

FIRST AMENDMENT TO GROUND LEASE AGREEMENT

This First Amendment to Ground Lease Agreement (the “First Amendment”) is made on July ___, 2024 (the “Effective Date”) by the PORT OF SEATTLE, a Washington municipal corporation (“Port”), and DMCBP PHASE V, LLC, a Delaware limited liability company (“Tenant”).

WHEREAS, the Port entered into a Ground Lease Agreement with PDC SEATTLE LPIV BB/TH, LLC, a Delaware limited liability company dated August 23, 2022 (the “Agreement”).

WHEREAS, Section 7.3.2 of the Ground Lease provides for the Parties to agree upon a Developable Square Footage of the Property in connection with the Port’s review and approval of Tenant’s Final Plans, the Parties are in agreement of the Developable Square Footage, and wish to amend the Agreement to include a Developable Square Footage and to adjust Base Rent accordingly.

WHEREAS, the Ground Lease provided for certain time frames within which the due diligence was to be completed and approvals for the development of the project were to be accomplished. The Due Diligence period set forth in the Agreement expired on December 21, 2022. Due to the delays in the approval process by the City (as defined in the Ground Lease) the parties orally agreed to extend certain time frames and conditions and now wish to amend and modify those time frames and conditions.

WHEREAS, the parties desire to amend the Agreement on the terms and conditions contained herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Port and Tenant agree as follows:

1. **Recitals; Defined Terms**: Any capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.
2. **Definition of Property; Developable Square Footage**: The Property has increased in size. **Exhibits A and B** attached to the Agreement are hereby completely replaced and superseded with **Exhibits A and B** attached hereto. **Exhibit B** assumes that the Port will acquire fee title to Tract C (as defined below) from the City. The Port is in the process of acquiring fee title to the area for the private drive to 20th Ave S (King County Tax Parcel No. 0922049418, also sometimes referred to as “Tract C”), the approximate total square footage of land subject to the Ground Lease will be 1,325,015. Tenant accepts Tract C on the same terms and conditions as the remainder of the Property, as detailed in the Agreement. The agreed upon Developable Square Footage in Section 1.53 of the Agreement is hereby increased from a total of 862,488 square feet to a total of 883,357 square feet, which Developable Square Footage was agreed upon following the process outlined in Section 7.3.2.

3. Consolidation of Parcels: The current Property is made up of several individual parcels of real property described in Exhibit A hereto, which includes Tract C. Consistent with each party's obligations under Section 6.1 of the Agreement, Tract C shall be consolidated into a single legal lot, as necessary for the Site Plan, and will be "replatted" by the Tenant as required by the City in connection with the acquisition of Tract C by the Port from the City.

4. Commencement Date: Section 1.10 is hereby replaced and completely superseded by the following:

"'Commencement Date' shall mean the day after all of the following events have occurred: (a) the passage of sixty (60) days following Tenant's receipt of a SEPA determination and issuance by the City of a Business Park Master Plan ("**Master Plan**"), or alternately, if no appeals are filed during the appeal period for the City's SEPA determination, the passage of twenty-one (21) days following Tenant's receipt of a SEPA determination and issuance by the City of the approved Master Plan; (b) the Port has received fee title to Tract C from the City; (c) the approval by the City's Hearing Examiner of the Title 16 Variance to allow construction over the "ravine" the City has determined is located on the Property; (d) the date upon which Tenant, in its reasonable discretion, is ready to commence construction, which shall in no event be later than April 1, 2025; and (e) Tenant's receipt of a Clearing and Grading Permit from the City. The Commencement Date shall be documented and confirmed by letter delivered by the Tenant to the Port, and countersigned by the Port, and upon execution by both parties, incorporated into this Agreement."

5. Due Diligence Period: The Due Diligence Period, and Tenant's associated termination right, expired on December 21, 2022. Notwithstanding the foregoing, all of the Parties' rights and obligations under Section 6.2.1. with respect to inspection of the Property shall remain in full force and effect until the Commencement Date, or early termination of the Agreement.

6. Deposit: Section 3.3 is hereby deleted in its entirety and replaced with the following

3.3 Deposit. Tenant previously provided a deposit in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) in the form of a promissory note (the "Deposit"), a copy of which was attached and incorporated into the Agreement as an exhibit. Within ten (10) days following mutual execution of this First Amendment, the promissory note shall be converted to cash, with the amount to be designated as lease deposits in favor of the Tenant. The Deposit shall be non-refundable upon mutual execution of this First Amendment and shall irrevocably become the property of and retained by the Port for its sole account to be used at it sees fit. Provided that if the

Agreement terminates pursuant to the June 1, 2025, Early Termination provided for in Section 6.2.2.2, the Port shall refund to Tenant within thirty (30) days, an amount equal to half (1/2) of the Deposit or Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00). In the event Tenant elects to exercise the Tenant Early Termination Extension, and the Commencement Date does not occur by December 31, 2025, the foregoing refund shall not occur, and the Port shall retain the full amount of the Deposit. However, notwithstanding the foregoing or anything to the contrary contained herein, if the Agreement has not terminated pursuant to Section 6.2.2.2, then effective upon the Commencement Date, or the earlier commencement of Base Rent as provided for in Section 4.2.1, the entire Deposit shall be applied towards Base Rent payable under this Agreement until fully applied.

7. Sections 4.2.1 and 4.2.2 are hereby deleted in their entirety and replaced with the following:

4.2.1 During Construction. From the Commencement Date until the first of the following three events occurs, (i) issuance of a temporary certificate of occupancy for the Project, (ii) Substantial Completion of the Project, or (iii) August 1, 2026, Tenant will pay Base Rent equal to Thirty-Nine and 6/10 Cents (\$0.396) per square foot of the Property per year, plus leasehold excise tax. Base Rent shall be payable monthly in equal installments of one-twelfth (1/12) of such amount, as follows:

$$883,357 \text{ sf} \times \$0.396 / 12 = \$29,150.78^*$$

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

Notwithstanding the foregoing, if the Commencement Date has not occurred by April 1, 2025, Base Rent shall become due and owing on April 1, 2025. For the avoidance of doubt, if Base Rent becomes due and owing prior to the Commencement Date, Tenant shall not enjoy any additional rights under this Agreement which are contingent upon the Commencement Date occurring, until the Commencement Date does in fact occur.

4.2.2 Post Construction. From the earlier of (i) issuance of a temporary certificate of occupancy for the Project (ii) Substantial Completion of the Project; or (iii) August 1, 2026, and for the remaining Term (and Extension Terms), Tenant will pay Three Dollars and Ninety Six Cents (\$3.96) per square foot of the Property per year, plus leasehold excise tax, subject to adjustment as set forth in this Section 4.2, which Base Rent shall be payable monthly in equal installments of one-twelfth (1/12) of such amount, as follows:

$$883,357 \text{ sf} \times \$3.96 / 12 = \$291,507.81^*$$

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

8. Section 6.2.2. is hereby deleted in its entirety and replaced with the following:

6.2.2.1. [Intentionally Deleted]

6.2.2.2. Early Termination. If the Commencement Date has not occurred by June 1, 2025, this Agreement shall automatically terminate, and neither the Port nor Tenant shall have any further rights or obligations under this Agreement, except (i) for those obligations that by the terms of this Agreement shall expressly survive termination of this Agreement and (ii) Tenant's assignment obligations under Section 6.2.2.3 below. Notwithstanding the foregoing, if the Commencement Date has not occurred by June 1, 2025, Tenant may elect, by providing written notice to the Port by May 25, 2025, to extend the Early Termination provided for in this Section 6.2.2.2, until December 31, 2025 (the "Tenant Early Termination Extension"), provided that the full amount of the Deposit shall become non-refundable, in accordance with Section 3.3, upon said election.

6.2.2.3. In the event this Agreement terminates in accordance with this Section 6.2.2.2 then, subject to the rights of any Leasehold Mortgagee, upon the Port's written request and at its sole option, Tenant shall fully and irrevocably assign to the Port, in consideration for the Port's payment of Ten and 00/100 Dollars (\$10.00), all of Tenant's right, title and interest in and to (for the Port's ownership and unlimited use): (a) all preliminary, final, and working plans and specifications for or relating to the Project, and drawings and construction documentation prepared in connection therewith, and (b) all permits, approvals, dedications, entitlements and/or related development rights, and all applications with applicable Authorities relating thereto, including, without limitation, the Master Plan, relating to the Property, the Premises and/or the Project, which assignment shall be in form reasonably satisfactory to the Port ("Assignment Option") (provided that the Port may not exercise its option under this Section 6.2.2.3 unless and until this Agreement has been terminated and each Leasehold Mortgagee has failed to exercise its right to assume Tenant's right and obligations under this Agreement or to a New Lease). Tenant shall use commercially reasonable efforts to permit (and upon the Port's request evidence) that Tenant's contracts with its architect(s), engineer(s), general contractor and other consultants provide for such Assignment Option, without the further consent of said parties. Upon termination of this Agreement pursuant to this Section 6.2.2, and upon the Port's exercise of the Assignment Option, Tenant agrees to execute all such documents, consents or acknowledgments as necessary to affect and finalize the assignment described herein; provided that in no event shall Tenant be obligated to make any representations or warranties, and all such deliverables shall be on an as-is basis without any representation or warranty whatsoever.

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

10. Section 13.2 shall be amended by adding the following as a new Section 13.2.4:

13.2.4. Wildlife Hazards. Without limitation to Tenants obligations to ensure compliance with all Legal Requirements, Tenant shall be responsible, at its sole cost and expense, for implementing, constructing, and maintaining all necessary improvements and operational practices to ensure required ongoing mitigation and management of wildlife hazards to aviation, including without limitation, full compliance with all current and future Federal Aviation Administration regulations and advisories relating to wildlife hazards to aviation.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and date as stated above.

PORT:

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

By: _____ Name:

Its:

State of Washington

)

) ss.

County of

)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

DATED:

NOTARY PUBLIC FOR WASHINGTON

My Commission Expires:

Signature continued on the next page.

EXHIBIT A

Legal Description of the Property

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

PARCEL I:

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

PARCEL II:

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

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN ROADS OR HIGHWAYS.

PARCEL III:

TRACT C OF CITY OF DES MOINES SHORT PLAT NO. LUA2013-0036, RECORDED NOVEMBER 13, 2014, AS RECORDING NO. 20141113900004, RECORDS OF KING COUNTY, WASHINGTON AS AMENDED BY CITY OF DES MOINES SHORT PLAT NO. LUA2013-0036 ALTERATION RECORDED APRIL 26, 2016, AS RECORDING NO. 20160426900009, RECORDS OF KING COUNTY, WASHINGTON.

