

LEASE AGREEMENT

Between

PORT OF SEATTLE

and

LDC
WASHINGTON LLC

DRAFT

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the “Agreement”) is made as of this 1st day of November, 2014, by and between the PORT OF SEATTLE, a Washington municipal corporation, hereinafter called the “Port,” and LDC WASHINGTON LLC, a Delaware limited liability company, hereinafter called “Lessee.”

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

SECTION 1: DEFINITIONS

The following terms shall have the meanings specified in this Section, unless otherwise specifically provided. Other terms may be defined in other parts of the Agreement.

1.1 Agreement. “Agreement” shall mean and refer to this agreement, together with the Exhibits and all agreements supplemental to or modifying this Agreement.

1.2 Agreement Year. “Agreement Year” shall mean and refer to each year during the Term of this Agreement, beginning with the first day of the first full month to begin after the Commencement Date or, in the event the Commencement Date is the first day of a month, then beginning on the Commencement Date.

1.3 Alteration. “Alteration” shall have the meaning set forth in SECTION 8 below.

1.4 Authorities. “Authorities” shall mean and refer to the United States, State, County, City, or other local governmental or quasi-governmental authorities, or any department, office, or agency of the foregoing now existing or hereafter created.

1.5 Base Rent. “Base Rent” shall have the meaning set forth in Section 4.2 below.

1.6 Business Day. A “Business Day” shall mean all days except Saturdays, Sundays, and Washington state public or bank holidays.

1.7 Commencement Date. “Commencement Date” is the date of execution of this Agreement as set forth in the first paragraph above.

1.8 Crop Year. “Crop Year” shall mean and refer to the twelve-month period from September 1 of one calendar year and August 31 of the next calendar year.

1.9 Default Rate. “Default Rate” shall mean and refer to 12% per annum or the maximum interest rate permitted by law for this transaction in the State of Washington, whichever is less.

1.10 Environmental Laws. “Environmental Laws” shall mean and refer to any and all Legal Requirements relating to the protection of human health and the environment.

1.11 Event of Default. “Event of Default” shall have the meaning set forth in Section 16.1 below.

1.12 Hazardous Substance. “Hazardous Substance” shall mean and refer to any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 172.101) or by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), petroleum products and their derivatives, and such other substances, materials and wastes as are or become regulated or subject to cleanup authority by any Authorities under any Environmental Laws.

1.13 Legal Requirements. “Legal Requirements” shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements (whether now or hereafter in effect) of all Authorities, which may be applicable to or have jurisdiction over the Premises, and all requirements, obligations and conditions of all instruments of record on the date of this Agreement.

1.14 Lessee. “Lessee” shall mean LDC Washington LLC, whose address for purposes of notices is 955 Alaskan Way W., Seattle, Washington, with a copy to Louis Dreyfus Commodities LLC, 40 Danbury Road, Wilton, CT 06897, Attention: Chief Legal Officer.

1.15 Lessee’s Operations. “Lessee’s Operations” shall mean and refer to all operations of Lessee in the conduct of Lessee’s maintenance and operation of a grain terminal facility, and activities incidental thereto, on or about the Premises.

1.16 Notice of Default. “Notice of Default” shall mean and refer to written notice of any Event of Default to Lessee. Such notice, for all purposes, shall be in lieu of, and not in addition to, any notice required as a prerequisite to an unlawful detainer or similar action for possession of the Premises.

1.17 Permitted Encumbrances. “Permitted Encumbrances” means, as of the date of this Agreement, any and all encumbrances of record [together with such matters that would be disclosed by a detailed inspection and/or survey of the Premises] and any amendments to existing encumbrances or additional encumbrances to the extent same are created by the Port with the consent of Lessee pursuant to SECTION 17 below.

1.18 Port. “Port” or “the Port” shall mean and refer to the Port of Seattle, whose street address for purposes of notice is Pier 69, 2711 Alaskan Way, Seattle, Washington 98121, Attention: Property Manager, Terminal 86, and whose mailing address for purposes of notice is P.O. Box 1209, Seattle, Washington 98111, Attention: Property Manager, Terminal 86.

1.19 Port Management Agreement. “Port Management Agreement” shall mean and refer to that certain Port Management Agreement No. 22-080031 between the State of Washington, through the Department of Natural Resources, and the Port and any similar agreement executed by those parties for the period following the expiration of the current Port Management Agreement. A copy of the current Port Management Agreement is attached hereto as Exhibit C.

1.20 Premises. “Premises” shall mean and refer to the parcel of land legally described on Exhibit A hereto together with all improvements thereon, subject to the Permitted Encumbrances. An aerial photo of the Premises is attached hereto as Exhibit B. The Premises consists of approximately 724,785 square feet of land area and approximately 277,567 square feet of submerged land area commonly referred to as Terminal 86 grain terminal.

1.21 Rent. “Rent” shall mean and refer collectively to sums denominated as either Base Rent, Tonnage Rent (as defined in Section 4.3), Minimum Rent (as defined in Section 4.5), or any such other sums or charges otherwise payable by Lessee to the Port under the terms of this Agreement. Failure by Lessee to pay any sum denominated as Rent shall entitle the Port to pursue any or all remedies specified in this Agreement as well as remedies specified in RCW Chapter 59.12 or otherwise allowed by law.

1.22 Security. “Security” shall have the meaning set forth in Section 5.1 below.

1.23 State-Owned Aquatic Lands. “State-Owned Aquatic Lands” shall mean and refer to that portion of the Premises owned by Washington State and managed by the Port pursuant to the Port Management Agreement. The State-Owned Aquatic Lands are reflected on Exhibit A and generally depicted on Exhibit B hereto.

SECTION 2: LEASE OF PROPERTY; CONDITION AND USE OF PROPERTY

2.1 Agreement. Subject to the provisions, covenants and agreements contained in this Agreement, the Port hereby leases to Lessee, and Lessee hereby leases from the Port the Premises for the Term.

2.2 Access Road. The Port further licenses to Lessee (for use by Lessee, its agents, consultants, officers, suppliers, partners, customers, guests, employees, licensees and invitees), and Lessee hereby licenses from the Port, the right to use the public/common access road shown on Exhibit B (as it may be re-routed from time-to-time), reserved to the Port by the Amended and Restated Reciprocal Easement Agreement dated May 11, 2011, by and between the Port and Immunex Corporation, attached hereto as Exhibit D.

2.3 Condition and Use of Premises. Lessee is fully familiar with the physical condition of the Premises, has received the same in good order and condition, and accepts it in its present condition. Lessee may use the Premises for the uses set forth in Section 6.1 hereof.

2.4 Port Management Agreement. This Agreement is subject and subordinate to the provisions of the Port Management Agreement between the Port and the Washington Department of Natural Resources, attached as Exhibit C and incorporated by this reference. In the event that the Port Management Agreement expires or terminates with respect to any portion of the Premises prior to the expiration or termination of this Agreement, this Agreement shall not be affected thereby except that, as to such portion of the Premises, this Agreement shall remain in full force and effect with the Department of Natural Resources, State of Washington, as lessor hereunder.

2.5 License for Access. The Port, for itself and its successors and assigns, grants to Lessee an irrevocable license for reasonable ingress and egress from and to the Premises on established roadways and sidewalks. The Port may relocate, reconstruct or modify the location of such ingress and egress only upon receipt of the prior written consent of Lessee, which consent shall not be unreasonably withheld; provided, however, that it will be deemed reasonable for Lessee to withhold consent, without limitation, if such change would cause the Lessee to have to relocate any Improvements or any operations on the Premises .

2.6 Rights Reserved to the Port. Lessee acknowledges that Lessee's right to utilize the Premises shall at all times be subject to the Port's reserved right described in SECTION 17 and 20.5.

2.7 Quiet Enjoyment. The Port covenants that Lessee shall peaceably and quietly have possession and enjoyment of the Premises in accordance with and subject to the terms of this Agreement during the Term without hindrance or molestation by the Port or any persons claiming by or under the Port.

SECTION 3: TERM

3.1 Term. The Term of this Agreement shall commence on the Commencement Date and shall extend for a period of twenty (20) years from the Commencement Date. If the Commencement Date falls other than on the first day of a calendar month, then the Term of this Agreement shall extend and continue for a period of twenty (20) years from the first day of the calendar month next following such Commencement Date.

3.2 Option to Extend. If Lessee is in compliance with the terms and conditions of this Agreement as of the date Lessee gives notice of its renewal exercise, Lessee has, upon written notice to the Port given not less than one (1) year or more than two (2) years in advance of expiration of the initial (or extended) Lease Term, the option to renew this Agreement for two (2) additional ten (10) year term(s).

SECTION 4: RENT

4.1 Payment of Base Rent. The Base Rent shall be paid in advance on the first day of each and every month during the Term to the Port without any prior demand therefor and without any abatement, deduction or setoff whatsoever. If the Term commences on any day other than the first day of a calendar month, Base Rent for any fractional month shall be prorated based upon the actual number of days in such fractional month.

4.2 Base Rent. For the first Agreement Year the base rent ("Base Rent") shall be the sum of FIFTY THOUSAND 00/100 DOLLARS (\$50,000.00) per month. The Base Rent shall be subject to adjustment as set forth below.

4.2.1 Adjustments to Base Rent. The Base Rent stated in Section 4.2 shall be adjusted at the end of every five (5) Agreement Years effective the first day of the next Agreement Year by increasing the Base Rent by an amount equal to the product of (i) the Base Rent for such five year period times (ii) the lesser of (x) the percentage increase to the Consumer Price Index for All Urban Consumers, West Region, all items, as published for the month of October by the United States Department of Labor, Bureau of Labor Statistics for the previous five year period, or, at the Port's option, the percentage increase for the previous five year period to the Seattle-Tacoma-Bremerton Area (1982-4= 100) (the "CPI"), and (y) ten percent (10%). If the CPI is not

published for any month pertinent to such calculation, the percentage adjustment shall be calculated with reference to the most recent month for which the CPI has been published. If the CPI is discontinued or revised during the applicable term, the Port may use such other government index or computation with which it is replaced in order to obtain substantially the same results as would be obtained if the CPI had not been discontinued or revised. The Base Rent will never be reduced, even in the event of decreases in the CPI.

4.3 **Tonnage Rent.** In addition to the Base Rent, Lessee shall pay the Port tonnage rent based upon the total number of bushels of grain converted to metric tons, exported monthly through the leased Premises (the “Tonnage Rent”). The monthly Tonnage Rent will be calculated using the corresponding fee in metric tons based upon the total number of bushels of grain exported through the leased Premises (the “Tonnage Fee”). The Tonnage Fee is established as follows:

| Total Volume for Year [Million Bushels] | | Tonnage Fee Rate |
|--|------------------|---|
| <i>Equal to or Greater Than</i> | <i>Less Than</i> | <i>[Per Metric Ton]</i> |
| 0 | 70 | \$0.44 |
| 70 | 80 | \$0.55 |
| 80 | 90 | \$0.88 |
| 90 | 100 | \$0.90 |
| 100 | 110 | \$0.94 |
| 110 | 120 | \$0.96 |
| 120 | 130 | \$0.99 |
| 130 | 140 | \$1.02 |
| 140 | 150 | \$1.05 |
| 150 | 230 | \$1.10 |
| 230 | ...and over | \$1.10 on the first 230 million bushels, and \$0.50 per metric ton thereafter |

4.3.1 The Tonnage Fee rate above will apply to the total cumulative bushels of grain exported through the leased Premises in a given Agreement Year (except as specifically set forth above for bushels over 230 million). For example, if the total bushels are equal 100 million in a given year, then the Tonnage Fee rate will be equal to \$0.94 per metric ton for all 100 million bushels.

4.3.2 Tonnage Fees for different grains will be based on the bushel volumes described in the table in Section 4.3. The Tonnage Fees for corn, soybeans, and other grains such as wheat, barley, sorghum, etc., are also subject to the Tonnage Fee table, but with the bushel weight conversion factor determined by the table below. The following table illustrates the conversion factor by which the Port will convert export volumes to metric tons and calculate a tonnage rate for use in calculating and billing the monthly Tonnage Rent.

Conversion Factors

| Corn | Soybeans | Other Agricultural Commodities |
|----------------------------------|----------------------------------|---|
| <i>Bushels Metric Equivalent</i> | <i>Bushels Metric Equivalent</i> | <i>Applicable Bushels Metric Equivalent</i> |
| 1 bushel = 0.0254013 metric ton | 1 bushel = 0.0272155 metric ton | As published by the United States Department of Agriculture (“USDA”) or, if not available from USDA, then as published by source agreed upon between the Parties. |
| 1 metric ton = 39.368 bushels | 1 metric ton = 36.7437 bushels | As published by the USDA, or, if not available from USDA, then as published by source agreed upon between the Parties |

4.3.3 **Tonnage Fee Forecast and Process for Billing Tonnage Rent.** For purposes of billing the applicable Tonnage Fee, the Lessee will provide the Port a written report based on Lessee’s Crop Year forecast on or before August 20 of each Agreement Year to determine the Tonnage Fee to apply to the forthcoming Crop Year period. At the end of each Crop Year period, the billing for that one-year Crop Year period will be reconciled by Lessee based on the actual total volume exported through the Premises. If the actual total volume exported during the Crop Year period was greater than the volume used to determine the monthly Tonnage Fee billing rate for that same year, then Lessee will remit the balance due to the Port within sixty (60) days after the end of that Crop Year. If the actual Crop Year volume is less than the volume used to determine the monthly Tonnage Fee billing rate for that Crop Year period, then the Port will credit Lessee’s account for the overpaid balance within sixty (60) days after the end of the Crop Year period and apply same to the next Rent coming due until such credit has been applied in full.

4.3.4 Adjustments to Tonnage Rent. The Tonnage Fee will be adjusted effective in Agreement Year seven (7), and annually thereafter, such that each Tonnage Fee rate will be increased by an amount equal to two percent (2.0%) of the Tonnage Fee rate in effect for the prior Agreement Year for the respective volume range as defined above.

4.4 Billing Process. Lessee shall submit to the Port a written report with information regarding terminal export activity showing for each calendar month the name(s) (or other identification) of vessels and barges loaded, and for each the type and amount of grain loaded and the dates loaded (“Activity Data”). This Activity Data report shall be submitted monthly within ten (10) Business Days from the end of the month. The Port will generate invoices based on the Activity Data and payment will be due within ten (10) business days from receipt by Lessee.

4.4.1 Right to Audit. The Port may inspect and audit, through its employees or representatives, Lessee’s records regarding Activity Data (“Records”), which Records shall be limited to bills of lading, masters’ receipts, and daily activity reports. Lessee shall make the Records readily available for such examination. The Port may undertake such inspection and/or audit at any reasonable time and from time to time not more than once per calendar year providing Lessee with at least 10 Business Days’ notice, and during Lessee’s normal business hours. In the event the Records are not maintained in the Puget Sound region, they shall be made available for audit locally within ten (10) Business Days of a request by the Port.

4.4.2 Right to Copy Lessee’s Records. The Port or its representatives shall have the right to copy any and all Records at the Port’s sole expense.

4.5 Minimum Rent. Subject to force majeure as set forth in Section 20.2 below, if in any Agreement Year, the sum of the Base Rent and Tonnage Rent payable to the Port by the Lessee for the aggregate of all months in that Agreement Year is less than ONE MILLION EIGHT HUNDRED AND 00/100 DOLLARS (\$1,800,000) (“Minimum Rent”), Lessee shall pay the Port an amount equal to such difference within sixty (60) days after the end of the Agreement Year.

4.5.1 Adjustments to Minimum Rent. The Minimum Rent stated in Section 4.5 above shall be adjusted at the end of every five (5) Agreement Years effective the first day of the next Agreement Year by increasing the Minimum Rent by an amount equal to the product of (i) the Minimum Rent for such five year period times (ii) the lesser of (x) the percentage increase to the Consumer Price Index for All Urban Consumers, West Region, all items, as published for the month of October by the United States Department of Labor, Bureau of Labor Statistics for the previous five year period, or, at the Port’s option, the percentage increase for the previous five year period to the Seattle-Tacoma-Bremerton Area (1982–4= 100) (the “CPI”), and (y) ten percent (10%). If the CPI is not published for any month pertinent to such calculation, the percentage adjustment shall be calculated with reference to the most recent month for which the CPI has been published. If the CPI is discontinued or revised during the applicable term, the Port, at its sole option, may use such other government index or computation with which it is replaced in order to obtain substantially the same results as would be obtained if the CPI had not been discontinued or revised. The Base Rent will never be reduced, even in the event of decreases in the CPI.

4.6 Remittance Address. Any and all payments due to the Port by Lessee shall be remitted to the following address: Port of Seattle, P. O. Box 1209, Seattle, WA 98111, or at such other place as the Port may direct in writing.

4.7 Late Payment. If any portion of the Base Rent and Tonnage Rent is not received by the Port within ten (10) calendar days following written notice from the Port regarding the deficiency, Lessee shall pay to the Port a late payment charge equal to \$1,000 in addition to the installment of Rent then owing, regardless of whether or not a Notice of Default has been given by the Port. In addition, if such delinquent payment of Rent and late charge are not received within fifteen (15) days of when such delinquent payment of Rent was originally due, Lessee shall further pay interest on such delinquent payment of Rent and late charge thereafter at the Default Rate. The Port and Lessee recognize that the damages which the Port will suffer as a result of Lessee’s failure to timely pay Rent are difficult or impracticable to ascertain, and agree that said interest and late charge are a reasonable approximation of the damages that the Port will suffer in the event of Lessee’s late payment. This provision shall not relieve Lessee from payment of Rent at the time and in the manner herein specified. Acceptance by the Port of any such interest and late charge

shall not constitute a waiver of Lessee's default with respect to said overdue amount, nor shall it prevent the Port from exercising any other rights or remedies available to the Port.

4.8 Disputed Amounts. In the event that Lessee disputes any amounts of Rent claimed by the Port to be due under the Lease and the parties are unable to resolve such dispute, either party may refer such dispute to binding arbitration in accordance with the provisions of the Commercial Arbitration Rules of the American Arbitration Association, as amended from time to time, and such arbitration shall be held in Seattle, Washington.

SECTION 5: BOND OR OTHER SECURITY

5.1 Security. Lessee shall, upon execution of this Agreement, file with the Port a good and sufficient corporate surety company bond or other security (hereinafter referred to as the "Bond") in accordance with the provisions of the laws of the State of Washington to secure the full performance by Lessee of all terms and conditions of this Agreement, including the payment by Lessee of all amounts now or hereafter payable to the Port during the full term hereof. The form and provisions of the Bond, and the identity of the surety thereon, shall be subject to the sole approval of the Port. The amount of the Bond shall be based upon the monthly total minimum Payment hereunder and determined in accordance with the laws of the State of Washington as implemented by Port policy and shall be adjusted as required by said laws or policies or increases in Payment due to renegotiation. If Lessee fails to provide a bond or fails to adjust the amount of the Bond, Lessee shall be considered in default hereunder, and subject to the Port's rights under SECTION 16 "Defaults" below. No future amendment or extension to this Agreement shall be effective until the surety or insurer has given its consent thereto and the amount of the Bond has been adjusted as required. The bond may provide for termination on the anniversary date thereof upon not less than one (1) year's written notice to the Port if the Agreement is not in default at the time of said notice. In the event of any such termination, Lessee shall obtain a new Bond, also subject to the Port's sole approval, to replace the Bond being so terminated to be effective on or before the date of termination. Lessee may, in lieu of a Bond, provide a guaranty from an affiliate of Lessee, having a net worth of not less than \$250,000,000, in the form attached hereto as Exhibit E. Lessee shall have the right to substitute the guaranty at any time during the term of the Agreement for a guaranty in substantially the same form by any affiliate of Lessee having a net worth of no less than \$250,000,000 and, in such event, the Port will release the prior guarantor. The Port agrees that the above guaranty constitutes security satisfactory to the Port in accordance with R.C.W. 53.08.085.

SECTION 6: USE

6.1 Use of Premises. Lessee may use the Premises solely for the storage, handling, loading and unloading of grain and other agricultural commodities in connection with the export of same, as well as for activities directly related to the authorized use, and shall not use them for any other purpose without the prior written consent of the Port. In the event Lessee is prohibited from using the Premises for the above use, or same is made impracticable due to changes in Legal Requirements, reduced rail service (not within Lessee's control), or for any other reason outside of Lessee's control, Lessee may, at Lessee's option, terminate this Agreement upon one year's prior written notice to the Port; provided, however, in order to exercise its termination right, Lessee must demonstrate to the Port's reasonable satisfaction that Lessee's operations at the Premises will be adversely affected to a significant degree over the remaining Agreement term. The Parties agree that as an example only and without in any way limiting the foregoing, in the event of restrictions on rail service to the Facility outside of Lessee's control such that Lessee will have the ability to receive and unload fewer than two full trains per day and such reduction in service is reasonably expected to last for a significant period of time, then Lessee shall have the right to terminate as set forth above.

6.2 General Standards Regarding Use.

6.2.1 Lessee shall occupy and use the entire Premises for the purpose set forth in Section 6.1 in a manner consistent with commonly accepted grain business practices continuously during the entire Term of this Agreement, with the exception of temporary closures for such periods as may be customary or necessary for seasonal or commercial temporary shut downs, capital improvements, repairs or redecorating or for reasons beyond Lessee's reasonable control.

6.2.2 Lessee shall not use or occupy or permit the Premises or any part thereof to be used or occupied, in whole or in part, in a manner which would: (i) violate any present or future Legal Requirements, (ii) violate any of the covenants, agreements, provisions and conditions of this Agreement, (iii) violate the certificate of occupancy then in force with respect thereto, (iv) subject to Lessee's right to use the Premises in accordance with Section 6.1 above, as will constitute a public or private nuisance, or (v) subject to Lessee's right to use the Premises in accordance with Section 6.1 above, interfere or disrupt the operations or tenancies of any other Port tenants.

6.3 Lessee shall not conduct or permit to be conducted without the prior written consent of the Port, any auction, fire, bankruptcy, "going out of business" or other distress sales of any nature upon or from the Premises, whether voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other insolvency proceeding, unless ordered by a court of competent jurisdiction.

6.4 Continuing Compliance. Throughout the term of this Agreement, Lessee shall, at its own cost and expense, promptly and diligently observe and comply with: (i) all Legal Requirements (including, without limitation, those relating to Environmental Laws); (ii) all applicable rules and regulations of the Port of general application pertaining to the building or other realty of which the Premises are a part now in existence or hereafter promulgated for the general safety and operation of the Port, its various tenants, invitees, licensees and the general public; and (iii) all permits, licenses, franchises and other authorizations required for Lessee's use of the Premises or any part thereof. Lessee shall comply with each of these whether or not they are now in force or at any time in the future may be passed, enacted, or directed.

6.5 Terminal Security.

6.5.1 Without limiting the generality of either Section 6.2 or 6.1, Lessee shall comply at all times with all local, state and federal laws, rules and regulations relating to homeland security ("Security Laws") applicable to the Premises or any larger facility of which the Premises are a part. If the Premises, either directly or as a result of its location within a larger Port facility, are subject to a government-required security plan ("Security Plan"), Lessee will fully and promptly comply with the Security Plan. To the extent the Port has the ability to comment on or impact any Security Laws or Security Plan, Lessee will have the opportunity to comment and participate in the decision making process. Lessee shall be solely responsible for all of its costs of complying with any applicable Security Laws or Security Plan as well as any fines or penalties incurred (whether by Lessee or the Port) to the extent resulting from Lessee's failure to comply with such Security Laws or Security Plan; provided, however, that the Port shall coordinate among its tenants to facilitate prudent planning of required improvements or services.

6.5.2 Lessee shall not – without the Port's separate, express written agreement – undertake any activities or handle any cargo, other than activities conducted or cargo permitted under Section 6.1 above or as currently conducted or handled by Lessee on the Commencement Date, that would either: (i) subject the Premises, or any larger facility of which the Premises are a part, to any Security Laws to which it is not already then-subject, or (ii) require the adoption of, or any material modification to, a Security Plan applicable to the Premises, or any larger facility of which the Premises are a part (together, "Additional Security Requirement"). In addition to its own costs of complying with any Additional Security Requirement, Lessee shall further be responsible to the Port for any costs it incurs in complying with any Additional Security Requirement or any fines or penalties incurred as a result of its failure to implement, or comply with, such Additional Security Requirement.

6.6 Signs. No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on or within the Premises, including the walls, windows and doors thereof, without the prior written approval of the Port. At the termination or sooner expiration of this Agreement, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Lessee shall be removed by Lessee at its own expense, and Lessee shall repair any damage or injury to the Premises and correct any unsightly condition caused by the maintenance and removal of said signs.

SECTION 7: UTILITIES

7.1 Utilities. Lessee shall be liable for and shall pay throughout the term of this Agreement, all charges for all utility services furnished to the Premises, including, but not limited to, light, heat, electricity, fire alarm monitoring, surface water management, natural gas, water, sewerage, recycling, garbage disposal and janitorial services. Lessee has the right to choose the providers of such utility services and negotiate the rates for such services. In the event that the Premises are part of a building or part of any larger premises to which any utility services are furnished on a consolidated or joint basis, Lessee agrees to pay to the Port Lessee's pro rata share of the cost of any such utility services, specifically including a reasonable cost associated with management of such utility services. Lessee's pro rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required.

7.2 Energy Conservation. The Port shall have the right to institute such reasonable policies, programs and measures as may be necessary or desirable, with Lessee's prior consent, and at the Port's cost, for the conservation and/or preservation of energy or energy related services. Lessee shall be required to comply with any applicable City codes, rules and regulations, whether mandatory or voluntary, at Lessee's cost.

SECTION 8: ALTERATIONS; OWNERSHIP OF CERTAIN INSTALLATIONS

8.1 Alterations. Lessee may make such changes, alterations, additions, substitutions or improvements (collectively referred to as "Alterations") to the Premises as Lessee shall deem expedient or desirable for its purposes, including removal of any portion of the existing improvements or Alterations, provided that same do not materially negatively impact the value or usefulness of the Premises. Lessee must notify the Port in writing prior to making required permit applications to any Authorities for any Alterations. Lessee must, in addition, provide the Port with written notice of any proposed Alterations not less than thirty (30) days prior to initiating the construction or installation of the Alterations. In connection with any Improvements, the Port will, , join with Lessee in applying for all permits necessary to be obtained from any and all public authorities at Lessee's sole cost and expense, and will promptly execute such consents and applications as any and all such authorities may require. The Port, at its sole discretion, will assist Lessee, at Lessee's sole expense, with any governmental incentive programs. All such Alterations shall be done at Lessee's sole cost and expense.

8.2 Requirements for All Alterations. Any Alterations shall be performed: (i) in a good and workmanlike manner; (ii) in compliance with all Legal Requirements; and (iii) in a manner which will not unreasonably interfere with or disturb other Port tenants. In addition, prior to commencement of any Alterations, Lessee shall furnish to the Port proof of insurance for any and all contractors working on behalf of Lessee in the minimum form and limits as set forth in Section 11.1.1.3 and 11.1.1.4. Any Alterations shall immediately become the property of the Port without any obligation on its part to pay therefor.

8.3 Trade Fixtures. Lessee shall retain ownership of all trade fixtures and movable equipment and furnishings ("Trade Fixtures") from time to time installed on the Premises by Lessee at its expense. Lessee may remove any Trade Fixtures at any time during the Term and shall remove all Trade Fixtures prior to the expiration of the Term. Any Trade Fixtures not removed at the expiration of the Term shall, at the election of the Port, become the property of the Port without payment to Lessee, or be deemed abandoned and removed by the Port, at Lessee's expense. Upon any removal of any Trade Fixtures, Lessee shall promptly repair any and all damage to the Premises caused by their removal and reimburse the Port for its costs and expenses in removing any Trade Fixtures not removed by Lessee and repairing any such damage not repaired by Lessee; this covenant shall survive the termination of this Agreement.

SECTION 9: REPAIR AND MAINTENANCE; COMPLIANCE WITH LAWS

9.1 Duty to Repair and Maintain. The Premises, together with all Alterations and fixtures that are not Trade Fixtures therein and the appurtenances thereto, shall be put and kept in good order, maintenance and repair by Lessee at Lessee's sole cost and expense, and Lessee shall undertake all maintenance and make all repairs and replacements, ordinary, as well as extraordinary, foreseen and unforeseen, structural or otherwise, which may be necessary or

required so that at all times the Premises and all Alterations shall be in good order, condition and repair.

9.2 Maintenance, Repair, and Improvements by the Port. Lessee accepts the Premises “AS IS,” and the Port shall have no obligation to maintain or repair the Premises whatsoever and will only do so upon Lessee’s request and agreement to fully reimburse the Port. There shall be no abatement or reduction of rent, and the Port shall not be responsible for any loss or damages to Lessee’s business, arising by reason of the Port making any repairs, alterations or improvements.

SECTION 10: REAL AND PERSONAL PROPERTY TAXES

10.1 Payment of Real Property Taxes by Lessee. Lessee shall be liable for, and shall pay throughout the term of this Agreement, any taxes on the Premises and/or on the leasehold interest created by this Agreement and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, fees payable hereunder, whether imposed on Lessee or on the Port, excluding all income taxes and business and occupation taxes imposed on the Port. Lessee shall reimburse the Port for all such taxes paid or payable by the Port. With respect to any such taxes payable by the Port that are on or measured by the rent or fee payments hereunder (excluding all income taxes and business and occupation taxes imposed on the Port), Lessee shall pay to the Port with each rent or fee payment an amount equal to the tax on, or measured by that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Lessee shall be payable by Lessee to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Lessee shall be entitled to a minimum of ten (10) days’ written notice of the amounts payable by it.

10.2 Lessee’s Personal Property Taxes. Lessee shall pay or cause to be paid, prior to delinquency, any and all taxes and assessments levied upon all Trade Fixtures, inventories and other personal property placed or installed in and upon the Premises by Lessee. If any such taxes on Lessee’s personal property or Trade Fixtures are levied against the Port or the Port’s property, and if the Port pays the taxes based upon such increased assessment, Lessee shall, upon demand, repay to the Port the taxes so levied.

10.3 Other Taxes of Lessee. Lessee shall be liable for, and shall pay throughout the term of this Agreement, all license and excise fees payable for, or on account of, the activities conducted by Lessee on the Premises.

10.4 Tax Contests and Cooperation. The Port will cooperate with Lessee, at Lessee’s request, in Lessee (i) challenging any assessment of Real Estate Taxes for which Lessee is liable for payment under Section 10.1 or other taxes for which Lessee is responsible in connection with its use of the Premises and (ii) procuring any potential tax exemptions, abatements or incentives, benefits under federal, state or county governmental incentive programs, including, but not limited to, sales tax, ad valorem taxes for personal or real property whether assessed against the fee ownership or the lease of the Premises, tax credits or economic development benefits, and/or any other financing for the Premises and the improvements or Alterations or use of the Premises. The Port will execute any documents reasonably necessary to assist Lessee in the foregoing.

SECTION 11: INDEMNITY AND INSURANCE

11.1 Insurance.

11.1.1 Lessee’s Required Policies. Lessee shall obtain and keep in force, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

11.1.1.1 General Liability Insurance. Lessee shall obtain and keep in force a commercial general liability policy of insurance, written on ISO Form CG 00 01 10 01 (or equivalent), that protects Lessee, and the Port as an additional insured, against claims for bodily injury, personal injury and property damage, including products and completed operations, based upon, involving or arising out of the tenancy, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$5 million dollars (\$5,000,000) per occurrence and no less than \$10 million in the annual aggregate. The policy shall not contain any intra-insured exclusions

as between insured persons or organizations. The Port shall be included as an additional insured in respect of both ongoing and completed operations of the Lessee.

11.1.1.2 *Automobile Liability Insurance.* Lessee shall obtain and keep in force a commercial automobile liability policy of insurance, written on ISO Form CA 00 01 07 97 (or equivalent), that provides coverage for bodily injury and property damage based upon, involving or arising out of motor vehicle operations on or about the Premises and all areas appurtenant thereto. Lessee shall provide a waiver of subrogation on this policy in favor of the Port. Such insurance shall cover any “auto” (i.e. owned, hired and non-owned) and shall be on an occurrence basis providing a combined single limit in an amount not less than \$1 million dollars (\$1,000,000) per occurrence.

11.1.1.3 *Protection and Indemnity Liability Insurance.* Lessee shall obtain and keep in force protection and indemnity liability insurance, written on a UK P&I Club form (or equivalent), protecting Lessee and the Port against claims involving or arising out of operations in which owned or non-owned vessels, boats, work skiffs, or floating platforms, are used on or about the Premises. Such insurance shall be on a claims-made basis providing single limit coverage in an amount not less than \$1 million dollars (\$1,000,000) per occurrence.

11.1.1.4 *Workers Compensation:* Lessee bears responsibility for maintaining all workers compensation coverage as required by Title 51 Industrial Insurance – Revised Code of Washington. Lessee shall also be required to maintain stop gap/employers liability insurance in the amount of no less than \$1 million dollars (\$1,000,000) per bodily injury, per disease, per accident.

11.1.2 Port Required Policies. The Port shall obtain and keep in force, at its sole cost and expense the following types of insurance, in the amounts specified and in the form hereinafter provided for:

11.1.2.1 *Property Insurance - Premises.* The Port shall obtain and keep in force property insurance for the Premises using an ISO CP 10 20 Cause of Loss Broad Form (or equivalent) insuring against loss or physical damage to the Premises, including all [scheduled] Alterations (specifically including “betterments” and “improvements”) made by or for Lessee to the Premises. The Port covenants to schedule all Alterations of which the Port has notice pursuant to Section 8.1 or otherwise. Coverage will exclude personal property of the Lessee, including all trade fixtures. The coverage will exclude loss or physical damage, including business interruption, that results from earthquake, land movement, or flood coverage, unless the Port elects to purchase this coverage based on current market conditions. The policy shall include coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of the Premises including any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any Legal Requirement as the result of a covered cause of loss. The amount of such insurance shall be equal to the full replacement cost of the Premises. The full replacement value shall be updated periodically to reflect changes in value (or the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost). The policy shall not contain a coinsurance clause. The Lessee shall be included as an additional insured on the policy.

11.1.2.2 *Property Insurance—Course of Construction Insurance.* All Alterations whether constructed by Lessee or the Port, shall be insured for physical loss while in construction under a builder risk property policy (or equivalent policy), or an extension of the Port’s property insurance policy if the completed value of the Alteration is in excess of \$1 Million Dollars. Coverage shall be on an ISO CP 10 20 Cause of Loss Broad Form (or equivalent). Coverage will exclude loss or physical damage, including business interruption, that results from earthquake, land movement, or flood coverage, unless the Port elects to purchase this coverage based on current market conditions. The Port will provide this coverage for all Alterations it initiates and performs on the Premises. The Port will provide this coverage on behalf of the Lessee for all work to be initiated and performed by Lessee, if no less than 30 days of advance notice is given to the Port. In the event that advance notice is not given to the Port, and the Port cannot place coverage, the Lessee bears the responsibility to provide this coverage while the Alteration is in progress and promptly notify the Port upon completion of the Alteration such that the completed work can be insured on the Port’s main property insurance policy. The Port bears no responsibility

or duty to insure Alterations of the Lessee, either while the work is in progress or upon or completion of the work, if the Lessee fails to notify the Port. In order for completed Alteration to be insured by the Port on its main property insurance policy, at least 10 days' notice is required to ensure that the Port can notify and schedule completed Alteration with the Port's property insurer.

11.1.2.3 *Limits.* The limits of insurance specified in Section 11.1.1 shall be subject to reasonable periodic adjustment to reflect changes in insurance market prices for similar properties in the same geographic area and changes in insurance products provided that such adjustments shall not be more frequent than once every 3 Agreement Years.

11.1.2.4 Deductibles.

11.1.2.4.1 *Liability Required Coverage.* Lessee bears full responsibility for payments of all deductibles or self-insured retentions for all required liability coverage as defined in Section 11.1.1 [General Liability Insurance, Automobile Liability Insurance and Protection and Indemnity Liability Insurance]. All liability insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by the Port, whose insurance shall be considered excess insurance only.

11.1.2.4.2 *Property Insurance.* This section in no way limits Lessee's duty to repair and maintain the Premises as described in Section 9. For property losses that are covered by the Port's property insurance policy, and that exceed the insurance deductible at the time of loss, Lessee bears responsibility for 50% of the Port property insurance deductible, including any self-insured retention, on a per loss basis, for all property insurance that the Port maintains on the Premises as defined in Section 11.1.2 and the Port bears responsibility for the remainder of such deductible or self-insured retention. For property losses that are less than the Port's deductible for all property insurance that the Port is required to maintain under defined in Section 11.2.1, but which losses would otherwise be insured losses under such required policies, a) the Lessee bears responsibility for any single loss that is below \$20,000, subject to a maximum of \$100,000 per Agreement Year after which such losses will be governed by clause (b), and b) for all other losses, Lessee bears responsibility for 50% of the amount of the loss, including any self-retention, on a per loss basis, and the Port bears responsibility for the remainder of such loss. Notwithstanding the foregoing sentences, Lessee's total out of pocket responsibility for property insurance deductibles, self-insured retention amounts or losses that are below such deductibles as set forth above will in all events be limited to a maximum of \$500,000 per loss and at \$1,000,000 as an annual aggregate per Agreement Year and the Port shall bear the responsibility for all amounts in excess of the foregoing. The Lessee shall notify the Port of all losses and occurrences to which Lessee accrues and retains a deductible obligation under this Section within fifteen (15) days of Lessee's knowledge of the occurrence; provided, however that failure to provide notice within such period will not shift the risk of any insurance deductible unless the Port has been materially harmed by such failure to notify or delay in notification. As used herein, "Lessee's knowledge" shall mean knowledge by a member of Lessee's insurance group. The Port shall be given a final total cost of each occurrence that resulted in a deductible obligation to Lessee within thirty days (30) of completion of repairs and damages relating to the occurrence. For all losses, to which the Lessee bears or will bear a deductible obligation, the Port has a right but not an obligation to review the damages resulting from the occurrence and investigate the causes leading up to the occurrence causing loss. Following the initial occurrence or loss that creates a deductible obligation to Lessee, the Lessee shall forward to the Port upon the Port's request a summary that totals all losses and costs associated with a deductible obligation within each particular Agreement Year. The Port bears no deductible responsibility for losses to Alterations under construction that Lessee insures under any of its own property insurance and that is not insured by the Port as a result of Lessee's failure to provide notice in accordance with Section 11.1.2.2 above but not in the case where Port fails to provide insurance after notice. This includes Alterations completed by Lessee but not reported to the Port.

11.1.2.5 *Insurance Policies - Insurance Companies.* Insurance required hereunder shall be with companies duly licensed to transact business in the State of Washington, and maintaining during the policy term a General Policyholders Rating of 'A-' or better and a financial rating of 'IX' or better, as set forth in the most current issue of "Best's Insurance Guide."

11.2 Termination; Renewal. Insurance as required by this Agreement shall remain current and in effect throughout the entire Term of the Agreement. Each party shall no later than ten (10) days after the expiration of any insurance policy required by this Agreement, furnish the other party with evidence of renewals or “insurance binders” evidencing renewal thereof, or the other party, after giving notice and ten (10) days to cure such failure may order such insurance and charge the cost thereof to the party failing to provide insurance, which amount shall be payable upon demand.

11.3 Evidence of Insurance. Each party shall deliver, or cause to be delivered, to the other party, certificates of insurance, additional insured endorsements, waivers of subrogation and any other documentation or endorsement that provides evidence of the required insurance. Upon request by a party, the other party shall deliver or cause to be delivered to the requesting party, certified copies of the policies of insurance, if available from the insurance company, that a party and has purchased in order for the requesting party to verify insurance coverage, limits, and endorsements or view any exclusions to the insurance policies.

11.4 No Limitation of Liability. The limits of insurance required by this Agreement or as carried by a party shall not limit the liability of a party nor relieve a party of any obligation hereunder.

11.5 Waiver of Subrogation. Without affecting any other rights or remedies, if allowed by applicable Legal Requirements, each party (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the other party, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to the party obtaining insurance arising out of or incident to the perils required to be insured against under this Agreement. Accordingly, each party shall cause each insurance policy required by this SECTION 11 to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

11.6 Increase in Port’s Cost of Insurance. Lessee shall not change its use of the Premises from the use as of the date of this Agreement in such a manner as to materially increase the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the term of this Agreement, may be added to the amount of Rent and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.

11.7 Contractor’s Insurance. Contractors working on the Premises on behalf of the Lessee shall maintain the insurance coverage and limits required of Lessee as indicated in Section 11.1.1 with the following modification:

11.7.1.1 The limit of general liability insurance as outlined in Section 11.1.1 shall be reduced to \$1 Million (\$1,000,000) per occurrence and \$2 Million (\$2,000,000) in the aggregate. The Port shall be included as an additional insured on Contractor’s policy for both on-going and completed operations.

11.8 Insurance Dispute Resolution. Resolution of Certain Disputes with Respect to Property Insurance Deductibles. In the event the Parties, after a good faith attempt at resolution, are unable to agree whether a property loss for which the estimated total cost to repair is less than or equal to \$500,000 would be a covered loss under the property insurance required to be carried by the Port under this Agreement and therefore subject to sharing as set forth in the third sentence of Section 11.1.2.4.2 above (the “Dispute”), then either Party (the “Notifying Party”) may invoke the procedure in this Section 11.8 by written notice to the other Party. Within thirty (30) days of such notice, the Parties will choose an independent insurance adjuster (the “Independent Insurance Adjuster”) to resolve such Dispute. In the event the Parties are unable to agree on an Independent Insurance Adjuster within such period, the Notifying Party by written notice to the other party may designate Vericclaim as the Independent Insurance Adjuster. Within ten (10) days of the selection of the Independent Insurance Adjuster, the Parties will meet with the Independent Insurance Adjuster to attempt to resolve the Dispute. Each party may provide such information as it deems appropriate to the Independent Insurance Adjuster for his/her consideration. If the Parties are

unable to resolve the Dispute at that meeting (or by such other date or after subsequent meeting(s) as agreed by the Parties), the Independent Insurance Adjuster will act as an arbitrator and advise the Parties in writing of his opinion on the Dispute. The opinion of such Independent Insurance Adjuster as to whether the Disputed Repair would have been a covered loss (in part or in whole) relative to the property insurance policy in place at the time of the loss; and will be binding upon the Parties for purposes of such Dispute only, and the parties agree that such opinion shall have no probative effect on any other loss. The Parties agree to hold such opinion confidential and shall not disclose such opinion to any other person except to a Party's affiliates, personnel, counsel or auditors or as required by Legal Requirements. The cost of the Independent Insurance Adjuster will be split equally between the Parties. The dispute resolution in this Section 11.8 shall not apply to any loss for which the estimated total cost to repair exceeds \$500,000.

SECTION 12: ENVIRONMENTAL STANDARDS

12.1 Definitions.

12.1.1 "Environmental Law" as used herein shall mean any environmentally related Legal Requirements, now or hereafter in effect.

12.1.2 "Hazardous Substances" as used herein shall mean any substance or material defined or designated as a hazardous waste, solid waste, toxic substance, or other pollutant or contaminant, by any Environmental Law.

12.1.3 "Pre-existing Hazardous Substances" as used herein shall mean any Hazardous Substances which were released on or existed on the Premises prior to March 26, 1968, the effective date of the Cargill, Inc. lease of the Premises (the "Cargill Lease"), or which the Port had placed on the Premises as part of the initial site preparation (fill and grading) of the Premises.

12.2 Hazardous Substances. Lessee shall not allow the presence in or on the Premises of any Hazardous Substances in violation of any Environmental Law and Lessee shall not allow any Hazardous Substances to migrate off the Premises in violation of any Environmental Law. Notwithstanding the foregoing, Lessee shall not be responsible for the migration onto the Premises of any Hazardous Substance that is not the result of an act or omission of Lessee. Lessee shall manage any Pre-existing Hazardous Substances it encounters in accordance with Environmental Law. Lessee shall provide the Port with Lessee's USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets (MSDS), Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Lessee receives from, or provides to, any governmental unit or agency in connection with Lessee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises. Lessee must maintain a Spill Protection and Response Plan, including on-site equipment. In case of an oil or fuel release, drippage, leak, etc., Lessee shall promptly notify the Port via the Port's spill manager by calling (206) 295-7912. Upon execution of this Agreement, Lessee shall provide a written plan to the Port that includes Best Management Practices (BMP's) for prevention and response, and a list of trained personnel and equipment to handle a spill incident.

12.3 Violation of Environmental Law. If Lessee, or the Premises, is in violation of any Environmental Law concerning the presence or use of Hazardous Substances or the handling or storing of Hazardous Substances, to the extent Lessee is responsible pursuant to Section 12.1 above, Lessee shall promptly take such action as is necessary to mitigate and correct such violation or, in the event Lessee is not responsible for such Hazardous Substances on the Premises pursuant to Section 12.1, Lessee shall promptly assist the Port in pursuing such responsible party or parties. If Lessee is responsible under Section 12.1 above and does not act in a prudent and prompt manner as required by Section 12.1, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Lessee (Lessee hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the damage. All reasonable out-of-pocket costs and expenses incurred by the Port in taking action in place of the Lessee pursuant to the immediately preceding sentence shall become immediately due and payable by Lessee upon presentation of an invoice and supporting documentation therefor.

12.4 Inspection; Test Results. The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Lessee shall permit the Port access to the Premises at

any time upon reasonable notice for the purpose of conducting environmental testing at the Port's expense. Except as may be required to comply with Legal Requirements, including Environmental Laws, Lessee shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent, which consent will not be unreasonably withheld. Lessee shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Lessee, and Lessee shall provide copies of any final reports in Lessee's possession to the Port provided that doing so would not waive or compromise any attorney-client, work product or other legal privilege attached to such report.

12.5 Removal of Hazardous Substances. Prior to vacation of the Premises, in addition to all other requirements under this Agreement, Lessee shall remove any Hazardous Substances placed on the Premises during the term of this Agreement or Lessee's prior possession of the Premises in violation of the requirements set forth in Section 12.1, and shall demonstrate such removal to the Port's reasonable satisfaction. This removal and demonstration shall be a condition precedent to the Port's payment of any Security to Lessee upon termination or expiration of this Agreement.

12.6 Remedies Not Exclusive. No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above but without duplication of any rights under Section 12.6.1, the Port shall be entitled to full reimbursement from Lessee for Damages (as defined in Section 12.6.1) whenever the Port incurs any costs resulting from Lessee's failure to comply with Section 12.1.

12.7 Environmental Indemnity.

12.7.1 In addition to all other indemnities provided in this Agreement, Lessee agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs, costs arising out of injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this Lease) and including reasonable, out-of-pocket attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation ("Damages"), to the extent arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any Hazardous Substance from the Premises to other properties or into the surrounding environment, whether (1) made, commenced or incurred during the term of this Agreement, or (2) made, commenced or incurred after the expiration or termination of this Agreement if arising out of events occurring during the term of this Agreement, including in each case Damages resulting from any failure by Lessee to comply with Section 12.1, provided that such indemnity shall not apply to any Damages to the extent arising from (i) the migration of any Hazardous Substance onto the Premises from off the Premises that is not the result of an act or omission of Lessee, or (ii) any Pre-existing Hazardous Substances, or (iii) any act or omission of the Port or its agents. Lessee's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

12.7.2 In addition to all other indemnities provided in this Agreement, the Port agrees to defend, indemnify and hold Lessee free and harmless from any and all Damages, to the extent arising from the existence or discovery of any Pre-Existing Hazardous Substances, any Hazardous Substance on any property owned by the Port other than the Premises, whether leased to another tenant or not (the "Port Property"), or the migration of any Hazardous Substance from the Port Property to the Premises to other properties or into the surrounding environment, whether (1) made, commenced or incurred during the term of this Agreement, or (2) made, commenced or incurred after the expiration or termination of this Agreement if arising out of events occurring during the term of this Agreement provided that such indemnity shall not apply to any Damages to the extent arising from any act or omission of Lessee or its agents including failure to comply with the obligation in Section 12.1 to manage Pre-Existing Hazardous Substances. The Port's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

SECTION 13: DAMAGE OR DESTRUCTION

13.1 Duty to Repair. If all or part of the Premises or any other improvement at any time on the Premises is damaged or destroyed by any fire or other casualty during the Term, Lessee shall, with reasonable promptness, carry out repair or replacement of damaged property, to at least the condition existing immediately prior to the damage or destruction; *provided, however*, that Lessee's obligation shall be limited to the repair or replacement that can be done based on the sum of (i) the amount of actual proceeds of the property insurance required to be carried by the Port; (ii) the amount of Lessee's deductible responsibility under such property insurance under Section 11.1.2.4.2; and (iii) the amount of Port's deductible responsibility under such property insurance under Section 11.1.2.4.2 actually funded by the Port ((i), (ii) and (iii) are collectively, the "Insurance Proceeds"). In the event (i) the Insurance Proceeds will not be sufficient to rebuild the Premises to at least the condition existing immediately prior to the damage or destruction, or (ii) the Premises cannot be restored because same is not permitted by any Legal Requirements, then in either event Lessee shall have the option to terminate this Lease by giving written notice of termination to the Port within the later of (x) one hundred eighty (180) days after the occurrence of such casualty, or (y) twenty (20) days after any permit, license or approval is denied in whole or in part, in which case this Lease shall terminate on the date set forth in such notice, the Rent and other charges under this Agreement will be apportioned as of the date of destruction and Lessee will be discharged from responsibility to repair the damage, but all proceeds of insurance covering the loss under Port required policies for property insurance under Section 11.1.2 shall in that circumstance belong to the Port free of any claim thereto by Lessee. In the event Lessee chooses, in its sole discretion, to carry property or catastrophic insurance coverage, any proceeds from such policy or policies shall belong exclusively to Lessee and the Port shall have no right to same.

13.2 Abatement of Rent. Lessee shall be entitled to a proportional abatement of rent in the event and during the period that any portion of the Premises is unusable due to any destruction or damage to the Premises by any fire or other casualty. Additionally (and without in any way limiting Section 13.1 above), if the whole or materially all of the Premises are destroyed by fire or other casualty at any time during the last five (5) years of the Term, then Lessee may terminate this Agreement by written notice given to the Port within sixty (60) days after the date of such destruction, and the Rent and other charges under this Agreement will be apportioned as of the date of destruction and Lessee will be discharged from responsibility to repair the damage, but all proceeds of insurance covering the loss under Port required policies for property insurance under Section 11.1.2 shall in that circumstance belong to the Port free of any claim thereto by Lessee. In the event Lessee chooses, in its sole discretion, to carry property or catastrophic insurance coverage, any proceeds from such policy or policies shall belong exclusively to Lessee and the Port shall have no right to same.

13.3 Application of Insurance Proceeds. Any and all fire or other insurance proceeds under Port required policies for property insurance under Section 11.1.2 that become payable at any time during the Term of this Agreement because of damage to or destruction of any buildings or improvements on the Premises shall be paid to the Port. In the event that such proceeds are less than Two Hundred Fifty Thousand Dollars (\$250,000.00), the Port shall immediately deliver such funds to Lessee, to be used for reconstruction purposes. The Port shall have the right to confirmation that such proceeds were applied toward the cost of repairing and restoring the damaged or destroyed buildings or improvements in the manner required by this Agreement, and if such funds are not used for such purposes, the funds should then be returned to the Port. In the event that such proceeds exceed Two Hundred Fifty Thousand Dollars (\$250,000.00), the Port shall (i) immediately deliver to Lessee an amount equal to fifty (50%) of the total completion cost estimate based upon the contractor's quote(s) delivered by Lessee, and (ii) hold the remainder of such funds, and disburse them to Lessee on a percentage of completion basis upon Lessee's delivery to the Port of contractors' invoices in the manner of a construction lender's disbursement account for application toward the cost of repairing and restoring the damaged or destroyed buildings or improvements in the manner required by this Agreement; *provided, however*, that should Lessee exercise its option to terminate this Agreement under this Section 13, then, in that event, any and all fire or other insurance proceeds under Port required policies for property insurance under Section 11.1.2 that become payable because of such damage or destruction shall be paid to the Port to compensate the Port, at least in part, for the loss to its fee estate of the damaged or destroyed buildings or improvements.

SECTION 14: CONDEMNATION

14.1 Condemnation.

14.1.1 Total Taking. In the case of a taking by eminent domain of either all of the Premises or such portion of either the Premises or any buildings or structures of which the Premises are a part that are required for reasonable use of the Premises, Lessee may terminate as of the date of such taking. If Lessee is not in default under any of the provisions of this Agreement on said date, any Rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

14.1.2 Partial Taking. In the case of a taking of portion of the Premises or any buildings or structures of which the Premises are a part as shall *not* be required for reasonable use of the Premises, this Agreement shall continue in full force and effect, and the Base Rent shall, as of the date of such taking, be equitably reduced based on the proportion by which the Premises (but not the buildings or structures of which the Premises are a part) is reduced.

14.1.3 Damages. The Port reserves all right to the entire damage award or payment for taking by eminent domain, and Lessee waives all claim whatsoever against the Port and/or the authority exercising eminent domain other than for damages for termination of its leasehold, taking of any personal property or for interference with its business. The Port and Lessee further agree that all decisions regarding how the eminent domain proceeding should be handled shall be made in the sole discretion of the Port (specifically including any response to a motion for order adjudicating public use and necessity or and request for immediate possession), and Lessee shall take no actions or steps which interfere with the Port's ability to control the handling of the eminent domain proceeding. Notwithstanding the foregoing, nothing in this Section shall be considered to be a waiver or assignment by Lessee of any right to relocation assistance payments or relocation advisory services which may be available in connection with the eminent domain proceeding.

14.1.4 Eminent Domain. The term "eminent domain" as used in this Section shall include taking or damaging of property by, through or under any governmental or quasi-governmental authority and the purchase or acquisition in lieu thereof.

14.2 Court Decree. In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by a party of any of its obligations under this Agreement, then either party hereto may terminate this Agreement by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Agreement on the effective date of such termination, any Rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee. Lessee is not entitled to any compensation at termination for the bargain value of the leasehold.

SECTION 15: SURRENDER AND HOLDING OVER

15.1 Surrender. At the expiration of the Term (and subject to Sections 13 and 14 herein), Lessee shall quit and surrender the Premises, together with any remaining improvements or modifications, in good condition and repair, normal wear and tear excepted.

15.2 Holding Over. If the Premises are not surrendered as provided in this Section, Lessee shall indemnify and hold the Port harmless against loss or liability resulting from the delay by Lessee in so surrendering the Premises, including, without limitation, any claims made by any succeeding occupant founded on such delay. Any holding over with the consent of the Port after expiration or earlier termination of this Agreement shall be construed to be a tenancy from month-to-month upon the same terms and conditions provided in this Agreement. Any holding over without the consent of the Port after expiration or earlier termination of this Agreement shall be construed to be tenancy at sufferance upon the same terms and conditions provided in this Agreement, except that Base Rent shall be one hundred fifty percent (150%) of that which it was immediately prior to expiration or earlier termination of this Agreement.

15.3 Survival. Lessee's obligations under this Section shall survive the expiration or earlier termination of this Agreement. No modification, termination or surrender to the Port of this

Agreement or surrender of the Premises or any part thereof, or of any interest therein by Lessee, shall be valid or effective unless agreed to and accepted in writing by the Port, and no act by any representative or agent of the Port, other than such written agreement and acceptance, shall constitute an acceptance thereof.

SECTION 16: DEFAULT

16.1 Events of Default. The occurrence of any of the following events shall constitute an “Event of Default” on the part of the Lessee with or without notice from the Port:

16.1.1 The vacating or abandonment of the Premises by Lessee, which shall exclude, without limitation, those items permitted under Section 6.2.1 above.

16.1.2 The failure by Lessee to make any payment of rent, fees or any other payment required by this Agreement, within ten (10) days of Lessee’s receipt of a Notice of Default.

16.1.3 The failure by Lessee to observe or perform any covenant, condition, or agreement to be observed or performed by Lessee in this Agreement within thirty (30) days after receipt of a Notice of Default, or such additional time as is reasonably required to correct such default if such cure cannot be completed within such thirty (30) day period, provided that Lessee commences cure within such period and thereafter diligently prosecutes such cure to completion.

16.1.4 The filing by Lessee of a petition in bankruptcy, Lessee being adjudged bankrupt or insolvent by any court, a receiver of the property of Lessee being appointed in any proceeding brought by or against Lessee and is not discharged within sixty (60) days, Lessee making an assignment for the benefit of creditors, or any proceeding being commenced to foreclose any mortgage or other lien on Lessee’s interest in the Premises or on any personal property kept or maintained on the Premises by Lessee that is not discharged within sixty (60) days.

16.2 Remedies. In addition to, and not in lieu or to the exclusion of, any other remedies provided in this Agreement or to any other remedies available to the Port at law or in equity:

16.2.1 Whenever any Event of Default occurs and is continuing, this Agreement and all of Lessee’s rights under it will automatically terminate if the Notice of Default so provides. Upon termination, the Port may reenter the Premises using such force as may be necessary and remove all persons and property from the Premises. The Port will be entitled to recover from Lessee all unpaid Rent, fees or any other payments and damages incurred because of Lessee’s default including, but not limited to, the reasonable, out-of-pocket costs of re-letting, including Lessee improvements, necessary renovations or repairs, advertising, leasing commissions, and attorney’s fees and costs (“Termination Damages”), together with interest on all Termination Damages at the Default Rate, from the date such Termination Damages are incurred by the Port until paid.

16.2.2 In addition to Termination Damages, and notwithstanding termination and reentry, Lessee’s liability for all Rent, fees or other charges which, but for termination of this Agreement, would have become due over the remainder of the Agreement term (“Future Charges”) will not be extinguished and Lessee agrees that the Port will be entitled, upon termination for default, to collect as additional damages, a Rental Deficiency. “Rental Deficiency” means, at the Port’s election, either:

(a) An amount equal to Future Charges, less the amount of actual rent and fees, if any, which the Port receives during the remainder of the Agreement term from others to whom the Premises may be rented, in which case such Rental Deficiency will be computed and payable at the Port’s option either:

(i) In an accelerated lump-sum payment discounted to present worth, or

(ii) In monthly installments, in advance, on the first day of each calendar month following termination of this Agreement and continuing until the date on which the Agreement term would have expired but for such termination,

and any suit or action brought to collect any portion of Rental Deficiency attributable to any particular month or months, shall not in any manner prejudice the Port's right to collect any portion of Rental Deficiency by a similar proceeding; or

(b) An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining Agreement term, reduced to present worth. In this case, the Rental Deficiency must be paid to the Port in one lump sum, on demand, and will bear interest at the Default Rate until paid. For purposes of this subsection, "present worth" is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

16.2.3 If this Agreement is terminated for default as provided in this Agreement, the Port shall use reasonable efforts to re-let the Premises in whole or in part, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the Agreement term), for such use or uses and, otherwise on such terms and conditions as the Port, in its sole discretion, may determine, but the Port will not be liable for, nor will Lessee's obligations under this Agreement be diminished by reason for any failure by the Port to re-let the Premises or any failures by the Port to collect any rent due upon such re-letting.

16.2.4 If upon any reentry permitted under this Agreement, there remains any personal property upon the Premises, the Port, in its sole discretion, may remove and store the personal property for the account and at the expense of Lessee. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Lessee of the Port's action. All risks associated with removal and storage shall be on Lessee. Lessee shall reimburse the Port for all expenses incurred in connection with removal and storage as a condition to regaining possession of the personal property. The Port has the right to sell any property which has been stored for a period of 30 days or more, unless Lessee has tendered reimbursement to the Port for all expenses incurred in removal and storage. The proceeds of sale will be applied first to the costs of sale (including reasonable attorneys' fees), second to the payment of storage charges, and third to the payment of any other amounts which may then be due and owing from Lessee to the Port. The balance of sale proceeds, if any, will then be paid to Lessee.

16.3 Remedies Cumulative. All rights, options and remedies of the Parties contained in this Agreement shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and each Party shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Agreement.

16.4 No Counterclaim or Setoff. If the Port shall commence any proceeding for non-payment of Rent, fees or of any other payment of any kind to which the Port may be entitled or which the Port may claim under this Agreement, Lessee will not interpose any counterclaim or setoff of any nature or description in any such proceeding; the parties specifically agreeing the Lessee's covenant to pay Rent, fees or any other payments under this Agreement are independent of all other covenants and agreements in this Agreement; *provided, however*, this shall not be construed as a waiver of Lessee's right to assert such a claim in any separate action brought by Lessee.

SECTION 17: EASEMENTS

17.1 Easements. The Parties recognize that the Port facilities are continuously being modified to improve the utilities, services and premises used and provided by the Port. Any such improvements or modifications on or affecting the Premises shall be subject to the prior written consent of Lessee, which consent shall not be unreasonably withheld; provided, however that Lessee may withhold consent in the event the proposed improvement or modification would interfere with Lessee's use of the Premises. The Port, or its agents, shall have the right, upon no less than two (2) Business Days prior written notice (except in the event of an emergency) to enter the Premises, and to maintain, repair and operate the existing sewer, water, and drainage lines, and the electrical service, fiber and communication service and all other services and facilities, all as may be reasonably required by the Port for its own use and that of its other tenants. *Provided, however*, that the Port by virtue of such use, does not interfere with Lessee's use or occupancy of

the Premises for an unreasonable period of time, not to exceed two (2) working days, and provided that in no event may the Port permit interruption of Lessee's operations during [the harvest period], without consent of Lessee.

17.2 Easements Burdening the Premises. The Parties acknowledge that certain easements, as more particularly called out in Exhibit B, burden and/or benefit the Premises, including, but not limited to, an easement through air space over the Premises for the purpose of a pedestrian overpass. Lessee expressly subordinates its rights under this Agreement to those easements but shall not, as a result thereof, have any additional Premises maintenance and repair responsibilities beyond those already agreed to in the Agreement. Lessee shall have the benefit of such easements to the extent necessary to perform its obligations under this Lease and for the operation of the Premises as permitted herein.

SECTION 18: NO WAIVER; LANDLORD'S RIGHT TO PERFORM

18.1 Receipt of Monies Following Termination. No receipt of monies by the Port from Lessee after the termination or cancellation of this Agreement in any lawful manner shall (a) reinstate, continue or extend the Term; (b) affect any notice theretofore given to Lessee; (c) operate as a waiver of the rights of the Port to enforce the payment of any Rent and fees then due or thereafter falling due; or (d) operate as a waiver of the right of the Port to recover possession of the Premises by proper suit, action, proceeding or remedy; it being agreed that after the service of notice to terminate or cancel this Agreement, or after the commencement of suit, action or summary proceedings, or any other remedy, or after a final order or judgment for the possession of the Premises, the Port may demand, receive and collect any monies due, or thereafter falling due, without in any manner affecting such notice, proceeding, suit, action, order or judgment; and any and all such monies collected shall be deemed to be payments on account of the use and occupation and/or Lessee's liability hereunder.

18.2 No Waiver of Breach. The failure of the Port to insist in any one or more instances, upon a strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver of or relinquishment for the future of the performance of such covenant, or the right to exercise such option, but the same shall continue and remain in full force and effect. The receipt by the Port of the Rent or fees, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Port of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Port. The consent or approval of the Port to or of any act by Lessee requiring the Port's consent or approval shall not be deemed to waive or render unnecessary the Port's consent or approval to or of any subsequent similar acts by Lessee.

18.3 No Waiver of Rent. The receipt by the Port of any installment of Rent, fees or of any Additional Rent shall not be a waiver of any Rent, fees or Additional Rent then due.

18.4 Application of Payments. The Port shall have the right to apply any payments made by Lessee to the satisfaction of any debt or obligation of Lessee to the Port, in the Port's sole discretion and regardless of the instructions of Lessee as to application of any such sum, whether such instructions be endorsed upon Lessee's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by the Port of a check or checks drawn by others than Lessee shall in no way affect Lessee's liability hereunder nor shall it be deemed an approval of any assignment of this Agreement or subletting by Lessee.

18.5 Port's Right to Perform. Upon Lessee's failure to perform any obligation or make any payment required of Lessee hereunder following no less than thirty (30) days prior written notice by the Port (except that in the event of an emergency involving threat of imminent harm to persons or property, verbal notice shall be permissible) the Port shall have the right (but not the obligation) to perform such obligation of Lessee on behalf of Lessee and/or to make payments on behalf of Lessee to such parties. Lessee shall reimburse the Port the reasonable cost of the Port's performing such obligation on Lessee's behalf, including reimbursement of any amounts that may be expended by the Port, plus interest at the Default Rate, as Additional Rent.

SECTION 19: ASSIGNMENT AND SUBLETTING

19.1 Prohibition. Lessee shall not, in whole or in part, assign, sublet, license or permit occupancy by any party other than Lessee of all or any part of the Premises, without the prior

written consent of the Port in each instance. Lessee shall at the time the Lessee requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee, sublessee or licensee including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee, sublessee or licensee. Notwithstanding anything in this Agreement to the contrary, Lessee shall have the right to assign all or part of its rights and obligations under this Agreement to any Affiliate of Lessee, provided that such Affiliate has a net worth of at least Two-Hundred Fifty Million Dollars (\$250,000,000) or the performance of the obligations of such Affiliate hereunder are guaranteed by an entity with a net worth of at least Two-Hundred Fifty Million Dollars (\$250,000,000) (the Port shall have the right to receive information providing reasonable assurance of such net worth). Upon receipt by Port of written notice of such an assignment, Lessee shall be released from all such assigned rights and obligations under this Agreement. As used herein, the term "Affiliate", as applied to Lessee, shall mean any person, entity or group of persons or entities which directly or indirectly, through one or more intermediaries, is controlled by Louis Dreyfus Commodities B.V. ("LDCBV"). As used in this Section, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise. The remaining requirements of Section 19 shall not apply to Lessee's assignment to an Affiliate.

19.1.1 As a condition for the Port's consent to any assignment, encumbrance or sublease, the Port may require that the assignee, sublessee or licensee remit directly to the Port on a monthly basis, all monies due to Lessee by said assignee, sublessee or licensee (except with respect to excess rentals otherwise due Lessee pursuant to Section 19.2). In addition, a condition to the Port's consent to any assignment, sublease or license of this Agreement or the Premises shall be the delivery to the Port of a true copy of the fully executed instrument of assignment, sublease or license and an agreement executed by the assignee, sublessee or licensee in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee, sublessee or licensee assumes and agrees to be bound by the terms and provisions of this Agreement and perform all the obligations of Lessee hereunder.

19.1.2 In the event of any assignment, Lessee and each respective assignor, waives notice of default by the Lessee in possession in the payment and performance of the Rent, covenants and conditions of this Agreement and consents that the Port may in each and every instance deal with the Lessee in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Agreement and modify the same, and in general deal with the Lessee then in possession without notice to or consent of any assignor, including Lessee; and any and all extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Lessee and of each respective assignor.

19.1.3 Lessee agrees that any sublease or license will contain a provision in substance that if there be any termination whatsoever of this Agreement then the sublessee or licensee, at the request of the Port, will attorn to the Port and the sublessee or licensee, if the Port so requests, shall continue in effect with the Port, but the Port shall be bound to the sublessee or licensee in such circumstances only by privity of estate. Nothing herein shall be deemed to require the Port to accept such attornment.

19.1.4 No assignment, subletting or license by Lessee shall relieve Lessee of any obligation under this Agreement, including Lessee's obligation to pay Rent, fees or Additional Rent hereunder. Any purported assignment, subletting or license contrary to the provisions hereof without consent shall be void. The consent by the Port to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

19.1.5 Lessee shall reimburse the Port in the sum of Five Hundred Dollars (\$500.00) plus any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Lessee for consent to an assignment, subletting, or license.

19.2 Excess Rental. If in connection with any assignment, sublease or license, Lessee receives rent, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such Rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder and out-of-pocket expenditures, operating costs or concessions incurred by

Lessee in connection with such assignment, sublease or license, are appropriately taken into account, Lessee shall pay to the Port, as Additional Rent hereunder, fifty percent (50%) of the excess of each such payment of rent received by Lessee after its receipt.

19.3 Scope. The prohibition against assigning or subletting contained in this Section shall be construed to include a prohibition against any assignment or subletting by operation of law. Furthermore, for purposes of this Section, any sale, transfer or other disposition in the aggregate of fifty percent (50%) or more of the equity ownership in Lessee (i.e. stock with respect to Lessee corporation, partnership interests with respect to a Lessee partnership, etc.) shall be deemed an assignment provided that any such sale of, transfer or other disposition of the equity ownership of Lessee shall not be deemed an assignment so long as after such disposition Lessee is an Affiliate of LDCBV. If this Agreement be assigned, or if the underlying beneficial interest of Lessee is transferred, or if the Premises or any part thereof be sublet or occupied by anybody other than Lessee, the Port may collect rent from the assignee, sublessee or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of Section 19.2, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, sublessee or occupant as Lessee, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. No assignment or subletting shall affect the continuing primary liability of Lessee (which, following assignment, shall be joint and several with the assignee), and Lessee shall not be released from performing any of the terms, covenants and conditions of this Agreement.

19.4 Approved Sublease. The Port hereby consents in principle, pursuant to this SECTION 19, to a Sublease by Lessee to the Washington State Department of Agriculture of approximately 3,778 square feet of office space for the State Grain Inspector at a rental not to exceed the rental for that area paid by Lessee to the Port (plus costs of any utilities and janitorial services to be provided by Lessee). Lessee shall furnish to the Port for its file a copy of the sublease agreement and any subsequent amendments.

19.5 Put-through Arrangements. For the avoidance of doubt, the parties acknowledge and agree that Article 19 does not apply to any "put-through" agreements that Lessee may enter into to handle, store, load or unload commodities for a third party at the Premises.

SECTION 20: MISCELLANEOUS

20.1 Notices. All notices required to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery, to the appropriate address indicated in SECTION 1 hereof or at such other place or places as either the Port or Lessee may, from time to time, respectively, designate in a written notice given to the other. Notices shall be deemed sufficiently served upon the earlier of actual receipt or the expiration of three (3) days after the date of mailing thereof.

20.2 Force Majeure. Lessee's obligations under this Agreement to pay Tonnage Fees and Minimum Rent will be excused to the extent it is unable to carry out its normal business activities through the Premises by reason of strikes, embargoes, wars, acts of terrorism, riots, rebellion, sabotage, hurricanes, fires, explosions, or an Act of God; provided, however, that Lessee's obligation to pay Base Rent shall not be affected by this section. Lessee's obligations to pay Tonnage Fees and Minimum Rent under this section will not be excused to the extent its inability to carry out its normal business activities through the Premises is the result of Lessee's failure to act in a prudent manner following such events.

20.3 Non-Discrimination.

20.3.1 Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, sex, age, creed, color or national origin in furnishing, or by refusing to furnish to such person or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby.

20.4 Nondiscrimination – Employment. Lessee covenants and agrees that in all matters pertaining to the performance of this Agreement, Lessee shall at all times conduct its business in a

manner which assures fair, equal and nondiscriminatory treatment of all persons without respect to race, sex, age, color, creed or national origin and, in particular:

20.4.1 Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are member of racial or other minorities, and

20.4.2 Lessee will comply with all requirements of applicable federal, state and local laws or regulations issued pursuant thereto relating to the establishment of nondiscriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, sex, age, creed, color or national origin.

20.5 Access to Premises. The Port shall have the right to show the Premises at all reasonable times during business hours of Lessee to any prospective purchasers, Lessees or mortgagees of the same, and may at any time enter upon the Premises, or any part thereof, for the purpose of ascertaining the condition of the Premises or whether Lessee is observing and performing the obligations assumed by it under this Agreement, all without hindrance or interference from the Lessee. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance notice to Lessee (except that no notice shall be required in the event of an emergency) or an authorized employee of Lessee at the Premises, which notice may be given orally.

20.6 Time. Time is of the essence of every provision hereto.

20.7 Attorneys' Fees. In the event either party requires the services of an attorney in connection with enforcing the terms of this Agreement or in the event suit is brought for the recovery of any Rent or fees due under this Agreement or the breach of any covenant or condition of this Agreement, or for the restitution of the Premises to the Port and/or eviction of Lessee during the Term of this Agreement, or after the expiration thereof, the prevailing party will be entitled to a reasonable sum for out-of-pocket attorneys' fees, consultants' fees, witness fees and other costs, both at trial and on appeal, to the extent of such party's success.

20.8 Captions and Article Numbers. The captions, article and section numbers and table of contents appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Agreement nor in any way affect this Agreement.

20.9 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

20.10 Applicable Law; Waiver of Trial by Jury. This Agreement, and, the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of Washington. The venue for any action arising out of this Agreement shall be in the state or federal courts located in King County, Washington. In any action on or related to the terms of this Agreement, the parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

20.11 Submission of Agreement. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of or option for leasing the Premises. This document shall become effective and binding only upon execution and delivery hereof by the Port and Lessee. No act or omission of any officer, employee or agent of the Port or Lessee shall alter, change or modify any of the provisions hereof.

20.12 Security Measures. Lessee hereby acknowledges that the Rent payable to the Port hereunder does not include the cost of guard service or other security measures, and that the Port shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

20.13 Entire Agreement; Modification. This Agreement sets forth all covenants, promises, agreements, conditions and understandings between the Port and Lessee concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Port and Lessee other than as are herein set forth. No subsequent alteration, amendment, change or addition to the Agreement shall be binding upon the Port or Lessee unless reduced to writing and signed by the Port and Lessee.

20.14 Relationship of the Port and Lessee. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Agreement nor any acts of Lessee and the Port shall be deemed to create any relationship other than that of lessee and lessor.

20.15 Federal Maritime Commission Regulations. This Agreement may be subject to the Shipping Act of 1984, the Shipping Act of 1916, the Ocean Shipping Reform Act of 1998, and their respective implementing regulations. No future amendment or modification to this instrument will be effective until the appropriate procedures, if any, have been completed in accordance with the procedures of the appropriate federal agency which has jurisdiction over the Shipping Acts.

20.16 Confidentiality. The Port acknowledges and agrees that information provided by Lessee to the Port in connection with this Agreement includes confidential and proprietary business information of Lessee and shall not be disclosed in response to any request under the Freedom of Information Act, 5 U.S.C. § 552 (1994) (“FOIA”), on the grounds that the Material would reveal trade secrets or confidential commercial or financial information of Lessee and/or its affiliates.

20.17 Exhibits. Exhibit A, B, C, D, and E, are attached to this Agreement after the signatures and by this reference incorporated herein:

SECTION 21: SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PORT OF SEATTLE

LDC WASHINGTON LLC

By: _____
Its: _____

By: _____
Its: _____

SECTION 22: ACKNOWLEDGMENTS

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____ 201__, before me personally appeared Tay Yoshitani, to me known to be the Chief Executive Officer of the PORT OF SEATTLE, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)

(Print Name)
Notary Public, in and for the State of Washington,
residing at _____
My Commission expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____ 201__, before me personally appeared _____, to me known to be the _____ of _____, the corporation that executed the within and foregoing instrument at Lessee, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)

(Print Name)
Notary Public, in and for the State of _____,
residing at _____
My Commission expires: _____

DRAFT