

ITEM NO. 6c Attach 2
DATE OF MEETING: June, 2012

GROUND LEASE AGREEMENT

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GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the "Agreement") is made as of this ____ day of _____, 2012 by and between the PORT OF SEATTLE, a Washington municipal corporation, and PUGET SOUND ENERGY, INC., a Washington corporation.

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 4.4 below.

1.2 Adjustment Date. "Adjustment Date" shall have the meaning set forth in Section 4.3.1 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, 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, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees 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 date that is the earlier of (i) the date of Issuance of a temporary certificate of occupancy, or the equivalent thereof, for Tenant or Tenant's sublessee to fully occupy and use the Project for Tenant's or its sublessee's intended use; or (ii) the second (2nd) anniversary of the Issuance of the warehouse building permit. Thereafter, "Agreement Year" shall mean and refer to each successive twelve (12) month period following the expiration of the first Agreement Year.

1.6 Airport. "Airport" means Seattle-Tacoma International Airport.

1.7 Alteration. "Alteration" shall have the meaning set forth in Section 8.1 below.

1.8 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.

1.9 Intentionally Deleted.

1.10 Base Rent. "Base Rent" shall have the meaning set forth in Section 4.3 below.

1.11 Broker. "Broker" shall mean and refer to MetPartners for Tenant. The Port is not represented by a Broker in connection with this transaction.

1.12 City. "City" shall mean and refer to the City of Des Moines, Washington.

1.13 Commencement Date. "Commencement Date" shall mean and refer to (a) the date of Issuance of the warehouse building permit, but not later than eighteen (18) months after the Execution Date, or (b) at Tenant's election, on or after the date of Issuance of a clearing and grading permit for the Project.

1.14 Consumer Price Index. "Consumer Price Index" shall mean and refer to the Consumer Price Index – All Urban Consumers for the Seattle-Tacoma-Bremerton, Washington Subgroup "All Items" (1982-84 = 100). If at any time prior to the expiration or earlier termination of this Agreement, the Consumer Price Index – All Urban Consumers (All Items) for the Seattle-Tacoma-Bremerton, Washington Subgroup is no longer published, the parties shall use such substituted index as is then generally recognized and accepted for similar determinations of purchasing power.

1.15 Cure Notice. "Cure Notice" shall have the meaning set forth in Section 20.3.3 below.

1.16 DMCBP. "DMCBP" means the Des Moines Creek Business Park.

1.17 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.

1.18 Developer. "Developer" shall have the meaning set forth in Section 24.6 below.

1.19 Development Agreement. "Development Agreement" shall mean the Second Development Agreement by and between the City and the Port pertaining to the DMCBP.

1.20 Entitlement Period. “Entitlement Period” shall mean and refer to the period commencing on the Execution Date and ending on the date of the Issuance of the warehouse building permit, but not later than eighteen (18) months after the Execution Date.

1.21 Intentionally Deleted.

1.22 Environmental Information. “Environmental Information” shall mean and refer to any environmental documents, records or data, including, without limitation, any study, evaluation, investigation or results of any environmental testing conducted, or any draft or final plan concerning environmental matters prepared, by or for Tenant with respect to the Premises.

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

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

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

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

1.27 Execution Date. “Execution Date” shall mean and refer to the date on which both parties have executed this Agreement.

1.28 FAA. “FAA” shall mean and refer to the Federal Aviation Administration.

1.29 Fair Market Rent. “Fair Market Rent” shall have the meaning set forth in Section 4.3.2 below.

1.30 Final Offers. “Final Offers” shall have the meaning set forth in Section 4.3.2.2 below.

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

1.32 Hazardous Substance. “Hazardous Substance” shall mean and refer to any hazardous or toxic substance, material or waste, including, but not limited to, (i) those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 172.101), (ii) those substances, materials, and wastes listed by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), (iii) those substances, materials and wastes listed by the Washington State Department of Ecology as hazardous substances (Washington Administrative Code 173-303 and 173-340), (iv) petroleum products and their derivatives, and (v) such other

substances, materials and wastes as are or become regulated or subject to cleanup authority by any jurisdiction under any Environmental Laws.

1.33 Intentionally Deleted

1.34 Incremental Environmental Costs. "Incremental Environmental Costs" shall have the meaning set forth in Section 14.7.1.

1.35 Inspection Rights. "Inspection Rights" shall have the meaning set forth in Section 3.4.2.2 below.

1.36 Issuance. "Issuance" shall mean and refer to, with respect to any permit, when all action has been taken by the responsible authority having jurisdiction to issue the permit.

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

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

1.39 Legal Requirements. "Legal Requirements" shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements (whether now or hereafter in effect) of all 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; applicable storm water pollution prevention plans, spill prevention control and countermeasures plans, or other applicable facility operations and maintenance plans as described in section 14.1; the Development Agreement; 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's 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. In addition, if PSE is neither Tenant nor the occupant of the Premises, and Tenant or its approved sublessee is not then legally required to maintain a stormwater pollution prevention program, the Port shall reasonably consider a request to waive the requirement for such user.

1.40 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 Tenant or Tenant's Operations.

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

1.42 Non-Disturbance and Attornment Agreement. “Non-Disturbance and Attornment Agreement” or “NDA” shall have the meaning set forth in Section 24.5 below.

1.43 Notice of Default. “Notice of Default” shall mean and refer to written notice of any Event of Default to Tenant.

1.44 Operating Expenses. “Operating Expenses” shall have the meaning set forth in Section 12.1 below.

1.45 Option Payment(s). “Option Payment(s)” shall have the meaning set forth in Section 4.2 below.

1.46 Permit Plans. “Permit Plans” shall have the meaning set forth in Section 7.3.2 below.

1.47 Permitted Assignment. “Permitted Assignment” shall have the meaning set forth in Section 24.4 below.

1.48 Permitted Encumbrances. “Permitted Encumbrances” shall mean and refer to any and all encumbrances of record as of the Execution Date (subject to the Port's obligation to cure any such encumbrances, as set forth in Section 2.2 of this Agreement) that would be disclosed by a detailed inspection and/or survey of the Property, together with all encumbrances arising in connection with the Lot Division (defined in Section 6.2) provided that such encumbrances do not materially interfere with the planned Project.

1.49 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:

1.49.1 Liens arising by statute in connection with worker's compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations or other similar charges, 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 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); and

1.49.2 Any Leasehold Mortgage.

1.50 Permitted Subleases. “Permitted Subleases” shall have the meaning set forth in Section 25.4 below.

1.51 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.

1.52 Port. "Port" or "the Port" shall mean and refer to the Port of Seattle, whose street address for purposes of notice is Aviation Division, 17801 International Blvd. (Pacific Highway S.), Seattle, Washington 98158, Attention: Manager, Aviation Properties and whose mailing address for purposes of notice is P. O. Box 68727, Seattle, Washington 98168, Attention: Manager, Aviation Properties.

1.53 Port Party. "Port Party" shall have the meaning set forth in Section 11.1.2.

1.54 Port's Work. "Port's Work" shall have the meaning set forth in Section 6.1 below.

1.55 Post Termination Remediation. "Post Termination Remediation" shall have the meaning set forth in Section 14.4 below.

1.56 Pre-existing Hazardous Substances. "Pre-existing Hazardous Substances" shall mean and refer to any actionable levels (as such may change from time to time) of Hazardous Substances and/or underground storage tanks present on the Property on the Execution Date or set forth in the Pre-Lease Environmental Evaluation, excluding any Hazardous Substances brought onto the Property by Tenant or its employees, agents or invitees.

1.57 Pre-Lease Environmental Condition. "Pre-Lease Environmental Condition" shall mean and refer to the environmental condition of the Property as determined by and set forth in the Pre-Lease Environmental Evaluation.

1.58 Pre-Lease Environmental Evaluation. "Pre-Lease Environmental Evaluation" shall mean and refer to the environmental investigation and evaluation conducted by the Tenant on the Property prior to and during construction of the Project as described in Section 3.4.2.

1.59 Premises. "Premises" shall mean and refer to the leased Property together with the Project to be erected by Tenant on the Property.

1.60 Project. "Project" shall mean and refer to construction of a natural gas and electric utility emergency/storm, materials storage and distribution, and operations center, including a materials storage/distribution warehouse, testing/maintenance shops and field services building; a waste management building; a substation field services, shops, and materials storage building; a multi-story office building; and materials, equipment, and vehicle storage yard together with other improvements, fixtures, structures and appurtenances related thereto, to be built on the Property by, or for, Tenant.

1.61 Property. “Property” means those parcels of land, comprising approximately fifty and one tenth (50.1) acres, legally described in **Exhibit A** hereto and depicted on **Exhibit B** hereto, subject to the Permitted Encumbrances; provided that the composition of the Property shall be adjusted pursuant to the terms and conditions of Sections 7.1.1, 7.1.2, 7.1.3, and 7.1.4.

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

1.63 PSE. “PSE” shall mean and refer to Puget Sound Energy, Inc.

1.64 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 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.

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

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

1.67 Service Area Agreement. “Service Area Agreement” or “SAA” shall have the meaning set forth in Section 12.3 below.

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

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

1.70 Tenant. “Tenant” shall mean Puget Sound Energy, Inc., whose street address for purposes of notice is 10885 NE 4th Street, 10-N, Bellevue, Washington 98004, Attention: Manager Real Estate and whose mailing address for purposes of notice is P. O. Box 97034, Bellevue, Washington 98009-9734, Attention: Manager Real Estate.

1.71 Intentionally Deleted.

1.72 Tenant’s Operations. So long as PSE is a Tenant or subtenant of, or otherwise occupies, the Premises, “Tenant’s Operations” shall mean and refer to all operations in the conduct of public utility business and all operations on or about the Premises or conducted off the Premises and related to operations conducted on or about the Premises. If PSE is not the Tenant or the subtenant, or otherwise occupying the Premises, “Tenant’s Operations” shall mean and refer to all operations on or about the Premises or conducted off the Premises and related to operations conducted on or about the Premises by the Tenant or the occupant of the

improvements located on the Property. Tenant's operations shall be consistent with land use that is compatible with noise levels associated with operating the Airport and that will not conflict with the Airport's use, operations and development for flight-related activities and functions.

1.73 Term. "Term" shall have the meaning set forth in Section 3.1 below.

1.74 Termination Assessment Report. "Termination Assessment Report" shall have the meaning set forth in Section 14.4 below.

1.75 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.

1.76 Usable Property. "Usable Property" shall mean and refer to those portions of the Property identified on **Exhibit A** as Lot #1 (Office), Lot #2 (Warehouse/Yard), Lot #3 (Yard), S. 208th Street R.O.W., S. 212th Street R.O.W., and Tract "A" Stormwater Facility (Public), as generally depicted on the Map of the Premises attached hereto as **Exhibit B** and incorporated herein by reference; provided that the composition of the Usable Property shall be adjusted pursuant to the terms and conditions of Sections 7.1.1, 7.1.2, 7.1.3, and 7.1.4.

1.77 Utilities and Transportation Commission. "Utilities and Transportation Commission" or "UTC" shall have the meaning set forth in Section 12.3 below.

1.78 Work Plan. "Work Plan" shall have the meaning set forth in Section 3.4.2.3.1 below.

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. Subject only to the Port's completion of the Port's Work set forth in ARTICLE 6, Tenant is fully familiar with the physical condition of the Property, has received the same in good order and condition and, subject to the Port's obligation with respect to Pre-existing Hazardous Substances arising out of the Pre-Lease Environmental Condition, 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 or its adequacy for construction and operation of the Project. Tenant may use the Property for the uses set forth in 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. Tenant also accepts the Property subject to all the Permitted Encumbrances. The Port shall deliver the Property to Tenant free and clear of those liens and encumbrances that may, in Tenant's reasonable judgment, materially interfere with the Project, or Tenant's use of the Property, and of which Tenant has notified the Port in writing on or before the Execution Date.

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, 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 License for Access. The Port, for itself and its successors and assigns, grants to Tenant an irrevocable license for reasonable ingress and egress from and to the Property on established roadways and sidewalks; *provided, however,* notwithstanding anything herein to the contrary, neither party may relocate or substantially modify the location of such ingress and egress without approval of the other party.

2.5 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 26.9, but 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 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 twentieth (20th) Agreement Year. In the event that Tenant appropriately exercises any Extension Option(s) set forth in Section 3.2, the Term of this Agreement shall automatically be extended by the Extension Term for each such Extension Option exercised. Notwithstanding the foregoing, if Tenant elects for the Commencement Date to occur prior to Issuance of the warehouse building permit pursuant to Section 1.13(b) and any such approvals are not secured on terms and conditions acceptable to Tenant, Tenant may terminate this Agreement upon notice to the Port and completion of work required by Tenant's clear and grade permit to the reasonable satisfaction of the Port.

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 for each 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 pursuant to Section 4.3.2. Written notices of Tenant's exercise of the Extension Option for each Extension Term must be given to the Port no less than twelve (12) 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, 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. 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, 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; however, Permitted Subleases may provide that notice of exercise of a materially co-terminus (e.g., not more than one (1) month shorter) corresponding extension option by the subtenant of the entirety of the Premises is binding upon both Tenant and the Port under this Agreement.

3.3 Right of First Offer. PSE has a one-time, non-assignable right of first offer to purchase the Property in the event the Port elects to sell the Property to a third party during the Term or any extension thereof. Before the Port may sell the Property to a third party, the Port will first offer the Property to PSE by presenting PSE with an offer to purchase. PSE will have twenty (20) days following the date the Port first presents PSE such offer to decide whether to negotiate an agreement to purchase the Property. If PSE opts to negotiate such an agreement, PSE shall, within that same twenty (20) day period, deliver written notice thereof to the Port. Promptly after receipt of such notice, the parties will commence good faith negotiations exclusively with each other for a period not to exceed ninety (90) days after the date PSE gives the required notice to the Port. If the Port does not receive the required notice within the 20-day period, or if the Port receives the notice within the required period but the Port and PSE do not enter into a legally binding, written agreement for the purchase and sale of the Property within the 90-day period, the Port will be free to enter into an agreement with a third party and this right of first offer will permanently expire. PSE's rights under this Section 3.3 shall survive any Permitted Assignment or Permitted Sublease of the Premises.

3.4 Entitlement Period.

3.4.1 Tenant's Rights; Termination. Tenant may during the Entitlement Period review and evaluate all aspects of the Property, and shall have the right to go onto the Property in order to conduct such reasonable tests and inspections as Tenant shall deem appropriate, of the suitability of the Property for lease and Tenant's intended use pertaining to the Premises. In the event that Tenant, in Tenant's sole discretion, determines that the Property is unsuitable for Tenant's desired use, Tenant shall so notify the Port by delivering to the Port, on or before the last day of the Entitlement Period a written notice terminating this Agreement. If Tenant does not so notify the Port, this Agreement shall automatically continue in full force and effect. In the event that Tenant elects to terminate this Agreement, this Agreement shall automatically terminate as of the date on which Tenant delivers a termination notice to the Port, and neither party shall have any further rights or obligations under this Agreement except for Tenant's indemnity obligations set forth in Section 3.4.4. In addition, Tenant shall have the right to terminate this Agreement after the Commencement Date in accordance with the other terms and

conditions of Sections 3.1, 14.7.2, 15.2, and 26.14, and ARTICLE 16. Upon any termination, Base Rent and/or Option Payments received prior to the termination date will be non-refundable.

3.4.2 Tenant Actions Prior to Commencement Date. Subject to the restrictions set forth in Section 9.2 and the requirements of Section 11.2, Tenant may undertake the following actions and activities on or pertaining to the Property during the Entitlement Period provided this Agreement is not otherwise terminated:

3.4.2.1 Pre-Lease Environmental Condition. Tenant shall conduct an environmental assessment constituting the “**Pre-Lease Environmental Evaluation**” of the Property prior to and during construction of the Project to identify, to the extent practicable, the nature and extent of Hazardous Substances, if any, present on the Property. A Pre-Lease Environmental Evaluation report shall be prepared by Tenant and shall be reviewed and approved by the Port, which approval shall not be unreasonably withheld. The Pre-Lease Environmental Evaluation shall summarize the results of the following four (4) investigation elements:

- (i) The Phase 1 Environmental Site Assessment completed by Tenant and documented in a report dated April 9, 2012. The Port has reviewed and accepted the Phase I Environmental Site Assessment report; and
- (ii) The Phase 2 Environmental Site Assessment completed by Tenant and documented in a report dated April 10, 2012. The Port has reviewed and accepted the Phase 2 Environmental Site Assessment report; and
- (iii) The Geotechnical Investigation completed by Tenant and documented in a report dated April 5, 2012. The Port has reviewed and accepted the Geotechnical Investigation Report; and
- (iv) Observations of environmental conditions and associated data collected and documented by environmental professionals during construction of the Project. Environmental professionals will observe construction and support construction management teams in the identification and handling of suspected contamination conditions encountered during construction. Environmental construction support will be provided in accordance with a Work Plan, as defined in Section 3.4.2.3. As directed in that Work Plan, environmental construction support documentation will be recorded by environmental professionals representing Tenant and the Port and collated into a comprehensive construction field data report. Within forty-five (45) days following the conclusions of in-ground construction, the report shall be presented for review and approval by Tenant and the Port.

The Pre-Lease Environmental Evaluation shall set forth the Pre-Lease Environmental Condition and shall be approved in writing by Tenant and the Port no fewer than ten (10) days before Substantial Completion of the Project.

3.4.2.2 Inspection and Testing. Throughout the Entitlement Period, provided the Agreement is not otherwise terminated, the Port shall grant Tenant's access at reasonable hours to the Property by Tenant and/or Tenant's representative(s) to physically inspect the Property, survey the Property, obtain engineering information, develop pre-construction architectural information, conduct tests and studies that Tenant deems appropriate, including, subject to and consistent with Section 3.4.2.1, invasive testing such as borings and excavating test holes and test pits, and otherwise examine the Property in preparation for development (the "**Inspection Rights**"). Tenant shall keep the Port reasonably informed of all such activities and shall give at least forty-eight (48) hours' prior written notice to Mark Griffin at the Port and the Port may elect to have one or more representatives present during any activity by Tenant or its representatives at the Property. Notwithstanding the foregoing, Tenant shall not conduct any invasive and/or destructive testing on or about the Property without the Port's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Before conducting any invasive or intrusive testing such as borings or test holes, Tenant shall give the Port at least forty-eight (48) hours' prior written notice, and shall exercise commercially reasonable efforts to coordinate the date and time of such testing to enable the Port's representatives and/or consultants to be present to take duplicate samples and record the methods used by Tenant's consultants; provided that the Port's representatives and/or consultants shall not materially interfere with Tenant's work. Tenant shall be solely responsible for the cost of all work conducted by or on behalf of Tenant pursuant to these Inspection Rights or otherwise.

3.4.2.3 Environmental Construction Support Work Plan.

3.4.2.3.1 Schedule. Tenant shall prepare an Environmental Construction Support Work Plan (the "**Work Plan**") as described in this section. The first draft Work Plan shall be made available for Port review along with Tenant's "30%" design plan for all construction involving earthwork, excavation, trenching, clearing, grubbing, and/or any other work that will disturb soil on the Property; *provided, however*, for the initial phase of Tenant's construction, the draft Work Plan and the then-current draft construction/design plan shall be provided to the Port as soon as practicable to allow Port review consistent with Section 7.3 and Port participation in cost-effective management/handling of environmental contamination, if any, found during construction. Tenant shall consider and, if deemed appropriate for Required Management that may generate Incremental Environmental Cost or other work that will be at the Port's cost, incorporate reasonable comments provided by the Port within ten (10) days after Tenant's submission to the Port of its Work Plan and updates thereto (subject to dispute resolution pursuant to Section 14.8). Such updates to the Work Plan shall be made available to the Port for review along with Tenant's preliminary plans applicable to subsequent phases of Tenant's work on the Property.

3.4.2.3.2 Purpose. The Work Plan shall be designed to facilitate each phase of Tenant's construction of the Premises, regardless of the presence of contamination conditions, consistent with construction plans and specifications, the construction contract, and in compliance with Legal Requirements. At the same time, the Work Plan shall be designed to minimize construction delays caused by the presence, if any, of environmental contamination, minimize unanticipated contractor actions required by such contamination, and eliminate the potential for contractor change order requests based on management of anticipated and unanticipated environmental conditions. The Work Plan shall be designed to allow for collaboration and cooperation among the contractor, Tenant's construction management representatives, and Tenant and Port on-site environmental professionals with respect to Required Management of matters for which the Port is responsible in the Port's reasonable judgment. However, the Port's representatives, consistent with the Work Plan, will provide direction or input only through Developer's construction manager, or, when not immediately available, the other Developer representatives designated in the Work Plan for this role, and not directly to any contractor, subcontractor or supplier.

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

- (i) Personnel roles and responsibilities, including contact information and process for unanticipated condition call-out,
- (ii) Environmental professional minimum qualifications,
- (iii) Designation of known contaminated areas (if any) in construction documents,
- (iv) 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,
- (v) Determination of whether the contractor will manage suspected contaminated materials by direct-haul or on-site stockpiling and associated cost allocation,
- (vi) Field inspection of construction project areas,
- (vii) Use of standardized procedures with respect to Required Management of matters for which the Port is responsible in its reasonable judgment, including but not limited to:
 - a. Field screening, sample collection and laboratory analysis;
 - b. Construction excavation of known contaminated areas (if any);
 - c. Construction excavation of unanticipated soil contamination;
 - d. Underground storage tank removal;
 - e. Removal of soil containing free draining product;
 - f. Soil handling and disposal; and
 - g. Well decommissioning,
- (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.

In addition, the Work Plan shall provide (i) that the Port's contract with its primary on-site environmental professional will require that, in the event Tenant encounters anticipated or unanticipated contamination conditions, or suspected contamination conditions, in accordance with the terms of the Work Plan, the Port's on-site environmental professional will be on the Property within one (1) hour following Tenant's call-out notification given in a manner consistent with the call-out process identified in the Work Plan and will remain there until work is completed; and (ii) that the Port shall exercise diligent efforts to enforce such contractual obligation and avoid or minimize to the extent reasonably practicable any disruption of or delay to Tenant's work associated with such work stoppage.

3.4.2.4 Permit Applications. 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 master use, 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's Operations. The Port agrees to execute such 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, however*, that except as otherwise provided in this Agreement, or provided in or consistent with the Development Agreement: (i) the Port shall not be required to incur any expense 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), and (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, which such approval shall not be withheld with respect to routine development restrictions and covenants that would run with the land developed for a project like the Project (e.g., slope setback and non-disturbance provisions, rights to make cuts and fills for roads, etc.) or restrictions and covenants otherwise required or customary for Issuance of the requested approvals (e.g., provisions applicable to decommissioning facilities used in the management of hazardous wastes), and (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 agreements, provided that this Section shall not limit the Port's obligations under the Development Agreement, applicable law or set forth elsewhere in this Agreement.

3.4.2.5 Tenant's Share of In-lieu Fees under Development Agreement.

Tenant shall pay \$2,595,860.00, or such lesser amount as Tenant may negotiate directly with the City or the Port, for the Property's frontage share (which frontage share includes one-half (1/2) of the S. 208th R.O.W. and one-half (1/2) of the S. 212th R.O.W.) of the in lieu fees payable by the Port under the Development Agreement with respect to the 24th Avenue South segment construction required for "Area 1 and Area 2" (as defined in the Development Agreement). Tenant shall pay its share of the in-lieu fees to the City contemporaneously with the City's Issuance of the applicable building permit.

3.4.3 Permanent Improvements. Until the Commencement Date has occurred, Tenant shall have no authority whatsoever to make any improvements to the Property or commence any construction of the Project.

3.4.4 Indemnity Prior to Commencement Date. Except with respect to (a) the Port's obligations under Section 3.4.2, and (b) Pre-existing Hazardous Substances, Tenant shall indemnify, hold harmless and defend the Port to the extent provided by Sections 11.1, 14.6, and 18.1 from claims or damages arising in connection with Tenant's exercise of its Inspection Rights or any other activities of Tenant and the Developer or their agents, employees or invitees on or about the Property during the period prior to the Commencement Date. Upon termination of this Agreement for any reason whatsoever, Tenant's indemnity obligations to the Port under this Section shall survive and shall continue in full force and effect.

ARTICLE 4: RENT

4.1 Payment of Base Rent. Beginning on the Commencement Date, Base Rent shall be paid in advance on the first day of each and every month during the Term to the Port without any prior demand therefor and without any abatement, deduction or setoff whatsoever, 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; *provided, however*, that during the Entitlement Period, only the Option Payments due under Section 4.2 shall be payable.

4.2 Option Payments during Entitlement Period. Until the Commencement Date, Tenant shall pay the sum of Six Thousand Dollars (\$6,000.00) per month for each of the first five (5) full months of the Entitlement Period and Eight Thousand Dollars (\$8,000.00) per month commencing on the sixth (6th) full month of the Entitlement Period (the "**Option Payments**"). The Option Payments shall be deemed Base Rent during the Entitlement Period.

4.3 Base Rent. For the period commencing on the Commencement Date and continuing through the expiration of the fifth (5th) Agreement Year, the base rent ("**Base Rent**") shall be Fifty-Eight Cents (\$0.58) per square foot of the Usable Property per year, paid in monthly installments, subject to any rent credits, offsets, and reimbursements provided for herein. As the Usable Property is adjusted pursuant to Section 7.1.1, 7.1.2, 7.1.3 or 7.1.4, Base Rent shall be adjusted accordingly and the monthly installment of Base Rent payable with

respect to the month of each such adjustment shall be prorated accordingly. Payment of Base Rent shall commence on the Commencement Date. Thereafter, Base Rent shall be subject to adjustment as follows:

4.3.1 Base Rent Adjustments. Commencing on the first day of the sixth (6th) Agreement Year and every fifth (5th) anniversary thereafter during the initial Term, and as applicable, the twenty-sixth (26th), thirty-sixth (36th), and forty-sixth (46th) Agreement Years during any Extension Term, of this Agreement, Base Rent shall be adjusted (each, an "**Adjustment Date**"). Subject to Section 17.1, the dollar amount of Base Rent shall be increased to (i) the amount of Base Rent as of the expiration of the fifth (5th) Agreement Year (or, during an Extension Term, the immediately prior 5-year period) multiplied by (ii) the sum of (A) one (1) plus (B) the percentage increase in the Consumer Price Index from the Commencement Date (or, during an Extension Term, the commencement of such Extension Term) through the applicable Adjustment Date; provided that such 5-year increase may not be less than an average of two and one-half percent (2.5%) per year compounded annually or greater than an average of four and one-half percent (4.5%) per year compounded annually compared to the prior 5-year period.

4.3.2 Extension Term Base Rent. Notwithstanding Section 4.3.1, in connection with each of the three (3) Extension Options that Tenant may choose to exercise, Base Rent will be adjusted to the then-prevailing fair market rental rate (the "**Fair Market Rent**") for the Usable Property considering similarly situated industrial property in reasonable proximity to the Property to be delivered to a new tenant as of the applicable Adjustment Date. The Fair Market Rent shall be determined considering: (i) the then-current use of the Property and not the highest and best use if the Property were undeveloped or redeveloped or rezoned, (ii) as though in the condition of the Property at the time this Agreement initially commenced (as abandoned residential property that Tenant plans to reclaim and improve), (iii) that the Property cannot be subordinated to any debt, (iv) the credit worthiness of the tenant, and (v) the size of the Usable Property; *provided, however*, in no event shall the Property be considered so unique that either the Port or Tenant is considered a captive owner or tenant without reasonable market transaction alternatives. The value of any improvements made to the Property by Tenant shall not be considered in establishing the Fair Market Rent. The Fair Market Rent adjustments will be effective on the commencement of the twenty-first (21st), thirty-first (31st), and forty-first (41st) Agreement Years with Base Rent adjustments to the then applicable Base Rent to occur at the beginning of the twenty-sixth (26th), thirty-sixth (36th), and forty-sixth (46th) Agreement Years, as applicable, following the method stated in Section 4.3.1 above. In no event will the Fair Market Rent adjustments be less than Base Rent for the immediately prior 5-year period.

4.3.2.1 Proposal Process. The Port will obtain an appraisal of the Property 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 a Fair Market Rent proposal. Tenant will respond with its acceptance of the proposal or with its own proposal no later than one hundred twenty (120) days before the applicable Adjustment Date.

4.3.2.2 Rent Dispute Resolution. In the event Tenant disputes the Fair Market Rent proposed by the Port and the Port and Tenant cannot agree on the adjusted Fair Market Rent for the Property within ninety (90) days prior to the applicable Adjustment Date, the Port and Tenant shall each deliver to the other a final proposal for the Fair Market Rent (the "**Final Offers**"). 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 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. The arbitrators shall select one of the Final Offers as the resolution of the dispute, and may not render a compromise decision.

If either the Port or Tenant fails to timely appoint an arbitrator to the panel, the party failing to meet the deadline prescribed in this section or extended with the consent of the other party, shall not object to the appointment of any arbitrator chosen by the other party as long as the arbitrator meets the minimum qualifications of this section. The party failing to timely appoint an arbitrator shall nevertheless be responsible for the fees and expenses of at least one arbitrator and half the fees and expenses of another arbitrator. Each party shall bear the expense of its own counsel, experts and preparation and presentation of proof.

The third member of the arbitration panel shall be chosen by consensus of the first two panel members. If the two panel members are unable to agree on a third arbitrator within thirty (30) days after appointment of the second arbitrator, then either party may apply to the Superior Court of King County for appointment of the third arbitrator; *provided, however*, 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.

4.3.2.3 Procedural Rules. The procedural rules to be used by the arbitrators shall be specified by a majority of the arbitrators and may, but need not, include compliance with the Washington Arbitration Act or the rules of the American Arbitration Association. The cost of arbitration shall be equally divided between the Port and Tenant.

4.3.2.4 Required Rent. In the event that the Fair Market Rent cannot be determined until after the applicable Adjustment Date, Tenant shall pay Base Rent at the rate proposed by the appraiser appointed by the Port prior to submission of the question to arbitration. Upon final determination of the Fair Market Rent, any overpayment resulting from the arbitration decision (or settlement between the parties in anticipation thereof) shall be promptly refunded by the Port to Tenant together with interest at the Default Rate within fifteen (15) days from the arbitration decision (or final approval of such settlement).

4.4 Absolute Net Agreement; Additional Rent. 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 4.3 above, Tenant covenants and agrees to pay as “**Additional Rent**” the following: (a) general property taxes (ARTICLE 10); (b) insurance costs (ARTICLE 11); (c) operating expenses (ARTICLE 12); (d) utility charges (ARTICLE 12); (e) maintenance and repair expenses (ARTICLE 13) and (f) any other cost or expense associated with Tenant’s Operations on or occupation of the Property, of whatever description, and whether imposed in the first instance on the Port or Tenant. Except as otherwise provided herein, any 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. Tenant, however, shall not be required to pay any mortgage indebtedness or any interest on any mortgage that at any time may encumber the interest of the Port in the Property.

4.5 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 34249, Seattle, WA 98124-1249, or at such other place as the Port may direct in writing.

4.6 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; provided that for Tenant's first late payment in any Agreement Year, such late payment charge shall not apply if the applicable payment is made within five (5) days of the Port's notice to Tenant of non-payment. 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. 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. Tenant shall, on the Commencement Date, (a) obtain and deliver to the Port an irrevocable stand-by letter of credit issued by a bank in a form reasonably approved by the Port in an amount equal to the sum of Base Rent due for the first Agreement Year, (b) establish a custodial deposit account maintained in the amount of the sum of Base Rent due for the first Agreement Year at a financial institution reasonably acceptable to Tenant and the Port, or (c) deliver to the Port a cash deposit (“**Cash Deposit**”) in the amount of the sum of Base Rent due for the first Agreement Year (any of the foregoing hereinafter referred to as the

“**Security**”), to secure Tenant’s full performance of this Agreement, including the payment of all fees and other amounts now or hereafter payable to the Port hereunder; provided that, if the forms of Security described in subsections (a) or (b) are not available upon commercially reasonable terms, then Tenant shall be permitted to provide an alternative form of Security reasonably acceptable to the Port. The amount, form, provisions and nature of the Security, and the identity of the surety or other obligor thereunder, shall at all times be subject to the Port’s approval. The Security shall remain in place at all times throughout the Term of this Agreement and throughout any holdover period (provided that in the event of an assignment of this Agreement, the Port shall accept a substitute standby letter of credit from the assignee and release the initial Security to original Tenant upon request). If Tenant delivers to the Port the Cash Deposit described in subsection (c) above, no interest shall be paid on the Cash Deposit and the Port shall not be required to keep the Cash Deposit separate from its other accounts. No trust relationship is created with respect to the Security.

5.2 Return of Security. The Security is a part of the consideration for execution of this Agreement. If Tenant shall have fully performed all terms and conditions of this Agreement, the Security (or such portion as remains without claim by the Port) shall be returned to Tenant within thirty (30) days following the termination (or expiration) date without interest (as applicable in the case of Security in the form of the Cash Deposit); 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 or any other unpaid sum due hereunder, or to cure other defaults of Tenant. If the Port uses any part of the Security, Tenant shall restore the Security to its then-currently 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: WORK BY PORT

6.1 Port Work. The Port shall, at its own cost, immediately commence, and prosecute to completion with reasonable diligence and dispatch, all the work described in this ARTICLE 6 (the "**Port's Work**").

6.2 Lot Division. The Port shall take all steps necessary to cause the Property to be subdivided as 3 separate lots: one for Lot #1 (Office), one for Lot #2 (Warehouse/Yard), one for Lot #3 (Yard), and for 5 additional separate lots or tracts to be created for S. 208th R.O.W (described in Section 7.1.2), S. 212th Street R.O.W (described in Section 7.1.3), Tract "A", Stormwater Facility (Public) (described in Section 7.1.1 below), and Tracts X and Y (each denominated "Critical Area"), whether by boundary line adjustment, short plat, binding site plan, or otherwise, in accordance with Legal Requirements (the "**Lot Division**"). The Port shall ensure that no restrictions on title arising as a result of the Lot Division or subsequent dedication of S 208th Street, S. 212th Street, or Tract "A" Stormwater Facility (Public) to the City will

materially adversely affect Tenant's construction and occupancy of the Project. Tenant shall reasonably cooperate, at no additional cost to Tenant, in such Lot Division process.

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. 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. Except for the Lot Division approvals (if necessary), Tenant or its designee shall obtain all necessary permits, including any discretionary permits, from the City, the Department of Ecology, and the Army Corps of Engineers. The plans and specifications shall be prepared by a duly qualified architect (and engineer, if necessary) licensed in the State of Washington. The Port shall reasonably cooperate, at no cost to the Port in such permitting processes other than as expressly provided elsewhere in this Agreement, including, without limitation, execution of required applications.

7.1.1 Stormwater Management Detention Pond. Tenant shall develop, prior to the scheduled occupancy date of the Project, on Tract "A", Stormwater Facility (Public), legally described on **Exhibit A** and depicted on the Map attached hereto as **Exhibit B**, stormwater drainage and detention facilities sized, and with appropriate specifications, to manage stormwater discharges as depicted on Sheet 1 of 1 of that certain SWM Pond Contributing Area Exhibit, dated April 25, 2012, prepared by Barghausen Consulting Engineers, Inc., Job No. 15371. Tenant shall commission and provide the City and the Port (without warranty or liability therefor) an Operations and Maintenance Manual for the facilities that include provisions for mitigation of wildlife hazards to Airport flight operations. Upon completion of such facilities, Tract "A", Stormwater Facility (Public) shall be (and be deemed) removed from the Property, and either party may record notice of the amended legal description resulting from such removal. In addition, upon acceptance of such facilities by the City, the facilities shall be deeded to the City (through or on behalf of the Port if permitted and required to secure statutory bonding requirement exemption and subject to approval of a surplusing resolution by the Port Commission as required by statute) as provided by the Development Agreement. Within thirty (30) days after acceptance by the City and Tenant's submission of an invoice detailing the total cost and the Port's proportionate share thereof, the Port shall reimburse Tenant for thirty and six tenths percent (30.6%) of the cost to construct such facilities, including, without limitation, all design and permitting costs, up to Seven Hundred Thirty Five Thousand, Four Hundred Forty Four and No/100 Dollars (\$735,444.00) in the form of a credit against Base Rent next coming due, such percentage share attributable to the Port of Seattle Contributing Area (assuming ninety percent (90%) impervious surface thereon) and one-half (1/2) of the impervious surface constructed within S. 208th R.O.W. and S. 212th R.O.W.). The Port shall cooperate with Tenant to facilitate the design, permitting and construction of such facilities, including, without limitation, executing applications or other instruments, necessary or appropriate, in Tenant's reasonable discretion, in connection therewith.

7.1.2 S. 208th Street. Tenant shall, prior to the scheduled occupancy date of the Project, design and construct, to the City's specifications, the S. 208th Street segment ("**S. 208th Street**"), extending from 24th Avenue South to approximately one thousand (1,000) feet west of the eastern boundary of the Property, within the separate legal lot (the "**S. 208th Street R.O.W.**") marked "S. 208th St. R.O.W." on **Exhibit B**. Upon completion of the construction of S. 208th Street facilities, the S. 208th Street R.O.W. shall be (and be deemed) removed from the Property, and either party may record notice of the amended legal description resulting from such removal. In addition, following acceptance of such facilities by the City as provided by the Development Agreement, such facilities shall be dedicated to the City (through or on behalf of the Port if permitted and required to secure statutory bonding requirement exemption and subject to approval of a surplusing resolution by Port Commission as required by statute). Within thirty (30) days after acceptance by the City and Tenant's submission of an invoice detailing the total cost and the Port's proportionate share thereof, the Port shall reimburse Tenant for forty-nine percent (49%) of the total cost to construct S. 208th Street, including, without limitation, all design and permitting costs, up to Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) in the form of a credit against Base Rent next coming due.

7.1.3 S. 212th Street. Tenant shall, prior to the scheduled occupancy date of the Project, design and construct, to the City's specifications, the S. 212th Street segment, including a trail north of, and adjacent to, the street (in lieu of a sidewalk) ("**S. 212th Street**"), extending from 24th Avenue South to approximately one thousand (1,000) feet west of the eastern boundary of the Property, within the separate legal lot (the "**S. 212th Street R.O.W.**") marked "S. 212th St. R.O.W." on **Exhibit B**. Upon completion of the construction of 212th Street, the 212th Street R.O.W. shall be (and be deemed) removed from the Property, and either party may record notice of the amended legal description resulting from such removal. In addition, following the acceptance of such facilities by the City as provided by the Development Agreement, such facilities shall be dedicated to the City (through or on behalf of the Port if permitted and required to secure statutory bonding requirement exemption and subject to approval of a surplusing resolution by Port Commission as required by statute). Within thirty (30) days after acceptance by the City and Tenant's submission of an invoice detailing the total cost and the Port's proportionate share thereof, the Port shall reimburse Tenant for forty-nine percent (49%) of the total cost to construct S. 212th Street, including, without limitation, all design and permitting costs, up to Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) in the form of a credit against Base Rent next coming due.

7.1.4 Negative Surplusing Decisions. If the Port Commission chooses not to approve a surplusing resolution as to the facilities or property rights described in 7.1.1, 7.1.2, or 7.1.3, the Usable Property subject to such decision shall, nevertheless, be removed from Property as of the date of such Port Commissioner decision.

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.

7.3 Port Review of Project. Before any construction of the Project is commenced on the Property, and before any building materials have been delivered to the Property by Tenant or under Tenant's authority, Tenant shall comply with all the following conditions or procure the Port's written waiver of the condition or conditions specified in the waiver:

7.3.1 Preliminary Plans. Deliver to the Port for the Port's approval three (3) full sets of preliminary construction plans and specifications for the Project (i) at thirty percent (30%) and sixty percent (60%), or as soon as practicable following execution of this Agreement if greater than thirty percent (30%) of the preliminary clearing, grading and drainage phase (if commenced, at Tenant's election, in advance of building permit issuance); and (ii) at thirty percent (30%) and sixty percent (60%) of the Project design phase. Such plans (at the applicable phase) shall identify proposed utilities, sewer and service connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, canopies, and landscaping, all consistent with DMCBP Design Guidelines and all sufficient to enable potential contractors and subcontractors to make reasonably accurate bid estimates and to enable the Port to make an informed judgment about the design and quality of construction, about the effect of the Project, as constructed, on the reversion and about the impact of the Project on the surrounding properties owned or managed by the Port. In addition, Tenant shall deliver to the Port the Work Plan described in Section 3.4.2.3, updated as applicable to the work then being performed. All improvements shall be constructed within the exterior property lines of the Property; *provided, however*, that required work beyond the Property on utilities, access, and conditional use requirements do not violate this provision. The Port shall not unreasonably disapprove preliminary plans and specifications. Approval or disapproval shall be communicated in the manner provided for notices, and disapproval shall be accompanied by specification of the grounds for disapproval. Tenant shall not deliver working drawings to any governmental body for a building permit until the preliminary plans are approved as specified in this Section. Following the Port's first or any subsequent disapproval, Tenant shall submit revised plans and specifications. The Port shall as soon as reasonably possible, but in no event later than fifteen (15) business days following its receipt of Tenant's initial submission of the plans and specifications required by this Section 7.3.1, review and comment on Tenant's submittal unless such review and comment are delayed for reasons caused by Tenant. In the event the Port requires the submission of any revised plans and specifications, the Port shall, within ten (10) business days following its receipt of Tenant's revised plans and specifications, review and comment on those revised plans and specifications.

7.3.2 Permit Plans. Prepare a permit ready set of plans and specifications at the appropriate stage of design substantially conforming to 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. Following approval by the Port, those plans shall be referred to as the “**Permit Plans**.”

7.3.3 General Contractor. Furnish to the Port a true copy of Tenant’s contract with the general contractor and with evidence of the general contractor’s financial condition.

7.3.4 Development Dispute Avoidance and Resolution. The parties are fully committed to working with each other in connection with design, permitting, and construction of the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise with respect to the design, permitting or construction of the Project (each, a “**Development Dispute**”), the Port and Tenant each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner as provided in this Section 7.3.4 so as to avoid unnecessary losses, delays and disruptions in the construction of the Project.

7.3.4.1 The Port and Tenant will first attempt to resolve Development Disputes at the field level through discussions between Mark Griffin, Director, Real Estate Development, who shall serve as the Port’s representative throughout the construction of the Project and Clay Wallace and Joe Alhadeff, who shall serve as PSE's and Developer's representatives throughout construction of the Project. The Port and Tenant shall each have the right to change representative by notice to the other party.

7.3.4.2 If a Development Dispute cannot be resolved through the Port’s representative and Tenant’s representative within two (2) business days after the first meeting, senior representatives of the Port and Tenant, upon the request of either party, shall meet as soon as possible, but in no case later than two (2) business days after such a request is made, to attempt to resolve such Development Dispute. Prior to any meetings between the senior representatives, the parties will exchange relevant information that will assist the parties in resolving their Development Dispute.

7.3.4.3 If, after meeting, the senior representatives determine that the Development Dispute cannot be resolved on terms satisfactory to both parties, the parties shall submit the Development Dispute to mediation, which submittal to mediation shall be binding upon the parties. Either party may request mediation by filing the request (the “**Mediation Notice**”) in writing with the other party to this Agreement. The mediation shall be conducted by a mutually agreeable arbitrator, or if the parties cannot so agree within two (2) days of receipt of the request, either party may file the request with the American Arbitration Association (“**AAA**”) pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the arbitrator. This requirement to arbitrate is a condition precedent to litigation and cannot be waived except by an explicit written waiver signed by the Port and Tenant. A representative of the Port, Tenant, and, if different from Tenant, PSE, must attend the mediation session, all having authority to settle the claim, or, in the case of the Port, if the Port Commission’s approval is required, the management authority to recommend settlement

of the claim directly to the Port Commission. To the extent there are other parties in interest, such as contractors, or subcontractors of any tier, their representatives, with full authority to settle the claim, shall also attend the mediation session. Unless the Port and Tenant mutually agree in writing otherwise, all unresolved claims shall be considered at a single mediation session which shall occur within ten (10) days of the Mediation Notice. The mediator's fee will be divided equally among the parties participating in the mediation.

7.3.4.4 Any Development Dispute, which has not been resolved in accordance with the procedures set forth in Section 7.3.4.3 above, shall be resolved by binding arbitration with the AAA pursuant to its Construction Industry Arbitration Rules, which arbitration shall occur within ten (10) days of the end of the mediation.

7.4 Reimbursement of the Port's Expenses for Review and Coordination. Tenant will reimburse the Port for the reasonable cost and expense, not to exceed Eighty Thousand Dollars (\$80,000.00), incurred by the Port to review the preliminary and Permit Plans and to coordinate with Tenant throughout the entitlement, design, permitting and construction process, including, but not limited to, the services of an owner's representative, architect, and/or an engineer to maintain the overall functionality of the business park as it relates to design and construction of utilities, infrastructure and other common elements that will serve the business park as a whole, as follows (the following are all subject to the Eighty Thousand Dollar (\$80,000.00) limitation):

7.4.1 Any Port employee time charged to Tenant shall be charged at the employee's base wage rate (either actual hourly rate or annual salary divided by 1950 hours) with reasonable markup to cover the cost of benefits, but without further markup to cover the cost of Port overhead.

7.4.2 Any consultant time charged to Tenant shall be charged to Tenant at the Port's actual cost, without markup of any kind.

7.4.3 Any out-of-pocket costs shall be charged to Tenant at the Port's actual cost, without markup of any kind.

7.4.4 All of the Port's time and expenses under Section 3.4.2.

7.4.5 Any costs incurred by the Port prior to the Execution Date.

7.4.6 All amounts payable to the Port shall be paid within thirty (30) days of Tenant's receipt of the Port's proper invoice therefor. The Port shall provide Tenant such documentation as Tenant may reasonably request to support the amount of any invoice.

7.5 Intentionally Deleted.

7.6 Building 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 best efforts to cooperate with Tenant, at no cost to the Port, in connection therewith and, if requested by Tenant, to lead efforts (consistent with its own regulatory obligations) to secure any necessary approvals from the FAA or other regulators of Port activities that have a regulatory role in review of the Project.

7.7 Payment and Performance Bond. Before any construction on the Premises is commenced, Tenant shall provide the Port with a copy of Tenant's contract with its general contractor and with evidence of the general contractor's financial condition for the Port's approval of the contractor and the contract. The contract with the general contractor must require that the contractor have a payment and performance bond in place, which bond shall be in an amount (not to exceed the contract price) and written by a company qualified to issue such a bond in Washington and whose bond the Port may legally accept.

7.8 Intentionally Deleted.

7.9 Diligent Prosecution of Construction. After construction is commenced, it shall be prosecuted diligently, 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. Allowing for delays beyond Tenant's reasonable control, and subject to the other terms of this Agreement and related Approvals and agreements including without limitation construction permits and the construction contract, Tenant shall use reasonable efforts to ensure that not later than September 30, 2014 the Project shall be substantially completed. Substantial completion ("**Substantial Completion**") of the Project shall be deemed to have occurred when all of the following conditions have been met:

7.9.1 Tenant's construction of the Project has been completed to such an extent, and all government permits and approvals and temporary occupancy certificates necessary have been obtained so that the Project may be opened for business, 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;

7.9.2 The Port and Tenant have completed a walk through during the final stage of construction prior to full occupancy by Tenant (provided that this requirement shall not preclude Tenant from occupying or permitting occupancy of portions of the Project the use of which is legally authorized by the Des Moines Building Official); and

7.9.3 The parking areas, entrances and exits for the Premises shall have been paved and striped and the parking lot lighting substantially installed and operating.

Partial use or occupancy (e.g., of one building) shall not necessarily result in the Project being deemed substantially complete and shall not be evidence of Substantial Completion.

7.10 Permanent Certificate of Occupancy. Notwithstanding that the Project has been substantially completed, 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 for the Project.

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 No Interference With Port Operations. Notwithstanding anything to the contrary herein, construction of the Project by Tenant shall be done in such a manner which does not materially interfere with the business of the Port or any of its tenants on Port property other than the Property.

7.13 Intentionally Deleted.

7.14 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. Tenant shall have the right, but not the obligation, to remove any portion of Project at any point prior to the expiration or earlier termination of this Agreement, except as otherwise provided in Section 17.1. Upon expiration or earlier termination of this Agreement (and subject to Section 16.7), title to the Project then situated on the Property shall pass automatically to the Port, without payment therefor, and Tenant shall have no further rights therein.

7.15 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.

ARTICLE 8: ALTERATIONS; OWNERSHIP OF CERTAIN INSTALLATIONS

8.1 Alterations. Tenant, after completion of the Project, may from time to time during the Term make such changes, alterations, additions, substitutions 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. All such Alterations shall be done at Tenant’s sole cost and expense.

8.2 Limitations on Alterations. Tenant shall make no Alterations that will (i) cost in excess of One Million Dollars (\$1,000,000) over the course of any twenty-four (24) month period; or (ii) involve work changes to the electrical, natural gas, water, sewer or other utility systems of the Project that are reasonably likely to affect systems serving properties other than the Property, 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 proposed plans and specifications therefor as well as any permits required by any Authority other than the Port.

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 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 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 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.

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 for an operations center and distribution warehouse comprised of offices, a warehouse facility, shops, and outdoor storage yard for legal uses, including indoor and outdoor storage of gas, electrical and other equipment parts, materials and supplies; repair, maintenance and painting of gas, electrical and other equipment, parts, materials and supplies; storage of fuel, transformer oil, and oil-filled equipment, including polychlorinated bi-phenyls and other flammable, hazardous or regulated substances provided such storage is in compliance with Legal Requirements; vector waste offloading, decanting and associated management, provided that all vector waste activities are managed in compliance with Legal Requirements; fleet vehicle storage; fleet vehicle up-fit, minor maintenance and washing; vehicle fueling, and various office/shop/operations activities. . For use other than what is described in this section, Tenant shall obtain the Port's prior approval, which shall not be unreasonably withheld. Tenant's use shall be compatible with noise levels associated with operating the Airport and will not conflict with the Airport's use, operation and development for flight-related activities and function.

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, and other code required signage complying with applicable building code, municipal code requirements, and FAA regulations and the DMCBP Design Guidelines . No other signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on the Premises, including the walls, windows and doors thereof, without the prior written approval of the Port, which shall not be unreasonably withheld, conditioned, or delayed. 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 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 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 on the Premises and/or on the leasehold interest created by this Agreement and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, fees payable hereunder, whether imposed on Tenant or on the Port. Tenant shall reimburse the Port for all such taxes paid or payable by the Port. With respect to any such taxes payable by the Port that are on or measured by the rent or fee payments hereunder, Tenant shall pay to the Port with each rent or fee payment an amount as nearly as practicable equal to the tax on, or measured by, that particular payment plus or less any deficiency or surplus from prior payments. 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 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. Tenant shall defend (with counsel approved by the Port and Tenant's insurer), and except for the Port's obligations with respect to the Pre-Lease Environmental Condition covered in Section 3.4.1, fully indemnify, and hold entirely free and harmless the Port and its Commissioners, officers, and employees (each, a "**Port Party**") 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 the Premises, other than the Pre-Lease Environmental Condition established by the Pre-Lease Environmental Evaluation; (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. Nothing herein shall require Tenant to indemnify the Port from any accident, injury, death or damage to the extent arising from the negligence or other fault of the Port or its Commissioners, officers, contractors, agents, invitees, or employees. 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 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 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 of this Agreement (and as respects the insurance required by Section 11.2.3, during any period prior to the Commencement Date for which Tenant, or its contractors, agents or employees are present on or about the Property) the types of insurance, in the amounts specified and in the form hereinafter provided for below in this Section 11.2.

11.2.2 Self-Insurance. Tenant shall have the right to substitute self-insurance or self-insured retentions for any insurance requirements in this Section 11.2 pursuant to Tenant's, or PSE's (if different), self-insurance program. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Tenant in lieu of insurance.

11.2.3 Liability Insurance. Tenant shall obtain and keep in force during the Term of this Agreement a commercial general liability policy of insurance protecting Tenant and the Port, as an additional insured, 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 action/inaction of any subtenant, licensee or concessionaire permitted by ARTICLE 25. Such insurance shall provide single limit coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence or claim for policies without a general aggregate limit. For policies with a general aggregate limit, such aggregate limit shall be not less than Two Million Dollars (\$2,000,000). The policy shall contain a minimum \$250,000 sub-limit that covers damage to premises rented or leased to Tenant, including fire damage. In the event a claims made policy form is used (Form CG 00 02) the policy shall have an extended one year tail reporting period to allow for the submission of claims that occurred during the policy but are not reported until one year

following the end of the policy term. In addition, all claims made policy forms shall have a retroactive date that is equal to or prior to the date of execution of this Agreement.

11.2.4 Automobile Liability Insurance. Tenant shall obtain and keep in force a commercial automobile liability policy of insurance, written on ISO Form CA 00 01 07 97 (or equivalent), that protects against claims for bodily injury and property damage based upon, involving or arising out of motor vehicle operations on or about the Premises and all areas appurtenant thereto. Such insurance shall cover any "Auto" (i.e., owned, hired and non-owned) and shall be on an occurrence basis providing single limit coverage in an amount not less than one million dollars (\$1,000,000) per occurrence.

11.2.5 Builder's Risk Insurance. Before the commencement of the Project, and until final completion of the Project and obtaining a permanent certificate of occupancy, 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 in an amount equal to the agreed value of the Project, covering improvements in place 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.

11.2.6 Property Insurance. Tenant shall obtain and keep in force during the Term of this Agreement "Special Extended" or "all risk" property insurance, insuring loss or damage to the Premises, including any betterments, improvements or Alterations. 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.

11.2.7 Intentionally Deleted.

11.2.8 Intentionally Deleted.

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 11.2.3 and 11.2.7 above including naming the Port as an additional insured on the third party's commercial general liability insurance required under 11.2.3; provided that such subtenant may not substitute self-insurance without the Port's prior consent.

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) for nonpayment of premiums) prior written notice to the Port. 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 further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

11.6 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. All insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by the Port, whose insurance shall be considered excess insurance only. If at any time during the Term, 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 equal to or greater than the amount required above.

11.6.2 The amounts 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.

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 of this Agreement, Tenant shall pay, as Additional Rent, directly to all third parties the total of all the costs and expenses incurred with respect to the operation and maintenance of the Premises, and until removed from the Premises, the S. 208th Street R.O.W. and the S. 212th Street R.O.W., as applicable, and the services provided for the benefit of the Tenant (the “**Operating Expenses**”), it being understood and agreed that, except as otherwise set forth in this Agreement, the Port shall not be required to furnish any services and/or utilities of any nature to the Premises during the Term of the Agreement, Tenant hereby assuming full and sole responsibility for the supply and payment for all services, operational costs and utilities; *provided, however*, the Port shall

cooperate with Tenant, including granting licenses or easements to utility companies) in allowing services and/or utilities to service the Premises.

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, 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 Service Area Agreement. Following execution of this Agreement, the Port and PSE shall execute an amendment to the existing service area agreement (the "**SAA**") between the Port and PSE dated January 10, 2006, subject to approval of the Washington State Utilities and Transportation Commission (the "**UTC**"), which PSE shall file with the UTC. The Port and PSE shall modify Attachment 1 to Exhibit A of the SAA to include the Property on the list of PSE's customers within the IDD (as defined in the SAA) and Attachment 1 to Exhibit B of the SAA to reflect any PSE facilities installed to provide electric service to the Property both effective on the Commencement Date and through the Term of this Agreement. PSE shall have the sole and exclusive right to provide electric service to the Property upon approval by the amendment by the UTC.

12.4 Intentionally Deleted.

12.5 Port Not Responsible.

12.5.1 The Port shall not be required to furnish any services or utilities of any nature to the Property during the term of this Agreement, Tenant hereby assuming full and sole responsibility for the supply of and payment for all utilities and services. 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.

12.5.2 The Port acknowledges and agrees that, due to the nature of Tenant's operations on the Premises, uninterrupted utility service to the Premises is of critical importance to Tenant and public health, safety and welfare. Therefore, notwithstanding anything in this Agreement to the contrary, the Port shall use its best efforts to refrain from any action or inaction that would result in interruption of electrical or other utility services to the Premises. Without limiting the generality of the foregoing, Tenant may install, operate and maintain such standby generators or such other fueled equipment and associated storage facilities as Tenant deems appropriate for emergency electrical power. Notwithstanding the foregoing, neither shall the Port be liable to Tenant, other tenants of DMCBP or third parties nor shall Tenant (or any subtenant) be liable to the Port, other tenants of DMCBP or third parties for any losses, including loss of income or business interruption, resulting from any interruptions or failure in the supply of any utility to the Premises, except when such losses result from gross negligence or, as and to

the fullest extent applicable in a loss allegedly caused by PSE, except as provided by tariff on file with the UTC.

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 be put and kept in good order, 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. Throughout the Term 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 Indemnity. 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 or pre-existing title defects or encumbrances of record. 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 Hazardous Substances. Tenant 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 in any manner that violates, or with the passage of time is likely to violate, any Environmental Law, the Pollution Prevention Plan, Spill Prevention Control and Countermeasures Plan, or other applicable facility operations and maintenance plan to the extent related to Hazardous Substances or Environmental Laws. To the extent applicable, Tenant shall provide the Port upon request an opportunity to review all Material Safety Data Sheets (MSDS) for all Hazardous Substances used or stored on the Premises, Tenant's (or its subtenants', as applicable) USEPA Waste Generator Number, and Generator Annual Dangerous Waste Reports. To the extent applicable, Tenant shall provide the Port an opportunity to review any environmentally related regulatory permits or approvals (including revisions or renewals) and any material report or notice Tenant receives from, or provides to, any governmental unit or agency in connection with Tenant's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance in, on, about, from or adjacent to the Premises. Tenant is responsible to report any spills or emissions of Hazardous Substances to the Port and any spills or emissions of Hazardous Substances that are above reportable quantities as defined by applicable Environmental Laws to the appropriate regulatory Agency.

14.1.1 Pollution Prevention Plan. Tenant shall prepare and implement a Pollution Prevention Plan that addresses measures in effect by Tenant to prevent pollution (specifically including stormwater) through appropriate pollution prevention and good housekeeping practices, control and perform immediate removal, investigation, remediation and restoration action in the event of a release of a Hazardous Substance in connection with the operation of the Premises during the Term. The Pollution Prevention Plan shall be: (i) provided to the Port not more than thirty (30) days before operational occupancy, (ii) consistent with applicable stormwater permits, and (iii) updated to address future changes in PSE's emergency operations center activities or facilities. The Pollution Prevention Plan shall be updated as needed, to address Tenant's operations and practices. If PSE is neither Tenant nor the occupant of the Premises, and Tenant or its approved, or otherwise permitted, sublessee is not then legally required to maintain a stormwater pollution prevention program, the Port shall reasonably consider request to waive the requirement for such user.

14.1.2 Installation and Operation of Aboveground and Underground Storage Tanks. In the event Tenant installs, constructs or otherwise uses aboveground or underground storage tanks on the Premises, Tenant shall specifically and diligently comply with all applicable Environmental Laws and Legal Requirements related thereto, including but not limited to the Washington State Department of Ecology's Underground Storage Tank

Regulations (WAC 173-360). Tenant shall maintain all records necessary to document that the facilities and equipment on the Premises are being operated in compliance with the requirements of any applicable Environmental Law (including but not limited to the Underground Storage Tank Regulations). Tenant shall provide the Port with copies of such records promptly following the Port's request.

14.1.3 Spill Prevention Control and Countermeasures Plan. PSE or a successor Tenant or sublessee, if applicable, shall prepare a Spill Prevention Control and Countermeasures Plan. Such plan shall (i) be provided to the Port not more than thirty (30) days before operational occupancy, (ii) satisfy all Legal Requirements, and (iii) whether or not legally required, be certified by a licensed professional engineer.

14.1.4 Tenant shall maintain all records required to document that its facilities and equipment on the Premises are being operated in 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 promptly following the Port's request.

14.2 Violation of Environmental Law. If Tenant, or the Premises, is in violation of any Environmental Law concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Tenant shall promptly engage in (i) such Required Management as is necessary to correct the violation; and (ii) subject to Section 14.8, incorporate such reasonable and practicable additional protocols (e.g., to better control noise, odors or other elements of such planned work) as the Port may request. If Tenant does not act in a prudent and prompt manner as set forth in this Agreement, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Tenant and to take such action as the Port deems necessary to mitigate the violation. If the Port has a reasonable belief that Tenant is in violation of any Environmental Law, or that Tenant's actions or inactions are likely to present a threat of violation of Environmental Law, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary in its reasonable discretion to correct any such violation or threat of violation; provided that notwithstanding anything herein to the contrary, in the exercise of the Port's access rights under this Section, the Port shall at all times comply with applicable electric reliability, security and other regulatory requirements, and Tenant's reasonable security protocols. Except as set forth in Section 14.7 below, 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 a proper invoice therefor.

14.3 Environmental Audits.

14.3.1 Tenant's Environmental Audit. Tenant shall conduct an environmental audit of the entire Premises including operations, equipment, facilities and fixtures. The environmental audit shall be conducted by an independent qualified environmental professional selected by Tenant not less than once every three (3) years beginning three (3) years after the

expiration of the first (1st) Agreement Year. Tenant shall meet with the Port to present the results of the Environmental Audit within thirty (30) days of completion.

14.3.2 Port Environmental Audit. The Port shall, at the Port's expense, have the right to conduct its own environmental audit of the Premises. The Port shall have access to the Premises to conduct (but shall have no obligation to conduct) an annual environmental inspection, including (but not limited to) an environmental audit at the Port's expense; provided that any of the Port's employees, representatives, agents, or contractors entering the Premises shall at all times be accompanied by a representative of Tenant and/or its subtenant, and shall observe Tenant's or its subtenant's reasonable security protocols, while present on the Premises. The Port shall provide Tenant with copies of any reports received, or notices given, as a result of the annual environmental inspections. In conducting any environmental audit, the Port shall not interfere with Tenant's business operations, and if it shall damage or otherwise disturb the Premises during such environmental audit, it shall restore the Premises to the condition in which they existed prior to the damage.

14.3.3 Environmental Audit Response. No later than thirty (30) days following the receipt of the results of an environmental audit (whether commissioned by Tenant or the Port), Tenant shall meet with the Port and at the meeting address the findings of the environmental audit and Tenant's plan for response to the findings, including a schedule for completing reasonable remediation, repairs, replacements, and/or upgrades of the Premises structures and/or facilities and a description of operations and procedures necessary to perform Required Management. Tenant shall exercise commercially reasonable efforts to incorporate into its final plan comments received from the Port at the meeting, and subject to Section 14.8, incorporate such reasonable and practicable additional protocols (e.g., to better control noise, odors or other elements of such planned work) as the Port may request. Subject to the term and conditions of this Agreement, Tenant shall complete all repairs, replacements, and/or upgrades according to the final plan (and performance schedule). The Tenant shall also modify any operational plans and procedures consistent with the results of the environmental audit as necessary to complete all Required Management. In conducting any environmental audit, the Port shall not interfere with Tenant's business operations, and if it shall damage or otherwise disturb the Premises during such environmental audit, it shall restore the Premises to the condition in which they existed prior to the damage.

14.3.4 Disclosure of Environmental Information. Tenant shall promptly inform the Port of the existence of any other environmental study, evaluation, investigation or results of any environmental testing conducted by or for Tenant on the Premises whenever the same become known to Tenant, and Tenant shall provide the Port the opportunity to review and comment on the same, unless and except to the extent such disclosure could compromise attorney client, work product or other legal privilege. If the Port intends to release or disclose any such Environmental Information on its own or pursuant to a request for release or disclosure pursuant to Ch. 42.56 RCW or otherwise, the Port shall notify Tenant of such intention or request by telephone and certified mail, return receipt requested, at least twenty (20) business

days prior to such release or disclosure such that Tenant shall have an opportunity to seek a protective order to prevent or limit such release or disclosure.

14.4 Post-Occupancy Environmental Assessment and Remediation. Within sixty (60) days after PSE ceases to occupy the Premises, and again, if applicable, within sixty (60) days following the expiration date of the Term of this Agreement (or within ninety (90) days after any earlier termination of this Agreement), Tenant (or PSE upon its earlier cessation of its occupancy) shall submit a report (“**Termination Assessment Report**”) to the Port describing the results of a comprehensive environmental assessment that reasonably investigates whether Hazardous Substances in the Premises or migrating from the Premises (except Pre-existing Hazardous Substances) for which the Tenant is responsible under Sections 14.1, 14.2, or 14.6 of this Agreement remain on the Property or have migrated from the Property. The Termination Assessment Report shall be conducted by an independent qualified environmental professional selected by PSE or a successor tenant, as applicable, with the Port's reasonable consent, and the scope of the investigation shall be reasonably determined by such independent qualified environmental professional, subject to the reasonable consent of both PSE or a successor tenant, as applicable, and the Port, and to dispute resolution pursuant to Section 14.8. The scope of the Termination Assessment Report environmental assessment shall include, at a minimum: (i) review of tenant/occupant operational history, audit reports and responses, spill and spill response reports, and other relevant environmental records; (ii) collection and analysis of samples representative of facility operations; equipment, material and waste storage locations; and locations of leaks, spills and other releases, which could reasonably be expected to have resulted in introduction of Hazardous Substances to the environment; and (iii) collection and analysis of samples from random locations, at a rate determined reasonable and appropriate based on best professional judgment considering the recommendations of the independent qualified environmental professional, and to dispute resolution pursuant to Section 14.8. With respect to Hazardous Substances identified in such Termination Assessment Report that were stored, released, spilled, discharged, leaked, emitted, injected, escaped or dumped in, on or about the Premises after the Commencement Date (i) by Tenant or its employees, agents, invitees or sublessees and (ii) by unassociated third parties, if prevention of the release was within Tenant's control, Tenant (or PSE upon its earlier cessation of its occupancy) shall perform (x) a final remediation of such Hazardous Substances pursuant to a plan approved by the Port and if and to the extent required by appropriate regulatory agencies which, to the extent reasonably feasible and practical under the circumstances (and subject to dispute resolution under Section 14.8), shall meet the standard established under MTCA Method A or, if such standard ceases to exist, a reasonably comparable replacement standard consistent with Environmental Law ("**Method A**"); and (y) also to the extent reasonably feasible and practical under the circumstances (and subject to dispute resolution under Section 14.8), a remediation below Method A in areas or circumstances where such residual Hazardous Substances at levels compliant with Method A would materially impair the Port's ability, or increase the cost to the Port, to re-lease, or otherwise use, the Property for uses compatible with Airport noise levels and otherwise compliant with 49 U.S.C. 47107(c)(2)(A) (the "**Post Termination Remediation**"). Post Termination Remediation shall be a condition precedent to the Port's payment of any Security to Tenant upon termination or expiration of this Agreement. Notwithstanding the foregoing, with

respect to Post Termination Remediation, the Port will reasonably approve less stringent cleanup criteria and investigation, monitoring, removal, institutional controls and restrictive covenants that are not materially burdensome to the Port's re-leasing or future use of the Premises in light of federal aviation restrictions otherwise imposed upon the Property. The Post Termination Remediation shall fully and finally resolve Tenant's environmental obligations to the Port under this Agreement (or in the case of PSE's earlier cessation of its occupancy, Tenant's and PSE's environmental obligations through the date of such cessation), and the Port shall, and shall be deemed to, accept the Premises upon expiration or earlier termination of this Agreement (or in the case of PSE's earlier cessation of its occupancy through the date of such cessation) in their then current condition, AS IS, WHERE IS, WITH ALL FAULTS AND DEFECTS, subject only to completion of such Post Termination Remediation.

14.5 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, and except as set forth in Sections 14.4 and 14.7 below or otherwise limited in this Agreement, the Port shall be entitled to full reimbursement from Tenant whenever the Port incurs any costs to the extent resulting from Tenant's use or Required Management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, or injuries to third persons or other properties, except to the extent any environmental condition is exacerbated or contributed to as a result of the negligence or other fault of any Port Party. In addition to any remedy provided above, and except as otherwise limited in this Agreement, Tenant shall be entitled to full reimbursement from the Port whenever Tenant incurs any costs to the extent resulting from the Pre-Lease Environmental Conditions, including, but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against Tenant, or injuries to third persons, except to the extent any environmental condition is exacerbated or contributed to as a result of the negligence or other fault of Tenant.

14.6 Environmental Indemnity. In addition to all other indemnities provided in this Agreement, except as otherwise provided in Section 14.4, Tenant agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including reasonable attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), to the extent arising from any Hazardous Substance stored, released, spilled, discharged, leaked, emitted, injected, escaped or dumped in, on or about the Property after the Commencement Date (i) by Tenant or its employees, agents, invitees or sublessees or (ii) by unassociated third parties, if prevention of the release was within Tenant's control. Except as otherwise provided in this Agreement, Tenant's obligations under this Section shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, in no event shall Tenant be liable for, and the Port shall defend (with counsel reasonably acceptable to Tenant and the Port's insurer), indemnify and hold Tenant free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation investigation and cleanup, or other

remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from Pre-existing Hazardous Substances or the migration of any Hazardous Substance onto the Premises from other properties owned by the Port. In addition, if Tenant disposes of any Pre-existing Hazardous Substances or Hazardous Substances that have migrated onto the Premises from other properties owned by the Port, the Port shall sign generator slips, as requested by Tenant, with respect to any such Pre-existing Hazardous Substances or Hazardous Substances. The Port's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

14.7 Incremental Environmental Costs.

14.7.1 Port Responsibility. The Port shall be responsible for the Incremental Environmental Costs for Required Management of Pre-existing Hazardous Substances identified in the Pre-Lease Environmental Condition or during Tenant's initial construction. "**Incremental Environmental Costs**" means the costs and expenses incurred in investigating, testing, designating, handling, transporting, disposing of, or otherwise managing any Pre-existing Hazardous Substances on the Property in accordance with the Work Plan, to the extent those costs and expenses exceed the costs and expenses, including, but not limited to, costs and expenses for development and construction of the Project, that would have been incurred had Pre-existing Hazardous Substances not been present, and any fines, fees, or penalties, or similar costs assessed by any Authority as a result of the presence of Pre-existing Hazardous Substances on, or migration of Pre-existing Hazardous Substances from, the Property; *provided, however*, the Port shall not be responsible for (i) the cost of any investigation and/or testing performed and reports prepared for Tenant prior to the Commencement Date; or (ii) any costs or expenses associated with the excavating, investigating, testing, handling, transporting, disposing or management of the soil or other materials on the Property, except to the extent that such costs are required or increased, due to the presence of any Pre-existing Hazardous Substances within the soil or other materials.

14.7.2 Port's Options; Tenant's Right to Terminate. If any Pre-existing Hazardous Substances are found that are not attributable to Tenant during construction of the Project and prior to Substantial Completion of the Project, the Port shall either (i) perform the Required Management of the Pre-existing Hazardous Substances at the Port's cost with reasonable dispatch so as to not delay construction of the Project unnecessarily, (ii) reach agreement with Tenant within ten (10) days under which Tenant will perform the Required Management of the Pre-existing Hazardous Substances at the Port's cost, or (iii) notify Tenant within ten (10) days of discovery that the Port will not engage in Required Management of the Pre-existing Hazardous Substances. Tenant shall have no claim for delay or constructive eviction as a result of the presence or Required Management of any such Pre-existing Hazardous Substances. Base Rent (or if applicable the Option Payments) shall be suspended during any period the Property is not fully usable due to the Required Management of any such Pre-existing Hazardous Substances. Tenant will have the option to terminate this Agreement without recourse against the Port for Tenant's prior investment in the Property in the case of any of the

following: (i) the delay caused by the Required Management will require more than ninety (90) days, (ii) the Port opts not to engage in Required Management of the Pre-existing Hazardous Substances, (iii) the Port opts to have Tenant perform the Required Management of the Pre-existing Hazardous Substances at the Port's cost but Tenant does not wish to do so, or (iv) the parties cannot reach agreement implementing the option to have Tenant perform the Required Management of the Pre-existing Hazardous Substances. Notwithstanding any other provision of this Agreement, Tenant is not obligated to address or incur any Incremental Environmental Cost in connection with any Pre-existing Hazardous Substances or contamination from sources other than Tenant's uses, and such matters shall be governed by applicable Washington law.

14.8 Environmental Dispute Resolution. If disputes or disagreements arise between the parties with respect to any environmental matter (each, an “**Environmental Dispute**”), the Port and Tenant (and if different from Tenant, PSE) commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner as provided in this Section 14.8.

14.8.1 The Port and Tenant (and if different from Tenant, PSE) will first attempt to resolve Environmental Disputes at the field level through discussions between the parties' environmental professionals, consistent with the Work Plan, as applicable.

14.8.2 If an Environmental Dispute cannot be resolved through the parties' environmental professionals within two (2) business days after first meeting, senior representatives of the Port and Tenant, upon the request of either party, shall meet as soon as possible, but in no case later than two (2) business days after such a request is made, to attempt to resolve such Environmental Dispute. Prior to any meetings between the senior representatives, the parties will exchange relevant information that will assist the parties in resolving their Environmental Dispute.

14.8.3 If, after meeting, the senior representatives determine that the Environmental Dispute cannot be resolved on terms satisfactory to both parties, the parties shall submit the Environmental Dispute to mediation, which submittal to mediation shall be binding upon the parties. Any party may request mediation by filing the request (the “**Mediation Notice**”) in writing with the other party to this Agreement. The mediation shall be conducted by a mutually agreeable arbitrator, or if the parties cannot so agree within two (2) days of receipt of the request, any party may file the request with the American Arbitration Association (“**AAA**”) pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the arbitrator. This requirement to arbitrate is a condition precedent to litigation and cannot be waived except by an explicit written waiver signed by the Port and Tenant. A representative of the Port, Tenant, and, if different from Tenant, PSE, must attend the mediation session, all having authority to settle the claim, or, in the case of the Port, if Port Commission approval is required, the management authority to recommend settlement of the claim directly to the Port Commission. To the extent there are other parties in interest, such as contractors, or subcontractors of any tier, their representatives, with full authority to settle the

claim, shall also attend the mediation session. Unless the Port and Tenant mutually agree in writing otherwise, all unresolved claims shall be considered at a single mediation session which shall occur within ten (10) days of the Mediation Notice. The mediator's fee will be divided equally among the parties participating in the mediation.

14.8.4 Any Environmental Dispute, which has not been resolved in accordance with the procedures set forth in Section 14.8.3 above, shall be resolved by binding arbitration with the AAA pursuant to its Construction Industry Arbitration Rules, which arbitration shall occur within ten (10) days of the end of the mediation.

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 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, but except for matters governed by ARTICLE 14, only to the extent the proceeds of any insurance policies covering the loss are sufficient to reimburse Tenant therefor; *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, 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 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, and all proceeds of insurance covering the loss shall in that circumstance 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, 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 use the Premises as an emergency operations center, or any

other than current use of the Premises, as reasonably determined by Tenant or its subtenant, as applicable.

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; *provided, however*, the following order of priority shall not apply in the event that either party exercises the power of eminent domain against the other party:

16.2.1 The Port, at all times, regardless of when the taking occurs, shall be entitled to receive, with interest thereon as allowed by the taking authority, 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, such value being hereinafter referred to as the “**Property Value.**” The Port shall also be entitled to costs awarded in the condemnation proceeding proportionately attributable to that Property Value.

16.2.2 Then, the remaining portion of the award (the “**Remaining Value**”) shall be split between Tenant and the Port with Tenant receiving that portion of the Remaining Value attributable to the Premises for the remainder of this Agreement (assuming this Agreement is extended to its full potential term) and the Port receiving that portion of the Remaining Value attributable the reversionary interest in the Premises (with the assumption that the Tenant will have decided to remove all improvements and fixtures). The Port and Tenant shall be entitled to costs awarded in the condemnation proceeding proportionately attributable to their portions of the Remaining Value.

16.2.3 In addition, Tenant shall have the right to seek an independent and separate award from the condemning authority for relocation benefits and for any tangible personal property of the Tenant 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, with interest thereon as allowed by the taking authority, that portion of the

award as shall represent compensation for the Property Value. The Port shall also be entitled to costs awarded in the condemnation proceeding proportionately attributable to that Property Value.

16.4.2 The Remaining Value shall be payable to Tenant. Tenant shall also be entitled to costs awarded in the condemnation proceeding proportionately attributable to the Remaining Value.

Should, however, the partial taking occur during the last two (2) years of the 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 (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 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. Tenant covenants that, upon the termination of any temporary taking, prior to the expiration of the 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.

16.7 Takings to Maintain Airport Compatibility. If at any time after the Issuance of a clearing and grading permit for the Project, (i) the Port or FAA determines that PSE's use of the Premises for a use listed in the first sentence of Section 9.1 will conflict with the Airport's use, operation and development for flight-related activities and function; and (ii) enforcement of such

determination materially interferes with PSE's use of the Premises, then such determination shall be deemed to be a taking pursuant to this ARTICLE 16.

ARTICLE 17: SURRENDER AND HOLDING OVER

17.1 Tenant's Option for Removal of Modifications; Surrender. Tenant, at its sole election and discretion, may elect to: (i) remove the improvements or modifications to the Property at Tenant's sole cost and expense or (ii) allow the same to remain on the Property. Different elections may be made as to various portions of the improvements or modifications on the Property. In the event that Tenant elects to remove any or all of the improvements or modifications to the Property, Tenant shall diligently complete such removal prior to termination (including by expiration) of this Agreement and Tenant shall quit and surrender the Property, together with any remaining improvements or modifications, in good condition and repair, (reasonable wear and tear excepted). Notwithstanding the foregoing, upon the expiration of this Agreement, but not before the end of the second (2nd) or third (3rd) Extension Terms (as applicable, the "**Removal Date**"), the Port shall have the option, in its sole discretion, to require Tenant to remove all or a portion of the building elements of the Project, but only down to the foundations, and related debris ("**Improvement Removal**"), subject to the following conditions: (i) the Port shall have given Tenant notice ("**Removal Notice**") of its election prior to or together with the Port's Fair Market Rent proposal delivered to Tenant pursuant to Section 4.3.2.1; (ii) Tenant shall not be required to remove any improvements other than buildings; (iii) removal of the improvements shall be paid for out of the Improvement Removal Fund (defined below) subject to the terms and conditions described below; and (iv) Tenant shall complete the Improvement Removal following the Removal Date as quickly as is reasonably practicable. If the Port timely provides Tenant a Removal Notice, and Tenant elects to exercise its next Extension Option, then the cost of the Improvement Removal will be estimated and Base Rent for the applicable Extension Term (as determined pursuant to Section 4.3.2) shall be decreased by an amount ("**Rent Reduction Amount**") equal to the amortized estimated cost of the Improvement Removal at an interest rate that is equal to the then current 10 year Treasury Note rate. Each month during the applicable Extension Term, Tenant shall deposit the Rent Reduction Amount into an escrowed reserve account (the "**Improvement Removal Fund**"). If, following the establishment of an Improvement Removal Fund, Tenant exercises its third (3rd) Extension Option, then proceeds in the Improvement Removal Fund shall be paid to the Port upon the expiration of the second (2nd) Extension Term, and a third (3rd) Extension Term Improvement Removal Fund shall be established in the manner described above. If Tenant does not exercise its third (3rd) Extension Option following timely receipt of a Removal Notice, then Tenant shall perform the Improvement Removal with the funds in the Improvement Removal Fund. If the Improvement Removal Fund is not sufficient to complete the Improvement Removal, then the Port shall pay the overage. If the funds in the Improvement Removal Fund exceed the cost to complete the Improvement Removal, then the excess will be for the Port's account. If the Port withdraws its Removal Notice, or otherwise does not require the Improvement Removal following establishment of an Improvement Removal Fund, then the proceeds of the Improvement Removal Fund will be paid to the Port upon expiration of the then current Extension Term.

17.2 Holding Over. If the Premises are not surrendered as provided in this ARTICLE, Tenant (without waiver of Tenant's eminent domain authority) 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.

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 immediately 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.

18.2 Liens on Property. Tenant will not directly or indirectly create or permit to be created any Lien on the Property or allow any Lien to remain upon the Property.

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 grace periods 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. 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 Premises 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, assumes the Port's obligations under this Agreement arising after the date of transfer, and agrees not to disturb Tenant's quiet possession of the Premises for so long as Tenant is not in default hereunder.

19.3 Subordination. The rights of Tenant hereunder are and shall be, at the election of any mortgagee or the beneficiary of a deed of trust encumbering the Premises or any part thereof, subject and subordinate to the lien of such mortgage or deed of trust, or the lien resulting from any other method of financing or refinancing, now or hereafter in force against the Premises or any part thereof, and to all advances made or hereafter to be made upon the security thereof; *provided, however,* that notwithstanding such subordination, so long as Tenant is not in default under any of the terms, covenants and conditions of this Agreement, neither this Agreement nor any of the rights of Tenant hereunder shall be terminated or subject to termination by any trustee's sale, any action to enforce the security, or by any proceeding or action in foreclosure.

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 mortgage 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 options that have been exercised, and shall be subject and subordinate to the rights of the Port.

20.2 No Benefit Without Notice. No holder ("**Leasehold Mortgagee**") 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) and facsimile number 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 26.1 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 26.1 of this Agreement, a copy of any notice of default sent to Tenant.

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 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. 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, with reasonable diligence and continuity, commences to comply with all non-monetary requirements of this Agreement then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee.

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) 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 Mortgage, and continue its good faith efforts to perform all of Tenant's other obligations under this Agreement, including during any period during which the Leasehold Mortgagee has possession of the Premises the obligation to operate and maintain the improvements and Premises in accordance with the standards set forth by the Port in this Agreement.

20.3.5 Termination; New Lease. In the event that this Agreement is terminated by the Port on account of any incurable default under 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, in compliance with the requirements of ARTICLE 24, 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.

20.3.7 In the event that the Leasehold Mortgagee shall acquire title to Tenant's interest in this Agreement (whether through foreclosure or assignment in lieu of foreclosure) or under a New Lease pursuant to this ARTICLE, the Leasehold Mortgagee may assign such lease in accordance with the provisions of ARTICLE 24 and shall, upon full assumption of the lease by the assignee, be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Tenant's part to be performed and observed from and after the date of such assignment.

20.3.8 No agreement between the Port and Tenant modifying, canceling or surrendering this Agreement 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 a 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:

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

21.1.2 Intentionally Deleted.

21.1.3 The failure by Tenant to make any payment of Rent, fees or any other payment required by this Agreement 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 Intentionally Deleted.

21.1.6 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 this ARTICLE 21, whenever any default continues un-remedied 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 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 such longer period as is reasonably required to cure the Event of Default so long as Tenant commences to cure within such sixty (60) day period and diligently pursues 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 Agreement Term ("**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 Future Charges, less the amount of actual rent and fees, if any, which the Port receives during the remainder of the 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 (1st) day of each calendar month following termination of this Agreement and continuing until the date on which the 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 rental value of the Premises over the remaining 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 percentage point 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 have a duty to mitigate its damages and 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 Term of this Agreement), for such use or uses on commercially reasonable terms.

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 Eviction. Notwithstanding anything herein to the contrary, so long as PSE is using the Premises (either as the Tenant under this Agreement or as the subtenant of the assignee

of Tenant's interest under this Agreement) as an utility emergency operations center, the Port shall have no right to reenter or repossess or otherwise terminate or interfere with PSE's quiet possession of the Premises either by force, summary proceedings, or otherwise, notwithstanding any Event of Default, whether or not timely cured. In such case, the Port's sole and exclusive remedy following an uncured Event of Default is to seek an award of monetary damages, specific performance, or both as otherwise provided herein. Except as otherwise provided in this Agreement, all rights, options and remedies of the Port contained in this Agreement shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and the Port shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Agreement.

21.4 No Counterclaim or Setoff. If the Port shall commence any proceeding for non-payment of Rent, fees or of any other payment of any kind to which the Port may be entitled or which the Port may claim under this Agreement, 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 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*, that (i) the Port by virtue of such use, shall in no event interfere with Tenant's use of the Premises; and (ii) no Facilities serving the Premises shall be interrupted or diminished in any manner.

ARTICLE 23: NO WAIVER; LANDLORD'S RIGHT TO PERFORM

23.1 Receipt of Monies Following Termination. 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 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 that may be expended by the Port, plus interest at the Default Rate, as Additional Rent; *provided, however*, the Port shall provide Leasehold Mortgagee notice and opportunity to cure as set forth in ARTICLE 20.

ARTICLE 24: ASSIGNMENT

24.1 Prohibition on Assignment. Except as otherwise specifically permitted in this Agreement, 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) or sublease all or substantially all 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 (or subtenant of all or substantially all of the entire Premises) including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee (or subtenant of all or substantially all of the entire Premises) and the proposed documentation for the transfer as described below. In determining whether to grant such a consent to an assignment or 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 elect one of the following: (a) to consent to such proposed assignment or (b) to refuse such consent.

24.1.1 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 (or sublease of all or substantially all of the Premises) and an agreement executed by the assignee in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee (or sublease of all or substantially all of the Premises) assumes and agrees to be bound by the terms and provisions of this Agreement and perform all the obligations of Tenant hereunder.

24.1.2 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.

24.1.3 No assignment (or sublease of all or substantially all of the Premises), other than a Permitted Assignment, 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 (or sublease of all or substantially all of the Premises) shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

24.1.4 Tenant shall reimburse the Port in the sum of Twenty-Five Hundred Dollars (\$2,500.00) plus any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Tenant for consent to an assignment (or sublease of all or substantially all of the Premises).

24.2 Excess Rental. If, following any assignment (or, except for the sublease described in Section 25.4, a sublease of all or substantially all of the Premises), the Port believes

in good faith that Tenant has received rent or other monetary consideration, either initially or over the term of the assignment, in excess of the Rent called for hereunder after appropriate adjustments to assure that all other payments called for hereunder and out-of-pocket expenditures, operating costs or concessions incurred by Tenant in connection with such assignment (or sublease of all or substantially all of the Premises) are appropriately taken into account, Base Rent shall be adjusted as provided in Section 4.3 as if the effective date of such transfer was an Adjustment Date.

24.3 Scope. The general prohibition against assignment (or sublease of all or substantially all of the Premises) contained in this ARTICLE shall be construed to include a prohibition against any assignment or subletting by operation of law.

24.4 Permitted Assignments. Notwithstanding anything to the contrary in this Agreement, Tenant may, without the Port's prior written consent, assign this Agreement or sublet all or portions of the Premises to: (i) an Affiliate of Tenant, (ii) as collateral for Tenant's corporate mortgages, (iii) a successor corporation, limited liability company or other entity related to Tenant by merger, consolidation or non-bankruptcy reorganization, (iv) the lender to the Tenant of the Premises is authorized to assign the lender's interest in this Agreement in the event the lender takes action against the Tenant to foreclose or accept a deed in lieu of foreclosure, (v) the Developer, or (vi) after completion of construction of the Project, any assignee of the Developer (any of the foregoing are referred to herein as "**Permitted Assignments**"). No Permitted Assignment shall take effect until Tenant shall have delivered to the Port copies of the applicable transfer 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, and has provided the notice address of the transferee.

24.5 Non-Disturbance and Attornment Agreement. In connection and simultaneously with any Permitted Assignment of this Agreement, the Port agrees to execute and deliver to any Permitted Assignee 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 occupancy and quiet enjoyment of the Premises so long as Tenant or the Permitted Assignee is not in default beyond applicable notice and cure periods on the terms described in the NDA.

24.6 Further Assignment. Notwithstanding anything to the contrary in this Agreement, the Premises may be assigned, without the Port's further consent, to Benaroya Capital Company, L.L.C., a Washington limited liability company, or any affiliated entity of which Larry R. Benaroya is the Manager (the "**Developer**") so that the Developer may: (i) develop the Property to PSE's specifications, (ii) own the Project subject to the terms of this Agreement, and (iii) sublease the Property (and lease the Project) to PSE without the Port's consent; *provided that*, (i) the Developer expressly assumes all of PSE's obligations under this Agreement (other than those PSE reserves) and delivers a copy of such assumption agreement to the Port, and (ii) Tenant and Developer simultaneously enter into a sublease ("**Developer Sublease**"), and deliver a copy of the executed Developer Sublease to the Port. Except as otherwise provided, any Permitted Assignee

must first obtain the Port's written consent prior to any further assignment of their interest in this Agreement.

ARTICLE 25: SUBLEASE

25.1 Sublease. Except as set forth in Section 25.4 below, Tenant may not sublease, license or grant concession rights as to (for convenience in this ARTICLE 25, "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 transfer as described below. In determining whether to grant such a consent to a sublease, the Port may consider all factors which Lessor 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.

25.1.1 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 contrary to the provisions hereof (or for which consent is not specifically obtained) shall be void. 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.

25.1.2 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.

25.1.3 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.

25.1.4 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).

25.1.5 In the event that any portion of the Premises is sublet or occupied by anyone other than Tenant, the Port may, upon the 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.

25.2 Copies of Sublease. 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.

25.3 Intentionally Deleted.

25.4 Permitted Subleases. Notwithstanding anything to the contrary in this Agreement, if the Developer is the Tenant, the Property may be sublet, and the Project may be leased, to PSE, or an Affiliate of PSE, without the Port's further consent, so that the Developer may: (i) develop the Property to PSE's specifications and (ii) own the Project subject to the terms of this Agreement and sub-lease the Property (and lease the Project) to PSE without the Port's consent (each, a "**Permitted Sublease**").

25.5 Non-Disturbance and Attornment Agreement. In connection and simultaneously with any permitted sublease of this Agreement, the Port agrees to execute and deliver to any permitted subtenant an NDA, whereby the Port shall agree not to disturb the permitted subtenant's occupancy and quiet enjoyment of the Premises so long as Tenant or the permitted subtenant is not in default beyond applicable notice and cure periods on the terms described in the NDA, which shall extend the protections against eviction set forth in Section 21.3 to such permitted subtenant.

25.6 Further Sublease. Except as otherwise provided, any permitted subtenant must first obtain the Port's written consent prior to any further sublease of its interest in this Agreement.

ARTICLE 26: MISCELLANEOUS

26.1 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.

26.2 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 other than the Broker(s) listed in Section 1.10 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 other than the Broker(s). 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. The Port shall pay Tenant's Broker a market-rate brokerage commission in accordance with the form of **Exhibit E** attached hereto, which agreement will provide that the commission due will equal five percent (5%) of the cumulative Base Rent payments for Agreement Years one (1) through five (5) (but not exceeding sixty (60) calendar months) and two and one-half percent (2.5%) of cumulative Base Rent payments for Agreement Years six (6) through ten (10). The commission will be paid one-half at the Commencement Date and one-half after all termination rights under Section 3.4 have lapsed at the Issuance of a temporary certificate of occupancy for the Project.

26.3 Assignment by Port. In the event of a sale, conveyance, or other transfer by the Port of the Property or in the event of an assignment of this Agreement by the Port, the same shall operate to release transferor from any further liability upon 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. In such event, Tenant agrees to look solely to the successor in interest of transferor. 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.

26.4 Title Insurance. To the extent desired or otherwise required, the Port and Tenant agree that each shall insure their respective interests in title as those interests may appear, at their own expense.

26.5 Intentionally Deleted.

26.6 Labor Disputes. Tenant agrees to use commercially 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; provided that in no event shall Tenant be required to settle a strike or other labor difficulty by virtue of this paragraph.

26.7 Non-Discrimination.

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

26.7.2 Employment. Tenant covenants and agrees that in all matters pertaining to the performance of this Agreement, Tenant shall at all times conduct its business at the Premises in a manner which complies with federal, state and local hiring and employment practices.

26.8 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 without the prior written consent of the Port and without otherwise being in compliance with ARTICLE 24 hereof.

26.9 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 five (5) 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).

26.10 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.

26.11 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.

26.12 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 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.

26.13 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.

26.14 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, unless the application of the remaining provisions of this Agreement would make it impractical, in Tenant's reasonable judgment, to use the Premises for Tenant's operations, in which case, Tenant shall have the right to terminate this Agreement.

26.15 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.

26.16 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.

26.17 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.

26.18 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.

26.19 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.

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

- 26.20.1 Exhibit A – Legal Description
- 26.20.2 Exhibit B – Map of Premises
- 26.20.3 Exhibit C – Memorandum of Lease
- 26.20.4 Exhibit D – Non-Disturbance and Attornment Agreement
- 26.20.5 Exhibit E – Brokerage Commission Agreement

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

PORT OF SEATTLE

PUGET SOUND ENERGY, INC.

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT A

-- Legal Description --

DRAFT

EXHIBIT B

-- Map of Premises --

DRAFT

EXHIBIT C

MEMORANDUM OF LEASE

Return Address

Perkins Coie LLP
10885 NE Fourth Street, Suite 700
Bellevue, Washington 98004
Attention: R. Gerard Lutz

Document Title(s) (or transactions contained therein):

1. Memorandum of Lease

Reference Number(s) of Documents assigned or released:
(on page ___ of documents(s))

Grantor(s) (Last name first, then first name and initials):

1. the PORT OF SEATTLE, a Washington municipal corporation
2. Additional names on page ___ of document.

Grantee(s) (Last name first, then first name and initials):

1. PUGET SOUND ENERGY, INC., a Washington corporation
2. Additional names on page ___ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Full legal is on Exhibit A attached.

Assessor's Property Tax Parcel/Account Number

5251200010, 0922049108

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into this ____ day of May, 2012, between the PORT OF SEATTLE, a Washington municipal corporation, ("Landlord"), and PUGET SOUND ENERGY, INC., a Washington corporation, ("Tenant").

1. Pursuant to that certain Ground Lease Agreement (the "Lease") by and between Landlord and Tenant, dated April ____, 2012, Landlord has leased to Tenant, and Tenant has leased from Landlord certain property ("the Property"), which is legally described on Exhibit A attached hereto.
2. The Term of this Agreement shall commence on the Commencement Date and shall extend through the twentieth (20th) Agreement Year. Tenant shall have three (3) Extension Options, each of which is for ten (10) additional years following the termination of the initial Term.
3. Tenant has, and notwithstanding any assignment of Tenant's interest in the Lease, shall retain, a one-time, non-assignable right of first offer to purchase the Property in the event Landlord elects to sell the Property to a third party during the initial Term or any Extension Term.
4. Tenant may assign the Lease or sublet all or a portion of the Property, without Landlord's consent, in connection with certain Permitted Assignments and in connection with the development of the Property. With respect to any other assignment of the Lease or subleasing of the Property, Landlord's consent thereto shall not be unreasonably withheld, conditioned, or delayed.
5. Use of the Premises shall be compatible with noise levels associated with operating Seattle-Tacoma International Airport and will not conflict with the Airport's use, operation and development for flight-related activities and function.
6. Following an Event of Default on the part of Tenant, Landlord shall have the right to seek and remedy available at law or in equity, except as provided, and subject to the terms and conditions set forth, in Article 21 of the Lease.
7. This Memorandum of Lease is subject to all of the terms, conditions and understandings set forth in the Lease, which are incorporated into this Memorandum by this reference as though fully set forth. It shall not constitute an amendment or modification of the Lease. In the event of a conflict between the terms and conditions of this Memorandum of Lease and the terms and conditions of the Lease, the terms and conditions of the Lease shall prevail. Capitalized terms in this Memorandum of Lease have the meanings set forth in the Lease, unless otherwise defined herein.
8. This Memorandum of Lease may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes, but all of which together shall constitute one and the same instrument.

EXECUTED as of the date first written above.

LANDLORD:

PORT OF SEATTLE,
a Washington municipal corporation

By: _____
Name: _____
Its: _____

TENANT:

PUGET SOUND ENERGY, INC.,
a Washington corporation

By: _____
Name: _____
Its: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 2012 before me personally appeared _____, to me known to be the _____ of the PORT OF SEATTLE, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

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

(Signature)

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

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 2012, before me personally appeared _____, to me known to be the _____ of PUGET SOUND ENERGY, INC., the corporation that executed the within and foregoing instrument at Tenant, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

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

(Signature)

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

EXHIBIT D

-- Non-Disturbance and Attornment Agreement --

Return Address

Perkins Coie LLP
10885 NE Fourth Street, Suite 700
Bellevue, Washington 98004
Attention: R. Gerard Lutz

Document Title(s) (or transactions contained therein):

1. Nondisturbance and Attornment Agreement

Reference Number(s) of Documents assigned or released:
(on page ___ of documents(s))

Grantor(s) (Last name first, then first name and initials):

1. the PORT OF SEATTLE, a Washington municipal corporation
2. Additional names on page ___ of document.

Grantee(s) (Last name first, then first name and initials):

1. PUGET SOUND ENERGY, INC., a Washington corporation
2. Additional names on page ___ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Full legal is on Exhibit A attached.

Assessor's Property Tax Parcel/Account Number

5251200010, 0922049108

NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement" or "Recognition Agreement") is made and entered into as of May, __ 2012, by and between the PORT OF SEATTLE, a Washington municipal corporation, (the "Port"), and PUGET SOUND ENERGY, INC., a Washington corporation, ("PSE").

RECITALS

A. The Port, as lessor, and PSE, as lessee, entered into that certain Ground Lease Agreement, dated as of April __, 2012 ("Ground Lease"), pursuant to which the Port leased to PSE, and PSE leased from the Port, certain premises (the "Premises") more particularly described in the Ground Lease. A Memorandum of Lease was recorded in connection with the Ground Lease on April __, 2012, in the King County Recorder's Office as Document No. _____.

B. Following execution of the Ground Lease, PSE, as assignor, and Benaroya Capital Company, L.L.C., a Washington limited liability company ("Sublandlord"), as assignee, entered into that certain Assignment and Assumption Agreement, dated as of April __, 2012 (the "Assignment"), pursuant to which PSE assigned its interest in the Ground Lease to Sublandlord, subject to a reversionary interest in the Ground Lease in favor of PSE, as more fully described in the Assignment.

C. Pursuant to that certain Sublease dated as of April __, 2012 ("Sublease"), Sublandlord subleased to PSE, and PSE subleased from Sublandlord the Premises. A true, correct and complete copy of the Sublease (which includes a copy of the Ground Lease) is attached hereto as Exhibit A.

D. PSE desires to continue its interest in the Premises under the Sublease in the event of termination of the Ground Lease occurring as a result of Sublandlord's default of its obligations under the Ground Lease, or otherwise; and Lessor desires that PSE's interest under the Sublease shall continue notwithstanding such termination of the Ground Lease, subject to, and in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, The Port and PSE agree as follows:

1. Port's Acknowledgement. The Port hereby acknowledges the Assignment and the Sublease and agrees that such documents and the transactions contemplated thereby are permitted under the Ground Lease.

2. Attornment and Non-disturbance. In the event of the termination of the Ground Lease for any reason other than expiration of the Term, as the same may be extended, (a "Recognition Event"), the Port shall continue to recognize the estate of PSE created under the Sublease, PSE shall attorn to the Port and perform all of PSE's obligations under the Sublease directly to the Port, as if the Port were the sublandlord under the Sublease, and the Sublease shall continue with the same force and effect as if the Port and PSE had entered into a sublease as of

the Recognition Event on the same provisions as those contained in the Sublease (as modified by this Recognition Agreement); provided, however, that in no event shall the obligations of the Port be greater than those of the Port under the Ground Lease with respect to the Premises. Both the Port and PSE shall execute and deliver at the other's request an instrument confirming PSE's and the Port's obligations pursuant to this Recognition Agreement, and the Port's agreement to be bound by the terms of the Sublease as modified pursuant to this Recognition Agreement; provided, however, that no failure of either of them to do so shall affect the provisions or effect of this Recognition Agreement.

3. Conditions of Recognition and Attornment. From the date of a Recognition Event, The Port shall have the same rights as against PSE as Sublandlord had, and PSE shall have the same rights as against the Port as it had as against Sublandlord under the Sublease.

4. Modification of Sublease. Upon a Recognition Event, the Sublease shall be deemed modified to be identical to the terms of the Ground Lease.

5. Modification of Ground Lease. Nothing in this Recognition Agreement shall be deemed to amend or otherwise modify the Ground Lease prior to its expiration or earlier termination.

6. Inconsistent Provisions of Sublease. This Recognition Agreement shall be deemed to modify the Sublease in any respect where the Sublease is inconsistent with the provisions of this Recognition Agreement, and nothing in the Sublease shall be deemed to modify this Recognition Agreement.

7. 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 below or at such other place or places as either the Port or PSE 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.

The Port:
The Port of Seattle
Aviation Division
P. O. Box 68727
Seattle, Washington 98158
Attention: Manager, Aviation Properties

PSE:
Puget Sound Energy, Inc.
P. O. Box 97034
Bellevue, Washington 98009-9734
Attention: Manager, Real Estate

8. Waiver of Covenants, Conditions, or Remedies. The waiver by one party of the performance of any covenant, condition, or promise under this Recognition Agreement shall not invalidate this Recognition Agreement, nor shall it be considered a waiver by it of any other covenant, condition, or promise under this Recognition Agreement. The waiver by either or both parties of the time for performing any act under this Recognition Agreement shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Recognition Agreement shall not be a waiver of any consistent remedy provided by law, and the provision in this Recognition Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

9. Miscellaneous Provisions.

(a) Governing Law and Venue. This Recognition Agreement shall be construed in accordance with the laws of the State of Washington and, together with the provisions of the Sublease and the Ground Lease, contains the entire agreement among the parties hereto regarding the matters which are the subject of this Recognition Agreement. Any actions or proceedings brought under this Recognition Agreement, or with respect to any matter arising under or out of this Recognition Agreement, shall be brought and tried only in courts located in King County, Washington (excepting appellate courts).

(b) Further Assurances. In addition to the documents and instruments to be delivered as herein provided, each of the parties hereto shall, from time to time at the request of the other party, execute and deliver to the other party such other documents and shall take such other action as may be reasonably required to more effectively carry out the terms of this Recognition Agreement. The provisions of this Paragraph 9(c) shall not be construed to require any party to take any action or execute any document which would be contradictory to, or inconsistent with, the terms of this Recognition Agreement.

(c) Relationship. Nothing contained in this Recognition Agreement shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or a partnership or a joint venture between PSE and the Port.

(d) Successors and Assigns. The terms, covenants and conditions of this Recognition Agreement shall apply to and bind the permitted heirs, successors, assigns, executors and administrators of all the parties hereto.

(e) Interpretation. The parties acknowledge that each party and its counsel have reviewed and revised this Recognition Agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Recognition Agreement or any amendments or exhibits to it or any document executed and delivered by either party in connection with this Recognition Agreement. All personal pronouns used in this Recognition Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa, and references to "party" or "parties" shall refer solely to the parties signatory

hereto except where otherwise specifically provided. The use herein of the words “including” or “include” when following any general statement, term or matter shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not an express statement against intended limitations (such as “without limitation,” or “but not limited to,” or words of similar import) is used with reference thereto. The captions preceding the Paragraphs of this Recognition Agreement have been inserted solely as a matter of convenience and such captions in no way define or limit the scope or intent of any provision of this Recognition Agreement. The term “and/or” when used herein shall be construed to include every possible construction with “and” alone, and every possible construction with “or” alone.

(f) Final Agreement. This Recognition Agreement constitutes the understanding and agreement of the parties hereto with respect to the matters set forth herein, and all prior agreements, understandings or representations with respect to the subject matter of this Recognition Agreement are hereby superseded, terminated and cancelled in their entirety and are of no further force or effect.

(g) Amendments. This Recognition Agreement is not subject to modification or amendment except by a writing executed by The Port and PSE.

(h) 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 in connection with the breach of any covenant or condition of this Agreement 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.

(i) Time of the Essence. Time is of the essence of this Recognition Agreement and of each provision hereof.

Counterparts. This Recognition Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and when taken together they shall constitute one and the same Recognition Agreement.

IN WITNESS WHEREOF The Port and PSE have executed this Recognition Agreement as of the date first written above.

PORT OF SEATTLE,
a Washington municipal corporation

PUGET SOUND ENERGY, INC.,
a Washington corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT E

-- Brokerage Commission Agreement --

COMMISSION AGREEMENT

This Commission Agreement (this "**Agreement**") is entered into as of _____, 2012, between **THE PORT OF SEATTLE**, a Washington municipal corporation ("**Landlord**"), and METPARTNERS, a Washington limited liability corporation ("**Broker**").

RECITALS:

- A. Broker is assisting PUGET SOUND ENERGY ("**PSE**") in negotiating and consummating a lease with Landlord for a portion of the land commonly known as the Des Moines Creek Business Park, located at 24th Ave South between South 216th Street and South 208th Street in Des Moines, Washington (the "**Property**") for an operations center and distribution warehouse which will be constructed by The Benaroya Company pursuant to a separate agreement; and
- B. Broker and Landlord wish to set out the terms and conditions upon which Landlord shall pay Broker a commission for such services.

NOW, THEREFORE, in consideration of the mutual covenants of the parties contained herein, the parties hereto agree as follows:

AGREEMENT:

Broker and Landlord agree as follows:

1. **Representation.** Broker is PSE's exclusive representative with respect to the proposed lease of the Property.
2. **Commission.**
 - (a) **Lease Agreement.** If, and only if, Landlord and PSE fully execute and deliver a lease agreement for the Property ("**Lease Agreement**") prior to the expiration of the Term (as defined in Section 44 below), Landlord agrees to pay Broker a commission pursuant to **Exhibit A** attached hereto (the "**Commission**").
 - (b) **Payment Terms.** The Commission shall be earned upon completion of each of the following conditions: (1) full execution of the Lease Agreement by Landlord and PSE; (2) payment to Landlord of any security deposit and receipt of the first month's rent as provided in the Lease Agreement; (3) commencement of the Lease Agreement; and (4) receipt by Landlord of a written invoice from Broker setting forth the Commission and showing the calculation thereof based upon the terms of this Agreement. The Commission shall be paid by Landlord to Broker in cash. Provided all conditions precedent set forth above have been satisfied, one-half of such Commission shall be due within thirty (30) days after the full execution and delivery of the Lease Agreement by Landlord and PSE. The second half of such Commission shall be due within thirty (30) days after all of PSE's rights to terminate the Lease Agreement under Section 3.4 thereof have been waived or otherwise been extinguished at

issuance of a temporary certificate of occupancy and after Broker delivers to Landlord a written invoice therefor.

3. **Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be (a) mailed by first class, United States mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address listed below, (b) hand delivered to the intended addressee, (c) sent by nationally recognized overnight courier (e.g., FedEx), or (d) sent by facsimile transmission followed by a confirmatory letter. Notice sent by certified mail, postage prepaid, shall be effective three (3) business days after being deposited in the United States mail; all other notices shall be effective upon delivery to the address of the addressee (even if such addressee refuses delivery thereof). The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision.

Landlord: Port of Seattle
Aviation Division
17801 International Blvd
Seattle, WA 98158
Attn: Manager, Aviation Properties

Broker: MetPartners
520 Pike Street, Suite 1515
Seattle, WA 98101
Attn: Macgregor Miller

4. **Effectiveness of Agreement.** This Agreement shall be effective for a term of five (5) years or such longer time as PSE may need to substantially complete the project and subject to force majeure events after the date hereof (the "**Term**").

5. **Broker's Representation.** Broker represents that Broker (a) is duly licensed as a real estate broker under the laws of the State of Washington, (b) is PSE's exclusive agent with respect to the proposed Lease Agreement, and (c) has full right, power and authority to execute this Agreement.

6. **Successors and Assigns.** The provisions hereto shall duly bind the heirs, transferees, successors and assigns of the parties.

7. **Effective Date.** This Agreement shall become effective on the date that it has been signed by all parties set forth below. All sums due and payable under this Agreement shall be paid in the City of Seattle, King County, Washington State. The laws of the State of Washington shall apply to this Agreement.

8. **Authorization** Broker and Landlord represent that (i) all actions on the part of any other individual or entity that is necessary for the authorization, execution and delivery of this Agreement have been taken, and that no other signatures or approvals are necessary for this

Agreement to be binding; (ii) the execution and delivery of this Agreement will not violate any provision of any material agreement or other instrument known by which Broker or Landlord is bound or affected; and (iii) upon such execution and delivery, this Agreement will constitute a valid and binding obligation of Landlord and Broker enforceable in accordance with its terms.

9. **Disclosure.** Landlord acknowledges receipt of the pamphlet entitled "The Law of Real Estate Agency", attached as **Exhibit B** hereto. Broker hereby certifies that, other than the Commission to be paid pursuant to this Agreement and a commission that it will be paid pursuant to a separate agreement with The Benaroya Company for negotiating the lease of the improvements to be constructed on the Property, it has no other financial or potential financial interest in the Lease Agreement that is contemplated herein.

10. **Attorney's Fees.** In the event of a dispute arising under this Agreement, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees.

11. **Entire Agreement.** **THIS AGREEMENT CONTAINS THE FINAL, ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF. ALL PRIOR AGREEMENTS, WHETHER WRITTEN OR ORAL, RELATIVE HERETO AND THERETO WHICH ARE NOT CONTAINED HEREIN OR THEREIN ARE SUPERSEDED AND TERMINATED HEREBY, AND THIS AGREEMENT MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO.**

This Agreement is executed as of the date first written above.

LANDLORD:

PORT OF SEATTLE

By: _____

Name: _____

Title: _____

Date: _____

BROKER:

METPARTNERS

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
COMMISSION

A. **Commission Rate.** The rate of the Commission shall be five percent (5%) of the Base Rent for the first five years of the Lease Agreement and two and one half percent (2.5%) for the second five years of the Lease Agreement.

B. **Base Rent Defined.** The “**Base Rent**” payable under the Lease Agreement shall be calculated by adding the total amount of “Base Rent” including the minimum Base Rate Adjustments (as described in the Lease Agreement) which is due and payable during the first ten (10) years of the lease term of the Lease Agreement and excluding therefrom the following items: (1) cash credits, or abatements of rent; (2) any other sums designated as “additional rent” or that constitute operating expense reimbursements to Landlord under the Lease Agreement; (3) late payment charges; (4) percentage rent; (5) rent or other charges for parking; (6) security deposits (including any amounts necessary to restore any security deposit after application of same pursuant to the Lease Agreement); (7) any amounts paid to Landlord for fees, repairs, reimbursements, late charges or interest, whether or not characterized as rentals under the Lease; (8) any rent (including Basic Rent) payable under the Lease Agreement for any portion of the lease term in excess of ten years.

EXHIBIT B
The Law of Real Estate Agency

The Law of Real Estate Agency

This pamphlet describes your legal rights in dealing with a real estate broker or salesperson. Please read it carefully before signing any documents.

The following is only a brief summary of the attached law:

Section 1. Definitions. Defines the specific terms used in the law.

Section 2. Relationships between Licensees and the Public. States that a licensee who works with a buyer or tenant represents that buyer or tenant -- unless the licensee is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client -- unless the parties agree in writing that both licensees are dual agents.

Section 3. Duties of a Licensee Generally. Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.

Section 4. Duties of a Seller's Agent. Prescribes the additional duties of a licensee representing the seller or landlord only.

Section 5. Duties of a Buyer's Agent. Prescribes the additional duties of a licensee representing the buyer or tenant only.

Section 6. Duties of a Dual Agent. Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.

Section 7. Duration of Agency Relationship. Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

Section 8. Compensation. Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship. Allows brokers to receive compensation from more than one party in a transaction with the parties' consent.

Section 9. Vicarious Liability. Eliminates the common law liability of a party for the conduct of the party's agent or subagent, unless the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent associated with a different broker.

Section 10. Imputed Knowledge and Notice. Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

Section 11. Interpretation. This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

Section One

RCW 18.86.010. Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

1. "Agency relationship" means the agency relationship created under this chapter or by written agreement between a licensee and a buyer and/or seller relating to the performance of real estate brokerage services by the licensee.
2. "Agent" means a licensee who has entered into an agency relationship with a buyer or seller.
3. "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof.
4. "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.
5. "Buyer's agent" means a licensee who has entered into an agency relationship with only the buyer in a real estate transaction, and includes subagents engaged by a buyer's agent.
6. "Confidential information" means information from or concerning a principal of a licensee that:
 - a. Was acquired by the licensee during the course of an agency relationship with the principal;
 - b. The principal reasonably expects to be kept confidential;
 - c. The principal has not disclosed or authorized to be disclosed to third parties;
 - d. Would, if disclosed, operate to the detriment of the principal; and
 - e. The principal personally would not be obligated to disclose to the other party.
7. "Dual agent" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.
8. "Licensee" means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in chapter 18.85 RCW.
9. "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.
10. "Principal" means a buyer or a seller who has entered into an agency relationship with a licensee.
11. "Real estate brokerage services" means the rendering of services for which a real estate license is required under chapter 18.85 RCW.
12. "Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

13. "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.
14. "Seller's agent" means a licensee who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.
15. "Subagent" means a licensee who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the agent in writing to appoint subagents.

Section Two

RCW 18.86.020 Agency relationship.

1. A licensee who performs real estate brokerage services for a buyer is a buyer's agent unless the:
 - a. Licensee has entered into a written agency agreement with the seller, in which case the licensee is a seller's agent;
 - b. Licensee has entered into a subagency agreement with the seller's agent, in which case the licensee is a seller's agent;
 - c. Licensee has entered into a written agency agreement with both parties, in which case the licensee is a dual agent;
 - d. Licensee is the seller or one of the sellers; or
 - e. Parties agree otherwise in writing after the licensee has complied with RCW 18.86.030(1)(f).
2. In a transaction in which different licensees affiliated with the same broker represent different parties, the broker is a dual agent, and must obtain the written consent of both parties as required under RCW 18.86.060. In such a case, each licensee shall solely represent the party with whom the licensee has an agency relationship, unless all parties agree in writing that both licensees are dual agents.
3. A licensee may work with a party in separate transactions pursuant to different relationships, including, but not limited to, representing a party in one transaction and at the same time not representing that party in a different transaction involving that party, if the licensee complies with this chapter in establishing the relationships for each transaction.

Section Three

RCW 18.86.030. Duties of a licensee.

1. Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:
 - a. To exercise reasonable skill and care;
 - b. To deal honestly and in good faith;
 - c. To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;

- d. To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;
 - e. To account in a timely manner for all money and property received from or on behalf of either party;
 - f. To provide a pamphlet on the law of real estate agency in the form prescribed in RCW 18.86.120 to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights, under RCW 18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2) (e) or (f), whichever occurs earliest; and
 - g. To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing entitled "Agency Disclosure."
2. Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable.

Section Four

RCW 18.86.040. Seller's agent--Duties.

1. Unless additional duties are agreed to in writing signed by a seller's agent, the duties of a seller's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:
 - a. To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction;
 - b. To timely disclose to the seller any conflicts of interest;
 - c. To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
 - d. Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship; and
 - e. Unless otherwise agreed to in writing after the seller's agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.
2.
 - a. The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a seller's agent does not in and of itself

- breach the duty of loyalty to the seller or create a conflict of interest.
- b. The representation of more than one seller by different licensees affiliated with the same broker in competing transactions involving the same buyer does not in and of itself breach the duty of loyalty to the sellers or create a conflict of interest.

Section Five

RCW 18.86.050. Buyer's agent -- Duties.

1. Unless additional duties are agreed to in writing signed by a buyer's agent, the duties of a buyer's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:
 - a. To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction;
 - b. To timely disclose to the buyer any conflicts of interest;
 - c. To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
 - d. Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship; and
 - e. Unless otherwise agreed to in writing after the buyer's agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a buyer's agent is not obligated to:
 1. Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or
 2. Show properties as to which there is no written agreement to pay compensation to the buyer's agent.
2.
 - a. The showing of property in which a buyer is interested to other prospective buyers by a buyer's agent does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest.
 - b. The representation of more than one buyer by different licensees affiliated with the same broker in competing transactions involving the same property does not in and of itself breach the duty of loyalty to the buyers or create a conflict of interest.

Section Six

RCW 18.86.060. Dual agent -- Duties.

1. Notwithstanding any other provision of this chapter, a licensee may act as a dual agent only with the written consent of both parties to the transaction after the dual agent has complied with RCW 18.86.030(1)(f), which consent must include a statement of the terms of compensation.
2. Unless additional duties are agreed to in writing signed by a dual agent, the duties of a dual agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) and (f) of this subsection:
 - a. To take no action that is adverse or detrimental to either party's interest in a transaction;

- b. To timely disclose to both parties any conflicts of interest;
 - c. To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;
 - d. Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;
 - e. Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a dual agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and
 - f. Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a dual agent is not obligated to:
 1. Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or
 2. Show properties as to which there is no written agreement to pay compensation to the dual agent.
3.
 - a. The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a dual agent does not in and of itself constitute action that is adverse or detrimental to the seller or create a conflict of interest.
 - b. The representation of more than one seller by different licensees affiliated with the same broker in competing transactions involving the same buyer does not in and of itself constitute action that is adverse or detrimental to the sellers or create a conflict of interest.
 4.
 - a. The showing of property in which a buyer is interested to other prospective buyers or the presentation of additional offers to purchase property while the property is subject to a transaction by a dual agent does not in and of itself constitute action that is adverse or detrimental to the buyer or create a conflict of interest.
 - b. The representation of more than one buyer by different licensees affiliated with the same broker in competing transactions involving the same property does not in and of itself constitute action that is adverse or detrimental to the buyers or create a conflict of interest.

Section Seven

RCW 18.86.070. Duration of agency relationship.

1. The agency relationships set forth in this chapter commence at the time that the licensee undertakes to provide real estate brokerage services to a principal and continue until the earliest of the following:
 - a. Completion of performance by the licensee;
 - b. Expiration of the term agreed upon by the parties;
 - c. Termination of the relationship by mutual agreement of the parties; or

- d. Termination of the relationship by notice from either party to the other. However, such a termination does not affect the contractual rights of either party.
2. Except as otherwise agreed to in writing, a licensee owes no further duty after termination of the agency relationship, other than the duties of:
 - a. Accounting for all moneys and property received during the relationship; and
 - b. Not disclosing confidential information.

Section Eight

RCW 18.86.080. Compensation.

1. In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between brokers.
2. An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the licensee.
3. A seller may agree that a seller's agent may share with another broker the compensation paid by the seller.
4. A buyer may agree that a buyer's agent may share with another broker the compensation paid by the buyer.
5. A broker may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction.
6. A buyer's agent or dual agent may receive compensation based on the purchase price without breaching any duty to the buyer.
7. Nothing contained in this chapter negates the requirement that an agreement authorizing or employing a licensee to sell or purchase real estate for compensation or a commission be in writing and signed by the seller or buyer.

Section Nine

RCW 18.86.090. Vicarious liability.

1. A principal is not liable for an act, error, or omission by an agent or subagent of the principal arising out of an agency relationship:
 - a. Unless the principal participated in or authorized the act, error, or omission; or
 - b. Except to the extent that:
 1. The principal benefitted from the act, error, or omission; and
 2. The court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or subagent.
2. A licensee is not liable for an act, error, or omission of a subagent under this chapter, unless the licensee participated in or authorized the act, error or omission. This subsection does not limit the liability of a real estate broker for an act, error, or omission by an associate real estate broker or real estate salesperson licensed to that broker.

Section Ten

RCW 18.86.100. Imputed knowledge and notice.

1. Unless otherwise agreed to in writing, a principal does not have knowledge or notice of any facts known by an agent or subagent of the principal that are not actually known by the principal.
2. Unless otherwise agreed to in writing, a licensee does not have knowledge or notice of any facts known by a subagent that are not actually known by the licensee. This subsection does not limit the knowledge imputed to a real estate broker of any facts known by an associate real estate broker or real estate salesperson licensed to such broker.

Section Eleven
RCW 18.86.110. Application.

This chapter supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of a licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. This chapter shall be construed broadly.

