

Item #	<u>6a Attach 2 REVISED</u>
Date of Meeting	<u>June 10, 2014</u>

DRAFT – 06/09/14

GROUND LEASE AGREEMENT

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GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the "Agreement") is made as of this ____ day of _____, 20__ by and between the PORT OF SEATTLE, a Washington municipal corporation ("Landlord"), and _____, a Delaware limited liability company ("Tenant").

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

ARTICLE 1: DEFINITIONS

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

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

1.2 Adjustment Date. "Adjustment Date" shall have the meaning set forth in Section 4.2.4 below.

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

1.4 Agreement. "Agreement" shall mean and refer to this Agreement, together with the Exhibits, the Option Agreement (to the extent that sections are quoted or specifically incorporated herein) and all agreements supplemental to or modifying this Agreement, whether made contemporaneously herewith or subsequent hereto. If there is any conflict between the Option Agreement and this Agreement, the provisions of this Agreement will control.

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

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

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

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

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

1.11 Commencement Date. “Commencement Date” shall be the date hereof.

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

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

1.14 Development Agreement. “Development Agreement” shall mean the Amended and Restated Second Development Agreement by and between the City and the Port, dated _____, 2014.

1.15 Earthwork Construction Start Date. “Earthwork Construction Start Date” shall mean the date on which any construction involving earthwork, excavation, trenching, clearing, grubbing, and/or any other soil-disturbing work on the Leased Premises is begun.

1.16 Earthwork Construction End Date. “Earthwork Construction End Date” shall mean the date on which all construction involving earthwork, excavation, trenching, clearing, grubbing, and/or any other soil-disturbing work on the Leased Premises is concluded.

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

1.18 Environmental Construction Field Data Report. “Environmental Construction Field Data Report” shall mean the document that contains all field observations and data collected by Tenant and Port environmental professionals during Project construction regarding the Required Management of suspected and contaminated soil, as approved by Port.

1.19 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.

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

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

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

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

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

1.25 Fair Market Rent. “Fair Market Rent” shall have the meaning set forth in Section 4.2.5 below.

1.26 Final Plans. “Final Plans” shall mean Permit Plans (defined in Section 7.3.2) that have received all approvals necessary to proceed with construction from government and other Authorities.

1.27 Force Majeure Event. “Force Majeure Event” shall mean delays which are beyond the control of Tenant and which are directly caused by strikes, lockouts, riots, insurrections, acts of terrorism, war, fire or other casualty or acts of God, and not caused by or resulting from an act or neglect of Tenant. Delays beyond the control of Tenant that are directly caused by weather, governmental entities, procedures or inspections may be considered a “Force Majeure Event” only if such events could not be reasonably anticipated by Tenant.

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

1.29 Hazardous Substance. “Hazardous Substance” shall mean any substance or material defined or designated as a hazardous waste, toxic substance, solid waste or other pollutant or contaminant under any Environmental Laws.

1.30 Incremental Environmental Costs. “Incremental Environmental Costs” shall have the meaning set forth in Section 14.7.1.

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

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

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1.33 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; 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.

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

1.35 Master Plan. “Master Plan” shall have the same meaning as in the Option Agreement, i.e. the Master Plan for phased development of the 87-acre Optioned Property (as defined in the Option Agreement) prepared by Developer and approved by the City and by Landlord.

1.36 New Lease. “New Lease” shall have the meaning set forth in Section 20.3.5 below.

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

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

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

1.40 Option Agreement. “Option Agreement” shall mean and refer to that Option to Ground Lease Agreement dated May __, 2014 between the Port and Des Moines Creek Business Park, LLC.

1.41 Permit Plans. “Permit Plans” shall have the meaning set forth in Section 7.3.1 below.

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

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1.43 Permitted Encumbrances. "Permitted Encumbrances" shall mean and refer to the encumbrances of record referred to in the title commitment issued by Chicago Title Insurance Company dated July 17, 2013 as supplemented and amended, (subject to the Port's obligation to cure any such encumbrances, as set forth in Section 2.2 of this Agreement) and that would be disclosed by a detailed inspection and/or survey of the Property, together with all encumbrances arising in connection with the subdivision or plat consistent with the Master Plan; provided, however, that such encumbrances do not materially interfere with the Project.

1.44 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:

1.44.1 Liens arising by statute in connection with worker's compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations, mechanics liens or labor and material liens arising out of the construction of improvements, 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

1.44.2 Any Leasehold Mortgage.

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

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

1.47 Phase Development Plan. "Phase Development Plan" shall mean the development plan for the Property which has been approved by the Parties hereto and the City.

1.48 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.

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

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1.50 Post-Termination Remediation. “Post Termination Remediation” shall have the meaning set forth in Section 14.4 below.

1.51 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 Commencement Date or as set forth in the Pre-Lease Environmental Evaluation Report, excluding any Hazardous Substances brought onto the Property by Tenant or its employees, agents or invitees.

1.52 Pre-Lease Environmental Condition. “Pre-Lease Environmental Condition” shall mean and refer to the nature and extent of Hazardous Substances on the Property, as determined by and set forth in the Pre-Lease Environmental Evaluation Report.

1.53 Pre-Lease Environmental Evaluation. “Pre-Lease Environmental Evaluation” shall mean and refer to an environmental assessment, conducted pursuant to the American Society for Testing and Materials (“ASTM”) standard 1527-05 or current ASTM standard for the conduct of environmental site assessments, performed by the Tenant on the Property prior to and during construction of the Project, as required by Section 15.2 of the Option Agreement. The Pre-Lease Environmental Evaluation shall consist of the following four (4) investigation elements:

- (a) A Phase 1 environmental site assessment;
- (b) A Phase 2 environmental site assessment (as needed based on the results of the Phase 1 assessment);
- (c) A geotechnical investigation; and
- (d) Observations of environmental professionals collected during construction of the Project and documented in the Environmental Construction Field Data Report.

1.54 Pre-Lease Environmental Evaluation Report. “Pre-Lease Environmental Evaluation Report” shall mean and refer to the report containing the Pre-Lease Environmental Evaluation.

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

1.56 Project. “Project” shall mean and refer to _____ [*insert the type or improvements to be constructed and the size of the improvement for each parcel of each Phase*].

1.57 Property. “Property” shall mean those parcels of land, comprising approximately _____ acres [*insert the number of acres for each phase*], legally described in **Exhibit A** hereto and depicted on **Exhibit B** hereto, subject to the Permitted Encumbrances; provided that

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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.

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

1.59 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.

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

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

1.62 Rights of Way. “Rights of Way” shall mean those tracts designated on the Phase Development Plan and Short Plat as streets dedicated to the City or designated as private easements for ingress and egress for pedestrian and vehicular traffic and utilities.

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

1.64 Sensitive Area Tracts. “Sensitive Area Tracts” shall mean those tracts designated on the Phase Development Plan and Short Plat as non-developable areas due to environmental issues, wetlands, historical areas, or other reasons by an appropriate governmental agency with control over the development of the Property.

1.65 Stormwater Tracts. “Stormwater Tracts” shall mean those tracts designated on the Phase Development Plan and Short Plat as stormwater detention ponds for water detention and disposal of storm water run-off.

1.66 Substantial Completion. “Substantial Completion” shall have the meaning set forth in Section 7.6 below.

1.67 Tenant. “Tenant” shall mean _____, LLC [*fill in Tenant name for each Phase*].

1.68 Tenant’s Operations. “Tenant’s Operations” shall mean and refer to _____. [*Fill in types of Operations or used for each Phase*]

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

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

1.71 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.

1.72 Usable Property. "Usable Property" shall mean and refer to those portions of the Property identified as "Usable Property", as generally depicted on the Phase Development Plan for 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.

1.73 "Work Plan" shall mean and refer to the Environmental Construction Support Work Plan.

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. 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 Commencement 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 easement for reasonable ingress, egress, and utilities to and from the Property on established roadways, driveway, and corridors and sidewalks as set forth in the Master Plan and the Phase Development Plan provided there is no public road access; *provided, however*, notwithstanding anything herein to the contrary, neither party may relocate or substantially modify the location of such easements without the reasonable 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 26.8, 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 and safety protocols.

ARTICLE 3: TERM

3.1 Term. The initial term of this Agreement (the "**Term**") shall commence on the Commencement Date and shall extend through the fifty-fifth (55th) 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.

3.2 Extension Options. The Port hereby grants Tenant two (2) 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 second Extension Term and Rent during any such Extension Terms shall be determined and adjusted pursuant to Section 4.2. Written notices of Tenant's exercise of the Extension Option for each Extension Term must be given to the Port no less than six (6) months prior to the expiration of the then-current Term (the "**Extension Notice Date**"). Tenant shall have no right to exercise its right to extend the Term of this Agreement at such time as an Event of Default is outstanding beyond the applicable notice and cure period; provided, that, if the Port declares an Event of Default within thirty (30) days prior to the Extension Notice Date, 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 within the time period stated above, Port will give written notice to the Leasehold Mortgagee and Leasehold Mortgagee shall have thirty (30) days from receipt of the notice to exercise the Extension Option in the place and stead of the Tenant. In the event that both Tenant and Leasehold Mortgagee fail 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.

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.

4.2 Base Rent. For the period commencing on the Commencement Date and continuing through the expiration of the fifth (5th) Agreement Year, the base rent shall be payable as follows:

4.2.1 During Construction. From the Commencement Date until Substantial Completion of the Project, Tenant will pay rent equal to Four Cents (\$0.04) per square foot for all of the Property in the Phase.

4.2.2 Post Construction. After Substantial Completion of the Project, Tenant will pay the following rates for the Usable Property and the Sensitive Area Tracts:

(a) Usable Property Rate. Fifty-Three Cents (\$0.53) per square foot of the Usable Property per year.

(b) Sensitive Area Tracts Rate. Four Cents (\$0.04) per square foot of the Sensitive Area Tracts per year.

(c) Together, the rent due for the Usable Property and the Sensitive Area Tracts shall be the base rent (“**Base Rent**”) and shall be 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.

4.2.3 Good Faith Deposit Credit. Tenant shall be entitled to a credit as against the Base Rent equal to Fifty Thousand Dollars (\$50,000) posted by Tenant or its Affiliate as a good faith deposit under the Letter of Intent between Panattoni Development Company, Inc. and the Port dated November 5, 2013.

4.2.4 Base Rent Adjustments. Base Rent will increase by ten percent (10%) throughout the Term and any Extension Terms beginning at the sixth (6th) Agreement Year and then every five (5) years thereafter (each, an “Adjustment Date”). To the extent that the Base Rent is not determined and agreed upon by the parties before the Extension Options are

exercised, if Tenant disagrees with the adjustment of the Base Rent for the Extension Term determined after the exercise of the Extension Option, Tenant may withdraw its exercise of the Extension Option and this Agreement will terminate at the end of the existing Term as if the Extension Option had not been exercised.

4.2.5 Base Rent Adjustments Reflecting FMV Re-appraisals. Notwithstanding Section 4.2.4, Base Rent for the twenty-sixth (26th), thirty-sixth (36th) and forty-sixth (46th) Agreement Years and the fifty-sixth (56th) and sixty-sixth (66th) Agreement Years (to the extent Tenant chooses to exercise one or both of the Extension Options) will be adjusted to the then-prevailing fair market rental rate (the “**Fair Market Rent**”) considering similarly-zoned, unimproved industrial property located in the vicinity of Sea-Tac Airport to be delivered to a new tenant for development as of the applicable Adjustment Date. The value of any improvements made to the Property by Tenant at no cost to the Port will not be considered in establishing the Fair Market Rent. In no event will the Fair Market Rent adjustments be less than ninety percent (90%) of the then current Base Rent or more than one hundred ten percent (110%) of the then current Base Rent. The then applicable Base Rent will increase by ten percent (10%) at the 31st, 41st, and 51st (and the 61st and 71st, as applicable) Agreement Years.

4.2.5.1 Fair Market Rent Proposal Process. The Port will obtain an appraisal of the fair market value of the Property as unimproved land no sooner than one hundred eighty (180) days before but not later than one hundred fifty (150) days before the applicable Adjustment Date and will deliver to Tenant and Leasehold Mortgagee a Fair Market Rent proposal along with the appraisal report. In the event the Tenant disputes the Fair Market Rent determination or the Port’s appraisal and the parties do not agree on the adjusted Base Rent for the Property before the ninetieth (90th) day prior to the effective date of the adjustment, the Port and Tenant shall each deliver to the other party a “Final Offer” on the 90th day prior to the effective date of the adjustment and invoke the Rent Dispute Resolution process described in Section 4.2.5.2 below. “Final Offer” shall mean the last offer with regard to what the Port or Tenant, respectively, will accept as the rent rate for the Premises on the 90th day prior to the effective date of the adjustment.

4.2.5.2 Rent Dispute Resolution. Thereafter, the adjusted Fair Market Rent of the Property will be determined by three (3) arbitrators, each of whom shall be a member of one of the Society of Industrial and Office Realtors, the American Society of Real Estate Counselors or the Washington-British Columbia Chapter of the American Institute of Real Estate Appraisers. The Port and Tenant will each select and fully compensate one of the three arbitrators and the third arbitrator will be selected by the other two and compensated in equal shares by the Port and Tenant. Each party shall select an appraiser to be a member of the arbitration panel within twenty-one (21) days of either party invoking the Rent Dispute Resolution process. Each party shall cooperate to expedite the selection of the three arbitrators and in no case may either party delay the selection of the arbitration panel. In the event that there is a dispute with regard to the selection of the third member of the arbitration panel, either party may apply to the Superior Court of King County for appointment of the third member of the arbitration panel. Neither party may use the court process to delay the appointment of the third arbitrator and each party must cooperate with the party applying for appointment to

accomplish the appointment of the third arbitrator by the most expeditious means, including acceptance of service if an action is required to be filed, use of the ex parte department or letter to the presiding judge requesting appointment/designation of arbitrator. The arbitration to achieve Rent Dispute Resolution shall be based on an approach to valuation consistent with the standards of professional appraisal practice. For purposes of the Rent Dispute Resolution, the arbitration panel may ask questions and request further information from each party, but the arbitration panel shall have discretion with respect to what the panel deems comparable properties in light of the requirement in Section 4.3.2.1 that similarly situated industrial property in reasonable proximity to the Property be considered. The arbitrators shall ultimately select one of the Final Offers as the resolution of the dispute, and may not render a compromise decision. Leasehold Mortgagee shall participate in the arbitration process to the extent the Tenant refuses or fails to participate after due written notice by Port of Tenant failure to or refusal to participate.

4.2.5.3 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).

4.3 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 4.2 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 to the extent that the failure to pay such expenses will result in a liability to the Port or a lien on the fee title to the Property. Except as otherwise provided herein, to the extent that the Port is billed for and obligated to pay 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. Otherwise, Tenant shall pay all such insurance costs, taxes operating expenses, utility changes directly to the providers of such services or operations. Tenant, however, shall not be required to pay any mortgage indebtedness or any interest on any mortgage that at any time may encumber the interest of the Port in the Property.

4.4 Remittance Address. Any and all payments due to the Port by Tenant shall be remitted to the following address: Port of Seattle, P. O. Box 34249-1249, Seattle, WA 98124-1249, or at such other place as the Port may direct in writing.

4.5 Late Payment. If any payment of Rent is not received by the Port within ten (10) days of when due, Tenant shall pay to the Port a late payment charge equal to five percent (5%) of the amount of such delinquent payment of Rent in addition to the installment of Rent then

owing. 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. The Port acknowledges that, in connection with the Ground Lease Closing, Tenant has delivered security in the form specified in the Option Agreement of _____ (i.e. a cash deposit in the sum of \$ _____) (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. 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 Security from the assignee and release the initial Security to original Tenant upon request).

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; 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: PRE-LEASE OBLIGATIONS OF TENANT

6.1 Subdivision/Plat. The Port shall not be responsible for accomplishing any subdivision of the Property to create the legal lots necessary for the Project's Phase Development Plans. The parties acknowledge that Tenant has taken steps necessary to plat the Property

consistent with the Master Plan and consistent with the approved Phase Development Plan (the “**Short Plat**”). Construction on the Property shall be consistent with the Short Plat.

6.2 Pre-Lease Environmental Evaluation. The parties acknowledge that, pursuant to Section 15 of the Option Agreement (a copy of said Section 15 is attached hereto as **Exhibit F** and incorporated herein), Tenant has substantially completed a Pre-Lease Environmental Evaluation on the Property prior to the Commencement Date. A final Pre-Lease Environmental Evaluation Report shall be prepared by Tenant and submitted to the Port for review and approval at least fifteen (15) days prior to Substantial Completion of the Project, which approval shall not be unreasonably withheld by the Port.

6.3 Inspection and Testing. Tenant acknowledges that prior to the Commencement Date, the Tenant had adequate access to the Property to physically inspect the Property, survey the Property, obtain engineering information, develop pre-construction architectural information, conduct tests and studies that Tenant deems appropriate and otherwise examine the Property in preparation for development.

6.4 Environmental Construction Support Work Plan. The parties acknowledge that, pursuant to Section 15 of the Option Agreement, Tenant has begun the preparation of an Environmental Construction Support Work Plan. No later than ten (10) business days before the Earthwork Construction Start Date, Tenant shall submit to the Port a final Environmental Construction Support Work Plan which incorporates the comments of the Port and captures any necessary updates to the Work Plan.

6.5 Permit Applications. To the extent Tenant requires governmental permits or approvals beyond those required by the Option Agreement prior to the Commencement Date of this Agreement, the following provisions shall apply: Subject to the requirements of ARTICLE 7, Tenant shall have the right, at Tenant's sole cost and expense, to commence and prosecute any proceedings necessary to cause the issuance of any 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

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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 Substances), 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.

6.6 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.

6.7 Pre-Paid Frontage Improvement In-Lieu Fee Reimbursement. Pursuant to the terms of the Option Agreement, the Parties hereto have agreed that there is _____ lineal feet [*fill in for each Phase*] of frontage on 24th Avenue South and _____ [*fill in for each Phase*] lineal feet of frontage on S. 216th Street ("Phase Lineal Foot Frontage"). Based on the total Phase Lineal Foot Frontage and the Lineal Foot Factor for each street (as defined in the Option Agreement) the total Frontage Improvement In-Lieu Fee reimbursement (as defined in the Option Agreement) is \$_____. [*calculate for each Phase*] The Port agrees to finance the Frontage Improvement In-Lieu Fee reimbursement at an eight percent (8%) annual percentage rate over a seven (7) year term, fully amortized over the term in accordance with the repayment schedule attached hereto as Exhibit C and incorporated herein. The first payment will be due thirty (30) days after the Commencement Date or on the first day of the following month, whichever is later, then each payment thereafter will be due and payable on the first day of each month until fully paid. Each payment will be applied first to interest and then to principal. Payment of all principal and interest due and unpaid will be due in full if this Agreement is terminated prior to the end of the 7-year term. Tenant shall have the right to pre-pay all or part of the financed Frontage Improvement In-Lieu Fee without penalty.

6.8[Phase 2 Ground Lease only] [Cost Sharing Agreement]. As part of the exercise of the Option Agreement by Des Moines Creek Business Park, LLC as Optionee the Port, as landlord and _____, as tenant entered into a Ground Lease for Phase 1 of the Optioned Property under the Master Plan and that certain Cost sharing Agreement of even date with the Phase 1 Ground Lease. The Cost Sharing Agreement provides that the tenant of the Phase 2 property under the Master Plan will reimburse the tenant under the Phase 1 Ground Lease for certain site work including but not limited to the costs of the construction of the stormwater drainage and detention facilities and the construction of the South 211th Street improvements which benefitted both the Phase 1 and Phase 2 Property. Tenant herein agrees to comply with all of the terms and conditions of the Cost Sharing Agreement, including the timely payment of the costs as set forth in the Cost Sharing Agreement. Tenant herein and Port acknowledge and agree that _____, as the tenant under the Phase 1 Ground Lease is

a third party beneficiary of this Section 6.8 agreement between the Port and Tenant and as such has the same right to enforce this provision as the Port.]

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. 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, including, without limitation, execution of required applications.

7.1.1 Stormwater Management Facilities. Tenant shall develop all required stormwater drainage and detention facilities sized, and with appropriate specifications, to manage stormwater discharges as depicted on the Phase Development Plan attached hereto as **Exhibit B** consisting of approximately ___ acres [*fill in for each Phase*] and in compliance with FAA Advisory Circular 150/5200-33B. 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, the applicable Stormwater Tracts as identified in the Short Plat shall be (and be deemed) removed from the Premises, shall no longer be subject to payment of Base Rent thereon, 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 surplus resolution by the Port Commission as required by statute) as provided by the Development Agreement. 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. The Port shall not be liable for any costs associated with design or construction of the storm water management facilities required in this Section. [A prorated share of the costs of the construction of the stormwater drainage and detention facilities will be part of the Cost Sharing Agreement executed concurrently herewith between the Port and Tenant under the Option Agreement (the "**Cost Sharing Agreement**") which shall require the owner of future Phase 2 or 3, as benefited thereby, to reimburse Tenant for such prorated share of the costs.] [*Delete in the Phase 2 Ground Lease form.*]

7.1.2 South 208th Street. Tenant shall, as part of the Phase Development Plan for Phase 1 of the Project, design and construct, to the City's specifications, an extension of

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South 208th Street (“**S. 208th Street**”) from 24th Avenue South to approximately one thousand (1,000) feet west of the eastern boundary of the Property within the separate tract (the “**S. 208th Street R.O.W.**”) marked as the “S. 208th St. R.O.W.” on **Exhibit B** and consisting of approximately 1.62 acres. The Port and Tenant recognize that absent the extension of S. 208th Street, the Project may not be approved by the City, and that the Property may be less desirable to lease. In recognition of these considerations, the parties agree that upon completion of the construction as set forth above, Landlord will provide a rent credit against Base Rent in an amount equal to forty-nine percent (49%) of actual cost for design and construction of the extension of the S. 208th Street facilities or Four Hundred Fifty Thousand Dollars (\$450,000), whichever is less. Upon completion of the construction of S. 208th Street, the S. 208th Street R.O.W. shall be (and be deemed) removed from the Property, Base Rent shall no longer be paid thereon, 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).

7.1.3 South 211th Street. Tenant shall, as part of the Phase Development Plan for Phase 1 of the Project, design and construct, to the City's specifications, South 211th Street (“**S. 211th Street**”) within the separate tract (the “**S. 211th Street R.O.W.**”) marked as the “S. 211th Street R.O.W.” on **Exhibit B** and consisting of approximately _____ acres [*fill in for each Phase*]. Upon completion of the construction of S. 211th Street, the S. 211th Street R.O.W. shall be (and be deemed) removed from the Property, Base Rent shall no longer be paid thereon, 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). [A prorated share of the costs of the construction of the South 211th Street improvements will be part of the Cost Sharing Agreement which shall require the owner of future Phase 2 or 3, as benefited thereby, to reimburse Tenant for such prorated share of the costs.][*Delete in the Phase 2 Ground Lease form.*]

7.1.4 South 214th Street/20th Avenue South. Tenant shall, as part of the Phase Development Plan for Phase 2 or 3 of the Project (as dictated by the City pursuant to the Development Agreement), design and construct, to the City's specifications, South 214th Street (“**S. 214th Street**”) within the separate tract (the “**S. 214th Street R.O.W.**”) marked as the “S. 214th Street R.O.W.” on **Exhibit B** and consisting of approximately _____ acres. [*Fill in for each applicable Phase*] Upon completion of the construction of S. 214th Street, the S. 214th Street R.O.W. shall be (and be deemed) removed from the Property, Base Rent shall no longer be paid thereon, 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).

7.1.5 Sensitive Area Tracts. There is approximately ____ acres [*Fill in for each applicable Phase*] of property designated as Sensitive Area Tracts as shown on **Exhibit B**.

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; Compliance with Phase Development Plan. The parties acknowledge that Tenant has delivered and the Port has approved a Phase Development Plan for the Property that is the subject of this Ground Lease. With respect to any matter addressed in the Phase Development Plan (which was approved by the Port as a condition for execution of this Agreement), the Phase Development Plan shall govern the development, construction and any leasing/subleasing of the subject Property.

7.3.1 Permit Plans. Tenant shall prepare a permit ready set of plans and specifications at the appropriate stage of design substantially conforming to Phase Development Plan 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**.”

7.4 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.

7.5 Payment and Performance Bond. Before any construction on the Premises is commenced, Tenant or its general contractor will post a payment and performance bond which shall be in an amount equal to the contract price for the construction of the Project and written by a company qualified to issue bonds in the State of Washington.

7.6 Diligent Prosecution of Construction. After construction is commenced, it shall be prosecuted diligently (subject to **Force Majeure Events**), in accordance with the Final Plans, in a good and workmanlike manner and in compliance with all Legal Requirements and pursuant to the conditions of the governmental approvals until the Project is substantially completed.

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Substantial completion (“**Substantial Completion**”) of the Project shall be deemed to have occurred when all of the following conditions have been met:

7.6.1 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 is complete, 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;

7.6.2 Tenant have completed a walk through during the final stage of construction prior to full occupancy by Tenant with the City inspection officials (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 City’s building official); and

7.6.3 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.

7.7 Permanent Certificate of Occupancy. Notwithstanding Substantial Completion of the Project, Tenant shall use reasonable efforts to cause its contractor to diligently proceed to complete full construction of the Project and obtain a permanent certificate of occupancy for the Project once there is an occupant or user for the Property.

7.8 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.

7.9 Intentionally Deleted.

7.10 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, 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.

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

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

7.12 Incremental Environmental Costs.

7.12.1 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 Report. “**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 by or for Tenant, including but not limited to the Pre-Lease Environmental Evaluation Report, the Environmental Construction Field Data Report and the Environmental Construction Support Work Plan; 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.

7.12.2 Port’s Options. 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, or (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, subject to Port review of compliance with Section 7.12.1 , and according to the procedures provided in the Work Plan. 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 shall be suspended during any period that construction of the Project is delayed due to the Required Management of any such Pre-existing Hazardous Substances.

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, tenant improvements, or improvements (collectively referred to as “**Alterations**”) to the Project as Tenant may

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

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

8.4 Trade Fixtures. Tenant or its subtenants shall retain ownership of all Trade Fixtures and business equipment and furnishings from time to time installed in the Project by Tenant at its expense. Tenant may remove any Trade Fixtures or other property of Tenant or any subtenant at any time during the Term and shall remove all thereof prior to the expiration of the Term. Any Trade Fixtures not removed at the expiration of the Term shall, at the election of the Port, become the property of the Port without payment to Tenant, or be deemed abandoned and removed by the Port, at Tenant's expense. Upon any removal of such Trade Fixtures, Tenant shall promptly repair any and all damage to the 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 a high-quality business park with a mix of commercial and light industrial uses. For use other than what is described in this Section, Tenant shall obtain the Port's prior approval, which shall not be unreasonably withheld, conditioned or delayed. Tenant's use shall be compatible with normal Airport operations as well as compatible with noise levels associated with operating the Airport and shall 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

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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. 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 6.2, 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 of 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

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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 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) 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 Two Hundred Fifty Thousand Dollars (\$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 Commencement Date 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 Tenant's motor vehicle operations on or about the Premises and all areas appurtenant thereto. Such insurance shall cover any "Auto" (i.e., owned, hired and non-

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owned used by Tenant) 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 any construction of the Project commences, 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.

11.3 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 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 the services provided for the benefit of the Tenant (the “**Operating Expenses**”).

12.2 Utilities. Tenant shall, at its sole cost and expense, arrange for the furnishing of all utilities, including natural gas, electricity, telecommunications, water and sewer, as well as stormwater charges, necessary for the operation of the Premises, and Tenant covenants and agrees to pay all such charges directly, to the applicable public utility or governmental authority furnishing such service to the Premises, the amounts due for such services as indicated by meters measuring Tenant’s consumption thereof.

12.3 Port Not Responsible. The Port shall not be required to furnish any services or utilities of any nature to the Property 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. However, failure of the Tenant to pay such Operating Expenses or utilities shall not be a breach of this Agreement, so long as the Port is not obligated for such payment or the failure to pay does not result in a lien on the fee title to the Property.

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 Repair & Maintenance 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 any Environmental Law. 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. 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, or from 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 Authority.

14.1.1 Records. Tenant shall maintain all records required to document that Tenant's Operations 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 solid or 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 after reasonable notice, 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, after providing Tenant written notice, 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; 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 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 Inspections.

14.3.1 Tenant's Environmental Inspection. Tenant shall conduct an environmental inspection of the entire Premises including operations, equipment, facilities and

fixtures only in the event that there is evidence of the presence of environmental contamination of the Property. The environmental inspection shall be conducted by an independent qualified environmental professional selected by Tenant. Tenant shall meet with the Port to present the results of the environmental inspection 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 an 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 subtenants' 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 Operations, or the operations of a sub-tenant. Prior to conducting any intrusive or invasive testing or investigation, the Port will present a work plan to Tenant for Tenant's approval which will not be unreasonably withheld. If the Port damages or otherwise disturbs the Premises during such environmental audit, it shall restore the Premises to the condition in which they existed prior to the damage.

14.4 Post-Occupancy Environmental Assessment and Remediation. Within sixty (60) days after Tenant 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 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 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 Tenant 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 Tenant, as applicable, and the Port, and to dispute resolution. 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. 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 in violation of Environmental Law (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 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 Authorities which, to the extent reasonably feasible and practical under the circumstances (and subject to dispute resolution pursuant to Section 14.8), shall meet the standard established under MTCA Method A or, if such standard does not 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 pursuant to 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 FAA 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, and the Port shall be deemed to accept the Premises upon expiration or earlier termination of this Agreement in their then current condition, AS IS, WHERE IS, WITH ALL FAULTS AND DEFECTS, and 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 Condition, 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 and before the Termination Date. 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 or otherwise caused by the Port or its agents, consultants or employees. 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.

14.8 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 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 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 and Tenant 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 13 (Repair and Maintenance), 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 occupy the Premises as a high-quality business park, eliminates or material adversely affects access to the Premises or otherwise results in the elimination of parking or truck docks such that the Property cannot be used for the original intended purpose, or any other then current use of the Premises, as reasonably determined by Tenant.

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

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

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

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

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

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

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

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

Should, however, the partial taking occur during the last two (2) years of the Term, 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.

ARTICLE 17: SURRENDER AND HOLDING OVER

17.1 Port's Option for Removal of Modifications; Surrender.

17.1.1 *Removal Notice and Removal Fund.* Upon the expiration of this Agreement, but not before the end of the Initial Term (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 4.2.5.1; (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 4.2.5.1) 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 first (1st) Extension Option, then proceeds in the Improvement Removal Fund shall be paid to the Port upon the expiration of the Initial Term, and a second (2nd) Extension Term Improvement Removal Fund shall be established in the manner described above. If Tenant does not exercise its second (2nd) 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.

17.1.2 *Tenant’s Option at Tenant’s Cost if Port Does Not Elect Removal.* Tenant, at its sole election and discretion, may elect to remove the improvements or modifications to the Property at Tenant’s sole cost and expense. 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).

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.

ARTICLE 19: ESTOPPEL CERTIFICATES, ATTORNMENT AND SUBORDINATION

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

19.2 Attornment. Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage or deed of

trust made by the Port, its successors or assigns, encumbering the 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, Tenant's subleases, and any modification of this Agreement or any sublease and assumes the Port's obligations under this Agreement arising after the date of transfer, and agrees not to disturb Tenant's or its subtenants quiet possession of the Premises for so long as Tenant is not in default hereunder.

19.3 Title. Notwithstanding the above, the Port shall not use the Property as security for any monetary obligation or further encumber the Property, except as may be expressly authorized by this Agreement or by prior written approval of Tenant, which approval shall not be unreasonably withheld. So long as Tenant is not in default of this Agreement, this Agreement will not be amended, modified or terminated or subject to termination by any trustee's sale, any action to enforce the security, or by any proceeding or action in foreclosure.

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 D** 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 any Extension Option that has 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) 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 and any other notices the Port is required by the terms of this Agreement to provide to Tenant or that will materially affect the leasehold interest, including but not limited to amendments to this

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Agreement, side letters that affect the economics of this Agreement or any waivers of any rights or obligations under the terms of this Agreement.

20.3.2 The Port, upon providing Tenant any notice of (i) default under this Agreement or (ii) a termination of this Agreement, or (iii) a matter upon which the Port may predicate or claim a default, shall at the same time 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.

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

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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

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

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

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

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

20.3.6 Subject to the provisions of this ARTICLE, the Leasehold Mortgagee may exercise, with respect to the Premises, any right, power, or remedy under the Leasehold Mortgage. Every Leasehold Mortgagee (or its designee) or any other purchasers in foreclosure

proceedings may become the legal owners and holders of Tenant's interest in this Agreement through such foreclosure proceedings or by assignment of this Agreement in lieu of foreclosure and shall provide notice of such assignment and assumption to the Port in compliance with Section 24.1.1. Leasehold Mortgagee after a foreclosure or assignment in lieu of foreclosure under the Leasehold Mortgage may subsequently assign the leasehold interest or the New Lease to a third party who shall assume the lease and provide notice of the assumption to the Port and otherwise comply with the Provisions of Section 24.1.1. Upon such assumption, the Leasehold Mortgagee shall be released from all liability for the performance or observance of the covenants and conditions in this Agreement (or such New Lease) contained on Tenant's part to be performed and observed from and after the date of such assignment.

20.3.7 Notwithstanding Sections 20.3.5 and 20.3.6, in the event that any person or entity other than Leasehold Mortgagee (a "**Foreclosure Purchaser**") shall acquire title to Tenant's interest in this Agreement as a result of foreclosure or assignment in lieu of foreclosure under the Leasehold Mortgage, or under a New Lease pursuant to this ARTICLE, the Foreclosure Purchaser may not assign this Agreement (or such New Lease) without the prior written consent of the Port in compliance with the requirements of ARTICLE 24. If the Port's consent is obtained, the assignee must assume Tenant's obligations under this Agreement and an executed counterpart of such assumption must be delivered to the Port. Upon such assumption, the Foreclosure Purchaser shall be released from all liability for the performance or observance of the covenants and conditions in this Agreement (or such New Lease) contained on Tenant's part to be performed and observed from and after the date of such assignment.

20.3.8 Notwithstanding Section 20.3.1, no agreement between the Port and Tenant modifying, canceling or surrendering this Agreement 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.

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21.1.2 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.

21.1.3 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.

21.1.4 The filing by Tenant of a petition in bankruptcy, Tenant being adjudged bankrupt or insolvent by any court, a receiver of the property of Tenant being appointed in any proceeding brought by or against Tenant, Tenant making an assignment for the benefit of creditors, or any proceeding being commenced to foreclose any mortgage or other Lien on Tenant's interest in the Premises or on any personal property kept or maintained on the Premises by Tenant.

21.2 Remedies. Except as otherwise provided herein, in addition to, and not in lieu or to the exclusion of, any other remedies provided in this Agreement or to any other remedies available to the Port at law or in equity:

21.2.1 Except as otherwise provided in ARTICLE 20 (and specifically the notice and cure rights of a Leasehold Mortgagee under Section 20.3.3) and this ARTICLE 21, whenever any default continues unremedied in whole or in part (i) for thirty (30) days after Notice of Default is provided by the Port to Tenant and Leasehold Mortgagee in the case of default for failure to pay any Rent, fees or other required payment 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

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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 Market Rent 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 percent (1%) above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

21.2.3 If this Agreement is terminated for default as provided in this Agreement, the Port shall 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 Counterclaim or Setoff. If the Port shall commence any proceeding for non-payment of Rent, fees or of any other payment of any kind to which the Port may be entitled or which the Port may claim under this Agreement, Tenant will not interpose any counterclaim or setoff of any nature or description in any such proceeding; the parties specifically agreeing that Tenant's covenant to pay Rent, fees or any other payments under this Agreement are independent of all other covenants and agreements in this Agreement; *provided, however*, this

shall not be construed as a waiver of Tenant's right to assert such a claim in any separate action brought by Tenant.

ARTICLE 22: RELOCATION; EASEMENTS

22.1 Easements. The parties recognize that the Port's facilities are continuously being modified to improve the utilities, services and premises used and provided by the Port. The Port, or its agents (following reasonable notice to Tenant and after providing Tenant with an opportunity to meet with the Port to discuss the easement, its location, and the process for implementing and using it), shall have the right to enter the Premises of Tenant, and to cross over, construct, move, reconstruct, rearrange, alter, maintain, repair and operate the sewer, water, and drainage lines, and the electrical service, fiber and communication service and all other services and facilities (collectively, "**Facilities**") all as required by the Port for its own use or benefit; *provided, however*, 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. Subject to the rights granted to a Leasehold Mortgagee in Section 20, no receipt of monies by the Port from Tenant after the termination or cancellation of this Agreement in any lawful manner shall (a) reinstate, continue or extend the Term 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) without the prior written consent of the Port in each instance, which consent shall not be unreasonably withheld, conditioned, or delayed. Tenant shall at the time the Tenant requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee and the proposed documentation for the transfer as described below. 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. In determining whether to grant consent to an assignment, the Port may consider factors which the Port reasonably determines in good faith are relevant to its decision.

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

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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, 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 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 up to Five Thousand Dollars (\$5,000.00) for fees and expenses incurred by the Port in connection with any request by Tenant for consent to an assignment.

24.2 Intentionally Deleted.

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

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, or (ii) a successor corporation, limited liability company or other entity related to Tenant by merger, consolidation or non-bankruptcy reorganization or (iii) any investor as part of the organization of Tenant or any entity owned or controlled by Carl D. Panattoni, Adon Panattoni or Bart Brynestad (any of the foregoing are referred to herein as "Permitted Assignments"). No Permitted Assignment shall take effect until Tenant shall has delivered to the Port copies of the applicable transfer documents or sublease documents, including an assumption agreement whereby the Permitted Assignee assumes the obligations of Tenant under this Agreement from and after the date of the transfer, running in favor of the Port (except for subleases), and has provided the notice address of the transferee.

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

ARTICLE 25: SUBLEASE

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

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

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. The parties acknowledge that pursuant to the Option Agreement, the Port has delivered to Tenant a title commitment prepared by Chicago Title Insurance Company for the issuance of a policy of title insurance (subject only to the execution of this Agreement and recordation of a Memorandum of Ground Lease) insuring Tenant's leasehold interest in the Phase Parcel applicable to this Agreement. The cost for such policy of title insurance is the responsibility of the Tenant.

26.5 OFAC Compliance. Tenant advises Landlord hereby that the purpose of this paragraph is to provide to Metropolitan Life Insurance Company, a New York corporation ("MetLife"), in its capacity as a member of Tenant, information and assurances to enable MetLife to comply with the law relating to OFAC. Landlord represents, warrants and covenants in favor of MetLife and Tenant either that (i) it is regulated by the SEC, FINRA or the Federal Reserve (a "Regulated Entity") or is a wholly-owned subsidiary of a Regulated Entity, or (ii) it is a Federal, State, or Municipal Governmental Agency of the United States, or (iii) neither it nor any person or entity that directly or indirectly (a) controls it or (b) has an ownership interest in it of twenty-five percent (25%) or more, appears on the list of Specially Designated Nationals and Blocked Persons ("OFAC List") published by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury. Landlord covenants during the term of this Agreement to provide to MetLife and Tenant information reasonably requested by MetLife, including, without limitation, organizational structural charts and organizational documents, which MetLife may deem to be necessary ("OFAC Information") in order to confirm its continuing compliance with the provisions of this paragraph. Landlord represents and warrants to MetLife and Tenant that the OFAC Information it has provided or to be provided to it in connection with this Agreement is true and complete. [*This may only apply to Phase I*].

26.6 Non-Discrimination and Title VI Assurances.

26.6.1 Services. Tenant agrees that it will not discriminate by segregation or otherwise against any Person or Persons because of race, sex, age, creed, color, national origin or handicap in furnishing, or by refusing to furnish, to such Person, or Persons, the use of the Project or the Premises, including any and all services, privileges, accommodations, and activities provided thereby.

26.6.2 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.

26.6.3 Title VI Assurances.

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

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

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

26.7 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.

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26.8 Access to Premises. Subject to the provisions of Section 23.5, 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).

26.9 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.

26.10 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.

26.11 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.

26.12 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.

26.13 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.

26.14 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.

26.15 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.

26.16 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.

26.17 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.

26.18 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.

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

26.19.1 Exhibit A – Legal Description

26.19.2 Exhibit B – Phase Development Plan

26.19.3 Exhibit C – Payment Schedule for Frontage Improvement In-Lieu Fee Reimbursement

26.19.4 Exhibit D – Form of Memorandum of Lease

26.19.5 Exhibit E – Form of Non-Disturbance and Attornment Agreement

26.19.6 Exhibit F – Pre-Lease Environmental Evaluation Requirements

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

PORT OF SEATTLE

_____.

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

APRIL 25, 2014 - DRAFT

EXHIBIT A

-- Legal Description --

APRIL 25, 2014 - DRAFT

EXHIBIT B

-- Phase Development Plan --

APRIL 25, 2014 - DRAFT

EXHIBIT C

-- Payment Schedule for Frontage Improvement In-Lieu Fee Reimbursement --

EXHIBIT D

-- Form of Memorandum of Lease --

**RECORDED AT THE REQUEST
OF:**

WHEN RECORDED RETURN TO:

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

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum"), dated as of _____, 2014, is entered into by and between _____, LLC, a Delaware limited liability company, or its assigns ("**Tenant**"), **PORT OF SEATTLE**, a Washington municipal corporation ("**Landlord**").

- 1 Landlord owns fee title to that certain real property located in the 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, Landlord entered into that Ground Lease Agreement with Tenant (the "**Lease**") wherein Landlord agreed to lease to Tenant the Land.
- 3 The Lease term is for a period of fifty five years and commences on _____. 201_, and expires on _____, 2___. Tenant has two successive options to extend the term of the Lease for a ten year period.
- 4 This Memorandum is solely for recording purposes and shall not be construed to supplement, amend, or otherwise modify the terms and conditions contained in the Lease.
- 5 This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease regarding Assignment.
- 6 This Memorandum and the Lease are governed by the laws of the State of Washington.

Signatures are on the next page.

SIGNATURE PAGE
to Memorandum of Option to Ground Lease

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

[ALL SIGNATURES MUST BE NOTARIZED]

LANDLORD:

PORT OF SEATTLE,
a Washington municipal corporation

By: _____

Name: _____

Title: _____

TENANT:

_____, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Exhibit A to

Memorandum of Ground Lease

LEGAL DESCRIPTION OF PROPERTY

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____ (SEAL)
Notary Public Signature

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____ (SEAL)
Notary Public Signature

EXHIBIT E

-- Form of Non-Disturbance and Attornment Agreement -

RECOGNITION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, is made as of _____, 20__, by and among _____, a _____ (hereinafter referred to as "**Prime Lessor**"), and _____, a _____ (hereinafter referred to as "**Prime Lessee**"), and _____, a _____ (hereinafter referred to as "**Tenant**"), with reference to the following facts:

A. Prime Lessor has entered into a Lease with Prime Lessee dated _____ (the "**Prime Lease**") for [the building located at _____] (the "**Property**") as more fully described in the Prime Lease;

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

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

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

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

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

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

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

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

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

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

3. Prime Lessee hereby agrees to protect, defend, indemnify and hold Tenant harmless from and against any and all claims, damages, costs and expenses (including not limited to reasonable attorneys’ fees) incurred by Tenant as a result of the violation of this Agreement by Prime Lessee or the breach by Prime Lessee of the Prime Lease, including but not limited to any breach which result in termination of the Prime Lease. Tenant hereby agrees to protect, defend, indemnify and hold Prime Lessee harmless from and against any and all claims, damages, costs and expenses (including but not limited to reasonable attorneys’ fees) arising from Tenant’s violation of the terms of this Agreement.

4. Prime Lessee hereby authorizes Tenant and Tenant hereby agrees to assume and make all rent or other payments due to Prime Lessor from Prime Lessee pursuant to the Prime Lease directly to Prime Lessor as and when such payments are due under the Prime Lease and otherwise in accordance with the Prime Lease. Prime Lessor hereby agrees to accept such payments from Tenant as though such payments had been made by Prime Lessee.

5. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage paid or reliable overnight courier to each of the parties at their respective

addresses as hereinabove set forth or at such other address as a party may designate by notice given in accordance with this paragraph. Notices shall be deemed delivered upon actual receipt as evidenced by the return receipt.

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

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

PRIME LESSOR:

By: _____
Name:
Title:

PRIME LESSEE:

By: _____
Name:
Title:

TENANT:

By: _____
Name:
Title:

EXHIBIT F

-- Pre-Lease Environmental Evaluation Requirements -