

AMENDMENT NO. 2 OF COMMERCIAL LEASE AGREEMENT
(Parcel 12A Subbase)

This Amendment No. 2 of Commercial Lease Agreement is made and entered into this 4th day of June 2013, by and between Virgin Islands Port Authority, P.O. Box 301707, St. Thomas, United States Virgin Islands 00803-1707 ("Tenant"), and Government of the Virgin Islands through the Department of Property and Procurement, Building No. 1, Subbase, St. Thomas, United States Virgin islands 00802 on behalf of the Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building, Second Floor, St. Thomas, United States Virgin Islands 00802 ("Landlord").

WITNESSETH

WHEREAS, there exists a certain Commercial Lease Agreement signed by then Governor Alexander A. Farrelly on May 12, 1987 and the Legislature of the Virgin Islands on August 18, 1987 between Landlord and Tenant for the use, occupancy and development of some 33 acres of submerged and filled lands located in Crown Bay, St. Thomas and more particularly designated as Parcel No. 161, Subbase, Phase II-A, Phase II-B, and Marina Basin, all as shown on Exhibit "A" attached to said Commercial Lease Agreement;

WHEREAS, there is an Amendment No. 1 to the Commercial Lease Agreement between the Government of the Virgin Islands and Virgin Islands Port Authority dated July 23, 1987 and approved by the Legislature of the Virgin Islands on August 18, 1987; and

WHEREAS, copies of the Commercial Lease Agreement, with Exhibit "A" attached, and Amendment No. 1 are attached to this Amendment No. 2; and

WHEREAS, Parcel No. 12A Subbase consists of approximately 8,500 square feet, located behind the old L'Escargot Building, adjacent to Parcel 170 Crown Bay Landfill (See OLG File No. D3-420-T91 attached), and is within the development of filled lands under Phase II-A of the Commercial Lease Agreement between Landlord and Tenant; and

WHEREAS, Tenant intends to relinquish and surrender all its right and interest in Parcel 12A Subbase under the Commercial Lease Agreement to Landlord, in exchange for which Landlord intends to convey to Tenant by Quit Claim Deed a portion of Parcel Nos. 16, 17 and 18 Subbase consisting of 14,322, 5,108 and 5,003 square feet, respectively; and

WHEREAS, a portion of Parcels Nos. 16, 17 and 18 Subbase are owned by the Government of the Virgin Islands through the Department of Property and Procurement and lie contiguous to filled lands, namely, Parcels 168 and 169 Crown Bay Landfill leased to Tenant by Landlord; and

Doc# 2013007063

Amendment No. 2 of Commercial Lease Agreement (Parcel 12A Subbase)

Page 2 of 7

WHEREAS, Parcel No. 12 Subbase is owned by the Government of the Virgin Islands through the Department of Property and Procurement; and

WHEREAS, it is in the best interest of Tenant and Landlord to exchange these parcels so that they can be included within the overall use and development of their respective properties with which the parcels to be exchanged are contiguous; and

WHEREAS, the term of the Commercial Lease Agreement is for a basic term of twenty (20) years commencing on its effective date, with the option to renew the Lease for four (4) additional terms of twenty (20) years each; and

WHEREAS, pursuant to §9 of Act No. 6335 approved by the Legislature of the Virgin Islands on December 22, 1999, Tenant was granted the right to exercise its four 20 year options set forth in Section 3 of the Commercial Lease Agreement without executing a new lease, and Tenant has exercised such right; and

WHEREAS, the Tenant's Governing Board on September 21, 2011, at a regularly held meeting with quorum present, voted in favor of the exchange of parcels described herein.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Tenant and Landlord acknowledge, understand and agree as follows:

1. Tenant does hereby relinquish and surrender unto Landlord all of Tenant's rights and interest in and to Parcel 12A Subbase under the Commercial Lease Agreement attached hereto.
2. Landlord hereby accepts the foregoing relinquishment and surrender of the Tenant's rights and interest and hereby assumes all liabilities and obligations of the Tenant under the Commercial Lease Agreement and tenancy arising from and after the date of this Amendment No. 2.
3. To the extent allowable by law, Landlord hereby agrees to indemnify, defend and hold harmless Tenant from and against any and all costs, claims, obligations, damages, penalties, causes of action, losses, injuries, liabilities and expenses (including without limitation reasonable attorney fees and disbursements) of whatever kind or nature with respect to any claim, liability or obligation under the Commercial Lease Agreement and tenancy arising or accruing on or after the date of this Amendment No. 2.


Amendment No. 2 of Commercial Lease Agreement (Parcel 12A Subbase)

Page 3 of 7

- 4. Tenant hereby agrees to indemnify, defend and hold harmless Landlord from and against any and all costs, claims, obligations, damages, penalties, causes of action, losses, injuries, liabilities and expenses (including without limitation reasonable attorney fees and disbursements) of whatever kind or nature with respect to any claim, liability or obligation under the Commercial Lease Agreement and tenancy arising or accruing prior to the date of this Amendment No. 2.
- 5. Tenant hereby represents to Landlord as follows:
 - a. that the Commercial Lease Agreement, with Exhibit "A" attached, and Amendment No. 1 delivered to Landlord are true, correct and complete copies;
 - b. that the Tenant has not amended or extended the Lease except as aforesaid;
 - c. that all rents and fees due and payable under the Commercial Lease Agreement are current through the date of this Amendment No. 2;
 - d. that as of the date hereof, the Tenant is not in default under the terms of the Commercial Lease Agreement, all obligations and conditions under the Commercial Lease Agreement or tenancy to be performed to date by Tenant have been satisfied, no event has occurred which, with the passage of time or giving of notice or both, would constitute a default or event of default by Tenant under the Commercial Lease Agreement or tenancy.
- 6. This Amendment No. 2 shall inure to the benefit of and shall be binding upon the Tenant and the Landlord, and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned being duly authorized have caused this Amendment No. 2 to be executed and delivered on the date first above written.

Witnesses



Tenant: Virgin Islands Port Authority



 By: Carlton Dowe
 Executive Director

Doc# 2013007063

Amendment No. 2 of Commercial Lease Agreement (Parcel 12A Subbase)

Page 4 of 7

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. THOMAS/ST. JOHN) S.S.:

The foregoing Amendment No. 2 of Commercial Lease Agreement was acknowledged before me this 4th day of June, 2013 by Carlton Dowe as Executive Director of the Virgin Islands Port Authority.

NOTARY PUBLIC
Name: **Henry V. Carr, III, Esq.**
Comm. Exp: June 24, 2013
Comm. #: LNP 014-09
St. Thomas/St. John District

Notary Public
My Commission Expires: _____

Witnesses

Tenant: Virgin Islands Port Authority Governing Board

By: Robert O'Connor, Jr.
Chairman

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. THOMAS/ST. JOHN) S.S.:

The foregoing Amendment No. 2 of Commercial Lease Agreement was acknowledged before me this 4th day of June, 2013 by Robert O'Connor, Jr. as Chairman of the Virgin Islands Port Authority Governing Board.

NOTARY PUBLIC
Name: **Henry V. Carr, III, Esq.**
Comm. Exp: June 24, 2013
Comm. #: LNP 014-09
St. Thomas/St. John District

Notary Public
My Commission Expires: _____

Doc# 2013007065
Pages 20
09/04/2013 10:56AM
Official Records of
ST THOMAS/ST JOHN
ERICA DOVER, M.P.A.
RECORDER OF DEEDS
Fees \$0.00

ACCEPTANCE :

Amendment No. 2 of Commercial Lease Agreement (Parcel 12A Subbase)

Page 5 of 7

LANDLORD, Government of the Virgin Islands through the Department of Property and Procurement on behalf of the Department of Planning and Natural Resources, hereby accept the aforesaid Amendment No. 2 of the Commercial Lease Agreement, and assume and agree to observe and perform all of the obligations and conditions of the Tenant under the said Commercial Lease Agreement.

IN WITNESS WHEREOF Landlord has caused this instrument to be signed this 13th day of June, 2013.

Witnesses

Department of Planning and Natural Resources

[Signature]
Sherril Allard

[Signature] 6/13/13
By: Commissioner Alicia Barnes

TERRITORY OF THE VIRGIN ISLANDS)
DISTRICT OF ST. THOMAS & ST. JOHN) S.S.:

14th The foregoing Acceptance was acknowledged before me this June day of June, 2013 by Alicia Barnes as Commissioner of the Department of Planning and Natural Resources.

[Signature]
Notary Public
My Commission Expires: 11/4/2016

Beryl L. Innis, Notary Public
NP-88-12 My Comm. Exp. 11-4-2016
Territory of the Virgin Islands
STT-STJ USVI DISTRICT



Witnesses

Department of Property and Procurement

Amendment No. 2 of Commercial Lease Agreement (Parcel 12A Subbase)

Page 6 of 7

Witnesses

Department of Property and Procurement

Lisa Mill

Lynn A. Millin Maduro
By: Commissioner Lynn A. Millin Maduro

Deak Hill

TERRITORY OF THE VIRGIN ISLANDS)
DISTRICT OF ST. THOMAS & ST. JOHN) S.S.:

The foregoing Acceptance was acknowledged before me this 18 day of June, 2013 by Lynn A. Millin Maduro as Commissioner of the Department of Property and Procurement Resources.

[Signature]
Notary Public At the Pleasure of
My Commission Expires 11/1/2013

Approved:

[Signature]
John P. De Jongh
Governor of the Virgin Islands

7/19/13
Date

[Signature]
Shawn-Michael Malone
President of the 30th Legislature
of the Virgin Islands

8/9/2013
Doc# ~~2013007065~~
Pages 20
09/04/2013 10:56AM
Official Records of
ST THOMAS/ST JOHN
ERICA DOVER, M.P.A.
RECORDER OF DEEDS
Fees \$0.00

Approved for Legal Sufficiency


[Signature]
Legal Counsel
Virgin Islands Port Authority

5-31-13

Amendment No. 2 of Commercial Lease Agreement (Parcel 12A
Subbase)

Page 7 of 7

Approved for Legal Sufficiency


Assistant Attorney General
Government of the Virgin Islands

Doc# 2013007063
Pages 20
09/04/2013 10:56AM
Official Records of
ST THOMAS/ST JOHN
ERICA DOVER, M.P.A.
RECORDER OF DEEDS
Fees \$0.00

Doc# 2013007063