



VIRGINIA PORT AUTHORITY  
600 WORLD TRADE CENTER, NORFOLK, VA 23510  
(757) 683-8000

## MEMORANDUM OF BOARD ACTION

**To:** Virginia Port Authority Board of Commissioners  
**From:** John Milliken, Chairman of the Board of Commissioners  
Louisa Strayhorn, Chair of the Finance and Audit Committee  
**Date:** March 8, 2021  
**Subject:** Action taken pursuant to Bylaws Section 3.4.1: The Executive Director's authority to execute a Sublease Agreement with Portsmouth Business Park, LLC.

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### Legal Authority:

The Virginia Port Authority (the "Authority"), a body corporate and a political subdivision of the Commonwealth of Virginia, was established pursuant to Chapter 10, Title 62.1 of the Code of Virginia of 1950, as amended (the "Act"). Pursuant to the Act, the Authority is empowered to rent, lease, buy, own, acquire, construct, reconstruct and dispose of harbors, seaports, port facilities and such property, whether real or personal, as it may find necessary or convenient.

Section 3.4.1 of the Authority's Bylaws states that upon obtaining prior written approval by the Chairman of the Board and the Chair of the Finance and Audit Committee, the Executive Director may enter into a contract, agreement or arrangement on the Authority's behalf in excess of \$2,500,000.

### Action(s) Taken:

- The Authority leases a portion of certain real property ("Property") in the City of Portsmouth, in the Commonwealth of Virginia, from Virginia International Gateway, Inc. in a lease agreement dated September 21, 2016 (the "VIG Master Lease").
- The Authority expressed an interest in entering into a Sublease Agreement, as Sublessor, with Portsmouth Business Park II, LLC, as Sublessee, for approximately four (4) acres of land located adjacent to the Property, for the purpose building a trans-load facility.
- Pursuant to the Authority's Real Estate Procedures Manual, the Authority diligently negotiated a sublease agreement in a manner that ensured fairness and competitiveness. See *attached* Sublease Agreement.
- Pursuant to the Amended and Restated Deed of Facilities Lease Agreement between Virginia International Gateway, Inc. ("VIG") and the Authority dated September 21, 2016, VIG consented to the sublease on February 1, 2022.
- The value of the Deed of Lease is in excess of \$2,500,000.

- Pursuant to the Authority's Bylaws, Section 3.4.1, on October 22, 2021 the Executive Director/CEO requested the written approval of the Chairman of the Board and Chair of Finance and Audit Committee to authorize the Executive Director to approve the final form and content of and execute and deliver the Sublease Agreement with Portsmouth Business Park II, LLC for approximately four (4) acres of land located adjacent to the Property. The written consent of the Chairman of the Board and the Chair of the Finance and Audit Committee was granted. See *attached* communications granting authorization.

**Conclusion:**

- Pursuant to Section 3.4.1 of the Authority's Bylaws, on February 1, 2022, upon obtaining the written approval of the Chairman of the Board and the Chair of the Finance and Audit Committee, the Sublease Agreement with Portsmouth Business Park II, LLC was authorized. Accordingly, the Executive Director executed the Deed of Lease on February 2, 2022.

**Attachments:**

- Electronic Correspondence dated February 1, 2022 between Chairman Milliken, Chair Strayhorn, and Stephen A. Edwards
- Master Landlord's and Landlord's Consent to Sublease Agreement between Virginia Port Authority and Portsmouth Business Park II, LLC

## Ryanne Shields

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**Subject:** RE: Approval of Sub-Lease in Portsmouth

**From:** John G Milliken <[jmillik3@gmu.edu](mailto:jmillik3@gmu.edu)>

**Sent:** Tuesday, February 1, 2022 11:34 AM

**To:** Stephen Edwards <[sedwards@PortofVirginia.com](mailto:sedwards@PortofVirginia.com)>; Louisa M. Strayhorn, Commissioner <[louisa@lsaconsultingusa.com](mailto:louisa@lsaconsultingusa.com)>

**Cc:** Sarah McCoy <[smccoy@PortofVirginia.com](mailto:smccoy@PortofVirginia.com)>

**Subject:** RE: Approval of Sub-Lease in Portsmouth

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This is great news.

I approve the sublease as attached to your original e-mail.

John G. Milliken

Chair, Board of Commissioners

703 300 1166

[Jmillik3@gmu.edu](mailto:jmillik3@gmu.edu)

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**From:** Stephen Edwards <[sedwards@PortofVirginia.com](mailto:sedwards@PortofVirginia.com)>

**Sent:** Tuesday, February 1, 2022 10:57 AM

**To:** John G Milliken <[jmillik3@gmu.edu](mailto:jmillik3@gmu.edu)>; Louisa M. Strayhorn, Commissioner <[louisa@lsaconsultingusa.com](mailto:louisa@lsaconsultingusa.com)>

**Cc:** Sarah McCoy <[smccoy@PortofVirginia.com](mailto:smccoy@PortofVirginia.com)>

**Subject:** Approval of Sub-Lease in Portsmouth

Chairs Milliken and Strayhorn,

You will recall from the September Growth and Operations Committee in closed session that we discussed the need for increased trans-load and cross dock industrial capacity to support the Ports growth.

Attached for your review and approval pursuant Section 3.4.1 of the Amended and Restated Bylaws of the VPA, I am writing to request your approval as the Chairman of the Board and the Chair of the Finance and Audit Committee to authorize the CEO and Executive Director to execute a Sublease Agreement with Portsmouth Business Park, LLC. The sublease is for 4.12 acres of the Virginia International Gateway terminal at the very edge of the terminal adjacent to Wild Duck Lane. As a result of this sublease Portsmouth Business Park, LLC will build a trans-load facility (circa 70,000 sq ft high velocity cross dock) at the site of the former power station. The 4.1 acres will be used for trailer parking required to support the trans-load operation which otherwise would have insufficient capacity to operate. VIG is able to release the space as it is nonproductive and outside of the operational secure perimeter. In addition to this trans-load facility a second much larger trans-load facility from the same investor is planned in Hampton Roads at about 900,000 sq ft. A significant investment in the Commonwealth with the underlying user for both facilities being a major Californian 3<sup>rd</sup> Party Logistics company new to our market.

Please do not hesitate to contact me with any questions. If you could respond by e-mail of your concurrence with this request, it would be greatly appreciated.

Regards,

Stephen

**Stephen A. Edwards**

CEO and Executive Director

**Virginia Port Authority**

600 World Trade Center

Norfolk, VA 23510

Office: [757-683-2101](tel:757-683-2101)

Cell: [757-705-1491](tel:757-705-1491)



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## Ryanne Shields

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**Subject:** RE: Approval of Sub-Lease in Portsmouth - Confidential Attorney Client Privileged Communication

**From:** Louisa Strayhorn <[louisa@lsaconsultingusa.com](mailto:louisa@lsaconsultingusa.com)>

**Sent:** Tuesday, February 1, 2022 5:07 PM

**To:** Sarah McCoy <[smccoy@PortofVirginia.com](mailto:smccoy@PortofVirginia.com)>; Stephen Edwards <[sedwards@PortofVirginia.com](mailto:sedwards@PortofVirginia.com)>; John Milliken, Chairman <[jmillik3@gmu.edu](mailto:jmillik3@gmu.edu)>

**Subject:** Re: Approval of Sub-Lease in Portsmouth - Confidential Attorney Client Privileged Communication

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I authorize and approve of the sublease. Thank you

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**From:** Sarah McCoy <[smccoy@PortofVirginia.com](mailto:smccoy@PortofVirginia.com)>

**Sent:** Tuesday, February 1, 2022 4:59 PM

**To:** Louisa Strayhorn <[louisa@lsaconsultingusa.com](mailto:louisa@lsaconsultingusa.com)>; Stephen Edwards <[sedwards@PortofVirginia.com](mailto:sedwards@PortofVirginia.com)>; John Milliken, Chairman <[jmillik3@gmu.edu](mailto:jmillik3@gmu.edu)>

**Subject:** RE: Approval of Sub-Lease in Portsmouth - Confidential Attorney Client Privileged Communication

Good question, Commissioner Strayhorn.

The term of the sublease runs concurrent with the VPA's lease of Virginia International Gateway Terminal. The subtenant intends to build a trans-load facility. Given this significant capital investment, the subtenant seeks a sublease for as long as the VPA can lawfully provide same – the remainder of the VPA's term of lease with VIG, Inc.

Additionally, this particular parcel is not currently being used by the port with no foreseeable operating use. Accordingly, the port believes that the next best use is an entity that will generate cargo, jobs, and tax revenue for the region. Therefore, the port is comfortable with giving this length of term in furtherance of port-related economic development.

Please let me know if you have any additional questions.

Best,

Sarah

**Sarah J. McCoy**

General Counsel

Virginia Port Authority

600 World Trade Center

Norfolk, VA 23510

Office: 757-683-2119

Cell: 757-773-1910

[www.portofvirginia.com](http://www.portofvirginia.com)



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**From:** Louisa Strayhorn <[louisa@lsaconsultingusa.com](mailto:louisa@lsaconsultingusa.com)>  
**Sent:** Tuesday, February 1, 2022 3:14 PM  
**To:** Stephen Edwards <[sedwards@PortofVirginia.com](mailto:sedwards@PortofVirginia.com)>; John Milliken, Chairman <[jmillik3@gmu.edu](mailto:jmillik3@gmu.edu)>  
**Cc:** Sarah McCoy <[smccoy@PortofVirginia.com](mailto:smccoy@PortofVirginia.com)>  
**Subject:** Re: Approval of Sub-Lease in Portsmouth

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I approve and authorize. (question why 43 years?)

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**From:** Stephen Edwards <[sedwards@PortofVirginia.com](mailto:sedwards@PortofVirginia.com)>  
**Sent:** Tuesday, February 1, 2022 10:56 AM  
**To:** John Milliken, Chairman <[jmillik3@gmu.edu](mailto:jmillik3@gmu.edu)>; Louisa Strayhorn <[louisa@lsaconsultingusa.com](mailto:louisa@lsaconsultingusa.com)>  
**Cc:** Sarah McCoy <[smccoy@PortofVirginia.com](mailto:smccoy@PortofVirginia.com)>  
**Subject:** Approval of Sub-Lease in Portsmouth

Chairs Milliken and Strayhorn,

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Attached for your review and approval pursuant Section 3.4.1 of the Amended and Restated Bylaws of the VPA, I am writing to request your approval as the Chairman of the Board and the Chair of the Finance and Audit Committee to authorize the CEO and Executive Director to execute a Sublease Agreement with Portsmouth Business Park, LLC. The sublease is for 4.12 acres of the Virginia International Gateway terminal at the very edge of the terminal adjacent to Wild Duck Lane. As a result of this sublease Portsmouth Business Park, LLC will build a trans-load facility (circa 70,000 sq ft high velocity cross dock) at the site of the former power station. The 4.1 acres will be used for trailer parking required to support the trans-load operation which otherwise would have insufficient capacity to operate. VIG is able to release the space as it is nonproductive and outside of the operational secure perimeter. In addition to this trans-load facility a second much larger trans-load facility from the same investor is planned in Hampton Roads at about 900,000 sq ft. A significant investment in the Commonwealth with the underlying user for both facilities being a major Californian 3<sup>rd</sup> Party Logistics company new to our market.

Please do not hesitate to contact me with any questions. If you could respond by e-mail of your concurrence with this request, it would be greatly appreciated.

Regards,

Stephen

**Stephen A. Edwards**  
CEO and Executive Director

**Virginia Port Authority**

600 World Trade Center  
Norfolk, VA 23510  
Office: [757-683-2101](tel:757-683-2101)  
Cell: [757-705-1491](tel:757-705-1491)



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**SUBLEASE AGREEMENT**

By And Between

**THE VIRGINIA PORT AUTHORITY**, a political subdivision of the Commonwealth of  
Virginia, as Sublessor,

and

**PORTSMOUTH BUSINESS PARK, LLC**, a Delaware limited liability company, as Sublessee

## SUBLEASE AGREEMENT

This **SUBLEASE AGREEMENT** (this “**Agreement**”) is dated as of the \_\_\_ day of January, 2022, and is by and between **VIRGINIA PORT AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**VPA**” or “**Sublessor**”), and **PORTSMOUTH BUSINESS PARK, LLC**, a Delaware limited liability company, as sublessee (“**Portsmouth Business Park**” or “**Sublessee**”).

### RECITALS:

A. VPA leases a portion of certain real property in the City of Portsmouth, in the Commonwealth of Virginia, more particularly described on Exhibit A, from Virginia International Gateway, Inc. in a lease agreement dated September 21, 2016 (the “**VIG Master Lease**”).

B. Sublessee desires to lease from VPA, for a term of forty-three (43) years, the “Premises” (as defined herein) pursuant to the provisions of this Agreement.

E. VPA is willing to accommodate Sublessee’s request to occupy the “Premises” in accordance with the terms of this Agreement.

**NOW, THEREFORE, WITNESSETH:** That for and in consideration of the mutual promises made in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by VPA and by Sublessee, the parties agree as follows:

### 1. **DEFINITIONS**

In addition to terms defined hereinabove, which are hereby incorporated into this Agreement and made a part hereof by this reference, the following terms used in this Agreement shall (unless otherwise expressly provided herein or unless the context otherwise requires) have the following respective meanings. All references to Sections shall mean sections in this Agreement.

#### 1.1 **“Portsmouth Business Park”**

shall mean Portsmouth Business Park, LLC, as Sublessee.

#### 1.2 **“Commencement Date”**

shall mean the date that the VPA secures the site for Sublessee’s use.

#### 1.3 **“Container Movement**

shall mean the unit movement of international import containers through Sublessee’s (or Related Persons’ (defined below)) crossdock facility or other Sublessee affiliates owned properties in the Hampton Roads market.

#### 1.4 **“Effective Date”**

shall mean January \_\_\_\_, 2022.

#### 1.5 **“Expiration Date”**

shall mean January 31, 2065, unless the Initial Term is otherwise terminated or extended in accordance with this Agreement.

**1.6 “Hazardous Materials”**

shall mean (i) toxic or Hazardous Substances, (including petroleum), and (ii) any other substances which may be the subject of liability pursuant to any environmental law of the United States or the Commonwealth of Virginia, but the term shall not include reasonable amounts of materials and substances typically used for cleaning and maintenance of properties similar to the Premises and uses similar to the Permitted Use including the storage, operation, and maintenance of equipment on the Premises, provided that such materials and substances, in their actual storage and usage at or on the Premises, do not violate any of the herein described statutes, laws or regulations.

**1.7 “Hazardous Substance(s)”**

shall have the meaning of "Hazardous Substance" set forth in 42 U.S.C. Section 9601(14), as amended, and of "regulated substance" at 42 U.S.C. Section 6991(7), as amended).

**1.8 “HRCP II”**

shall mean HRCP II, LLC, a wholly-owned subsidiary of VIT (defined below).

**1.9 “Initial Term”**

shall mean the initial forty-three-year term of this Agreement.

**1.10 “Permitted Use”**

shall have the meaning given to the term in Section 6.

**1.11 “Premises”**

shall mean the approximately 4.1 acre parcel of real estate more particularly described in Exhibit A, including access and use along the roadway paralleling Wild Duck Lane. Wild Duck Lane shall at all times remain open for ingress and egress purposes.

**1.12 “Prohibited Environmentally Dangerous Acts”**

shall mean (i) the manufacture, process, distribution, use, treatment, storage, disposal, transport, or handling of any Hazardous Substances in violation of the herein described statutes, laws or regulations, (ii) the emission, discharge, release of Hazardous Substances to the air, soil, surface water or groundwater, (iii) the storage, treatment or disposal of any Hazardous Substances or any other substances which may be the subject of liability pursuant to any environmental law of the United States or the Commonwealth of Virginia, but the term shall not include the storage and/or use of reasonable amounts of materials and substances typically used for cleaning and maintenance of properties similar to the Premises and uses similar to the Permitted Use including the storage, operation, and maintenance of equipment on the Premises, provided that such materials and substances, in their actual storage and usage at or on the Premises, do not violate any of the herein described statutes, laws or regulations.

**1.13 “Related Persons”**

shall mean any employee, agent, licensee, contractor, or subtenant of Sublessee and its affiliates, and any individuals who are employees of any of the above parties, whether natural persons, corporations, or entities otherwise organized.

**1.14 “Renewal Notice”**

shall have the meaning given to the term in Section 3.2.1.

**1.15 “Renewal Option”**

shall have the meaning given to the term in Section 3.2.

**1.16 “Rent”**

shall mean monthly rent payable under this Agreement as described in Section 4.

**1.17 “Lease Year”**

shall mean a year during the Term, from each February to January of the following year. The first Lease Year shall end on January 31, 2023.

**1.18 “Term”**

shall mean the Initial Term or the subsequent Renewal Term.

**1.19 “VIG”**

shall mean Virginia International Gateway, Inc., the Lessor in the VIG Master Lease and owner of the Premises.

**1.20 “VIG Insureds”**

Shall mean Virginia International Gateway, Inc., including its parents, affiliates, and subsidiaries, as their interests may appear.

**1.21 “VIT”**

shall mean Virginia International Terminals, LLC, a Virginia limited liability company and wholly owned subsidiary of the Virginia Port Authority.

**1.22 “VPA”**

shall mean the VIRGINIA PORT AUTHORITY, a political subdivision of the Commonwealth of Virginia, as Sublessor.

**2. SUBLEASE OF PREMISES**

**2.1 Sublease**

For and in consideration of the terms, conditions, covenants, promises and agreements herein made, the VPA hereby leases/subleases the Premises to Sublessee, subject, however, to all provisions within this Agreement, the VIG Master Lease, and any easements, restrictions and covenants of record. Sublessee agrees to abide by this terms of this Agreement and all provisions of the VIG Master Lease applicable to sublessees. VPA agrees that nothing in this Agreement limits, abrogates or otherwise changes VPA’s obligations under the VIG Master Lease and VIG shall be a third-party beneficiary of this clause.

**3. TERM AND RENEWAL**

**3.1 Initial Term**

The “**Initial Term**” means that period which begins at 12:01 a.m. on the Commencement Date, and terminates at 11:59 p.m. on the Expiration Date.

**3.2 Renewal Option**

In the event that (i) Sublessor exercises its right to purchase the Property as set forth in the VIG Master Lease or (ii) negotiates an extension of the VIG Master Lease, Sublessee may, in its sole discretion, elect to renew this Agreement for two (2) options for ten (10) years each (the “**Renewal Option(s)**”), subject to the provisions of this Agreement, and on the following terms and conditions:

**3.2.1 Renewal Notice**

In order to exercise a Renewal Option, Sublessee must send to VPA a written notice (the “**Renewal Notice**”) of Sublessee’s desire to exercise the Renewal Option in accordance with Section 20 of this Agreement no later than one hundred fifty (150) days prior to the expiration of the then current Term. Notwithstanding anything contained in this Agreement to the contrary, in the event that Sublessee fails to timely provide the Renewal Notice, VPA shall provide a written notice to Sublessee advising Sublessee of such failure and Sublessee shall have thirty (30) days following receipt of such written notice from VPA to send the Renewal Notice.

**3.2.2 Conditions to Renewal Option(s)**

The Renewal Option(s) shall commence upon the expiration of the Initial Term or prior Renewal Option(s). The Renewal Option(s) are expressly conditioned upon Sublessee not being in default under any term or condition of this Agreement after the expiration of any applicable cure period granted by this Agreement, at the time the Renewal Option(s) are exercised. When fully exercised with all of the foregoing conditions fulfilled, the exercised Renewal Option(s) shall be referred to as the “**Renewal Term(s)**.”

**3.2.3 Rent During Renewal Option(s)**

The Rent during any Renewal Option shall be the fair market rent for the Portsmouth, Virginia market area to be determined by Sublessor and Sublessee.

**4. RENT.**

Commencing upon Sublessee’s receipt of a certificate of occupancy on the building it is constructing on the adjacent parcel (“**Rent Commencement Date**”), Sublessee shall pay to VPA Rent during the Initial Term in accordance with the following schedule:

| <u>Component</u> |                               | <u>Monthly Rent</u> |
|------------------|-------------------------------|---------------------|
| Premises:        | 4.1 acres @ \$4,413 / ac / mo | \$18,093.30         |

The monthly Rent shall increase on the first anniversary of the Commencement Date and every twelve (12) months thereafter by two and one-half percent (2.5%) per annum.

Rent shall be paid in monthly installments beginning on the Rent Commencement Date and continuing on the first day of every month during the Term and any renewals of this Agreement. Each monthly installment of Rent shall be paid in advance, without notice or demand or offset, on or before the first (1st) day of each month, prorated for any partial months at the beginning or end of such period. All Rent shall be made payable to the Virginia Port Authority, Attention: Accounts Receivable, 1431 Terminal Boulevard, Norfolk, Virginia 23505.

#### **4.1 Utilities**

Sublessee shall pay all utility costs, if any, generated as a result of Sublessee's use of the Premises. The cost of such utilities shall be based on \$.07 per kWh per bulb used by Sublessee. If there is any dispute as to determination and billing by VPA for utilities under this Section 4.1, then the dispute shall be resolved by an engineer mutually acceptable to, and equally paid by, VPA and Sublessee.

#### **4.2 Rental Credit**

During any Lease Year following the twenty-fourth (24<sup>th</sup>) month after the Commencement Date, if Sublessee meets or exceeds a benchmark of (i) Ten Thousand (10,000) Container Movements at the Premises or (iii) Thirty Thousand (30,000) Container Movements at the Premises and adjacent Sublessee affiliate properties ("**Benchmarks**"), then VPA shall credit Sublessee a sum equal to the rent accrued in the prior twelve-month period. In the event that Sublessee does not meet the Benchmarks, Sublessee is not entitled to the rental credit. Sublessee shall provide VPA with the Benchmarks within ten (10) days following each quarter. Notwithstanding anything contained herein to the contrary, in no event shall the Benchmarks increase due to the annual increase in the Rent.

### **5. APPLICATION OF RENT PAYMENTS; FAILURE TO PAY RENT**

Rent payments will be applied to current Rent. If a monthly installment of Rent is not paid within ten (10) days of the due date, the VPA may send Sublessee notice of failure to pay Rent. If Sublessee shall not cure such failure to pay Rent within thirty (30) days after receipt of such notice, Sublessee shall be in default and the provisions of Section 18 will apply.

### **6. USE OF PREMISES**

#### **6.1 Permitted Use**

Consistent with the requirements of Section 7: Use Restrictions in the VIG Master Lease quoted below, Sublessee shall use the Premises for the use, operation, repair, and parking of equipment and motor vehicles and for no other purpose in violation of Section 7 of the VIG Master Lease.

*VPA shall use the Premises for the following purposes only, and for no other purpose whatsoever: (1) the loading and unloading of cargo housed in Containers, of empty Containers, and also of Non-Container Cargo, and ships' stores, supplies and gear on or from vessels and other craft berthed in the Berthing Area; (2) the receipt, handling, delivery, and storage incidental to the transportation of cargo (whether or not in cargo Containers) transported or to be transported by vessels berthed in the Berthing Area, and of ships' stores, supplies and gear for such vessels; (3) the use, operation, repair, and parking of equipment and motor vehicles; (4) the storage of cargo-handling equipment and necessary amounts of dunnage, used in the operations of Lessee and/or the Port Operator; (5) the maintenance and utilization of office space; (6) all other activities reasonably connected with or related to the operation of the Facility.*

#### **6.2 Improvements to Premises**

Except with prior written consent from both VPA and VIG, which consent shall not be unreasonably withheld, conditioned or delayed, or as contemplated by the Transaction Documents, Sublessee shall not erect any permanent structures or make any permanent improvements on the Premises or materially alter, modify or make permanent additions, or permanent improvements of, any structure now existing or built at any time during the Term, or install any permanent fixtures thereon. In granting its consent to such permanent structures, improvements, alterations, modifications or replacements of Leased Assets (collectively, "Sublessee Improvements"), the Parties agree that VIG shall have a reasonable basis for denial of the consent to any contemplated Sublessee Improvement if any of the following items would be untrue: (i) such Sublessee Improvement would not decrease the current or residual value or the remaining useful life of the Leased Assets, the Commencement Date Transferred Assets or the Phase II Expansion Land Transferred Assets as measured immediately prior to the making of such Sublessee Improvement (as determined by VIG in its sole discretion), (ii) such Sublessee Improvement would not materially alter the primary intended use of the Premises as a marine container terminal, (iii) such Sublessee Improvement would not increase the property taxes payable by VIG by more than a de minimis amount relative to the property taxes that would have been payable if such Sublessee Improvement is not made (as determined by VIG in its reasonable discretion), unless VIG will be reimbursed by Sublessee for any such increase in a mutually satisfactory manner, or (iv) VIG determines, in its reasonable discretion, that such Sublessee Improvement would not cause adverse federal or state income tax consequences for VIG other than de minimis tax consequences. Notwithstanding the foregoing, Sublessee shall be responsible for the payment of property taxes generated by any improvement to the Premises.

### **6.3 Care of the Premises; Restrictions on Use**

Sublessee shall maintain the Premises in good order and repair and Sublessee shall repair any damage it causes to the Premises. Sublessee shall not allow the Premises to be used for any illegal purpose and shall not do or allow any unreasonable act which may disturb occupants of adjoining property or cause damage to adjoining property. Damages to the Premises or disturbance under this subsection due to the grossly negligent or willful acts or omissions of Sublessee shall subject Sublessee to liability in favor of VPA.

### **6.4 Cessation of Use**

In the event Sublessee shall cease operations located on Sublessee's adjacent crossdock facility for a period in excess of two hundred seventy (270) consecutive days, for reasons other than casualty, condemnation, construction, remodeling, expansion, assignment, leasing, tenant rollover or force majeure, VPA shall have the right, upon ninety (90) days' written notice to Sublessee, to terminate this Agreement.

## **7. QUIET ENJOYMENT**

So long as Sublessee is not in default of this Agreement beyond any applicable notice and cure periods, the VPA covenants that Sublessee shall have quiet and peaceful use and enjoyment of the Premises throughout the Term.

## **8. PERSONAL PROPERTY**

All personal property placed in or kept on the Premises shall be at the sole risk of the owner of such personal property, whether Sublessee or another third party, and the VPA, VIT, and HRCP II shall have no liability for loss, damage or deterioration of same for any reason. The VPA property tax exemption does not extend to Sublessee through the Lease of the Premises.

## **9. ACCEPTANCE OF CONDITION OF PREMISES**

Sublessee covenants that it has visually examined and inspected the Premises, prior to or at the execution of this Agreement; knows the readily apparent condition of said Premises and accepts the Premises "as is" without any representations or warranties by the VPA as to the readily apparent condition and usefulness of the Premises for Sublessee's intended purposes.

## **10. ASSIGNMENT AND SUBLETTING**

Sublessee may not assign or transfer this Agreement without the prior written consent from both VPA and VIG, at both Parties' sole discretion; provided, however, that Sublessee may assign or transfer this Agreement to an affiliated entity under the control of, or under common control with, Sublessee.

## **11. ACCESS BY VPA**

VPA shall have the right, during regular business hours, upon no less than seventy-two (72) hour prior notice to Sublessee, and at mutually agreeable times, to conduct field examinations of the Premises in the presence of an authorized representative of Sublessee to determine and verify: (i) Sublessee's use of the Premises is in accordance with the terms of this Agreement; and (ii) any other reasonable review or assessment of the Premises or matters pertaining to the Agreement as reasonably determined by VPA.

## **12. INSURANCE**

VPA shall maintain in full force and effect throughout the entire term of this Agreement the insurance required of VPA under the VIG Master Lease.

Sublessee must procure and maintain during the term of this Agreement, or as otherwise stated herein, the following minimum insurance policies and liability limits. Sublessee must purchase all insurance policies required herein from underwriters authorized to conduct business and write insurance in the Commonwealth of Virginia by the Virginia State Corporation Commission. All policies required herein must be primary and noncontributory to any other insurance.

### **12.1 Required Insurance:**

Coverage shall be at least as broad as:

- Commercial General Liability Insurance policy which provides coverage at least as broad as ISO form CG 00 01 or its equivalent. Policy limits are subject to review, but shall in no event be less than, the following:
  - **\$1,000,000** Each Occurrence
  - **\$2,000,000** General Aggregate
  - **\$2,000,000** Products/Completed Operations Aggregate
  - **\$1,000,000** Personal Injury
- Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.
- Umbrella or Excess Liability Insurance. During the term of this contract, Sublessee shall procure, maintain and pay for, umbrella or excess liability insurance written on an occurrence basis and covering claims in excess of the underlying insurance policies described above, with a **\$3,000,000** limit per occurrence. Such insurance shall contain a provision that it will not be more restrictive than the primary insurance and shall drop down as primary insurance in the event that the underlying insurance policy aggregate is exhausted.

If Sublessee maintains broader coverage and/or higher limits than the minimums shown above, VPA requires and shall be entitled to the broader coverage and/or the higher limits maintained by Sublessee.

If VPA reasonably requests Sublessee to procure insurance for risks other than those described herein, or other special hazards be included in the property insurance policies, Sublessee will obtain the requested insurance if applicable to Sublessee's operations and available at commercially reasonable cost. If Sublessee believes that such insurance is not applicable to Sublessee's operations or is not available at commercially reasonable cost, Sublessee will explain the same to VPA and ask VPA to waive the requirement, which request for waiver will not be unreasonably withheld by VPA.

Each liability insurance policy referred to in this Section, except workers' compensation, must be taken out in the name of Sublessee as the principal insured party, and Virginia Port Authority, Virginia International Terminals, LLC, HRCF II, LLC, and the VIG Insureds must be added to each policy as additional insureds (with the additional named insured requirement for general liability policy being on an ISO form CG20-10, 11/85 edition, or equivalent).

Each policy shall require the insurer or Sublessee to endeavor to give VPA at least thirty (30) days prior written notice, at the addresses for notices to VPA stated herein, in the event of any cancellation of, modification to, or difficulty (if any) in extending, renewing or reinstating any insurance required herein.

### **13. INDEMNITY**

Sublessee will reimburse 1) VPA and its officers, directors, shareholders, subsidiaries, affiliates, agents, employees, and representatives and 2) VIG, its officers, directors, shareholders, subsidiaries, affiliates, agents, employees, and representatives may appear (collectively, "**VPA Parties**") for and will indemnify, defend, and hold harmless VPA Parties from and against any and all loss or damage sustained by, liability or charges imposed on, and claims or causes of action asserted against, VPA Parties arising in whole or in part out of or by reason of (i) any accident or occurrence in or on the Premises or any use of or business conducted in or on the Premises; or (ii) any damage to or loss of any property of Sublessee, Related Persons or any person occupying the Premises or any of their respective officers, directors, shareholders, affiliates, agents, employees, or contractors (collectively, "**Sublessee Parties**"), whether this damage to or loss of property occurs on the Premises or on any other part of Virginia International Gateway Terminal; or (iii) any gross negligence or willful misconduct of Sublessee Parties, whether occurring on the Premises or on any other part of Virginia International Gateway Terminal. Notwithstanding the foregoing, Sublessee shall not be required to reimburse, indemnify, defend or hold harmless any of the VPA Parties for any loss, damage, liability, charges, claims, or causes of action arising in whole or in part out of or by reason of the negligence or fault of any of the VPA Parties. Sublessee's reimbursement and indemnity obligations will include, but not be limited to, any and all related penalties, assessments, fines, damages, interest, settlement amounts, judgments, losses, reasonable attorneys' fees, and other expenses, and will survive the expiration or other termination of this Agreement.

### **14. CONDEMNATION**

**14.1** If during the Term all of the Premises is taken or condemned by any competent public or quasi-public authority (any such taking or condemnation being hereinafter referred to as a "**Total Taking**"), this Agreement and all rights granted by this Agreement to Sublessee to use or occupy the Facility shall terminate as of the date of such Total Taking; provided, however, Sublessee shall be entitled to assert a claim for compensation for such taking as may be available at law or in equity under Commonwealth or federal law.

**14.2** **In the event that all or any portion of the Premises is taken by condemnation proceeding or right of eminent domain and results in a taking of less than all of the Premises (any such taking or condemnation being hereinafter referred to as a "Partial Taking"), such that Sublessee, in its reasonable business judgment, cannot materially**

**operate its business in the manner contemplated, Sublessee may elect, at its sole option and discretion, to terminate this Agreement by providing notice to VPA within one hundred and eighty (180) days of such Partial Taking of Sublessee's intent to terminate this Agreement, and such termination shall be effective upon the date specified in such notice, unless VPA is able to remedy such situation to Sublessee's reasonable satisfaction within the one hundred and eighty (180) day period in which event this Agreement shall continue as beforehand (provided Rent shall be equitably abated during that period of time that VPA is acting to correct the problems arising from such Partial Taking). In such event, Sublessee shall be entitled to assert a claim for compensation as may be available at law or in equity under Commonwealth or federal law.**

**14.3 In the event this Agreement continues after a Partial Taking of the Premises, any adjustment of Rent shall be subject to the mutual agreement of the Parties. Unless otherwise mutually agreed upon by the Parties, all other terms and conditions of this Agreement shall remain in full force and effect.**

**15. MECHANICS' AND MATERIALMEN'S LIENS**

Sublessee shall not create, place, or suffer the creation or filing of any mechanics' or materialmen's lien against the Premises by reason of labor or materials provided for or at the request or order of Sublessee, or of Sublessee's agents or contractors. Sublessee shall discharge or cause to be bonded off any such lien within thirty (30) days after the date the same was filed.

**16. MAINTENANCE, REPAIRS, UTILITIES AND OTHER COSTS**

All costs relating to the possession, operation and maintenance of the Premises shall be the responsibility of Sublessee as follows:

**16.1 Sublessee's Responsibility**

Sublessee shall provide appropriate receptacles for the collection, storage and removal of garbage, rubbish and other waste and arrange for the removal of same at Sublessee's expense on a regular basis. Upon termination of the Agreement, Sublessee shall remove all trash and refuse, and shall leave the Premises free of debris, garbage, or discarded equipment or inventory.

**16.2 VPA's Responsibility**

Notwithstanding the provisions of Section 16.1, VPA shall be responsible for, and shall promptly, diligently, and regularly perform, all maintenance and repairs, and the cost thereof, for common areas, sewers, underground utilities, and drainage located on, used by, or related to the Premises. This responsibility does not extend to maintenance or repair of the foregoing in the event the negligence or willful misconduct of Sublessee or Related Persons necessitated the maintenance or repair, ordinary wear and tear excepted.

**17. ENVIRONMENTAL PROVISIONS**

17.1 Sublessee shall not cause or contribute to, or permit any Related Person to cause or contribute to any Prohibited Environmentally Dangerous Acts.

17.2 Sublessee shall promptly, and at its sole cost and expense, take any and all steps necessary to investigate, document and remedy promptly any condition involving environmental

contamination of the Premises and/or any spills/leaks of Hazardous Substances on the Premises resulting from, or incident to, Sublessee's use of the Premises or caused by any Related Person in violation of environmental law. Sublessee shall promptly fix any leaking vehicles parked on the Premises. Notwithstanding anything in this Agreement to the contrary, this obligation shall survive the termination of this Agreement. In the event that remediation is performed following the termination of this Agreement, the indemnity and insurance obligations in Section 12 and Section 13 shall continue until remediation is completed. Sublessee shall promptly reimburse the VPA for all reasonable and actual costs the VPA incurs to investigate environmental contamination caused by Sublessee or any Related Person.

17.3 Sublessee and all Related Persons shall not, without the prior written approval of the VPA, engage in or allow any activity on the Premises involving: (i) the handling of any Hazardous Substances in violation of environmental law, (ii) the storage, treatment or disposal of any Hazardous Substances in violation of environmental law, or (iii) any other substance that may be the subject of liability pursuant to any environmental law of the United States or the Commonwealth of Virginia.

17.4 Sublessee shall not discharge, or permit the discharge by any party under its control of, any toxic or Hazardous Substance, to the air, soil, surface water, or ground water in violation of environmental law.

17.5 Sublessee agrees that upon termination of this Agreement, Sublessee shall deliver the Premises to the VPA in the same or better environmental condition as existed on the Effective Date. In the event that Sublessee fails to deliver the Premises to the VPA at the termination of this Agreement in the same or better environmental condition as existed on the Effective Date, then in addition to any other remedy that the VPA may have, the VPA shall be entitled to recover from Sublessee upon demand therefor the estimated cost to put the Premises in the same environmental condition as existed on the Effective Date. Notwithstanding the foregoing, in no event shall Sublessee be responsible for any environmental condition that has (i) migrated to or otherwise affected the Premises as a result of an environmental condition on another property, or (ii) been caused by VPA, VIT, HRCP II or any other third party.

17.6 Notification to regulatory authorities of environmental conditions on the Premises existing as of the Effective Date, and associated mitigation and disposal (if any are required by such regulatory authorities) shall not be the responsibility of Sublessee. This includes actual or apparent discharge, dispersal, release, escape, migration, or seepage of any contaminant or pollutant upon or within the Premises prior to the Effective Date. The responsibility to report, as well as the subsequent responsibility to mitigate environmental impacts existing at the Premises prior to the Effective Date, will be the responsibility of the VPA should that remedy be required by law or action by the appropriate regulatory agency.

17.7 Any environmental permits required for Sublessee's intended purpose on the Premises shall be obtained and paid for by Sublessee. VPA shall reasonably assist in coordination of these permits but is not responsible for their acquisition or payment.

## **18. EVENTS OF DEFAULT; VPA'S REMEDIES UPON DEFAULT**

### **18.1 Events of Default**

The following events shall be deemed to be an event of default ("**Event of Default**") by Sublessee under this Agreement:

18.1.1 The failure of Sublessee to pay when due any installment of Rent or any other payment required to be made by Sublessee under this Agreement and the failure to cure such default within thirty (30) days after Sublessee receives notice from the VPA of such failure to pay sums when due.

18.1.2 The failure of Sublessee to obtain and maintain the insurance required by this Agreement, which failure is not cured within thirty (30) days after Sublessee receives notice of the same from the VPA.

18.1.3 The failure of Sublessee to comply with any term, provision, promise or covenant of this Agreement (other than the payment of Rent or any other payment required to be made by Sublessee hereunder) and the failure to cure such non-compliance within thirty (30) days after written notice of the same from the VPA; provided, however, if such a default is not curable within such 30-day period, Sublessee shall not be in default as long as Sublessee commences to cure same within such 30-day period and diligently pursues such cure.

## **18.2 Written Notice Given**

If the VPA gives written notice to Sublessee of an Event of Default pursuant to this Section 18 and Sublessee does not cure such default within the specified period following the notification, then at the expiration of said period, this Agreement shall automatically terminate as completely as if the deadline for curing the default were the date specified as the Expiration Date in this Agreement, and Sublessee shall then surrender the Premises to the VPA. If this Agreement shall be so terminated, the VPA may, at its option, without formal demand or notice of any kind, re-enter the Premises by any unlawful detainer action or by any other lawful means and remove Sublessee, or any other person who may be occupying the Premises, from the Premises.

## **18.3 No Waiver**

The failure of the VPA to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any permitted right or remedy upon an Event of Default, and/or acceptance of payment of full or partial Rent or other payment required to be made by Sublessee during the continuance of any such Event of Default, shall not constitute a waiver of such Event of Default or of any covenant, agreement, term or condition of this Agreement. The failure of Sublessee at any time or times to require performance of any provision of this Agreement by the VPA shall in no manner affect the rights of Sublessee at a later time to enforce the provisions.

## **18.4 No Right or Remedy Exclusive**

No right or remedy herein conferred upon or reserved to either party shall be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law.

## **18.5 Attorneys' Fees**

In the event of any dispute under this Agreement, the prevailing party shall be entitled to recover its costs and expenses incurred, including, without limitation, reasonable attorney fees and court costs, and this provision shall survive termination of this Agreement.

## **19. TITLE VII ASSURANCES**

Sublessee for itself and its assigns and successors in interest, as a part of the consideration hereof, does hereby covenant and agree that (1) no person, on the ground of race, color, sex or national origin shall be excluded by Sublessee from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises, (2) in connection with Sublessee's construction or making of any improvements on said lands, Sublessee's making of repairs to the Premises, and in Sublessee's obtaining or furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, or by Sublessee's contractors in the selection and retention of first-tier subcontractors, (3) such discrimination shall not be practiced by Sublessee against the public regarding any lawful access to and use of the Premises, and (4) Sublessee shall not suffer or permit the violation of any federal or Virginia civil rights laws pertaining to the use of the Premises or access thereto. In the event of a breach of any of the above non-discrimination covenants, the VPA shall have the right to terminate this Agreement and to re-enter and repossess said land and improvements thereon, and hold the same as if said Agreement had never been made or issued.

## **20. NOTICES**

### **20.1 If to VPA**

All notices to VPA required or permitted under this Agreement shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, addressed to:

(Name) Virginia Port Authority  
Attn: Real Estate  
(Address) 600 World Trade Center  
Norfolk, VA 23510

### **20.2 If to Sublessee**

All notices to Sublessee required or permitted under this Agreement shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, addressed to:

c/o IRG Realty Advisors, LLC  
4020 Kinross Lakes Parkway, Suite 200  
Richfield, Ohio 44286  
Attention: Katherine J. Himmilwright, Lease Administration

with a copy to:

Fainsbert Mase Brown & Sussman, LLP  
11111 Santa Monica Boulevard, Suite 810  
Los Angeles, California 90025  
Attention: Jerry A. Brown, Jr., Esq.

### **20.3 When Notice Deemed Given/Change of Address**

Where, under the terms of this Agreement, a notice is sent by certified U.S. mail, postage prepaid, return receipt requested, such notice shall be deemed to have been given as three days after the date of mailing such notice. Each party to this Agreement shall notify the other party of any new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of a new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in Section 20.1 or Section 20.2, as appropriate.

#### **20.4 When Notice Effective**

Where, under the terms of this Agreement, a notice is required or permitted to be sent by certified U.S. mail, postage prepaid, return receipt requested, and such notice is not sent in such manner, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed.

#### **21. HEADINGS**

The headings of the sections of this Agreement are inserted for convenience only and do not alter or amend the provisions that follow such headings.

#### **22. RELATED ENTITIES**

The terms “Sublessee” and “VPA” shall be deemed to include all affiliates, subsidiaries and other entities under common control with such named entities.

#### **23. TIME PERIODS/BUSINESS DAY**

Any time period calculated or stated in this Agreement which begins on a Holiday or on a Saturday or Sunday shall be deemed to begin on the next Business Day. Any time period which ends on a Holiday or on a Saturday or Sunday shall be deemed to end on the next Business Day

#### **24. ADDITIONAL PROVISIONS**

This Agreement is subject to the following terms, conditions, modifications, additions and/or deletions provided in the following designated attachments, exhibits and riders:

None.

#### **25. FORCE MAJEURE**

In discharging their respective duties as set forth in this Agreement, VPA and Sublessee shall be held to a standard of reasonableness and shall not be liable to the other for matters outside its control, including, but not limited to, acts of God, civil riot, war, pandemics, epidemics, strikes, labor unrest, delays in receiving government approvals, or shortage of material (collectively, “**Force Majeure**”), and in no event shall either party be liable to the other for incidental damages, including, but not limited to, loss of business or business interruption. If VPA or Sublessee shall be delayed, hindered or prevented from performance of any of its obligations by reason of Force Majeure, the time for performance of such obligation shall be extended for the period of such delay.

#### **26. ESTOPPEL**

VPA shall, at any time and from time to time, upon not less than ten (10) days’ prior request by Sublessee, execute, acknowledge and deliver to Sublessee, or to such other persons who may be designated in such request, a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and, if so, the dates to which the rent and any other charges have been paid in advance, and such other items requested by Sublessee, including without limitation, the lease commencement date and expiration date, rent amounts, and that no offsets or counterclaims are present. It is intended that any such statement delivered pursuant to this Section 26 may be relied upon by any prospective lender of Sublessee.

#### **27. MISCELLANEOUS**

### **27.1 Single Includes Plural**

Whenever used in this Agreement, the plural shall include the singular and the singular the plural, and the use of any gender shall include all other genders when the context so requires.

### **27.2 Covenants and Leases**

All of the provisions of this Agreement are to be construed as covenants and leases as though the words importing such covenants and leases were used in each separate Article of this Agreement.

### **27.3 Severability**

Should any provision of this Agreement be or become invalid, void, illegal or not enforceable, such provision shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding upon the parties hereto as though such provision had not been included.

### **27.4 Use of Defined Terms**

Defined terms may be used in the singular or the plural. When used in the singular preceded by “a”, “an”, or “any”, such term shall be taken to indicate one or more members of the relevant class. When used in the plural, such term shall be taken to indicate all members of the relevant class.

### **27.5 Limitation on Liability**

Notwithstanding any provision to the contrary in this Agreement or any related document or document referenced in this Agreement, all parties agree that no party will be liable, under any circumstances or conditions, to any party or person, for any special, indirect, incidental, consequential or contingent damages of any kind in connection with this Agreement, including, without limitation, damages resulting from loss of profits, lost sales, business or goodwill, whether or not such party has been advised of the possibility of such damages.

As used in this Agreement, “VPA” and “Sublessee” and their respective legal names shall mean only the entity specified in this Agreement named as such and its permitted successors and assigns, and no principal, officer, employee, manager, member, shareholder and/or partner (general or limited) of either VPA or Sublessee shall have any personal liability under any provision of this Agreement for any reason or purpose or at any time.

### **27.6 Language Provisions**

All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders.

The words “hereof,” “specified in this Agreement” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provisions of this Agreement.

The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

The word “will” shall be construed to have the same meaning and effect as the word “shall.”

Unless the context requires otherwise, any reference to any law or regulation specified in this Agreement shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

Titles of Articles and Sections in this Agreement are for convenience only, do not constitute part of this Agreement and neither limit nor amplify the provisions of this Agreement, and all references in this Agreement to Articles, Sections, Subsections, paragraphs, clauses, subclauses, Schedules or Exhibits shall refer to the corresponding Article, Section, Subsection, paragraph, clause or subclause of, or Schedule or Exhibit attached to, this Agreement, unless specific reference is made to the articles, sections or other subdivisions or divisions of, or to schedules or exhibits to, another document or instrument.

Each reference in this Agreement to an Article or Section includes all subsections to the referenced Article or Section unless otherwise specifically limited by the terms of the reference itself.

Each definition of a document in this Agreement shall include such document as amended, modified, supplemented or restated from time to time in accordance with the terms of this Agreement.

Except where specifically restricted, reference to a party to a document includes that party and its successors and assigns permitted hereunder or under such document.

Unless otherwise specifically stated, whenever a time is referred to in this Agreement or in any other document, such time shall be the local time in Norfolk, Virginia.

#### **27.7 Binding on Heirs, Successors or Assigns**

This Agreement shall be binding upon the parties hereto, and their respective successors, heirs and permitted assigns.

#### **27.8 Choice of Law/Venue/Consent to Jurisdiction**

This Agreement shall be governed, including as to validity, interpretation and effect, by, and construed in accordance with, the internal Laws of the Commonwealth of Virginia applicable to agreements made and fully performed within the Commonwealth of Virginia. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Virginia. Each party hereto also hereby irrevocably waives any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court and further waives any claim that any such suit, action or proceeding which has been brought in any such court has been brought in an inconvenient forum.

#### **27.9 Fees and Expenses**

All fees, costs and expenses incurred in connection with the preparation, negotiation, execution, delivery or performance of this Agreement and the transactions contemplated hereby or thereby shall be the responsibility of and paid by the party incurring such fees, costs or expenses.

#### **27.10 Execution**

This Agreement may be executed by handwritten signing or by electronically transmitted facsimile of such signing, either of which shall create a validly executed document, in any number of counterparts, each of which shall be deemed an original and such counterparts together shall be deemed and constitute one and the same instrument.

**28. SUBLEASE SUBORDINATE TO MASTER LEASE**

Both Parties warrant that this agreement is subject to and subordinate to the VIG Master Lease. This warranty inures to the benefit of VIG.

**29. ENTIRE AGREEMENT**

This is the entire agreement between the parties, and no modification or addition to it shall be binding unless in writing and signed by the parties hereto. The covenants, conditions and agreements contained herein are binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal representative, successors and assigns. Wherever the context so requires, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders. Neither party is authorized to enter into an oral modification of the terms of this Agreement.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK; SIGNATURES FOLLOW  
ON NEXT PAGE

**IN WITNESS WHEREOF**, the parties hereto have affixed their signatures and seals.

**SUBLESSEE:**

PORTSMOUTH BUSINESS PARK, LLC,  
a Delaware limited liability company

By: Holdings SPE Manager, LLC,  
a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
John A. Mase  
Chief Executive Officer

**SUBLESSOR:**

VIRGINIA PORT AUTHORITY

By: \_\_\_\_\_  
Stephen A. Edwards, CEO & Executive Director

Date: \_\_\_\_\_

