

## PORT OF OLYMPIA GROUND LEASE

THIS LEASE is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the PORT OF OLYMPIA, a Washington municipal corporation, Lessor, hereinafter referred to as "the Port," and the Tenant described below, hereinafter referred to as "Tenant," on the following terms and conditions:

### 1. LEASE SUMMARY.

#### TENANT.

Name:  
Address:  
City, State, Zip Code:  
Phone Numbers:  
Email:

#### LEASED PREMISES.

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms and conditions of this Lease, that certain real property consisting of approximately \_\_\_\_\_ of land or \_\_\_\_\_ square feet located on the \_\_\_\_\_ in Olympia, Thurston County, Washington as described in Exhibit "A" hereto and depicted in Exhibit "D" hereto.

The subject property will require completion by Tenant of a binding site plan, as determined by the City of Tumwater. The Port shall be given the opportunity to review and approve all applications and submissions made by Lessee in connection therewith, with the Port's approval not to be unreasonably withheld.

Upon full execution of the Lease, the Port and Tenant agree to execute an addendum to this Lease setting forth the description and size of the Leased Premises in accordance with the binding site plan provided by Tenant and approved by the Port.

#### TERM.

The initial term shall be \_\_\_\_ (\_\_) years beginning \_\_\_\_\_ and ending \_\_\_\_\_ (the "Initial Term"). Tenant shall also have one option to renew as outlined below.

#### OPTION TO RENEW.

\_\_\_\_ (\_\_) option to renew for an additional term of \_\_\_\_\_ (\_\_) years. Such renewal shall be upon the terms, covenants, and conditions contained herein (except for rent, rental adjustments, and the

times at which rental adjustments shall be made, all of which shall be determined in accordance with the then current Commission policy). The renewal term shall commence on the expiration of the immediately preceding term. Such Option to Renew may be exercised only by written notice to the Port no later than one hundred and eighty (180) days prior to the expiration of the then current term. Tenant shall not be entitled to renew this Lease if Tenant is in default of the performance of its obligations hereunder at the date notice of renewal is due or at the date the renewal term is to commence.

MINIMUM GROUND RENT.

Commencing on \_\_\_\_\_ and continuing thereafter for the first fifteen (15) years of the Initial Term of this Lease, Tenant shall pay rent in the amount of \_\_\_\_\_ (\$) per month, subject to escalations as outlined below, plus applicable Leasehold Excise Tax. In addition Tenant shall pay such Insurance, Utilities, Fire Insurance and other expenses in accordance with the Lease.

During the first fifteen (15) years of the Initial Term, rental revisions will be made every three (3) years effective at the commencement of each successive three (3) year period. Rent will be automatically adjusted to reflect an amount equal to the change in the Consumer Price Index (CPI) for All Urban Consumer (CPI-U) in the Seattle-Tacoma-Bremerton area, all items, issued by the Bureau of Labor Statistics of the US Department of Labor. Such adjustment shall be calculated as the average annual change in the index. Provided however that the annual minimum ground rent for any one (1) year period shall in no event be less than the annual minimum ground rent for the immediately preceding one (1) year period.

The rent is in addition to, and not in lieu of the requirement to pay any concession fees or tariffs established pursuant to the Port's Minimum Standards for Commercial Activities.

The timing and calculation of rent and rental revisions for the second fifteen years of the Initial Term shall be determined in accordance with the then current Commission policy.

Beginning with the sixteenth year of the Initial Term, Tenant hereby elects to have the fair market value for rental revisions for the property determined by (a) the Assessor's valuation or (b) by independent appraiser, as outlined in Paragraph 36, **APPRAISAL PROCEDURE**. Port and Tenant agree that upon execution of this Lease, Tenant will execute an amendment describing the method by which rental revisions will be determined for the duration of the term.

Rental revisions for any extension of Term in accordance with the Option to Renew shall be in accordance with the then current Port Commission Policy.

PERCENTAGE RENT.

In addition to minimum rent, Tenant shall pay a percentage rent in an amount equal to \_\_\_\_\_ (\_\_\_%) percent of annual Gross Sales in accordance with the provisions of Paragraph 4.4.

RENT COMMENCEMENT DATE

Rent shall commence at the earliest to occur of (a) date Tenant receiving a temporary Certificate of Occupancy issued by the City of Tumwater or (b) nine (9) months from the commencement date of the Lease term.

SURETY.

In accordance with Paragraph 5 of the Lease, in an amount equal to one (1) year's minimum ground rent plus Washington State Leasehold Excise Tax, in a form acceptable to the Port, and adjusted to reflect rental adjustments of this Lease. Initial amount shall \_\_\_\_\_ (\$) one times the annual rent plus Washington State Leasehold Excise Tax of 12.84%. Expiration Date: Ninety (90) days after termination of the Lease. Upon full execution of the Lease, the Port and Tenant agree to execute an addendum to this Lease setting forth the Lease Surety in accordance with the parcel size as determined by the binding site plan or boundary line adjustment. Any change in surety shall be posted with the Port at least thirty (30) days prior to the effective date of any change.

USE OF PREMISES.

Tenant shall be permitted to use the site to [fill in here as appropriate...](#)

INSURANCE.

Bodily Injury/Death: Combined Single Limit \$1,000,000 each occurrence.  
Property Damage per Occurrence: \$500,000

CONFLICTING PROVISIONS.

To the extent any of the provisions of the foregoing Paragraph 1, LEASE SUMMARY, conflicts with any other provisions of this lease, the provisions of Paragraph 1, LEASE SUMMARY, shall govern.

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EXHIBIT "A" - REQUIREMENTS AS TO IMPROVEMENTS

EXHIBIT "B" - TOXIC, DANGEROUS AND HAZARDOUS SUBSTANCES STORAGE  
LICENSE

EXHIBIT "C" - LESSOR'S CONSENT AND AGREEMENT

EXHIBIT "D" - MAP OF PREMISES

EXHIBIT "E" – TENANT SIGN GUIDELINES

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**2. LEASED PREMISES.**

The Port hereby leases to Tenant, and Tenant hereby leases from the Port, the premises described in paragraph 1, **LEASE SUMMARY** above, located in Thurston County, hereinafter called "the premises." Tenant acknowledges and agrees that Tenant is responsible for applying for, processing, obtaining, and recording such approvals as may be necessary for the division of the premises from the larger property owned by the Port of which the premises are a part, whether by binding site plan or otherwise, and Tenant shall bear all costs and expenses thereof. The Port shall be given the opportunity to review and approve all applications and submissions made by Tenant in connection therewith, with the Port's approval not to be unreasonably withheld.

**3. TERM.**

This Lease shall be for the term specified in paragraph 1 above.

**4. RENT.**

4.1. It is the intention of the parties hereto that the rent specified in the Lease shall be net to the Lessor in each year during the term of the Lease. Accordingly, all costs, expenses and obligations of every kind relating to the leased property (except as otherwise, specifically provided in the Lease) which may arise or become due during the term of the Lease shall be paid by Tenant and the Port shall be indemnified by the Tenant against such costs, expenses and obligations. All such costs, expenses, and obligations and payments coming due hereunder shall be deemed as "additional rent". Tenant agrees to pay as rent for the use and occupancy of the premises during the term of this Lease, without deduction or offset, the rent specified in paragraph 1 above, payable to the Port in advance on or before the first day of each and every month and payable at such place as the Port may designate.

4.2. Rent shall be subject to revision by the procedure as outlined in Paragraph 36, **APPRAISAL PROCEDURE**. Any rent revision will not be less than the then current rent payment at the time the revision becomes effective.

4.3. If the Tenant does not pay the rent by the 10th of the month, then in addition to the overdue rent, Tenant shall pay interest on the rent payment then due at a rate per annum equal to the greater of eighteen percent (18%) per annum or two (2) percentage points over the composite prime rate of interest set forth in the Wall Street Journal "Money Rates" Column (or its successor) most recently prior to such date. Such interest commences on the date the rent is due and continues until such rent is paid. If the Tenant does not pay the rent when due and interest is incurred each month for three (3) consecutive months, the rent called for herein shall automatically become due and payable quarterly in advance rather than monthly, notwithstanding any other provision in this Lease to the contrary, and regardless of whether or not the interest is paid or collected. The imposition of such interest does not prevent the Port from exercising any other rights and remedies under this Lease.

4.4. Percentage Rent.

4.4.1. Tenant shall be liable to pay to the Landlord in addition to the minimum ground rent, for each calendar year (or portion thereof), percentage rent ("Percentage

Rent") in the annual amount determined by multiplying all Gross Sales (as defined in Subsection 4.4.3) for such calendar year (or portion thereof) times the Gross Sales Multiplier defined below) and then subtracting from the product thus obtained the minimum ground rent paid by Tenant for such calendar year (or portion thereof). The term "calendar year" when used with respect to Percentage Rent shall also include any portion of a calendar year during the Lease Term, at the commencement of or upon the termination of this Lease.

4.4.2. The "Gross Sales Multiplier" shall be \_\_\_\_\_% with respect to Gross Sales of all items and services.

4.4.3. The term "Gross Sales" as used in this Lease shall mean the actual sales price of all goods, food, meals, beverages, wares and merchandise sold, and the actual charges for all services performed by Tenant or any subtenant of the leased premises, whether such sales and charges are made for cash, on credit or for any other consideration, and including gift certificates, or like vouchers, and including merchandise certificates, coupons or other similar instruments, however designated (sales on credit being treated as a sale for the full price thereof the month in which such sale shall have been made, regardless of time of collection of payment), where such sales and charges are made in or from the premises, including but not limited to telephone sales or services and orders taken in or from the premises (including off-premises catering from the premises) and receipts from vending machines and amusement devices. Gross Sales shall not include the sales price or charges for promotional giveaways and employee meals for which the Tenant does not receive cash consideration. The term "Gross Sales" as used in this Lease shall exclude the following:

1. The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and credit allowances made thereon;
2. Sums and credits received by Tenant in the settlement of claims for loss of or damage to merchandise;
3. Cash refunds made to customers in the ordinary course of business, but this exclusion shall not include any amount paid or payable for what are commonly referred to as trading stamps;
4. Returns to shippers or manufacturers;
5. Receipts from public telephones, stamp machines, public toilet locks, or cigarette vending machines.
6. Sales taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected separately from the selling price of merchandise or services;
7. Sales of trade fixtures, equipment or personal property which are not stock in trade;
8. The exchange of merchandise between stores of the Tenant where such exchanges are made solely for the convenient operation of the Tenant's business and not for the purpose of consummating a sale which has theretofore been made at, in, on or from the premises, and/or for the purpose

of depriving the Port of the benefit of a sale which otherwise would have been made at, in, on or from the premises;

9. Fees paid by Tenant to credit card companies and/or banking institutions in accordance with credit card purchase plans not to exceed a total of two percent (2%) of Tenant's Gross Sales in any single calendar year;
10. Gift certificates until redeemed or taken into income and not to exceed a total of one percent (1%) of Tenant's Gross Sales in any single calendar year;
11. Discounts from coupons rung up as sales, but where no cash is received by Tenant, and
12. Receipts from the sale of lottery tickets, but only to the extent such receipts must be remitted by Tenant to others.

All sales originating at the premises shall be considered as made and completed therein, even though bookkeeping and payment of the account may be transferred to another place for collection and even though actual filing of the sale or service order and actual delivery of the merchandise may be made from a place other than the premises.

- 4.4.4. Tenant shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions, whether cash or credit, in a cash register or registers having a sealed and continuous tape which cumulates and consecutively numbers all purchases. Tenant shall keep, and Tenant shall cause any and all subtenants to keep, complete and accurate books and records of all of their respective Gross Sales during the term of this Lease, including, without limitation, (a) a sales journal, general ledger, and all bank account statements showing deposits of Gross Sales revenue, (b) all such cash register receipts with regard to the Gross Sales and credits, refunds and other pertinent transactions made from or upon the premises (including the Gross Sales of any subtenant, licensee or concessionaire), and (c) detailed original records of any exclusions or deductions from Gross Sales (including any exclusions or deductions from Gross Sales of any subtenant, licensee or concessionaire). Tenant shall preserve, and shall require all subtenants to preserve, for a period of three (3) years following each respective calendar year during the lease term, all such books and records. Tenant shall (i) give the Port or require any subtenant to give the Port during reasonable hours upon forty-eight (48) hours prior written notice, access to the books and records relating to the operation of the business transacted on the premises, including the right to copy a portion or portions thereof; and (ii) give the Port or require any subtenant to give to the Port access to the registers on a reasonable basis as the Port may from time to time desire. In addition, upon request of the Port, Tenant agrees to furnish to the Port a copy of Tenant's state and local sales and use tax returns.
- 4.4.5. Said Percentage Rent shall be computed each calendar month during the lease term, and on or before the twentieth (20th) day of the calendar month immediately following the close of each such period, Tenant shall pay to the Port the amount by which the sum so computed as a percentage of Gross Sales of the

Tenant during such period exceeds the installments of minimum ground rent payable by Tenant during such period.

At the close of each calendar year during the lease term and within thirty (30) days thereafter, there shall be determined the Gross Sales of the Tenant during said calendar year and the amounts paid to the Port as minimum ground rent for said calendar year as Percentage Rental; and thereupon an adjustment shall be made with respect to said rental as follows: If the Tenant shall have paid to the Port an amount greater than the Tenant is required to pay under the terms hereof, the Tenant shall be entitled to a refund forthwith of said amount or, if the Tenant shall have paid an amount less than the rentals required to be paid hereunder, then Tenant shall forthwith pay such difference.

For the purpose of computing the Percentage Rent, sales in the first fractional month in which rentals commence shall be added to the sales for the first full month and any Percentage Rent due and payable for this entire period shall be based on the excess over the monthly installments of minimum ground rent which shall be payable by Tenant during said entire period.

- 4.4.6. The Tenant agrees to furnish or cause to be furnished to the Port a statement of Gross Sales of the Tenant within twenty (20) days after the close of each calendar month, and an annual statement of Gross Sales within thirty (30) days after the close of each calendar year. Such statements shall be signed by a responsible officer of Tenant. The receipt by the Port of any statement or any payment of Percentage Rent for any period shall not bind it as to the correctness of the statement or the payment. Within two (2) years after the receipt of any such statement, the Port at any time shall be entitled to an audit of such Gross Sales either by the Port or by a certified public accountant to be designated by the Port. Such audit shall be limited to the determination of the "Gross Sales" as defined in this Lease and shall be conducted during normal business hours at the principal place of business of Tenant. If it shall be determined as a result of such audit that there has been a deficiency in the payment of Percentage Rent, then such deficiency shall become immediately due and payable with interest at the rate set forth in Paragraph 4.1 above from the date when said payment should have been made. In addition, if Tenant's statement for the pertinent calendar year shall be found to have understated Gross Sales by more than two percent (2%), and the Port is entitled to any additional Percentage Rent as a result of said understatement, or if such audit shows that Tenant has failed to maintain the books of account and records required hereunder so that the Port is unable to verify the accuracy of Tenant's statement, then the Tenant shall pay all of the Port's reasonable costs and expenses (including reasonable auditor and attorney fees) which may be incurred by the Port in conducting such audit and collecting such underpayment, if any. If Tenant understates Gross Sales by more than three percent (3%) more than twice in any five-year period, then, in addition to the Port's aforesaid rights, the Port may terminate this Lease. Any information gained from such statements or inspection shall be confidential and shall not be disclosed other than to carry out the purposes hereof; provided, however the Port shall be permitted to divulge the contents of any such statements in connection

with any contemplated sales, transfers, encumbrances, financing arrangement or assignments of the Port's interest in all or any portion of the Property or in connection with any administrative or judicial proceeding in which the Port is involved or in which the Port may be required to divulge such information.

**5. LEASE SURETY BOND.**

Tenant shall, upon execution of this Lease, file with the Port a good and sufficient surety bond in accordance with the requirements of state law. The form and terms of the surety bond and the identity of the surety shall be subject to approval of the Port and the surety shall guaranty the full performance by Tenant of all the terms and conditions of this Lease, including the payment by Tenant of the rents and all other amounts herein provided for the full term hereof. Any acceptable surety instrument having an expiration earlier than the full lease term shall be automatically renewable. Any company issuing such a surety instrument must give the Port at least ninety (90) days advance written notice prior to the effective date of cancellation or expiration of such surety instrument. Initially, the required amount of the surety bond is set forth in paragraph 1 above. These provisions as to lease surety are subject to the continued approval of the Port and to revision and adjustment as may hereafter result from changes in state requirements or as established by the Port Commission.

**6. ACCEPTANCE OF PREMISES.**

Tenant has examined the premises, and the adjoining premises of which the premises are a part, and accepts them in their present condition. There are no warranties expressed or implied as to any condition apparent or unknown except as otherwise stated in this Lease. Tenant agrees to make any changes in the premises necessary to conform to any federal, state or local law applicable to Tenant's use of the premises.

**7. POSSESSION.**

If the Port shall be unable for any reason to deliver possession of the premises or any portion thereof at the time of the commencement of this Lease, the Port shall not be liable for any damage caused thereby to Tenant, nor shall this Lease thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Tenant shall not be liable for any rent until such time as the Port can deliver possession; provided that if Tenant shall take possession of any portion of the premises in the interim, it shall pay the full rent specified herein reduced pro rata for the portion of the premises not available for possession by Tenant; and provided further, that if the Port shall be unable to deliver possession of the premises at the commencement of this Lease, Tenant shall have the option to terminate this Lease by giving at least thirty (30) days' written notice of such termination, and this Lease shall terminate unless the Port shall deliver possession of the premises prior to the effective date of termination specified in such notice. If Tenant shall, with the Port's consent, take possession of all or any part of the premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable, with the exception that Tenant shall not be obligated to pay any rental for the period prior to the commencement of the term of this Lease unless otherwise mutually agreed.

**8. USE OF PREMISES.**

Tenant shall use the premises only for those purposes stated in paragraph 1 above and shall not use them for any other purpose without the written consent of the Port, which consent may be withheld in the Port's sole discretion. The premises shall be used only for lawful purposes; and only in accordance

with all applicable building, fire and zoning codes. Tenant shall use the entire premises for the conduct of said business in a first-class manner continuously during the entire term of this Lease. Tenant agrees that it will not disturb the Port or any other Tenant of the Port by making or permitting any disturbance or any unusual noise, vibration or other condition on or in the premises. No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on or within the premises, including the windows and doors thereof, without the approval of the Port. At the termination or sooner expiration of this Lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Tenant shall be removed by Tenant at its own expense, and Tenant shall repair any damage or injury to the premises and correct any unsightly condition caused by such removal. At no time shall the Tenant have the right to remove or otherwise disturb timber, valuable minerals, sand, gravel or water, from the site, which materials belong to the Port and may only be used with consent and appropriate compensation.

#### **9. REQUIREMENTS AS TO IMPROVEMENTS.**

The specific requirements as to the planning, construction and completion of any major improvements planned by Tenant on the subject premises are attached hereto as Exhibit "A" to this Lease, which by this reference is incorporated herein as if set forth in full. Prior to the submission of any plans for contemplated improvements on the leased premises, Tenant shall furnish a survey of the appropriate leased premises as prepared by a registered and licensed surveyor, all at Tenant's own expense.

#### **10. RIGHTS-OF-WAY.**

The Port agrees to grant other such right-of-way easements across the property of the Port reasonably available therefor for the installation and maintenance of necessary and adequate services to the premises of Tenant, including but not limited to petroleum product pipelines, railroad spurs, railways and utility lines.

#### **11. RESERVATION OF RIGHTS.**

The Port reserves to itself from the premises herein leased rights of way upon, over, across, onto or beneath the above-described lands for pole and wire lines, gas, water and sewage pipes and mains, conduits or any other utilities or industrial or business area facilities of all kinds now existing or to be constructed and maintained by it, either in addition to or in the substitution for those now existing from any point or points and in any direction and also reasonable rights of entry upon the demised premises for the construction, repair, inspection and maintenance of them in efficient use and condition, providing such action by the Port shall not materially interfere with or interrupt Tenant's operation and shall be at the expense of the Port. The Port is hereby granted such continuous, perpetual easement or easements that the Port believe are necessary within the leased premises for such purposes, which easement or easements may be further granted by the Port to third parties.

#### **12. AIR SPACE RESERVATIONS AND USE RESTRICTIONS. Intentionally Omitted**

#### **13. UTILITIES AND SERVICES.**

Tenant shall be liable for and shall pay throughout the term of this lease all charges for all utility services furnished to the premises, including but not limited to, light, heat, gas, janitorial services, garbage disposal, security, electricity, water, stormwater and sewerage, including any connection fees, and any fire protection, police protection, or emergency health services as furnished by local authorities and as may be the subject of a contract between the Port and such local authorities or as imposed by ordinance or statute. If the premises are part of a building or part of any larger premises to which any utility services are furnished on a consolidated or joint basis, Tenant agrees to pay to the Port Tenant's

pro-rata share of the cost of any such utility services. Tenant's pro-rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required.

#### **14. INDEMNIFICATION/LIABILITY INSURANCE.**

The Port, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Tenant or by others (including, but not limited to all persons directly or indirectly employed by Tenant, and any agents, contractors, subcontractors, suppliers, customers or invitees of Tenant) as a result of any condition (including existing or future defects in the Premises), or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Premises and the areas adjacent thereto; provided, however, that the foregoing provisions shall not be construed to make Tenant responsible for loss, damage, liability or expense to the extent resulting from the negligence or wrongful conduct of the Port or its employees, agents, contractors, subcontractors, suppliers, or officers. Tenant hereby covenants and agrees to indemnify, defend (with attorneys reasonably satisfactory to the Port), protect and hold the Port harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against the Port arising from or in connection with the loss of life, personal injury and/or damage to property occasioned by any negligent or other wrongful act or omission of Tenant or its agents, contractors, servants or employees. In addition, Tenant covenants and agrees to indemnify, defend (with attorneys reasonably satisfactory to the Port), protect and hold the Port harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against the Port and arising from or in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Premises, unless caused by any negligent or other wrongful act or omission of the Port or its agents, contractors, servants or employees. If a court of competent jurisdiction determines that any activity covered by the indemnities under this section of this Lease is subject to RCW 4.24.115, then, in the event of liability for damages arising out of a bodily injury to person or damage to property caused by or resulting from the concurrent negligence or willful act or omission of Tenant and Landlord, its officers, officials, employees, agents, contractors, or volunteers, the Tenant's and Landlord's liability hereunder shall be only to the extent of each such party's negligence or willful act or omission. It is further specifically and expressly agreed that Tenant hereby waives any immunity it may have under industrial insurance, RCW Title 51, solely for the purposes of this indemnification and only to the extent necessary to render the parties' indemnity obligations enforceable. This waiver was mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Lease.

The Port indemnifies, defends, and holds Tenant harmless from claims that are: (i)(a) for personal injury, death, or property damage or b) for incidents occurring in or about the Premises, building, common areas or project; and (ii) caused by the negligence or wrongful conduct of Landlord, its principals, agents, contractors, employees, or invitees. This indemnification and hold harmless shall include reasonable attorneys fees and court costs incurred by Tenant with respect to such claims.

Tenant shall, at its own expense, provide and maintain commercial general liability insurance with a reputable insurance company or companies reasonably satisfactory to the Port, and including, but not limited to premises and operations; personal injury, contractual liability; independent contractors; broad form property damage; completed operations and products; and such additional types and amounts of liability insurance as the Port may deem reasonably necessary for the types of services or activities

offered by Tenant and customarily required by landlords under such circumstances and with the minimum policy limits set forth above. The coverage afforded by such policies shall thereafter be in such amounts as the Port may specify from time to time in accordance with what would be required by a reasonable and prudent property manager in the same geographic area. The Port shall be named as an additional insured on such policies (and, at the Port's option, shall be furnished with a certificate of such insurance). Such policies shall provide that such insurance may not be cancelled without the insurance company first having given the Port thirty (30) days' advance written notice of such intent to cancel. Tenant shall submit certificates evidencing compliance with this paragraph in lieu of furnishing the actual policies or copies thereof. Tenant shall furnish the Port with evidence of renewal of such policies not less than thirty (30) days prior to their expiration.

#### **15. WAIVER OF SUBROGATION.**

The Port and Tenant hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective insurance contracts, including any extended coverage endorsements thereto, provided, that this paragraph shall be inapplicable to the extent it would have the effect of invalidating any insurance coverage of the Port or Tenant. Each party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

#### **16. TAXES.**

Tenant shall be liable for, and shall pay, throughout the term of this lease, all license fees and taxes covering or relating to the premises and its use, including, without limitation, (a) all real estate taxes assessed and levied against the premises; (b) all amounts due and payable for general or special assessments against the premises during the term of this lease (whether assessed prior to or during the term of this lease), including any assessments for LIDs or ULIDs; and (c) all personal property taxes upon Tenant's fixtures, furnishings, equipment and stock in trade, Tenant's leasehold interest under this lease or upon any other personal property situated in or upon the Premises. If any governmental authority at any time levies a tax on rentals payable under this lease or a tax in any form against Lessor because of or measured by income derived from the leasing or rental of the premises, such tax shall be paid by Tenant; provided, however, that Tenant shall not be liable for the payment of any tax imposed generally on Lessor's gross or net income without regard to the source of such income.

#### **17. MAINTENANCE AND REPAIR.**

Tenant shall, at its own expense, keep the premises, structures and other improvements and the adjoining roadways, sidewalks and areas in a neat, clean, safe and sanitary condition and maintain and keep all of the premises maintained equal in quality to of other owners of similar class properties and conditions in the Thurston County, Washington area, reasonable wear and tear excepted, and to maintain the landscape and undeveloped areas (including ditches and shoulders of adjoining roadways) in a clean, sanitary, orderly and attractive condition, mowed and free from rubbish and debris. Tenant shall also, at its own expense, at all times keep the premises free from infestation of pests and conditions which might result in harborage for, or infestation of, pests. (Pests shall include, without limitation, rodents, insects, and birds in numbers to the extent that a nuisance is created.) Tenant shall keep the glass of all windows and doors on the premises clean and presentable, and shall maintain and keep the premises in a good state of repair, and shall commit no waste of any kind, and, without limiting the generality of the foregoing, shall replace all cracked or broken glass in the premises, and keep the electrical system and all drains clean and in a good state of repair, and shall protect all sprinkler systems and all pipes and drains so that they will not freeze or become clogged. Tenant shall replace any and all improvements which become worn out, obsolescent, deteriorated, unsafe or unusable and shall replace such improvements with new

fixtures and improvements of at least as good a quality as originally installed at the commencement of this Lease. In the event Tenant fails to properly maintain, repair and replace the premises or any improvements thereon, and if the Port shall give a ten (10) day written notice to Tenant, Tenant shall comply with Tenant's responsibilities under this paragraph, and the Port shall be entitled, but shall not be obligated, to enter the leased premises and perform such work as may be necessary to restore the leased premises and improvements to the conditions set forth herein. The cost of such repairs shall be billed to Tenant by the Port and shall be payable upon receipt and subject to the same penalties for late payment as if such payment was additional rent.

Tenant shall keep the premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the premises by Tenant. At the Port's request, Tenant shall furnish the Port with written proof of payment of any item which would or might constitute the basis for such a lien on the premises if not paid. Any dispute under this section shall be subject to arbitration under paragraph 37, **ARBITRATION PROCEDURE**. Tenant shall also be wholly responsible for any and all repairs, maintenance, and improvements to maintain building structure integrity, (including foundations, bearing columns, bearing walls and exterior walls), and to the roof, utility service and lines, whether located on or off the premises, provided, however, Tenant shall only be responsible for any sewer line repairs occurring on the premises or Tenant's parking area. Tenant shall have no claim as deduction or offset any monies or charges against the rent paid to the Port for maintenance or repairs. Tenant has inspected the premises and accepts the premises "as is".

#### **18. ALTERATIONS AND IMPROVEMENTS; SIGNAGE.**

Tenant shall make no alterations or improvements to or upon the premises or install any fixtures (other than trade fixtures which can be removed without injury to the premises) without first obtaining written approval of the Port. The Port's response to Tenant's requests for approval shall be prompt, and such approval shall not be unreasonably withheld. Upon installation, Tenant shall furnish the Port with a copy of the "as-built" drawings including utility installations and site plans detailing the nature of the additions, alterations or improvements. The Port reserves the right to have Tenant remove, at Tenant's sole expense, all or any of such alterations, additions or improvements at the end of the Lease term as provided in paragraph 19, **DISPOSITION OF IMPROVEMENTS**. Any dispute under this section shall be subject to arbitration under paragraph 37, **ARBITRATION PROCEDURE**.

Tenant shall have no right to install Tenant identification signs in any location in or about the Premises that are visible from the exterior of the building, without first obtaining written approval of the Port. The location, size, design, color and other physical aspects of permitted signs shall be subject to (i) Port's Tenant Sign Guidelines; (ii) Port's written approval prior to installation; (iii) any covenants, conditions or restriction encumbering the premises and (iv) any applicable municipal permits and approvals. A copy of Port's Tenant Sign Guidelines is attached hereto as Exhibit E.

#### **19. DISPOSITION OF IMPROVEMENTS.**

a. Except as otherwise agreed to in writing by the Port, in its sole and absolute discretion, within sixty (60) days after the expiration or earlier termination of this Lease (including any and all extensions or renewals thereof), the Tenant shall at Tenant's expense, remove, demolish or clear off from the Premises all improvements and all property owned by Tenant, and after such removal or clearance, Tenant shall restore the surface of the ground to a graded, properly filled, level and uniform condition, free from all debris.

Any dispute under this section shall be subject to arbitration, under paragraph 37 **ARBITRATION PROCEDURE**.

## **20. INSPECTION.**

The Port reserves the right to inspect the premises at any and all reasonable times throughout the term of this Lease, provided that it shall not interfere unduly with Tenant's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the premises, and shall impose no liability upon the Port for failure to make such inspections. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the premises for a reasonable period of time prior to the expiration or sooner termination of this Lease.

## **21. RESTORATION.**

a. At all times during the term of this Lease, Tenant shall maintain in effect upon the leased premises and Tenant's improvements thereon, fire and extended coverage property insurance for physical loss and damage excluding earthquake insurance and flood insurance, written by companies authorized to do business in the State of Washington and approved by the Port's insurance carrier. Such policy or policies (a) shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of the leased premises and Tenant's improvements thereon, which amount shall be adjusted not less frequently than annually, (b) shall contain an endorsement waiving any and all rights of subrogation against the Port and (c) shall provide that notice of cancellation of the policy or any endorsement shall be given to the Port and any other party designated by the Port at least 10 days prior to cancellation. The Port and each other party designated by the Port shall be named as additional insureds and loss payees on all such policies. Tenants shall provide the Port and each other party designated by the Port with certificates of insurance evidencing such coverage and shall provide evidence of renewal at least 30 days prior to the expiration of such policy or policies. Tenant will also take out and maintain policies of insurance to cover the loss, damage or destruction of Tenant's furniture, fixtures, equipment and other items owned by Tenant on the leased premises, with limits based on the reasonable value thereof.

b. If any building or improvement erected by Tenant on the leased premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Tenant may, at its option, at its own cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the Port. Such work of repair or restoration shall be commenced within sixty (60) days after the damage or loss occurs and shall be completed with due diligence but not longer than one (1) year after such work is commenced, and such work shall be otherwise done in accordance with the requirements of the provisions hereof pertaining to the construction of improvements upon the leased premises. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration, or if Tenant elects not to repair or restore, to the cost of removing, demolishing, or clearing off the building or improvements. If (i) there are not insurance proceeds, or (ii) the same shall be insufficient for said purpose, Tenant shall make up the deficiency out of its own funds. Should Tenant fail or refuse to make the repair, restoration or removal as hereinabove provided, then in such event said failure or refusal shall constitute a default under the covenants and conditions hereof, and all insurance proceeds so collected shall be forthwith paid over to and be retained by the Port on its own account, and the Port may, but shall not be required to, sue and apply the same for and to the repair, restoration or removal of said leased premises or improvements, and the Port may, at its option, terminate this Lease as elsewhere provided herein.

c. Notwithstanding anything to the contrary contained in the preceding section, if any building erected on said leased premises shall be damaged by fire or other casualty, and if the cost of repairing or restoring the same shall exceed the insurance payable for such damage, and if such damage shall occur during the term so that the remaining term of this Lease is of insufficient length to allow Tenant to finance such cost in a commercially reasonable manner, the Tenant shall have the option, to be exercised within

thirty (30) days after such event, to repair or restore said building as hereinabove provided, or to terminate this Lease by written notice thereof to the Port.

d. Any dispute under this section shall be subject to arbitration, under paragraph 37 **ARBITRATION PROCEDURE.**

## **22. DEFAULTS.**

Time is of the essence of this Lease, and in the event of the failure of Tenant to pay the rental, interest or other charges provided in this Lease at the time and in the manner herein specified, or to keep any of Tenant's covenants or agreements herein, the Port may elect to terminate this Lease and reenter and take possession of the premises with or without process of law, provided, however, that Tenant shall be given fifteen (15) days' notice in writing if the default is for the nonpayment of rent or other monetary default, or thirty (30) days' notice in writing for any other default, stating the nature of the default in order to permit such default to be remedied by Tenant within the applicable time period. If the Port issues a notice of default for the nonpayment of rent, in order to cure such default, Tenant must pay the overdue rent, together with interest as set forth in paragraph 4 above, plus a Fifty Dollar (\$50.00) lease reinstatement fee. If during any consecutive twelve-month period, the Port has issued three notices of default, the Port shall not be required to accept the cure of any subsequent default by Tenant and may terminate this Lease or exercise any other rights or remedies available to it immediately by written notice to Tenant without the expiration of any otherwise applicable cure period.

If upon such reentry there remains any personal property of Tenant or of any other person upon the premises, the Port may, but without the obligation to do so, remove said personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and Tenant shall reimburse the Port for any expense incurred by the Port in connection with such removal and storage. The Port shall have the right to sell such stored property, without notice to Tenant, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from Tenant to the Port, and the balance, if any, shall be paid to Tenant. Notwithstanding any such reentry, the liability of Tenant for the full rental provided for herein shall not be extinguished for the balance of the term of this Lease, and Tenant shall make good to the Port any deficiency arising from a reletting of the premises at a lesser rental than that chargeable to Tenant. Tenant shall pay such deficiency each month as the amount thereof is ascertained by the Port. Payment by Tenant to the Port of interest on rents and/or any other charges due and owing under this Lease shall not cure or excuse Lessee's default in connection with rents and/or other charges. All remedies of the Port hereunder are cumulative and not alternative.

## **23. ADVANCES BY PORT FOR TENANT.**

If Tenant shall fail to do anything required to be done by it under the terms of the Lease, except to pay rent, the Port may, at its sole option, do such act or thing on behalf of Tenant, and upon notification to Tenant of the cost thereof to the Port, Tenant shall promptly pay the Port the amount of that cost. However, if the Port shall pay any monies on Tenant's behalf, Tenant shall repay such monies, together with interest thereon commencing on the date the Port paid such monies and calculated at the greater of the rate of eighteen percent (18%) per annum, or two (2) percentage points over the composite prime rate of interest set forth in the Wall Street Journal "Money Rates" column (or its successor) most recently prior to such date.

**24. HOLDING OVER.**

If Tenant shall, without the consent of the Port, hold over after the expiration or sooner termination of this Lease, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis. During such month-to-month tenancy, Tenant shall pay to the Port the rate of four (4) times the then-current rental under the terms of the Lease, unless a different rate shall be agreed upon, and the Tenant shall be bound by all of the additional provisions of this Lease.

**25. ASSIGNMENT OR SUBLEASE.**

Except as provided below, Tenant shall not assign or transfer (including any assignment or transfer for security purposes) this Lease or any interest therein nor sublet the whole or any part of the premises, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the advance written consent of the Port, which may be withheld in the Port's sole discretion. Lessor agrees that it will consent to the assignment of this Lease (or any interest herein) for security purposes to a bona fide lender, but only on the terms and conditions contained in the form of Lessor's Consent and Agreement attached hereto as Exhibit C, which must be signed by such lender. If Tenant is a corporation, Tenant further agrees that if at any time during the term of this Lease, more than one-half (1/2) of the outstanding shares of any class of stock of the Tenant corporation shall belong to any stockholders other than those who own the outstanding shares of that class of stock at the time of the execution of this Lease or to members of their immediate families, including their estates, such change in the ownership of the stock of Tenant shall be deemed an assignment of this Lease within the meaning of this paragraph. If Tenant is a partnership, Tenant further agrees that if at any time during the term of this Lease, more than one-half of the interests in the partnership shall belong to any partners other than those who own an interest in the partnership at the time of the execution of this Lease or to members of their immediate families, including their estates, such change in the ownership of interests in Tenant shall be deemed an assignment of this Lease within the meaning of this paragraph. If the Port shall give its consent to any assignment or sublease, the Port may consider the proposed assignee's, sublessee's, or transferee's compliance with and ability to meet the Minimum Standards for Commercial Activities for the Olympia Regional Airport and the proposed assignee's, sublessee's, or transferee's receipt of a license pursuant thereto. Tenant shall remain liable under the terms of this Lease, and this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent pursuant to this paragraph.

A minimum handling and transfer fee deposit ("Transfer Fee Deposit") of Three Hundred Dollars (\$500) shall be payable by Lessee to Lessor if Lessee requests Lessor's consent to a proposed assignment (including an assignment to a creditor for security purposes), sublease or modification of this Lease. Lessor reserves the right to increase the Transfer Fee Deposit to an amount up to Five Hundred Dollars (\$1,000) if, in Lessor's sole judgment, the transaction will necessitate the expenditure of time and expense on the part of Lessor in excess of \$500. Such Transfer Fee Deposit shall be submitted to Lessor at the same time that Lessee requests Lessor's consent to the proposed sublease, assignment or modification. If Lessor's reasonable and customary attorneys' fees exceed the Transfer Fee Deposit, then Lessee agrees to reimburse Lessor for such additional reasonable and customary attorneys' fees. Lessee's failure to remit this additional amount within sixty (60) days of the mailing of the notice of such charges, shall constitute a default under this Lease. The Transfer Fee Deposit and any additional amounts paid by Lessee for Lessor's consideration of a requested sublease, assignment, or modification of the Lease shall be non-refundable in all cases.

**26. COMPLIANCE WITH PORT REGULATIONS/ALL LAWS.**

Tenant agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the premises are a part or to Tenant's use or occupancy thereof, now in

existence or hereafter promulgated for the general health, welfare, safety and convenience of the Port, its various tenants, invitees, licensees and the general public, including without limitation, the Minimum Standards for Commercial Activities for the Olympia Regional Airport and payment of all fees and tariffs provided for therein or adopted in accordance therewith, as the same now exist or may hereafter be amended. Tenant further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations, including, without limitation, those relating to environmental matters, and Americans with Disabilities Act, and to indemnify the Port for any liability, damages, costs or fees incurred by the Port due to Tenant's failure to comply with the requirements of this section. Costs and fees shall include all direct and indirect costs and professional fees, including engineering and attorney's fees. Any fees for any federal, state or local inspections and/or certificates required for use and occupancy of the leased premises shall be paid by Tenant. The leased premises are located at the NEWMARKET INDUSTRIAL CAMPUS Complex and Tenant agrees to conform and to comply with all of the "Standards for Development - NewMarket Industrial Campus, 1998" as now promulgated or as may be amended in the future.

## **27. HAZARDOUS SUBSTANCES.**

Tenant certifies, represents, warrants, covenants and agrees that:

(a) For itself, its contractors, subcontractors and agents, Tenant will comply with all applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, treatment, use, sale, storage, handling, transport and disposal of any Hazardous Substances (as defined below) by any person on the leased premises or common areas. Lessee will not, without the Port's prior written consent, keep on or around the leased premises or any common areas, for use, disposal, treatment, generation, storage, or sale, any Hazardous Substances.

(b) With respect to any Hazardous Substance, Tenant shall:

(i) Comply promptly, timely and completely with all governmental requirements for reporting, keeping and submitting manifests and obtaining and keeping current identification numbers;

(ii) Make available for the Port's review and copying during normal business hours, true and correct copies of all reports, manifests and identification numbers at the time as they are required to be and/or are submitted to the appropriate governmental authorities;

(iii) Within five (5) business days of the Port's request, submit written reports to the Port regarding Tenant's use, storage, treatment, transportation, generation, disposal or sale of Hazardous Substances and provide evidence satisfactory to the Port of Tenant's compliance with the applicable laws, rules and regulations;

(iv) Allow the Port or the Port's agents or representatives to come on the leased premises at all reasonable times to check Tenant's compliance with all applicable laws, rules and regulations regarding Hazardous Substances; and

(v) Comply with minimum levels, standards or other performance standards or requirements which may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances) present on the leased premises, including those levels or standards established by an on-site inspection by the appropriate governmental authorities.

In the event of a material violation of any of the items (i) through (v) listed above, any and all costs incurred by the Port and associated with the Port's inspections of Tenant's leased premises and the Port's monitoring of Tenant's compliance with this section, and including the Port's attorney's fees and costs, shall be additional rent and shall be due and payable to the Port immediately upon demand by the Port.

(c) Tenant has not and will not release or waive the liability of any party who may be potentially responsible for the presence or removal of Hazardous Substances on or from the leased premises.

(d) Tenant agrees to immediately notify the Port if Tenant becomes aware of (a) any Hazardous Substances or other environmental problem or liability with respect to the leased premises or any Other Property (as defined below); or (b) any lien, action or notice resulting from violation of any laws, regulations, ordinances or orders described in this Section 27. At its own cost, Tenant will take all actions which are necessary or desirable to clean up any Hazardous Substances affecting the leased premises, including removal, containment or any other remedial action whether or not required by governmental authorities.

(e) If Tenant is in violation of any governmental law, rule or regulation concerning Hazardous Substances or is in violation of this Lease relating thereto, it shall promptly take such action as is necessary to mitigate and correct the violation. If Tenant does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation to come onto the premises, to act in place of the Tenant (with Tenant hereby appointing the Port as its agent for such purposes), and to take such action as the Port deems necessary to insure compliance or to mitigate the violation. If the Port has a reasonable belief that Tenant is in violation of any such regulation, or that Tenant's actions or inactions present a threat of violation or a threat of damage to the premises, the Port reserves the right to enter the premises and take such action as the Port deems necessary to mitigate, abate or correct the threat thereof. All costs and expenses incurred by the Port in connection with any such action shall be payable by the Tenant and shall become immediately due and payable as additional rent upon presentation of an invoice therefor.

(f) Tenant shall be fully and completely liable to the Port for, and shall indemnify and hold the Port harmless from and against any and all actual or alleged claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including attorneys' fees and disbursements), which accrue to or are incurred by Tenant or the Port which arise or are alleged to arise directly or indirectly from or out of, or are in any way connected with (a) the inaccuracy of the representations and warranties contained herein, (b) the breach of any covenant contained herein, (c) any operations or activities (including, without limitation, use, disposal, transportation, storage, generation or sale of Hazardous Substances) on or about the leased premises during Tenant's possession or control of the leased premises which directly or indirectly result in the leased premises or any Other Property becoming contaminated with Hazardous Substances or otherwise violating any applicable law, rule or regulation pertaining to Hazardous Substances, and (d) the cleanup of Hazardous Substances from the leased premises or any Other Property. Tenant acknowledges that it will be solely responsible for all costs and expenses relating to investigation (including preliminary investigation) and cleanup of Hazardous Substances from the leased premises or from any Other Property. Tenant specifically agrees that the bond provided pursuant to this Lease shall extend to the indemnity agreed to in this subparagraph.

(g) Tenant's obligations under this Section 27 are unconditional and shall not be limited by any other limitations of liability provided for in this Lease. The representations, warranties and covenants of Tenant set forth in this Section 27 (a) are separate and distinct obligations from Tenant's other obligations under the Lease and (b) shall survive and continue in effect after any termination or expiration of this Lease for any reason.

(h) As used in this Section 27, "Hazardous Substances" means any chemical, substance, material, waste or similar matter defined, classified, listed or designated as harmful, hazardous, extremely hazardous, dangerous, toxic or radioactive, or as a contaminant or pollutant, or other similar term, by, and/or which are subject to regulation under, any federal, state or local environmental statute, regulation or ordinance presently in effect or that may be promulgated in the future, and as they may be amended from time to time.

(i) As used in this Section 27, "Other Property" means any real or personal property (including, without limitation, surface or ground water) which becomes contaminated with Hazardous Substances as a result of operations or other activities on, or the contamination of, the leased premises.

(j) Upon expiration or sooner termination of this Lease, Tenant shall have removed from the leased premises any contaminated soils or other contaminated or hazardous materials or substances deposited thereon by Tenant. Any failure to complete such removal by the expiration or sooner termination of this Lease shall be deemed a holding over by Tenant subject to the provision of paragraph 24, **HOLDING OVER**. At the Port's request, within 30 days thereafter, Tenant shall deliver to the Port a certificate from the Thurston County Health Department certifying that the leased premises comply with all applicable requirements of the Health Department concerning levels of Hazardous Substances. At such time, Tenant shall also reconfirm its representations and warranties contained herein and shall represent and warrant that upon termination of the Lease all Hazardous Substances have been removed from the leased premises and have been properly and lawfully disposed of.

(k) Tenant shall be responsible for applying for and obtaining all necessary and desirable federal, state or local governmental permits or approvals for the use of the leased premises; shall not commence any activity on the leased premises until all permits or approvals required for such activity have been issued; and shall conduct all of its activities on the leased premises in full compliance with all applicable permits and approvals.

## **28. STORAGE TANK LICENSES.**

All storage on site, whether permanent or mobile, capable of holding more than one hundred ten (110) gallons either in bulk or in separate containers or any material identified in Exhibit "B" shall require a separate hazardous materials license. Such license shall provide for appropriate handling and storage facilities, inspections, testing and clean up procedures and any special insurance provisions which may be required. Tenant shall comply with all laws, rules and regulations applicable thereto. Tenant shall provide Lessor with full and complete copies of any reports or other results of inspections within five (5) days after any remedial or other action required as a result of any inspection. Upon request, Tenant shall provide Lessor with a certificate of insurance evidencing Tenant's compliance with insurance requirements applicable to storage tanks.

## **29. INSPECTIONS AND NOTICE OF CHANGE.**

a. Tenant agrees that inspections may be required by the Port at the Tenant's expense to assure compliance with paragraphs 27, **HAZARDOUS SUBSTANCES**, and 28, **STORAGE TANK LICENSES**. Such inspections shall be made once every five (5) years or at any time the Port has good cause to believe a problem may exist.

b. The Tenant shall annually identify any materials listed in Exhibit "B" used in the course of its ordinary business.

## **30. EMINENT DOMAIN.**

If the premises shall be taken or condemned for any public purpose, or for any reason whatsoever, to such an extent as to render the premises untenable, either Lessor or Tenant shall have the option to terminate this Lease effective as of the date of taking or condemnation, which shall be the earlier of the date the final condemnation judgment or the date possession is taken by the condemning authority. If the taking or condemnation does not render the premises untenable, this Lease shall continue in effect, and Lessor shall, if the condemnation award is sufficient therefor, promptly restore the portion not taken to the extent possible to the condition existing prior to the taking. If, as a result of such restoration, the area of the premises is reduced, the rental shall be reduced proportionately. All proceeds from any taking or condemnation shall be paid to Lessor and Tenant waives all claim against such proceeds; provided, however, that Tenant shall be entitled to any award separately designated for Tenant's relocation expenses or for damage or taking of Tenant's trade fixtures or other personal property. A voluntary sale or

conveyance in lieu of but under the threat of condemnation shall be considered a taking or condemnation for public purpose, and shall include the Port's use of the premises for any purpose for public use in connection with the operation of the business of the Port. If the Port so requires the use of the premises, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to Tenant not less than six (6) months or more before the termination date specified in the notice, and damages to Tenant, if any resulting therefrom shall be determined by agreement between the parties hereto, or in the absence of agreement, by arbitration as hereafter provided. Damages or other compensation shall be determined in accordance with RCW 53.08.010 and Title 8 as appropriate.

### **31. INSOLVENCY.**

If Tenant shall: solicit acceptances of a plan of reorganization to be filed in any subsequent case under the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as hereafter amended or any successor statute thereto (the "Bankruptcy Code"); negotiate with one or more creditors for any workout, including, but not limited to, an extension agreement, composition agreement, standoff, standby, or standstill agreement whereby the creditors agree to forebear in any fashion from their rights to collect a debt of Tenant; cease to pay Tenant's debts as they come due; admit in writing the inability to pay its debts as they come due; make an assignment for the benefit of creditors; become a party to any liquidation or dissolution action or proceeding; have appointed (voluntarily or involuntarily), a trustee, custodian, receiver, conservator, or liquidator for Tenant or for a significant portion of Tenant's assets; have entered against it any order by a district court or bankruptcy court of the United States or any of its territories that dismisses a voluntary petition under the Bankruptcy Code because the bankruptcy petition was filed in bad faith; have entered against it an order, judgment, or decree; have any of its assets levied against by writ of execution, attachment (including pre-judgment attachment), garnishment, recording of a judgment or any similar process whereby a creditor seeks to obtain a legal right to dispose of particular assets of Tenant to satisfy to any extent a debt of the Tenant to the creditor; file a voluntary petition under the Bankruptcy Code or have filed against it an involuntary petition under the Bankruptcy Code creating any automatic stay or other injunctive force protecting the assets of Tenant from the immediate collection actions of a creditor (where such involuntary petition is not subsequently dismissed within 60 days in response to pleadings filed by the Tenant by entry of an order of any district court or bankruptcy court of the United States or any of its territories); have appointed voluntarily or involuntarily, a trustee, custodian, or examiner with special powers by any district court or bankruptcy court in the United States or any of its territories; admit in an answer filed in response to an involuntary petition filed under the Bankruptcy Code that Tenant is insolvent because Tenant's assets are exceeded by Tenant's debts or that Tenant is unable to pay Tenant's debts as they come due; then, in the event any of the foregoing shall occur, the Port may, at its option, terminate this Lease.

### **32. PROMOTION OF PORT COMMERCE.**

The purpose of the Port is to encourage the development of commerce within the Port district, and to every reasonable extent possible, increase the movement of passengers and freight through Port facilities. In furtherance of this purpose, Tenant agrees to cooperate with the Port in the promotion of these purposes during the term of this Lease, and wherever reasonably possible, to utilize the Port's facilities in the movement of freight and passengers as a part of Tenant's business activities. Nothing in this paragraph shall be construed to obligate Tenant to spend monies in the Port's promotional advertising, but Tenant does agree to supply such information and data for the Port's promotional and advertising activities.

**33. ATTORNEY'S FEES AND COSTS.**

Should a dispute arise between the parties hereto as to the effect of any provision hereof and said dispute is referred to an attorney, whether for enforcement in court or for decision under arbitration, the losing party shall pay the prevailing party's actual and incurred attorney's fees; costs of court or arbitration, including such fees and costs of any appeal; other legal expenses; and collection costs, except that the amount of such fees, costs or expenses taken separately or in the aggregate, shall not be unreasonable. If such dispute arises and is later settled by the parties, such settlement shall include a specific allocation of disposition of attorney's fees on both sides.

**34. NONDISCRIMINATION - SERVICES.**

Tenant for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a federal Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

It is agreed that Tenant's noncompliance with the provisions of this clause shall constitute a material breach of this Lease. In the event of such noncompliance, the Port may take appropriate action to enforce compliance, may terminate this Lease, or may pursue such other remedies as may be provided by law.

**35. NONDISCRIMINATION – SERVICES, CONSTRUCTION, USE.**

Tenant for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

The Port reserves the right to take such action as the appropriate governmental authority may direct to enforce these provisions.

**36. APPRAISAL PROCEDURE.**

The fair market value of the property shall be determined at Tenant's election (made concurrently with Tenant's execution of this Lease) as indicated in Paragraph 1 of the Lease Summary for rent revisions. At the commencement of the Lease, Tenant shall choose whether to have such fair market value determined either (a) by reference to the most recent land valuation for the parcel as determined by the Thurston County Assessor's Office (for so long as Washington State law requires the Assessor to assess land at 100% of its fair market value) ("Option A") or (b) by an appraisal conducted by an independent appraiser selected by Tenant and approved by the Port, which approval will not be unreasonably withheld, ("Option B"). Such choice shall be effective and binding for all rental revisions during the lease term, including any options. Such appraiser shall be a qualified MAI appraiser, with not less than 10 years experience appraising commercial real estate in Thurston County, Washington. A qualified MAI appraiser shall mean a member in good standing of the Appraisal Institute, or equivalent

professional organization. In conducting an appraisal of the property, the fair market value shall be based upon the highest and best use of the property as if vacant, and the appraiser (a) shall consider sales of fee simple comparable properties in the general area; (b) shall appraise the property as if in private ownership and without discount or consideration for the property being owned by a municipal corporation; (c) shall appraise the property without regard to the premises being leased or the Tenant owning any improvements thereon; and (d) shall conduct and write the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice. If Tenant has chosen Option B, and fails to choose an appraiser within 180 days prior to the date a rental revision is to become effective, the Port may choose an appraiser, or, at the Port's election, Tenant shall be deemed to have elected to have such rental revision determined as provided in Option A.

If Tenant has selected Option A and the fair market value is not or cannot be determined by the Assessor's office as provided in Option A, fair market value shall be determined by an appraiser selected by the Port who meets the qualifications described above. Such determination, and any rental revision resulting therefrom shall be retroactive to the date the rental revision was to be effective. The cost of any appraisal shall be shared equally by the Port and Tenant.

### **37. ARBITRATION PROCEDURE.**

In the event of a dispute between the Port and Tenant with respect to any issue specifically mentioned elsewhere in this Lease as a matter to be decided by arbitration, such dispute shall be determined by arbitration as provided in this paragraph. The Port and Tenant shall each appoint a person as arbitrator who shall have had at least ten (10) years of experience in Thurston County in the subject matter of the dispute. The appointment shall be in writing and given by each party to the other, and the arbitrators so appointed shall consider the subject matter of the dispute, and if agreement can be reached between them, their opinion shall be the opinion of the arbitration. In the event of their failure to agree upon the matter so submitted, they shall appoint a third arbitrator. In the case of the failure of such arbitrators to agree upon the third arbitrator, the same shall be appointed by the American Arbitration Association from its qualified panel of arbitrators, with similar qualifications. If the Port or Tenant shall fail to so appoint an arbitrator for a period of ten (10) days after written notice from the other party to make such appointment, then such party will have defaulted its right to make such appointment, and the arbitrator appointed by the non-defaulting party shall determine and resolve the dispute. In the event the three arbitrators are appointed, after being duly sworn to perform their duties with impartiality and fidelity, they shall proceed to determine the question submitted. The decision of the arbitrators shall be rendered within thirty (30) days after their appointment, and such decision shall be in writing, with copies thereof delivered to each of the parties. The award of the arbitrators shall be final, binding, and conclusive on the parties. The fees of the arbitrators and the expenses incident to the proceedings shall be borne equally between the Port and Tenant. The arbitrators shall award to the prevailing party the fees of that party's counsel, expert witnesses, or other witnesses called by the prevailing party.

### **38. JOINT AND SEVERAL LIABILITY.**

Each and every party who signs this Lease, other than in a representative capacity, as Tenant, shall be jointly and severally liable hereunder.

### **39. INVALIDITY OF PARTICULAR PROVISIONS.**

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

**40. NOTICES.**

All default and other substantial notices required under the provisions of this Lease may be personally delivered or mailed. If mailed, they shall be sent by certified mail, return receipt requested to the following addresses:

To the Port:  
Port of Olympia  
915 N. Washington St. NE  
Olympia, WA 98501

To the Tenant:  
[Fill in here as appropriate](#)

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices given by personal delivery shall be deemed given upon receipt. Notices sent by mail shall be deemed given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

**41. WAIVER.**

The acceptance of rental by the Port for any period or periods after a default by Tenant hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Tenant in writing. No waiver by the Port of any default hereunder by Tenant shall be construed to be or act as a waiver of any subsequent default by Tenant. After any default shall have been cured by Tenant, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of paragraph 22, **DEFAULTS**.

**42. BINDER.**

This Lease is binding upon the parties hereto, their heirs, personal representatives, successors in interest and assigns.

**43. NO RECORDING.**

Without the prior written consent of the Port, this Lease shall not be placed of record.

**44. COMMISSIONS AND FEES.**

In the absence of any agreement between the parties to the contrary, each party represents and warrants to the other that it has not been represented by, or introduced to the other by, any broker or agent. In the absence of any agreement between the parties to the contrary, each party hereby agrees to indemnify and hold the other harmless from and against any and all fees, commissions, costs, expenses (including attorneys' fees) obligations and causes of actions arising against or incurred by the other party by reason of any claim for a real estate commission or a fee or finder's fee by reason of any contract, agreement or arrangement with, or services rendered at the request of, the indemnifying party.

**LESSOR:**

PORT OF OLYMPIA, a Washington  
municipal corporation

By: \_\_\_\_\_  
Executive Director

**TENANT:**

TENANT'S NAME HERE:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF WASHINGTON )  
 ) ss  
COUNTY OF THURSTON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ personally appeared before me **E. B. GALLIGAN** to me known to be the Executive Director at the Port of Olympia, the municipal corporation named in the within and foregoing **Lease Agreement**, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

\_\_\_\_\_  
(Print Name) \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF THURSTON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ at the entity named in the within and foregoing **Lease Agreement**, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

\_\_\_\_\_  
(Print Name) \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_



**EXHIBIT "A"**  
**REQUIREMENTS AS TO IMPROVEMENTS**

These conditions relating to improvements in this Exhibit "A" shall control unless the Port and Tenant have otherwise separately agreed to more specific time periods for production and coordination of drawings, financing and commencement of construction. In the event such additional documentation becomes a part of this Lease, then the time periods set forth in such documents shall be logically coordinated, the intent being that the shorter time periods should control the parties' respective performances.

**1. PORT APPROVAL OF TENANT IMPROVEMENTS.**

As used herein, the terms "improvements" or "structures" shall mean and include without limitation all permanent buildings, and all other major structures or improvements of any kind located above the ground level of any site, plus any replacements, additions, repairs or alterations thereto. No improvement shall be constructed or maintained on the leased premises until the Port has first approved the design, density, size, appearance and location thereof. Before commencing any work of improvement or applying for any governmental permit or approval, Tenant shall first deliver to the Port for approval two (2) sets of schematic plans and preliminary specifications, including grading and drainage plans, exterior elevations, floor plans, site plans, and showing in reasonable detail existing topography and proposed type of use, size, land coverage, shape, height, location, material and elevation of each proposed improvement, all proposed ingress and egress to public or private streets or roads, all utilities and service connections, and all proposed landscaping, exterior materials and fences, parking, exterior lighting, signs, cut and fill, finished grade, runoff and concentration points. Nothing in this paragraph shall imply a submission standard higher than that required for a building permit, except as it relates to land use(s), utilities, infrastructure and impact upon adjoining properties and use(s) of adjoining properties.

The Port shall then have twenty (20) days during which to accept and approve or reject such preliminary plans and specifications. Once the preliminary plans and specifications have been approved, but prior to commencing any such work, Tenant shall submit to the Port for approval of final plans and specifications for any proposed improvements in the same manner as provided above.

All plans and specifications for grading or improvements to be submitted to the Port hereunder shall be prepared by a licensed or registered architect or engineer, as the case may be. All grading, piling, footing and foundation work must be conducted under the supervision of an appropriate licensed engineer. At the Port's option, a final certification by a licensed soils engineer or geologist must be filed with the Port upon completion of the grading work. The Port shall not unreasonably withhold its approval of any such plans or specifications.

The Port shall be conclusively deemed to have given its approval unless, within thirty (30) days after all such plans and specifications have been received by the Port, the Port shall give Tenant written notice of each item of which the Port disapproves. Unless so disapproved, the Port shall endorse its approval on at least one set of plans and return the same to Tenant. The Port may disapprove any plans which are not in harmony or conformity with other existing or proposed improvements on or in the vicinity of the leased premises, or with the Port Master Plan or other plans or criteria for the leased premises in the general area in which the leased premises are located, the sole discretion as to such adequacy remaining with the Port. Notwithstanding the foregoing, Tenant may, in accordance with the lease, repair, replace, alter or reconstruct any improvement on the leased premises for which plans were previously approved by the Port as provided above, but only if such repair, replacement, alteration or reconstruction is substantially identical to the improvement previously approved.

Concerning utility installations, Tenant, at Tenant's sole cost, including any connection fees, assessments or changes, shall be responsible for the installation on the leased premises of all utilities required by Tenant's use of the premises, assuming such utility services are available to the leased premises. Any contractual arrangements with any municipal supplier with respect to the improvements or utility installation shall not be entered into by Tenant without first obtaining the Port's approval. In the event that such utility services are not readily available at the leased premises, Tenant, at Tenant's sole cost, shall pay for the extension of such utilities to the leased premises.

The Port shall not be liable for any damages in connection with the approval or disapproval of any plans or specifications, any construction or performance by Tenant on the leased premises in connection with the erection of such improvements, any mistake in judgment, negligence or omissions in exercising its rights and responsibilities hereunder, or the enforcement or failure to enforce any provisions contained in the Lease. The Port's approval of plans and specifications shall not constitute the assumption of any responsibility by the Port or its representatives for the accuracy, efficacy or sufficiency thereof, and Tenant shall be solely responsible therefor.

## **2. CERTIFICATES OF COMPLIANCE.**

Tenant shall obtain all necessary permits and shall send copies of same to the Port, as well as copies of Certificates of Completion/Occupancy associated with such permits and pay the cost thereof. Prior to commencement of any such work of improvements, Tenant shall supply to the Port a certificate from a licensed civil engineer or land surveyor verifying that the appropriate subdivision or binding site plan approval has been obtained, and that the proposed improvements will be located on the correct parcel and in accordance with plans previously approved by the Port. The Port may waive such requirement if the Port has already surveyed the proposed premises. Upon completion of any such improvements, Tenant shall supply to the Port a further certification by Tenant's architect (including the landscape architect in the case of improvements consisting of landscaping) that the improvements, as designed by the architect, have been completed in accordance with the plans previously approved by the Port. Final landscaping as approved by the Port shall be completed within sixty (60) days after completion of the structure. Tenant shall also supply to the Port one (1) set of "as-built" grading plans showing all underground installations within sixty (60) days following completion of any substantial improvement within the leased premises. Tenant shall also furnish the Port with a complete set of "as-built" building plans and an itemized statement of the actual construction cost of such improvements, not later than sixty (60) days after completion.

## **3. DILIGENT COMPLETION AND COMPLIANCE.**

After commencement of construction, Tenant shall diligently complete the construction so that the improvements will not remain in a partly finished condition any longer than is reasonably necessary. Tenant shall comply with all applicable governmental laws, ordinances and other requirements or conditions and restrictions which may affect the leased premises, (whether prior to, during or after construction) including, without limitation, the Americans With Disabilities Act, and shall make such corrections, alterations or other improvements which may be necessary to remedy any non-complying condition (subject to the reasonable approval of the Port), all at the sole cost and expense of Tenant.

**EXHIBIT "B"**

***TOXIC, DANGEROUS AND HAZARDOUS SUBSTANCES STORAGE LICENSE***

(License required for any material covered by  
Dangerous Waste Regulations in WAC 173-303  
as amended and 40 CFR Part 116-117 as amended,  
copies are on file in the Port of Olympia offices)

Licensee:

\_\_\_\_\_  
Lease:

\_\_\_\_\_  
Term:

\_\_\_\_\_  
(Not to exceed 5 years.)

Fee:

\_\_\_\_\_  
Insurance:

\_\_\_\_\_  
(The Port must be named insured and entitled notice prior to cancellation.)

Renewable: For life of underlying lease so long as conditions below are met:

1. Facilities approved for installation and use:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Preconstruction approvals required:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Preoccupancy approvals required:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Inspections required:

a. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. At any time the Port has good reason to believe a problem may exist.

c. At a minimum, all tanks shall be pressure tested at least once every five (5) years to assure no loss of product into the environment (air, soil, surface or ground water).

5. Materials authorized for storage:

a. \_\_\_\_\_

b. Any additional materials require the consent of the Port.

6. Additional terms:

a. The Port Engineer shall have the right to terminate this license at any time and in his own discretion, if the facilities fail to meet all federal, state or local requirements or otherwise pose a hazard of unlawful contamination or pollution and such failures are not cured within thirty (30) days of written notice or such lesser time as appropriate under emergency circumstances.

b. The licensee agrees to bear all costs of construction, operation, maintenance, inspection or repair of the approved facilities and to keep the same in good operating repair during the term of this license, and the cost of any cleanup or other activities required in the event of a spill, leak or other pollution-causing event.

c. The licensee agrees at any time that the approved facilities cease to be subject to a valid license agreement, for any reason, that the licensee shall, at its own cost, remove the facilities and restore the site to its original condition (including removal of all contaminated soils or water).

d. The Port shall have the right to terminate this license upon breach of any term herein or termination of the specified lease. Breach of any term of this license shall constitute a breach of the specified lease.

e. The licensee shall compensate the Port for all costs incurred by reason of any breach of this license.

LICENSEE:

PORT OF OLYMPIA;

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

License Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C**

**LESSOR'S CONSENT AND AGREEMENT**

**(For Financing Purposes)**

Description of Ground Lease.

"Lessor"	The Port of Olympia
"Tenant"	_____
"Lease":	Ground Lease dated _____
"Leasehold":	Tenant's interest in the Lease and all Leasehold Improvements
"Lender(s)":	_____ _____ _____ _____

NOW, THEREFORE, Lessor represents, warrants, covenants and agrees as follows:

1. **Consents.** Lessor hereby consents to the assignment of Tenant's interest in the Leasehold to Lender for security purposes under the Lender's Deed of Trust upon closing of the loan. Herein the term "Deed of Trust" shall mean the Lender's Deed of Trust as may be applicable and the "Lender" shall mean \_\_\_\_\_, as its/their interests appear in the Deed of Trust.

2. **Status of Lease.** A true and correct copy of the Lease, together with all amendments, supplements, and modifications thereto, is attached as Schedule A to this Agreement. The Lease is presently in full force and effect, is valid and enforceable according to its terms and has not been modified or amended in any way except as shown on the copy of the Lease attached hereto.

3. **Non-Default.** Tenant is not in default (a) in the payment of rent or any other amounts due and payable by Tenant to Lessor under the Lease or (b) to the knowledge of Lessor, in the observance or performance of any other covenant or condition to be observed or performed by Tenant under the Lease. To the knowledge of Lessor, no event has occurred which now does or hereafter will authorize Lessor to terminate the Lease.

4. **Right to Foreclose Deed of Trust.** Lender recognizes that any Deed of Trust taken by Lender affects and applies only to Tenant's interest in the Leasehold and that Lessor will not permit any security interest to be taken in any of its land. In the event of default by Tenant under the terms of the Deed of Trust, Lender may enforce or foreclose the Deed of Trust including the acceptance of a Deed in Lieu of Foreclosure. Lessor agrees that in connection with any such foreclosure, Lender may:

a. acquire Tenant's interest in the Leasehold either by Deed in Lieu of Foreclosure or actual foreclosure without further consent of Lessor, subject to the requirements of paragraph 6.4 below.

b. rent the Leased Premises pending foreclosure of the Leasehold by Lender without further consent of Lessor.

c. assign and sell the Leasehold in whole or in part to any person or entity, subject to the requirements set forth in paragraph 6.5 below.

5. **Surrender of the Leased Premises.** No surrender of the Leased Premises or any other act of Tenant shall be deemed to terminate the Lease and Lessor will not terminate voluntarily by agreement with Tenant unless Lender has been previously notified in writing and has consented to the termination in writing. The Lease shall not be amended or modified unless Lender has been previously notified in writing and has consented to such amendment or modification in writing.

6. **Notice of Default and Lender's Rights.**

6.1. **Notice of Default.** If Tenant defaults under the Lease or if any event occurs which would give Lessor the right to terminate, modify, amend or shorten the term of the Lease, Lessor shall take no steps to exercise any right it may have under the Lease without first giving Lender written notice of such default. A copy of each and every Notice of Default served or sent by Lessor or its agent to or upon Tenant pursuant to the Lease shall be sent contemporaneously to Lender in accordance with paragraph 13 below. Such Notice of Default shall specify the event or events of default then outstanding and the time period at the end of which the indicated action would become effective.

6.2. **Termination for Monetary Default.** If the Notice of Default given by Lessor to Lender relates to a monetary default and Tenant has not cured such monetary default within 15 days as provided in the Lease and Tenant's failure to cure results in Lessor desiring to terminate the Lease, Lessor may terminate the Lease if such monetary default is not cured by either Tenant or Lender within twenty (20) days of Lender's receipt of Notice, and kept current thereafter.

6.3. **Termination for Non-Monetary Default.** If the notice given by Lessor to Lender relates to a non-monetary default and Tenant has not cured such non-monetary default within the 30-day period specified in the Lease, Lessor shall take no action to terminate the Lease if:

(a) within 20 days after Lessor's notice to Lender to Tenant's failure to cure (or failure to diligently pursue a cure) Lender notifies Lessor of its intent to realize upon its security interest and commences realization within 60 days thereafter, and diligently pursues realization; and

(b) Lender notifies Lessor that it will assume the Lease when Lender is legally entitled to the ownership and/or possession of Tenant's interests in the Leasehold; and

(c) Lender pays Lessor at time of notification all back rent or other monies or performances due that may be in default up to the date Lender notifies Lessor of Lender's intent and

further pays all rent that accrues during the period after Lender so notifies Lessor and completes such other performances that may be required or come due under the Lease.

Lessor shall not terminate the Lease because of Tenant's breach of any term(s) of the Lease relating to the solvency of Tenant or the institution of any bankruptcy, insolvency, receivership or related action by or against tenant as long as Lender cures any default under the Lease by Tenant as provided in this Consent and Agreement.

6.3.1. If the non-monetary default is of a nature which requires immediate abatement as a result of which Lender would not normally pursue realization on the collateral, and Tenant has not taken steps to immediately cure the default, then Lender must take immediate steps to cure such default within ten (10) days of receipt of notice or else the Lessor may terminate the Lease.

6.3.2. Upon termination of the Lease as provided herein, Lender will release its Deed of Trust within fifteen (15) days thereafter.

6.4. **Assumption of the Lease.** If Lender acquires the interest of Tenant at any time or takes possession of the collateral, then Lender shall formally assume the Lease within twenty (20) days thereafter. Failure to so assume the Lease shall give Lessor the right to immediately terminate the Lease.

6.5. **Right to Assign.** Lender shall not have the right to assign its interest in the Leasehold nor in the case of a foreclosure under the Deed of Trust shall the Trustee under the Deed of Trust transfer the Leasehold to any person or entity (other than Lender) without first obtaining the written consent of Lessor for such assignment or transfer, which consent will not be unreasonably withheld or delayed provided that Lender has disclosed to Lessor (a) the identity of the proposed purchaser, assignee or transferee; (b) shown that the purchaser's, assignee's or transferee's credit standing would reasonably be acceptable to a commercially prudent lender; and (c) provided evidence to Lessor that the use of the property by such purchaser, assignee or transferee shall be consistent with the terms of the Lease or Tenant's prior use of the Leasehold. Upon the purchaser's, assignee's or transferee's assumption and agreement to perform and to be bound by all of the terms of the Lease, Lender shall be relieved of further liability under the Lease, however, if Lender finances the purchaser, assignee or transferee, Lender shall again be subject to all the obligations set forth in this Agreement.

7. **Disposition of Insurance and Condemnation Proceeds.** Lessor shall be named as an additional insured under any of Tenant's casualty policies on the Leased Premises to the extent of the interests limited in this paragraph 7. Should the Leased Premises suffer any loss which is covered by casualty insurance, and the insurance proceeds are used to restore any improvements made by Tenant, Lessor agrees that Tenant and Lender shall have the right to such proceeds so long as none of Lessor's property, utilities or other services therein are damaged or such damages are repaired. In the event the Leased Premises are substantially damaged and Tenant's improvements have been repaired, Lessor shall only participate in the insurance proceeds to the extent necessary to repair and restore Lessor's ground and any of Lessor's or Tenant's improvements (excluding buildings and personal property) on or in the ground to the same condition the land was in at the commencement of the Lease, or in the same condition at the time of the casualty. Under the Lease, Lessor has the option of requiring Tenant to demolish the improvements at the end of the Lease term, or to have Tenant convey title to Lessor Tenant's interests in the Leasehold Improvements. In the event Leased Premises and the Leasehold are so severely damaged that Tenant's and Lenders' decision is not to repair or restore the premises, Lessor shall participate in the insurance proceeds to the extent necessary to remove the remainder of the damaged improvements and to restore the Leased Premises and any utilities or other such improvements (excluding rebuilding the improvements or restoring other personal property of Tenant) to the same condition the land was in at the commencement of the Lease,

or in the same condition at the time of the casualty. Other than as described herein, Lessor shall have no claim to insurance proceeds or condemnation proceeds that are attributable to Tenant's interest in the Leasehold, nor shall Lender have any interest in Lessor's condemnation proceeds, if any.

8. **Right to Participate in Litigation.** Lender shall have the right to participate in any litigation, arbitration or dispute directly affecting the Leased Premises or the interests of Tenant or Lender therein, including without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. Lessor, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify Lender of the same.

9. **Incorporation of Mortgagee Protection Provisions.** To the extent not inconsistent with this Agreement, all provisions of the Lease which by their terms are for the benefit of any leasehold mortgagee, are hereby incorporated herein for the benefit of Lender. Without limited the foregoing, Lender shall be a beneficiary of the warranty and indemnity provided in paragraph 6 of Paragraph 1, **LEASE SUMMARY**, of the Lease.

10. **Right to Remove Collateral.** In the event Lender exercises its rights under its collateral and realizes upon the collateral, Lessor agrees that Lender is entitled to remove Tenant's furniture, movable trade fixtures and equipment installed by Tenant from the Leased Premises at any reasonable time and that the collateral shall remain personal property even though the trade fixtures may be affixed to or placed upon the Leased Premises. "Trade fixtures" means the movable personal property of Tenant which is free standing or attached to floors, walls or ceiling, but does not include installed light fixtures, floor coverings, doors, windows, heating, plumbing or electrical systems or components thereof, including any roof-mounted HVAC equipment and/or units thereof, or permanent walls or partitions installed by Tenant. In the event Lender so realizes on its collateral, Lessor waives any right, title, claim, lien or interest in the above trade fixtures by reason of such fixtures being attached to or located on the Leased Premises. Lender shall use reasonable care in removing the trade fixtures from the premises and shall repair any damage that may result from such removal which shall be completed in accordance with the terms of the Lease.

11. **Interpretation of Agreement.** This Agreement sets forth the complete understanding of Lender with respect to this transaction; may be amended only in writing signed by the party against whom it is sought to be enforced; and, without limiting the generality of the foregoing shall not be deemed modified by any course of dealing. No provision in the Assignment of Tenant's Interest in Lease, Security Agreement and Deed of Trust shall vary, modify or expand the covenants herein contained. In the event of any conflict between the terms of this Agreement and the Lease, this Agreement shall control.

12. In the event of litigation or arbitration between the parties to enforce or interpret this Agreement, the arbitrator, Board of Arbitration or Judge, as may be appropriate, may award the prevailing party in such arbitration or litigation a reasonable attorney's fee not to exceed 20 percent of the amount in controversy, plus costs and costs of collection.

13. **Notices.** All notices, copies of notices, consents or other communications given under this Agreement must be in writing and shall be effective when received. Such communications shall be given in person to an officer of Lender or to Lessor or shall be delivered to one of such persons by registered or certified U.S. mail or by public or private courier or wire service or facsimile transmission addressed to the parties at their respective addresses set forth below, unless by such notice a different person or address shall have been designated in writing:

If to Lender: \_\_\_\_\_(Print)  
\_\_\_\_\_(Print)  
\_\_\_\_\_(Print)  
\_\_\_\_\_(Print)

If to Lessor: Port of Olympia  
915 N. Washington St. NE  
Olympia, Washington 98501  
Attn: Heber Kennedy

IN WITNESS WHEREOF, Lessor has executed these presents this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

LESSOR:

PORT OF OLYMPIA, a Washington Municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

AGREED to this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_.

TENANT:

By: \_\_\_\_\_

Its: \_\_\_\_\_

AGREED to this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_.

LENDER:

By: \_\_\_\_\_

Its: \_\_\_\_\_

AGREED to this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_.

**EXHIBIT A of C**  
**To Lessor's Consent and Agreement (Exhibit C)**

**Copy of Lease**