

SECOND AMENDMENT TO CONCESSION AGREEMENT

THIS SECOND AMENDMENT TO CONCESSION AGREEMENT (this “Second Amendment”), is entered into as of this 28th day of July, 2023 (the “Second Amendment Effective Date”) among Diamond State Port Corporation, a Delaware corporation created in the Department of State of the State of Delaware (“DSPC”), Enstructure Wilmington Holdings LLC, a Delaware limited liability company (“Enstructure”), and for purposes of Sections 3.3, 3.6, 4.9(c), 5.4(a), 10.1, 14.1, 19.2(b), 20.1, 21.2 and 21.4 of the Concession Agreement, Enstructure LLC, a Delaware limited liability company (“Enstructure Parent”).

Recitals

WHEREAS, DSPC and GT USA Wilmington, LLC, a Delaware limited liability company (“GT USA”), entered into that certain Concession Agreement dated as of September 18, 2018 together with all side letters thereto (the “Initial Concession Agreement”) as amended by the Amendment thereto dated as of December 31, 2019 (the “First Amendment” and the Initial Concession Agreement as amended by the First Amendment, the “Concession Agreement”) between DSPC and GT USA; and

WHEREAS, GT USA and Enstructure have entered into that certain Stock and Asset Purchase Agreement dated as of July 28, 2023 pursuant to which Enstructure is purchasing all of GT USA’s assets necessary to operate the Premises, including the existing third-party contracts and permits necessary to operate the Port and the Concession Agreement (the “APA”); and

WHEREAS, the parties agree that Enstructure will succeed GT USA as concessionaire of the Port in accordance with the Concession Agreement (as amended by this Second Amendment); and

WHEREAS, in furtherance thereof, the parties desire to modify the Concession Agreement as set forth herein.

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

1. **Assumption of Obligations; DSPC Consent.**

a. Pursuant to that certain Assignment and Assumption Agreement dated as of the date hereof (the “Assignment and Assumption Agreement”) between GT USA and Enstructure, following DSPC’s consent, Enstructure will assume the rights and obligations of GT USA under the Concession Agreement as modified by the terms of this Second Amendment, and the Early Works Agreement (as defined below), and succeed GT USA as concessionaire of the Port. Effective as of the Second Amendment Commencement Date (as defined below), except as set forth herein, references to “GT USA” in the Concession Agreement are hereby deleted and replaced with “Enstructure” and references to “GT Americas” and “Gulftainer” in the Concession Agreement are hereby deleted and replaced with “Enstructure Parent”, where applicable.

b. Effective as of the Second Amendment Commencement Date, DSPC consents to the assignment of GT USA’s interest in the Concession Agreement and Enstructure’s assumption

of GT USA's rights and obligations thereunder as modified by the terms of this Second Amendment.

c. DSPC acknowledges and agrees that Enstructure is not responsible for, and has no obligation related to, any Concession Fees or any other fees, capital expenditures or other payments or reimbursements attributable to the Port and/or the Original Assets, incurred by any party, including but not limited to DSPC, prior to the date hereof.

d. DSPC acknowledges and agrees that Enstructure makes no representation and/or warranty related to (i) compliance with applicable Laws, including but not limited to any Environmental Laws, or (ii) asset maintenance or condition, in each case, with respect to the Premises and/or the Assets as of the Second Amendment Effective Date; provided that Enstructure agrees to use commercially reasonable efforts to bring the Premises and the Assets into compliance with applicable Laws within six (6) months from the Second Amendment Effective Date .

2. Amendments to the Concession Agreement. The following amendments shall be made to the Concession Agreement effective as of the Second Amendment Commencement Date:

a. Term. Section 2.2 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 2.2 **Delivery of Premises and Term**

Upon the terms and subject to the conditions set forth in this Agreement, as of the **Second Amendment** Commencement Date, as fee simple owner of the Premises, DSPC hereby demises and leases unto GT-USA **Enstructure** 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 **Enstructure** 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)~~ **approximately fifty-five (55)** years (the “Term”), commencing on the **Second Amendment** Commencement Date and ending on ~~the calendar day immediately preceding the fiftieth (50th) anniversary of the Commencement Date~~ **October 1, 2078** (the “Expiration Date”). The date of the termination of GT-USA's **Enstructure'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~~ **Enstructure** Default, other than the running of the Term, shall be known as the “Termination Date.””

b. Matters Affecting Premises. Section 2.3(e) of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 2.3 **Matters Affecting Premises**

(e) There shall be no continuing financial commitment from DSPC or the State of Delaware for operating expenses or capital expenditures for the Term of this Agreement; provided, however, that DSPC hereby agrees to apply any **intends to provide any unused funds obtained by the State of Delaware under the American Rescue Plan Act and budgeted for the reimbursement of expenses incurred by Enstructure in connection with the development of Edgemoor pursuant to that certain Agreement with Respect to the Edgemoor Project at the Port of Wilmington, Delaware, dated as of January 12, 2023, by and between DSPC and GT USA (as assigned to Enstructure) (the “Early Works Agreement”), to the extent disbursements are in accordance with the Early Works Agreement, such unused funds remain available and the State of Delaware and/or DSPC are legally permitted to use such funds in such manner.** capital provided by the State of Delaware to DSPC for DSPC’s July 1st, 2017 to June 30th, 2018 fiscal year for reimbursement of a portion of GT USA’s capital expenditures in its first year of this Agreement (“Supplemental CapEx”). DSPC shall retain control of the Supplemental CapEx and shall reimburse GT USA upon receipt of appropriate invoices and evidence of work being properly performed and properly payable from such unused capital and such other information as DSPC may reasonably request.”

c. **Edgemoor Utilization.** Section 3.1 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 3.1 **Use of Premises.** GT-USA **Enstructure** shall use the Premises only for the purposes described in this ARTICLE 3 (“Permitted Operations”), and for no other purpose whatsoever without the prior written consent of DSPC, which consent may be withheld for any reason whatsoever, or granted upon such terms and conditions as DSPC may require in its sole and absolute discretion.

(a) **Existing Port.** GT-USA **Enstructure** shall use the Existing Port as a facility for the handling, receipt, delivery, storage, loading and unloading of containers and containerized cargoes and non-containerized cargoes (including breakbulk, project cargoes, roll-on/roll-off (ro/ro) and bulk (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.~~

(b) **Edgemoor.** Prior to [REDACTED], **Enstructure may use Edgemoor as a facility for the storage of non-containerized cargoes (including breakbulk, project cargoes, roll-on/roll-off (ro/ro) and bulk (both liquid and dry)); provided that Enstructure may use Edgemoor only if Enstructure (i) accesses Edgemoor via road (i.e., not vessel to onshore or vice versa) to the extent such use is in compliance with applicable Law, including the Coastal Zone Act, 7 Del. C. §§ 7001 et seq., and (ii) has secured and retained all permits required**

under applicable Law for such use and provides written notice to DSPC of the various types of cargoes to be stored at Edgemoor (the “Interim Use”). Following the completion of the Edgemoor Development Project, Edgemoor shall be configured solely as a container handling terminal or such other use as DSPC may approve, in its sole discretion, in accordance with Exhibit 2 attached to the Second Amendment. In the event Edgemoor is used solely as a container handling terminal, Enstructure shall be permitted to accept ancillary general cargo or other cargos at Edgemoor unless otherwise prohibited under applicable Law. For any period of time after [REDACTED] Enstructure may request DSPC’s consent to use Edgemoor for an Interim Use provided such Interim Use does not interfere with DSPC’s or its designee’s potential development of Edgemoor. Consent to the Interim Use and any associated concession fees to be charged for such use shall be determined by the Chair and Vice Chair of the Board of Directors of DSPC and shall not be considered an amendment to the Concession Agreement.

(c) **Contributed Property.** Following the Contribution (as defined below) to DSPC, Enstructure may use the Contributed Property as a facility for the storage of non-containerized cargoes (including breakbulk, project cargos, roll-on/roll-off (ro/ro) and bulk (both liquid and dry)); provided that Enstructure may use the Contributed Property only if Enstructure (i) accesses the Contributed Property via road (i.e., not vessel to onshore or vice versa) to the extent such use is in compliance with applicable Law, including the Coastal Zone Act, 7 Del. C. §§ 7001 *et seq.*, and (ii) has secured and retained all permits required under applicable Law for such use and provides written notice to DSPC of the various types of cargoes to be stored at the Contributed Property.

(d) **General.** 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 **Second Amendment** 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~~ **Enstructure** shall not use the Premises as a terminal for liquefied natural gas. ~~GT USA~~ **Enstructure** 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~~ **Enstructure’s** reasonable control.”

d. **No Competition.** Section 3.3 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“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 Enstructure~~ breaches its ~~Initial Capital Expenditure Obligation~~ **the Initial Second Amendment Payment, Port 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 Enstructure~~ may from time to time request that DSPC join with ~~GT USA Enstructure~~ 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 Enstructure~~ 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 Enstructure~~ shall not be a violation of this Section 3.3(a).

(b) ~~Gulftainer Enstructure Parent~~ and its Affiliates, including ~~GT USA Enstructure~~, agree that during the Term they will not (other than in connection with ~~GT USA's Enstructure'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 **an international shipping container handling terminal** ~~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, in Baltimore, MD, or on the Delaware River,~~ 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 Gulftainer 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 Enstructure~~ 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 Enstructure~~ as contemplated by this Agreement, then this Section 3.3(b) shall terminate in all respects. For the avoidance of doubt, a breach by ~~Gulftainer Enstructure Parent~~ 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."

e. **Concession Fee**. Sections 4.3 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“Section 4.3 **Concession Fee**”

(a) Commencing on the Second Amendment Commencement Date and for each year during the Term, Enstructure agrees to pay to DSPC an annual fee of One Million Dollars (\$1,000,000), increased each year on the anniversary of date of the Second Amendment Commencement Date by the lesser of five percent (5%) or any percentage increase to the Index relative to the last year of the most-recent adjustment period (the “Concession Fee”). Enstructure shall pay the Concession Fee to DSPC on a quarterly basis within twenty (20) days after the end of each calendar quarter of the Term, and the first and last quarterly payments shall be prorated. The Concession Fee shall be attributable only to the Existing Port and not to Edgemoor. As set forth in Exhibit 2 to the Second Amendment, following the parties’ entry into definitive written agreements in connection with the Edgemoor Development Project, the parties shall negotiate in good faith to determine an appropriate concession fee for Edgemoor operations.

(b) As of January 1, 2031, the annual Concession Fee for the Existing Port shall increase as follows: the annual Concession Fee shall be equal to the product of the 2030 Revenue Factor (as hereinafter defined) multiplied by One Million Dollars (\$1,000,000). As used herein, the “2030 Revenue Factor” means the quotient of the total 2030 annual Operating Revenue divided by the total 2023 annual Operating Revenue. In the event the product would result in an annual Concession Fee equal to an amount less than One Million Five Hundred Thousand Dollars (\$1,500,000), the annual Concession Fee shall be One Million Five Hundred Thousand Dollars (\$1,500,000). In the event the product would result in an annual Concession Fee equal to an amount greater than Two Million Dollars (\$2,000,000), the annual Concession Fee shall be Two Million Dollars (\$2,000,000). To the extent the total 2030 annual revenue of Enstructure is unavailable prior to January 1, 2031, the annual Concession Fee as of January 1, 2031 shall equal the 2030 Concession Fee, and any such adjustment required as a result of the reset mechanisms described in this subsection shall apply retroactively to January 1, 2031 once the total 2030 annual revenue for Enstructure is determined and such 2031 Concession Fee adjustment, if any, is determined. For the avoidance of doubt, although the Concession Fee reset described in this Section 4.3(b) is a one-time reset, the annual Concession Fee in the years subsequent to 2031 shall increase each year by the lesser of five percent (5%) or any percentage increase to the Index relative to the last year of the most-recent adjustment period.

f. **Capital Expenditures and Edgemoor Development.** Section 4.9 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“Section 4.9 **Committed Minimum Capital Expenditures and Edgemoor Development**”

(a) *Initial Capital Contribution.* Enstructure agrees to make a one-time, non-refundable payment of Twenty-One Million and Five Hundred Thousand Dollars (\$21,500,000) to DSPC on the Second Amendment Commencement Date for the benefit of the Existing Port or the Edgemoor project, the utilization and allocation of which will be determined by DSPC in its sole discretion (the “Initial Second Amendment Payment”). The Initial Second

Amendment Payment is in addition to and not part of the Total Capital Expenditure Obligation (as defined below).

(b) *Existing Port – Capital Contribution.*

(i) Enstructure agrees to contribute to the Existing Port (A) a minimum aggregate amount of Forty-Five Million Dollars (\$45,000,000) by December 31, 2032 (“Port Initial Capital Expenditure Obligation”) and (B) an amount, inclusive of the Port Initial Capital Expenditure Obligation, not less than Eighty-Seven Million Dollars (\$87,000,000) prior to the Expiration Date (clause (b)(i)(B) is referred to as the “Total Capital Expenditure Obligation”). Enstructure may satisfy the Port Initial Capital Expenditure Obligation and the Total Capital Expenditure Obligation either directly or indirectly, including through (x) the use, application and/or contribution of grant funding received by Enstructure (but excluding governmental grant funding received by Enstructure) or (y) investments or contributions made by customers or sublessees of Enstructure; provided that (1) (A) any improvements funded by such investments or contributions are affixed to the Premises or (B) Enstructure retains title to any such improvements and (2) Enstructure provides documentation to DSPC from such customers or sublessees sufficient for DSPC to audit such investments or contributions. In all events, Enstructure will receive “credit” toward the Port Initial Capital Expenditure Obligation and the Total Capital Expenditure Obligation only for capital expenditures that are not financed by the sale or pledge of Assets existing at the Port as of the Second Amendment Commencement Date. The Total Capital Expenditure Obligation is in addition to the amounts contributed prior to the Second Amendment Effective Date.

(ii) Exhibit 5 attached to the Second Amendment sets forth an illustrative capital expenditure schedule of the Port Initial Capital Expenditure Obligation to be invested with the period ending on December 31, 2032. The Parties agree that Enstructure may shift expenditures among contract years and to different investment categories provided Enstructure invests at least Forty-Five Million Dollars (\$45,000,000) in the Existing Port by December 31, 2032.

(c) *Edgemoor - Contributed Property.* DSPC shall have the right to enter into and perform due diligence upon Tax Parcel Nos 06-156.00-003 (~20.86 acres) and 26-039.00-004 (~4.52 acres) as shown on Exhibit 3 to the Second Amendment and described on Exhibit 4 to the Second Amendment (together, the “Contributed Property”). Further, DSPC may provide Enstructure Parent with written direction to cause its wholly-owned subsidiary, Port Ventures, LLC, a Delaware limited liability company (“Port Ventures”), to transfer fee simple title in the Contributed Property to DSPC (the “Contribution”). Upon receipt by Enstructure Parent of such written direction, DSPC and Port Ventures shall promptly close upon the Contributed Property, and such Contributed Property will, upon closing, be included within the definition of “Premises” and treated similar to the Existing Port except with respect to environmental provisions. Following the Contribution, DSPC shall be responsible for Existing Conditions at the Contributed Property. Enstructure is responsible for any environmental conditions (including Hazardous Materials Contamination) arising at the Contributed Property after the

transfer of such Contributed Property to DSPC. The Contributed Property is a material part of the consideration provided by Enstructure to DSPC pursuant to this Agreement. If DSPC has exercised its right to cause the contribution of the Contributed Property, Enstructure may sublease the Contributed Property in accordance with the requirements of Section 5.1(b).

(d) *Development of Edgemoor.* DSPC and Enstructure acknowledge and agree that it is their mutual intent to develop, or facilitate the development of, Edgemoor into a commercial marine terminal facility, with a preference for a container handling terminal facility (the “Edgemoor Development Project”). DSPC’s and Enstructure’s mutual understandings pertaining to the Edgemoor Development Project are set forth on Exhibit 2 to the Second Amendment.



g. **Assignment of Concession Agreement.** Section 5.1(a) of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 5.1 **No Assignment without DSPC Consent**

(a) This Agreement is personal to ~~GT-USA~~ **Enstructure.** ~~GT-USA~~ **Enstructure** 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, **except in the case of an Assignment pursuant to a Change of Control, in which case such consent(s) shall not be unreasonably withheld, conditioned or delayed.**

h. **Organizational Structure.** Section 5.4 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“Section 5.4 **Organizational Structure**

(a) Enstructure hereby represents and warrants that, as of the date of the Second Amendment, Enstructure Parent indirectly owns one hundred percent (100%) of the limited liability company interests in Enstructure. Enstructure shall maintain the day-to-day operational control of the Premises and Assets.

(b) Enstructure shall hold, in Delaware, regular management meetings with DSPC and the International Longshoremen’s Association, including quarterly transparency meetings, which meetings shall be attended by (i) at least one member of Enstructure’s executive leadership team or Board of Directors, (ii) Enstructure’s Port of Wilmington and Edgemoor Chief Operating Officer and (iii)

at least one member of Enstructure's local management team. Enstructure shall provide a financial summary to DSPC at least five (5) business days in advance of each transparency meeting and annual audited financial statements within thirty (30) days of the completion of such statements."

i. **DSPC Oversight and Consent Rights**. Section 5.5 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language in Section 5.5(b) and to add a new Section 5.5(c):

"Section 5.5 **DSPC Oversight and Consent Rights**

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

- (i) change its business strategy;
- (ii) pledge or otherwise encumber any of the Original Assets;
- (iii) lease all or substantially all of the Premises or Assets;
- (iv) construct Leasehold Improvements in excess of ~~Five Million Dollars (\$5,000,000)~~ **Ten Million Dollars (\$10,000,000)** as provided in Section 6.4; **provided that this amount shall increase by Five Million Dollars (\$5,000,000) every ten (10) years following the Second Amendment Commencement Date**;
- (v) construct any Leasehold Improvement which would cause DSPC to incur liability for Existing Conditions;
- (vi) sell any Original Assets in one or a series of related transaction for greater than Five Million Dollars (\$5,000,000-00);
- (vii) ~~make any material modifications, including removing, destroying or taking down, any buildings or other structures existing at the Existing Port as of the Commencement Date~~ **intentionally omitted**;
- (viii) rename the Existing Port or name Edgemoor;
- (ix) ~~make any material capital related and/or funding decision~~ **intentionally omitted**;
- (x) enter into any new material contracts that would by their terms extend beyond the Term; and

(xi) ~~make any decisions related to dredging management at the Port~~ **intentionally omitted.**

(c) Prior to taking any of the following actions, Enstructure shall provide DSPC prior written notice:

(i) sell any Assets (other than the Original Assets) in one or a series of related transaction for greater than Five Million Dollars (\$5,000,000);

(ii) make any material capital related and/or funding decision involving the expenditure or commitment of greater than Five Million Dollars (\$5,000,000); and

(iii) make any material non-ordinary course decisions related to dredging management at the Port.”

j. **Alterations/Improvements/Maintenance.** Sections 6.4(a) and 6.4(b)(i) of the Concession Agreement are hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 6.4 **Alterations/Improvements/Maintenance.**

(a) ~~GT—USA~~ **Enstructure** shall make no Leasehold Improvement costing in excess of ~~Five Million Dollars (\$5,000,000)~~ **Ten Million Dollars (\$10,000,000) (such amount to increase by Five Million Dollars (\$5,000,000) every ten (10) years commencing on the Second Amendment Commencement Date)** 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~~ **Enstructure**, such alterations, improvements or fixtures shall, upon request of DSPC, be removed promptly by ~~GT—USA~~ **Enstructure** 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.”

k. **DSPC Access and Inspection.** Section 6.5(a) of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 6.5 **DSPC Access and Inspection**

(a) If at any time DSPC reasonably suspects a failure of GT USA **Enstructure** 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 **Enstructure** of any necessary maintenance or repair shall not relieve GT USA **Enstructure** 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.”

l. **Dredging**. Section 6.6 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language in Section 6.6(c) and to add a new Section 6.6(e):

“Section 6.6 **Dredging**

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

(e) Repayment for Use of DSPC’s Dredging “Credits”. If DSPC is able to obtain “credit” for any of its capital contributions made in connection with the Edgemoor dredging project from the United States Army Corps of Engineers and such credits are used for dredging at the Existing Port, Enstructure shall pay to DSPC, as Additional Fees, the fair market value of any credits used by Enstructure at the Existing Port.”

m. **Fumigation**. Section 6.7 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 6.7 **Fumigation**

GT-USA **Enstructure is not obligated to provide** shall have sole responsibility for the provision of fumigation services by GT-USA or a third party at the Premises **and may determine in its sole discretion whether, where, and when to offer fumigation services.** All **In the event Enstructure determines to provide fumigation services,** such fumigation services shall be provided in compliance with all Environmental Laws or as may be requested or required by the USEPA, DNREC, the USDA or any other Governmental Authority. Without limiting DSPC’s rights to indemnification as provided in Article 15 of this Agreement, GT-USA **Enstructure** hereby agrees to indemnify and hold DSPC harmless with respect to any claims or costs incurred by DSPC that are caused by the provision of fumigation services at the Premises. After the Commencement Date, GT-USA **Enstructure** shall be responsible for any construction, modification, restriction or other expenditure required in order to obtain all required permits for fumigation services at the Port.”

n. **Enstructure Default.** Section 10.1 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 10.1 **GT-USA Enstructure Default**

The occurrence of any of the following shall constitute a default by GT-USA **Enstructure** (“GT-USA **Enstructure** Default”):

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

(b) **Failure to Invest.** Failure to invest the **Port** Initial Capital Expenditure Obligation and/or Initial **Second Amendment Payment** ~~Warehouse Capital Obligation and/or failure to invest the Total Capital Expenditure Obligation and/or Minimum Warehouse Capital Obligation~~;

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

Failure of Minimum Revenue Guarantee. Failure to achieve the Minimum Annual Revenue Guarantee for any three (3) consecutive year period, unless any such failure is attributable to customer displacement or relocation in connection with the Edgemoor Development Project. In the event Enstructure is unable to reach the Minimum Annual Revenue Guarantee for any three (3) consecutive calendar years, such failure to achieve the Minimum Annual Revenue Guarantee will trigger a negotiation between DSPC and Enstructure with regard to any required mitigation or, if

agreement between the Parties is not reached, will result in a Enstructure Default under this Agreement as set forth in this Section 10.1(c);

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

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

(f) Insolvency. ~~Any of GulfTainer, GT Americas, GT USA or OpCo~~ **Any of Enstructure Parent, Enstructure Parent's subsidiaries that directly or indirectly own Enstructure, or Enstructure** becomes Insolvent;

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

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

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

(j) Assignment. Any Assignment made by ~~GT USA~~ **Enstructure** in violation of the terms and conditions of ARTICLE 5 of this Agreement, to the extent that such violation is 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~~ **Enstructure** 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)~~ **Enstructure Parent, Enstructure** or any ~~GT USA~~ **Enstructure** Affiliate ~~or OpCo~~ Affiliate of any other representation, warranty, covenant, condition or other term of this Agreement."

o. **DSPC Remedies Upon Enstructure Default**. Section 10.2(f) of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete

the following struck-through language:

“Section 10.2 **DSPC Remedies Upon GT-USA Enstructure Default**

(f) Oversight. DSPC may increase oversight authority and implement consent rights to any actions by ~~the GT-USA Board of Director~~ **Enstructure**, in the sole discretion of DSPC.”

p. **Insurance**.

i. Section 13.1 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 13.1 **Types and Amounts**

(b) Pollution Liability. Pollution liability insurance covering GT-USA’s ~~Enstructure’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 **Enstructure**. The combined single limit per occurrence shall not be less than **Thirty-Five Million Dollars (\$5035,000,000)**.

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

(f) Assets. “All risk” coverage including Collapse or Upset, Earthquake and Flood Insurance **to the extent commercially available**, 100% Replacement Cost **(or agreed value)** Valuation Insurance, Loss of Use and Extra Expense for the Assets.

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

(k) Business Interruption Insurance. Business interruption insurance on an “all risk” or special form basis, which names DSPC as “loss payee” with a minimum liability coverage of ~~five~~ **Fifteen Million Dollars (\$15,000,000)** ~~times the Minimum Annual Concession Fee payable to or for the benefit of DSPC under this Agreement;~~ **provided such amount will be adjusted on the first day of the calendar quarter immediately following the tenth (10th) anniversary of the Second Amendment Commencement Date and every five (5) years thereafter in proportion to any increase or decrease in the Index relative to the last year of the last adjustment period (or, with respect to the first adjustment, since the Second Amendment Commencement Date).**”

ii. Section 13.4 of the Concession Agreement is hereby amended to delete the following struck-through language:

“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 Enstructure~~ agrees that for any such deductible or self-insured retention amount, ~~GT-USA Enstructure~~ 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 Enstructure~~ 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 gross negligence or other wrongful conduct~~ **willful misconduct** of DSPC.”

iii. Section 13.6 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 13.6 **Evidence, Renewal, Acceptance and Valuation**

~~GT-USA Enstructure~~ shall deliver, prior to the Second 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 Enstructure~~ shall provide to DSPC at least thirty (30) days prior to the expiration of any such policy **(or as soon as available, if endorsement not available thirty (30) days prior to expiration)** 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 Enstructure~~ shall promptly provide to DSPC a full, true and complete copy of each policy and amendments required to be maintained hereunder. Further, ~~GT-USA Enstructure~~ 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.”

q. **Guaranty**. Section 14.1 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 14.1 **Guaranty**

In consideration of DSPC's consent to enter into this Agreement, irrespective of the ownership of ~~GT-USA~~ **Enstructure**, at all times during the Term, ~~GT-USA~~ **Enstructure**, or if ~~GT-USA~~ **Enstructure** 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~~ **Enstructure Parent**, shall guarantee performance (including financial and non-financial obligations) of ~~GT-USA's~~ **Enstructure'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 **to the Second Amendment as Exhibit 6** ~~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 ~~Five~~ **Fifteen** Million Dollars (\$15,000,000), (ii) have a term of two (2) years until ~~GT-USA~~ **Enstructure** provides evidence reasonably satisfactory to DSPC that ~~GT-USA~~ **Enstructure** has invested at least ~~One Hundred Fifty~~ **Eighty-Seven** Million Dollars (\$15,087,000,000) 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~~ **Enstructure Parent**. 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~~ **Enstructure** under this Agreement and to satisfy them as they become absolute and due; provided that DSPC shall account to ~~GT-USA~~ **Enstructure** for any proceeds that are not so used. ~~GT-USA, GT-Americas or the ultimate parent of any other Equity Participants in GT-USA~~ **Enstructure Parent**, as applicant under the Letter of Credit, hereby agrees to waive any challenge to a draw made by DSPC against the Letter of Credit based on a ~~GT-USA~~ **Enstructure** 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~~ **Enstructure's** ability to dispute with DSPC whether a ~~GT-USA~~ **Enstructure** 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. **Notwithstanding any provision in this ARTICLE 14 to the contrary, Enstructure shall deliver the Letter of Credit within fifteen (15) days after the Second Amendment Commencement Date.**

In addition to the Letter of Credit, Enstructure Parent shall guaranty Enstructure's obligations pursuant to a parent guaranty in the form attached to the Second Amendment as Exhibit 7 (the "Parent Guaranty").

r. **Indemnity**. Section 15.5 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 15.5 **Survival**

“The obligations and responsibilities of GT-USA **Enstructure** set forth in this ARTICLE 15 shall survive the Expiration Date or Termination Date, as applicable. **For clarity, the obligations of the Parties under this ARTICLE 15 shall not apply to periods prior to the Second Amendment Commencement Date; provided, however, that the foregoing shall not limit the obligations of the Parties under Section 6.7 or ARTICLE 16.**”

s. **Environmental Conditions**. Section 16.2 of the Concession Agreement is hereby deleted in its entirety and replaced with the following:

“Section 16.2 **Existing Conditions and Monitoring Costs**

(a) Except as otherwise provided in this Agreement, DSPC shall be liable for any Existing Condition at the Premises. For the purposes of this Agreement, “Existing Condition” means (i) all environmental conditions (including Hazardous Materials Contamination) existing at the Existing Port as of the Commencement Date, other than relating to the Pigeon Point Property, (ii) all environmental conditions (including Hazardous Materials Contamination) existing at Edgemoor until Enstructure begins operating at Edgemoor, and (iii) all environmental conditions (including Hazardous Materials Contamination) existing at the Contributed Property as of the date of Contribution.

(b) Notwithstanding subsection (a) above, Enstructure shall be liable for (i) all environmental conditions (including Hazardous Materials Contamination) arising at the Existing Port after the Commencement Date, other than relating to the Pigeon Point Property, (ii) all environmental conditions (including Hazardous Materials Contamination) arising at Edgemoor after Enstructure begins operating at Edgemoor, and (iii) all environmental conditions (including Hazardous Materials Contamination) arising at the Contributed Property after the date of Contribution.

(c) Notwithstanding subsection (a) above, Enstructure shall assume any environmental related monitoring costs and obligations, whether now or hereafter arising, for all environmental conditions at the Premises (*i.e.*, Existing Port, Edgemoor and Contributed Property).

(d) The Parties agree that in the event that Enstructure plans to disturb any portion of the Premises that could result in a material increase in development costs or other liability or mitigation obligation arising from an Existing Condition, Enstructure agrees to coordinate with DSPC, prior to any such disturbance, to provide DSPC a reasonable opportunity to review and provide comments to the development plan to attempt to mitigate environmental, operational and financial costs to all Parties to the greatest extent possible. DSPC shall in any event have ten (10) business days from receipt of Enstructure's development plan to provide comments and to approve such plan, and DSPC shall not unreasonably withhold its consent to such plans. If Enstructure has not provided its development plans with DSPC for an improvement or change which

could trigger any material liability or mitigation obligation relating to an Existing Condition, Enstructure shall be responsible for any increased costs, including remediation and mitigation expenses, for or related to correction or abatement of any Existing Condition in connection with specific activity.”

t. **Liability and Indemnification for Certain Environmental Matters.** Sections 16.5(a) through (f) of the Concession Agreement are hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 16.5 **Liability and Indemnification for Certain Environmental Matters**

(a) ~~GT-USA~~ **Enstructure** 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~~ **Enstructure** 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~~ **Enstructure** Contamination, **in accordance with Environmental Laws.**

(c) ~~GT-USA~~ **Enstructure** accepts responsibility for all environmental liabilities arising from any ~~GT-USA~~ **Enstructure** 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~~ **and for the exacerbation of Existing Conditions in accordance with Section 16.2(d).**

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

(e) ~~GT-USA~~ **Enstructure** 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~~ **Enstructure** Contamination or (ii) any violation of Environmental Laws on, from, or affecting the Premises or committed by ~~GT-USA~~ **Enstructure** Responsible Persons on or affecting the Port.

(f) DSPC shall defend, indemnify, and hold harmless ~~GT-USA~~ **Enstructure** 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, **except as set forth in Section 16.2(d).**"

u. **Leasehold Mortgages.**

i. Section 18.3 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

"Section 18.3 **Enstructure's Right to Mortgage**

GT-USA **Enstructure** 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 **(including under Article 9 of the Uniform Commercial Code of the State of Delaware or the corresponding Article or sections under the Uniform Commercial Code of any other jurisdiction)** its right, title or interest in the Premises, the membership interests in GT-USA **Enstructure**, this Agreement, and/or the Leasehold Improvements to any leasehold mortgagee **or secured party** ("Leasehold Mortgagee") as security for the repayment of any indebtedness incurred by GT-USA **Enstructure**, 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, **whether affiliated or** unaffiliated with GT-USA **Enstructure** or its Affiliates, that from time to time provides ~~arms-length~~ secured financing to GT-USA **Enstructure** 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 **Enstructure** 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 **Enstructure** in the effort to obtain financing from a Leasehold Mortgagee by GT-USA **Enstructure**, provided that DSPC incurs no expense or liability."

ii. Section 18.4 of the Concession Agreement is hereby amended to add the following bolded and underlined language:

"Section 18.4 **Notice to DSPC**

If GT-USA **Enstructure** 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 **Enstructure** 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, **the Secretary of State of the State of**

Delaware or any other applicable filing or recording office in any other jurisdiction where financing statements or other filings are required for recording or perfecting a lien on the Premises, the membership interests in Enstructure, this Agreement, and/or the Leasehold Improvements.”

iii. Sections 18.5(a) and 18.5(e) of the Concession Agreement are hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“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) **to exercise and enforce all of its rights and remedies under its Mortgage and applicable Law (including the Uniform Commercial Code)**; (iii) acquire ~~GT-USA’s~~ **Enstructure’s** rights to this Agreement; (iv) take possession of and operate the Leasehold Improvements or the operations of ~~GT-USA~~ **Enstructure** 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~~ **Enstructure** 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~~ **Enstructure’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~~ **Enstructure’s** proper successor, and absent a default by such Leasehold Mortgagee or third party, this Agreement shall remain in full force and effect. **A Leasehold Mortgagee, its designee or assignee, or other purchaser in foreclosure proceedings or any other proceedings, disposition or transaction permitted under other applicable Law (including the Uniform Commercial Code), may become the legal owner and holder of Enstructure’s interest in and under this Agreement and a Change of Control (requiring DSPC’s consent) may occur through the exercise of all of its rights and remedies under any Mortgage, including pursuant to a scire facias sur mortgage action under Delaware law, by assignment of this Agreement in lieu of foreclosure, a public or private sale or strict foreclosure under the Uniform Commercial Code.**

(e) A Leasehold Mortgagee that does not directly hold an interest in the Leasehold Estate, or that holds a Mortgage, shall not have any obligation under this Agreement prior to the time that such Leasehold Mortgagee obtains title to the Leasehold Estate. Further, in the event that a Leasehold Mortgagee elects to (i) perform ~~GT-USA’s~~ **Enstructure’s** obligations under this Agreement, (ii) continue ~~GT-USA’s~~ **Enstructure’s** operations under this Agreement, or (iii) acquire any portion of ~~GT-USA’s~~ **Enstructure’s** right, title or interest in the Premises or under this Agreement, then such Leasehold Mortgagee shall not have any personal liability to DSPC in connection therewith, and DSPC’s sole recourse in the event of default by such Leasehold Mortgagee shall be to

execute against such Leasehold Mortgagee's interest in the Leasehold Estate and the Leasehold Improvements. Moreover, any Leasehold Mortgagee or other party who acquires the Leasehold Estate pursuant to foreclosure or an assignment in lieu of foreclosure **or other process authorized by applicable Law (including the Uniform Commercial Code)** shall not be liable to perform any obligations hereunder to the extent the same are incurred or accrue after such Leasehold Mortgagee or other party no longer has ownership of such Leasehold Estate."

iv. Section 18.5 of the Concession Agreement is hereby amended to add the following new Section 18.5(i):

"(i) There shall be no merger of the leasehold estate created by this Agreement with the fee estate in the Premises by reason of the fact that the same person may own or hold (i) the leasehold estate created by this Agreement or any interest in such leasehold estate, and (ii) any interest in such fee estate; and no such merger shall occur unless and until all persons having any interest in the leasehold estate created by this Agreement and the fee estate in the Premises shall join in and record a written instrument effecting such merger."

v. **Union Employees**. Section 20.1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following new Section 20.1:

"Section 20.1 **Union Employees and Project Labor Agreements**.

(a) Enstructure shall offer employment to all active employees of GT USA who are represented by unions affiliated with the ILA and International Brotherhood of Teamsters ("Unions") to take effect upon the Second Amendment Commencement Date ("Union Employees"). Employees who as of the Second Amendment Concession Date are on a leave of absence with GT USA, shall be considered Union Employees and offered employment subject to and upon presenting as available to work for Enstructure within six (6) months of the Second Amendment Concession Date.





(d) Enstructure hereby covenants and agrees that it shall cause its general contractor to negotiate and enter into project labor agreements (“PLAs”) on covered construction projects (“Covered Projects”). For the purposes of this subsection, PLAs are pre-hire collective bargaining agreements permitted by 29 U.S.C. Section 8(f). The PLAs shall require the general contractor, contractors and subcontractors at any tier who perform construction work on Covered Projects to be bound by the terms of the PLAs with applicable trade unions. The PLAs shall require the use of qualified union labor, govern hours of work, terms and conditions applicable to employees, and shall contain other reasonable, customary and lawful terms to ensure the orderly and timely completion of Covered Projects, including prohibitions on strikes, lockouts and disruptive activity for any reason, procedures for the orderly resolution of disputes, including disputes over trade jurisdiction. Enstructure agrees that its commitment to require the use of PLAs applies to any capital improvement project involving the construction of facilities at any of the Premises, including the development of Edgemoor. To the extent an existing project labor agreement is in place prior to the Second Amendment Commencement Date with GT USA, Enstructure agrees to cause its general contractor to become bound a Project Labor Agreement providing similar terms.

w. **Notices.** Section 21.2 of the Concession Agreement is hereby deleted in its entirety and replaced with the following new Section 21.2:

“Section 21.2 **Notices**

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

(i) If to DSPC:

Department of State
Attn: Secretary of State
820 N. French Street
10th Floor
Wilmington, DE 19801

with copies to:

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

Barnes and Thornburg LLP
c/o Diamond State Port Corporation
222 Delaware Ave
Suite 1200
Wilmington, DE 19801

(ii) If to Enstructure:

c/o Enstructure LLC
16 Laurel Avenue
Suite 300
Wellesley, MA 02481
Attention: Enstructure Legal Department
Email: Legal@enstructure.com

(iii) If to Enstructure Parent:

c/o Enstructure LLC
16 Laurel Avenue
Suite 300
Wellesley, MA 02481
Attention: Enstructure Legal Department
Email: Legal@enstructure.com

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

(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.”

x. **Audit Rights**. Sections 21.3 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 21.3 **Audit Rights**

(a) ~~GT-USA~~ **Enstructure** shall maintain complete and accurate records sufficient to permit DSPC to audit accurately the cargo levels, ~~including Minimum Volume, Port 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~~ **Enstructure**. If it is ultimately determined that ~~GT-USA's~~ **Enstructure's** representation to DSPC regarding ~~cargo volume, capital expenditures or Concession Fees~~ is in error by at least three (3%) percent, then ~~GT-USA~~ **Enstructure** shall pay the out-of-pocket audit fees incurred by DSPC for its inspection and audit of ~~GT-USA's~~ **Enstructure's** records.

(b) **Thirty (30) days following completion but no later than one hundred and fifty (150) days after the end of each fiscal year, Enstructure shall provide to DSPC its audited financial statements including a balance sheet as of the end of such fiscal year and related statements of operations for such fiscal year, together with an unqualified opinion of a firm of nationally-recognized independent certified public accountants, based on an audit using generally accepted auditing standards, that such financial statements were prepared in accordance with GAAP and present fairly, in all material respects, Enstructure's financial condition and results of operations.**

y. **Rule Against Perpetuities.** Section 21 of the Concession Agreement is hereby amended by adding the following new Section 21.31:

“Section 21.31 **Rule Against Perpetuities.** If any of the options, privileges, covenants or rights created by this Agreement shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the descendants of Joseph R. Biden, Jr. the President of the United States on the date hereof, who are living on the date hereof.”

z. **Port of Wilmington Trademarks.** Section 21 of the Concession Agreement is hereby amended by adding the following new Section 21.32:

“Section 21.32 **Port of Wilmington Trademarks.** Effective as of the Second Amendment Commencement Date, DSPC agrees to provide Enstructure a royalty free license to use to Enstructure all of its rights, title and interest in and to the “Port of Wilmington Delaware” service mark registered on October 18, 2016 at registration number 5,062,620, to the extent DSPC has an ownership in such property.”

aa. **Defined Terms.** Section 22.1 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“120% Threshold” has the meaning specified in Section 16.2(b).

“2030 Revenue Factor” has the meaning specified in Section 4.3(b).

“Affiliate” means, with respect to ~~GT USA~~ **Enstructure**, an entity that directly or indirectly controls, is controlled by, or is under common control with ~~GT USA~~ **Enstructure**, ~~whether through share ownership, a trust, a contract or otherwise of an Equity Participant.~~

“Agreement” ~~has the meaning specified in the Preamble~~ **means this Concession Agreement between DSPC and Enstructure, as successor-in-interest to GT USA, as amended from time to time.**

“APA” **means that certain Stock and Asset Purchase Agreement dated as of July 28, 2023 by and among GT USA, GT Americas and Enstructure.**

~~_____~~

“Assignment and Assumption Agreement” **means that certain Assignment and Assumption Agreement dated as of July 28, 2023 between GT USA and Enstructure.**

“Change of Control” means, with respect to ~~GT USA~~ **Enstructure**, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, any of:

(i) **if at any time** ~~_____~~
~~_____~~ **cease to collectively control a majority of the voting power of Enstructure or Enstructure Parent then at any time thereafter the occurrence of the following would be a Change of Control:** a change in ownership as compared to the ownership as of the ~~Execution Date of this Agreement~~ **Second Amendment Effective Date**, so that 50% or more of the direct or indirect voting or economic interests in ~~GT USA~~ **Enstructure** are transferred to another entity or group of entities acting in concert;

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

(iii) ~~the merger, consolidation, amalgamation or business combination of GT USA, in circumstances where GT USA is not the surviving corporation, or sale of substantially all of the assets of such entity.~~ **Enstructure or Enstructure ceasing to be an indirect wholly owned subsidiary of Enstructure Parent (or its successor entity, if applicable).**

~~For purposes of this definition of “Change of Control”, “indirect” includes any Change of Control of GT Americas~~

“Concession Fee” has the meaning specified in Section 4.3(e)(a).

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

“Contributed Property” has the meaning specified in Section 4.9(c).

“Contribution” has the meaning specified in Section 4.9(c).

~~_____~~
“Covered Projects” has the meaning specified in Section 20.1(d).

~~_____~~
“DSPC Commencement Conditions” has the meaning specified in APPENDIX 2(b) **Exhibit 1(b) of the Second Amendment**.

“Early Works Agreement” has the meaning specified in Section 2.3(e).

“Edgemoor Development Project” has the meaning specified in Section 4.9(d).

“Edgemoor Recission” has the meaning specified in Exhibit 2(c)(ii).

“Enstructure” means **Enstructure Wilmington Holdings LLC, a Delaware limited liability company.**

“Enstructure Commencement Conditions” has the meaning specified in Exhibit 2(a) to the Second Amendment.

“Enstructure Parent” means **Enstructure LLC, a Delaware limited liability company.**

“Enstructure Responsible Persons” means **Enstructure or its officers, agents, representatives or employees, contractors, subcontractors, lessees or sublessees, customers, invitees or licensees or any of their employees, contractors or agents.**

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

“First Amendment” means that certain Amendment to Concession Agreement dated as of December 31, 2019 between DSPC and GT USA.

[REDACTED]

~~“Initial Capital Expenditure Obligation” has the meaning specified in Section 4.9(c).~~

“Initial Concession Agreement” means that certain Concession Agreement dated as of September 18, 2018 between DSPC and GT USA.

~~“Initial Payment” has the meaning specified in Section 4.1.~~

“Initial Second Amendment Payment” has the meaning specified in Section 4.9(a).

~~“Initial Warehouse Capital Expenditure” has the meaning specified in Section 4.9(d).~~

“Interim Use” has the meaning specified in Section 3.1(b).

~~“Minimum Annual Concession Fee” has the meaning specified in Section 4.4.~~

“Minimum Annual Revenue Guarantee” means [REDACTED] of annual Operating Revenues excluding intercompany transfers (other than revenue derived from Permitted Operations performed for [REDACTED]).

~~“Minimum Annual Volume Guarantee” has the meaning specified in Section 4.5(a).~~

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

~~“Minimum Volume” has the meaning specified in Section 4.5(a).~~

~~“Minimum Warehouse Capital Obligation” has the meaning specified in Section 4.9(d).~~

~~“Mutual Environmental Review” has the meaning specified in Section 16.2.~~

“New Edgemoor Concession” has the meaning specified in Exhibit 2(b) to the Second Amendment.

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

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

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

“Parent Guaranty” has the meaning specified in Section 14.1.

[REDACTED]

“Phase 1 Developer” has the meaning specified in Exhibit 2(b) to the Second Amendment.

“Phase 1 Development Plan” has the meaning specified in Exhibit 2(b) to the Second Amendment.

[REDACTED]

[REDACTED]

“PLAs” has the meaning specified in Section 20.1(d).

“Port Initial Capital Expenditure Obligation” has the meaning specified in Section 4.9(b)(i).

“Port Ventures” has the meaning specified in Section 4.9(c).

“Second Amendment” means that certain Second Amendment to Concession Agreement dated as of July 28, 2023 between DSPC and Enstructure.

“Second Amendment Commencement” means the close of the transactions contemplated by the Second Amendment on the Second Amendment Commencement Date.

“Second Amendment Commencement Date” means the date on which the transactions contemplated by the Second Amendment close which shall be up to five (5) Business Days following the date on which the last unfulfilled and unwaived condition to be satisfied prior to the Second Amendment Commencement as set forth in Exhibit 1 to the Second Amendment shall be fulfilled or waived in accordance with the terms of this Agreement, as modified from time to time.

“Second Amendment Effective Date” means July 28, 2023.

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

“Total Capital Expenditure Obligation” has the meaning specified in Section 4.9(a)(b)(i).

“Third-Party Developer” has the meaning specified in Exhibit 2(c) to the Second Amendment.

“Transaction Documents” has the meaning specified in APPENDIX 2(g)(ii) Exhibit 1(d)(ii).

“Union Employees” has the meaning specified in Section 20.1(a).

“Unions” has the meaning specified in Section 20.1(a).

“Volume Schedule” has the meaning specified in Section 4.5(a).

bb. Concession Agreement Deletions. The following sections of the Concession Agreement are hereby deleted: 1.2(b), 2.3(c), 2.6(c)-(d), 2.10, 3.1(b), 4.1, 4.2, 4.4, 4.5, 4.10, the last sentence of 6.2, 11.3, 13.1(a)(viii), 13.1(n), 16.8, 20.2, 21.7, Appendix 2-1, Appendix 2-2, Appendix 2-3, Appendix 2-4, Appendix 2-5, Appendix 3, Appendix 8, Appendix 11, Appendix 12, Appendix 13, Appendix 14, Appendix 15, Appendix 16, Appendix 17.

cc. Second Amendment Commencement Date Changes. In addition to any changes referenced herein, references to the “Commencement Date” in the following sections and definitions are hereby changed to mean the “Second Amendment Commencement Date”: 3.4(a), 11.2(a), 13.6, 13.10, 21.28, and “Material Damage or Destruction”.

dd. References to GT USA. Notwithstanding anything to the contrary herein, references in Sections 2.3(e) (as revised) and 2.7 and the first sentence of Section 2.10 of the Concession Agreement to “GT USA” will remain as references to “GT USA”.

3. Conditions to Second Amendment Commencement. Each party agrees that its obligation to proceed with the Second Amendment Commencement shall be conditioned on, in the case of Enstructure, the waiver by Enstructure or satisfaction of each of the conditions set forth

in Exhibit 1(a) hereto and, in the case of DSPC, the waiver by DSPC or satisfaction of each of the conditions set forth in Exhibit 1(b) hereto.

4. Recordation of Agreement; Amendment to Memorandum of Lease. An Amendment to Memorandum of Lease in the form of Exhibit 8 hereto shall be executed by the parties hereto concurrently herewith and Enstructure or DSPC may record the same in the Office of the Recorder of Deeds in and for New Castle County, Delaware.

5. Conformed Concession Agreement. For the convenience of the parties hereto, the parties shall agree to a conformed version of the Concession Agreement incorporating the amendments set forth herein and in the First Amendment. Upon such agreement, the conformed copy shall be deemed automatically attached to this Second Amendment as Exhibit 9 hereto. In the event of a conflict between the terms of the conformed version and those of the Concession Agreement as amended by the First Amendment and the Second Amendment, the terms of the Concession Agreement as amended by the First Amendment and the Second Amendment shall control.

6. Miscellaneous.

(a) The Recitals on the first page hereof are an integral part of this Second Amendment, are true and correct, and are incorporated herein by reference as if fully set forth in this Section 6. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Concession Agreement as amended by this Second Amendment.

(b) This Second Amendment may not be modified, altered or amended except by a subsequent written instrument executed by DSPC and Enstructure. Except as expressly set forth herein, all terms and conditions set forth in the Concession Agreement remain in full force and effect.

(c) This Second Amendment shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns for the faithful performance of the covenants and conditions contained herein.

(d) Each of the parties hereto represents and warrants that he or she is duly authorized to execute and deliver this Second Amendment.

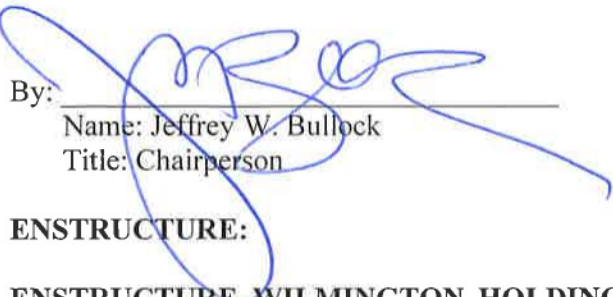
(e) If any term, covenant or condition of this Second Amendment or its application to any person or circumstances shall be invalid or unenforceable, the remainder of this Second Amendment, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected, and each term shall be valid and enforceable to the fullest extent permitted by law.

[Signature page follows]

IN WITNESS WHEREOF, the parties set forth below have caused this Second Amendment to be executed as of the day and year first above written.

DSPC:

DIAMOND STATE PORT CORPORATION

By: 

Name: Jeffrey W. Bullock

Title: Chairperson

ENSTRUCTURE:

**ENSTRUCTURE WILMINGTON HOLDINGS
LLC, a Delaware limited liability company**

By: _____

Name:

Title:

For purposes of Sections 3.3, 3.6, 4.9(c), 5.4(a), 10.1,
14.1, 19.2(b), 20.1, 21.2 and 21.4 of the Concession
Agreement

ENSTRUCTURE PARENT:

ENSTRUCTURE LLC

By: _____

Name:

Title:

IN WITNESS WHEREOF, the parties set forth below have caused this Second Amendment to be executed as of the day and year first above written.

DSPC:

DIAMOND STATE PORT CORPORATION

By: _____

Name: Jeffrey W. Bullock

Title: Chairperson

ENSTRUCTURE:

**ENSTRUCTURE WILMINGTON HOLDINGS
LLC, a Delaware limited liability company**

By: _____

Name: Matthew Satnick

Title: Authorized Representative

For purposes of Sections 3.3, 3.6, 4.9(c), 5.4(a), 10.1, 14.1, 19.2(b), 20.1, 21.2 and 21.4 of the Concession Agreement

ENSTRUCTURE PARENT:

ENSTRUCTURE LLC

By: _____

Name: Matthew Satnick

Title: Authorized Representative

EXHIBIT 1

Conditions to Second Amendment Commencement

(a) **Enstructure Second Amendment Commencement Conditions.** Enstructure's obligation to proceed with the Second Amendment Commencement is conditioned entirely upon the occurrence of each and all of the following conditions and events, each of which may be waived by Enstructure in its sole discretion, but excluding such condition or event if the failure to satisfy it is due to the fault of Enstructure (collectively, the "Enstructure Commencement Conditions"):

(i) The closing under the APA shall have occurred.

(ii) All representations and warranties of DSPC herein shall be true and correct in all material respects on and as of the Second Amendment Effective Date, on and as of the Second Amendment Commencement Date.

(iii) DSPC shall not be in breach in any material respect of any covenant on its part contained in the Concession Agreement or this Second Amendment, that is to be performed or complied with by DSPC as of the Second Amendment Effective Date, as of the Second Amendment Commencement Date.

(b) **DSPC Second Amendment Commencement Conditions.** DSPC's obligation to proceed with the Second Amendment Commencement is conditioned entirely upon the occurrence of each and all of the following conditions and events, each of which may be waived by DSPC in its sole discretion, but excluding such condition or event if the failure to satisfy it is due to the fault of DSPC (collectively, the "DSPC Commencement Conditions"):

(i) Attestation from Enstructure that the closing under the APA (including authorization to satisfy GT USA's leasehold mortgage encumbering the Premises) shall have occurred.

(ii) All representations and warranties of Enstructure herein shall be true and correct in all material respects on and as of the Second Amendment Effective Date, on and as of the Second Amendment Commencement Date.

(iii) Enstructure shall not be in breach in any material respect of any covenant on its part contained in the Concession Agreement or this Second Amendment that is to be performed or complied with by Enstructure as of the Second Amendment Commencement Date.

(iv) GulfTainer on behalf of itself and its subsidiaries and affiliates shall have executed and delivered a Release in favor of DSPC reasonably satisfactory to DSPC.

(c) **Closing Deliverables.** On the Second Amendment Commencement Date, the Enstructure shall deliver the following to DSPC:

(i) The Initial Second Amendment Payment;

(ii) The Parent Guaranty;

(iii) Proof of insurance as required by Article 13 of the Concession Agreement;

and

(iv) Written authorization for DSPC to file a UCC-1 financing statement covering the Assets (as defined in Section 2.8 of the Initial Concession Agreement) to be recorded with the Delaware Secretary of State.

(d) **Representations and Warranties of Enstructure.** Enstructure makes the following representations and warranties to DSPC, and Enstructure acknowledges that DSPC is relying upon such representations and warranties in entering into this Second Amendment:

(i) Organization. As of the Second Amendment Effective Date and the Second Amendment Commencement Date, Enstructure is, and will continue to be during the Term, duly organized, validly existing and in good standing under Delaware law and is duly qualified to conduct business in the State of Delaware;

(ii) Power and Authority. As of the Second Amendment Effective Date and the Second Amendment Commencement Date, Enstructure has the power and authority to execute and deliver this Second Amendment and all other documents as are required hereunder (the “Transaction Documents”) and to perform its obligations thereunder;

(iii) Enforceability. Each of the Transaction Documents has been duly authorized, executed and delivered by Enstructure and, assuming due execution and delivery by DSPC, constitutes a valid and legally binding obligation of Enstructure, 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) No Conflicts. The execution and delivery of the Transaction Documents by Enstructure, the consummation of the transactions contemplated thereby, and the performance by Enstructure of the terms, conditions and provisions thereof have not and will not, as of the Second Amendment Effective Date and the Second Amendment Commencement Date, contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or cause the acceleration of any material obligations of Enstructure under (i) any applicable Law, (ii) any material agreement, instrument or document to which Enstructure is a party or by which it is bound, or (iii) the articles, bylaws or governing documents of Enstructure;

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

(vi) Compliance with Law; Litigation. As of the Second Amendment Effective Date and the Second Amendment Commencement Date, Enstructure and its Affiliates are not listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors; the Specially Designated Nationals List; the Denied Persons List; the Unverified List; the Entity List; the Debarred List; or any other list of persons with which DSPC may not do business under applicable Law. As of the Second Amendment Effective Date and the Second Amendment Commencement Date, there is no action pending, at

law or in equity, or before or by any Governmental Authority that has been properly served on Enstructure or its Affiliates, nor to the best of Enstructure's knowledge, threatened against Enstructure that would have a material adverse effect on (i) the transactions contemplated by this Second Amendment, (ii) the validity or enforceability of this Second Amendment, or (iii) Enstructure's ability to operate the Premises;

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

(viii) No Brokers; No Contingent Fee Agreements.

(A) There is no investment banker, broker, finder or other intermediary, other than Jefferies LLC, which has been retained by, or is authorized to act on behalf of Enstructure, DSPC or their Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Second Amendment;

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

(ix) Foreign Corrupt Practices Act. As of the Second Amendment Effective Date and the Second Amendment Commencement Date: (i) neither a Governmental Authority nor any other person has notified Enstructure or its Affiliates in writing of any actual or alleged violation or breach of the Foreign Corrupt Practices Act; (ii) Enstructure and its Affiliates have not undergone or is undergoing any audit, review, inspection, investigation, survey or examination of records relating to compliance with the Foreign Corrupt Practices Act, nor is there any basis for any such audit, review, inspection, investigation, survey or examination of records; (iii) Enstructure and its Affiliates have not been and is not now under any administrative, civil or criminal investigation or indictment and is not party to any litigation involving alleged false statements, false claims or other improprieties relating to compliance by Enstructure or its Affiliates with the Foreign Corrupt Practices Act, nor is there any basis for such investigation or indictment; and (iv) there are no situations with respect to the business of Enstructure and its Affiliates that involved or involves (A) the use of any corporate funds or unlawful contributions, gifts, entertainment or other unlawful expenses related to political activity, (B) the making of any direct or indirect unlawful payments to government officials or others from corporate funds or the establishment or maintenance of any unlawful or unrecorded funds, (C) the violation of any of the provisions of the Foreign Corrupt Practices Act (or any rules or regulations promulgated

thereunder), or (D) the receipt of any illegal discounts or rebates or any other violation of the antitrust laws; and

(x) Enstructure represents and warrants that it has purchased substantially all of GT USA's assets (including contracts and permits) located at the Premises and is assuming all known liabilities of GT USA related to GT USA's business.

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

(e) **Representations and Warranties of DSPC.** DSPC makes the following representations and warranties to Enstructure, and DSPC acknowledges that Enstructure is relying upon such representations and warranties in entering into this Second Amendment:

(i) Established. As of the Second Amendment Effective Date and the Second Amendment 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 Second Amendment Effective Date and the Second Amendment 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 Enstructure, 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) 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 Second Amendment Effective Date and the Second Amendment 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 which DSPC is a party or by which it is bound, or (C) any judgment, decree, order, statute, injunction, rule, regulation or the like applicable to DSPC or its assets;

(v) Premises Ownership. As of the Effective Date and immediately prior to the Second Amendment Commencement, DSPC is the sole owner of all right, title and interest in the Premises.

(vi) Compliance with Laws; Litigation. To the best of DSPC's knowledge, as of the Second Amendment Effective Date, DSPC has not been prosecuted to conviction for an offense of non-compliance with any Environmental Laws or other Law relevant to the Premises. As of the Second Amendment Effective Date, there is no action pending, at law or in equity, or

before or by any Governmental Authority that has been properly served on DSPC that would have a material adverse effect on the validity or enforceability of this Second Amendment.

EXHIBIT 2

Edgemoor Development Project

(a) **Costs Prior to Development.** Prior to the development of Edgemoor

Enstructure shall be solely responsible for all costs associated with Edgemoor, including, but not limited to, costs related to security, general maintenance, mowing, and taxes and insurance, but, for the avoidance of doubt, not including environmental remediation costs until Enstructure becomes responsible for such costs in accordance with Section 16.2 of the Concession Agreement as amended by this Second Amendment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(d) **DSPC Approval.** DSPC must approve of any plan of development relating to the Edgemoor Development Project prior to such plan taking effect, which approval shall be in DSPC's sole discretion.

EXHIBIT 3

Depiction of Contributed Property



Area outlined in black is the current Edgemoor site known as Tax Parcel No. 06-153.00-006

Area outlined in red is 25 +/- acres owned by Port Ventures, LLC known as Tax Parcel Nos. 26-039.00-004 and 06-156.00-003

 = Contributed Property

EXHIBIT 4

Description of Contributed Property


20160114-0001959
Pages: 4 F: \$94.00
01/14/16 03:38:38 PM
T20160001497
Michael E. Kozikowski
New Castle Recorder DEE

Tax Parcel Nos: 26-039.00-004
& 06-156.00-003

Prepared By and Return To:
Richards, Layton & Finger, P.A.
One Rodney Square
P.O. Box 551
Wilmington, DE 19899

THIS DEED, MADE this 14 day of January, 2016,

BETWEEN Ahmad E. Amer, LLC, a Delaware limited liability company, party
of the first part,

-AND-

Port Ventures, LLC, a Delaware limited liability company, party of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of
Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of
which are hereby acknowledged, hereby grants and conveys unto the said party of the second
part, its successors and assigns,

ALL THOSE CERTAIN tracts, pieces or parcels of land, situate partially in Brandywine
Hundred, and partially in the City of Wilmington, New Castle County, Delaware, and being
more particularly bounded and described as follows, to-wit:

(A) ALL THAT CERTAIN tract or parcel of land with the buildings thereon erected, more
particularly bounded and described according to a Survey prepared by Van Demark & Lynch,
Inc., Civil Engineers and Surveyors, dated November 21, 1953, as follows, to-wit:

BEGINNING at a monument set in the Southeasterly side of Hay Road (formerly called
Marsh Road) (at 60.00 feet wide), said point of Beginning being a corner for lands hereby
conveyed and lands now or formerly of Ludlow Sales Corporation; thence along the
Southeasterly side of said Road, North 46 degrees 20 minutes East, 50.34 feet to a monument, a
corner for these lands and lands now or formerly of E.I. duPont de Nemours and Company (Edge
Moor Works); thence by line of said lands, South 36 degrees 59 minutes 20 seconds East,
1821.90 feet more or less to a point in the low water line of the Delaware River, said course
crossing over the concrete monument set on the river bank at a distance of 1781.89 feet from the
last mentioned monument; thence along said low water line by the various courses and distances
thereof, Southwesterly 1200.00 feet more or less to a point in the Northeasterly right of way line
at the Philadelphia Baltimore and Washington Railroad Company (at 50.00 feet wide); thence

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\$0.00

-1-

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NCC 238809 01/14/16 15:19:00
\$24366.07 ST
\$24366.07 MC

thereby, North 37 degrees 07 minutes West, 1172.80 feet more or less to a two inch iron pipe marking a corner for lands now or formerly of Ludlow Sales Corporation, said point being distant South 37 degrees 07 minutes East, 2.60 feet from a monument and said course passing over a concrete monument set on the river bank at a distance of 1135.00 feet Southeasterly from a line of said lands now or formerly of Ludlow Sales Corporation, said concrete monument being also distant by a tie line bearing South 28 degrees 35 minutes 10 seconds West, 1200.12 feet from the concrete monument set on the river bank in the Northeasterly boundary line of the tract hereby conveyed; thence along line of said lands now or formerly of said Ludlow Sales Corporation the two (2) following described courses and distances: (1) North 52 degrees 53 minutes 45 seconds East, 1045.24 feet to a concrete monument; and (2) North 36 degrees 59 minutes 20 seconds West, 1135.19 feet to the first mentioned monument in the said Southeasterly side of said Hay Road, the point and place of Beginning. Containing within said described metes and bounds 24.784 acres of land, be the same or less.

(B) ALL THAT CERTAIN tract of land under water, lying between the Northeasterly and Southwesterly boundary line of the tract hereinabove designated as (A) projected and extended in straight lines to the bulkhead line of Tidewaters of the Delaware River, lying between the Christiana River and the Northerly boundary of Edgemoor, opposite the City of Wilmington and Edgemoor as fixed, established and adopted by the Secretary of War of the United States, under Act of Congress in that behalf on November 7, 1902, as appears from the Certification of Approval appearing on the maps of said bulkhead line signed by William Carey Sanger Asst. Secretary of War, filed in the Office of the Secretary of State, Dover, Delaware, by Hon. C.R. Layton, Secretary of State, on April 27, 1903, and also filed and now of record in the Office of the Recorder of Deeds, in and for New Castle County and State of Delaware, in Deed Record A, Volume 38, Page 601, as by reference thereto will more fully appear, and bounded on the Northwest by the Westerly bank of the Delaware River (designated the high water mark thereof) and on the Southeast by the said bulkhead line.

ALSO ALL THAT CERTAIN lot or piece of land, situate in Brandywine Hundred, New Castle County and State of Delaware and being more particularly bounded and described as follows, to-wit:

BEGINNING at a concrete monument set in the Southwesterly property line of Department of Community Affairs and Economic Development, n/k/a Delaware Economic Development Authority and RSC Realty Corp., a Delaware corporation, said monument being South 37 degrees 05 minutes East, 1137.05 feet from a concrete monument set in the Southeasterly line of Marsh Road marking the most Easterly corner of lands of Department of Community Affairs and Economic Development, n/k/a Delaware Economic Development Authority and RSC Realty Corp., a Delaware corporation, thence from said point of Beginning along said Southwesterly line, South 37 degrees 05 minutes East, 684.45 feet to a point in the low water line of the Delaware River, thence North 29 degrees 57 minutes 30 seconds East, 49.04 feet along said low water line of the Delaware River to a point; thence North 38 degrees 17 minutes 30 seconds West, 665.47 feet to a point; thence South 52 degrees 55 minutes West,

- 31.13 feet to the point and place of Beginning. Containing within said metes and bounds 0.592 acres, be the same more or less.

SUBJECT to all easements, covenants, restrictions, reservations, agreements and other matters of record, to the extent valid and enforceable.

BEING the same lands and premises which Ahmad E. Amer by deed dated September 26, 2011, and recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, in Instrument No. 20110930-0059697, did grant and convey unto Ahmad E. Amer, LLC, a Delaware limited liability company, in fee.

GRANTEE(S) ADDRESS:

529 Terminal Avenue
New Castle, DE 19720

EXHIBIT 5

Illustrative Capex Schedule

Port Initial Capital Expenditure Obligation

Category	Years 1-5	Years 6-10	Total
Buildings	\$17,500,000	\$12,500,000	\$30,000,000
Site & Civil Improvements	\$2,500,000	\$2,500,000	\$5,000,000
Cranes and Equipment	\$5,000,000	\$5,000,000	\$10,000,000
Total	\$25,000,000	\$20,000,000	\$45,000,000

EXHIBIT 6

Form of Guaranty (Letter of Credit)

Irrevocable Standby Letter of Credit No. _____

Date of Issuance: _____

BENEFICIARY:

Diamond State Port Corporation
ATTN: Executive Director
c/o Department of State
820 N. French Street, 10th Floor
Wilmington, DE 19801

At the request and for the account (Enstructure) ("Applicant"), we
[Name of Bank] ("Issuer")
[Address]
[Address]

issue this irrevocable standby letter of credit number (**reference number**) ("Standby") in favor of the Diamond State Port Corporation ("Beneficiary") in the maximum aggregate amount of US \$5.0 million.

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

[Address]

[Address]

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

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

This Standby is being issued pursuant to the Concession Agreement dated September 18, 2018, as amended, between Beneficiary and Applicant (the "Concession Agreement").

The expiration date of this Standby is **[date]**.

Issuer hereby irrevocably undertakes to pay any amount not exceeding the Letter of Credit amount, in immediately available funds, on submission of a demand in writing in the form of the annex, from the Beneficiary stating that Applicant failed to perform its obligations under the Concession Agreement. The submission of a demand shall be signed or endorsed by the Beneficiary. Payment against a demand shall be made within 3 business days after presentation by wire transfer to a duly requested account of Beneficiary. An advice of such payment shall be sent to Beneficiary's above-stated address.

Partial and multiple drawings are permitted.

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

THIS STANDBY LETTER OF CREDIT IS ISSUED SUBJECT TO INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590, 1998 AND AS TO MATTERS NOT GOVERNED BY THE ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

PLEASE BE ADVISED THAT OUR TRADE PROCESSING CENTER IS NOW LOCATED AT THE FOLLOWING ADDRESS:

[Address]

[Address]

CONSEQUENTLY ANY REFERENCE TO EXPIRATION OF THIS LETTER OF CREDIT AND PRESENTATION UNDER THIS LETTER OF CREDIT AT OUR COUNTERS WILL MEAN OUR COUNTERS AT THE ABOVE ADDRESS. KINDLY SEND ALL CORRESPONDENCE AND DOCUMENTS UNDER THIS CREDIT TO OUR ABOVE ADDRESS.

IN CASE OF NEED PLEASE BE GUIDED BY THE FOLLOWING:

FOR QUESTIONS RELATING TO ISSUANCE/AMENDMENT OF COMMERCIAL AND STANDBY LETTERS OF CREDIT, AS WELL AS CLARIFICATION OF LC TERMS AND CONDITIONS, PLEASE CALL [●] OR [●].

FOR QUESTIONS RELATING TO STATUS OF DOCUMENTS OR DRAWING(S) THAT HAVE ALREADY BEEN PRESENTED AND/OR THE RESPECTIVE PAYMENT, PLEASE CALL: [●] OR VIA FAX AT [●].

WE HEREBY ENGAGE WITH YOU THAT ALL DOCUMENTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION FOR PAYMENT ON OR BEFORE THE EXPIRY DATE OF THIS LETTER OF CREDIT.

[ISSUING BANK]

[signature]

Authorized Signature

Annexed Payment Demand

[Date]

[ISSUING BANK]

[Address]

[Address]

Re: Standby Letter of Credit No. **[reference number]**,
Dated **[date]**
Issued by **[Issuer's Name]**
("Standby")

The undersigned Beneficiary demands payment of [INSERT CURRENCY/AMOUNT] under the Standby.

Beneficiary states that Applicant has failed to perform its obligations under the agreement titled Concession Agreement dated _____ and therefore is obligated to pay Beneficiary the amount demanded [, which amount is due and unpaid] under such agreement.

Beneficiary requests that payment be made by wire transfer to account of Beneficiary as follows:

Diamond State Port Corporation
ATTN: Executive Director
c/o Department of State
820 N. French Street, 10th Floor
Wilmington, DE 19801

[ROUTING NUMBER OF BENEFICIARY'S BANK]

[NAME AND NUMBER OF BENEFICIARY'S ACCOUNT]

DIAMOND STATE PORT CORPORATION

By its authorized officer:

[INSERT ORIGINAL SIGNATURE]

[INSERT TYPED/PRINTED NAME AND TITLE]

EXHIBIT 7

Form of Parent Guaranty

GUARANTEE

THIS GUARANTEE (“Guarantee”) is executed on this 28th day of July, 2023, by Enstructure LLC, a Delaware limited liability company (“**Guarantor**”), for the benefit of Diamond State Port Corporation (“**Beneficiary**”). In consideration of Beneficiary entering into that certain Second Amendment to Concession Agreement (the “Second Amendment”), among Beneficiary, Enstructure Wilmington Holdings LLC, a Delaware limited liability company (“Enstructure”), and the Guarantor, which amends that certain Concession Agreement dated as of September 18, 2018 between DSPC and GT USA (as amended, restated, supplemented, or otherwise modified from time to time, the “Concession Agreement”), and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor promises to and agrees with Beneficiary as follows:

1. Concession Agreement. The Concession Agreement is hereby incorporated by reference as if herein set forth in its entirety. Guarantor represents and warrants to Beneficiary that prior to Guarantor’s execution of this Guarantee, it received and reviewed a complete and correct copy of the Concession Agreement.
2. Guarantee of Payment and Performance. Guarantor irrevocably, unconditionally and absolutely guarantees the full, timely, complete, direct, immediate payment and performance of any and all covenants, obligations, liabilities and promises of Enstructure under the Concession Agreement, including, without limitation, a failure to make any required payment or perform any obligation thereunder and all primary, secondary, direct, indirect, fixed and contingent obligations of Enstructure to pay, agreements and other obligations (collectively, the “**Guaranteed Obligation**”).
3. Continuing Guarantee. This Guarantee shall bind and obligate Guarantor for payment of the Guaranteed Obligation precisely as if the same had been contracted and was due and owing by Guarantor directly, and shall constitute a guarantee of payment, performance and compliance, not a guarantee of collection only. For purposes of this Guarantee, the Guaranteed Obligation shall be deemed to be paid only to the extent that Beneficiary actually receives immediately available funds and such funds are not required to be returned or divested for any reason.
4. Independent Obligation. The obligations of Guarantor hereunder are separate and independent of the obligations of Enstructure, and a separate action or actions may be brought and prosecuted against Guarantor regardless of whether an action is brought against Enstructure or whether Enstructure is joined in any such action or actions. The Guaranteed Obligation may be enforced against Guarantor at any time and from time to time following the failure on the part of Enstructure to pay or perform all or any part of the Guaranteed Obligation. Beneficiary shall have the right to proceed against the Guarantor without first proceeding against Enstructure for the Guaranteed Obligations.
5. No Waiver by Beneficiary. No delay or failure of Beneficiary in exercising any right hereunder shall affect such right, nor shall any single or partial exercise of any right preclude further exercise thereof.

6. Guarantee Irrevocable. This Guarantee shall be irrevocable and shall remain in full force and effect until the earlier of the Expiration Date (as defined in the Concession Agreement) or the Termination Date (as defined in the Concession Agreement).
7. Guarantor's Financials. Guarantor shall, as of the last Business Day of each fiscal quarter, maintain a minimum Liquidity of no less than [REDACTED] (the "Minimum Liquidity Requirement"). Guarantor agrees to make available to Beneficiary or its representative, at any time and from time to time, upon not less than five (5) days' notice to Guarantor, such financial information as Beneficiary shall reasonably require to assess Guarantor's satisfaction of the Minimum Liquidity Requirement. In addition, Guarantor shall provide the Beneficiary with a quarterly officer's certificate from the Guarantor's Chief Financial Officer certifying the Guarantor's compliance with the Minimum Liquidity Requirement. If, as of any testing date, Guarantor fails to satisfy the Minimum Liquidity Requirement, then Beneficiary shall have the right, upon notice to Guarantor, to require that this Guarantee be secured by a cash deposit in the amount sufficient to restore the Guarantor's Liquidity to the Minimum Liquidity Requirement (collectively, the "Deposit"). Guarantor agrees that it shall deliver the Deposit within thirty (30) days of Beneficiary's demand therefor. Beneficiary agrees that it shall hold the Deposit in an interest-bearing account with a financial institution licensed to do business in the State of Delaware. In the event of any default or defaults in payment of any sums due Beneficiary under the Concession Agreement, Beneficiary may apply the Deposit or any part thereof toward the curing of any such default or defaults. At such time as Beneficiary, in its sole discretion, determines that any failure of the Minimum Liquidity Requirement has been remedied or otherwise resolved, Beneficiary shall release the Deposit to Guarantor; provided, however, that Beneficiary reserves the right to again require that Guarantor deliver a Deposit in the event that a failure of the Minimum Liquidity Requirement subsequently occurs. Guarantor may elect to provide an additional letter of credit in lieu of the Deposit. Upon the expiration or other termination of the Concession Agreement, if Enstructure shall not then be in default of the Concession Agreement, the Deposit or the unapplied balance thereof shall be returned to Guarantor. It is understood and agreed that Beneficiary shall always have the right to apply the Deposit or any part thereof, as aforesaid in the event of any such default or defaults, without prejudice to any other remedy or remedies which Beneficiary may have, or Beneficiary may pursue any other such remedy or remedies in lieu of applying the Deposit or any part thereof. Any failure to deliver the Deposit to Beneficiary shall be an event of default hereunder and shall further constitute an event of default under the Concession Agreement, entitling Beneficiary to exercise any and all rights and remedies set forth in the Concession Agreement in the event of Enstructure's default thereunder.
- a. For the purposes of this Guarantee, "Liquidity" means, as of the last Business Day of each fiscal quarter, (a) unrestricted cash equivalents and cash-on-hand as reflected in the balance sheet of the Guarantor and its subsidiaries on a consolidated basis plus (b) the amount the Guarantor is currently entitled to draw of undrawn availability under its then current revolving credit facility plus (c) the amount of any Letter of Credit provided by the Guarantor.
8. Additional Actions by Beneficiary. Beneficiary may at any time and from time to time, without notice to Guarantor, take any or all of the following actions without affecting or impairing the liability and obligations of the Guarantor on this Guarantee:

- a. modify or amend the Concession Agreement or any term thereof, or any obligation of Enstructure arising thereunder;
 - b. consent to any assignment by Enstructure; and/or
 - c. consent to an extension or extensions of the term of the Concession Agreement.
9. Representations and Warranties of Guarantor. Guarantor hereby represents and warrants that the following are true and accurate as of the date of this Guarantee and shall be true at all times in the future while this Guarantee is outstanding:
- d. Guarantor has sufficient net worth and sufficient liquidity of assets to enable Guarantor to perform promptly all of the Guaranteed Obligations as and when they are due;
 - e. Guarantor has carefully read and negotiated all provisions of this Guarantee and has consulted with competent legal counsel in connection therewith;
 - f. Guarantor is immediately aware of Enstructure's business and financial condition and has conducted a thorough investigation of all material factors regarding the making of the Concession Agreement and this Guarantee;
 - g. Guarantor has the resources, access, and opportunity to remain informed at all times of the financial status of Enstructure and of all other material information relative to the Concession Agreement and Guarantor's obligations under Guarantee and covenants to remain informed relative to all such matters as long as this Guarantee remains in effect; and
 - h. Guarantor has full power and right to enter into this Guarantee and carry out the transactions contemplated hereby. This Guarantee has been duly executed and delivered by Guarantor, duly authorized by all necessary actions and approvals with respect to Guarantor and constitutes a valid and binding agreement of Guarantor enforceable in accordance with its terms. Neither the execution and delivery of this Guarantee nor the consummation of the transactions contemplated hereby will constitute a violation or breach by Guarantor of any law, ordinance, agreement, instrument, judgment, order or injunction to which Guarantor is a party or by which Guarantor is bound.
10. Registered Agent; Jurisdiction; Governing Law. This Guarantee shall be governed by the laws of the State of Delaware. Guarantor hereby consents to the jurisdiction and venue of the courts of said state for all matters arising hereunder. Guarantor hereby (a) submits to the exclusive jurisdiction of the courts of the State of Delaware and the United States District Court for the District of Delaware for the purposes of all legal proceedings arising out of or relating to this Guarantee and (b) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the venue of any such proceeding brought in such court and any claim that any such proceeding brought in such court has been brought in an inconvenient forum. Notwithstanding anything herein to the contrary, nothing herein shall limit the right of Beneficiary to bring proceedings against Guarantor in the courts of any other jurisdiction.
11. Time of Essence. Time is of the essence of this Guarantee and each and every provision

hereof.

12. Entire Agreement, Amendments. This Guarantee sets forth the entire agreement of Beneficiary and Guarantor with respect to the subject matter hereof and supersedes all prior written agreements and representations by Beneficiary to Guarantor. There are no conditions, oral or written, to the effectiveness of this Guarantee.
13. Severability. If any provision hereof is invalid or unenforceable, the other provisions hereof shall remain in full force and effect and shall be liberally construed in favor of Beneficiary.
14. Binding Nature. The provisions of this Guarantee shall be binding upon Guarantor and the successors and assigns of Guarantor, and shall benefit Beneficiary and its successors and assigns. This Guarantee shall not be assigned in whole or in part by Guarantor without Beneficiary's prior written consent, which consent may be withheld in Beneficiary's sole discretion.
15. Waivers of Guarantor. Guarantor hereby waives (i) all defenses whatsoever (including all suretyship defenses) to Guarantor's liability hereunder and (ii) all claims, counterclaims and set-offs of any kind or nature. Without limitation, Guarantor hereby waives (x) any defense arising by reason of any claim or defense based upon an election of remedies by Beneficiary and/or other rights of Beneficiary to proceed against Enstructure or any other person or entity or any collateral and (y) all presentments, demands for performance or payment, notices of nonperformance, protests, notices of protest, notices of default or nonpayment, notice of acceptance of this Guarantee, notices of the existence, creation or incurring of new or additional Guaranteed Obligations and all other notices or formalities to which Guarantor might otherwise be entitled.
16. Notice. All notices, requests and other communications to the Guarantor or DSPC hereunder shall be delivered in the manner required by the Concession Agreement and shall be sufficiently given to DSPC or the Guarantor if addressed or delivered to them at the addresses specified in Section 21.2 of the Concession Agreement. All such notices and communications shall be deemed to have been duly given at the times set forth in the Concession Agreement.
17. Section Headings. The section headings set forth in this Guarantee are for convenience only and shall not have substantive meaning hereunder or be deemed part of this Guarantee.

IN WITNESS WHEREOF, Guarantor has executed this Guarantee as of the day and year first above written.

Guarantor:

ENSTRUCTURE LLC

By: _____
Matthew Satnick
Authorized Representative

Address: Enstructure LLC
16 Laurel Avenue
Suite 300
Wellesley, MA 02481
Attention: Enstructure Legal
Department
Email: Legal@enstructure.com

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

The foregoing guarantee was acknowledged before me, a notary public within and for said County and State, on the 28th day of July, 2023, by Matthew Satnick, who is an Authorized Representative of Enstructure LLC and who acknowledged that the name of said Enstructure LLC was subscribed to the foregoing agreement by himself as an Authorized Representative thereof by the direction and authority of said company and that the seal impressed thereon is the seal of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

Notary Public
My commission expires:

(SEAL)

EXHIBIT 8

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
26-039.00-004 (option)
06-156.00-003 (option)

Prepared by:
Morris, Nichols, Arsht & Tunnell LLP
Attn: Katherine H. Betterly, Esquire
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899

AMENDMENT TO MEMORANDUM OF LEASE

THE DIAMOND STATE PORT CORPORATION (“DSPC”), a Delaware corporation created by the Department of State of the State of Delaware, and Enstructure Wilmington Holdings LLC, a Delaware limited liability company (“Enstructure”), do hereby declare, effective the 31st day of July, 2023, this Amendment to Memorandum of Lease:

DSPC filed with the Office of the Recorder of Deeds in and for New Castle County, Delaware, at instrument number 20181004-0050456, the Memorandum of Lease dated as of October 3, 2018 (the “Memorandum of Lease”) to record that certain Concession Agreement dated as of September 18, 2018 (the “Initial Concession Agreement”) as amended by the Amendment thereto dated as of December 31, 2019 (the “First Amendment” and the Initial Concession Agreement as amended by the First Amendment, the “Concession Agreement”) between DSPC and GT USA Wilmington, LLC, a Delaware limited liability company (“GT USA”), whereby DSPC demised and leased unto GT USA the property described on Exhibit A thereto (the “Premises”); and

GT USA and Enstructure have entered into (i) that certain Stock and Asset Purchase Agreement dated as of July 28, 2023 pursuant to which Enstructure purchased all of GT USA’s assets necessary to operate the Premises, including the existing third-party contracts and permits necessary to operate the Port and the Concession Agreement and (ii) that certain Assignment and Assumption Agreement dated as of July 28, 2023 pursuant to which Enstructure assumed the rights and obligations of GT USA under the Concession Agreement; and

Pursuant to that certain Second Amendment to Concession Agreement executed effective July 28, 2023 (the “Agreement”), Enstructure succeeded GT USA as concessionaire of the Port, and the parties hereby agree to amend the Memorandum of Lease as follows:

1. The term of the Agreement shall expire on October 1, 2078 unless sooner terminated or extended as provided in the Agreement.

2. Pursuant to the Agreement and at any point during the term of the Agreement, DSPC has an option to acquire from Enstructure the real property commonly referred to as Tax

Parcel Nos 06-156.00-003 (~20.86 acres) and 26-039.00-004 (~4.52 acres) and more particularly described on Appendix A hereto.

3. Enstructure shall not assign the Agreement except in accordance with the terms of the Agreement. Unless specifically approved in writing by DSPC, no such assignment (except in accordance with the terms of the Agreement) will relieve Enstructure from its obligations to perform all of the terms, covenants and conditions of the Agreement.

4. This Amendment to Memorandum of Lease is intended only to provide notice of certain terms and conditions contained in the Agreement and is not to be construed as a complete summary of the terms and conditions thereof. In the event the terms contained herein conflict with the terms and conditions of the Agreement, the Agreement shall control.

5. Upon the earlier of termination or expiration of the Agreement, pursuant to the terms thereof, DSPC and Enstructure shall execute a release of the Memorandum of Lease (as amended by this Amendment to Memorandum of Lease) which shall be filed in the Office of the Recorder of Deeds in and for New Castle County, Delaware. If the Agreement has been properly terminated or has expired by its terms, then DSPC and Enstructure agree to execute the release within ten (10) days after receipt of a written request for the same by either party.

6. Except as otherwise indicated, all initially capitalized terms used in this Amendment to Memorandum of Lease and not defined herein shall have the meanings ascribed to them in the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Memorandum of Lease as of the 28th day of July, 2023.

**DIAMOND STATE PORT
CORPORATION**

Witness:

By: _____(SEAL)

Jeffrey W. Bullock
Chairperson

STATE OF DELAWARE)
) ss.
COUNTY OF NEW CASTLE)

I HEREBY CERTIFY that on this 28th day of July, 2023, 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.

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

Notary Public

My Commission Expires: _____

[Notary Seal]

**ENSTRUCTURE WILMINGTON
HOLDINGS LLC**

Witness:

By: _____(SEAL)

Matthew Satnick
Authorized Representative

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I HEREBY CERTIFY that on this 28th day of July, 2023, before me, a Notary Public in and for the State and County aforesaid, personally appeared Matthew Satnick, 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 Enstructure Wilmington Holdings LLC for the purposes therein contained.

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

Notary Public

My Commission Expires: _____

[Notary Seal]

APPENDIX A

Description of Option Property

20160114-0001959
Page: 4 F: \$94.00
01/14/16 02:35:30 PM
T20160001497
Michael E. Kozikowski
New Castle Recorder DEE

Tax Parcel Nos: 26-039.00-004
& 06-156.00-003

Prepared By and Return To:
Richards, Layton & Finger, P.A.
One Rodney Square
P.O. Box 551
Wilmington, DE 19899

THIS DEED, MADE this 14th day of January, 2016,

BETWEEN Ahmad E. Amer, LLC, a Delaware limited liability company, party
of the first part,

-AND-

Port Ventures, LLC, a Delaware limited liability company, party of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of
Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of
which are hereby acknowledged, hereby grants and conveys unto the said party of the second
part, its successors and assigns,

ALL THOSE CERTAIN tracts, pieces or parcels of land, situate partially in Brandywine
Hundred, and partially in the City of Wilmington, New Castle County, Delaware, and being
more particularly bounded and described as follows, to-wit:

(A) ALL THAT CERTAIN tract or parcel of land with the buildings thereon erected, more
particularly bounded and described according to a Survey prepared by Van Demark & Lynch,
Inc., Civil Engineers and Surveyors, dated November 21, 1953, as follows, to-wit:

BEGINNING at a monument set in the Southeasterly side of Hay Road (formerly called
Marsh Road) (at 60.00 feet wide), said point of Beginning being a corner for lands hereby
conveyed and lands now or formerly of Ludlow Sales Corporation; thence along the
Southeasterly side of said Road, North 46 degrees 20 minutes East, 50.34 feet to a monument, a
corner for these lands and lands now or formerly of E.I. duPont de Nemours and Company (Edge
Moor Works); thence by line of said lands, South 36 degrees 59 minutes 20 seconds East,
1821.90 feet more or less to a point in the low water line of the Delaware River, said course
crossing over the concrete monument set on the river bank at a distance of 1781.89 feet from the
last mentioned monument; thence along said low water line by the various courses and distances
thereof, Southwesterly 1200.00 feet more or less to a point in the Northeasterly right of way line
at the Philadelphia Baltimore and Washington Railroad Company (at 50.00 feet wide); thence

NCC 233898 01/14/16 15:19:02
\$2628.13 ST
\$0.00

-1-

4²

NCC 233898 01/14/16 15:19:02
\$24386.57 ST
\$24386.57 NC

thereby, North 37 degrees 07 minutes West, 1172.80 feet more or less to a two inch iron pipe marking a corner for lands now or formerly of Ludlow Sales Corporation, said point being distant South 37 degrees 07 minutes East, 2.60 feet from a monument and said course passing over a concrete monument set on the river bank at a distance of 1135.00 feet Southeasterly from a line of said lands now or formerly of Ludlow Sales Corporation, said concrete monument being also distant by a tie line bearing South 28 degrees 35 minutes 10 seconds West, 1200.12 feet from the concrete monument set on the river bank in the Northeasterly boundary line of the tract hereby conveyed; thence along line of said lands now or formerly of said Ludlow Sales Corporation the two (2) following described courses and distances: (1) North 52 degrees 53 minutes 45 seconds East, 1045.24 feet to a concrete monument; and (2) North 36 degrees 59 minutes 20 seconds West, 1135.19 feet to the first mentioned monument in the said Southeasterly side of said Hay Road, the point and place of Beginning. Containing within said described metes and bounds 24.784 acres of land, be the same or less.

(B) ALL THAT CERTAIN tract of land under water, lying between the Northeasterly and Southwesterly boundary line of the tract hereinabove designated as (A) projected and extended in straight lines to the bulkhead line of Tidewaters of the Delaware River, lying between the Christiana River and the Northerly boundary of Edgemoor, opposite the City of Wilmington and Edgemoor as fixed, established and adopted by the Secretary of War of the United States, under Act of Congress in that behalf on November 7, 1902, as appears from the Certification of Approval appearing on the maps of said bulkhead line signed by William Carey Sanger Asst. Secretary of War, filed in the Office of the Secretary of State, Dover, Delaware, by Hon. C.R. Layton, Secretary of State, on April 27, 1903, and also filed and now of record in the Office of the Recorder of Deeds, in and for New Castle County and State of Delaware, in Deed Record A, Volume 38, Page 601, as by reference thereto will more fully appear, and bounded on the Northwest by the Westerly bank of the Delaware River (designated the high water mark thereof) and on the Southeast by the said bulkhead line.

ALSO ALL THAT CERTAIN lot or piece of land, situate in Brandywine Hundred, New Castle County and State of Delaware and being more particularly bounded and described as follows, to-wit:

BEGINNING at a concrete monument set in the Southwesterly property line of Department of Community Affairs and Economic Development, n/k/a Delaware Economic Development Authority and RSC Realty Corp., a Delaware corporation, said monument being South 37 degrees 05 minutes East, 1137.05 feet from a concrete monument set in the Southeasterly line of Marsh Road marking the most Easterly corner of lands of Department of Community Affairs and Economic Development, n/k/a Delaware Economic Development Authority and RSC Realty Corp., a Delaware corporation, thence from said point of Beginning along said Southwesterly line, South 37 degrees 05 minutes East, 684.45 feet to a point in the low water line of the Delaware River, thence North 29 degrees 57 minutes 30 seconds East, 49.04 feet along said low water line of the Delaware River to a point; thence North 38 degrees 17 minutes 30 seconds West, 665.47 feet to a point; thence South 52 degrees 55 minutes West,

- 31.13 feet to the point and place of Beginning. Containing within said metes and bounds 0.592 acres, be the same more or less.

SUBJECT to all easements, covenants, restrictions, reservations, agreements and other matters of record, to the extent valid and enforceable.

BEING the same lands and premises which Ahmad E. Amer by deed dated September 26, 2011, and recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, in Instrument No. 20110930-0059697, did grant and convey unto Ahmad E. Amer, LLC, a Delaware limited liability company, in fee.

GRANTEE(S) ADDRESS:

529 Terminal Avenue
New Castle, DE 19720

EXHIBIT 9

Conformed Concession Agreement

[To be attached.]