

MOORING LEASE AGREEMENT NO. XX

THIS MOORING LEASE AGREEMENT ("Agreement") is made and entered into pursuant to Alabama Code Section 9-15-70, et seq, by and between the following parties:

STATE OF ALABAMA, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, STATE LANDS DIVISION, an Agency of the State of Alabama, (hereinafter referred to as the "LESSOR") and XX, (hereinafter referred to as the "LESSEE").

For and in consideration of Ten and 00/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged LESSOR and LESSEE hereby agree as follows:

1. **Definitions** For purposes of this Agreement, the following words and phrases shall have the following meaning:
 - (a) **"Lease Year"** shall mean the twelve (12) month period beginning on _____ and each subsequent 12-month period thereafter or portion thereof, until termination of this Agreement as provided herein.
 - (b) **"Environment"** shall mean soil, surface waters, groundwaters, land, stream and sediments, surface or subsurface strata, ambient air, indoor air and indoor air quality, interior and/or exterior of any building or improvement and any environmental medium.
 - (c) **"Environmental Condition"** shall mean any condition of the Environment with respect to the Leased Property.
 - (d) **"Environmental Law"** shall include but is not limited to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended (RCRA); the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et. seq., as amended (original act known as CERCLA or Superfund, the Amendments are known as SARA); the HSWA amendments to RCRA regulating Underground Storage Tanks (USTs), 52 U. S.C. §6991 (i), as amended; the Clean Air Act of 1963, 42 U.S.C. §7401, et seq., as amended (Clean Air Act); the Federal Water Pollution Control Act of 1977 and 1987, 33 U.S. C. §1251, et seq.; as amended (Clean Water Act); the Toxic Substances Control Act of 1976, 15 U.S.C. §2601, et. seq., as amended (TSCA); the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et.seq., as amended (HMTA); the Alabama Department of Environmental Management Administrative Code, under Statutory Authority: Code of Alabama 1975, including any revisions or amendments thereto; and any other or future federal, state or local statute, law, regulation, rule or ordinance implementing or otherwise dealing with the subject matter of the preceding federal and state statutes or regulations.
 - (e) **"Hazardous Material"** shall mean (a) radioactive materials, asbestos-containing materials and polychlorinated biphenyls and (b) any other chemicals, materials or substances defined or regulated as toxic, hazardous or dangerous or as a pollutant or contaminant under any applicable Environmental Law.
 - (f) **"Leased Property"** shall mean all that certain property, located XX in XX County, Alabama, as described on Exhibit "A", Exhibit "A" dated XX, and identified as annexed hereto, all of the terms and provisions of which are incorporated herein by this reference and are made a part of this Agreement, together with all of the appurtenances privileges and easements pertaining thereto. For accounting purposes, this lease shall be referred to as "Lease Agreement #XX."
 - (g) **"Legal Requirements"** shall mean laws, rules, regulations, statutes, ordinances, permits, orders, decrees of, or other lawful obligations imposed by federal, state, city, town, county, boroughs and village governments, and rules, regulations, orders and directives of all departments, subdivisions, bureaus, agencies of office thereof, and of any other

governmental, public or quasi-public authorities having jurisdiction over the Leased Property, whether now or hereafter in force including, but not limited to, those pertaining to the Environment at the Leased Property.

2. **TERM OF AGREEMENT.** The term of this Agreement shall be ten (10) years commencing on _____ and ending at midnight _____ unless earlier terminated as provided below.

3. **RENTAL AND ADDITIONAL CHARGES**

(a) **Rent:** During the term of this Agreement, LESSEE shall pay to LESSOR the net rental of (\$XX) XX and 00/100's Dollars per Lease Year in equal monthly installments of (\$XX) XX and 00/100 Dollars, (hereinafter Base Rent) in advance on the _____ (____) day of each and every lease month, beginning on _____.

(b) **Rent and Charge Adjustment:** The rent shall be adjusted on the first day of each Lease year. In adjusting the rental rate or other charges, if any, the rental rate will be adjusted on the change in the Consumer Price Index, all urban consumers, all items (1982-84=100) (Index) as published by the U.S. Department of Labor. This adjusted rate will be the sum of the Base Rate and that same rate multiplied by the percent increase of the Consumer Price Index for the period beginning two months prior to the beginning of the First Lease Year and the Consumer Price Index figure two months prior to the expiration of the Lease Year. The adjusted rental rate shall never be adjusted below that of the Base Rate. If for any reason the Index becomes unavailable, the parties shall by mutual agreement choose a similar publication as Consumer Price Index.

4. **PAYMENT**

(a) **Payment:** All amounts which LESSEE assumes or agrees to pay pursuant to this Agreement shall be paid in lawful money of the United States to LESSOR at its office provided in Paragraph 29. LESSEE shall pay all amounts promptly when due without notice or demand therefore and without any abatement, deduction or set off for any reason whatsoever, except as may be expressly provided in this Agreement. If LESSEE makes any payment to LESSOR by check, same shall be by check of LESSEE and LESSOR shall not be required to accept the check of any other person, and any check received by LESSOR shall be deemed received subject to collection. If any check is mailed by LESSEE, LESSEE shall post such check in sufficient time prior to the date when payment is due so that such check will be received by LESSOR on or before the date when payment is due. LESSEE shall assume the risk of lateness or failure of delivery of the mails, and no lateness or failure of the mails will excuse LESSEE from its obligation to have made the payment in question when required under this Agreement.

(b) **Waiver:** No payment by LESSEE or receipt or acceptance by LESSOR of a lesser amount than the correct payment due shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and LESSOR may accept such check or payment without prejudice to LESSOR'S right to recover the balance or pursue any other remedy in this Agreement or at law provided.

(c) **Arrearage:** If LESSEE is in arrears in the payment of any amounts due hereunder, LESSEE waives LESSEE'S right, if any, to designate the items to which any payments made by LESSEE are to be credited, and LESSOR may apply any payments notwithstanding any designation or request by LESSEE as to the items to which any such payments shall be credited.

5. **TITLE AND CONDITION OF LEASED PROPERTY**

(a) **Ordinances and Restrictions:** The Leased Property is leased to LESSEE subject to existing easements, covenants, reservations and restrictions, if any, and all Legal

Requirements and regulations of governmental authorities and all recommendations of the Fire Underwriter's Rating Bureau, Southeastern Underwriters Association and Marine Underwriters Association, now or hereafter in effect.

(b) Inspection: LESSEE AGREES THAT IT SHALL BE CONCLUSIVELY PRESUMED, AS BETWEEN LESSOR AND LESSEE, THAT THE LESSEE HAS INSPECTED THE LEASED PROPERTY, AND THAT THE LESSEE IS SATISFIED WITH AND HAS ACCEPTED THE LEASED PROPERTY. THE LEASED PROPERTY IS BEING LEASED IN ITS 'AS IS' CONDITION, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO ITS CONDITION, MERCHANTABILITY, OPERABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(c) LESSOR does not warrant title to the Leased Property.

(d) LESSOR reserves all oil, gas, and mineral rights which it owns on the Leased Property and its right to full use of the Leased Property to the extent such use does not unreasonably interfere with Lessee's use as set forth herein, including any and all activities incident thereto.

(e) Environmental Responsibilities:

(i) Environmental Compliance Responsibility: LESSEE shall comply with all Environmental Laws and shall be responsible for its actions, operations, cargo, and materials of any kind. LESSEE acknowledges responsibility for any and all environmental insult deriving from the physical or chemical characteristics of its cargo and materials on the Leased Property.

(ii) Environmental Claims: If LESSEE has knowledge of potential liability under item (a) in this section, LESSEE shall promptly advise LESSOR in writing of any circumstances which may give rise to a claim.

6. USE OF LEASED PROPERTY

(a) Business Use: During the term of this Agreement, LESSEE shall only use and occupy the Leased Property for barge fleeting and integrally related purposes. LESSEE will not generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, blend or process any hazardous wastes at the Leased Property. LESSEE may store or handle Hazardous Materials on the Leased Property that are routinely used by LESSEE for the Business Use, as stated herein, and in accordance with all Environmental Laws and all provisions of this Agreement.

(b) Compliance with Ordinances and Restrictions: LESSEE shall comply with all Legal Requirements which shall, in respect of the Leased Property or the use and occupation thereof, or the abatement of any nuisance in, on or about the Leased Property, impose any violation, order or duty on LESSOR or LESSEE; and LESSEE shall pay all costs, expenses, fines, penalties and damages which may be imposed upon LESSOR by reason of or arising out of LESSEE'S failure to fully and promptly comply with and observe the provisions of this Paragraph.

7. NET LEASE PROVISION

(a) Net Rental: The rent provided in Paragraph 4 shall be net to LESSOR. Accordingly, LESSEE shall pay, as additional rent, all real estate taxes and assessments (as provided in Paragraph 8); insurance (as required in Paragraph 9); repairs and maintenance (as provided in Paragraph 10); and utilities (as provided in Paragraph 11).

(b) Proof of Payment: LESSEE shall furnish to LESSOR for its inspection, within ten (10) days after request therefore, official receipts of the appropriate authority, or such other

proof as is reasonably satisfactory to LESSOR, evidencing payment of any amount payable by LESSEE under the provisions hereof.

- (c) **Default in Payment:** All amounts that LESSEE assumes or agrees to pay pursuant to this Agreement which are not paid when due, together with interest at the rate of eighteen percent (18%) per annum from the date due and payable, shall constitute additional rent hereunder and shall be due and payable by LESSEE on demand by LESSOR.

8. TAXES AND ASSESSMENTS

- (a) **Payment by LESSEE:** During the term of this Agreement, LESSEE shall pay to LESSOR as additional rent all property taxes, water rents and charges, taxes on rents, drainage assessments, sanitary and storm water sewer charges and assessments, assessments for public improvements and other governmental levies and charges, general and special, ordinary and extraordinary, foreseen or unforeseen of any nature whatsoever which are assessed, levied, or imposed upon the Leased Property, or any part thereof, or which otherwise became payable or may become a lien against the Leased Property during the term hereof. Without limiting the generality of the foregoing sentence, it is understood that LESSEE'S responsibility for public improvement assessments includes all assessments imposed during the term of this Agreement, whether or not the related improvements are completed or commenced prior to the commencement of this Agreement, and whether or not such improvements are completed or commenced prior to the termination of this Agreement. LESSEE shall also pay to LESSOR all taxes levied, imposed or assessed by any taxing authority upon any rentals payable hereunder. LESSEE shall also be responsible for any payment within the time provided by law of all taxes imposed on its property, including but not limiting to inventory, fixtures, apparatus, and equipment.
- (b) **Time for Payment:** Within thirty (30) days after LESSOR'S receipt of tax bills on the Leased Property or such reasonable time (in LESSOR'S determination) thereafter, LESSOR shall certify to LESSEE the amount of taxes payable by LESSEE hereunder. LESSOR shall, in addition, furnish LESSEE with a copy or copies of all applicable tax bills upon request. Within ten (10) days after receipt of such notice, LESSEE shall pay to LESSOR an amount equal to all taxes and assessments required to be paid by LESSEE hereunder.
- (c) **Income, Transfer and Certain Other Taxes of LESSOR Excluded:** Nothing contained in this Agreement shall require LESSEE to pay any franchise, income, receipts, profits, estate, inheritance, succession, gift, or transfer tax imposed upon LESSOR or its successors and assigns. However, if at any time during the term of this Agreement, there shall be levied, assessed or imposed upon LESSOR a capital levy, gross receipts, ad valorem or other tax directly on the rents received hereunder then such tax shall be deemed to be included within the amount which LESSEE is required to pay hereunder.

9. RISK OF LOSS, INDEMNITY, INSURANCE COVERAGE

- (a) **Risk of Loss:** LESSEE shall keep vessel(s) in safe and proper working condition. LESSEE undertakes an obligation to insure, guard, and protect its vessel(s) on Leased Property from damage, including by vandalism or loss. LESSOR hereby assumes any and all risks associated with keeping and operating the vessel(s) on Leased Property.
- (b) **Indemnification by LESSEE:** LESSEE shall, and does hereby agree that it will protect, defend, indemnify, and hold harmless, LESSOR and its officers, directors, employees, agents, successors and assign (the "Indemnitees") at all times from and against and in respect to any and all damages, as hereinafter defined. Damages, as used herein, shall include any claims, actions, demands, losses, costs, expenses, obligations, liabilities (joint or several), penalties, charges and damages (including without limitation, reasonable legal, accounting, consulting, engineering, environmental, and other fees and expenses incurred in investigating or in attempting to avoid the same or oppose the imposition thereof) that may be imposed or incurred by, or assessed against any of the Indemnitees

by any other party or parties (including, without limitation, any governmental entity) arising out of, in connection with or relating to the subject matter, including but not limited to:

- (i) Any breach by LESSEE of any of the representations, warranties, covenants, and agreements of LESSEE contained in this Agreement or in any other agreement or instrument executed and delivered by LESSEE pursuant to the terms hereof;
 - (ii) The violation of any law of the United States, State of Alabama, or any municipal, county, state or federal authorities which is directly or indirectly related in any way to any act, omission, or commission, of LESSEE, its employee(s), agent(s), contractor(s), invitee(s), guest(s), patron(s), and/or licensee(s), that results from LESSEE'S use and/or occupancy of any portion of the Leased Property;
 - (iii) Any Environmental Condition or violation of Environmental Law, directly or indirectly related in any way to any act, omission, or commission of LESSEE, its employee(s), agent(s), contractor(s), invitee(s), guest(s), patron(s), and/or licensee(s), that results from LESSEE'S use and/or occupancy of any portion of the Leased Property.
 - (iv) Any accident or other occurrence causing injury or death to any person (including, without limitation, the LESSOR'S representatives, agents, and employees), or damage to property (including, without limitation, property of the LESSOR), directly or indirectly, related in any way to any act, omission, or commission of LESSEE, its employee(s), agent(s), contractor(s), invitee(s), guest(s), patron(s), and/or licensee(s), that results from LESSEE'S use and/or occupancy of any portion of the Leased Property; and
 - (v) Any damage caused by obstructions in or under the surface of the water; and
 - (vi) The conduct or management of the Leased Property or any business thereon, or any work or thing whatsoever done, or any condition created on the Leased Property.
- (c) LESSEE to Maintain Insurance:** Without limiting or diminishing the foregoing indemnity, LESSEE, at its own cost and expense, shall carry and maintain adequate and appropriate insurance coverage during the period of the Lease including, but not limited to, the following types of insurance in the minimum amounts specified:
- (i) Commercial General Liability Insurance with limits of liability of not less than Five Million Dollars (\$5,000,000.00), Combined Single Limit, for any one occurrence for bodily injury, including death, property damage liability and contractual liability.
 - (ii) Business Automobile Liability covering owned, non-owned, and hired vehicles with limits of liability not less than One Million Dollars (\$1,000,000.00), Combined Single Limit, for any one occurrence for bodily injury, including death, and property damage liability.

In lieu of providing evidence of the required Commercial General Liability and Business Auto Liability insurance, it is agreed that LESSEE may self-insure for those risks only if it provides sufficient documentation that it has the necessary financial resources to guarantee payment of its liabilities assumed in this Agreement. LESSOR may accept as sufficient documentation a statement signed by an authorized corporate officer of the current parent company that LESSEE is self-insured for those risks and will respond directly to any claims which could be brought against a standard Commercial General Liability and/or Business Auto Liability insurance policy for any of its liabilities assumed in this Agreement. LESSEE agrees to provide said statement of self insurance upon request by LESSOR, but no more often than annually. All other requirements pertaining to insurance remain as written.

- (iii) Workers' Compensation covering the following areas if applicable to LESSEE'S intended use of the Leased Property:

- (a) Standard Workers' Compensation and Employers Liability providing coverage under the Alabama Workers Compensation Act in an amount not less than that required by Alabama Law.
 - (b) Coverage as required by Federal statute, including but not limited to U.S. Longshoremen and Harbor Workers Act (USL&H), Jones Act, and Railroad Federal Employers Liability Act (FELA).
 - (iv) Protection & Indemnity Insurance, minimum limits of \$5,000,000.00 per occurrence.
 - (v) LESSEE may purchase an umbrella liability policy to provide the limits of coverage specified so long as such umbrella provides coverage at least as broad as specified for the individual policies, is equivalent to or in excess of the limits specified for each individual policy, and the umbrella applies directly above the individual policy, without gap in limit of liability.
 - (vi) The coverage provided by the policies required herein is primary coverage, regardless of policy language to the contrary, and any insurance carried by the LESSOR is excess coverage. LESSEE agrees to add LESSOR and related parties as additional insureds, utilizing the following or substantially similar language: "The State of Alabama, Department of Conservation and Natural Resources, and their agents, consultants, and employees are additional insureds" under the GL, Auto, Umbrella policies, and all other insurance policies applicable to the Leased Property, vessels and vessel operation."
 - (vii) Such other insurance or in such higher amounts as may be reasonably required by LESSOR from time to time.
- (d) Form of Policies:** All policies of insurance must be written with companies acceptable to the LESSOR. Prior to the Effective Date of this Agreement, LESSEE shall furnish to the LESSOR original certificates of insurance signed by the licensed agent evidencing required coverage. Certificates must be mailed to LESSOR at the address stated in Paragraph 29. Failure to provide current certificates within 10 days following policy expirations may render this Agreement null and void. LESSOR reserves the right to require certified copies of any and all policies.
- Each policy of insurance shall provide, either in body of the policy or by endorsement, that such policy cannot be materially altered or canceled without thirty (30) days' written notice to the LESSOR and to the insured. The LESSEE'S insurance policies shall include endorsements providing that the LESSOR, its officers, officials, employees, and volunteers are to be covered as primary and non-contributory additional insureds, with respect to liability arising out of its use of the LESSOR'S facilities. Except for the proven negligence of the LESSOR, the coverage shall contain no special limitations on the scope of protection afforded.
- (e) Waiver of Subrogation:** The LESSEE'S insurer(s) shall agree to waive all rights of subrogation against the LESSOR, its officers, officials, agents, servants and employees for losses arising from the LESSEE'S use of the Leased Property.
- (f) Business Interruption Insurance:** During any period that the Leased Property is in a damaged condition, and while the work of repair or rebuilding is proceeding, pursuant to Paragraph 14, there shall be no abatement of rents, LESSEE understanding that it may obtain appropriate insurance or may take other means to meet its rental obligations while such repairs are being completed.
- (g) Insurance on Contents:** LESSOR carries no insurance on the contents of the Leased Property, and LESSEE agrees to assume all responsibility for any loss or damage thereto.

(h) Subcontractor Insurance Requirements: LESSEE shall not allow any subcontractor to commence work until all similar insurance has been obtained by the subcontractor or LESSEE has provided coverage for the subcontractor.

10. MAINTENANCE AND REPAIR

(a) Responsibility of LESSEE: LESSEE shall throughout the term of this Agreement, at its own cost and expense, put, keep and maintain the Leased Property in good, substantial and sufficient condition, and shall make all necessary repairs and replacements to any and all improvements which comprise the Leased Property thereon and to the pipes, heating and cooling system, plumbing system, window glass, fixtures and all other appliances, equipment and appurtenances used in connection with the Leased Property or belonging thereto. Such repairs and replacements, interior and exterior, ordinary as well as extraordinary, and structural as well as nonstructural, shall be made promptly, as and when necessary. All repairs and replacements shall be in quality and class at least equal to the original work.

(b) LESSOR'S Rights: LESSOR shall not be required to furnish any services or facilities or to make any repair or alteration in or to the Leased Property. LESSEE hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Leased Property.

(c) Condition at End of Lease Term: Except as otherwise provided in this Agreement, upon the expiration or termination of this Agreement, LESSEE will surrender the Leased Property to LESSOR in as good a condition and repair as when first occupied by LESSEE, reasonable wear and tear excepted. Leased Property will be free of all debris.

11. UTILITIES

(a) Responsibility of LESSEE: LESSEE shall furnish or arrange for the furnishing of all necessary services to the Leased Property, including, but not limited to gas, water, electricity, sewer, and telephone. LESSOR shall not be liable for any failure of water, gas, electricity, or any other utility supply, nor for injury or damage to person (including death) or property caused by or resulting from steam, gas, electricity, water, rain or snow which may flow or leak from any part of the Leased Property, or from any pipes, appliances or plumbing works, or from the street or subsurface, or from any other place, nor from interference with line or other easements.

(b) Payment to be Made by LESSEE: LESSEE shall pay promptly all charges for electricity, gas, water, telephone and other utilities used in or upon the Leased Property including sewer service, garbage service, water charges, storm water charges and any other utility type charges imposed upon the Leased Property or any use thereof.

12. DAMAGE AND DESTRUCTION

(a) Limitation of LESSOR'S Liability: In no event shall LESSOR be liable for interruption to business of LESSEE or for damage to or replacement or repair of LESSEE'S personal property, including inventory, trade fixtures, floor coverings, furniture and other property removable by LESSEE under the provisions of this Agreement.

(b) Option to Terminate Agreement: If the Leased Property is (i) rendered wholly untenable, or (ii) damaged to the extent of twenty percent (20%) or more of the replacement value thereof immediately prior to the occurrence as certified by LESSOR'S engineer, or (iii) damaged in whole or in part during the last one year of the term, then and in any of such events, LESSOR may cancel this Agreement by giving to LESSEE notice within ninety (90) days after the occurrence of such event. The rent and other charges shall be adjusted as of the date of such cancellation.

- (c) **Non-Abatement of Rent:** Reference is made to Paragraph 12(b) above with respect to non-abatement of rents after any such damage or destruction.

13. EMINENT DOMAIN

- (a) **Condemnation in Entirety:** If the entire Leased Property shall be taken by condemnation or right of eminent domain, or by private purchase by the condemning authorities in lieu thereof, this Agreement shall terminate and any unearned rent paid in advance by LESSEE as of the date title is conveyed shall be refunded.
- (b) **Partial Taking:** If such portion of the Leased Property be taken so as to render the balance, in the reasonable discretion of LESSEE, to be insufficient in size or not reasonably suitable for the purpose of LESSEE, then LESSEE, upon written notice to LESSOR, shall be entitled to terminate this Agreement provided that such notice is given within one hundred eighty (180) days after such taking. Should any part of the Leased Property be so taken and should this Agreement not be terminated in accordance with this Paragraph 13(a), LESSOR may, in its sole discretion, promptly restore the Leased Property as nearly as reasonably possible to its condition prior to such taking, and upon completion thereof, the rent shall be equitably abated taking into consideration the proportion that the area taken bears to the total area prior to the taking and effect of the taking on the ability of LESSEE to continue to utilize the Leased Property.
- (c) **Disposition of Award:** All compensation awarded or paid upon any total or partial taking of the Leased Property shall belong to and be the property of LESSOR except LESSEE shall be entitled to any amount equal to the unamortized cost (depreciated on straight-line basis computed monthly) to LESSEE of all leasehold improvements (other than leasehold improvements paid for out of insurance proceeds following a fire or other casualty made by LESSEE from and after date hereof in that portion of the Leased Property so taken). Notwithstanding the foregoing, nothing herein contained shall be construed to preclude LESSEE from prosecuting any claim directly against the condemning authority for loss of business, or depreciation to, damage to, or cost of removal of, or for the value of stock, trade fixtures, furniture, equipment, machinery, and other personal property belonging to LESSEE, provided, however, no such claim shall diminish or otherwise adversely affect LESSOR'S award. In the event of termination of this Agreement, LESSEE shall have no claim against LESSOR for the value of any unexpired term of this Agreement and no right or claim to any part of the award on account thereof.

14. IMPROVEMENTS, FIXTURES AND EQUIPMENT

- (a) **Construction Improvements:** LESSEE may make, at LESSEE'S expense, or cause to be made, and maintained, in accordance with terms of this Agreement, such improvements as may be necessary or appropriate in connection with the carrying on of its business; provided that no such construction of improvements on the Leased Property, not specifically authorized in writing by LESSOR shall be undertaken without LESSEE'S first having submitted plans and specifications therefore to, and securing the written approval of LESSOR; provided, however, LESSOR'S approval shall not be unreasonably withheld, and provided further that no disapproval of LESSOR shall be considered unreasonable if LESSEE should plan to create any condition which might endanger or impair the use of surrounding property.

During the primary or any extended term of this Agreement, LESSEE shall pay for (or cause to be paid for) all labor performed and material furnished in the erection, repair, alteration, improvement, or demolition of buildings to be constructed and erected by LESSEE pursuant to the terms of this Agreement, and to keep LESSOR'S interest in the Leased Property and buildings and improvements thereon at all times free and clear of all liens for labor or materials furnished in and about such erection, repair, alteration, and improvement and will defend (or remove by bond or other appropriate proceeding) at its own cost and expense each and every lien asserted or claim filed against LESSOR'S interest in the Leased Property or buildings or improvements thereof, or any part thereof

for labor claimed to have been performed or materials claimed to have been so furnished. Under no provision of this Agreement is LESSEE authorized to do any act which shall in any way encumber the title of LESSOR in and to the Leased Property, the interest of LESSOR therein shall be in no way subject to any claim against LESSEE by way of lien or encumbrance, whether claimed by operation of law or by virtue of any expressed or implied contract with LESSEE, and any claim to a lien upon the Leased Property, arising from any act or omission of LESSEE, shall accrue only against LESSEE'S rights or interest, whatever they may be and shall in all respects be subject to the paramount title and rights of LESSOR in and to the Leased Property.

(b) Furniture, Trade Fixtures and Equipment of LESSEE: It is agreed that title to all improvements placed or constructed on the Leased Property or on any of LESSOR'S land, as authorized hereby, shall be and remain exclusively the property of the LESSEE, and LESSEE shall have the right to remove such improvements upon the termination of this Agreement, provided it is not in default hereunder.

(c) Damage Occasioned by Removal: In case of damage to the Leased Property by reason of the removal of such property specified in Paragraph 14(b) above, LESSEE shall, at its expense, make all repairs to the Leased Property reasonably required by LESSOR.

(d) Procedure at End of Term: In the event LESSEE does not desire to remove any or all of such property, LESSEE shall notify LESSOR in writing not less than sixty (60) days prior to the expiration of the term of this Agreement specifying the items which LESSEE has decided not to remove. If, within thirty (30) days after the service of such notice, LESSOR shall request LESSEE to remove any of said property, LESSEE shall, at its own expense and before the expiration of the term of this Agreement, remove said property.

15. LEASED PROPERTY, INABILITY TO UTILIZE. LESSOR shall not be liable for the failure or inability of LESSEE to utilize all or any part of the Leased Property. Nothing herein contained shall be construed as a warranty that the Leased Property is in good condition or is fit or suitable for the use or purpose for which it is let or license granted. LESSOR has made no representation or promises with respect to the Leased Property except as herein expressly set forth, and LESSEE does hereby release and discharge LESSOR from all claims of every kind growing out of the condition of the Leased Property.

16. NUISANCES. LESSEE will comply, at all times and in all respects, with all laws and ordinances relating to nuisances, health, safety and sanitation of the Leased Property and LESSEE will not by any act, or omission render LESSOR liable for any violation thereof. LESSEE will not commit any waste of property, or permit the same to be done, and will take good care of the Leased Property at all time.

17. TRASH AND DEBRIS. LESSEE covenants and agrees that it will exert every reasonable effort to maintain the Leased Property clean and free of wastepaper, trash or any unnecessarily unsightly debris or flammable material resulting from its operations hereunder.

18. SIGNS. No signs, billboards, posters of any kind, or other advertisements will be permitted to be placed on or about the Leased Property, or permitted to remain thereon, without the written consent of LESSOR, provided that:

(a) Such signs conform to all Legal Requirements;

(b) LESSEE shall obtain such building permits or licenses as may be required for the erection and maintenance of any such signs and shall pay any required fees therefore; and

(c) Such signs must be removed at LESSEE'S expense at the termination of this Agreement and any damage to the Leased Property occasioned thereby must be repaired by LESSEE.

19. QUIET ENJOYMENT. LESSOR covenants and agrees with LESSEE that upon payment by LESSEE of the rent herein provided and the performance of all of the covenants and conditions

hereof, LESSEE shall and may peaceably and quietly have, hold and enjoy the Leased Property hereby demised for the entire term hereof.

20. LESSOR'S RIGHT TO INSPECT OR SHOW LEASED PROPERTY. LESSOR, its agents and representatives, shall have the right to enter into and upon the Leased Property, or any part thereof, at all reasonable hours for the purpose of examining the same. In addition, LESSOR or its agents and representatives shall have the right to show the Leased Property to persons wishing to purchase or lease the same.

21. DEFAULT

(a) Remedies of Default: Upon the happening of any one or more of the events as expressed below in Paragraph 21(b), LESSOR shall have any or all of the following rights, at the option of LESSOR:

- (i) To either annul and terminate this Agreement, on ten (10) days written notice to LESSEE and thereupon reenter and take possession of Leased Property; or
- (ii) Upon ten (10) days written notice to LESSEE to reenter and relet the premises from time to time as agents of LESSEE, it being agreed by LESSEE that such reentry and/or re-letting shall not discharge LESSEE from any liability or obligations hereunder, except that net rents (i.e., gross rents less the expense of collecting and handling, and less commissions) collected as a result of such re-letting shall be a credit on LESSEE'S liability for rents under the terms of this Agreement. (Nothing herein, however, shall be construed to require LESSOR to reenter and re-let in such event).

Any such reentry upon default shall be allowed by LESSEE without hindrance and LESSOR shall not be liable in damages for any such reentry or guilty of trespass or forcible entry. Any and all rights and remedies given under this Agreement to LESSOR in the event of any such default shall be cumulative, in addition to, and without waiver of or in derogation of, any right or remedy given to LESSOR under any law now or hereafter in effect.

(b) Events of Default: The events of default referred to in the preceding Paragraph 21(a) are as follows:

- (i) The event that LESSEE should fail to pay any amounts LESSEE assumes or agrees to pay pursuant to this Agreement, including without limitation rent and wharfage, as and when the same become due, and such default should continue for ten (10) days after written demand for the payment thereof is made by LESSOR upon LESSEE;
- (ii) The event that a Petition in Bankruptcy or for similar relief is filed by or against LESSEE and, if filed against LESSEE, such Petition is not dismissed within sixty (60) days after the filing thereof, or the event LESSEE is adjudged a bankrupt;
- (iii) The event that an assignment for the benefit of creditors is made by LESSEE;
- (iv) The event of the appointment of a Receiver of LESSEE'S property, unless such Receivership is dismissed within sixty (60) days from such appointment; or
- (v) The event LESSEE violates any of the other terms, conditions or covenants on the part of LESSEE herein contained, and fails to remedy the same, or to commence with reasonable dispatch to remedy the same, within thirty (30) days after written notice thereof is given to LESSEE by LESSOR, and to diligently prosecute the curing of same until completion.

22. HOLDING OVER. Should LESSEE hold over the Leased Property without first having obtained LESSOR'S written consent, such holding over shall not be construed as a renewal or extension of this Agreement and LESSEE shall be liable for damages for any such wrongful holding over. LESSEE shall peaceably remove vessel(s) and any other equipment/property from Leased Property at the cancellation or expiration of Lease. Any such holdover with the consent

of LESSOR shall constitute LESSEE a tenant at sufferance only unless otherwise provided by written agreement between LESSOR and LESSEE.

23. WAIVER. The failure of LESSOR to insist, in any one or more instances, upon a strict performance of any of the covenants of this Agreement, shall not be construed as waiver, or a relinquishment for the future, of such covenant, but the same shall continue and remain in full force and effect. It is agreed by LESSEE that LESSOR shall be entitled to receive and retain any payments provided herein with knowledge of the breach of any covenant hereof, that such shall not be deemed a waiver of any breach, and that no waiver by LESSOR of any provisions hereof shall be deemed to have been made unless expressed in writing and signed by LESSOR.

24. ASSIGNMENT AND SUBLEASE. Each and every transfer or assignment of this Agreement, or any interest therein, and each and every subletting of the Leased Property shall be null and void unless the prior written consent of LESSOR is obtained.

25. INVALIDITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the same shall be reduced in scope and coverage to the extent necessary to render the same valid, and, if that is not possible, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

26. COUNTERPARTS. This Agreement is executed in any number of counterparts, each of which counterpart shall be deemed to be an original, and all collectively but one instrument, and shall for all purposes be sufficiently proved by any such counterpart.

27. ATTORNEY'S FEES AND COSTS. Should LESSOR employ an attorney or attorneys to enforce any of the provisions hereof, or to protect its interest in any matter arising under this agreement, or to recover damages for the breach of this Agreement, and should LESSOR prevail, LESSEE agrees to pay all reasonable costs, charges and expenses incurred in connection therewith.

28. BINDING EFFECT. The covenants and agreements herein contained shall be binding upon and inure to the benefit of the respective parties hereto, their legal representatives, heirs, executors, administrators, successors and assigns (subject to the restrictions against assignment as set forth above).

29. NOTICES. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given only if delivered or mailed, by certified mail, first class postage prepaid, to the parties at the following addresses.

If to LESSOR:

State of Alabama Department of Conservation and Natural Resources
State Lands Division
Attn: State Lands Director
64 N Union Street, Room 464
Montgomery, AL 36130

If to LESSEE:

XX

All such notices and other communications given as provided in this Paragraph shall, if delivered personally, be deemed given upon delivery and shall, if delivered by mail in the manner described above, be deemed given upon deposit in a regular depository of the United States mail, postage prepaid.

Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice shall be deemed to have been given until it is actually received by the party sought to be charged with the contents.

30. USE OF GENDER OR NUMBERS. Words on any gender used in this Agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, and vice versa when the context requires.

31. CAPTIONS OR TITLES. The captions or titles used throughout this Agreement are for reference and convenience only and shall in no way define, limit or describe the scope of intent of this Agreement.

32. CONSTRUCTION. This Agreement shall be construed without regard to any presumption of other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken or eliminated were never included in this Agreement and no implication or reference shall be drawn from the fact that said words or phrases were so stricken or otherwise eliminated.

33. ENTIRE AGREEMENT AND MODIFICATIONS. No representation, promise, inducement, or statement of intention has been made by LESSOR or LESSEE which is not embodied in this Agreement or in the written statements, certificates, schedules, exhibits or other documents delivered pursuant hereto or in connection with the transactions contemplated hereby, and neither LESSOR nor LESSEE shall be bound by or liable for any alleged representation, promise, inducement, or statement of intention not so set forth. This Agreement may be modified or amended only by a written instrument signed by each of the parties hereto.

34. NO AGENCY. By entering into this Agreement, LESSEE is not an agent of Conservation, its officers, employees, agents or assigns. Nothing in this Agreement creates an agency relationship between the Parties.

35. ALTERNATIVE DISPUTE RESOLUTION. In the event of any dispute between the Parties, senior officials of both Parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this Agreement which are not resolved by negotiation, the Parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Coalition for Dispute Resolution of the Alabama State Bar.

36. NOT ENTITLED TO MERIT SYSTEM. LESSEE understands and agrees that neither its agents or employees will be entitled to any benefits of the Alabama State Merit System by virtue of this Agreement.

37. BOYCOTT. In compliance with Act 2016-312, LESSEE hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which the State can enjoy open trade.

In compliance with Ala. Act No. 2023-409, by signing this Lease LESSEE provides written verification that LESSEE, without violating controlling law or regulation, does not and will not, during the term of the Agreement engage in economic boycotts as the term "economic boycott" is defined in Section 1 of the Act.

38. GOVERNING LAW. Irrespective of the place of execution, it is the intention of the parties that the laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties.

39. CANCELLATION OF LEASE AGREEMENT. Either party hereto may cancel this lease by giving written notice to the other party. In such event, this lease shall terminate thirty (30) days from the date of such notice. Upon termination of this lease, following notice, LESSEE shall have no further obligation to LESSOR for rent due hereunder for any period following the date of termination.

40. STATE CONSTITUTION. The undersigned agrees that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision contained herein shall contravene any statute or Constitutional provision or amendment, either now in effect or which may be enacted during the course of this lease then that conflicting provision shall be deemed null and void.

The LESSEE'S sole remedy for the settlement of any and all disputes arising under the terms herein shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama.

41. IMMIGRATION. By signing this Agreement, Lessee affirms, for the duration of this Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, if found to be in violation of this provision, Lessee shall be deemed in breach of this Agreement and shall be responsible for all damages resulting therefrom.

42. NONDISCRIMINATION. LESSEE further agrees to comply with all state and federal laws which prohibit discrimination on the basis of race, color, religion, age, gender, national origin, genetic information, veteran status, or disability.

43. LEGAL ACTION VENUE. LESSEE agrees that the Laws of the State of Alabama shall govern and be controlling and binding over the provisions of the rights herein granted, and that, notwithstanding any provision to the contrary, the venue of any legal action brought in connection herewith shall be the circuit court of Montgomery County, Alabama.

44. FORCE MAJEURE. In the case of a Force Majeure Event as defined herein, Conservation reserves the right to immediately terminate the Agreement without prior notice to Coalition. Should this occur, neither Party shall be liable for or be considered in breach of this Agreement due to any failure to perform its obligations as a result of a cause beyond its control, including, without limitation: (i) acts of God; (ii) flood, fire or explosion; (iii) actions, embargoes, quarantines or blockades in effect on or after the date of this Agreement; (iv) national, state or regional emergency, whether ongoing or occurring on or after the date of this Agreement; (v) public health emergencies, outbreak, epidemic or pandemic, whether ongoing or occurring on or after the date of this Agreement, including, without limitation, COVID-19; or (vi) any other event which is beyond the reasonable control of such party (each of the foregoing, a "Force Majeure Event").

45. REVIEW AND EXECUTION. THE PARTIES ACKNOWLEDGE AND AGREE THAT EACH PARTY HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL IN CONNECTION WITH REVIEWING AND EXECUTING THIS AGREEMENT. ACCORDINGLY, ANY RULE OF LAW OR ANY LEGAL DECISION THAT WOULD REQUIRE INTERPRETATION OF ANY CLAIMED AMBIGUITY IN THIS AGREEMENT AGAINST THE PARTY THAT DRAFTED IT HAS NO APPLICATION AND IS EXPRESSLY WAIVED.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed by their respective duly authorized officers as set forth below effective as of the date of Governor's signature below (herein referred to as "Effective Date").

[signatures on following page]

LESSOR:

STATE OF ALABAMA
Department of Conservation
and Natural Resources

RECOMMENDED:

Patricia Powell McCurdy
Director
State Lands Division

Christopher M. Blankenship
Commissioner

LESSEE:

XX

By: _____

Its: _____

APPROVED:

ATTEST:

Kay Ivey
Governor of Alabama

Wes Allen
Secretary of State

Date: _____

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that **Christopher M. Blankenship**, whose name as **Commissioner of the Alabama Department of Conservation and Natural Resources**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, in his official capacity and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 202X.

Notary Public

STATE OF ALABAMA)
_____ COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that _____, whose name as the _____ of _____, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he/she, in his/her official capacity and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 202X.

Notary Public

SAMPLE