

# 30545

## SIXTH ADDENDUM TO LEASE

This SIXTH ADDENDUM TO LEASE, executed as of this 31<sup>st</sup> day of **October**, 2008, by and between **WORLDPORT LLC**, a Delaware limited liability company (successor-in-interest to California Drive-In Theatres, Inc.) ("Landlord"), and **THE CITY OF LONG BEACH**, a municipal corporation, ("Tenant"), hereby amends, modifies and supplements the Lease in the following particulars but no others:

1. Paragraph 2 of the Lease is hereby supplemented by addition of the following:

a) Section 2.4.2 Landlord (s) Termination Right:

Notwithstanding anything herein to the contrary, Landlord shall have the Right to terminate this lease and all future rights and obligations of the parties at anytime during the term of this lease, upon not less than one hundred and eighty three (183) days prior written notice to Tenant, if Landlord intends to demolish and or redevelop all or part of the Worldport Business Center.

CF (Tenant's Initials) JP (Landlord's Initials)

2. Paragraph 6 of the Lease is hereby modified and the following inserted in its place:

"6.1. Maintenance of Premises.

6.1.1 Landlord shall be responsible for all capital improvements in excess of \$5,000 (e.g. HVAC, roof, foundation, structural walls)."

6.1.3 In the event Landlord does not properly maintain or repair the Building, Tenant shall have recourse to offset rent per the following:

a) General Action. If Tenant provides notice ("Repair Notice") to Landlord of an event or circumstance which pursuant to the terms of this Lease requires Landlord to repair, alter, improve and/or maintain ("Required Action") and Landlord fails to provide the Required Action within the time period required by this Lease, or a reasonable period of time if no specific time period is specified in this Lease, then Tenant may proceed to take the Required Action, pursuant to the terms of this Lease, and shall deliver a second notice to Landlord at least three (3) business days prior to commencement of the Required Action specifying that Tenant is taking the Required Action ("Second Notice") for the account of Landlord.

b) Emergency Action. Notwithstanding the foregoing, if there exists an emergency such that the Premises are rendered untenable and Tenant's personnel are forced to vacate the Premises and if Tenant gives written notice to Landlord ("Emergency Notice") of Tenant's intent to take action with respect thereto ("Necessary Action") and the Necessary Action is also a Required Action, and the emergency could be cured by such Necessary Action, Tenant may take the Necessary Action made for the account of Landlord if Landlord does not commence the Necessary Action within two (2) business days after the Emergency Notice ("Emergency Cure Period") and thereafter use its commercially reasonable best efforts and due diligence to complete the Necessary Action as soon as possible.

c) Restrictions on Action. If any Necessary Action will affect the systems and equipment located within the Building ("Building Systems"), the structural integrity of the Building, or the exterior appearance of the Building, Tenant shall use only those contractors used by Landlord in the Building for work on the Building Systems or its structure, and Landlord shall provide Tenant (when available and upon Tenant's request) with notice identifying such contractors and any changes to the list of such contractors, unless such contractors are unwilling or unable to perform such work, in which event Tenant may utilize the services of any other qualified contractors who normally and regularly perform similar work in comparable buildings except for any contractors who Landlord specifically notifies Tenant in writing, within five (5) business days of Landlord's receipt of a Repair Notice or two (2) business days of Landlord's receipt of an Emergency Notice, that Tenant may not use for such work.

d) Reimbursement For Action. If any Required Action or Necessary Action is taken by Tenant pursuant to the terms of Section 6.1, then Landlord shall reimburse Tenant for its reasonable and documented costs and expenses in taking the Required Action or Necessary Action within thirty (30) business days after receipt by Landlord of an invoice from Tenant

which sets forth a reasonably particularized breakdown of its costs and expenses in connection with taking the Required Action or Necessary Action on behalf of Landlord ("Repair Invoice"). In the event Landlord does not reimburse Tenant for the Repair Invoice within thirty (30) business days of receipt, then Tenant may deduct from the next rent payable by Tenant under this Lease, the amount set forth in the Repair Invoice ("Offset Right"). Notwithstanding the foregoing, if Landlord delivers to Tenant within thirty (30) business days after receipt of the Repair Invoice, a written objection to the payments of such invoice, setting forth with reasonable particularity Landlord's reason for its claim that the Required Action or Necessary Action did not have to be taken by Landlord pursuant to the terms of the Lease or that Tenant breached the terms of Section 6.1, or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive), then Tenant shall not be entitled to deduct such amount from rent until and unless a court of competent jurisdiction determines that Tenant's offset against rent is in compliance with Section 6.1. If any Required or Necessary Action taken by Tenant are Tenant's financial responsibility under the Lease or this Sixth Addendum to Lease, then any related claims will be subrogated to Tenant's insurance.

3. Paragraph 6.5 of the Lease is hereby deleted in its entirety.

4. Paragraph 7 of the Basic Lease Provisions is hereby deleted in its entirety, and the following is inserted in its place:

“7. Term. Three (3) years, from September 1, 2008 to August 31, 2011.”

5. Paragraph 7 of the Lease is hereby deleted in its entirety, and the following is inserted in its place:

“7. Insurance.”

Effective October 1, 2007 and continuing for the duration of the Lease, Tenant will deliver to Landlord certificates of insurance or self insurance showing that Tenant has in force, and Tenant shall have in force, the following forms and limits of coverage:

7.1. **Commercial General Liability Insurance.** Tenant shall obtain and keep in force commercial general liability insurance or self-insurance on an occurrence basis equivalent in coverage scope to ISO CG 00 01 11 88 in an amount not less than \$3,000,000 per occurrence and in aggregate. Such insurance or self-insurance shall include coverage equivalent to "Additional Insured - Designated Insured Endorsement" equivalent in coverage scope to ISO CG 20 26 11 85 naming Landlord an additional insured against claims for bodily injury, personal injury, and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the premises and all areas appurtenant thereto by Tenant due to the sole negligence of Tenant.

7.2. **Workers' Compensation and Employer's Liability Insurance.** Tenant shall obtain and keep in force workers' compensation insurance or self-insurance as required by the Labor Code of the State of California, or any act hereafter enacted as an amendment or supplement thereto. In addition, Tenant shall obtain and keep in force employer's liability insurance or self-insurance with limits of \$1,000,000 per injury or occupational illness.

7.3. **Special Perils Personal Property Insurance.** Tenant shall obtain and keep in force commercial special perils property insurance in an amount not less than the full replacement value of Tenant's personal property and improvements on the premises. Tenant shall be responsible for the deductible under said commercial property insurance. Landlord and Tenant agree to waive any rights to make claims against the other for any property damage or loss that is insured against by Tenant's personal property insurance or by Landlord's property insurance, respectively.

All certificates of insurance or self insurance evidencing the coverages set for in paragraphs 7.1 and 7.3 above shall name Landlord as an additional insured and will provide that Tenant's insurance is primary to any insurance coverage obtained by Landlord. All certificates shall not be cancelled or modified (except for diminution of limits due to claims) without thirty days written notice to Landlord. The delivery of satisfactory certificates as required herein shall be a condition of this Lease being effective. Notwithstanding anything to the contrary herein or as required by law, Landlord shall not be liable for injury to Tenant's business or for any loss of income or profit herein.

7.4 Self Insurance. Tenant may self insure any of the coverages set for in paragraphs 7.1, 7.2, and 7.3 above, provided the self insurance is equivalent in coverage scope to the insurance as set forth herein. Tenant shall give notice to Landlord of self insurance.

6. Paragraph 44 of the Lease is hereby deleted in its entirety, and the following is inserted in its place:

“44. Early Termination Option.”

44.1 Tenant shall have the option to terminate this Lease, and all future rights and obligations one time per year effective ninety days after written notice from Tenant to Landlord. The option to terminate shall be between July 1 and September 30 each year. Reasonable evidence of non-funding shall be a letter from the City of Long Beach and tenant shall pay all unamortized tenant improvements and brokerage commissions upon notification.

44.2 In the event Tenant exercised Early Termination Option, Tenant shall quit and surrender possession of the Premises to Landlord, pursuant to the terms set forth in Subparagraph 6.3 of the Lease.

7. Paragraph 9 of the Lease is hereby modified as follows:

In the first grammatical sentence of Paragraph 9.1, the words “or rights of Landlord” are hereby deleted in their entirety.

In the second grammatical sentence of Paragraph 9.1, the words “of the City of Torrance” are hereby deleted in their entirety, and the words “of the City of Long Beach” are hereby inserted in their place.

8. Paragraph 8 of the Basic Lease Provisions is hereby deleted in its entirety, and the following is inserted in its place:

“8. Commencement Date. September 1, 2008.”

9. Paragraph 9 of the Basic Lease Provisions is hereby deleted in its entirety, and the following is inserted in its place:

“9. Termination Date. 11:59 p.m. (PST) on August 31, 2011.”

10. Paragraph 11 of the Basic Lease Provisions is hereby deleted in its entirety, and the following is inserted in its place:

“11. Base Rent. Effective from and after September 1, 2008 to and including the Termination Date, the Base Rent shall be Seven Thousand One Hundred Twenty-Three Dollars and 20/100 cents (\$7,123.20) per month with annual CPI adjustments 2% minimum to 4% maximum as defined pursuant to Subparagraph 3.2 of the Lease. In addition, Tenant shall continue to pay all other “Rent” as set forth in Section 3 the Lease.”

11. Paragraph 13 of the Basic Lease Provisions is hereby deleted in its entirety, and the following is inserted in its place:

“13. Tenant’s Share. Five and 45/100 Percent (5.45%) without the Accounting fee equal to ten percent (10%) of the costs specified in items subparagraph 3.3 (i) through (vi).”

12. Paragraph 15 of the Basic Lease Provisions and Paragraph 4 of the Lease are hereby deleted in their entirety, and the following is inserted in its place:

“15. Security Deposit. No deposit received and required.”

13. Paragraph 14 of the Lease and Paragraph 17 of the Basic Lease Provisions are hereby modified and the following is inserted in its place:

“14. Broker’s Fee. Upon the full execution of the Sixth Addendum to Lease, Landlord shall pay CRESA Partners a leasing commission equal to 4% of the aggregate rent

during the Lease term. Said commission will be paid in full no later than thirty (30) days after Landlord's and Tenant's execution of the Sixth Addendum."

14. Paragraph 18 (c) and (d) of the Basic Lease Provisions are hereby deleted in their entirety, and the following is inserted in its place:

"18. Addresses. (c) Tenant for Notices:

City of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Attention: City Manager

With a courtesy copy to:

City of Long Beach  
Workforce Development Bureau  
3447 Atlantic Avenue  
Long Beach, CA 90807."

(d) Tenant for Payment:  
City of Long Beach  
Department of Community Development  
Administrative and Financial Services Bureau  
333 West Ocean Boulevard, 3<sup>rd</sup> Floor  
Long Beach, California 90802  
Attention: Financial Services Officer

15. Paragraph 41 of the Lease is hereby deleted in its entirety, and the following is inserted in its place:

"41 Premises Improvement.

The Premises shall be remodeled per a set of plans, which Landlord shall have the right to review and approve. The agreed upon space plan shall be bid by three (3) licensed general contractors at prevailing wage rates in compliance with California Labor Code Section 1720. Tenant shall have the exclusive right to select the general contractor of its choice and will enter into a contract with the general contractor to perform the Premises Improvements. Tenant shall also select a firm for space planning and construction management services.

As part of this Sixth Addendum to Lease, Landlord agrees to reimburse the City an amount equal to Forty Thousand Three Hundred Twenty (\$40,320.00) Dollars, ("Landlord's Portion"). Within fifteen (15) days of receipt of an invoice from the general contractor and a written notice from Tenant that the Premises Improvements are fifty (50%) percent complete, Landlord shall pay for Landlord's Portion. Within fifteen (15) days of receipt of an invoice from the general contractor and a written notice from Tenant that the Premises Improvements are one hundred (100%) percent complete, Landlord shall pay the remaining fifty (50%) percent of Landlord's portion. Tenant shall coordinate all management and supervision for the entire scope of work including Landlord's portion.

16. Paragraph 11 of the Lease is hereby supplemented by the addition of the following:

Tenant will have the right to sublease any portion of the Tenant's premises during the Lease term to any subtenant administering programs in partnership with the Pacific Gateway Workforce Investment Network (PGWIN) without Landlord's consent. Tenant will have the right to sublease to tenants unrelated to PGWIN with Landlord's consent, which shall not be unreasonably withheld.

17. The following is hereby added as Section 45 of the Lease:

"45. Rooftop Communications Equipment.

Tenant shall inform Landlord, in writing, of any additional needs or requirements as it pertains to Rooftop Communications Equipment. Tenant shall have the right to erect or install an aerial,

antenna, dish, or other equipment ("Equipment") on the roof of the demised premises, provided, however, the size, location, and design of the Equipment shall be subject to Landlord's approval, which approval shall not be unreasonably withheld or delayed. If Tenant requests Landlord's consent to the erection or installation of any such Equipment on the roof of the demised premises, Tenant shall submit specifications for same to Landlord for review and approval at least forty-five (45) days prior to the date Tenant desires to erect or install the Equipment, which approval shall not be unreasonably withheld or delayed. In the event that Landlord permits the erection or installation of any equipment, it shall not penetrate the roof and shall be adequately screened with materials consistent with the other materials of the demised premises and the Equipment and screening shall comply with all applicable governmental codes, statutes and regulations, including those of the city/county in which the demised premises are located. Tenant shall pay for the cost of any increase in any premiums arising by reason of the erection or installation and maintenance of any such Equipment, and Tenant shall bear all costs, expenses and damages, including roof leaks, which may arise by reason of the erection, installation, or maintenance of any such Equipment, and shall defend, indemnify and hold Landlord harmless from and against any and all claims, liabilities, costs and expenses arising therefrom. Upon the termination of this Lease, Tenant shall remove the Equipment at its sole cost and expense, and Tenant shall repair any damage to the roof occasioned by such removal.

18. The following is hereby added as Section 46 of the Lease:

"46. Non-Discrimination Clause.

Landlord agrees, subject to all applicable laws, rules and regulations, that no person shall be subject to discrimination in the performance of this Agreement on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, AIDS, HIV status, age, disability, handicap, or Vietnam Era veteran status.

19. The following is hereby added as Section 47 of the Lease:

"47. Option to Extend Term.

Tenant shall have one three (3) year option to extend the Lease by providing no less than six (6) months' prior written notice. The monthly base rent for the option period shall be at the then current rental rate inclusive of the annual rent increases specified in Paragraph 11 of the Basic Lease Provisions.

Except as herein specifically provided, no other amendment or modification of the Lease is intended by this Addendum and all provisions of the Lease shall remain unchanged and in full force and effect in accordance with their terms.

IN WITNESS WHEREOF, the parties hereto have executed this addendum as of the date first above written.

APPROVED AS TO FORM  
October 21, 2008  
ROBERT E. SHANNON, City Attorney  
By Gary J. Anderson  
GARY J. ANDERSON  
DEPUTY CITY ATTORNEY

"LANDLORD":

WORLDPORT, LLC,  
a Delaware limited liability company

By: Worldport, Inc., a Delaware  
corporation, Manager

By: Jill Saperstein  
Name: Jill Saperstein  
Title: Assistant Secretary

"TENANT":

THE CITY OF LONG BEACH, **EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.**  
a Municipal corporation

By: Patrick H. West Assistant City Manager  
Name: Patrick H. West  
Title: City Manager

**EXHIBIT A  
LOCATION OF THE PREMISES**

