

EXPLANATION OF CONSENT AGENDA ITEM E.2.c.(10) – February 22, 2017

ITEM:

Consideration of approving first amendment to one (1) year lease dated January 22, 2016 with Autoport Canaveral, LLC to acknowledge election of a three (3) year lease extension, revise extension options to provide up to four (4) extensions of three years each (total term not to exceed 16 years) and update potential expansion sites. The first amendment has been reviewed and approved by General Counsel and Port Attorney.

EXPLANATION:

At the November 18, 2015 commission meeting, the Board approved a 1-year lease with Autoport that included an option for the tenant to extend the term as business ramped up. This first amendment to the lease acknowledges tenants election to extend the lease term by 3 years, provides up to four (4) extensions of three years each (total term not to exceed 16 years), and updates the potential expansion sites (locations, acreages, and pricing). Terms of the Amendment include:

Term: Extended through January 31, 2020

Monthly Rent: \$1,600/AC (Year 1)
\$1,700/AC (Year 2)
\$1,800/AC (Year 3)

Improvements: Tenant responsible for purchase, installation and maintenance of HVAC with estimated cost in excess of \$20,000. Tenant will be given rent credit in an amount not to exceed the lesser of the cost of purchase and installation or \$20,000. HVAC system to be surrendered with premises upon expiration or termination of lease.

Options: Further term extensions and/or addition of expansion sites to be brought back to the Board for consideration.

STAFF RECOMMENDS APPROVAL:

Prepared by: Craig Langley

EXPLANATION OF CONSENT AGENDA ITEM E.2.c.(10) – February 22, 2017



**FIRST AMENDMENT TO
LEASE AGREEMENT**

THIS FIRST AMENDMENT TO LEASE AGREEMENT is entered into, executed and delivered as of _____, 2017 (the "**Amendment**"), by and between **CANAVERAL PORT AUTHORITY**, an independent special taxing district and political subdivision of the State of Florida, (hereinafter referred to as "**Lessor**"); and **AUTOPORT CANAVERAL, LLC**, a Delaware limited liability company, (hereinafter referred to as "**Lessee**"). Lessor and Lessee are at times hereinafter referred to respectively as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, Lessor and Lessee are parties to that certain Lease Agreement dated January 22, 2016 (the "**Lease**"), a memorandum of which was recorded on August 23, 2016 at Official Record Book 7692, Page 1747 in the Public Record of Brevard County, Florida, for the lease of an approximate 20,000 square foot of warehouse space and a modular office on approximately 14.7 acres of land located at 9011 Marlin Street, Cape Canaveral, Florida, (collectively the "**Premises**"), as more particularly described in the Lease;

WHEREAS, any term not otherwise defined herein, shall have the meaning as set forth in the Lease;

WHEREAS, Lessee has timely provided its Extension Notice for a three (3) year extension to the Term and the Parties wish to amend the Lease to reflect the said extension;

WHEREAS, the Parties further wish to amend the Lease to, among other things, clarify the parcel size, revise the Expansion Sites and future Extension Options, and define the Parties obligations with respect to installation of a new Heating, Ventilating, and Air Conditioning (HVAC) system, all subject to the terms set forth herein.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as of the date hereof as follows:

1. **Recitals**. The Parties hereby acknowledge the accuracy of the above recitals, and incorporate the same as substantive provisions of this Amendment.

2. **Extension of Lease Term**. Section 2.a. of the Lease is hereby amended to reflect the election and approval of the first Extension Option thereby adding three (3) years to the Term of the Lease. As of the Effective Date of this Amendment, the Term of the Lease shall expire at 12 midnight on January 31, 2020, subject to such additional Extension Options properly exercised in accordance with the terms set forth in the Lease as amended hereby. As used in the Lease, "Term" means the Initial Term and, to the extent Extension Options have been properly exercised, the Extension Period(s), unless the context clearly requires otherwise.

3. Extension Options. Section 2.b. of the Lease is hereby deleted in its entirety and replaced as follows:

Lessee shall have the right, as hereinafter provided, to further extend the Term of the Lease for four (4) periods of three (3) years (each an "Extension Option" with the applicable term extension being referred to as an "Extension Period"), upon the following terms and conditions:

i. If Lessee desires to exercise an Extension Option, it must notify Lessor in writing (the "Extension Notice") no later than two hundred seventy (270) days prior to the expiration of the then current Term. The failure by Lessee to exercise an Extension Option on or before such time, for whatever reason, shall result in the automatic termination of any remaining Extension Options and the Lease shall terminate upon expiration without any further notice required by either Party upon expiration of the then current Term.

ii. Lessee shall not be entitled to exercise an Extension Option if Lessee shall be in material default in the performance of any of the Lease terms, covenants and conditions (after receipt of any required notice and the passage of any applicable cure period), either at the time of its attempted exercise of an Extension Option or at the proposed time of commencement of the Extension Period.

iii. Upon the proper exercise by Lessee of an Extension Option, and provided that the Extension Option has not been terminated pursuant to Paragraph (ii) above, the Term shall be extended by the applicable Extension Period.

iv. Except as otherwise provided herein, the extension of the Term pursuant to an Extension Option shall be upon the same terms, covenants and conditions as provided in this Lease, as if the Term of this Lease had been through the end of the Extension Period.

4. Rent. Section 3.b. of the Lease is hereby deleted in its entirety and replaced as follows:

Subject to the proper exercise of the Extension Option(s) the base rental for the Premises beginning in Year Two (2) and continuing through the end of the Lease Term, shall be as follows:

Lease Year	Monthly Base Rent/Acre
Two (2)	\$1,600/ac/month
Three (3)	\$1,700/ac/month
Four (4)	\$1,800/ac/month
Five (5)	\$1,900/ac/month
Six (6)	\$2,000/ac/month
Seven (7) and thereafter	Annual 3% increase over prior Lease Year

For the purpose of Rent calculation, the Parties acknowledge and agree the Property consists of 14.7 acres (west side of Marlin Street-12.03 acres + east side of Marlin Street 2.69 acres). Upon Lessor's completion of improvements to fill an existing pond area north of the Property and

providing Lessee a copy of a signed sketch and legal description of the Property (west side of Marlin Street) the rent shall be recalculated. On the first day of the next month after Lessor provides such notice, the Rent calculation will be based on the revised acreage for the Property (west side of Marlin Street) +2.69 acres (east side of Marlin Street).

5. Expansion of the Premises. Section 6 of the Lease is hereby deleted in its entirety and replaced with the following:

In further consideration hereof, during the first two (2) years of the Term, Lessor hereby grants Lessee option pricing on up to five (5) potential expansion areas as generally depicted in Exhibit "B", attached hereto and incorporated by reference (individually, an "**Expansion Site**" and collectively, the "**Expansion Sites**") subject to priority and the availability of the Expansion Sites as determined by Lessor. At anytime during the first two (2) years of the Term, should Lessee desire to expand the Premises to include an Expansion Site, Lessee shall provide written notice to Lessor containing the following: (a) identification of the desired Expansion Site(s); (b) summary of the need for such Expansion Site(s) based upon executed OEM deals and Lessee's projected volumes; and (c) desired timing for Lessee's occupancy of such Expansion Site(s) (the "**Expansion Notice**"). Within thirty (30) days of receipt of the Expansion Notice, Lessor shall provide Lessee written notice as to the availability of such Expansion Site(s) and, if available, the Parties shall subsequently amend this Lease, subject to approval of the lease amendment by both Parties, to add such mutually approved Expansion Site(s). Except as otherwise provided herein or as may be mutually agreed by the Parties, the terms and conditions of the lease amendment relative to an Expansion Site(s) shall be the same as the terms and conditions provided herein. An Expansion Site(s) shall only be used for staging of vehicles processed through the Premises. Except as otherwise provided herein or as may be mutually agreed by the Parties, the term of such lease amendment shall be co-terminus with then current Term and shall commence upon delivery by Lessor of an Expansion Site(s) to Lessee. The Rent for an Expansion Site(s) shall be at the rental rates provided in Exhibit "B-1", attached hereto and incorporated by reference. Except as otherwise provided herein or as may be mutually agreed by the Parties, within six (6) months following mutual agreement as to an Expansion Site(s) as evidenced by a fully executed Lease amendment, the Lessor shall deliver the Expansion Sites to Lessee, and to the extent identified in Exhibit "B-1", such Expansion Sites shall be improved with pavement for parking vehicles at Lessor's cost and expense.

6. Improvements. Section 14 of the Lease is hereby amended to add the following:

The Lessee agrees to purchase and install a new HVAC system for the Building. Lessee shall provide Lessor with three (3) quotes for the HVAC system and installation, along with a justification for the selection of the chosen system. Once installed, Lessee shall be solely responsible for the maintenance and any future repairs to the HVAC system as provided in Section 21 of the Lease. Upon expiration or earlier termination of the Lease, the HVAC system shall be surrendered with the Premises in workable condition, reasonable wear and tear excepted. As consideration therefore, Lessor shall reimburse Lessee in an amount not to exceed the lesser of (i) the cost to purchase and install a new HVAC system, as evidenced by final payment receipts; or (ii) \$20,000.00. Such reimbursement shall be credited toward Lessee's Rent in the amount of

\$5,000.00 per month, beginning on the first full month after installation of the HVAC system and Lessor's approval of final payment receipts, and continuing each month thereafter until Lessor's reimbursement obligation is satisfied. (Note: credit amount in the final month may be less than \$5,000.00).

7. South Warehouse Space. A new Section 52 is hereby added to the Lease as follows:

If at any time during the Term, the southern portion of the warehouse of which the Building is part (i.e., approximately 40,000 square feet together with the approximately 1.77 acres of land collectively referred to herein as the "South Warehouse") is vacated by the Lessor's existing (as of the date of this Amendment) tenant, Lessor shall notify Lessee in writing of said event (the "Vacancy Notice"). Upon receipt of the Vacancy Notice, Lessee shall have thirty (30) days to notify Lessor in writing of its desire to lease the South Warehouse upon the following terms and conditions: (i) Lessee shall accept South Warehouse "as is"; (ii) the monthly base rental per acre shall be equal to the monthly base rental per acre then in effect for the Premises, and will thereafter be subject to the same annual increases at the same time and in the same manner as Rent for the Premises; (iii) the term shall be co-terminus with then current Term for the Premises; (iv) any remaining Extension Options shall also be applicable to the South Warehouse; and (v) all other terms and conditions shall be as set forth in this Lease. Failure by Lessee to notify Lessor of its election on or before such time, for whatever reason, shall result in automatic termination of this option for the South Warehouse. For the avoidance of doubt, nothing in this Section shall limit or impair the rights of Lessor to lease the South Warehouse should Lessee fail to timely notify Lessor of its election. Upon proper exercise of this option Lessee and Lessor shall subsequently amend this Lease, subject to approval of the lease amendment by both Parties, to incorporate the South Warehouse into the Premises.

8. Expansion of the Property via First Refusal Option – VSA #1

At any time on or before August 31, 2017, if Lessor shall receive a bona fide signed written offer from a third party that Lessor desires to accept, whereby the third party seeks to lease the property described in Exhibit "B" as VSA #1 from Lessor, (the "VSA#Lease Offer"), then Lessee may exercise a first refusal option to lease VSA #1, in accordance with the procedures hereinafter set forth (the "FRO").

In the event a VSA #1 Lease Offer occurs, Lessor shall give notice and a full copy thereof to Lessee, stating in such notice that the submission is made in connection with Lessee's FRO under this Section. Lessee shall thereupon have fifteen (15) business days from the date such Lessor notice is given in which to give a return notice to Lessor, stating whether Lessee elects to lease the VSA #1 on the terms set forth in this Agreement. In the event that, within the fifteen (15) business day period aforesaid, Lessee shall not give any return notice to Lessor, or gives a return notice declining to exercise the FRO, then Lessor shall have the right to enter into a lease to the third party for VSA #1 or portion thereof referenced in the VSA #1 Lease Offer. In the event that the lease to the third party is consummated, then the FRO granted to Lessee under this Section shall cease and terminate, and shall have no further force or effect whatsoever. In the event that the third party lease is not consummated

for any reason, then the FRO granted to Lessee under this Section shall continue in full force and effect until August 31, 2017.

9. No Other Modifications. Except as hereby amended, no other term, condition or provision of the Lease shall be deemed modified or amended. From and after the date hereof, all references in the Lease, and any other document or instrument entered into in connection therewith, to the Lease shall be deemed to be references to the Lease as amended by this Amendment. The Lease is amended only to the extent set out in this Amendment. In all other respects, the existing terms and conditions of the Lease shall remain in full force and effect.

10. Counterparts; Facsimile Signatures. This Amendment may be executed in one or more counterpart copies, each of which constitutes an original, but all which, when taken together, shall constitute one Lease binding upon all of the Parties hereto. Further, the Parties hereto may execute facsimile copies of this Amendment and the facsimile signature of any such Party shall be deemed an original and fully binding on said Party; provided, however, any Party executing this Amendment by facsimile signature agrees to promptly provide an original executed copy of this Amendment to the other. Each person signing on behalf of the Parties below, represent and warrant they have full authority to enter this Amendment on behalf of the respective Party.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment to the Lease as of the date last signed below.

CANAVERAL PORT AUTHORITY,
an independent special taxing district and political
subdivision of the State of Florida

Witnesses:


By: _____
Thomas W. Weinberg, Chairman

ATTEST: _____
Jerry W. Allender, Secretary/Treasurer

Date: _____, 2017

AUTOPORT CANAVERAL, LLC,
a Delaware limited liability company

Witnesses:



Karen J. Scott

By:  _____

Name: ROY A. KIRCHNER

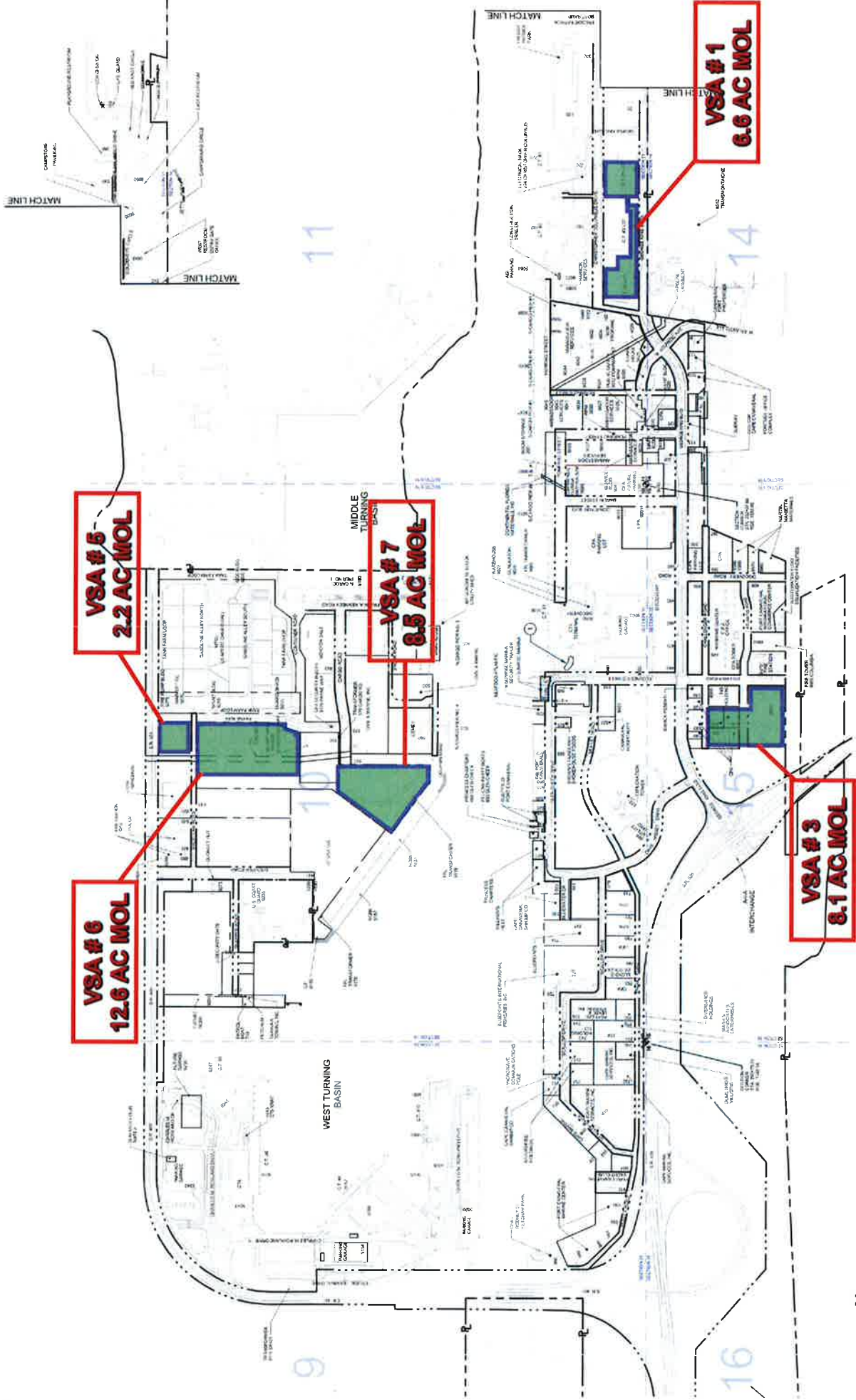
Title: PRESIDENT - CEO

Date: FEBRUARY 14, 2017

EXHIBIT "B"

Depiction of Potential Expansion Sites

EXHIBIT B Expansion Sites



Notes:

1. Boundaries and acreages approximate and subject to final survey.

EXHIBIT "B-1"

Potential Expansion Sites, Priority and Rates

EXHIBIT B -1

Potential Expansion Sites, Priority and Rates

Vehicle Staging Areas	Takedown Priority	Description	Conditions	Acreege Est.	Rates 2017 per acre/month	Monthly Rent	Annual Rent
VSA #1	First (1)	South Side: CT-3 parking lot east of Base Lease Premises	As Is; Area available until 2020	6.6	\$1,600	\$10,560	\$126,720
VSA #7	Second (2)	North Side: @NCB5	Paved; As-Is; License for use; Short term availability until required by others	8.5	\$2,060	\$17,510	\$210,120
VSA #3	Third (3)	South Side: West of Maritime Center	Grass Lot/undeveloped + Existing warehouse; Requires relocation of existing Port uses	8.1	\$1,600	\$12,960	\$155,520
VSA #6	Fourth (4)	North Side: West side of Payne Way	Undeveloped; Allow up to 12 Months	12.6	\$2,060	\$25,956	\$311,472
VSA #5	Fifth (5)	North Side: north of VSA#6	Undeveloped; Allow up to 12 Months	2.2	\$2,060	\$4,532	\$54,384
Total Potential area not including base lease:				38			\$858,216

Notes

1. Lease on Expansion Sites will depend on OEM deals signed and volumes projected.
2. Expansion Sites to be phased in over time.
3. Expansion Site availability is subject to change and will vary over time.
4. North Side Rates will be subject to annual 3% increase.
5. South Side rates will increase in period beyond 2017 to match North Side per acre/month rates (e.g., \$1700 in 2018, \$1800 in 2019, \$1900 in 2020 and \$2000 in 2021) and then will be subject to an annual 3% increase.
6. Takedown priority based on availability and port construction schedules.
7. Allow 6-12 months for any improvements agreed to be completed by Landlord. Landlord's obligation for improvements (e.g., paving, fencing, lighting, or stormwater) shall depend on OEM deal signed and volumes projected. Unless otherwise agreed in writing all other improvements by tenant.
8. All acreages estimated and subject to final survey.