

# GROUND LEASE AGREEMENT

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# GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the “Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the PORT OF SEATTLE, a Washington municipal corporation (“Port”), and PDC SEATTLE LPIV BB/TH, LLC, a Delaware Limited Liability Company (“Tenant”) for the Property commonly known as Des Moines Creek West.

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

## ARTICLE 1: DEFINITIONS

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

1.1 Additional Rent. “Additional Rent” shall have the meaning set forth in Section 4.3 below.

1.2 Adjustment Date. “Adjustment Date” shall have the meaning set forth in Section 4.2.3 below.

1.3 Affiliate. “Affiliate” shall mean and refer to any Person, directly or indirectly controlling or controlled by, or under direct or indirect common control with, or managing another Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, or participate in the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees, membership or officers, by contract or otherwise.

1.4 Agreement. “Agreement” shall mean and refer to this Agreement, together with the Exhibits, and all agreements supplemental to or modifying this Agreement, whether made contemporaneously herewith or subsequent hereto.

1.5 Agreement Year. The first (1st) “Agreement Year” shall be the twelve (12) month period commencing upon the first (1st) day of the calendar month following the Commencement Date of this Agreement. Thereafter, “Agreement Year” shall mean and refer to each successive twelve (12) month period following the expiration of the first Agreement Year.

1.6 Alteration. “Alteration” shall have the meaning set forth in Section 8.1 below.

1.7 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.

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

1.9 City. “City” shall mean and refer to the City of Des Moines, Washington.

1.10 Commencement Date. “Commencement Date” shall mean the day after all of the following events have occurred: (a) the expiration date of the Due Diligence Period set forth in Section 6.2; (b) the passage of sixty (60) days following Tenant’s receipt of a SEPA determination and issuance by the City of a Business Park Master Plan (“**Master Plan**”), or alternately, if no appeals are filed during the appeal period for the City’s SEPA determination, the passage of twenty-one (21) days following Tenant’s receipt of a SEPA determination and issuance by the City of the Master Plan; and (c) Tenant’s receipt of a clearing and grading permit from the City. The Commencement Date shall be documented and confirmed by letter delivered by the Port to Tenant, and countersigned by Tenant, and upon execution by both parties, incorporated into this Agreement.

1.11 Contractor Surety Bond. “Contractor Surety Bond” shall have the meaning set forth in Section 7.6 below.

1.12 Cure Notice. “Cure Notice” shall have the meaning set forth in Section 20.3.3 below.

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

1.14 [intentionally omitted].

1.15 Due Diligence Period. “Due Diligence Period” means the period set forth in Section 6.2 during which Tenant may review the condition of the Property and all matters for its suitability for development and the Project.

1.16 Earthwork Construction Start Date. “Earthwork Construction Start Date” shall mean the date (which in no event shall occur prior to the Commencement Date), on which any construction involving earthwork, excavation, trenching, clearing, grubbing, and/or any other soil-disturbing work on the Property (“Earthwork Construction”) is begun.

1.17 Environmental Construction Support Work Plan. “Environmental Construction Support Work Plan” or the “Work Plan” shall mean the approved plan for managing Hazardous Substances and USTs during construction of the Project as detailed in Section 6.4.

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

1.19 Event of Default. “Event of Default” shall have the meaning set forth in Section 21.1 below.

1.20 Excluded Sale. Any of the following shall constitute an “Excluded Sale”: (a) a Permitted Assignment; or (b) collateral security transfers in connection with any debt or equity

financing or transfers to a Foreclosure Purchaser or the first transfer following a foreclosure or deed in lieu of foreclosure or a transfer to a Foreclosure Purchaser.

1.21 Execution Date. “Execution Date” shall mean the date this Agreement is mutually executed by both Tenant and the Port.

1.22 Extension Option(s). “Extension Option(s)” shall have the meaning set forth in Section 3.2 below.

1.23 Extension Term(s). “Extension Term(s)” shall have the meaning set forth in Section 3.2 below.

1.24 Fair Market Rent. “Fair Market Rent” shall have the meaning set forth in Section 4.2.4 below.

1.25 Final Plans. “Final Plans” shall have the meaning set forth in Section 7.3.2 below.

1.26 Flight Kitchen. “Flight Kitchen” shall mean any entity with a primary purpose of preparing food to be served in-flight by airlines utilizing Seatac Airport.

1.27 Force Majeure Event. “Force Majeure Event” shall mean unavoidable delays to Tenant’s completion of the Demolition Phase or achievement of Substantial Completion of the Project which are not caused by Tenant, or result from causes beyond the reasonable control of, Tenant and not attributable to its neglect or nonfeasance including, but not limited to, strikes, lockouts, riots, insurrections, acts of terrorism, war, pandemics, epidemics and wide-spread public health emergencies (such as, but not limited to, the COVID-19 pandemic), fire or other casualty or acts of God, and not caused by or resulting from an act or neglect of Tenant. Delays beyond the control of Tenant that are directly caused by weather, governmental delays beyond customary time periods, or other Acts of God may be considered a “Force Majeure Event” only if such events could not be reasonably anticipated and prevented by Tenant. In the event Tenant claims the occurrence of a Force Majeure Event, as soon as reasonably practicable after the occurrence of such event, Tenant shall (a) provide written notice to the Port of the nature and extent of such Force Majeure Event; and (b) use all commercially reasonable efforts to remove any such causes and resume performance under this Agreement without further delay as soon as reasonably possible. In no event will a Force Majeure Event excuse any monetary obligations nor, for avoidance of doubt, result in any change or extension of the Commencement Date hereunder or Tenant’s obligation to pay Base Rent in accordance with Sections 4.2.1 and 4.2.2 below. In no event will a Force Majeure Event result in any extension of the Due Diligence Period.

1.28 Future Charges. “Future Charges” shall have the meaning set forth in Section 21.2.2 below.

1.29 Hazardous Substance. “Hazardous Substance” shall have the meaning set forth in Section 14.1.

1.30 Institutional Investor. "Institutional Investor" shall have the meaning set forth in Section 25.3 below.

1.31 Leasehold Mortgage. "Leasehold Mortgage" shall have the meaning set forth in Section 20.1 below.

1.32 Leasehold Mortgagee. "Leasehold Mortgagee" shall have the meaning set forth in Section 20.2 below.

1.33 Legal Requirements. "Legal Requirements" shall mean and refer to all laws, statutes and ordinances including, without limitation, building codes and zoning regulations and ordinances, land use (including shoreline), fire, energy, wildlife conservation, natural resource and wetland laws, regulations, ordinances and codes, and the orders, rules, regulations and all other requirements (whether now or hereafter in effect) of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public Authority, finally determined to be applicable to or have jurisdiction over the Property, or the sidewalks or streets adjacent thereto; and all applicable requirements, obligations and conditions of all Permitted Encumbrances. Tenant may, at its cost, contest any assertion that the Project does not, or Tenant Operations do not, comply with Legal Requirements and, so long as Tenant is pursuing such contest in good faith, Tenant shall not be in default hereunder notwithstanding such assertion.

1.34 Lien. "Lien" shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Property, Project or Premises and any Alteration, fixture, improvement or appurtenance thereto arising by or through any Tenant Party or Tenant Operations.

1.35 New Lease. "New Lease" shall have the meaning set forth in Section 20.3.5 below.

1.36 Non-Disturbance and Attornment Agreement. "Non-Disturbance and Attornment Agreement" or "NDA" shall have the meaning set forth in Section 25.4 below.

1.37 Notice of Default. "Notice of Default" shall mean and refer to written notice of any Event of Default to Tenant.

1.38 Operating Expenses. "Operating Expenses" shall have the meaning set forth in Section 12.1 below.

1.39 Permit Plans. "Permit Plans" shall have the meaning set forth in Section 7.3.3 below.

1.40 Permitted Assignment. "Permitted Assignment" shall have the meaning set forth in Section 25.3 below.

1.41 Permitted Assignee. “Permitted Assignee” means an assignee pursuant to a Permitted Assignment.

1.42 Permitted Encumbrances. “Permitted Encumbrances” shall mean and refer to the encumbrances of record referred to in the Pro Forma Title Policy to be obtained by Tenant from First American Title Insurance Company during the Due Diligence Period, as supplemented and amended, and any encumbrances, encroachments, exceptions or title defects that would be disclosed by a detailed inspection and/or ALTA survey of the Property, and any easements or other encumbrances that arise or may arise pursuant to Article 22.

1.43 Permitted Liens. “Permitted Liens” shall mean and refer to the following liens on Tenant’s leasehold interest in the Property and Tenant’s interest in the Project so long as they are subordinate to this Agreement:

(a). Liens arising by statute in connection with worker’s compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations, mechanics’ liens or material liens arising out of the development of the Project (provided that Tenant bonds or insures over such mechanics’ or material lien within thirty (30) days of Tenant’s receipt of notice of the same), good faith cash deposits in connection with tenders, contracts or leases to which Tenant is a party or other deposits required to be made in the ordinary course of business, provided in each case that the obligation is not for borrowed money (except for any Leasehold Mortgage) and that the obligation secured is not delinquent (or, in the event of a dispute, that Tenant is prosecuting or defending the dispute at Tenant’s cost to the extent required to protect the Port from any loss, cost or expense arising from such lien); provided, whether bonded over or insured, in any event Tenant shall cause any recorded mechanics liens to be removed of record within one hundred twenty (120) days of recording; and

(b). Any Leasehold Mortgage.

1.44 Permitted Subleases. “Permitted Sublease” shall mean any sublease by Tenant to a user who will occupy and use some or all of the Premises, so long as Tenant remains the tenant and obligated under this Agreement and the term of the sublease is for a shorter period than the Term of this Agreement and consistent with this Agreement.

1.45 Permitted Sublessee. “Permitted Sublessee” means a sublessee or licensee pursuant to a Permitted Sublease.

1.46 Person. “Person” shall mean and refer to an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

1.47 Port. “Port” or “the Port” shall mean and refer to the Port of Seattle, whose street address for purposes of notice is (for notices sent by messenger or overnight courier) Aviation and Business Properties, 17801 International Blvd. Rm. 6012M, Seattle, WA 98158, Attention: Aviation Properties Manager and whose mailing address for purposes of notice (for notices sent

by USPS only) is P.O. Box 68727, Seattle, Washington 98158, Attention: Aviation Properties Manager.

1.48 Port Commission. “Port Commission” shall mean the Port Commission of the Port of Seattle.

1.49 Port Party. “Port Party” shall have the meaning set forth in Section 11.1.2.

1.50 Pre-Existing Hazardous Substances. “Pre-existing Hazardous Substances” shall mean and refer to any Hazardous Substances which are: (i) present on the Property as of the date of this Agreement; (ii) identified in the course of the Pre-Construction Environmental Evaluation and Pre-Construction Environmental Evaluation Report, or unknown as of the Commencement Date and discovered after the Commencement Date and during the Earthwork Construction Period during construction of the Project, but which was determined to be present on the Property before the Commencement Date, and (iii) at concentrations exceeding industrial cleanup levels applicable to the property under the Washington Model Toxics Control Act, chapter 70A.305 RCW (“MTCA”).

1.51 Premises. “Premises” shall mean and refer to the Property together with the Project to be erected by Tenant on the Property.

1.52 Project. “Project” shall mean and refer to a high quality, building totaling (i) approximately 399,337 rentable square feet of space (subject to final approvals) or (ii) the maximum rentable square footage permitted to be constructed on the Property by all applicable Authorities as evidenced by governmental permits and approvals (including the Master Plan), together with any required stormwater facilities and other infrastructure, and all other on and off site improvements to be constructed by Tenant on or in connection with the Property.

1.53 Property. “Property” shall mean that parcel of land, comprising approximately 1,292,425 square feet with a minimum Developable Square Footage (as that term is defined in Section 7.3.2) of approximately 862,488 Developable Square Footage, as legally described in **Exhibit A** hereto and depicted on **Exhibit B** hereto, subject to the Permitted Encumbrances, provided that the Developable Square Footage may be increased as provided in Section 7.3.2, but in no event shall the Developable Square Footage be decreased from 862,488 square feet.

1.54 Property Value. “Property Value” shall have the meaning set forth in Section 16.2.1 below.

1.55 Rent. “Rent” shall mean and refer collectively to sums denominated as Base Rent, Additional Rent and any such other sums or charges otherwise payable by Tenant to the Port under the terms of this Agreement. Failure by Tenant to pay any sum denominated as Rent shall entitle the Port to pursue any or all remedies specified in this Agreement or, to the extent not precluded by this Agreement, otherwise allowed by law.

1.56 Rental Deficiency. “Rental Deficiency” shall have the meaning set forth in Section 21.2.2 below.



1.57 Required Management. “Required Management” shall mean appropriate management of Hazardous Substances in compliance with Legal Requirements.

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

1.59 Site Plan. “Site Plan” shall mean the preliminary Site Plan for development of the Property as attached hereto as **Exhibit B**.

1.60 Substantial Completion. “Substantial Completion” shall have the meaning set forth in Section 7.9 below.

1.61 Tenant. “Tenant” shall mean PDC SEATTLE LPIV BB/TH, LLC, and its assignees pursuant to either a Permitted Assignment or with the Port’s consent, whose address for purpose of notices is: 1821 Dock Street, Suite 100, Tacoma, WA 98402.

1.62 Tenant Operations. “Tenant Operations” shall mean and refer to commercial, industrial, light manufacturing, office, and warehouse building operations, consistent with local zoning ordinances, including, without limitation, any and all use, marketing, leasing, maintenance and repair, and management of the Property and the Premises.

1.63 Tenant Parties. “Tenant Parties” shall mean Tenant, its affiliates, successors and assignees (including any Permitted Assignees), subtenants (including any Permitted Sublessee), contractors, or invitees, and the officers, employees and agents of each of the foregoing.

1.64 Term. “Term” shall have the meaning set forth in Section 3.1 below.

1.65 Trade Fixture. “Trade Fixture” shall mean and refer to any furniture, fixtures and/or equipment located on or about the Premises that may be removed from the Premises without causing damage to the Premises that cannot readily be restored or repaired without undue expense and that has not become so related to the Property or the building thereon such that an interest in them arises under real property law.

## ARTICLE 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 Tenant and Tenant hereby leases from the Port the Property for the Term.

2.2 Condition and Use of Property. As of the Commencement Date, Tenant shall be fully familiar with the physical condition of the Property, has received the same and, subject to the Port’s obligations hereunder including, but not limited to, the Port’s obligations with respect to Pre-existing Hazardous Substances, Tenant accepts the Property in its present, “as is” condition, with all faults and defects, known and unknown, without warranty or representation of any kind or character by the Port, including, without limitation, the physical condition of the Property, zoning of the Property, access to or from the Property, or its adequacy for construction

and operation of the Project. Tenant may use the Property for the uses permitted under Article 9 hereof so long as such uses are in conformity with all Legal Requirements affecting the Property, and Tenant will not, by action or inaction, take or allow any action or thing which constitutes a public or private nuisance or waste. Unless Tenant elects to terminate this Agreement on or prior to the expiration of the Due Diligence Period or pursuant to Tenant's Early Termination Contingency, Tenant shall accept the Property subject to all of the Permitted Encumbrances.

2.3 Quiet Enjoyment. So long as Tenant is not in default under this Agreement and subject to the specific provisions, covenants and agreements contained in this Agreement, including, without limitation, the Permitted Encumbrances, the Port covenants and agrees that the quiet and peaceful possession and enjoyment of the Property by Tenant shall not be disturbed or interfered with by the Port or by any other party claiming by or through the Port.

2.4 Intentionally Omitted.

2.5 Intentionally Omitted.

2.6 Rights Reserved to the Port. Tenant acknowledges that Tenant's right to utilize the Property shall at all times be subject to the Port's reserved rights described, and subject to the limitations set forth, in Article 22 and Section 27.10; provided, however, the Port's reserved rights shall only be exercised in accordance with Legal Requirements applicable to Tenant's use and operations of the Premises and with Tenant's reasonable security and safety protocols.

### ARTICLE 3: TERM

3.1 Term. The initial term of this Agreement (the "**Term**") shall commence on the Commencement Date and shall extend through the fiftieth (50th) Agreement Year. In the event that Tenant timely exercises any Extension Option(s) in accordance with Section 3.2, the Term of this Agreement shall automatically be extended by the Extension Term for each such Extension Option exercised. Notwithstanding commencement of the Term on the Commencement Date, the terms and conditions of this Agreement shall become effective and binding on the parties on the Execution Date.

3.2 Extension Options. The Port hereby grants Tenant three (3) successive options to extend the Term of this Agreement (herein referred to individually as an "**Extension Option**") for an additional period of ten (10) years apiece for the first two Extension Options and a period of five (5) years for the third Extension Option (herein referred to individually as "**Extension Term**") on the same terms, covenants, and conditions, except that no additional Extension Options shall apply following the third Extension Term and Rent during any such Extension Terms shall be determined and subject to adjustment pursuant to Section 4.2. Written notices of Tenant's exercise of the Extension Option for each Extension Term must be given to the Port no less than six (6) months prior to the expiration of the then-current Term (the "**Extension Notice Date**"). Tenant shall have no right to exercise its right to extend the Term of this Agreement at such time as an Event of Default is outstanding beyond the applicable notice and cure period; provided, that, if the Port declares an Event of Default within thirty (30) days prior to the Extension Notice Date, and said default is curable, then the period of time within which said option may be exercised shall be extended as reasonably necessary for Tenant to cure the Event

of Default within the applicable cure period set forth in Section 21.2.1 below. In the event that Tenant fails to exercise an Extension Option in the time periods contemplated above, the Term of this Agreement shall expire upon the expiration of the then-current Term (or, as applicable, Extension Term), and Tenant shall have no further right to extend the Term hereof. The Extension Options herein granted to Tenant may not be separated from this Agreement in any manner, by reservation or otherwise, and may only be exercised by Tenant, or an assignee of Tenant under a Permitted Assignment or other assignment of this Agreement consented to by the Port pursuant to Article 25.

3.3 Deposit. Within five (5) business days after the Execution Date, Tenant shall deliver to the Port a refundable deposit in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) in the form of a promissory note (the "Deposit") attached hereto as **Exhibit G** and incorporated herein by reference. Unless Tenant has previously elected to terminate this Agreement, then upon expiration of the Due Diligence Period; the Deposit shall become non-refundable, except in the event Tenant is unable to obtain the Master Plan (in which case the Deposit is to be refunded to Tenant upon Tenants exercise of its Early Termination Contingency), and the promissory note shall be converted to cash and deposited into escrow. If Tenant elects to terminate this Agreement following a date on which the Deposit becomes non-refundable, then the Deposit shall irrevocably become the property of and retained by the Port for its sole account to be used at it sees fit (except in the case of Tenant's exercise of its Early Termination Contingency); provided, however, notwithstanding the foregoing or anything to the contrary contained herein, if Tenant has not elected to terminate this Agreement pursuant to the contingencies described in Sections 6.2.1 or 6.2.2, then effective upon the Commencement Date, the entire Deposit shall be applied towards Base Rent payable under this Agreement until fully applied.

#### ARTICLE 4: RENT

4.1 Payment of Base Rent. Beginning on the Commencement Date, Tenant shall pay Base Rent in advance on the first day of each and every month during the Term (and during any Extension Terms) to the Port without any prior demand therefor and without any abatement, deduction or setoff whatsoever, except as provided herein. 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. For purposes of calculation of Base Rent pursuant to Section 4.2 below, the Port and Tenant agree that the Property shall consist of the Developable Square Footage of the Property as stated in Section 1.53 above and defined in Section 7.3.2 below, provided that the Developable Square Footage may be subject to a one-time adjustment as stated in Section 7.3.2 which adjustment shall be memorialized in an amendment to the Agreement.

4.2 Base Rent. For the period commencing on the Commencement Date and continuing through the Term and any Extension Terms, the Base Rent shall be payable as follows:

4.2.1 During Construction. From the Commencement Date until the first of the following three events occurs, (i) issuance of a temporary certificate of occupancy for the

Project, (ii) Substantial Completion of the Project, or (iii) the five hundred and fortieth (540<sup>th</sup>) day following the Execution date, Tenant will pay Base Rent equal to Forty Cents (\$0.396) per square foot of the Property per year, plus leasehold excise tax. Base Rent shall be payable monthly in equal installments of one-twelfth (1/12) of such amount, as follows:

$$862,488 \text{ sf} \times \$0.396 / 12 = \$28,030.86^*$$

\* plus leasehold excise tax at 12.84% or any rate subsequently imposed by the State of Washington.

4.2.2 Post Construction. From the earlier of (i) issuance of a temporary certificate of occupancy for the Project (ii) Substantial Completion of the Project; or (iii) the five hundred and fortieth (540<sup>th</sup>) day following the Execution Date and for the remaining Term (and Extension Terms), Tenant will pay Three Dollars and Ninety Six Cents (\$3.96) per square foot of the Property per year, plus leasehold excise tax at 12.84%, subject to adjustment as set forth in this Section 4.2, which Base Rent shall be payable monthly in equal installments of one-twelfth (1/12) of such amount, as follows:

$$862,488 \text{ sf} \times \$3.96 / 12 = \$284,621.04^*$$

\* plus leasehold excise tax at 12.84% or any rate subsequently imposed by the State of Washington

4.2.3 Base Rent Adjustments. Throughout the Term and any Extension Terms, Base Rent will increase by fifteen percent (15%) beginning at the sixth (6<sup>th</sup>) Agreement Year and then every five (5) years thereafter (each, an “**Adjustment Date**”). To the extent that the Base Rent is not determined and agreed upon by the parties before the Extension Options are exercised, if Tenant disagrees with the adjustment of the Base Rent for the Extension Term determined after the exercise of the Extension Option, Tenant may withdraw its exercise of the Extension Option and this Agreement will terminate at the end of the existing Term as if the Extension Option had not been exercised.

4.2.4 Base Rent Adjustments Reflecting FMV Re-appraisals. Notwithstanding Section 4.2.3 and after the Base Rent Adjustments are made as provided therein, Base Rent for the sixteenth (16<sup>th</sup>), twenty sixth (26<sup>th</sup>), thirty sixth (36<sup>th</sup>), forty sixth (46<sup>th</sup>), fifty sixth (56<sup>th</sup>), and the sixty sixth (66<sup>th</sup>) Agreement Years (to the extent Tenant chooses to exercise one or more of the 3 Extension Options) will also be adjusted to the then-prevailing fair market rental rate (the “**Fair Market Rent**”) considering similarly-zoned, unimproved industrial property of comparable contiguous Developable Square Footage located within or reasonably proximate to the Property, to be delivered to a new tenant for development as of the applicable Adjustment Date, subject to the Floor and Cap (as such terms are defined below) and subject further to the use limitations set forth in Article 9 hereof (unless a relevant use limitation has been waived in writing by the Port, in its sole and absolute discretion, directly in response to Tenant's written request for such a waiver). The value of any improvements made to the Property will not be considered in establishing the Fair Market Rent (i.e., the Fair Market Rent shall be determined as if there are no improvements on the Property). Notwithstanding anything to the contrary

contained in this Agreement, in no event will the Fair Market Rent adjustments be less than one hundred percent (100%) of the then current Base Rent (the “**Floor**”) or more than one hundred ten percent (110%) of the then current Base Rent (the “**Cap**”).

4.2.4.1 Fair Market Rent Proposal Process. The Port will obtain an appraisal of the fair market rental value of the Property as unimproved land (i.e., ignoring the value of any improvements thereon) no sooner than one hundred eighty (180) days before but not later than one hundred fifty (150) days before the applicable Adjustment Date and will deliver to Tenant and Leasehold Mortgagee a Fair Market Rent proposal along with the appraisal report. In the event the Tenant disputes the Fair Market Rent determination or the Port’s appraisal and the parties do not agree on the adjusted Base Rent for the Property before the ninetieth (90<sup>th</sup>) day prior to the effective date of the adjustment, the Port and Tenant shall each deliver to the other a “Final Offer” on the 90<sup>th</sup> day prior to the effective date of the adjustment and invoke the Rent Dispute Resolution process described in Section 4.2.4.2 below. “**Final Offer**” shall mean the last offer with regard to what the Port or Tenant, respectively, will accept as the rent rate for the Property on the 90<sup>th</sup> day prior to the effective date of the adjustment.

4.2.4.2 Rent Dispute Resolution. Thereafter, the adjusted Fair Market Rent of the Property will be determined by three (3) arbitrators, each of whom shall be a member of one of the Society of Industrial and Office Realtors, the Seattle Chapter of the Appraisal Institute (as an MAI Designated member), the American Society of Real Estate Counselors or the Washington-British Columbia Chapter of the American Institute of Real Estate Appraisers. The Port and Tenant will each select and fully compensate one of the three arbitrators and the third arbitrator will be selected by the other two and compensated in equal shares by the Port and Tenant. Each party shall select an appraiser to be a member of the arbitration panel within twenty-one (21) days of either party invoking the Rent Dispute Resolution process. Each party shall cooperate to expedite the selection of the three arbitrators and in no case may either party delay the selection of the arbitration panel. In the event that there is a dispute with regard to the selection of the third member of the arbitration panel, either party may apply to the Superior Court of King County for appointment of the third member of the arbitration panel. Neither party may use the court process to delay the appointment of the third arbitrator and each party must cooperate with the party applying for appointment to accomplish the appointment of the third arbitrator by the most expeditious means, including acceptance of service if an action is required to be filed, use of the ex parte department or letter to the presiding judge requesting appointment/designation of arbitrator. The arbitration to achieve Rent Dispute Resolution shall be based on an approach to valuation consistent with the standards of professional appraisal practice. For purposes of the Rent Dispute Resolution, the arbitration panel may ask questions and request further information from each party, but the arbitration panel shall have discretion with respect to what the panel deems comparable properties in light of the requirement in Section 4.2.4 that similarly situated industrial property in reasonable proximity to the Property be considered. The arbitrators shall ultimately select one of the Final Offers as the resolution of the dispute and may not render a compromise decision. Leasehold Mortgagee shall participate in the arbitration process to the extent the Tenant refuses or fails to participate after due written notice by Port of Tenant’s failure to or refusal to participate.

4.2.4.3 Required Rent. In the event that the Fair Market Rent cannot be determined until after the applicable Adjustment Date, Tenant shall continue to pay Base Rent at the rate in effect prior to submission of the Fair Market Rent determination to arbitration. Upon final determination of the Fair Market Rent, any underpayment of Base Rent (being the deficit between (i) the amount of Base Rent paid by Tenant following the Adjustment Date and (ii) the amount of Fair Market Rent determined as a result of the arbitration decision (or settlement between the parties in anticipation thereof) shall be promptly paid by Tenant to the Port together with interest at the Default Rate within fifteen (15) days from the arbitration decision (or final approval of such settlement); provided, however, notwithstanding anything to the contrary contained in this Section 4.2.4, in no event shall the Fair Market Rent adjustments be less than the Floor or more than the Cap.

4.3 Absolute Net Agreement; Additional Rent. The Base Rent set forth in this Article 4 is established on the assumption that this Agreement is and shall constitute an absolutely “net, net, net” lease, without deduction, set-off or abatement whatsoever and that, except as expressly provided in this Agreement, the Port will not have to pay any expense or incur any liabilities of any kind in any way relating to, or in connection with, the Property, the Premises or construction or operation of the Project during or attributable to the Term (including any Extension Terms); it is the intent of the parties that Base Rent provided in this Agreement shall be an absolutely net payment to the Port. Accordingly, in addition to Base Rent described in Section 4.2 above, from and after the Commencement Date, Tenant covenants and agrees to pay to the applicable party the following: (a) all property taxes (Article 10); (b) all insurance costs (Article 11); (c) all Operating Expenses (Article 12); (d) all utility charges (Article 12); (e) all maintenance and repair expenses (Article 13); (f) any and all other cost or expense associated with Tenant Operations on and/or use or occupation of the Property, of whatever description, and (g) any other costs, expenses or charges which are the obligation of Tenant under this Agreement, whether imposed in the first instance on the Port or Tenant to the extent that the failure to pay such expenses will result in a liability to the Port or a lien on the fee title to the Property. Except as otherwise provided herein, to the extent that Tenant is billed for and obligated to pay any sums payable by Tenant to the Port pursuant to this Agreement (“**Additional Rent**”), including fees and interest (if any), such Additional Rent shall become due with the next monthly installment of Base Rent and shall be paid to the Port without deduction, set-off or abatement whatsoever. Otherwise, Tenant shall timely pay all such insurance costs, taxes, operating expenses, utility changes directly to the providers of such services or operations. Tenant, however, shall not be required to pay any mortgage indebtedness or any interest on any mortgage incurred by the Port which encumbers the Land only.

4.4 Remittance Address. Any and all payments due to the Port by Tenant shall be remitted to the following address: Port of Seattle, P. O. Box 24507, Seattle, WA 98124-0507 or at such other place as the Port may direct in writing.

4.5 Late Payment. If any payment of Rent is not received by the Port within ten (10) days of when due, Tenant shall pay to the Port a late payment charge equal to five percent (5%) of the amount of such delinquent payment of Rent in addition to the installment of Rent then owing. Notwithstanding anything to the contrary in this Section 4.5, late payment and interest charges shall be subject to a minimum, monthly charge of five hundred dollars (\$500.00). 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, Tenant shall further pay interest on such delinquent payment of Rent and late charge thereafter at the Default Rate. The Port and Tenant recognize that the damages which the Port will suffer as a result of Tenant'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 Tenant's late payment. This provision shall not relieve Tenant from payment of Rent at the time and in the manner herein specified, nor excuse any Event of Default. Acceptance by the Port of any such interest and late charge shall not constitute a waiver of Tenant'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. The Port shall have all of the same remedies for Tenant's failure to pay Additional Rent as for failure to pay Base Rent.

#### ARTICLE 5: TENANT'S SECURITY

5.1 Security. On or before the Commencement Date, Tenant shall pay to the Port a security deposit (hereinafter referred to as the "Security") to secure Tenant's full performance of this Agreement, including, without limitation, the payment of all Rent and other fees and other amounts now or hereafter payable by Tenant under this Agreement. The Security will be in an amount equal to twelve (12) months of Base Rent at the rate set forth in Section 4.2.2 above, in one of the following forms: (i) delivery of an irrevocable stand-by letter of credit issued by a bank in a form reasonably approved by the Port; (ii) delivery to the Port of a cash deposit; (iii) delivery of a bond issued by a bonding company reasonably approved by the Port; (iv) establishment of a custodial deposit account; or (v) delivery of rental insurance in a form and from a company reasonably approved by the Port. The amount of Security shall be adjusted consistent with and on each Adjustment Date set forth in Section 4.2.3 and Section 4.2.4. The Security shall remain in place at all times throughout the Term (including Extension Terms) and throughout any holdover period (provided that in the event of an Assignment of this Agreement, the Port shall accept substitute Security from the assignee, at which time the Port shall return the Security to Tenant as provided in Section 5.2 below.

5.2 Return of Security. The Security is a part of the consideration for execution of this Agreement. If Tenant shall have performed all terms and conditions of this Agreement, the Security shall be returned to Tenant within sixty (60) days following the Agreement termination (or expiration) date; otherwise, the Port shall, in addition to any and all other rights and remedies available under this Agreement or at law or equity, retain title to that portion of the Security sufficient to remedy the default.

5.3 Application of Security. The Port may apply all or part of the Security to unpaid Rent, to cure Events of Default of Tenant, and/or other unpaid sums due under this Agreement. If the Port uses any part of the Security, Tenant shall restore the Security to the then required amount within fifteen (15) days after the receipt of the Port's written request to do so. The retention or application of such Security by the Port pursuant to this Section does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.

## ARTICLE 6: PRE-CONSTRUCTION OBLIGATIONS OF TENANT

6.1 Subdivision/Plat. Tenant shall be responsible for accomplishing any lot consolidation of the Property required to create a single legal lot as necessary for the Site Plan. The Port hereby agrees to cooperate, without cost to the Port, with Tenant's efforts to subdivide the Property, which cooperation shall include, without limitation, the Port's execution of such documents as Tenant may require to initiate, process and consummate Tenant's contemplated subdivision of the Property; provided, the subdivision shall be prosecuted as necessary to establish the Property as a single legal lot as required by Des Moines land use regulations and Tenant shall provide the Port an opportunity to review and approve (such approval not to be unreasonably withheld or delay) the subdivision application prior to its submittal. Construction on the Property shall be consistent with approval required by the City.

### 6.2 Due Diligence Period.

6.2.1 Commencing on the Execution Date, Tenant shall conduct, at its own expense, its pre-construction due diligence on the Property for a period of up to one hundred twenty (120) days after the Execution Date (the "**Due Diligence Period**"). Tenant's rights during the Due Diligence Period shall include physical inspection of the Property (including geotechnical and environmental testing, subject to the Port's reasonable approval of any invasive environmental sampling such as soil or groundwater testing), survey of the Property, collection of engineering information, development of pre-construction architectural information, conducting testing and investigation in accordance with the terms of this Agreement, and other inspection and study of the Property in preparation for development of the Project, all of which are at Tenant's sole expense. Notwithstanding anything to the contrary contained herein, the Port has pre-approved the scope of geotechnical and environmental testing set forth on **Exhibit F** attached hereto (the "**Pre-Approved Testing Scope**"), and the Port shall not unreasonably withhold, condition or delay its approval to any additional testing proposed by Tenant. At any time prior to 5:00 p.m., Pacific Standard Time, on the last day of the Due Diligence Period, Tenant may terminate this Agreement in its sole and absolute discretion by written notice delivered to the Port. If Tenant shall so terminate this Agreement prior to the expiration of the Due Diligence Period, then the Deposit shall be promptly returned to Tenant and neither the Port nor Tenant shall have any further rights or obligations under this Agreement, except for those that by the terms of this Agreement expressly shall survive termination of this Agreement. Failing Tenant's timely termination of this Agreement as set forth in this Section 6.2.1, this Agreement shall remain in full force and effect, subject to Tenant's satisfaction of the Early Termination Contingency, and the Deposit held by the Port shall be retained or refunded by the Port subject to and in accordance with the terms of this Agreement, including, without limitation, Section 3.3 above and 6.2.2 below. Tenant shall indemnify the Port from any and all personal injury, injury or death to any person, and/or damage to the Property in accordance with the provisions of Section 11.1 below to the extent arising from Tenant and/or its investigative consultants conducting activities at the Property during the Due Diligence Period (or otherwise prior to the Commencement Date); provided, however, the foregoing indemnity shall not apply with respect to any claims to the extent arising from the negligence or fault of the Port, its officers, directors, shareholders, agents or employees. Furthermore, Tenant shall assure that its investigative consultants conducting activities at the Property during the Due Diligence Period



(or otherwise prior to the Commencement Date) maintain (or Tenant may elect to maintain on such parties' behalf), prior to commencement of any such investigative activities on the Property during the Due Diligence Period, commercial general liability and auto liability insurance in accordance with the provisions of Section 11.2 below.

6.2.2 Early Termination Contingency.

6.2.2.1 [Intentionally Deleted]

6.2.2.2 If Tenant has not terminated this Agreement prior to expiration of the Due Diligence Period, and: (1) Tenant is not satisfied (as determined by Tenant in its sole and absolute discretion) with its Master Plan or the conditions thereof following issuance of the Master Plan; or (2) issuance of such Master Plan has not been finally completed by the day that is three hundred and sixty five (365) days after the Execution Date, then, Tenant may elect to terminate this Agreement prior to 5:00 p.m., Pacific Standard Time on the date that is seven (7) days following issuance of the Master Plan, or alternately the day that is three hundred and sixty five (365) days following the Execution Date, whichever is first to occur, by providing written notice to the Port (the “**Tenant Early Termination Contingency**”). Additionally, the Port may elect to terminate this Agreement prior to 5:00 p.m., Pacific Standard Time on the date that is four hundred and fifty five (455) days after the Execution Date by providing written notice to Tenant, provided that the Port may only exercise this termination option if the Master Plan has not been issued by that date (the “**Port Early Termination Contingency**”, with both the Tenant Early Termination Contingency and the Port Early Termination Contingency being an “**Early Termination Contingency**”). Notwithstanding the Port’s early termination right, Tenant shall have the option to extend the foregoing 455-day period by ninety (90) days by (i) providing written notice of its election to extend the period at least five (5) business days prior to the expiration of the 455-day period, and (ii) depositing an additional deposit in the form of a promissory note in the amount of one hundred thousand dollars (\$100,000) with the Port, which additional deposit shall be subject to the same terms and conditions as the Deposit required pursuant to Section 3.3. Both the Tenant Early Termination Contingency and the Port Early Termination Contingency shall expire seven (7) business days following an event which triggers either contingency. Upon either Tenant’s or Port’s timely termination in compliance with this Section 6.2.2, the Deposit shall be handled in accordance with Section 3.3, this Agreement shall terminate, and neither the Port nor Tenant shall have any further rights or obligations under this Agreement, except (i) for those obligations that by the terms of this Agreement expressly shall survive termination of this Agreement and (ii) Tenant’s assignment obligations under Section 6.2.2.3 below.

6.2.2.3 In the event either Tenant or Port elects to terminate this Agreement in accordance with this Section 6.2.2 then, subject to the rights of any Leasehold Mortgagee, upon the Port’s written request and at its sole option, Tenant shall fully and irrevocably assign to the Port, in consideration for the Port’s payment of Ten and 00/100 Dollars (\$10.00), all of Tenant’s right, title and interest in and to (for the Port’s ownership and unlimited use): (a) all preliminary, final, and working plans and specifications for or relating to the Project, and drawings and construction documentation prepared in connection therewith, and (b) all permits, approvals, dedications, entitlements and/or related development rights, and all

applications with applicable Authorities relating thereto, including, without limitation, the Master Plan, relating to the Property, the Premises and/or the Project, which assignment shall be in form reasonably satisfactory to the Port ("Assignment Option") (provided that the Port may not exercise its option under this Section 6.2.2 unless and until this Agreement has been terminated and each Leasehold Mortgagee has failed to exercise its right to assume Tenant's right and obligations under this Agreement or to a New Lease). Tenant shall use commercially reasonable efforts to permit (and upon the Port's request evidence) that Tenant's contracts with its architect(s), engineer(s), general contractor and other consultants provide for such Assignment Option, without the further consent of said parties. Upon termination of this Agreement pursuant to this Section 6.2.2, and upon the Port's exercise of the Assignment Option, Tenant agrees to execute all such documents, consents or acknowledgments as necessary to affect and finalize the assignment described herein; provided that in no event shall Tenant be obligated to make any representations or warranties, and all such deliverables shall be on an as-is basis without any representation or warranty whatsoever.

6.2.2.4 Failing Tenant's or Port's timely termination as set forth in this Section 6.2.2, the contingency described in this Section 6.2.2 shall be deemed satisfied and waived, this Agreement shall remain in full force and effect, and the Port and Tenant shall proceed in accordance with the terms hereof (including, without limitation, Tenant's construction of the Project in accordance with the terms hereof) and the Deposit held by the Port shall be handled in accordance with Section 3.3.

6.3 Pre-Construction Environmental Evaluation. Without limiting Tenant's other rights of inspection during the Due Diligence Period, Tenant shall, at its own expense, conduct a "**Pre-Construction Environmental Evaluation**" on the Property in accordance with the provisions of the Pre-Construction Environmental Evaluation Scope attached as **Exhibit F** attached hereto and the Environmental Construction Support Work Plan described in Section 6.4 below. Tenant shall not conduct any environmental sampling, testing, or other investigation of or on the Property without Landlord's prior written approval of a sampling/investigation plan. Tenant will provide copies of all final reports and documenting data, sampling results, or other results of any such investigation to Landlord within five (5) business days of receiving such results. Following completion of the Pre-Construction Environmental Evaluation on the Property, a final "**Pre-Construction Environmental Evaluation Report**", summarizing the results of the Pre-Construction Environmental Evaluation shall be prepared by Tenant and submitted to the Port no later than five (5) business days after Tenant's receipt of such final Pre-Construction Environmental Evaluation Report. The Port shall have a period of twenty (20) days to review and approve the final findings of the Pre-Construction Environmental Evaluation Report, which approval shall not be unreasonably withheld, conditioned or delayed. Except for unknown pre-Existing Hazardous Substances that are found during the Earthwork Construction Period for construction of the Project that are deemed to have existed prior to the Commencement Date, and consistent with Section 1.50 above, any Hazardous Substances identified in the course of the Pre-Construction Environmental Evaluation and discussed in the final approved Pre-Construction Environmental Evaluation Report in concentrations exceeding industrial cleanup levels applicable to the property under the Washington Model Toxics Control Act, chapter 70A.305 RCW shall be the basis for defining the term Pre-Existing Hazardous Substances as it used in this Agreement and defined in Section 1.50. During the Due Diligence Period and except in

cases of an emergency or where otherwise required by law, if Tenant or Tenant Parties discover any Pre-Existing Hazardous Substances that, in Tenant's professional judgment, may require reporting to a local, state, or federal agency with enforcement authority under applicable Environmental Laws, Tenant shall not report such discovery to any such agency (unless Tenant is otherwise legally required to report the same to any such agency) but shall instead report the discovery to the Port, which will notify appropriate local, state, or federal agencies in accordance with the requirements of applicable Environmental Laws.

#### 6.4 Environmental Construction Support Work Plan.

6.4.1 The parties acknowledge that Tenant will prepare a draft and final Environmental Construction Support Work Plan based on the findings described in the Pre-Construction Environmental Evaluation. Tenant shall submit to the Port a draft Environmental Construction Support Work Plan for the Port's review, and the Port shall provide any comments (if any) no later than ten (10) days after its receipt of the draft. No later than ninety (90) days prior to the Earthwork Construction Start Date, Tenant shall provide the Port with its final Environmental Construction Support Work Plan which incorporates the reasonable comments (if any) that were timely provided by the Port, and which also captures any updates to the Work Plan that Tenant deems necessary.

6.4.2 Purpose. The primary purpose of the Work Plan is to ensure during the Earthwork Construction period of the Project, that Tenant performs the proper identification, management and record keeping of Hazardous Substances. In addition, the Work Plan shall be designed to facilitate the Earthwork Construction of the Project, regardless of the presence of contamination conditions, consistent with construction plans and specifications, the construction contract, and in compliance with all Legal Requirements.

6.4.3 Contents. The Work Plan shall include at least the following information, delegation of responsibilities, and standard operating procedures:

- (a) Personnel roles and responsibilities, including contact information and process for unanticipated condition call-out;
- (b) Environmental professional minimum qualifications;
- (c) Designation of known contaminated areas (if any) in construction documents;
- (d) Field inspection of construction project areas; and
- (e) Use of standardized procedures as required by applicable permits and permit conditions and best management practices, and to report periodically to the Port) with respect to Required Management of Pre-Existing Hazardous Substances, including but not limited to:
  - (i) Field screening, sample collection and laboratory analysis;

- (ii) Construction excavation of known contaminated areas (if any);
- (iii) Construction excavation of unanticipated soil contamination;
- (iv) Underground storage tank removal (if any);
- (v) Removal of soil containing free draining product (if any);
- (vi) Soil handling and disposal, including identification of contamination action levels for offsite disposal, restricted onsite reuse, and/or unrestricted onsite reuse, in coordination with designed excavation limits and geotechnical suitability determinations;
- (vii) Determination of whether suspected contaminated materials will be managed by direct-haul or on-site stockpiling;
- (viii) Response to contractor spills or other releases, verification of cleanup, and appropriate documentation;
- (ix) In-field dispute resolution; and
- (x) Required construction support documentation.

6.5 Permit Applications. To the extent Tenant requires governmental permits or approvals, the following provisions shall apply: Subject to the requirements of Article 7, Tenant shall have the right, at Tenant's sole cost and expense, to commence and prosecute any proceedings necessary to cause the issuance of any development approvals, conditional use, grade and fill, building and any other governmental permits or approvals desired by Tenant in connection with the development of the Project or Tenant Operations. At least twenty (20) business days prior to Tenant's submittal of the Master Plan application to the City, Tenant shall seek the Port's review and approval of said submittal, which approval shall not be unreasonably withheld, conditioned, or delayed. The Port agrees to execute an authorization letter pursuant to Section 7.1.1 of this Agreement, and such other documents as Tenant may reasonably request in such regard and for such purpose and the Port further agrees to support and otherwise fully cooperate with such action commenced by Tenant; provided that, except as otherwise provided in this Agreement, in so cooperating: (i) the Port shall not be required to incur any expense (including any cost for outside counsel or third party consultants), in doing so; (ii) Tenant shall exercise commercially reasonable efforts (not including variances or other processes for deviations from normal code requirements) to cause any such document to be so worded or submitted as to leave the Port and the Property and all other Port property without residual liabilities, obligations or encumbrances should Tenant fail to proceed with this Agreement; (iii) no action affecting the Property or any other Port property shall be finalized and no document referencing the Property or any other Port property shall be recorded without the Port's express written consent to such finality or recording, which shall not be unreasonably withheld, conditioned, or delayed (and, unless otherwise indicated, the Port's execution of an application

or petition shall not constitute the Port's consent to finalization of the action requested in such application or petition or to recording of any document); provided, however, the Port's consent shall not be required to the extent any such action or document only pertains to Tenant's leasehold interest in the Premises; (iv) the terms of such permits and any associated agreements are subject to the approval of the Port to the extent that the terms thereof would bind the Port following expiration or termination of this Agreement, except that once the Final Plans have been approved by the Port, no further approvals will be required, with respect to work pursuant and in accordance with the Final Plans, for the construction plans and specifications, shop drawings, utility agreements (other than easements which only the Port can grant), grading and building permits for horizontal or vertical construction of improvements or any modifications thereto or final approval of the construction of the improvements (however, Tenant shall provide copies of the approved construction plans and specifications, building permit, and final Certificate of Occupancy and as-built plans to the Port); (v) such documents shall provide that the Port shall have no liability during the Term for any costs or other liabilities related solely to such permits or approvals; and (vi) Tenant may not execute any documents that constitute an encumbrance on the Port's fee interest to the Property or conveyance of the title to the Property or other Port property (except for a Memorandum of an authorized sublease that may be recorded).

6.6 Permanent Improvements. Prior to the Commencement Date, and further subject to the provisions of Article 7 below, Tenant shall not and shall have no authority whatsoever to make any improvements to the Property or commence any construction of the Project, including, without limitation, any portion of the Demolition Phase or other Earthwork Construction.

## ARTICLE 7: CONSTRUCTION, OPERATION AND OWNERSHIP OF THE PROJECT

7.1 Construction of the Project. Following the Commencement Date, Tenant shall commence the construction of the Project designed for the uses permitted by Article 9, subject to the terms and conditions of this Agreement, including all provisions of this Article 7. The Project shall be of fire-resistant construction according to the standards and ratings of the local fire insurance rating organization. It shall be constructed in good and workmanlike manner and in accordance with all Legal Requirements, and with the requirements of the foregoing rating organization. Tenant or its designee shall obtain all necessary permits and approvals, including any discretionary permits, from all Authorities having jurisdiction over the Property and the Project, including, without limitation, the City, the Washington Department of Ecology ("Ecology"), Washington Department of Fish and Wildlife and the Army Corps of Engineers. The plans and specifications shall be prepared by a duly qualified architect(s) and professional engineer(s) licensed in the State of Washington approved by the Port and employed by Tenant. The Port hereby pre-approves the architects, engineers and other consultants set forth on **Exhibit I**. The Port shall reasonably cooperate, at no cost to the Port in such permitting processes, including, without limitation, execution of required applications.

7.1.1 Authorization Letter. Following mutual execution of this Agreement, the Port will provide letters to the City and any other applicable permitting Authority, authorizing Tenant to sign on behalf of the Port with respect to any permit applications required for the Project. Said letters will be in a form and contain such information required by the applicable

permitting Authority to effectuate the foregoing authorization. Further, in connection with other valuable consideration being exchanged in this Agreement, Tenant shall be entitled to any benefits, as applicant for its permits, that permitting jurisdictions or agencies would otherwise make available to the Port.

7.2 Project Fully Contained Within the Property. Except as otherwise provided in this Agreement, the Project shall be a complete independent building or buildings erected wholly within the boundary lines of the Property. Furthermore, all appurtenances thereto, specifically including but not limited to any parking necessary for Tenant or for any agent, employee, guest or invitee of any such Person, shall also be erected or constructed within the boundary lines of the Property. The parties acknowledge that the Tenant may be required to construct or pay for construction of certain utilities and other infrastructure in connection with the Project, all of which shall be conducted in full accordance with the Final Plans and all Legal Requirements; Tenant acknowledges and agrees that the costs of bringing utilities or infrastructure to the Property, including, without limitation, stormwater facilities and infrastructure as necessary to connect with City utility service, shall be the sole responsibility and performed at the sole cost and expense of Tenant.

7.3 Port Review of Project.

7.3.1 Site Plan. The Port and Tenant hereby confirm their approval of the preliminary Site Plan attached hereto as **Exhibit B**.

7.3.2 Final Plans. Prior to the Commencement Date, Tenant will prepare and deliver preliminary plans and specifications for the Project, substantially conforming with the preliminary Site Plan. The Port will review, inspect and approve the work related to the design at thirty percent (30%), sixty percent (60%), and one hundred percent (100%). Tenant will prepare final plans and specifications substantially conforming with any preliminary plans previously approved by the Port and submit them to the Port for approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any disapproval by the Port will be given by written notice to Tenant specifying the reasons for such disapproval. The Port will complete its review, and provide notice of its approval or disapproval, within twenty (20) days following its receipt of each phase of design submittals (plans and specifications) (30%, 60% and 100%) Tenant's proposed final plans and specification, and the Port's failure to timely respond shall be deemed the Port's approval thereof. Notwithstanding the foregoing or anything to the contrary contained herein, (a) in no event shall the Port be permitted to disapprove any plans unless such plans materially deviate from the most recent previously approved plans (or Site Plan), as applicable, and (b) the Port hereby agrees that it may not disapprove any plans (or other instrument depicting the Project) based on a reduction of square footage of the vertical improvements to be constructed on the Property. Notwithstanding the foregoing, the Port may require Tenant to modify any plans and specifications prepared for the Project to incorporate mitigation measures (if any) that are required by any Authority with jurisdiction over the Property or Project, in connection with the SEPA analysis for a Project permit or entitlement (including Master Plan approval) required by Tenant. Following approval by the Port, the final plans and specifications will be referred to as the "**Final Plans**." In connection with the Port's review and approval of the Final Plans, the Parties shall agree upon a "**Developable Square**

**Footage”** of the Property, which shall represent the area of the Property that, subject to regulations regarding setbacks, critical areas, wetlands, and applicable development regulations, can be used for development (the terms Developable Square Footage and “Developable Square Feet” shall be used interchangeably in this Agreement). In no event shall the Developable Square Footage be less than 862,488 square feet. The Developable Square Footage shall be used to calculate the Base Rent owed by Tenant pursuant to Article 4. The Parties shall execute an amendment to this Agreement memorializing the Developable Square Footage, which amendment shall not require Port of Seattle Commission approval if the process herein is followed. To the extent the Permit Plans, defined below in Section 7.3.3, indicate a Developable Square Footage or comparable figure, it shall be the same as the Developable Square Footage agreed to by the Parties in this Section 7.3.2.

7.3.3 Permit Plans. Subject to the provisions of this Section 7.3, Tenant shall prepare a permit ready set of plans and specifications at the appropriate stage of design substantially conforming to the Final Plans and provide a copy to the Port. The permit set plans provided shall be referred to as the “**Permit Plans**.”

7.3.4 Consultant Review. The parties acknowledge that the Port will engage a third-party representative to: (i) coordinate with Tenant throughout the design, design approval, permitting and construction process and (ii) interface with the Port’s staff throughout planning, design and construction of the site utilities and infrastructure for the Project. Tenant agrees to reimburse the Port for the reasonable third-party expenses actually incurred by the Port in engaging such representative not to exceed (in the aggregate) Fifty Thousand Dollars (\$50,000.00) within thirty (30) days following Tenant’s receipt of a written invoice from the Port for such reimbursement.

7.3.5 Port Review. The Port’s review or approval (or review by any agent or representative of the Port) of any design, plans, specifications, permit applications or construction work relating to the Project, shall under no circumstances be deemed to be a representation or warranty by the Port that the design, plans, specifications, permit applications or construction complies with applicable Legal Requirements or are suited for their intended purpose. Tenant waives any claims against the Port Parties with respect to any such review or approval by the Port or any agent or representative of the Port, including, without limitation, Tenant’s reliance upon such review or approval.

7.4 Project Permits. After completion, acceptance and initialing of the Permit Plans by the parties hereto, Tenant shall, at its expense, promptly submit the Permit Plans and any other documents required for construction of the Project to all Authorities having jurisdiction with respect to the erection of the Project for any and all governmental approvals. The Port and Tenant hereby agree not to unreasonably withhold, condition, or delay their consent to the modification of the Permit Plans in order to secure governmental approvals. Tenant shall use its best efforts to obtain all necessary governmental approvals from said Authorities as soon as practicably possible and the Port shall use its reasonable efforts to cooperate with Tenant, at no cost to the Port, and subject to Section 6.6 above, in connection therewith.

7.5 Intentionally Omitted.

7.6 General Contractor Review; Contractor's Surety Bonds. Before any construction on the Property is commenced, Tenant shall provide for the Port's review: (i) a complete copy of Tenant's contract with Tenant's general contractor; (ii) documentary evidence in a form reasonably satisfactory to the Port in its commercially reasonable discretion of the financial condition of Tenant's general contractor and wherewithal to construct the Project; and (iii) a true and correct copy of the general contractor's payment and performance bond (the "**Contractor's Surety Bond**"), which shall be in an amount equal to the contract price for the construction of the Project (and adjustable to cover any material increases to the contract price during the course of construction), and evidence of irrevocable issuance thereof by the general contractor's surety. Notwithstanding the foregoing, by reviewing the foregoing documentation, the Port is not in any way accepting responsibility or liability under Tenant's construction contract with its general contractor or any subcontractor, or in any way agreeing to diminish or waive any of its rights under this Agreement.

7.7 Payment of Prevailing Wage. Tenant agrees to comply with the Prevailing Wage requirements of Chapter 39.12 of the Revised Code of Washington, as amended, and include language in Tenant's contract with the general contractor for the Project obligating the general contractor on the Project and all subcontractors to pay all laborers, workers and mechanics that perform any part of the work on the Project wages that meet or exceed the prevailing wage rates as required by said RCW Chapter 39.12. Tenant shall monitor the general contractor's and subcontractors' compliance with the requirements of this Section 7.7; any failure by Tenant or Tenant causing its general contractor or subcontractor at any tier to meet the requirements of this Section 7.7 shall be a material breach of this Agreement. In connection with the Project, Tenant will be required to submit to the Port "Statements of Intent to Pay Prevailing Wages" for its general contractor and subcontractors at all tiers prior to submitting payment applications for any subcontractors or sub tier's work on the Property, with such statements of intent to include the contractor's registration certificate number; the prevailing rate of wage for each classification of workers; and the estimated number of workers in each classification. At the Port's request, at any time prior to Substantial Completion, Tenant shall further provide the Port with satisfactory evidence of prevailing wage payments by all contractors and subcontractors working on the Project, including, as required by the Port, "Affidavits of Wages Paid" executed by Tenant's general contractor and subcontractors at all tiers, with such affidavits to include the contractor's registration certificate number; the prevailing rate of wage for each classification of workers; and the estimated number of workers in each classification.

7.8 Work Continuity. Tenant acknowledges the benefit to the Project of anticipated work being done on time and without disruption or delay and that avoiding strikes, lockouts, or other work stoppages or slowdowns on the Project is critical to achieving these goals. In connection with its initial proposal for the Project to the Port, Tenant committed to requiring its general contractor for the Project to enter into an agreement intended to avoid strikes, lockouts, or other work stoppages or slowdowns on the Project. As such, Tenant agrees to require its selected general contractor to execute an agreement with the relevant building trades unions, on such terms as are acceptable to the general contractor, designed to prevent strikes, lockouts, or other work stoppages or slowdowns on the Project. Tenant's failure to meet the requirements of this Section 7.8 shall be a material breach of this Agreement.



7.9 Diligent Prosecution of Construction; Substantial Completion. After construction is commenced, it shall be prosecuted diligently as set forth in Section 7.9.1 below (subject to Force Majeure Events), in accordance with the Final Plans, in a good and workmanlike manner and in compliance with all Legal Requirements and pursuant to the conditions of the governmental approvals until Substantial Completion (as defined below) has occurred. Substantial completion (“**Substantial Completion**”) of the Project shall occur when Tenant’s construction of the Project has been completed as evidenced by the issuance by the general contractor and the Project architect of a Certificate of Completion on an accepted AIA or similar form, notwithstanding that minor or insubstantial details of construction, mechanical adjustment or decoration remain to be performed, the non-completion of which would not interfere with opening the Project for business or obtaining a Certificate of Completion.

7.9.1. Tenant shall prosecute the Project in accordance with the following timetable (the “**Timetable**”):

(a) Subject to delays due to Force Majeure Events, Tenant shall use commercially reasonable efforts to achieve Substantial Completion of the Project on or before the date that is twenty-four (24) months after the Earthwork Construction Start Date.

7.10 Certificate of Occupancy. Notwithstanding Substantial Completion of the Project, Tenant shall use reasonable efforts to cause its contractor to diligently proceed to complete full construction of the Project and obtain a permanent certificate of occupancy (or its substantial equivalent) for the Project following Tenant’s successful subleasing of the Premises and the lawful occupancy by such subtenant. Upon issuance by the City of a permanent certificate of occupancy (or its substantial equivalent) for the Project, with all construction work on the Project fully completed in accordance with all Final Permit requirements and conditions and the terms of this Agreement, including all final punch list items, Tenant shall be deemed to have achieved final completion of the Project (“**Final Completion**”).

7.11 As-Built Drawings. Tenant shall deliver to the Port full and complete “as built” drawings of the Project in machine readable format in full conformance with the Port’s CAD standards manual and complete operations and maintenance manuals within three (3) months after Substantial Completion or, if later, within one (1) month following Final Completion.

7.12 Ownership of Project. Tenant shall own the Project as it is built “brick by brick.” At all times while this Agreement is in force, title to the Project shall belong solely to the Tenant. Upon expiration or earlier termination of this Agreement (and subject to Article 17), title to the Project (and any additional or new improvements or Alterations) then situated on the Property shall pass automatically to the Port, without payment therefor, and Tenant shall have no further rights therein.

7.13 Sustainable Development. The Port encourages Tenant to integrate sustainable development elements in the planning, design, construction and operation of the Project to the extent such elements are technically and financially practical, including but not limited to the incorporation of sustainable materials and construction practices, the incorporation of design and

technologies to reduce energy use, and consideration of Leadership in Energy and Environmental Design certification for new construction. This Section is aspirational and not specifically enforceable.

7.14 Intentionally Omitted.

7.15 Costs of Construction. Tenant shall bear all costs and expenses of any kind or description whatsoever associated with or arising from the planning, design and construction of the Project, all in full compliance with all Legal Requirements, which costs and expenses include without limitation: (a) all design, engineering, entitlement, financing and construction costs and expenses (i.e., all “hard” and “soft” costs of construction); (b) all costs of processing an obtaining local, state and federal permitting and governmental approvals for the Project; (c) all development and/or impact fees and the cost of mitigation measures, conditions or requirements resultant from any required permitting or governmental approvals; (d) all costs of addressing and constructing the Project in conjunction with any existing utilities or infrastructure on or under the Property; (e) all costs of bringing utilities and infrastructure to the Property and all utility hook up and connection fees and all distribution facilities, conduits, pipelines and cables, together with any required stormwater facilities and other infrastructure; (f) all taxes and development or building fees or assessments, each of which may be charged on the basis of the size and type of the improvements constructed as part of the Project; (g) all impact fees and the cost of mitigation measures resultant from any required permitting or governmental approvals; (h) any other costs relating to environmental conditions of any kind on the Property, including the costs related to the presence of Pre-Existing Hazardous Substances, and any associated remediation thereof necessary for development and construction of the Project; and (i) any and all costs or expenses, including delay costs, expenses or liabilities, resulting from design changes, construction changes, or schedule changes, including those resulting from or in any way relating to unanticipated, changed or unknown conditions.

ARTICLE 8: ALTERATIONS; OWNERSHIP OF CERTAIN INSTALLATIONS

8.1 Alterations. Subject to Section 8.2, Tenant, after Substantial Completion of the Project, may from time to time during the Term make such changes, alterations, additions, substitutions, tenant improvements, or improvements (collectively referred to as “**Alterations**”) to the Project as Tenant may reasonably consider necessary and desirable to adapt or equip the Project for Tenant’s use and occupancy and as necessary to comply during the Term (including any Extension Terms) with all Legal Requirements, consistent with the permitted use of the Property and the Premises as set forth in Section 9.1 below. All Alterations, including those subject to Port consent pursuant to Section 8.2. below, shall be performed at Tenant’s sole cost and expense. Other than those Alterations subject to the limitations of Section 8.2, all other Alterations shall not require the consent of the Port.

8.2 Limitations on Alterations. Tenant shall make no Alterations that will impact the electrical, natural gas, water, sewer or other utility systems of the Project that are reasonably likely to affect systems serving properties outside of the Property or Premises, unless Tenant shall first deliver plans and specifications to the Port and obtain the Port’s prior written approval thereof which shall not be unreasonably withheld, conditioned, or delayed following the Port’s

receipt of the proposed plans and specifications therefor as well as any permits required by any Authority other than the Port. Port shall deliver its approval of or comments to the plans and specifications within ten (10) business days of receipt.

8.3 Requirements for All Alterations. Any Alteration shall be performed (i) in a good and workmanlike manner, (ii) in compliance with all Legal Requirements, (iii) in a manner that will not unreasonably interfere with or disturb the Port or its tenants of Port property other than the Property, and (iv) at Tenant's sole cost and expense. Tenant shall provide as-built drawings of any material alterations within thirty (30) business days following completion.

8.4 Trade Fixtures. Tenant or its subtenants shall retain ownership of all Trade Fixtures and business equipment and furnishings from time to time installed in the Project by Tenant at its expense. Tenant may remove any Trade Fixtures or other property of Tenant or any subtenant at any time during the Term and shall remove all thereof 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 Tenant, or be deemed abandoned and removed by the Port, at Tenant's expense. Upon any removal of such Trade Fixtures, Tenant shall promptly repair any and all damage to the Property or Premises caused thereby and reimburse the Port for its costs and expenses in removing any such Trade Fixtures not removed by Tenant and repairing any such damage not repaired by Tenant. This covenant shall survive the termination of this Agreement.

8.5 Prevailing Wage. The Prevailing Wage requirements of Section 7.7, above, shall apply to all Alterations performed pursuant to this Section 8.

## ARTICLE 9: USE

9.1 Use of Premises. Subject to and in accordance with all present and future Legal Requirements, Tenant shall have the right to use the Premises as a high-quality business park to include such uses as commercial, industrial, research and development, office, light manufacturing, and warehouse building operations, all as allowed by the zoning designation of the City of Des Moines. Notwithstanding the foregoing, if the use for the Premises is to be an office use, the Port and Tenant shall engage in a one-time Base Rent Adjustment to account for this use, pursuant to the Base Rent Adjustment process outlined in Section 4.2.4, with the appraisal(s) being based on the highest and best use of the Property, rather than the use identified in Section 4.2.4. The Base Rent Adjustment discussed in this Section 9.1 shall apply only to Post Construction Base Rent, even if the Base Rent Adjustment process is initiated and/or completed prior to Post Construction Base Rent becoming due. For any use other than what is described in the first sentence of this subsection, Tenant shall obtain the Port's prior approval, which shall not be unreasonably withheld, conditioned or delayed; provided, that notwithstanding any present or future Legal Requirements, unless otherwise approved by the Port, the Port shall have the right to deny approval for proposed use which consists primarily of (a) , residential, retail sales (other than e-commerce), retail services (other than warehouse and transportation uses in support of e-commerce retail services), entertainment or lodging uses or (b) a combination of the uses identified in the foregoing clause (a), which in either event, in the Port's sole and absolute discretion, are deemed incompatible with use and function of the Port's

surrounding airport facilities and related industrial activities. Notwithstanding anything contained in this Section 9.1 to the contrary, neither Tenant nor any future subtenant, assignee, licensee or other successor in interest shall be permitted to use the Premises as a Flight Kitchen. Any failure to adhere to the aforementioned prohibition shall be a material breach of this Agreement. The parties stipulate that the operation of a Flight Kitchen on the Premises creates an irreparable harm to the Port and existing operators of Flight Kitchens located outside of the Premises. Accordingly, the parties hereby consent that any party to this Agreement seeking to enforce this prohibition shall be entitled to injunctive relief.

9.2 General Standards Governing Use. Tenant shall not use or occupy or permit the Premises or any part thereof to be used or occupied, not do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way (i) violate any applicable Legal Requirements, or (ii) violate any of the covenants, agreements, provisions and conditions of this Agreement, or (iii) violate the certificate of occupancy then in force with respect thereto, or (iv) as will constitute a public or private nuisance.

9.3 Signs. Tenant may install, post, erect and, as Tenant desires or may be required, illuminate exterior facility identification, traffic control, safety, security, ADA, other code required signage, marketing signs (e.g., for lease), signage for occupants and other Project identifying signage, all in compliance with applicable building code, municipal code requirements, and other applicable Legal Requirements. At the termination or sooner expiration of this Agreement, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Tenant shall be removed by Tenant at its own expense, and Tenant shall repair any damage or injury to the Property or Premises and correct any unsightly condition caused by the maintenance and removal of said signs, etc.

## ARTICLE 10: REAL AND PERSONAL PROPERTY TAXES

10.1 Payment of Real Property Taxes by Tenant. Tenant shall be liable for, and shall pay throughout the Term and all Extension Terms of this Agreement, all license and excise fees payable for, or on account of, the activities conducted on the Premises and all taxes on the property of Tenant on the Premises and any taxes or assessments (including any current or future local improvement district assessments and/or special assessments) on or with respect to the Property, the Premises, the Project (and/or operation thereof) and/or on the leasehold interest created by this Agreement with respect to periods during the Term (including any Extension Terms) 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 Tenant or on the Port and including, without limitation, leasehold excise tax due under Chapter 82.29A of the Revised Code of Washington. Notwithstanding the foregoing, the Port shall not be permitted to encumber the Premises with any improvement district assessments or special assessments without Tenant's prior written approval; provided, that for avoidance of doubt, the Port shall not be obligated to challenge any such improvement district or special assessments with respect to the Property and all such assessments and the costs thereof, shall be the obligation and solely for the account of Tenant. The Port shall not interfere with Tenant's own advocacy or challenge relating to any improvement district or special assessments or amounts assessed thereunder, but shall be free at its sole option, without liability to Tenant, to advocate for, to remain neutral with

respect to or to challenge any proposed new improvement district or special assessments with respect to its properties, including the Property. Tenant shall reimburse the Port for all such taxes paid or payable by the Port that pertain to periods during the Term (including any Extension Terms). With respect to any such taxes payable by the Port that are on or measured by the rent or fee payments hereunder, Tenant 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 Tenant shall be payable by Tenant to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Tenant shall be entitled to a minimum of thirty (30) days' written notice of the amounts payable by it.

10.2 Tenant's Personal Property Taxes. Tenant shall pay or cause to be paid, prior to delinquency, any and all taxes and assessments levied upon all Trade Fixtures, inventories and other real or personal property placed or installed in and upon the Premises by Tenant. If any such taxes on Tenant'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, Tenant shall, upon demand, repay to the Port the taxes so levied.

## ARTICLE 11: INDEMNITY AND INSURANCE

### 11.1 Indemnity.

11.1.1 Waiver by Tenant. Except to the extent of the negligence or other fault of one or more Port Parties (defined below), the Port, its Commissioners, officers, employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property on the Premises regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Tenant or by others, including but not limited to all persons directly or indirectly employed by Tenant, any other occupants of the Property, or any agents, contractors, subcontractors, licensees or invitees thereof, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to the use or occupancy of the Premises by Tenant. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, Tenant hereby agrees that the Port shall not be liable for injury to Tenant's personal property or its business or any loss of income therefrom, whether such injury or loss results from conditions arising upon the Property, including any interruption of services and utilities or any casualty or condemnation, whether the cause of such injury or loss or the means of repairing the same is inaccessible to the Port or Tenant.

11.1.2 Indemnity by Tenant. Effective as of the Commencement Date (and prior to the Commencement Date as set forth in Section 6.2.1) and continuing through the Term and any Extension Terms, Tenant shall defend (with counsel approved by the Port and Tenant's insurer), fully indemnify, and hold entirely free and harmless the Port and its Commissioners, officers, employees and agents (each, a "**Port Party**" and, collectively, the "**Port Parties**") from any and all loss, damages, expenses, reasonable attorneys' fees, consultants' fees, court costs and other costs for or from: (a) anything and everything whatsoever arising from the condition of the Premises; (b) the occupancy of the Premises by the Tenant or subtenant, licensee, invitee or

concessionaire of Tenant; and (c) any accident, injury, death or damage to any party however caused in or about the Premises, whether or not caused by the negligence of Tenant or any third party; and (d) any fault or negligence by Tenant or any sublessee, licensee, invitee or concessionaire of the Tenant or of any officer, agent, employee, guest or invitee of any such Person. Notwithstanding the foregoing, nothing herein shall require Tenant to indemnify the Port from any accident, injury, death, loss, damage, or expenses to the extent arising from the negligence or other fault of a Port Party. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus Tenant expressly waives its immunity under industrial insurance, Title 51 RCW, as necessary to effectuate this indemnity; provided, however, that such extension shall not be interpreted or construed as a waiver or limitation of Tenant's right to assert any such immunity, defense, or protection directly against any of its own employees, or such employees' estates or other personal representatives.

11.1.3 Concurrent Negligence. Notwithstanding the foregoing, in the event of the concurrent negligence of Tenant, its subtenants, licensees, assignees, concessionaires, agents, employees, or contractors on the one hand and the negligence of the Port, its agents, employees or contractors on the other hand, which concurrent negligence results in injury, death, or damage to persons or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Premises such that RCW 4.24.115 is applicable, Tenant's obligation to indemnify the Port as set forth in this Section 11.1, for bodily injury, death and property damage, shall be limited to the extent of Tenant's negligence and that of Tenant's officers, sublessees, assignees, agents, employees, contractors or licensees, including Tenant's proportional share of costs, court costs, reasonable attorneys' fees, consultants' fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage.

11.1.4 Mutual Negotiation. TENANT AND THE PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION. Tenant's obligations under this Section 11.1 shall be in effect upon the Commencement Date and shall survive the expiration or earlier termination of this Agreement.

## 11.2 Insurance.

11.2.1 General Requirement. Tenant shall obtain and keep in force, at its sole cost and expense, during the Term and any Extension Terms of this Agreement the types of insurance, in the amounts specified and in the form hereinafter provided for below in this Section 11.2. Failure to do so shall result in Tenant incurring Additional Rent in the amount of five hundred dollars (\$500.00) applicable to the month in which the failure to occurred and shall accrue every month thereafter until sufficient insurance coverage is obtained.

11.2.2 Liability Insurance. Tenant shall obtain and keep in force as set forth in Section 6.2.1 above and otherwise during the Term and any Extension Terms of this Agreement a commercial general liability policy of insurance protecting Tenant and each Port Party, endorsed to name the Port Parties as additional insureds. Tenant's insurance shall be primary and non-contributory to any insurance the Port carries, and any insurance carried by the Port will apply on an excess basis, using an insurance industry standard form (CG 00 01 or CG 00 02) or

equivalent, against claims for bodily injury, death, personal injury and property damage based upon, involving or arising out of the tenancy, use, occupancy or maintenance of the Property or Premises and all areas appurtenant thereto, and specifically including the acts or omissions of any subtenant, licensee or assignee permitted by Article 26. Such insurance shall provide single limit coverage in an amount of Two Million Dollars (\$2,000,000.00) per occurrence or claim for policies without a general aggregate limit. For policies with a general aggregate limit, such aggregate limit shall be Five Million Dollars (\$5,000,000.00). These limits may be met through a combination of primary and excess policies. The policy shall contain a One Hundred Thousand Dollars (\$100,000.00) sub-limit that covers damage to premises rented or leased to Tenant, including fire damage. Endorsements shall be required to be submitted for (1) Additional Insured; (2) Primary and noncontributory of tenants' insurance, and (3) Waiver of subrogation.

11.2.3 Automobile Liability Insurance. Tenant shall obtain and keep in force as set forth in Section 6.2.1 above and otherwise during the Term and any Extension Terms of this Agreement a commercial automobile liability policy of insurance, written on ISO Form CA 00 01 07 97 (or equivalent), that protects against claims for bodily injury and property damage based upon, involving or arising out of Tenant's motor vehicle operations on or about the Premises and all areas appurtenant thereto. Such insurance shall cover any "Auto" (i.e., owned, hired and non-owned used by Tenant) and shall be on an occurrence basis providing single limit coverage in an amount of Two Million Dollars (\$2,000,000.00) per occurrence. This limit may be met through a combination of primary and excess policies.

11.2.4 Property Insurance. At all times this Agreement remains in effect, from and after Final Completion, Tenant shall obtain and keep in force during the Term (and all Extension Terms) of this Agreement "special extended" or "all risk" property insurance, specifically including earthquake and flood insurance, including loss or damage to the Premises, including, without limitation, any betterments, improvements or Alterations, to the full replacement value thereof. 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 Port shall be named on such property insurance as a Loss Payee with an insurable interest by the terms of the policy, to the extent of its interests as provided in this Agreement.

11.2.5 Builder's Risk Insurance. Before any construction of the Project commences, and until Final Completion, Tenant shall obtain and keep in force or require its contractor to obtain and keep in force "special extended" or "all risk" builder's risk insurance to include business interruption loss and physical damage from perils as follows, but not limited to these – fire, wind, collapse, land subsidence, flood, explosion, and earth movement, in an amount equal to the agreed value of the Project, covering improvements in place and/or under construction, and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees. The Port shall be named on such

builder's risk insurance as a Loss Payee with an insurable interest by the terms of the policy, to the extent of its interests as provided in this Agreement.

11.2.6 Additional Project Insurances. Tenant shall require its general contractor (and, as applicable, each of its subcontractors) to procure and maintain insurance in the following minimum form and limits for duration of the Project, including, without limitation, during prosecution of the Earthwork Construction:

(a) Commercial General Liability. Tenant's general contractor shall procure and maintain commercial general liability insurance on ISO Form CG 00 01 10 01 (or equivalent) for third party property damage, bodily injury, personal and advertising injury, and medical payments in an amount which is not less than \$5 million per occurrence and any subcontractor shall maintain limits of not less than \$3 Million per occurrence. If the policy contains an annual general aggregate limit, this limit shall be no less than \$10 million per year (this sentence is not applicable to subcontractors). These limits may be met through a combination of primary and excess policies. The insurance shall cover liability arising from premises, operations, independent Contractors, products completed operations, personal and advertising injury, and liability assumed under an insured contract. The Port shall be an additional insured on the Contractor's policy for ongoing and completed operations coverage. The Port shall be named as an additional insured, by endorsement, for all work performed by general contractor and subcontractors.

(b) Contractor's Pollution Liability. Tenant's general contractor shall procure and maintain contractor's pollution liability insurance shall provide this coverage, with the Port named as an additional insured on the policy, with limits of not less than \$2 million per occurrence. The coverage shall extend to sudden and accidental incidents, claims, damages, and losses, including defense costs that arise from the operations of the Contractor as it relates to the services to be performed under this contract and that occur on or after the notice to proceed (NTP) and extending to include all claims occurring during the project, including claims from incidents occurring during the project period but reported after project completion, for up to 60 days following the end of the project. The Port shall be named as an additional insured, by endorsement, for all work performed by general contractor and subcontractors, including without limitation the contractor performing the Earthwork Construction.

11.3 Insurance by Third Parties. Prior to their entry on the Property, any subtenant must provide to the Port proof of insurance meeting the requirements in Sections 11.2.2 and 11.2.3 above including naming the Port Parties as additional insureds on each such policies, with limits and in a form and with insurers in accordance with the provisions of this Article 11.

11.4 Insurance Policies. Insurance required hereunder shall be in companies duly licensed to transact business in the State of Washington and maintaining during the policy term a general policyholders rating of no less than A-, VII as currently rated by A.M. Best's Insurance Guide. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Article. Tenant shall cause to be delivered to the Port certificates of insurance and endorsements where applicable evidencing the existence of coverage and amounts of such insurance as required by this Agreement. No such policy shall be cancelable except after



thirty (30) days (or ten (10) days for nonpayment of premiums) prior written notice to the Port by the Tenant. Tenant shall, prior to the expiration of such policies, furnish the Port with evidence of renewals, such as certificates of insurance, evidencing renewal thereof.

11.5 Waiver of Subrogation. Without affecting any other rights or remedies, Tenant and the Port (for themselves and on behalf of anyone claiming through or under them by way of subrogation or otherwise) hereby waive any rights either may have against the other, or their respective officers, agents or employees (whether in contract or in tort) on account of any loss or damage occasioned arising out of or incident to the perils required to be insured against under this Article 11 or covered by any insurance maintained by the Port. Accordingly, the parties shall cause any such insurance policy to be endorsed to waive subrogation in favor of the other party. 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 Miscellaneous Insurance Provisions.

11.6.1 The limits of insurance required by this Agreement or as carried by Tenant shall not limit the liability of Tenant nor relieve Tenant of any obligation hereunder. If at any time during the Term (including any Extension Terms), Tenant shall have in full force and effect a blanket policy of commercial general liability and umbrella liability insurance covering the Premises and other premises and/or properties of Tenant, such insurance shall satisfy the requirements hereof, provided said policy contains a specific endorsement providing a minimum amount of coverage applicable to the Premises at least equal to the amounts required above.

11.6.2 The amounts (including minimum limits) and types of liability insurance specified in this Agreement shall be subject to periodic adjustment to reflect reasonable changes in insuring practices for similar properties in the same geographic area and changes in insurance products; accordingly, the Port may, subject to the reasonable agreement of Tenant, require periodic adjustment to the amounts (including minimum limits) and types of insurance specified in this Agreement.

ARTICLE 12: OPERATING EXPENSES; UTILITIES

12.1 Operating Expenses; Responsibility for Operations and Maintenance. Beginning on the Commencement Date and continuing thereafter during the Term and any Extension Terms of this Agreement, Tenant shall pay directly to all third parties the total of any and all costs and expenses whatsoever incurred with respect to and/or arising from the Property and the Premises, including, without limitation, all costs and expenses relating to the use, operation, development, management, maintenance and repair of the Premises and any and all services provided for the benefit of the Premises, Tenant and/or any subtenants of Tenant (the “**Operating Expenses**”).

12.2 Utilities. Tenant shall, at its sole cost and expense, arrange for the furnishing of all utilities, including natural gas, electricity, telecommunications, water and sewer, as well as stormwater charges, necessary for the operation of the Premises during the Term and any Extension Terms, and Tenant covenants and agrees to pay all such charges directly, to the

applicable public utility or governmental authority furnishing such service to the Premises, the amounts due for such services as indicated by meters measuring Tenant's consumption thereof.

12.3 Port Not Responsible. The Port shall not be required to furnish any services or utilities of any nature to the Property or the Premises during the Term (including any Extension Terms) of this Agreement, Tenant hereby assuming full and sole responsibility for the supply of and payment for all services and utilities. Furthermore, the Port shall not be liable in any way to Tenant for any failure or defect in the supply or character of electrical energy or water and sewer service furnished to the Premises by reason of any requirement, act or omission of the public utility providing such service or for any other reason.

#### ARTICLE 13: REPAIR AND MAINTENANCE; COMPLIANCE WITH LAWS

13.1 Duty to Repair and Maintain. The Premises, both outside and inside, together with all Alterations, equipment and installations therein and the appurtenances thereto, shall at all times during the Term and any Extension Terms be put and kept in good, safe, secure order, condition, maintenance and repair by Tenant at Tenant's sole cost and expense, and Tenant 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, equipment, installations and appurtenances shall be in thorough good order, condition and repair.

13.2 Continuing Compliance. Subject to the Port's obligations with respect to Pre-Existing Hazardous Substances, throughout the Term and any Extension Terms of this Agreement, Tenant shall, at its own cost and expense, promptly and diligently do the following:

13.2.1 Observe and comply with all Legal Requirements, whether or not such compliances herewith shall require structural repairs, changes or alterations in and about the Premises, or repairs, changes or alterations incident to or as the result of any use or occupation of the Premises or interfere with the use and enjoyment of the Property or any part thereof, and whether or not the same now are in force or at any time in the future may be passed, enacted, or directed (but this Section shall not require Tenant to upgrade the Project to meet code as against which the Project is vested);

13.2.2 Procure, maintain and comply with all permits, licenses, franchises and other authorizations required for any use of the Property or any part thereof then being made and for proper erection, installation, operation and maintenance of any improvements or any part thereof; and

13.2.3 Comply with any Permitted Encumbrances.

13.3 Repair & Maintenance Indemnity. During the Term and any Extension Terms, Tenant shall defend (with counsel reasonably approved by the Port and Tenant's insurer), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding and all costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of or be imposed because of the failure of Tenant to comply with Section 13.2. In no event shall the

foregoing be interpreted to require Tenant to indemnify the Port to the extent of the negligence or other fault of any Port Party or in connection with Pre-Existing Hazardous Substances. Tenant's obligations of indemnity under this Section shall survive the expiration or earlier termination of this Agreement.

13.4 Waste. Tenant will not do or permit or suffer any waste, damages, disfigurement or injury to or upon the Property or any part thereof; provided that Tenant shall have the right to remove any portion of the Project at any point prior to the expiration or earlier termination of this Agreement.

#### ARTICLE 14: COMPLIANCE WITH ENVIRONMENTAL LAWS

14.1 Definitions. "Hazardous Substances" as used herein shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any Legal Requirements or Environmental Laws.

14.2 Hazardous Substances. Except for Pre-Existing Hazardous Substances, during the Term, Tenant and/or the Tenant Parties shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Environmental Laws. Tenant and/or the Tenant Parties shall not allow any Hazardous Substances, including Pre-Existing Hazardous Substances, to migrate off the Premises and shall not allow the release, spill, discharge, leak, emission, injection, escape, migration, or dumping in, on, about, from or adjacent to the Premises (including, but not limited to, storm drains, sanitary sewer systems, surface waters, soils, underground waters or air) of any Hazardous Substances onto the Premises or adjacent surface waters, soils, underground waters, or air in violation of Environmental Laws; provided however, that neither Tenant nor any of the Tenant Parties shall be responsible for any passive migration of Pre-Existing Hazardous Substances onto the Property from off-Property areas or from the Property to off-Property areas unless such migration was directly caused or exacerbated by an act or omission of Tenant and/or the Tenant Parties. To the extent applicable, but not with respect to Pre-Existing Hazardous Substances (which shall remain the sole responsibility of the Port), Tenant shall provide the Port with Tenant and/or the Tenant Parties' USEPA Waste Generator Number(s) and, upon request, copies of all Safety Data Sheets (SDS) for all Hazardous Substances used or stored on the Premises, Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals), and any correspondence Tenant and/or the Tenant Parties receives from, or provides to, any governmental unit or agency in connection with their handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance in, on, about, or migrating from the Premises. Tenant and/or the Tenant Parties shall promptly report any spills or emissions of Hazardous Substances to the Port and, as required by applicable Environmental Laws, to the appropriate regulatory authorities.

14.2.1 Records. Tenant shall maintain all records related to Tenant Operations and its compliance with requirements of any applicable Environmental Laws (including but not limited to the underground storage tank regulations). Tenant shall provide the Port with copies of such records upon the Port's request.

14.3 Compliance with Environmental Laws. If, during the Term, Tenant, or the Premises, is not in compliance with any Environmental Law concerning the presence, use or handling of Hazardous Substances, Tenant shall promptly notify the Port of such noncompliance and shall use best efforts to comply with the applicable Environmental Law. If Tenant does not reasonably act to correct the noncompliance, following Tenant's receipt of the Port's reasonable advance written notice, the Port shall have the right, but not the obligation, to enter the Premises and take such action as the Port deems necessary to address the noncompliance. If the Port has a reasonable belief that Tenant or the Tenant Parties are not in compliance with any Environmental Law or that Tenant's actions or inactions are likely to present a threat of noncompliance with any Environmental Law, the Port shall have the right, after providing Tenant three (3) business days' advance written notice, to enter the Premises and take such action as the Port deems necessary in its reasonable discretion to correct or mitigate any such noncompliance. The Port shall at all times comply with Tenant's reasonable security protocols. Except as otherwise set forth in this Agreement, all costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Tenant upon presentation of an invoice.

14.3.1 Disposal. In addition, if Tenant disposes of any Pre-Existing Hazardous Substances, it shall only dispose of Pre-Existing Hazardous Substances at a landfill or other disposal facility in compliance with all applicable Environmental Laws. Tenant shall be the generator for purposes of transportation and disposal of Pre-Existing Hazardous Substances and shall sign generator slips with respect to any such Pre-Existing Hazardous Substances.

#### 14.4 Environmental Inspections.

14.4.1 Tenant Inspections. Tenant shall have the right to conduct environmental audits or inspections from time to time throughout the Term and any Extension Terms of this Agreement. Following Substantial Completion, Tenant may conduct an invasive subsurface environmental inspection of the Premises only in the event that there is evidence of (or Tenant otherwise reasonably suspects) a release or threatened release of Hazardous Substances on the Property. Unless there is an emergency, Tenant shall notify the Port of its intent to conduct an invasive subsurface environmental inspection at least five (5) days prior to conducting such inspection and Tenant shall not conduct or permit others to conduct any sampling of soil, groundwater, or other subsurface media without the Port's prior written consent. The environmental inspection shall be conducted consistent with industry best practices by a qualified environmental professional selected by Tenant. The Port shall have the right for a Port representative to attend and observe any site visits or inspections associated with the environmental inspection. Tenant shall meet with the Port to present the results of the environmental inspection within thirty (30) days of completion and shall provide the Port with a copy of any final data or reports created in connection the environmental inspection.

14.4.2 Port Inspections. Subject to any reasonable access restrictions and conditions imposed by Tenant or any Permitted Sublessee, the Port shall have access to the Premises to conduct an annual environmental inspection (with any such inspection to satisfy all of the requirements and protocols for Tenant's inspections set forth above in this Section 14.4), but nothing herein requires the Port to conduct such an inspection. In addition, subject to any reasonable access restrictions and conditions imposed by Tenant or any Permitted Sublessee,

Tenant 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.

14.5 Post Occupancy Environmental Site Assessment. Within thirty (30) days after the expiration date of the Term or Extension Terms of this Agreement or any earlier termination of this Agreement, the Port may require Tenant to conduct an investigation to determine whether any Hazardous Substances, other than Pre-Existing Hazardous Substances, may be present on the Premises and/or migrating from the Premises ("**Environmental Site Assessment**" or "**ESA**") and submit a report to the Port describing the results of such investigation ("**Phase I ESA Report**"). If required, the scope of the ESA shall conform to the ASTM E 1527-13 Standard Practice for Environmental Site Assessments, as amended, or equivalent in effect at the time, and shall include, at a minimum, a review and summary of tenant/occupant operational history, reasonably ascertainable audit reports and responses, spill and spill response reports, and any other relevant environmental records, including sampling data. If the Phase I ESA Report identifies the potential contamination of the Premises by Hazardous Substances (other than Pre-Existing Hazardous Substances), the Port may require Tenant to conduct a further investigation, consistent with industry best practices, to identify the scope of potential contamination, including soil, groundwater, surface water, or sediments sampling as appropriate ("**Phase II ESA**"). If the Port requires a Phase II ESA, Tenant shall submit a report documenting the results of the Phase II ESA to the Port within ninety (90) days after the expiration date of the Term or Extension Terms of this Agreement or any earlier termination of this Agreement. Receipt of the Phase I ESA Report if required by the Port, and, if applicable and reasonably required by the Port, the Phase II ESA Report shall be a condition precedent to the Port's payment of any Security to Tenant upon termination or expiration of this Agreement. Any ESA, Phase I ESA, or Phase II ESA which the Port requires pursuant to this Section 14.5 shall be at Tenant's sole cost and expense.

14.6 Removal of Hazardous Substances. Prior to vacation of the Premises, in addition to all other requirements under this Agreement, Tenant shall remove any Hazardous Substances placed on the Premises by Tenant or the Tenant Parties during the Term (including any Extension Terms) and otherwise during Tenant's possession of the Premises and shall demonstrate such removal in compliance with applicable Environmental Laws. This removal and demonstration shall be a condition precedent to the Port's payment of any Security to Tenant upon termination or expiration of this Lease.

14.7 Remedies Not Exclusive. Except as otherwise provided in this Agreement, no remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, or otherwise limited in this Agreement, the Port shall be entitled to full reimbursement from Tenant whenever the Port incurs any costs as a result of Tenant's or the Tenant Parties' handling, storage, use or Required Management of Hazardous Substances (other than costs associated with Pre-Existing Hazardous Substances that are the subject of the Port's indemnification in favor of Tenant set forth in Section 14.9.2 below) on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties, or injuries to persons or other property, except to the extent any environmental condition is exacerbated by any Port Party.

14.8 Stormwater Management. Tenant acknowledges that the Premises are subject to the requirements of the City of Des Moines ordinance regarding stormwater drainage, source control, and other applicable City requirements, as well as the federal Clean Water Act and Ecology stormwater regulations and permits. Tenant shall be responsible for preparing and maintaining its own Stormwater Pollution Prevention Plan (“SWPPP”). If required, during the Term (and any Extension Terms), Tenant shall apply for coverage and comply with all applicable requirements of the Industrial Stormwater General Permit (“ISGP”), Construction Stormwater General Permit, individual stormwater permits, or any other applicable permit(s) (collectively, the “Stormwater Regulations”). Tenant shall comply with all applicable requirements of all Stormwater Regulations, including implementing and performing best management practices (“BMPs”). During the Term (and any Extension Terms), Tenant shall defend, indemnify, and hold harmless the Port and Port Parties against any and all costs, including but not limited to reasonable attorneys’ fees, expenses, damages, fines, penalties, and liabilities of any kind incurred by the Port or Port Parties as a result of Tenant or the Tenant Parties’ failure or alleged failure to comply with Stormwater Regulations, including but not limited to any actual injury or harm resulting from (a) Tenant’s failure to implement and/or perform BMPs; and/or (b) Tenant’s failure to comply with permit requirements. Tenant’s obligations under this Section 14.8 shall survive termination of this Agreement.

14.8.1 Tenant shall keep onsite a spill kit capable of handling minor spills and/or leaks from parked vehicles. In the event of a spill or leak to a drainage structure, Tenant shall notify the Port’s 24-hour Incident Notification Line at (206) 787-3350.

14.9 Environmental Indemnity.

14.9.1 Tenant’s Indemnity. In addition to all other indemnities provided in this Agreement, during the Term (and any Extension Term), Tenant shall defend, indemnify and hold the Port Parties free and harmless from any and all claims, demands, lawsuits, liabilities, judgments losses, and expenses, including without limitation cleanup or other remedial costs (and including reasonable attorneys’ fees, costs and all other reasonable expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation) (collectively, “**Environmental Claims**”), arising from: (1) the existence, discovery, or handling of any Hazardous Substance in, on, under, or about the Premises; (2) the migration of any Hazardous Substances from the Premises to other properties or into the surrounding environment; and (3) Tenant’s failure to comply with any obligation in Section 14 of this Agreement, for all items (1) – (3), whether said Environmental Claims are (i) made, commenced or incurred during the term of this Agreement, or (ii) made, commenced or incurred after the expiration or termination of this Agreement if arising out of events occurring during the term of this Agreement. Tenant’s obligations under this Section shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, Tenant’s obligations under this Section 14.9.1 do not extend to Pre-Existing Hazardous Substances, except with respect to Environmental Claims involving Tenant’s disturbance or exacerbation of said Pre-Existing Hazardous Substances, or Tenant’s obligations pursuant to Section 7.15(h). All indemnification obligations for Environmental Claims shall be subject to this Section 14, and not the indemnity and liability provisions of Section 11.

14.9.2 Port Indemnity. In addition to all other indemnities provided in this Agreement, during the Term (and any Extension Term), the Port shall defend, indemnify and hold the Tenant and its officers, employees and agents (each, a “**Tenant Party**” and, collectively, the “**Tenant Parties**”) free and harmless from any and all Environmental Claims, arising from: (1) the existence, or discovery of any Pre-Existing Hazardous Substances in, on, under, or about the Premises; (2) the migration of any Pre-Existing Hazardous Substances from the Premises to other properties or into the surrounding environment, whether said Environmental Claims are (i) made, commenced or incurred during the term of this Agreement, or (ii) made, commenced or incurred after the expiration or termination of this Agreement provided such Pre-Existing Hazardous Substances were present on the Property as of the commencement Date of this Agreement. Port’s obligations under this Section shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, Port’s obligations under this Section 14.9.2 do not extend to: (i) Hazardous Substances that arise after the Commencement Date of this Agreement, including any Environmental Claims involving Tenant’s disturbance or exacerbation of said Pre-Existing Hazardous Substances; or (ii) Tenant’s obligations pursuant to Section 7.15(h). All indemnification obligations for Environmental Claims shall be subject to this Section 14, and not the indemnity and liability provisions of Section 11.

## ARTICLE 15: DAMAGE OR DESTRUCTION

15.1 Duty to Repair. If the Project or any other improvement at any time on the Premises shall be damaged or destroyed by any cause whatsoever during the Term and any Extension Terms of this Agreement, Tenant shall, with reasonable promptness, repair and replace the same at its own expense, to a condition reasonably comparable to the condition existing immediately prior to the damage or destruction, using available insurance proceeds (or such insurance proceeds as would have been available had Tenant carried the applicable insurance required under this Agreement) and payment of any deductibles and any additional rebuilding or replacement costs in excess of available insurance proceeds; *provided, however*, that if the proceeds of insurance are more than sufficient to pay the cost of the rebuilding, Tenant shall be entitled to retain that surplus.

15.2 Abatement of Rent. Except as otherwise provided herein, Tenant shall not be entitled to any abatement of rent, nor shall its obligations under this Agreement be terminated during the Term or any Extension Terms, notwithstanding any destruction or damage to the Premises by any cause whatsoever; *provided, however*, that if the whole or materially all of the Premises are destroyed by fire or other casualty at any time during the last two (2) years of the Term, or during the last two (2) years of any Extension Term, then Tenant may terminate this Agreement by written notice given to the Port within sixty (60) days after the date of such destruction, and Base Rent, Additional Rent and other charges under this Agreement will be apportioned as of the date of destruction, and Tenant will be discharged from responsibility to repair the damage, shall remove debris and restore the Premises to a clean, graded and safe condition. The proceeds of any insurance policies covering the loss shall be used exclusively for such removal, restoration and clearing of the Premises and, upon Tenant’s full and final performance of such obligations, fully paid and in full compliance with Section 18.1 below, any

remaining proceeds of insurance covering the loss shall belong to Tenant free of any claim thereto by the Port.

## ARTICLE 16: CONDEMNATION

16.1 Termination on Substantial Taking. If any competent authority for any public or quasi-public use or purpose takes or condemns (hereafter “takes” or “taking”) the whole or materially all of the Premises at any time during the Term or any Extension Term of this Agreement, this Agreement shall terminate and all Base Rent, Additional Rent, and other charges under this Agreement shall be apportioned as of the date of vesting of title in such taking or proceedings. For the purposes of this Article, a taking of “materially all” of the Premises, as distinguished from a taking of the whole of the Premises, means a taking of such scope that the untaken portion of the Premises is insufficient to permit Tenant or its subtenant to occupy the Premises as a high-quality business park, eliminates or material adversely affects access to the Premises or otherwise results in the elimination of parking or truck docks such that the Property cannot be used for the original intended purpose, or any other then current use of the Premises, as reasonably determined by Tenant.

16.2 Right to Award on Substantial Taking. If title to the whole or materially all of the Premises shall be taken, the rights of the Port and Tenant to share in the net proceeds of any award for the respective Property and Project, and the damages upon the taking, shall be in the following order of priority:

16.2.1 The Port, at all times, regardless of when the taking occurs, shall be entitled to receive, that portion of the award as shall represent compensation for the value of the Property, considered as vacant and improved only to the extent existing at the Commencement Date, but subject to a ground lease similar to this Agreement, such value being hereinafter referred to as the “**Property Value.**”

16.2.2 The remaining portion of the award shall be paid to the Tenant, subject to the rights of any Leasehold Mortgagee (the “**Remaining Value.**”).

16.2.3 In addition, to the extent consistent with Washington eminent domain law, Tenant shall have the right to seek an independent and separate award from the condemning authority for loss of value of the leasehold improvements, relocation benefits, and for any tangible personal property of the Tenant or any subtenant that is taken.

16.3 No Termination on Partial Taking. In the event of a taking of less than materially all of the Premises, this Agreement (except as hereinafter provided) shall nevertheless continue, but Base Rent to be paid by Tenant shall thereafter be reduced in the ratio that the rental value of the portion of the Premises taken bears to the rental value of the entire Premises at the time of the taking, and Tenant shall promptly restore the Premises as below provided. The Tenant shall undertake the work of repair and restoration as soon as reasonably practicable; and Tenant shall make the repairs and restoration even if the Remaining Value is insufficient for that purpose.



16.4 Right to Award on Partial Taking. In the event of a taking of less than materially all of the Premises, the rights of the Port and Tenant to share in the net proceeds of any award for the respective Property and Project, and the damages upon the taking, shall be in the following order of priority:

16.4.1 The Port, at all times, regardless of when the taking occurs, shall be entitled to receive that portion of the award as shall represent compensation for the Property Value.

16.4.2 The Remaining Value of the award shall be payable to Tenant, subject to the rights of any Leasehold Mortgagee.

Should, however, the partial taking occur during the last two (2) years of the Term, or during the last two (2) years of any Extension Term, then Tenant at its option upon thirty (30) days' prior notice to the Port, given at any time within sixty (60) days after the vesting of title in the taking authority, may terminate this Agreement. Upon that termination the Rent and other charges under this Agreement shall be apportioned as of the date of termination and the Tenant will be discharged from responsibility to restore the Premises. Upon that termination the entire Remaining Value shall belong to the Port free of any claim thereto or any part thereof by Tenant, anything in this Article to the contrary notwithstanding.

16.5 Value of Respective Interests. If the Property Value is determined in the proceeding pursuant to which the Premises shall have been taken, the Property Value and consequent Remaining Value so determined shall be conclusive upon the Port and Tenant. If these values shall not have been so determined, they shall be fixed by agreement between the Port and Tenant.

16.6 Temporary Taking. This Agreement shall not be affected if the taking Authority by the exercise of its power of eminent domain shall take the use or occupancy of the Premises or any part thereof for a temporary period for a period of less than ninety (90) days (hereafter "temporary taking"). Tenant shall continue to pay, in the manner and at the time specified in this Agreement, the full amounts of Base Rent, fees and all Additional Rent and other charges payable by Tenant under this Agreement. Except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the taking Authority, Tenant shall also continue to perform and observe all its other obligations under this Agreement, as though the temporary taking had not occurred. Tenant shall be entitled to receive the entire amount of any award made for the temporary taking, whether paid by way of damages, rent, or otherwise, unless the period of temporary use or occupancy shall extend to or beyond the expiration date of the Term (or any Extension Term) of this Agreement, in which case the award shall be apportioned between the Port and Tenant as of the date of expiration of the Term (or Extension Term). Tenant covenants that, upon the termination of any temporary taking, prior to the expiration of the Term (or Extension Term), it will, at its sole cost and expense, restore the Premises, as nearly as may be reasonably possible, to a condition reasonably comparable to that in which the same was immediately prior to the temporary taking, but only to the extent the condemnation proceeds are sufficient to do so.

## ARTICLE 17: SURRENDER AND HOLDING OVER

17.1 Port's Option for Removal of Modifications; Surrender. Prior to the expiration and not later than thirty (30) days following earlier termination of this Agreement, the Port, at its sole election and discretion, may elect to (i) require Tenant to remove all or any portion of the Project (or any of the then existing buildings, infrastructure, or other improvements and/or modifications on the Property) at Tenant's sole cost and expense or (ii) allow the same to remain on the Property. The Port may make different elections as to various portions of the improvements or modifications to the Property. In the event that the Port elects for the removal of any or all of the improvements or modifications to the Property, Tenant shall diligently complete such removal within not more than sixty (60) days after the later of (a) Tenant's receipt of the Port's election, or (b) the expiration of the Term (or Extension Term). The Port grants Tenant a license to use the Premises or portions thereof during the authorized period for Tenant's removal of improvements pursuant to this Section 17.1. Such license shall be subject to Tenant's indemnification obligations under Sections 11.1 and 14.9 and Tenant's insurance obligations under Section 11.2, which shall survive during the license period, unless otherwise modified by written agreement of the parties. In any event, Tenant shall quit and surrender the Property, together with any remaining improvements or modifications, in good condition and repair, normal wear and tear excepted.

17.2 Holding Over. If the Premises are not surrendered as provided in this Agreement, Tenant shall indemnify and hold the Port harmless against third party claim for loss or liability resulting from the delay by Tenant 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. Notwithstanding anything to the contrary contained herein, the Port acknowledges and agrees in no event shall Tenant be deemed to be holding over (nor shall Tenant be liable for any Rent) during its period of removal of improvements as contemplated in Section 17.1.

17.3 Survival. Tenant's obligations under this Article 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 Property or any part thereof, or of any interest therein by Tenant, 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.

## ARTICLE 18: IMPAIRMENT OF TITLE

18.1 Liens. Except for Permitted Liens on Tenant's interest in the Project only, Tenant will not directly or indirectly create or permit to be created and/or to remain a Lien upon the

Property, Project, Premises, and any Alterations, fixtures, improvements or appurtenances thereto that would attach to the Port's interest in the Property. In the event any such Lien(s) have been created by or permitted by or through the actions of Tenant or any Person claiming through Tenant in violation of this Article, Tenant shall promptly discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Tenant shall also defend (with counsel reasonably approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding which may be brought on or for the enforcement of such Lien(s). This obligation shall survive termination of this Agreement.

#### ARTICLE 19: ESTOPPEL CERTIFICATES, ATTORNMENT AND SUBORDINATION

19.1 Estoppel Certificates. Each party shall, at any time and from time to time as requested by the other party, upon not less than thirty (30) days' prior written notice, execute, acknowledge and deliver to the other a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), certifying the date through which Base Rent, Additional Rent and other charges, if any, have been paid, and stating whether or not, to the best knowledge of the signer, the other party is in default beyond any applicable notice and cure period provided in the performance of any of its obligations under this Agreement, and if so, specifying each such default of which the signer may have knowledge, and such other matters as may be reasonably requested. The parties agree and acknowledge that it is specifically intended that any such statement delivered pursuant to this Section 19.1 may be relied upon by others with whom the party requesting the certificate may be dealing.

19.2 Attornment. Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage or deed of trust made by the Port, its successors or assigns, encumbering the Property or any part thereof, and if so requested, attorn to the purchaser upon such foreclosure or sale or upon any grant of a deed in lieu of foreclosure and recognize such purchaser as landlord under this Agreement, provided, that such purchaser recognizes Tenant's rights under this Agreement, Tenant's subleases, and any modification of this Agreement or any sublease and assumes the Port's obligations under this Agreement arising after the date of transfer, and agrees not to disturb Tenant's or its subtenants quiet possession of the Premises for so long as no Event of Default has been committed by Tenant hereunder and is continuing.

19.3 Title. Notwithstanding the above, the Port shall not use the Property as security for any monetary obligation or further encumber the Property, except as may be expressly authorized by this Agreement or by prior written approval of Tenant, which approval shall not be unreasonably withheld. So long as no Event of Default has been committed by Tenant and is continuing, this Agreement will not be amended, modified or terminated or subject to termination by any trustee's sale, any action to enforce the security, or by any proceeding or action in foreclosure. If the Port encumbers its fee interest in the Property with any mortgage or deed of trust, it will provide Tenant with a non-disturbance agreement from such mortgage or deed of trust holder in form and content reasonably acceptable to Tenant.

19.4 Recording. Tenant covenants and agrees with the Port that Tenant shall not record this Agreement without the Port's prior written consent. The Port and Tenant agree to record a memorandum of this Agreement in the form of **Exhibit C** attached hereto.

## ARTICLE 20: MORTGAGES OF TENANT'S INTEREST

20.1 Prior Notice Required; Limited Purpose. Upon prior notice to the Port, Tenant shall have the right to grant a mortgage lien encumbering its leasehold interest under this Agreement, subject to the limitations set forth in this Article. Any such mortgage ("**Leasehold Mortgage**") shall be for a term not to exceed the Term of this Agreement plus any Extension that has been exercised and shall be subject and subordinate to the rights of the Port, subject to the Leasehold Mortgage provisions set forth in this Article 20.

20.2 No Benefit Without Notice. No holder ("**Leasehold Mortgage**") of a Leasehold Mortgage on this Agreement shall have the rights or benefits mentioned in this Article, nor shall the Port be bound by this Article, unless and until an executed counterpart of such Leasehold Mortgage (or any assignment thereof), together with a written notice setting forth the name, address, contact person (or department) for the Leasehold Mortgagee, is delivered to the Port. The Leasehold Mortgagee may designate other contact information by providing notice thereof to the Port in the manner provided by Section 27.1 of this Agreement.

20.3 Obligations to Leasehold Mortgagee. If Tenant mortgages this Agreement in compliance with this Article, then so long as such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

20.3.1 The Port shall serve upon the Leasehold Mortgagee, in the manner permitted by Section 27.1 of this Agreement, a copy of any notice of default sent to Tenant and any other notices the Port is required by the terms of this Agreement to provide to Tenant or that will materially affect the leasehold interest, including but not limited to amendments to this Agreement, or any waivers of any rights or obligations under the terms of this Agreement.

20.3.2 The Port, upon providing Tenant any notice of (i) default under this Agreement or (ii) a termination of this Agreement, or (iii) a matter upon which the Port may predicate or claim a default, shall at the same time or promptly thereafter provide a copy of such notice to every Leasehold Mortgagee. No such notice by the Port to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Leasehold Mortgagee at the last address furnished to the Port. After such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period after the giving of such notice upon it for remedying any default or causing the same to be remedied as is given Tenant after the giving of such notice to Tenant plus, in each instance, the additional periods of time specified in Sections 20.3.3 and 20.3.4 to remedy, commence remedying, or cause to be remedied the defaults specified in any such notice. The Port agrees that it shall accept such performance by or at the instance of the Leasehold Mortgagee as if the same had been made by Tenant. For such purpose, the Port and Tenant hereby authorize the Leasehold Mortgagee to enter upon the Premises and to exercise any of Tenant's rights and powers under this Agreement and, subject to the provisions of this Agreement, under the Leasehold Mortgage.

20.3.3 Cure Notice to Leasehold Mortgagee. Notwithstanding anything to the contrary in this Agreement, if any Event of Default shall occur that entitles the Port to terminate this Agreement, the Port shall have no right to terminate this Agreement unless, following the expiration of the period of time given Tenant to cure such default, the Port shall notify (“Cure Notice”) every Leasehold Mortgagee of the Port’s intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination if the nature of such default is the failure to pay a sum of money, and at least sixty (60) days in advance of the proposed effective date of such termination if such default is not the failure to pay a sum of money. A six (6) month extension of the date for termination of this Agreement as provided in Section 20.3.4 shall be granted by the Port if, during such thirty (30) or sixty (60) day Cure Notice period, any Leasehold Mortgagee:

(a) Notifies the Port of such Leasehold Mortgagee’s desire to nullify such Cure Notice; and

(b) Pays or causes to be paid all Base Rent and other payments then due and in arrears as specified in the Cure Notice to such Leasehold Mortgagee and that may become due during such 30 and 60-day period, provided that any Leasehold Mortgagee shall not be required to pay any amount before the same is due and owing under this Agreement; and

(c) Complies or in good faith promptly commences to comply with all non-monetary requirements of this Agreement then in default and diligently prosecutes to completion full cure of all uncured defaults.

Nothing herein obligates such Leasehold Mortgagee to cure any default of Tenant under the terms of this Agreement. Notwithstanding the above, Leasehold Mortgagee shall not be required to cure any default of Tenant resulting from insolvency or bankruptcy of the Tenant.

20.3.4 Six-Month Extension. If the Port shall elect to terminate this Agreement by reason of any default of Tenant, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 20.3.3, the specified date for the termination of this Agreement as fixed by the Port in its Cure Notice shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee, during such 6-month period:

(a) Notifies the Port in writing that the Leasehold Mortgagee will elect to exercise such 6-month extension; and

(b) Pays or causes to be paid Base Rent and other monetary obligations of Tenant under this Agreement as the same become due, including the payment of any sums due under any Leasehold Mortgagee; and

(c) Continues its good faith efforts to perform all of Tenant’s other obligations under this Agreement and diligently prosecutes to completion full cure of all uncured defaults, including during any period during which the Leasehold Mortgagee has possession of

the Premises the obligation to operate and maintain the Project and Premises in accordance and full compliance with all terms and conditions of this Agreement.

20.3.5 Termination; New Lease. In the event that this Agreement is terminated by the Port for any reason under the terms of this Agreement or on account of a bankruptcy by or against Tenant, the Port shall serve notice to the Leasehold Mortgagee that the Agreement has been terminated. The notice shall include a statement of any and all sums which would at the time be due under this Agreement but for such termination and of all other defaults under this Agreement then known to the Port. Every Leasehold Mortgagee shall thereupon have an option, which must be exercised within forty-five (45) days after the notice, to obtain a new lease (“**New Lease**”) in accordance with and upon the following terms and conditions:

(a) The New Lease shall be effective as of the date of termination of this Agreement, and shall be, for the remainder of the Term of this Agreement, at a rent and fee and upon all of the original agreements, terms, covenants and conditions. Such New Lease shall require the lessee to perform any unfulfilled obligation of the Tenant under this Agreement.

(b) Upon the execution of the New Lease, the lessee therein named shall pay any and all sums which would at the time of the execution thereof be due under this Agreement but for termination and shall pay all expenses, including reasonable attorneys’ fees, court costs and disbursements, incurred by the Port in connection with any default and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease.

(c) Nothing herein, however, shall be deemed to obligate the Port to deliver possession of the Premises to the lessee under any New Lease. Upon the execution and delivery of such New Lease, the lessee, in its own name or in the name of the Port, may take all appropriate steps as shall be necessary to remove Tenant from the Premises. The provisions of this Section 20.3.5 shall survive the termination of this Agreement.

20.3.6 Subject to the provisions of this Article, the Leasehold Mortgagee may exercise, with respect to the Premises, any right, power, or remedy under the Leasehold Mortgage. Every Leasehold Mortgagee (or its designee) or any other purchasers in foreclosure proceedings may become the legal owners and holders of Tenant’s interest in this Agreement through such foreclosure proceedings or by assignment of this Agreement in lieu of foreclosure and shall provide notice of such assignment and assumption to the Port in compliance with Article 25. Leasehold Mortgagee after a foreclosure or assignment in lieu of foreclosure under the Leasehold Mortgage may subsequently assign the leasehold interest or the New Lease to a third party who shall assume the lease and provide notice of the assumption to the Port and otherwise comply with the Provisions of Article 25. Upon such assumption, the Leasehold Mortgagee shall be released from all liability for the performance or observance of the covenants and conditions in this Agreement (or such New Lease) contained on Tenant’s part to be performed and observed from and after the date of such assignment.

20.3.7 Notwithstanding Sections 20.3.5 and 20.3.6, in the event that any person or entity other than Leasehold Mortgagee (a “**Foreclosure Purchaser**”) shall acquire title to Tenant’s interest in this Agreement as a result of foreclosure or assignment in lieu of foreclosure

under the Leasehold Mortgage, or under a New Lease pursuant to this Article, the Foreclosure Purchaser may not assign this Agreement (or such New Lease) without the prior written consent of the Port in compliance with the requirements of Article 25. If the Port's consent is obtained, the assignee must assume Tenant's obligations under this Agreement and an executed counterpart of such assumption must be delivered to the Port. Upon such assumption, the Foreclosure Purchaser shall be released from all liability for the performance or observance of the covenants and conditions in this Agreement (or such New Lease) contained on Tenant's part to be performed and observed from and after the date of such assignment.

20.3.8 Notwithstanding Section 20.3.1, no agreement between the Port and Tenant modifying, canceling or surrendering this Agreement (excluding, for avoidance of doubt, surrender of the Premises upon expiration of the Term, or applicable, an Extension Term), shall be effective without the prior written consent of the Leasehold Mortgagee.

20.3.9 Tenant's share, as provided by Article 16 of this Agreement of the proceeds arising from an exercise of the power of eminent domain shall, subject to the provisions of such Article 16, be disposed of as provided for by any Leasehold Mortgage.

20.3.10 A Standard Mortgagee Loss Payee Clause naming Leasehold Mortgagee may be added to any and all property insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied to rebuilding in the manner specified in this Agreement and the Leasehold Mortgage shall so provide; *provided, however*, the Leasehold Mortgage may provide the manner for the disbursement of such proceeds.

## ARTICLE 21: DEFAULT

21.1 Events of Default. The occurrence of any of the following events shall constitute an "**Event of Default**" on the part of the Tenant if the same continues beyond the applicable notice and cure period set forth in Section 21.2.1 below:

21.1.1 The vacating or abandonment of the Premises by Tenant if Tenant has failed to pay any amounts due and owing to the Port hereunder beyond the applicable notice and cure period.

21.1.2 Tenant fails to timely perform its obligations under the Timetable.

21.1.3 The failure by Tenant to make any payment of Rent, fees or any other payment required by this Agreement to be made by Tenant to the Port beyond the applicable notice and cure period.

21.1.4 The failure by Tenant to observe or perform any covenant, condition, or agreement to be observed or performed by Tenant in this Agreement beyond the applicable notice and cure period.

21.1.5 The filing by Tenant of a petition in bankruptcy, Tenant being adjudged bankrupt or insolvent by any court, a receiver of the property of Tenant being appointed in any proceeding brought by or against Tenant, Tenant making an assignment for the benefit of

creditors, or any proceeding being commenced to foreclose any mortgage or other Lien on Tenant's interest in the Premises or on any personal property kept or maintained on the Premises by Tenant.

21.2 Remedies. Except as otherwise provided herein, 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:

21.2.1 Except as otherwise provided in Article 20 (and specifically the notice and cure rights of a Leasehold Mortgagee under Section 20.3.3) and this Article 21, whenever any default continues unremedied in whole or in part (i) for thirty (30) days after Notice of Default is provided by the Port to Tenant and Leasehold Mortgagee in the case of default for failure to pay any Rent, fees or other required payment payable when due; or (ii) for sixty (60) days after Notice of Default is provided by the Port to Tenant and Leasehold Mortgagee in the case of a nonmonetary Event of Default (or, for a nonmonetary Event of Default which can be cured but cannot with due diligence (without regard to the availability of funds or the financial condition of Tenant) be cured within said sixty (60) day period, such longer period as is reasonably required to cure the nonmonetary Event of Default so long as Tenant commences to cure within such sixty (60) day period and thereafter prosecutes with all due diligence such cure to completion), this Agreement and all of Tenant'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 Tenant all unpaid Rent, fees or any other reasonable payments and damages incurred because of Tenant's default including, but not limited to, the costs of re-letting, including necessary renovations or repairs, advertising, leasing commissions, and attorneys' 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.

21.2.2 In addition to Termination Damages, and notwithstanding termination and reentry, Tenant'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 then current Term (including the Extension Term for any Extension Option exercised by Tenant) ("**Future Charges**") will not be extinguished and Tenant 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 the Future Charges, less the amount of actual rent and fees, if any, which the Port receives, subject to Section 21.2.3, during the remainder of the then current Term (or, as applicable, any Extension Term) of this Agreement 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 (1<sup>st</sup>) day of each calendar month following termination of this Agreement and continuing until the date on which the then current Term (or, as applicable, any Extension Term) of this Agreement 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 Market Rent of the Premises over the remaining Term (or, as applicable, any Extension Term) of this Agreement, 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 percent (1%) above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

21.2.3 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 current Term (or, as applicable, any Extension Term) of this Agreement), for such use or uses on commercially reasonable terms, provided that the Port will not be liable for, nor will Tenant'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.

21.2.4 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 Tenant. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Tenant of the Port's action. All risks associated with removal and storage shall be on Tenant. Tenant 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 thirty (30) days or more, unless Tenant 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 Tenant to the Port. The balance of sale proceeds, if any, will then be paid to Tenant.

21.3 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, Tenant will not interpose any counterclaim or setoff of any nature or description in any such proceeding; the parties specifically agreeing that Tenant'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 Tenant's right to assert such a claim in any separate action brought by Tenant.

## ARTICLE 22: RELOCATION; EASEMENTS

22.1 Easements. The parties recognize that the Port's facilities are continuously being modified to improve the utilities, services and premises used and provided by the Port. The Port, or its agents (following reasonable notice to Tenant and after providing Tenant with an opportunity to meet with the Port to discuss the easement, its location, and the process for implementing and using it), shall have the right to enter the Premises of Tenant, and to cross over, construct, move, reconstruct, rearrange, alter, maintain, repair and operate the sewer, water, and drainage lines, and the electrical service, fiber and communication service and all other services and facilities (collectively, "Facilities") all as required by the Port for its own use or benefit; *provided, however*, notwithstanding the foregoing that (i) the Port by virtue of such use, shall in no event unreasonably interfere with Tenant's development of the Project or the use of the Premises by Tenant or any of its occupants nor shall the Port be permitted to materially adversely impact the value or marketability of the Premises; and (ii) no Facilities serving the Premises shall be interrupted in any material respect or diminished in any manner; and (iii) all costs associated with the Facilities shall be the sole expense of the Port. Except in the case of emergency, the Port agrees to provide prior notice to Tenant to provide opportunity for consultation regarding the planned work to Facilities and to discuss reasonable efforts to minimize the impacts to Tenant and its occupants to the extent practicable in light of the planned work.

## ARTICLE 23: NO WAIVER; THE PORT'S RIGHT TO PERFORM

23.1 Receipt of Monies Following Termination. Subject to the rights granted to a Leasehold Mortgagee in Article 20, no receipt of monies by the Port from Tenant after the termination or cancellation of this Agreement in any lawful manner shall (a) reinstate, continue or extend the Term (or any Extension Term) of this Agreement; (b) affect any notice theretofore given to Tenant; (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 Tenant's liability hereunder.

23.2 No Waiver of Breach. The failure of either party 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 Tenant 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 Tenant. The consent or approval of Tenant to or of any act by the Port requiring the Tenant's consent or approval shall not be deemed to waive or render unnecessary Tenant's consent or approval to or of any subsequent similar acts by the Port.

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

23.4 Application of Payments. The Port shall have the right to apply any payments made by Tenant to the satisfaction of any debt or obligation of Tenant to the Port, in the Port's sole discretion and regardless of the instructions of Tenant as to application of any such sum, whether such instructions be endorsed upon Tenant'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 Tenant shall in no way affect Tenant's liability hereunder nor shall it be deemed an approval of any assignment of this Agreement or subletting by Tenant.

23.5 Port's Right to Perform. Upon Tenant's failure to perform any obligation, or make any payment required of Tenant hereunder, beyond the applicable notice and cure period, the Port shall have the right (but not the obligation) to perform such obligation of Tenant on behalf of Tenant and/or to make payment on behalf of Tenant to such parties. Tenant shall reimburse the Port the reasonable cost of the Port's performing such obligation on Tenant's behalf, including reimbursement of any amounts actually expended by the Port, plus interest at the Default Rate accruing from and after the date which is ten (10) days following Tenant's receipt of the Port's written demand notice (which notice shall include reasonable supporting documentation evidencing the Port's actual costs), as Additional Rent; *provided, however*, the Port shall provide Leasehold Mortgagee notice and opportunity to cure as set forth in Article 20.

## ARTICLE 24: INTENTIONALLY OMITTED

## ARTICLE 25: ASSIGNMENT

25.1 Prohibition on Assignment. Except as otherwise specifically permitted in this Agreement (including, without limitation, Section 25.3), Tenant shall not, in whole or in part, assign all or any part of this Agreement (as to all or any part of the Premises) without the prior written consent of the Port in each instance, which consent shall not be unreasonably withheld, conditioned, or delayed. Tenant shall at the time the Tenant requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee and the proposed assignment instrument for the transfer as described below. Within thirty (30) days after receipt of Tenant's request including the required information, the Port shall elect one of the following: (a) to obtain the consent of the Port Commission to such proposed assignment or (b) to refuse such consent. In determining whether to grant consent to an assignment, the Port may consider factors which the Port reasonably determines in good faith are relevant to its decision. In connection with the Port's review of any proposed assignment, Tenant shall reimburse the Port

up to five thousand dollars (\$5,000) in actual out of pocket expenses incurred by the Port related to the Port's review.

25.1.1 As a condition for the Port's consent to any assignment, Tenant shall deliver to the Port a true copy of the fully executed instrument of assignment and an agreement executed by the assignee in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee assumes and agrees to be bound by the terms and provisions of this Agreement and perform all the obligations of Tenant hereunder arising from and after the date of assignment.

25.1.2 In the event of any assignment, Tenant and each respective assignor, waives notice of default by the tenant 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 tenant 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 tenant then in possession without notice to or consent of any assignor, including Tenant; and any and all extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Tenant and of each respective assignor.

25.1.3 No assignment, other than a Permitted Assignment or any assignment to which the Port has provided its consent pursuant to this Section 25, shall relieve Tenant of any obligation under this Agreement, including Tenant's obligation to pay Base Rent, Additional Rent or other amounts due hereunder. Any purported assignment contrary to the provisions hereof without consent shall be void. The consent by the Port to any assignment shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. Notwithstanding the foregoing, provided that an assignment is a Permitted Assignment or an assignment to which the Port has provided its consent pursuant to this Section 25, Tenant shall be released from all obligations of Tenant under this Agreement arising from and after the effective date of such assignment, including any obligations to pay Base Rent, Additional Rent or other amounts due hereunder, and from the performance of any of the covenants, representations or warranties of Tenant under this Agreement.

25.1.4 In any assignment of this Agreement by Tenant that does not qualify as an Excluded Sale, Tenant shall pay the Port a sum equal to one-quarter of one percent (0.25%) of the gross price paid by assignee for Tenant's improvements in reimbursement for the Port's costs of evaluating and processing for Port Commission approval of Tenant's request for consent to an assignment. For avoidance of doubt, no fee shall be payable to the Port in connection with any assignment in connection with an Excluded Sale.

25.2 Scope. The general prohibition against assignment contained in this Article shall be construed to include a prohibition against any assignment or subletting by operation of law.

25.3 Permitted Assignments. Notwithstanding anything to the contrary in this Agreement, so long as no Event of Default has occurred and is continuing, Tenant may, without the Port's prior written consent, assign this Agreement to: (i) an Affiliate of Tenant, or (ii) a successor corporation, limited liability company or other entity related to Tenant by merger, consolidation or

non-bankruptcy reorganization, or (iii) any investor as part of the organization of Tenant, or (iv) any entity with whom Tenant (or an Affiliate of Tenant) has entered into a joint venture or a development management agreement in connection with the initial development of the Project, or (v) a Leasehold Mortgagee or its assignee, or (vi) an Institutional Investor (any of the foregoing are referred to herein as "**Permitted Assignments**"). No Permitted Assignment shall take effect until Tenant has delivered to the Port copies of the applicable transfer documents or sublease documents, including an assumption agreement whereby the Permitted Assignee assumes the obligations of Tenant under this Agreement from and after the date of the transfer, running in favor of the Port (except for subleases), and has provided the notice address of the transferee. For the purposes of this Section 25.3, "**Institutional Investor**" shall mean, in connection with any proposed transaction, any one of the following entities: (a) any entity owned or controlled by a pension fund, pension trust or pension account that owns, controls or manages total real estate equity assets of at least \$500,000,000, or that are managed by an entity that controls or manages at least \$500,000,000 of real estate assets; (b) any entity owned or controlled by a pension fund advisor that owns, controls or manages at least \$500,000,000 of real estate assets; (c) any entity owned or controlled by an insurance company that is subject to supervision by the insurance commission, or a similar official or agency, of a state or territory of the United States (including the District, of Columbia), which has a net worth of at least \$500,000,000 and owns, controls or manages real estate assets of at least \$500,000,000; or (d) any entity that owns or controls, together with its affiliates, manages real estate assets of at least \$500,000,000.

25.4 Non-Disturbance and Attornment Agreement. In connection and simultaneously with any Permitted Assignment of this Agreement or Permitted Sublease, the Port agrees to execute and deliver to any Permitted Assignee or Permitted Sublessee a non-disturbance and attornment agreement in substantially the form of **Exhibit D** attached hereto (the "**NDA**"), whereby the Port shall agree not to disturb the Permitted Assignee's or Permitted Sublessee's occupancy and quiet enjoyment of the Premises so long as Tenant or the Permitted Assignee or Sublessee is not in default beyond applicable notice and cure periods on the terms described in the NDA.

25.4.1 The Port will cause any and all holders of a lien or encumbrance on all or any portion of the Port's interest in the Premises to execute and deliver an NDA for the benefit of Tenant, its Permitted Assignees and Permitted Sublessees, as well as for any other assignees or sublessees with respect to which the Port has provided its consent.

## ARTICLE 26: SUBLEASE

26.1 Sublease. Except for the Permitted Subleases, Tenant may not sublease, license or grant concession rights as to (for convenience in this Article 26, "sublease") any portion of the Premises without the Port's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed and which consent shall be given if the proposed subtenant is financially capable of performing the obligations of the Tenant under this Agreement for the portion of the Premises or portion of the Term being subleased. Tenant shall at the time the Tenant requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed subtenant, including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed subtenant and the proposed documentation for the sublease. In determining whether to

grant such a consent to a sublease, the Port may consider all factors which the Port reasonably determines in good faith are relevant to its decision. Within twenty (20) days after receipt of all required information, the Port shall, in its sole discretion, elect one of the following: (a) to consent to such proposed sublease or (b) to refuse such consent. Any such sublease shall be subject to all of the covenants, conditions, agreements and terms of this Agreement. Notwithstanding anything to the contrary contained in this Agreement (including, without limitation, the foregoing provisions of this Section 26.1), Tenant may, without the Port's prior written consent, sublease all or any portion of the Premises but only if such subleases constitute Permitted Subleases as defined in Section 1.45. In connection with the Port's review of any proposed sublease, Tenant shall reimburse the Port up to five thousand dollars (\$5,000) in actual out of pocket expenses incurred by the Port related to the Port's review.

26.1.1 No sublease by Tenant shall relieve Tenant of any obligation under this Agreement, including Tenant's obligation to pay Base Rent, fees or Additional Rent hereunder. Any purported sublease that is not (a) a Permitted Sublease (as that term is defined in Section 1.44); or (b) a sublease for which Tenant has obtained the Port's consent, shall be void, but all Permitted Subleases shall be valid and effective without the need to obtain any consent or approval of the Port. Any sublease shall specifically be subject and subordinate at all times to this Agreement, and to all of its covenants, agreements, terms, provisions, and conditions.

26.1.2 Tenant agrees that any sublease will contain a provision in substance that if there is any termination whatsoever of this Agreement then the subtenant, licensee or concessionaire, at the request of the Port, will attorn to the Port and the subtenant, licensee or concessionaire, if the Port so requests, shall continue in effect with the Port. Nothing herein shall be deemed to require the Port to accept such attornment.

26.1.3 Tenant further agrees that any sublease will contain a provision in substance requiring each and every subtenant, licensee or concessionaire to maintain commercial liability insurance protecting against claims for bodily injury including death, personal injury and property damage in such amounts, and on such forms, as is commercially reasonable in light of the then-existing insurance and real estate markets, endorsed to name both Tenant and the Port Parties as additional insureds.

26.1.4 Tenant agrees that the Port is not, and will not be, responsible for the payment of any brokerage commissions, or finder's fees or similar charges of any nature in connection with any sublease, and Tenant agrees to indemnify and hold the Port harmless from and against any claims liability, losses or expenses, including reasonable attorneys' fees, incurred by the Port in connection with any claims for a commission by any broker or agent in connection with any sublease (including any direct relationship with any subtenant, licensee or concessionaire that may result by way of attornment).

26.1.5 Subject to the terms of a Leasehold Mortgage, in the event that any portion of the Premises is sublet or occupied by anyone other than Tenant, the Port may, upon an Event of Default of Tenant, collect rent from the subtenant, licensee, concessionaire or occupant and apply the amount collected to the Rent reserved under the terms of this Agreement, but without thereby affecting Tenant's liability under this Agreement.

26.2 Copies of Permitted Subleases. Within ten (10) days after entering into a Permitted Sublease, Tenant shall deliver to the Port a paper and scanned copy of the sublease for its records. The terms of sublease shall be consistent with the terms of this Agreement. Upon request from the Port, Tenant shall deliver to the Port a true and correct list of all subtenants, licensees and/or concessionaires to which Tenant has granted a right to occupy the Premises, an identification of the specific portion of the Premises that each such subtenant, licensee and concessionaire is permitted to occupy, the term of permitted occupancy for each such subtenant, licensee and concessionaire, and a copy of the fully executed instrument of the sublease for each such subtenant, licensee and concessionaire, but no more often than once annually. Upon entering into a Permitted Sublease, if requested by Tenant, Port will provide an NDA on the form attached hereto as **Exhibit D**.

26.3 Century Agenda. Tenant agrees to use commercially reasonable efforts to market the Project to potential subtenants that meet the Port's targeted list industries as set forth in **Exhibit E** attached hereto, in support of the Port's Century Agenda ("Century Agenda"). With the Port's reasonable input and concurrence, Tenant will use commercially reasonable efforts to develop a marketing plan that targets companies that create jobs by advancing trade and commerce, promote industrial growth, and stimulate economic development. Specifically, Tenant will encourage its listing Brokers to:

26.3.1 Develop marketing materials which may include such things as brochures, and or video, host a marketing event, and create a direct mail campaign that focuses on companies such as those described in Exhibit E that support the strategies and objectives of the Century Agenda. Tenant will encourage its listing Brokers to engage with Port representatives in developing this segment of Tenant's marketing campaign. The Port will be invited to comment on the content of Tenant's marketing material developed under this Section.

## ARTICLE 27: MISCELLANEOUS

27.1 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 Article 1 hereof or at such other place or places as either the Port or Tenant 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.

27.2 Brokers. The Port and Tenant each warrant to the other that it has had no discussions, negotiations and/or other dealings with any real estate broker or agent in connection with the negotiation of this Agreement, and that it knows of no other real estate broker or agent who is or may be entitled to any commission or finder's fee in connection with this Agreement. The Port and Tenant each agree to indemnify and hold the other harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, reasonable attorneys' fees and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent. This Section is not intended to

benefit any third parties and shall not be deemed to give any rights to brokers or finders. No commission(s) or finder's fee(s) shall be paid to Tenant, employee(s) of Tenant or any unlicensed representative of Tenant.

27.3 Assignment by Port. In the event of a sale, conveyance, or other transfer by the Port of the Property and an assignment of this Agreement by the Port, the same shall operate to release transferor from any further liability arising from and after the effective date of such transfer with respect to any of the covenants or conditions, express or implied, contained in this Agreement on the part of the Port, and from any and all further liability, obligations, costs and expenses, demands, causes of action, claims or judgments arising out of this Agreement from and after the effective date of said release. The effective date of such release shall be the effective date of an assumption by the assignee whereby the assignee agrees to assume all of the Port's obligations and liabilities with respect to this Agreement and Tenant receives a copy of such assignment and assumption agreement (together, when applicable, with a copy of the deed conveying the Port's interest in the Property). In such event, Tenant agrees to look solely to the successor in interest of transferor with respect to obligations arising after the effective date of such release. If any Security has been provided by Tenant to secure performance of Tenant's covenants hereunder, the Port shall transfer such Security to any purchaser and thereupon the Port shall be discharged from any further liability with respect to the Security and the transferee shall thereafter be obligated with respect to the Security pursuant to the terms hereof.

27.4 Title Insurance. The parties acknowledge that the Port has delivered to Tenant a title commitment, dated April 28, 2022, prepared by First American Title Insurance Company for the issuance of a policy of standard leaseholder's title insurance (subject to the execution of this Agreement and recordation of a Memorandum of Ground Lease) insuring Tenant's leasehold interest in the Property. The Port agrees to respond to Tenant in a reasonable amount of time in connection with any exceptions listed in the title commitment that Tenant objects to in a written notice to the Port given during the Due Diligence Period. The cost for such policy of title insurance is the responsibility of the Tenant.

27.5 OFAC Compliance. Tenant advises the Port hereby that the purpose of this paragraph is to provide to LPIV SEATTLE BB/TH, LLC, a Delaware limited liability company ("**Member**"), in its capacity as a member of Tenant, information and assurances to enable Member to comply with the law relating to OFAC. The Port represents, warrants and covenants in favor of Tenant and Member either that (i) it is regulated by the SEC, FINRA or the Federal Reserve (a "**Regulated Entity**") or is a wholly-owned subsidiary of a Regulated Entity, or (ii) it is a Federal, State, or Municipal Governmental Agency of the United States, or (iii) neither it nor any person or entity that directly or indirectly (a) controls it or (b) has an ownership interest in it of twenty-five percent (25%) or more, appears on the list of Specially Designated Nationals and Blocked Persons ("**OFAC List**") published by the Office of Foreign Assets Control ("**OFAC**") of the U.S. Department of the Treasury. The Port covenants during the term of this Agreement to provide to Member and Tenant information reasonably requested by Member, including, without limitation, organizational structural charts and organizational documents, which Member may deem to be necessary ("**OFAC Information**") in order to confirm its continuing compliance with the provisions of this paragraph. The Port represents and warrants to Member and Tenant that the OFAC Information it has provided or to be provided to it in connection



with this Agreement is true and complete. Tenant represents and warrants to the Port that Tenant is not a party with whom the Port is prohibited from doing business pursuant to the regulations of OFAC, including those parties named on OFAC's Specially Designated Nationals and Blocked Persons List and that Tenant is currently and shall at all times during the Term and any Extension Terms of this Agreement remain in compliance with the regulations of OFAC and any other governmental requirement relating thereto

27.6 Non-Discrimination: Services.

27.6.1 It is the basic policy of the Port to provide equal opportunity to the users of all Port services and facilities and all contracting entities. Tenant covenants and agrees that it will not discriminate by segregation or otherwise against any person or persons 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. Specifically, the Port will not tolerate discrimination against any persons on grounds of age, race, color, national origin/ancestry, ethnicity, religion, disability, Family Medical Leave Act (FMLA) use, pregnancy, sex/gender, sexual orientation, whistleblower status, military affiliation, marital status, workers' compensation use, transgender status, political beliefs, or any other protected status, as guaranteed by local, state and federal laws.

27.6.2 It is agreed that Tenant's noncompliance with the provisions of this clause shall constitute a material breach of this Lease. In the event of such noncompliance, the Port may take appropriate action to enforce compliance and pursue such other remedies as may be provided by law.

27.7 Nondiscrimination: Employment. Tenant covenants and agrees that in all matters pertaining to the performance of this Agreement, Tenant shall at all times conduct its business in a manner that complies with all federal, state and local laws and which assures fair, equal and non-discriminatory treatment of all persons, in particular:

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

27.7.2 Tenant will comply strictly 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.

27.8 Labor Disputes. Consistent with its general contractor's obligations in the agreement between the relevant building trade unions and the general contractor, Tenant agrees to use its best reasonable efforts to avoid disruption to the Port, its tenants or members of the public, arising from labor disputes involving Tenant, and in the event of a strike, picketing, demonstration or other labor difficulty involving Tenant, to use its good offices, including the utilization of available legal remedies, to minimize and/or eliminate any disruption to the Port, its tenants or members of the public, arising from such strike, picketing, demonstration or other

labor difficulty. Tenant will work proactively with the construction trades to prevent work stoppages and resolve grievances. Tenant further agrees to cause its selected general contractor to execute an agreement with the relevant building trade unions, on such terms as are acceptable to the general contractor, designed to prevent strikes, lockouts, or other work stoppages on the Project.

27.9 Successors Bound. This Agreement and each of its covenants and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective assignees, subject to the provisions hereof. Whenever in this Agreement a reference is made to the Port, such reference shall be deemed to refer to the person in whom the interest of the Port shall be vested, and the Port shall have no obligation hereunder as to any claim arising after the transfer of its interest in the Premises. Any successor or assignee of the Tenant who accepts an assignment of the benefit of this Agreement and enters into possession or enjoyment hereunder shall thereby assume and agree to perform and be bound by the covenants and conditions thereof. Nothing herein contained shall be deemed in any manner to give a right of assignment to Tenant (other than a Permitted Assignment) without the prior written consent of the Port and without otherwise being in compliance with Article 25 hereof.

27.10 Access to Premises. The Port shall have the right to enter the Property at all reasonable times during business hours of Tenant on five (5) days' written notice to show the Property to any prospective purchasers or mortgagees of the same and for the purpose of ascertaining the condition of the Property or whether Tenant is observing and performing the obligations assumed by it under this Agreement, provided that any of the Port's employees, representatives, agents, contractors, prospective purchasers, mortgagees or their agents entering the Premises shall at all times be accompanied by a representative of Tenant, and shall observe Tenant's reasonable security protocols, while present on the Premises. The Port shall also have the right to enter upon the Premises for the purpose of making any necessary repairs and performing any work that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work. The above-mentioned rights of entry shall be exercisable upon request made on ten (10) days' written notice to Tenant (or such shorter notice as may be reasonable in the event of an emergency, which notice may be given orally).

27.11 Time. Time is of the essence of each and every one of the Port's and Tenant's obligations, responsibilities and covenants under this Agreement.

27.12 Consent. Whenever the Port's prior consent or approval is required by this Agreement, the same shall not be unreasonably withheld, conditioned, or delayed, unless otherwise specifically provided by this Agreement.

27.13 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 Tenant during the Term or any Extension Term of this Agreement, or after the expiration thereof, the substantially prevailing party will be entitled to a reasonable sum for attorneys' fees, consultants' fees, witness fees and other costs, both at trial and on appeal.

27.14 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 do they in any way affect this Agreement.

27.15 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, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

27.16 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. 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.

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

27.18 Security Measures. Tenant 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. Tenant assumes all responsibility for the protection of the Premises, Tenant, its agents and invitees and their property from the acts of third parties.

27.19 Relationship of the Port and Tenant. 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 Tenant and the Port shall be deemed to create any relationship other than that of Tenant and the Port.

27.20 Exclusive Negotiations. During the Due Diligence Period, the Port will not engage in any negotiations with any other party regarding a ground lease of the Property.

27.21 Apprenticeship Utilization. Tenant agrees to incorporate an aspirational apprenticeship utilization (including, in good faith, targeted percentage participation of women and minority apprentices of 3%) into the construction agreement with Tenant's general contractor for the Project. Tenant shall provide to Port documentation of Tenant's attempts to meet the apprenticeship utilization goals, as well as documentation of Tenant's success in

achieving the apprenticeship utilization goals. Tenant shall provide the Port with the general contractor's affidavit of apprenticeship utilization by no later than Substantial Completion.

**27.22 Minority, Women, and DBE Diversity in Contracting.** Prior to executing its construction agreement with its general contractor, Tenant agrees to collaborate with the Port to develop aspirational goals for the participation of certified and self-certified Women and/or Minority Business Enterprises (WMBEs) both in the design and construction phases of the Project. Tenant will develop a written outreach and strategy, (i) establishing Tenant's goals for WMBE participation both in the design and construction of the Project; (ii) outlining Tenant's commitment and plan for outreach and engaging with WMBE firms to provide opportunities to compete for and participate in work associated with the Project; (iii) establishing Tenant's design and construction team's approach to packaging subcontracted work in a manner that reasonably promotes opportunities for WMBE firms to participate in the Project's design and construction phases; (iv) establish a WMBE utilization tracking tool for monthly utilization reports (name, company name, contact info, MBE or WBE status, contract amount); and (iv) identifying the individual Tenant employee(s) responsible for developing and implementing such outreach strategy and plan.

**27.23 CFIUS Compliance.** As used herein, "CFIUS" shall mean the Committee on Foreign Investment in the United States including any of CFIUS's constituent governmental departments and agencies and any other governmental entity conducting any inquiry or proceeding as part of the national security review provision under Section 721; and "Section 721" shall mean Section 721 of the Defense Production Act of 1950, as amended from time to time. In the event CFIUS inquires about, requests a declaration or notification concerning, or otherwise initiates a review of this Agreement under Section 721 including, without limitation, in connection with any assignment of this Agreement by Tenant and/or any Leasehold Mortgagee (hereafter, a "CFIUS Inquiry"), Tenant will be solely responsible for and shall provide, at Tenant's sole cost and expense, any responses or submissions to CFIUS related to such CFIUS Inquiry. The Port shall reasonably cooperate with Tenant to provide information pertaining to the Port that is necessary for such responses or submissions to CFIUS as a result of a CFIUS Inquiry, and not otherwise available to Tenant, provided that Tenant shall indemnify the Port for any and all reasonable costs incurred by the Port in connection with the CFIUS Inquiry, including, without limitation, any reasonable fees or costs incurred by the Port for outside counsel and advisors relating thereto. Tenant agrees that all costs and expenses associated with any mitigation measures requested by CFIUS as a result of the CFIUS Inquiry shall be for the sole account of Tenant.

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

**27.25 Trail Relocation.** Consistent with the Interlocal Agreement entered into between the Port and the City on August 30, 2018 (a copy of which has been provided to Tenant), Tenant

shall, at its sole cost and expense work with the City to relocate, re-establish, and improve the existing trail on the Property to a location and condition that is mutually acceptable to Tenant and the City (collectively, the "Trail Relocation"). To the extent that the Trail Relocation requires amendment to existing easements, or the grant of new easements, with respect to the Trail the Port agrees to cooperate, subject to its ability to review and approve any such instruments, which approval shall not be unreasonably withheld, conditioned, or delayed, provided that the Port will not be responsible for any recording fees or other costs associated with the aforementioned instruments. Notwithstanding the foregoing, the grant of any new easements or amendment of existing easements with respect to the Trail may be subject to approval by the Commission of the Port of Seattle. The Port's costs associated with review and approval of any documents or instruments pursuant to the Trail Relocation shall be subject to reimbursement from Tenant subject to Section 7.3.4.

#### 27.26 Title VI Assurances.

27.26.1 The Tenant for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

27.26.2 The Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no Person, on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and furnishing of services thereon, no Person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjective to discrimination, (3) that the Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, part 21, Nondiscrimination in Federally assisted programs of the U.S. Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

27.26.3 In the event of a breach of any of the above nondiscrimination covenants, and subject to a right and opportunity to cure provided to Tenant and Leasehold Mortgagee as set forth in this Agreement, the Port shall have the right to terminate this Agreement and to re-enter and repossess the Premises and the Project thereon and hold the same as if said Agreement had never been made or issued.

27.27 Subordination to Agreements with the United States. This Agreement is subject and subordinate to all current and future agreements entered into between the Port and the FAA, or any other federal agency, related to the operation or maintenance of Seatac Airport, including

agreements that are required as a condition to the Port receiving federal rights or property for Airport purposes or required in order for the Port to spend federal funds to improve or further develop the Airport in accordance with the Federal Aviation Act of 1958 (Pub. L. No. 85-726, 72 Stat. 731) and 49 U.S.C. §§ 47101-47144.

27.28 Exhibits. The following exhibits are attached to this Agreement after the signatures and by this reference incorporated herein:

- Exhibit A – Legal Description
- Exhibit B – Site Plan
- Exhibit C – Form of Memorandum of Lease
- Exhibit D – Form of Non-Disturbance and Attornment Agreement
- Exhibit E – Target List of Users or Industries on Century Agenda.
- Exhibit F – Pre-Construction Environmental Evaluation Scope
- Exhibit G – Form of Deposit Note
- Exhibit H – Intentionally Omitted.
- Exhibit I – List of Pre-Approved Tenant Architects, Engineers and Consultants

[Signature Page and Notary Blocks Follow]

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

**TENANT:**

**PDC SEATTLE LPIV BB/TH, LLC,**  
a Delaware Limited Liability Company

By:   
Name: Travis Hale  
Its: Local Partner

**PORT:**

**PORT OF SEATTLE**  
A Washington municipal corporation

By:   
Name: Stephen P. Metruck  
Its: Executive Director

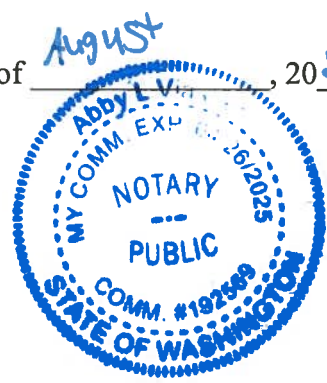
ACKNOWLEDGMENT

STATE OF Washington )  
 )  
COUNTY OF King )

I certify that I know or have satisfactory evidence that Travis Hale is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Local Partner of the **PDC SEATTLE LPIV BB/TH, LLC**, a limited liability company of the State of Delaware, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this 16 day of August, 2022.

Amy Stagner  
NOTARY PUBLIC in and for  
the State of Washington, residing at Kent, WA  
My Commission Expires: 04/26/2025  
Print Name: Abby L Vignier



ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 )  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that STEPHEN P. MEDRICK is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the EXECUTIVE DIRECTOR of the **PORT OF SEATTLE**, a municipal corporation of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this 23 day of August, 2022.

Hugh Hastings  
NOTARY PUBLIC in and for  
the State of Washington, residing at KING Co.  
My Commission Expires: 4-30-24  
Print Name: Hugh Hastings





**EXHIBIT A**

-- Legal Description --

The Land referred to herein below is situated in the County of King, State of Washington, and is described as follows:

**PARCEL I:**

NEW PARCEL B OF CITY OF DES MOINES LOT LINE ADJUSTMENT NO. LUA2021-0001, RECORDED UNDER RECORDING NO. [20210803900001](#), IN KING COUNTY, WASHINGTON.

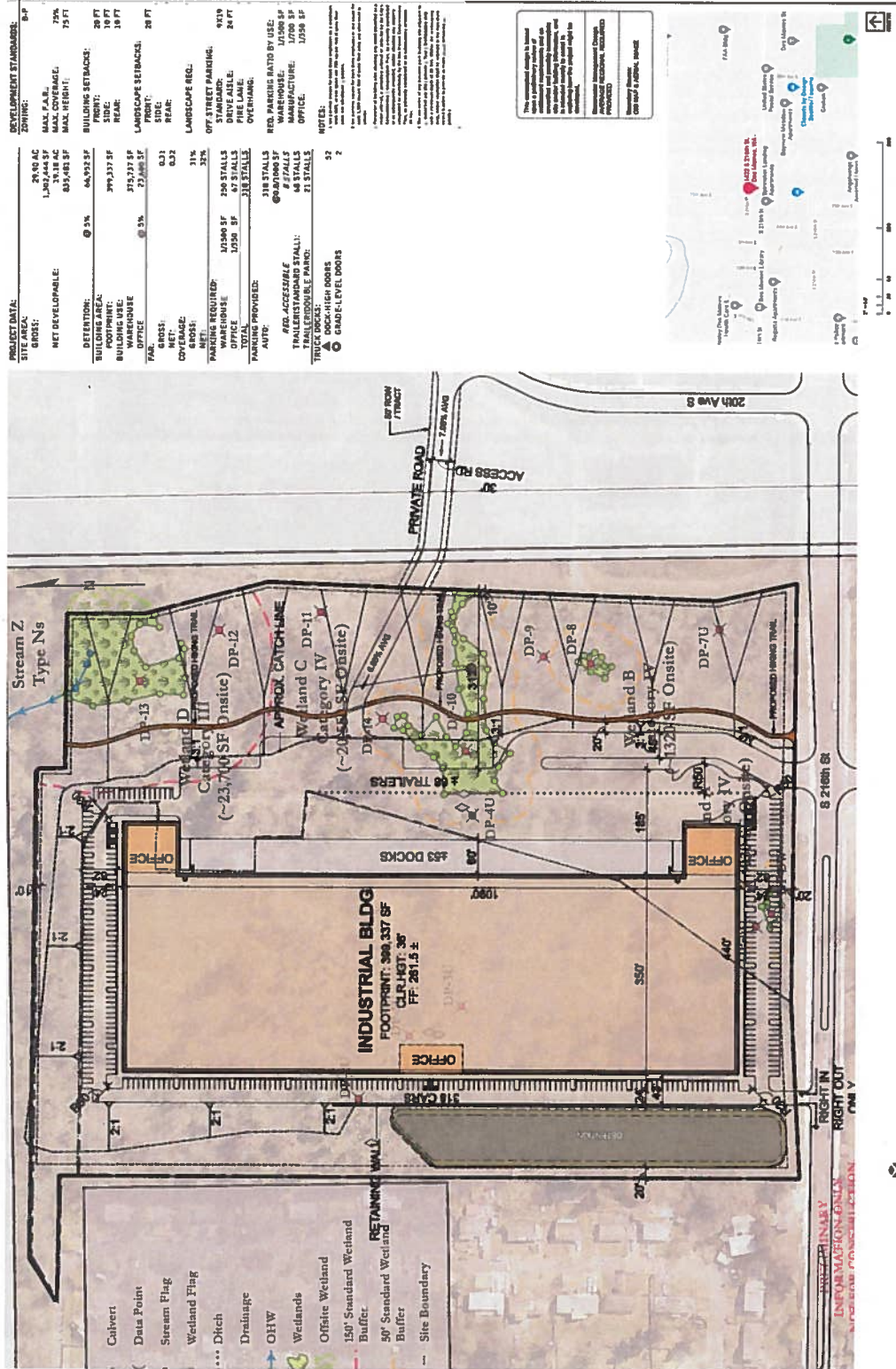
**PARCEL II:**

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, OF THE WILLAMETTE MERIDIAN, KING COUNTY, WASHINGTON, EXCLUDING THEREFROM AND LYING WESTERLY OF THE BOUNDARIES OF NEW PARCEL B OF CITY OF DES MOINES LOT LINE ADJUSTMENT NO. LUA2021- 0001, RECORDED UNDER RECORDING NO. [20210803900001](#);

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN ROADS OR HIGHWAYS.

**EXHIBIT B**

-- Site Plan --



**WARE MALCOMB**

Conceptual Site Plan  
 8 216th St  
 Deer Park, WA, 98108

DATE: 08/20/2024  
 SHEET: 1

**PANATTONI**

**EXHIBIT C**

-- Form of Memorandum of Lease --

**RECORDED AT THE REQUEST  
OF:**

\_\_\_\_\_

**WHEN RECORDED RETURN TO:**

\_\_\_\_\_

---

**MEMORANDUM OF GROUND LEASE**

This Memorandum of Ground Lease ("Memorandum"), dated as of \_\_\_\_\_, 2022, is entered into by and between **PDC SEATTLE LPIV BB/TH, LLC**, a Delaware limited liability company, or its assigns ("**Tenant**"), **PORT OF SEATTLE**, a Washington municipal corporation ("**Landlord**").

- 1 Landlord owns fee title to that certain real property located in the Des Moines, King County, State of Washington, as is more particularly described in **Exhibit A** attached hereto and incorporated herein ("**Land**").
- 2 On even date herewith, Landlord entered into that Ground Lease Agreement with Tenant (the "**Lease**") wherein Landlord agreed to lease to Tenant the Land.
- 3 The Lease term is for a period of fifty-five (50) years and commences on \_\_\_\_\_, 2022. and expires on \_\_\_\_\_, 2072. Tenant has two (2) successive options to extend the term of the Lease each for a ten (10) year period, and one (1) option to extend the term of the Lease for a five (5) year period.
- 4 This Memorandum is solely for recording purposes and shall not be construed to supplement, amend, or otherwise modify the terms and conditions contained in the Lease.
- 5 This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease regarding Assignment.
- 6 This Memorandum and the Lease are governed by the laws of the State of Washington.

*Signatures are on the next page.*

**SIGNATURE PAGE**  
**to Memorandum of Option to Ground Lease**

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date set forth above.

[ALL SIGNATURES MUST BE NOTARIZED]

**LANDLORD:**

**PORT OF SEATTLE**

A Washington municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**TENANT:**

**PDC SEATTLE LPIV BB/TH, LLC,**  
a Delaware Limited Liability Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit A to  
Memorandum of Ground Lease**

**LEGAL DESCRIPTION OF PROPERTY**

### ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the **PDC SEATTLE LPIV BB/TH, LLC**, Limited Liability Company of the State of Delaware, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 NOTARY PUBLIC in and for  
 the State of Washington, residing at \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_  
 Print Name: \_\_\_\_\_

### ACKNOWLEDGMENT

STATE OF WASHINGTON )

COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the **PORT OF SEATTLE**, a municipal corporation of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 NOTARY PUBLIC in and for  
 the State of Washington, residing at \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_  
 Print Name: \_\_\_\_\_

## EXHIBIT D

-- Form of Non-Disturbance and Attornment Agreement --

### RECOGNITION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

This Recognition, Nondisturbance and Attornment Agreement (“Agreement”), is made as of \_\_\_\_\_, 20\_\_, by and among The PORT OF SEATTLE, a Washington Municipal corporation (hereinafter referred to as “**Prime Lessor**”), and PDC SEATTLE LPIV BB/TH, LLC, a Delaware limited liability company (hereinafter referred to as “**Prime Lessee**”), and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter referred to as “**Tenant**”), with reference to the following facts:

A. Prime Lessor has entered into a Lease with Prime Lessee dated June \_\_, 2022 (the “**Prime Lease**”) for the building located at \_\_\_\_\_ (the “**Property**”) as more fully described in the Prime Lease;

B. By a certain sublease entered into between Prime Lessee and Tenant dated \_\_\_\_\_ (hereinafter called the “**Sublease**”), Prime Lessee leased to Tenant [a portion of] the Property and the improvements to be erected thereon as more particularly described in the Sublease (said portion of the Property and the improvements now or hereafter erected thereon being hereinafter called the “**Demised Premises**”);

C. The parties hereto desire to provide for the recognition and nondisturbance to Tenant by the Prime Lessor; and

D. The parties hereto desire to provide for Tenant’s agreement to pay Prime Lessor the rent payments due under the Prime Lease and to assume the Prime Lease after the occurrence of a default by Prime Lessee not cured within any applicable cure period.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto intending to be legally bound hereby agree as follows:

1. Prime Lessor agrees that as long as the Sublease shall be in full force and effect:

(a) The possession by Tenant of the Demised Premises and the Tenant’s rights thereto shall not be disturbed, affected or impaired by, nor will the Sublease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding upon the Prime Lease, or by the termination of the Prime Lease or the enforcement of any rights under the Prime Lease or any other documents held by the Prime Lessor, or by any judicial sale or execution or other sale of the Demised Premises, or (ii) any default under the Prime Sublease; and

(b) Prime Lessor will not exercise any of its rights under the Prime Lease in a manner which would effectively prohibit Prime Lessee from performing the Sublease in accordance with its terms.



2. If the Prime Lessor shall terminate the Prime Lease with Prime Lessee or its assigns or if the Property shall be sold as a result of any action or proceeding to terminate the Prime Lease, or transfer of ownership given in lieu of termination, the Prime Lease shall continue in full force and effect with Tenant, without necessity for executing any new lease, as a direct lease between Tenant and the then owner of the Property, as "landlord," upon all of the same terms, covenants and provisions contained in the Prime Lease, and in such event:

(a) Tenant shall be bound to the Prime Lessor or such new owner under all of the terms, covenants and provisions of the Prime Lease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to the Prime Lessor or such new owner, as the case may be, and to recognize the Prime Lessor or such new owner shall, from and after the date the Prime Lessor or new owner succeeds to the interest of "landlord" under the Prime Lease, have the same remedies against Tenant for the breach of any covenant contained in the Prime Lease that Landlord might have had under the Prime Lease against Prime Lessee; and

(b) The Prime Lessor or such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Prime Lease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term of the Prime Sublease). Tenant shall, from and after the date the Prime Lessor or new owner succeeds to the interest of "landlord" under the Prime Lease, have the same remedies against the Prime Lessor or new owner for the breach of any covenant contained in the Prime Lease that Prime Lessee might have had under the Prime Lease against Landlord if the Prime Lessor or new owner had not succeeded to the interest of Landlord.

3. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage paid or reliable overnight courier to each of the parties at their respective addresses as hereinabove set forth or at such other address as a party may designate by notice given in accordance with this paragraph. Notices shall be deemed delivered upon actual receipt as evidenced by the return receipt.

4. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

**[Signature Pages Follow]**

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

**PRIME LESSOR:**

PORT OF SEATTLE  
a Washington municipal corporation

By: \_\_\_\_\_  
Name:  
Title:

**PRIME LESSEE:**

PDC SEATTLE LPIV BB/TH, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**TENANT:**

By: \_\_\_\_\_  
Name:  
Title:

## EXHIBIT E

### Target List of Users or Industries on Century Agenda

Per the goals of the Port of Seattle's Century Agenda, the Port strives to participate in responsible development, investment and economic growth of the region and its communities, as well as being a model for Equity Diversity and Inclusion. Industries that include distribution, logistics, manufacturing, and aviation related businesses are to be included in the targeted marketing plans of Tenant. The shared goal and vision is to stimulate job growth, advance trade and commerce while promoting industrial growth and the stimulation of the local economy.

## EXHIBIT F

### Pre-Construction Environmental Evaluation Scope

#### **Geotechnical Testing & Studies:**

To conduct our study, we propose exploring soil and groundwater conditions by excavating 20 to 25 soil test pits to maximum depths of 8 to 15 feet below existing surface grades. The test pits will be excavated by our excavating contractor using a trackhoe. The field exploration will be monitored by an engineering geologist or a geotechnical engineer from our firm. Our representative will maintain a log of the soil conditions encountered, obtain representative soil samples, record water levels, and observe other site features pertinent to proposed development. Soil samples obtained will be returned to our office for verification of the field classifications and additional laboratory testing. Laboratory testing will include determination of the moisture content on each soil sample and, on selected samples, grain size distribution.

Using the results of our field study and laboratory testing, analyses will be undertaken to develop geotechnical recommendations for project design and construction. The results of our study will be summarized in a written report. Specifically, the report will address the following:

- Soil and groundwater conditions.
- Seismic Criteria per the current International Building Code (IBC).
- Geologic Hazards per the City of Des Moines Municipal Code.
- Site preparation and grading.
- Excavation
- Foundations
- Slab-on-grade floors.
- Lateral earth pressures on below-grade walls.
- Retaining Walls.
- Infiltration feasibility.
- Stormwater Facilities.
- Utilities
- Drainage
- Pavement

Prior to initiating our field work, we will contact the one-call utility locating service to delineate utilities that may enter the property. We should be provided with a site plan that further delineates utilities or other subterranean structures on-site. Our test pits will be located to avoid all known utilities or other below-grade structures. We will not be held

responsible for damage to utilities or other below-grade structures that are mislocated or unmarked in the field.

It should be noted that test pit explorations will result in remnant surface disturbance following excavation. The test pits will be backfilled after excavation using the excavated soil; however, the surface will not be restored to conditions that existed prior to excavation. Also, backfilling of the test pits will not be completed in an engineered manner. The backfill will be tamped in place using the excavator bucket. Depending on future building areas, it may be necessary to re-excavate the test pits and replace the backfill soils with structural fill for support of building foundations, floors, and site pavements. If remnant surface disturbance is not acceptable, the test pit explorations would need to be replaced with test borings which will have minimal surface disturbance and eliminate the potential for having to re-excavate the test pits and backfill structurally. We can provide an alternate cost for completing the exploration using test borings, if requested.

### **Environmental Testing & Studies:**

#### **Phase I**

Atlas will perform an ESA in general accordance with ASTM E1527-13 Standard Practice for Environmental Site Assessments: Phase I Site Assessment Process.

The ASTM E 1527-13 Standard Practice specifies that the User conduct a review of title and judicial records for environmental liens and/or Activity and Use Limitations (AUL) and provide the information to the Environmental Professional. Atlas offers the service and has included the fee in the total cost. Atlas will engage a title professional to perform the service.

The ESA will include a Tier 1 Vapor Encroachment Screening (VES) per the methodology as described in ASTM E2600-15: Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions. The purpose of the VES is to help to determine if Vapor Encroachment Condition (VEC) (the presence or likely presence of chemicals of concern vapors in the subsurface of the target property caused by the release of vapors from contaminated soil and/or groundwater either on or near the target property) is identified for the property.

#### **Phase II**

The scope of work presented in this proposal include the performance of limited subsurface investigations at the 31.40 acres Des Moines Creek West property. The investigation is to investigate for suspect residential heating oil tanks, and evaluate potential impacts from the Tacoma Smelter Plume and areas that were previously occupied by orchards.

**TASK 1 – Clearing and UST Exploration and Excavation:**

Site Safety Plan and Coordination: It is Atlas' policy to ensure safe working conditions at all project sites. Therefore, prior to commencing the field activities, Atlas will prepare a site-specific health and safety plan (HASP) for the site. The HASP was used by members of the project team, all of whom have completed 40 hours of Hazardous Waste Site Operations training and 8 hour refresher courses as outlined in Title 29, Part 1910.120 of the Code of Federal regulations (29 CFR 1910.120). The HASP will provide health and safety guidelines for the field activities, and addresses key safety issues and potential hazards associated with the project. The plan will describe the scope of work, specify the appropriate personal protective equipment (PPE), discusses emergency procedures and contacts, list project team-member responsibilities, and will outline work zones and decontamination procedures to be used during this project.

Atlas will subcontract a firm to conduct clearing of the vegetation to provide access and to conduct test pit excavation in the vicinity of the former residential structures on the Subject Property to assess for suspect heating oil tanks. Historical records indicate as many as at least twelve (12) former residential structures were located on the Subject Property and may have utilized oil in underground tanks for heating purposes. If suspect heating oil tanks are uncovered, the area will be demarcated for future removal and assessment of the tanks, which removal and assessment shall be the Tenant's responsibility should Tenant waive the Due Diligence Contingency. Prior to backfilling any areas containing USTs, the subcontractor will take soil samples and conduct analytical testing to determine the presence of TPHs.

The proposed soil boring location, as well as the test pit areas will be cleared of utilities by a subcontracted private utility locates firm as well as a public utility locate. Atlas will coordinate the schedule with the subcontractors.

#### TASK 2 – Tacoma Smelter Plume Soil Assessment:

Soil Sampling for Arsenic and Lead: Atlas will conduct shallow soil sampling at the property per the July 2019 Tacoma Smelter Plume Model Remedies Guidance, which requires a minimum of 68 sample locations in a 31-acre property (Decision Unit). The guidance requires a soil sample at each location collected between surface and 6-inches below ground surface (bgs) with a deeper soil sample collected from 6 to 12-inches at every fourth sample location (25 percent of samples).

In order to complete the soil assessment, 68 soil borings will be advanced using a hand auger and/or shovel in a general grid pattern across the property to an approximate depth of zero to six inches in depth (Figure 1). Additionally in 17 of the borings, Atlas will collect an additional sample from 6 inches to 12 inches below grade.

Qualified Atlas field scientists will perform sampling activities. Based upon the proposed number of sample locations and the large amount of overgrowth, we estimate that three days of fieldwork for two field scientists will be required to complete the field activities. No groundwater sampling will be conducted as part of this investigation. At

the completion of the sampling activities, the surface conditions will be restored to pre-existing conditions to the extent practical.

### Duff Sampling

In the areas with leaf debris, duff samples will be collected. For a 31-acre site, 17 duff samples are required to meet the guidance document requirements. Each duff sample will be a composite sample collected from at least six locations.

Laboratory Analysis: Eighty-five (85) soil samples collected from the borings and 17 duff composite samples will be analyzed on a 5-day turnaround time by a Washington-accredited laboratory. Soil and duff samples will be analyzed for total lead and total arsenic by United States Environmental Protection Agency (EPA) Method 6020B.

### TASK 3 – Former Orchard Soil Assessment:

Soil Sampling for Pesticides: Since Ecology does not have guidance for pesticide/herbicide sampling, Atlas will collect representative soil samples in accordance with the Guidance for Evaluating Residual Pesticides on Lands Formerly Used for Agricultural Production, prepared by the Oregon Department of Environmental Quality (DEQ) and dated January 2006 with a 2019 note regarding incremental sampling methodology (“the guidance”). The proposed sampling plan is based upon the Interstate Technology Regulatory Council (ITRC) guidance document titled “Incremental Sampling Methodology (ISM) Update” dated October 2020. Based on this guidance, Atlas proposes to divide the property into four decision units (DU) based upon the historic photograph depicting four distinct separate orchards. Atlas proposes to collect discrete soil samples from a total of 30 locations within each DU. These 30 discrete soil samples will be used to generate one composite sample from each DU that will be submitted for laboratory analysis. A total of five composite samples (four decision unit composite samples and one replicate) will be submitted to the laboratory for analysis.

Atlas is proposing to collect one surface sample (0-6 inches below ground surface) and one subsurface sample (one to two feet below ground surface) from each of the 30 locations in each DU (Figure 2). The same compositing scheme will be used for subsurface as for surface samples. The subsurface samples will be held by the laboratory and archived by the laboratory, pending the outcome of the surface sampling results. In addition, one replicate sample will be collected from one of the DU. The replicate sample is collected to check the accuracy of the sampling. The replicate sample will be composed of soil from 30 different locations within one of the DUs. The soil samples will be collected using either a shovel or hand auger. The sampling equipment will be decontaminated between sampling locations. A portion of each discrete sample will be placed into a glass jar provide by the laboratory, where it will be homogenized and readied for composite sampling. Due to the large volume of sampling and the amount of overgrowth, Atlas anticipates that the sampling effort will require two people over two days.

Each of the composite soil samples will be collected into glass jars provided by the analytical laboratory. Immediately after collection, the soil samples will be labeled with sample identification, sample location, date, time, sampler's initials, and the requested laboratory analysis. The composite soil samples from each DU will then be placed in a cooler on ice for transport to Apex Laboratory in Tigard, Oregon for laboratory analysis. These shallow composite soil samples from each DU will be analyzed for organochlorine pesticides by EPA Method 8081B, chlorinated herbicides by EPA Method 8151A, and organophosphate pesticides by EPA Method 8270E. Arsenic and lead are also associated with pesticides and herbicide contamination. However, arsenic and lead sampling is being conducted under Task 1 that will provide the data for these potential constituents of concern. The cost estimate assumes the composite soil sample will be analyzed on a 10 day turnaround basis from receipt of samples at laboratory.

#### TASK 4 – Report Preparation:

Following the completion of the field activities and receipt of the laboratory results, the data from the limited soil investigation will be included in a report to document the work performed. The report will include a description of the methods and procedures used, any assumptions made, our findings, conclusions, and recommendations. Property drawings, laboratory reports and chain-of-custody documentation will be included in the attachments. A full draft report will be available within 10 business days of receipt of final analytical result.



**EXHIBIT G**

Form of Deposit Note

**DEPOSIT NOTE**

**Property located Des Moines, WA**

**\$500,000.00**

**June \_\_, 2022**

**Tacoma, Washington**

FOR VALUE RECEIVED, the undersigned (“Tenant”) agrees to pay to the order of **The Port of Seattle**, a Washington municipal corporation the sum of **Five Hundred Thousand Dollars (\$500,000.00)** upon satisfaction or waiver of the Due Diligence Period as stated in the Ground Lease.

This Note is evidence of the obligation to pay the Deposit as defined in that certain Ground Lease between the Port of Seattle and the Tenant (the “**Ground Lease**”) dated of even date herewith, for the lease of the above real property located in **Des Moines, Washington**.

If this Note shall be placed in the hands of an attorney for collection, or if suit shall be brought to collect any of the balance due on this Note, Tenant promises to pay a reasonable attorney’s fee as fixed by the Court, and all court and collection costs.

Tenant’s failure to pay the Deposit shall constitute Tenant’s disapproval of the contingencies stated in the Ground Lease.

**Tenant:**

**PDC SEATTLE LPIV BB/TH, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_, Local Partner

**EXHIBIT H**

Intentionally Omitted.

## EXHIBIT I

### List of Pre-Approved Tenant Architects, Engineers and Consultants

- **Architect** – Ware Malcomb
- **Structural Engineer** – Shutler Consulting Engineering
- **Geotechnical Engineer** – Terra Associates, Inc.
- **Civil Engineer** – Barghausen Consulting Engineer, Inc.
- **Traffic Consultant** – Kimley-Horn and Associates, Inc.
- **Cultural Resources Consultant** – Cultural Resource Consultants, LLC
- **Sustainability Consultant** – ArchEcology, LLC
- **Wetlands Consultant** – Soundview Consultants, LLC
- **Environmental Consultant** – Atlas technical Consultants, LLC