

**THIRD AMENDMENT TO LEASE  
BETWEEN  
PORT OF SEATTLE  
AND  
WESTWAY FEED PRODUCTS, INC.  
AT  
TERMINAL 18**

THIS THIRD AMENDMENT TO LEASE made as of \_\_\_\_\_, 2015, by and between the PORT OF SEATTLE, a Washington municipal corporation, hereinafter called “the Port,” and WESTWAY FEED PRODUCTS, INC., a Delaware limited liability corporation, hereinafter called “Lessee.”

**W I T N E S S E T H :**

WHEREAS, the parties entered into a lease agreement dated July 23, 1996, hereinafter called the “Basic Lease,” covering certain premises and activities by Lessee at Terminal 18, Seattle, Washington, which was subsequently amended by First Amendment dated April 7, 2000; assigned by a Conditional Consent to Assignment dated October 12, 2006; amended by Second Amendment dated February 12, 2009; subsequently assigned by a Conditional Consent to Assignment dated February 11, 2010; and a Continuing Lease Guaranty was effective February 14, 2013; and

WHEREAS, the parties now wish to further revise the Basic Lease as previously amended, by extending the lease term, and by amending the maintenance and repair provision to address the replacement of rail tracks at the south end of Terminal 18.

NOW THEREFORE, in consideration of their mutual promises, the parties hereby agree as follows:

1. Paragraph 2 (TERM) of the Basic Lease is hereby deleted in its entirety and replaced with the following:

**“2 TERM**

This lease shall be for a term of thirty (30) years, beginning on or before September 30, 1998 and ending September 30, 2028.”

2. Paragraph 9 (MAINTENANCE AND REPAIR) of the Basic Lease, as amended, is hereby deleted in its entirety and replaced with the following:

**“9 MAINTENANCE AND REPAIR**

a. Maintenance and Repair by Lessee.

- i. Lessee shall, at its sole cost and expense, keep the Premises, together with all Alterations, equipment and installations – in good order, condition and repair at all times. Lessee shall make all repairs and replacements (ordinary as well as extraordinary, foreseen, and unforeseen) which may be necessary or required so that at all times the Premises are in good order, condition and repair. Without limiting the generality of the foregoing, Lessee shall keep the glass of all windows and doors on the Premises clean and presentable, shall replace all cracked or broken glass in the Premises, shall keep the mechanical and electrical systems and all drains clean and in a good state of repair, shall protect the sprinkler system and all pipes and drains so that they will not freeze or become clogged and shall not permit or suffer any waste, damages, or disfigurement to or upon the Premises or any part thereof.
- ii. Lessee shall also keep the Premises and entryways neat, clean and in

sanitary condition, free from infestation of pests and conditions which might result in harborage for, or infestation of pests. As used in this paragraph, the word “pests,” as used herein, shall include without limitation, rodents, insects, and birds in numbers to the extent that a nuisance is created. Lessee shall also specifically remove all snow and ice from the sidewalk in front of the Premises and shall remove all snow and ice from the roof thereof.

- iii. Lessee’s obligation to make all necessary repairs shall extend to all improvements on the Premises, including, but not limited to the apron, vessel fender system, pipeline and the molasses pipeline and riser system (the “Molasses Pipeline”), paving, fencing, tanks and other structures, and landscaping, except to the extent that any of the repairs described in this provision may be required as a result of damage caused by the sole negligence of the Port or other tenants of the Port.
- iv. Lessee will maintain and repair the railroad tracks within the Premises (“On Premises East Track”), the off Premises railroad tracks servicing Lessee’s Premises (“Off Premises East Track”), and the off Premises connecting east track (“Off Premises Connecting East Track”), all as shown on the attached *Exhibit A-3*, except to the extent that any of the repairs described in this provision may be required as a result of damage caused by the sole negligence of the Port or other tenants of the Port.
- v. The Port will complete a one-time replacement of the off Premises railroad tracks located northwest of Lessee’s Premises (“Off Premises New Terminal 18 South Gate Track”) as shown on the attached *Exhibit A-3*. Lessee will also be responsible for all maintenance and repairs for the Off Premises New Terminal 18 South Gate Track, except to the extent that any of the repairs described in this provision may be required as a result of damage caused by the sole negligence of the Port or other tenants of the Port. Maintenance and repair shall include, but not be limited to, the following: annual visual inspections, miscellaneous rail maintenance (such as tighten bolts), and any required asphalt repairs at crossing interface, and replacement of concrete panels. Consistent with Paragraph 6 (USE OF PREMISES) of the Basic Lease, the Lessee shall at all times schedule its maintenance and repairs to avoid disruptions of SSA’s (as defined in paragraph 6 of the Basic Lease) operations at SSA’s gates, yard, and apron.

b. Maintenance and Repair by Port.

- i. The Port is under no obligation to undertake maintenance and repairs to the Premises and will only do so upon Lessee's request and agreement to fully reimburse the Port, or upon such cost sharing as may be agreed to between the Port and Lessee.
- ii. There shall be no abatement or reduction of rent, except to the extent of the Port's sole gross negligence or intentional misconduct, 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 except to the extent of the Port's sole gross negligence or intentional misconduct.”

3. Exhibit “A-3” is attached hereto and incorporated herein, superseding Exhibit “A.”

4. Except as expressly amended herein, all provisions of the Basic Lease (as previously amended) shall remain in full force and effect.



EXHIBIT A-3

