

OPTION TO GROUND LEASE AGREEMENT

THIS OPTION TO GROUND LEASE AGREEMENT (this “Option Agreement”), dated as of July 13, 2020 (“**Effective Date**”) is made by and between PORT OF OLYMPIA, a Washington municipal corporation (the “**Port**”), and SSECC PDC, LLC, a Delaware limited liability company (the “**Developer**”).

RECITALS

A. The Port owns approximately One Hundred Ninety-Nine (199) acres of land located in the New Market Industrial Campus in the City of Tumwater, Thurston County, Washington, described on Exhibit A attached hereto (the “**Optioned Property**”).

B. The Port desires to have the Optioned Property developed into a high-quality business park with a mix of commercial, business, and light industrial uses (the “**Project**”).

C. The Developer’s principals have the experience, technical knowledge, and resources needed to develop the Project.

D. The Developer intends to complete the Project consistent with Phase Plans (as defined below) approved by the Port and the City of Tumwater (“**City**”) as part of Developer’s entitlement work, which plans will be consistent with Federal, State, and local laws, regulations and requirements and the City zoning rules.

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

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

G. This Option Agreement contemplates that before the start of construction of each Phase of the Project, Developer will exercise its option hereunder and the Optioned Property comprising that Phase will become part of the leased premises subject to the terms and conditions of the Ground Lease (as hereinafter defined) and will be removed from the Optioned Property and will no longer be subject to the Option Payments (as hereinafter defined).

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

AGREEMENT

1. Option to Ground Lease

1.1 In consideration of the payment from the Developer to the Port described herein, and subject to all of the provisions set forth in this Option Agreement, the Port hereby grants to Developer, or its permitted assignees, the exclusive and irrevocable right to enter into ground leases of Phases of the Optioned Property in accordance with the terms and conditions of this Option Agreement (the “**Option**”).

2. Option Term

2.1 This Option allows the Developer to enter into ground leases for one or more parcels of land within the Optioned Property no later than the Expiration Date (as defined herein). The Developer shall have the Option to lease the Optioned Property to complete the Project pursuant to a Phase Plan (as defined below) beginning on the Effective Date and continuing for ten (10) years from the Effective Date to July 13, 2030, at 12:00 p.m. (Pacific Time) (the “**Expiration Date**”). The period during which the Option may be exercised by Developer is referred to as the “**Option Term**.”

2.2 During the Option Term, the Port will not grant any third party a present or future interest in any of the Optioned Property except as otherwise agreed between the Port and the Developer.

3. Phase Plan; Phasing

3.1 The Project will be developed on the Optioned Property based on individual Phase Plans prepared by the Developer and submitted to the Port and the City for approval, each of which will comply with the City’s applicable development regulations. The parties anticipate that the Project will be developed in multiple Phases as dictated by leasing demand, market forces and tenant requirements in play at the time a Phase Plan (as defined below) is prepared.

3.2 The Port and the City are jointly developing the Bush Prairie Habitat Conservation Plan related to the Mazama pocket gopher, streaked horned lark, and Oregon spotted frog (the “**Habitat Plan**”). The coverage area for the Habitat Plan includes the Optioned Property. The Port will continue to be responsible for development of the Habitat Plan and will obtain all approvals through the final appeal periods (i.e., with no appeals having been filed or the appeals filed have been finally resolved) with respect to the Habitat Plan on or before the end of the twenty-fourth (24) month of the Option Term (“**Habitat Plan Completion Date**”). To the extent requested by the Port, the Developer will exert efforts, provide information, documentation, advice, and counsel, and execute such documents as are reasonably requested by the Port for the submittal and prosecution of the Habitat Plan.

3.3 Upon final approval, the Habitat Plan is expected to include a requirement for payment of fee-in-lieu mitigation to the City in order to develop the Optioned Property. The Base Rent and Option Fee schedule in Sections 6 and 7 of this Option Agreement reflect the fair market value for the Optioned Property in fully mitigated condition under the Habitat Plan. In consideration of that valuation, the Port will be responsible for paying fee-in-lieu mitigation

imposed by the City for development of the Optioned Property up to a maximum cap of \$100,000.00 per acre.

If the fee-in-lieu mitigation exceeds the maximum cap of \$100,000.00, the Developer may but will have no obligation to fund the excess over the cap. If the Developer does not agree to fund the excess over the cap, the Port may immediately terminate this Option Agreement upon written notice to the Developer with no further liability on the part of either party.

4. Exercise of Option; Designation of Phase Parcels

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

4.2 Developer shall prepare a “Phase Plan” for each Phase of the Project that will be submitted to the Port and the City of approval. The term “Phase Plan” shall mean a written development plan for each Phase Parcel which contains all of the elements and complies with all of the requirements of this Section 4.

4.2.1 The Phase Plan for each Phase Parcel must include at least ten (10) acres of the Optioned Property. The Port agrees to cooperate with the Developer on any submittals that are necessary to create a legal parcel for each Phase Parcel, including but not limited the plans and necessary submittals for a lot line adjustment or a parcel map to be approved by the appropriate governmental agency.

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

- (a) The legal description and survey map of the proposed Phase Parcel;
- (b) The building square footage, number of parking spaces, building height, and depictions that show building setbacks in relation to the proposed Phase Parcel, and site layout;
- (c) An anticipated construction schedule; and
- (d) All necessary documents to be filed with the City or any other governmental agency for the development of the Phase Parcel.

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

4.4 The Phase Plan for each Phase Parcel shall be submitted to Port for its approval or disapproval prior to submitting the same to the City or any agency thereof for approval. The Port shall review and comment on Developer’s submittal as soon as reasonably possible, but in no event

later than ten (10) business days following its receipt of the Phase Plan, if the Phase Plan is subject to approval of staff of the Port only, or no later than twenty (20) business days following receipt of the Phase Plan if the Phase Plan requires approval of the Port Commission, unless such review and comment are delayed for reasons caused by Developer. In the event that Port requires submission of any revised plans and specifications, Port shall either approve or disapprove the Phase Plan in writing by notice to Developer within five (5) business days following its receipt of Developer's revised submittal. The review and approval of any Phase Plan is subject to the Port's reasonable discretion and authority, and the Port's approval shall not be unreasonably withheld, conditioned, or delayed. Should the Port disapprove the Phase Plan, Port shall specify the reason(s) for its disapproval, to the extent that it is reasonable to do so, and suggest what changes or the manner in which its approval can be obtained. In addition, if Port disapproves the Phase Plan, the parties hereto shall attempt to resolve the matter using all diligence and good faith negotiations and, if necessary, shall resort to mediation of the dispute pursuant to Section 23 below. A disapproval of the Phase Plan by the Port automatically without further action by the parties reinstates this Option and the right of the Developer to re-submit a new or revised Phase Plan and to exercise its option on the same Phase and Phase Parcel.

4.5 Within thirty (30) days following notice from Port to Developer that the Phase Plan for the applicable Phase Parcel has been approved (whether or not such approval was the result of a mediation proceeding conducted pursuant to Section 23 below), the proposed ground lessee (as defined in Section 4.7 below) and Port shall complete a Closing (as defined in Section 8.1 below) for leasing such Phase Parcel in accordance with Section 8.1 below. If Developer or Ground Lessee fails to close the transaction as provided in Section 8.1, the exercise of the Option shall be deemed withdrawn by Developer, subject to Developer's right to re-exercise its Option to lease the withdrawn Phase Parcel at a later date so long as the Option remains in full force and effect.

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

4.6 The term "**Affiliate**" as used in this Agreement shall be defined as 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. As used herein, the term "**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.

4.7 Developer shall be entitled to create a separate legal entity to be identified as the lessee for each Ground Lease (which shall not constitute an assignment hereof) so long as such legal entity is an Affiliate of the Developer. Developer, if it is the entity entering into a Ground Lease, or Developer's Affiliate, shall be the "**Ground Lessee**" for purposes of this Agreement. Developer shall execute (or cause the Ground Lessee to execute) a separate Ground Lease for each

Phase Parcel with a Phase Plan. In addition, if a Phase Parcel is to be developed with more than one building, the Developer (or its designated Affiliate) and the Port may, at the Developer's discretion, enter into a separate Ground Lease for each "sub-parcel" (which shall mean, at a minimum, a separate legal parcel) of the Phase Parcel on which a separate building is constructed, so long as each sub-parcel complies with all of the requirements of Section 4 of this Agreement relating to an individual Phase Parcel, including compliance with all applicable laws and the Phase Plan.

5. Ground Lease for each Phase.

5.1 Upon each Ground Lease Closing (as defined below) of each Phase Parcel, the portion of Optioned Property comprising that Phase Parcel will become part of the leased premises subject to the ground lease associated with that Closing (the "**Leased Premises**"). "**Ground Lease**" shall mean a ground lease of the portion of Optioned Property for which a Phase Plan has been approved in a form to be mutually agreed upon by the Parties. If the Parties are unable to approve a mutually agreed upon form ground lease within 120 days of the full execution of this Option Agreement, either party may terminate this Option Agreement with written notice to the other party, and both parties will be absolved from any further liabilities hereunder from the date of termination.

After the form of ground lease has been agreed upon by the parties, it will be incorporated into this Agreement as though fully set forth herein. The failure of the parties to agree upon a ground lease will not be a default under this Agreement. Developer may not submit a Phase Plan until the parties have mutually agreed upon a form ground lease.

5.2 Upon execution of the Ground Lease for each Phase, the portion of Optioned Property comprising that Phase will no longer be considered Optioned Property and will not be subject to the terms of this Option Agreement or the Option Payments (as defined below).

6. Option Fee, Increased Option Fee

6.1 During the Option Term, as consideration for the Option and other rights granted herein (including the right of first refusal granted in Section 21), Developer shall pay the Port monthly payments equal to eight and a half percent (8.5%) of the then-current Base Rent (as defined below) for any portion of the Optioned Property that has not yet become part of the Leased Premises ("**Option Payment**"). The Option Payment shall be calculated by taking the total square feet of the Optioned Property minus the total square feet of the Leased Premises and multiplying the difference by 8.5% of the then-current Base Rent then dividing the product by twelve.

6.2 The initial monthly Option Payment due on the Option Payment Date (as defined below) is Twenty-Nine Thousand Four Hundred Seventy-Three and No/100 Dollars (\$29,473.00), which represents 8,668,440 square feet (equivalent to 199 acres) multiplied by \$0.48 per square foot per year triple net (the "**Base Rent**," as defined below) multiplied by 8.5%, with the product divided by twelve.

6.3 The initial monthly Option Payment will be due after the Port and the City complete the Habitat Plan and such submittals have either been approved by all required governmental agencies and all applicable appeal periods have expired and no appeals have been filed, or if

appeals have been filed then upon full resolution and adoption of the Habitat Plan (the “**Option Payment Date**”). The Port shall issue a written memorandum or notice to the Developer to establish the initial Option Payment Date.

6.4 The Option Payments shall be paid in advance of the first day of each month, beginning in the first month after the Option Payment Date and continuing every month of the Option Term until the Expiration Date; provided, however, no Option Payment will be due for any Leased Premises and the Option Payments will terminate upon the Parties entering into a Ground Lease or Ground Leases totaling a cumulative amount of at least forty (40) acres of the Optioned Property from the date of the Ground Lease Closing or Ground lease Closings that incorporates at least the a total of at least forty (40) acres of the Optioned Property. The Developer may but is not obligated to exercise the Option as to all of the Optioned Property.

6.5 The Option Payments will increase on the first day of the sixth year of the Option Term based on a Base Rent of \$0.528 per square foot per year for each square foot of Option Property that is still subject to this Option Agreement, and will be calculated in accordance with the formula in Sections 6.1–6.2.

7. **Base Rent**

7.1 Unless otherwise specified herein, all references to “Base Rent” herein shall mean the Base Rent and other compensation payable by the tenant under the terms of the Ground Lease.

7.2 Based on fair market valuation of like properties without habitat mitigation requirements, the initial Base Rent for the first Phase Ground Lease will be Forty-Eight Cents (\$0.48) per square foot per year (triple net) of **Usable Property** (as defined in the Ground Lease).

7.3 The initial Base Rent for any subsequent Ground Lease that Closes in the first five (5) years of the Option Term shall also be Forty-Eight Cents (\$0.48) per square foot per year (triple net) of **Usable Property** (as defined in the Ground Lease). The Base Rent for any Ground lease that Closes on or after the beginning of the first day of the sixth year of the Option Term will be \$0.528 per square foot per year (triple net) of **Usable Property** (as defined in the Ground Lease).

7.4 Each Ground Lease will provide that the Base Rent will increase by ten percent (10%) every five (5) years of the term of the Ground Lease, and will be readjusted starting in year 26 of each Ground Lease term and every five (5) years thereafter based on fair market rent, as defined in the Ground Lease. All rent payable during the Ground Lease term will be set forth in the Ground Lease.

8. **Good Faith Deposit.**

8.1 Developer will deliver to the Port a Promissory Note in the principal sum of One Hundred Thousand Dollars (\$100,000.00) as a good faith deposit (“**Good Faith Deposit**”) upon execution of this Agreement. The Promissory Note will be in the form attached hereto as **Exhibit B** and incorporated herein by reference. The Good Faith Deposit will be refundable until the later of (a) the Developer’s termination of the Option Agreement within the Due Diligence Period (as defined herein), (b) the approval of the Habitat Plan in accordance with the terms set forth in this Option Agreement, or (c) the Habitat Plan Completion Date. The Developer will

have the right to conduct a review of the Option Property during the first eight (8) months of the Option Term (the “**Due Diligence Period**”). During the Due Diligence Period the Developer will be obligated to complete at its own cost all due diligence studies that the Developer deems necessary to properly determine the feasibility for developing the Option Property, but at a minimum shall include: a boundary survey, Phase 1 Environmental Study, Minimum Winter Water Table Monitoring (from October to March) study, Geotech report, and any necessary research of applicable City zoning, land use requirements, and code requirements that maybe applicable to the development of the Option Property (the “**Due Diligence Reports**”).

8.2 Developer may terminate this Option Agreement, at its sole and absolute discretion, if it determines that the Project cannot be developed for economic reasons at any time within the Due Diligence Period by giving the Port written notice on or before the last day of the Due Diligence Period of its election to terminate this Option Agreement. The notice given to the Port terminating the Option Agreement will state the economic reason(s) upon which the Developer has determined that the Project cannot be developed.

8.3 If the Developer elects to terminate this Option Agreement, the Port will deliver the Good Faith Deposit to Developer and Developer shall deliver Due Diligence Reports to the Port. Upon the later to occur of (i) the end of the Due Diligence Period or (ii) the Habitat Plan is approved beyond any applicable appeal periods, and assuming the Developer has not elected to terminate this Option Agreement within the Due Diligence Period at which time the Good Faith Deposit will be non-refundable and the promissory note will be replaced with a cash deposit to be paid to the Port by Developer.

9. **Ground Lease; Closing**

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

(a) Ground Lease. Port shall execute, and Developer shall cause Ground Lessee to execute, a Ground Lease based on the approved form and complete the Ground Lease Closing as specified in this Section 9.1. At Developer’s request, a Ground Lease may be executed for each sub-parcel of a Phase Parcel meeting the requirements of Sections 4.1 and 4.7 above if Developer provides separate legal descriptions and surveys for each such Ground Lease and a separate Phase Plan is approved for each such sub-parcel of a Phase Parcel.

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

(c) Title Insurance. The Port will obtain directly from the title insurance company and deliver at each Ground Lease Closing a “dated down” title commitment prepared by First American Title Insurance Company, or such other title insurer agreed upon by the parties, for the issuance of a policy of title insurance (subject only to execution of the Ground Lease and recordation of a Memorandum of Ground Lease) insuring Developer’s (or Ground Lessee’s, as applicable) leasehold interest in the Phase Parcel, subject only to the exceptions to title (relating

only to the specific Phase Parcel) approved in accordance with the procedures set forth in Section 11 below. The costs for such policy of title insurance shall be paid by the Developer or Ground Lessee, as applicable, at or prior to the issuance of the policy.

(d) Other Documents. The Port shall execute, and the Developer shall cause the Ground Lessee to promptly execute, any and all further customary instructions or documents which may be reasonably required to facilitate a Ground Lease Closing within the time period herein provided. The Port's obligations under this Section 9.1 shall include, but not be limited to, the execution and delivery of an estoppel certificate in favor of Ground Lessee's lender or prospective lender, so long as the terms of such estoppel certificate are commercially reasonable.

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

9.3 In connection with each Ground Lease Closing, the Developer shall provide the Port with the name of the Ground Lessee's general contractor. The general contractor will, at a minimum, be a bonded and insured contractor licensed in the state of Washington.

10. Termination or Expiration of Option Agreement

10.1 Either party may terminate this Option Agreement for any material breach. Any default of Developer or the Developer's failure to comply with Sections 3, 4, 5, 6, 7, and 8 shall be deemed the only material breach that will allow the Port to terminate this Option Agreement, except as otherwise set forth in this Option Agreement. The Port's only remedy for Developer's material breach of this Option Agreement is the ability to terminate the Option Agreement. At Developer's sole election, Developer may rescind the exercise of an option under the Option Agreement as to a particular Phase of the Property only up to a Ground Lease Closing, if it determines in its sole and absolute discretion that the development of the terminated Phase is economically unfeasible. Following a Ground Lease Closing, the Leased Premises will be governed by the respective Ground Leases.

Material breach that will allow the Developer to terminate this Option Agreement as to a Phase Parcel is the Port's failure to approve a Phase Plan, as detailed in Section 13.3.

10.2 Unless this Option Agreement has been earlier terminated pursuant to Section 10.1, this Option Agreement shall terminate upon the earlier of: (i) execution of the last Ground Lease for any portion of the Optioned Property that is not yet part of the Leased Premises, it being the express intent of the parties hereto that the Ground Lease terms as substantially set forth in the form of the Ground Lease agreement approved by the Parties hereto shall govern their ongoing relationship, liabilities and obligations, or (ii) the Expiration Date of this Option Agreement.

11. Approval of Title

11.1 Within ten (10) business days of the full execution of this Option Agreement the Port will cause a current title commitment (herein the "**Title Report**") for the Optioned Property together with copies of all instruments listed as exceptions therein and an ALTA/ACSM Land Title Survey showing the location of all easements or similar encumbrances listed as exceptions to be provided to the Developer. Developer shall notify the Port in writing of any title exceptions identified in the Title Report which Developer disapproves no later than thirty (30) days before the end of the Due Diligence Period (the "**Developers Title Objection Notice**"). Any exception not disapproved in writing by such date shall be deemed approved by Developer and shall constitute a "**Permitted Exception**" hereunder. Developer and Port agree that (i) all non-delinquent property taxes and assessments, (ii) all matters created by or on behalf of Developer, including, without limitation, any documents or instruments to be recorded as part of any financing for the acquisition of the Option Property by Developer, and (iii) all matters agreed to by the parties hereto, shall constitute "**Permitted Exceptions**". The Port shall have ten (10) days after receipt of Developer's Title Objection Notice of disapproved title exceptions to provide Developer with a written notice of which disapproved exceptions the Port is willing or able to cause to be removed or insured against prior to closing. If the Port fails to provide such written notice to Developer it will be presumed that the Port is unwilling to cause any of the disapproved title exceptions to be removed or insured against, and Developer then shall elect, by giving written notice to the Port and Title Company on or before the expiration of the Due Diligence Period, (x) to terminate this Option Agreement, or (y) to waive its disapproval of such exceptions, in which case such exceptions shall then be deemed to be Permitted Exceptions. Developer's failure to give such notice shall be deemed an election to waive the disapproval of any such exception. If Developer

elects to terminate this Option Agreement in accordance with clause (x) above, the Good Faith Deposit shall be immediately refunded to Developer, and neither party shall have any further rights or obligations under this Option Agreement. Prior to the applicable Closing, Port shall be obligated to remove, at Port's sole cost and expense, exceptions to title which adversely affect title (as reasonably determined by Developer) that were created by the acts or omissions of Port after the date of the determination of the Permitted Exceptions. As used in this Option Agreement the term "**Approved Title Exception**" shall mean (i) the Permitted Exceptions, (ii) exceptions to title created or caused by Developer or agreed to in writing by Developer, and (iii) exceptions in the nature of easements granted to governmental agencies or quasi-governmental agencies for the purpose of providing utilities or drainage to the Optioned Property or abutting properties and the locations of such utilities have been approved in advance in writing by Developer and do not unreasonably interfere with use or development of the Optioned Property. Developer shall not be entitled to encumber with a monetary lien any portion of the Optioned Property, provided however, that Developer may create such encumbrances on its leasehold interest in any portion of the Optioned Property that is subject to a Ground Lease.

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

12. Right to Enter Property; Indemnification; Insurance

12.1 Inspection and Testing. Developer and its officers, employees, consultants, contractors or agents (the "**Developer Parties**") shall have adequate access at reasonable hours to the Optioned Property to physically inspect the Optioned Property, survey the Optioned Property, obtain land use, economic feasibility and engineering information, develop pre-construction architectural information, take photographs, conduct tests and studies that Developer deems appropriate, including invasive testing such as borings and excavating test holes and test pits, and otherwise examine the Optioned Property in preparation for development of the Project (the "**Inspection Rights**"). The Port makes no representations and warranties as to the status of the Optioned Property with respect to any Developer Parties' entry thereupon. The Developer Parties agree that for the purposes of their exercise of the Inspection Rights, they take and enter onto the Optioned Property on an "AS IS, WHERE IS" basis and at their sole risk and expense.

12.1.1. The Port will provide any surveys, environmental reports, soils reports, development agreements, and copies of any drafts of the Habitat Plan that is in the Port's possession with ten (10) business days of the full execution of this Agreement. Nothing herein obligates the Port to disclose any documents that would not otherwise be available to the general public, through a Public Records Request.

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

12.1.3. Notwithstanding the foregoing, Developer parties shall not conduct any invasive, intrusive, and/or destructive testing on or about the Optioned Property without Port's

prior written approval of a detailed scope of work/work plan, which approval shall not be unreasonably withheld, conditioned or delayed. Before conducting any invasive or intrusive testing such as borings or test holes, Developer parties shall give Port at least forty-eight (48) hours' prior written notice, and shall exercise commercially reasonable efforts to coordinate the date and time of such testing that is approved by the Port to enable the Port's representatives and/or consultants to be present to take duplicate samples, and take other such actions that it believes reasonable during such testing, and record the methods used by the Developer parties; provided that Port's representatives and/or consultants shall not materially interfere with the work of Developer parties. Developer shall be solely responsible for the cost of all work conducted by or on behalf of Developer pursuant to these Inspection Rights or otherwise, except for the cost of any of Port's representatives or consultants. Developer shall promptly share, upon receipt and at its cost, upon request, all data and any additional information obtained from its Inspection Rights.

12.2 Restoration of Optioned Property. Developer shall, upon completion of activities permitted in Section 12.1, restore the Optioned Property to its reasonably similar condition prior to such activities. Developer shall effect such restoration either: (a) within ten (10) business days after the completion of the work requiring the restoration, or (b) immediately, if failure to effect such restoration could reasonably be expected to create a dangerous or unsafe condition for any person while on the Optioned Property.

12.3 Indemnification. Developer shall defend, indemnify and hold harmless Port, its Commissioners, employees, and the agents and representatives of Port, from any and all claims, including but not limited to mechanic's liens, claims, liabilities, costs, expenses, including attorneys' fees, and damages arising out of or in any way related to entry upon or use (pursuant to this Section 12) of the Optioned Property by Developer parties, or by any other person or entity on behalf of, or at the request of, Developer. Except with respect to any Pre-Lease Environmental Condition (as defined below), Developer shall indemnify, hold harmless and defend Port from claims or damages arising in connection with Developer's exercise of its Inspection Rights or any other activities of Developer parties or their invitees on or about the Optioned Property. Upon termination of this Option Agreement for any reason whatsoever, Developer's indemnity obligations to Port under this Section 12 shall survive and shall continue in full force and effect.

12.4 Insurance. Prior to the commencement of any work or other activities on the Optioned Property, Developer shall, at Developer's initial cost and expense, obtain and thereafter maintain or cause to be maintained during the period of such work or activities the insurance specified below. Commercially acceptable certificates of insurance which evidence proof of the following insurance coverages shall be submitted by Developer to Port prior to commencement of any work, and will identify the Port as an additional insured thereunder:

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

(b) General Liability Insurance. Commercial general liability insurance with respect to or arising out of any use of or work to be performed by, for or at the request of Developer on the Optioned Property that protects Developer and Port, as an additional insured using ISO form 2026 or equivalent, against claims for bodily injury, personal injury and property damage based

upon, involving or arising out of Developer's use and/or occupancy of the Optioned Property and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than **Two Million Dollars (\$2,000,000)** per occurrence. The limits of said insurance required by this Option Agreement or as carried by Developer shall not, however, limit the liability of Developer nor relieve Developer of any obligation hereunder. The insurance to be carried by Developer shall be: (i) primary to and not contributory with any similar insurance carried by Port, whose insurance shall be considered excess insurance only, and (ii) shall not be cancelable or subject to modification except after thirty (30) days prior written notice to Port. Developer shall cause to be delivered to Port certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insured clauses and/or endorsements as required by this Option Agreement. Developer shall not do or permit anything to be done that may invalidate the insurance policies referred to in this paragraph.

(c) Automobile Liability Insurance. Commercial automobile liability insurance written on ISO Form CA 00 01 07 97 (or equivalent), that protects Developer and Port against claims for bodily injury and property damage based upon, involving or arising out of motor vehicle operations on or about the Optioned Property and all areas appurtenant thereto. Developer shall provide a Waiver of Subrogation on this policy in favor of Port. Such insurance shall cover any "Auto" (i.e. owned, hired and non-owned) and shall be on an occurrence basis providing single limit coverage in an amount not less than **One Million Dollars (\$1,000,000)** per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations.

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

12.4.2 Insurance required hereunder shall be in companies duly licensed to transact business in the State of Washington, and maintaining during the policy term a General Policyholders Rating of 'A-' or better and a financial rating of 'IX' or better, as set forth in the most current issue of "Best's Insurance Guide." No such policy shall be cancelable or subject to non-renewal or modification except after thirty (30) days prior written notice to Port. Developer shall at least ten (10) days prior to the expiration of such policies, furnish Port with evidence of renewals or "insurance binders" evidencing renewal thereof, or Port may order such insurance and charge the cost thereof to Developer, which amount shall be payable by Developer to Port upon demand.

13. Entitlements

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

all the Governmental Approvals needed for construction and operation of the Project at its sole cost and expense.

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

13.3 Failure to obtain all required Governmental Approvals of a Phase Plan upon terms and conditions acceptable to Developer in its sole and absolute discretion is grounds for Developer to terminate upon written notice the Option as to the Phase Parcel subject to the Phase Plan only. If Port fails to approve a Phase Plan or the terms and conditions of the Government Approvals or refuses to sign any documents to allow the submittal of the Phase parcel Plan for approval to the City or any applicable governmental agency without a reasonable excuse, such will constitute a material breach of this Option Agreement and Developer will have the right to terminate the Option Agreement as to such Phase Parcel. If Developer terminates this Option Agreement as to a Phase Parcel, the Option Agreement shall remain in full force and effect as to the balance of the Optioned Property, including the Phase Parcel to the extent that the Developer would like to re-submit a Phase Pan with respect thereto.

13.4 Subject to the provisions of Section 13.2 above, Developer will keep Port reasonably informed as to the status of all applications for Governmental Approvals, and will deliver to Port a copy of each application or request for approval as filed with the appropriate governmental agencies, along with all approvals and denials of any such applications by the government agencies.

14. Subdivision of Optioned Property

14.1 Developer agrees to plat the various portions of the Optioned Property to be included in the Ground Leases.

14.2 The plat(s) shall be consistent with each Phase Parcel that is the subject of the proposed plat shall be designed to permit development of the planned commercial facilities consistent with requirements of the applicable Phase Plan. Port agrees to execute the proposed plat so long as the proposed plat is consistent with the Phase Plan; provided however, that Port may, in its reasonable discretion, withhold its execution of the proposed plat if it articulates a

reasonable excuse for withholding such execution or otherwise provides for the dedication of land or the granting of utility or other easements not provided for in the Phase Plan or otherwise approved by the Port, subject to Section 4.4 above, in which case this Option Agreement shall be terminated. In the event that the City requires a development agreement be entered into by the Owner of the property subject to the Phase Plan, Developer will indemnify and defend Port from any liability under the development agreement required by the City.

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

15. Property Condition and Document Delivery Acknowledgment

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

16. Environmental Assessment

16.1 Defined Terms. All capitalized and defined terms in this Section shall have the meanings provided in the form of the Ground Lease to be agreed upon by the Parties hereto.

16.2 Pre-Lease Environmental Evaluation. Developer will begin the **Pre-Lease Environmental Evaluation** for each Phase of the Project at least forty-five (45) days prior to the Commencement Date for the Ground Lease. The intent of the parties is that, while Developer will conduct the majority of the Pre-Lease Environmental Evaluation prior to the Commencement Date of the Ground Lease, Developer will not be obligated to complete the Pre-Lease Environmental Evaluation (and finalize the “**Pre-Lease Environmental Evaluation Report**”) until after the Commencement Date thereof. The final Pre-Lease Environmental Evaluation will incorporate the field observations of contaminated soil discovered during construction of the Project as documented in the “**Environmental Construction Field Data Report**”. The Developer shall submit the Environmental Construction Field Data Report to the Port for review approval no later than forty-five (45) days after the “**Earthwork Construction End Date**”. The Pre-Lease Environmental Evaluation Report will be submitted by Developer for review and approval by Port at least fifteen (15) days before Substantial Completion of the Project, which approval shall not be unreasonably withheld. The Pre-Lease Environmental Evaluation Report will be relied upon by the parties to document the “**Pre-Lease Environmental Condition**” of the Phase Parcel for the

purposes of determining the extent of Pre-existing Hazardous Substances, compliance with environmental laws, liability, indemnity, and obligations with respect to post-occupancy remediation.

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

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

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

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

- (vii) Determination of whether suspected contaminated materials will be managed by direct-haul or on-site stockpiling
- (viii) Well decommissioning;
- (ix) Response to contractor spills or other releases, verification of cleanup, and appropriate documentation;
- (x) In-field dispute resolution;
- (xi) Accounting and documenting of Incremental Environmental Costs; and
- (xii) Required construction support documentation.

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

17. Assignment

17.1 Developer may not assign its rights or duties hereunder in whole or in part, except with the prior written consent of Port, unless the transfer is a "**Permitted Transfer**" as defined herein. As used herein a "Permitted Transfer" shall mean an assignment or transfer of this Option Agreement to: (i) an Affiliate of Developer, or (ii) a successor corporation, limited liability company or other entity related to Developer by merger, consolidation or non-bankruptcy reorganization or (iii) any investor as part of the organization of Developer or any entity owned or controlled by Panattoni Development Company, Inc., the Panattoni Living Trust dated April 8, 1998, Carl D. Panattoni, Adon Panattoni, Travis Hale, or Bart Brynestad (any of the foregoing).

18. Covenants, Conditions & Restrictions

18.1 Developer shall be entitled, but not obligated, to prepare covenants, conditions and restrictions ("**CCRs**") for maintenance of the infrastructure, regulation of the development and use of the Optioned Property, consistent with existing covenants and restrictions imposed by the FAA, and to meet the requirements of governmental authorities having jurisdiction over development activities at the Optioned Property including but not limited to access roads, utility easements, storm water detention ponds, and other necessary infrastructure to allow development of the Project; provided, however, that such CCRs, (a) shall be consistent with all Phase Plans agreed to between the parties hereto, (b) shall expire upon the date of the latest termination or expiration of the Option or any of the Ground Leases entered into pursuant to this Agreement unless otherwise agreed by Port, whichever is later, (c) shall terminate, at Port's option, as to any lands within the Optioned Property that are not subject to Ground Leases upon termination of the Option, and (d) shall not obligate any lands owned by the Port which are not subject to

Ground Leases for the payment of any expenses or the performance of any maintenance duties. Notwithstanding the foregoing, such CCRs shall remain in full force and effect to the extent reasonably necessary to ensure access to and maintenance of facilities common to both the land subject to a Ground Lease and the land no longer subject to a Ground Lease. Upon Port's approval of the CCRs, Developer may encumber its interest in the Optioned Property with the CCRs.

18.2 Notwithstanding the foregoing, any and all CCRs will be terminated on or before any Third Party Ground Lease Closing Date (as defined in Section 33), provided the termination of the CCRs over the property to be Ground Leased to the Third Party will not interfere with access or utilities needed for any of the property Ground Leased to Developer.

19. Developer's Representations and Warranties

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

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

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

(c) Developer is not to its actual knowledge a party to any pending action, suit proceeding or investigation at law or equity.

20. Port's Representations and Warranties

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

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

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

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

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

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

21. Developer's Right of First Refusal.

21.1 The Port owns additional property adjacent to or in the general area of the Optioned Property (the "**Adjacent Property**"). If any additional property any portion of the Adjacent Property owned by the Port becomes available for development during the Option Term, and this Option Agreement is still in force and effect, the Port will provide a written notice to Developer of the availability of the additional property Adjacent Property and Developer will have fifteen (15) business days to accept or reject the offer to add the additional property Adjacent Property to the Option Property. If Developer rejects the offer or fails to timely respond within the 15-day period, that the Port will have the right to offer the additional property Adjacent Property to the public for development without any obligation under this Option Agreement. If the Developer accepts the offer within the 15-day period then the additional property Adjacent Property will be added to the Optioned Property and Developer will begin paying Option Payments based on the current Option Payments rate on the additional Adjacent Property on the first day of the next month after the Developer has accepted the offer.

22. Notices

22.1 Any notice or communication (herein collectively "**Notices**") to be given under the terms of this Option Agreement shall be in writing and shall be personally delivered or sent by

facsimile, electronic mail, delivery by professional courier, or by registered or certified mail, return receipt requested. Notices shall be addressed as follows:

Port: Port of Olympia
606 Columbia Street NW, Suite 300
Olympia, WA 98501
Attn.: Real Estate Director

With a copy to: Phillips Burgess, PLLC
724 Columbia St. NW #320
Olympia, Washington 98501
Attn: Heather Burgess

Developer: SSECC PDC, LLC.
1821 Dock Street, Suite 100
Tacoma, WA 98402
Attention: Bart Brynestad or Travis Hale

With a copy to: Albert & Coss, LLP
550 Howe Ave., Suite 100
Sacramento, California 95825
Attention: Robert D. Collins

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

23. Approvals; Mediation

23.1 It is understood and agreed that all provisions of this Agreement which require approval by, or the consent of, Port will receive timely response and such approvals or consents will not be unreasonably withheld, conditioned or delayed. If Port fails to respond in writing to Developer's request for approval or consent (sent in accordance with the provisions of Section 22 above) within ten (10) business days (or such other longer period as may be set forth in this Option Agreement with respect to a particular request), the approval or consent shall be deemed given without any further action on the part of either party.

23.2 Any dispute between Port and Developer arising from Port's refusal to grant any approval or consent (or unreasonably conditioning or delaying the same), except as to matters that are within Port's sole discretion, shall be resolved using all diligence and good faith negotiations

in accordance with the following procedure. Any disapproval of an item or matter by Port (other than matters that are subject to Port's sole discretion) shall describe with specificity the disapproved items, actions, elements or other provisions and shall state the reasons for such disapproval or requesting clarification thereof ("**Disputed Items**"). Developer will respond within fourteen (14) days with either a modification or verification of the Disputed Items or clarification of such Disputed Items, as the case may be. If the parties hereto cannot agree upon the elements requiring such approval or consent or upon the interpretation of the intent thereof, a neutral third-party mediator will be selected by Port to mediate the Disputed Items. If, however, Developer does not accept the mediator selected by Port, Developer will be allowed to select a second neutral third-party mediator, provided Developer makes such selection within fourteen (14) days following Port's notice of its selected mediator. The two selected mediators will then select a third neutral third-party mediator who will act as mediator for the Disputed Items. All such mediator(s) shall be members in good standing of the Washington Bar and shall have at least ten (10) years' experience in commercial real estate and development law. The mediation shall be conducted in Thurston County, Washington, and the mediator shall apply the law of the State of Washington. The parties hereto agree that each party will bear its own costs and expenses incurred for its selected mediator, attorney's fees, preparation and presentation costs for the arbitration process.

24. Right to Cure

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

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

(b) The breaching party fails to fulfill any of the other non-monetary terms, covenants, or conditions set forth in this Option Agreement if such failure continues for a period of more than thirty (30) days after written notice thereof from the other party, except if the fulfillment of the obligation requires activity over a period of time, and the breaching party has commenced in good faith to perform whatever may be required for fulfillment within the specified thirty (30)-day period and continues such performance without interruption and with diligence, then the breaching party shall no longer be in breach.

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

25. Commissions

25.1 The parties hereto hereby acknowledge that no real estate commission shall be payable in connection with execution of this Option Agreement and/or the exercise of the Option or any Ground Lease, except the commission payable to Kidder Mathews for its representation of the Port which will be paid by the Port per a separate agreement.

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

25.3 Port hereby indemnifies and agrees to hold harmless Developer of and from any claim by any person or entity for a sales or brokerage commission or finder's fee by reason of any listing or other agreement with Port with respect to the transactions which are the subject of this Option Agreement, except for the commission payable to Kidder Mathew as set forth above.

26. Condemnation of Property

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

26.2 Section 26.1 shall not apply to any property that the Developer has already leased from the Port under a Ground Lease. Such property shall be considered to be removed from Optioned Property, and the Ground Lease shall govern rights to award of just compensation on substantial taking and partial taking.

26.3 In the event of a taking of less than materially all of the Optioned Property ("**Partial Taking**"), this Option Agreement shall nevertheless continue. In such event, the Option Payments to be paid by Developer shall thereafter be reduced by calculating the Option Payments on the acreage remaining in the Optioned Property after the Partial Taking. Developer shall have no right to any award of just compensation for a partial taking of Optioned Property by a condemning authority.

27. Governing Law

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

28. Disputes

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

instituted and prosecuted only in the United States District Court for the Western District of Washington.

29. Attorneys' Fees

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

30. Entire Agreement

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

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

31. Counterparts

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

32. Miscellaneous

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

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

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

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

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

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

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

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

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

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

33. Third Party Offers.

33.1 If Developer has not executed a Ground Lease of one or more Phase Parcels within sixty (60) months following full execution of this Option Agreement, notwithstanding any other term in this Option Agreement to the contrary, the Port may market to and accept offers from any third party (each, a "**Third Party Offer**") for the ground lease or sale (subject to requirements of Washington law) of any portion of the Optioned Property that is not part of the Leased Premises.

33.2 If the Developer satisfies the conditions in Section 33.1, and in addition to the provisions of Section 33.1, the Developer shall demonstrate meaningful progress of development for the duration Term of the Option Agreement, as demonstrated by executing Ground Lease Closing of one or more Phase Parcels every thirty-six (36) months following the initial sixty (60) months. Should Developer fail to execute Ground Lease Closing of one or more Phase Parcels every 36 months following the initial 60 months, notwithstanding any other term of this Option Agreement to the Contrary, the Port may market to and accept offers from any Third Party Offer to ground lease or to buy (subject to requirements of Washington law) of any portion of the Optioned Property that is not part of the Leased Premises.

33.3 If the Port is authorized to accept a Third Party Offer in accordance with the conditions in Sections 33.1 and 33.2, and the Port receives a bona fide Third Party Offer on terms that include Base Rent that is equivalent to or better than the Base Rent then in effect under this Option Agreement, the Port will present the Third Party Offer to the Developer. Provided that Developer is not in default under this Option Agreement beyond any applicable notice or cure periods, Developer will have forty-five (45) days (the “**Developer’s Response Period**”) after the Port provides the Developer written notice of the Third Party Offer to reach mutually agreeable terms with the Port for Developer’s development and construction of the Optioned Property subject to the Third Party Offer. Such terms must be consistent with this Option Agreement, including any approved Phase Plans.

33.4 If the Port and Developer are unable to come to terms during the Developer’s Response Period, the Port may, in its sole discretion, elect to accept the Third Party Offer. If the Port does so, the portion of the Optioned Property subject to the Third Party Offer will be removed from the Optioned Property upon the closing date of the ground lease between the Port and the Third Party or sooner at the discretion of the Port provided that the Developer’s Response Period has expired (the “**Third Party Ground Lease Closing Date**”).

33.5 Following the Third Party Ground Lease Closing Date, the Port will reimburse the Developer any Option Payments for that portion of the Optioned Property that was removed therefrom as a result of the Third Party Offer. The Port may reimburse said amounts through payments or rent credits over a period of not more than 5 (five) years from the Third Party Ground Lease Closing Date.

33.6 If the Port accepts any Third Party Offer, Developer will cooperate in good faith with the Port and any Third Party to ensure appropriate access to the Optioned Property subject to the Third Party Offer, including the right to access for inspection and testing and for construction and use of the property; provided, however, that the Parties will come to mutually agreeable terms to allow for such activities such that Developer does not incur any costs related to the Third Party’s development thereof (excepting administrative and review costs by Developer for any matters related to the Third Party Offer).


33.7 **TIME IS OF THE ESSENCE WITH REGARD TO EACH AND EVERY OBLIGATION OF DEVELOPER CONTAINED IN THIS SECTION.**

[Signatures are on the next page]

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

PORT:

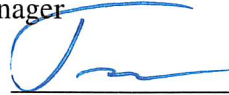
PORT OF OLYMPIA,
a Washington municipal corporation

By: 
Name: SAM GIBBEN
Title: EXECUTIVE DIRECTOR


DEVELOPER:

SSECC PDC, LLC
a Delaware limited liability company

By: PDC Seattle LLC,
a Delaware limited liability company,
its Manager

By: 
Name: TRAVIS HALE
Local Partner

APPROVED AS TO FORM:

By:  _____
Heather L. Burgess
Phillips Burgess PLLC
Attorneys for Port of Olympia

LIST OF EXHIBITS

- Exhibit A - Property Description
- Exhibit B - Form of Promissory Note
- Exhibit C - Removed
- Exhibit D - Removed
- Exhibit E - Memorandum of Option Agreement

EXHIBIT A

Property Description

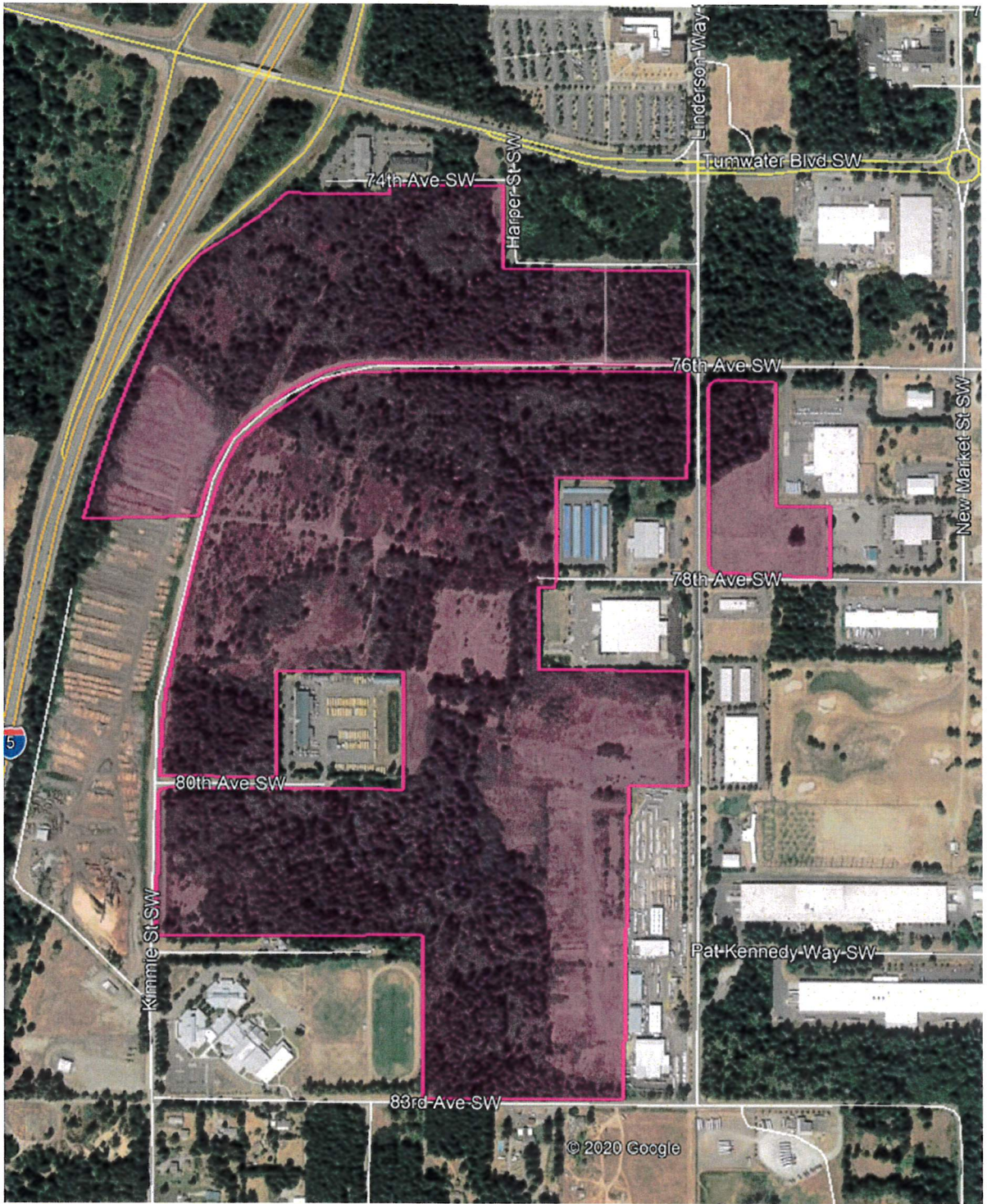
An area generally defined within the following lat/long coordinates consisting of 199.7 acres (to be updated by survey):

-122.9181449870989,46.97445403928667,0 -122.918126184653,46.9744155911654,0 -
122.9181094329955,46.97439019028343,0 -122.9180824150724,46.97436862912397,0 -
122.9180508586405,46.97434937482596,0 -122.9180006879918,46.97433131969058,0 -
122.9179090453607,46.97432390529789,0 -122.9157475060865,46.97425267719502,0 -
122.9157517465519,46.97519755413043,0 -122.9168255326571,46.97519926423038,0 -
122.9168182951563,46.97684639315099,0 -122.9176186977606,46.97687240270389,0 -
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ORIGINAL

EXHIBIT B

Form of Promissory Note

PROMISSORY NOTE

Property located Tumwater, WA

\$100,000.00

**July 13, 2020
Tacoma, Washington**

FOR VALUE RECEIVED, the undersigned (“**Developer**”) agrees to pay to the order of the **PORT OF OLYMPIA, a Washington municipal corporation** (“**Port**”) the sum of **One Hundred Thousand and NO/100 Dollars (\$100,000.00)** as follows:

- _____ days (3 days if not filled in) following mutual acceptance of the Option Agreement (as defined below).
- x Upon satisfaction or waiver of the Due Diligence Period as stated in the Option Agreement.
- _____ Other _____.

This Note is evidence of the obligation to pay the Good Faith Deposit as defined in the Option to Ground Lease Agreement (the “**Option Agreement**”) dated June __, 2020, between Developer and Port for the above real property located in **Tumwater, Washington**.

Developer’s failure to pay the Good Faith Deposit when due under the terms of the Option Agreement shall constitute Developer’s disapproval of the contingencies stated in the Option Agreement and will terminate the Option Agreement pursuant to Sections 8.2 and 8.3 thereof. Upon such failure to pay, both parties will be absolved of the obligations under the Option Agreement.

Events of Default. The occurrence of one or more of the following events (herein called “Event of Default”) shall constitute a default under this Note:

- (a) The undersigned fails to pay any installment of principal and interest or any late payment when due under this Note.
- (b) Any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or other insolvency law or common law or in equity is instituted by or against the undersigned and is not dismissed within thirty (30) days; or
- (c) Any obligations of the undersigned are assigned without the prior written consent of the Port;

(d) Any change in beneficial ownership of Developer without the prior written consent of the Port.

Remedies/Acceleration. If an Event of Default shall occur, then at the option of the Port and without prior notice, the entire indebtedness, including any accrued interest, hereby represented shall become immediately due and payable and continue to accrue at the default interest rate detailed below. The Port shall have and may exercise any and all rights and remedies available at law or in equity with respect to any such Event of Default. The remedies of the Port are cumulative and concurrent, and may be pursued singularly, successively, or together, at the sole discretion of the Port, and may be exercised as often as occasion therefore shall arise.

Waiver of Presentment. The undersigned waives presentment, demand, protest and notice of demand, protest and nonpayment and consents to any and all renewals and extensions of the time of payment hereof, and further agrees that at any time the terms of payment hereof may be modified or security released without affecting the liability of the undersigned to this Note.

Law. This Note shall be governed by, construed and enforced in accordance with the internal laws of the state of Washington, without giving effect to principles and provisions thereof relating to or choice of laws irrespective of the fact that any one of the parties is now or may become resident of a different state. Venue for any action under this Agreement shall lie in Thurston County, Washington.

Business Purposes. The undersigned acknowledge that the amounts due under this Note are primarily for agricultural, commercial, investment, or business purposes, and are not for personal, family, or household purposes of any kind.

Attorneys' Fees / Default Interest. If this Note shall be placed in the hands of an attorney for collection, or if suit shall be brought to collect any of the balance due on this Note, Developer promises to pay a reasonable attorney's fee as fixed by the Court, and all court and collection costs. This Note shall bear interest at the rate of twelve percent (12%) per annum after default.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

DEVELOPER:

SSECC PDC, LLC
a Delaware limited liability company

By: PDC Seattle LLC,
a Delaware limited liability company,
its Manager

By: 
Name: **Travis Hale**, Local Partner

EXHIBIT C

Removed

EXHIBIT D

Removed

EXHIBIT E

Memorandum of Option Agreement

RECORDED AT THE REQUEST OF

WHEN RECORDED RETURN TO:

Albert & Coss, LLC
550 Howe Ave., Suite 100
Sacramento, CA 95825

MEMORANDUM OF OPTION TO GROUND LEASE

This Memorandum of Option to Ground Lease ("Memorandum"), dated as of June __, 2020, is entered into by and between **SSECC PDC, LLC**, a Delaware limited liability company, or its assigns ("**Optionee**") and **PORT OF OLYMPIA** a Washington municipal corporation ("**Optionor**").

- 1 Optionor owns fee title in that certain real property located in the City of Tumwater, Thurston County, State of Washington, as is more particularly described in **Exhibit A** attached hereto and incorporated herein ("**Land**").
- 2 On even date herewith, Optionor entered into that certain Option to Ground Lease Agreement with Optionee (the "**Option**") wherein Optionor granted to Optionee the option to ground lease Optionor's interest in the Land in phases, subject to the Optionor's ownership interest therein.
- 3 The option term commences on July 13, 2020, and expires on July 13, 2030.
- 4 This Memorandum is solely for recording purposes and shall not be construed to supplement, amend, or otherwise modify the terms and conditions contained in the Option.
- 5 This Memorandum and the Option shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Option regarding Assignment.
- 6 This Memorandum and the Option are governed by the laws of the State of Washington.

[Signatures are on the next page]

SIGNATURE PAGE
to Memorandum of Option to Ground Lease

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

[ALL SIGNATURES MUST BE NOTARIZED]

OPTIONOR:

PORT OF OLYMPIA,
a Washington municipal corporation

By: 

Name: SAM GIRENCY

Title: EXECUTIVE DIRECTOR

OPTIONEE:

SSECC PDC, LLC,
a Delaware limited liability company

By: PDC Seattle LLC,
a Delaware limited liability company,
its Manager

By: 

Name: TRAVIS HALE

Local Partner

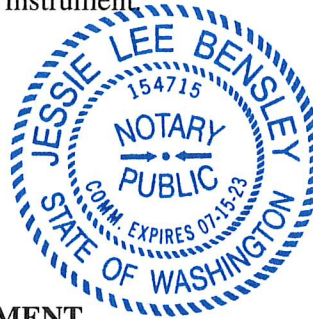
ACKNOWLEDGMENT

STATE OF Washington)
)
COUNTY OF Thurston)

On 7/28/2020 before me, Jessie Bensley Notary Public, personally appeared Sam Gibboney, 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.

Jessie Bensley (SEAL)
Notary Public Signature



ACKNOWLEDGMENT

STATE OF Washington)
)
COUNTY OF King)

On 7/22/2020 before me, Abby L Viasner, Notary Public, personally appeared Travis Hale, 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.

Abby L Viasner (SEAL)
Notary Public Signature

