

EXECUTION COPY

CONCESSION AGREEMENT

between

DIAMOND STATE PORT CORPORATION

and

GT USA WILMINGTON, LLC

Dated September 18, 2018

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THIS CONCESSION AGREEMENT (this “Agreement”) is entered into as of the 18th day of September, 2018 (the “Execution Date”) between DIAMOND STATE PORT CORPORATION, a Delaware corporation created in the Department of State of the State of Delaware (“DSPC”), and GT USA WILMINGTON, LLC, a Delaware limited liability company (“GT USA” and together with DSPC, the “Parties” and each, a “Party”).

Recitals

WHEREAS, DSPC is a corporation created pursuant to Subchapter II of Chapter 87, Title 29 of the Delaware Code, for the purpose of exercising all functions necessary in connection with the assumption, establishment, acquisition, construction, rehabilitation, improvement, operation and maintenance of the existing Port of Wilmington located at 1 Hausel Road, Wilmington, DE 19801 (“Existing Port”) and related facilities, including the recently acquired Edgemoor property (“Edgemoor” and together with the Existing Port, the “Port”).

WHEREAS, DSPC and GT USA desire to enter into this Agreement to transfer to GT USA the right to commercially operate the Port under the terms and conditions described herein with the objective of increased investment, job growth and promoting and enhancing commerce, shipping, navigation and competitiveness at the Port, all as set forth herein.

WHEREAS, DSPC and GT USA will both remain marine terminal operators under the Shipping Act, however, GT USA shall, as set forth in the terms and conditions herein, become the operating marine terminal operator at the Port and DSPC shall continue as a landlord with certain oversight and consent rights.

WHEREAS, in return for the right to commercially operate the Port, GT USA shall materially invest in redeveloping the existing port facilities and establishing new port facilities at Edgemoor and shall pay DSPC a Concession Fee as set forth herein.

NOW, THEREFORE, in consideration of the fees, covenants and agreements contained in this Agreement, the sufficiency of which is hereby acknowledged by the Parties, the Parties grant, covenant and agree to and with each other as follows:

ARTICLE 1

INITIAL REGULATORY MATTERS

Section 1.1 Recitals

The Parties hereby acknowledge that the recitals are an integral part of this Agreement and are hereby incorporated as substantive provisions of this Agreement.

Section 1.2 Regulatory Matters

(a) The Parties hereby agree that this Agreement shall be filed with the Federal Maritime Commission (the “FMC”) pursuant to the U.S. Federal Shipping Act of 1984, as amended (the “Shipping Act”), promptly following the execution hereof by both Parties (the “FMC Filing”) regardless of whether such a filing is required under applicable laws. If the FMC requests additional information concerning this Agreement, DSPC and GT

USA shall jointly address any such requests. As provided in Section 21.23 of this Agreement, the publication of this Agreement or any part hereof by or under the direction of the FMC shall not constitute a violation of the confidentiality or any other provisions of this Agreement.

(b) The Parties acknowledge that, prior to the date of this Agreement, they jointly submitted a voluntary notice ("CFIUS Notice") of the transaction contemplated by this Agreement to the Committee on Foreign Investment in the U.S. ("CFIUS") requesting CFIUS review of such transaction and CFIUS determined on June 25, 2018 that such transaction constituted a "non-covered" transaction (the "CFIUS Approval").

ARTICLE 2

COMMENCEMENT, TERM, PREMISES, ASSETS AND CONTRACTS

Section 2.1 Commencement

The Parties agree to use best efforts to close the transactions contemplated by this Agreement (the "Commencement") no later than 10:00 am Eastern Time on October 1, 2018 (the "Target Closing Date"), at the offices of Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Wilmington, Delaware 19801, provided, that this date may be extended until five (5) Business Days following the date on which the last unfulfilled and unwaived condition to be satisfied prior to the Commencement as set forth in APPENDIX 2 shall be fulfilled or waived in accordance with the terms of this Agreement (the "Commencement Date"). Notwithstanding the foregoing, in the event the Parties are not able to satisfy or waive the conditions precedent set forth in APPENDIX 2 by the outside date set forth in Section 11.3 below, then unless the Parties mutually agree to extend this date, this Agreement shall expire in accordance with the terms of such Section 11.3. The conditions to Commencement, representations and warranties and other matters set forth in APPENDIX 2 are hereby incorporated by reference as if fully recited herein.

Section 2.2 Delivery of Premises and Term

Upon the terms and subject to the conditions set forth in this Agreement, as of the Commencement Date, as fee simple owner of the Premises, DSPC hereby demises and leases unto GT USA all of the land located at the Existing Port and Edgemoor that is owned by DSPC, together with all improvements thereupon and thereunder, including without limitation, all buildings, structures, substructures, subaqueous structures and substructures, piers, wharfs and components thereupon and utility infrastructure owned by DSPC and all of DSPC's easement rights and appurtenances thereto for the use and benefit of such land (the "Premises") as identified in APPENDIX 1, free and clear of all encumbrances (other than the Permitted Liens or as otherwise expressly permitted herein) and, in connection therewith, grants GT USA the right, subject to the further terms of this Agreement, to use and operate the Premises for the uses and purposes set forth in this Agreement, for a term of fifty (50) years (the "Term"), commencing on the Commencement Date and ending on the calendar day immediately preceding the fiftieth (50th) anniversary of the Commencement Date (the "Expiration Date"). The date of the termination of GT USA's right to occupy the Premises as the result of any event, including, but not limited to, an event causing an early termination of this Agreement following a GT USA Default, other than the running of the Term, shall be known as the "Termination Date."

79 **Section 2.3 Matters Affecting Premises**

80 (a) Except as otherwise provided herein, GT USA accepts the Premises as
81 of the Commencement Date, after a full and complete examination and inspection thereof, in
82 its AS-IS, WHERE-IS condition, without representation as to suitability for any purpose. GT
83 USA accepts the Premises as of the Commencement Date subject to (i) utility easements for
84 existing utilities serving or reasonably necessary to serve the Premises and properties
85 adjacent thereto or in the vicinity thereof; (ii) any other easements or use or occupancy
86 restrictions of public record; (iii) any existing leases or other agreements with tenants or
87 other users of the Port; and (iv) all Laws affecting the Premises.

88 (b) GT USA shall at all times, and at no cost to DSPC, be subject to and
89 faithfully obey and comply with all existing leases and agreements with DSPC that are
90 Assigned Contracts as well as all existing utility easements serving the Premises, all existing
91 utility easements serving properties adjacent thereto or in the vicinity thereof, and all Laws
92 applicable to the Premises and GT USA's use and occupancy thereof, and shall require all
93 users, invitees and guests of the Premises to comply with same.

94 (c) So long as any bonds, the interest on which is intended to be excludable
95 from gross income under the Internal Revenue Code of 1986 (the "Code"), related to or
96 secured by the Premises or any part thereof are outstanding, GT USA shall not make any use
97 of the Premises that will cause those portions of the Premises that currently qualify as dock
98 and wharf facilities within the meaning of Section 142 of the Code, to fail to so qualify. In
99 any event, the Premises shall be used only for the Permitted Operations.

100 (d) Prior to the Commencement Date or such other time as the Parties shall
101 mutually agree upon, DSPC and GT USA shall cause a joint pre-occupancy inspection of the
102 Premises to be conducted and GT USA shall cause the Pre-Occupancy Report to be prepared,
103 at its own expense. The Pre-Occupancy Report shall detail existing known environmental
104 conditions at the Premises.

105 (e) There shall be no continuing financial commitment from DSPC or the
106 State of Delaware for operating expenses or capital expenditures for the Term of this
107 Agreement; provided, however, that DSPC hereby agrees to apply any unused capital
108 provided by the State of Delaware to DSPC for DSPC's July 1st, 2017 to June 30th, 2018
109 fiscal year for reimbursement of a portion of GT USA's capital expenditures in its first year
110 of this Agreement ("Supplemental CapEx"). DSPC shall retain control of the Supplemental
111 CapEx and shall reimburse GT USA upon receipt of appropriate invoices and evidence of
112 work being properly performed and properly payable from such unused capital and such
113 other information as DSPC may reasonably request.

114 (f) Except as may otherwise be authorized by DSPC and, in certain
115 circumstances, the Delaware General Assembly, GT USA agrees to retain operating control
116 of the Premises during the Term.

117 **Section 2.4 Reserved Easements**

118 (a) DSPC reserves to itself, including the right to grant to others in the
119 future, easements, licenses and permits for construction, maintenance, repair, replacement,
120 relocation and reconstruction, and related temporary access easements and other easements,
121 in each case, necessary for the utility easements for existing utilities serving or future
122 easements reasonably necessary to serve the Premises upon reasonable notice to and
123 coordination with GT USA (other than in the event of an emergency).

124 (b) DSPC reserves to itself, including the right to grant to others in the
125 future, the right (but unless expressly set forth in this Agreement, shall not have the
126 obligation) to enter upon the Premises and perform such work as may reasonably be
127 necessary (i) in the event of an emergency or (ii) as otherwise provided in this Agreement.
128 Without limiting the generality of the foregoing, DSPC reserves to itself, including the right
129 to grant to others in the future, the right (but unless expressly set forth in this Agreement,
130 shall not have the obligation) to enter upon the Premises, upon reasonable notice to and
131 coordination with GT USA (other than in the event of an emergency), to perform any
132 Response Action that DSPC deems in its sole discretion to be necessary or that may be
133 required to be performed by Law or a directive from a Governmental Authority having
134 jurisdiction over the Premises. DSPC shall not be liable for any Loss or interruption of the
135 Permitted Operations required in connection with DSPC's response to any investigatory or
136 remedial action required by a Governmental Entity, except to the extent caused by the gross
137 negligence, willful misconduct or bad faith of DSPC or its employees.

138 **Section 2.5 Quiet Enjoyment**

139 So long as it is not in default hereunder, GT USA shall quietly enjoy the Premises,
140 subject to DSPC's exercise of its regulatory or administrative authority and other rights as
141 expressly provided in this Agreement, and shall have the right to perform the Permitted
142 Operations at the Premises during the Term and, except as otherwise provided herein, to bill,
143 collect and retain all revenues derived from same (the "Operating Revenues").

144
145 **Section 2.6 Additional Property**

146 (a) The Parties acknowledge that pursuant to the Acquisition Agreement,
147 DSPC holds an option (the "Pigeon Point Option") to purchase the Pigeon Point Property
148 during the term of the Acquisition Agreement. So long as the Pigeon Point Option has not
149 terminated or expired, GT USA may provide DSPC with written direction to exercise the
150 Pigeon Point Option at least ninety (90) days prior to the expiration of the Pigeon Point
151 Option. Upon receipt by DSPC of such written direction, DSPC shall promptly exercise the
152 Pigeon Point Option and upon the closing of the Pigeon Point Option, the Pigeon Point
153 Property shall be deemed included within the definition of Premises as if it were initially part
154 of the definition thereof for all purposes other than the Environmental Provisions set forth in
155 ARTICLE 16.

156 (b) To the extent DSPC obtains control of the Wilmington South Disposal
157 Area, or any part thereof, and the Army Corps of Engineers consents (if such consent is

required), at GT USA's option such property shall be added to the definition of Premises as if it was initially part of the definition for all purposes. In the event GT USA elects not to incorporate Wilmington South Disposal Area or any part thereof into the Premises, GT USA agrees to provide reasonable ingress and egress easements for access to such property by DSPC and third parties.

(c) GT USA will exercise its best efforts to facilitate a relationship between GT USA and the owner of Boxwood to develop a transportation linkage between the Premises and Boxwood.

(d) GT USA and DSPC agree to use commercially reasonable and exclusive joint efforts to acquire and develop Riveredge as an expansion of existing port operations in the event the Parties determine, each in its sole discretion, that such an opportunity exists or there is a need for such acquisition and development.

Section 2.7 Assets at Commencement

In consideration for the Concession Fee and other payments owed to DSPC under this Agreement (and no separate consideration), on the Commencement Date DSPC shall sell and convey its cranes, electric tools, mechanic tools, vehicles, cargo handling, furniture, furnishings, computers, telephones, telephone numbers, office supplies, software and other intellectual property (including the Port's website (<http://www.portofwilmington.com>), but excluding DSPC's website) and all other equipment and parts and items, tangible and intangible (other than cash), used in operation at the Port to GT USA as of the Commencement Date with clear title, free from all liens, charges or encumbrances of any nature whatsoever, other than Permitted Liens (collectively, the "Original Assets"). GT USA accepts the Original Assets as of the Commencement Date, after a full and complete examination and inspection thereof, in their AS-IS, WHERE-IS condition, without representation as to suitability for any purpose. To the extent any Original Assets are not legally assignable, DSPC shall use commercially reasonable efforts to transfer beneficial ownership of any such Original Assets to GT USA, by license or otherwise, on the Commencement Date or as soon as reasonably practicable thereafter.

Section 2.8 Assets Acquired During Term

In addition to the Original Assets, GT USA shall have the right to purchase or lease (provided that any finance lease shall expressly permit an assignment of GT USA's interest thereunder to any person without restriction or condition), install and use, as applicable, at its cost and expense, cranes, electric tools, mechanic tools, vehicles, cargo handling, and any other equipment or parts (the "After-Acquired Assets" and, together with the Original Assets, the "Assets") on the Premises. To the extent that any After-Acquired Assets require installation at the Premises, GT USA shall provide notice to DSPC. In the event DSPC has the right to purchase any After-Acquired Assets as provided in Section 17.9 of this Agreement and DSPC does not elect to purchase any After-Acquired Assets, GT USA shall, at its expense, remove from the Premises any and all such After-Acquired Assets no later than sixty (60) days following the earlier of the Termination Date or Expiration Date of this Agreement, and shall repair any damage caused by such removal.

(both liquid and dry)), having a prior or subsequent movement over a pier, berth, or wharf at a terminal in the Port, and facilitating the dis-embarkment and embarkment of passengers, all in compliance with all applicable Laws. Edgemoor shall be used and configured solely as a container handling terminal; provided, that GT USA shall be permitted to accept ancillary general cargo at Edgemoor so long as Edgemoor remains configured as a container handling terminal. Without limiting the generality of the foregoing, Permitted Operations shall also include any stevedore and maritime terminal operations including container, chassis and equipment storage, line handling, docking and undocking of vessels, and operations incidental thereto and any use permitted by any agreement in effect prior to the Commencement Date between DSPC and any other party. Any Permitted Operations shall be in accordance with all applicable permits and Laws, including, without limitation, the Coastal Zone Act, 7 Del. C. §§ 7001 *et seq.*, and GT USA shall not use the Premises as a terminal for liquefied natural gas. GT USA shall use and operate the Premises in a workman-like manner, continuously during the entire Term of this Agreement, with the exception of temporary closures for such periods as may be reasonably necessary for repairs or restoration or for reasons beyond GT USA's reasonable control.

(b) GT USA acknowledges that one of DSPC's primary objectives under this Agreement is for the Premises and Assets to continue to serve DSPC's existing customers and related businesses after the Commencement Date. GT USA shall use commercially reasonable efforts to conduct its operations of the Premises and Assets in a manner designed to achieve this objective.

Section 3.2 Standard of Care

GT USA shall operate the Premises and Assets as a Reasonable Prudent Operator, in accordance with good industry practice and in compliance with all applicable Laws (the "Standard of Care").

Section 3.3 No Competition

(a) Except as provided below, DSPC agrees that during the term of this Agreement it will not, directly or indirectly or as a member of, or participant in, any other entity or as an agent, independent contractor or consultant of any person, enter into, engage in or participate in any other business of operating or owning a port, including, without limitation, any activities involving the provision of funding or other financial assistance or real estate or other property, or the authorization of any form of financing, in each case, relating to a port business. Notwithstanding the foregoing, upon a termination of this Agreement or in the event GT USA breaches its Initial Capital Expenditure Obligation or Total Capital Expenditure Obligation with respect to Edgemoor under this Agreement, then this Section 3.3(a) shall be of no further force and effect. Notwithstanding the foregoing, GT USA may from time to time request that DSPC join with GT USA in activities designed to promote and enhance development of the Port with Governmental Authorities, and to the extent it undertakes such activities, DSPC shall not be in violation of this Section 3.3(a). GT USA agrees that (i) DSPC's ownership of the Port, (ii) any action required or permitted by DSPC under the terms of this Agreement or (iii) the performance of any obligation of DSPC to any third party existing prior to the Commencement Date and not assigned to GT USA shall not be a violation of this Section 3.3(a).

(b) Gulfainer and its Affiliates, including GT USA, agree that during the Term they will not (other than in connection with GT USA's operations under this Agreement), directly or indirectly or as a member of, equity owner or participant in, any other entity or as an agent, independent contractor or consultant of any person, enter into, engage in or participate in the business of operating or owning a port that conducts business consistent with the Permitted Operations along the eastern seaboard from New York, NY to Norfolk, VA and/or inland waters from New York, NY to Norfolk, VA, including, without limitation, any activities involving the provision of funding or other financial assistance or real estate or other property, or the authorization of any form of financing relating to such a port in the specified area; provided, however, that it shall not constitute a breach of this non-compete provision if Gulfainer or an Affiliate thereof were to acquire a port that conducts business consistent with the Permitted Operations subject to the prior written mutual consent of the Port and GT USA, which consent may not be unreasonably withheld. Further, in the event a competitor to GT USA commences a general use port terminal business consistent with the Permitted Operations within the State of Delaware and such business has a Material Adverse Impact on the business of GT USA as contemplated by this Agreement, then this Section 3.3(b) shall terminate in all respects. For the avoidance of doubt, a breach by Gulfainer or any of its Affiliates of this provision shall constitute a breach of this Agreement notwithstanding that any such entity may not be a signatory hereto.

Section 3.4 Security

(a) As of the Commencement Date, and throughout the Term, GT USA assumes sole responsibility, at no cost to DSPC, for all risks to the safety and security of persons and property and also the property of its customers (including, without limitation, the Premises, the Assets, and cargo, furniture, fixtures and equipment stored or located on the Premises) from theft, personal violence, fire, flood and other causes, and including responsibility for guarding and safekeeping such persons and property and also the property of its customers, to whatever extent such risks arise out of GT USA's lease of the Premises and use of the Assets. GT USA shall be solely responsible for assuring that the Premises comply with all applicable security requirements required to be complied with by Laws, including measures to exclude unauthorized access and for providing and maintaining any physical improvements required to be complied with by Laws related to security requirements. Prior to the Commencement Date, GT USA shall be solely responsible to prepare a security plan that complies with applicable Laws and shall submit such security plan to DSPC and the applicable Governmental Authorities for approval. Upon the request of GT USA, DSPC shall, at GT USA's expense, reasonably cooperate with GT USA in its preparation of such security plan. DSPC reserves the right, but shall have no obligation, to design, build, operate and maintain security plans and programs outside of GT USA's security plan or program for the purposes of DSPC's own Port-wide monitoring, safety and coordination purposes. Any such DSPC security plans and programs may require coordination with GT USA but will not relieve GT USA of requirements to maintain its own security plan or program with respect to the Premises. Upon the request of GT USA, DSPC shall reasonably cooperate with any requirements of any grants for port security upgrades for use at the Premises available to GT USA from any available funding sources.

(b) DSPC shall have oversight rights regarding implementation and operation of safety and security standards by GT USA. GT USA shall consult with DSPC concerning any amendments or other modifications to GT USA's security plan following Commencement.

(c) GT USA shall be responsible for the payment of any fines related to any non-compliance with any security standard addressed herein by any sub-lessee, invitee, guest or any other entrant upon the Premises, such responsibility to include reimbursement for any fines imposed upon DSPC resulting from such noncompliance. Without prejudice to its rights hereunder, DSPC may, in the event of an emergency and in its sole discretion, act to secure the Premises and obtain reimbursement from GT USA for costs so incurred, which payment shall constitute Additional Fees.

(d) GT USA shall comply with all present and future port security requirements under Laws applicable to the Premises and shall provide DSPC on an annual basis beginning December 2018 or at such other times as may be requested by DSPC with a certification in a form reasonably acceptable to DSPC that it is in compliance with all such Laws in addition to the information set forth in Section 21.28(b).

Section 3.5 Signage, Advertising and Naming Rights

(a) Except with respect to signs required by Law, signs posted on the Assets relating to the operation thereof, directional signs related to the Premises and emergency-related or emergency procedural signs, GT USA shall not place, construct, or maintain on the Premises in a location that may be visible from the exterior of the Premises, any signs, advertisements, names, insignia, trademarks, descriptive material, and any other similar item, except for such items advertising business on the Premises which have been authorized in advance in writing by DSPC, provided, however, that GT USA shall have the right to place its name, logo, insignia and/or trademark on all Assets. In particular, DSPC shall have absolute discretion to withhold approval for any new lighted sign or any new sign with moving (or that has the appearance of moving) parts or symbols. DSPC, at GT USA's cost, may remove any item placed, constructed, or maintained that does not comply with the provisions of this Section 3.5. GT USA shall maintain and keep in good repair any such signs.

(b) Upon the earlier of the Expiration Date or Termination Date, GT USA shall remove, to the reasonable satisfaction of DSPC, all signs, advertisements, names, insignia, trademarks, descriptive material and any similar material installed, painted, inscribed or placed in or upon the Premises, GT USA shall repair all damage to the Premises caused by such removal.

(c) Any sign that GT USA has the right to place, construct, or maintain on or adjacent to the Premises shall comply with DSPC's reasonable requirements and with all applicable Laws, and GT USA shall obtain any approval required by such Laws. DSPC makes no representation with respect to GT USA's ability to obtain such approval.

(d) GT USA shall have the right to name and rename the Port, subject to the prior written consent of DSPC, which consent may be conditioned or withheld by DSPC in DSPC's sole discretion, for any reason or for no reason.

(e) While there shall be no formal responsibility during the Term of this Agreement, DSPC shall use reasonable efforts, at GT USA's expense, to assist GT USA in the marketing of services provided by GT USA at the Premises.

Section 3.6 Access to Premises by Third Party

GT USA agrees to provide access and use of the Port facilities to third parties sufficient to satisfy any applicable requirements under the Shipping Act and FMC regulations.

ARTICLE 4

PAYMENTS, PRORATIONS, CAPITAL OBLIGATIONS AND OTHER

CONSIDERATION TO DSPC

Section 4.1 Initial Payment

On the Commencement Date, GT USA will make an initial payment in the amount set forth on APPENDIX 16, such amount to be subject to a reduction or a non-material increase as of the Commencement Date to the extent the actual amounts as of the Commencement Date vary from those set forth in APPENDIX 16 (the "Initial Payment"). GT USA will offset the amount of the Initial Payment against the Concession Fee Differential (as calculated as if the Minimum Annual Concession Fee were paid in equal quarterly installments over a twelve (12) month period).

Section 4.2 Pre-Closing Dredging Costs

GT USA hereby acknowledges that DSPC will have incurred certain costs (currently estimated to be One Million Five Hundred Fifty Seven Thousand Six Hundred and Thirty Eight Dollars and 53/100 (\$1,557,638.53)) prior to the Commencement Date associated with dredging at Edgemoor and that GT USA will benefit from such dredging. DSPC does not anticipate that any annual dredging costs associated with dredging at the Existing Port will be incurred by DSPC prior to the Commencement Date, but to the extent any such costs are incurred, GT USA shall be responsible for repayment of its prorata portion of such costs as of the Commencement Date. GT USA shall be responsible for repayment of one hundred percent (100%) of the Edgemoor dredging costs. GT USA agrees that it will reimburse DSPC on the Commencement Date for any and all such costs, subject to DSPC's presentation of verifiable documentation reflecting that DSPC paid the cost for such dredging, and that it shall be responsible for the payment of such further dredging costs after the execution of this Agreement pursuant to Section 6.6. For the avoidance of doubt, the Parties acknowledge and agree that the repayment of dredging expenses shall not be subject to offset against the Concession Fee Differential.

401 **Section 4.3 Concession Fee**

402 (a) For each calendar quarter during the Term (adjusted pro rata for the
403 first and final quarters of the Term), with regard to any and all containerized volumes, GT
404 USA hereby agrees to pay DSPC a fee of [REDACTED] per TEU handled over the
405 quay and a fee of [REDACTED] per TEU with respect to non-water
406 borne (*i.e.*, not coming in or going out over the quay) TEUs handled in the Premises.

407 (b) For each calendar quarter during the Term (adjusted pro rata for the
408 first and final quarters of the Term), with regard to any cargos not in containers, GT USA
409 agrees to pay DSPC a fee of [REDACTED] per short ton over the quay and a fee of [REDACTED]
410 [REDACTED] per short ton with respect to non-water borne short tons handled in the
411 Premises.

412 (c) If, and when, the non-water borne cargo business exceeds Ten
413 Thousand (10,000) TEUs or Five Thousand (5,000) short tons in any calendar year, the
414 Parties shall meet and negotiate an appropriate increase in the applicable non-water borne
415 rates set forth above. In the event the Parties cannot reach agreement, the dispute resolution
416 provisions in ARTICLE 19 shall apply.

417 (d) The container volume fees and non-container volume fees in Sections
418 4.3(a) and (b) above are collectively referred to as the "Concession Fee." GT USA shall pay
419 the Concession Fee to DSPC within twenty (20) days after the end of each calendar quarter
420 of the Term. Commencing on the first day of the calendar quarter immediately following the
421 third (3rd) anniversary of this Agreement and every three (3) years thereafter, the per TEU
422 fees and the per short ton fees in Sections 4.3(a) and (b) shall be adjusted in proportion to any
423 increase or decrease in the Index relative to the last year of the last adjustment period (or,
424 with respect to the first adjustment, since the Commencement Date).

425 **Section 4.4 Minimum Annual Concession Fee**

426 (a) The Concession Fee for any calendar year (adjusted pro rata for the first
427 and last years of the Term) during the Term will never be less than Three Million Dollars
428 (\$3,000,000.00) (such amount, as adjusted pursuant to the further provisions of this Section
429 4.4, the "Minimum Annual Concession Fee"). The Minimum Annual Concession Fee shall be
430 adjusted on January 1st following the third (3rd) anniversary of the Commencement Date and
431 every three (3) years thereafter in proportion to any increase in the Index relative to the last
432 year of the most-recent adjustment period (or, with respect to the first adjustment, since the
433 Commencement Date). For the avoidance of doubt, in no event shall the adjusted Minimum
434 Annual Concession Fee be less than the Minimum Annual Concession Fee in the immediately
435 preceding adjustment period.

436 (b) The Minimum Annual Concession Fee may be adjusted at any time
437 during the Term as required so that such fee is sufficient to pay any debt service and post-
438 closing operating costs of DSPC arising out of or otherwise related to the Premises and
439 DSPC's activities as owner, prior operator and/or lessor of the Port; provided, however, DSPC
440 shall not restructure any of its debt existing as of the Execution Date or incur any new debt or

increase its operating expenses in a manner that would materially increase the Minimum Annual Concession Fee without GT USA's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 4.5 Minimum Annual Volume Guarantee

(a) APPENDIX 13 sets forth the schedule of planned cargo volumes by type of cargo at the Premises as prepared by GT USA (the "Volume Schedule"). GT USA shall act in good faith using reasonable commercial efforts to achieve the Volume Schedule, but in all events, GT USA agrees to maintain a minimum cargo volume equal to seventy-five percent (75%) of the planned cargo volume (the "Minimum Volume") or such other volume in such other manner that would result in a Concession Fee equivalent to the Concession Fee calculated using the Minimum Volume (the "Minimum Annual Volume Guarantee"), regardless of actual cargo volumes handled. For the avoidance of doubt, in the event cargo volumes exceed the Minimum Annual Volume Guarantee, the Concession Fee shall be calculated based on actual volume and shall never be less than the Minimum Annual Concession Fee. For years after Year 10 as set forth in APPENDIX 13, the Minimum Annual Volume Guarantee shall be consistent with or greater than the planned cargo volumes set forth in the Volume Schedule for Year 10.

(b) Provided that the Minimum Annual Concession Fee continues to be paid, to account for market, industry and economic uncertainty, GT USA shall be granted a three (3) year period to make-up the Minimum Annual Volume Guarantee and deliver the aggregate yearly volume over a three year period. In the event GT USA is unable to reach the Minimum Annual Volume Guarantee for any three (3) consecutive calendar years, such failure to achieve the Minimum Annual Volume Guarantee will trigger a negotiation between DSPC and GT USA with regard to any required mitigation or, if agreement between the Parties is not reached, will result in a GT USA Default under this Agreement as set forth in Section 10.1(c).

Section 4.6 Additional Fees

GT USA shall pay to DSPC as additional fees all other sums of money that shall become due and payable under this Agreement ("Additional Fees"). Unless a date for payment is otherwise specified herein, all Additional Fees shall be due and payable within thirty (30) days of the date of invoicing from DSPC in respect thereof.

Section 4.7 Offsets; Interest on Amounts Subject to Offsets

(a) Except as expressly permitted in this Agreement, GT USA shall pay to DSPC the Concession Fee and Additional Fees (collectively, the "Fees and Charges") without any deduction, abatement or offset whatsoever.

(b) With respect to all costs, expenses or other liabilities incurred by GT USA under this Agreement that are subject to be offset against the Concession Fees (the "Offsettable Amounts"), interest will accrue on the balance of such amounts at the rate of 4.00% per annum with the interest rate being added to the balance of the Offsettable Amounts and with the accumulated interest being offset before any other Offsettable Amounts are

offset; provided, however, that no such interest shall be imposed or otherwise accrue with respect to any offset permitted under this Agreement until the second anniversary of the Commencement Date, at which time such interest may be imposed and accrue in accordance with this Section 4.7(b) commencing on such date. Further, DSPC shall be permitted to prepay any amounts without premium or penalty that would be subject to an offset hereunder.

Section 4.8 Method of Payment

All payments owed by GT USA and payable to DSPC hereunder shall be made in United States Dollars and by check or wire, as instructed in writing by DSPC from time to time acting in its sole discretion.

Section 4.9 Committed Minimum Capital Expenditures

(a) APPENDIX 15 sets forth a schedule of the planned capital expenditures by GT USA at the Premises for the first ten (10) years following the Commencement Date, including development milestones for significant capital expenditure and construction events. For the remaining years of the Term, GT USA is expected to continue to invest capital as required to meet the Basic Condition and cargo volume consistent with or greater than the planned cargo set forth for Year 10 in APPENDIX 13. GT USA shall act in good faith and use reasonable commercial efforts to achieve the planned capital expenditures set forth in APPENDIX 15, but in all events GT USA shall meet the minimum requirements set forth in the further provisions in this Section 4.9.

(b) As a material part of the consideration for this Agreement, GT USA hereby agrees to commence construction of a cargo facility at Edgemoor no later than [REDACTED], with operation of the Edgemoor facility estimated to commence no later than [REDACTED], provided, however, that GT USA may delay without penalty the construction of Edgemoor until [REDACTED] (the "Outside Construction Date"), with operation of the Edgemoor facility in such case estimated to commence no later than [REDACTED], if it has not achieved an annual cargo container volume over the quay at the Existing Port of at least [REDACTED] TEU over the calendar year 2020. For the avoidance of doubt, time is of the essence and failure to meet such milestones, including the required capital expenditure in connection therewith as set forth in Section 4.9(c), shall constitute a GT USA Default.

(c) As a minimum capital expenditure requirement of GT USA, GT USA hereby agrees to (i) spend Forty Million Dollars (\$40,000,000) in capital expenditures at the Existing Port within the first two (2) years following the Commencement Date, (ii) spend Two Hundred and Fifty Million Dollars (\$250,000,000) in capital expenditures in the development of Edgemoor by December 31, 2020, subject to any extension until the Outside Construction Date in accordance with Section 4.9(b) above (clauses (i) and (ii) collectively, the "Initial Capital Expenditure Obligation"), and (iii) spend an aggregate amount, inclusive of the Initial Capital Expenditure Obligation, equal to those amounts necessary to reasonably support the volume projections up to and including Year 10 set out in APPENDIX 13, which is presently estimated at Five Hundred Million Dollars (\$500,000,000) (clauses (i), (ii) and (iii) collectively, the "Total Capital Expenditure Obligation"). However, GT USA shall not

be in breach for failure to meet the Total Capital Expenditure Obligation by the end of Year 10 if (i) GT USA spends at least the Initial Capital Expenditure Obligation and the Minimum Warehouse Capital Obligation and GT USA meets or exceeds the planned volume projections as set forth in this Agreement in the aggregate by the end of Year 10 or (ii) if GT USA fails to meet such planned volume projections at no fault of its own but instead as a result of changes in economic and competitive environments resulting in a Material Adverse Impact to volume throughput for ports generally on the eastern seaboard. DSPC agrees that prior to calling a default for breach by GT USA caused by failure to meet the Total Capital Expenditure Obligation as set forth herein, it will first enter into good faith reasonable negotiations relating to the Total Capital Expenditure Obligation as provided in Section 10.8. The Total Capital Expenditure Obligation referred to herein refer to capital expenditures for new construction.

(d) GT USA shall invest One Hundred Million Dollars (\$100,000,000) in warehouse capital improvements at the Port and/or Edgemoor (the "Minimum Warehouse Capital Obligation"), which shall include a minimum of Twenty Million Dollars (\$20,000,000) in warehouse capital improvements at the Existing Port on or before the third (3rd) anniversary of the Commencement Date (the "Initial Warehouse Capital Expenditure"). In no event shall any amount of the Minimum Warehouse Capital Obligation be applied to satisfy GT USA's Initial Capital Expenditure Obligation or Total Capital Expenditure Obligation.

(e) GT USA shall, with DSPC oversight, coordinate with certain additional parties with regards to its capital development and volume plans for the Premises, including without limitation, for the development of a transportation and logistics link with the planned Boxwood logistics facility. In order to meet its Minimum Warehouse Capital Obligation, GT USA shall contract with companies involved in the development of modern warehousing systems designed to retain and attract refrigerated business, particularly existing fruit and perishable product customer.

Section 4.10 Proration of Accounts Receivable and Accounts Payable at the Commencement Date and Post-Closing Adjustment

Upon the Commencement Date, GT USA will accept any accounts receivables relating to periods prior to the Commencement Date in trust for the benefit of DSPC. Any rents or other payments received shall be prorated between the Parties as of the Commencement Date. In addition, upon the Commencement Date, GT USA shall assume responsibility for payment of all accounts payable due and owing in connection with the operation of the Port; provided, however, any accounts payable arising for time periods prior to the Commencement Date (other than any capital improvement obligation that was required by DSPC under any Assigned Contracts) shall be for the account of DSPC. Within thirty (30) days following the Commencement Date, GT USA and DSPC shall conduct a post-closing adjustment of accounts payable and accounts receivable, including having the amount of all security deposits held by DSPC pursuant to Assigned Contracts for periods of time after the Commencement Date included as an accounts payable due to GT USA by DSPC. Following such adjustment, DSPC or GT USA, as applicable, shall pay the other party the net balance following offset of accounts payable owed to DSPC against accounts receivable owed by DSPC pursuant to the provisions of this Section 4.10.

Reimbursement of the pre-closing dredging costs in Section 4.2 and the Initial Payment are outside of the scope of this adjustment.

ARTICLE 5

ASSIGNMENT, SUBLETTING & ORGANIZATIONAL STRUCTURE

Section 5.1 No Assignment without DSPC Consent

(a) This Agreement is personal to GT USA. GT USA shall not sell, convey, assign, sublease, license, mortgage, encumber, transfer, transfer beneficial ownership, license, grant or be the subject of a Change of Control, or otherwise dispose of this Agreement, any interest herein or the Premises, or otherwise permit any of the same ("Assign" or "Assignment"), without the prior written consent of DSPC and the Delaware General Assembly (if required by Chapter 87 of Title 29 of the Delaware Code), which consents may be conditioned or withheld for any reason or for no reason.

(b) Notwithstanding anything herein to the contrary, GT USA is hereby authorized, without the prior written consent of DSPC, to enter into subleases for less than substantially all of the Premises provided that any such sublease is entered into in the ordinary course of operation of the Port business. GT USA shall not sublease any part of the Premises for a term beyond the Expiration Date without the prior written consent of DSPC. Other than subleases of portions of the Premises in the ordinary course of business described in this Section 5.1(b), GT USA shall not sublease any of its rights hereunder without the consent of DSPC, which consent shall not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, any sublease of all or substantially all of the Existing Port or Edgemoor shall not be considered as a sublease in the ordinary course of business.

(c) The following shall be deemed to be an Assignment of this Agreement subject to this Article: (A) any Change in Control of GT USA; (B) any pledge, mortgage, Assignment, or other security arrangement of this Agreement or of the direct ownership interest in GT USA; and (C) any amalgamation, arrangement, reorganization or other business combination agreement between GT USA and any entity, other than any parent, subsidiary or Affiliate of GT USA, in circumstances where GT USA is not the surviving entity. Any Assignment made in violation of the foregoing provision shall be null and void *ab initio* and of no force and effect.

Section 5.2 Assignee Information

GT USA shall provide to DSPC and the Delaware General Assembly all relevant documentation and information concerning any proposed assignee to which GT USA proposes to Assign this Agreement ("Assignee"), as reasonably requested by DSPC or the Delaware General Assembly for its consideration in determining whether to grant its consent to such proposed Assignment, including, without limitation, (a) the name of the proposed Assignee, (b) the capitalization of the proposed Assignee, (c) the terms of the proposed Assignment, and (d) such other information and documents relating to the proposed Assignee's business, experience and finances as DSPC or the Delaware General Assembly may reasonably request.

605 **Section 5.3 Assignment Consent Procedure**

606 (a) No Assignment shall be made or have any force or effect if, at the time
607 of such Assignment, there has occurred and is continuing a GT USA Default that has not
608 been remedied or an event that, with the lapse of time, the giving of notice or otherwise
609 would constitute a GT USA Default.

610 (b) Unless specifically approved in writing by DSPC, no Assignment,
611 either with or without GT USA's consent, required or otherwise, will relieve or release GT
612 USA from the primary obligation to perform all of the terms, covenants and conditions of, or
613 liabilities under, this Agreement.

614 (c) Notwithstanding anything herein to the contrary, if an Assignment
615 occurs with or without DSPC's consent, DSPC may collect from such Assignee, any Fees
616 and Charges or other sum otherwise payable to DSPC under this Agreement and apply the
617 amount collected to the Fees and Charges or other accounts receivable with respect to this
618 Agreement, but such collection by DSPC shall not be deemed a waiver of the provisions of
619 this Agreement, nor an acceptance of such Assignee as the lessee, concessionaire and
620 operator of the Premises.

621 **Section 5.4 Organizational Structure**

622 (a) GT USA hereby represents and warrants that, as of the Execution Date
623 and Commencement Date, GT Americas owns one hundred percent (100%) of the limited
624 liability company interests in GT USA. GT Americas is permitted to, but need not, admit
625 one or more other Equity Participants in GT USA with the prior written consent of DSPC,
626 which consent shall not be unreasonably withheld; provided, however, that in no event may
627 GT Americas own or otherwise control less than 51% of the equity and voting interest in GT
628 USA and, provided further, that such Equity Participant must all times be an entity domiciled
629 in the United States or is otherwise subject to regulation under securities laws of the United
630 States.

631 (b) GT USA shall maintain the day-to-day operational control of the
632 Premises and Assets. In the event that GT Americas brings in an Equity Participant in GT
633 USA in accordance with Section 5.4(a), GT USA may elect to form a one hundred percent
634 (100%) owned subsidiary operating company ("OpCo") of GT USA or through such other
635 structure as mutually agreed to by GT USA and DSPC. In the event GT USA forms an
636 OpCo, DSPC shall have the same rights vis-à-vis the OpCo as it has vis-à-vis GT USA and
637 such OpCo shall be subject to all of the operational controls, observation rights and any and
638 all other obligations of GT USA as set forth herein. Notwithstanding the forgoing, GT USA
639 and GulfTainer agree that at all times during the Term, GT USA shall remain controlled by
640 GT Americas, GT Americas must remain a one hundred percent (100%) subsidiary of GT
641 International Limited FZC, and GulfTainer Company Limited must remain a controlling
642 shareholder of GT International Limited FZC.

643 (c) The board of directors of GT USA shall consist of a majority of
644 members appointed by GT Americas who shall maintain voting control over matters

submitted to such board at all times during the Term. The GT USA equity owners shall consist of GT Americas owning at least 51% of the equity thereof and maintaining majority voting and governing control over the management of GT USA. GT USA shall permit one representative designated by DSPC to attend all public, private and executive session meetings of GT USA's board of directors in a nonvoting observer capacity and, in such respect, shall give such representative copies of all notices, minutes, consents and other materials that it provides to its directors at the same time and in the same manner as provided to such directors; provided, however, that without limiting the other rights of DSPC set forth in this Agreement (including, without limitation, information and audit rights), GT USA shall be permitted to exclude such representative from a meeting or withhold such materials if the meeting or materials involve an actual conflict with DSPC. GT USA shall hold quarterly meetings of its board of directors, two of which shall be held in the State of Delaware. GT USA's annual meeting, which shall be one of the four required meetings, shall be held in the State of Delaware. GT USA shall provide such representative with no less than five (5) days prior written notice of all meetings.

(d) GT USA shall permit one representative designated by the International Longshoremen's Association to attend all public and private operational meetings of GT USA's board of directors in a nonvoting observer capacity and, in such respect, shall give such representative copies of all notices, minutes, consents and other materials that it provides to its directors at the same time and in the same manner as provided to such directors.

(e) DSPC, its affiliates and representatives agree to act in conformity with the Corporate Governance, Compliance and Anti-Corruption Policy of GT USA, as identified in APPENDIX 14 and as amended from time to time, which shall be incorporated into this Agreement to the extent it is not in contravention of the State of Delaware's or the United States of America's Laws and regulations.

Section 5.5 DSPC Oversight and Consent Rights

(a) During the Term of this Agreement, DSPC shall relinquish operational and management responsibilities over the Port to GT USA; provided, however, DSPC shall have the continuing right to monitor and supervise the safety and security of the Port, as well as the proper and adequate performance by GT USA in carrying out its obligations under this Agreement. It is the intention of the Parties that DSPC shall not be involved in day-to-day operations of the Port but shall be permitted to maintain reasonable oversight and supervision regarding decisions that could affect the safety and security of the Port or have a material impact on the Properties and Assets, DSPC, the State of Delaware or its constituents.

(b) Without limitation of any other consent rights of DSPC under this Agreement or applicable Laws, GT USA shall not take any of the following actions without the prior written consent of DSPC, which will not be unreasonably withheld:

(i) change its business strategy;

(ii) pledge or otherwise encumber any of the Original Assets;

- 685 (iii) lease all or substantially all of the Premises or Assets;
- 686 (iv) construct Leasehold Improvements in excess of Five Million
687 Dollars (\$5,000,000) as provided in Section 6.4;
- 688 (v) construct any Leasehold Improvement which would cause DSPC
689 to incur liability for Existing Conditions;
- 690 (vi) sell any Assets in one or a series of related transaction for greater
691 than Five Million Dollars (\$5,000,000.00);
- 692 (vii) make any material modifications, including removing, destroying
693 or taking down, any buildings or other structures existing at the Existing Port as of the
694 Commencement Date;
- 695 (viii) rename the Existing Port or name Edgemoor;
- 696 (ix) make any material capital related and/or funding decision;
- 697 (x) enter into any new material contracts that would by their terms
698 extend beyond the Term; and
- 699 (xi) make any decisions related to dredging management at the Port.
- 700 (c) DSPC hereby agrees to serve, at GT USA's expense, as the non-Federal
701 proponent of the Premises to the extent that such support is needed, as determined by GT
702 USA in its reasonable discretion, with any federally sponsored programs.
- 703 (d) DSPC agrees to provide reasonable assistance, at GT USA's expense,
704 in connection with the establishment of customs facilities at Edgemoor.

705 **ARTICLE 6**
706 **MAINTENANCE, ALTERATIONS, IMPROVEMENTS, AND DREDGING**

707 **Section 6.1 Premises Maintenance**

708 (a) GT USA shall, at its own cost and expense, keep and maintain, in good
709 working order and condition throughout the Term, satisfying the Basic Conditions described
710 in Section 6.4(b) below, the Premises (including without limitation, all portions of the storm
711 water collection system that are on, in, or under the Premises), the Assets, buildings and the
712 wharfs, and perform repair work or replacement work related thereto to ensure that all
713 necessary repairs, improvements and replacements of the facilities at the Premises shall be
714 made, subject to all applicable Laws and to all lawful orders of any Governmental Authority
715 having jurisdiction over Premises and Assets. GT USA shall, at its sole cost and expense,
716 keep the Premises in a tidy, clean and sanitary condition and shall observe all applicable
717 Laws throughout the Term. GT USA shall at all times during the Term, carry out regular
718 safety inspections on the Premises as are required by applicable Laws.

(b) GT USA must keep all railroads and passageways on and adjoining the Premises free from obstruction by GT USA and GT USA Contractors motor vehicles and other objects.

(c) GT USA shall have the sole responsibility, with the reasonable assistance of DSPC at GT USA's request, for obtaining all permits, subaqueous leases and rights of way required for Permitted Operations of the Premises and Assets, at GT USA's expense; provided, however, that DSPC shall use its best efforts to obtain the required permit for required dredging at Edgemoor at the expense of GT USA. To the extent a permit or permit application required for operation of the Port cannot be transferred to GT USA on or prior to the Commencement Date, DSPC shall continue as the named permittee until such time as the permit can be transferred to GT USA, GT USA can be named as a co-permittee or co-applicant or GT USA can procure its own permit. GT USA agrees to indemnify DSPC from any and all liability which may arise from the operation of the Port by GT USA, its employees, agents and contractors under DSPC's permits or permit applications or any permit where DSPC is listed as co-permittee to the extent such liability arises from an exceedance or other violation of the substantive terms and restrictions contained in such permit or permit application or the relevant applicable law and regulations. A list of the current permits, including applications for permits, required for operation of the Existing Port and Edgemoor which GT USA shall undertake to assume or procure, as applicable, prior to (to the extent possible) or following the Commencement Date, as applicable is attached hereto as APPENDIX 3 and incorporated herein by reference.

Section 6.2 Joint Inspection

Not less frequently than once every five (5) years during the Term, and without limiting any other inspection rights of DSPC under this Agreement, GT USA and DSPC shall undertake jointly an inspection of the Premises and the Assets, the cost of which shall be shared equally, to ascertain the compliance of the Premises and Assets with the Basic Condition and other applicable provisions of this Agreement. If any aspect of the Premises and/or Assets fail to comply substantially with the Basic Condition or any other applicable provisions of this Agreement, GT USA shall bring it into compliance therewith. If DSPC reasonably determines that GT USA has failed to meet its maintenance obligations under this ARTICLE 6, DSPC shall notify GT USA in writing and GT USA shall remedy such deficiency (i) within thirty (30) days or (ii) if such deficiencies cannot be remedied within such period of time, within one hundred and twenty (120) days, or such additional time as DSPC allows, provided, that GT USA commences and diligently pursues remedial work within such initial thirty (30) day period or GT USA shall be in material default under this Agreement.

Section 6.3 GT USA's Failure to Repair and Maintain Premises

If GT USA fails to repair and maintain the Premises, adhere to Laws (including Environmental Laws) in accordance with this Agreement or correct deficiencies in accordance with Section 6.2 within ninety (90) days after DSPC gives written notice to GT USA and a reasonable opportunity to cure such failure (except in the case of risk to life or property, in which case no notice shall be required), DSPC may enter the Premises at any time upon reasonable notice and make the required repairs or do the required maintenance or bring the Premises into compliance with Laws and recover from GT USA as Additional Fees, the cost thereof (including

the cost of repairs and cleaning plus DSPC's other costs, including, without limitation, employee wages and overhead, incurred in connection with performing such work). In making such repairs or doing such maintenance or cleaning, DSPC and/or its agents are authorized to enter the Premises and may bring and leave upon the Premises all necessary materials, tools and equipment, and DSPC shall not be liable, except for the gross negligence or willful misconduct of DSPC or its representatives, to GT USA for any inconvenience, annoyance, loss of business, or any injury suffered by GT USA by reason of DSPC effecting such repairs, maintenance or cleaning.

Section 6.4 Alterations/Improvements/Maintenance

(a) GT USA shall make no Leasehold Improvement costing in excess of Five Million Dollars (\$5,000,000) without first obtaining written approval from DSPC, which approval shall not be unreasonably withheld, delayed or conditioned. In the event any such alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by GT USA, such alterations, improvements or fixtures shall, upon request of DSPC, be removed promptly by GT USA at its expense and the Premises Restored to their original condition upon the earlier of the Expiration Date or Termination Date.

(b) All maintenance, alterations, and improvements shall be carried out in accordance with the following standards (collectively, the "Basic Conditions");

(i) Leasehold Improvements, maintenance and alterations must be consistent with the Permitted Operations and shall include such infrastructure and be maintained in a condition sufficient for GT USA to achieve at least the Minimum Annual Volume Guarantee set forth on APPENDIX 13 and include, without limitation, the infrastructure maintenance obligations set forth in APPENDIX 7.

(ii) Prior to constructing, erecting or otherwise making any Leasehold Improvements or alterations, GT USA must procure and pay for all necessary permits, and comply with all applicable Laws.

(iii) Leasehold Improvements and alterations may not detract from the value or the character, weaken the structural integrity, or reduce the security of the Premises, other Leasehold Improvements and/or Assets.

(iv) If any work related to Leasehold Improvements, maintenance or alterations involves the replacement of fixtures or parts, all replacement fixtures or parts shall have a value, useful life, quality and durability substantially or at least the same as the fixtures or parts being replaced and shall be of similar or better quality and nature commonly in use at the time of replacement.

(v) Leasehold Improvements and alterations must be of first quality materials and related work must proceed in a proper, professional manner following appropriate due diligence.

(vi) GT USA shall promptly discharge, remove or contest all liens filed against the Premises arising out of any Leasehold Improvements, alterations or maintenance.

(vii) GT USA shall ascertain and comply with all applicable Laws, including without limitation, all environmental laws related to GT USA's performance of its obligations pursuant to this Agreement and/or GT USA's use and occupancy of the Premises.

(viii) GT USA shall not cause or permit any Hazardous Materials to be generated, treated or stored on or about the Premises or transferred to the Premises, or otherwise in contravention of applicable environmental laws except where applicable permits allow GT USA to handle that hazardous cargo.

(c) GT USA shall provide to DSPC a construction bond with terms consistent with industry standards and for the full cost of the applicable construction for any project in excess of five million dollars (\$5,000,000.00) undertaken at the Premises.

Section 6.5 DSPC Access and Inspection

(a) If at any time DSPC reasonably suspects a failure of GT USA to meet the Standard of Care, Basic Condition or any other material obligations under this Agreement, including with regard to safety and security, DSPC shall have a right to inspect the operations of the Premises and Assets and the operational throughput records. However, except as otherwise provided in this Agreement, DSPC shall not have access to the financial information of GT USA. The failure of DSPC to notify GT USA of any necessary maintenance or repair shall not relieve GT USA of its obligation to so maintain and repair. The right to inspect reserved to DSPC hereunder shall impose no obligation on DSPC to make inspections to ascertain the condition of the Premises, and shall impose no liability upon DSPC for failure to make such inspections or for failure to discover any defect in the condition of the Premises.

(b) Without prejudicing the rights set forth in Section 10.2(i), in the event that GT USA is unable to occupy and operate the Premises for any period of time, DSPC may immediately enter the Premises and operate the Premises and the Assets if reasonably necessary to continue orderly operations at the Premises.

Section 6.6 Dredging

(a) Subject to any of GT USA's contractual rights to receive reimbursement from Port tenants, GT USA agrees to cause, at its sole expense, all berthing areas to be dredged on a regular basis so as to maintain depths necessary or appropriate for Permitted Operations and in all events to maintain at least the following minimum depths at the Port, subject to appropriate seasonal adjustments: Berths #1-4: 38 feet MLW; Berths #5-7: 35 feet MLW; Floating Berth: 38 feet MLW; Petroleum Jetty: 38 feet MLW; and Auto Berth: 38 feet MLW.

(b) GT USA shall maintain all licenses and permits required for maintenance dredging at all berths at the Port.

838 (c) Without limiting GT USA's other requirements as forth in this
839 Agreement, GT USA hereby agrees to be solely responsible for all costs incurred for (i) the
840 channel and/or dredging at Edgemoor, provided, however, that DSPC hereby agrees to use its
841 best efforts to obtain the required permit for the initial dredging at Edgemoor, (ii) the Project
842 Dredge for Edgemoor, and (iii) O&M Dredging for the Existing Port (to the extent not
843 recovered from any third party port tenant with such contractual obligations). O&M
844 Dredging for Edgemoor will be monitored and overseen by DSPC as the non-Federal
845 proponent, but it is intended that it will be paid for by the United States Federal Government
846 during the Term. In the event the United States Federal Government does not assume this
847 cost, the cost of such O&M Dredging shall be shared by DSPC and GT USA pending their
848 mutual review and agreement to any cost sharing arrangement. In the event the parties
849 cannot come to an agreement after their mutual review, the Parties shall follow the dispute
850 resolution procedures set forth in ARTICLE 19.

851 (d) GT USA shall keep DSPC reasonably informed as to the overall
852 dredging management plan at the Port and shall use its commercially reasonable efforts to
853 implement any requests made by DSPC concerning such plan to ensure that dredging at the
854 Port is at all times being conducted in accordance with the short and long term plans of the
855 State of Delaware and the Army Corps of Engineers. As provided in Section 5.5(b), any
856 decisions related to dredging management at the Port shall be subject to the prior written
857 consent of DSPC.

858 **Section 6.7 Fumigation**

859 GT USA shall have sole responsibility for the provision of fumigation services by GT
860 USA or a third party at the Premises. All such fumigation services shall be provided in
861 compliance with all Environmental Laws or as may be requested or required by the USEPA,
862 DNREC, the USDA or any other Governmental Authority. Without limiting DSPC's rights to
863 indemnification as provided in ARTICLE 15 of this Agreement, GT USA hereby agrees to
864 indemnify and hold DSPC harmless with respect to any claims or costs incurred by DSPC that
865 are caused by the provision of fumigation services at the Premises. After the Commencement
866 Date, GT USA shall be responsible for any construction, modification, restriction or other
867 expenditure required in order to obtain all required permits for fumigation services at the Port.

868 **Section 6.8 GT USA's Risk**

869 All structures, alterations, installations, materials, supplies and articles existing or at any
870 time erected, brought, placed or being on the Premises by GT USA, including, without
871 limitation, all activities related to Leasehold Improvements, shall be entirely at the risk of GT
872 USA concerning loss, damage, destruction or accident from any cause whatsoever, except as
873 otherwise provided herein. GT USA EXPRESSLY ACKNOWLEDGES THAT ITS
874 OBLIGATION UNDER THIS AGREEMENT IS SUBSTANTIAL AND MAY INVOLVE
875 SIGNIFICANT COST.

876 **ARTICLE 7** 877 **DAMAGE OR DESTRUCTION**

878 **Section 7.1 Restoration**

For purposes of this ARTICLE 7, the terms "Restoration," "Restore" or "Restoring" mean, with respect to any Casualty Event, to repair, restore or rebuild the affected portion of the Premises to restore them to their condition prior to the Casualty Event (but in no event to less than the Minimum Condition), as the case may be, ordinary wear and tear excepted.

Section 7.2 Obligations of GT USA

If all or any part of any of the Premises and/or Assets shall be destroyed or damaged during the Term, in whole or in part, by a Casualty Event, GT USA shall:

(a) Give DSPC written notice thereof promptly after GT USA receives actual notice of such casualty;

(b) At its sole cost and expense, whether or not insurance proceeds, if any, shall be available to pay for the Casualty Costs, proceed diligently to Restore the affected Premises and Assets; and

(c) Deposit all insurance proceeds received by GT USA in connection with a Casualty Event with an Escrow Agent to Restore the Premises (such insurance proceeds and any interest earned thereon the "Casualty Restoration Funds").

Section 7.3 Rights of DSPC

In addition to the other remedies available to DSPC that are set forth elsewhere in this Agreement or otherwise, the following remedies shall be available to DSPC in the event of a Casualty Event:

(a) In any case where this Agreement shall expire or be terminated prior to the completion of the Restoration, GT USA shall:

(i) promptly account to DSPC for all amounts spent in connection with any Restoration which was undertaken,

(ii) promptly pay over or cause the Escrow Agent established pursuant to Section 7.2 above to pay over to DSPC the remainder, if any, of the Casualty Restoration Funds received by GT USA or held by the Escrow Agent prior to such termination or cancellation, and

(iii) pay over or cause the Escrow Agent to pay over to DSPC, within five (5) Business Days after receipt thereof, any Casualty Restoration Funds received by GT USA or the Escrow Agent subsequent to such termination or cancellation. Upon completion of and payment for the Restoration, DSPC shall return to GT USA any unused portion of the Casualty Restoration Funds.

(b) Failure to Restore Following a Casualty Event.

(i) If, in the event of a Casualty Event,

(A) GT USA fails or neglects to commence the diligent Restoration of the Premises and/or Assets or the portion thereof so damaged or destroyed, or

(B) having so commenced such Restoration, GT USA fails to complete the same diligently in accordance with the terms of this Agreement,

then DSPC may, by giving sixty (60) days' prior notice to GT USA, deem such failure to be a GT USA Default and thereafter exercise the remedies provided for in ARTICLE 10.

(ii) If, in the event of a Casualty Event, either

(A) GT USA fails or neglects to commence the diligent Restoration of the Premises and/or Assets or the portion thereof so damaged or destroyed,

(B) having so commenced such Restoration, GT USA fails to complete diligently the same in accordance with the terms of this Agreement, or

prior to the completion of any such Restoration by GT USA, this Agreement shall expire or be terminated in accordance with the terms of this Agreement, then DSPC may, but shall not be required to, complete such Restoration using the Casualty Restoration Funds to the extent they are available and otherwise at GT USA's expense. GT USA's obligations under this ARTICLE 7 shall survive the expiration or termination of this Agreement.

Section 7.4 Benefit of DSPC

The requirements of this ARTICLE 7 are for the benefit only of DSPC. No other person shall have or acquire any claim against DSPC as a result of any failure of DSPC actually to undertake or complete any Restoration as provided in this ARTICLE 7 or to obtain the evidence, certifications and other documentation provided for herein.

Section 7.5 GT USA's Right to Extend Term

If a Casualty Event has the effect of rendering the Premises substantially unavailable to GT USA for a period in excess of sixty (60) days, then, so long as GT USA is diligently proceeding to Restore the Premises as required under this ARTICLE 7, GT USA shall have the right to extend the Term by such number of days that such Port facilities are substantially unavailable (the "Casualty Extension"). If GT USA elects to exercise the right to the Casualty Extension, GT USA shall give notice to DSPC within thirty (30) days following the date on which GT USA first became aware of its right to the Casualty Extension occurring setting forth the details of the Casualty Event that results in the Premises being substantially unavailable. DSPC shall, after receipt of said notice, be entitled by notice to GT USA to require GT USA to provide such further supporting documentation as DSPC may reasonably consider necessary.

Section 7.6 Cooperation

DSPC shall cooperate with GT USA and act in a reasonable and expedited manner in connection with any Restoration by GT USA in connection with a Casualty Event, including, without limitation, an expedited review and approval of all documents and requests submitted by GT USA in connection with the Restoration. DSPC and GT USA shall cooperate and coordinate so as to minimize any interference or delay with respect to GT USA's Restoration.

Section 7.7 Assets

The provisions of this ARTICLE 7 shall apply to any Casualty Event which results in the loss or destruction of any Assets to the extent that the failure to Restore such Assets shall have a material adverse effect on the efficient operation of the Port.

ARTICLE 8 **FORCE MAJEURE**

Section 8.1 Force Majeure Event

The term "Force Majeure Event" means any event beyond the reasonable control of GT USA or DSPC, as the case may be, that delays or interrupts the performance of the obligations or covenants of GT USA or DSPC for a period of at least thirty (30) days, respectively, hereunder, including without limitation an intervening act of God or public enemy, war, act of terror, invasion, armed conflict, act of foreign enemy, blockade, revolution, sabotage, civil commotions, interference by civil or military authorities, industry wide strike, illegal non-industry wide strikes provided that GT USA has diligently but unsuccessfully sought to obtain an injunction prohibiting such strike, earthquake, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority of competent jurisdiction, governmental embargo, restrictions, priorities or allocations of any kind and all kinds, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, tornado, hurricane, extraordinary tides or winds or other natural disaster; *but only* if such event is *neither* (a) the result of an exercise of eminent domain *nor* (b) the result of (i) the negligence or misconduct of GT USA or DSPC, as the case may be, or their respective representatives, (ii) any act or omission by GT USA or its representatives in breach of the provisions of this Agreement, or (iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of GT USA. Notwithstanding the foregoing, any event that is covered by business interruption insurance shall be excluded from the definition of Force Majeure Event.

Section 8.2 Consequences of Force Majeure Event

In the event that either Party is affected by a Force Majeure Event, the provisions of this ARTICLE 8 shall apply unless such Force Majeure Event constitutes a Casualty Event, in which case, the provisions of ARTICLE 7 shall apply.

(a) Neither DSPC nor GT USA shall be liable for any failure, delay or interruption in performing their individual obligations hereunder due to a Force Majeure Event.

(b) Subject to the notice required in Section 8.3, a Force Majeure Event shall excuse a Party from whatever obligation such Party, using all commercially reasonable efforts, is not actually capable of performing or causing to be performed as a direct result of the Force Majeure Event being claimed for the applicable period stated. Notwithstanding the occurrence of a Force Majeure Event, (i) this Section 8.2 shall not excuse the Party claiming force majeure from the performance of its obligations under this Agreement that, using all commercially reasonable efforts, the Party is actually capable of performing or causing to be performed during the applicable period, and (ii) during such applicable force majeure period, each Party shall use its commercially reasonable efforts to minimize the effect and duration of the Force Majeure Event.

(c) In the event a Force Majeure Event renders all or substantially all of the Premises unusable for the Permitted Operations and both Parties reasonably agree that Restoration (as defined in ARTICLE 7) of such Premises is not possible by GT USA using commercially reasonable efforts within a two (2) year period from the date of the Force Majeure Event, then GT USA and DSPC shall enter into good faith negotiations for terms and conditions upon which this Agreement can be continued and if the Parties fail to agree upon such terms, GT USA may terminate this Agreement and neither party shall have any continuing obligations other than those that arose prior to the termination of this Agreement or that expressly survive termination under the terms of this Agreement.

Section 8.3 Notice of Force Majeure Claim

The party claiming a Force Majeure Event shall give notice to the other party as soon as practicable and in no event later than fifteen (15) days following the date on which it first became aware of such Force Majeure Event, which notice shall include (a) a statement of the basis of the Force Majeure Event claim, (b) details of the circumstances from which any delay arises and (c) an estimate of the delay in the performance of obligations under this Agreement attributable to such Force Majeure Event, including information in support thereof, to the extent known at that time. The party claiming a Force Majeure Event shall bear the burden of proof of the force majeure defense.

ARTICLE 9 TAXES, FEES & UTILITIES

Section 9.1 Payment of Taxes and Fees

GT USA shall timely pay all taxes, fees or other charges imposed with respect to the use and occupancy of the Premises and the Assets and the performance of Permitted Operations, including, without limitation, any documentary or other transfer or sales taxes, property or possessory interest taxes, stormwater charges, and any City of Wilmington business tax with respect to this Agreement or Permitted Operations. DSPC reserves the right, without being obligated to do so, to pay the amount of any such taxes not timely paid by GT USA, and thereafter, upon demand from DSPC that GT USA reimburse DSPC therefor, to require said sum to be due and payable by GT USA to DSPC as Additional Fees. If GT USA wishes at any time to dispute the lawfulness, applicability or amount of any taxes, it must do so with the Governmental Agency imposing the tax. DSPC hereby notifies GT USA that the interest transferred to GT USA pursuant to this Agreement may be subject to property or possessory interest taxes and GT USA may be subject to the payment of property or possessory interest taxes levied on the interest. GT USA further acknowledges that the exemptions enjoyed by DSPC for any tax, stormwater charge or any other fees may not be transferable to GT USA and GT USA shall assume and be responsible for any and all such taxes, charges and/or fees.

Section 9.2 Utilities

GT USA shall contract and pay for all utility services provided to the Premises and to all tenants and other users of the Port, including, without limitation, water, gas, electricity, telephone, data, stormwater and sewage, except to the extent provided in any leases or other agreements with tenants or other users of the Port.

1034 **ARTICLE 10**
1035 **DEFAULT**

1036 **Section 10.1 GT USA Default**

1037 The occurrence of any of the following shall constitute a default by GT USA ("GT USA
1038 Default"):

1039 (a) Payment Default. Failure by GT USA to make any payment of money
1040 due under this Agreement, including, but not limited to, to pay any Concession Fee or the
1041 Minimum Annual Concession Fee, if the failure continues for ten (10) Business Days after
1042 written notice has been given to GT USA;

1043 (b) Failure to Invest. Failure to invest the Initial Capital Expenditure
1044 Obligation and/or Initial Warehouse Capital Obligation and/or failure to invest the Total
1045 Capital Expenditure Obligation and/or Minimum Warehouse Capital Obligation;

1046 (c) Failure of Minimum Annual Volume Guarantee. Failure to achieve
1047 Minimum Annual Volume Guarantee set forth on Appendix 13 for any three (3) consecutive
1048 year period, regardless of whether or not the Minimum Annual Concession Fee is being paid
1049 by GT USA;

1050 (d) Operations Default. Failure to operate the Premises in accordance with
1051 the Permitted Operations or to maintain the Premises or Assets in the Basic Condition and/or
1052 failure to comply with the applicable safety and security standards set forth in this
1053 Agreement;

1054 (e) Change of Control. Any Change of Control in violation of the terms of
1055 this Agreement;

1056 (f) Insolvency. Any of GulfTainer, GT Americas, GT USA or OpCo
1057 becomes Insolvent;

1058 (g) Abandonment. Abandonment of the operation and development of the
1059 Port as contemplated by this Agreement, including, without limitation, failure to occupy and
1060 operate the Premises for five (5) Business Days except in connection with a Casualty Event
1061 or Force Majeure Event;

1062 (h) Failure to Maintain Insurance or Letter of Credit. Failure to obtain and
1063 maintain any insurance policy as required by ARTICLE 14 of this Agreement or the Letter of
1064 Credit in accordance with the terms of this Agreement;

1065 (i) Failure to Comply with Employee Provisions. Failure to comply with
1066 the employee provisions described in ARTICLE 20;

1067 (j) Assignment. Any Assignment made by GT USA in violation of the
1068 terms and conditions of ARTICLE 5 of this Agreement, to the extent that such violation is
1069 not waived, approved or cured in accordance with the terms thereof;

(k) Execution or Attachment. Execution or attachment against the Assets, to the extent that such execution or attachment substantially interferes with Permitted Operations, or against all or any material part of the Premises or any interest therein that has been created or allowed in any way to exist by GT USA or any person claiming through it, and such execution or attachment has not been vacated, stayed by court order, bonded or otherwise removed within a period of sixty (60) days; and/or

(l) Breach of Representations, Warranties and Other Covenants. Any material breach by GT USA, GT Americas, OpCo (if formed) or any GT USA Affiliate or OpCo Affiliate of any other representation, warranty, covenant, condition or other term of this Agreement.

Section 10.2 DSPC Remedies Upon GT USA Default

Subject to Section 10.8, upon the occurrence of and during the continuance of a GT USA Default, DSPC may, upon written notice to GT USA, declare GT USA to be in default; provided that to the extent the GT USA Default is curable, GT USA shall have thirty (30) days to cure such GT USA Default after receiving notice thereof from DSPC unless another cure period is expressly provided herein. In the event of a GT USA Default, DSPC may avail itself of the remedies set forth below (but in no event shall DSPC be obligated to do so). Such remedies are not exclusive, and the election of one remedy shall not preclude an election of any other remedy (or no remedy) at any later time.

(a) Termination of Agreement and Right to Possession. DSPC may, at its option, terminate this Agreement and terminate GT USA's right to use the Premises and Assets and have the Premises and all Assets and other property returned to DSPC (including transfer of title to infrastructure, equipment and assets, whether now or hereafter acquired) by giving written notice of termination to GT USA. The consequences of such termination shall be as set forth in Section 11.2.

(b) Re-entry and Distrain. Subject to Section 10.1 above, DSPC may, at its option, terminate this Agreement and, to the extent allowed pursuant to applicable law, re-enter the Premises and distrain upon any of GT USA's Assets and other property.

(c) DSPC Performance in Lieu of GT USA. DSPC, without waiving or releasing GT USA from its obligations under this Agreement, may observe and perform the covenant or covenants of which GT USA has defaulted (but in no event shall DSPC be obliged to do so), and in that event may pay such monies as may be reasonably required or as DSPC may reasonably deem expedient, and DSPC shall thereupon charge all monies to GT USA, together with interest thereon, at an annual rate equal to the Prime Rate plus 2.5 percent, from the date on which DSPC paid the monies. GT USA shall repay such monies to DSPC forthwith on demand as Additional Fees, and DSPC shall have the same rights and remedies and may take the same steps for recovery of the monies so paid, together with interest, as DSPC may take for recovery of arrears of Fees and Charges.

(d) Damages. DSPC shall have the right to recover its Losses arising from such GT USA Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any person who is owed damages or

1111 a debt. For the avoidance of doubt, the parties agree that this Agreement includes an
1112 acceleration clause and DSPC shall have the right to have an arbitrator or court include future
1113 owed payments in its calculation of damages subject to DSPC's duty to mitigate under
1114 applicable law.

1115 (e) Letter of Credit. DSPC may draw upon the Letter of Credit.

1116 (f) Oversight. DSPC may increase oversight authority and implement
1117 consent rights to any actions by the GT USA Board of Director, in the sole discretion of
1118 DSPC.

1119 (g) Specific Performance. DSPC may seek specific performance,
1120 injunction or other equitable remedies, it being acknowledged by GT USA that damages may
1121 be an inadequate remedy for a GT USA Default.

1122 (h) Handback Guaranty. DSPC may make a claim on the Handback
1123 Guaranty.

1124 (i) Leasehold Improvements. In connection with the termination of this
1125 Agreement, DSPC may take possession of all Leasehold Improvements and, in its discretion,
1126 use them for DSPC's benefit or sell or otherwise dispose of them.

1127 (j) Other Remedies. DSPC shall have any other remedy available under
1128 applicable law.

1129 **Section 10.3 Use or Storage of Abandoned Property**

1130 In the event of a termination following a GT USA Default, or if GT USA vacates the
1131 Premises for more than five (5) days, DSPC may use or store all or any of the Assets at the
1132 expense of GT USA, and if stored on DSPC property but not used, charge GT USA for use of
1133 storage premises.

1134 **Section 10.4 DSPC's Rights; Non-Waiver**

1135 No acceptance of any Fees and Charges or other payment subsequent to any breach,
1136 non-observance or non-performance, nor any condoning, excusing or overlooking by DSPC on
1137 previous occasions of breaches, non-observances or non-performances, shall be taken as a waiver
1138 of such breach, non-observance or non-performance or in any way defeat or affect the rights of
1139 DSPC contained herein. No consideration by DSPC permitting GT USA to rectify any breach,
1140 non-observance or non-performance shall be taken as a waiver of GT USA's covenants or shall
1141 in any way defeat or affect the rights of DSPC to terminate this Agreement for a subsequent
1142 breach. DSPC may exercise any of its rights and remedies under this Agreement or at law or in
1143 equity.

1144 **Section 10.5 Consequences of Termination upon GT USA Default**

1145 Upon termination of this Agreement by DSPC in accordance with Section 10.2(a)
1146 above, the provisions under ARTICLE 11 and ARTICLE 17 shall apply.

1147 **Section 10.6 DSPC Default**

1148 The occurrence of any of the following events during the Term shall constitute a default
1149 by DSPC ("DSPC Default"):

1150 (a) Failure to Transfer. Failure by DSPC to facilitate the transfer of the
1151 Premises, the Original Assets or the Assigned Contracts to GT USA;

1152 (b) Assist with Regulatory and Administrative Matters. Failure by DSPC
1153 to use commercially reasonable efforts, at GT USA's cost, on an on-going basis under this
1154 Agreement to assist GT USA with all regulatory and administrative matters associated with
1155 the management and operation of this Agreement that permits GT USA to fulfil the terms of
1156 this Agreement;

1157 (c) Failure to Maintain Insurance. Failure to obtain and maintain any
1158 insurance policy as required by ARTICLE 13 of this Agreement; and/or

1159 (d) Breach of Representations, Warranties and Other Covenants. Any
1160 material breach by DSPC of any other representation, warranty, covenant, condition or other
1161 term of this Agreement.

1162 (e) Cooperation with Financings. The failure of DSPC to reasonably
1163 cooperate with GT USA and any Leasehold Mortgagees with respect to any financing by GT
1164 USA pursuant to Section 18.

1165 (f) The Beazley Insurance Policy. The failure of DSPC to retain the
1166 Beazley Insurance Policy in full force and effect through the end of such policy's term.

1167 **Section 10.7 GT USA Remedies Upon DSPC Default**

1169 Upon the occurrence of and during the continuance of a DSPC Default, GT USA may,
1170 upon written notice to DSPC, declare DSPC to be in default and may avail itself of the following
1171 remedies. These remedies are not exclusive, and the election of one remedy shall not preclude
1172 an election of any other remedy at a later time:

1173 (a) After-Acquired Assets (for the avoidance of doubt, excluding the
1174 Original Assets) shall remain the property of GT USA after termination of this Agreement;
1175 provided, however, GT USA shall have the option to require DSPC to purchase such assets at
1176 fair market value, as determined in accordance with procedures set forth in Section 17.9(c),
1177 in the event of a DSPC Default.

1178 (b) GT USA may seek specific performance, injunction or other equitable
1179 remedies, it being acknowledged by DSPC that damages may be an inadequate remedy for a
1180 DSPC Default.

1181 (c) GT USA may seek to recover all of its Losses arising from a DSPC
1182 default, which losses shall include any and all damages, liabilities, penalties, charges, costs
1183 and expenses, arising from such DSPC Default.

1184 **Section 10.8 Good Faith Negotiations**

1185 Notwithstanding any provision herein to the contrary, in the event either Party declares a
1186 default under this ARTICLE 10, the Parties agree to first enter into good faith amicable
1187 negotiations between the executive management of each of DSPC and GT USA over a period of
1188 thirty (30) days to resolve the default following any applicable cure period. The foregoing
1189 obligation shall not apply to any failure to maintain any required insurance or the Letter of Credit
1190 or any default involving a hazardous condition or any non-curable default.

1191 **Section 10.9 Offsetable Amounts**

1192 Notwithstanding any expiration or termination of this Agreement or the remedies
1193 exercised by either party, the balance of any Offsetable Amounts will remain an obligation of
1194 DSPC and will be paid in full by DSPC concurrent with such expiration or termination;
1195 provided, however, in the event this Agreement is terminated as a result of a GT USA Default,
1196 this provision shall not apply to any Offsetable Amount that was incurred solely as a result of
1197 entering into the transactions contemplated herein (e.g., Seabury fee, obligations under Section
1198 20.2, etc.). Nothing herein shall be construed to waive GT USA's right to seek recovery of such
1199 excluded amounts pursuant to the dispute resolution provisions in Section 19.2 herein.

1200 **ARTICLE 11**
1201 **TERMINATION**

1202 **Section 11.1 Surrender**

1203 Upon the earlier of the Expiration Date or Termination Date, GT USA shall surrender the
1204 Premises and Assets (including, without limitation, any remaining Original Assets, any new or
1205 replacement assets, infrastructure, alterations, equipment, etc. subject to Article 17) in the
1206 Minimum Condition as set forth in Section 17.2. In case of earlier termination due to a DSPC
1207 Default, equipment purchased by GT USA (other than the Original Assets) shall remain the
1208 property of GT USA after termination of this Agreement. Title to Original Assets conveyed to
1209 GT USA and title to any Leasehold Improvements constructed by GT USA on the Premises
1210 during the Term shall be transferred from GT USA to DSPC upon the earlier of the Expiration
1211 Date or the Termination Date, at no additional cost to DSPC.

1212 **Section 11.2 Termination Consequences**

1213 Upon expiration or the termination of this Agreement, the following provisions shall
1214 apply:

1215 (a) GT USA shall, on the Expiration Date or Termination Date, as
1216 applicable, and without any action whatsoever being necessary on the part of DSPC, vacate
1217 the Premises immediately and well and truly surrender and deliver to DSPC, the Premises
1218 free and clear of all encumbrances other than (i) those affecting title to the Premises existing
1219 as of the Commencement Date, and (ii) those created by or suffered to exist or consented to
1220 by DSPC;

1221 (b) GT USA shall transfer to DSPC title to any Original Assets conveyed
1222 to GT USA along with any After Acquired Assets in use for the operation of the Port upon

the earlier of the Termination Date or Expiration Date, at no additional cost to DSPC, except as provided in ARTICLE 17;

(c) GT USA shall within sixty (60) days remove any of its property of GT USA, including any fixtures that GT USA is required to remove at the end of the Term and deliver all keys and otherwise afford DSPC full and proper access to the Port and all improvements located at the Port;

(d) GT USA shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to and including the Expiration Date or Termination Date, as applicable;

(e) DSPC shall have the option, by providing notice to GT USA, of requiring that GT USA assign to DSPC or its nominee, without warranty or recourse to GT USA, all of GT USA's right, title, and interest in, to, and under, this Agreement;

(f) GT USA shall, at its sole cost and expense, promptly deliver to DSPC all "as-built" drawings, plans, other drawings, specifications and models prepared in connection with any Leasehold Improvements and otherwise applicable to the Premises and all permits relating to such Leasehold Improvements;

(g) GT USA shall, at its sole cost and expense, promptly deliver to DSPC copies of all records and other documents relating to the Premises as DSPC, acting reasonably, may request;

(h) GT USA shall execute and deliver to DSPC a release or other instrument reasonably required by DSPC to evidence such expiration or termination;

(i) GT USA shall, upon the Expiration Date, assign to DSPC any contracts or other agreements extending beyond the Term that DSPC has consented to pursuant to Section 5.1(a) or shall, upon the Termination Date, assign to DSPC all existing contracts and agreements relating to operations at the Port, as requested by DSPC; and

(j) GT USA shall assist DSPC in such manner as DSPC may require to ensure the orderly transition of control, maintenance and rehabilitation of the Premises.

Section 11.3 Outside Date on Conditions Precedent

Notwithstanding anything herein to the contrary, in the event the Parties are not able to satisfy the conditions precedent set forth in APPENDIX 2 by October 31, 2018, then unless the Parties mutually agree to extend this date, this Agreement shall automatically expire and neither party shall have any continuing obligations other than those that arose prior to the termination of this Agreement, or that expressly survive expiration under the terms of this Agreement.

Section 11.4 Survival

This ARTICLE 11 shall survive the Expiration Date or Termination Date, as applicable.

ARTICLE 12
EMINENT DOMAIN

Section 12.1 Taking Event

(a) If any portion of the Premises shall be taken by any Governmental Authority under the power or threat of eminent domain for any public use or purported public use during the Term, a "Taking Event" shall have been deemed to have occurred.

(b) If in a Taking Event, a portion, but less than substantially all, of the Premises is taken (a "Partial Taking Event"): (a) each Party shall give the other Party notice thereof promptly after such Party receives actual notice of such Partial Taking Event; (b) GT USA shall, in the event GT USA determines in its reasonable discretion that the remaining portion of the Premises after such Partial Taking Event is still suitable for its intended use, at its sole cost and expense, and provided that the condemnation or other similar proceeds, if any, shall be available to pay for the estimated or actual cost of repairs, alterations, Restorations, replacement and rebuilding, proceed diligently to Restore the portions of the Premises that were not subject to the Partial Taking Event in accordance with ARTICLE 6; and (c) GT USA shall deposit with an Escrow Agent such portion of the condemnation or other similar proceeds received by GT USA in connection with such Partial Taking Event necessary to Restore the Premises as the parties hereto reasonably agree (the "Taking Restoration Funds") which shall be used and applied in the Restoration of the lost or damaged property.

(c) GT USA shall be entitled to claim, prove and receive in any condemnation proceedings such awards or other compensation for any loss or diminution in or of interests under this Agreement as may be allowed by the Governmental Authority effectuating such Taking Event; provided, however, that GT USA's claim may not frustrate or adversely impact DSPC's separate claims for compensation in connection with such Taking Event. If multiple claims with respect to such Taking Event are barred under applicable Law, the parties shall reasonably cooperate in consolidating their separate claims.

Section 12.2 Effect of a Taking Event on This Agreement

(a) In the event of a Taking Event in which all or substantially all of the Premises are taken or so transferred, this Agreement and all of GT USA's right, title and interest thereunder shall cease on the date title to such property so taken or transferred vests in the Governmental Authority effectuating the Taking Event.

(b) In the event of a Partial Taking Event, on the earlier of the date title to the portion of the Premises vests in such Governmental Authority, or the date on which such Governmental Authority takes possession of the portion of the Premises: (i) this Agreement shall terminate with respect to DSPC's and GT USA's future obligations hereunder with respect to the portion of the Premises so taken and (ii) all Fees and Charges and any other payments due hereunder from GT USA to DSPC for the remainder of the Term shall be equitably reduced from and after such Partial Taking Event to the extent GT USA does not have full use of the Premises as a result of such Taking Event.

1298 **Section 12.3 Rights of DSPC and GT USA**

1299 In addition to the other remedies available to DSPC that are set forth elsewhere in this
1300 Agreement, the following remedies shall be available to DSPC and GT USA in the event of a
1301 Taking Event:

1302 (a) In any case where this Agreement shall expire or be terminated prior to
1303 the completion of any Restoration initiated by GT USA, GT USA shall (i) promptly account
1304 to DSPC for all amounts spent, and all accounts due and payable at the time of termination,
1305 in connection with any Restoration which was undertaken, (ii) promptly pay over or cause
1306 the Escrow Agent to pay over to DSPC the remainder, if any, of the Taking Restoration
1307 Funds received by GT USA or held by the Escrow Agent prior to such termination or
1308 cancellation and after payment in full of any accounts then due and payable, and (iii) pay
1309 over or cause the Escrow Agent to pay over to DSPC, within five (5) Business Days after
1310 receipt thereof, any Taking Restoration Funds received by GT USA or the Escrow Agent
1311 subsequent to such termination or cancellation; and

1312 (b) DSPC's rights under this Section 12.3 shall survive the Expiration Date
1313 or Termination Date, as applicable.

1314 **Section 12.4 Rights of GT USA**

1315 In the event of a Taking Event affecting only a portion of the Premises, leaving the
1316 remainder of the Premises in such location or in such form, shape or reduced size so as not to be
1317 effectively and practicably usable for its intended purpose or in the event of a Taking Event that
1318 directly affects more than seventy percent (70%) of the Premises, GT USA may, by giving notice
1319 to DSPC within sixty (60) days after the occurrence of such Taking Event, subject to the
1320 provisions set forth in ARTICLE 11, terminate this Agreement.

1321 **Section 12.5 Payment of Taking Restoration Funds to GT USA**

1322 Subject to the satisfaction by GT USA of all of the terms and conditions of this
1323 ARTICLE 12, the Escrow Agent shall pay to GT USA from time-to-time any Taking Restoration
1324 Funds, but not more than the amount actually collected by the Escrow Agent upon the Taking
1325 Event, together with any interest earned thereon, after reimbursing itself therefrom, as well as
1326 DSPC, to the extent, if any, of the reasonable expenses paid or incurred by the Escrow Agent and
1327 DSPC in the collection of such monies.

1328 **Section 12.6 Payment and Performance Bonds**

1329 If GT USA obtains payment or performance bonds related to a Restoration, GT USA
1330 shall name DSPC and itself, as their interests may appear, as additional obligees, and shall
1331 deliver copies of any such bonds to DSPC promptly upon obtaining them.

1332 **Section 12.7 Cooperation**

1333 DSPC shall cooperate with GT USA and act in a reasonable and expedited manner in
1334 connection with any Restoration of the Premises by GT USA in connection with a Taking Event,
1335 including, without limitation, an expedited review and approval of all documents and requests

submitted by GT USA in connection with the Restoration. The parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to GT USA's Restoration.

ARTICLE 13

INSURANCE

Section 13.1 Types and Amounts

GT USA shall, and shall cause its subcontractors and customers to, obtain, maintain and pay for, or cause to be obtained, maintained and paid for during the Term, during any GT USA holdover occupancy of the Premises, and during such other time as GT USA occupies, suffers, permits or allows any person to occupy the Premises, insurance, insurance policies and/or bonds with respect to the Premises and Permitted Operations as required under this Article, against all risks as specified in this Article, including the following:

(a) **Liability Insurance.** Commercial General Liability or Comprehensive Marine Liability Insurance, including coverage for bodily injury and property damage, with such types of coverage and minimum coverage amounts as may be reasonably requested by DSPC from time to time, but in no event for less than \$1,000,000 limit per occurrence \$2,000,000 Annual General Aggregate and \$2,000,000 Products and Completed Operations Aggregate and in no event with less than the following coverages:

- (i) Premises and Operations Liability;
- (ii) Products and Completed Operations Liability;
- (iii) Blanket Contractual Liability;
- (iv) Personal and Advertising Injury Liability;
- (v) Broad Form Property Damage Liability, including completed operations;
- (vi) Fire Legal Liability;
- (vii) Independent Contractors Liability;
- (viii) Elevator Liability;
- (ix) Employees as Additional Insureds; and
- (x) Fruit and cargo coverage covering cargo of Port customers.

(b) **Pollution Liability.** Pollution liability insurance covering GT USA's liability for bodily injury, property damage and environmental damage resulting from sudden and accidental and gradual pollution and related clean-up costs incurred by GT USA. The combined single limit per occurrence shall not be less than \$50,000,000.

1368 (c) Wharfingers/Stevedoring Legal Liability. Wharfingers (Port
1369 Authorities Legal Liability) – Includes first and third party property damage to vessels,
1370 cargo, freight, etc., plus bodily injury to third parties. (Stevedores Addendum) – Includes
1371 property in care, custody and control. The coverage limited in the amount of not less than
1372 \$1,000,000 per occurrence.

1373 (d) Protection & Indemnity Insurance. Protection & Indemnity Insurance
1374 (at no less than \$1,000,000) if GT USA operates vessels in connection with the performance
1375 of Permitted Operations at the Premises.

1376 (e) Employer's Liability Insurance. Employers Liability Insurance in
1377 respect of all GT USA's employees, workers and servants engaged in any work in or upon
1378 the Premises in the amount of not less than \$1,000,000 each accident, each employee and
1379 policy limit for injury and disease.

1380 (f) Assets. "All risk" coverage including Collapse or Upset, Earthquake
1381 and Flood Insurance, 100% Replacement Cost Valuation Insurance, Loss of Use and Extra
1382 Expense for the Assets.

1383 (g) Terrorism. Subject to continuing commercial availability at
1384 commercially reasonable prices, terrorism insurance covering property and liability in respect
1385 of the Premises and Assets in the amount not less than \$50,000,000 for uncertified and
1386 certified (as specified under the Terrorism Risk Insurance Program Reauthorization Act) acts
1387 of terrorism.

1388 (h) Business Automobile Insurance. Covering all owned, non-owned,
1389 hired and used automobiles with limits of at least \$1,000,000 per occurrence.

1390 (i) Property Insurance. Property insurance on an "all risk" or Special
1391 Form basis covering all buildings, fixtures, improvements and equipment (other than the
1392 Assets) on the Premises on a replacement cost basis with limits of 100% of the full
1393 replacement cost of such property, subject to market-based deductibles, sub-limits for
1394 catastrophic risks and probable maximum loss determinations (pursuant to a probable
1395 maximum loss analysis completed by a qualified, independent firm).

1396 (j) Umbrella/Excess Liability Policy. GT USA shall maintain an Umbrella
1397 or Excess Liability policy with a limit of not less than Fifty Million Dollars (\$50,000,000) in
1398 excess of and including the coverage stipulated in the primary policies as stated above in
1399 subsections (a), (c), (d), (e) and (h). Any retention is the responsibility by GT USA, and will
1400 not be claimed against DSPC.

1401 (k) Business Interruption Insurance. Business interruption insurance on an
1402 "all risk" or special form basis, which names DSPC as "loss payee" with a minimum liability
1403 coverage of five times the Minimum Annual Concession Fee payable to or for the benefit of
1404 DSPC under this Agreement.

1405 (l) Builder's Risk Insurance. Before any improvements are made to the
1406 Premises, GT USA shall obtain and maintain in full force and effect during the construction

of such improvements, an All Risk (Special Form) basis insurance policy at the full replacement value of the work, subject to no coinsurance, with GT USA, DSPC and any/all subcontractors as named insureds, and with deductible to the account of GT USA.

(m) Workers' Compensation Coverage. Workers' Compensation Coverage in respect of all GT USA's employees, workers and servants engaged in any work in or upon the Premises in compliance with Law, including The U.S. Longshore and Harbor Worker's Act and, if Permitted Operations include operating vessels, The Merchant Marine Act (Jones Act).

(n) Other Forms and Amounts of Insurance. Additional insurance and/or increased coverage minimums, if deemed necessary by DSPC, shall be provided by GT USA, at the sole cost of GT USA.

Section 13.2 GT USA's Failure to Carry Insurance

All insurance shall be in form and amounts specified in this ARTICLE 13. If GT USA fails to obtain, maintain, or pay for any insurance as required herein, DSPC may do so after notifying GT USA and may charge interest thereon, at an annual rate equal to Prime Rate plus 2.5 percent, from the date on which DSPC paid the monies, and GT USA shall, upon demand, reimburse DSPC for any premiums and interest incurred as a result thereof and such premiums and interest incurred by DSPC shall constitute, for purposes of this Agreement, Additional Fees.

Section 13.3 Terms and Conditions

The insurance policies obtained and maintained by GT USA pursuant to this ARTICLE 13 shall be in a form and with insurers reasonably acceptable to DSPC, and, in addition to and not in substitution of the other terms and conditions required under this ARTICLE 13, contain the following terms and conditions:

(a) Property Loss Policies Endorsements. All property insurance policies shall contain an endorsement that the proceeds of any loss shall be made payable to DSPC or such Escrow Agent, savings bank, savings and loan association or commercial bank or trust company, designated by GT USA and approved by DSPC, and appointed in accordance with the terms of this Agreement. All such insurance proceeds shall be held as agreed upon by GT USA and DSPC in trust for them and such proceeds shall be used and applied (i) in the Restoration, reconstruction or replacement of the loss or damaged property for which such insurance moneys are payable hereunder in accordance with the applicable provisions of this Agreement or (ii) in the redemption of bonds to the extent such proceeds are related to loss or damaged property financed by such bonds.

(b) Primary Policies. All insurance policies shall provide that they are primary and shall not call upon any contribution by any insurance (including self-insurance) carried by DSPC.

(c) Additional Insureds. DSPC shall be named by endorsement as an additional insured under the policies described in Section 13.1(a) through Section 13.1(l) and Section 13.1(n) (as applicable).

(d) Waiver of Subrogation. GT USA's insurance policies shall contain a waiver of subrogation in favor of DSPC to the maximum extent permissible by law. GT USA shall also cause its subcontractors and customers to maintain a waiver of subrogation in their insurance policies in favor of DSPC and GT USA to the maximum extent permissible by law.

(e) No Cancellation Without Notice. Each insurance policy and bond required under this ARTICLE 13 shall contain a provision that the insurer shall provide DSPC with thirty (30) days prior written notice of any cancellation or reduction of or material change to the policy.

(f) Severability of Interest/Cross Liability Endorsement. Each liability insurance policy required under this Article shall include a severability of interest or cross liability endorsement, reading generally as follows:

"Cross Liability: In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom a claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase underwriters' limit of liability."

Section 13.4 Deductibles, Co-Insurance and Self-Insured Retentions

Deductibles, co-insurance and self-insured retentions shall be in accordance with prevailing market conditions and practices from time-to-time, and subject to approval by DSPC, which approval shall not be unreasonably withheld, delayed or conditioned. GT USA agrees that for any such deductible or self-insured retention amount, GT USA shall provide to DSPC defense and indemnification at least equal to the defense and indemnification to which DSPC would be entitled as an additional insured had GT USA provided the above specified coverages respectively. GT USA's provision of such defense and indemnification to DSPC includes cases where such defense and indemnification would be required under said insurance policy forms for claimed loss, damage, injury or death which was caused solely by the active or passive negligence or other wrongful conduct of DSPC.

Section 13.5 DSPC's Right to Modify

DSPC shall have the right to add, modify, delete, alter or change insurance coverage requirements set forth in this ARTICLE 13 to reflect known material changes in insurance coverages for comparable maritime ports or operations comparable to Permitted Operations, provided that GT USA shall not have any obligation to procure or maintain at its cost any additional insurance unless an independent insurance consultant shall have delivered to GT USA its opinion to the effect that the additional coverages are required pursuant to the above-stated criteria and such additional coverages are commercially available.

Section 13.6 Evidence, Renewal, Acceptance and Valuation

GT USA shall deliver, prior to the Commencement Date, evidence of all insurance policies described herein to the reasonable satisfaction of DSPC, including certificates of insurance with declarations, schedule pages and all endorsements evidencing coverage and specifically including all required additional insured endorsements and a listing of policy

exclusions. GT USA shall provide to DSPC at least thirty (30) days prior to the expiration of any such policy an endorsement showing that such insurance coverage has been renewed or replaced. Failure to submit the required certificates of insurance or endorsement to DSPC shall automatically constitute default hereunder without any notice to cure and shall continue until a satisfactory certificate or endorsement, as applicable, is provided or DSPC is reimbursed under Section 13.2 above. Acceptance by DSPC of such evidence of insurance shall not constitute agreement by DSPC that the policy or policies are in compliance with the provision of this Agreement. At DSPC's request, GT USA shall promptly provide to DSPC a full, true and complete copy of each policy and amendments required to be maintained hereunder. Further, GT USA shall deliver promptly to DSPC copies of all valuations of new Leasehold Improvements and shall obtain increased coverage for all applicable insurance policies required hereunder to the extent affected by the new Leasehold Improvements.

Section 13.7 Preservation of Insurability

GT USA covenants and agrees that nothing will be done or omitted to be done by GT USA or any party for whom it is responsible in Law as a result of which the Premises and/or Leasehold Improvements are rendered uninsurable or increases the level of risk for DSPC's insurance coverage.

Section 13.8 Liability

In the event that GT USA fails to maintain insurance as stipulated, or if GT USA's insurance policy or policies prove to be defective in any form, GT USA shall be held liable to the same extent as if it were the underwriter of such insurance policy or policies.

Section 13.9 No Limitation on Indemnities by GT USA

The limits and types of insurance required to be carried by GT USA hereunder, or actually carried by GT USA, shall not define or limit the indemnity obligations of GT USA under this Agreement.

Section 13.10 Market Adjustment

The amounts of coverage required under this ARTICLE 13 shall be reviewed, and if deemed necessary by DSPC in its reasonable judgment, adjusted each succeeding fifth (5th) anniversary of the Commencement Date in accordance with then-prevailing market conditions.

ARTICLE 14 GUARANTY

Section 14.1 Guaranty

In consideration of DSPC's consent to enter into this Agreement, irrespective of the ownership of GT USA, at all times during the Term, GT USA, or if GT USA is financially unable to obtain a Letter of Credit (as defined below), then GT Americas, GT USA or the ultimate parent of any other Equity Participants in GT USA, shall guarantee performance (including financial and non-financial obligations) of GT USA's obligations under this Agreement by issuing an irrevocable letter of credit or by obtaining a surety bond (each, a "Letter of Credit"), in either case, in substantially the form attached hereto as APPENDIX 8 or in

such other form as may be reasonably agreed to by DSPC, provided that the Letter of Credit shall at a minimum (i) be in an amount that is not less than Fifteen Million Dollars (\$15,000,000), (ii) have a term of two (2) years until GT USA provides evidence reasonably satisfactory to DSPC that GT USA has invested at least One Hundred Fifty Million Dollars (\$150,000,000) in capital improvements at the Premises, and a term of one (1) thereafter, and (iii) be provided by a DSPC approved United States financial institution; and provided, further, that the Letter of Credit shall be perpetually renewed on the same terms for the duration of the Term and in the event the Letter of Credit is drawn upon during the Term, it shall be immediately replaced by GT Americas, GT USA or the ultimate parent of any other Equity Participants in GT USA. In the event the Letter of Credit is set to expire in fewer than thirty (30) days and DSPC has received a notice of non-extension from the issuer thereof, DSPC is hereby authorized to draw on the Letter of Credit as cash collateral to secure the contingent obligations of GT USA under this Agreement and to satisfy them as they become absolute and due; provided that DSPC shall account to GT USA for any proceeds that are not so used. GT USA, GT Americas or the ultimate parent of any other Equity Participants in GT USA, as applicant under the Letter of Credit, hereby agree to waive any challenge to a draw made by DSPC against the Letter of Credit based on a GT USA Default, including, without limitation, failure to pay the Concession Fee or any other breach of this Agreement. The foregoing persons shall be jointly and severally liable for fulfilling the obligations set forth in this ARTICLE 14. Notwithstanding any provision in this ARTICLE 14 to the contrary, DSPC hereby acknowledges and agrees that no provision in this ARTICLE 14 is intended to prohibit or otherwise restrict GT USA's ability to dispute with DSPC whether a GT USA Default or other breach under this Agreement has occurred that was the basis for drawing on the Letter of Credit, which shall be subject to the dispute resolution procedures set forth in ARTICLE 19 of this Agreement.

ARTICLE 15

LIABILITY AND INDEMNIFICATION

Section 15.1 Indemnity

(a) GT USA shall indemnify, protect, defend and save harmless DSPC from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description (including attorneys' fees) to which DSPC may be subjected to by reason of GT USA's or its officers, agents, representatives or employees, contractors, sub-contractors, lessees or sublessees, customers, invitees or licensees or any of their employees, contractors or agents ("GT USA Responsible Persons") performance of the Permitted Operations or occupation or use of the Premises and Assets, including, without limitation, by reason of injury to or death of persons, by reason of injury or damage to, or destruction of property, or by failure to act in compliance with the Shipping Act, or any breach by GT USA or an Affiliate of GT USA of this Agreement, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by DSPC or be against or sustained by others to whom DSPC may become liable. For the avoidance of doubt, GT USA shall have the obligation to indemnify, protect, defend and save harmless DSPC from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which DSPC may be subjected to due to third-party challenges to the legality or enforceability of this Agreement or the transactions contemplated herein relating

to open access to the Port by GT USA, claims under the Shipping Act or any other claim relating to open access, but excluding any challenge based on the approval and implementation of this Agreement's failure to comply with Chapter 87 of Title 29 or other applicable law. GT USA's indemnity obligations under this Section 15.1 are in addition to GT USA's indemnity obligations provided in Section 6.1(c), Section 6.7 and ARTICLE 16. Carrying any insurance policy, including inadequate or deficient policies, or failing to carry the insurance required under this Agreement shall in no way absolve or release GT USA from its obligations under this ARTICLE 15.

(b) DSPC shall indemnify, protect, defend and save harmless GT USA from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which GT USA may be subjected by reason of injury to or death of persons or by reason of injury or damage to, or destruction of property of any person, firm or corporation occasioned wholly or in part by any negligent act or omission of DSPC or its officers, agents, representatives or employees, or any breach by DSPC of this Agreement. For the avoidance of doubt, DSPC shall have the obligation to indemnify, protect, defend and save harmless GT USA from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which GT USA may be subject to due to third-party challenges to the legality or enforceability of this Agreement or the transactions contemplated herein as against GT USA based on the approval and implementation of this Agreement's failure to comply with Chapter 87 of Title 29 or other applicable law.

Section 15.2 Liens

GT USA shall defend, indemnify and hold harmless DSPC against all liens and charges of any kind or nature that may at any time be established against the Premises or any improvements thereon or any part thereof or any Assets as a consequence of any act or omission of GT USA or any GT USA Responsible Persons.

Section 15.3 Defense Against Suits

GT USA shall promptly pay any and all costs or expenses (including consultant fees and attorneys' fees) that may be incurred by DSPC as well as any judgments or decrees in favor of DSPC:

(a) In enforcing any obligations of GT USA under the covenants, terms or provisions of this Agreement;

(b) In obtaining possession of the Premises as the result of any termination of this Agreement by DSPC following a default by GT USA;

(c) In defending any suit or proceeding brought against DSPC for the violation by GT USA or any GT USA Responsible Persons of any Law;

(d) In defending any action or suit for damages because of any failure, neglect or default on the part of GT USA in connection with the performance of its obligations under this Agreement; and

(e) Resulting from claims asserted by any GT USA Responsible Persons irrespective of the negligence or other fault of DSPC.

Section 15.4 Notice of Damage or Injury

In the event of an event or series of related events causing death, serious injury to persons or damage to property on the Premises, including to the property of others on the Premises, reasonably estimated to exceed Five Hundred Thousand Dollars (\$500,000), GT USA shall promptly notify DSPC in writing and shall promptly thereafter furnish to DSPC copies of all factual reports and factual portions of any other reports given to GT USA's insurance carrier or carriers or any Governmental Authority and any additional information regarding such event required by DSPC.

Section 15.5 Survival

The obligations and responsibilities of GT USA set forth in this ARTICLE 15 shall survive the Expiration Date or Termination Date, as applicable.

ARTICLE 16

ENVIRONMENTAL AND SAFETY MATTERS

Section 16.1 GT USA's Responsibilities

(a) GT USA shall ascertain and comply with all Environmental Laws related to GT USA's performance of its obligations pursuant to this Agreement and/or GT USA's use and occupancy of the Premises. GT USA shall keep up-to-date records at the Premises of all environmental permits and compliance with all regulatory requirements and give DSPC access to said records upon reasonable request.

(b) GT USA shall establish and maintain a program of compliance with all applicable Environmental Laws, and shall deliver to DSPC a copy of any printed or electronic data setting forth GT USA's program of compliance, as well as any modifications or revisions to said program during the Term. GT shall have and maintain emergency response and environmental management plans, a Spill Prevention Control and Countermeasure Plan, up-to-date plans for oil/hazmat spill response, heavy weather preparedness, including a high wind plan for cranes and similar equipment, facility evacuation, and fire and life safety response and such other emergency response and environmental management plans as DSPC may require, and a dust control and air emissions plan. GT shall maintain all fire suppression and life safety systems in compliance with applicable Laws.

(c) GT USA shall, and shall require its lessees and sublessees to, apply for and maintain all applicable federal, state, and local permits required by Environmental Laws, and shall take reasonable measures to ensure that all GT USA Responsible Persons and any other entrants upon the Premises (other than employees or representatives of DSPC) comply with all applicable Environmental Laws.

(d) GT USA shall monitor the compliance of all GT USA Responsible Persons and any other entrants upon the Premises (other than employees or representatives of

1647 DSPC) with Environmental Laws and shall use its reasonable best efforts to halt, report,
1648 address, mitigate, remediate, and correct any incident of non-compliance as required by
1649 Environmental Laws.

1650 (e) GT USA shall not cause or permit any Hazardous Materials to be
1651 generated, treated or stored on or about the Premises or transferred to the Premises, in
1652 contravention of any Environmental Laws.

1653 (f) GT USA shall comply, and shall require all GT USA Responsible
1654 Persons and other entrants to the Port to comply with all permits that apply to the Premises or
1655 operations at the Port.

1656 **Section 16.2 Existing Conditions, 120% Threshold and Monitoring Costs**

1657 (a) Except as otherwise provided in this Agreement, DSPC shall be liable
1658 for any environmental conditions existing at the Premises as of the date of this Agreement,
1659 other than relating to the Pigeon Point Property, and such conditions shall be referred to as an
1660 "Existing Condition".

1661 (b) Notwithstanding subsection (a) above, GT USA shall be responsible for
1662 any costs for Environmental Remediation at the Premises arising from Existing Conditions
1663 that result in an increase up to twenty percent (20%) in excess of the Industry Standard Costs
1664 for the Delaware/Philadelphia region as of the date such Environmental Remediation is
1665 undertaken (the "120% Threshold"). In the event the 120% Threshold is exceeded, and such
1666 increased costs are due solely to Environmental Remediation of Existing Conditions, neither
1667 Party shall be automatically liable for any costs in excess of the 120% Threshold. In such
1668 case, the Parties shall enter into a mutual review in good faith to determine a fair and
1669 equitable resolution, which may include how to equitably revise GT USA's operational and
1670 capital expenditure obligations under this Agreement (a "Mutual Environmental Review") to
1671 account for the increased costs that would be incurred in connection with the continued
1672 development by GT USA. In the event the parties cannot come to an agreement after any
1673 Mutual Environmental Review required under the terms of ARTICLE 16, the Parties shall
1674 follow the dispute resolution procedures set forth in ARTICLE 19 to establish a fair and
1675 equitable resolution with the arbitrator or court considering such factors as he, she or it shall
1676 determine, including, without limitation, the Concession Fees that have been paid or are to be
1677 paid to DSPC, the revenue to GT USA based on current volumes and GT USA's capital
1678 expenditure requirements under this Agreement to determine whether and how to proceed
1679 with the proposed development.

1680 (c) DSPC agrees that solely to the extent it is able to recover insurance
1681 proceeds from the Beazley Insurance Policy for unknown conditions at Edgemoor, DSPC
1682 shall apply such proceeds to cover any costs related to Existing Conditions that GT USA
1683 would otherwise be responsible for pursuant to subsection (b) above. Nothing in this
1684 subsection (c) shall be deemed to be a waiver of the Mutual Environmental Review required
1685 after the 120% Threshold has been reached.

(d) The Parties further agree that, notwithstanding anything to the contrary herein, in the event that GT USA plans to disturb any portion of the Premises that could result in increased development costs or other liability or mitigation obligation arising from an Existing Condition, GT USA agrees to coordinate with DSPC, prior to any such disturbance, to reformulate the development plan to mitigate environmental, operational and financial costs to all Parties to the greatest extent possible. If DSPC's prior written consent has not been obtained for an improvement or change which could trigger a Mutual Environmental Review or any other liability or mitigation obligation relating to an Existing Condition, GT USA shall be responsible for any costs, including remediation and mitigation expenses, for or related to correction or abatement of any Existing Condition in connection with specific activity.

(e) Notwithstanding subsection (a) above, GT USA further agrees (i) to assume any environmental related monitoring costs, whether now or hereafter existing, at the Existing Port as of the Commencement Date and (ii) to assume any environmental related monitoring costs, whether now or hereafter existing, at Edgemoor upon the commencement of construction by GT USA at Edgemoor but no later than the Outside Construction Date.

(f) Notwithstanding subsection (a) above, in the event DSPC is required to spend more than the Concession Fee Differential in any calendar year in connection with the investigation, testing, feasibility study, risk assessment, treatment, removal, disposal, reuse, handling, transport, clean up, remediation, containment, capping, encapsulating, mitigation, or monitoring of any Non-Development Related Existing Conditions, the parties shall enter into a Mutual Environmental Review to determine how these additional costs should be handled. In the event the parties cannot come to agreement after any Mutual Environmental Review, the Parties shall follow the dispute resolution procedures set forth in ARTICLE 19 to establish a fair and equitable resolution with the arbitrator or court considering such factors as he, she or it shall determine, including without limitation, the Concession Fees that have been paid or are to be paid to DSPC, the revenue to GT USA based on current volumes and GT USA's capital expenditure requirements under this Agreement to determine whether and how to proceed with the proposed development.

Section 16.3 Notification of Potential Liability Triggering Event

. Within five (5) Business Days of receipt, or immediately in the case of an imminent or substantial endangerment to human health or the environment, each party hereto shall notify and provide the other party copies of all material, written notices, demands, lawsuits, or other correspondence relating to the following:

(a) The violation of any Environmental Law affecting the Premises, the use of the Premises or the Port;

(b) Any enforcement action relating to Environmental Laws affecting the Premises, the use of the Premises or the Port undertaken by any federal, state, or local governmental agency, or any private party;

(c) The institution of any lawsuit relating to Environmental Laws affecting the Premises, the use of the Premises or the Port by any governmental entity or any private party; or

(d) The service of a potentially responsible party demand letter covering environmental issues relating to the Premises, the use of the Premises or the Port from any private or governmental party.

Section 16.4 Coordination with DSPC

In the event of any incident of non-compliance with Environmental Laws respecting the Premises that is reportable to a regulatory agency pursuant to Environmental Laws, GT USA shall:

(a) Immediately deliver to DSPC (at address in Section 21.2) a copy of any report regarding such incident submitted to any regulatory agency; and

(b) Cooperate with DSPC or its designated agents or contractors with respect to any investigation of such reportable incident.

Section 16.5 Liability and Indemnification for Certain Environmental Matters

(a) GT USA shall conduct and complete all Response Actions necessary to correct any violation of Environmental Laws on, from, or affecting the Premises arising from any GT USA Contamination, but excluding any Non-Development Related Existing Conditions, in accordance with Environmental Laws.

(b) DSPC shall conduct and complete all Response Actions necessary to correct any violation of Environmental Laws on, from, or affecting the Premises arising from any Non-Development Related Existing Condition, but excluding any GT USA Contamination.

(c) GT USA accepts responsibility for all environmental liabilities arising from any GT USA Contamination resulting from and during its operation at the Premises and except as set forth in Section 16.2, or as could otherwise result from a Mutual Environmental Review.

(d) DSPC accepts responsibility for all environmental liabilities arising from any Non-Development Related Existing Condition, except as set forth in Section 16.2, or as could otherwise result from a Mutual Environmental Review.

(e) GT USA shall defend, indemnify, and hold harmless DSPC from and against all claims, lawsuits brought or threatened, government orders, demands, penalties, fines, liabilities, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, including, without limitation, attorney's and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, arising out of or in any way related to (i) GT USA Contamination or (ii) any violation of Environmental Laws on,

from, or affecting the Premises or committed by GT USA Responsible Persons on or affecting the Port.

(f) DSPC shall defend, indemnify, and hold harmless GT USA from and against all claims, lawsuits brought or threatened, government orders, demands, penalties, fines, liabilities, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, including, without limitation, attorney's and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, arising out of or in any way related to any Non-Development Related Existing Conditions.

(g) Without limiting its obligations under any other section of this Agreement, GT USA shall be solely and completely responsible for responding to and complying with any administrative order, request or demand relating to potential or actual violations of Environmental Laws relating to GT USA Contamination, where such order, request or demand names GT USA alone, or names both GT USA and DSPC. The responsibility conferred under this section includes but is not limited to responding to any such order, request or demand and defending against any assertion of DSPC's financial responsibility or individual duty to perform. GT USA shall assume any liabilities or responsibilities which are assessed against DSPC in any action described under this subsection (g). Notwithstanding any provisions of this Section 16.5, DSPC retains the right to defend itself in any action or actions which are based upon or in any way related to GT USA Contamination. In any such defense of itself, DSPC shall select its own counsel, at GT USA's expense.

Section 16.6 Pigeon Point Option

If GT USA shall cause DSPC to exercise its option to acquire the Pigeon Point Property, GT USA shall assume all environmental monitoring costs for such property and shall be responsible for, and shall indemnify and hold DSPC harmless from, all costs at or arising from the Pigeon Point Property, regardless of whether or not such costs relate to existing environmental conditions at the Pigeon Point Property.

Section 16.7 Inspection by DSPC

DSPC shall have the right, at reasonable times and upon reasonable prior notice or immediately in the case of an imminent or substantial endangerment to human health or the environment, to inspect the Premises in order to verify compliance with this ARTICLE 16 and to inspect all records that GT USA maintains as required by Environmental Laws and this ARTICLE 16.

Section 16.8 VCP Agreement

DSPC and DNREC are parties to that certain Voluntary Clean-Up Program Agreement dated September 22, 2017 (the "VCP Agreement"). As of the date hereof, no work has been performed under the VCP Agreement. DSPC and GT USA agree to work together to transition the Existing Port to a brownfield site pursuant to 7 Del. C. § 9121 et. seq. Upon such transition, DSPC shall withdraw from the VCP Agreement. Nothing herein shall be construed to modify the allocation of environmental liability between the Parties as set forth in this Article 16 or to

require DSPC to remain in the VCP Agreement if DNREC determines that GT USA cannot convert the Existing Port to a brownfield site.

Section 16.9 Survival

The obligations and responsibilities set forth in ARTICLE 16 shall survive the expiration or any earlier termination of this Agreement.

ARTICLE 17 TRANSITION AND HANDBACK PROCEDURES

Section 17.1 Transition

During the last twelve (12) months of the Term, GT USA shall cooperate with DSPC and any proposed subsequent tenant or operator of the Premises identified by DSPC to ensure the orderly transition of the Premises upon the Expiration Date, including, without limitation, providing tours to, participating in transition meetings with, and providing relevant non-confidential information to, DSPC or such subsequent tenant upon the reasonable request of DSPC.

Section 17.2 Handback Requirements

(a) **General.** At the earlier of the Expiration Date or Termination Date (collectively for this ARTICLE 17, "Handback Date"), GT USA shall return the Premises and, in addition, transfer, remove or sell the Assets to DSPC as provided in this ARTICLE 17 ("Handback").

(b) **Premises.** On the Handback Date, GT USA shall return the Premises to DSPC, free and clear of all encumbrances, in accordance with the terms of this ARTICLE 17.

(c) **Assets.** On or following the Handback Date, GT USA shall convey title to any Original Assets conveyed to GT USA, free and clear of all encumbrances, at no additional cost to DSPC. GT USA shall, at DSPC's sole discretion, and in accordance with Section 2.8 of this Agreement, (i) convey the After-Acquired Assets, free and clear of all encumbrances, to DSPC in accordance with Section 17.9 below; or (b) remove After-Acquired Assets from the Premises at GT USA's expense.

(d) **Minimum Condition.** On the Handback Date, the Premises and the Assets (to the extent that DSPC has designated such Assets for purchase) shall meet the Minimum Condition.

(e) **Obligation to Invest.** Provided the Basic Condition is met, GT USA shall have no obligation to invest capital in the Premises in the last fifteen (15) years of the Term without DSPC's consent to repurchase such capital expenditure at the market value at the expiration of the Term.

1836 **Section 17.3 Handback Activities**

1837 (a) Within the period between thirty (30) and twenty-four (24) months
1838 prior to the scheduled Handback Date, as such Handback Date may be extended ("Handback
1839 Engineer Selection Date"), each Party hereto shall appoint an engineering team (which may
1840 include an engineering consultant engaged by each party hereto at its sole cost) to serve as
1841 each of such Party's Handback engineering team (each, a "Handback Engineer"). The
1842 Parties shall jointly appoint an Independent Engineer within thirty (30) days after the
1843 appointments of the Handback Engineers.

1844 (b) Both Handback Engineers, at the sole cost and expense of each Party,
1845 shall inspect the Premises and any Assets being transferred to DSPC under this ARTICLE
1846 17, no later than two (2) months after the Handback Engineer Selection Date, and jointly
1847 certify to the condition of the Premises, and any applicable Assets no later than thirty (30)
1848 days after such joint inspection ("Initial Inspection Report") and propose a joint plan, if
1849 applicable, to bring the condition of the Premises, and any applicable Assets, to at least the
1850 Minimum Condition no later than forty (40) days after such joint inspection ("Handback
1851 Plan"). The Handback Plan shall specify particular repairs, replacements and other work
1852 required to bring the condition of the Premises, and any applicable Assets, to at least the
1853 Minimum Condition ("Reinstatement Work"). If the two Handback Engineers, cooperating
1854 in good faith with one another, are unable to comply with this ARTICLE 17, then either
1855 Party shall have the right to require, upon notice to the other Party, that the Independent
1856 Engineer resolve any dispute between Handback Engineers, and the Independent Engineer's
1857 resolution of any such dispute shall be binding on the Parties. The Independent Engineer
1858 shall deliver copies of its reports and resolutions to both GT USA and DSPC within thirty
1859 (30) days of such notice.

1860 (c) The activities to be performed by the Handback Engineers and/or
1861 Independent Engineer, as applicable, pursuant to this ARTICLE 17 shall include the
1862 following, and the Parties shall fully cooperate with each other, and the Independent
1863 Engineer, if applicable, in such regard, including providing such documentation and making
1864 the Premises, and any applicable Assets, available for such inspections:

1865 (i) examination of maintenance records and all "as-built" drawings,
1866 plans, other drawings, specifications and models prepared in connection with any Leasehold
1867 Improvements and otherwise applicable to the Premises;

1868 (ii) preparation of a detailed Initial Inspection Report;

1869 (iii) examination of maintenance facilities and documentation; and

1870 (iv) follow-up inspections and reviews of the completion and quality of
1871 the Reinstatement Work, and progress reports delivered to DSPC and GT USA at least every
1872 month and at such other times set forth for the completion of the stages of Reinstatement Work
1873 in the Reinstatement Schedule, which specify (A) whether the Reinstatement Work is proceeding
1874 in accordance with the Reinstatement Schedule, (B) any deficiencies in the Reinstatement Work
1875 or Reinstatement Schedule, (C) any key issues affecting the completion of the Reinstatement

1876 Work, and (D) an assessment of the completion level of and estimation of time to complete the
1877 Reinstatement Work.

1878 (d) All furniture, furnishings, computers, telephones, office supplies and
1879 similar property used to operate the Port by GT USA shall become the property of DSPC, at
1880 no additional cost, upon the earlier of the Expiration Date or Termination Date; provided,
1881 however, at DSPC's option, any item of such property shall remain the property of GT USA,
1882 and GT USA shall, at its expense, remove any such property that remains the property of GT
1883 USA no later than sixty (60) days following the earlier of the Termination Date or Expiration
1884 Date, and shall repair any damage caused by such removal.

1885 **Section 17.4 Reinstatement Schedule and Estimated Reinstatement Costs**

1886 (a) Within one hundred and twenty (120) days after receipt of a copy of the
1887 Handback Plan, GT USA will provide to DSPC a report (the "Reinstatement Plan") setting
1888 out:

1889 (i) GT USA's proposals as to the Reinstatement Work;

1890 (ii) GT USA's proposals as to the schedule for the carrying out of the
1891 Reinstatement Work, which shall be completed within three (3) months prior to the Handback
1892 Date (the "Reinstatement Schedule"); and

1893 (iii) the Estimated Reinstatement Costs.

1894 (b) DSPC and, if applicable, the Independent Engineer may, within sixty
1895 (60) days after receipt of the Reinstatement Plan, by notice to GT USA, make reasonable
1896 objections to GT USA's proposals concerning any or all of the Reinstatement Work, the
1897 Reinstatement Schedule and the Estimated Reinstatement Costs as set out in GT USA's
1898 report ("DSPC's Objection Notice"). DSPC's Objection Notice shall give details of both the
1899 grounds for such objection and DSPC's and, if applicable, the Independent Engineer's,
1900 proposals concerning the Reinstatement Work and Reinstatement Schedule and its estimate
1901 of the Estimated Reinstatement Costs.

1902 (c) Upon agreement, through the Independent Engineers and/or Handback
1903 Engineers, on the Reinstatement Work, the Reinstatement Schedule and the Estimated
1904 Reinstatement Costs, GT USA will carry out, or arrange for the carrying out of, the
1905 Reinstatement Work in accordance with the Reinstatement Schedule, in each case at its own
1906 cost notwithstanding that the actual cost of the Reinstatement Work ("Reinstatement Costs")
1907 may be higher than the Estimated Reinstatement Costs.

1908 (d) The agreement of DSPC to any Reinstatement Work, Reinstatement
1909 Schedule or Estimated Reinstatement Costs, the participation of DSPC in the Initial
1910 Inspection Report or the Handback Plan, or the complete or partial carrying out of the
1911 Reinstatement Work (whether revised or otherwise) will not relieve or absolve GT USA
1912 from:

1913 (i) its obligation to undertake the Reimbursement Work;

1914 (ii) its obligation to provide the Handback Guaranty; or
1915 (iii) any obligation to conduct any other inspection or perform any
1916 other work in accordance with, or to otherwise comply with, its obligations under this
1917 Agreement.

1918 (e) GT USA shall ensure on or before the Handback Date that the Basic
1919 Conditions are satisfied with respect to any Reinstatement Work and that all contractors
1920 carrying out the Reinstatement Work provide a two (2) year warranty concerning such work,
1921 or, if unavailable at commercially reasonable prices, such warranty as may be reasonably
1922 available in the marketplace, such warranties expressly transferring to DSPC or any
1923 successor tenant or operator of the Premises designated by DSPC.

1924 **Section 17.5 Handback Guaranty**

1925 (a) Within seven (7) days after delivery of the Reinstatement Plan to
1926 DSPC, GT USA shall provide DSPC a Handback Guaranty, which DSPC may draw upon in
1927 accordance with Section 17.5(b) below. If DSPC's Handback Engineer or, if applicable, the
1928 Independent Engineer, certifies to the substantial completion of a defined stage of the
1929 Reinstatement Work, as defined in the Reinstatement Schedule, then GT USA may provide a
1930 replacement Handback Guaranty to DSPC covering only the agreed upon Estimated
1931 Reinstatement Costs remaining, uncertified Reinstatement Work, and the previously
1932 delivered Handback Guaranty shall be refunded to GT USA.

1933 (b) If either (i) the Reinstatement Work is not certified to as substantially
1934 complete by DSPC's Handback Engineer or, if applicable, the Independent Engineer, within
1935 the time set forth in the Reinstatement Schedule, and in all cases, prior to the Handback Date,
1936 or (ii) GT USA does not renew the Handback Guaranty within ten (10) days prior to its
1937 termination if the Reinstatement Work is not completed by the Handback Date, as
1938 determined by DSPC's Handback Engineer or, if applicable, the Independent Engineer, then,
1939 in addition to all other remedies available to DSPC, including, without limitation, seeking
1940 damages for interference with DSPC's re-use of the Premises or other DSPC property or GT
1941 USA's liabilities as a holdover tenant, DSPC shall have the option, in its sole discretion, to
1942 elect to draw upon and retain the Handback Guaranty in such amount that DSPC reasonably
1943 determines equals amounts needed to complete or repair properly the Reinstatement Work
1944 not so certified plus a reasonable estimation of DSPC's actual overhead and administration
1945 costs reasonably likely to be incurred in connection with performing such work.

1946 **Section 17.6 Final Handback**

1947 Any Handback Guaranty remaining shall be refunded to GT USA at such time that
1948 DSPC's Handback Engineer or, if applicable, the Independent Engineer certifies to the final
1949 completion of the Reinstatement Work.

1950 **Section 17.7 Contract Closure Environmental Activities**

1951 (a) Preparation of Plan for Contract Closure Environmental Activities.
1952 One (1) year prior to the Expiration Date or promptly upon notice of termination or a partial

recapture of a portion of the Premises pursuant to this Agreement, GT USA shall prepare a closure plan for conducting the Contract Closure Environmental Activities with respect to the Premises or such portion of the Premises upon a partial recapture, as applicable. GT USA shall submit the closure plan to DSPC.

(b) Performance of Contract Closure Environmental Activities. GT USA shall perform or cause to be performed all actions necessary to ensure that the Contract Closure Environmental Activities have been completed to the extent feasible prior to the Handback Date, including final inspection and testing, and shall provide to DSPC documentary evidence that the condition of the Premises satisfies the requirements under this ARTICLE 17. GT USA, at its own expense, shall repair any damage to the Premises or other DSPC property caused by such work.

(c) Survival. If GT USA does not complete the work under this ARTICLE 17 in a manner which leaves the Premises (or portion of the Premises in the case of a partial recapture) in the condition required hereunder, then GT USA's obligations under this ARTICLE 17 shall survive the scheduled Handback Date until completed. The survival of GT USA's obligations to complete any required Response Action or the Contract Closure Environmental Activities shall not relieve GT USA of any other legal liabilities owed to DSPC, including, without limitation, damages for interference with DSPC's re-use of the Premises or other DSPC property or GT USA's liabilities as a holdover tenant. DSPC shall grant GT USA all access and other cooperation reasonably necessary for GT USA to comply with these provisions.

Section 17.8 Storage Tanks

During the Term, DSPC may elect, by written notice to GT USA, given at any time during the period that is at least sixty (60) days, before the Expiration Date or in the event the Handback Date occurs as a result of the exercise of a termination right by a party under this Agreement, within thirty (30) days after the Termination Date, to require GT USA either (a) to remove any above ground storage tanks installed by GT USA on the Premises at the Handback Date, or (b) to leave any above ground storage tanks in place in operating condition. If DSPC gives notice of election to GT USA, GT USA shall handle the storage tanks in accordance with DSPC's intention as stated in its notice to GT USA. If no notice of election is given to GT USA, GT USA shall remove said storage tanks in accordance with Environmental Law. Any storage tanks installed by GT USA during the term shall be above-ground only, shall contain its own secondary confinement system and shall be in compliance with all Environmental Laws.

Section 17.9 DSPC's Purchase Option

(a) General. Not less than two (2) years prior to the Expiration Date or if this Agreement is terminated, to the extent feasible, prior to the Termination Date, GT USA shall notify DSPC of DSPC's option to purchase any After-Acquired Assets (including equipment, etc. but excluding any then-operational Original Assets and any pre-existing or newly constructed buildings or improvements on the Premises which shall revert automatically to DSPC at no cost to DSPC) then owned by GT USA in an amount equal to the Buy-Out Value applicable to such Asset(s) as of the Expiration or Termination Date; provided that, in the event of an early termination of this Agreement, such notice may be

given up to sixty (60) days after such termination. In the event DSPC so exercises its option to purchase any of the After-Acquired Assets, the purchase thereof shall be effective as of the Expiration Date (or in the event of early termination of this Agreement, effective within thirty (30) days after DSPC's election to purchase one or more of such After-Acquired Assets), with DSPC to pay the Buy-Out Value in immediately available funds on the effective date. Unless DSPC has already consented to repurchase any Asset as provided in this ARTICLE 17, DSPC shall have the right, in its sole discretion to select which Asset(s) it would like to purchase upon under this Section 17.9. Notwithstanding the foregoing, if termination of this Agreement is due to a DSPC Default, the After-Acquired Assets purchased by GT USA shall remain the property of GT USA after termination of this Agreement and shall be removed at GT USA's expense within sixty (60) days of such Termination Date and only the Original Assets shall be returned to DSPC.

(b) Purchase Agreement. Within thirty (30) days after DSPC's election notice, the Parties shall enter into a purchase agreement customary for such types of transactions, which purchase agreement shall include: (i) the effective date of the purchase; (ii) GT USA's duty to maintain such Asset(s) in good working order and condition until such date; (iii) DSPC's right to terminate the purchase agreement in the event of a material adverse change in the condition of the subject Asset(s) prior to such date; (iv) a provision that the purchase price of the subject Asset(s) shall equal the Buy-Out Value applicable to the subject Asset(s), as the case may be (and to the extent that the Buy-Out Value has not been determined within such 30-day period, it shall be determined consistent with the Buy-Out Value procedures in Section 17.9(c)), and such other customary terms and conditions, including, without limitation, any requirements of applicable Laws in effect at the time.

(c) Determination of Buy-Out Value. The "Buy-Out Value" shall be determined as set forth in this Section 17.9(c).

(i) The Buy-Out Value shall equal, for any given date, the fair market value of the subject Asset(s) as of such date, as determined pursuant to a written appraisal by an Independent Appraiser.

(ii) If the Parties fail to agree upon such a single Independent Appraiser within sixty (60) days after a Party requests the appointment thereof, then each Party shall appoint an appraiser (the "Party-Appointed Appraiser") and give the other Party written notice of the name thereof, with such notice to be provided not later than fifteen (15) days following receipt of the other Party's notice with respect thereto. If either Party shall not have notified the other in writing of the appointment of its Party-Appointed Appraiser in accordance with the foregoing, then the other Party shall be authorized to appoint a Party-Appointed Appraiser on such party's behalf. Each of the two Party-Appointed Appraisers shall then, within sixty (60) days, file in writing with each Party its determination of the fair market value of the subject Asset(s) as of such applicable date. Neither Party shall be entitled to challenge the determination of the fair market value. Any vacancy shall be filled by the party who made the original appointment.

(iii) If such two written appraisals assign a fair market value of the Asset(s) that is within 10% of one another, then the average of such two fair market value

determinations shall be deemed the Buy-Out Value, which shall control for all applicable purposes under this Agreement.

(iv) If such two written appraisals assign a fair market value of the Asset(s), that differs by more than 10% of one another, the two Party-Appointed Appraisers shall then appoint a third Independent Appraiser within thirty (30) days after the two Party-Appointed Appraisers determination of fair market value of the Asset(s). If the two Party-Appointed Appraisers so chosen shall be unable to agree upon the third Independent Appraiser within such thirty (30) days, the parties may file a petition with the American Arbitration Association in Wilmington, Delaware ("AAA") solely for the purpose of selecting a third appraiser who meets the qualifications stated above. Within sixty (60) days after the appointment of the third Independent Appraiser, the third Independent Appraiser shall file in writing with DSPC and GT USA its determination concerning the fair market value of the subject Asset(s) as of such applicable date, and the average of (A) the third Independent Appraiser's fair market value determination, and (B) the fair market value determination by the one of the two Party-Appointed Appraisers who is closest numerically to the fair market value determination of the third Independent Appraiser, shall be deemed the Buy-Out Value, and neither Party shall be entitled to challenge such determination of the Buy-Out Value, which shall control for all applicable purposes under this Agreement.

(v) Each Party shall pay the costs and expenses of the Party-Appointed Appraiser appointed by it or on its behalf, together with 50% of the costs and expenses of the third Independent Appraiser. In the event of a single Independent Appraiser, each Party shall pay 50% of the costs and expenses of such single Independent Appraiser.

ARTICLE 18

LEASEHOLD MORTGAGES

Section 18.1 Leasehold Mortgages

The rights of GT USA to finance and mortgage the Premises, the membership interests in GT USA, this Agreement, the After-Acquired Assets, the Leasehold Improvements and/or the operations under this Agreement are governed solely by the following provisions in this Section 18. Notwithstanding anything herein to the contrary, GT USA agrees that it shall not mortgage, pledge or otherwise encumber the Original Assets.

Section 18.2 DSPC's Security Interest in the Assets

To secure the payment of all rentals and other sums of money becoming due from GT USA, DSPC shall have, and GT USA grants to DSPC, a security interest on the Assets now or hereafter located at the Premises. GT USA hereby authorizes DSPC to take any actions necessary to perfect such security interest. Notwithstanding the foregoing, provided that GT USA is not in default under this Agreement, DSPC agrees that its security interest in the After-Acquired Assets shall be automatically subordinated to any Leasehold Mortgagee. DSPC further agrees that, if so requested by any Leasehold Mortgagee, DSPC shall subordinate its security interest in the After-Acquired Assets by signing and delivering to the Leasehold Mortgagee a written agreement to subordinate such security interest, in form and substance reasonably acceptable to DSPC; provided, however, that in no event shall DSPC be required by such

Leasehold Mortgagee to undertake any obligations or responsibility to the Leasehold Mortgagee other than as set forth herein.

Section 18.3 GT USA's Right to Mortgage

GT USA may, at any time and from time to time, with written notice to DSPC but without obtaining DSPC's consent, hypothecate, mortgage, grant or pledge its right, title or interest in the Premises, the membership interests in GT USA, this Agreement, and/or the Leasehold Improvements to any leasehold mortgagee ("Leasehold Mortgagee") as security for the repayment of any indebtedness incurred by GT USA, the proceeds of which shall be used solely for the Initial Payment, the purchase of Assets, the construction of Leasehold Improvements and the general development and operation of the Premises (each, a "Mortgage"). As used herein, the term "Leasehold Mortgagee" means any third-party U.S. financial institution or other domestic person or entity, unaffiliated with GT USA or its Affiliates, that from time to time provides arms-length secured financing to GT USA to be used solely as set forth above, and any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, and their respective representatives, successors and assigns. GT USA shall not enter into any Mortgage where the term exceeds the Term of this Agreement. DSPC agrees to use its commercially reasonable efforts to cooperate with GT USA in the effort to obtain financing from a Leasehold Mortgagee by GT USA, provided that DSPC incurs no expense or liability.

Section 18.4 Notice to DSPC

If GT USA grants a Mortgage, it shall give notice of the same (including the name and address of the Leasehold Mortgagee, as the case may be) to DSPC; provided, however, that the failure to give such notice shall not constitute a GT USA Default but rather shall only have the effect of relieving DSPC from any obligation to the Leasehold Mortgagee until such notice is given. DSPC shall have no retroactive obligations to the Leasehold Mortgagee upon receipt of notice of the existence of such Leasehold Mortgagee. DSPC hereby consents to the recordation of the interest of the Leasehold Mortgagee in the official records of New Castle County, Delaware.

Section 18.5 Leasehold Mortgagee Protections

The Leasehold Mortgagee shall be entitled to the following rights and protections:

(a) A Leasehold Mortgagee shall have the right to do one, some or all of the following things: (i) assign its Mortgage; (ii) enforce its Mortgage; (iii) acquire GT USA's rights to this Agreement; (iv) take possession of and operate the Leasehold Improvements or the operations of GT USA under this Agreement; (v) assign, sublet or transfer some or all of this Agreement and the rights relating to the Premises to a third party, provided DSPC reasonably agrees to such third party; (vi) exercise any rights of GT USA hereunder or with respect to this Agreement; or (vii) cause a receiver, reasonably acceptable to DSPC, to be appointed to do any of the foregoing things. Upon acquisition of GT USA's rights under this Agreement by a Leasehold Mortgagee or any other third party who acquires the same from or on behalf of the Leasehold Mortgagee, DSPC shall recognize the Leasehold Mortgagee or such other party (as the case may be) as GT USA's proper successor, and

absent a default by such Leasehold Mortgagee or third party, this Agreement shall remain in full force and effect.

(b) Provided that DSPC has received proper written notice of such Leasehold Mortgagee, as a precondition to DSPC exercising any rights or remedies as a result of any real or alleged GT USA Default, DSPC shall deliver a duplicate copy of each and every notice of default to the Leasehold Mortgagee concurrently with delivery of such notice of default to GT USA.

(c) The Leasehold Mortgagee shall have the same period of time after receipt of a notice of default to remedy a GT USA Default, or cause the same to be remedied, as is given to GT USA after GT USA's receipt of a notice of a GT USA Default, plus, in each instance, the following additional time periods: (i) ten (10) days in the event of any monetary-related GT USA Default; and (ii) twenty (20) days in the event of any non-monetary-related GT USA Default; *provided, however*, that (a) such twenty (20) day period shall be extended for the time reasonably required by the Leasehold Mortgagee to complete such cure, including the time reasonably required for the Leasehold Mortgagee to obtain possession of the GT USA's leasehold interest in the Premises (the "Leasehold Estate"), institute foreclosure proceedings or otherwise perfect its right to effect such cure, provided that in no event shall such period be extended for more than 120 days after GT USA's initial receipt of notice of such default and (b) the Leasehold Mortgagee shall not be required to cure any non-monetary GT USA Default which cannot legally be cured (*e.g.*, bankruptcy of GT USA) by such Leasehold Mortgagee ("Non-Curable Defaults"). The Leasehold Mortgagee shall have the right to substitute itself for GT USA and perform the duties of GT USA hereunder or with respect to this Agreement or the Leasehold Estate for purposes of curing such GT USA Default. DSPC expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee (and its respective employees, agents, representatives or contractors) to enter upon the Premises to complete such performance with all of the rights and privileges of GT USA hereunder. DSPC shall not terminate this Agreement prior to expiration of the cure periods available to the Leasehold Mortgagee as set forth above. Further, (1) neither the bankruptcy nor the insolvency of GT USA shall be grounds for terminating this Agreement as long as the Concession Fees and all other amounts payable by GT USA hereunder are paid by the Leasehold Mortgagee in accordance with the terms hereof and the other obligations under this Agreement are performed by the Leasehold Mortgagee in accordance with the terms hereof and (2) Non-Curable Defaults shall be deemed waived by DSPC upon the Leasehold Mortgagee's completion of foreclosure proceedings or other acquisition of the Leasehold Estate.

(d) If any GT USA Default under this Agreement cannot be cured by the Leasehold Mortgagee without its obtaining possession of all or part of the Premises, then such GT USA Default shall nonetheless be deemed cured if: (i) within sixty (60) days after receiving notice from DSPC as set forth in subsection (b) above, a Leasehold Mortgagee acquires possession of the Premises, or commences appropriate judicial or nonjudicial proceedings to obtain the same; (ii) the Leasehold Mortgagee is prosecuting any such proceedings to completion with commercially reasonable diligence; and (iii) after gaining possession thereof, the Leasehold Mortgagee performs all other obligations of GT USA (other than in connection with Non-Curable Defaults) as and when the same are due in

2164 accordance with the terms of this Agreement. If the Leasehold Mortgagee is prohibited by
2165 any process or injunction issued by any court or by reason of any action of any court having
2166 jurisdiction over any bankruptcy or insolvency proceeding involving GT USA, as the case
2167 may be, from commencing or prosecuting the proceedings described above, then the sixty
2168 (60) day period specified above for commencing such proceedings shall be extended for the
2169 period of such prohibition.

2170 (e) A Leasehold Mortgagee that does not directly hold an interest in the
2171 Leasehold Estate, or that holds a Mortgage, shall not have any obligation under this
2172 Agreement prior to the time that such Leasehold Mortgagee obtains title to the Leasehold
2173 Estate. Further, in the event that a Leasehold Mortgagee elects to (i) perform GT USA's
2174 obligations under this Agreement, (ii) continue GT USA's operations under this Agreement,
2175 or (iii) acquire any portion of GT USA's right, title or interest in the Premises or under this
2176 Agreement, then such Leasehold Mortgagee shall not have any personal liability to DSPC in
2177 connection therewith, and DSPC's sole recourse in the event of default by such Leasehold
2178 Mortgagee shall be to execute against such Leasehold Mortgagee's interest in the Leasehold
2179 Estate and the Leasehold Improvements. Moreover, any Leasehold Mortgagee or other party
2180 who acquires the Leasehold Estate pursuant to foreclosure or an assignment in lieu of
2181 foreclosure shall not be liable to perform any obligations hereunder to the extent the same are
2182 incurred or accrue after such Leasehold Mortgagee or other party no longer has ownership of
2183 such Leasehold Estate.

2184 (f) DSPC shall not agree to any material modification or amendment of
2185 this Agreement and shall not accept a surrender or termination of this Agreement outside the
2186 terms of this Agreement; in each such case, without the prior written consent of each
2187 Leasehold Mortgagee.

2188 (g) DSPC shall, within twenty (20) days after written request from GT
2189 USA, or the existing Leasehold Mortgagee, execute and deliver thereto a certificate in
2190 customary form or as otherwise reasonably acceptable to DSPC to the effect that (i) DSPC
2191 recognizes such entity as a Leasehold Mortgagee under this Agreement and (ii) will accord to
2192 such entity all the rights and privileges of a Leasehold Mortgagee hereunder.

2193 (h) DSPC shall not agree to hypothecate, mortgage, grant or pledge its
2194 right, title or interest in the Premises, the Assets or the Leasehold Improvements (but
2195 excluding DSPC's rights to the Concession Fees under the terms of this Agreement) without
2196 the prior written consent of GT USA and each Leasehold Mortgagee, which consent shall not
2197 be unreasonably withheld, conditioned or delayed.

2198 ARTICLE 19 2199 DISPUTE RESOLUTION

2200 Section 19.1 Dispute Resolution

2201 The Parties shall attempt in good faith to resolve a dispute arising out of, relating to, or
2202 in connection with this Agreement in the manner described in Section 10.8. If the attempt is
2203 unsuccessful, the Parties may pursue additional remedies as described below. Statements made

2204 by representatives of the Parties during informal dispute resolution procedures in Section 10.8
2205 shall be considered part of settlement negotiations and shall not be admissible in evidence in any
2206 litigation proceeding without the mutual consent of both Parties.

2207 **Section 19.2 Dispute Resolution Procedures**

2208 (a) Arbitration in Delaware Chancery Court. If good faith negotiation
2209 pursuant to Section 10.8 above is deemed unsuccessful, then if the dispute can be arbitrated
2210 in the Court of Chancery of the State of Delaware pursuant to 10 Del. C. § 349, DSPC and
2211 GT USA agree that the dispute will be so arbitrated.

2212 (b) Litigation in Delaware Court. If the dispute cannot be arbitrated in the
2213 Delaware Chancery, then each of the Parties hereby consents exclusively to the jurisdiction
2214 of the Courts of the State of Delaware and of the United States District Court for the District
2215 of Delaware for all purposes in connection with any action or proceeding that arises from or
2216 relates to this Agreement and agrees not to initiate any proceeding in any other jurisdiction,
2217 court or tribunal. Each Party hereby waives any objection it might have to personal
2218 jurisdiction of any such court and waives any rights it may have to personal service of
2219 summons, complaint, or other process in connection therewith, and agrees that service may
2220 be made by registered or certified mail addressed to it at the address provided in Section 21.2
2221 hereof. Neither Party hereto shall commence any action in any other court or attempt to
2222 remove an action to any other court, it being agreed that any violation of this Section 19.2
2223 may be specifically enforced by mandatory injunction because money damages would be an
2224 inadequate remedy. GT Americas and GulfTainer also consent to jurisdiction of the Courts of
2225 the State of Delaware and of the United States District Court for the District of Delaware for
2226 purposes of this Agreement.

2227 **ARTICLE 20**
2228 **EMPLOYEES**

2229 **Section 20.1 Union Employees**

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Section 20.2 Non-Union Employees

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(a) At least ten (10) days prior to the Commencement Date, GT USA shall make written offers for employment to all non-unionized DSPC employees at substantially similar compensation (considering base compensation/wages and benefits as a whole) as their respective compensation at the time of such offer and for a period of not less than twelve (12) months following the Commencement Date, subject to GT USA's right to terminate any employee prior to that date for performance related issues, as determined in their reasonable business judgment. Each such employee who accepts the offer of employment shall become a GT USA employee as of the Commencement Date. GT USA reserves the right to terminate any employee at-will at any time; *provided, however*, that with respect to any employee terminated other than for performance related issues, GT USA shall provide to such employee an amount equal to the employee's base compensation (meaning forty (40) hours per week) plus healthcare benefits as in effect immediately prior to termination for the remainder of the twelve (12) month period, except that such amounts may be offset against the Concession Fee Differential with respect to any such amounts owed for the period following the expiration of six (6) months following the Commencement Date until the last day of the twelve (12) month period.

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(b) GT USA further agrees to provide DSPC's non-unionized employees employed on the Commencement Date priority in filling GT USA's non-union employment needs at the Premises in accordance with on-going business needs.

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(c) A current list of non-union employees is attached hereto and incorporated herein by reference as APPENDIX 17. DSPC shall, prior to the Commencement Date, provide to GT USA an updated schedule listing, as of such date that includes the names, job classifications, years of service and other information necessary for the purposes of benefits enrollment and conversions.

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(d) To the extent not inconsistent with the foregoing, GT USA's terms of employment shall include all applicable employment plans and policies in place at GT USA (or its Affiliates, as applicable) immediately prior to the Commencement Date, such as, by way of example, GT USA's drug and alcohol policy, insurance plans and retirement plans.

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(e) GT USA shall cause all DSPC employees to be given credit for all service with DSPC for purposes of eligibility, vesting, benefit, accrual, vacation, severance and satisfaction of any waiting periods as well as for any similar purposes, under all employee benefit plans, programs and policies in which they are participants; provided, however, that the provisions of this Section 20.2(e) shall not apply to any new 401(k) plan offered by GT USA on or after the Commencement Date.

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(f) GT USA shall comply with all Laws regarding equal opportunity. GT USA shall not, because of race, color, sex, religious creed, sexual orientation or national origin of any individual, refuse to hire or employ such individual, bar or discharge from employment such individual or otherwise discriminate against such individual, with respect to compensation, tenure, terms, conditions or privileges of employment. Further, GT USA shall make and shall cause its contractors to make a good faith effort to actively encourage

2283 the participation of minorities and females in GT USA's and its contractors' development
2284 and/or operations at the Premises.

2285 (g) DSPC hereby agrees that any audited actuarial pension and benefit
2286 plans of DSPC's employees as of immediately prior to the Commencement Date shall remain
2287 the responsibility of DSPC. For the avoidance of doubt, any benefit programs as of
2288 Commencement will be provided by GT USA, which shall be solely responsible for such
2289 benefit programs.

2290 (h) GT USA hereby agrees that it will use commercially reasonable efforts
2291 to build a training academy for employees involving port operations and logistics within five
2292 (5) years following the Commencement Date.

2293 **ARTICLE 21**
2294 **GENERAL**

2295 **Section 21.1 GT USA's Schedule of Rates**

2296 GT USA is permitted to charge and collect all Operating Revenues in connection with
2297 the Permitted Operations. GT USA shall be entitled to establish and maintain throughout the
2298 Term its own tariff/schedule or marine terminal operator tariff/schedule. In the absence of a
2299 schedule or tariff of rates covering facilities or services provided by GT USA, the DSPC Tariff
2300 shall remain in full force and effect at the Premises, and applicable charges under the DSPC
2301 Tariff shall be assessed and collected by GT USA during such times. All of GT USA's charges
2302 relating to the Premises shall comply with applicable Laws.

2303 **Section 21.2 Notices**

2304 (a) Any notice or other communication permitted or required to be given
2305 under or pursuant to this Agreement shall be in writing sent as specified in Section 21.2(b)
2306 below to the representative of the party to whom such notice is to be given at the following
2307 locations respectively:

2308 (i) If to DSPC:

2309 Department of State
2310 Attn: Secretary of State
2311 820 N. French Street
2312 4th Floor
2313 Wilmington, DE 19801

2314
2315 with a copy to:

2316 Morris, Nichols, Arsht & Tunnell LLP
2317 c/o Diamond State Port Corporation
2318 1201 N. Market Street
2319 P.O. Box 1347
2320 Wilmington, DE 19899-1347

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(ii) If to GT USA:

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GT USA

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1 Hausel Road

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Wilmington, DE 19801

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with a copy to:

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Gulftainer Company Limited

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Attn: Richard Blair, Group Head – Legal & Compliance

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Sarh Al Emarat Tower

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43rd floor

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Al Majaz

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P.O.Box 225

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Sharjah, UAE

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Tel: 0097165128888

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or at such other location as either party shall advise by notice from time-to-time.

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(b) All notices provided for herein may be sent by Federal Express or other overnight courier service, personally delivered, or mailed registered or certified mail, return receipt requested or by such other method as the parties hereto may mutually agree upon. If a notice is personally delivered, sent by overnight courier service or sent by registered or certified mail, it shall be deemed given upon receipt or refusal of delivery.

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Section 21.3 Audit Rights

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GT USA shall maintain complete and accurate records sufficient to permit DSPC to audit accurately the cargo levels, including Minimum Volume, Initial Capital Expenditure Obligation, the Total Capital Expenditure Obligation, the Minimum Warehouse Capital Obligation and Concession Fees and shall retain such records for a period of seven (7) years on a rolling basis. DSPC shall have the right to inspect, or to cause its representatives to inspect, such records during normal business hours, which inspection may occur no more than two (2) times per year and only after five (5) Days prior written notice to GT USA. If it is ultimately determined that GT USA's representation to DSPC regarding cargo volume, capital expenditures or Concession Fees is in error by at least three (3%) percent, then GT USA shall pay the out-of-pocket audit fees incurred by DSPC for its inspection and audit of GT USA's records.

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Section 21.4 Agent for Service of Process

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GT USA, GT Americas and Gulftainer shall accept service of process with respect to any such claim when delivered by certified mail return receipt requested or by personal service via nationally recognized (in the United States) overnight carrier addressed to GT USA at its above-stated addresses or to its resident agent established by registration with the Secretary of State of the State of Delaware.

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Section 21.5 Applicable Law

2361 This Agreement shall be construed and interpreted in accordance with the laws of the
2362 State of Delaware, except to the extent that United States federal law otherwise applies. All
2363 obligations of DSPC are subject to all applicable Law and appropriations by the Delaware
2364 General Assembly.

2365 **Section 21.6 Headings**

2366 All headings and captions appearing in this Agreement have been inserted for
2367 convenience and reference only and in no way define, limit or enlarge the scope or meaning of
2368 this Agreement or any provision thereof.

2369 **Section 21.7 Modification of Appendices**

2370 The Parties acknowledge and agree that between the date hereof and the
2371 Commencement Date it may become necessary to add to, delete from or otherwise modify
2372 certain appendices hereto to reflect any changes in circumstances or other events that occur
2373 between the date hereof and the Commencement Date that would have been disclosed on such
2374 appendices had the change in circumstances or other event existed as of the Execution Date (*e.g.*,
2375 list of current employees, litigation schedule, etc.) and to update the calculation of the Initial
2376 Payment. DSPC shall have the right to modify such appendices, provided that (a) such
2377 modifications may not be material to GT USA's interests, and (b) DSPC shall notify GT USA
2378 and provide copies of any such modifications to GT USA as promptly as practicable after DSPC
2379 becomes aware of the need for such modifications.

2380 **Section 21.8 Entire Agreement; Amendment**

2381 This Agreement and the agreements and contracts contemplated hereby constitute the
2382 entire agreement between the parties hereto with respect to the subject matter hereof and thereof
2383 and supersede all prior agreements and understandings, whether oral or written, between the
2384 parties, particularly including, without limitation, the request for offer process, the letter of intent
2385 and term sheet entered into by the Parties with respect to the matters contained in this
2386 Agreement. The making, execution and delivery of this Agreement by the parties have not been
2387 induced by any representations, statements, warranties or agreements other than those expressly
2388 set forth herein. This Agreement may be amended from time to time, but only by written
2389 amendment with the written consent of both DSPC and GT USA and may be subject to the
2390 approval of the Delaware General Assembly.

2391 **Section 21.9 Successors and Assigns**

2392 Subject to the terms in this Agreement, this Agreement shall be binding upon and inure
2393 to the benefit of each of the Parties and to their respective transferees, successors, and assigns.

2394 **Section 21.10 Recordation of Agreement; Memorandum of Lease**

2395 A Memorandum of Lease in the form of APPENDIX 9 shall be executed by the parties
2396 hereto concurrently herewith and GT USA or DSPC may record the same in the Office of the
2397 Recorder of Deeds in and for New Castle County, Delaware.

2398 **Section 21.11 No Third Party Beneficiaries; No Brokers**

GT USA and DSPC agree that there are no third-party beneficiaries to this Agreement or any other Transaction Documents. GT USA acknowledges that Seabury Securities LLC has been engaged by DSPC as a broker in relation to this Agreement and the transactions contemplated hereunder, but DSPC acknowledges that GT USA shall have no liability relating to Seabury Securities or its affiliates. GT USA represents that it has engaged no broker and is liable to no such third party in relation to this Agreement or the transactions contemplated hereunder. GT USA agrees to indemnify, defend, and hold harmless DSPC and any property of DSPC from any liability (including reasonable attorneys' fees) or claim arising by, through any party making any such claim.

Section 21.12 No Waiver

No waiver hereunder by any Party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

Section 21.13 Expenses

Except as expressly provided herein, each Party shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

Section 21.14 Time of Essence

Time is of the essence in the performance of and the compliance with each of the provisions and conditions of this Agreement. All times provided in this Agreement for the performance of any act shall be strictly construed.

Section 21.15 Severability

Should any provision in this Agreement be illegal or not enforceable, it shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding upon the parties as though the said provision had never been included.

Section 21.16 DSPC-GT USA Relationship

(a) Nothing contained in this Agreement, nor in any acts of the parties, shall be deemed to create a partnership or joint venture or similar agreement or like arrangement between the parties.

(b) DSPC and GT USA acknowledge their intent that this Agreement does not delegate to GT USA any governmental powers or duties vested in DSPC.

Section 21.17 Sale of Premises by DSPC

DSPC may sell or transfer all, but not less than all of the Premises, subject to the limitations in this Section. In the event DSPC sells or transfers all of the Premises and as a part of a transaction to assign its interest in and to this Agreement, and provided such buyer, transferee or assignee agrees to perform as lessor under this Agreement, then from and after the effective date of such sale, assignment, or transfer, DSPC has no further liability under this Agreement to GT USA except as to matters of liability which accrued and are unsatisfied as of

such effective date, it being intended that the covenants and obligations contained in this Agreement on the part of DSPC be binding on DSPC and its successors and assigns only during and in respect of their respective successive periods of ownership of the fee. DSPC shall be required to obtain any Leasehold Mortgagee's consent and GT USA's consent, which consent shall only be withheld on commercially reasonable grounds, for any sale, transfer or assignment of this Agreement to any independent third party. GT USA's and Leasehold Mortgagee's consent requirements hereunder expressly excludes any transfer, sale or assignment to the State of Delaware or any agency of the State of Delaware.

Section 21.18 No Right to Holdover

GT USA shall have no right to remain in possession of all or any part of the Premises after the earlier of the Termination Date or Expiration Date. GT USA shall have no right to holdover and no tenancy shall be created by implication or law. However, if GT USA fails to vacate and surrender possession of the Premises on or prior to the Termination Date or the Expiration Date, GT USA shall pay DSPC 200% of the average quarterly Concession Fee paid by GT USA over the eight (8) quarters prior to the Termination Date or the Expiration Date, for each quarter after the Termination Date or the Expiration Date that GT USA fails to surrender possession to DSPC, always subject to all fees being increased at the sole discretion of DSPC at any time during the holding over period and upon notice to GT USA. DSPC's receipt and acceptance of such Concession Fee as adjusted in this Section 21.17 shall not be construed as DSPC's consent to any holding over by GT USA. GT USA hereby agrees to indemnify and hold harmless DSPC from and against any and all Losses incurred by DSPC as a result of GT USA remaining in possession of all or any part of the Premises after the Termination Date or the Expiration Date. GT USA shall not interpose any counterclaim in any summary or other proceeding based on holding over by GT USA. Except as provided in this Section 21.17, all other terms and conditions of this Agreement shall apply during any period of holding over by GT USA.

Section 21.19 Costs

To the extent this Agreement contemplates any costs to be reimbursed or offset by either Party, such costs shall be the actual and reasonable costs incurred by the other Party.

Section 21.20 Intellectual Property

GT USA's intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise and all computer systems, including all hardware and software, that are incorporated into the Port facilities shall remain in the ownership of GT USA. Notwithstanding the foregoing, upon the earlier of the expiration or termination of this Agreement, GT USA agrees to provide or cause a third party to provide DSPC with a perpetual royalty free license for the intellectual property in use at the Port facilities to enable DSPC to continue operating the Port facilities in the manner they were operated in the five (5) years prior to the expiration or earlier termination of this Agreement.

Section 21.21 Community Relations

GT USA shall assist DSPC and the State of Delaware in developing positive community relations with regard to this Agreement and GT USA's operation of the Premises. GT USA shall

2477 make best effort to enter into a community benefits agreement, setting forth the range of
2478 community benefits this Agreement will provide and any impact mitigations that may be
2479 undertaken to avoid displacement of long-time communities living in close proximity to the
2480 Premises.

2481 **Section 21.22 Consents and Cooperation**

2482 Unless expressly provided herein, any cooperation, consent or approval required shall not
2483 be unreasonably withheld, conditioned, delayed or conditioned.

2484 **Section 21.23 Confidentiality**

2485 To the extent, if any, not otherwise required by Law with respect to either or both DSPC
2486 and GT USA, and being particularly cognizant of both the publication by FMC of agreements
2487 like this one after being filed with the FMC, and DSPC being a public agency subject to
2488 extensive disclosure obligations under laws of the State of Delaware regarding agreements like
2489 this one as public records, neither DSPC nor GT USA shall during the Term (except in the
2490 proper performance of its obligations hereunder) or at any time after the Expiration Date or
2491 Termination Date, disclose to any person the terms of this Agreement, or use for any purpose any
2492 information which is marked private and/or confidential when received by a party, or which
2493 relates to the other party and/or the terms of this Agreement, and/or by its nature is reasonably
2494 ascertainable as being private and/or confidential. The foregoing restrictions shall not apply to
2495 any disclosure made with the prior written consent of either GT USA or DSPC, whichever is the
2496 non-disclosing party, or which was already known by the recipient party prior to disclosure by
2497 the disclosing party, or which is, or comes to be, in the public domain without fault of the
2498 recipient party, or which is disclosed by the recipient party to its professional advisers, or
2499 financial institutions or their representatives, or as required by Law or by the rules or regulations
2500 of any Governmental Authority having jurisdiction over DSPC, GT USA or the subject matter of
2501 this Agreement or any part hereof. Notwithstanding the foregoing, DSPC and GT USA shall
2502 cooperate on making public announcement of this Agreement on the Effective Date.

2503 **Section 21.24 Rights and Remedies**

2504 All rights and remedies of the Parties contained in this Agreement shall be cumulative
2505 and not alternative.

2506 **Section 21.25 Qualification to do Business in Delaware**

2507 At all times during the Term GT USA agrees to be and continue to be legally qualified to
2508 do business in the State of Delaware.

2509 **Section 21.26 Authority**

2510 Each individual executing this Agreement on behalf of a party represents and warrants
2511 that he or she is duly authorized to execute and deliver this Agreement on behalf of such party.

2512 **Section 21.27 Waiver of Jury Trial; Counterclaim**

2513 DSPC AND GT USA HEREBY MUTUALLY WAIVE ANY AND ALL RIGHTS
2514 WHICH EITHER MAY HAVE TO REQUEST A JURY TRIAL IN ANY ACTION,
2515 PROCEEDING, OR COUNTERCLAIM (EXCEPT FOR THOSE INVOLVING PERSONAL

2516 INJURY OR PROPERTY DAMAGE) ARISING OUT OF THIS AGREEMENT OR GT USA'S
2517 USE OR OCCUPANCY OF OR RIGHT TO USE OR OCCUPY THE PREMISES.

2518 **Section 21.28 GT USA to Provide Information to DSPC**

2519 (a) Upon request by DSPC, after the Commencement Date, GT USA shall
2520 provide, at GT USA's expense, to DSPC any information or documentation that DSPC
2521 requests from GT USA reasonably relating in any way to this Agreement, including without
2522 limitation, information to support any claim of force majeure, evidence of payment of taxes
2523 and utilities, and all documents that GT USA is to prepare and maintain under ARTICLE 16
2524 of this Agreement.

2525 (b) GT USA must provide DSPC upon the Commencement Date, and
2526 thereafter if requested by DSPC or if such information or documentation changes, the
2527 following relating to the safety and security of the Premises: (i) a copy of GT USA safety
2528 and emergency management plans, (ii) a point of contact for safety and security matters, and
2529 (iii) the name and telephone number of each representative of GT USA to be contacted in
2530 case of an emergency.

2531 (c) GT USA must submit to DSPC upon the Commencement Date, a
2532 disaster preparedness plan in form and substance acceptable to DSPC, and must update the
2533 plan on a periodic basis at DSPC's request upon reasonable written notice. A representative
2534 of GT USA must attend each disaster preparedness meeting called by DSPC during the Term
2535 of this Agreement.

2536 **Section 21.29 TIGER Grant Required Language**

2537 GT USA, as a part of the consideration hereof, does hereby covenant and agree as a
2538 covenant running with the land that in the event facilities are constructed, maintained, or
2539 otherwise operated on the Premises described in this Agreement for a purpose for which a U.S.
2540 Department of Transportation activity, facility, or program is extended or for another purpose
2541 involving the provision of similar services or benefits, GT USA will maintain and operate such
2542 facilities and services in compliance with all requirements imposed by the Acts and Regulations
2543 (as may be amended) such that no person on the grounds of race, color, or national origin, will be
2544 excluded from participation in, denied the benefits of, or be otherwise subjected to
2545 discrimination in the use of said facilities.

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2547 **Section 21.30 Further Acts**

2548 Each of the Parties hereto shall perform such further acts and execute such further
2549 agreements as may be required from time-to-time to give proper effect to the intent of this
2550 Agreement.

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**ARTICLE 22
DEFINED TERMS**

2553 **Section 22.1 Definitions**

2554 As used in this Agreement, the following terms have the following meanings:

2555 "120% Threshold" has the meaning specified in Section 16.2(b).

2556 "AAA" has the meaning specified in Section 17.9(c)(iv).

2557 "Acquisition Agreement" means that certain Acquisition Agreement between
2558 DSPC and the City of Wilmington dated as of September 1, 1995, as amended from time to time.

2559 "Additional Fees" has the meaning specified in Section 4.6.

2560 "Affiliate" means, with respect to GT USA, an entity that directly or indirectly
2561 controls, is controlled by, or is under common control with GT USA, whether through share
2562 ownership, a trust, a contract or otherwise of an Equity Participant.

2563 "After-Acquired Assets" has the meaning specified in Section 2.8.

2564 "Agreement" has the meaning specified in the Preamble.

2565 "Assets" has the meaning specified in Section 2.8.

2566 "Assign" or "Assignment" have the meanings specified in Section 5.1(a).

2567 "Assigned Contracts" means each contract identified in APPENDIX 2-4
2568 attached hereto.

2569 "Assignee" has the meaning specified in Section 5.2.

2570 "Basic Conditions" has the meaning specified in Section 6.4(b).

2571 "Beazley Insurance Policy" means the pollution liability insurance naming
2572 DSPC as the insured with policy number WIDE02170101 and a policy period through 27
2573 February 2027.

2574 "Boxwood" means the Boxwood Road site commonly referred to as Tax Parcel
2575 Nos. 07-042.10-055 and 07-042.20-010 located at 801 Boxwood Road, Wilmington, DE 19804,
2576 which is a logistics facility owned as of the date hereof by Boxwood Industrial Park, LLC, a
2577 subsidiary of Harvey Hanna & Associates, Inc.

2578 "Bulk Handling Permits" shall have the meaning set forth in Appendix 2(g)(iv).

2579 "Business Day" means any day other than a Saturday, a Sunday, or a day on
2580 which commercial banks in Wilmington, Delaware are required or authorized to be closed.

2581 "Buy-Out Value" has the meaning specified in Section 17.9(c).

2582 "Casualty Costs" means the estimated or actual costs of repairs, alterations,
2583 Restorations, replacement and rebuilding.

2584 **"Casualty Event"** means fire or other casualty of any kind or nature (including
2585 any casualty for which insurance was not obtained or obtainable, but excluding a casualty caused
2586 by a nuclear, chemical, biological or radioactive event), ordinary or extraordinary, foreseen or
2587 unforeseen.

2588 **"Casualty Extension"** has the meaning specified in Section 7.5.

2589 **"Casualty Restoration Funds"** has the meaning specified in Section 7.2(c).

2590 **"CFIUS"** has the meaning specified in Section 1.2(b).

2591 **"CFIUS Approval"** has the meaning specified in Section 1.2(b).

2592 **"CFIUS Notice"** has the meaning specified in Section 1.2(b).

2593 **"Change of Control"** means, with respect to GT USA, whether accomplished
2594 through a single transaction or a series of related or unrelated transactions and whether
2595 accomplished directly or indirectly, any of:

2596 (i) a change in ownership, as compared to the ownership as of the
2597 Execution Date of this Agreement, so that 50% or more of the direct or indirect voting or
2598 economic interests in GT USA are transferred to another entity or group of entities acting in
2599 concert;

2600 (ii) the power directly or indirectly to direct or cause the direction of
2601 management, operations, controls and policy of GT USA, whether through ownership of voting
2602 securities, by contract, management agreement, or common directors, officers or trustees or
2603 otherwise, is transferred to another entity or group of entities acting in concert; or

2604 (iii) the merger, consolidation, amalgamation or business combination
2605 of GT USA, in circumstances where GT USA is not the surviving corporation, or sale of
2606 substantially all of the assets of such entity.

2607 For purposes of this definition of "Change of Control", "indirect" includes any
2608 Change of Control of GT Americas.

2609 **"City of Wilmington"** means the City of Wilmington, New Castle County,
2610 Delaware.

2611 **"Closing"** means the closing of the Commencement on the Commencement Date
2612 at the offices of Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Wilmington,
2613 Delaware 19801.

2614 **"Commencement"** has the meaning specified in Section 2.1.

2615 **"Commencement Conditions"** means GT USA Commencement Conditions and
2616 the DSPC Commencement Conditions.

2617 **“Commencement Date”** has the meaning specified in Section 2.1.

2618 **“Concession Fee”** has the meaning specified in Section 4.3(c).

2619 **“Concession Fee Differential”** means the difference between the actual
2620 Concession Fee owed by GT USA in any calendar year less the Minimum Annual Concession
2621 Fee.

2622 **“Contract Closure Environmental Activities”** means any and all activities
2623 required to be taken pursuant to ARTICLE 17, and applicable Environmental Law in order to
2624 complete all Response Actions for GT USA Contamination in compliance with all applicable
2625 Environmental Law.

2626 **“Day”** means a calendar day unless otherwise specified.

2627 **“DNREC”** means the Department of Natural Resources and Environmental
2628 Control of the State of Delaware.

2629 **“Dollars”** means United States dollars.

2630 **“DSPC”** has the meaning specified in the Preamble.

2631 **“DSPC Books and Records”** has the meaning specified in Section 2.11(a).

2632 **“DSPC Commencement Conditions”** has the meaning specified in
2633 APPENDIX 2(b).

2634 **“DSPC Default”** has the meaning specified in Section 10.6.

2635 **“DSPC Tariff”** means DSPC Terminal Tariff Agreement issued February 17,
2636 2012, as amended from time to time.

2637 **“DSPC’s Objection Notice”** has the meaning specified in Section 17.4(b).

2638 **“Edgemoor”** means those certain tracts of land commonly referred to as Tax
2639 Parcel No. 06-153.00-006 and Tax Parcel No. 06-153.00-003 and conveyed to DSPC pursuant to
2640 that certain Deed recorded in the Office of the Recorder of Deeds in and for New Castle County,
2641 Delaware as Instrument No. 20170227-0010347 on February 27, 2017.

2642 **“Environmental Laws”** means all Laws issued by any Governmental Authority,
2643 including, but not limited to, those so defined in or regulated under any of the following: 15 U.S.
2644 Code Section 2601, *et seq.* (the Toxic Substances Control Act); 33 U.S. Code Section 1251, *et*
2645 *seq.* (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, *et seq.* (the Resource
2646 Conservation and Recovery Act); 42 U.S. Code Section 7401, *et seq.* (the Clean Air Act); 42
2647 U.S. Code Section 9601, *et seq.* (the Comprehensive Environmental Response, Compensation
2648 and Liability Act); 49 U.S. Code Section 1801, *et seq.* (the Hazardous Materials Transportation
2649 Act); the Delaware Underground Storage Tank Act, 7 Del. C. § 7401 *et seq.*, the Delaware
2650 Hazardous Substance Cleanup Act, 7 Del. C. §§ 9101 *et seq.*, the Delaware Hazardous Waste

2651 Management Act, 7 Del. C. §§ 6302 *et seq.* and similar state and local laws and local fire codes;
2652 the regulations adopted and promulgated pursuant to such statutes, including any regulations
2653 adopted pursuant to such statutes after the Execution Date, as well as any subsequently enacted
2654 federal, Delaware, local or maritime law, statute, ordinance, rule, regulation, program, plan,
2655 resolution, policy, program, permit, order, or other directive issued by any Governmental
2656 Authority as may be modified, amended or reissued, in any way relating to or regulating the
2657 Permitted Operations with regard to:

2658 (i) human health, safety and industrial hygiene related to Toxic
2659 Materials;

2660 (ii) the environment, including natural resources, pollution or
2661 contamination of the air, soil, sediment, soil gas, surface water, groundwater, structures, and
2662 subsurface structures including utility vaults, corridors or conduits, or noise or light pollution;

2663 (iii) toxic Materials, including, without limitation, the handling, use,
2664 storage, accumulation, transportation, generation, spillage, migration, discharge, release,
2665 treatment or disposal or any Toxic Materials, or Response Actions associated with same; or

2666 (iv) global warming or generation of greenhouse gases.

2667 **“Environmental Remediation”** means the investigation, testing, feasibility
2668 study, risk assessment, treatment, removal, disposal, reuse, handling, transport, clean up,
2669 remediation, containment, capping, encapsulating, mitigation, or monitoring of Hazardous
2670 Materials.

2671 **“Equity Participant”** means, with respect to GT USA, any person or entity that
2672 holds any partnership interest, membership interest, capital stock or other ownership interest in
2673 GT USA.

2674 **“Escrow Agent”** means an escrow agent designated by GT USA and approved by
2675 DSPC.

2676 **“Estimated Reinstatement Costs”** means GT USA’s estimate of the costs of
2677 carrying out the Reinstatement Work.

2678 **“Execution Date”** has the meaning specified in the introduction to this
2679 Agreement.

2680 **“Existing Conditions”** has the meaning specified in Section 16.2.

2681 **“Existing Port”** has the meaning specified in the Recitals.

2682 **“Expiration Date”** has the meaning specified in Section 2.2.

2683 **“Fees and Charges”** has the meaning specified in Section 4.7.

2684 **“FMC”** has the meaning specified in Section 1.2.

2685 **"FMC Condition"** has the meaning set forth in APPENDIX 2.

2686 **"FMC Filing"** has the meaning specified in Section 1.2(a).

2687 **"Force Majeure Event"** has the meaning specified in Section 8.1.

2688 **"General Permit"** means DNREC's existing General NPDES Permit for storm
2689 water discharge and any subsequently issued General Permits.

2690 **"Governmental Authority"** means any court, federal, state, or local government,
2691 department, commission, board, bureau, agency or other regulatory, administrative,
2692 governmental or quasi-governmental authority.

2693 **"GT Americas"** means GT Americas Corp., a Delaware corporation, and wholly-
2694 owned subsidiary of GT International Limited FZC, a limited company organized in the
2695 Hamriyah Free Zone in the United Arab Emirates.

2696 **"GT USA"** has the meaning specified in the Preamble.

2697 **"GT USA Commencement Conditions"** has the meaning specified in
2698 APPENDIX 2(a).

2699 **"GT USA Contamination"** means the Hazardous Materials Contamination on,
2700 under, or migrating from the Premises that: (i) was caused, permitted or authorized by GT USA
2701 or by any of its representatives after the Commencement Date; or (ii) was caused, permitted or
2702 authorized on the Premises by any third party during the Term.

2703 **"GT USA Contractors"** mean all contractors, major suppliers, architects,
2704 engineers, consultants, and all subcontractors and major suppliers thereto, and any others that
2705 may perform work or services related to the proposed Leasehold Improvements.

2706 **"GT USA Default"** has the meaning specified in Section 10.1.

2707 **"GT USA Responsible Persons"** has the meaning specified in Section 15.1.

2708 **"Gulftainer"** means Gulftainer Company Limited, a United Arab Emirates
2709 limited company, and GT International Limited FZC, a limited company organized in the
2710 Hamriyah Free Zone in the United Arab Emirates.

2711 **"Handback"** has the meaning specified in Section 17.2(a).

2712 **"Handback Date"** has the meaning specified in Section 17.2(a).

2713 **"Handback Engineer"** has the meaning specified in Section 17.3(a).

2714 **"Handback Engineer Selection Date"** has the meaning specified in
2715 Section 17.3(a).

2716 **"Handback Guaranty"** means a letter of credit covering one hundred percent
2717 (100%) of the agreed upon Estimated Reinstatement Costs valid for a period of ninety (90) days
2718 after the Handback Date (provided the letter of credit shall be renewed no later than ten (10) days
2719 prior to its termination if the Reinstatement Work is not completed by the termination date, as
2720 determined by DSPC's Handback Engineer or, if applicable, the Independent Engineer).

2721 **"Handback Plan"** has the meaning specified in Section 17.3(b).

2722 **"Hazardous Materials"** means any flammables, explosives, radioactive
2723 materials, hazardous waste, petroleum products or other hydrocarbons, chemicals, toxic
2724 substances or related materials, including all substances regulated under or defined as "hazardous
2725 substances," "hazardous materials," "toxic substances" or "solid wastes" in the Comprehensive
2726 Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec.
2727 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801, et seq.; the
2728 Resources Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq.; the Toxic Substance
2729 Control Act, as amended, 15 U.S.C. Sec. 2601 et seq.; DSPC's Tariff; Delaware Code
2730 Annotated, Title 7 or any other Environmental Law.

2731 **"Hazardous Materials Contamination"** means the presence, release or
2732 threatened release of Hazardous Materials.

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2737 **"Independent Appraiser"** means an independent third party appraiser that is
2738 nationally recognized in appraising such assets and that is mutually acceptable to GT USA and
2739 DSPC.

2740 **"Independent Engineer"** means an independent third party engineer that is
2741 nationally recognized in such engineering work and that is mutually acceptable to GT USA and
2742 DSPC.

2743 **"Index"** means the Consumer Price Index for "All Items" shown on the Average
2744 for "Urban Wage Earners and Clerical Workers" as promulgated by the Bureau of Labor
2745 Statistics of the U.S. Department of Labor for the metropolitan region of Philadelphia,
2746 Pennsylvania, Camden, New Jersey, and Wilmington, Delaware using the year 1982 – 1984 as a
2747 base of 100 (Series ID: CWURS12BSA0). In the event that a substantial change is made in the
2748 method by which such Consumer Price Index is determined, then for purposes of this paragraph,
2749 the Index shall be adjusted to the figure that would have resulted had no change occurred in the
2750 manner of determining the Consumer Price Index. In the event that such Consumer Price Index
2751 (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan
2752 publication evaluating the information theretofore used in determining the Consumer Price Index
2753 shall be used in lieu of the Consumer Price Index.

2754 **"Industry Standard Costs"** means the average cost, based on two (2) estimates
2755 from reputable, insured Environmental Remediation contractors licensed in the Delaware,

2756 Pennsylvania or New Jersey area for similar work at a similarly situated but non-environmentally
2757 impaired location. DSPC and GT USA shall each select one of the contractors to provide an
2758 estimate; provided, further, that neither party shall obtain an estimate from any environmental
2759 consultant or contractor currently under contract with such party.

2760 **"Initial Capital Expenditure Obligation"** has the meaning specified in
2761 Section 4.9(c).

2762 **"Initial Inspection Report"** has the meaning specified in Section 17.3(b).

2763 **"Initial Payment"** has the meaning specified in Section 4.1.

2764 **"Initial Warehouse Capital Expenditure"** has the meaning specified in
2765 Section 4.9(d).

2766 **"Insolvency" or "Insolvent"** means, with respect to any person, any of the
2767 following on the part of such person: (i) an assignment for the benefit of creditors; (ii) the filing
2768 of a voluntary petition in bankruptcy; (iii) an adjudication by a court of competent jurisdiction
2769 that such person is bankrupt; (iv) the appointment of a receiver for the properties of such person;
2770 (v) the filing of an involuntary petition of bankruptcy and failure of to secure a dismissal of the
2771 petition within ninety (90) days after the filing; or (vi) the attachment of or the execution on such
2772 person's leasehold interest hereunder as a result of any lien, encumbrance or judgment created,
2773 incurred or suffered by any such person and such attachment or execution has not been secured,
2774 removed, vacated, discharged, stayed by court, bonding or otherwise, within sixty (60) days.

2775 **"Law"** means any order, writ, injunction, decree, judgment, law, ordinance,
2776 decision, principle of common law, ruling that has the force of law, statute, code, rule or
2777 regulation of any Governmental Authority.

2778 **"Leasehold Estate"** has the meaning specified in Section 18.4(d).

2779 **"Leasehold Improvements"** means all permanent buildings, structures, major
2780 alterations or capital improvements, including the installation, construction, extension, erection,
2781 or major repair of any fixtures, buildings or structure on the Premises (other than the Assets), and
2782 all substitutions or replacements thereof or to existing improvements on the Premises, both
2783 interior and exterior, structural and non-structural, in each case made by GT USA.

2784 **"Leasehold Mortgagee"** has the meaning specified in Section 18.2.

2785 **"Letter of Credit"** has the meaning specified in ARTICLE 14.

2786 **"Loss"** means, with respect to any person, any loss, liability, damage, penalty,
2787 charge or out-of-pocket and documented cost or expense actually suffered or incurred by such
2788 person (including reasonable attorneys' fees). Loss shall exclude punitive damages.

2789 **"Material Adverse Impact"** means any event, change, circumstance, effect or
2790 other matter that has, or could reasonably be expected to have, either individually or in the
2791 aggregate with all other events, changes, circumstances, effects or other matters, with or without

2792 notice, lapse of time or both, a material adverse effect on (a) the business, assets, liabilities,
2793 properties, condition (financial or otherwise), operating results, operations or prospects of the
2794 Premises, or (b) the ability of DSPC or GT USA to perform its obligations under this Agreement.

2795 **"Material Damage or Destruction"** means a material casualty loss, destruction
2796 or damage to any part of the Premises or Original Assets (other than wear and tear, Toxic
2797 Materials and other matters relating to the environment) that did not exist as of the date of the
2798 pre-occupancy inspection described in Section 2.3(d), has not been substantially repaired in a
2799 good and workmanlike manner before the Commencement Date, and will adversely affect the
2800 Permitted Operations taken as a whole; provided, however, that no effect arising out of or in
2801 connection with, or resulting from, any of the following shall be deemed, either alone or in
2802 combination, to constitute or contribute to a Material Damage or Destruction: (a) any condition
2803 in, on or under the Premises that GT USA has actual knowledge as of the date of the Pre-
2804 Occupancy Report; or (b) any loss, destruction, or damage caused by the negligence, intentional
2805 misconduct or bad faith of GT USA or its representatives.

2806 **"Minimum Annual Concession Fee"** has the meaning specified in Section 4.4.

2807 **"Minimum Annual Volume Guarantee"** has the meaning specified in
2808 Section 4.5(a).

2809 **"Minimum Condition"** means the condition necessary to substantially satisfy the
2810 Basic Condition and have the operational capacity to handle (i) the same types of services that
2811 have been provided upon the Premises for the prior five (5) years from the date of termination,
2812 (ii) a TEU and short ton volume equal to or greater than GT USA's average annual TEU and
2813 short ton volume over the similar prior five (5) years but in no event less than the Minimum
2814 Annual Volume Guarantee then in effect and (iii) be in a reasonably similar environmental
2815 condition existing as of the Commencement Date. The Minimum Condition shall further mean
2816 the continued employment of operational and administrative level support personnel to manage
2817 the then current operations at the Port.

2818 **"Minimum Volume"** has the meaning specified in Section 4.5(a).

2819 **"Minimum Warehouse Capital Obligation"** has the meaning specified in
2820 Section 4.9(d).

2821 **"MLW"** means mean low water.

2822 **"Mortgage"** has the meaning specified in Section 18.2.

2823 **"Mutual Environmental Review"** has the meaning specified in Section 16.2.

2824 **"NFPA"** means the National Fire Protection Association.

2825 **"NPDES"** means the National Pollution Discharge Elimination System.

2826 **"Non-Curable Default"** has the meaning specified in Section 18.4(d).

2827 **“Non-Development Related Existing Conditions”** shall mean Existing
2828 Conditions which require a response, whether investigation, testing, feasibility study, risk
2829 assessment, treatment, removal, disposal, reuse, handling, transport, clean up, remediation,
2830 containment, capping, encapsulating, mitigation, or monitoring that were not triggered by,
2831 arising out of or exacerbated by any actions of GT USA or its employees, agents or contractors
2832 in connection with the possession, operation and development of the Premises.

2833 **“O&M Dredging”** means ongoing maintenance and operation dredging.

2834 **“Offsetable Amounts”** has the meaning specified in Section 4.7(b).

2835 **“OpCo”** has the meaning specified in Section 5.4(a).

2836 **“Operating Revenues”** has the meaning specified in Section 2.5.

2837 **“Original Assets”** has the meaning specified in Section 2.7.

2838 **“Outside Construction Date”** has the meaning specified in Section 4.9(b).

2839 **“Partial Taking Event”** has the meaning specified in Section 12.1(b).

2840 **“Party”** or **“Parties”** has the meaning specified in the Preamble.

2841 **“Party-Appointed Appraiser”** has the meaning specified in Section 17.9(c)(ii).

2842 **“Permitted Liens”** means those matters set forth in APPENDIX 11.

2843 **“Permitted Operations”** has the meaning specified in Section 3.1.

2844 **“person”** means any natural person, corporation, limited liability company,
2845 general partnership, limited partnership, proprietorship, other business organization, trust, union,
2846 association or Governmental Authority.

2847 **“Pigeon Point Option”** has the meaning specified in Section 2.6(a).

2848 **“Pigeon Point Property”** means the real property described in APPENDIX 5.

2849 **“Port”** has the meaning specified in the Recitals.

2850 **“Pre-Occupancy Report”** means the written report prepared or caused to be
2851 prepared by GT USA based upon the results of the pre-occupancy inspection and subject to the
2852 approval of DSPC, which shall not be unreasonably withheld.

2853 **“Premises”** has the meaning specified in Section 2.2.

2854 **“Prime Rate”** means the prime rate of interest as reported in *The Wall Street*
2855 *Journal*.

2856 **“Project Dredge”** means the initial dredging required for the conversion of
2857 Edgemoor to an operational and fully-functional container handling terminal.

2858 **“Reasonable Prudent Operator”** means a person seeking in good faith to
2859 perform its contractual obligations and, in so doing and in the general conduct of its undertaking,
2860 exercising that degree of skill, diligence, prudence and foresight which would reasonably and
2861 ordinarily be expected from a skilled and experienced operator engaged in the same type of
2862 undertaking under the same or similar circumstances and conditions.

2863 **“Reinstatement Costs”** has the meaning specified in Section 17.4(c).

2864 **“Reinstatement Plan”** has the meaning specified in Section 17.4(a).

2865 **“Reinstatement Schedule”** has the meaning specified in Section 17.4(a)(ii).

2866 **“Reinstatement Work”** has the meaning specified in Section 17.3(b).

2867 **“Release”** means any release, spill, discharge, disposal, leak, leaching, migration
2868 or dispersal of Hazardous Materials.

2869 **“Response Action”** means the investigation, testing, feasibility study, risk
2870 assessment, treatment, removal, disposal, reuse, handling, transport, clean up, remediation,
2871 containment, capping, encapsulating, mitigation, or monitoring of Hazardous Materials or any
2872 Release; the preparation and implementation of any health and safety plans, operations and
2873 maintenance plans or any other plans related to a Release; the demolition, reconstruction or
2874 construction of any subsurface or surface structures to implement the Response Action; and the
2875 Restoration of the Premises after the completion of the Response Action whether required by
2876 Environmental Law or this Agreement.

2877 **“Restoration,” “Restoring” or “Restore”** has the meaning specified in
2878 Section 7.1.

2879 **“Riveredge”** means the property located just to the south of the Delaware
2880 Memorial Bridge on the Delaware River commonly referred to as Tax Parcel No. 21-022.00-002
2881 and currently owned by Parkway Gravel, Inc.

2882 **“Settlement Statement”** means the statement agreed to by GT USA and DSPC
2883 reflecting all payments and transfer of funds at the Closing issued by Morris, Nichols, Arsht &
2884 Tunnell LLP, through its trust account.

2885 **“Shipping Act”** has the meaning specified in Section 1.2.

2886 **“Standard of Care”** has the meaning specified in Section 3.2.

2887 **“State”** means and includes, in its broadest sense, the State of Delaware, all of its
2888 officials, officers, directors, executives, administrators, agents, members and employees.

2889 **“Supplemental CapEx”** has the meaning specified in Section 2.3(e).

2890 **"Taking Event"** has the meaning specified in Section 12.1(a).

2891 **"Taking Restoration Funds"** has the meaning specified in Section 12.1(b).

2892 **"Target Closing Date"** has the meaning specified in Section 2.1.

2893 **"Term"** has the meaning specified in Section 2.2.

2894 **"Termination Date"** has the meaning specified in Section 2.2.

2895 **"TEU"** means the measurement standards customarily employed by United States
2896 ports for computing intermodal container traffic in 20-foot equivalent units, with 40-foot
2897 containers counted as two (2) TEU, or the pro rata equivalents thereof.

2898 **"Total Capital Expenditure Obligation"** has the meaning specified in
2899 Section 4.9(a).

2900 **"Toxic Materials"** means: (a) substances that are toxic, corrosive, inflammable or
2901 reactive; (b) petroleum products, crude oil (or any fraction thereof) and their derivatives; (c)
2902 explosives, asbestos, radioactive materials, hazardous wastes, sewage, infectious substances,
2903 toxic substances or related hazardous materials; (d) air pollutants, noxious fumes, vapors, soot,
2904 smoke or other airborne contaminants; and (e) substances which now or in the future are defined
2905 by Environmental Laws as "hazardous substances," "hazardous materials," "hazardous wastes,"
2906 "pollutants," "contaminants," "reproductive toxins," "carcinogens" or "toxic substances," or
2907 regulated under applicable Environmental Laws.

2908 **"Transaction Documents"** has the meaning specified in APPENDIX 2(g)(ii).

2909 **"USDA"** means the United States Department of Agriculture.

2910 **"USEPA"** means the United States Environmental Protection Agency.

2911 **"VCP Agreement"** has the meaning specified in Section 16.8.

2912 **"Volume Schedule"** has the meaning specified in Section 4.5(a).

2913 **"Wilmington South Disposal Area"** means the real property known as the
2914 Wilmington Harbor South Property or the Wilmington Harbor South Dredge Material Disposal
2915 Site described in APPENDIX 6.

2916 **Section 22.2 Terms Generally**

2917 Words in the singular shall include the plural and vice versa, in each case, as the context
2918 requires, (b) the term "hereof," "herein," and "herewith" and words of similar import shall,
2919 unless otherwise stated, be construed to refer to this Agreement and not to any particular
2920 provision of this Agreement, and Article, Section, paragraph and Appendix references are to the
2921 Articles, Sections, paragraphs and Appendices to this Agreement unless otherwise specified and

2922 (c) the word "including" and words of similar import when used in this Agreement shall mean
2923 "including, without limitation," unless otherwise specified.

2924 [Signature Pages Follow]

2925

2926 **IN WITNESS WHEREOF**, DSPC and GT USA have caused this Agreement to be
2927 executed as of the day and year first above written.

2928

DIAMOND STATE PORT CORPORATION

Witness:

Witness: 

By:

Jeffrey W. Bullock
Chairperson

(SEAL)

2929 STATE OF DELAWARE)
2930) ss.
2931 COUNTY OF NEW CASTLE)

I HEREBY CERTIFY that on this 18th day of September, 2018,
before me, a Notary Public in and for the State and County aforesaid, personally appeared
Jeffrey W. Bullock, Chairperson of the Diamond State Port Corporation, known to me (or
satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed
instrument and acknowledged that said individual executed the same on behalf of Diamond State
Port Corporation for the purposes therein contained.

2938 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

2939
2940

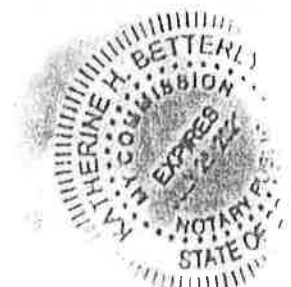
Karl A. Bee
Notary Public

KATHERINE H. BETTERLY
NOTARY PUBLIC
STATE OF DELAWARE
 My Commission Expires July 28, 2021

2941 My Commission Expires: _____

[Notary Seal]

2942



GT USA WILMINGTON, LLC

Witness:

Donald P. Moore
Donald P. Moore

By:

[Signature] (SEAL)
Peter Richards
President & Director

2943 STATE OF DELAWARE)
2944) ss.
2945 COUNTY OF NEW CASTLE)

2946 I HEREBY CERTIFY that on this 18th day of September, 2018,
2947 before me, a Notary Public in and for the State and County aforesaid, personally appeared Peter
2948 Richards, President & Director of GT USA Wilmington, LLC known to me (or satisfactorily
2949 proven) to be the person whose name is subscribed to the foregoing and annexed instrument and
2950 acknowledged that said individual executed the same on behalf of GT USA Wilmington, LLC
2951 for the purposes therein contained.

2952 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

2953
2954

[Signature]
Notary Public

KATHERINE H. BETTERLY
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires July 28, 2021

2955 My Commission Expires: _____ [Notary Seal]

2956



FOR PURPOSES OF SECTIONS 3.3, 3.6,
5.4(b), 14.1, 19.2(b) and 21.4

Witness:

Donald P. Moore
Donald P. Moore

GT AMERICAS CORP.

By: [Signature] (SEAL)
Peter Richards
Chief Executive Officer

2957 STATE OF DELAWARE)
2958) ss.
2959 COUNTY OF NEW CASTLE)

2960 I HEREBY CERTIFY that on this 18th day of September, 2018,
2961 before me, a Notary Public in and for the State and County aforesaid, personally appeared Peter
2962 Richards, Chief Executive Officer of GT Americas Corp. known to me (or satisfactorily proven)
2963 to be the person whose name is subscribed to the foregoing and annexed instrument and
2964 acknowledged that said individual executed the same on behalf of GT Americas Corp. for the
2965 purposes therein contained.

2966 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

2967
2968

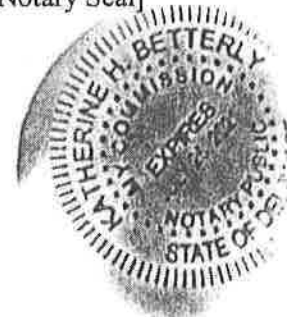
[Signature]
Notary Public

KATHERINE H. BETTERLY
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires July 28, 2021

2969 My Commission Expires: _____

2970 12062112.11

[Notary Seal]



2971

APPENDIX 1

2972

PREMISES

2973

Existing Port:

2974

Correctional and Confirmatory Deed recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware as Instrument No. 20020726-0072228 on July 26, 2002 but excluding the Wilmington South Disposal Area and the Pigeon Point Property.

2975

2976

2977

Edgemoor:

2978

Deed recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware as Instrument No. 20170227-0010347 on February 27, 2017.

2979

2980

2981

The Premises are also depicted in a drawing attached as APPENDIX 10.

2982

2983

APPENDIX 2

2984

CONDITIONS TO COMMENCEMENT

2985 (a) **GT USA Commencement Conditions.** GT USA's obligation to proceed with
2986 Commencement is conditioned entirely upon the occurrence of each and all of the following
2987 conditions and events, each of which may be waived by GT USA as the case may be, in its sole
2988 discretion but excluding such condition or event if the failure to satisfy it is due to the fault of
2989 GT USA (collectively, the "GT USA Commencement Conditions");

2990 (i) The FMC Filing shall have occurred (the "FMC Condition").

2991 (ii) Receipt of CFIUS Approval.

2992 (iii) Receipt of all required consents and assignment of all transferable permits
2993 required for operation of the Existing Port and Edgemoor.

2994 (iv) Receipt of all third-party consents listed on APPENDIX 12.

2995 (v) GT USA shall have completed its due diligence on all environmental
2996 matters relating to the Premises, including the Existing Conditions, and shall be satisfied, in its
2997 reasonable discretion with such due diligence, that there are no facts or circumstances related to
2998 environmental matters that would materially affect its ability to perform its obligations under this
2999 Agreement; provided, however, that this condition precedent shall be automatically deemed
3000 waived by GT USA if it is not satisfied by September 18, 2018.

3001 (vi) All representations and warranties of DSPC herein shall be true and
3002 correct in all material respects on and as of the Execution Date, on and as of the Commencement
3003 Date.

3004 (vii) DSPC shall not be in breach in any material respect of any covenant on its
3005 part contained in this Agreement that is to be performed or complied with by DSPC as of the
3006 Execution Date, as of the Commencement Date.

3007 (viii) GT USA shall have obtained title insurance with standard industry
3008 exceptions with respect to the Premises and DSPC's ownership thereof and exceptions for the
3009 leasehold mortgages encumbering Tax Parcel No. 10-006.00-018 identified on APPENDIX 11
3010 hereto and any other recorded leasehold mortgages granted by any tenants at the Existing Port
3011 that could not reasonably be expected to materially and adversely affect the ability of GT USA to
3012 obtain financing as contemplated by ARTICLE 18.

3013 (ix) The Beazley Insurance Policy shall be in full force at the Commencement
3014 Date.

3015 (b) **DSPC Commencement Conditions.** DSPC's obligation to proceed with
3016 Commencement is conditioned entirely upon the occurrence of each and all of the following
3017 conditions and events, each of which may be waived by DSPC as the case may be, in its sole

3018 discretion but excluding such condition or event if the failure to satisfy it is due to the fault of
3019 DSPC (collectively, the "DSPC Commencement Conditions");

3020 (i) Satisfaction of the FMC Condition.

3021 (ii) Receipt of CFIUS Approval.

3022 (iii) Receipt of all required consents and assignment of all transferable permits
3023 required for operation of the Existing Port and Edgemoor.

3024 (iv) GT USA shall have caused a joint pre-occupancy inspection of the
3025 Premises to be conducted and GT USA shall cause the Pre-Occupancy Report to be prepared.

3026 (v) All representations and warranties of GT USA herein shall be true and
3027 correct in all material respects on and as of the Execution Date, on and as of the Commencement
3028 Date.

3029 (vi) GT USA shall have entered into contracts with the International
3030 Longshoreman's Association – Local 1694-1 and the International Brotherhood of Teamsters –
3031 Local 326 effective as of the Commencement Date.

3032 (vii) GT USA shall have delivered and DSPC reviewed and signed-off on
3033 financials (audited, if available) of GT USA and GT Americas.

3034 (viii) Receipt of all third-party consents listed on APPENDIX 12.

3035 (ix) Consent by the City of Wilmington or satisfaction of the City of
3036 Wilmington mortgages presently encumbering the Existing Port.

3037 (x) Consent by the Delaware River and Bay Authority or repayment and
3038 termination of that certain Lease between DSPC and the Delaware River and Bay Authority
3039 dated as of March 1, 2005 (Warehouse H) and Operating Agreement between the Delaware
3040 River and Bay Authority and DSPC dated March 1, 2005 (Warehouse H).

3041 (xi) GT USA shall not be in breach in any material respect of any covenant on
3042 its part contained in this Agreement that is to be performed or complied with by DSPC as of the
3043 Commencement Date.

3044 (c) **Agreement Grant; Joint Final Inspection; Delivery of Premises.** One (1)
3045 calendar day prior to the Commencement Date, GT USA and DSPC shall perform a joint on-site
3046 final inspection of the Premises, and provided that there shall not have been a Material Damage
3047 or Destruction, GT USA shall accept in writing the Premises in its then As-Is, Where-Is
3048 condition subject to the terms of this Agreement; provided, that if Material Damage or
3049 Destruction has not been repaired in a good and workmanlike manner before the Commencement
3050 Date, then that shall constitute failure to deliver the Premises, which shall be subject to
3051 APPENDIX 2(f)(B) below.

3052 (d) **Closing Deliverables.** At Closing, the parties shall deliver the following:

3053 (i) At Closing, GT USA shall deliver to DSPC:

3054 (A) The Initial Payment;

3055 (B) The Letter of Credit;

3056 (C) Proof of insurance as required by Article 13;

3057 (D) Pre-Occupancy Report;

3058 (E) A copy of GT USA safety and emergency management plans, a
3059 point of contact for safety and security matters and the name and telephone number of each
3060 representative of GT USA to be contacted in case of an emergency;

3061 (F) A disaster preparedness plan in form and substance acceptable to
3062 DSPC;

3063 (G) Side letter, in a form reasonably acceptable to DSPC, signed by
3064 Gulfainer Company Limited and GT International Limited FZC confirming their agreement to
3065 comply with certain terms of this Agreement;

3066 (H) GT USA's Legal Opinion, substantially in the form of APPENDIX
3067 2-5, attached hereto and incorporated herein by reference;

3068 (I) Settlement Statement executed by GT USA; and

3069 (J) Assignment and Assumption Agreement in substantially the form
3070 attached hereto executed by GT USA.

3071 (ii) At Closing, DSPC shall deliver to GT USA:

3072 (A) DSPC's Legal Opinion, substantially in the form of APPENDIX 2-
3073 1, attached hereto and incorporated herein by reference;

3074 (B) Assignment and Assumption Agreement in substantially the form
3075 attached hereto executed by DSPC;

3076 (C) Settlement Statement executed by DSPC; and

3077 (D) Bill of Sale, in the form attached hereto as APPENDIX 2-2, signed
3078 by DSPC.

3079 (e) **Governmental Intervention.** If any Governmental Authority of competent
3080 jurisdiction shall have undertaken any action permanently restraining, enjoining or otherwise
3081 prohibiting the transactions contemplated by this Agreement, and such action has become final
3082 and non-appealable prior to the Commencement Date, then either party may terminate this
3083 Agreement by providing written notice of termination to the other party, and the parties shall
3084 have no continuing rights or obligations with respect to this Agreement.

3085 (f) **Material Damage or Destruction.** In the event a Material Damage or
3086 Destruction exists as of the Commencement Date, then GT USA shall have the option to Restore
3087 or repair, as applicable, the affected portion of the Premises and seek reimbursement from
3088 insurance proceeds received by DSPC, all in accordance with the terms of this subsection (f) and
3089 the other terms of this Agreement and applicable Law or to terminate this Agreement by
3090 providing DSPC with written notice of termination and, in the event of such termination, the
3091 Parties shall have no continuing rights or obligation with respect to this Agreement other than
3092 those that survive termination. If GT USA exercises its option to Restore or repair, as
3093 applicable, the affected portion of the Premises, then (A) DSPC shall assign to GT USA all
3094 insurance proceeds payable by third-party insurers to DSPC with respect to such Material
3095 Damage or Destruction and, to the extent permissible by law, assign any right to sue it may have
3096 against any third party for such Material Damage or Destruction, or enforce, at no cost to GT
3097 USA, all of its rights, remedies and privileges under any applicable insurance policies with third-
3098 party insurers, and (B) GT USA shall diligently proceed to Restore or repair, as applicable, the
3099 affected portion of the Premises.

3100 (g) **Agreement Transition Procedures.** Prior to the Commencement Date, the
3101 Parties shall cooperate with each other to ensure the orderly transition of the Premises and the
3102 Original Assets on the Commencement Date. To that end, DSPC shall make reasonable efforts
3103 to set up transition meetings among DSPC, GT USA, and the existing users of the Premises, and
3104 shall grant GT USA pre-Commencement Date access to the Premises and the Original Assets so
3105 that GT USA can facilitate its transition of the Permitted Operations as of the Commencement
3106 Date.

3107 (h) **Representations and Warranties of GT USA.** GT USA makes the following
3108 representations and warranties to DSPC, and GT USA acknowledges that DSPC is relying upon
3109 such representations and warranties in entering into this Agreement:

3110 (i) **Organization.** As of the Execution Date and the Commencement Date,
3111 GT USA is, and will continue to be during the Term, duly organized, validly existing and in
3112 good standing under Delaware law and is duly qualified to conduct business in the State of
3113 Delaware;

3114 (ii) **Power and Authority.** As of the Execution Date and the Commencement
3115 Date, GT USA has the power and authority to execute and deliver this Agreement and all other
3116 documents as are required hereunder (the "Transaction Documents") and to perform its
3117 obligations thereunder;

3118 (iii) **Enforceability.** Each of the Transaction Documents has been duly
3119 authorized, executed and delivered by GT USA and, assuming due execution and delivery by
3120 DSPC, constitutes a valid and legally binding obligation of GT USA, enforceable against it in
3121 accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar
3122 laws affecting the enforceability of the rights of creditors generally and to general principles of
3123 equity;

3124 (iv) **No Conflicts.** The execution and delivery of the Transaction Documents
3125 by GT USA, the consummation of the transactions contemplated thereby, and the performance

3126 by GT USA of the terms, conditions and provisions thereof have not and will not, as of the
3127 Execution Date and the Commencement Date, contravene or violate or result in a material breach
3128 of (with or without the giving of notice or lapse of time, or both) or cause the acceleration of any
3129 material obligations of GT USA under (i) any applicable Law, (ii) any material agreement,
3130 instrument or document to which GT USA is a party or by which it is bound, or (iii) the articles,
3131 bylaws or governing documents of GT USA;

3132 (v) Consents; Authorizations. No consent or authorization is required to be
3133 obtained by GT USA from, and no notice or filing is required to be given by GT USA to or made
3134 by GT USA with, any person (including, without limitation, any Governmental Authority) in
3135 connection with the execution and delivery by GT USA of the Transaction Documents or the
3136 consummation of the transactions contemplated hereby, except for such consents that have been
3137 obtained and notices of filings that have been given as of the Execution Date or such other
3138 consents that are not required to be obtained as of the Execution Date and shall be obtained
3139 following the Execution Date;

3140 (vi) Compliance with Law; Litigation. As of the Execution Date and the
3141 Commencement Date, GT USA is in compliance with all material Laws applicable to it other
3142 than related to permits for bulk handling at the Existing Port (the "Bulk Handling Permits") and
3143 GT USA has received no notice of non-compliance with any Law and does not know of or have
3144 reasonable grounds to know of any acts, matters or things which would, or may, give rise to a
3145 notice of non-compliance with any Law being issued concerning any GT USA operations,
3146 proposed activities or businesses conducted or to be conducted on the Premises. In addition, as
3147 of the Execution Date and the Commencement Date, GT USA and its Affiliates have at no time
3148 been prosecuted to conviction for an offense of non-compliance with any Environmental Laws or
3149 other Law relevant to the Premises or GT USA operations conducted, or to be conducted, thereat,
3150 nor settled any such prosecution short of conviction. As of the Execution Date and the
3151 Commencement Date, GT USA and its Affiliates are not listed on any of the following lists
3152 maintained by the Office of Foreign Assets Control of the United States Department of the
3153 Treasury, the Bureau of Industry and Security of the United States Department of Commerce or
3154 their successors; the Specially Designated Nationals List; the Denied Persons List; the
3155 Unverified List; the Entity List; the Debarred List; or any other list of persons with which DSPC
3156 may not do business under applicable Law. As of the Execution Date and the Commencement
3157 Date, there is no action pending, at law or in equity, or before or by any Governmental Authority
3158 that has been properly served on GT USA or its Affiliates, nor to the best of GT USA's
3159 knowledge, threatened against GT USA that would have a material adverse effect on (i) the
3160 transactions contemplated by this Agreement, (ii) the validity or enforceability of this
3161 Agreement, or (iii) GT USA's ability to operate the Premises;

3162 (vii) Opportunity to Inspect. GT USA acknowledges and agrees that it has
3163 been afforded all reasonable opportunity to inspect the Premises and all documentation provided
3164 by or on behalf of DSPC in respect thereof;

3165 (viii) No Brokers; No Contingent Fee Agreements.

3166 (A) Except for Seabury Securities LLC, whose fees will be paid solely
3167 by DSPC or its Affiliates, there is no investment banker, broker, finder or other intermediary

3168 which has been retained by, or is authorized to act on behalf of GT USA, DSPC or their
3169 Affiliates who might be entitled to any fee or commission in connection with the transactions
3170 contemplated by this Agreement;

3171 (B) GT USA attests that no person has been employed or retained to
3172 solicit or obtain DSPC's selection of GT USA or otherwise in connection with the transactions
3173 contemplated by this Agreement upon an agreement or understanding for a contingent fee,
3174 except a bona fide employee or agency. As used herein, (A) "bona fide agency" means an
3175 established commercial or selling agency, maintained by GT USA for the purpose of securing
3176 business, that neither exerts nor proposes to exert improper influence to solicit or to obtain
3177 contracts with DSPC nor holds itself out as being able to obtain any contract or contracts with
3178 DSPC through improper influence, (B) "bona fide employee" means a person, employed by GT
3179 USA and subject to GT USA's supervision and control as to time, place and manner of
3180 performance, who neither exerts nor proposes to exert improper influence to solicit or to obtain
3181 contracts with DSPC nor holds itself out as being able to obtain any contract or contracts with
3182 DSPC through improper influence, (C) "contingent fee" means commission, percentage,
3183 brokerage, or other fee that is contingent upon the success that a person or concern has in
3184 securing a contract with DSPC, and (D) "improper influence" means any influence that induces
3185 or tends to induce an employee or officer of DSPC to give consideration or to act regarding a
3186 contract with DSPC on any basis other than the merits of the matter; and

3187 (ix) Foreign Corrupt Practices Act. As of the Execution Date and the
3188 Commencement Date: (i) neither a Governmental Authority nor any other person has notified
3189 GT USA or its Affiliates in writing of any actual or alleged violation or breach of the Foreign
3190 Corrupt Practices Act; (ii) GT USA and its Affiliates have not undergone or is undergoing any
3191 audit, review, inspection, investigation, survey or examination of records relating to compliance
3192 with the Foreign Corrupt Practices Act, nor is there any basis for any such audit, review,
3193 inspection, investigation, survey or examination of records; (iii) GT USA and its Affiliates have
3194 not been and is not now under any administrative, civil or criminal investigation or indictment
3195 and is not party to any litigation involving alleged false statements, false claims or other
3196 improprieties relating to compliance by GT USA or its Affiliates with the Foreign Corrupt
3197 Practices Act, nor is there any basis for such investigation or indictment; and (iv) there are no
3198 situations with respect to the business of GT USA and its Affiliates that involved or involves (A)
3199 the use of any corporate funds or unlawful contributions, gifts, entertainment or other unlawful
3200 expenses related to political activity, (B) the making of any direct or indirect unlawful payments
3201 to government officials or others from corporate funds or the establishment or maintenance of
3202 any unlawful or unrecorded funds, (C) the violation of any of the provisions of the Foreign
3203 Corrupt Practices Act (or any rules or regulations promulgated thereunder), or (D) the receipt of
3204 any illegal discounts or rebates or any other violation of the antitrust laws; and

3205 (x) DSPC and GT USA agree that all prior or contemporaneous oral and
3206 written representations, warranties and other agreements between and among themselves and
3207 their agents or representatives relative to the transactions contemplated herein are superseded by
3208 this Agreement.

(xi) For the sake of clarity, GT USA makes no representation that the approval of this Agreement by the Delaware Assembly has complied with all requirements of the laws of the State of Delaware, such matter being solely the representation of DSPC below.

(i) **Representations and Warranties of DSPC.** DSPC makes the following representations and warranties to GT USA, and DSPC acknowledges that GT USA is relying upon such representations and warranties in entering into this Agreement:

(i) Established. As of the Execution Date and the Commencement Date, DSPC is, and will be, validly established and existing under Subchapter II of Chapter 87, Title 29 of the Delaware Code;

(ii) Power and Authority. As of the Execution Date and the Commencement Date, DSPC has, and will continue to have during the Term, the power and authority to execute and deliver the Transaction Documents and to perform its obligations thereunder;

(iii) Enforceability. Each of the Transaction Documents has been duly authorized, executed and delivered by DSPC, and, assuming the due execution and delivery by GT USA, constitutes a valid and legally binding obligation of DSPC, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

(iv) Compliance with Laws. As of the Commencement Date, (i) except as set forth on APPENDIX 4, DSPC is in compliance with all material Laws applicable to it and DSPC has received no notice of non-compliance with any Law and does not know of or have reasonable grounds to know of any acts, matters or things which would, or may, give rise to a notice of non-compliance with any Law being issued concerning any DSPC's current operations on Premises; and (ii) the approval of this Agreement on behalf of DSPC has complied with all requirements of the laws of the State of Delaware.

(v) Consents; Authorizations. No consent or authorization is required to be obtained by DSPC from, and no notice or filing is required to be given by DSPC to or made by DSPC with, any third party (including, without limitation, any Governmental Authority) in connection with the execution and delivery by DSPC of the Transaction Documents or the consummation of the transactions contemplated thereby, except for those consents set forth on APPENDIX 12, which approval has been obtained or will be obtained no later than the Commencement Date;

(vi) No Conflict. The execution and delivery of the Transaction Documents by DSPC, the consummation of the transactions contemplated thereby, and the performance by DSPC of the terms, conditions and provisions thereof have not, as of the Execution Date and the Commencement Date and will not during the Term, contravene or violate or result in a material breach of (with or without the giving of notice, lapse of time or both) or acceleration of any material obligations of DSPC under (A) DSPC's statutory authority and certificate of incorporation and bylaws of DSPC, (B) any material agreement, instrument or other document to

3248 which DSPC is a party or by which it is bound, or (C) any judgment, decree, order, statute,
3249 injunction, rule, regulation or the like applicable to DSPC or its assets;

3250 (vii) Litigation. Except as set forth on APPENDIX 18, there is no action
3251 pending at law or in equity, or before or by any Governmental Authority that has been properly
3252 served on DSPC, nor, to DSPC's reasonable knowledge, threatened or likely against DSPC that
3253 arises from Environmental Law or that would have a material adverse effect on (i) the
3254 transactions contemplated by the Transaction Documents, or (ii) the validity or enforceability of
3255 this Agreement.

3256 (viii) Premises and Original Assets Ownership. As of the Commencement Date
3257 and immediately prior to Commencement, DSPC is the sole owner of all right, title and interest
3258 in the Premises and the Original Assets, free of any liens, mortgage or other encumbrances, other
3259 than the Permitted Liens.

3260
3261

3262 APPENDIX 2-1

3263 GT USA OPINION OF COUNSEL

3264
3265 [Letterhead of Counsel to GT USA]

3266 _____, 2018

3267 Diamond State Port Corporation
3268 1 Hausel Road
3269 Wilmington, DE 19801-5882

3270 Ladies & Gentlemen:

3271 We are counsel to GT USA Wilmington, LLC, a Delaware limited liability company
3272 ("GT USA"), in connection with the concession and lease by and between Diamond State Port
3273 Corporation, a Delaware corporation created in the Department of State of the State of Delaware
3274 ("DSPC"), and GT USA, dated as of _____, 2018, (the "Agreement") relating to
3275 the operation and further development of the Port of Wilmington's situation on land identified as
3276 the Premises identified in this Agreement. This opinion is being delivered to you pursuant to
3277 APPENDIX 2(a)(vii) of this Agreement. Capitalized terms used and not otherwise defined
3278 herein shall have the respective meanings set forth in this Agreement.

3279 In our capacity as such counsel, we have examined originals, or copies certified or
3280 otherwise identified to our satisfaction as being true copies of the originals, of (i) this Agreement
3281 and (ii) such corporate and other records and documents we considered appropriate as the basis
3282 for the opinions set forth below.

3283 For purposes of this opinion, we have assumed the genuineness of all signatures, the
3284 authenticity of all documents submitted to us as originals and the conformity to the originals of
3285 all documents submitted to us as copies.

3286 On the basis of such examination and subject to the qualifications and limitations in this
3287 opinion, we are of the opinion that:

3288 1. GT USA is a limited liability company duly formed and validly existing in good
3289 standing under the laws of Delaware, with power to enter into the Agreement, and to perform its
3290 obligations under the Agreement.

3291 2. The execution, delivery, and performance of the Agreement have been duly
3292 authorized by all necessary corporate action on the part of GT USA, and the Agreement has been
3293 duly executed and delivered by GT USA.

3294 3. The Agreement constitutes the legally valid and binding obligation of GT USA,
3295 enforceable against GT USA in accordance with its terms, except as may be limited by
3296 bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting

3297 creditors' rights generally and by general principles of equity, including, without limitation,
3298 concepts of materiality, reasonableness, good faith and fair dealing and the possible
3299 unavailability of specific performance or injunctive relief, regardless of whether considered in a
3300 proceeding in equity or at law.

3301 4. The execution and delivery of the Agreement by GT USA do not, and the
3302 performance of its obligations thereunder will not, violate: (A) any provision of GT USA's
3303 organizational documents or (B) any applicable Delaware statute, rule or regulation, other than
3304 Chapter 87 of Title 29 of the Delaware Code or other laws and regulations relating to the process
3305 of approval and implementation of the of the lease of the Premises and the privatization of the
3306 Port, about which we provide no opinion.

3307 5. No consent or approval of, authorization by, or filing or recording with, any
3308 Delaware governmental authority is required to be made or obtained by GT USA in connection
3309 with the execution and delivery by GT USA of the Agreement or the performance of its
3310 obligations thereunder.

3311 The laws covered by this opinion are limited to the present federal law of the United
3312 States and the present laws of the State of Delaware. We express no opinion as to the law of any
3313 other jurisdiction and no opinion regarding the statutes, administrative decisions, rules,
3314 regulations, or requirements of any county, municipality, subdivision or local authority of any
3315 jurisdiction.

3316 This opinion is furnished by us as special counsel to GT USA and may be relied upon by
3317 you only in connection with this Agreement. It may not be used or relied upon by you for any
3318 other purpose or by any other person, nor may copies be delivered to any other person, without
3319 in each instance our prior written consent.

3320 Respectfully submitted,

3321 [Counsel to GT USA]

3322

APPENDIX 2-2

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that the Diamond State Port Corporation, a Delaware corporation created in the Department of State of the State of Delaware with an office and place of business at 1 Hausel Road, Wilmington, DE 19801-5882 (the "Grantor"), for and in consideration of One United States Dollar (U.S. \$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and delivery unto GT USA WILMINGTON, LLC, a Delaware limited liability company (the "Grantee"), all rights, title and interest of the Grantor in the Original Assets, subject to the Permitted Liens as such terms are defined in that certain Concession Agreement dated as of _____, 2018 between Grantor and Grantee.

IN WITNESS WHEREOF, the party below has executed this Bill of Sale as of the _____ day of _____, 2018.

DIAMOND STATE PORT CORPORATION

By: _____
Jeffrey W. Bullock
Chairperson

3345 APPENDIX 2-3

3346 ASSIGNMENT AND ASSUMPTION AGREEMENT

3347 This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (this "Agreement") is
3348 dated and effective as of _____, 2018 (the "Effective Date") by and between
3349 the DIAMOND STATE PORT CORPORATION, a Delaware corporation created in the
3350 Department of State of the State of Delaware with an office and place of business at 1 Hausel
3351 Road, Wilmington, DE 19801-5882 ("Assignor"), and GT USA WILMINGTON, LLC, a
3352 Delaware limited liability company ("Assignee").

3353 **RECITALS**

3354 A. Assignor and Assignee are parties to that certain Concession Agreement dated
3355 _____, 2018 (the "Agreement"), with a Commencement Date as defined therein.

3356 B. Under and pursuant to the terms of the Agreement, Assignor has agreed to assign
3357 certain third-party leases, contracts and agreements as such leases, contracts and agreement are
3358 identified and described in APPENDIX 2-4 of the Agreement and Exhibit A hereto (collectively,
3359 the "Contracts"). To the extent of any discrepancy between APPENDIX 2-4 of the Agreement
3360 and Exhibit A to this Agreement, Exhibit A shall govern and control.

3361 C. In accordance with the terms and conditions of this Agreement, Assignor wishes
3362 to assign all of its right, title and interest in and to the Contracts, and Assignee agrees to assume
3363 all obligations of Assignor under the Contracts, arising on and after the Effective Date of this
3364 Agreement.

3365 D. Assignor has determined that such assignment to Assignee is in the best interests
3366 of Assignor.

3367 **NOW THEREFORE**, in consideration of the foregoing, and for other good and valuable
3368 consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby
3369 agree as follows:

3370 1. Assignment and Delegation. Assignor hereby assigns to Assignee all of its right,
3371 title and interest in, to and under the Contracts, and hereby delegates to Assignee all of its duties
3372 and obligations arising under such Contracts on and from the Effective Date.

3373 2. Assumption. Assignee hereby accepts the foregoing assignment and delegation
3374 and assumes all of the duties and obligations of Assignor under the Contracts arising after the
3375 Commencement Date and with respect to the performance of any capital improvement obligation
3376 that was required by Assignor under any Contracts regardless of whether such obligation arose
3377 before or after the Effective Date (the "Assumed Liabilities"). Other than with respect to
3378 Assumed Liabilities, the Assignor retains all liabilities arising under the Contracts prior to the
3379 Commencement Date. Assignor shall protect, indemnify and hold harmless Assignee from and
3380 against any and all liabilities, obligations, losses, damages, settlements, claims, actions, suits,
3381 penalties, costs and expenses which relate to time periods prior to the Commencement Date (as

such term is defined in the Agreement) but expressly excluding any costs or liabilities arising under the Contracts which relate to the performance of any capital improvement obligation that was required by Assignor before or after the Commencement Date. Assignee shall protect, indemnify and hold harmless Assignor from and against any and all liabilities, obligations, losses, damages, settlements, claims, actions, suits, penalties, costs and expenses which shall at any time or from time to time be imposed upon, incurred by or asserted against Assignor in respect of the Assumed Liabilities.

3. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that (a) the Contracts have been duly and validly authorized, executed and delivered by Assignor, are in full force and effect and enforceable by Assignor in accordance with the terms thereof; (b) Assignor has not sold, transferred, encumbered, assigned or otherwise alienated its interest in and to the Contracts other than to Assignee pursuant to this Agreement except as described in the Agreement, (c) DSPC is a Delaware corporation created in the Department of State of the State of Delaware, (d) DSPC has full power, legal right and authority to enter into, execute and perform its obligations under this Agreement and to assign the Contracts to Assignee pursuant to the terms of this Agreement and (d) the Contracts are all of the material contracts and agreements that DSPC is a party to with respect to the Premises, the Original Assets and the operation of the Port.

4. **Representations and Warranties of Assignee.** Assignee represents and warrants to Assignor that it is a corporation duly organized and validly existing under the laws of the State of Delaware, and that it has full power, legal right and authority to enter into, execute and perform its obligations under this Agreement.

5. **Delivery of Notice.** Contemporaneously with the execution and delivery of this Agreement, Assignor and Assignee shall deliver written notice to each of the Contract counterparties that such Contract has been assigned by Assignor to Assignee as of the Commencement Date, that Assignee has assumed all of the duties and obligations of Assignor under such Contract and that all payments due under such Contract for all periods, and for all services performed, beginning on and after the Effective Date shall be made to Assignee and not Assignor.

6. **Governing Law.** This Agreement shall be governed by the laws of the State of Delaware.

8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same agreement.

9. **Further Cooperation.** Assignor agrees to execute and deliver such other documents, notices and consents and to undertake such other action as Assignee may reasonably request to carry out all the intents and purposes of this Assignment.

3420

3421 IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of
3422 the day and year first set forth above.

**DIAMOND STATE PORT
CORPORATION**, as Assignor

GT USA WILMINGTON, LLC, a Delaware
limited liability company, as Assignee

By: _____
Name: Jeffrey W. Bullock
Title: Chairperson

By: _____
Name: Peter Richards
Title: Chief Executive Officer

3423 **Attach Exhibit A to Assignment and Assumption Agreement** [Exhibit should mirror Appendix A-4 of
3424 this Agreement]
3425
3426

3427

APPENDIX 2-4

3428

ASSIGNED CONTRACTS

- 3429 1. Lease Agreement by and between DSPC (assignee of the lease), and lessor, and [REDACTED]
3430 [REDACTED] (assignee of the lease), as lessee dated as of July 31, 1990.
- 3431 2. Lease Guaranty relating to [REDACTED] obligations under the [REDACTED] by
3432 [REDACTED] for the benefit of DSPC.
- 3433 3. Facilities Lease Agreement between DSPC, as lessor, and [REDACTED], as Lessee,
3434 dated as of January 1, 2009, as amended by the First Amendment to Facilities Lease
3435 Agreement dated as of January 1, 2014.
- 3436 4. Agreement between DSPC (successor in interest to the City of Wilmington), as landlord,
3437 and [REDACTED], as
3438 tenant, dated as of September 22, 1983, in which as amended by the First Amendment to
3439 [REDACTED], the Second Amendment to
3440 [REDACTED] and the Third Amendment to
3441 [REDACTED]
- 3442 5. Ground Lease between DSPC, as lessor, and [REDACTED]
3443 [REDACTED] as agent, dated as of January 1, 2009, as amended by the First
3444 Amendment to Ground Lease dated as of September 22, 2010 and the Second Amendment
3445 to Ground Lease dated as of January 1, 2014.
- 3446 6. [REDACTED] Agreement for the [REDACTED] to
3447 the Port of Wilmington, Delaware for the [REDACTED] between DSPC and [REDACTED]
3448 [REDACTED] dated as of August 16, 2018.
- 3449 7. Port Services Agreement by and between DSPC and [REDACTED]
3450 [REDACTED] dated as of July 2014, as amended by the First Amendment to the [REDACTED]
3451 [REDACTED] dated as of March 9, 2016.
- 3452 8. Lease between DSPC, as landlord, and [REDACTED] as tenant,
3453 effective as of April 1, 2008, as amended by the First Amendment to Lease dated as of
3454 November 14, 2008.
- 3455 9. [REDACTED] dated as of June 30, 2008 between DSPC and [REDACTED]
3456 [REDACTED] as amended.
- 3457 10. Lease and Services Agreement dated as of December 10, 2013 between DSPC and [REDACTED]
3458 [REDACTED], as amended.
- 3459 11. The Master Services Agreement between [REDACTED] and DSPC, dated
3460 May 15, 2009, as amended by that certain Amendment No. 1 to the Master Services
3461 Agreement, dated April 7, 2016.

- 3462 12. The [REDACTED] Agreement between DSPC and [REDACTED]
3463 dated October 27, 2017.
- 3464 13. The [REDACTED] between [REDACTED] and DSPC,
3465 effective July 1, 2015.
- 3466 14. The [REDACTED] Agreement between [REDACTED] and DSPC,
3467 dated November 1, 2017 (expired May 31, 2018).
- 3468 15. The Statement of Work between DSPC and [REDACTED], dated May 3, 2017,
3469 as amended by that certain First Amendment to the Statement of Work, dated July 20,
3470 2017.
- 3471 16. The U.S. Government Lease for Real Property, No. GS-03B-09313, between DSPC and
3472 the U.S. Government, dated May 19, 2009.
- 3473 17. The Lease Agreement between DSPC and [REDACTED], dated February 26,
3474 2016.
- 3475 18. The Lease Agreement, between DSPC and [REDACTED] dated November 10,
3476 2015, as amended.
- 3477 19. The Lease Agreement, between DSPC and [REDACTED] dated
3478 February 23, 2001, as amended.
- 3479 20. The Lease Agreement between DSPC and [REDACTED]
3480 [REDACTED], dated November 18, 1999, as amended.
- 3481 21. The Lease Agreement between DSPC and [REDACTED], dated November 4, 2015,
3482 as amended.
- 3483 22. The Lease Agreement between DSPC and [REDACTED] dated November 4, 2015,
3484 as amended.
- 3485 23. The Lease Agreement between DSPC and [REDACTED] dated
3486 November 28, 2008, as amended.
- 3487 24. The Lease Agreement between DSPC and [REDACTED]
3488 [REDACTED], dated October 1, 2014, as amended.
- 3489 25. The Lease Agreement between DSPC and [REDACTED], dated October 10,
3490 2007, as amended.
- 3491 26. The Lease Agreement between DSPC and [REDACTED], dated
3492 September 1, 2010, as amended.
- 3493 27. The Lease Agreement between DSPC and [REDACTED], dated November 30,
3494 2011, as amended.

- 3495 28. The Lease Agreement between DSPC and [REDACTED], dated November 2014, as
3496 amended.
- 3497 29. The Lease Agreement between DSPC and [REDACTED], Inc., dated November 30,
3498 2011, as amended.
- 3499 30. The Lease Agreement between DSPC and [REDACTED], dated September 3,
3500 2004, as amended.
- 3501 31. Agreement dated as of June 13, 2003 between DSPC and [REDACTED] as
3502 amended by the First Amendment thereto dated as of October 1, 2013.
3503
- 3504 32. The Lease Agreement No. 57-6395-13-028 dated November 12, 2013, between DSPC and
3505 the U.S. Government, as amended.
- 3506 33. The [REDACTED], dated May 1999, between DSPC and
3507 [REDACTED]
- 3508 34. The Lease dated August 22, 1989, between the City of Wilmington and [REDACTED]
3509 [REDACTED], as amended.
- 3510 35. The Memorandum of Understanding, dated November 10, 2010, between [REDACTED]
3511 and DSPC.
- 3512 36. The Agreement, dated February 2, 1932, between the [REDACTED],
3513 [REDACTED] Harbor
3514 [REDACTED]
- 3515 37. Ground Lease dated as of January 1, 2002 between DSPC and [REDACTED].
- 3516 38. Master Service Agreement [REDACTED]
3517 [REDACTED] between [REDACTED] issued October 27, 2017

3518 **Section 2.6(b) Wilmington South Disposal Area Contracts.**

3519 *DSPC and GT USA agree that these will be included in the Assignment and Assumption*
3520 *Agreement and will be deemed automatically assigned and assumed upon receipt of third party*
3521 *consent from Department of Army.*

- 3522 1. Department of the Army Lease Wilmington Harbor Navigation Project Wilmington
3523 Harbor South Confined Disposal Area, New Castle County, Delaware (Lease No. DACW-
3524 31-1-19-001) between the Secretary of the Army and DSPC (Autoport).
- 3525 2. Department of the Army Lease Wilmington Harbor Navigation Project Wilmington
3526 Harbor South Confined Disposal Area, New Castle County, Delaware (Lease No. DACW-
3527 31-1-14-404) between the Secretary of the Army and DSPC (Autoport).

- 3528 3. Department of the Army Lease Wilmington Harbor Navigation Project Wilmington
3529 Harbor South Confined Disposal Facility, New Castle County, Delaware (Lease No.
3530 DACW-31-1-19-022) between the Secretary of the Army and DSPC (FPOR).
- 3531 4. Department of the Army Lease Wilmington Harbor Navigation Project Wilmington
3532 Harbor South Confined Disposal Facility, New Castle County, Delaware (Lease No.
3533 DACW-31-1-14-405) between the Secretary of the Army and DSPC (FPOR).
- 3534 5. The Department of the Army Lease, Wilmington Harbor Navigation Project, New Castle
3535 County, Delaware, No. DACW-31-1-16-605, between the Secretary of the Army and
3536 DSPC, dated April 11, 2017.

3537 APPENDIX 2-5

3538 DSPC OPINION OF COUNSEL¹

3539
3540 [Letterhead of Morris, Nichols, Arsht & Tunnell LLP]

3541 _____, 2018

3542 GT USA Wilmington, LLC
3543 1 Hausel Road
3544 Wilmington, DE 19801-5882

3545 Ladies & Gentlemen:

3546 We are counsel to The Diamond State Port Corporation ("DSPC"), in connection with the
3547 concession and lease by and between DSPC and GT USA Wilmington, LLC ("GT USA"), dated
3548 as of _____, 2018, (the "Agreement") relating to the operation and further
3549 development of the Port of Wilmington's situation on land identified as the Premises identified
3550 in this Agreement. This opinion is being delivered to you pursuant to APPENDIX 2(a)(vii) of
3551 this Agreement. Capitalized terms used and not otherwise defined herein shall have the
3552 respective meanings set forth in this Agreement.

3553 In our capacity as such counsel, we have examined originals, or copies certified or
3554 otherwise identified to our satisfaction as being true copies of the originals, of (i) this Agreement
3555 and (ii) such corporate and other records and documents we considered appropriate as the basis
3556 for the opinions set forth below.

3557 For purposes of this opinion, we have assumed the genuineness of all signatures, the
3558 authenticity of all documents submitted to us as originals and the conformity to the originals of
3559 all documents submitted to us as copies.

3560 On the basis of such examination and subject to the qualifications and limitations in this
3561 opinion, we are of the opinion that:

3562 1. DSPC is a body politic and corporate formed under Chapter 87 of Title 29 of the
3563 Delaware Code and is validly existing in good standing under the laws of Delaware, with power
3564 to enter into this Agreement, and to perform its obligations under this Agreement.

3565 2. The execution, delivery, and performance of this Agreement have been duly
3566 authorized by all necessary corporate action on the part of DSPC, and this Agreement has been
3567 duly executed and delivered by DSPC.

3568 3. This Agreement constitutes the legally valid and binding obligation of DSPC,
3569 enforceable against DSPC in accordance with its terms, except as may be limited by bankruptcy,

¹ Subject to further standard assumptions and qualifications.

3570 insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights
3571 generally and by general principles of equity, including, without limitation, concepts of
3572 materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific
3573 performance or injunctive relief, regardless of whether considered in a proceeding in equity or at
3574 law.

3575 4. The execution and delivery of the Agreement by DSPC do not, and the
3576 performance of its obligations thereunder will not, violate: (A) any provision of DSPC's
3577 organizational documents or (B) any applicable Delaware statute, rule or regulation including
3578 Chapter 87 of Title 29 of the Delaware Code or other laws and regulations relating to the process
3579 of approval and implementation of the lease of the Premises and the privatization of the Port.

3580 5. No consent or approval of, authorization by, or filing or recording with, any
3581 Delaware governmental authority that has not already been obtained is required to be made or
3582 obtained by DSPC in connection with the execution and delivery by DSPC of the Agreement or
3583 the performance of its obligations thereunder.

3584 The laws covered by this opinion are limited to the present laws of the State of Delaware.
3585 We express no opinion as to the law of any other jurisdiction and no opinion regarding the
3586 statutes, administrative decisions, rules, regulations, or requirements of any county, municipality,
3587 subdivision or local authority of any jurisdiction.

3588 This opinion is furnished by us as special counsel to DSPC and may be relied upon by
3589 you only in connection with this Agreement. It may not be used or relied upon by you for any
3590 other purpose or by any other person, nor may copies be delivered to any other person, without
3591 in each instance our prior written consent.

3592 Respectfully submitted,

3593 Morris, Nichols, Arsht & Tunnell LLP

3594 **APPENDIX 3**

3595 **PERMITS TO BE ASSIGNED**

3596
3597 **A. PORT OF WILMINGTON**

3598
3599 **1. Existing Permits to be Transferred from POW to GT USA Wilmington Prior to**
3600 **Closing**

3601
3602 **Air**

- 3603
3604 ■ APC-2007/0041-Construction/Operation - Amendment 1 (Issued March 21, 2011)

3605 C-4 Crane, C-5 Crane, C-4 Hopper, C-5 Hopper, American Minerals Hopper,
3606 mechanical sweepers, portable vacuum dust suppression system and associated
3607 equipment
3608

- 3609
3610 ■ APC-2018/0047-Construction (Issued January 31, 2018)
3611 Environmental Hopper
3612

- 3613 ■ APC-2011/0151-Operation (Issued March 30, 2012)
3614 Mobile Belt Feeder and Ship loader
3615

- 3616 ■ APC-2011/0159-Operation (Issued March 26, 2012)
3617 Mobile Harbor Crane and two (2) clamshell grabs
3618

- 3619 ■ APC-2017/0084-Operaton – FE (issued September 12, 2017)
3620 Gantry Crane C-6
3621

- 3622 ■ APC-2017/0085-Operaton – FE (issued September 12, 2017)
3623 Gantry Crane C-7
3624

3625 **Water**

3626 **Surface Water Discharges**

- 3627 ■ Stormwater Plan (dated February 18, 2018)
3628

- 3629 ■ NPDES General Stormwater Permit
3630

3631 **Wetlands and Subaqueous Lands**

- 3632
3633 ■ LA-300/18 – Maintenance repairs at Berth 6 (expires August 2, 2021)
3634

- 3635 ■ SP-434/18 – Installation of new support piles for 2 new cranes (expires December 29,
3636 2019)

3637

3638 **Waste and Hazardous Substances – Boiler Safety Program**

3639

3640

Certificates of Inspection

3641

3642

- # DE53666
Compressor – Shop

3643

3644

3645

- # DE68657
Compressor – Warehouse C Humidification

3646

3647

3648

- # DE68658
Compressor – Warehouse B Humidification

3649

3650

3651

- # DE68659
Compressor – Warehouse B Fire System

3652

3653

3654

- # DE79093
Compressor – Warehouse C Sprinkler System

3655

3656

3657

- #DE 5630
Compressor - Warehouse A Humidification

3658

3659

3660

- #DE76059
Compressor - Warehouse E

3661

3662

3663

- #DE76060
Compressor - Warehouse E

3664

3665

3666

- #DE76062
Compressor - Warehouse E

3667

3668

3669

- #DE76063
Compressor - Warehouse E

3670

3671

3672

- #DE77044
Compressor - Warehouse F

3673

3674

3675

- #DE79093
Compressor -- Warehouse C Sprinkler System

3676

3677

3678

- #DE84090

3679 Compressor Warehouse F Sprinkler

3680

3681 ■ #DE84091

3682 Compressor Warehouse F Sprinkler

3683

3684 ■ #DE84092

3685 Warehouse F Sprinkler

3686

3687 **2. Transfers/Notifications Post Closing**

3688

3689 **Air Emissions Reduction Credits** – GTUSA Wilmington and POW make notification
3690 within 30 days after trade

3691

3692 ■ VOC's and NOx credits transferred from Chemours

3693

3694 **Above Ground Storage Tank Registrations** – GTUSA Wilmington to notify DNREC
3695 within 72 hours of closing

3696

3697 ■ 6,000 Gallon Gasoline

3698

3699 ■ 8,000 Gallon Diesel Fuel

3700

3701 **3. Active Air Permit Applications Under Review – GT USA Wilmington becomes**
3702 **applicant**

3703

3704 **Cranes**

3705

3706 ■ Application for Permit to Construct (Original submission: September 9, 2016)
3707 Crane C-1

3708

3709 ■ Application for Permit to Construct (Original submission: September 9, 2016)
3710 Crane C-4

3711

3712 ■ Application for Permit to Construct (Original submission: September 9, 2016)
3713 Crane C-5

3714

3715 **Fumigation**

3716

3717 ■ Application for Permit to Construct (Original submission: April 30, 2012)

3718

3719 **4. Applicable Non-Permit Documents**

3720

3721 **Air**

3722

3723 **Bulk Materials Handling**

- 3724
3725 ▪ Conciliation Order by Consent – Secretary’s Order No. 2007-A-0007 (Issued
3726 March 2, 2007)
3727 ▪ Interim Operating Practices dated July 27, 2007
3728
3729

3730 **Fumigation**

- 3731
3732 ▪ Conciliation Order by Consent – Secretary’s Order No. 2012-A-0012 (Issued
3733 April 17, 2012)
3734

3735 **Water**

3736
3737 **Clean Water Act/Stormwater**

- 3738
3739 ▪ Spill Prevention, Control and Countermeasures Plan (dated January 18, 2018)
3740

3741 **5. Non-Environmental/DNREC Permits**

3742
3743 **City of Wilmington Fire Marshal’s Office**

- 3744
3745 ▪ Fire Permit – F045 Flam Comb Liq – Above Ground (Permit No. 000697)
3746 ▪ Fire Permit – F135 Welding, Cutting and Burning (Permit No. 000276)
3747
3748

3749 **B. EDGEMOOR**

3750 **1. Existing Permits to be Transferred from POW to GT USA Wilmington Prior to**
3751 **Closing**

3752
3753 **Water**

- 3754
3755 ▪ Subaqueous Lands lease (SL-368/16) – Originally issued to Chemours, name
3756 changes to Diamond State Port Corporation (changing for a lease to a permit, in
3757 progress not issued)
3758

3759 **2. Existing Permits to Remain with POW (TBD)**

3760
3761 **Waste and Hazardous Substances**

- 3762
3763 ▪ RCRA Corrective Action Permit HW-03A16
3764
3765

3765 **3. Non-Environmental/DNREC Permits**

3766

3767

United States Coast Guard

3768

- Private Aid to Navigation Warning Buoy (LL 3090.1)

3769

3770

APPENDIX 4

3771

DSPC COMPLIANCE WITH LAWS

3772

3773 Pending applications for bulk handling permits and methyl bromide permits.

3774

3775

3776

3777

APPENDIX 5

3778

PIGEON POINT PROPERTYSCHEDULE D-1Pigeon Point Property

PARCEL NO. 10,011.00-014

PARCEL NO. 1. ALL that certain farm plantation or tract of land, situate partly in New Castle Hundred and partly in the City of Wilmington, New Castle County, State of Delaware, more particularly bounded and described as follows, to wit:

BEGINNING at the point of intersection of the Southwesterly right of way line of lands of the Reading Railroad, Delaware River Extension Branch with the Easterly right of way line of other lands of the Reading Railroad known as the South Extension of the Delaware River Extension Branch, said point of Beginning being distant the three following described courses and distances measured along the said Southwesterly right of way line of the Reading Railroad, Delaware River Extension Branch and the extension thereof from the point of intersection thereof with the Easterly right of way line of the Penn Central Railroad, New Castle Cut-Off, at one hundred (100) feet wide: (1) South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, two hundred fifty (250) feet to a point; (2) South forty-eight (48) degrees, thirty-one (31) minutes, fifty (50) seconds West, twenty (20) feet to a point; and (3) South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, twenty-three hundred seventeen and twelve one-hundredths (2317.12) feet to said point of Beginning; thence from said point of Beginning and along line of lands of said Reading Railroad, Delaware River Extension Branch, the three following described courses and distances: (1) South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, one hundred thirty-five and eighty-eight one-hundredths (135.88) feet to a point; (2) South forty-six (46) degrees, fifty-nine (59) minutes, ten (10) seconds East, nine hundred thirty (930) feet, more or less, to a point; and (3) South sixty-seven (67) degrees, twenty-five (25) minutes, ten (10) seconds East, three hundred thirty (330) feet, more or less, to a point in the low water line of the Delaware River, as said low water line is established by a field survey by Van Demark & Lynch, Inc. in February, 1970; thence along the said low water line of the Delaware River by the various courses thereof in a generally Southwesterly direction, twelve hundred sixty (1260) feet more or less to a point, a corner for said other lands of the Reading Railroad, South extension of the Delaware River Extension Branch, said point being distant by a tie line of South forty (40) degrees, forty-seven (47) minutes, no (00) seconds West, eleven hundred forty-eight and ten one-hundredths (1148.10) feet from the last described point; thence along the line of said other lands of the Reading Railroad, the three following described courses and distances: (1) North sixty-four (64) degrees, seventeen (17) minutes, no (00) seconds West, six hundred ten (610) feet, more or less, to a point; (2) thence along a line parallel with the center line of the existing four sets of track, said

15

3779

course being fifteen (15) feet Easterly of the center line of the two Easterly sets of track measured at right angles thereto, North ten (10) degrees, thirty-seven (37) minutes, no (00) seconds East, twelve hundred fifty-three and sixty-two one-hundredths (1253.62) feet to a point of curvature; and (3) Northerly along a curve to the left having a radius of five hundred sixty-one and two one-hundredths (561.02) feet, an arc distance of two hundred thirty-seven and twenty-eight one-hundredths (237.28) feet to the point of intersection thereof with the said Southwesterly right of way line of the Reading Railroad, Delaware River Extension Branch and the point and place of BEGINNING, said point being distant by a chord of North one (1) degree, thirty (30) minutes, no (00) seconds West, two hundred thirty-five and fifty-one one-hundredths (235.51) feet from the last described point.

PARCEL NO. 2. All that certain farm, plantation, of tract of land, situate in New Castle Hundred, New Castle County and State of Delaware, being more particularly bounded and described as follows, to wit:

BEGINNING at the point of intersection of the Easterly right of way line of the Penn Central Railroad, New Castle Cut-Off, at one hundred (100) feet wide, with the Southwesterly right of way line of the Reading Railroad, the Delaware River Extension Branch, at sixty (60) feet wide; thence from said point of Beginning and along the said Southwesterly right of way line of the Reading Railroad, the three following described courses and distances: (1) South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, two hundred fifty (250) feet to a point; (2) thence South forty-eight (48) degrees, thirty-one (31) minutes, fifty (50) seconds West, twenty (20) feet to a point on the said right of way line of the Reading Railroad, at one hundred (100) feet wide; and (3) thence still thereby, South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, twelve hundred and ninety feet to the point and place of Beginning; thence from the said point of Beginning, the six following described courses and distances: (1) South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, nine hundred fifty-nine and fifty-nine one-hundredths (959.59) feet to the point of intersection thereof with the Westerly right of way line of other lands of the Reading Railroad, known as the South Extension of the Delaware River Extension Branch, at thirty (30) feet wide; (2) Southerly along a curve to the right having a radius of five hundred thirty-one and two one-hundredths (531.02) feet from the last described point; (3) thence along a line parallel with the center line of the existing four sets of track, said course being fifteen (15) feet Westerly of the center line of the two Easterly sets of track measured at right angles thereto, South ten (10) degrees, thirty-seven (37) minutes, no (00) seconds West, fourteen hundred fifty-three and sixty-two one-hundredths (1453.62) feet to a point of curvature; (4) thence Southerly along a curve to the left having a radius of four hundred fifty-seven (457) feet, an arc distance of two hundred seven and twenty-five one-hundredths (207.25) feet to the point of tangency of said curve, said point being distant by a

chord of South two (2) degrees, twenty-two (22) minutes, thirty (30) seconds East, two hundred five and forty-eight one-hundredths (205.48) feet from the last described point; (5) thence South fifteen (15) degrees, twenty-two (22) minutes, no (00) seconds East, three hundred twenty-eight (328) feet to a point; and (6) thence South sixty-four (64) degrees, seventeen (17) minutes, no (00) seconds East, eighty (80) feet, more or less, to a point on the low water line of the Delaware River; thence along said low water line of the Delaware River in a generally Southwesterly directions, eight hundred fifty (850) feet, more or less, to a point, a corner for lands for the State of Delaware, Memorial Bridge Approach, said point being distance by a tie line of South thirty-seven (37) degrees, forty-one (41) minutes, thirty (30) seconds West, eight hundred forty-two and twenty-two one-hundredths (842.22) feet from the last described point; thence along line of said lands of the State of Delaware, Memorial Bridge Approach, the eight following described courses and distances: (1) North sixty-six degrees, twenty-nine (29) minutes, fifty-nine (59) seconds West, fourteen hundred twenty-six and seventy-one one-hundredths (1426.71) feet, more or less, to an existing monument; said course crossing over an existing monument at a distance Northwesterly of two hundred twenty-four and thirty-four one-hundredths (224.34) feet more or less from the said low water line; (2) North thirty-three (33) degrees, five (05) minutes, twenty-one (21) seconds East, three hundred forty-four and thirty-two one-hundredths (344.32) feet to a point; (3) North sixty-three (63) degrees, forty-two (42) minutes, twenty-seven (27) seconds West, six hundred twenty-eight and seventy-four one-hundredths (628.74) to a point; (4) South seventy-five (75) degrees, fifty-two (52) minutes, three (03) seconds West, one hundred ninety-five and four one-hundredths (195.04) feet to a point; (5) North no (00) degrees, twenty-six (26) minutes, thirty-three (33) seconds East, five hundred sixty-one and forty one-hundredths (561.40) feet to a point; (6) North thirty-four (34) degrees, forty-six (46) minutes, twenty-nine (29) seconds East, eleven hundred fifty-six and sixty-seven hundredths (1156.67) feet to a point, a corner for lands of the State of Delaware; (7) South sixty-six (66) degrees, twenty-four (24) minutes, forty (40) seconds East, six hundred forty-nine and thirty-five hundredths (649.35) feet to a point; and North twenty-three (23) degrees, thirty-five (35) minutes, twenty (20) seconds East, fourteen hundred thirty and sixty-eight one-hundredths (1430.68) feet to a point and place of Beginning;

CONTAINING WITHIN SUCH METES AND BOUNDS OF BOTH PARCELS HEREWITHIN DESCRIBED 141.30 ACRES.

3783

APPENDIX 6

3784

WILMINGTON SOUTH DISPOSAL AREA

WILMINGTON SOUTH DISPOSAL AREA

A certain tract of land situate in the State of Delaware, New Castle County, City of Wilmington and more particularly bounded and described as follows:

BEGINNING for the same at a 3 inch aluminum monument with disc (hereinafter referred to as a standard marker) at the end of the Second Line of that parcel of land known as Tract 100 and as described in a Deed dated November 19, 1985 and recorded in the Office of the Recorder of Deeds in and for New Castle County in Deed Book 309 at Page 093 which was granted and conveyed by the Delaware Solid Waste Authority to the Secretary of the Army, United States of America and running thence binding reversely along said Second Line, as now surveyed, North 87° 38' 07" West, 25.00 feet to a standard marker, thence leaving said Second Line and severing the lands of the subject owner for lines of division, the four (4) following courses, viz.:

- (1) North 15° 33' 37" East, 298.30 feet,
- (2) North 11° 24' 57" East, 530.49 feet,
- (3) North 17° 00' 45" East, 700.66 feet, and
- (4) North 54° 31' 50" East, 150.23 feet to a standard marker on and distant South 87° 31' 03" East 1,252.31 feet from the beginning of the Fourth Line of that parcel of land described in a Deed dated July 30, 1980 and recorded in the aforesaid Office of the Recorder of Deeds in Deed Record I, Volume 111, Page 285 which was granted and conveyed by New Castle County to the City of Wilmington said point also being distant South 87° 31' 03" East, 37.31 feet from monument "A" found on said line and running thence binding along part of said line, South 87° 31' 03" East, 100.85 feet to a standard marker thence leaving said line and continuing to sever the lands of the subject owner for lines of division the five (5) following courses, viz.:

- (1) South 87° 31' 03" East, 202.00 feet,
- (2) South 75° 31' 03" East, 196.00 feet,
- (3) North 47° 15' 38" East, 550.00 feet,
- (4) North 23° 07' 45" East, 700.00 feet and
- (5) South 67° 12' 29" East, 954.81 feet to a point on and distant South 22° 03' 59" West, 694.98 feet from the beginning of the South 22° 03' 59" West, 1994.11 feet line as shown on an unrecorded Boundary Survey of Port of Wilmington, City of Wilmington Marine Terminal by Mann-Telley, Engineers and Surveyors dated October 14, 1991, thence leaving said line and continuing along the same course extending out into the Delaware River, South 67° 12' 29" East, 813.19 feet to a point on or near the -24 elevation contour line as shown on a Topographic Survey of Wilmington Harbor South, Disposal Area Development by the Army Corps of Engineers dated from February 2, 1983 to June 11, 1984 and running thence, meandering along said -24 elevation contour line within the Delaware River, the nine (9) following courses, viz.:

- (1) South 22° 47' 31" West, 239.00 feet,
- (2) South 05° 32' 31" West, 264.00 feet,
- (3) South 16° 52' 31" West, 1,119.00 feet,
- (4) South 23° 02' 31" West, 815.00 feet,
- (5) South 21° 54' 31" West, 1,320.33 feet,
- (6) South 35° 21' 25" West, 544.00 feet,
- (7) South 30° 21' 25" West, 757.00 feet,
- (8) South 15° 58' 25" West, 618.00 feet,
- (9) South 10° 36' 25" West, 104.02 feet to a point thereon thence leaving said -24 elevation contour line and crossing said Delaware River, North 67° 08' 35" West, 881.10 feet to a point on the southernmost corner of that parcel of land described in a Deed dated July 7, 1981 and recorded in the aforesaid Office of the Recorder of Deeds in Deed Record N, Volume 115, Page 80 which was granted and conveyed by the Wilmington and Northern Railroad Company, et al, to the City of Wilmington and running thence binding along the southwest and northwest outlines described in the aforesaid Deed the five (5) following courses, viz.:

- (1) North 63° 47' 47" West, 317.61 feet,
- (2) North 79° 12' 26" West, 140.30 feet,
- (3) 385.00 feet in a northwesterly direction along the arc of a curve to the right having a radius of 688.20 feet and a long chord bearing and distance of North 57° 19' 49" West, 380.00 feet,
- (4) North 41° 18' 14" West, 791.83 feet and
- (5) North 48° 41' 46" East, 44.00 feet to a point on the division line of that parcel of land described in the aforesaid deed and said Tract No. 100 as described in the heretofore first mentioned Deed and running thence binding along said division line, 417.57 feet in a southeasterly

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3787

direction along the arc of a curve to the left having a radius of 3,819.83 feet and a long chord bearing and distance of South 49° 51' 00" East, 417.36 feet to a standard marker at the end of the Fifth Line described in the aforesaid Deed and running thence thence binding reversely along said Fifth Line and reversely along the Fourth and Third Lines of said Deed, the three (3) following courses, viz.:

- (1) North 13° 30' 26" East, 1,712.03 feet to a standard marker,
- (2) North 10° 57' 38" East, 577.49 feet to a standard marker,
- (3) North 19° 58' 38" East, 198.30 feet to a standard marker to the point of beginning containing 299.134 acres of land more or less of which 75.730 acres more or less is submerged land.

The bearings used herein are referenced to the Delaware State Grid System.

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APPENDIX 7

3791

INFRASTRUCTURE PRESERVATION

3792 GT USA will maintain the existing infrastructure and facilities to ensure long-term, unimpaired
3793 availability of the Port for safe, effective, productive operations.

3794 Wharf Fixtures: GT USA shall repair or replace fixtures on the wharf as damage is discovered
3795 during routine, regular inspections, or as damage is reported in the course of operations. This
3796 includes fenders, moorings, bollards, crane tie-downs, crane stow-sockets, crane emergency stop
3797 structures, crane rails and fastenings, and crane power feeds.

3798 Wharf Infrastructure: GT USA shall periodically inspect the wharf's supporting piles, sheet piles
3799 and substructure, continuing DSPC's current pattern and recurrence interval. This shall involve
3800 visual inspections and, as needed, non-destructive instrumented examination. GT USA shall
3801 periodically identify and, if necessary, repair and replace wharf and sheet piles in order to
3802 maintain the structural integrity of the wharf. GT USA shall also commission repairs, as needed,
3803 to the wharf substructure.

3804 Pavement Systems: GT USA shall regularly conduct visual surveys of the terminal pavement
3805 surfaces, and identify areas of deterioration which indicate imminent progressive deterioration.
3806 Where appropriate, GT USA shall apply surface repairs to deter further degradation.

3807 Major Overlays: GT USA shall excise and replace selected paved areas in order to restore safe,
3808 effective operations, or apply a new surface layer.

3809 Utility Systems: GT USA shall regularly conduct visual surveys of water, sewer, power,
3810 drainage, and data utilities, and make repairs as needed to restore proper and safe functioning in
3811 accordance with applicable codes. GT USA shall regularly conduct visual surveys of the storm
3812 drain system, and as necessary, remove and properly dispose of any sediment buildups that might
3813 occur.

3814 Instruments and Equipment: GT USA shall regularly monitor the functioning of operating data
3815 instrumentation and equipment, including gate instruments, truck scales, terminal lighting, spill
3816 traps, and reefer installations. GT USA shall arrange to repair damage and replace failed
3817 instruments as faults occur.

3818 Buildings and Warehouses: The terminal's operating and administration buildings and
3819 warehouses shall be maintained and kept in condition proper for occupancy and use in
3820 accordance with applicable building codes and health department ordinances. Periodic exterior
3821 painting, siding, roof repair, and window maintenance shall be done to protect the weather
3822 integrity of the buildings and warehouses. GT USA shall also regularly monitor and repair and
3823 replace any sprinkler systems, refrigeration units, electrical systems, and air-conditioning, heat
3824 and ventilation systems.

3825 Berth Dredging: Working with DSPC and the United States Army Corps of Engineers, GT USA
3826 shall arrange for dredging of the berths to maintain proper operating depths in accordance with
3827 Section 6.6 of the Agreement.

3828 Administration and Design: GT USA shall undertake the administration of these maintenance
3829 activities, including any necessary design, permitting, contracting, construction, inspection, and
3830 monitoring.

3831 Crane Maintenance: GT USA shall regularly monitor and maintain the ship to shore and facility
3832 equipment.

3833 Cargo Handling Equipment Maintenance: GT USA shall regularly monitor and maintain the
3834 cargo handling equipment.

3835 APPENDIX 8

3836 LETTER OF CREDIT

3837 Irrevocable Standby Letter of Credit No. _____

3838
3839 Date of Issuance: _____

3840
3841 **BENEFICIARY:**

3842 Diamond State Port Corporation
3843 ATTN: Executive Director
3844 c/o Department of State
3845 820 N. French Street, 4th Floor
3846 Wilmington, DE 19801

3847
3848 At the request and for the account (GT USA Wilmington, LLC) ("Applicant"), we
3849 STANDARD CHARTERED BANK ("Issuer")
3850 2 GATEWAY CENTRE, 13TH FLOOR,
3851 SUITE 1302
3852 NEWARK, NJ 07102

3853 issue this irrevocable standby letter of credit number (**reference number**) ("Standby") in favor
3854 of the Diamond State Port Corporation ("Beneficiary") in the maximum aggregate amount of US
3855 \$15.0 million.

3856
3857 Issuer undertakes to pay the Beneficiary's demand for payment in U.S. Dollars and for an
3858 amount available under this Standby and in the form of the Annexed Payment Demand
3859 completed and signed by an authorized officer as indicated and presented to Issuer at the
3860 following place for presentation:

3861 2 GATEWAY CENTRE, 13TH FLOOR
3862 SUITE 1302
3863 NEWARK, NJ 07102

3864 on or before the expiration date or any future expiration date.

3865
3866 It is a condition of this Standby that it shall be deemed automatically extended without
3867 amendment for two year periods from the expiry date hereof or any future expiry date unless at
3868 least sixty (60) days prior to such expiration date, we notify the Beneficiary at the above stated
3869 address by overnight courier that we elect not to consider this Standby letter of credit renewed
3870 for any such additional period.

3871
3872 This Standby is being issued pursuant to the Concession Agreement dated _____, 2018
3873 between Beneficiary and Applicant (the "Concession Agreement").

3874
3875 The expiration date of this Standby is [date].

3876
3877 Issuer hereby irrevocably undertakes to pay any amount not exceeding the Letter of Credit
3878 amount, in immediately available funds, on submission of a demand in writing in the form of the
3879 annex, from the Beneficiary stating that Applicant failed to perform its obligations under the

3880 Concession Agreement. The submission of a demand shall be signed or endorsed by the
3881 Beneficiary. Payment against a demand shall be made within 3 business days after presentation
3882 by wire transfer to a duly requested account of Beneficiary. An advice of such payment shall be
3883 sent to Beneficiary's above-stated address.

3884
3885 Partial and multiple drawings are permitted.

3886
3887 Any payment made under this Standby shall reduce the amount available under it.

3888
3889 THIS STANDBY LETTER OF CREDIT IS ISSUED SUBJECT TO INTERNATIONAL
3890 STANDBY PRACTICES, ICC PUBLICATION NO. 590, 1998 AND AS TO MATTERS
3891 NOT GOVERNED BY THE ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED
3892 BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF
3893 NEW YORK.

3894
3895 PLEASE BE ADVISED THAT OUR TRADE PROCESSING CENTER IS NOW LOCATED
3896 AT THE FOLLOWING ADDRESS:

3897
3898 STANDARD CHARTERED BANK
3899 2 GATEWAY CENTRE, 13TH FLOOR
3900 SUITE 1302
3901 NEWARK, NJ 07102

3902
3903 CONSEQUENTLY ANY REFERENCE TO EXPIRATION OF THIS LETTER OF CREDIT
3904 AND PRESENTATION UNDER THIS LETTER OF CREDIT AT OUR COUNTERS WILL
3905 MEAN OUR COUNTERS AT THE ABOVE NEWARK ADDRESS. KINDLY SEND ALL
3906 CORRESPONDENCE AND DOCUMENTS UNDER THIS CREDIT TO OUR NEWARK
3907 ADDRESS.

3908
3909 IN CASE OF NEED PLEASE BE GUIDED BY THE FOLLOWING:

3910
3911 FOR QUESTIONS RELATING TO ISSUANCE/AMENDMENT OF COMMERCIAL AND
3912 STANDBY LETTERS OF CREDIT, AS WELL AS CLARIFICATION OF LC TERMS AND
3913 CONDITIONS, PLEASE CALL BERNADETTE EDOUARD AT (201) 706-5310, DEBORAH
3914 CLARK AT (201) 706- 5306 OR YVONNE BOAKYE (201) 706-5302.

3915
3916 FOR QUESTIONS RELATING TO STATUS OF DOCUMENTS OR DRAWING(S) THAT
3917 HAVE ALREADY BEEN PRESENTED AND/OR THE RESPECTIVE PAYMENT, PLEASE
3918 CALL: KATHY PARK AT (201)706-5319 OR VIA FAX AT (973)474-5929 OR (973)474-
3919 5930.

3920
3921 WE HEREBY ENGAGE WITH YOU THAT ALL DOCUMENTS DRAWN UNDER AND IN
3922 COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY
3923 HONORED UPON PRESENTATION FOR PAYMENT ON OR BEFORE THE EXPIRY
3924 DATE OF THIS LETTER OF CREDIT.

3925

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3927
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3932
3933

STANDARD CHARTERED BANK

[signature]

Authorized Signature

3934 Annexed Payment Demand

3935

3936 [Date]

3937

3938 STANDARD CHARTERED BANK

3939 2 GATEWAY CENTRE, 13TH FLOOR

3940 SUITE 1302

3941 NEWARK, NJ 07102

3942

3943 Re: Standby Letter of Credit No. [reference number],

3944 Dated [date]

3945 Issued by [Issuer's Name]

3946 ("Standby")

3947

3948 The undersigned Beneficiary demands payment of [INSERT CURRENCY/AMOUNT] under the
3949 Standby.

3950

3951 Beneficiary states that Applicant has failed to perform its obligations under the agreement titled

3952 Concession Agreement dated _____ and therefore is obligated to pay Beneficiary the

3953 amount demanded [, which amount is due and unpaid] under such agreement.

3954

3955 Beneficiary requests that payment be made by wire transfer to account of Beneficiary as follows:

3956

3957 Diamond State Port Corporation

3958 ATTN: Executive Director

3959 c/o Department of State

3960 820 N. French Street, 4th Floor

3961 Wilmington, DE 19801

3962 ROUTING NUMBER OF BENEFICIARY'S BANK]

3963 [NAME AND NUMBER OF BENEFICIARY'S ACCOUNT]

3964

3965

3966

3967

3968

3969

3970

DIAMOND STATE PORT CORPORATION

By its authorized officer:

[INSERT ORIGINAL SIGNATURE]

[INSERT TYPED/PRINTED NAME AND TITLE]

3971

APPENDIX 9

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Tax Parcel Nos. 26-067.00-001
26-067.00-002
26-067.00-003
26-067.00-004
26-067.00-005
26.073.00-002
10-006.00-018
26-064.00-002
06-153.00-006
06-153.00-003

Prepared by:
Morris, Nichols, Arsht & Tunnell LLP
Attn: Katherine H. Betterly, Esquire
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899

3988

MEMORANDUM OF LEASE

3989 THE DIAMOND STATE PORT CORPORATION ("DSPC"), a Delaware corporation
3990 created by the Department of State of the State of Delaware, and GT USA WILMINGTON,
3991 LLC, a Delaware limited liability company ("GT USA"), do hereby declare, effective the ____
3992 day of _____, 2018, this Memorandum of Lease:

3993 Pursuant to that certain Concession Agreement executed effective _____,
3994 2018 (the "Agreement"), DSPC demised and leased unto GT USA, and GT USA leased and
3995 demised from DSPC, that certain property described in the Agreement and more particularly
3996 described on Exhibit A attached hereto (the "Premises"), on and subject to the terms, covenants
3997 and conditions contained in the Agreement.

3998 1. The term of the Agreement commenced as of _____, 2018 and shall
3999 expire on _____, 20__, unless sooner terminated or extended as provided in the
4000 Agreement.

4001 2. GT USA shall not assign the Agreement except in accordance with the terms of
4002 the Agreement. Unless specifically approved in writing by DSPC, no such assignment (except in
4003 accordance with the terms of the Agreement) will relieve GT USA from its obligations to
4004 perform all of the terms, covenants and conditions of the Agreement.

4005 3. This Memorandum of Lease is intended only to provide notice of certain terms
4006 and conditions contained in the Agreement and is not to be construed as a complete summary of
4007 the terms and conditions thereof. In the event the terms contained herein conflict with the terms
4008 and conditions of the Agreement, the Agreement shall control.

4009 4. Upon the earlier of termination or expiration of the Agreement, pursuant to the
4010 terms thereof, DSPC and GT USA shall execute a release of this Memorandum of Lease which
4011 shall be filed in the Office of the Recorder of Deeds in and for New Castle County, Delaware. If
4012 the Agreement has been properly terminated or has expired by its terms, then DSPC and GT

4013 USA agree to execute the release within ten (10) days after receipt of a written request for the
4014 same by either party.

4015 5. Except as otherwise indicated, all initially capitalized terms used in this
4016 Memorandum of Lease and not defined herein shall have the meanings ascribed to them in the
4017 Agreement.

4018 **IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum of Lease
4019 as of the ____ day of _____, 2018

DIAMOND STATE PORT CORPORATION

Witness:

By: _____ (SEAL)

Jeffrey W. Bullock
Chairperson

4020 STATE OF DELAWARE)
4021) ss.
4022 COUNTY OF NEW CASTLE)

4023 I HEREBY CERTIFY that on this ____ day of _____, 2018,
4024 before me, a Notary Public in and for the State and County aforesaid, personally appeared
4025 Jeffrey W. Bullock, Chairperson of the Diamond State Port Corporation, known to me (or
4026 satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed
4027 instrument and acknowledged that said individual executed the same on behalf of Diamond State
4028 Port Corporation for the purposes therein contained.

4029 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

4030 _____
4031 Notary Public

4032 My Commission Expires: _____ [Notary Seal]

4033

GT USA WILMINGTON, LLC

Witness:

By: _____ (SEAL)

Peter Richards
Chief Executive Officer

4034 STATE OF DELAWARE)
4035) ss.
4036 COUNTY OF NEW CASTLE)

4037 I HEREBY CERTIFY that on this _____ day of _____, 2018,
4038 before me, a Notary Public in and for the State and County aforesaid, personally appeared Peter
4039 Richards, known to me (or satisfactorily proven) to be the person whose name is subscribed to
4040 the foregoing and annexed instrument and acknowledged that said individual executed the same
4041 on behalf of GT USA Wilmington, LLC for the purposes therein contained.

4042 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

4043 _____
4044 Notary Public

4045 My Commission Expires: _____ [Notary Seal]

4046
4047

4048

APPENDIX 10

4049

DRAWING OF PORT

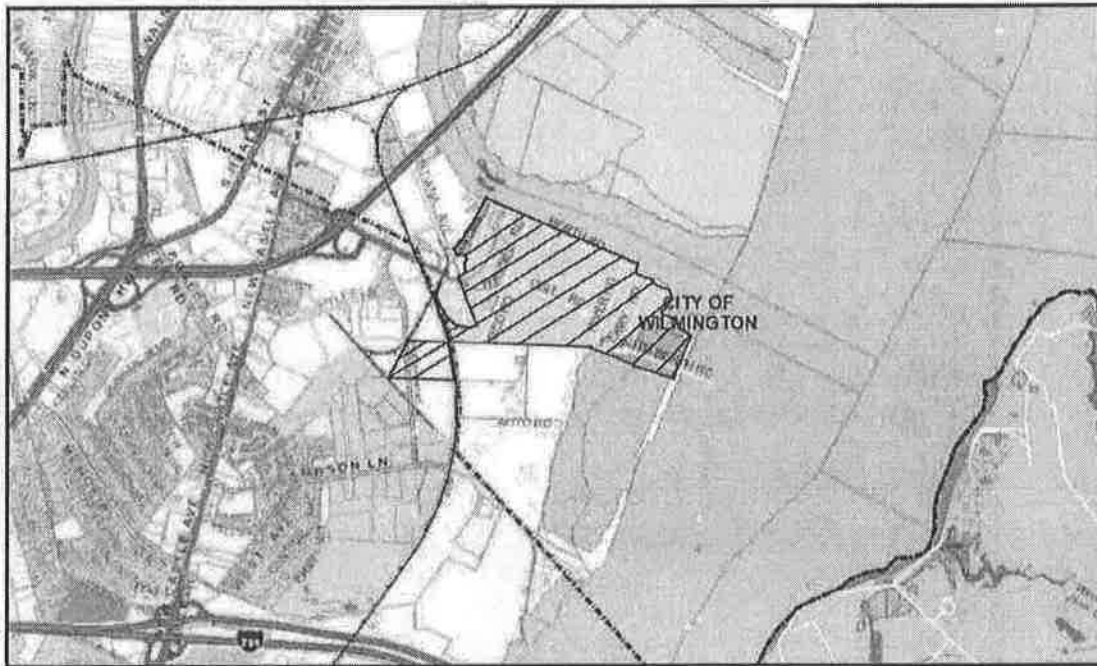
4050

4051

Main Port Property:

4052

4053



New Castle County Delaware GIS: <http://gis.newcastle.org>
Disclaimer: For informational purposes only - not to be used as official documentation.



Date: 4/18/2019

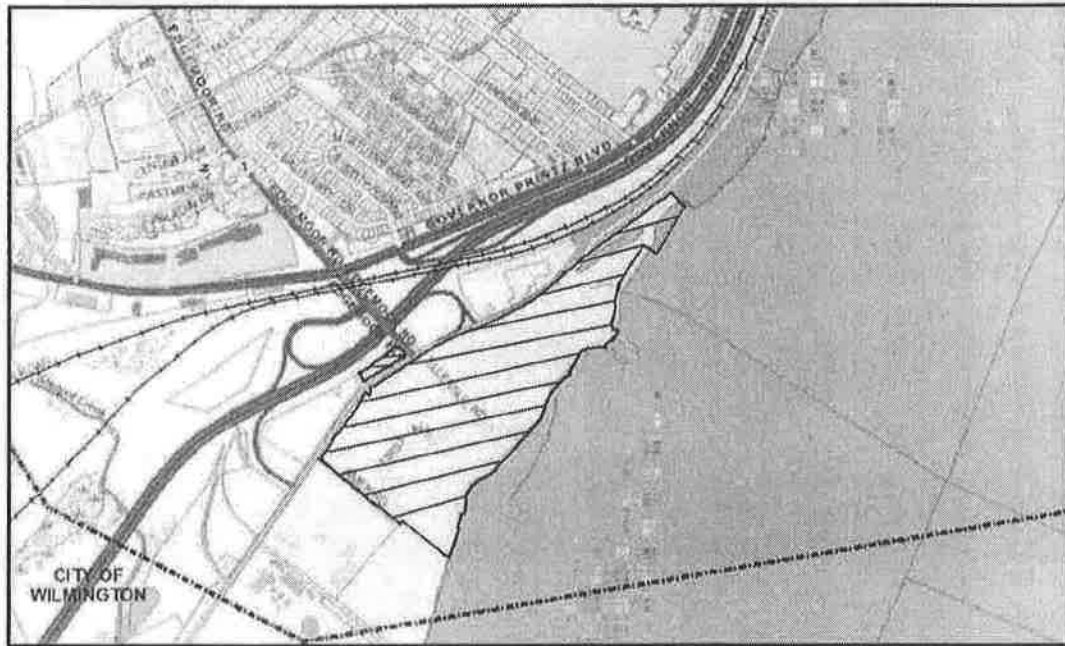
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4057 Edgemoor:



Edgemoor



New Castle County Delaware GIS: <http://gis.nccde.org>
Disclaimer: For informational purposes only - not to be used as official documentation.



Date: 4/11/2018

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4058
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4060 APPENDIX 11

4061
4062 **PERMITTED LIENS**

4063
4064 Diamond State Port Corporation's security interest on Assets granted pursuant to Section 18.2 of
4065 the Agreement.

4066
4067 A Leasehold Mortgage, Security Agreement, Assignment of Subleases and Rents and Financing
4068 Statement (Fixture Filing) by American Minerals, Inc., a Delaware corporation, as Mortgagor, to
4069 Bank of Montreal, as Administrative Agent for and on behalf of the Lenders, as Mortgagee,
4070 dated as of August 2, 2011, and recorded on August 16, 2011, in the Office of the Recorder of
4071 Deeds in and for New Castle County, State of Delaware, as Instrument Number 20110816-
4072 0050794.

4073
4074 A Leasehold Mortgage, Assignment of Leases and Rents Security Agreement, Financing
4075 Statement by American Premier, Inc., a Delaware corporation, successor by merger to Ralstan
4076 Trading and Development Corporation and Mineral Development and Sales Company, the sole
4077 partners in American Minerals, Mortgagor, to Continental Bank N.A., a national banking
4078 association, Mortgagee, dated as of December 11, 1991, and recorded on December 17, 1991, in
4079 the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, in Deed
4080 Book 2147, Page 304.

4081
4082 Any other recorded leasehold mortgages granted by any tenants at the Existing Port. *[Note:*
4083 *Parties agree to update this schedule prior to the Commencement Date to reflect the recording*
4084 *information for such mortgages following the completion of GT USA's title review.]*

4085
4086 ** City of Wilmington mortgages on Existing Port to be paid off and satisfied upon
4087 Commencement Date.

APPENDIX 12

THIRD PARTY CONSENTS

REQUIRED CONSENTS:

1. [REDACTED]
 - a. [REDACTED]
2. [REDACTED]
 - a. [REDACTED]
3. DNREC
 - a. Air Permit – Operation PCI Conveyor Issued on March 30, 2012 by the State of Delaware Natural Resources and Environmental Control.
 - b. Mobile Harbor Crane Permit Operating Permit APC-2017/0084 Crane C-7 and Operating Permit APC-2017/0085 Crane C-6.

REQUESTED (BUT NOT REQUIRED) CONSENT:

1. [REDACTED]
 - a. [REDACTED]

NOTICE REQUIREMENT ONLY: (Advance notice but no consent required)

1. [REDACTED]
 - a. [REDACTED]

WILMINGTON HARBOR SOUTH:

Wilmington Harbor South has been excluded from the definition of Premises but DSPC will seek approval of the Department of Army to transfer any leasehold rights DSPC may have in such

4122 *Wilmington Harbor South to GT USA; provided, the Parties agree that these consents shall not*
4123 *be a condition to closing.*

4124 a. The Department of the Army Lease, Wilmington Harbor Navigation Project, New
4125 Castle County, Delaware, No. DACW-31-1-16-605, between the Secretary of the
4126 Army and DSPC, dated April 11, 2017.

4127 b. Department of the Army Lease Wilmington Harbor Navigation Project
4128 Wilmington Harbor South Confined Disposal Area, New Castle County,
4129 Delaware (Lease No. DACW-31-1-19-001) between the Secretary of the Army
4130 and DSPC (Autoport).

4131 c. Department of the Army Lease Wilmington Harbor Navigation Project
4132 Wilmington Harbor South Confined Disposal Area, New Castle County,
4133 Delaware (Lease No. DACW-31-1-14-404) between the Secretary of the Army
4134 and DSPC (Autoport).

4135 d. Department of the Army Lease Wilmington Harbor Navigation Project
4136 Wilmington Harbor South Confined Disposal Facility, New Castle County,
4137 Delaware (Lease No. DACW-31-1-19-022) between the Secretary of the Army
4138 and DSPC (FPOR).

4139 e. Department of the Army Lease Wilmington Harbor Navigation Project
4140 Wilmington Harbor South Confined Disposal Facility, New Castle County,
4141 Delaware (Lease No. DACW-31-1-14-405) between the Secretary of the Army
4142 and DSPC (FPOR).

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APPENDIX 13

VOLUME SCHEDULE

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APPENDIX 14

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GT USA CORPORATE GOVERNANCE, COMPLIANCE AND ANTI-CORRUPTION POLICY

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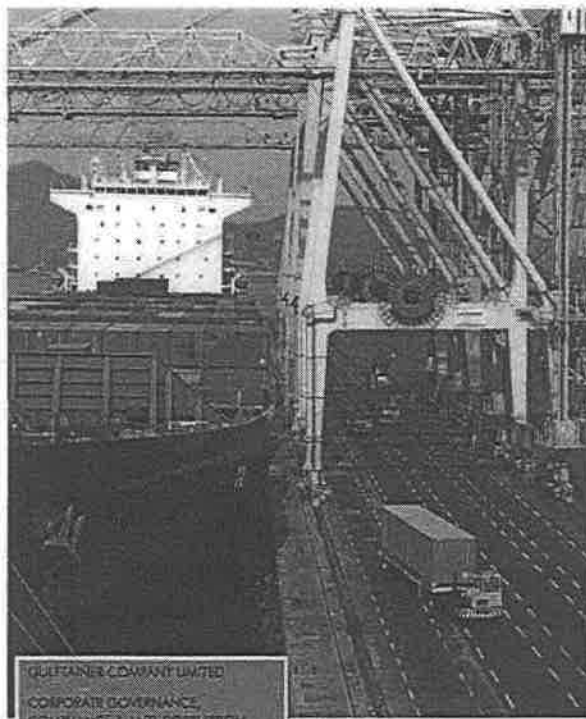
[See attached]

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GULFAIR COMPANY LIMITED
CORPORATE GOVERNANCE,
COMPLIANCE & ANTI-CORRUPTION

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Gulfair Group Corporate Governance, Compliance & Anti-Corruption Policy

A. Introduction

Gulfair Group always maintains the highest standard of ethics, corporate governance and corporate social responsibility. The Gulfair Group is committed to conduct its business legally, fairly, honestly and with transparency and integrity. It is the policy of the Gulfair Group to comply with all laws, rules and regulations governing anti-bribery, anti-corruption, export and international trade controls in all the countries in which the Gulfair Group operates.

The Gulfair Group is a proud member of the Pearl Initiative, a business lead initiative formed by the Gulfair Group's Vice-Chairman, in co-operation with the United Nations Office for Partnerships and by creating a strategic partnership with the United Nations Global Compact, to adopt higher standards in corporate accountability, transparency and governance and thereby enhancing business innovation, opportunity and value creation.

B. Policy Statement

Since its formation in 1976, the Gulfair Group has consistently maintained a zero-tolerance stance in relation to all forms of corruption and a firm commitment to comply with export and international trade controls and it re-affirms to do so in this Corporate Governance and Compliance Policy (this "Policy").

C. Definitions

Bribery	means promising, offering or giving, receiving or soliciting an undue advantage to or from a person or entity, either directly or through an intermediary, in order that the person or entity should perform, or refrain from performing, an act in breach of their business or public duties.
Corruption	means any act intended to result in the misuse of entrusted responsibility and/or authority for personal or corporate gain and includes bribery, conflicts of interest and misuse of assets of any entity of Gulfair Group.
Gulfair	means Gulfair Company Limited, Sharjah, UAE.
Gulfair Group	means Gulfair's affiliates and subsidiaries.
Partners	means Gulfair's partners (business or otherwise), suppliers, consultants, distributors, agents and service partners.
Personnel	means all persons employed by or performing some function on behalf of any entity of Gulfair Group.

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recusal	means the process by which a director, officer or employee of Gulfairer is excluded from a business transaction or activity because of U.S. economic sanctions.
Restricted Business	means activities, to be conducted by any entity of Gulfairer Group or other non-U.S. persons or entities, relating to business with countries, governments, entities, or persons against whom economic sanctions laws, executive orders, and regulations have been imposed by the U.S. Government, including the Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury.
U.S. Export	means actual shipment or transmission of items controlled under the Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR) out of the United States and includes knowledge that what is being transferred to a U.S. entity will be further transferred to a foreign person.
U.S. Person	means any: (1) U.S. citizen, wherever located in the world or by whomsoever employed; (2) U.S. permanent resident alien, commonly referred to as a "green card holder," wherever located in the world or by whomsoever employed; or (3) person physically located in the territory of the United States (even if temporarily) and includes any company or entity organized under the laws of the United States, and any non-U.S. branch office thereof.

1. SCOPE OF THE POLICY

This Policy applies to the Gulfairer Group, directors, employees, consultants, agents and Partners in all their acts and transactions. This Policy further extends to all the national and international business dealings and transactions of the Gulfairer Group. All the provisions of the Bribery Act 2010 of the United Kingdom are incorporated into this Policy by reference. Additionally, this Policy is intended to ensure compliance with the following national and international laws and conventions, as amended, replaced or updated (which includes but is not limited to):

1. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997).
2. The OECD Guidelines for Multinational Enterprises (2000).
3. The UN Global Compact Principles.
4. The United Nations Convention against Corruption (2003).
5. The Foreign Corrupt Practices Act of 1977 (US Federal Law).
6. The Law on the Procedures for the Recovery of Illegally Obtained Public and Private Funds (Dubai Law Number 37 of 2009).
7. The UAE Federal Penal Code (Number 3 of 1987).
8. The Objectives, Policies and Guidelines of the Pearl Initiative (2010).
9. U.S. EAR as administered by the U.S. Commerce Department's Bureau of Industry and Security (BIS).

10. International Traffic in Arms Regulations (ITAR) as administered by the U.S. State Department's Directorate of Defense Trade Controls (DDTC).
11. Economic sanctions regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC).
12. U.S. Department of Energy (DOE) controls regarding exports and imports of natural gas and liquefied natural gas under the Natural Gas Act (15 U.S.C. § 717b) and under DOE regulations (10 C.F.R. Part 590).
13. U.S. Money Laundering Control Act of 1986, as expanded by Title III of the PATRIOT Act of 2001, as amended, and the Bank Secrecy Act of 1970, as amended.
14. U.S. Iran Sanctions Act of 1996.
15. U.S. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.
16. U.S. Iran Threat Reduction and Syrian Human Rights Act.
17. U.S. Iran Freedom and Counterproliferation Act.
18. U.S. Antiterrorism and Effective Death Penalty Act of 1996.
19. European Council Regulation No 428/2009 of 29 May 2009 (including the EU Dual-Use List); and related export controls legislation implemented by EU Member States.
20. U.K. Proceeds of Crime Act 2002 and the U.K. Terrorism Act 2000.

II. COMPLIANCE

1. It is the responsibility of Gulfairer Group, its Personnel and Partners at all times to abide by all laws, regulations and international conventions applicable in the countries in which Gulfairer Group operates or which are applicable to the Personnel and Partners. Lack of knowledge about applicable rules and regulations is never an excuse and each of the Personnel and Partner must keep themselves updated with and act according to:

- i. the requirements in this Policy;
- ii. all relevant local rules and legislation in the countries they conduct business; and
- iii. other applicable business practices.

2. All the Personnel and Partners must comply with the overriding local law position and ensure that it is not violated, as there may be certain matters that are permitted within this Policy but would be prohibited under local laws in certain countries where Gulfairer Group operates.

3. Gulfairer Group's Personnel and Partners must consequently always exercise good judgment and never put themselves or others into a position of being under undue influence or even the suspicion thereof.

4. It is NEVER in the interest of Gulfairer Group to violate this Policy. Compliance with this Policy is MANDATORY on all Personnel (and failure to comply will be a disciplinary offence) and Partners.



III. ANTI-CORRUPTION AND BRIBERY

1. Anti-Corruption Policy

Whilst conducting business anywhere in the world, neither the Gulfair Group nor any of its directors, employees, consultants, agents, Personnel and Partners shall indulge in any of the following acts:

1.1 Bribery, which includes:

- a) Accepting an Unlawful Inducement for any reason and from any natural person or legal entity;
- b) Offering an Unlawful Inducement for any reason and to any natural person or legal entity;
- c) Offering or accepting cash or other forms of payment to secure a contract or obtain a license;
- d) Offering or accepting gifts or entertainment intended to influence the recipient to undertake a particular course of action;
- e) Offering or accepting donations with an ulterior motive; or
- f) payment of travel expenses or accommodation for a customer or official when there is no underlying business purpose for a trip.

1.2 Attempted bribery, which includes:

- a) Attempting to offer or solicit an Unlawful Inducement;
- b) Promising to offer or solicit an Unlawful Inducement;
- c) Authorizing the acceptance or offering of an Unlawful Inducement; or
- d) Agreeing to accept, solicit, offer or authorize an Unlawful Inducement.

For the purposes of this Policy, the term Unlawful Inducement shall include money, gifts or any other valuable consideration, whether tangible or intangible, aimed to secure an unfair, undue or illegal advantage of any nature.

Any breach of this Policy shall: (a) amount to gross misconduct, (b) be treated with the utmost gravity, (c) be expeditiously investigated (independently) and lead by the CEO of Gulfair Group, (d) be dealt with according to the prevailing Personnel policies; and (e) reported to the appropriate authorities.

2. Areas with exposure of corruption

The following areas are identified as potential risk areas for corruption and include "Standards of Conduct" that are intended as principles and guidance to assist in identifying and dealing with situations of potential corruption.



2.1 Services

This section relates to potential business of Gulfair Group with third parties and other customers.

2.2 Standards of Conduct:

- i. Gulfair Group will only participate in business where it can compete fairly for business based on the quality and price of its offerings and not by offering bribes or engaging in any other unethical behavior, either directly or indirectly.
- ii. Immediately upon the identification of a business opportunity and continuously throughout such business process, the concerned Personnel must undertake a risk assessment to identify the likelihood of the customer and the specific business opportunity contravening this Policy.
- iii. Approvals and escalation rules for price discounts, rebates, commissions, special payment terms or any other deviation from Gulfair Group standard terms and conditions for business contracts (if any), must be documented in relevant business policies.

3. Partners

3.1 Gulfair does business with a number of Partners in different parts of the world. The Partners are responsible to conduct businesses according to this Policy in the same manner as Personnel, as Gulfair may find itself liable for their actions.

3.2 Standards of Conduct:

- 3.2.1 It is never appropriate for a Partner to carry out an act on Gulfair's behalf that would be a breach of this Policy, whether instructed to do so by Gulfair or not.
- 3.2.2 Authorising, encouraging or knowingly allowing (which includes having a reasonable suspicion of their intention) any third party to pay or receive bribes or engage in other corrupt practices on Gulfair's behalf which are all serious violations of this Policy and can violate applicable anti-corruption laws.
- 3.2.3 All Personnel who are involved in any aspect of the relationship with a Partner shall comply with the following procedures:
 - i. An evaluation/KYC (Know Your Customer) of the Partner must be performed prior to any appointment.
 - ii. The general principle is to perform research and interviews to ensure that the Partner

agrees to behave in a manner consistent with this Policy. The research shall, *inter alia*, include e.g. reviewing information available in the public domain and, whenever applicable, any potential conflicts of interest and any prior or current administrative, civil, criminal or governmental proceedings involving the Partner.

- ii. All Partners must be appointed pursuant to a written contract and whenever possible, this should be the relevant Gulfairer draft of the agreement. Any variations to such agreements or any requests to use a contract other than Gulfairer prepared agreement, must be reviewed and approved by Gulfairer Legal Department. Any such written contract, once signed, shall be deemed to incorporate by reference, this Policy.
- iv. Any consideration paid to a Partner must be appropriate, reasonable, equitable, negotiated at arm's length basis and justifiable in return for legitimate services pursuant to the agreement. Consideration will only be paid following receipt of a valid invoice and to its registered place of business/company within its country of residence.
- v. All Personnel and Partners must notify Gulfairer immediately in writing in the event of any suspected act of bribery or if there has been a breach of any relevant anti-corruption laws.

4. Gifts, Hospitality and Expenses

Exchanges of reasonable and courtesy business gifts and hospitality are part of our business practices and allowed if they are transparent, proportionate, reasonable and of a bona fide nature. They should be modest in nature and value and not exceed any amounts specified by relevant local law or other local practices. In any event, no Personnel of Gulfairer Group shall accept any gifts or hospitality over and above AED 500 (approximately USD 136) and all such advances (or even the ones accepted which are below AED 500 or USD 136) by any person or entity whatsoever shall be reported to the Gulfairer Legal Department, who shall maintain records, as appropriate. Particular attention should be taken in all relationships with public or government officials and employees.

4.1 Standards of Conduct:

- 4.1.1 All Personnel and Partners are prohibited from receiving, offering or providing gifts and hospitalities whenever they can be perceived to affect the outcome of a business transaction or potentially expose our business to undue influence.
- 4.1.2 All Gulfairer entities are responsible to establish and monitor monetary limits (as detailed above) and approval levels for gifts, hospitality and expenses based on the principles in this Policy as well as local legislation, including tax law.
- 4.1.3 Gifts typically include low value items given professionally without any expectation of compensation or consideration or value in return. Gifts shall have no role in a business process other than as a mark of appreciation between companies.

- 4.1.4 A gift should be of modest value and must never leave the recipient into a position of obligation. Common and acceptable gifts are e.g. company promotional items.
- 4.1.5 A gift shall never consist of money, loans or anything else that can be exchanged to a monetary value.
- 4.1.6 Gifts should not be given in relation to a religious or any other holidays. Instead of providing such gifts, Gulfairer may make a donation to a charity and notify our customers and Partners of the donation, subject to and in accordance with its Corporate Social Responsibility policy.
- 4.1.7 Gifts from suppliers or other third parties should whenever possible be respectfully declined. In instances where this is not possible (e.g. mailed items or in specific countries or cultures), the gifts must be put into a common display or raffia (with the proceeds going to charity) or donated to charity.

5. Hospitality

Hospitality typically includes meals and/or entertainment (e.g. music-, sports- or theatre events) when a company intends to initiate or develop its business relationships with existing or prospective customers and Partners.

5.1 Standards of Conduct:

- 5.1.1 For hospitality to be permitted, it must always be in connection with a business meeting where the business content is predominant.
- 5.1.2 Hospitality requires that the host be present and that the hospitality is fairly provided and modest in value.
- 5.1.3 Hospitality must never be perceived as excessive or luxury and must never leave the recipient into a position of obligation.
- 5.1.4 Hospitality must not be offered on an overly frequent basis.
- 5.1.5 The amount of money spent on hospitality should not exceed the approved maximum set according to this Policy.

6. Expenses related to visits to reference sites, training activities and conferences

As part of the business process, customers will be invited to reference sites for better understanding of the business. Furthermore, the service contract may include customer training activities at specific training sites.

6.1 Standards of Conduct:

- 6.1.1 Gulfairer may pay for reasonable travel and modest accommodation costs incurred by attending customers, while participating in visits to reference sites, training or conferences.



- 6.1.2 Travel and accommodation must always be in connection with a business meeting.
- 6.1.3 Where the business content is predominant, invitation shall not be overly frequent.
- 6.1.4 Travel and accommodation must never be perceived as excessive or luxurious and must never leave the recipient into a position of obligation or provide anything in return.
- 6.1.5 It should be ensured that all costs involved with the aforementioned in item 6.1 should have prior approval and appropriate invoicing and documentation should be provided in such respect.

7. Consultancy and Research arrangements

Many professionals serve as consultants to Gulfair, providing valuable consulting services, including research, business development, and participation on advisory boards, training, presentations and other services.

7.1 Standards of Conduct:

- 7.1.1 Consultancy arrangements should be entered into only where a legitimate need for services is identified in advance and documented in a contract, describing all services to be provided.
- 7.1.2 The selection of a consultant for consultancy should be made on the basis of the consultant's qualifications and expertise to meet the defined need.
- 7.1.3 Consideration paid to a consultant for consultancy should be consistent with fair market value for the services provided, negotiated at arm's length basis, appropriate, reasonable and equitable.

8. Charitable Donations and Sponsorships

Gulfair may make reasonable donations for charitable purposes in support of the needy and may also sponsor different types of conferences for business promotional purposes, subject to and in accordance with the Corporate Social Responsibility policy of Gulfair.

8.1 Standards of Conduct:

- 8.1.1 Donations should only be made to valid registered charitable organizations and foundations that do not have any conflict of interest with any existing or potential customer or government official.
- 8.1.2 Requests for charitable donations should be evaluated separately from the commercial activities and it is inappropriate to make charitable donations linked to past, present or future business transactions.
- 8.1.3 Gulfair shall not make any political donations, which means donations for political purposes to any politician, political party or related organisation, official of a political party or candidate for political office in any circumstances either directly or through third parties.



- 8.1.4 The donations will be made separately from, and cannot be perceived to affect, the outcome of a business transaction.

9. Facilitation Payments

Facilitation payments are NOT permitted.

For the purposes of this item 9, a facilitation payment is any payment that is an unofficial payment made to secure or expedite a routine service or other necessary action to which the payer of the facilitation payment has a legal or other right to receive. The key element of this definition is that the service which the payment relates to must be something to which the payer would be entitled to receive with or without the payment (i.e., it is not legal to make a facilitation payment for a service that any person is otherwise entitled to anyway).

9.1 Standards of Conduct:

- 9.1.1 Personnel may not directly or indirectly make a facilitation payment and accordingly facilitation payments made by an individual and included in an expense report will not be reimbursed by Gulfair except under the below circumstances:
 - a. Gulfair recognises that in some exceptional instances payments may be demanded under threat of violence, personal harm or imprisonment. The safety of our employees and associates is paramount to Gulfair and therefore no person is expected to put compliance with this Policy ahead of their own safety.
 - b. In the event any payment is made under duress or asked for, it should be documented and reported to the Chief Executive Officer.

10. Procurement, Contracting and Purchasing

This section relates to supplier selection and management and is valid for all procurement within Gulfair whether it is managed from a purchasing function or anywhere else in the company and whether it involves components, products, and indirect material or consultant services.

10.1 Standards of Conduct:

- 10.1.1 All Personnel who are involved in the awarding of any contract to a supplier, whether for products or services shall comply with Gulfair procedures covering the evaluation, appointment and management of suppliers.
- 10.1.2 An evaluation of the supplier must be performed prior to any appointment. The general principle is to perform research and interviews to ensure that the supplier will behave in a



manner consistent with this Policy. The research shall include e.g. any actual or perceived potential conflicts of interest, involvement in any unethical business practices and any prior or current administrative, civil or governmental proceedings.

- 10.1.3 In order to ensure a fair contract awarding process that is free from corruption, all competing suppliers shall be provided with the same documented information and time frame in order to compete for a contract on the same conditions.
- 10.1.4 Suppliers may attempt or challenge Personnel to leak information or to provide them with personal benefits to attain a favorite position and ultimately secure a contract. No Personnel shall accept such challenges or benefits, or in any other way put themselves into a position of being under undue influence or even the suspicion thereof.
- 10.1.5 Payments to a supplier must be appropriate, reasonable and justifiable in return for legitimate products or services according to contract. Payments will only be made following receipt of a valid invoice.

11. Merger, Acquisitions and Joint Ventures

When undertaking any merger, acquisition or joint venture, Gulfair must ensure that full and comprehensive due diligence process is carried out to identify whether the target company presents any present or future risks in relation to corporate governance, compliance and/or anti-corruption.

11.1 Standards of Conduct:

The anti-corruption due diligence shall include e.g. any actual or perceived potential conflicts of interest, the reputation and past conduct of the target company (involvement in any unethical business practices), details of the target company's anti-corruption policy/program and any prior or current administrative, civil or governmental proceedings.

12. Human Resource

The Human Resource processes shall mitigate corruption risks and any possible risks for conflict of interests in the recruiting process, as well as in the process of defining compensation and bonuses.

12.1 Standards of Conduct:

- 12.1.1. All Gulfair managers must conduct recruiting in a way that is fair and transparent. The process of recruiting must not be tainted by bribery, favoritism or nepotism.
- 12.1.2. Gulfair managers must ensure that they comply with the most current policies and guidance from Gulfair HR Department in relation to employee background check prior to offering employment to any individual.



12.1.3. Gulfair managers must ensure that they comply with the most current policies and guidance from Gulfair HR Department in relation to defining compensation and bonuses.

13. Support for questions and issues related to corruption

13.1 Support line

Questions related to the content of this Policy can be discussed with the Group Legal Director of the Legal Department of Gulfair.

13.2 What to do if you suspect corruption

The discovery of suspected corrupt activities can arise in a variety of situations and occur in many forms. Personnel are therefore required to immediately consult with the Group Legal Director and ask for advice if they have concerns about what actions should be undertaken.

Situations in which suspected corrupt practices arise can possibly also trigger challenges and dilemmas, for instance, if an employee fears internal collusion, potential threats or if his/her concerns are for other reasons not appropriate to be discussed with the immediate manager. In such situations Personnel are requested to immediately consult with another person from senior management and seek advice.

Gulfair will not tolerate any form of harassment, discrimination or retaliation against those employees who raise concerns and act in good faith in line with this Policy.

IV. EXPORT CONTROLS

1. Export Controls Policy

Where applicable, Gulfair Group is committed to comply with U.S. export laws and regulations. All concerned Personnel shall comply with U.S. export laws and regulations and any other related legislation whenever it may be determined that any Gulfair Group's activity or transaction involves a U.S. Export or other transaction with any person, entity or country subject to export controls.

2. Guidelines

- 2.1 In order to prevent violation of any of the various sanctions imposed by U.S. government, it must be ensured before entering or completing any transaction that can be deemed as U.S. Export, that

the destination country/other party is not listed in any export denial, debarment, and blocked persons list of the U.S. government, such as:

- a. Department of Commerce "Denied Person List" (BIS).
- b. Department of Commerce "Entity List" (BIS).
- c. Department of Commerce "Unverified List" (BIS).
- d. Department of Treasury Specially Designated Nationals and Blocked Persons.
- e. Department of Treasury Specially Designated Terrorists organisations and individuals.
- f. Department of Treasury Specially Designated Narcotics Traffickers and Narcotics Kingpins.
- g. Department of Treasury Palestinian Legislative Council List.
- h. Department of Treasury Country Sanctions, as such list may be updated from time to time.
- i. Department of State Designated Terrorist Organisations.
- j. Department of State Terrorist Exclusion List.
- k. Department of State Arms Export Control Act debarred Parties.
- l. Department of State International Traffic in Arms Regulations Munitions Export Control Orders.
- m. Department of State Non Proliferation Orders:
 - Department of State Missile Proliferators
 - Department of State Chemical and Biological Weapons Concerns
 - Department of State Lethal Military Equipment Sanction
- n. Foreign Persons designated under the Weapons of Mass destruction Trade Control Regulations.

2.2 All contemplated transactions that may involve a U.S. Export must undergo a compliance check before actually effecting the transaction to ensure non-applicability of red flag indicators to the transaction and to ensure that none of the party to the transaction is listed in U.S. governments controlled list.

2.3 Personnel's responsibilities:

- a. Make themselves familiar with the provisions of this Policy and with various export control requirements, export laws and regulations;
- b. Examine the transactions, contracts, scope of work, etc. to determine if any of them will require export control requirement review before carrying on with the same;
- c. Adhere to the applicable laws, regulations and controls and this Policy diligently; and
- d. Disclose promptly any violation or expected/potential violation of the export regulations or provisions of this Policy.

2.4 Red Flag indicators:

- a. The customer or its address is similar to one of the parties found on the BIS's list of denied persons or the unverified list.
- b. The customer or purchasing agent is reluctant to offer information about the end-use of the item.
- c. The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery.
- d. The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- e. The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- f. The customer has little or no business background.
- g. The customer is unfamiliar with the product's performance characteristics but still wants the product.
- h. Delivery dates are vague, or deliveries are planned far out of the way of destinations.
- i. A freight forwarding firm is listed as the product's final destination.
- j. Packing is inconsistent with the stated method of shipment or destination.
- k. When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for re-export.

2.5 All transactions undertaken by Guffinier Group involving U.S. Export must be documented properly. Records such as accounts, financial details, and boycotts in relation to the export must be maintained in their original form, i.e. in the form they are created or received. The U.S. related records must be retained for a minimum period of five (5) years from the latest of the following times:

- a. Export of item from U.S. or the provision of financing, transporting or other service for or on behalf of end-users of proliferation;
- b. Any known reexport, transshipment, or diversion of such items; or
- c. Any other termination of the transaction, whether formally in writing or by any other means.

V. INTERNATIONAL TRADE CONTROLS

1. U.S. Economic Sanctions Policy



No "U.S. Person" who serves as a member of the Board of Directors, or who is an officer or employee of Gulfair Group, shall participate in Gulfair's business involving countries, governments, entities, or persons restricted under U.S. economic sanctions laws and regulations. A copy of this Policy shall be provided to all directors, and to all officers or employees of Gulfair Group who are U.S. Persons or who manage or supervise such U.S. Persons by which guidance is provided regarding the circumstances under which a U.S. Person must be recused from "restricted business," and procedures to as to effectuate an appropriate recusal.

2. Scope of U.S. Economic Sanctions In Particular

The procedures of this Section V apply to any and all U.S. Person directors, both inside and outside (independent) directors, and all other U.S. Person staff of Gulfair Group.

3. Situations Where Recusal of a U.S. Person is Required

3.1 A U.S. Person director, officer or employee may not:

- 3.1.1 Participate in transactions or other dealings, including but not limited to selling, purchasing, transporting, brokering, or insuring activities, related to restricted business;
- 3.1.2 Approve a contract, transaction, investment, or dealing concerning restricted business, or a decision to commence, renew, expand, acquire, or sell, or terminate restricted business;
- 3.1.3 Be involved in any negotiation or commercial analysis of a contract, transaction, investment, dealing, or decision regarding restricted business;
- 3.1.4 Be involved in financing arrangements related to restricted business, such as decisions concerning how to price, finance, book, account for, or manage financial risk associated with restricted business, including but not limited to cash calls and credit facilities;
- 3.1.5 Be involved in any technical services related to restricted business;
- 3.1.6 Undertake any activity that would specifically facilitate, support, assist, supervise, or manage restricted business;
- 3.1.7 Refer any restricted business opportunity, undertaking, or activity to any entity or person;
- 3.1.8 Change Gulfair Group's operating policies or procedures to allow Gulfair Group or any other foreign entity or person to undertake activity involving restricted business, whether or not applicable to a specific transaction, e.g. on a one-time basis, or more generally, altering or modifying ordinary procedures with the specific purpose of facilitating ongoing restricted business; OR



3.1.9 Evade or avoid, or attempt to evade or avoid, U.S. economic sanctions that prohibit restricted business.

4. Situations Where Recusal of a U.S. Person is Not Required:

4.1 A U.S. Person director, officer or employee may:

- 4.1.1 Receive general reports on restricted business activities, provided that the U.S. Person does not take any action, based on that report or otherwise, to assist or support Gulfair Group's undertakings in connection with the restricted business;
- 4.1.2 Approve or work on the implementation of certain corporate "overhead" functions that apply globally to Gulfair Group business operations that are:
 - a. not intended to provide support of a specific nature to a transaction involving restricted business, e.g., health and disability insurance to employees globally or general information and technology management support, and
 - p. used on a normal, day-to-day basis for all business activities (whether or not restricted business); OR
- 4.1.3 Consider whether activities or undertakings would be in compliance with, restricted under, or exempted from U.S. laws or regulations or applicable Gulfair Group compliance policies and procedures, including a specific transaction or contract related to restricted business. (However, one cannot provide advice or be involved in implementing any business activity or commercial transaction that involves any restricted business.)

5. Procedure for Recusal

The corporate governance procedures below shall be followed for recusing U.S. Persons from participating in or approving or facilitating business that is restricted by U.S. economic sanctions laws or regulations.

5.1 The Group Legal Director shall evaluate if there is a risk that actions, undertakings, directions, or votes of the Board of Directors or subcommittee thereof, or actions of any officer or employee, may cause a U.S. Person to be involved in restricted business that would be prohibited by U.S. laws or regulations.

5.2 If it is determined pursuant to the preceding paragraph that a matter would involve a U.S. Person in restricted business, then the Gulfair Group Chief Executive Officer or other executive officer who is a non-U.S. Person, shall direct the U.S. Person in question to not participate in any such matter, and to be recused from the matter and any meeting or discussion relating thereto for the duration of any such matter.



5.3 Any decision to recuse a U.S. Person should be duly recorded in the records of Gulfair Group and the Group Legal Director shall provide a recusal memo for U.S. Person to acknowledge and sign. The Gulfair Legal Department shall also make a file note containing the basic facts about such recusal, including the reason therefor and the action taken. As minimum, the said note should:

- 5.3.1 Specify the reason for and the date of the recusal;
- 5.3.2 Specify the duration of the recusal (which may be expressed in terms related to the pendency of the matter before the Board of Directors or a subcommittee thereof);
- 5.3.3 Specify the effect of the recusal on the U.S. Person, e.g., that the U.S. Person is not to be contacted or involved or participate in any manner concerning the restricted business matter from which he or she has been recused;
- 5.3.4 Name the non-U.S. Person who is to assume responsibility and authority for the restricted business matter for which the U.S. Person has been recused (if applicable);
- 5.3.5 Be disseminated to all/applicable members of the Board of Directors or other Personnel who might be affected by the U.S. Person's recusal; and
- 5.3.6 Be retained for as long as the U.S. Person serves in his or her position or five years from the conclusion of such restricted business activity, action, undertaking, or vote, whichever occurs last.

5.4 To the extent feasible, meeting materials involving a restricted business agenda matter from which the U.S. Person must be recused should not be circulated or distributed to the U.S. Person.

5.5 The recusal must be absolute. The recused U.S. Person shall have no involvement with any restricted business activity, action, undertaking, vote, or matter from which he or she has been recused. If the U.S. Person is recused and cannot conduct restricted business, then the U.S. Person cannot direct another person to approve or participate in, or be involved with such restricted business.

5.6 The U.S. Person must leave a meeting room or terminate any electronic communication during the portion of the meeting or communication while the restricted business matter is under discussion and consideration solely by non-U.S. Persons.

5.7 Any questions regarding this Policy or its implementation can be directed to the Group Legal Director of Gulfair.

VI. INVESTIGATION OF SUSPECTED BREACHES OF THIS POLICY

Suspicious and reports of corruption must never be ignored and accordingly all Personnel are obliged to pursue any such suspicions or reports.



Gulfair will investigate all reports or other information received regarding alleged violations of this Policy. Failure to adhere to this Policy may result in disciplinary action appropriate to the violation, up to and including termination of employment or the contractual relationship, and legal proceedings.

As Gulfair has a zero tolerance against bribery, all criminal activities including corruption will be reported to the relevant authorities, based on the findings of the independent investigation.

VII. MONITORING OF COMPLIANCE

Gulfair has introduced and will continue to introduce a variety of controls across all areas of its business in order to monitor compliance with this Policy and related procedures to highlight any failures to comply. This will include, but will not be limited to, financial controls of invoices and expenses and self-assessment from appropriate functions, such as sales and purchasing, to identify and report deficiencies and improvement areas.

Gulfair will perform audits and compliance reviews in order to test whether controls and processes are working properly. Audits will be carried out by internal resources or by external auditors.

All Personnel have an obligation to make clear to all Partners that they are required to comply with this Policy, and that sanctions and termination of the relationship may result, in the event of violations of this Policy.

VIII. CONTINUOUS IMPROVEMENT

The results from monitoring activities, audits and compliance reviews will be thoroughly evaluated in order to assess whether actions undertaken are sufficient to deal with corruption risks and to improve the effectiveness of the program.

IX. GUIDANCE

This Policy shall be made available to all officers, directors, employees, consultants, agents, customers and Partners of the Gulfair Group, by publishing it on Gulfair's official website and notifying them about its existence and the fact that it will be subject to update and amendments from time to time.

This Policy shall form an integral and binding part of the executed standard terms and conditions that Gulfair or any member of Gulfair Group enters into with any customer for providing terminal management or logistics services.



Mr. Richard Blair, Group Legal Director, is hereby appointed as the Chief Compliance Officer of the Gulfstream Group in order to implement, monitor and review this Policy; and to provide guidance on this Policy as required. Any matters pertaining to this Policy should be brought to the immediate attention of the Chief Compliance Officer.

Approved on the 17th day of January, 2017 (as updated on the 09th day of January 2018),

Peter Richards
Chief Executive Officer
Gulfstream Company Limited

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CAPEX SCHEDULE

[illegible]

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APPENDIX 16

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INITIAL PAYMENT

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4183 **Initial Payment: \$11,536,000.00**

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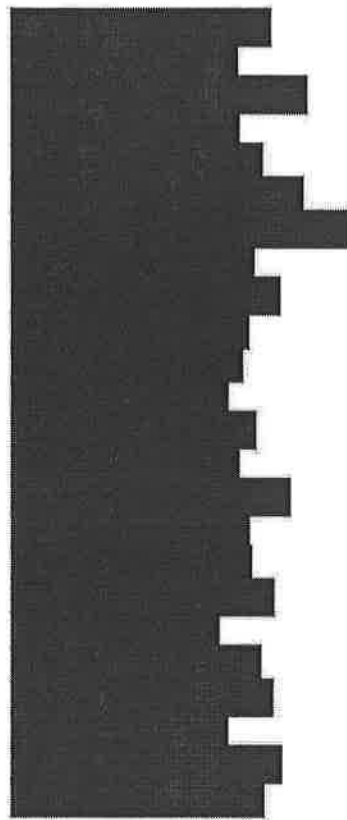
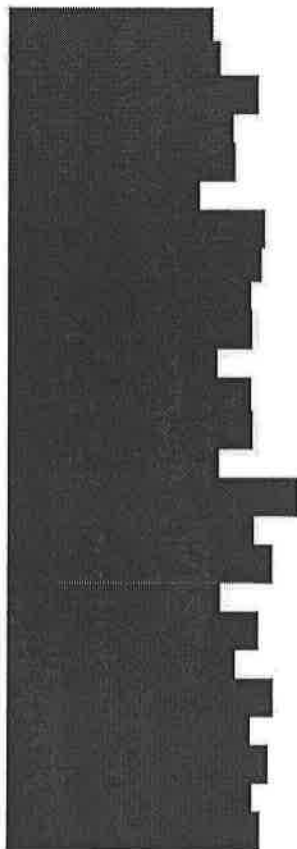
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APPENDIX 17

CURRENT LIST OF DSPC NON-UNION EMPLOYEES

DIAMOND STATE PORT CORPORATION

Non-Union Port Employees (Pay Roll Name) as of August 6, 2018



APPENDIX 18

DSPC LITIGATION

None. Although DSPC notes that it is aware of the following pending litigation.

U.S. District Court for the District of Delaware

<u>Case No.</u>	<u>Case Title</u>	<u>Date Filed</u>	<u>Date Closed</u>
1:2018cv00195	<i>Tyler v. Diamond State Port Corporation</i>	2/02/2018	
1:18cv985	<i>Lourethia Rush v. Diamond State Port Corporation</i> (Employment Civil Rights Action)	7/2/2018	
1:18cv195	<i>Rudolph B. Tyler, Jr. v. Diamond State Port Corporation</i> (Employment Discrimination)	2/2/2018	

Superior Court of the State of Delaware in and for New Castle County

<u>Case No.</u>	<u>Case Title</u>	<u>Date Filed</u>	<u>Date Closed</u>
N18C-03-058 MMJ	<i>Faron Williams, II and Jerome Broomer v. Diamond State Port Corporation and Michael Phillips</i> (Personal Injury – Auto)	3/6/2018	
N17C-12-339 PRW	<i>Kocks Krane GmbH v. Dr. Patrice Gilliam-Johnson, Dr. Patrice Gilliam-Johnson in her official capacity as the Secretary of the Delaware Department of Labor; Francis Chudzik, in his official capacity as the Enforcement Supervisor for the Delaware Department of Labor; the Delaware Department of Labor, a Delaware government agency; and Diamond State Port Corporation, a Delaware Corporation</i> (Complex Com. Litigation)	12/27/2017	

(Note: By Order of the Court dated August 4, 2018, the litigation was consolidated with two other matters relating to the crane construction project in which DSPC is not a defendant, under the caption *In re Port of Wilmington Gantry Crane Litigation, C.A. No. N17C-22-276 PRW CCLD.*)