

SETTLEMENT AGREEMENT AND FULL SITE RELEASE

This Settlement Agreement and Full Site Release (“Agreement”) is entered into by Portac, Inc., a Delaware corporation, (“Portac”) and the Port of Tacoma, a Washington municipal corporation, (the “Port”), (collectively, the “Parties” and each a “Party”).

I. STATEMENT OF PURPOSE

By mutual agreement of the Parties, the purpose of this Agreement is to provide for the full release and indemnification of Portac by the Port from any and all environmental liabilities and claims associated with the Port’s property known as “Parcel 15” (i.e., the Site) in exchange for Portac’s payment to the Port of **\$8,600,000.00 (US Dollars)** consistent with, and pursuant to, the terms and conditions in this Agreement.

II. PARTIES BOUND

This Agreement shall apply to and be binding upon the Parties to this Agreement, their successors, assigns, and any Related Party. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Agreement and to execute and legally bind such Party to comply with this Agreement. The Parties each agree to undertake all actions required by the terms and conditions of this Agreement.

III. DEFINITIONS

A. “Environmental Claim” means any claim, demand, action, suit, obligation, loss, cost, damage, fine, penalty, expense, contractual, statutory, common law, and/or other liability, judgment, proceeding, or injury, whether threatened, sought, brought, or imposed, whether known or unknown, accrued or fixed, absolute or contingent, matured or unmatured, or determined or determinable, including those at law or in equity, that a Party or a Person may now have or hereafter may acquire that results from or relates to, or imposes or seeks to impose costs, liabilities or other Losses directly or indirectly related to the Site for, (i) any Environmental Contamination or asserted or actual violation of any Environmental Law, including the investigation, cleanup, remediation, removal, disposal or settlement thereof; (ii) solid, gaseous, or liquid waste generation, handling, treatment, storage, disposal, or transportation; (iii) exposure to or migration of Hazardous Substances; (iv) the manufacture, processing, distribution in commerce, use, or storage of Hazardous Substances; (v) injury to or death of any person or persons directly or indirectly connected with Hazardous

Substances; (vi) destruction or contamination of any property directly or indirectly connected with Hazardous Substances; or (vii) any and all penalties or damages directly or indirectly connected with Hazardous Substances.

B. "Environmental Contamination" means any actual, alleged, or suspected past, present, or future Releases or migration of Hazardous Substances, as defined or regulated under any Environmental Law, on, above, under, migrating or emanating from the Site, or otherwise related to the Site or the September 23, 1988 Order on Consent Docket No. DE 88-S326, the June 27, 2013 the Washington Department of Ecology (Ecology) PLP Notices to the Parties, or the April 12, 2016 Agreed Order No. DE 11237..

C. "Environmental Law" means all federal, state, and local laws, statutes, rules, regulations, ordinances, and codes, and any judicial or administrative interpretation, judgment or Order thereof or requirement thereunder, relating to the regulation or protection of human health, safety, the environment, and natural resources, including without limitation those that govern (i) the existence, cleanup, investigation, removal, and/or remedy of Environmental Contamination in, on, under, or migrating from or to the Site; (ii) the protection of the environment from Released, spilled, deposited or otherwise emplaced Environmental Contamination; (iii) the control of Hazardous Substances or other hazardous wastes; or (iv) the use, generation, handling, storage, manufacturing, transport, shipment, treatment, disposal, removal, remediation, investigation, or recovery of Hazardous Substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq. (CERCLA); the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. (RCRA); the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1252 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; the Hazardous Materials Transportation Act, as amended 49 U.S.C. Section 1801 et seq.; the Atomic Energy Act, as amended, 42 U.S.C. Section 2011 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651 et seq.; and the Emergency Planning and Community Right to Know Act, as amended, 42 U.S.C. Section 11001 et seq.; and any similar or comparable federal, state, or local laws, including without limitation, the Model Toxics Control Act, as amended, RCW 70.105D (MTCA); the Washington Hazardous Waste Management Act, RCW 70.105; the Washington Water Pollution Control Act, RCW 90.48; the Washington Clean Air Act, RCW 70.94; and any other federal, state, or local law, regulation, ordinance or Order or common law decision and the

amendments, regulations, Orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder.

D. "Hazardous Substances" means: (a) a hazardous substance as defined in Section 101(14) of CERCLA, (b) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is a "hazardous substance," "dangerous substance," "hazardous material," "toxic substance," "hazardous waste," "dangerous waste," "acutely hazardous," or words of similar import or regulatory effect under Environmental Laws, including, but not limited to, RCRA and MTCA; and (c) any petroleum or petroleum-derived products, radon, radioactive materials, substances or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

E. "Loss" or "Losses" means any judgments, damages, punitive damages, penalties, fines, costs (including without limitation reasonable attorneys' fees, consultant fees, expert fees, and court costs), liabilities (including without limitation sums paid in settlement of Environmental Claims), damages or losses, together with all other expenses of any kind or nature, whether asserted or unasserted, known or unknown, accrued or fixed, absolute or contingent, matured or unmatured, or determined or determinable, including those at law or in equity.

F. "Order" means any order, judgment, award, decision, consent decree, injunction, ruling or writ of a governmental authority or a court that is binding on any specific Person or its property under applicable law.

G. "Person" means any natural individual, corporation, partnership, limited liability company, joint venture, association, bank, trust company, trust or other entity, whether or not a legal entity, or any governmental authority.

H. "Related Party" means, with respect to a Party, that Party's direct and indirect parents, predecessors, successors, assigns, officers, employees, agents, representatives, shareholders and affiliates. For the avoidance of doubt, in the case of Portac, Mitsui & Co. (U.S.A.), Inc. is a Related Party.

I. "Release" means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), sediment, surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

J. "Site" means the entire area known as "Parcel 15" previously leased by Portac or its Related Parties from the Port, including (a) both the 30-acre paved former log yard ("Log Yard") and an adjacent former sawmill area ("Saw Mill Area") that are more generally depicted and described on Exhibit A, and (b) any adjacent areas (including soils, sediments, surface waters and ground waters) where releases of Site-related Environmental Contamination have come to be located or its presence is suspected or discovered. Environmental Contamination that has come to be located at properties other than Parcel 15 is excluded from the Site definition only if and to the extent that Portac actively and affirmatively moved (or expressly directed a third party to actively and affirmatively move) such Environmental Contamination, without the Port's knowledge or consent, to such properties by vehicle or other form of mechanical or human-powered transportation prior to the Effective Date of this Agreement.

IV. AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises in this Agreement and intending to be legally bound by the Agreement, the Parties agree as follows:

A. Portac Payment: Portac shall pay the Port \$8,600,000.00 (US Dollars) ("Payment") within thirty (30) days of the date this Agreement has been signed by both parties. The Payment shall serve as full settlement of any and all of the Port's actual, alleged or potential Environmental Claims, either direct or indirect, against Portac and any Related Party of Portac. Payment shall be made to the Port via its written instructions.

B. Port Obligations: Upon execution of this Agreement and subsequent Payment by Portac to the Port, Port agrees to undertake all responsibility for any Environmental Claim, Environmental Contamination, Loss, Order or Release relating to the Site, and any further environmental investigation, cleanup, and remedial action at the Site, including any actions ordered, requested, or required by Ecology under MTCA or any other Environmental Law or by the U.S. Environmental Protection Agency under any Environmental Law. Further, Port agrees to work in good faith and use diligent and best efforts to (a) inform Ecology of this Agreement, and (b) persuade Ecology that Portac and its Related Parties should not be a party to any further Order in any way directly or indirectly relating to or addressing the Environmental Contamination or the Site.

C. Mutual Release: Upon execution of the Agreement and subsequent Payment by Portac to the Port, the Port hereby fully and irrevocably forever waives and releases Portac, all of Portac's Related Parties, and all of the Related Parties' officers, employees, agents and representatives (collectively the "Released Parties") from any

and all Environmental Claims relating to or affecting the Site or any allegations of any obligations under Environmental Laws, other than claims arising from Portac's breach of this Agreement.

Upon execution of the Agreement and subsequent Payment by Portac to the Port, Portac and its Related Parties hereby fully and irrevocably forever waive and release the Port, and its officers, employees, agents and representatives, from any and all Environmental Claims relating to or affecting the Site or any allegations of any obligations under Environmental Laws, other than claims arising from the Port's breach of this Agreement.

D. Indemnification: Upon execution of the Agreement and subsequent Payment by Portac to the Port, the Port shall fully indemnify, defend, protect, and hold harmless the Released Parties for, against and from any and all Losses arising out of or resulting from any and all Environmental Claims, Environmental Contamination, Losses, Orders or Releases relating to or affecting the Site, or other efforts by any Person whatsoever to impose any Loss or obligations upon any Released Party for any investigation or remediation relating to or potentially or actually involving Environmental Contamination or the Site, or any allegations of any obligations under Environmental Laws. This obligation is irrespective of whether the alleged or actual basis for the Environmental Claims or other efforts against any Released Party arose prior to or following execution of this Agreement. This indemnification does not extend to Environmental Contamination that Portac actively and affirmatively moved (or expressly directed a third party to actively and affirmatively move), without the Port's knowledge or consent, to properties other than Parcel 15 by vehicle or other form of mechanical or human-powered transportation prior to the Effective Date of this Agreement. Released Parties, at their own expense, shall have the right at any time to appear in, and to participate in as a party if it so elects, and be represented by counsel of its own choice in, any action or proceeding initiated in connection with Environmental Claims or other efforts against any Released Party.

E. Portac Dissolution: Upon execution of the Agreement and subsequent Payment by Portac to the Port, the Port understands that Portac may seek to corporately wind up and dissolve. Should Portac seek to corporately wind up and dissolve, the Port hereby waives any and all objections to such dissolution, and will not initiate any action, suit, or proceeding, including an Environmental Claim, in such dissolution against Portac, a Related Party, or any other party that would frustrate or impede Portac's objective to dissolve, except to the extent any such objection, action, suit, or proceeding is based on Portac's failure to fulfill the terms of this Agreement.

F. This Agreement shall be governed and construed in accordance with the laws of the state of Washington. If it becomes necessary to interpret any of the Agreement's terms,

it is the intent of the Parties that the laws of the State of Washington shall apply, except to the extent preempted by federal law, and without giving effect to the provisions of Washington law relating to conflicts of laws or choice of laws. Venue for any litigation shall be Pierce County Washington.

G. The Parties understand and agree that execution and performance of this Agreement does not constitute, and shall not be construed as, an admission of liability, fault, or responsibility of any party.

H. The Parties executing this Agreement have (1) carefully read this Agreement; (2) know and understand its contents; (3) had the opportunity to discuss it and its effects with an attorney of their choice; (4) signed it as their free and voluntary acts; and (5) full and legal authority to enter into this binding Agreement.

I. **Entire Agreement:** This Agreement contains the entire agreement among the Parties with respect to the subject matter and supersedes all other agreements, term sheets, and understandings, whether prior or contemporaneous, oral or written, between the Parties with respect to the subject matter hereof. The Parties enter into this Agreement in reliance solely on the terms herein without reliance on any other promises, representations, or warranties.

J. No amendment of or modification to this Agreement shall be deemed valid unless made in writing and signed by all Parties to this Agreement.

K. **Dispute Resolution:** The Parties enter into this Agreement in good faith and promise to perform their respective obligations. In the event of a breach of any of the provisions of this Agreement, each Party shall pursue dispute resolution as follows:

a. If any of the Parties disagree concerning the interpretation or implementation of any provision of this Agreement, or if any dispute arises out of or relates to this Agreement, or the breach thereof, the disputing Parties shall commence direct good faith negotiations within thirty calendar days concerning the dispute after one Party notifies the other of the dispute in writing.

b. If the Parties are unable to resolve a disagreement within sixty calendar days of their first meeting on the subject, the Parties shall promptly refer the disagreement to a single mediator upon whom the Parties can agree. The Parties shall share the costs of the mediator equally. If the Parties are unable to agree upon a mediator, or if they are unable to resolve the disagreement within sixty calendar days of its referral to the mediator, or within any other time interval on which the Parties unanimously agree, the Parties may have recourse to any legal or equitable remedies available to them in a court of competent jurisdiction within Washington State, as described at IV.F.

L. This Settlement Agreement shall not constitute or be construed as an admission of liability by any Party or as an admission of violation of any law, rule, regulation or policy by any Party. This Agreement also shall not constitute or be construed as an admission or denial by any Party with respect to any factual or legal allegation or issue.

M. This Settlement Agreement shall be regarded as inadmissible compromise negotiations ER 408 or FRE 408; provided, however, that this Agreement may be admitted for the sole purpose of enforcing the terms of the Agreement, including to challenge any claims by any Party that a claim asserted against it is barred or waived.

N. This Agreement is binding upon and shall inure to the benefit of the Parties and their Related Parties, as may be the case.

O. This Agreement shall not make or deem to make any Party to this Agreement the agent or partner of any other Party.

P. If any provision of this Agreement is found invalid or unenforceable, such provision shall be enforced to the maximum-extent possible and the other provisions shall remain in effect to the extent they can be reasonably applied in the absence of such invalid or unenforceable provisions.

Q. **Effective Date:** This Agreement may be executed in one or more counterparts, all of which together constitute one agreement, and each of which separately constitute an original document. A facsimile or electronic signature may be treated as an original. The **Effective Date** of this Agreement shall be the date on which it is signed by the last Party to sign the Agreement. This Agreement is expressly subject to Port of Tacoma Commission approval by an affirming vote at a public meeting.

R. **Notices:** All notices and other communications regarding this Agreement shall be in writing and shall be deemed duly given: (a) upon hand delivery; (b) upon email transmission when the recipient confirms receipt of such transmission by return email; or (c) two (2) business days after being posted by registered mail. All notices and other communications shall be delivered as addressed below or to such other addresses as any party may designate by notice to the other Party.

For Portac, Inc.:

Mr. Masaru Namiki
Portac, Inc.
P.O. Box 3471
Redmond, Washington 98073-3471

with a copy to:

Mr. Patrick W. Ryan
Perkins Coie, LLP
1201 Third Avenue, 40th Flr.
Seattle, WA 98101-3099

For Port of Tacoma:

Mr. Rob Healy
Port of Tacoma
1 Sitcum Plaza
Tacoma, WA 98421-3000

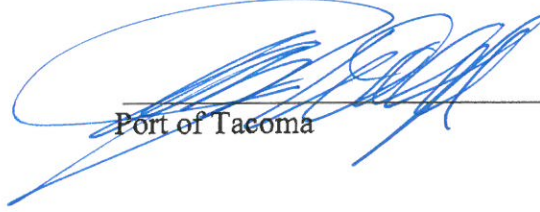
with a copy to:

Ms. Kimberly Seely
COASTLINE LAW GROUP PLLC
4015 Ruston Way, Suite 200
Tacoma, WA 98402

DATED this 28th day of March, 2018.



Portac, Inc.



Port of Tacoma

EXHIBIT A

Legal Description of the Log Yard and Saw Mill Area:

That portion of the west half of Sec. 1., T. 20N., R. 3 E., W. M. in the County of Pierce, State of Washington, lying east of Alexander Avenue, south of vacated Marshall Avenue, and northwesterly of East/West Road, more particularly described as follows:

Commencing at a monument marking the centerline of Alexander Avenue and the centerline of Marshall Avenue as vacated by Resolution No. 15349 of the Board of Pierce County Commissioners and recorded under Auditor's Fee No. 2417068; thence along the centerline of said vacated Marshall Avenue N 89° 43' 08" E 206.82 ft.; thence south 40 ft. to a point on the east line of a power line easement granted to the City of Tacoma by instrument recorded under Auditor's Fee No. 2127264, and the true point of beginning; thence on a line parallel with said centerline of vacated Marshall Avenue N 89° 43' 08" E, 2005.70 ft. to a point 50 ft. northwesterly of the centerline of the East/West Road; thence along a line parallel to and 50 ft. northwesterly of the East/West Road centerline, S 38° 29' 08" W, 1289.19 ft. to the point of curvature of a 3050 ft. radius curve to the right; thence along said curve through a central angle of 29° 21' 45", an arc distance of 1583.05 ft. to the west line of said power line easement as recorded under Auditor's Fee No. 2127264; thence along said west line and parallel with monumented centerline of Alexander Avenue, North, 1062.69 ft.; thence East, 34 ft. to a point on the east line of said power line easement; thence North, 863.42 ft. to the true point of beginning.

Containing 52.58 acres.

TOGETHER with non-exclusive easements for ingress and egress over the following five described tracts of land:

A. A strip of land 60 ft. in width lying 30ft. on each side of the following described centerline: Commencing at the intersection of Alexander Avenue and East/West Road; thence along the centerline of East/West Road on an arc of curve to the left, 225.00 ft. to the point of beginning of said described easement centerline; thence northwesterly on a line radial to said curve to a point on the southerly boundary of the within described property, and the terminus of this line description.

B. A strip of land 60 ft. in width lying 30ft. on each side of the following described centerline: Beginning at a point 1032.69 ft. north of the southwest corner of the within described property; thence west to the east right-of-way line of Alexander Avenue.

C. A strip of land 60.0 ft. in width, being located in the north half of said Section 1, described as follows: Beginning at a point on the easterly right-of-way of Alexander Avenue, said point being 15.0 ft. west of and 20.0 ft. north of the brass monument marking the southwest corner of Government Lot 3, in said Section 1; thence north 89° 43' 08" E, 185 ft.; thence S 45° 16' 52" E, 84.85 ft. to a point on the northerly lease line; thence S 89° 43' 08" W along said lease line and extension thereof a distance of 245.0 ft. to said easterly right-of-way of Alexander Avenue; thence north along said right-of-way a distance of 60.0 ft. to the point of beginning.

D. A strip of land 60.0 ft. in width, being located in the north half of said Section 1, described as follows: Beginning at the intersection of the centerline of East/West Road and the south line of Government Lot 2, in said Section 1; thence S 89° 43' 08" W, 64.13 ft. to the westerly utility right-of-way of East/West Road and the true point of beginning of this description; thence S 38° 29' 08" W along said right-of-way, 51.30 ft. to the northeast corner of within described property, thence S 89° 43' 08" W along the north line of said described property, 103.95 ft.; thence N 44° 43' 08" E, 84.85 ft.; thence N 89° 43' 08" E, 92.13 ft. to said westerly right-of-way of East/West Road; thence S 38° 29' 08" W along said right-of-way, 25.65 ft. to the true point of beginning.

E. A strip of land 60 ft. in width lying 30ft. on each side of the following described centerline: Commencing at the intersection of the centerline of East-West Road and the south line Government Lot 2 in said Section 1; thence S 38° 29' 08" W along said East-West Road centerline, 1200.77 ft. to the point of beginning of said described easement centerline; thence N 51° 30' 52" W, 50.00 ft. to a point on the southeasterly boundary of the within described and the terminus of the line description.

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EXHIBIT A
SITE DIAGRAM