the Board of Commissioners of the Orleans Levee District (hereafter the Levee Board) may carry out its obligations to construct and maintain levees (where such levees exist on the Leased Premises), Lessee agrees that the Levee Board shall have the right at all times to enter on the Leased Premises for the purpose of inspecting, improving, repairing, maintaining and constructing levees in such manner as the Levee Board may deem necessary in order to carry out the obligations imposed on it by law, and Lessee's use of the Leased Premises shall conform thereto, subject, however, to the provisions of Section 33 ("Condemnation"), below.

#### 18. PARKING

Lessee shall provide and supervise at its expense and risk such vehicular parking areas within the Leased Premises as may be necessary for the conduct of all operations on the Leased Premises.

#### 19. WATCHMAN SERVICE

Lessee shall furnish all watchman service which it may desire at Lessee's own cost, risk and expense. Board shall have no obligation to provide watchman service.

#### 20. ACCESS

Lessee shall construct and/or maintain access from any adjacent roadway to the Leased Premises at Lessee's own cost, risk and expense.

#### 21. DEFAULT

(A) The following events shall constitute events of default (hereafter Events of Default)



under this Lease:

(i) If Lessee shall fail duly and punctually to pay the rent or to make any other payment required when due to Board or fail to maintain any insurance coverage or comply with any other provision required under Section 11 ("Insurance Requirements") above, or fail to maintain any security required under Section 36 ("Security Requirement") below, and if such failure shall continue for a period of fifteen (15) days after written notice of it has been given to Lessee by Board; or

(ii) If Lessee shall be adjudged a bankrupt or insolvent by any court of competent jurisdiction, or if a voluntary petition in bankruptcy or a petition for reorganization or arrangement shall be filed by Lessee, or if a receiver of the property of Lessee shall be appointed; or

(iii) If the interest of Lessee under this Lease shall transfer or pass to or devolve on any other person, firm or corporation without prior written approval of Board; or

(iv) If Lessee becomes a corporation or other entity in dissolution or liquidation, whether voluntary or as the result of any act or omission, or by operation of law or the order or decree of any court having jurisdiction or for any other reason whatsoever; or

(v) If, by or pursuant to or under authority of any legislative act, resolution or rule or any order or decree of any court or government board, agency or office, a receiver, trustee or liquidator shall take possession or control of all or substantially all of Lessee's property; or

(vi) If Lessee shall abandon, desert or vacate the Leased Premises or discontinue its operations at the Leased Premises for a period greater than thirty (30) days; or

(vii) If Lessee breaches or defaults in respect to any other covenants, conditions or agreements contained herein and fails for a period of fifteen (15) days after receipt of written notice to remedy such default, or, if remedying such default would reasonably require longer than fifteen (15) days, fails to commence to remedy and to proceed thereafter with all reasonable diligence to the remedying of such default.

(B) At the occurrence of such Event of Default, the rent at the rate then in effect for the remaining term of this Lease shall at once become due and exigible without putting Lessee in default. At that time, Board in its sole discretion may exercise any or all of the following options consistent with applicable law without further notice to Lessee and without putting Lessee into default:

- (i) to demand the rent for the whole term,
- (ii) to proceed for past due installments
- (iii) to cancel this Lease immediately.

(C) Lessee expressly waives any statutory right it may have under La. C.C.P. Art. 4701 et seq. of notice to vacate the Leased Premises.

(D) In all cases, Lessee shall remain responsible for all damages or losses suffered by Board as a consequence of Lessee's breach in the performance of its obligations under this Lease. In addition to exercising the rights or remedies herein above provided in this Section, at the occurrence of Event of Default designated in Subsection A(vi) above (i.e. abandonment or discontinuance of operations), whether alone or in conjunction with other Events of Default, Board may take possession of the Leased Premises without terminating this Lease and at Board's option either operate the facility or relet the Leased Premises at the best price obtainable by reasonable effort, consistent



with the public purposes of Board, and for any term Board deems proper, Lessee to remain liable to Board for the deficiency, if any, between Lessee's rent and other obligations hereunder and the price obtained by Board on operation or reletting. Failure strictly and promptly to enforce these conditions shall not operate as a waiver of Board's rights.

(E) All covenants in this Lease and all covenants on the part of Lessee in any finance agreement pertaining to the Bonds (hereafter the "Finance Agreement") shall be given independent effect, and compliance with or default under one agreement shall not automatically constitute compliance with or default under the other. Without limiting the generality of the foregoing, the fact that Lessee complies with the Finance Agreement or that a particular action or condition is permitted by or is otherwise within the limitations of any Finance Agreement shall not avoid the occurrence of a default under this Lease if such action or condition constitutes a default under this Lease. Furthermore, payment in full of the Bonds and termination of the Finance Agreement shall not terminate this Lease.

**22. ABANDONMENT**

Lessee agrees not to vacate or abandon the Leased Premises at any time during the term of the Lease. Should Lessee vacate or abandon the Leased Premises or be dispossessed by process of law or otherwise, such abandonment, vacation or dispossession shall be a breach of this Lease, and, in addition to any other rights which Board may have as set out in Section 21 ("Default") above, Board has the option in its sole discretion, and Lessee hereby agrees that Board shall have the right to deem any personal property belonging to Lessee which remains on the Leased Premises to be abandoned and to remove and dispose of such property as the Board deems appropriate. The cost of such removal and disposal, including storage at another site if the Board deems that appropriate, shall be charged to the account of Lessee.

**23. WAIVER**

(A) Board, acting through its executive director in his discretion, its chief operating officer or its attorney, shall have the right to extend the default periods detailed in Section 21 ("Default") above if Board in its sole discretion determines that Lessee is making a good faith effort to cure a default condition which Board has called to Lessee's attention under the terms outlined in Section 21 ("Default") above, and such extension shall not operate as a waiver of Board's rights under the default provisions above unless Board specifically so states.

(B) Any expressly stated waiver of a breach or default of any of the conditions of this Lease shall extend only to the particular breach or default so expressly waived and shall in no way deprive Board of its remedies arising out of any other breach or default hereunder, whether prior or subsequent.

**24. NO SET OFF**

Lessee shall have no right to set off any claims Lessee may have against Board against rent payments or other charges due to Board under this Lease.

**25. TERMINATION OF LEASE**

(A) At the termination of this Lease by cancellation or expiration or for any other reason whatsoever, Lessee shall immediately yield up possession of the Leased Premises to Board. In case of failure or refusal of Lessee to yield up the Leased Premises, Lessee shall pay as liquidated damages for the whole time such possession is withheld double the proportionate amount of the rent herein specified. This provision shall not constitute a waiver by Board of any remedies now or hereafter afforded to Board by the laws of Louisiana. At termination of this Lease, Board and Lessee shall conduct a joint move-out survey to determine the condition of the Leased Premises, which



survey shall be committed to writing and accepted by signatures of representatives of both parties.

(B) At such termination, Lessee may be required by Board, to remove any and all facilities, buildings or structures placed by Lessee or Lessee's agents on the Leased Premises, except those approved in Section 13(A) ("Improvements; Construction") above, and Lessee shall restore the Leased Premises to as good condition as at the commencement of this Lease or, at the time of completion in the case of improvements made by Lessee, ordinary wear and tear excepted. In any event, Lessee shall immediately remove all trash, stocks of materials, supplies, tools, and the like from the Leased Premises and from the adjacent areas of responsibility of Lessee.

(C) If the facilities, buildings or structures which are required by Board to be removed from the Leased Premises and all trash, stocks of materials, supplies, tools, etc. shall not have been removed by Lessee prior to the date of termination of the Lease, and the Leased Premises not restored as aforesaid, Lessee hereby agrees Board shall have the option either to collect double the proportionate amount of rent as liquidated damages until the said facilities, buildings, structures, trash, stocks of materials, supplies, tools, etc. have been removed and the Leased Premises restored at Lessee's cost, risk and expense, the double rental to continue until ultimate removal thereof and completion of restoration; or to retain or dispose of such property of Lessee, or any part thereof, which remains on the Leased Premises without payment or reimbursement to Lessee unless other arrangements have been made in writing between Board and Lessee with regard to the removal thereof.

## 26. RIGHTS OF WAY

Board may at its option grant to Lessee or to appropriate public utility companies, if requested by Lessee, rights of way to be so located as to give said utility companies as convenient access to the Leased Premises as practicable without unreasonable interference with the use by Board or Board's other tenants of its or their property, provided that the location of such utilities insofar as they cross or otherwise effect any of Board's property within or outside of the Leased Premises, shall be approved in writing in advance by Board. Such rights of way for utilities, granted by Board, shall be only for the duration of the term of this Lease or any extensions thereof. Lessee shall assume all risks, costs or other obligations imposed by the utility companies as a condition of such installations made at Lessee's request.

## 27. TAXES

If, by reason of this Lease or of the use of the Leased Premises by Lessee as provided under this Lease, ad valorem or other taxes should accrue against the land or any improvements on the Leased Premises, then Lessee shall pay any and all such taxes prior to their becoming delinquent. Failure to do so shall constitute a breach of this Lease.

## 28. LIENS

Lessee shall not permit any lien or privilege to remain of record when filed by any person or company for claims arising in connection with any work or undertaking by Lessee or Lessee's agents on the Leased Premises, and Lessee shall promptly discharge or cause to be discharged any such lien. If in default therein for (30) days after written notice thereof from Board, Lessee shall pay to Board as additional rent any amount or amounts paid by Board in causing the removal of such lien, including reasonable attorney's fees and expenses. Nothing contained here, however, shall require Board to discharge such lien except in its own discretion.

## 29. NO ASSIGNMENT OR SUBLETTING

(A) Lessee shall not assign this Lease in whole or in part, nor sublet the Leased Premises or any portion of them, to anyone without in each case the prior written consent of Board acting through



its executive director in his discretion. Lessee shall not permit any transfer by operation of law or by any other means of any of Lessee's interests in the Leased Premises. A transfer by Lessee of substantially all of its assets, the merger of Lessee with another entity, or the transfer of a controlling interest in the stock of Lessee shall be considered an assignment hereunder. Lessee, in case of assignment or sublease with permission of Board, shall remain at all times primarily liable for the prompt payment of all rent or other amounts due from Lessee under the terms hereof and for the prompt performance of all covenants on Lessee's part herein agreed to be performed. Board's consent to an assignment or sublease does not modify the requirement for Board's consent to any subsequent assignment or sublease. Furthermore, Board reserves the right, in considering whether to approve any assignment or sublease of this Lease, to demand further compensation as the parties may negotiate at such time.

(B) Lessee shall not make any of the rights granted to Lessee under this Lease the subject of sale or transfer for profit. Accordingly, if at any time during the term of this Lease or any renewal, Lessee seeks to assign same or to sublease the Leased Premises either in whole or in part, then Board, as a condition for granting or withholding its consent thereto, may require that the rent payable under this Lease by Lessee to Board be adjusted and restated so that the rent payable to Board for the Leased Premises or that portion of the Leased Premises which is to be affected shall be at the renewal rate then established by Board for properties of the same type that are located in the same area. When any assignment is proposed by Lessee for approval by Board, the purchase price and/or the rent proposed to be paid for the improvements owned by Lessee shall be stated separately in such proposed agreement from the purchase price or the rent proposed to be paid for the leasehold rights affecting the land and improvements owned by Board. Board shall have the right to demand that no profit be made by Lessee from the latter only.

(C) In addition to the foregoing requirements, for so long as any Finance Agreement is in effect, Lessee shall also comply with the requirements set forth in any Finance Agreement in connection with any assignment or sublease.

### 30. LAW, RULES, AND REGULATIONS

(A) Lessee shall not at any time during the term of this Lease use or allow the use of the Leased Premises for any purposes in violation of the laws, regulations or ordinances of the United States of America, the State of Louisiana, the City of New Orleans, or of Board, whether such laws, regulations or ordinances now exist or shall be enacted or issued during the term of this Lease.

(B) Lessee shall observe all laws and ordinances applicable to the installation, maintenance and removal of any improvements, machinery or other equipment on the Leased Premises (including access for utility connections) and to take appropriate safeguards to prevent loss, damage or injury to the Leased Premises or to any adjacent properties as a result of such installation, maintenance or removal of such improvements, machinery or equipment.

(C) Lessee shall keep the Leased Premises in a safe, clean and wholesome condition and in full compliance with local ordinances and all other laws and governmental regulations affecting the Leased Premises and shall remove promptly at Lessee's cost any rubbish or waste material of any character whatsoever which may accumulate thereon. Any oil, sludge, residue, or other materials to be disposed of in connection with Lessee's operations shall not be discharged into the Mississippi River, the Mississippi River Gulf Outlet, the Inner Harbor Navigation Canal, any waterway within the jurisdiction or under the control of Board, or connecting waterways or drains, nor shall any material, debris, or objects of any kind be thrown or otherwise allowed to be discharged into those waterways.

(D) Lessee shall report to Board in writing every occasion when hazardous materials are to be stored or used on or passed through the Leased Premises. Whenever possible, Lessee shall make this report before such occasion and in any event as soon as Lessee becomes aware of any such



occasion. Lessee shall furnish to the Board copies of all compliance orders, administrative orders, and any official actions from municipal, state or federal environmental agencies. This includes spill reports, discharge (clean air and clean water) permits, and all correspondence concerning environmental issues on the Leased Premises. Lessor acknowledges Lessee's use of ammonia in its operations and waives any requirement that Lessee report the use of same.

(E) Board shall at all times be free to make and enforce any reasonable and uniform rules, regulations or ordinances which it deems necessary or appropriate with regard to the property under its administration, of which the Leased Premises form a part, provided that such rules, regulations or ordinances shall not be arbitrary or discriminatory against Lessee.

(F) Lessee shall demand adherence to all of the above-mentioned laws, ordinances, rules and regulations both with reference to employees of Lessee and with reference to all other persons entering the Lease Premises who derive their right to be there from Lessee.

**31. TARIFF OF RATES AND CHARGES;  
RULES AND REGULATIONS; DISCRIMINATION**

(A) Lessee agrees that the charges for its services rendered in connection with its operations on the Leased Premises shall be competitive with charges for similar services now being or hereafter provided within the Port of New Orleans and other ports having similar maritime cargo terminals. Lessee further agrees that it shall publish such charges, as well as rules and regulations, in a tariff and shall file same and any and all amendments and/or reissues thereof with the Federal Maritime Commission (FMC) in accordance with the Shipping Acts of 1916 and 1984, as amended, the regulations promulgated thereunder by the FMC, and the requirements of this Lease. Lessee shall furnish to Board a copy of its tariff and any subsequent revisions, amendments, or other changes. Lessee shall at all times have the right to increase or decrease such charges and modify such rules and regulations in accordance with sound business practices. However, Lessee's tariff and all charges, rules and regulations contained in it shall first be reviewed and approved by the Board acting through its executive director. From the date of the receipt by Board of Lessee's proposed tariff or any amendments to it, Board shall have thirty (30) days to indicate in writing its approval or disapproval of the said tariff or any amendments to it in writing. If Board fails to indicate its approval or disapproval of the proposed tariff or any amendment to it within the thirty (30) day period, the proposed tariff or amendment shall be deemed approved, and Lessee may proceed to place the proposed tariff or amendment in effect on the thirty-first day after submission. All charges shall be billed and collected by Lessee from the party contracting therefor, and Lessee shall be entitled to retain all sums so collected, except for charges paid to the Board pursuant to the Tariff.

(B)(i) In the event Board receives from anyone a charge or charges of unlawful discrimination on the part of Lessee in the operation of the Leased Premises, and Board, after a reasonable investigation, concludes that there are reasonable grounds to believe that unlawful discrimination has been practiced by Lessee, then Lessee, upon written notice to it by Board, shall immediately cease and desist from such practices or activities.

(ii) In any event, Lessee shall protect, defend, and save and hold Board forever harmless against any and all charges of discrimination on the part of Lessee in the operation of the Leased Premises and any and all claims for damages or compensation arising therefrom that may be brought against Board including costs, reasonable attorneys' fees, and expenses.

(C) In order that factual information shall be available to Board, Lessee agrees that in the event of an investigation by Board of a charge or charges of discrimination, Lessee shall cooperate with Board and shall make available to Board all pertinent records and information and, in particular, but without limitation, all records and information relative to the charges brought, including all records relative to vessel loadings or unloadings. Board agrees not to release any information or documents which it obtains under this Section unless in compliance with applicable laws.



(D) Nothing herein shall be construed as being an effort to deprive the Federal Maritime Commission of its jurisdiction.

### 32. INDEMNITY

(A) Lessee shall protect, defend, indemnify, and forever hold harmless the Board from and against all losses, costs, claims, charges, expenses, penalties, damages, fines, suits, demands, attorney's fees, interest, and actions of any kind and nature whatsoever growing out of, in connection with, or by reason of any of Lessee's operations and the operations of those holding under or through Lessee on the Leased Premises, including such as may be imposed for the violation of any law of the United States, the State of Louisiana, any ordinance of the City of New Orleans, Board or any regulation of any governmental agency (federal, state or local), and including all liability under employers' liability or workers' compensation acts (federal or state).

(B) Lessee shall further protect, defend, indemnify, and forever hold harmless Board against all losses, costs, claims, charges, expenses, penalties, damages, fines, suits, demands, attorney's fees, interest, and actions of any kind and nature whatsoever arising out of or in connection with any accident or other occurrence, whether directly or indirectly caused, occasioned or contributed to in whole or in part through any act, omission, fault or negligence, whether active or passive, of Lessee or those occupying the Leased Premises through Lessee causing injury to any person (fatal or otherwise) or damage to property caused by the use or occupancy of the Leased Premises by Lessee or those occupying the Leased Premises through Lessee during the term of this Lease or in Lessee's performance of its obligations hereunder.

(C) Lessee hereby acknowledges that the duty to defend is a separate and distinct obligation herein and, on the filing of any action, claim, suit or proceeding of any nature or kind, shall defend the Board from and against any and all of the foregoing actions, claims, or suits, of whatever nature or kind, directly or indirectly caused by, resulting from, or growing out of the performance of Lessee's obligations under this Lease. When in the course of fulfilling its obligations under this Section, Lessee must engage attorneys to defend Board, Lessee shall obtain the prior written consent of Board to the attorneys to be engaged.

(D) If Board must retain an attorney to enforce the defense or indemnity provision, Lessee shall be liable to Board for all attorney's fees and costs reasonably associated with enforcing same.

### 33. CONDEMNATION

(A) If the whole of the Leased Premises shall be lawfully taken by condemnation or in any other manner for any public use or purpose, this Lease shall terminate as of the date of vesting of title on such taking and the rent shall be apportioned as of such date.

(B) If any part of the Leased Premises shall be so taken, this Lease shall be and remain unaffected by such taking except that Lessee may elect to terminate this Lease in the event of such partial taking if the remaining area of the Leased Premises is not reasonably sufficient for Lessee to continue the operation of its business. In such case, Lessee shall give prompt written notice to Board of such election, and this Lease shall terminate on the date of service of Lessee's notice, and the rent shall be apportioned as of such date. After such partial taking, if this Lease continues in force as to any remaining part of the Leased Premises, the rent shall be apportioned.

(C) If the temporary use or occupancy of the entire Leased Premises shall be lawfully taken for a period in excess of thirty (30) days by condemnation or in any other manner for any public use or purpose, this Lease shall terminate as of the date of such taking, and the rent shall be apportioned as of such date unless Lessee shall elect to continue the Lease, subject to abatement of the rent during the period of such temporary use or occupancy.



(D) If any part of the Leased Premises shall be so temporarily taken, this Lease shall remain unaffected by such taking except that Lessee may elect to terminate this Lease in such event if the remaining area of the Leased Premises is not reasonably sufficient for Lessee to continue the operation of its business. In such case, Lessee shall give prompt written notice to Board of such election, and this Lease shall terminate on the date of service of Lessee's notice. The rent shall be apportioned as of such date. After such temporary partial taking, if this Lease continues in force as to any remaining part of the Leased Premises, the rent shall be apportioned.

(E) In the event of termination of this Lease because of a lawful taking either in whole or in part, Lessee shall be relieved of its obligations as specified under Section 25 ("Termination of Lease") above except as pertains to yielding up the Leased Premises and the right to elect to remove any and all of Lessee's facilities, buildings and structures.

(F) Board shall be entitled to receive the entire award in any proceeding with respect to any taking provided for in this Section without deduction for any leasehold rights vested in Lessee by this Lease, and Lessee shall receive no part of such award except that Lessee shall be entitled to appear, claim, prove and receive in the proceedings relating to any taking mentioned in this Section an award made representing the value of the alterations, installations and improvements made by or for Lessee, including without limitation fixtures, machinery or equipment installed and owned by Lessee on the Leased Premises as well as any damages to which Lessee may be entitled by law.

#### **34. PUBLIC BELT RAILROAD COMMISSION**

(A) Lessee hereby takes cognizance of those certain contracts for railroad services on the Inner Harbor-Navigation Canal and on the Mississippi River-Gulf Outlet between Board and the City of New Orleans through the Public Belt Railroad Commission entered on August 18, 1918 and March 15, 1957, by which contracts the Public Belt Railroad Commission was granted the exclusive right to do all the switching and like service to, from and for the lessees and occupants of Board properties adjacent to and in connection with said waterways.

(B) Lessee shall be responsible for making its own arrangements for switching service directly with the Public Belt Railroad Commission under a conventional switchtrack agreement and to pay all costs incurred or imposed for obtaining such switching service and providing and maintaining any switchtrack facilities.

#### **35. NOTICE**

(A) Wherever, in the provisions of this Lease, notice is required to be given by either party, it shall not be construed to mean personal service, but it shall mean notice in writing, addressed to the party to receive such notice at the addresses designated below or as may be designated by the parties from time to time by notice given pursuant to this section, sent by registered or certified U.S. mail or a nationally recognized express delivery company:

To Lessee: New Orleans Cold Storage & Warehouse Company, LTD  
3401 Alvar Street  
New Orleans, Louisiana 70126  
Attn: Gary Escoffier  
President

To Board: Board of Commissioners  
of the Port of New Orleans  
1350 Port of New Orleans Place  
P.O. Box 60046  
New Orleans, Louisiana 70160  
Attention: Executive Director



(B) Every notice, demand, request or other communication sent in the manner aforesaid shall be deemed to have been given, made or communicated, as the case may be, on the third business day after the same has been deposited, registered or certified, properly addressed as aforesaid, proper postage prepaid, in the U.S. mail, except that any notice, demand, request, or other communication, to Lessee or the Board may be personally delivered, and in such event shall be deemed to have been given on the date the same shall have been personally delivered to the party to whom such notice, demand, request or other communication is addressed, or to an officer of such party, as provided by law.

**36. SECURITY REQUIREMENT**

(A) Lessee shall provide security to Board in an amount equal to the annual Base Rent, as it may be escalated from time to time under this Lease, for Lessee's performance of its obligations under this Lease. Such security shall be in the form of a cash deposit or in a manner as provided below or otherwise as agreed to in writing by Board's executive director, in his discretion.

(B) Lessee shall have the right to satisfy its obligation under Subsection (A) above by providing a performance bond which shall be in effect for the entire term of this Lease and any extension or renewal of it and furthermore shall remain in effect for thirty (30) days beyond the term of this Lease or any renewal or extension, and all premiums for it shall be paid by Lessee. Lessee agrees that in the event of cancellation or termination of the bond, a new bond effecting the same guarantees to Board shall be furnished by Lessee to Board prior to the effective date of such termination or cancellation. The performance bond shall be in a form substantially similar to the following form and acceptable to the Board in its discretion:

\_\_\_\_\_, a surety corporation organized and existing under and pursuant to the laws of the State of \_\_\_\_\_, having its principal office in the City of \_\_\_\_\_, State of \_\_\_\_\_, duly authorized to act pursuant to Power of Attorney conferred on him, a duly certified copy of which is annexed hereto and made part hereof, which corporation binds and obligates itself jointly, severally and in solido with New Orleans Cold Storage & Warehouse Company, LTD, Lessee herein, to and in favor of Board of Commissioners of the Port of New Orleans, a political subdivision of the State of Louisiana, as Lessor herein, for the faithful performance by Lessee of all obligations assumed by or imposed on Lessee by this Lease, including payment of such rent as may be due by Lessee to Board, provided, however, that the obligation of \_\_\_\_\_ as surety hereunder shall not be less than \_\_\_\_\_ Dollars (\$\_\_\_\_\_); and provided that if Lessee shall perform and abide by all of the obligations assumed by or imposed on Lessee by this Lease, including the payment of rent, this obligation shall be null and void and of no effect. Otherwise, it shall remain in full force and effect.

(C)(i) Alternatively, Lessee shall have the right to satisfy its obligation under Subsection (A) above by providing an irrevocable letter of credit in the form and manner set out below. The irrevocable letter of credit must be issued by a bank in the New Orleans area, be subject to partial draws, and be for an amount equal to at least the amount of the annual Base Rent, available by draft of Board at sight to be accompanied by the signed statement of Board, acting through its executive director, his designee or the chief operating officer, the director of finance and accounting or the executive or general counsel, certifying that Lessee has failed to faithfully perform any obligation assumed by or imposed on Lessee by this Lease, which letter of credit shall be delivered to Board at the time of execution of this Lease. Lessee agrees that in the event of cancellation or termination of said letter of credit, a new letter of credit effecting the same guarantees to Board shall be furnished by Lessee to Board before the effective date of such cancellation or termination. Said letter of credit shall be in effect for the entire term of this Lease and any extension or renewal of this Lease and



furthermore for a period of thirty (30) days beyond the term of this Lease or any extension or renewal of it.

(ii) Lessee agrees that under no circumstances shall Board be liable in damages to Lessee in the event that Board should issue a draft or drafts against said letter of credit in an amount or amounts over and above that which may ultimately be declared to be the actual liability of Lessee to Board.

### **37. RIGHTS OF MORTGAGEE**

A. It is specifically agreed that the provisions of this Section shall apply and be effective as regards any mortgage financing required for this Lease that may be proposed by Lessee for the utilization of the Leased Premises, including for the purpose of a construction mortgage (whether collateral or conventional) for permanent or construction financing or to refinance prior indebtedness without limitation on principal amount. The proceeds of any such mortgage shall be for use at the Leased Premises or for the purposes of this Lease as provided in Section 6 ("Limitation of Operations") above and no other purpose.

B. Lessee shall have the right to subject the entirety of its interest in the Leased Premises and this Lease to a mortgage on the conditions set out herein. Any such mortgage must encumber the entirety of the Lessee's interest in and to this Lease and the Leased Premises.

C. For purposes of convenience, any such mortgage and any other instrument secured by or relating thereto executed by Lessee (or permitted successor, permitted assignee or permitted Purchaser) pursuant to the provisions hereof (or any other security interest or collateral assignment in whatever form) are herein collectively referred to as the "Mortgage," and the holders of any such Mortgage together with the indebtedness secured thereby from time to time originally or by assignment are herein collectively referred to as the "Mortgagee." Also for purposes of convenience, any person acquiring Lessee's interest under this Lease pursuant to the exercise of any right, power or remedy of the Mortgagee under or in connection with the Mortgage, whether pursuant to judicial proceedings or dation en paiement or by an act of absolute assignment or otherwise, is herein referred to as the "Purchaser."

D. Lessee's rights to execute and deliver a Mortgage constituting a lien on its interest in the Lease and the Leased Premises shall be subject to the following conditions:

(i) Insofar as the Leased Premises are concerned, the Mortgage shall constitute a lien on and affect only the interest of Lessee therein under this Lease, but must encumber the entirety of the Lessee's interest in this Lease and in the Leased Premises.

(ii) Each Mortgagee shall be a bank, building or loan association, insurance company, a mortgage banker, pension fund, an educational institution, a welfare, retirement or endowment fund, a real estate investment trust, or other like institution regularly engaged in the business of making loans secured by mortgages on property, or a corporation listed on a stock exchange, in each case reasonably approved by the Board acting through its president and chief executive officer in his discretion. Each Purchaser also must be reasonably approved by the Board acting through its president and chief executive officer in his discretion, and shall be subject (without limitation) to Subsection (D)(vi), Subsection (G) and Subsection (I) of this Section. This Board shall not be deemed to have unreasonably withheld its consent of a Purchaser if, in the reasonable opinion of this Board, the proposed Purchaser is lacking in ability, experience and financial resources to operate the Leased Premises for the purposes contemplated by this Lease and to respond to this Board for the obligations undertaken hereunder by Lessee. Approval of a Mortgagee by the Board shall automatically include approval of such person as a Purchaser.

(iii) If Lessee desires to enter into a Mortgage, Lessee shall furnish Board with a written



proposal containing all details and information appropriate to Board's evaluation of the Mortgage.

(iv) The Mortgage shall contain provisions reflecting the requirements of this Lease (such as Subsection (D)(i) above). Within thirty (30) days after the making of such Mortgage, Lessee or Mortgagee shall furnish to the Board a duplicate thereof and an address where notices may be served on the Mortgagee.

(v) By an appropriate instrument reasonably satisfactory to the Board executed contemporaneously with or before each Mortgage, the Mortgagee (A) shall acknowledge and agree to the provisions of this Section, including without limitation Subsection (E)(vi), and (B) shall covenant to mail to Board a copy of any notice of default on the part of the Lessee, concurrently with the mailing or serving of such notice on Lessee, and to otherwise provide promptly to Board written notice of each action taken by Mortgagee pursuant to the Mortgage, including without limitation notice that it has sued Lessee to enforce or foreclose on the Mortgage, or that it has acquired or caused sale of the interest of Lessee.

(vi) Board shall give its written consent to such Mortgage, provided that such consent shall not be unreasonably withheld if the within conditions are fulfilled. Such consent is limited by the restrictions set forth in Section 6 ("Limitation of Operations on Leased Premises") and Section 29 ("No Assignment and Subletting") above. MORTGAGEE AND ANY PURCHASER AND ANY PERSON DERIVING RIGHTS TO THIS LEASE THROUGH THE MORTGAGE OR MORTGAGEE MUST POSSESS ALL OF THE QUALIFICATIONS AND MEET ALL THE RESTRICTIONS PROVIDED IN SAID SECTIONS 6 AND 29 AND IN THIS SECTION.

(vii) In connection with each Mortgage, each Mortgagee shall agree (either in such Mortgage with Board as a third party beneficiary or by other appropriate instrument executed contemporaneously with or before such Mortgage, in either case reasonably satisfactory to the Board) that in the event of any casualty, damage or destruction to or of any of the Leased Premises, the provisions of this Lease pertaining to the payment, disbursement and use of proceeds from property insurance shall control over any contrary provisions in the Mortgage.

(E) Subject to the provisions hereof, the right to mortgage is vested in Lessee, its permitted successors or permitted assigns, or any permitted Purchaser acquiring Lessee's rights as permitted hereby, and may be exercised one or more times. If Lessee shall execute a Mortgage pursuant to the provisions hereof, including fulfillment of the preceding conditions, then in such event, and so long as such Mortgage shall constitute a lien on Lessee's interest in the Leased Premises and under this Lease, the following shall apply:

(i) No agreement by Lessee and the Board for the cancellation, surrender, termination (other than as provided in this Lease) or modification of this Lease shall be effective without the written consent of the Mortgagee, which consent shall not be unreasonably withheld or delayed. However, Board shall have no obligation to seek or obtain such consent, which shall be the responsibility of Lessee.

(ii) Board, on serving Lessee with any notice of default pursuant to the provisions of this Lease or any other material notice under the provisions of or with respect to this Lease, shall concurrently mail a copy of such notice to the Mortgagee at the address designated by Mortgagee. If the default is in the payment of any monies, the notice of default shall state the amount thereof. If there are multiple parties secured by the Mortgage, such secured parties shall designate one Mortgagee as agent to receive such notices from Board. The effectiveness of a notice of default to Lessee shall not be conditioned as to Lessee on the receipt of such copy by Mortgagee.

(iii) Insofar as Board is concerned, Mortgagee shall have the right to enter on the Premises at any time for the purpose of timely curing any defaults by Lessee hereunder, provided Mortgagee otherwise complies with applicable law and its agreements with Lessee. Lessee irrevocably

authorizes and directs Board to accept, and Board agrees if indemnified as provided below to accept within the time periods set forth herein, performance or observance by the Mortgagee of any covenant or obligation on Lessee's part to be performed or observed hereunder, with the same force and effect as though performed or observed by Lessee. However, in any instance when a Mortgagee exercises its rights under this Subsection (iii), such Mortgagee will first deliver to Board a written instrument from Mortgagee (or if Mortgagee is a trustee for others then from such actual holders of indebtedness with financial solvency reasonably acceptable to Board acting through its executive director in his discretion) indemnifying Board against any responsibility, liability, loss, expense, attorneys' fees and other costs in connection therewith, including without limitation any action Board may agree to take or accept at Mortgagee's request.

(iv) Board will not terminate this Lease or accelerate the rent with respect to any default under this Lease until the expiration of the grace period, if any, provided to Lessee with respect thereto, plus an additional period of thirty (30) days after the later of (x) the expiration of Lessee's cure period (if any) or (y) receipt by the Mortgagee of a copy of the notice of default. In addition, Board will not terminate this Lease or accelerate the rent with respect to any default if, within such additional 30-day period, (A) the Mortgagee shall cure any default susceptible of being cured by the payment of money and any other default reasonably susceptible of being cured within 30 days, and (B) with respect to any default which is not susceptible of being cured by the payment of money and which cannot reasonably be cured within such additional 30-day period, the Mortgagee shall, within such additional 30-day period (and with notice of such to Board requesting Board not to terminate or accelerate), commence performance of such action as shall remedy such default and shall thereafter continuously proceed to do so with all reasonable diligence, and if necessary for such purpose, shall proceed to acquire (or cause the sale to a permitted Purchaser of) the entirety of Lessee's interest in the Leased Premises under this Lease by foreclosure sale or otherwise, and shall thereafter prosecute such proceedings with all reasonable diligence. During the pendency of any such extended Mortgagee cure period and the pendency of any foreclosure proceedings, the Mortgagee shall fully perform all the terms, conditions, covenants and obligations of Lessee under this Lease that can be performed by such Mortgagee without possession of the Leased Premises (including without limitation payment of all Rent and maintenance of all insurance), and such Mortgagee further shall exercise any provisional remedies reasonably available to it under its Mortgage or applicable law to attempt in good faith to obtain possession of the Leased Premises as promptly as possible. Such cure period for the Mortgage may be so extended up to one hundred fifty (150) additional days (following the expiration of such additional 30-day period), so long as the Mortgagee is diligently pursuing such cure and such cure is reasonably susceptible of being cured within such additional 150-day period. Within thirty (30) days after Mortgagee or other Purchaser obtains possession of the Leased Premises, such Purchaser shall cure any remaining default under this Lease (or, if said default cannot reasonably be cured within such 30-day period, then within such reasonable additional time as may be reasonably necessary to cure said default so long as such Purchaser commences the curing thereof within such 30-day period and thereafter continuously prosecutes the curing of such default to completion with all due diligence and good faith). During all such extended cure periods, all obligations of Lessee under this Lease capable of performance by Mortgagee without possession (including without limitation payment of rent and maintenance of insurance) shall be duly performed. On the securing of possession of Lessee's interest in the Leased Premises, the Purchaser shall be subrogated to all the rights and shall assume all of the obligations of Lessee hereunder in accordance with Subsection (G) of this Section.

(v) Notwithstanding the foregoing, nothing in this Section shall be construed to require Board to accept any cure of a default from Lessee after Lessee's cure period has expired or to otherwise benefit Lessee. Board's agreement in this Section not to terminate this Lease or accelerate the rent for a specific default during a Mortgagee's cure period for that default as provided herein shall not obligate Board to accept performance directly or indirectly from Lessee after Lessee's grace period has expired, nor prevent Board from seeking specific performance, injunctive relief or other remedies against Lessee during such Mortgagee cure period short of terminating this Lease or accelerating rent, nor prevent Board from declaring another default and exercising all remedies



including termination or acceleration available to Board based on that default and the lapse of any grace and cure periods applicable thereto. Moreover, in the event of any default of Lessee or other occurrence or event which, in the Board's discretion reasonably exercised, by its nature is a serious emergency, safety or other similar concern, the rights conferred to Lessee and Mortgagee hereunder shall remain subject to the exercise of the police power by this Board.

(vi) In case Lessee's interest under this Lease shall be sold, assigned or otherwise transferred to a Purchaser pursuant to the exercise of any right, power or remedy of the Mortgagee under the Mortgage or pursuant to judicial proceedings, and if such Purchaser shall have cured any default under this Lease as provided in Subsection (E)(iv) above and by appropriate instrument shall have assumed all of the agreements and obligations of Lessee under this Lease in accordance with Subsection(G) below, Board within sixty (60) days after receiving written request thereof and on payment to Board of all expenses, including attorneys' fees, incident thereto, will execute and deliver such instrument or instruments as may be required to confirm such sale, assignment or other transfer of Lessee's interest under this Lease.

(F) Any and all Mortgagees and Purchasers shall have an interest only in the interest of Lessee in the Leased Premises created by this Lease and shall have no greater rights, liens or interest in the Leased Premises than Lessee and shall be subject to the interest of Board in the Leased Premises and to all provisions of this Lease.

(G) Any act of assignment of this Lease to a Mortgagee or any dation en paiement or deed in lieu of foreclosure executed by Lessee in favor of Mortgagee as a result of a default under the Mortgage, or any acquisition by a Purchaser (including a Mortgagee) by judicial sale or otherwise of this Lease, shall be subject to and shall be effective as to Board only if it is accompanied by an appropriate instrument reasonably satisfactory to the Board executed contemporaneously with or before such transfer containing an express covenant by such Purchaser to cure any remaining defaults under this Lease and an express assumption by the Purchaser of all of the terms and conditions of this Lease. Copies of such assumption instrument and its accompanying assignment or dation en paiement or sheriff's sale, as applicable, shall immediately be served on Board. Any Purchaser (including any Mortgagee) of the interest of Lessee in the Leased Premises created by this Lease shall be entitled to such rights only on the assumption by appropriate instrument reasonably acceptable to Board of all of the agreements and obligations of Lessee under this Lease, the completion of the cure of all outstanding defaults under this Lease and the approval of such Purchaser as provided herein. Furthermore, any assignment or other transfer of the Mortgage by a Mortgagee to another Mortgagee shall be subject to and shall be effective only if it contains an express agreement by such subsequent Mortgagee to all of the terms and conditions of this Lease relating to Mortgagees. Such subsequent Mortgagee is subject to the reasonable approval of the Board as provided herein above. If the Mortgage is so assigned or transferred, a copy of the document containing this assumption shall immediately be served on Board.

(H) On written request of Lessee, Board will certify promptly to Lessee or to any proposed assignee or Mortgagee, if such is in fact the case, whether or not this Lease continues in force and effect, whether or not it has been modified (and if there have been modifications, stating them) and whether or not Board knows of any default or breach by Lessee under any of the terms of this Lease (and if Board knows any exists, stating them).

(I) In the event a Purchaser is other than the Mortgagee acquiring this Lease, by foreclosure sale or dation en paiement (deed in lieu of foreclosure) or otherwise, said Purchaser shall meet the requirements set forth in Sections 4, 6 and 29 above, or Board, on sixty (60) days' written notice to Purchaser, shall have the right to terminate this Lease.

(J) No judgment foreclosing a Mortgage and judicial sale thereunder or any other acquisition by a Purchaser shall release Lessee from any of its obligations under this Lease.



**38. JOINT VENTURE DENIED**

Nothing in this Lease shall be construed to create or constitute a partnership, joint venture or agency relationship between Lessee and Board, the existence or any such relationship being hereby expressly denied.

**39. HEADINGS; INTERPRETATION; SURVIVAL**

The lease heading and all section headings are for quick reference and convenience only and do not alter, amend, explain or otherwise affect the terms and conditions appearing in this Lease. The language and all parts of this Lease shall in all cases be construed as a part of the whole according to its fair meaning and not strictly for or against Board or Lessee. Should a court be called on to interpret a provision hereof, no weight shall be given, nor shall any construction or interpretation be influenced, by any presumption of preparation of this Lease by Board or by Lessee. All obligations of Lessee which by their nature involve performance after the end of the Term which cannot be ascertained to have been fully performed until after the end of the Term, including specifically Lessee's indemnity obligations under this Lease, shall survive the expiration or earlier termination of the Term.

**40. LOUISIANA CONTRACT; SEVERABILITY**

This is a Louisiana contract and shall be governed, interpreted and enforced in accordance with the laws of the State of Louisiana and of the United States of America. If any provision of this Lease shall be found unenforceable or against public policy, said finding shall not effect the validity of the remaining provisions of the Lease, the provisions herein to be considered severable.

**THUS DONE AND SIGNED** in multiple originals in the City of New Orleans, State of Louisiana, in the presence of the subscribing witnesses.

WITNESSES:

[Signature]  
[Signature]

[Signature]  
Attorney for Board

WITNESSES:

[Signature]  
[Signature]

**BOARD OF COMMISSIONERS OF  
THE PORT OF NEW ORLEANS**

by: [Signature]  
Gary P. LaGrange  
Executive Director  
Date: 10-2-02

**NEW ORLEANS COLD STORAGE &  
WAREHOUSE COMPANY, LTD.**

by: [Signature]  
Gary Escoffier  
President  
Date: 10-02-02



ACKNOWLEDGMENT

STATE OF LOUISIANA  
PARISH OF ORLEANS

On this 2nd day of Oct., 2002, before me personally came and appeared Gary P. LaGrange, to me known, who, being by me duly sworn, did depose and say that he is the Executive Director of the Board of Commissioners of the Port of New Orleans, the political subdivision of the State of Louisiana described in and which executed the foregoing instrument; and that he signed his name thereto pursuant to authority granted to him by the Board of Commissioners of the Port of New Orleans; and that said instrument is the act and deed of Board of Commissioners of the Port of New Orleans; and

The said Gary P. LaGrange did further produce to me sufficient proof that he is the President and Chief Executive Officer of said Board of Commissioners of the Port of New Orleans and that he was duly authorized by Board of Commissioners of the Port of New Orleans to execute the foregoing instrument, and I, the Notary Public, hereby certify that the signature of the said Gary P. LaGrange on the foregoing instrument is authentic.

  
\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT

STATE OF LOUISIANA  
PARISH OF ORLEANS

On this 2nd day of Oct., 2002, before me personally came and appeared Gary Escoffier, to me known, who, being duly sworn by me, did depose and say that he is the President of New Orleans Cold Storage & Warehouse Company, LTD., the company which entered into this Lease between the Board of Commissioners of the Port of New Orleans; and that he signed his name thereto pursuant to authority granted to him by the board of directors of New Orleans Cold Storage & Warehouse Company, LTD.; and that said instrument is the act and deed of New Orleans Cold Storage & Warehouse Company, LTD.;

And the said Gary Escoffier did further produce to me sufficient proof that he is the President of New Orleans Cold Storage & Warehouse Company, LTD., and that he was duly authorized by the board of directors of New Orleans Cold Storage & Warehouse Company, LTD., to enter into the foregoing lease, and I the Notary Public hereby certify that the signature of the said Gary Escoffier, on the foregoing lease is authentic.

  
\_\_\_\_\_  
NOTARY PUBLIC



Proceeds from bonds are used to construct cold storage facility within Jourdan Road shed. Improvements to Jourdan Road shed become property of Board.

NOCS leases Jourdan Road shed and 6 acres of marshaling yard. 30 year primary term, with 2 10-year options. NOCS responsible for all maintenance of leased premises.

Board guarantees access to Jordan Road facility for vessels with minimum of 32 foot draft and/or 80 foot beam. If access via the MRGO is reduced to less than 32 foot draft and/or 80 foot beam for more than 5 consecutive days, and if vessels must divert from Jourdan Road because of reduced channel dimensions, and if vessels can not transit the IHNC lock and can not be accommodated elsewhere in the Port without additional cost to NOCS, Board will provide rent credits of \$5.00 per net metric ton on diverted cargo, up to a cumulative maximum in any one year in the amount of one year's rent. The per ton rent credit amount will be subject to a CPI adjustment every five years.

**FINANCIAL TERMS**

**NOCS Rent to Board**

Lease of Jourdan Road shed plus 6 acres of marshaling yard \$200,000 per year (initial base rent)

NOCS guarantees 100,000 short tons of maritime cargo per lease year through Jourdan Road facility. NOCS pays Board \$3.00 per short ton (in addition to base rent) for any shortfall below 100,000 short tons in any lease year.

All rental charges, including \$3.00 per ton shortfall charge, will be subject to CPI adjustment every five years. In year 31, base rent will increase by the above CPI adjustment plus an additional \$275,000 per year.

**TARIFF CHARGES**

Applicable tariff charges for dockage and sheddage to be collected by Board. Applicable tariff charges for wharfage to be collected by NOCS and remitted to Board.

BOARD OF COMMISSIONERS  
OF THE PORT OF NEW ORLEANS



September 23, 2002  
New Orleans, Louisiana

The regular monthly meeting of the Board of Directors of New Orleans Cold Storage & Warehouse Co., Ltd. was held on the 23<sup>rd</sup> day of September 2002 at the Alvar Street office, New Orleans, Louisiana.

The meeting convened at 1:00 p.m. and the following Board members were present:

Joseph M. Paniello  
Gary F. Escoffier  
Mark E. Blanchard  
Lawrence J. Molony, Jr.

The reading of the minutes of the Board of Directors' meeting held in the prior month was dispensed with and the said minutes were approved by the Board.

Lawrence J. Molony, Jr., Vice President-Finance, reviewed the Combined P&L of warehouse and subsidiaries for August 2002 and the individual P&L's and Balance Sheet for the warehouse operations and subsidiaries for August 2002.

Review the status of the lease, the construction and the financing of the Jourdan Road facility.

The President and the Executive Vice President addressed the optimistic outlook of potential new sales for the Jourdan Road facility.

On motion duly made and seconded by Joseph M. Paniello and Mark E. Blanchard, it was:

RESOLVED that the President and CEO, Gary F. Escoffier, be and he is hereby authorized to enter into a fifty (50) year lease with the Port of New Orleans for the Jourdan Road facility.

On motion of Joseph M. Paniello, seconded by Lawrence J. Molony, Jr. and unanimously approved, it was:

RESOLVED that the President and CEO, Gary F. Escoffier, be and he is hereby authorized to enter into a contract for the design and construction of the Jourdan Road facility for the sum of \$9M made with Bohan Construction.

On motion of Joseph M. Paniello, seconded by Lawrence J. Molony, Jr. and unanimously adopted, it was:

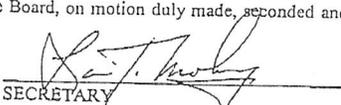
RESOLVED that the President and CEO, Gary F. Escoffier, be and he is hereby authorized to enter into a lease with Mustang Equipment for ten (10) new forklifts for the NOCS West Gulf, Inc. facility.

On motion of Joseph M. Paniello, seconded by Mark E. Blanchard and unanimously adopted, it was:

RESOLVED to authorize Gary F. Escoffier, President and CEO, to execute loan documents required to acquire the funds needed for the construction of the Jourdan Road facility.

The President reviewed the settlement accepted by the Flemings in the Transport case.

There being no further business to come before the Board, on motion duly made, seconded and unanimously adopted, the meeting was adjourned.

  
SECRETARY

