

THIRD AMENDMENT TO CONCESSION AGREEMENT

THIS THIRD AMENDMENT TO CONCESSION AGREEMENT (this “Third Amendment”), is entered into as of this 23rd day of December, 2024 (the “Third 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”), for purposes of Sections 3.3, 3.6, 4.9(c), 5.4(a), 10.1, 14.1, 18.3, 19.2(b), 20.1, 21.2 and 21.4 of the Concession Agreement (as defined herein), Enstructure LLC, a Delaware limited liability company (“Enstructure Parent”), and for purposes of Exhibit 2 of this Third Amendment, Enstructure DCT LLC, a Delaware limited liability company (“Enstructure DCT”).

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”) which was amended by the Amendment thereto dated as of December 31, 2019 between DSPC and GT USA (the “First Amendment”);

WHEREAS, on July 28, 2023, (i) Enstructure entered into a Stock and Asset Purchase Agreement with GT USA pursuant to which Enstructure acquired GT USA’s assets at the Premises (as defined herein) and succeeded GT USA as concessionaire under the Concession Agreement and (ii) DSPC, Enstructure and Enstructure Parent entered into the Second Amendment to Concession Agreement (the “Second Amendment” and the Initial Concession Agreement as amended by the First Amendment and the Second Amendment, the “Concession Agreement”);

WHEREAS, the Second Amendment contemplated that further amendments would be made to the Concession Agreement in connection with the development of the DCT Property (as defined herein); 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 Third 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. Amendments to the Concession Agreement. The following amendments shall be made to the Concession Agreement effective as of the Third Amendment Effective 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

(a) 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 Enstructure all of the land located at the Existing Port, and Edgemoor **and, upon the closing of the Contribution, the Contributed Property,** that is owned by DSPC, together with all improvements thereupon and thereunder, including 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 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 approximately fifty-five (55) years **or such other period of time contemplated by Sections 2.2(b) and 2.2(c) below** (the "Term"), commencing on the Second Amendment Commencement Date and ending on October 1, 2078 **or such other date contemplated by Sections 2.2(b) and 2.2(c) below** (the "Expiration Date"). **Subject to Section 10.10,** The **the** date of the termination of 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 an **uncured** Enstructure Default, other than the running of the Term, shall be known as the "Termination Date."

(b) **Upon Substantial Completion of Phase 1, the current Term for the Premises shall reset and run for a period of fifty-five (55) years from Substantial Completion of Phase 1, and the Expiration Date shall be the date immediately preceding the fifty-five (55) year anniversary of Substantial Completion of Phase 1, unless Substantial Completion of Phase 1 is not the first day of the month, in which case the Expiration Date will be the last day of the month in which the fifty-five (55) year anniversary of Substantial Completion of Phase 1 occurs.**

(c) **Enstructure shall have two (2) 15-year options to extend the Term prior to the Expiration Date (each, an "Extension"). The first Extension will be exercisable by Enstructure only if Enstructure: (i) is not in default under the Concession Agreement, (ii) has contributed the entire Existing Port Initial Capital Expenditure Obligation, Existing Port Total Capital Expenditure Obligation and Enstructure Phase 1 Commitment (to the extent necessary to complete Phase 1) pursuant to the terms of the Concession Agreement, (iii) has completed Phase 1, and (iv) agrees to contribute an additional Twenty-Five Million Dollars (\$25,000,000) during the first Extension for capital improvements at the Existing Port (the "First Extension Capital Commitment"). The second Extension will be exercisable by Enstructure only if Enstructure: (1) is not in default under the Concession Agreement, (2) has contributed the entire First Extension Capital**

Commitment, (3) has completed Phase 2, and (4) agrees to contribute an additional Twenty-Five Million Dollars (\$25,000,000) during the second Extension for capital improvements at the Existing Port (the “Second Extension Capital Commitment”). Each Extension shall be exercisable by Enstructure upon not less than twenty-four (24) months written notice to DSPC prior to the expiration of the Term. For the avoidance of doubt, the “Term” shall include, and the “Expiration Date” shall be modified to reflect, any exercised Extension.”

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) **Except as set forth in the Joint Development Agreement,** 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. ~~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..”~~

c. **Assets at Commencement.** Section 2.7 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 2.7 **Assets at Commencement**

In consideration for the Concession Fee and other payments owed to DSPC under this Agreement (and no separate consideration), on the Commencement Date DSPC **sold** ~~shall sell~~ and convey**ed** its cranes, electric tools, mechanic tools, vehicles, cargo handling, furniture, furnishings, computers, telephones, telephone numbers, office supplies, software and other intellectual property (including the Port’s website (<http://www.portofwilmington.com>), but excluding DSPC’s website (**www.diamondstateportcorp.com**)) and all other equipment and parts and items, tangible and intangible (other than cash), used in operation at the Port to GT USA as of the Commencement Date with clear title, free from all liens, charges or encumbrances of any nature whatsoever, other than

Permitted Liens (collectively, the “**Initial Original Assets**”). GT USA ~~accepts~~ **accepted** the **Initial** Original Assets as of the Commencement Date, after a full and complete examination and inspection thereof, in their AS-IS, WHERE-IS condition, without representation as to suitability for any purpose. ~~To the extent any Original Assets are not legally assignable, DSPC shall use commercially reasonable efforts to transfer beneficial ownership of any such Original Assets to GT USA, by license or otherwise, on the Commencement Date or as soon as reasonably practicable thereafter.~~ **Such Initial Original Assets were transferred to Enstructure as part of the SPA.”**

d. **Assets Acquired During Term.** Section 2.8 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 2.8 **Assets Acquired During Term**

(a) In addition to the Original Assets, Enstructure shall have the right to purchase or lease (provided that any finance lease shall expressly permit an assignment of Enstructure’s interest thereunder to any person without restriction or condition), install and use, as applicable, at its cost and expense, cranes, electric tools, mechanic tools, vehicles, cargo handling, and any other equipment or parts (the “**After-Acquired Assets**” and, together with the Original Assets, **the DCT Development Assets (as defined below) and the Grant Assets**, the “**Assets**”) on the Premises. To the extent that any After-Acquired Assets require installation at the Premises, Enstructure shall provide notice to DSPC. In the event DSPC has the right to purchase any After-Acquired Assets as provided in Section 17.9 of this Agreement and DSPC does not elect to purchase any After-Acquired Assets **or has the right to take title to any DCT Development Assets as provided in Section 17.2 of this Agreement and DSPC does not elect to take title to such assets,** Enstructure shall, at its expense, remove from the Premises any and all such ~~After-Acquired~~ Assets no later than sixty (60) days following the earlier of the Termination Date or Expiration Date of this Agreement, and shall repair any damage caused by such removal.

(b) **In connection with the Delaware Container Terminal Project, Enstructure intends to purchase, through the use of its own funds, DSPC’s funds, state or federal grant funding or a combination thereof, cranes, electric tools, mechanic tools, vehicles, cargo handling, and any other equipment or parts (the “DCT Development Assets”) for the development of or use at the DCT Property. The Parties will memorialize the acquisition of such assets and allocate to one Party or the other the source of the funds, including General Funds, used to do so. Unless otherwise provided herein, DCT Development Assets shall not be considered “After-Acquired Assets” and the treatment of DCT Development Assets at the termination or expiration of this Agreement shall be as set forth in Sections 10.2, 10.7 and 11.3 and**

ARTICLE 17 and the Joint Development Agreement. DCT Development Assets collectively refers to the DCT Development Combined Assets and the DCT Enstructure Assets.

(c) Notwithstanding anything herein to the contrary, each Grant Asset shall be disposed of in accordance with applicable Law and the provisions of any grant agreement governing the disposition of such asset. With respect to Third Amendment Grant Assets, in the event there are unrestricted proceeds available after the disposition thereof following a termination or expiration of this Agreement, such unrestricted proceeds shall be split between the Parties as follows: first, to Enstructure until Enstructure has recouped matching payments, if any, made to obtain the grant funds used to purchase such Third Amendment Grant Assets, then the remainder to DSPC.”

e. **Use of Premises.** Section 3.1(b) 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. 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.

(b) ~~Edgemoor~~**DCT Property.** ~~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”).~~ **Until the Substantial Completion of Phase 1, the DCT Property may be used for the purposes set forth in the Joint Development Agreement.** Following the **Substantial Completion of Phase 1, the DCT Property will** completion of the Edgemoor Development Project, Edgemoor shall be configured solely **primarily** as a container handling terminal **and in accordance with applicable Law (including all Coastal Zone Act, 7 Del. C. §§ 7001 et seq., restrictions,** 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 **the DCT Property** is used solely as a container handling terminal, Enstructure shall be permitted to accept ancillary general cargo or other cargoes at the DCT Property unless otherwise prohibited under applicable Law. ~~For any~~

period of time after ~~████████████████████~~, 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. **Enstructure shall operate the Existing Port and the DCT Property, once operational, as a fully integrated facility."**

f. **No Competition.** Section 3.3(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 3.3 No Competition

(a) Except as provided below, DSPC agrees that during the ~~Term~~ **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 **for any reason other than an uncured DSPC Default (including a partial termination of this Agreement with respect to only a portion of the Premises)** or in the event Enstructure breaches the Initial Second Amendment Payment, ~~the Existing Port Initial Capital Expenditure Obligation, or the Existing Port Total Capital Expenditure Obligation,~~ **the Enstructure Phase 1 Commitment (subject to any project savings) or either Extension Capital Commitment (if Enstructure has exercised its option to extend the Term pursuant to the applicable Extension option(s))**, then this Section 3.3(a) shall **not apply to the development of or use by DSPC or a third party of the portion of the Premises (i.e., the Existing Port or the DCT Property) affected by such termination or breach** ~~be of no further force and effect; provided, that, if the termination and/or breach relates to the DCT Property, DSPC or a third party shall not handle breakbulk cargo at the DCT Property unless the commodity of breakbulk cargo came through the DCT Property prior to such termination and/or breach (i.e. any breakbulk cargo of the same commodity that has come into the DCT Property shall be grand-fathered in and DSPC or a third party shall be permitted to continue to accept such cargo).~~ Notwithstanding the foregoing **In addition**, Enstructure may from time to time request that DSPC join with 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). 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 Enstructure shall not be a violation of this Section 3.3(a).”

g. **Signage, Advertising and Naming Rights.** Section 3.5(d) of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 3.5 Signage, Advertising and Naming Rights

(d) Enstructure shall have the right to ~~name and rename the Port,~~ subject to the prior written consent of DSPC, which consent may be conditioned or withheld by DSPC in DSPC’s sole discretion, for any reason or for no reason **select the name(s) under which it will do business and operate the Existing Port and the DCT Property. DSPC shall have the sole right to name and rename the Existing Port and the DCT Property.**”

h. **Concession Fee.** Section 4.3 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 4.3 Concession Fee

(a) **Enstructure agrees to pay to DSPC each of the Existing Port Concession Fee and the DCT Property Concession Fee (together, the “Concession Fee”) as set forth below.**

(b) **Existing Port**

(i) 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 ~~the~~ 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 “Existing Port Concession Fee”); provided that upon Substantial Completion of Phase 1, the next Existing Port Concession Fee adjustment shall occur on January 1st of the first full calendar year following Substantial Completion of Phase 1 (the “Revised Adjustment Date”), calculated based on the number of months elapsed between the last anniversary of the Second Amendment Commencement Date where an adjustment was made and the Revised Adjustment Date, and each annual adjustment thereafter shall be applied on the anniversary of the Revised Adjustment Date, subject to

the one-time adjustment reset pursuant to Section 4.3(b)(ii). Enstructure shall pay the Existing Port 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 Existing Port Concession Fee shall be attributable only to the Existing Port and not to Edgemoor the DCT Property. ~~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.~~

(ii) As of January 1, 2031, the annual Existing Port Concession Fee ~~for the Existing Port~~ shall increase as follows: the annual Existing Port 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 Existing Port Operating Revenues divided by the total 2023 annual Existing Port Operating Revenues. In the event the product would result in an annual Existing Port Concession Fee equal to an amount less than One Million Five Hundred Thousand Dollars (\$1,500,000), the annual Existing Port Concession Fee shall be One Million Five Hundred Thousand Dollars (\$1,500,000). In the event the product would result in an annual Existing Port Concession Fee equal to an amount greater than Two Million Dollars (\$2,000,000), the annual Existing Port Concession Fee shall be Two Million Dollars (\$2,000,000). To the extent the total 2030 annual revenue of Enstructure is Existing Port Operating Revenues are unavailable prior to January 1, 2031, the annual Existing Port Concession Fee as of January 1, 2031 shall equal ~~the 2030 Concession Fee~~ One Million Five Hundred Thousand Dollars (\$1,500,000), 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 Existing Port Operating Revenues are determined and such 2031 Existing Port Concession Fee adjustment, if any, is determined. For the avoidance of doubt, although the Existing Port Concession Fee reset described in this Section 4.3(b)(ii) is a one-time reset, the annual Existing Port Concession Fee in the years subsequent to 2031 shall continue to 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.

(c) DCT Property. Enstructure agrees to pay each of the DCT Property Base Fee and the DCT Property Variable fee (together, the "DCT Property Concession Fee") as described below:

(i) DCT Property Base Fee. Commencing on the Substantial Completion of Phase 1 and for each year thereafter during

the Term, Enstructure agrees to pay to DSPC an annual fee equal to

[REDACTED]

[REDACTED] and thereafter the DCT Property Base Fee shall be increased each year on the Revised Adjustment Date, prorated based on the number of months elapsed between Substantial Completion of Phase 1 and the Revised Adjustment Date for the first full calendar year, and thereafter, each anniversary of such 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 "DCT Property Base Fee"). [REDACTED]

[REDACTED]

(ii) DCT Property Variable Fee. Commencing on the first anniversary of Substantial Completion of Phase 1 and for each year thereafter during the Term, Enstructure agrees to pay to DSPC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(iii) If, following an uncured DSPC DCT Pre-Development Default, Enstructure elects not to terminate this Agreement with respect to the DCT Property, provided no Enstructure Default exists and is continuing, Enstructure shall not pay a DCT Property Concession Fee for the remainder of the Term. If, following an uncured DSPC DCT Post-Development Default, Enstructure elects not to terminate this Agreement with respect to the DCT Property, the parties agree to renegotiate a reduction in the DCT Property Concession Fee based on the future use of the DCT Property. Enstructure shall be permitted to occupy and operate the DCT Property during such negotiations; provided that Enstructure shall be responsible for fees accumulated during that period based on the agreed upon future rent.”

i. Committed Minimum Capital Expenditures and Delaware Container Terminal. Section 4.9 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 4.9 Committed Minimum Capital Expenditures and ~~Edgemoor Development~~ Delaware Container Terminal Project

(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~~ Delaware Container Terminal 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 Existing Port 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~~**2042** (“**Existing Port Initial Capital Expenditure Obligation**”) and (B) an amount, inclusive of the **Existing 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 “**Existing Port Total Capital Expenditure Obligation**”). Enstructure may satisfy the **Existing Port** Initial Capital Expenditure Obligation and the **Existing Port** 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), **(y) the payment of any state or federal match requirement in connection with any governmental grant to the extent such grant benefits the Existing Port** or ~~(y)~~ **(z)** 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 **Existing Port** Initial Capital Expenditure Obligation and the **Existing Port** Total Capital Expenditure Obligation only for capital expenditures that are not financed by the sale or pledge of Assets existing at the **Existing Port** as of the Second Amendment Commencement Date. The **Existing Port** 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 **Existing Port** Initial Capital Expenditure Obligation to be invested with the period ending on December 31, ~~2032~~**2042**. The Parties agree that Enstructure may shift expenditures **of the Existing Port Initial Capital Expenditure Obligation shown in Exhibit 5 to the Second Amendment** among contract years and to different investment categories **of investment at the Existing Port** provided Enstructure invests at least Forty-Five Million Dollars (\$45,000,000) in the Existing Port by December 31, ~~2032~~**2042**.

(c) ~~Edgemoor~~**DCT Property** - *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 described on Exhibit 4 to the Second Amendment (together, the “**Contributed Property**”). Further, DSPC, **at any time during the Term**, 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”). **Enstructure Parent, on behalf of Port Ventures, hereby represents, warrants and covenants that (i) as of the Third Amendment Effective Date and immediately prior to the closing of the Contribution, Port Ventures is and shall be the sole owner of all right, title and interest in the Contributed Property and (ii) at the time of the Contribution, Port Ventures will transfer the Contributed Property to DSPC free and clear of all encumbrances; provided, that, if at the closing of the Contribution there are any encumbrances on the Contributed Property, Enstructure shall be provided a reasonable amount of time to remove such encumbrances.** 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” **“DCT Property”** and treated similar to **the DCT Property** the Existing Port except with respect to environmental provisions. Following the Contribution, DSPC shall be responsible for Existing Conditions at the Contributed Property **except to the extent addressed in Exhibit 2 to the Third Amendment.** 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~~ **Delaware Container Terminal Project***. DSPC and Enstructure acknowledge and agree that it is their mutual intent to develop, or facilitate the development of, ~~Edgemoor~~ **the DCT Property** into a commercial marine terminal facility, ~~with a preference for operating as~~ a container handling terminal facility (the “~~Edgemoor Development~~ **Delaware Container Terminal Project**”). DSPC’s and Enstructure’s **agreements and** mutual understandings pertaining to the ~~Edgemoor Development~~ **Delaware Container Terminal** Project are set forth on Exhibit 2 to the ~~Second~~ **Third** Amendment **and the Joint Development Agreement.** [REDACTED]

j. **No Assignment without DSPC Consent.** Section 5.1 of the Concession Agreement is hereby amended to add the following bolded and underlined language:

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

(a) This Agreement is personal to Enstructure. 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 **(for the avoidance of doubt, it shall, without limitation, be deemed unreasonable for DSPC to withhold, condition or delay consent to obtain a higher Concession Fee or terms more beneficial to DSPC than those in the then-current Concession Agreement).**”

(d) DSPC hereby consents to Enstructure’s sublease of the DCT Property, provided that: (i) such sublease is required in connection with obtaining financing for the Delaware Container Terminal Project in accordance with this Agreement and the Joint Development Agreement; (ii) advance notice of such sublease has been provided to DSPC; (iii) such sublease is a sublease with a wholly owned subsidiary of Enstructure; (iv) the sublessee is subject to all of the same terms and conditions as set forth in this Agreement and the sublessee agreed to be bound by the terms of this Agreement; and (v) Enstructure shall not be released from any obligations under this Agreement.”

k. **Organizational Structure.** Section 5.4(b) of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 5.4 **Organizational Structure**

(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~~ **Enstructure’s President Mid-Atlantic and the terminal manager for each of the Existing Port and DCT Property** 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.”

l. **DSPC Oversight and Consent Rights.** Sections 5.5(b)(ii) and (iv) of the Concession Agreement are hereby amended to add the following bolded and underlined language:

“Section 5.5 DSPC Oversight and Consent Rights

(b) Without limitation of any other consent rights of DSPC under this Agreement or applicable Laws, 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:

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

(iv) construct Leasehold Improvements in excess of 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; **provided, further, that this shall not include matters covered by the Joint Development Agreement;**”

m. **Alterations/Improvements/Maintenance.** Section 6.4(a) of the Concession Agreement is hereby amended to add the following bolded and underlined language:

“Section 6.4 Alterations/Improvements/Maintenance

(a) Enstructure shall make no Leasehold Improvement costing in excess of 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; **provided that this shall not include matters covered by the Joint Development Agreement.** 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 Enstructure, such alterations, improvements or fixtures shall, upon request of DSPC, be removed promptly by Enstructure at its expense and the Premises Restored to their original condition upon the earlier of the Expiration Date or Termination Date.”

n. **Enstructure Default.** Section 10.1 of the Concession Agreement is hereby amended and restated in its entirety as follows:

“Section 10.1 Enstructure Default

(a) The occurrence of any of the following shall constitute a default by Enstructure as it relates to the Existing Port (“Enstructure EP Default”):

(i) **Payment Default.** Failure by Enstructure to make any payment of money due under this Agreement related to the Existing Port, including, but not limited to, to pay the Existing Port Concession Fee,

if the failure continues for ten (10) Business Days after written notice has been given to Enstructure;

(ii) Failure to Invest. Failure to invest the Existing Port Initial Capital Expenditure Obligation and/or the Initial Second Amendment Payment and/or the Existing Port Total Capital Expenditure Obligation and/or either Extension Capital Commitment (if Enstructure has exercised its option to extend the Term pursuant to the applicable Extension option);

(iii) Failure of Minimum Revenue Guarantee. Failure to achieve the Existing Port 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 Delaware Container Terminal Project. In the event Enstructure is unable to reach the Existing Port Minimum Annual Revenue Guarantee for any three (3) consecutive calendar years, such failure 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 an Enstructure EP Default under this Agreement as set forth in this Section 10.1(a)(iii);

(iv) Operations Default. Failure to operate the Existing Port in accordance with the Permitted Operations or to maintain the Existing Port or Existing Port 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;

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

(vi) Insolvency. Any of Enstructure Parent, Enstructure Parent's subsidiaries that directly or indirectly own Enstructure, or Enstructure becomes Insolvent;

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

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

(ix) Failure to Comply with Employee Provisions. Failure to comply with the employee provisions described in ARTICLE 20 as it relates to the Existing Port;

(x) Assignment. Any Assignment made by 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;

(xi) Execution or Attachment. Execution or attachment against the Existing Port Assets, to the extent that such execution or attachment substantially interferes with Permitted Operations, or against all or any material part of the Existing Port or any interest therein that has been created or allowed in any way to exist by 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

(xii) Breach of Representations, Warranties and Other Covenants. Any material breach by Enstructure Parent, Enstructure or any Enstructure Affiliate of any other representation, warranty, covenant, condition or other term of this Agreement as it relates to the Existing Port.

(b) Prior to the date of the completion of Phase 1, the occurrence of an Enstructure Terminable Default that is not cured within the applicable cure period shall constitute a default by Enstructure as it relates to the DCT Property (“Enstructure DCT Pre-Development Default”).

(c) Following the completion of Phase 1, the occurrence of any of the following shall constitute a default by Enstructure as it relates to the DCT Property (“Enstructure DCT Post-Development Default”, and together with Enstructure DCT Pre-Development Defaults, each an “Enstructure DCT Default”, and Enstructure DCT Defaults together with the Enstructure EP Defaults, each an “Enstructure Default”):

(i) Payment Default. Failure by Enstructure to make any payment of money due under this Agreement related to the DCT Property, including, but not limited to, to pay the DCT Property Concession Fee, if the failure continues for ten (10) Business Days after written notice has been given to Enstructure;

(ii) Failure to Invest. Failure to invest the Extension Capital Commitment (if Enstructure has exercised its option to extend the Term pursuant to the applicable Extension option);

(iii) Decommissioning. Decommissioning the DCT Property from active use;

(iv) Operations Default. Failure to operate the DCT Property in accordance with the Permitted Operations or to maintain the DCT Property or DCT Property 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;

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

(vi) Insolvency. Any of Enstructure Parent, Enstructure Parent's subsidiaries that directly or indirectly own Enstructure, or Enstructure becomes Insolvent;

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

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

(ix) Failure to Comply with Employee Provisions. Failure to comply with the employee provisions described in ARTICLE 20 as it relates to the DCT Property;

(x) Assignment. Any Assignment made by 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;

(xi) Execution or Attachment. Execution or attachment against the DCT Property Assets, to the extent that such execution or attachment substantially interferes with Permitted Operations, or against all or any material part of the DCT Property or any interest therein that has been created or allowed in any way to exist by 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

(xii) Breach of Representations, Warranties and Other Covenants. Any material breach by Enstructure Parent, Enstructure, Enstructure DCT or any Enstructure Affiliate of any other representation, warranty, covenant, condition or other term of this Agreement as it relates to the DCT Property.

(d) To the extent DSPC funds are used in connection with Phase 2, the parties will agree to remedies for a default by Enstructure under the Joint

Development Agreement with respect to Phase 2.

- o. **DSPC Remedies Upon Enstructure Default.** Section 10.2 of the Concession Agreement is hereby amended to add the following bold and underlined language, including new subsections (k) and (l):

“Section 10.2 DSPC Remedies Upon Enstructure Default

Subject to Section 10.8 **and Section 10.10**, upon the occurrence of and during the continuance of an Enstructure Default, DSPC may, upon written notice to Enstructure, declare Enstructure to be in default; provided that to the extent the Enstructure Default is curable, Enstructure shall have thirty (30) days to cure such Enstructure Default after receiving notice thereof from DSPC unless another cure period is expressly provided herein. ~~In~~ **Subject to Section 10.8 and Section 10.10, in** the event of an **uncured** Enstructure Default, DSPC may avail itself of the remedies set forth below (but in no event shall DSPC be obligated to do so). Such remedies are not exclusive, and the election of one remedy shall not preclude an election of any other remedy (or no remedy) at any later time.

(k) Notwithstanding anything herein to the contrary, during the term of the Joint Development Agreement, DSPC shall only be permitted to terminate the Joint Development Agreement, and therefore this Agreement with respect to the DCT Property, in connection with an Enstructure Terminable Default. In the event of an Enstructure DCT Pre-Development Default for which DSPC terminates the Joint Development Agreement (i) this Agreement with respect to the DCT Property shall terminate and all future Enstructure payment obligations under this Agreement with respect to the DCT Property will be terminated, (ii) Enstructure shall transfer to DSPC the DCT Combined Assets at no additional cost to DSPC, (iii) DSPC shall have the right, but not obligation, to assume all contracts with respect to the DCT Enstructure Assets without payment to Enstructure (or if such DCT Enstructure Assets have been fully paid for and delivered, to assume title to such assets at fifty percent (50%) of the depreciated value of such asset, as determined in accordance with Section 10.2(l) of this Agreement) and (iv) Enstructure shall pay the Break Fee to DSPC.

(l) In the event of an Enstructure DCT Post-Development Default, DSPC shall have the option to terminate this Agreement with respect to the DCT Property and, if DSPC exercises such termination option, Enstructure shall transfer to DSPC (i) the DCT Combined Assets at no additional cost to DSPC and (ii) at DSPC's election, the DCT Enstructure Assets for an amount equal to fifty percent (50%) of the depreciated value of such assets. For purposes of subsection (ii), the depreciated value of an asset shall be calculated based on the depreciation of such asset in accordance with the applicable

provisions of the Budget and Accounting Policy Manual¹ (or, if such manual is no longer published, similar guidance) published by the Office of Management and Budget of the State of Delaware providing for the depreciation of assets of the State of Delaware.

p. **DSPC Default.** Section 10.6 of the Concession Agreement is hereby amended and restated in its entirety as follows:

“Section 10.6 DSPC Default

(a) Prior to the date of the completion of Phase 1, the material breach by DSPC of any provision of the Joint Development Agreement that is not cured within the applicable cure period shall constitute a default by DSPC as it relates to the DCT Property (“DSPC DCT Pre-Development Default”).

(b) The occurrence of any of the following events (i) with respect to the Existing Port during the Term (“DSPC EP Default”) or (ii) with respect to the DCT Property following the completion of Phase 1 (“DSPC DCT Post-Development Default”) and together with DSPC DCT Pre-Development Defaults, each a “DSPC DCT Default” and collectively with the DSPC EP Defaults, each a “DSPC Default”), shall constitute a default by DSPC:

(i) Failure to Transfer. Failure by DSPC to facilitate the transfer of the Premises, the Original Assets or the Assigned Contracts to Enstructure;

(ii) Assist with Regulatory and Administrative Matters. Failure by DSPC to use commercially reasonable efforts, at Enstructure’s cost, on an on-going basis under this Agreement to assist Enstructure with all regulatory and administrative matters associated with the management and operation of this Agreement that permits Enstructure to fulfil the terms of this Agreement;

(iii) Failure to Maintain Insurance. Failure to obtain and maintain any insurance policy as required by ARTICLE 13 of this Agreement;

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

¹ As of the Third Amendment Effective Date, the Budget and Accounting Manual may be found here: <https://budget.delaware.gov/accounting-manual/>.

(v) Cooperation with Financings. The failure of DSPC to reasonably cooperate with Enstructure and any Leasehold Mortgagees with respect to any financing by Enstructure pursuant to Section 18 (provided that the DCT Property shall be subject to the Joint Development Agreement); and/or

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

q. **Enstructure Remedies Upon DSPC Default.** Section 10.7 of the Concession Agreement is hereby amended to add the following bold and underlined language, including a new Section 10.7(d):

"Section 10.7 Enstructure Remedies Upon DSPC Default

Upon the occurrence of and during the continuance of a DSPC Default, Enstructure may, upon written notice to DSPC, declare DSPC to be in default and may avail itself of the following remedies. **In the event an uncured DSPC Default relates only to one portion of the Premises (i.e., the Existing Port or the DCT Property), to the extent applicable, Enstructure shall be entitled to exercise the following remedies only with respect to such portion of the Premises.** These remedies are not exclusive, and the election of one remedy shall not preclude an election of any other remedy at a later time:

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

(b) **In the event of an uncured DSPC DCT Pre-Development Default, (i) the DCT Enstructure Assets shall remain the property of Enstructure after termination of this Agreement, (ii) provided no Enstructure Default has occurred and is continuing, DSPC shall forfeit its right to the DCT Combined Assets and (iii) in the event Enstructure does not elect to terminate this Agreement with respect to the DCT Property, Enstructure may elect to not complete the Delaware Container Terminal Project and, to the extent permitted by and in compliance with applicable Laws, may use the DCT Property 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)), and facilitating the dis-embarkment and embarkment of passengers.**

(c) In the event of an uncured DSPC DCT Post-Development Default (i) the DCT Enstructure Assets shall remain the property of Enstructure after termination of this Agreement, (ii) the portion of the DCT Combined Assets funded by Enstructure, calculated based on each Party's respective contributions to the source of funds (e.g., General Funds) used to acquire such assets, shall be treated as "After-Acquired Assets" and DSPC shall be permitted to repurchase Enstructure's share of such assets at fair market value in accordance with the provisions of Article 17 (for the avoidance of doubt, the portion of such assets funded by DSPC shall be treated as "Additional Original Assets") and (iii) to the extent Enstructure does not elect to terminate this Agreement with respect to the DCT Property, Enstructure may elect to not complete any remaining phase(s) of the Delaware Container Terminal Project and, to the extent permitted and in compliance with applicable Laws, may use the DCT Property 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)), and facilitating the dis-embarkment and embarkment of passengers (and the DCT Concession Fee shall be adjusted as set forth in Section 4.3(c)(iii)).

(b) ~~(d)~~ Enstructure may seek specific performance, injunction or other equitable remedies, it being acknowledged by DSPC that damages may be an inadequate remedy for an uncured DSPC Default.

(c) ~~(e)~~ Enstructure may seek to recover all of its Losses arising from an uncured DSPC default, which losses shall include any and all damages, liabilities, penalties, charges, costs and expenses, arising from such DSPC Default."

q. Cross-Default. Article 10 of the Concession Agreement is hereby amended to add new Section 10.10:

"Section 10.10 Enstructure Cross-Default

(a) Notwithstanding anything to the contrary herein, but subject to Section 10.10(b) below, (i) in the event of an uncured Enstructure EP Default, the remedies of DSPC set forth in this Agreement shall be limited to the Existing Port, and not the DCT Property and (ii) in the event of an uncured Enstructure DCT Default, the remedies of DSPC set forth in this Agreement shall be limited to the DCT Property, and not the Existing Port. All provisions in this Agreement relating to the remedies of DSPC shall be interpreted consistently with the immediately preceding sentence (e.g., in the event of an uncured Enstructure EP Default, if the Agreement provides that DSPC may terminate this Agreement upon such an uncured Enstructure Default, then DSPC may terminate this Agreement only with respect to the Existing Port, and the Agreement shall continue in full force

and effect with respect to the DCT Property, and the parties shall amend this Agreement to remove references to the Existing Port and Enstructure's rights, title, interest, duties and obligations thereto).

(b) Notwithstanding Section 10.10(a) above, in the event of (i) an **uncured** Enstructure EP Default (A) prior to Substantial Completion of Phase 1 pursuant to Sections 10.1(a)(i), 10.1(a)(ii), 10.1(a)(iv) (solely with respect to a breach of Section 6.4(b)(i) caused by a negligent act or omission of Enstructure or its Affiliates prior to Substantial Completion of Phase 1), 10.1(a)(v), 10.1(a)(vi), 10.1(a)(vii), 10.1(a)(x) or 10.1(a)(xi), (B) following Substantial Completion of Phase 1 pursuant to Sections 10.1(a)(v) (solely with respect to Enstructure Parent), 10.1(a)(vi) (solely with respect to Enstructure Parent), 10.1(a)(x) (solely with respect to Enstructure Parent) or 10.1(a)(xi) (solely with respect to Enstructure Parent) or (C) at any time pursuant to Section 10.1(a)(viii) (solely with respect to the Letter of Credit or Parent Guaranty) or (ii) an **uncured** Enstructure DCT Default pursuant to Sections 10.1(c)(v) (solely with respect to Enstructure Parent), 10.1(c)(vi) (solely with respect to Enstructure Parent), 10.1(c)(viii) (solely with respect to the Letter of Credit or Parent Guaranty) or 10.1(c)(xi) (solely with respect to Enstructure Parent), in each case such default shall be treated as a default with respect to the Premises generally (subject to the applicable cure periods) and the remedies of DSPC set forth in this Agreement shall be applicable the Premises generally, and not limited to any portion of the Premises."

r. **Surrender**. Section 11.1 of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

"Section 11.1 **Surrender**

Upon the earlier of the Expiration Date or Termination Date, Enstructure shall ~~surrender~~ **Handback** the Premises and Assets **in accordance with ARTICLE 17** ~~(including, without limitation, any remaining Original Assets, any new or replacement assets, infrastructure, alterations, equipment, etc. subject to ARTICLE 17) in the Minimum Condition as set forth in Section 17.2. In case of earlier termination due to a DSPC Default, equipment purchased by Enstructure (other than the Original Assets) shall remain the property of Enstructure after termination of this Agreement. Title to Original Assets conveyed to Enstructure and title~~ **Title** to any Leasehold Improvements constructed by Enstructure on the Premises during the Term shall be transferred from Enstructure to DSPC upon the earlier of the Expiration Date or the Termination Date, at no additional cost to DSPC."

s. **Termination Consequences**. Section 11.2(b) of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 11.2 Termination Consequences

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

(b) Enstructure shall transfer to DSPC title to any Original Assets conveyed to Enstructure along with any After Acquired Assets **or DCT Development Assets** in use for the operation of the Port upon the earlier of the Termination Date or Expiration Date, at no additional cost to DSPC, except as provided in **Section 2.8 and/or** ARTICLE 17;”

t. **Non-Default Termination**. Section 11.3 of the Concession Agreement is hereby amended and restated in its entirety as follows:

“Section 11.3 Non-Default Terminations.

In the event this Agreement is terminated with respect to the DCT Property due to a Budget Failure [REDACTED], Enstructure shall (i) retain the DCT Enstructure Assets and (ii) sell the DCT Combined Assets and divide the proceeds between Enstructure and DSPC in proportion to each Party’s respective contributions to the source of funds (e.g. General Funds) used to acquire such assets (provided, however, that DSPC shall have the first option to purchase the DCT Combined Assets and any sale to DSPC, Enstructure or a third party shall be at fair market value). Any DCT Combined Assets acquired in whole or in part with federal or state grant funding shall be disposed of in accordance with the applicable grant requirements with each party getting its proportionate share of any proceeds thereof in accordance with each party’s respective matching contributions pursuant to the applicable grant agreement. In the event this Agreement is terminated with respect to the DCT Property due to a Cost Overrun, the Parties shall resolve any disputes related to DCT Development Assets in accordance with Article 15 of the Joint Development Agreement.”

u. **Existing Conditions and Monitoring Costs**. Sections 16.2(a) and (b) of the Concession Agreement are hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 16.2 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~~ **Substantial Completion of Phase 1**, 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~~ **Substantial Completion of Phase 1**, and (iii) all environmental conditions (including Hazardous Materials Contamination) arising at the Contributed Property after the date of Contribution.”

v. **Handback Requirements**. Section 17.2(c) of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language:

“Section 17.2 **Handback Requirements**

(c) **Assets**. On or following the Handback Date, Enstructure shall convey **to DSPC** title to any Original Assets conveyed to Enstructure, free and clear of all encumbrances, at no additional cost to DSPC. Enstructure shall, at DSPC’s sole discretion, and in accordance with Section 2.8 of this Agreement, (i) convey the After-Acquired Assets, free and clear of all encumbrances, to DSPC in accordance with Section 17.9 below, **if conveyance is applicable**; or ~~(bii)~~ remove After-Acquired Assets from the Premises at Enstructure’s expense. **With respect to DCT Development Assets, unless otherwise provided in Sections 10.2, 10.7 and 11.3 or in the Joint Development Agreement, Enstructure shall, at DSPC’s sole discretion, and in accordance with Section 2.8 of this Agreement, (i) convey to DSPC title to the DCT Development Assets, free and clear of all encumbrances, at no additional cost to DSPC; or (b) remove the DCT Development Assets from the Premises at Enstructure’s expense.**”

w. **Enstructure’s Right to Mortgage**. 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**

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~~ **Uniform** Commercial Code of any other jurisdiction) its right, title or interest in

the Premises, the membership interests in 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 Enstructure, the proceeds of which shall be used solely for the purchase of Assets, the construction of Leasehold Improvements and the general development and operation of the Premises (each, a “Leasehold 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 Enstructure or its Affiliates, that from time to time provides secured financing to 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. 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 Enstructure in the effort to obtain financing from a Leasehold Mortgagee by Enstructure, provided that DSPC incurs no expense or liability. **Notwithstanding anything to the contrary herein, Enstructure agrees that, prior to Substantial Completion of Phase 1, (i) any Leasehold Mortgage on the DCT Property will be entered into in accordance with the terms of the Joint Development Agreement and (ii) in no event will assets primarily used at or associated with a portion of the Premises (i.e., the Existing Port) or Enstructure’s interest therein be used as collateral for a Leasehold Mortgage or other security interest in connection with a loan or other arrangement that benefits the other portion of the Premises. Further, Enstructure agrees that, at all times during the Term of this Agreement, it will require the terms of every Leasehold Mortgage to require the Leasehold Mortgagee (i) to provide DSPC with notice of any default under any Leasehold Mortgage and (ii) to provide DSPC with the opportunity, in the event of a default under such Leasehold Mortgage, to be involved in discussions and negotiations related to the Leasehold Mortgagee’s exercise of any remedy that would affect the DCT Property.**”

x. **Notices.** Section 21.2(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 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~~
P.O. Box 8600
Wilmington, DE ~~19801~~ **19899**

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.”

y. **Audit Rights**. Section 21.3(a) of the Concession Agreement is hereby amended to add the following bolded and underlined language:

“Section 21.3 Audit Rights

(a) Enstructure shall maintain complete and accurate records sufficient to permit DSPC to audit accurately the cargo levels, **the Existing** Port Initial Capital Expenditure Obligation, the **Existing Port** Total Capital Expenditure Obligation, **the Enstructure Phase 1 Commitment, each Extension Capital Commitment (if Enstructure has exercised its option to extend the Term pursuant to the applicable Extension option)** 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 Enstructure. If it is ultimately determined that Enstructure’s representation to DSPC regarding capital expenditures is in error by at least three (3%) percent, then Enstructure shall pay the out-of-pocket audit fees incurred by DSPC for its inspection and audit of Enstructure’s records.”

z. **Entire Agreement; Amendment; Division Notice.** Section 21.8 of the Concession Agreement is hereby amended to add the following bolded and underlined language:

“Section 21.8 **Entire Agreement; Amendment; Division Notice**

This Agreement and the agreements and contracts contemplated hereby constitute the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, whether oral or written, between the parties, particularly including, without limitation, the request for offer process, the letter of intent and term sheet entered into by the Parties with respect to the matters contained in this Agreement. The making, execution and delivery of this Agreement by the parties have not been induced by any representations, statements, warranties or agreements other than those expressly set forth herein. This Agreement may be amended from time to time, but only by written amendment with the written consent of both DSPC and Enstructure and may be subject to the approval of the Delaware General Assembly. **If, at any time after the Third Amendment Effective Date, Enstructure receives an offer for any equity financing (including any equity investment, partnership, or grant) or substantial debt financing evidenced by a signed letter of intent from an equity partner or a signed letter of approval from a lender (or other similar documentation) to develop and/or support the operations of the Premises that would require the Concession Agreement to be divided into two (2) independent concession agreements to govern the relationship between DSPC, Enstructure and Enstructure Parent with respect to each of the Existing Port and the DCT Property, Enstructure may provide notice to DSPC of such offer and request the division of the Concession Agreement (a “Division Notice”). Within thirty (30) days of receipt by DSPC of a Division Notice, the parties will commence and diligently pursue the negotiation and execution of a concession agreement for each of the Existing**

Port and the DCT Property (the “Existing Port Concession Agreement” and the “DCT Property Concession Agreement,” respectively), each of which shall contain such terms and conditions as are necessary to as nearly as practicable create independent concession agreements that are substantively the same in all material aspects to the existing Concession Agreement other than with respect to logical alterations applicable to each of the Existing Port and the DCT Property, respectively. In the event of any inability to reach agreement upon the terms and conditions of either the Existing Port Concession Agreement or the DCT Property Concession Agreement, either party may seek dispute resolution under ARTICLE 19 and each party expressly and irrevocably consents to the determination by the applicable court under ARTICLE 19 of the terms and conditions that best reflect the foregoing intent which terms and conditions may be imposed upon the parties by that court with respect to those areas where the parties disagree.”

aa. **Community Relations.** Section 21.21 of the Concession Agreement is hereby amended to add the following bolded and underlined language:

“Section 21.21 Community Relations

Enstructure shall assist DSPC and the State of Delaware in developing positive community relations with regard to this Agreement and Enstructure’s operation of the Premises. Enstructure shall make best effort to enter into a community benefits agreement, setting forth the range of community benefits this Agreement will provide and any impact mitigations that may be undertaken to avoid displacement of long-time communities living in close proximity to the Premises. **With respect to the Delaware Container Terminal Project, Enstructure will take the lead, in its sole discretion, on community engagement efforts related to the Delaware Container Terminal Project and operations at the Premises generally, with DSPC and other state agencies actively participating in such community engagement efforts.”**

bb. **Title VI Assurances.** Article 21 of the Concession Agreement is hereby amended to add the following new Section 21.33:

“Section 21.33 Title VI Assurances

During the Term, to the extent required by the PIDP Grant or the CPP Grant, Enstructure agrees that it shall comply with the provisions set forth on Exhibit 4 to the Third Amendment.”

cc. **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:

As the context may require, references to “Edgemoor” in the Concession Agreement shall be deemed references to “the DCT Property” and references to the “Edgemoor Development Project” shall be to the “Delaware Container Terminal Project.”

Capitalized terms not defined in this Agreement and defined in the Joint Development Agreement shall have the meaning given to them in the Joint Development Agreement.

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

“Additional Original Assets” means all assets, including cranes, electric tools, mechanic tools, vehicles, cargo handling, furniture, furnishings, computers, telephones, telephone numbers, office supplies, software and other intellectual property and all other equipment and parts and items, tangible and intangible (other than cash), used or acquired for use in operation at the Port, including the development and operation of the DCT Property, to the extent such assets are acquired solely through the use of DSPC funds, including the DSPC Phase 1 Commitment, and excluding similar items acquired solely through the use of Enstructure funds.

“After-Acquired Assets” has the meaning specified in Section 2.8 but, **for the avoidance of doubt, does not include DCT Development Assets.**

“Assets” has the meaning specified in Section 2.8(a).

“Break Fee” has the meaning specified in the Joint Development Agreement.

“Budget Failure” has the meaning specified in the Joint Development Agreement.

“Cost Overrun” has the meaning specified in the Joint Development Agreement.

“CPP Grant” means that certain grant by the United States Environmental Protection Agency under the Clean Ports Program.

“DCT Combined Assets” means any DCT Development Assets that are acquired through the use of any combination of DSPC funds or Enstructure funds.

“DCT Development Assets” has the meaning specified in Section 2.8(b).

“DCT Enstructure Assets” means any DCT Development Assets that are acquired solely through the use of Enstructure funds, including, the Enstructure Phase 1 Commitment, and excluding similar items acquired in whole or in part through the use of DSPC funds.

“DCT Property” means Edgemoor and, upon the closing of the Contribution, Edgemoor and the Contributed Property.

“DCT Property Base Fee” has the meaning specified in Section 4.3(c)(i).

“DCT Property Assets” means the Assets used or located at the DCT Property.

“DCT Property CO” means the receipt of a certificate of occupancy for the DCT Property upon the substantial completion of Phase 1.

“DCT Property Concession Agreement” has the meaning specified in Section 21.8.

“DCT Property Concession Fee” has the meaning specified in Section 4.3(c).

“DCT Property Operating Revenues” means the Operating Revenues attributable to the DCT Property.

“DCT Property Variable Fee” has the meaning specified in Section 4.3(c)(ii).

“Delaware Container Terminal Project” has the meaning specified in Section 4.9(d).

“Division Notice” has the meaning specified in Section 21.8.

“DSPC Phase 1 Commitment” the sum of Two Hundred Fifteen Million Dollars (\$215,000,000).

“DSPC DCT Default” has the meaning specified in Section 10.6(b).

“DSPC DCT Pre-Development Default” has the meaning specified in Section 10.6(a).

“DSPC DCT Post-Development Default” has the meaning specified in Section 10.6(b).

“DSPC EP Default” has the meaning specified in Section 10.6(b).

~~“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 DCT” means Enstructure DCT LLC, a Delaware limited liability company.

“Enstructure DCT Default” has the meaning specified in Section 10.1(c).

“Enstructure DCT Pre-Development Default” has the meaning specified in Section 10.1(b).

“Enstructure DCT Post-Development Default” has the meaning specified in Section 10.1(c).

“Enstructure Default” has the meaning specified in Section 10.1(c).

“Enstructure EP Default” has the meaning specified in Section 10.1(a).

“Enstructure Phase 1 Commitment” the sum of One Hundred Fifty Million Dollars (\$150,000,000).

“Enstructure Terminable Default” has the meaning specified in the Joint Development Agreement.

“Existing Port Assets” means the Assets used or located at the Existing Port.

“Existing Port Concession Fee” has the meaning specified in Section 4.3(b)(i).

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

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

“**Existing Port Operating Revenues**” means the **Operating Revenues attributable to the Existing Port.**

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

“**Expiration Date**” has the meaning specified in Section 2.2(a).

“**Extension**” has the meaning specified in Section 2.2(c).

“**Extension Capital Commitment**” means each of the **First Extension Capital Commitment and the Second Extension Capital Commitment.**

“**First Extension Capital Commitment**” has the meaning specified in Section 2.2(c).

“**General Funds**” has the meaning specified in the **Joint Development Agreement.**

“**Grant Assets**” means **any assets that are acquired in whole or part through the use of state or federal grant funding, including the Third Amendment Grant Assets. For the avoidance of doubt, to the extent Enstructure has paid the match for any grant funds, and Enstructure’s payment is commingled with such grant funds and used for the purchase of assets, such assets shall be considered Grant Assets.**

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

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

“**Joint Development Agreement**” means the **Joint Development Agreement to be entered into among DSPC, Enstructure and Enstructure DCT with respect to the management and oversight of Phase 1 and Phase 2.**

“**Law**” means any order, writ, injunction, decree, judgment, law, ordinance, decision, principle of common law, ruling that has the force of law, statute, code, rule or regulation of any Governmental Authority, **including, for**

avoidance of doubt, provisions of the Ocean Shipping Reform Act and regulations promulgated thereunder relating to MTO cooperative working agreements with competitor marine terminal operators in the region.

“Leasehold Mortgage” has the meaning specified in Section 18.2 18.3.

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

“Original Assets” means the Initial Original Assets together with the Additional Original Assets.

██
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“Phase 1” means the first phase of the Delaware Container Terminal Project, as described in the Joint Development Agreement.

“Phase 1 Commitments” means the Enstructure Phase 1 Commitment and the DSPC Phase 1 Commitment.

“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.

██
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“Phase 2” means the second phase of the Delaware Container Terminal Project, as described in the Joint Development Agreement.

██
██

“Phase 3” means the third phase of the Delaware Container Terminal Project, as described in the Joint Development Agreement.

“PIDP Grant” that certain Port Infrastructure Development Grant in the amount of Fifty Million Dollars (\$50,000,000).

“PIDP Related Projects” those portions of the Delaware Container Development Project related to and funded by the PIDP Grant as further described in the Joint Development Agreement.

“Premises” has the meaning specified in Section 2.2(a).

“Revised Adjustment Date” has the meaning specified in Section 4.3(b)(i).

“Second Extension Capital Commitment” has the meaning specified in Section 2.2(c).

“SPA” means the Stock and Asset Purchase Agreement dated as of July 28, 2023 between Enstructure and GT USA.

“Substantial Completion of Phase 1” means the date of receipt of the DCT Property CO.

“Term” has the meaning specified in Section 2.2(a).

“Termination Date” has the meaning specified in Section 2.2(a).

“Third Amendment” means that certain Third Amendment to Concession Agreement dated as of December 23, 2024 among DSPC, Enstructure and Enstructure Parent.

“Third Amendment Effective Date” means December 23, 2024.

“Third Amendment Grant Assets” means any assets that are acquired in whole or part through the use of that certain PIDP Grant or that certain CPP Grant.

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

2. Additional Updates. The following Sections of the Concession Agreement are updated as described below.

a. The last sentence of Section 6.6(c) of the Concession Agreement is hereby amended to add the following bolded and underlined language and to delete the following struck-through language: “In the event the United States Federal Government does not assume this cost, if Enstructure is the operator at ~~Edgemoor~~ **the DCT Property**, ~~Edgemoor~~ **Enstructure** agrees to be solely responsible for the cost of such O&M Dredging.”

b. The last sentence of Section 6.6(d) is hereby deleted in its entirety.

c. The references to “GT” in Section 16.1(b) are hereby replaced with references to “Enstructure”.

d. Section 21.31 of the Concession Agreement is hereby amended to add a comma following “Joseph R. Biden, Jr.”.

e. Section 22.2 of the Concession Agreement is hereby amended to add “(a)” at the beginning of the sentence.

f. The references to “Mortgage” in Article 18 are hereby replaced with references to “Leasehold Mortgage”.

3. 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 and the Second Amendment. Upon such agreement, the conformed copy shall be deemed automatically attached to this Third Amendment as Exhibit 5 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, the Second Amendment and the Third Amendment, the terms of the Concession Agreement as amended by the First Amendment, the Second Amendment and the Third Amendment shall control.

4. Miscellaneous.

a. The Recitals on the first page hereof are an integral part of this Third Amendment, are true and correct, and are incorporated herein by reference as if fully set forth in this Section 4. Exhibits 1, 2 and 6 to the Third Amendment are an integral part of this Third Amendment and are incorporated herein by reference as if fully set forth in this Section 4. Exhibit 2 to this Third Amendment shall be deemed to replace in its entirety Exhibit 2 to the Concession Agreement and Exhibit 2 to the Second Amendment. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Concession Agreement as amended by this Third Amendment.

b. This Third 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 Third 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 Third Amendment.

e. If any term, covenant or condition of this Third Amendment or its application to any person or circumstances shall be invalid or unenforceable, the remainder of this Third 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

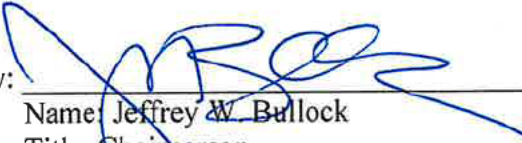
valid and enforceable to the fullest extent permitted by law.

[Signature page follows]

IN WITNESS WHEREOF, the parties set forth below have caused this Third 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:

ENSTRUCTURE PARENT:

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

By: _____
Name:
Title:

ENSTRUCTURE DCT:

**ENSTRUCTURE DCT LLC, a Delaware limited
liability company**

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties set forth below have caused this Third 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: [REDACTED]
Title: Authorized Representative

ENSTRUCTURE PARENT:

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

By:  _____
Name: [REDACTED]
Title: Co-Chief Executive Officer

ENSTRUCTURE DCT:

**ENSTRUCTURE DCT LLC, a Delaware limited
liability company**

By:  _____
Name: [REDACTED]
Title: Authorized Representative

EXHIBIT 1

Representations and Warranties

(a) **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 Third Amendment (for purposes of this Exhibit 1, references to “Enstructure” shall be deemed references to Enstructure, Enstructure Parent and Enstructure DCT):

(i) **Organization.** As of the Third Amendment Effective 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 Third Amendment Effective Date, Enstructure has the power and authority to execute and deliver this Third 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 Third Amendment Effective 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 Third Amendment Effective Date or such other consents that are not required to be obtained as of the Third Amendment Effective Date and shall be obtained following the Third Amendment Effective Date;

(vi) **Compliance with Law; Litigation.** As of the Third Amendment Effective 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 Third 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 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 Third Amendment, (ii) the validity or enforceability of this Third Amendment, or (iii) Enstructure's ability to operate the Premises; and

(vii) Foreign Corrupt Practices Act. As of the Third Amendment Effective 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.

(b) **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 Third Amendment:

(i) Established. As of the Third Amendment Effective 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 Third Amendment Effective 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; and

(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 Third Amendment Effective 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.

EXHIBIT 2

(a) **Costs Prior to Development.** Except as otherwise agreed, prior to the commencement of Phase 1, 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 the Third Amendment.

(b) **Development of the DCT Property.**

(i) The parties anticipate that the Delaware Container Terminal Project will proceed in three phases, subject to the Joint Development Agreement. Enstructure: (A) will determine, at its sole discretion, whether and when to commence each phase; (B) will have discretion to adjust the scope of each phase (use, capacity and design) depending on commercial demand; and (C) may implement Phase 2 and Phase 3 in smaller or larger increments. References in this Exhibit 2 to “Enstructure” shall be deemed references to Enstructure and/or Enstructure DCT, as applicable.

(ii) **Phases 2 and 3.** The amount of required funding for Phase 2 and Phase 3 remains to be determined but the parties currently estimate that Enstructure will provide Fifty Million Dollars (\$50,000,000) to complete Phase 2 and One Hundred and Fifteen Million Dollars (\$115,000,000) to complete Phase 3. Unless otherwise agreed between the parties, Phase 2 and Phase 3 will be fully funded by Enstructure; provided, however, the parties may apply any remaining amounts of the DSPC Phase 1 Commitment to Phase 2 or Phase 3.

(A) Phase 2 includes the development of an estimated additional 21.8-acre portion of the DCT Property and is anticipated to add an estimated 400,000 TEU per year (650,000 TEU total per year). Phase 2 will be covered by the Joint Development Agreement.

i. Upon receipt of all applicable permits, Enstructure shall be permitted to complete Phase 2 as preliminarily described in the Phase 2 Development Plan (as defined in the Joint Development Agreement) without any further consent of DSPC. If no DSPC funds are used, and DSPC is not a sponsor for any grants used, in connection with Phase 2, the governance rights (but not the rights to information) of the Joint Governance Committee (as defined in the Joint Development Agreement) shall not apply to Phase 2. If DSPC funds are used, or DSPC is a sponsor for any grants used, in connection with Phase 2, the provisions of the Joint Development Agreement relating to the Joint Governance Committee shall continue to exist and apply to Phase 2.

(B) Phase 3 includes the development of the final 54.5-acre portion of the DCT Property and is anticipated to add an estimated 550,000 TEU per year (1,200,000 TEU total per year). The parties intend to enter into agreements governing the development of Phase 3, similar to the Joint Development Agreement for Phase 1 and Phase 2.

i. Enstructure shall be permitted to complete Phase 3 with the consent of DSPC, which consent shall not be unreasonably withheld, delayed or conditioned. If no DSPC funds are used, and DSPC is not a sponsor for any grants used, in connection with Phase 3, DSPC shall have similar rights to information as the Joint Governance

Committee but shall not have consent rights with respect to Phase 3. If DSPC funds are used, or DSPC is a sponsor for any grants used, and DSPC has consented to Phase 3, the joint development agreement the parties intend to enter into with respect to Phase 3 shall include provisions that give DSPC the same governance and informational rights as the Joint Development Agreement.

(c) **Procurement.** In accordance with 29 Del. C. § 6904 and Section 73 of House Bill No. 475 (151st General Assembly) and Section 73 of Senate Bill 160 (152nd General Assembly), to the extent required in connection with applicable federal laws and the laws of the State of Delaware, Enstructure shall ensure that the Delaware Container Terminal Project complies with state procurement requirements, including the procurement standards described in 29 Del. C. §§ 6960, 6962(d)(4)a., 6962(d)(7), 6929(d)(8) and 6929(d)(9). Enstructure shall ensure that the Delaware Container Terminal Project complies with the procurement standards described in 2 C.F.R. 200.317-327. Further, Enstructure has previously entered into a project labor agreement with respect to the Delaware Container Terminal Project.

(d) **Contributed Property.** For the avoidance of doubt, the treatment of the Contributed Property shall be as set forth below.

(i) In the event DSPC has acquired the Contributed Property pursuant to Section 4.9(c) of the Concession Agreement:

(A) If the Joint Development Agreement is terminated pursuant to a Budget Failure [REDACTED] and Enstructure or DSPC elects to terminate the Concession Agreement with respect to the DCT Property: (1) Edgemoor will be automatically deemed removed from Enstructure's leasehold interest and all references to "Premises" will thereafter only include the Existing Port; and (2) the Contributed Property shall remain in Enstructure's leasehold interest under the Concession Agreement for the remainder of the Term. If DSPC elects to move forward with the development of the DCT Property, Enstructure agrees to sublease the Contributed Property to DSPC or to a third-party developer on commercially reasonable terms. Notwithstanding anything to the contrary herein, including Section 16.2(a), if Enstructure subleases the Contributed Property, Enstructure shall remain liable for all environmental conditions (including Hazardous Materials Contamination) existing at the Contributed Property as of the date of Contribution.

(B) In all other events, if the Concession Agreement with respect to the DCT Property is terminated, Edgemoor and the Contributed Property will be automatically deemed removed from Enstructure's leasehold interest and all references to "Premises" will thereafter only include the Existing Port.

(ii) In the event DSPC has not yet exercised its option to acquire the Contributed Property pursuant to Section 4.9(c) of the Concession Agreement:

(A) If the Concession Agreement with respect to the DCT Property is terminated, Edgemoor will be automatically deemed removed from Enstructure's leasehold interest and all references to "Premises" will thereafter only include the Existing Port. If DSPC elects to move forward with the development of the DCT Property, Enstructure agrees to lease

the Contributed Property to DSPC or to a third-party developer on commercially reasonable terms. If DSPC elects to exercise its option, the provisions of Section (d)(i) above shall control.

(B) DSPC's option to purchase the Contributed Property pursuant to Section 4.9(c) of the Concession Agreement shall remain in full force and effect for the remainder of the Term.

(iii) Notwithstanding if DSPC has not acquired the Contributed Property (for the avoidance of doubt, its option to do so exists for the remainder of the Term), if Enstructure leases the Contributed Property following the Third Amendment Effective Date, Enstructure shall require that any use of the Contributed Property is supported with unionized labor.

EXHIBIT 3

[REDACTED]

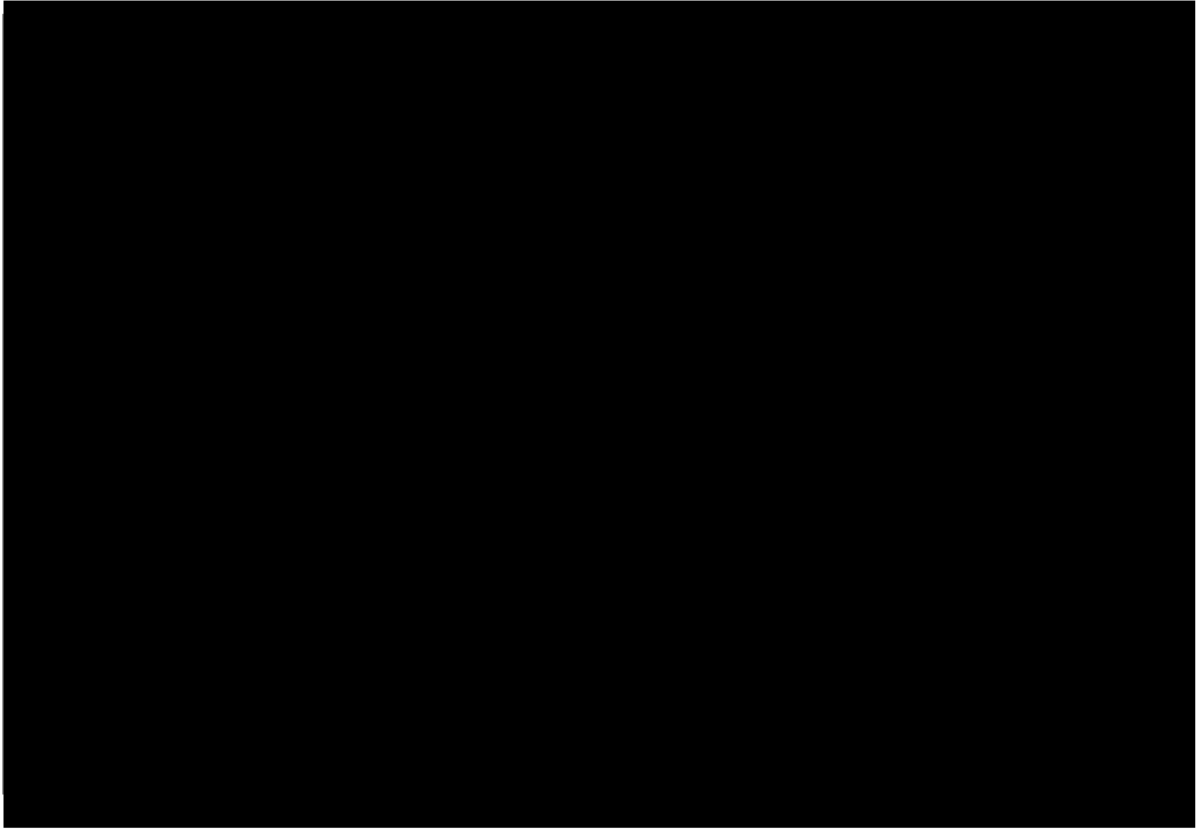


EXHIBIT 4

Title VI Assurances

By executing the foregoing agreement (the “Agreement”) to which this Exhibit is attached, Enstructure acknowledges that DSPC has given or will give to the United States certain assurances with respect to non-discrimination required by Title VI of the Civil Rights Act 1964 (42 U.S.C. § 2000d et seq., 78 Stat. 252), 49 C.F.R. Part 21, 49 C.F.R. § 47123, 28 C.F.R. § 50.3 and other acts and regulations related to non-discrimination in Federally-assisted programs of the U.S. Department of Transportation (“DOT”) (collectively, and including all amendments thereto, the “Acts and Regulations”) as a condition precedent to receiving Federal financial assistance for certain Delaware Container Terminal Project expenses or projects described in the Agreement and limited to those PIDP Related Projects for which the PIDP Grant (as defined in the Agreement) are used. DSPC is required under the Acts and Regulations to include in the Agreement, and Enstructure agrees to be bound by, the covenants and requirements set forth in this Exhibit.

Enstructure agrees and certifies that it will comply with the provisions set forth below with respect to those PIDP Related Projects for which the PIDP Grant funds are used. Enstructure further agrees that it shall (i) insert each of these provisions in all of its contracts and subcontracts related to those PIDP Related Projects for which the PIDP Grant funds are used; (ii) require that the clauses be included in all lower tier subcontracts related to those PIDP Related Projects for which the PIDP Grant funds are used; (iii) incorporate applicable requirements of these provisions by reference for work done under any purchase orders, rental agreements, and other agreements for supplies or services for those PIDP Related Projects for which the PIDP Grant funds are used; and (iv) be responsible for compliance with these provisions by any subcontractor, lower-tier subcontractor, or service provider for those PIDP Related Projects for which the PIDP Grant funds are used. For purposes of the following provisions, Enstructure is sometimes hereinafter called “contractor” and DSPC is sometimes called “Sponsor” or “Recipient.” In the event of a discrepancy between the following provisions and other provisions of the Agreement, the provisions of this Exhibit shall prevail.

(a) **Compliance and Non-discrimination Requirements.** During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

(i) *Compliance with Regulations.* The contractor (hereinafter includes consultants) will comply with the Acts and Regulations relative to non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

(ii) *Non-discrimination.* The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

(iii) *Solicitations for Subcontracts, Including Procurements of Materials and Equipment.* In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to non-discrimination on the grounds of race, color, or national origin.

(iv) *Information and Reports.* The contractor will provide all information and reports required by the Acts and Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or DOT to be pertinent to ascertain compliance with such Acts and Regulations and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or DOT, as appropriate, and will set forth what efforts it has made to obtain the information.

(v) *Sanctions for Noncompliance.* In the event of a contractor's noncompliance with the non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or DOT may determine to be appropriate, including, but not limited to:

(A) withholding payments to the contractor under the Agreement until the contractor complies; and/or

(B) cancelling, terminating, or suspending a contract, in whole or in part.

(vi) *Incorporation of Provisions.* The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts and Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or DOT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

(b) **Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.** The contractor for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the contractor will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

(c) **Title VI List of Pertinent Non-discrimination Authorities.** During the performance of the Agreement, the contractor agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibiting discrimination on the basis of race, color, national origin) and 49 C.F.R. Part 21;

(ii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, et seq.) (prohibiting unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

(iii) Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibiting discrimination on the basis of sex);

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 C.F.R. Part 27;

(v) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);

(vi) Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47101 et seq.), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

(vii) The Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

(viii) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131–12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;

(ix) The Federal Aviation Administration’s non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

(x) Executive Order 12898 (as amended by Executive Order 12948), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

(xi) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

(xii) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

EXHIBIT 5

Conformed Concession Agreement

[To be attached.]