

MOTION:

SECOND:

**RE: RESOLUTION TO RATIFY ACTION OF THE EXECUTIVE DIRECTOR TO EXECUTE A
TEMPORARY USE LICENSE**

ACTION:

WHEREAS, the groundbreaking ceremony for the OMNIRIDE western facility occurred on January 23, 2019; and

WHEREAS, the location of the OMNIRIDE western facility is an active construction site and deemed to an unsafe location for the groundbreaking ceremony; and

WHEREAS, BRE Foxtrot 7760 Doane Drive LLC, permitted OMNIRIDE to use their facility, which is located adjacent to the OMNIRIDE western facility, for the sole purpose of the groundbreaking ceremony; and

WHEREAS, use of the BRE Foxtrot 7760 Doane Drive LLC facility required a temporary use license indemnifying BRE Foxtrot 7760 Doane Drive LLC against all risk of loss or damage to persons, vehicles and/or the contents of vehicles occurring on or about their facility, to the maximum extent permitted by law; and

WHEREAS, the need for the temporary use license was not known prior to the January 2019 Commission meeting, therefore authorization to execute the temporary use was not sought at the January Commission meeting; and

WHEREAS, the execution of the temporary use license was required before the February Commission meeting.

NOW, THEREFORE, BE IT RESOLVED, that the Potomac and Rappahannock Transportation Commission does hereby ratify the action taken by the Executive Director to execute a temporary use license for use of the BRE Foxtrot 7760 Doane Drive LLC facility for the sole purpose of the groundbreaking ceremony.

ITEM 11-D
February 7, 2019
PRTC Regular Meeting
Res. No. 19-02-____
Page Two

Votes:

Ayes:

Nays:

Abstain:

Absent from Vote:


Alternate Present Not Voting:

Absent from Meeting:



February 7, 2019

TO: Madam Chair Anderson and PRTC Commissioners

FROM: Robert A. Schneider, PhD 

SUBJECT: Ratify Action of the Executive Director to Execute a Temporary Use License

Recommendation:

Ratify the action of the Executive Director to Execute a Temporary Use License

Background:

The groundbreaking ceremony for the OMNIRIDE western facility was scheduled for January 23, 2019. Unfortunately, the western facility site is now an active construction site and deemed unsafe to use for the ceremony. Staff reached out to BRE Foxtrot 7760 Doane Drive LLC to see if they would allow us to use their facility for the ceremony since it is adjacent to our construction site.

We were granted permission to use their facility, however, a temporary use license (attached), which would indemnifying them against all risk of loss or damage to persons, vehicles and/or the contents of vehicles occurring on or about their facility, to the maximum extent permitted by law, was required. The agreement was sent to legal counsel for review and found to be sufficient as to legal form.

Since the execution of the temporary use license was required before the next Commission meeting, I executed the temporary use license and am asking the Commission to ratify my action.

Fiscal Impact:

NA

TEMPORARY USE LICENSE

This Temporary Use License (this "License") is entered into as of January 16, 2019, between BRE FOXTROT 7760 DOANE DRIVE LLC, a Delaware limited liability company ("Licensor"), and Potomac and Rappahannock Transportation Commission, a _____ ("Licensee").

RECITALS:

WHEREAS, Licensor is the owner of the real property known as 7760 Doane Drive, Manassas, Virginia (the "Property").

WHEREAS, Licensee desires the temporary right to use and occupy a portion of the Property and Licensor has agreed to grant such right to Licensee on the terms, provisions and conditions contained herein.

AGREEMENTS:

NOW THEREFORE, in consideration of the covenants and arrangements of the parties set forth in this License, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensee and Licensor hereby agree as follows:

1. **License.** Subject to the terms and conditions set forth in this License, Licensor grants to Licensee a revocable license to occupy a portion of the parking lot of the Property, as depicted in the plan attached as Exhibit A. The portion of the Property depicted on Exhibit A shall be known herein as the "Premises".

2. **Term.** The term of this License (the "Term") shall commence on the date of this License (the "Effective Date") and shall terminate on January 23, 2019 (the "Termination Date"). Licensee shall have no right to use the Premises for any other purpose whatsoever after the Termination Date.

3. **Permitted Use.** Licensee may use and occupy the Premises for a groundbreaking event only and for no other use or purpose. Licensee shall comply with all applicable Laws relating to the use, condition, access to and occupancy of the Premises now or hereinafter in effect; provided, however, that neither Licensor nor Licensee shall be required to make any improvements or alterations to the Premises or Property in connection therewith. Licensee shall conduct its business and control each of its agents, contractors, employees or invitees (each, including Licensee a "Licensee Party") so as not to create any nuisance or unreasonably interfere with other tenants or Licensor in its management of the Property. As used herein the term "Laws" shall mean all federal, state, and local laws, ordinances, rules and regulations, all court orders, governmental directives, and all restrictive covenants affecting the Property, and "Law" shall mean any of the foregoing.

4. **Licensee Risk.** Licensee's (and anyone claiming by, through or under Licensee) entering of the Property and the Premises and use thereof shall be at Licensee's sole risk and expense, and Licensor shall have no responsibility or liability for (i) any loss of or damage to Licensee's property or (ii) any interruption or injury to Licensee's business in connection with Licensee's occupancy of the Premises. **LICENSEE AND LICENSEE'S PERMITTEES ASSUME ALL RISK OF LOSS OR DAMAGE TO PERSONS, VEHICLES AND/OR THE CONTENTS OF VEHICLES OCCURRING ON OR ABOUT THE PREMISES.**

5. **Repairs and Maintenance.** Licensee shall repair or replace, subject to Licensor's direction and supervision, any damage to the Premises or the Property caused by Licensee.

6. **No Assignment.** This License is personal to Licensee and Licensee shall not assign, sublet nor otherwise transfer this License or any of Licensee's rights under this License, nor permit any person or entity (other than Licensee, its invitees, its employees, agents and its contractors) to use the Premises or any portion thereof nor record this License. Any such attempt to assign, transfer or record shall be void and of no effect.

7. **Licensee's Insurance.** Licensee shall maintain throughout the Term the following insurance policies: (a) commercial general liability insurance in amounts of \$3,000,000 per occurrence and \$5,000,000 aggregate or such other amounts as Licensors may from time to time reasonably require, insuring Licensee, Licensors, Licensors's agents and their respective affiliates against all liability for injury to or death of a person or persons and damage to property arising from the Licensee's use and occupancy of the Premises, (b) insurance covering the full value of Licensee's property and property of others in the Premises, (c) contractual liability insurance sufficient to cover Licensee's indemnity obligations hereunder, and (d) worker's compensation insurance in the minimum Virginia statutory limits covering all persons employed by Licensee for which claims for death or bodily injury could be asserted against Licensors, Licensee or the Premises, and containing a waiver of subrogation endorsement acceptable to Licensors. Licensee's insurance shall provide primary coverage to Licensors when any policy issued to Licensors provides duplicate or similar coverage, and in such circumstance Licensors's policy shall be excess over Licensee's policy. Prior to the Effective Date and thereafter upon request by Licensors, Licensee shall furnish to Licensors certificates of such insurance and such other evidence satisfactory to Licensors of the maintenance of all insurance coverages required hereunder, and Licensee shall obtain a written obligation on the part of its insurance company to notify Licensors at least 30 days before cancellation or a material change of any such insurance policies. Additionally, all insurance policies required under this License shall be in a form reasonably satisfactory to Licensors and issued by companies with a Best's Insurance Guide rating of "A", Class X or better.

8. **Waiver of Subrogation.** Licensors and Licensee each waives any claim it might have against the other for any injury to or death of any person or persons or damage to or theft, destruction, loss, or loss of use of any property (a "Loss"), to the extent the same is insured and recoverable against under any insurance policy that covers the Property, the Premises, Licensors's or Licensee's fixtures, personal property, leasehold improvements, or business, or, in the case of Licensee's waiver, is required to be insured against under the terms hereof, however, Licensors's waiver shall not include any deductible amounts on insurance policies carried by Licensors. Notwithstanding any provision in this License to the contrary, Licensors, its affiliates, partners, managers, members, officers, directors, agents, employees, contractors, representatives, and invitees (collectively, the "Licensors Parties") shall not be liable to Licensee or to any party claiming by, through or under Licensee (collectively, the "Licensee Parties") for (and Licensee hereby releases the Licensors Parties from any claim or responsibility for) any damage to or destruction, loss, or loss of use, or theft of any property of any Licensee Party located in or about the Property, caused by casualty, theft, fire, physical condition of the Premises or Property, third parties or any other matter or cause. Each party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party.

9. **Licensee's Indemnity.** Subject to Section 8, to the maximum extent permitted by Law, Licensee shall defend, indemnify, and hold harmless the Licensors Parties from and against all losses, claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including attorneys' fees) arising from (a) any Loss arising from any occurrence on, or use of, the Premises (b) any act or omission of Licensee or its agents, contractors, employees or invitees, (c) any Loss directly or indirectly arising out of or related to the use, generation, storage, release, or disposal of Hazardous Substances by Licensee or any of Licensee's agents, contractors, employees or invitees in, on, under or about the Premises or the Property or surrounding land or environment, or (d) Licensee's failure to perform its obligations under this License, even though caused or alleged to be caused by the negligence or fault of Licensors or its agents (other than a Loss arising from the sole or gross negligence of Licensors or its agents). This indemnity

provision shall survive termination or expiration of this License. If any proceeding is filed for which indemnity is required hereunder, Licensee agrees, upon request therefor, to defend the indemnified party in such proceeding at its sole cost utilizing counsel satisfactory to the indemnified party.

10. Events of Default. Each of the following occurrences shall be an "Event of Default":

(a) **Insurance.** Licensee fails to procure, maintain and deliver to Licensors evidence of the insurance policies and coverages as required under Section 7; or

(b) **Mechanic's Liens.** Licensee fails to pay and release of record, or diligently contest and bond around, any mechanic's lien filed against the Premises or the Property for any work performed, materials furnished, or obligation incurred by or at the request of Licensee, within ten days of written notice from Licensors;

(c) **Other Defaults.** Licensee's failure to perform, comply with, or observe any other agreement or obligation of Licensee under this License.

11. Termination Upon Default. Upon an Event of Default, Licensors may terminate this License upon written notice to Licensee, such termination shall be deemed effective on the date of such notice and Licensee shall vacate and deliver the Premises to Licensors in accordance with the provisions of this License. Termination of this License by Licensors as aforesaid shall not prejudice any other remedies which might be available to the Licensors at law or in equity, under this License. In addition, Licensors may perform any act Licensee is obligated to perform under the terms of this License (and enter upon the Premises in connection therewith if necessary) in Licensee's name and on Licensee's behalf, without being liable for any claim for damages therefor, and Licensee shall reimburse Licensors on demand for any expenses which Licensors may incur in connection therewith.

12. Failure to Vacate. If Licensee fails to vacate the Premises upon the termination or expiration of this License, in addition to any other liabilities to Licensors accruing therefrom, Licensee shall protect, defend, indemnify and hold Licensors harmless from all loss, cost (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any prospective tenant of the Premises founded upon such failure to vacate, and any lost profits to Licensors resulting therefrom.

13. Surrender of Premises. At the expiration or termination of the Term, Licensee shall peaceably deliver to Licensors the Premises. All items not removed shall be deemed to have been abandoned by Licensee and may be disposed of by Licensors without notice to Licensee, at Licensee's sole cost and expense, and without any obligation to account for such items. The provisions of this Section 13 shall survive the expiration of the Term.

14. Licensors' Liability. The liability of any Licensors Party to Licensee for any default by Licensors under the terms of this License or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Property shall be limited to Licensee's actual direct, but not consequential, special or punitive damages therefor and shall be recoverable only from the Licensors' interest in the Property, and no Licensors Party shall ever be personally liable hereunder.

15. Notices. All notices and other communications given pursuant to this License shall be in writing and shall be (a) mailed by first class, United States mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address listed below, (b) hand delivered to the intended addressee, or (c) sent by nationally recognized overnight courier to the addresses set forth in this Section 15. Notice sent by certified mail, postage prepaid, shall be effective three business days after being deposited in the United States mail; all other notices shall be effective upon delivery to the address of the

addressee (even if such addressee refuses delivery thereof). The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision.

If to Licensors: c/o Gateway Industrial Properties
233 S Wacker Drive, Suite 3405
Chicago, Illinois 60606
Attn: VP – Asset Management

and

c/o Revantage Corporate Services
233 S. Wacker Drive, Suite 3400
Chicago, Illinois 60606
Attention: Assistant General Counsel

and

c/o Revantage Corporate Services
233 S. Wacker Drive, Suite 3400
Chicago, Illinois 60606
Attention: Lease Administration

If to Licensee: []

16. **Severability.** If any clause or provision of this License is held or declared to be illegal, invalid, or unenforceable under any present or future Laws, then the remainder of this License shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this License a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

17. **Amendments; Binding Effect.** This License may only be amended by an instrument in writing signed by Licensors and Licensee. No provision of this License shall be deemed to have been waived by Licensors unless such waiver is in writing signed by Licensors, and no custom or practice which may evolve between the parties in the administration of the terms hereof shall waive or diminish the right of Licensors to insist upon the performance by Licensee in strict accordance with the terms hereof. The terms and conditions contained in this License shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided.

18. **License Only.** This License creates a revocable license only and Licensee acknowledges that Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Property or the Premises by virtue of this License or Licensee's use of the Premises or any other part of the Property pursuant hereto. Licensee acknowledges that in no event shall the relationship between Licensors and Licensee be deemed to be a partnership, joint venture or a so-called landlord-tenant relationship and that in no event shall Licensee be entitled to avail itself of any rights afforded to tenants under the laws of the State in which the Premises are located. This License is not and does not grant an easement or any other interest in real property.

19. **Entire Agreement.** This License constitutes the entire agreement between Licensors and Licensee regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for those set forth in this License, no representations, warranties, or agreements have been

made by Licensor or Licensee to the other with respect to this License. Time is of the essence of this License.

20. **Governing Law.** This License shall be governed by and construed in accordance with the laws of the State in which the Premises are located.

21. **Survival Provision.** It is expressly understood and agreed that any indemnity provisions contained in this License shall survive any expiration or earlier termination of this License.

22. **Attorneys Fees.** In the event either party institutes any action or proceeding against the other relating to the provisions of this License, or any default hereunder, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable attorneys fees and costs incurred therein by the prevailing party.

23. **Counterparts.** This License may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts shall constitute but one and the same instrument. Signatures delivered electronically (e.g., via PDF file) shall be deemed original signatures for all purposes.

24. **Brokers.** Licensee hereby represents and warrants to Licensor that Licensee has not dealt with any broker or finder or real estate licensee in connection with this License.

25. **Environmental Matters.** Licensee shall not use, treat, store, recycle, keep or otherwise allow the presence of any Hazardous Substances in, on or around the Premises or the Property in violation of any Environmental Laws. "Hazardous Substances" shall mean any compound, chemical, contaminant, pollutant, toxic substance, hazardous waste, hazardous material, or hazardous substance, including, without limitation, asbestos, asbestos-containing materials, polychlorinated biphenyls, oil, petroleum, and petroleum products, which may pose a threat to the environment or to human health and safety, as defined, or regulated by any Environmental Laws. "Environmental Laws" shall mean all applicable federal, state, and municipal laws, ordinances, bylaws, codes, rules, regulations, decrees, orders, licenses, permits, conditions, judgments, rulings, directives and requirements of any governmental agency or authority having jurisdiction with respect to Hazardous Substances or the health or safety of persons or property. To the maximum extent permitted by law, Licensee shall indemnify the Licensor Parties and hold the Licensor Parties harmless from and against any and all liability, liens, claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions and causes of action (including without limitation all attorneys' fees and expenses) arising out of or relating to, directly or indirectly, any violation or alleged violation by any Licensee Party of any Environmental Laws.


26. **Prohibited Persons and Transactions.** Licensee represents and warrants to Licensor that Licensee is currently in compliance with and shall at all times during the Term (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

[SIGNATURE PAGE FOLLOWS.]

EXECUTED AS OF THE DATE FIRST SET FORTH ABOVE.


LICENSOR:

BRE FOXTROT 7760 DOANE DRIVE LLC, a
Delaware limited liability company

DocuSigned by:
By: 
Name: Jack Hennessey
Title: Authorized Signatory

LICENSEE:

Potomac and Rappahannock Transportation
Commission

By: 
Name: ARTHEA EVANS
Title: DIRECTOR OF MARKETING


1/30/19
Executive Director
Robert A. Schneider

EXHIBIT A

[The Premises]

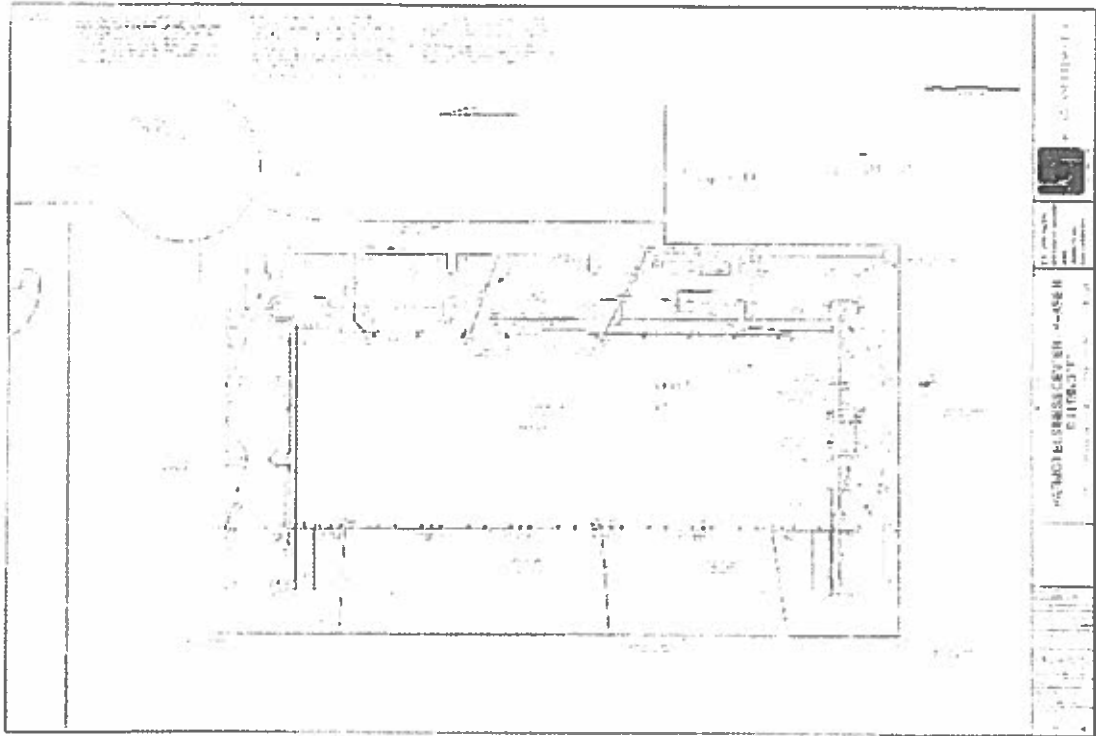


EXHIBIT "A", THE PREMISES