

## FINAL DRAFT - 06/09/14 OPTION TO GROUND LEASE AGREEMENT

THIS OPTION TO GROUND LEASE AGREEMENT (herein “Option Agreement”), dated as of May \_\_, 2014 (“**Effective Date**”) is made by and between PORT OF SEATTLE, a Washington municipal corporation (“**Port**”), and DES MOINES CREEK BUSINESS PARK, LLC, a Delaware limited liability company (“**Developer**”).

### RECITALS

A. Port owns approximately eighty-seven (87) acres of land known as the “Des Moines Creek Business Park” located along 24<sup>th</sup> Avenue South between South 208<sup>th</sup> and South 216<sup>th</sup> Streets in the City of Des Moines, King County, Washington, described on **Exhibit A** attached hereto (the “**Optioned Property**”).

B. Port desires to have the Optioned Property developed into a high-quality business park with a mix of commercial and light industrial uses totaling approximately 1.6 million square feet (the “**Project**”).

C. Developer’s principals have the experience needed to develop the Project.

D. Developer intends to complete the Project consistent with a master plan to be prepared by Developer and to be approved by the City of Des Moines (“**City**”) as part of Developer’s entitlement work.

E. Developer has requested and Port has agreed to provide Developer with the right to enter into ground leases of portions of the Optioned Property (each portion a “**Phase**”) pursuant to the terms and conditions set forth below.

F. This Option Agreement is intended to address the parties’ mutual interest in accomplishing the Project. It is also intended to address the Port’s interest in being paid consideration for Developer’s exclusive control of the Optioned Property during the Option Term, and in establishing deadlines for take-down of the Optioned Property while providing some flexibility for Developer with regard to when and whether, within the deadlines, the take-down and construction of each Phase will actually happen.

G. This Option Agreement contemplates that before the start of construction of each Phase of the Project, Developer will exercise its option hereunder and the Optioned Property comprising that Phase will become part of the leased premises subject to the terms and conditions of the Ground Lease (as hereinafter defined) and will be removed from the Optioned Property subject to the Option Payments.

NOW, THEREFORE, for and in consideration of the above Recitals, the agreements, covenants and conditions herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Port and Developer (“the parties hereto”) agree as follows.



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**AGREEMENT**

**1. Option to Ground Lease**

Subject to all of the provisions set forth below, Port hereby grants to Developer, or its permitted assignees, the exclusive and irrevocable right to enter into ground leases of portions of the Optioned Property in accordance with the terms and conditions of this Option Agreement (the “**Option**”).

**2. Option Term**

Developer shall have the Option to lease the Optioned Property to complete the Project pursuant to the Master Plan (as defined below) beginning on the Effective Date and continuing for seven (7) years from the Effective Date to June \_\_, 2021, at 12:00 p.m. (Pacific Time) (the “**Expiration Date**”). The period during which the Option may be exercised by Developer is referred to below as the “**Option Term**.”

**3. Master Plan; Phasing**

3.1 The Project will be developed on the Optioned Property consistent with the Amended and Restated Second Development Agreement between the Port and the City as approved by that certain Resolution No. 1252 dated February 20, 2014 (“**Second Development Agreement**”) and the City’s other applicable development regulations. The parties anticipate that the Project will be developed in three (3) Phases as dictated by leasing demand, market forces and tenant requirements in play at the time a Phase Development Plan (as defined below) is prepared.

3.2 Attached as **Exhibit B** is the proposed master plan that depicts the intended development of Phase 1 and Phase 2 of the Project (“**Master Plan**”). The parties expect that Developer will prepare a separate but related Master Plan for Phase 3 of the Project as described in the Second Development Agreement.

**4. Exercise of Option; Designation of Phase Parcels**

4.1 Developer may identify and designate (by giving written notice to Port in accordance with Section 22 below) portions of the Optioned Property as individual phases (each a “**Phase Parcel**”) for the construction of improvements to a specific portion of the Project consistent with the Master Plan and with the provisions of this Section 4.

4.2 Developer shall prepare a “Phase Development Plan” for each Phase of the Project. The term “Phase Development Plan” shall mean a development plan which contains all of the elements and complies with all of the requirements of this Section 4.

4.2.1 Each Phase Development Plan shall be prepared by Developer so that the total acreage of the Phase Parcel is in compliance with the requirements of the Second Development Agreement, Master Plan and the take-down schedule in Section 5.

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4.2.2 Each Phase Development Plan must include the following elements all sufficient to enable the Port to make an informed judgment about the design and construction of each Phase of the Project:

- (a) The legal description and survey map of the proposed Phase Parcel;
- (b) The building square footage, number of parking spaces, building height, show building setbacks in relation to the proposed Phase Parcel, and site layout, all consistent with the Master Plan;
- (c) The 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; and
- (d) An anticipated construction schedule.

4.3 Delivery of a proposed written Phase Development Plan to Port for its approval pursuant to Sections 4.1 and 4.2 above shall constitute a notice of Developer's exercise of the Option to lease the Phase Parcel described in the Phase Development Plan.

4.4 The Phase Development Plan for each Phase Parcel shall be submitted to Port for its approval or disapproval. The Port shall review and comment on Developer's submittal as soon as reasonably possible, but in no event later than ten (10) business days following its receipt of the Phase Development Plan, unless such review and comment are delayed for reasons caused by Developer. In the event that Port requires submission of any revised plans and specifications, Port shall either approve or disapprove the Phase Development Plan in writing by notice to Developer within five (5) business days following its receipt of Developer's revised submittal. Should the Port disapprove the Phase Development Plan, Port shall specify the reason(s) for its disapproval and suggest the change or manner in which its approval can be obtained. In addition, if Port disapproves the Phase Development Plan, the parties hereto shall attempt to resolve the matter using all diligence and good faith negotiations and, if necessary, shall resort to arbitration of the dispute pursuant to Section 23 below. If Developer proposes a Phase Development Plan that is not consistent with the Master Plan and such Phase Development Plan is approved by Port, such approval shall be deemed a modification to or amendment of the Master Plan, so that the approved Phase Development Plan then conforms to the Master Plan, as so amended. A disapproval of the Phase Development Plan by the Port automatically without further action by the parties reinstates this Option and the right of the Developer to re-submit a new or revised Phase Development Pan and to exercise its option on the same Phase.

4.5 Within thirty (30) days of notice from Port to Developer that the Phase Development Plan for the applicable Phase Parcel has been approved (whether or not such approval was the result of an arbitration proceeding conducted pursuant to Section 23 below), the proposed ground lessee (as defined in Section 4.7 below) and Port shall complete a Closing (as defined in Section 8.1 below) for leasing such Phase Parcel in accordance with Section 8.1 below. If Developer fails to close the transaction as provided in Section 8.1, the exercise of the

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Option shall be deemed withdrawn by Developer, subject to Developer’s right to re-exercise its Option to lease the withdrawn Phase Parcel at a later date so long as the Option remains in full force and effect.

The approved Phase Development Plan shall be incorporated into the Ground Lease (as defined below) and shall govern the development, construction and leasing of the applicable Phase Parcel such that, on matters already covered by the Phase Development Plan, Port and ground lessee shall not need to re-obtain the approval of the other under the Ground Lease.

4.6 The term “**Affiliate**” as used in this Agreement shall be as defined in **Exhibit C** (Form of Ground Lease).

4.7 Developer shall be entitled to create a separate legal entity for each Ground Lease (which shall not constitute an assignment hereof) so long as such legal entity is an Affiliate of Developer. Developer, if it is the entity entering into a Ground Lease, or Developer’s Affiliate, shall be the “**Ground Lessee**” for purposes of this Agreement. Developer shall execute (or cause the Ground Lessee to execute) a separate Ground Lease for each Phase Parcel with a Phase Development Plan. In addition, if a Phase Parcel is to be developed with more than one building, Developer (or its designated Affiliate) and Port may, at Developer’s discretion, enter into a separate Ground Lease for each sub-parcel of the Phase Parcel on which a separate building is constructed, so long as each sub-parcel complies with all of the requirements of Section 4 of this Agreement relating to an individual Phase Parcel, including compliance with all applicable laws and the Phase Development Plan.

**5. Property Take-Down Schedule**

5.1 Upon each Ground Lease Closing (as defined below) of each Phase Parcel, the portion of Optioned Property comprising that Phase Parcel will become part of the leased premises subject to the ground lease associated with that Closing (“**Leased Premises**”). “**Ground Lease**” shall mean a ground lease of the portion of Optioned Property for which a Phase Development Plan has been approved substantially in the form attached as **Exhibit C**. Upon execution of the Ground Lease for each Phase, the portion of Optioned Property comprising that Phase will no longer be considered Optioned Property and will not be subject to Option Payments.

5.2 If not sooner leased by Developer, the Optioned Property shall become part of the Leased Premises subject to payment of applicable Base Rent (as defined below), in accordance with the deadlines in the following take-down schedule:

<b>Phase</b>	<b>Start/Lease Date</b>	<b>Leased Acreage by Phase*</b>		<b>Total Leased Premises</b>
		<small>*All acreage estimates are subject to confirmation by survey as part of preparation of each Phase Development Plan.</small>		
1	June 30, 2015	Usable	25.89	35.68
		South 208 <sup>th</sup> Street	1.62	
		South 211 <sup>th</sup> Street	1.04	
		Phase 1 Stormwater Pond	4.15	

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		Sensitive Area	2.98	
		<b>Total</b>	<b>35.68</b>	
2	June 30, 2016	Usable	22.67	64.95
		South 214 <sup>th</sup> /20 <sup>th</sup> Avenue	1.62	
		South (first segment)		
		Phase 2 Stormwater Pond	2.00	
		Sensitive Area	2.98	
		<b>Total</b>	<b>29.27</b>	
3	June 30, 2018	Usable	15.96	87
		South 214 <sup>th</sup> /20 <sup>th</sup> Avenue	0.65	
		South (second segment)		
		Phase 3 Stormwater Pond	2.46	
		Sensitive Area	2.98	
		<b>Total</b>	<b>22.05</b>	

**6. Option Fee**

6.1 During the Option Term, as consideration for exclusive control of the Optioned Property, Developer shall pay to Port monthly payments equal to eight and a half percent (8.5%) of the then current Base Rent (as defined below) for any portion of the Optioned Property that has not yet become part of the Leased Premises (“**Option Payment**”). The Option Payment shall be calculated by taking the total square feet of the Optioned Property minus the total square feet of the Leased Premises and multiplying the difference by 8.5% of the then current Base Rent then dividing the product by twelve.

6.2 The initial monthly Option Payment due in connection with the Effective Date of this Option Agreement is Fourteen Thousand Two Hundred Twenty-Seven Dollars (which represents Three Million Seven Hundred Eighty-Nine Thousand Seven Hundred Twenty square feet (equivalent to 87 acres) multiplied by \$0.53 multiplied by 8.5%, with the product divided by twelve).

6.3 The Option Payments shall be paid in advance of the first day of each month, beginning in the first month of the Option Term and continuing every month of the Option Term until the Expiration Date; provided, however, if the Optioned Property is fully leased prior to the Expiration Date, no Option Payment will be due from the Ground Lease Closing for the remainder of the Optioned Property included in the last Phase of the Project.

**7. Base Rent, Increased Option Fee**

7.1 Base Rent for purposes of calculating the Option Payment due under this Option Agreement shall be Fifty-Three Cents (\$0.53) per square foot per year triple net, the same as the Base Rent due for the Phase 1 Ground Lease.

7.2 The initial Base Rent for the Phase 1 Ground Lease will be Fifty-Three Cents (\$0.53) per square foot per year of **Usable Property** (as defined in the Ground Lease). The

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initial Base Rent will increase by Two Cents (\$0.02) per square foot per year for each subsequent Phase of the Project such that initial Base Rent for the Phase 2 Ground Lease will be Fifty-Five Cents (\$0.55) per square foot of Usable Property per year triple net and Fifty-Seven Cents (\$0.57) per square foot of Usable Property per year triple net for the Phase 3 Ground Lease. All rent payable during the Ground Lease term will be set forth in the Ground Lease. In connection with that certain revised Letter of Intent between the parties fully executed as of November 15, 2013 (“**Letter of Intent**”), Developer has put up Fifty Thousand Dollars (\$50,000.00) as a good faith deposit (“Good Faith Deposit”). Developer’s Good Faith Deposit will be applied to the Base Rent due under the Phase 1 Ground Lease.

7.3 Not later than twelve (12) months after the Effective Date of this Option Agreement, if Developer and Port have not executed the Phase 1 Ground Lease, the Option Payment due will increase such that Developer shall pay the applicable Base Rent for at least thirty-five (35) acres, consistent with the deadlines in the take-down schedule set forth in Section 5.2, until the Ground Lease is exercised or the Option terminated.

7.4 Not later than June 30, 2016, if Developer and Port have not executed a Ground Lease for Phase 2 of the Project, the Option Payment due will increase such that Developer shall pay the applicable Base Rent for at least sixty-four (64) acres, consistent with the take-down schedule set forth in Section 5.2, until the Ground Lease is exercised or the Option terminated.

7.5 Not later than June 30, 2018, if Developer and Port have not executed a Ground Lease for Phase 3 of the Project, the Option Payment due will increase such that Developer shall pay the applicable Base Rent for at least eighty-seven (87) acres, consistent with the take-down schedule set forth in Section 5.2, until the Ground Lease is exercised or the Option terminated.

## **8. Ground Lease; Closing**

8.1 Execution and delivery of a Ground Lease (a “**Ground Lease Closing**”) shall take place within the time provided in Section 4.5 above. At Ground Lease Closing:

(a) Ground Lease. Port shall execute, and Developer shall cause Ground Lessee to execute, a Ground Lease consistent with Exhibit C and complete the Ground Lease Closing as specified in this Section 8.1. At Developer’s request, a Ground Lease may be executed for each sub-parcel of a Phase Parcel meeting the requirements of Sections 4.1 and 4.7 above if Developer provides separate legal descriptions and surveys for each such Ground Lease and a separate Phase Development Plan is approved for each such sub-parcel of a Phase Parcel.

(b) Memorandum of Ground Lease. Port shall execute and Developer shall cause Ground Lessee to execute a Memorandum of Ground Lease (in the form attached as an exhibit to the Ground Lease), in recordable form, for recordation in the Official Records of King County, Washington.

(c) Title Insurance. Port will obtain directly from the title insurance company and deliver at each Closing a “dated down” title commitment prepared by First American Title Insurance Company for the issuance of a policy of title insurance (subject only to execution of

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the Ground Lease and recordation of a Memorandum of Ground Lease) insuring Developer's (or Ground Lessee's, as applicable) leasehold interest in the Phase Parcel, subject only to the exceptions to title (relating only to the specific Phase Parcel) approved in accordance with the procedures set forth in Section 10 below. The costs for such policy of title insurance shall be paid for by Developer or Ground Lessee, as applicable.

(d) Reimbursement of Prepaid Frontage Improvement In-Lieu Fees. Developer acknowledges that, pursuant to the terms of the Second Development Agreement, Port has prepaid Nine Million One Hundred Eleven Thousand Eight Hundred Eighty-Nine Dollars (\$9,111,889) in frontage improvements in-lieu fees ("**Frontage Improvement In-Lieu Fees**") that Developer would otherwise incur as a condition of the City's issuance of building permits for the Project. Developer agrees to reimburse Port in the following manner:

(i) In connection with each Ground Lease Closing, Developer agrees to reimburse Port for that portion of the Phase Parcel that fronts South 216<sup>th</sup> Street and/or 24<sup>th</sup> Avenue South that is the basis for calculating the Frontage Improvement In-Lieu Fees that are due. Each Phase Parcel will have a measureable lineal foot frontage calculated along South 216<sup>th</sup> Street and/or 24<sup>th</sup> Ave South. The reimbursement per lineal foot for South 216<sup>th</sup> Street is approximately \$3,537.50 ("Lineal Foot Factor") based on the prepayment made by the Port of \$4,326,894 and the reimbursement per lineal foot for 24<sup>th</sup> Ave South is approximately \$1,824.91 ("Lineal Foot Factor") based on the prepayment made by the Port of \$4,784,995. All lineal foot frontage will be calculated and verified by a licensed surveyor or engineer and included as part of the Phase Development Plan submittal to Port. The lineal foot factors for both South 216<sup>th</sup> Street and 24<sup>th</sup> Avenue South are subject to change based upon the verified actual lineal frontage by such surveyor or engineer. The reimbursement amount will for each Phase Parcel will be calculated as follows: Phase Lineal Foot Frontage multiplied by the Lineal Foot Factor (for the applicable street) = the total reimbursement owed by Developer.

(ii) Port agrees to finance the reimbursement owed by Developer for each Phase over a term of seven (7) years at eight percent (8%) per annum with the payments of principal and interest fully amortized over the 7-year term. The first reimbursement payment for each Phase will be due thirty (30) days after the Effective Date of the Ground Lease or on the first day of the following month, whichever is later.

(iii) Developer may elect to finance reimbursement of the Frontage Improvement In-Lieu Fees.

(e) South 208<sup>th</sup> Street Rent Credit. Developer will prior to the scheduled occupancy date for Phase 1 of the Project design and construct to City specifications an extension of S. 208<sup>th</sup> Street from 24<sup>th</sup> Ave. South. Upon completion and submission of the required documentation as detailed in the Phase 1 Ground Lease, Port will provide a rent credit to Developer for forty-nine percent (49%) of the actual costs for the design and construction of the extension not to exceed a total of Four Hundred Fifty Thousand Dollars (\$450,000.00). The rent credit to Developer will take the form of a credit against the Base Rent for Phase 1 next coming due after completion of the street.

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(f) Other Documents. Port shall execute, and Developer shall cause the Ground Lessee to promptly execute, any and all further customary instructions or documents which may be reasonably required to facilitate a Ground Lease Closing within the time period herein provided. Port's obligations under this Section 8.1 shall include, but not be limited to, the execution and delivery of an estoppel certificate in favor of Ground Lessee's lender or prospective lender, so long as the terms of such estoppel certificate are commercially reasonable.

8.2 In connection with the Ground Lease Closing for each Phase Development Plan, Ground Lessee shall deliver Security to the Port within two (2) business days of the Ground Lease Closing Date to secure Ground Lessee's performance of the Ground Lease. "Security" shall mean an amount or obligation sufficient to cover the sum of the Base Rent for one year of the lease term. The obligation to deliver Security can be fulfilled by one of the following means: (i) delivery of an irrevocable stand-by letter of credit issued by a bank in a form reasonably approved by the Port; (ii) establishment of a custodial deposit account; (iii) delivery to the Port of a cash deposit; (iv) delivery of rental insurance in a form and from a company reasonably approved by the Port, or (v) delivery of a bond issued by an approved bonding company.

8.3 In connection with each Ground Lease Closing, Developer shall provide the Port with the name of the Ground Lessee's general contractor.

## **9. Termination or Expiration of Option Agreement**

9.1 Either party may terminate this Option Agreement for any material breach. Failure of Developer to comply with Sections 3, 4, 5, 6, and 7 shall be deemed the only material breach that will allow the Port to terminate this Option Agreement. The Port's only remedy for Developer's material breach of this Option Agreement is the ability to terminate the Option Agreement. At Developer's sole election, Developer may rescind the exercise of an option under the Option Agreement as to a particular Phase of the Property if it determines in its sole and absolute discretion that the development of the terminated Phase is economically unfeasible. Material breach that will allow the Developer to terminate this Option Agreement includes Port failure to approve a Phase Development Plan. Additional causes for Developer termination of this Option Agreement shall include circumstances outlined in Section 12.3.

9.2 Unless this Option Agreement has been earlier terminated pursuant to Section 9.1, this Option Agreement shall terminate upon the earlier of: (i) execution of the last Ground Lease for any portion of the Optioned Property that is not yet part of the Leased Premises, it being the express intent of the parties hereto that the Ground Lease terms as substantially set forth in Exhibit C shall govern their ongoing relationship, liabilities and obligations, or (ii) the Expiration Date of this Option Agreement.

## **10. Approval of Title**

Prior to execution of this Option Agreement, the parties hereto have obtained a current title commitment (herein the "**Preliminary Title Report**") for the Optioned Property together with copies of all instruments listed as exceptions therein and an ALTA/ACSM Land Title Survey showing the location of all easements or similar encumbrances listed as exceptions.



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Developer agrees that those exceptions to title set forth on **Exhibit D** attached hereto are approved by Developer and will not need to be removed (the “**Listed Title Exceptions**”). Prior to the applicable Closing, Port shall be obligated to remove, at Port’s sole cost and expense, exceptions to title which adversely affect title (as reasonably determined by Developer) that were created by the acts or omissions of Port after the date of the Preliminary Title Report and not approved by Developer. As used in this Option Agreement the term Approved Title Exception shall mean (i) the Listed Title Exceptions, (ii) exceptions existing as of the date of the Preliminary Title Report but not otherwise included in the Listed Title Exceptions, (iii) exceptions to title created or caused by Developer or agreed to in writing by Developer, and (iv) exceptions in the nature of easements granted to governmental agencies or quasi-governmental agencies for the purpose of providing utilities or drainage to the Optioned Property or abutting properties and the locations of such utilities have been approved in advance in writing by Developer and do not unreasonably interfere with use or development of the Optioned Property. Developer shall not be entitled to encumber with a monetary lien any portion of the Optioned Property, provided however, Developer may create such encumbrances on its leasehold interest in any portion of the Optioned Property that is subject to a Ground Lease.

Port further agrees to cooperate with Developer as requested by Developer in order to relocate any other easement burdening the Optioned Property that Developer reasonably determines may have a materially adverse effect on the Project.

### **11. Right to Enter Property; Indemnification; Insurance**

11.1 Inspection and Testing. Developer and its officers, employees, consultants, contractors or agents (“**Developer parties**”) shall have adequate access at reasonable hours to the Optioned Property to physically inspect the Optioned Property, survey the Optioned Property, obtain land use, economic feasibility and engineering information, develop pre-construction architectural information, take photographs, conduct tests and studies that Developer deems appropriate, including invasive testing such as borings and excavating test holes and test pits, and otherwise examine the Optioned Property in preparation for development of the Project (the “**Inspection Rights**”).

11.1.1. Developer parties shall keep Port reasonably informed of all such activities and shall give at least forty-eight (48) hours’ prior written notice to Port, Attention: Director of Real Estate Development, Mark Griffin. Port may elect to have one or more representatives present during the exercise of Inspection Rights.

11.1.2. Notwithstanding the foregoing, Developer parties shall not conduct any invasive and/or destructive testing on or about the Optioned Property without Port's prior written approval of a detailed scope of work/work plan, which approval shall not be unreasonably withheld, conditioned or delayed. Before conducting any invasive or intrusive testing such as borings or test holes, Developer parties shall give 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 Port’s representatives and/or consultants to be present to take duplicate samples and record the methods used by Developer parties; provided that Port’s representatives and/or consultants shall not materially interfere with the work of Developer parties. Developer

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shall be solely responsible for the cost of all work conducted by or on behalf of Developer pursuant to these Inspection Rights or otherwise, except for the cost of any of Port's representatives or consultants. Developer shall promptly share, upon receipt and at its cost, upon request, all data and any additional information obtained from its Inspection Rights.

11.2 Restoration of Optioned Property. Developer shall, upon completion of activities permitted in Section 11.1, restore the Optioned Property to its reasonably similar condition prior to such activities. Developer shall effect such restoration either: (a) within ten (10) business days after the completion of the work requiring the restoration, or (b) immediately, if failure to effect such restoration could reasonably be expected to create a dangerous condition for any person while on the Optioned Property.

11.3 Indemnification. Developer shall defend, indemnify and hold harmless Port (and the agents and representatives of Port), from any and all mechanic's liens, claims, liabilities, costs, expenses, including attorneys' fees, and damages arising out of or in any way related to entry upon or use (pursuant to this Section 11) of the Optioned Property by Developer parties, or by any other person or entity on behalf of, or at the request of, Developer. Except with respect to any Pre-Lease Environmental Condition (as defined below), Developer shall indemnify, hold harmless and defend Port from claims or damages arising in connection with Developer's exercise of its Inspection Rights or any other activities of Developer parties or their invitees on or about the Optioned Property. Upon termination of this Option Agreement for any reason whatsoever, Developer's indemnity obligations to Port under this Section 11 shall survive and shall continue in full force and effect.

11.4 Insurance. Prior to the commencement of any work or other activities on the Property, Developer shall, at Developer's initial cost and expense, obtain and thereafter maintain or cause to be maintained during the period of such work or activities the insurance specified below. Commercially acceptable certificates of insurance which evidence proof of insurance shall be submitted by Developer to Port prior to commencement of any work.

(a) Workers' Compensation and Employers' Liability Insurance. This insurance shall include workers' compensation and employers' liability as required by any applicable law or regulation.

(b) General Liability Insurance. Commercial general liability insurance with respect to or arising out of any use of or work to be performed by, for or at the request of Developer on the Optioned Property that protects Developer and Port, as an additional insured using ISO form 2026 or equivalent, against claims for bodily injury, personal injury and property damage based upon, involving or arising out of Developer's use and/or occupancy of the Optioned Property and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than **Two Million Dollars (\$2,000,000)** per occurrence. The limits of said insurance required by this Option Agreement or as carried by Developer shall not, however, limit the liability of Developer nor relieve Developer of any obligation hereunder. The insurance to be carried by Developer shall be: (i) primary to and not contributory with any similar insurance carried by Port, whose insurance shall be considered excess insurance only, and (ii) shall not be cancelable or subject to modification except after thirty (30) days prior

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written notice to Port. Developer shall cause to be delivered to Port certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insured clauses and/or endorsements as required by this Option Agreement. Developer shall not do or permit anything to be done that may invalidate the insurance policies referred to in this paragraph.

(c) Automobile Liability Insurance. Commercial automobile liability insurance written on ISO Form CA 00 01 07 97 (or equivalent), that protects Developer and Port against claims for bodily injury and property damage based upon, involving or arising out of motor vehicle operations on or about the Optioned Property and all areas appurtenant thereto. Developer shall provide a Waiver of Subrogation on this policy in favor of Port. 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. The policy shall not contain any intra-insured exclusions as between insured persons or organizations.

11.4.1 Commercial general liability and commercial automobile liability insurance, as required above, shall be written for not less than the limits of liability set forth above or as required by law, whichever is greater.

11.4.2 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 'A-' or better and a financial rating of 'IX' or better, as set forth in the most current issue of “Best's Insurance Guide.” No such policy shall be cancelable or subject to non-renewal or modification except after thirty (30) days prior written notice to Port. Developer shall at least ten (10) days prior to the expiration of such policies, furnish Port with evidence of renewals or “insurance binders” evidencing renewal thereof, or Port may order such insurance and charge the cost thereof to Developer, which amount shall be payable by Developer to Port upon demand.

## **12. Entitlements**

12.1 The parties hereto acknowledge that, in order for the Project to be constructed, it will be necessary to make applications to the appropriate governmental agencies to verify compliance of the Project (as described in the Master Plan and Phase Development Plan) with local zoning, obtain environmental permits and approvals, and obtain building permits for construction of the proposed improvements outlined in a Phase Development Plan. Accordingly, Developer shall engage the services of professional and technical consultants and otherwise incur such costs and expenses as may be reasonably necessary for the preparation of a Phase Development Plan, geological reports and such other tests, studies, and reports as may be necessary for obtaining such governmental approvals, permits and authorizations for the development of a Phase Parcel (collectively, “**Government Approvals**”). Developer will secure all the Governmental Approvals needed for construction and operation of the Project at its sole cost and expense.

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12.2 All applications and other consents and documentation for the Phase Parcel submitted in connection with this Option Agreement shall be consistent with the Phase Development Plan. Subject to the foregoing, (a) all Governmental Approvals shall be obtained in the name of the Ground Lessee or Developer (b) subject to the limitations in this Option Agreement, Port shall execute any applications or other consents or documentation necessary to permit Developer or the applicable Ground Lessee to process Governmental Approvals consistent with the Master Plan and, if applicable, the Phase Development Plan, and (c) Developer or the applicable Ground Lessee shall prepare, file and process all applications for Governmental Approvals necessary for development of the Project consistent with the Master Plan, and if applicable, for development of the Phase Parcel consistent with the Phase Development Plan. Upon the expiration or termination of the Option, with respect to portions of the Optioned Property not subject to a Ground Lease, Governmental Approvals shall revert to Port, and Developer or Ground Lessee, as the case may be, shall execute an assignment. Upon expiration or termination of a Ground Lease, all Governmental Approvals with respect to the leased premises under a Ground Lease, shall revert to Port, and the Developer or the Ground Lessee, as the case may be, shall execute an assignment thereof.

12.3 Failure to obtain governmental approval of a Phase Development Plan or the Master Plan upon terms and conditions acceptable to Developer in its sole and absolute discretion is grounds for Developer to terminate upon written notice the Option as to the Phase Parcel subject to the Phase Development Plan only. If Port fails to approve a Phase Development Plan or the terms and conditions of the government approvals or refuses to sign any documents to allow the submittal of the Phase parcel Plan for approval to the City or any applicable governmental agency, such will constitute a material breach of this Option Agreement and Developer will have the right to terminate the Option Agreement as to such Phase Parcel. If Developer terminates this Option Agreement as to a Phase Parcel, the Option Agreement shall remain in full force and effect as to the balance of the Optioned Property.

12.4 Subject to the provisions of Section 12.2 above, Developer will keep Port reasonably informed as to the status of all applications for Governmental Approvals, and will deliver to Port a copy of each application or request for approval as filed with the appropriate governmental agencies.

### **13. Subdivision of Optioned Property**

13.1 Developer agrees to plat the Optioned Property to be included in the Ground Leases.

13.2 The plat shall be consistent with the Master Plan, and each Phase Parcel that is the subject of the proposed plat shall be designed to permit development of the planned commercial facilities consistent with requirements of the applicable Phase Development Plan. Port agrees to execute the proposed plat so long as the proposed plat is consistent with the Master Plan; provided however, that Port may, in its reasonable discretion, withhold its execution of the proposed plat if it provides for the dedication of land or the granting of utility or other easements not provided for in the Master Plan, subject to Section 4.4 above, in which case this Option Agreement shall be terminated.

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13.3 The Developer may consistent with the Master Plan construct infrastructure improvements with the exercise of the Phase 1 Development Plan that will benefit future Phases of the Option Property. The Port and Tenant under the Phase 1 Ground Lease will enter into an agreement for the reimbursement of a proportionate share of the infrastructure improvements constructed and installed by the Tenant which benefits the future Phase or Phases of the Option Property. The terms and conditions of the reimbursement agreement shall be acceptable to each party and will be entered into at the time this Option is exercised and the Ground Lease is executed for Phase 1.

**14. Property Condition and Document Delivery Acknowledgment**

14.1 Port will deliver the Optioned Property to Developer in its “as is” condition, with all faults and defects, known and unknown, without warranty or representation of any kind or character by Port, including, without limitation, the physical condition of the Optioned Property or its adequacy for construction of the Project. Developer acknowledges the foregoing and agrees that the inspection period provided in the Letter of Intent and the provisions of this Option Agreement constitutes adequate opportunity to inspect the Optioned Property and review all applicable legal requirements to satisfy itself regarding the condition of the Optioned Property for construction of the Project. Port agrees not to make any changes to the Optioned Property during the term of this Option.

**15. Environmental Assessment**

15.1 Defined Terms. All capitalized and defined terms in this Section shall have the meanings provided in Article I of the Ground Lease.

15.2 Pre-Lease Environmental Evaluation. Developer will begin the **Pre-Lease Environmental Evaluation** for each Phase of the Project at least forty-five (45) days prior to the Commencement Date for the Ground Lease. The intent of the parties is that, while Developer will conduct the majority of the Pre-Lease Environmental Evaluation prior to the Commencement Date of the Ground Lease, Developer will not be obligated to complete the Pre-Lease Environmental Evaluation (and finalize the **Pre-Lease Environmental Evaluation Report**) until after the Commencement Date. The final Pre-Lease Environmental Evaluation will incorporate the field observations of contaminated soil discovered during construction of the Project as documented in the **Environmental Construction Field Data Report**. The Developer shall submit the Environmental Construction Field Data Report to the Port for review approval no later than forty-five (45) days after the **Earthwork Construction End Date**. The Pre-Lease Environmental Evaluation Report will be submitted by Developer for review and approval by Port at least fifteen (15) days before Substantial Completion of the Project, which approval shall not be unreasonably withheld. The Pre-Lease Environmental Evaluation Report will be relied upon by the parties to document the **Pre-Lease Environmental Condition** for the purposes of determining the extent of Pre-existing Hazardous Substances, compliance with environmental laws, liability, indemnity, and obligations with respect to post-occupancy remediation.

15.3 Environmental Construction Support Work Plan. Developer will prepare an **Environmental Construction Support Work Plan** (the “**Work Plan**”).

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15.3.1. Purpose. The primary purpose of the Work Plan is to ensure the proper management of Hazardous Substances and to ensure that the Port is paying only those Incremental Environmental Costs for which it is responsible under Section 7.12 of the Ground Lease. In addition, the Work Plan shall be designed to facilitate construction of each Phase of the Project, regardless of the presence of contamination conditions, consistent with construction plans and specifications, the construction contract, and in compliance with all Legal Requirements. The Work Plan shall be designed to allow for collaboration and cooperation among the contractor, Developer's construction management representatives, and Developer's and Port's on-site environmental professionals with respect to Required Management of Hazardous Substances.

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

- (a) Personnel roles and responsibilities, including contact information and process for unanticipated condition call-out;
- (b) Environmental professional minimum qualifications;
- (c) Designation of known contaminated areas (if any) in construction documents;
- (d) Field inspection of construction project areas; and
- (e) Use of standardized procedures to obtain Port concurrence with respect to Required Management of Pre-Existing Hazardous Substances, including but not limited to:
  - (i) Field screening, sample collection and laboratory analysis;
  - (ii) Construction excavation of known contaminated areas (if any);
  - (iii) Construction excavation of unanticipated soil contamination;
  - (iv) Underground storage tank removal;
  - (v) Removal of soil containing free draining product;
  - (vi) Soil handling and disposal, including identification of contamination action levels for offsite disposal, restricted onsite reuse, and/or unrestricted onsite reuse, in coordination with designed excavation limits and geotechnical suitability determinations;
  - (vii) Determination of whether suspected contaminated materials will be managed by direct-haul or on-site stockpiling
  - (viii) Well decommissioning;

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- (ix) Response to contractor spills or other releases, verification of cleanup, and appropriate documentation;
- (x) In-field dispute resolution;
- (xi) Accounting and documenting of Incremental Environmental Costs; and
- (xii) Required construction support documentation.

15.3.3 Schedule. The first draft Work Plan, along with Developer's thirty percent (30%) design plan, shall be submitted for Port review when the Project design is at the thirty percent (30%) stage. Developer shall incorporate comments provided by Port within ten (10) days after Developer's submission to Port of its Work Plan. If the first draft Work Plan is revised at any time during design, it will be re-submitted for Port review and incorporation of comments. No later than ten (10) business days before the Earthwork Construction Start Date, Tenant shall submit a final Work Plan to the Port.

**16. Assignment**

Developer may not assign its rights or duties hereunder in whole or in part, except with the prior written consent of Port, unless the transfer is a "**Permitted Transfer**" as defined in the Ground Lease.

**17. Covenants, Conditions & Restrictions**

Developer shall be entitled, but not obligated, to prepare covenants, conditions and restrictions (herein "**CCRs**") for maintenance of the infrastructure, regulation of the development and use of the Optioned Property, consistent with existing covenants and restrictions imposed by the FAA, and to meet the requirements of governmental authorities having jurisdiction over development activities at the Optioned Property including but not limited to access roads, utility easements, storm water detention ponds, and other necessary infrastructure to allow development of the Project; provided, however, that such CCRs, (a) shall be consistent with the Master Plan and all Phase Development Plans agreed to between the parties hereto, (b) shall expire upon the date of the latest termination or expiration of the Option or any of the Ground Leases entered into pursuant to this Agreement unless otherwise agreed by Port whichever is later, (c) shall terminate, at Port's option, as to any lands within the Optioned Property that are not subject to Ground Leases upon termination of the Option, and (d) shall not obligate any lands owned by the Port which are not subject to Ground Leases for the payment of any expenses or the performance of any maintenance duties. Notwithstanding the foregoing, such CCRs shall remain in full force and effect to the extent reasonably necessary to ensure access to and maintenance of facilities common to both the land subject to a Ground Lease and the land no longer subject to a Ground Lease. Upon Port's approval of the CCRs, Developer may encumber its interest in the Optioned Property with the CCRs.

**18. Developer's Representations and Warranties**

The representations and warranties of Developer to Port set forth below in this Section 19 are true and accurate as of the date of this Option Agreement. Developer hereby represents and warrants as follows:

(a) Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware.

(b) The execution and delivery of this Option Agreement (including all exhibits attached hereto) and the performance hereof by Developer will not conflict with, or result in a breach of, any of the terms, conditions, provisions of, or constitute a default (or constitute an event which, with the giving of notice or the passage of time, or both, would constitute a default) under any instrument or agreement to which Developer is a party or by which Developer is bound.

**19. Port's Representations and Warranties**

The representations and warranties of Port to Developer set forth below in this Section 20 are true and accurate as of the date of this Option Agreement. Port hereby represents and warrants as follows:

(a) Port is a municipal corporation duly organized and validly existing under the laws of the State of Washington.

(b) The execution and delivery of this Option Agreement (including all exhibits attached hereto) and the performance hereof by Port will not conflict with, or result in a breach of, any of the terms, conditions, provisions of, or constitute a default (or constitute an event which, with the giving of notice or the passage of time, or both, would constitute a default) under any instrument or agreement to which Port is a party or by which Port is bound.

(c) Port is not a party to any pending action, suit, proceeding or investigation, at law or equity or otherwise arising from or related to the Optioned Property or to the past or present activities of Port relating to the Optioned Property.

(d) There are no pending or threatened condemnation proceedings affecting all or any portion of the Optioned Property.

(e) Fee simple title to the Optioned Property is currently vested in Port, subject to the approved title exceptions attached hereto as **Exhibit D**. During the Term of this Option Agreement title to the Optioned Property will not be used as security for monetary obligation or further encumbered by the Port, except as may be expressly authorized by this Option Agreement or by prior written approval of the Developer which approval shall not be unreasonably withheld.



**20. Third Party Owner's Representative Costs Reimbursement**

Developer acknowledges that the Port will engage a third party owner's representative to:

(i) coordinate with Developer throughout the design, design approval, permitting and construction process of the Master Plan and each Phase Development Plan and (ii) interface with Port's staff throughout planning, design and construction of the site utilities and infrastructure for each Phase of the Project. Developer agrees to reimburse Port's owner's representative costs not to exceed Two Hundred Thousand Dollars (\$200,000) over the development of the entire Project, payable upon Substantial Completion of each Phase within thirty (30) days' of Developer's receipt of Port's invoice for such reimbursement.

**21. Notices**

21.1 Any notice or communication (herein collectively "**Notices**") to be given under the terms of this Option Agreement shall be in writing and shall be personally delivered or sent by facsimile, electronic mail, delivery by professional courier, or by registered or certified mail, return receipt requested.

[REDACTED]

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Notices shall be addressed as follows:

Port: Port of Seattle  
2711 Alaskan Way – Pier 69  
PO Box 1209  
Seattle, WA 98111  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

Developer: Des Moines Creek Business Park, LLC.  
6840 Fort Dent Way  
Suite 350  
Seattle, WA 98188  
Attention: Bart Brynestad  
Phone: (206) 248-0555  
Facsimile: (206) 248-004  
Email: bbrynestad@panattoni.com

With a copy to: CVM Law Group, LLP  
2485 Natomas Park Drive, Suite 450  
Sacramento, California 95831  
Attention: Robert D. Collins  
Phone: (916) 381-6171  
Facsimile: (916) 381-1109  
Email: bcollins@cvmllaw.com

21.2 All such Notices shall be deemed to have been given: (i) if personally delivered, upon receipt, (ii) if by registered or certified mail, upon the date indicated on the return receipt, and (iii) if by courier service, upon the date delivered as shown by the records of the courier and if by facsimile or e-mail, the day sent. The parties hereto may, from time to time, change their address for delivery of notice by sending notice of its new address to the other Party in accordance with the terms of this Section 22. The phone numbers supplied above are only for the purpose of facilitating written notice, and may not be used in lieu of written notice.

**22. Approvals; Arbitration**

22.1 It is understood and agreed that all provisions of this Agreement which require approval by, or the consent of, Port will receive timely response and such approvals or consents will not be unreasonably withheld, conditioned or delayed. If Port fails to respond in writing to Developer's request for approval or consent (sent in accordance with the provisions of Section 22 above) within ten (10) business days (or such other longer period as may be set forth

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in this Option Agreement with respect to a particular request), the approval or consent shall be deemed given without any further action on the part of either party.

22.2 Any dispute between Port and Developer arising from Port's refusal to grant any approval or consent (or unreasonably conditioning or delaying the same), except as to matters that are within Port's sole discretion, shall be resolved using all diligence and good faith negotiations in accordance with the following procedure. Any disapproval of an item or matter by Port (other than matters that are subject to Port's sole discretion) shall describe with specificity the disapproved items, actions, elements or other provisions and shall state the reasons for such disapproval or requesting clarification thereof ("**Disputed Items**"). Developer will respond within fourteen (14) days with either a modification or verification of the Disputed Items or clarification of such Disputed Items, as the case may be. If the parties hereto cannot agree upon the elements requiring such approval or consent or upon the interpretation of the intent thereof, a neutral third-party arbitrator will be selected by Port to arbitrate the Disputed Items. If, however, Developer does not accept the arbitrator selected by Port, Developer will be allowed to select a second neutral third-party arbitrator, provided Developer makes such selection within fourteen (14) days following Port's notice of its selected arbitrator. The two selected arbitrators will then select a third neutral third-party arbitrator and the three together will arbitrate the Disputed Items. All such arbitrator(s) shall be members in good standing of the Washington Bar and shall have at least ten (10) years' experience in commercial real estate and development law. The arbitration shall be conducted in King County, Washington, and the arbitrator(s) shall apply the law of the State of Washington. The parties hereto will cause the arbitrator(s) to make a determination within fourteen (14) days following submittal. The parties hereto agree that each party will bear its own costs and expenses incurred for its selected arbitrator, attorney's fees, preparation and presentation costs for the arbitration process. The parties hereto will share the cost of any third party arbitrator and the administrative costs of the arbitration. No party to the arbitration shall have the right to vacate, modify or correct the results of the arbitration or pursue an appeal of the arbitration except as otherwise allowed by the laws of the State of Washington.

**23. Right to Cure**

If either party fails to perform any obligation hereof in a timely fashion, such default shall not cause the termination of this Agreement unless such failure to perform continues beyond the expiration of following cure periods:

(a) The breaching party fails to perform monetary obligations required by this Option Agreement when the same are due and the continuance of such failure for a period of fifteen (15) days after written notice thereof from the other party;

(b) The breaching party fails to fulfill any of the other non-monetary terms, covenants, or conditions set forth in this Option Agreement if such failure continues for a period of more than thirty (30) days after written notice thereof from the other party, except if the fulfillment of the obligation requires activity over a period of time, and the breaching party has commenced in good faith to perform whatever may be required for fulfillment within the specified thirty (30)-

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day period and continues such performance without interruption and with diligence, then the breaching party shall no longer be in breach.

With respect to any executed Ground Lease, the cure provisions of such Ground Lease shall control, notwithstanding any conflict between such provisions and the provisions of this Section 23.

**24. Commissions**

24.1 The parties hereto hereby acknowledge that no real estate commission shall be payable in connection with execution of this Option Agreement and/or the exercise of the Option or any Ground Lease.

24.2 Developer hereby indemnifies and agrees to hold harmless Port of and from any claim by any person or entity for a sales or brokerage commission or finder's fee by reason of any listing or other agreement with Developer with respect to the transactions which are the subject of this Option Agreement.

24.3 Port hereby indemnifies and agrees to hold harmless Developer of and from any claim by any person or entity for a sales or brokerage commission or finder's fee by reason of any listing or other agreement with Port with respect to the transactions which are the subject of this Agreement.

**25. Condemnation of Property**

25.1 If any competent authority for any public or quasi-public use or purpose takes or condemns the whole or materially all of the Optioned Property at any time during the Option Term ("**substantial taking**"), this Option Agreement shall terminate and all Option Payments shall be apportioned as of the earlier of either the date immediate possession and use is requested by the condemning authority or the date of vesting of title in such taking. For the purposes of this Section, a taking of "**materially all**" of the Optioned Property, as distinguished from a taking of the whole of the Optioned Property, means a taking of such scope that the untaken portion of the Optioned Property is insufficient to permit Developer to develop the Optioned Property in accordance with the Master Plan. Developer shall have no right to any award of just compensation for a substantial taking of Optioned Property by a condemning authority.

25.2 Section 25.1 shall not apply to any property that the Developer has already leased from the Port under a Ground Lease. Such property shall be considered to be removed from Optioned Property, and the Ground Lease shall govern rights to award of just compensation on substantial taking and partial taking.

25.3 In the event of a taking of less than materially all of the Optioned Property ("**partial taking**"), this Option Agreement shall nevertheless continue. The minimum amount of acreage to be included in each Phase pursuant to the take-down schedule in Section 5 may be revised if the partial taking causes a material change in the Master Plan; in such event, the Option Payments to be paid by Developer shall thereafter be reduced to be consistent with the

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revised take-down schedule. Developer shall have no right to any award of just compensation for a partial taking of Optioned Property by a condemning authority.

**26. Governing Law**

This Option Agreement shall be governed by the laws of the State of Washington and any question arising hereunder shall be construed or determined according to such laws, without regard to its principles of conflicts or choice of law.

**27. Disputes**

Any state law actions or proceedings arising under, growing out of, or in any way related to this Option Agreement shall be instituted and prosecuted only in courts located in King County, Washington, and each party hereto expressly waives any right to cause any such actions or proceedings to be instituted or prosecuted elsewhere. Questions of federal law shall be instituted and prosecuted only in the United States District Court for the Western District of Washington.

**28. Attorneys' Fees**

If any of the parties hereto shall bring any action or proceeding against any other, the prevailing party or parties in such action or proceeding shall be entitled to recover from the party prevailed against all reasonable attorneys' fees and costs incurred in connection therewith. The attorneys' fees which the prevailing party is entitled to recover shall include fees for any judgment rendered on this Option Agreement, and this Section shall survive and not be deemed merged with any judgment rendered on this Option Agreement. "**Reasonableness**" shall be determined with reference to typical attorneys' fees paid in King County, Washington and "prevailing party" shall be determined in accordance with Washington law.

**29. Entire Agreement**

29.1 This Agreement contains the entire agreement and understanding between the parties hereto with respect to the Property. There are no oral understandings, terms or conditions, and neither party has relied upon any representations, express or implied, not contained in this Option Agreement. All prior understandings, terms, or conditions are deemed merged into this Option Agreement.

29.2 This Option Agreement may not be changed orally, but only by agreement in writing and signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.

**30. Counterparts**

This Option Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same agreement.

**31. Miscellaneous**

31.1 Time is of the essence in each and every term, condition, obligation and provision of this Option Agreement.

31.2 This Option Agreement shall be construed as a whole and in accordance with its fair meaning, the captions being for the convenience of the parties hereto only and not intended to describe or define the provisions in the portions of the Option Agreement to which they pertain.

31.3 All periods of time referred to in this Option Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Option Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

31.4 The unenforceability, invalidity, or illegality of any provision of this Option Agreement shall not render the other provisions hereof unenforceable, invalid or illegal. The waiver or failure to enforce any provision of this Option Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

31.5 The warranties, covenants and obligations of each of the parties under the provisions of this Option Agreement, including the Ground Leases contemplated by this Option Agreement, to the extent the same have not been fully performed and excepting those covenants and obligations which have been extinguished by the expiration of a specified period of time, shall survive the exercise of the options and entry into the contemplated Ground Leases.

31.6 A Memorandum of this Option Agreement will be recorded in the form attached hereto as **Exhibit E** and incorporated herein.

31.7 Developer acknowledges that Port is a public entity and all of its records (with limited exceptions) are subject to public records requests.

31.8 The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

31.9 Except where a party hereto is specifically permitted to act in its sole discretion, each party hereto agrees to act reasonably and in good faith with respect to the performance and fulfillment of the terms of each and every covenant and condition contained in this Option Agreement. Additionally, except as to consents and approvals which may be withheld or granted in a party's sole discretion, all consents and approvals shall be reasonable and without condition or delay.

31.10 The language in all parts of this Option Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either party.



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*[Intentionally left blank – signature page to follow]*



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IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Option Agreement as of the date set forth above.

**PORT:**

PORT OF SEATTLE,  
a Washington municipal corporation

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

**DEVELOPER:**

DES MOINES CREEK BUSINESS PARK, LLC  
a Delaware limited liability company

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



## **LIST OF EXHIBITS**

- Exhibit A - Property Description
- Exhibit B - Master Plan
- Exhibit C - Form of Ground Lease
- Exhibit D - Approved Title Exceptions
- Exhibit E - Memorandum of Option Agreement

**EXHIBIT A**

**Legal Description of Option Property**

**EXHIBIT B**  
**Master Plan**

**EXHIBIT C**

**Form of Ground Lease**

**EXHIBIT D**

**Approved Title Exceptions**

**EXHIBIT E**

**Memorandum of Option Agreement**

RECORDED AT THE REQUEST OF

WHEN RECORDED RETURN TO:

CVM Law Group, LLC  
2485 Natomas Park Drive, Suite 450  
Sacramento, CA 95833

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**MEMORANDUM OF OPTION TO GROUND LEASE**

This Memorandum of Option to Ground Lease ("Memorandum"), dated as of May \_\_, 2014, is entered into by and between **DES MOINES CREEK BUSINESS PARK, LLC**, a Delaware limited liability company, or its assigns ("**Optionee**"), **PORT OF SEATTLE**, a Washington municipal corporation ("**Optionor**").

- 1 Optionor owns fee title in that certain real property located in the City of Des Moines, King County, State of Washington, as is more particularly described in **Exhibit A** attached hereto and incorporated herein ("**Land**").
- 2 On even date herewith, Optionor entered into that certain Option to Ground Lease Agreement with Optionee (the "**Option**") wherein Optionor granted to Optionee the option to ground lease Optionor's entire interest in the Land in phases.
- 3 The option term commences on June \_\_, 2014, and expires on June \_\_, 2021.
- 4 This Memorandum is solely for recording purposes and shall not be construed to supplement, amend, or otherwise modify the terms and conditions contained in the Option.
- 5 This Memorandum and the Option shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Option regarding Assignment.
- 6 This Memorandum and the Option are governed by the laws of the State of Washington.

*Signatures are on the next page.*

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

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

[ALL SIGNATURES MUST BE NOTARIZED]

**OPTIONOR:**

**PORT OF SEATTLE,**  
**a Washington municipal corporation**

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

**OPTIONEE:**

**DES MOINES CREEK BUSINESS PARK, LLC,**  
**a Delaware limited liability company**

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

**Exhibit A to  
Memorandum of Option to Ground Lease**

**LEGAL DESCRIPTION OF PROPERTY**



