



**PORT of OLYMPIA**  
Serving All of Thurston County  
**Commission Meeting**  
**Monday, Feb. 26, 2024**  
**5:30 PM**

Percival Plaza - Olympics Room  
626 Columbia Street NW  
Olympia, WA 98501

The meeting agenda is available on the Port's website as of Feb. 21, 2024.  
<https://www.portolympia.com/commission>

The public may join the meeting from their computer, tablet or smartphone at:

<https://us02web.zoom.us/j/82643754702>

or Telephone: 1 253 215 8782

Webinar ID: 826 4375 4702

Written public comments may be submitted to [commissioncoordinator@portolympia.com](mailto:commissioncoordinator@portolympia.com) by 12:00 p.m. on the date of the meeting. All written comments will be compiled and sent to the Commissioners prior to the meeting.

Verbal public comment is accepted in person at the meeting.

If you are attending the meeting via Zoom, you may raise your hand during the meeting to give public comment.  
For those listening by phone, press \*9 if you wish to raise your hand and provide comment.

## AGENDA

- A. Call to Order
- B. Pledge of Allegiance
- C. Approval of Agenda
- D. Executive Director Report
- E. Public Comment

Individual public comments are limited to 3 minutes per person. Members of the public may comment on agenda items and other port business.

NOTE: Guidelines for public comment can be found in the Commission Rules in Resolution 2022-09 Article VI.

- *Comments should be directed to Commission:* Comments should be directed to the Commission as a whole and should not include comments about individual Port staff or members of the public.
- *Courtesy:* All speakers (members of the public, Port staff, and Commissioners) shall be courteous in language and demeanor and shall confine remarks to those facts that are germane and relevant to the question or issue under discussion.

### **Port of Olympia Mission**

*Creating economic opportunities and building community for all of Thurston County through responsible resource use.*

- F. Consent Calendar
  - 1. None
- G. Pending Issues or Business
  - 1. None
- H. Action Calendar
  - 1. CSD Contract Authorization: Ben McDonald, Director of Human Resources and Administration
- I. Action/Other Calendar
  - 1. Aviation Fuel Tax Interlocal Agreement: Warren Hendrickson, Director of Operations  
Public Comment on Action/Other Item
  - 2. Cleanwater Centre 206 Land Lease – Launch Negotiations LLC: Clarita Mattox, Real Estate Senior Manager  
Public Comment on Action/Other Item
  - 3. Cleanwater Centre 210 Land Lease – Launch Negotiations LLC: Clarita Mattox, Real Estate Senior Manager  
Public Comment on Action/Other Item
- J. Advisory Calendar
  - 1. None
- K. Commissioner Reports/Discussion
- L. Other Business
- M. Meeting Announcements
- N. Adjourn

## COVER MEMO

<b>Briefing Date:</b>	February 26, 2024
<b>Staff Contact/Title:</b>	Ben McDonald, Director of Human Resources and Administration, <a href="mailto:benm@portolympia.com">benm@portolympia.com</a> ; 360-528-8003
<b>Subject:</b>	CSD Attorneys at Law Contract 2024-1004
<b>Purpose:</b>	<input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Decision Needed

### **Background/Overview:**

The Port of Olympia has contracted with the law firm of CSD Attorneys at Law to provide miscellaneous legal services including labor relations and collective bargaining.

The previous contract has expired and we have created a new contract to clarify scope of services, updated costs, and new term dates.



## CSD Attorneys at Law P.S. Contract Authorization

Ben McDonald  
Director of Human Resources and Administration  
Feb. 26, 2024

1



### Today's Presentation

*Action/Approval Requested*

- Seeking approval of the contract with CSD Attorneys at Law P.S.
- Contract authorization – not a commitment to spend the money.



2

## Background

- Previously known as Chmelik Sitkin & Davis Attorneys at Law, CSD provides legal counsel to Ports and other jurisdictions. CSD specialize in public contracting, employment and labor law, open government issues, and local agreements.
- Provided counsel to the Port of Olympia during contract negotiations with ILWU Local 47B. Currently being used during mediation sessions.
- Original contract was a "Letter of Engagement" from CSD and approved up to \$49,999 in 2022. Was amended in 2023 for a not-to-exceed amount of \$100,000 and expired on December 31, 2023.

3



3



## New Contract

### *Justification*

- Previous agreement was via "Letter of Engagement" and signed by previous Executive Director.
- In 2023, Chmelik Sitkin & Davis Law changed their firm's name to CSD Attorneys at Law P.S.
- The new contract will better clarify scope of services.



4



## Scope of Services

### Legal Representation

- Provide legal counsel during mediation sessions with Local 47B.
- Provide legal counsel during upcoming negotiations with Local 47A.
- Provide legal counsel if the parties enter into arbitration.
- Provide legal counsel as directed by the Commission.



5

## Contract No. 2024-1004

Action: New Contract No. 2024-1004

Option 1:

Term	
Term	Feb. 26, 2024 – Dec. 31, 2025
Costs	
Proposed	\$50,000

Preferred/Proposed:

Term	
Term	Feb. 26, 2024 – December 31, 2025
Costs	
Proposed	\$100,000

6



6

## Questions and Comments

### *Suggested Motion*

*"...move to authorize the Interim Executive Director to sign contract number 2024-1004 with CSD Attorneys at Law P.S. with a term date of December 31, 2025, and a NTE amount of \$\_\_\_\_\_."*

7

7

## COVER MEMO

<b>Briefing Date/Time:</b>	February 26, 2024
<b>Staff Contact/Title:</b>	Warren Hendrickson, Director of Operations 360.528.8050, <a href="mailto:warrenh@portolympia.com">warrenh@portolympia.com</a>
<b>Subject:</b>	Aviation Fuel Tax Interlocal Agreement (ILA)
<b>Purpose:</b>	<input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Decision Needed

### **Overview:**

This is an Action/Other agenda item before the Commission. Action is requested.

### **Background:**

- Since 2014, the State of Washington has not complied with certain Federal Aviation Administration regulations that require that "State taxes on aviation fuel ... are subject to use for a State aviation program or for airport-related purposes."
- The state has been diverting aviation fuel taxes, most significant among them Hazardous Substance Tax (HST) and Petroleum Products Tax (PPT), for non-aeronautical purposes. Regrettably, there is no clear path forward to the state becoming compliant, and FAA enforcement has been lacking. The estimated lost revenue to the state's airports exceeds \$56 million annually.

### Compliance action plan:

- The Chelan Douglas Regional Port Authority (owner of four municipal airports) has agreed to coordinate a joint effort – in conjunction with multiple statewide airports – to bring the state into compliance.
- This effort will require participating airport sponsors to develop a legal action plan, draft a formal legal complaint against the state, and then initiate preliminary discussions with the state Department of Revenue and the Attorney General's Office to seek a financial settlement and future compliance.

### Legal fund contribution request:

- Exhibit A to the attached interlocal agreement lists airports currently supporting the compliance action plan and their recommended minimum contribution levels. The minimum contribution for the Port of Olympia is \$1,000.00.

- To date, of airports in the Port of Olympia category, the Port of Moses Lake has contributed \$5,000.00 and the Port of Skagit has contributed \$3,000.00.

**Documents Attached:**

- ILA Fuel Tax Diversion with Exhibit A
- Diversion of Aviation Fuel Taxes Letter - Mr. Warren Hendrickson
- CSD Legal Services Letter
- PowerPoint Presentation

**Summary & Financial Impact:**

- \$3,000.00 one-time contribution
- Professional Services M&O Budget Category

**Affected Parties:**

- Port of Olympia
- Chelan Douglas Regional Airport Authority
- Federal Aviation Administration
- Washington Department of Revenue
- WSDOT Aviation
- Statewide airports

**Staff Recommendation:**

Port staff recommends that the Port of Olympia Commission:

- Authorize the Interim Executive Director to execute the Chelan Douglas Regional Port Authority ILA.
- Authorize a legal fee contribution of \$3,000.00 in lieu of the minimum \$1,000.00 requested.

**2024 INTERLOCAL AGREEMENT FOR  
LEGAL SERVICES CONCERNING THE DIVERSION OF AVIATION FUEL TAX**

This Interlocal Agreement (the “Agreement”) is made and entered between the following municipal and county governments and airport sponsors, as evidenced by its signature below. Each shall be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

**WHEREAS**, the Interlocal Cooperation Act, RCW 39.34, authorizes public agencies to execute agreements on the basis of mutual advantage to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

**WHEREAS**, the Parties to this Agreement are public agencies as defined by Chapter 39.34 RCW which seek to work cooperatively on the project described below on the basis of mutual advantage and efficiencies for the benefit of their respective jurisdictions; and

**WHEREAS**, under current Federal law and regulations, diversion of certain airport revenues from aviation fuel sales for non-aeronautical purposes is prohibited. The relevant FAA grant assurance provides, in pertinent part, that “[a]ll revenues generated by the airport and any local taxes on aviation fuel...will be expended by it for the capital or operating costs of the airport; the local airport system; or other facilities which are owned or operated by the owner or operator of the airport, and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport;” and

**WHEREAS**, grant assurances apply to airport sponsors, which are the owners or operator of the airports. Violation of assurances may result in an FAA administrative action or FAA initiated federal civil lawsuit against the airport sponsor; and

**WHEREAS**, Washington state has authorized cities and counties to collect and use tax on aviation fuel sales at FAA-grant assurance airports. Moreover, the Department of Revenue (“DOR”) collects a hazardous substance tax (“HST”) and petroleum products tax (“PPT”) on the sale of aviation fuel at FAA-grant assurance airports; and

**WHEREAS**, Washington state possesses no data on the actual amount of local sales/use tax, HST, and PPT collected specifically on aviation fuel. The state concedes that obtaining this data would be “expensive and administratively burdensome,” and the revenue is estimated to be in the tens of millions of dollars; and

**WHEREAS**, past efforts at bringing the state into compliance have been unsuccessful and effective regulatory remedies are lacking. Meanwhile, the relevant statute of limitations to recover diverted funds precludes the recovery of millions of dollars each year; and

**WHEREAS**, the Parties are joining together to explore legal and all other avenues available to bring the state into compliance; and

**WHEREAS**, the Chelan Douglas Regional Port Authority (“CDRPA”) has offered to serve as the lead agency by entering into a contract for legal services to evaluate and consider a range of options to prevent the diversion of aviation fuel tax for non-aeronautical purposes; and

**WHEREAS**, the estimated cost of the pre-litigation legal inquiry is \$125,000.00; and

**WHEREAS**, the Parties have determined that it would be in the public’s and each Party’s best interest to enter into an agreement for the sharing of costs for this effort so that the diverted funds may be used as contemplated by the FAA grant assurances; and

**WHEREAS**, the Parties and their counsel recognize that the Parties have common legal interests in evaluating and litigating issues raised in this matter;

**NOW THEREFORE**, the Parties, for and in consideration of the mutual covenants herein contained, hereby agree as follows:

#### AGREEMENT

1. **Purpose and Objectives.** It is the purpose of this Agreement to have the Parties collectively pay for the legal services (“Legal Services”) to represent the Parties’ interests in pre-litigation challenges to Washington state’s diversion of aviation fuel tax.
2. **Effective Date, Term, and Termination.**
  - a. The “Effective Date” of this Agreement shall be the day upon which the signing Party has executed this Agreement.
  - b. The “Term” of this Agreement shall begin on the Effective Date and end upon completion of the legal services contemplated herein, unless extended by written agreement of the Parties.
  - c. So long as the cost of Legal Services is covered by the Parties, this Agreement may be terminated prior to the end of the Term only upon agreement of all Parties and subject to Paragraph 4, below. In such an event, the Parties will agree on a reasonable termination date.
3. **Administration.**
  - a. The CDRPA shall contract with Legal Services to perform the following tasks:
    - i. To develop a legal framework memorandum that will evaluate and consider various legal theories and provide a solid foundation upon which future legal action may rely.
    - ii. Meet with appropriate parties, including Airport Sponsors and the FAA, and consider procedural issues for executing the Parties’ strategy.

- iii. If the Parties elect to litigate, prepare the necessary pleadings, and select the appropriate venue for legal action.
  - iv. Engage in preliminary settlement negotiations with the DOR and the Attorney General's Office, if appropriate.
  - v. If preliminary settlement negotiations are unsuccessful, file suit and pursue the matter through final judgment, settlement, or compliance.
- b. The CDRPA will provide periodic reports to the Parties on the status of the Legal Services and solicit input on strategies and other matters related to the Legal Services.

**4. Cost and Payment.**

- a. The CDRPA will engage Legal Services to perform pre-litigation tasks, as outlined in Paragraph 3(a)(i) through (iv), above, which will cost an estimated \$125,000.00. The CDRPA proposes to share in the total cost as set forth in Exhibit A (Aviation Fuel Tax—Funding Support). The Parties shall not be obligated to provide the proposed amount in Exhibit A.
- b. It is anticipated that private organizations and/or associations may provide additional funding support for Legal Services contemplated herein but in no event will such entity be considered a Party for purposes of this Agreement.
- c. The CDRPA shall be responsible for making payments to Legal Services upon the contract terms from the funds received pursuant to Paragraph 4(a).
- d. All money received by the CDRPA shall be kept in a separate, non interest-bearing account until such time payments to Legal Services are due. At all times, the CDRPA shall provide the Parties periodic updates on the work product from Legal Services as well as an accounting of revenue received, and expenses paid.
- e. Should the pre-litigation costs be less than the estimate, or should the Parties resolve this dispute with surplus funds, the Parties may be refunded their pro-rata share.
- f. Should costs for Legal Services exceed the estimate, the Parties may be asked—but will not be obligated—to contribute additional sums.

**5. Maintenance and Audit of Records.**

- a. Each Party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement.

- b. These records shall be subject to inspection, review and audit by any party, the Washington State Auditor's Office, or any other entity as required by law. Nothing in this Agreement shall be construed to require a Party to disclose any privileged or work-product documents or information to the other Parties, which a Party, in its sole discretion, shall determine not to disclose.
- c. Each Party shall retain all such books, records, documents, and other materials for the longest applicable retention period under federal and Washington state law.

## **6. Legal Relations.**

- a. The Parties are separate and independent governmental entities in all respects. Nothing in this Agreement shall be construed as creating any other relationship.
- b. Each Party agrees to defend, indemnify, and hold harmless the other Parties and its agents from and against claims, damages, losses, and expenses, including, but not limited to, attorney's fees and costs and expenses, arising out of or from its performance of this Agreement, except for injuries and damages caused by the actions of the entity being indemnified.
- c. Nothing in this Agreement shall be construed to permit anyone other than the Parties and their successors to rely upon the covenants and agreements contained in this Agreement, nor to give any such third party a cause of action, as a third-party beneficiary or otherwise, on account of any nonperformance of the provisions of this Agreement.
- d. No Party will have the power or authority to bind the others or incur any obligations on the others' behalf without each party's prior written consent.
- e. Any sharing of documents, things, and other information between or among that Parties and counsel for the Parties is intended to be in furtherance of the common legal interests described herein, and with the intention, expectation and understanding that they will be kept confidential and privileged, as applicable, under the terms of this Agreement.

## **7. Miscellaneous Provisions.**

- a. Any notice, demand, or communication required or permitted under this Agreement shall be addressed to the respective Representative and deemed to have been duly given (i) on the date of delivery if delivered by courier, (ii) three business days after posting a postage pre-paid first class letter addressed to the mailing address of the Party, or (iii) upon confirmation by the intended recipient of the receipt of email addressed to the Party to whom directed at the relevant Party's email address specified below its signature.
- b. Pursuant to RCW 39.34.030 it is acknowledged that:

- i. This Agreement shall not be construed to create any entity.
  - ii. The CDRPA shall be the Administrator of this Agreement.
  - iii. No property--real, personal, or intangible--shall be acquired by the Parties collectively or individually pursuant to this Agreement.
- c. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Any action to enforce the terms and conditions of this Agreement shall be brought either in Chelan County, Washington or in the county wherein the Party that is the subject of the enforcement action is located.
- d. This Agreement may not be amended except by the unanimous written agreement of all the Parties.
- e. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.
- f. The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.
- g. The failure of any Party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
- h. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- i. All covenants, promises and performances which are not fully performed as of the date of termination shall survive termination as binding obligations.
- j. Each of the provisions of this Agreement has been reviewed, negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.
- k. This Agreement is not assignable absent written approval by all Parties, which approval shall be granted, withheld, or conditioned in the discretion of each party. Each of the covenants, terms, provisions, and agreements herein contained shall be binding upon and

inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective legal representatives, successors, and assigns.

- l. This Agreement is not for the benefit of any individual or entity other than the Parties and shall not be enforceable thereby under any circumstances whatsoever.
  
- m. This Agreement may be executed by the Parties hereto in counterparts and once so signed by all Parties and posted to each Party's web site in accordance with RCW 39.34, shall have full force and effect. PDF copies of relevant signature pages or electronic signatures shall be treated as originals. Each of the undersigned warrant that they have authority to execute this Agreement.
  
- n. The entire Agreement (including the recitals and the amendments) between the Parties hereto is contained in this Agreement, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

CHELAN DOUGLAS REGIONAL PORT AUTHORITY

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Email: \_\_\_\_\_

Entity: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Email: \_\_\_\_\_

Entity \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Email: \_\_\_\_\_

**Aviation Fuel Tax - Funding Support - \$110,000 goal**

<b>Hub Airports</b>	<b>Contribution</b>
SEA	\$25,000
GEG	\$10,000
<b>Non-Hub</b>	
BLI	\$7,500
PAE	\$7,500
PSC	\$7,500
PUW	\$6,000
EAT	\$5,500
YKM	\$5,500
ALW	\$5,500
BFI	\$2,500
FHR (Friday Harbor)	\$2,500
<b>GA - Airports w/100LL &amp; Jet-A</b>	
Anacortes	\$1,000
Arlington	\$1,000
Auburn	\$1,000
Bremerton	\$1,000
Chehalis	\$1,000
Chelan	\$1,000
Dallesport	\$1,000
Deer Park	\$1,000
Ellensburg	\$1,000
Hoquiam	\$1,000
Kelso	\$1,000
Kenmore	\$1,000
Moses Lake	\$1,000
Olympia	\$1,000
Omak	\$1,000
Port Angeles (Wm. Fairchild)	\$1,000
Renton	\$1,000
Richland	\$1,000
Shelton	\$1,000
Skagit	\$1,000
Snohomish (Harvey Field)	\$1,000
Spokane (Felts Field)	\$1,000
Tacoma Narrows	\$1,000
Thun Field	\$1,000

Vancouver (Pearson Field)	\$1,000
Wilbur	\$1,000
Winthrop	\$1,000

**Associations**

WA State Aviation Alliance - includes AOPA, WPPA, WAMA, WPA, NBAA and others

<u>\$8,000</u>
<b>\$120,000</b>

CHELAN DOUGLAS  
**Regional Port**  
AUTHORITY

One Campbell Parkway, Suite A | East Wenatchee, WA 98802 | Phone: 509.884.4700 | Fax: 509.662.5151 | [www.cdrpa.org](http://www.cdrpa.org)

December 1, 2023  
Warren Hendrickson, Airport Director  
[warrenh@portolympia.com](mailto:warrenh@portolympia.com)

RE: State of Washington – Diversion of Aviation Fuel Taxes  
Violation of Federal Aviation Administration Grant Assurance 25

Dear Mr. Hendrickson,

Federal law requires, with limited exceptions, that “State taxes on aviation fuel (imposed by either an airport sponsor or a non-sponsor) are subject to use for a State aviation program or for airport related purposes.” The State of Washington is not in compliance with Federal Aviation Administration 14 CFR Chapter 1. There is no clear path forward to becoming compliant. FAA enforcement is lacking.

Our collective past efforts hoping for compliance have not been successful. The continued diversion and use of millions of dollars of aviation fuel taxes for non-aeronautical purposes in the State of Washington remains unchecked. It is time for a new direction.

Airports in the State of Washington need to demand compliance. The Chelan Douglas Regional Port Authority (owner of four municipal airports) has agreed to help coordinate this effort.

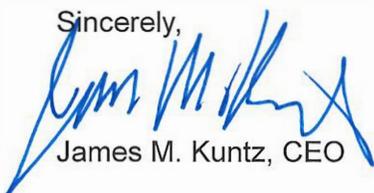
The new direction is largely legal, broken into four (4) phases:

- Task I: Develop a Legal Framework Memo
- Task II: Working with Airport Sponsors to Develop a Legal Action Plan
- Task III: Draft a Complaint
- Task IV: Preliminary Discussions with Department of Revenue and the Attorney General's Office seeking a settlement and compliance

I am hoping your airport is willing to participate. Please find attached the following documents:

- Information Sheet
- CSD Letter on Legal Plan
- Suggested Contribution from each Airport

Sincerely,



James M. Kuntz, CEO

**BOARD OF DIRECTORS**

Donn Etherington, Commissioner, Chelan County Dist. 1 | Jim Huffman, Commissioner, Douglas County Dist. 1 | JC Baldwin, Commissioner, Chelan County Dist. 2  
W. Alan Loeb sack, Commissioner, Douglas County Dist. 2 | Richard DeRock, Commissioner, Chelan County Dist. 3 | Mark Spurgeon, Commissioner, Douglas County Dist. 3

October 19, 2023

**VIA ELECTRONIC MAIL**

[jim@cdrpa.org](mailto:jim@cdrpa.org)

Jim Kuntz  
Chelan Douglas Regional Port Authority  
One Campbell Parkway, Suite A  
East Wenatchee, WA 98802-9290

**RE: State of Washington - Diversion of Tax on Aircraft Fuel Violation of Federal Aviation Administrations' Grant Assurance 25**

**SUBJECT TO ATTORNEY-CLIENT PRIVILEGE**

Dear Jim,

In the capacity as general counsel for the Washington Public Ports Association, I have been tasked with outlining the steps necessary to undertake legal action to compel the State of Washington Department of Revenue (the "DOR") to comply with the federal legal structure that generally precludes diversion of Federal Aviation Administration ("FAA") grant funded airports from diverting airport revenue for non-airport uses.

This letter provides a cursory overview of the applicable federal and state laws followed by a task-based proposed course of action with a task assigned a preliminary budget. This letter will then form the basis of further discussion of a legal remedy to the DOR's inaction.

Please note that I am not presuming nor precluding the retention of our law firm to perform any of these tasks.

**Federal Law and Regulation Brief Overview.** In broad overview I note that 42 USC §47107(b)(1) allows the United States secretary of transportation to (with limited exceptions inapplicable here) require:

. . .written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of (A) the airport; (B) the local airport system; or (C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

42 USC §47107(b)(1) provides the legal basis through the adoption of executive orders and federal regulations FAA Grant Assurance 25. It provides in pertinent part:

25. Airport Revenues.

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport, and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport.

The grant assurances apply to airport sponsors which are the owners or operators of the airports. Violation of the assurances may result in an FAA administrative action and/or FAA initiated federal civil lawsuit against the airport sponsor.<sup>1</sup> A critical task is to understand the link between the obligations owed to the FAA by airport sponsors and an action against DOR.

Important to the discussion, there appears to be a six (6) year statute of limitations for actions to recover diverted funds.<sup>2</sup> Therefore, one may conclude that every year an implementation delay by the DOR results in millions of dollars of unrecoverable diverted funds. This may explain the reticence of the DOR to implement, in whole or in part, the necessary steps.

**State Law and Inaction Brief Overview.** First, it is important to note that cities and counties are creations of and subservient to the state. As such, cities and counties collect state-authorized sales and use tax on aviation fuel sales at FAA grant assurance airports. Moreover, the DOR collects a hazardous substance tax ("HST") and a petroleum products tax ("PPT") on the sale of aviation fuel at FAA grant assurance airports.

The 2015 "Washington Action Plan - FAA Policy Concerning Airport Revenue" was precise in its description of the Washington tax structure but vague as to the corrective action. The 2020 Washington State Supplemental Operating Budget at §135, subpart 8 required an update of the 2015 plan.

(8) Within amounts appropriated in this section, the department [the DOR] shall update the document titled "Washington Action Plan - FAA Policy Concerning Airport Revenue" to reflect changes to Washington tax code regarding hazardous substances. The department, in consultation with the aviation division of the Washington state department of transportation, shall develop and recommend a methodology to segregate and track actual amounts collected from the hazardous substance tax under chapter 82.21 RCW and the petroleum products tax under chapter 82.23A RCW as imposed on aviation fuel. The department must submit a report, including the recommended methodology, to the fiscal committees of the legislature by January 11, 2021.

---

<sup>1</sup> 42 USC §47107(k).

<sup>2</sup> 42 USC §47107(k)(5).

In December 2020, the DOR did submit an update which again was short on action steps to resolve the issue. Here again, the FAA regulatory statute of limitations may play a role in DOR's inaction.

#### Action plan

Washington possesses no data on the actual amount of local sales/use tax, HST, and PPT collected specifically on aircraft fuel. Obtaining this information would be expensive and administratively burdensome. Therefore, Washington plans to estimate the amount of local sales/use tax collected on aircraft fuel by each local jurisdiction subject to the FAA Policy's restrictions and the amount of HST and PPT collected on aircraft fuel by the state. The state will use this data to determine whether amounts the state spends on aviation programs at least equal the amount of HST and PPT revenues collected on aircraft fuel, which are dedicated by Washington law to non-aviation purposes.

The state will inform local jurisdictions of the FAA Policy's revenue use requirements, and advise those jurisdictions to offset their use of tax revenue on aircraft fuel put towards non-aviation purposes with an equal amount of spending on aviation. The state will provide information about what types of aviation spending qualify for the offset amount and will respond to complaints from airports. The state will also track state spending on state aviation programs to ensure it is sufficient to offset the HST and PPT collections on aircraft fuel.

I did hear in our meeting last month that the FAA had preliminarily approved a DOR plan to track diverted tax revenue and compare it against the budget of the aviation division of the Washington Department of Transportation (an allowable use of airport-generated funds). Those on the call calculated that such a comparison would show a surplus of approximately millions of dollars a year.<sup>3</sup>

Legal Tasks to Compel Compliance by the State of Washington. I have divided the legal effort into a series of tasks with a very rough order of magnitude cost estimate attached to each.<sup>4</sup> These tasks need to be accomplished sequentially.

#### Task 1. Develop a Legal Framework Memorandum – Thirty Thousand Dollars (\$30,000)

Task 1 is to develop a comprehensive memorandum that establishes the unbroken chain from federal law, through executive order or federal code, through FAA policy, through state law and finally through Washington administrative code, that would provide airport sponsors and enforceable right against the DOR – in short, “standing”. The term standing is a condition that a party seeking a legal remedy must show they have, by demonstrating to the court, sufficient connection to and harm from the law or action challenged, to support that party's participation in the case. Standing must be determined by reference to federal and state laws and regulations and applicable federal and state case law.

---

<sup>3</sup> One (1) proposal discussed was to provide these excess funds to the aviation division for use as grants to airport sponsors for their matching share of FAA grants.

<sup>4</sup> Each task assumes an hourly billing rate of Three Hundred Thirty Dollars (\$330) per hour. Firms with different billing rates can then be compared against the estimate.

Without standing, no airport sponsor can survive a challenge to the court's jurisdiction. The legal framework memorandum confirming standing will necessarily lay out the case for the court action and be useful in future tasks.

Task 2. Working with Airport Sponsors to Develop a Legal Action Plan – Ten Thousand Dollars (\$10,000)

Once standing has been confirmed and informed by the legal framework memorandum, the appropriate committee of airport sponsors, together with the lawyers that developed the legal framework memorandum, would consider a range of options and court venues for litigation. Preliminary it is thought that federal court in either the Eastern District or Western District of Washington would be preferred venues for litigation against the State of Washington. This task would also involve locating appropriate airport sponsors to act as plaintiffs in the litigation. I note that standing may be created by the initiation by the FAA of an enforcement action against airport sponsors. This task includes a coordinating meeting with the FAA.

If standing was not established then other alternatives, including a complaint under Part 13 or Part 16 of the FAA regulations, legislative pressure, and/or withholding remittance of taxes could be considered.

Task 3. Draft a Complaint – Twenty Thousand Dollars (\$20,000)

If litigation was selected as a preferred course of action, then a complaint would be drafted seeking appropriate relief. Here standing would have to be carefully plead. I believe that this complaint would need to be very detailed. The legal framework memorandum would be useful for this task.

Task 4. Preliminary Discussions with DOR and the Attorney General's Office – Fifteen to Fifty Thousand Dollars (\$15,000 - \$50,000)

Once a complaint is drafted and approved, I recommend that a delegation of airport sponsors and the attorney seek a preliminary meeting with the DOR and its lawyers. The legal framework memorandum may be provided. The "draft" complaint will be provided. A range is presented here because the discussions may be productive, leading to a settlement.

Task 5. Litigation – Two Hundred Fifty Thousand Dollars (\$250,000)

This task involves filing the lawsuit in the selected venue and taking the matter through trial. A lawyer with the appropriate trial experience and knowledge of law should be selected. Here again, the legal framework memorandum would provide a valuable starting point.

In summary, this effort from start to finish will be expensive. I did design this sequentially so that each

step would present an opportunity for compromise with the DOR. I am available to discuss this as needed.

Sincerely,

CSD ATTORNEYS AT LAW P.S.

A handwritten signature in black ink, appearing to read "Frank J. Chmelik", written over the typed name below.

Frank J. Chmelik

FJC/lrf  
cc: Eric ffitch  
effitch@washingtonports.org  
Chris Herman  
[cherman@washingtonports.org](mailto:cherman@washingtonports.org)

# Washington State Diversion of Aviation Fuel Taxes

	<u>Projected Annual Revenue</u>
<input checked="" type="checkbox"/> <b><u>1. Aircraft Fuel Excise Tax (RCW 82.42.020)</u></b> <ul style="list-style-type: none"> <li>▶ Fuel tax levied on each gallon of aircraft fuel sold.</li> <li>▶ Tax established in 1967.</li> <li>▶ On December 30, 1987 tax rate was \$0.05 per gallon.</li> <li>▶ Current tax rate is \$0.18 per gallon.</li> <li>▶ Full \$0.18 per gallon tax deposited in State aeronautics account.</li> </ul>	\$ 9,178,650
<input checked="" type="checkbox"/> <b><u>2. State Retail Sales / Use Tax (Chapter 82.08 and 82.12 RCW)</u></b> <ul style="list-style-type: none"> <li>▶ Retail sales/use tax rate has remained at 6.5 percent since 1983.</li> <li>▶ Imposed before 1987. Not subject to FAA revenue use requirements.</li> <li>▶ Funds deposited in State General Fund.</li> </ul>	
<input checked="" type="checkbox"/> <b><u>3. Hazardous Substance Tax (Chapter 82.21 RCW)</u></b> <ul style="list-style-type: none"> <li>▶ HST was first imposed in 1989. Subject to FAA revenue use requirements.</li> <li>▶ Revenue being diverted into toxic control accounts.</li> <li>▶ July 1, 2023 the tax is \$1.40 per barrel. Per barrel rate adjusts for inflation, effective July 1 of each year.</li> <li>▶ Department of Revenue 2023 3rd Quarter \$14,108,961 x 4.</li> </ul>	\$ 56,435,844
<input checked="" type="checkbox"/> <b><u>4. Petroleum Products Tax (Chapter 82.23A RCW)</u></b> <ul style="list-style-type: none"> <li>▶ PPT was first imposed in 1989. Subject to FAA revenue use requirements.</li> <li>▶ Tax imposed on the first possession. Tax is equal to 0.3% of the wholesale value of petroleum product.</li> <li>▶ Effective July 1, 2021 tax rate reduced to 0.15%.</li> <li>▶ PPT scheduled to expire on July 1, 2030.</li> <li>▶ Revenue is being diverted into the pollution liability insurance program.</li> <li>▶ Department of Revenue 2023 3rd Quarter \$299,386 x 4.</li> </ul>	\$ 1,197,544

✗ **5. Local Sales / Use Taxes (Chapter 82.14 RCW and RCW 81.104.170)** \$            **Unknown**

- ▶ Aviation fuel sales occur in approximately 107 local taxing jurisdictions that either imposed or raised the rate on their local sales and uses taxes after 1987. Said local sales and uses taxes are subject to FAA Revenue use requirements.

✗ **6. Oil Spill Taxes** \$            **949,736**

- ▶ Tax first imposed in October 1991. Subject to FAA revenue use requirements.
- ▶ Revenue is being diverted into an Oil Spill Prevention account.
- ▶ 5 cents per 42-gallon barrel (1 cent per 42-gallon barrel for Response Tax and 4 cents per 42-gallon barrel for Administration tax).
- ▶ Current tax rate is 4 cents per 42-gallon barrel.
- ▶ Department of Revenue 2023 3rd Quarter \$237,434 x 4.
- ▶ When fund balance is less than \$8 million the tax is imposed and remains in effect until the fund balance exceeds \$9 million.

**Total Amount of Revenue required to be deposited into State of Washington Aeronautics Account to comply with FAA Revenue Use Requirements:** 

---

---

\$            **67,761,774**

**Current Compliance Amounts:** \$            **9,178,650**

**Balance due to comply with FAA Revenue Use Requirements:** \$            **58,583,124** Annually  
Plus Local Sales / Use Taxes

- FAA Compliant**
- FAA Non-Compliant**

**FAA Policy and Procedures Concerning the Use of Airport Revenue; Proceeds From Taxes on Aviation Fuel:**  
Federal Register, November 7, 2014

"...State taxes on aviation fuel (imposed by either an airport sponsor or a non-sponsor) are subject to use either for a State aviation program or for airport-related purposes..."

"...The policy amendment applies prospectively to use of proceeds from...new taxes...in effect on December 30, 1987..."

Note: This document was prepared by the Chelan Douglas Regional Port Authority. It represents our best estimation of aviation fuel tax diversions. More precise information can be obtained from the Washington Department of Revenue.



**PORT of OLYMPIA**  
Serving All of Thurston County

## Aviation Fuel Tax Interlocal Agreement (ILA)

Warren Hendrickson  
Director of Operations  
Feb. 26, 2024



1



### Today's Presentation

*Action/Other Item – Approval Requested*

- Aviation fuel tax background
- Washington state non-compliance
- Compliance action plan
- Interlocal agreement
- Legal funding
- Advisory presentation Feb. 20, 2024



2

## Aviation Fuel Tax

### *Background*

- 2015 WSDOT Aviation Airport Investment Study
  - Airport grant program shortfall \$12 million annually
- 2020 WSDOT Aviation Funding Need
  - \$76.9 million in funding requests
  - \$12.5 million state matching funds required
  - \$1.4 million available
- Washington state ranks *last* in funding per airport in NW Mountain Region
  - Oregon funding is triple that of Washington's

3



3

## Aviation Fuel Tax

### *Background (cont'd)*

- FAA Policy and Procedures concerning the use of airport revenue; Proceeds from taxes on aviation fuel
  - Federal Register November 7, 2014

*"...State taxes on aviation fuel (imposed by either an airport sponsor or a non-sponsor) are subject to use either for a State aviation program or for airport-related purposes..."*

*"...The policy amendment applies prospectively to use of proceeds from...new taxes...not...in effect on December 30, 1987..."*

4



4

## Aviation Fuel Tax

### *Washington State Revenue Diversion*

- Washington state aviation fuel taxes
  - Aircraft fuel excise tax (RCW 82.42.020: \$.18 per gallon)
  - State retail sales / use tax (6.5% of retail price - pre-1987)
  - Hazardous Substance tax (HST: \$1.40 per 42-gallon barrel)
  - Petroleum Products tax (PPT: 0.15% of wholesale value)
  - Local sales / use taxes (25 different taxes by 107 local jurisdictions)
  - Oil Spill taxes (\$.04 per 42-gallon barrel)

5



5

## Aviation Fuel Tax

### *Washington State Revenue Diversion*

- Washington state federal policy compliance
  - ✓ Aircraft fuel excise tax (RCW 82.42.020) 100% = Aeronautics Account
  - ✓ State retail sales / use tax (6.5% of retail price – pre-1987)
  - ✗ Hazardous substance tax (HST: \$1.40 per 42-gallon barrel)
  - ✗ Petroleum products tax (PPT: 0.15% of wholesale value)
  - ✗ Local sales / use taxes (25 different taxes by 107 local jurisdictions)
  - ✗ Oil spill taxes (\$.04 per 42-gallon barrel)

6



6

## Aviation Fuel Tax

### Washington State Revenue Diversion

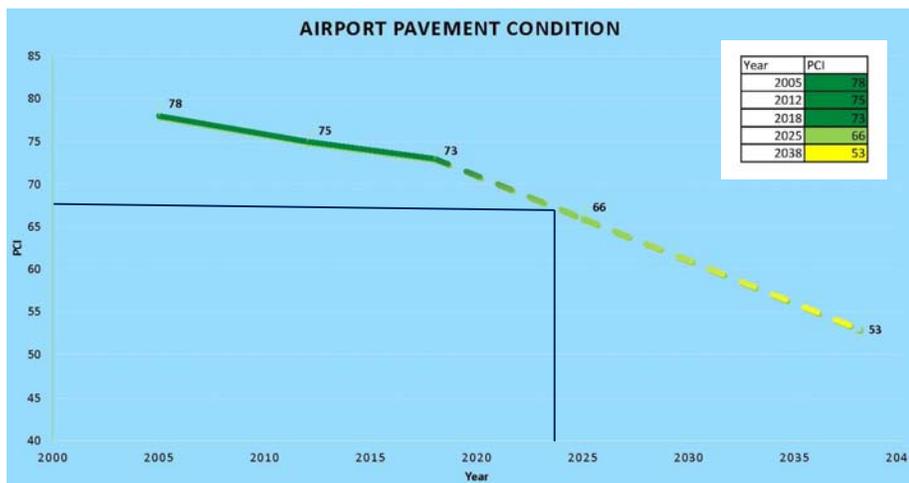
- Annual Washington state revenue diversion
  - HST: \$ 56,435,844
  - PPT: \$ 1,197,544
  - Local sales / use taxes: Not known
  - Oil spill taxes: \$ 949,736
  
- Total non-compliant annual revenue: **\$ 58,583,124**

7



7

## Why Important?



8



8

## Aviation Fuel Tax

### *Compliance Action Plan*

- DOR Report to State Legislature January 11, 2021
- First calculation of diverted revenue 3<sup>rd</sup> quarter 2023
- Correction to date: None

9



9

## Aviation Fuel Tax

### *Compliance Action Plan (cont'd)*

- Need has been established
- Funding already exists, with no new taxes (fuel taxes = user fees)
- Missing ingredient: Political will
- Enhancing agent: FAA forcefulness on compliance

10



10

## Aviation Fuel Tax

### *Compliance Action Plan (cont'd)*

- Airport sponsor obligation
  - Federal Register November 7, 2014

*"...For taxes imposed by non-sponsor State and local governments, **the airport sponsor will be expected** to advise those entities of Federal requirements for use of aviation fuel tax revenues, and to take action reasonably within the sponsor's power to tailor State and local taxation to conform to the requirements of §§ 47107(b) and 47133..."*

11



11

## Compliance Action Plan

### *Interlocal Agreement (ILA)*

- Chelan Douglas Regional Port Authority lead agency
  - Task I: Develop a legal framework memo
  - Task II: Work with airport sponsors to develop a legal action plan
  - Task III: Draft a formal complaint
  - Task IV: Hold preliminary discussions with Department of Revenue and the Attorney General's Office seeking a settlement and compliance
- Port General Counsel review completed
- Legal fund contributions now requested

12



12

## Compliance Action Plan

### *ILA Partners*

- 2 commercial service hub airports
  - Sea-Tac, Spokane
- 9 commercial service non-hub airports
  - Paine Field, Boeing Field, Paine Field, Bellingham, Friday Harbor
  - Yakima, Wenatchee, Tri-Cities, Walla Walla, Pullman-Moscow
- 26 general aviation airports
  - Olympia, Chehalis, Tacoma Narrows, Bremerton, Skagit, Grant County

13



13

## Compliance Action Plan

### *Legal Fund Contributions Requested*

- Total: \$120,000
  - Hub airports: \$35,000 total
  - Non-hub airports: \$2,500 to \$7,500
  - 26 general aviation airports: \$1,000 each
    - Port of Moses Lake (Grant County) contribution: \$5,000
    - Port of Skagit contribution: \$3,000

14



14

## Compliance Action Plan

### *Legal Fund Contributions Requested*

- Total: \$120,000
  - Hub airports: \$35,000 total
  - Non-hub airports: \$2,500 to \$7,500
  - 26 general aviation airports: \$1,000 each
    - Port of Moses Lake (Grant County) contribution: \$5,000
    - Port of Skagit contribution: \$3,000
- Port of Olympia staff recommendation: \$3,000

15



15

## Next Steps

- Execute ILA
- Authorize Port contribution to legal fund



16

## Questions and Comments

### *Suggested Motions*

- Execute ILA

*"...move to authorize the Executive Director to approve the Chelan Douglas Regional Port Authority ILA, as presented."*

- Port contribution to legal fund

*"...move to authorize a legal fee contribution of \$3,000.00 to the Chelan Douglas Regional Port Authority in support of the ILA, as presented."*

## COVER MEMO

<b>Briefing Date/Time:</b>	February 26, 2024
<b>Staff Contact/Title:</b>	Clarita Mattox, Real Estate Senior Manager 360.528.8070, <a href="mailto:claritam@portolympia.com">claritam@portolympia.com</a>
<b>Subject:</b>	Launch Negotiations LLC Cleanwater Centre Building 206 Tumwater Boulevard Purchase & Sale Agreement and Ground Lease
<b>Purpose:</b>	<input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Decision Needed

### **Overview:**

This is an Action/Other item before the Commission. Action is requested.

This request is specific to the 206 Tumwater Boulevard building in the Cleanwater Centre.

### **Background:**

In 2008, the Port entered into a land lease agreement with a previous Tenant for redevelopment of the 10+ acres at the Tumwater Town Center Campus of the Port, now known as the Cleanwater Centre. In 2012, the tenant stopped paying rent and transferred title of the entire development to the Port, which included eight buildings of 6,000 square feet each, and one of approximately 24,000 square feet.

During the conveyance of these buildings, the Port began implementing the current Strategic Plan, which included working with the City of Tumwater to generate 15 acres of commercial development and 30 acres of industrial development on Port-owned properties in Tumwater.

The Port Commission subsequently approved investing in the Cleanwater Centre by upgrading it to current code and standards required by the City of Tumwater, including stormwater, lighting, utilities, landscape, and parking.

In addition, the Port initiated implementation of the vision to repurpose one of the buildings with the project that is now the Scribbles and Giggles daycare center.

A second building was then leased to the Washington State Patrol (WSP). The Port continues to own and lease these two buildings to Scribbles and Giggles and the WSP Detachment offices, respectively.

After considering a more viable business model for the remaining seven buildings, the Port Commission approved Resolution 2016-06, which declared the remaining buildings as surplus to the Port's needs, and further authorized Port staff to sell the remaining seven buildings and to enter into long-term land leases.

Port staff then moved forward with a vigorous Cleanwater Centre marketing and redevelopment effort. Out of the eight 6,000 square foot buildings, four have been sold and their new owners signed long-term land leases with the Port.

Two remain under Port's ownership and are leased as space leases, with the last two being presented tonight for consideration.

The Port received a commitment from Launch Negotiations LLC to purchase the final two 6,000 square foot buildings, and to enter into a long-term land lease for each building. Due diligence on the buyers was conducted as it is customary for any real estate transaction with the Port.

Should the Commission move to approve the subject lease(s), only the 24,000 square foot building remains available in the Cleanwater Centre. The City of Tumwater's requirement for repurposing it, however, includes development of the existing service road into a new roadway within Cleanwater Centre to provide direct access to Tumwater Boulevard. Development of this new road will be dependent on the future and parameters of the Bush Prairie Habitat Conservation Plan.

**Documents Attached:**

- Purchase and Sale Agreement and Land Lease Agreement and Site Exhibit
- PowerPoint presentation
- Resolution 2016-06

**Summary & Financial Impact:**

Subject Tenant is entering into a Land Lease Agreement with the Port for approximately 6,000 square feet of land, located at 210 Tumwater Boulevard in the Cleanwater Centre, Tumwater, under the following terms/conditions:

- Tenant to purchase building: \$40,000
- Land lease subject to the purchase and sale agreement.

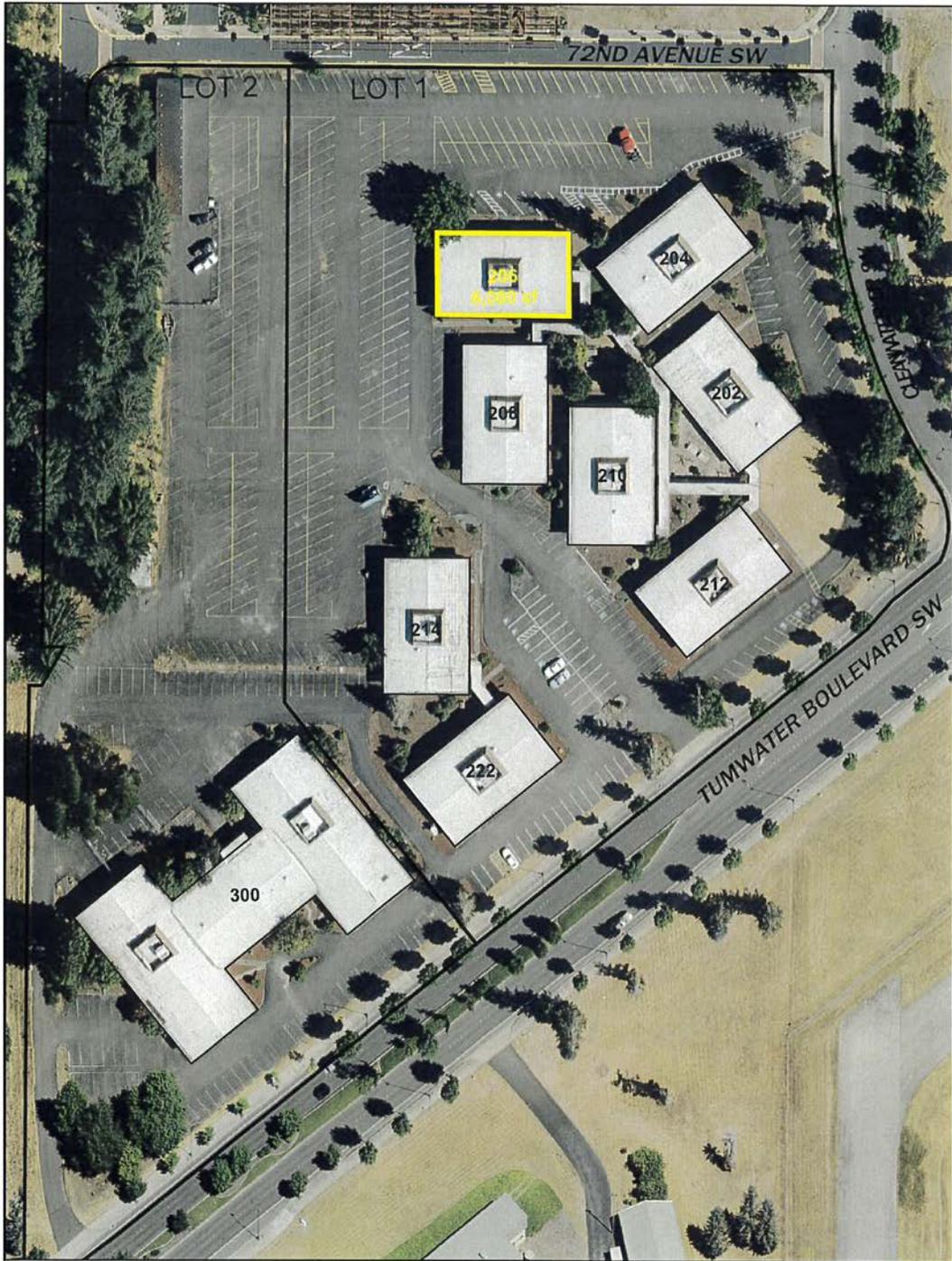
- Building Use: Renovation/repurposing subject to office/commercial/retail uses permitted in the Tumwater Town Center of the City of Tumwater.
- Term: Land lease for 30 years starting February 26, 2024.
- Option to Extend Term: 20 Years.
- Initial rent: \$30,000 per year, upon receipt of Occupancy Permit.
- Rent adjustments 2% annually – every February 1 of each year.
- Rent adjustments in year 15 of the initial term will be recalculated based on appraisal, but in no event the rent shall be reduced.
- Rent for the 20-year Option: initial rent recalculated based on appraisal.
- Rent during Option Period to be adjusted based on the then Commission rent escalation policy.
- Common area and operating charges to tenant: \$6,780/year.

**Affected Parties:**

- Port of Olympia
- Launch Negotiations LLC

**Staff Recommendation:**

- Ratify and approve Purchase and Sale Agreement and Land Lease as presented.



	<b>Cleanwater Centre Exhibit A</b>	<b>June 2019</b> Address: 206 Tumwater Blvd SW Tumwater, WA 98501
---	--	---

**PURCHASE AND SALE AGREEMENT  
IMPROVEMENTS ONLY  
(Cleanwater Centre Building)**

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made effective on the latest date of signatures set forth below (the “**Effective Date**”), by and between the **PORT OF OLYMPIA**, a Washington port district (“**Port**”) and **LAUNCH NEGOTIATIONS LLC** (“**Purchaser**”).

**RECITALS**

**A.** The Port is the present owner of real property located in Thurston County, Washington (the “**Real Property**”) as is legally described in **Exhibit A** which is incorporated by reference.

**B.** The Port of Olympia Commission determined that the improvements located on the Real Property are surplus to the Port needs and a negotiated transfer of the improvements for consideration is permitted, per Port of Olympia Commission Resolution 2016-06.

**C.** The Port hereby desires to sell to Purchaser, and Purchaser hereby desires to buy from the Port, all structures and improvements located on the Real Property (the “**Building**”), which improvements include a six thousand (6,000) square foot building currently known as **206 Tumwater Boulevard, Tumwater, Washington**.

**D.** The purchase and sale of the Building is intended to coincide with the commencement of a ground lease whereby Purchaser will lease the Real Property from the Port, which will retain fee title to the Real Property (“**Ground Lease**”).

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreement as set forth herein, it is hereby agreed as follows:

**1. Incorporation of Recitals.** The recitals set forth above are incorporated by reference and become part of this Agreement.

**2. Purchase Price.** The total purchase price for the Building is FORTY THOUSAND and NO/100 Dollars (\$40,000.00), which sum includes the deposit (“**Purchase Price**”), payable in all cash or **Cashier’s Check** made out to the Port of Olympia. In consideration of the Purchase Price, the Port will transfer its ownership interest in the Building to Purchaser.

**3. Full Payment Due.** The Purchaser shall pay the sum of FORTY THOUSAND DOLLARS AND NO CENTS (\$40,000.00 USD), to the **Port** at time of executing this Agreement. Port shall have this instrument Ratified by the Port Commission on the date stated below. If this transaction is not consummated by the Purchaser other than as a result of the Port’s breach of this Agreement, then the Port shall retain the full amount and all interest.

4. **Conveyance of Building.** Title to the Building will be conveyed to the Purchaser via Quit Claim Deed, substantially in the form attached here as **Exhibit B** (the "Deed").

5. **Closing.** The closing of the purchase and sale of the Building contemplated by this Agreement (the "**Closing**") shall be within three (3) days from the day of the Port Commission ratification of this Agreement scheduled to be **February 26, 2024**. The date on which the transaction contemplated by this Agreement closes, as evidenced by the recording of the Deed is referred to in this Agreement as the "**Closing Date.**" If Closing does not occur on or before the Closing Date and the parties have not, prior to such Closing Date, mutually agreed in writing to extend the Closing, this Agreement will automatically terminate and will, except for any provisions of this Agreement that by their terms survive the expiration or termination of this Agreement, be of no further force and effect.

In the event that this sale cannot be closed by the date provided herein due to the unavailability of either party to sign any necessary document, or to deposit any necessary money, because of the interruption of available transport, strikes, fire, flood, or extreme weather, governmental relations, incapacitating illness, acts of God, or other similar occurrences, the Closing Date shall be extended seven (7) days beyond cessation of such condition, but in no event more than fourteen (14) days beyond the Closing as provided herein without the written agreement of the parties. The Purchaser and the Port may agree in writing to extend the Closing Date at any time.

6. **Title Insurance.** Purchaser may, at Purchaser's expense, obtain a policy of title insurance insuring the Purchaser of good and marketable title to the Building and/or its leasehold estate under the Ground Lease.

7. **Closing Costs.** In addition to the Purchase Price as stated above, the Purchaser shall pay the recording cost of this and land Lease Agreement. The Port shall pay the following costs at Closing: None. Pursuant to RCW 60.80.020(1) the parties hereby waive services of the Escrow Agent in administering the disbursement of closing funds necessary to satisfy any unpaid utility charges except as specifically directed in escrow instructions hereafter delivered to Escrow Agent. The Parties acknowledge that the transfer contemplated in this Agreement is not subject to the real estate excise tax in accordance with WAC 458-61A-205.

8. **Possession.** Purchaser shall be entitled to possession on the Lease Commencement Date, as defined in the Ground Lease.

9. **"As-Is/Where-Is" Condition.** Purchaser acknowledges and confirms that Purchaser shall accept the Port's conveyance of the Building to Purchaser in an "As-Is" and "Where-Is" condition, free of any warranty by the Port, except as otherwise expressly provided for in this Agreement and in the documents executed and delivered by the Port at Closing, and free of any obligation by the Port to perform any repairs or other improvement work with respect to the Building or Real Property. Purchaser expressly acknowledges that THE PORT MAKES NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, A WARRANTY OF

CONDITION, HABITABILITY, HAZARDOUS WASTE OR ENVIRONMENTAL CONTAMINATION, OR USE OF THE BUILDING OR REAL PROPERTY FOR A PARTICULAR PURPOSE. THE PORT SHALL NOT IN ANY WAY BE LIABLE FOR OR WITH RESPECT TO THE CONDITION OF THE REAL OR PERSONAL PROPERTY OR ANY BUILDINGS, STRUCTURES, OR IMPROVEMENTS. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE CLOSING IN PERPETUITY.

**10. Purchaser's Indemnity.** Purchaser agrees to indemnify, defend and hold harmless the Port, its commissioners, employees, and agents, from any and all costs, expenses, and damages, and any and all claims, demands, or liability, on account or by reason of any third-party claim, act, lawsuit, demand or action brought against the Port following the Closing of sale in regards to the Property, including claims for hazardous waste related to the Building after the Closing Date, property damage claims, personal injury claims, and governmental enforcement actions, and Purchaser shall defend the same at its own cost and expense and shall pay any judgment rendered therein against the Port or any of its commissioners, employees or agents. The indemnity provided in this Section shall survive Closing.

**11. Right to Independent Counsel.** Purchaser acknowledges that it has had the right to have this Agreement and all other documents related to this transaction reviewed by independent legal counsel.

**12. Brokerage Commission.** The Purchaser and Port represent that neither party has employed the services of a real estate broker or agent in connection with this Agreement or the transactions contemplated herein, or, if such agents have been employed, that the party employing said agent shall pay any and all expenses outside the closing of this Agreement. Each party shall indemnify and hold harmless the other party from and against any claim for commissions and/or fees due to any real estate broker or agent where such claim is based on the purported employment or authorization of such real estate broker or agent by the indemnifying party. The indemnities provided in this Section shall survive the Closing and termination of this Agreement.

**13. FIRPTA – Tax Withholding at Closing.** The Escrow Agent is instructed to prepare a certification that the Port is not a foreign person within the meaning of the Foreign Investment in Real Property Tax Act. The Port agrees to sign this certification.

**14. Default.**

**14.1. By the Port.** In the event of a default by the Port, Purchaser shall be entitled to terminate this Agreement and receive a refund of the Earnest Money as its sole and exclusive remedy.

**14.2. By Purchaser.** In the event of any default by Purchaser, the Port's sole and exclusive remedy will be to terminate this Agreement and receive the Earnest Money as liquidated damages.

**14.3. General.** Neither Purchaser nor the Port may recover consequential

damages such as lost profits. If Purchaser or the Port institutes suit against the other concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses. Upon termination under this Section, all documents deposited in escrow will be returned to the party who deposited them, and the defaulting party will be required to pay any and all costs of terminating the escrow.

**15. Condemnation or Destruction.**

**15.1. Condemnation.** The Port hereby represents and warrants that the Port has no knowledge of any action or proceeding pending or instituted for condemnation or other taking of all or any part of the Building by friendly acquisition or statutory proceeding by any governmental entity. The Port agrees to give Purchaser immediate written notice of such actions or proceedings that may result in the taking of all or a portion of the Property. If, prior to Closing, all or any part of the Building is subject to a bona fide threat or is taken by eminent domain or condemnation, or sale in lieu thereof, then Purchaser, by notice to the Port given within five (5) calendar days of Purchaser's receiving actual notice of such threat, condemnation, or taking by any governmental entity, may elect to terminate this Agreement. In the event Purchaser continues or is obligated to continue this Agreement, the Port shall, at Closing, assign to Purchaser its entire right, title and interest in and to any condemnation award attributable to the Building. During the term of this Agreement, the Port shall not stipulate or otherwise agree to any condemnation award without the prior written consent of Purchaser.

**15.2. Damage or Destruction.** Prior to Closing the risk of loss of or damages to the Building by reason of any insured or uninsured casualty shall be borne by the Port.

**15.3. Termination.** If this Agreement is terminated, neither party hereto shall have any further rights or obligations under this Agreement whatsoever, except for such rights and obligations that, by the express terms hereof, survive any termination of the Agreement.

**16. Miscellaneous.**

**16.1 Counterparts; Electronic Transmission.** This Agreement may be executed in one or more identical counterparts and may be delivered by electronic transmission.

**16.2 Notices.** All notices, demands, and any and all other communications which may be or are required to be given to or made by either party to the other in connection with this Agreement shall be in writing and shall be deemed to have been properly given if delivered by hand, sent by fax, sent by email, sent by registered or certified mail, return receipt requested, or sent by recognized overnight courier service to the addresses set out below or at such other addresses as specified by written notice and delivered in accordance herewith. Any such notice, request or other communication shall be considered given or delivered, as the case maybe, on the date of hand, fax or courier delivery or on the date of deposit in the U.S. Mail as provided above. However, the time period within which a response to any notice or request must be given, if any, shall commence to run from the date of actual receipt of such notice, request, or other communication by the addressee thereof.

**PORT:** Port of Olympia  
Real Estate Division  
606 Columbia Street NW Suite 300  
Olympia, WA 98501  
E-mail: [claritam@portolympia.com](mailto:claritam@portolympia.com)  
Phone: (360) 528-8070

**PURCHASER:** LAUNCH NEGOTIATIONS LLC  
206 Tumwater Blvd  
Tumwater WA 98506  
503-422-5970  
[russpet14310@gmail.com](mailto:russpet14310@gmail.com)

**16.3 Entire Agreement.** This Agreement embodies and constitutes the entire understanding between the parties hereto with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

**16.4 Modification.** Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except to the extent provided herein or by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought.

**16.5 Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Washington with venue in Thurston County.

**16.6 Binding Effect; Assignment; Nominee.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns. No party shall be entitled to assign their interest in or rights under this Agreement without the prior written consent of all parties hereto.

**16.7 Further Acts.** The parties shall execute and deliver such further instruments and documents and take such other further actions as may be reasonably necessary to carry out the intent and provisions of this Agreement.

**16.8 Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions all be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

**SIGNATURES ON NEXT PAGE**

**PORT:**

**PORT OF OLYMPIA**



By: Robert Rudolph, Jr.  
Its: Interim Executive Director

Date: 2/15/24

**PURCHASER:**

**LAUNCH NEGOTIATIONS LLC**



By: Ruslan Petrusha  
Its: Owner / Member

Date: 01/24/24

## **EXHIBIT A**

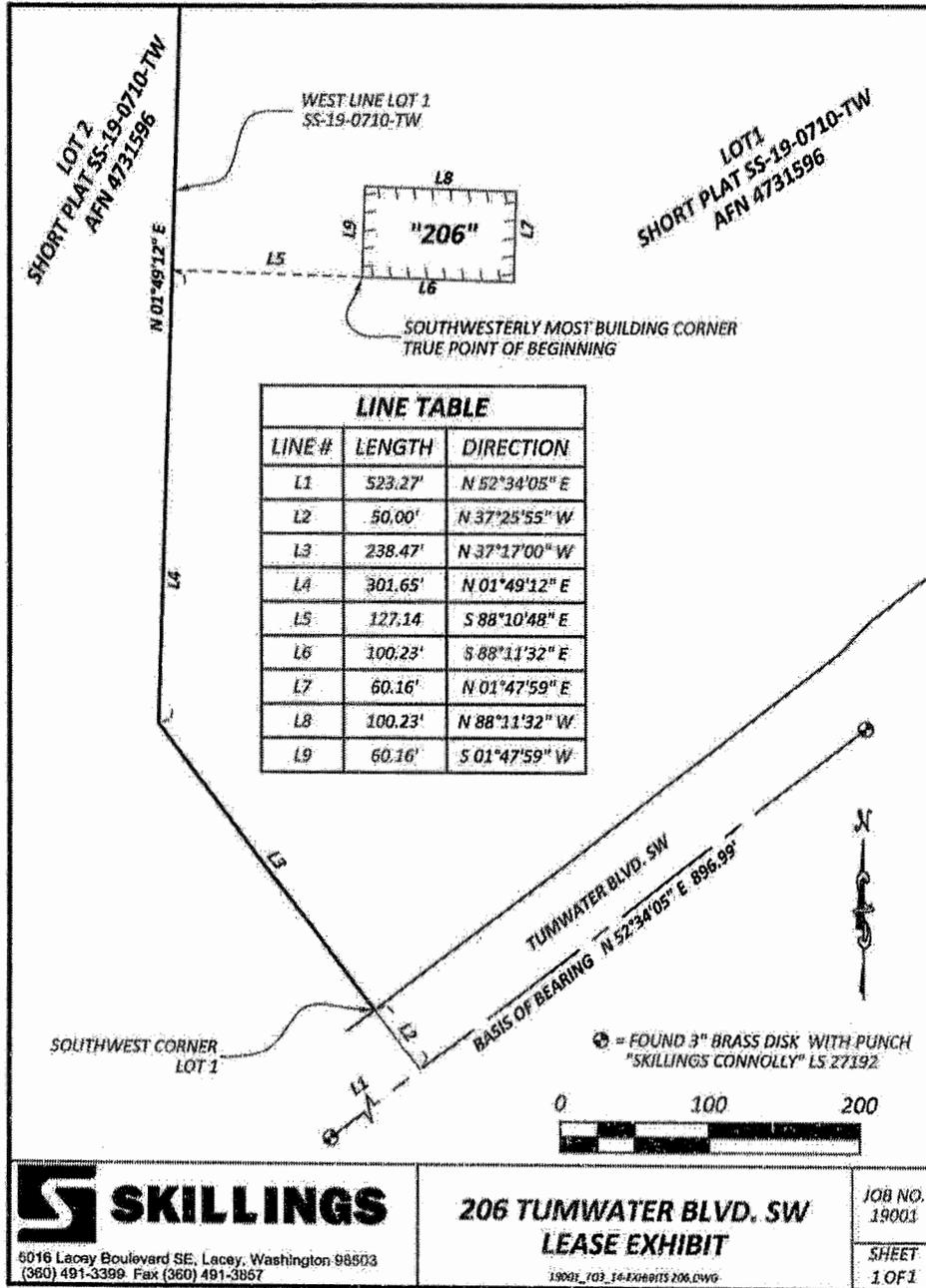
### **LEASE DESCRIPTION (206 Tumwater Boulevard SW)**

That portion of Lot 1 of City of Tumwater Short Plat SS-19-0710-TW, as recorded under Auditor's File No. 4731596, records of Thurston County, Washington, particularly described as follows:

Commencing at the Southwest corner of said Lot 1; Thence N 37°17'00" W along the West line of said Lot 1, 238.47 Feet and N 01°49'12" E, 301.65 feet; Thence S 88°10'48" E, 127.14 feet to the Southwesterly most corner of "Building 206 Tumwater Boulevard" and the True Point Of Beginning; Thence S 88°11'32" E along the South line of said building, 100.23 Feet to the Southeasterly corner of said building; Thence N 01°47'59" E along the East line of said building, 60.16 Feet to the Northeasterly corner of said building; Thence N 88°11'32" W along the North line of said building, 100.23 Feet to the Northwesterly corner of said building; Thence S 01°47'59" W along the West line of said building, 60.16 Feet to the True Point Of Beginning.

Lease area APPROXIMATELY 6,030 Sq. ft.

DEPICTION – 206 Tumwater Blvd. Tumwater WA 98506



**EXHIBIT B**  
**Form of Deed**

**After recording return to:**

Port of Olympia  
606 Columbia St NW  
Olympia WA 98501

---

**QUIT CLAIM DEED (IMPROVEMENTS ONLY)**

Grantor(s):	PORT OF OLYMPIA, a Washington Port District
Grantee(s):	LAUNCH NEGOTIATIONS LLC, a Washington Limited Liability Company
Abbreviated Legal Description:	PTN of Lot 1, SS-19-0710-TW, AFN 4731596 (Improvements Only)
Assessor's Property Tax Parcel/Account No.:	PTN of 82701600100 (Improvements Only)
Reference Numbers of Documents Assigned or Released:	N/A

---

WHEREAS, the real property described on the attached **Exhibit A** (the "Real Property") is owned by the PORT OF OLYMPIA, a Washington port district ("Grantor"); and

WHEREAS, the Real Property is being leased to **LAUNCH NEGOTIATIONS LLC**, a Washington limited liability company ("Grantee") by Grantor by that certain Port of Olympia Ground Lease dated **February 26, 2024**, between Grantor as Lessor and Grantee as Lessee; and

WHEREAS, pursuant to Port of Olympia Commission Resolution 2016-06 the improvements located on the Real Property have been found to be surplus to the Port's needs and a negotiated transfer of the improvements for consideration has been permitted and approved.

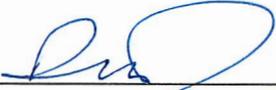
NOW, THEREFORE, Grantor, subject to the reservations from and exceptions to transfer below, hereby releases, relinquishes, assigns, conveys, and quit claims to Grantee **all structures and improvements** located on the Real Property as of the date of this Deed, together with all rights and appurtenances thereto.

The foregoing release, relinquishment, assignment, conveyance, and quit claim is effective as to the current **structures and improvements located on the described real estate only**. The foregoing release, relinquishment, assignment, conveyance, and quit claim is not effective as to future structures or improvements to be located or constructed on the underlying real property.

IT IS THE INTENTION OF THE PARTIES THAT THE REAL PROPERTY (UPON WHICH THE TRANSFERRED IMPROVEMENTS ARE LOCATED) SHALL REMAIN VESTED WITH THE PORT OF OLYMPIA AND THAT THIS INSTRUMENT CONVEYS ONLY THE IMPROVEMENTS LOCATED ON THE REAL PROPERTY.

GRANTOR:

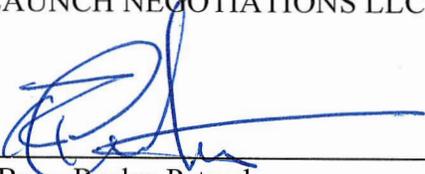
PORT OF OLYMPIA

  
\_\_\_\_\_  
By: Robert Rudolph, Jr.  
Its: Interim Executive Director

Dated: 2/15/24

GRANTEE:

LAUNCH NEGOTIATIONS LLC

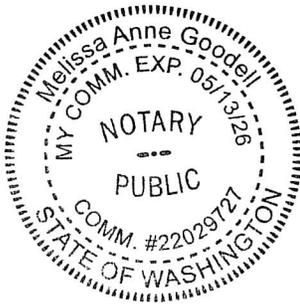
  
\_\_\_\_\_  
By: Ruslan Petrusha  
Its: Owner / Member

Dated: 01/24/24

ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

This record was acknowledged before me on February 15, 2024 by Robert Rudolph, Jr., as the Interim Executive Director of the Port of Olympia.



Melissa Anne Goodell  
(Signature of Notary Public)

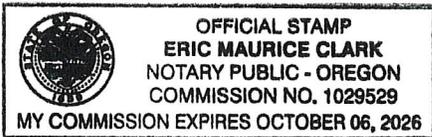
Melissa Anne Goodell  
(Name)

Notary Public  
(Title of Office)

My appointment expires: 5/13/2026

STATE OF OREGON )  
 ) ss.  
COUNTY OF CLACKAMAS )

This record was acknowledged before me on January 24<sup>th</sup>, 2024 by Ruslan Petrusha as the owner/member of LAUNCH NEGOTIATIONS LLC



Eric Maurice Clark  
(Signature of Notary Public)

Eric Maurice Clark  
(Name)

NOTARY PUBLIC  
(Title of Office)

My appointment expires: October 6, 2026

**EXHIBIT A  
TO QUIT CLAIM DEED  
LEGAL DESCRIPTION**

**(206 Tumwater Boulevard SW)**

That portion of Lot 1 of City of Tumwater Short Plat SS-19-0710-TW, as recorded under Auditor's File No. 4731596, records of Thurston County, Washington, particularly described as follows:

Commencing at the Southwest corner of said Lot 1; Thence N 37°17'00" W along the West line of said Lot 1, 238.47 Feet and N 01°49'12" E, 301.65 feet; Thence S 88°10'48" E, 127.14 feet to the Southwesterly most corner of "Building 206 Tumwater Boulevard" and the True Point Of Beginning; Thence S 88°11'32" E along the South line of said building, 100.23 Feet to the Southeasterly corner of said building; Thence N 01°47'59" E along the East line of said building, 60.16 Feet to the Northeasterly corner of said building; Thence N 88°11'32" W along the North line of said building, 100.23 Feet to the Northwesterly corner of said building; Thence S 01°47'59" W along the West line of said building, 60.16 Feet to the True Point Of Beginning.

Lease area APPROXIMATELY 6,030 Sq. ft.

**PORT OF OLYMPIA GROUND LEASE  
TUMWATER PROPERTIES**

**CLEANWATER CENTRE**

THIS LEASE is made this \_\_\_\_\_ day of \_\_\_\_\_ 2024, by and between the **PORT OF OLYMPIA**, a Washington municipal corporation, Lessor, hereinafter referred to as "Port", and the Tenant described below, hereinafter referred to as "Tenant", on the following terms and conditions:

**1. LEASE SUMMARY.**

TENANT

Name:	<b>Launch Negotiations LLC</b>
Address:	206 Tumwater Blvd
City, State, Zip Code:	Tumwater WA 98506
Phone Numbers:	503-422-5970
Email:	<u><a href="mailto:russpet14310@gmail.com">russpet14310@gmail.com</a></u>

PREMISES

The Port hereby leases to Tenant, and Tenant hereby leases from Port, upon and subject to the terms and conditions of this Lease, that certain real property consisting of approximately 6,000 of square feet of land located in the Port's Cleanwater Centre in Tumwater, Thurston County, Washington as generally shown and described in Exhibit "A" hereto, and commonly known as **206 Tumwater Boulevard, Tumwater, Washington**, subject to encumbrances, rights, and reservations as shown therein or provided in this Lease, and as presently existing or hereafter arising pursuant to governmental authority (the "Premises").

TERM

The initial term shall be thirty **(30) years beginning February 26, 2024** (the "Lease Commencement Date") and **ending February 25, 2054**, the "Initial Term"); provided that the commencement of this Lease is subject to the Port's receipt of first month's rent, lease security in a form acceptable to the Port, and certificate of insurance in a form acceptable to the Port. Tenant shall also have one option to extend as outlined below. The "Initial Lease Year" shall be the twelve (12) month period immediately following the Lease Commencement Date, and every successive twelve (12) month period after that shall be a "Lease Year."

## OPTION TO EXTEND TERM

Tenant shall have one (1) option(s) to extend for an additional period of twenty (20) years (the "Option to Extend"). The extension term 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 provisions herein). The extension term shall commence on the expiration of the immediately preceding term. The Option to Extend 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 extend this Lease if Tenant is in default of the performance of its obligations hereunder at the date notice of extension is due or at the date the extension term is to commence. In addition, Tenant shall not be entitled to renew this Lease if Tenant is a corporation, limited liability company or other entity whose stated duration will expire prior to the end of the renewal term.

## MINIMUM GROUND RENT

**Initial Rent:** Tenant shall pay monthly rent in the amount of Two Thousand Five Hundred US Dollars and No Cents (\$2,500.00 USD) ("Base Rent") plus Washington State Leasehold Tax, provided leasehold tax will be adjusted consistent with adjustments by the Department of Revenue, if any, and applicable Common/Operational charges described below.

**Rent Adjustments:** Base Rent shall be automatically adjusted on February 1st of each year by an increase of two percent (2%) during the Initial Term.

**Appraisal – Rent Adjustment:** On the 15<sup>th</sup> anniversary of the Land Lease the Port and Tenant shall ascertain the fair market value for base rent via appraisal pursuant to Section 33, **APPRAISAL PROCEDURE** and rent shall be adjusted based on the then Port Commission policy, but in no event shall the rent be reduced or less than the rent amount at the time of the appraisal.

**Option Period Rent:** Tenant's notice to the Port of its intent to exercise its Option to Extend shall include Tenant's nomination of an appraiser to appraise the Premises to determine appropriate base rent for the extension term. The Port and Tenant shall ascertain the fair market value for base rent during the extension term via appraisal pursuant to Section 33, **APPRAISAL PROCEDURE**.

Rental adjustments for the extension term shall be in accordance with the then current Port Commission Policy.

## RENT COMMENCEMENT DATE

- Rent shall commence upon Tenant's occupancy of the building located on the Premises.
- The earliest to occur of (a) date Tenant receiving a temporary Certificate of Occupancy issued by the City of Tumwater or (b) fourteen (14) months from the Lease Commencement Date, whichever occurs first.

## LEASE SECURITY

Tenant shall deposit a lease security in accordance with Section 5 of the Lease, in an amount equal to one (1) year's base rent plus Washington State Leasehold Excise Tax and Operating Cost, in a form acceptable to the Port, and adjusted to reflect rental adjustments and other changes to this Lease. Initial amount shall be Fourty Thousand Six Hundred Fourty-Two Dollars and No Cents (**\$40,632.00 USD**), the annual rent plus Washington State Leasehold Excise Tax of 12.84% and annual Common

Area Maintenance). The initial security amount shall be posted with the Port by the date of execution of the Lease by Tenant. Any change in security shall be posted with the Port at least thirty (30) days prior to the effective date of such change. Any surety posted as security may not expire prior to ninety (90) days after satisfaction of all obligations under this Lease.

#### USE OF PREMISES

Tenant may use the Premises for re-purposing the existing building to operate office, retail, commercial services, with the exception of a pizza restaurant/eatery, yoga instruction, martial arts, religious services of any kind, childcare, as approved by the City of Tumwater and all intended uses shall be reviewed and approved by the Port and are subject to the Cleanwater Centre zoning under the City of Tumwater zoning codes.

#### INSURANCE

Tenant shall maintain insurance with the following coverage and limits:  
Bodily Injury/Death: Combined Single Limit \$1,000,000 each occurrence.  
Property Damage per Occurrence: \$500,000.

Tenant shall submit certificates evidencing compliance with Section 14, and at the Port's request shall provide the Port with 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.

#### ASSIGNMENT, SUBLEASE, OR LEASE MODIFICATION.

Tenant may not assign its rights under this Lease or sublet the Premises without the Port's consent, which consent shall not be unreasonably withheld. Tenant shall be subject to a fee for any request for assignment, sublease, or modification of this Lease as stated in Port Commission Fee Schedule.

#### REAL ESTATE COMMISSIONS AND FEES (IF APPLICABLE)

Except as set forth above, each party represents and warrants that it has not dealt with any other broker or other person to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement, and that insofar as it knows, no broker or other person is entitled to any commission, charge, or fee in connection with the transactions contemplated by this Agreement. Each party agrees to indemnify, defend, and hold harmless the other party against any loss, liability, damage, cost, claim, or expense, including interest, penalties, and reasonable attorney fees that the other party shall incur or suffer by reason of a breach by the first party of the representations and warranties set forth in the preceding sentence.

#### ADDITIONAL PROVISION

- A. **Purchase & Sale Agreement.** Concurrently with execution of this Lease, the Parties shall enter into a Purchase and Sale Agreement for the purchase and sale of the improvements located on the Premises, which Purchase and Sale Agreement is attached hereto as **Exhibit "F"**. The Purchase and Sale Agreement for the existing improvements shall close within three (3) days of Ratification of the Lease by the Port Commission, or as may be mutually agreed to by the Parties,

but in no event later than **February 15, 2024**. In the event the Purchase and Sale Agreement for the existing improvements fails to close, this Lease shall terminate.

- B. **Permits and Certificate of Occupancy.** Tenant shall provide copies of permits during the building process and a final Certificate of Occupancy upon issuance by the City of Tumwater.
- C. **Common Area:** Tenant shall have the non-exclusive right, in common with other tenants of the Cleanwater Centre, to use the Common Areas (defined below). Tenant shall comply with all rules and regulations adopted by the Port from time to time regarding the Common Areas and shall use its best efforts to cause its employees, contractors, and invitees to comply with those rules and regulations, and not interfere with the use of Common Areas by others. "Common Areas" means all areas, facilities and building systems that are provided and designated from time to time by the Port for the general non-exclusive use and convenience of Tenant with other tenants and which are not leased or held for the exclusive use of a particular tenant. Common Areas include driveways, walkways, loading areas, trash facilities, parking areas roadways, pedestrian sidewalks, landscaped areas, security areas, mall areas, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Without advance notice to Tenant and without any liability to Tenant, the Port may change the size, use, or nature of any Common Areas, erect improvements on the Common Areas, or convert any portion of the Common Areas to the exclusive use of Port or selected tenants, so long as Tenant is not thereby deprived of the substantial benefit of the Premises. The Port reserves the use of exterior systems and the right to install, maintain, use, repair, and replace pipes, and wires leading through the Premises in areas which will not materially interfere with Tenant's use thereof. In making changes or improvements to the Common Areas, the Port may use or temporarily close any of the Common Areas or permanently change their configuration and shall use reasonable efforts to minimize interference with Tenant's normal activities, but no such interference shall constitute constructive eviction or give rise to any abatement of rent or liability of the Port to Tenant.
- D. **Operating Costs and Common Area Maintenance Charges:** Except as otherwise expressly provided herein, the parties intend that the Port receive all Base Rent free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to Base Rent, Tenant shall pay to the Port all other impositions, insurance premiums, repair and maintenance charges, and any other charges, costs, obligations, liabilities, requirements, and expenses, including without limitation the Operating Costs and Common Area Maintenance Charges described below, which arise with regard to the Premises or may be contemplated under any other provision of the Lease during its term, except for costs and expenses expressly made the obligation of the Port in this Lease.

During the Initial Lease Year, Tenant shall pay Operating Costs and Common Area Maintenance Charges for the Premises of \$1.13/s.f./year, payable one-twelfth (1/12) each month at the same time as Base Rent ( $\$1.13 \times 6,000 \text{ s.f.} \times 1/12 = \text{\$565.00 per month}$ ). At or around the beginning of each Lease Year thereafter, the Port shall give Tenant a good faith estimates of Tenant's pro-rata share of Operating Costs and Common Area Maintenance Charges for such year, and Tenant shall pay one-twelfth (1/12) of such amount each month during such Lease year at the same time as Base Rent.

By April 15<sup>th</sup> each year, the Port shall determine and provide to Tenant a statement setting forth the amount of Operating Costs and Common Area Maintenance Charges actually incurred, and the amount of Tenant's pro-rata share of such costs payable by Tenant with respect to the prior Lease Year. If the amount of Tenant's pro-rata share of such costs exceeds the sum of the

monthly installments actually paid by Tenant for such Lease Year, Tenant shall pay to the Port the difference within thirty (30) days following receipt of the statement. If the sum of the monthly installments actually paid by Tenant for such Lease Year exceeds the amount of Tenant's pro-rata share of such costs, the difference shall be applied as a credit to Tenant's future pro-rata share of such costs payable by Tenant pursuant to this section, or if the term of this Lease has expired, the excess shall be refunded to Tenant within thirty (30) days after delivery of such statement.

**Lease pro-rata share being 1/8 of the Common Area Cost of Lot 1.**

If Tenant disputes any amount shown on the Operating Costs and Common Area Maintenance Charges statement, Tenant may, at Tenant's sole expense, audit the Port's books and records for the Lease Year covered by such statement upon written notice to the Port given within thirty (30) days after Tenant's receipt of such statement. If Tenant fails to provide notice of dispute within such thirty (30) day period, the statement shall be deemed accepted by Tenant as final and conclusive. Tenant shall complete any audit conducted pursuant to this provision within sixty (60) days following Tenant's request therefore. If the results of Tenant's audit determine the amount of Tenant's pro-rata share of such costs exceeded the sum of the monthly installments actually paid by Tenant for such Lease Year, Tenant shall pay to the Port the difference within thirty (30) days following completion of the audit. If the sum of the monthly installments actually paid by Tenant for such Lease Year exceeds the amount of Tenant's pro-rata share of such costs actually due and owing, the difference shall be applied as a credit to Tenant's future pro-rata share of such costs payable by Tenant pursuant to this section, or if the term of this Lease has expired, the excess shall be refunded to Tenant within thirty (30) days after completion of the audit. The Port and Tenant shall cooperate as may be reasonably necessary in order to facilitate the timely completion of any audit. Nothing in this section shall in any manner modify Tenant's obligations to make payments as and when provided under this Lease.

"Operating Costs and Common Area Maintenance Charges" as used in this Lease shall mean all costs of operating, maintaining, and repairing the Premises and the Cleanwater Centre, determined in accordance with generally accepted accounting principles, and may include, without limitation, the following: all taxes and assessments (including, but not limited to, real and personal property taxes and assessments, local improvement district assessments and other special purpose assessments, and taxes on rent or gross receipts (other than Washington State leasehold excise tax)); insurance premiums paid by the Port and (to the extent used) deductibles for insurance applicable to the Cleanwater Centre; utilities serving the Cleanwater Centre such as water, sewer, and all other utility charges (other than utilities separately metered and paid directly by Tenant or other tenants); refuse and trash removal; supplies, materials, tools, and equipment used in the operation, repair, and maintenance of the Cleanwater Centre; to the extent serving areas other than just the Premises, pest control; lighting systems, fire detection, and security services; landscape maintenance; management (fees and/or personnel costs); parking lot, road, sidewalk, and driveway patching, resurfacing, and maintenance; snow and ice removal; repair, maintenance, and, where reasonably required, replacement of signage; amortization of capital improvements as the Port may in the future install to comply with governmental regulations and rules or undertaken in good faith with a reasonable expectation of reducing operating costs (the useful life of which shall be a reasonable period of time as determined by the Port); costs of legal services (except those incurred directly relating to a particular occupant of the Cleanwater Centre); and accounting services, labor, supplies, materials and tools.

Operating Costs and Common Area Maintenance Charges shall not include: the Port's income tax or general municipal overhead; real estate broker's commissions; or any costs regarding the operation, maintenance and repair of the Premises or the Cleanwater Centre paid directly by Tenant or other tenants in the Cleanwater Centre, or otherwise reimbursed to the Port. If Tenant

is renting a pad separate from any other structures in the Cleanwater Centre for which the Port separately furnishes the services described in this section, then the term "Operating Costs and Common Area Maintenance Charges" shall not include those costs of operating, repairing, and maintaining the Cleanwater Centre, which can be separately allocated to the other tenants of the other pads. Operating Costs and Common Area Maintenance Charges which cannot be separately allocated to the tenants of other pads may include but are not limited to: insurance premiums; taxes and assessments; management (fees and/or personnel costs); exterior lighting; parking lot, road, sidewalk, and driveway patching, resurfacing, and maintenance; snow and ice removal; and costs of legal services and accounting services.

CONFLICTING PROVISIONS

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

## TABLE OF CONTENTS

<u>PARAGRAPH</u>	<u>PAGE</u>
1. LEASE SUMMARY .....	1
2. PREMISES .....	9
3. TERM .....	9
4. RENT .....	9
5. LEASE SECURITY .....	9
6. ACCEPTANCE OF PREMISES .....	9
7. POSSESSION .....	10
8. USE OF PREMISES .....	10
9. REQUIREMENTS AS TO IMPROVEMENTS .....	10
10. RIGHTS-OF-WAY .....	10
11. RESERVATION OF RIGHTS .....	11
12. AIR SPACE RESERVATIONS AND USE RESTRICTIONS .....	11
13. UTILITIES AND SERVICES .....	11
14. INDEMNIFICATION/LIABILITY INSURANCE .....	12
15. WAIVER OF SUBROGATION .....	13
16. TAXES .....	13
17. MAINTENANCE AND REPAIR .....	13
18. ALTERATIONS AND IMPROVEMENTS -- SIGNAGE .....	14
19. DISPOSITION OF IMPROVEMENTS .....	14
20. INSPECTION .....	15
21. RESTORATION .....	15
22. DEFAULTS .....	16
23. ADVANCES BY PORT FOR TENANT .....	17
24. HOLDING OVER .....	17
25. ASSIGNMENT OR SUBLEASE .....	17
26. COMPLIANCE WITH PORT REGULATIONS/ALL LAWS .....	18
27. HAZARDOUS SUBSTANCES .....	18
28. STORAGE TANK LICENSES .....	20
29. INSPECTIONS AND NOTICE OF CHANGE .....	20
30. EMINENT DOMAIN .....	20
31. INSOLVENCY .....	21
32. ATTORNEY'S FEES AND COSTS .....	21
33. APPRAISAL PROCEDURE .....	21
34. ARBITRATION PROCEDURE .....	22
35. JOINT AND SEVERAL LIABILITY .....	22
36. INVALIDITY OF PARTICULAR PROVISIONS .....	22
37. NOTICES .....	22
38. WAIVER .....	23
39. BINDING .....	23
40. NO RECORDING .....	23
41. REAL ESTATE COMMISSIONS AND FEES .....	23

EXHIBIT "A" -- MAP OF PREMISES and LEGAL DESCRIPTION

EXHIBIT "B" -- REQUIREMENTS AS TO IMPROVEMENTS

EXHIBIT "C" -- LESSOR'S CONSENT AND AGREEMENT

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

EXHIBIT "E" -- DEVELOPMENT GUIDELINES

EXHIBIT "F" -- PURCHASE AND SALE AGREEMENT

EXHIBIT "G" -- PARKING FOR SPACE LEASES IN THE CLEANWATER CENTRE

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**2. PREMISES.**

The Port hereby leases to Tenant, and Tenant hereby leases from the Port, the Premises described in Section 1, **LEASE SUMMARY** above.

**3. TERM.**

This Lease shall be for the term specified in Section 1, **LEASE SUMMARY** above.

**4. RENT.**

4.1. It is the intention of the parties hereto that the rent specified in this Lease shall be net to the Port in each year during the term of the Lease. Accordingly, all costs, expenses and obligations of every kind relating to the Premises (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 Tenant shall indemnify the Port against such costs, expenses and obligations. All such costs, expenses, and obligations and payments coming due hereunder shall be deemed as "additional rent".

4.2. Tenant shall pay as rent for the use and occupancy of the Premises during the term of this Lease, without deduction or offset, the Base Rent specified in Section 1, **LEASE SUMMARY** 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.

4.3. 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.

**5. LEASE SECURITY.**

Tenant shall, upon execution of this Lease, file with the Port a good and sufficient security in the form of a bond, letter of credit, cash deposit, or other security acceptable to the Port in its sole discretion, in accordance with the requirements of state law RCW 53.08.085 and Section 1, **LEASE SUMMARY** above. The form and terms of the security and the identity of the surety shall be subject to approval of the Port, and the security 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 security instrument having an expiration earlier than the full lease term shall be automatically renewable. Any company issuing such a security instrument must give the Port at least ninety (90) days advance written notice prior to the effective date of cancellation or expiration of such security instrument. These provisions as to lease security 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 Section 1 above and shall not use them for any other purpose without the prior 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 Premises are attached hereto as Exhibit "B" 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 Premises, Tenant shall furnish a survey of the appropriate 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, on reasonable terms and conditions, for the installation and maintenance of necessary and adequate services to the Premises, 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 rights of way upon, over, across, onto or beneath the above-described lands for access ways, driveways, and other roads, pole and wire lines, gas, water and sewage pipes and mains, conduits, and other utilities, and 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 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 and perpetual easement or easements that the Port believe are necessary within the 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.**

There is hereby reserved to the Port, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said air space or landing at, taking off from or operating on the Olympia Regional Airport. Tenant, its successors and assigns, will not erect or permit the erection of any structures nor permit the growth of any tree thereon which would exceed the height limitations set forth in the "Zoning Ordinance", Olympia Regional Airport, Master Plan Update, Thurston County, Washington, dated November, 1996, and as may be amended from time to time. Tenant, its successors and assigns, will comply in all respects with said zoning ordinance, which is hereby made a part of this Lease. Tenant expressly agrees for itself, its successors and assigns to restrict the height of structures, objects or natural growth and other obstructions on the Premises to a maximum height as determined by applicable Federal Aviation Administration standards as currently in effect or as may be hereafter issued or amended.

Tenant expressly agrees for itself, its successors and assigns to prevent any use of the Premises described which would interfere with landing or taking off of aircraft at the Olympia Regional Airport or otherwise constitute an airport hazard as may be determined by the Port or the Federal Aviation Administration (FAA) or any similar agency having jurisdiction over operations at the Olympia Regional Airport. The prohibited use of the Premises referred to in this paragraph includes causing any visual obstruction or radio or similar emission that may tend to interfere with the operations at the Olympia Regional Airport.

If the Premises are located within the approach zone to the Olympia Regional Airport, Tenant would therefore be subject to substantial use restrictions for the benefit of such airport and its uses. In view of these restrictions, Tenant may not sublease the property until such sublessee shall have received written permission from the Port as to the nature and extent of the use to which such the sublessee intends to devote the property in order to ensure that such intended use will not in any way interfere with the operation of the Olympia Regional Airport.

Tenant acknowledges that noise from both flight and non-flight operations may be generated from activities at the Olympia Regional Airport and by other tenants of the Port. Tenant is taking the Premises subject to such condition, whether now existing or hereafter arising, and hereby waives all claims (including, without limitation, claims for damages, nuisance or injunctive relief) relating thereto; provided, however, that Tenant does not waive any right to have applicable statutes and regulations regarding noise enforced.

**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, licensees, 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 employees, agents, contractors, subcontractors, suppliers, customers, licensees, or invitees. 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 Tenants use of the Premises ~~or out of any occurrence in or upon the Premises~~, during the term of this Lease, 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 persons or damage to property caused by or resulting from the concurrent negligence or willful act or omission of Tenant and Port, its officers, officials, employees, agents, contractors, or volunteers, the Tenant's and Port'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 the Port, its principals, agents, contractors, or employees. This indemnification and hold harmless shall include reasonable attorney 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 or its equivalent 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; pollution liability; 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. 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 by time of execution of the Lease by Tenant, and at the Port's request shall provide the Port with 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 the Port 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 Port'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 and the buildings, structures and other improvements located on the Premises, and the adjoining roadways, sidewalks and areas, in a neat, clean, safe, sanitary, and good condition, 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 any improvement on 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 fixtures and improvements of at least as good a quality as existed at the commencement of this Lease. If Tenant fails to properly maintain or repair the Premises or any improvements thereon, the Port shall be entitled, but shall not be obligated, to enter the Premises after notice to Tenant and the expiration of any applicable cure period, and perform such work as may be necessary to restore the 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 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".

Unless otherwise consented to by the Port, 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 Section 34, **ARBITRATION PROCEDURE**.

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

**18.1 Alterations and Improvements.** Tenant shall make no alterations to 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 or alterations. All improvements, as defined in Exhibit "B," to the Premises shall be constructed in accordance with Section 9 herein. 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 Section 19, **DISPOSITION OF IMPROVEMENTS**. Any dispute under this section shall be subject to arbitration under Section 34, **ARBITRATION PROCEDURE**.

**18.2 Signage.** 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 any 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 written approval prior to installation; (ii) any covenants, conditions or restriction encumbering the Premises and (iii) any applicable municipal permits and approvals.

## **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 properly graded, filled, compacted, level, and uniform condition, free from all debris, and in accordance with all applicable law and all provisions of this Lease, including but not limited to Section 27, **HAZARDOUS SUBSTANCES**.

b. If the Port, in its sole discretion, elects to have all or any portion of the improvements remain on the Premises, then title to the same shall automatically pass to the Port, free of any right, title, or interest of Tenant therein, or its successors or assigns, without the necessity of executing any further instrument and without any allowance, compensation, or payment by the Port. Tenant hereby grants and conveys to the Port all of its right, title and interest in and to such improvements, to be effective for all purposes only upon the

expiration or termination of this Lease and the Port's election to have such improvements remain upon the Premises. Upon such election by the Port, Tenant further agrees to execute, acknowledge and deliver to the Port contemporaneously with the expiration or termination of this Lease, a proper recordable instrument quit claiming and releasing to the Port to any right, title and interest of Tenant in and to the Premises and in and to all improvements remaining on the Premises pursuant to the election of the Port, and agrees to give such further assurances of title as may be required by the Port. In addition, upon such election by the Port, Tenant shall, upon expiration or termination of the lease, surrender and deliver the Premises and all improvements to remain on the Premises to the Port, without delay and in good order, condition and repair, ordinary wear and tear excepted, and in a neat and clean condition, excepting only Tenant's or any subtenant's movable trade fixtures, machinery, equipment and personal property that can be removed without injury to the Premises. Tenant shall also deliver to the Port all documents necessary or appropriate for the proper operation, maintenance and management of the Premises and remaining improvements.

c. Any dispute under this section shall be subject to arbitration under Section 34, **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 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 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. Tenant shall provide the Port and each other party designated by the Port with certificates of insurance evidencing such coverage, and at the Port's request shall provide copies of the actual policies. Tenant 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 Premises, with limits based on the reasonable value thereof.

b. If any building or improvement erected by Tenant on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Tenant shall, at its own cost and expense, either (i) repair or restore the same according to the original plans thereof, or (ii) repair or restore the same according to such modified plans as shall be previously approved in writing by the Port. Tenant shall elect whether to proceed under (i) or (ii) above. 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 no later 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 Premises. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or

restoration. 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 or restoration 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 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 Premises shall be damaged by fire or other casualty, and if the cost of repairing or restoring the same as provided above 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 provided above, or to terminate this Lease by written notice thereof to the Port.

d. Any dispute under this section shall be subject to arbitration under Section 34 **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 Section 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. At the Port's option, Tenant shall pay such deficiency each month as the amount thereof is ascertained by the Port, or the Port may accelerate all future payments and Tenant shall pay the present value of all future payments at once. 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 Tenant'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. Port 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, limited liability company, limited partnership, partnership, or other form of entity or association, Tenant further agrees that if at any time during the term of this Lease, more than one-half (1/2) of the outstanding beneficial interests of any class of interest in Tenant, or the managerial control of Tenant, shall belong to any persons other than those who hold such interests or managerial control at the time of the execution of this Lease, such change shall be deemed an assignment of this Lease within the meaning of this paragraph. **Upon any sublease of the Premises or any part thereof, Tenant shall include the following provision in the sublease:**

*Port Ground Lease. Lessee understands, acknowledges, and agrees that Lessor's right to the real property on which the Premises are located are pursuant to a Ground Lease between Lessor and the Port of Olympia, a copy of which is attached as Exhibit \_\_\_ hereto. Lessee understands, acknowledges, and agrees that it shall be bound by all provisions in the Ground Lease to which Lessor is subject, including but not limited to provisions related to protection of air space, environmental provisions, and any limitation on use of the property and Premises. Lessee acknowledges that it has had an opportunity to review the Ground Lease in its entirety and takes no exceptions to any provisions therein.*

Notwithstanding any assignment or sublease, 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. Tenant shall pay all reasonable costs and attorney fees incurred by the Port with respect to any request by Tenant for assignment, sublease, or other encumbrance or transfer of this Lease or the Premises or any interest therein.

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

Tenant agrees to comply with all applicable rules and regulations of the Port pertaining to the Premises and the Cleanwater Centre or other realty of which the Premises are or may become a part, and 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. Tenant further agrees to comply with all applicable federal, state and local laws, rules, regulations, ordinances, permits, orders, and decrees, including, without limitation, those relating to environmental matters, and Americans with Disabilities Act, as currently in effect or as may be hereafter amended or issued. Tenant shall defend, indemnify, and hold harmless the Port from and against all claims, costs, fees, fines, penalties, liabilities, losses, and damages incurred by the Port by reason of any charge, claim, litigation, or enforcement action related to any actual or claimed violation by Tenant of any of the laws, rules, regulations, ordinances, permits, orders and/or decrees referenced in this section. Costs and fees shall include, but not be limited to, all direct and indirect costs and professional fees, including engineering, consultant, and attorney's fees. Any fees for any federal, state or local inspections and/or certificates required for use and occupancy of the Premises shall be paid by Tenant. The Premises are located at the Cleanwater Centre and Tenant agrees to conform and to comply with all rules and regulations related to the Cleanwater Centre as now promulgated or as may be amended in the future, including without limitation, the Development Guidelines attached to this Lease as Exhibit "E".

## 27. HAZARDOUS SUBSTANCES.

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

(a) As used in this Section, "Hazardous Substances" means any chemical, substance, material, waste, vapor, or similar matter defined, classified, listed or designated as harmful, hazardous, extremely hazardous, dangerous, toxic, radioactive, or pollution, 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, rule, regulation, or ordinance presently in effect or that may be promulgated in the future, and as they may be amended from time to time.

(b) As used in this Section, "Other Property" means any real or personal property other than the Premises (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 Premises.

(c) Tenant shall apply for and obtain all necessary federal, state, and local permits and approvals for Tenant's use of the Premises. Tenant shall not commence any activity on the Premises until all permits and approvals required for such activity have been issued and shall conduct all activities on the Premises in compliance with such permits and approvals.

(d) Tenant agrees and warrants for itself and its employees, agents, representatives, contractors, subcontractors, licensees, invitees, subtenants, and assigns (collectively "Tenant's Representatives"), that Tenant and Tenant's Representatives will comply with all applicable federal, state, and local laws, rules, regulations, ordinances, permits, orders, and decrees relating to the generation, recycling, treatment, use, sale, storage, handling, transport, disposal, release, and cleanup of any Hazardous Substances by any person on the Premises or other Port property (collectively "Environmental Laws"). In addition, Tenant and Tenant's Representatives will not, without the Port's prior written consent, keep on or around the Premises or any common areas, for use, disposal, treatment, generation, storage, or sale, any Hazardous Substances.

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

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

(ii) Make available for the Port's review during normal business hours, true and correct copies of all reports, manifests and identification numbers retained by Tenant or submitted to appropriate

governmental authorities, and all documents and communications received from any government agencies, and provide copies to the Port of all documents requested by the Port at no cost to the Port within five (5) business days of the Port's request;

(iii) Within five (5) business days of a written report from the Port, submit a written report 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 applicable Environmental Laws;

(iv) Allow the Port or the Port's agents or representatives to come on the Premises at all reasonable times to check Tenant's compliance with all applicable Environmental Laws; and

(v) Comply with all applicable Environmental Laws, and all requirements and standards established by federal, state, or local governmental agencies responsible for or specifically charged with the regulation of Hazardous Substances.

(f) 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 Premises.

(g) Tenant agrees to immediately notify the Port if Tenant becomes aware of (a) any release of any Hazardous Substances or any other environmental issue or liability with respect to the Premises or any Other Property; or (b) any lien, action or notice resulting from violation of any Environmental Laws. At its own cost, Tenant will take all actions which are necessary to notify relevant and appropriate authorities of any such release and to remediate any Hazardous Substances affecting the Premises, including removal, containment or any other remedial action, whether or not required by governmental authorities.

(h) If Tenant is in non-compliance with any Environmental Laws or is in non-compliance with this Section, it shall promptly take such action as is necessary to mitigate and correct the non-compliance. If Tenant fails to act in a prudent and prompt manner, the Port shall have the right, but not the obligation, to enter the Premises and 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 address or mitigate the non-compliance. 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. Without limiting the foregoing, in the event of Tenant's non-compliance with any requirements in subsections (e)(i) – (v) above, any and all costs incurred by the Port with respect thereto, including but not limited to costs of inspections, monitoring, and attorney fees, shall become immediately due and payable as additional rent upon presentation of an invoice therefor.

(i) Tenant shall be fully and completely liable to the Port for, and shall defend, 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 costs and professional fees, including engineering, consultant, and 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 Premises during Tenant's possession or control of the Premises which directly or indirectly result in the Premises or any Other Property becoming contaminated with Hazardous Substances or otherwise violating any applicable Environmental Laws, and (d) the cleanup of Hazardous Substances at or from the Premises or any Other Property to a level sufficiently protective of human health and the environment in compliance with all applicable Environmental Laws. 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 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.

(j) Tenant's obligations under this Section 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: (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.

(k) Upon expiration or sooner termination of this Lease, Tenant shall have removed from the Premises any Hazardous Substances, contaminated soils or other contaminated or hazardous materials or substances deposited thereon by Tenant in a manner that complies with all applicable Environmental Laws. 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 Section 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 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 Premises and have been properly and lawfully disposed of, and the Premises have been cleaned up to a level that meets all applicable Environmental Laws.

## **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 "D" 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 the Port 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 the Port with a certificate of insurance evidencing Tenant's compliance with insurance requirements applicable to storage tanks. Tenant shall pay any and all costs necessary to comply with the terms of any license required under this section and the costs of complying with any other legal or regulatory requirements associated with Tenant's storage of materials identified in Exhibit "D."

## **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 Sections 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. Tenant shall annually identify any materials listed in Exhibit "D" 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 the Port 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 the Port 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 Base Rent shall be reduced proportionately. All proceeds from any taking or condemnation shall be paid to Port 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. 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.

### **33. APPRAISAL PROCEDURE.**

The fair market value of the property shall be determined by an appraisal conducted by an independent appraiser selected by Tenant and approved by the Port, of which approval will not be unreasonably withheld. 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" means a member in good standing of the Appraisal Institute, or equivalent professional organization. In conducting an appraisal of the Premises, 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 fails to choose an appraiser at least one-hundred and eighty (180) days prior to the date an appraisal is needed for a rental revision, the Port may choose an appraiser.

#### **34. 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 section. 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.

#### **35. 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.

#### **36. 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.

#### **37. 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**  
606 Columbia Street NW, Suite 300  
Olympia, WA 98501

To the Tenant:  
**Launch Negotiations LLC**  
206 Tumwater Blvd  
Tumwater WA 98506  
503-422-5970  
[russpet14310@gmail.com](mailto:russpet14310@gmail.com)

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.

**38. 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 Section 22, **DEFAULTS**.

**39. BINDING.**

Subject to Section 25, **ASSIGNMENT OR SUBLEASE** above, this Lease is binding upon the parties hereto, their heirs, personal representatives, successors in interest and assigns.

**40. NO RECORDING.**

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

**41. REAL ESTATE COMMISSIONS AND FEES.**

Any real estate commissions or fees related to this Lease, and claims related thereto, shall be handled in accordance with **Section 1, LEASE SUMMARY** above.

**SIGNATURES ON THE NEXT PAGE**

**PORT:**

**PORT OF OLYMPIA, a Washington  
Municipal corporation**

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



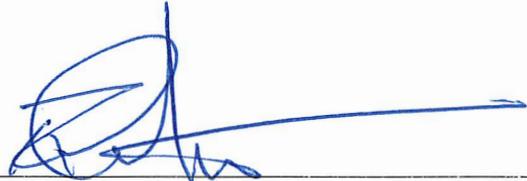
Robert Rudolph, Jr.

Interim Executive Director

**TENANT:**

**LAUNCH NEGOTIATIONS LLC**

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



Ruslan Petrusha

Owner / Member

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

2/15/24

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

01/24/24

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF THURSTON )

On this 15<sup>th</sup> day of February, 2024, personally appeared before me **ROBERT RUDOLPH, JR.** To me known to be the Interim Executive Director at the Port of Olympia, the municipal corporation named in the within and foregoing **Lease Agreement**, and acknowledged to me that she signed the same on its behalf, as she is so authorized to do, as her 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.

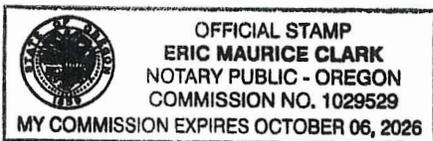


Melissa Anne Goodell  
(Print Name) Melissa Anne Goodell  
NOTARY PUBLIC in and for the State of Washington,  
residing at Olympia  
My commission expires: 5/13/2026

STATE OF OREGON )  
 ) ss  
COUNTY OF CLACKAMAS )

On this 24<sup>th</sup> day of January, 2024, personally appeared before me **RUSLAN PETRUSHA**, to me known to be the OWNER at the entity named in the within and foregoing **Lease Agreement**, and acknowledged to me that they signed the same on its behalf, as they are so authorized to do, as their 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.



Eric Maurice Clark  
(Print Name) Eric Maurice Clark  
NOTARY PUBLIC in and for the State of Washington, OREGON,  
residing at SANDY, OR  
My commission expires: OCTOBER 06, 2026

**RATIFICATION**

This **Lease** shall be subject, as a condition subsequent, to ratification by the Port of Olympia Commission within thirty (30) days after the date set forth on Page 1. This Lease shall be effective and binding on the parties until such time (and thereafter if ratified), the Executive Director having the authority to sign this Lease and bind the Port to all of its material terms. If this Lease is not ratified, it shall terminate and be of no further force and effect.

The undersigned confirms that this Lease was ratified by the Port of Olympia Commission on \_\_\_\_\_, 2024.

Port of Olympia Commission

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

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

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

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF THURSTON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the Port of Olympia Commission, the municipal corporation named in the within and foregoing **Lease Agreement**, and acknowledged to me that they signed the same on its behalf, as they are so authorized to do, as their 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  
LEASE PREMISES**

**(206 Tumwater Boulevard)**



LEASE PREMISES  
LEGAL DESCRIPTION

(206 Tumwater Boulevard)

That portion of Lot 1 of City of Tumwater Short Plat SS-19-0710-TW, as recorded under Auditor's File No. 4731596, records of Thurston County, Washington, particularly described as follows:

Commencing at the Southwest corner of said Lot 1; Thence N 37°17'00" W along the West line of said Lot 1, 238.47 Feet and N 01°49'12" E, 122.60 feet; Thence S 88°10'48" E, 234.19 feet to the Southwesterly most corner of "Building 206" Tumwater Boulevard" and the True Point Of Beginning; Thence S 88°11'26" E along the South line of said building, 60.63 Feet to the Southeast corner of said building; Thence N 01°29'41" E along the East line of said building, 100.33 Feet to the Northeast corner of said building; Thence N 88°14'09" W along the North line of said building, 60.11 Feet to the Northwest corner of said building; Thence S 01°47'29" W along the West line of said building, 100.28 Feet to the True Point of Beginning.

Lease area approximately 6,030 Sq.Ft.

**EXHIBIT B**  
**REQUIREMENTS AS TO IMPROVEMENTS**

These conditions relating to improvements in this Exhibit "B" 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 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 Premises, or with the Port Master Plan or other plans or criteria for the Premises in the general area in which the 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 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 Premises of all utilities required by Tenant's use of the Premises, assuming such utility services are available to the 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 Premises, Tenant, at Tenant's sole cost, shall pay for the extension of such utilities to the 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 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 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 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 C**  
**LESSOR'S CONSENT AND AGREEMENT**  
**(For Financing Purposes)**

Description of Ground Lease.

“Port”	The Port of Olympia
“Tenant”	_____
“Lease”:	Ground Lease dated _____
“Leasehold”:	Tenant's interest in the Lease
“Lender(s)”:	_____
	_____
	_____
	_____

NOW, THEREFORE, the Port represents, warrants, covenants and agrees as follows:

1. **Consents.** the Port 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 the Port under the Lease or (b) to the knowledge of the Port, 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 the Port, no event has occurred which now does or hereafter will authorize the Port 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 the Port 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. The Port 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 the Port, subject to the requirements of Section 6.4 below.

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

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

5. **Surrender of the Premises.** No surrender of the Premises or any other act of Tenant shall be deemed to terminate the Lease and the Port 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 the Port the right to terminate, modify, amend or shorten the term of the Lease, the Port 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 the Port or its agent to or upon Tenant pursuant to the Lease shall be sent contemporaneously to Lender in accordance with **Section 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 the Port 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 the Port desiring to terminate the Lease, the Port 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 the Port 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, the Port shall take no action to terminate the Lease if:

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

(b) Lender notifies the Port 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 the Port at time of notification all back rent or other monies or performances due that may be in default up to the date Lender notifies the Port of Lender's intent and further pays all rent that accrues during the period after Lender so notifies the Port and completes such other performances that may be required or come due under the Lease.

The Port 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 Port 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 the Port 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 the Port for such assignment or transfer, which consent will not be unreasonably withheld or delayed provided that Lender has disclosed to the Port (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 the Port 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.** The Port shall be named as an additional insured under any of Tenant's casualty policies on the Premises to the extent of the interests limited in this Section 7. Should the Premises suffer any loss which is covered by casualty insurance, and the insurance proceeds are used to restore any improvements made by Tenant, the Port agrees that Tenant and Lender shall have the right to such proceeds so long as none of the Port's property, utilities or other services therein are damaged or such damages are repaired. In the event the Premises are substantially damaged and Tenant's improvements have been repaired, the Port shall only participate in the insurance proceeds to the extent necessary to repair and restore the Port's ground and any of the Port'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, the Port has the option of requiring Tenant to demolish the improvements at the end of the Lease term, or to have Tenant convey title to the Port Tenant's interests in the Leasehold Improvements. In the event Premises and the Leasehold are so severely damaged that Tenant's and Lenders' decision is not to repair or restore the Premises, the Port shall participate in the insurance proceeds to the extent necessary to remove the remainder of the damaged improvements and to restore the 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, the Port 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 the Port'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 Premises or the interests of Tenant or Lender therein, including without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. The Port, 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.

10. **Right to Remove Collateral.** In the event Lender exercises its rights under its collateral and realizes upon the collateral, the Port agrees that Lender is entitled to remove Tenant's furniture, movable trade fixtures and equipment installed by Tenant from the 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 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, the Port 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 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 the Port 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 the Port:

Port of Olympia  
606 Columbia St. NW, Suite 300  
Olympia, Washington 98501  
Attn: Real Estate Operations

IN WITNESS WHEREOF, the Port 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**

**EXHIBIT "D"**

***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 "E"**

**DEVELOPMENT GUIDELINES**

**EXHIBIT "F"**

**PURCHASE AND SALE AGREEMENT FOR IMPROVEMENTS**

## EXHIBIT "G"

### CLEANWATER CENTRE SPACE LEASE PARKING

**Parking.** The Port agrees that it will provide to Tenant sufficient parking to support its operation of commercial and retail uses, in approximately 6,000 s.f. facility in the Port's Cleanwater Centre ("Centre"), commonly known as **204 Tumwater Boulevard SW, Tumwater, WA 98501**, during the term of the Lease and any renewals hereof. Tenant acknowledges that the parking area shown on this **Exhibit F, Page 2**, incorporated as part of the Lease (which includes not less than 236 shared parking stalls, as shared with all tenants of the Cleanwater Centre), and given the hours of operations of commercial/retail/office building, will be sufficient to support such Tenant's operation.

It is understood and agreed that the parking requirement for Tenant's operation as mandated by the City of Tumwater's development standards is \_\_\_\_\_ stalls including \_\_\_\_ ( ) ADA parking stalls in the immediate proximity of the commercial/retail/office building.

Tenant further acknowledges and agrees that the parking lot included within the common areas (236 stalls) are subject to the Lease, was constructed solely to meet the needs of tenants of the Port for that property, identified as Lot 1 attached here to and by reference incorporated herein. Tenant further agrees and acknowledges that no development on Port property, other than such Lot 1 property, shall share the use of the parking areas. Port further agrees that it will act reasonably by exercising management and control of the parking lot. Tenant shall not be permitted to use the parking area for any other purpose without the explicit written approval by the Port.

**Non-Dedicated Non-Exclusive Parking Area:** Tenant understands and agrees that there is no exclusivity or dedicated parking area for use by Tenant and that use of the parking area in the Port's Cleanwater Centre is 'shared' parking by all Tenants of the Port allowed in the property.

Any dispute regarding this Exhibit F shall be subject to arbitration under paragraph 34, ARBITRATION PROCEDURE, provided that Tenant shall not be excused from payment under this paragraph pending the outcome of arbitration.

**Changes and Maintenance of Parking Areas:** Tenant acknowledges and agrees that maintenance and repairs to the parking areas are subject to the Common Area provisions of the Lease and Tenant shall be responsible for the proportionate rate associated with the Common Area Maintenance cost as stated in the Lease.

The Port reserves the unrestricted right to make reasonable changes in the parking area. The parking area may be elevated, surface or subterranean. The Port shall have the right to make such changes in the parking area as the Port deems necessary and consistent with the purposes and intent of operating, and in respect thereto, provided however, that the Port will not make changes to the parking area that would reduce the parking available to meet the minimum requirements of each Tenant in the Centre

The Parking Area includes all automobile parking areas, access roads, driveways, entrances, exits, sidewalks, landscaping, landscaped areas, lighting and curbs. The parking area shall at all times be subject to the exclusive control and management of the Port and shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to the parking area.



**PORT OF OLYMPIA COMMISSION  
RESOLUTION 2016-06**

**A RESOLUTION OF THE PORT OF OLYMPIA COMMISSION PURSUANT TO RCW  
53.08.090 AND 53.20.010  
TO DECLARE PROPERTY SURPLUS TO ITS NEEDS AND TO AMEND ITS  
COMPREHENSIVE SCHEME OF HARBOR IMPROVEMENTS TO DELETE THE  
PROPERTY FROM ITS SCHEME TO ALLOW A NEGOTIATED TRANSFER FOR  
CONSIDERATION.**

**WHEREAS**, pursuant to RCW 53.08.010, the Port of Olympia has adopted a Comprehensive Scheme of Harbor Improvements for the development of harbor improvements, development of industrial lands, and other lands owned by the Port of Olympia, located in Thurston County, Washington; and

**WHEREAS**, the Port's ownership of land included within the Port's Comprehensive Scheme of Harbor Improvements includes all of those certain improvements located on tax parcel numbers 82701600200, 82701600000, 12710110100, and 82701600100, which consist of ten (10) existing buildings, eight (8) 6,000 square foot buildings, one (1) 22,000 square foot building, and one (1) 4,000 square foot building (the "Cleanwater Centre Improvements"); and

**WHEREAS**, pursuant to RCW 53.08.090, on August 8, 2016, the Port's Executive Director or designee has made written certification to the Port of Olympia Commission that the Cleanwater Centre Improvements are no longer needed for Port district purposes; and

**WHEREAS**, pursuant to RCW 53.08.090, property that is part of the Port's Comprehensive Scheme of Harbor Improvements shall not be disposed of until the Comprehensive Scheme of Harbor Improvements has been modified to find the property surplus to the Port needs, and after public notice and hearing as provided by RCW 53.20.010; and

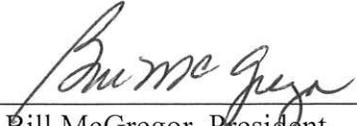
**WHEREAS**, proper public notice was given and a public hearing was held as required by statute.

**NOW, THEREFORE, BE IT RESOLVED** that:

1. The Cleanwater Centre Improvements described herein are no longer needed for Port district purposes and are surplus to the Port's needs, and the sale of such property is in the public interest.
2. The Port's Comprehensive Scheme of Harbor Improvements is hereby amended to find the Cleanwater Centre Improvements surplus to the Port's needs and to remove the Cleanwater Centre Improvements from the Port's Comprehensive Scheme of Harbor Improvements to permit a negotiated transfer of the same for consideration.

**ADOPTED** by a majority of the members of the Port Olympia Commission, a majority being present and voting on this Resolution at a regular Commission meeting on August 8, 2016, as attested to by the signatures below of the Commissioners physically present this 8<sup>th</sup> day of August, 2016.

**PORT OF OLYMPIA COMMISSION**

By:   
Bill McGregor, President

By:   
Joseph Downing, Vice-President

By:   
E.J./Zita, Secretary



**PORT of OLYMPIA**  
Serving All of Thurston County

## Cleanwater Centre – Launch Negotiations LLC Purchase and Sale Agreements and Land Leases

Clarita Mattox  
Real Estate Senior Manager  
Feb. 26, 2024

1



## Today's Presentation

*Action/Other Item – Approval Requested*

- Ratify:
  - The Purchase and Sale Agreements of two buildings
  - Long-term land leases
  - Cleanwater Centre in Tumwater
- Traditionally a consent item



2

## Background

### *Cleanwater Centre Buildings Purchases and Ground Leases*

- 2008: Port entered into a land lease agreement
  - Ten acres at the Port's Tumwater Town Center, now known as the Cleanwater Centre
- 2012: Tenant stopped paying rent and conveyed improvements to the Port
  - Eight 6,000 s.f. buildings and one ~24,000 s.f. building
- 2014: Port began implementing the Strategic Plan initiative at Cleanwater
  - Port worked with the City of Tumwater for redevelopment of 15 acres of commercial use and 30 acres of industrial land

3



3

## Background (cont'd)

### *Cleanwater Centre Building Purchases and Ground Leases*

- 2014: Port Commission approved investment for improving the Cleanwater Centre to make it marketable
- 2014-2015: Port began the project to bring the site to code
  - Stormwater, lighting, parking, landscaping, and utilities
- 2016-2017: Port retained ownership of two buildings - space leases
  - Scribbles & Giggles Learning Center
  - Washington State Patrol
- 2016: Different business model - sell the buildings "As Is" condition, lease the land, and new building owners to repurpose/maintain the buildings

4



4

## Background (cont'd)

### *Cleanwater Centre Building Purchases and Ground Leases*

- 2016: Commission approved Resolution 2016-06 declaring the buildings surplus, amending the CSHI, and authorized executive director to sell the buildings and to enter into long-term land leases
- 2017 to 2023: Port sold six of its eight 6,000 s.f. buildings (two completed renovations and four are or will be going through permitting process)
  - Current Uses: Eatery (pizza), yoga studio, martial arts, day care, medical services, offices, religious gatherings
- 2024: The long-term lease and purchase and sale with Launch Negotiations LLC are for the **last two** (of the eight) 6,000 s.f.

5



5

## Terms

### *Ground Leases and Purchase and Sale Agreements with Launch Negotiations LLC for 206 and 210 Tumwater Blvd*

- Customary due diligence conducted
- Building purchase price \$40,000 each
- 30-year land lease terms
- 20-year option to extend terms
- \$0.58/s.f. NNN per month
- Rent adjusts 2% every year
- Year 15 of lease – Appraisal



6



6

## Questions and Comments

*Suggested Action...*

*"...move to ratify the purchase and sale agreements and long-term land leases with Launch Negotiations LLC, as presented."*

7



7

## COVER MEMO

<b>Briefing Date/Time:</b>	February 26, 2024
<b>Staff Contact/Title:</b>	Clarita Mattox, Real Estate Senior Manager 360.528.8070, <a href="mailto:claritam@portolympia.com">claritam@portolympia.com</a>
<b>Subject:</b>	Launch Negotiations LLC Cleanwater Centre Building 210 Tumwater Boulevard Purchase & Sale Agreement and Ground Lease
<b>Purpose:</b>	<input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Decision Needed

### **Overview:**

This is an Action/Other item before the Commission. Action is requested.

This request is specific to the 210 Tumwater Boulevard building in the Cleanwater Centre.

### **Background:**

In 2008, the Port entered into a land lease agreement with a previous Tenant for redevelopment of the 10+ acres at the Tumwater Town Center Campus of the Port, now known as the Cleanwater Centre. In 2012, the tenant stopped paying rent and transferred title of the entire development to the Port, which included eight buildings of 6,000 square feet each, and one of approximately 24,000 square feet.

During the conveyance of these buildings, the Port began implementing the current Strategic Plan, which included working with the City of Tumwater to generate 15 acres of commercial development and 30 acres of industrial development on Port-owned properties in Tumwater.

The Port Commission subsequently approved investing in the Cleanwater Centre by upgrading it to current code and standards required by the City of Tumwater, including stormwater, lighting, utilities, landscape, and parking.

In addition, the Port initiated implementation of the vision to repurpose one of the buildings with the project that is now the Scribbles and Giggles daycare center.

A second building was then leased to the Washington State Patrol (WSP). The Port continues to own and lease these two buildings to Scribbles and Giggles and the WSP Detachment offices, respectively.

After considering a more viable business model for the remaining seven buildings, the Port Commission approved Resolution 2016-06, which declared the remaining buildings as surplus to the Port's needs, and further authorized Port staff to sell the remaining seven buildings and to enter into long-term land leases.

Port staff then moved forward with a vigorous Cleanwater Centre marketing and redevelopment effort. Out of the eight 6,000 square foot buildings, four have been sold and their new owners signed long-term land leases with the Port.

Two remain under Port's ownership and are leased as space leases, with the last two being presented tonight for consideration.

The Port received a commitment from Launch Negotiations LLC to purchase the final two 6,000 square foot buildings, and to enter into a long-term land lease for each building. Due diligence on the buyers was conducted as it is customary for any real estate transaction with the Port.

Should the Commission move to approve the subject lease(s), only the 24,000 square foot building remains available in the Cleanwater Centre. The City of Tumwater's requirement for repurposing it, however, includes development of the existing service road into a new roadway within Cleanwater Centre to provide direct access to Tumwater Boulevard. Development of this new road will be dependent on the future and parameters of the Bush Prairie Habitat Conservation Plan.

**Documents Attached:**

- Purchase and Sale Agreement and Land Lease Agreement and Site Exhibit
- PowerPoint presentation
- Resolution 2016-06

**Summary & Financial Impact:**

Subject Tenant is entering into a Land Lease Agreement with the Port for approximately 6,000 square feet of land, located at 210 Tumwater Boulevard in the Cleanwater Centre, Tumwater, under the following terms/conditions:

- Tenant to purchase building: \$40,000
- Land lease subject to the purchase and sale agreement.

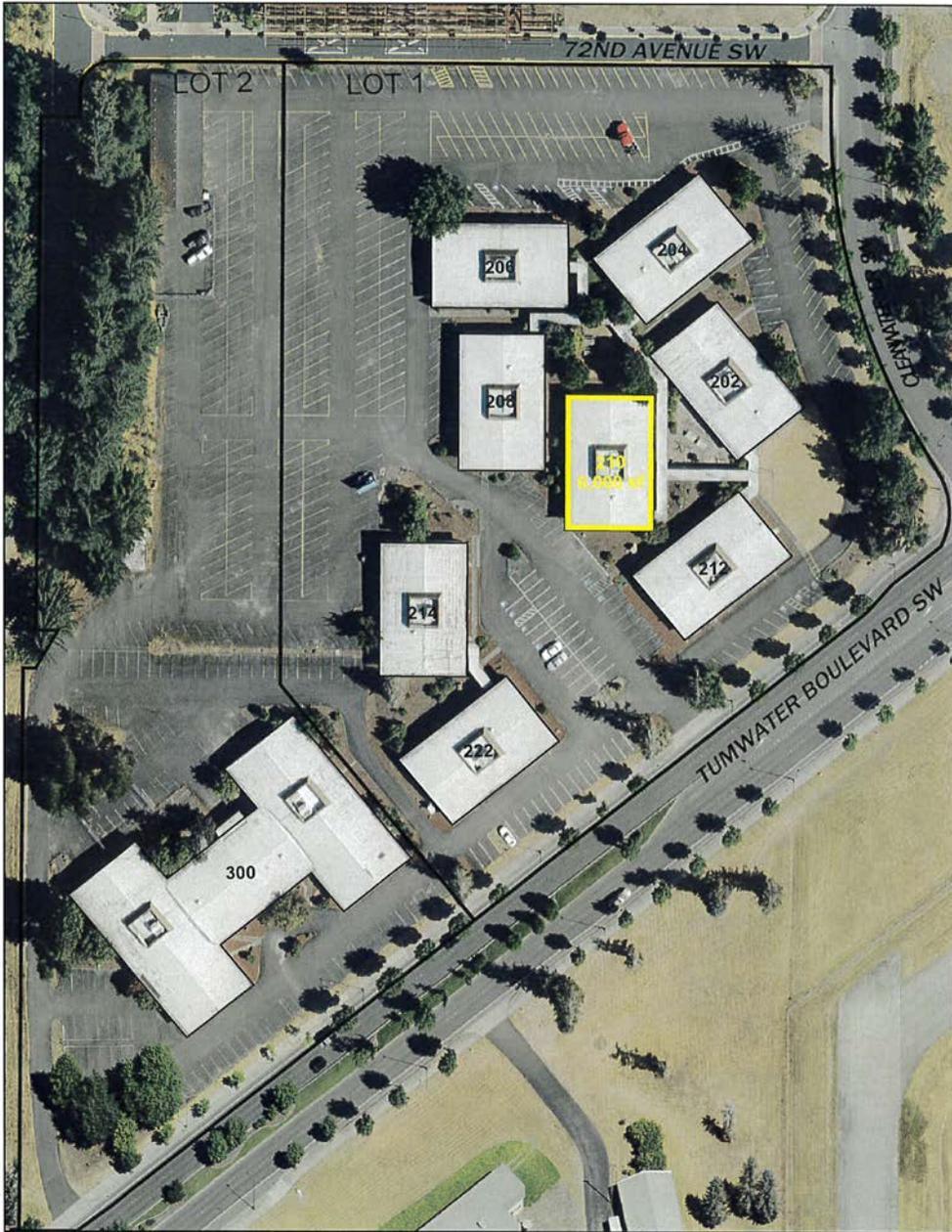
- Building Use: Renovation/repurposing subject to office/commercial/retail uses permitted in the Tumwater Town Center of the City of Tumwater.
- Term: Land lease for 30 years starting February 26, 2024.
- Option to Extend Term: 20 Years.
- Initial rent: \$30,000 per year, upon receipt of Occupancy Permit.
- Rent adjustments 2% annually – every February 1 of each year.
- Rent adjustments on year 15 of the initial term will be recalculated based on appraisal, but in no event the rent shall be reduced.
- Rent for the 20-year Option: initial rent recalculated based on appraisal.
- Rent during Option Period to be adjusted based on the then Commission rent escalation policy.
- Common area and operating charges to tenant: \$6,780/year.

**Affected Parties:**

- Port of Olympia
- Launch Negotiations LLC

**Staff Recommendation:**

- Ratify and approve Purchase and Sale Agreement and Land Lease as presented.



 <b>PORT of OLYMPIA</b>	<b>Cleanwater Centre Exhibit A</b>	<b>June 2019</b> Address: 210 Tumwater Blvd SW Tumwater, WA 98501
--	--	---

**PURCHASE AND SALE AGREEMENT  
IMPROVEMENTS ONLY  
(Cleanwater Centre Building)**

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made effective on the latest date of signatures set forth below (the “**Effective Date**”), by and between the **PORT OF OLYMPIA**, a Washington port district (“**Port**”) and **LAUNCH NEGOTIATIONS LLC** (“**Purchaser**”).

**RECITALS**

**A.** The Port is the present owner of real property located in Thurston County, Washington (the “**Real Property**”) as is legally described in **Exhibit A** which is incorporated by reference.

**B.** The Port of Olympia Commission determined that the improvements located on the Real Property are surplus to the Port needs and a negotiated transfer of the improvements for consideration is permitted, per Port of Olympia Commission Resolution 2016-06.

**C.** The Port hereby desires to sell to Purchaser, and Purchaser hereby desires to buy from the Port, all structures and improvements located on the Real Property (the “**Building**”), which improvements include a six thousand (6,000) square foot building currently known as **210 Tumwater Boulevard, Tumwater, Washington**.

**D.** The purchase and sale of the Building is intended to coincide with the commencement of a ground lease whereby Purchaser will lease the Real Property from the Port, which will retain fee title to the Real Property (“**Ground Lease**”).

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreement as set forth herein, it is hereby agreed as follows:

**1. Incorporation of Recitals.** The recitals set forth above are incorporated by reference and become part of this Agreement.

**2. Purchase Price.** The total purchase price for the Building is FORTY THOUSAND and NO/100 Dollars (\$40,000.00), which sum includes the deposit (“**Purchase Price**”), payable in all cash or **Cashier’s Check** made out to the Port of Olympia. In consideration of the Purchase Price, the Port will transfer its ownership interest in the Building to Purchaser.

**3. Full Payment Due.** The Purchaser shall pay the sum of FOURTY THOUSAND DOLLARS AND NO CENTS (\$40,000.00 USD), to the **Port** at time of executing this Agreement. Port shall have this instrument Ratified by the Port Commission on the date stated below. If this transaction is not consummated by the Purchaser other than as a result of the Port’s breach of this Agreement, then the Port shall retain the full amount and all interest.

4. **Conveyance of Building.** Title to the Building will be conveyed to the Purchaser via Quit Claim Deed, substantially in the form attached here as **Exhibit B** (the "Deed").

5. **Closing.** The closing of the purchase and sale of the Building contemplated by this Agreement (the "**Closing**") shall be within three (3) days from the day of the Port Commission ratification of this Agreement scheduled to be **February 26, 2024**. The date on which the transaction contemplated by this Agreement closes, as evidenced by the recording of the Deed is referred to in this Agreement as the "**Closing Date.**" If Closing does not occur on or before the Closing Date and the parties have not, prior to such Closing Date, mutually agreed in writing to extend the Closing, this Agreement will automatically terminate and will, except for any provisions of this Agreement that by their terms survive the expiration or termination of this Agreement, be of no further force and effect.

In the event that this sale cannot be closed by the date provided herein due to the unavailability of either party to sign any necessary document, or to deposit any necessary money, because of the interruption of available transport, strikes, fire, flood, or extreme weather, governmental relations, incapacitating illness, acts of God, or other similar occurrences, the Closing Date shall be extended seven (7) days beyond cessation of such condition, but in no event more than fourteen (14) days beyond the Closing as provided herein without the written agreement of the parties. The Purchaser and the Port may agree in writing to extend the Closing Date at any time.

6. **Title Insurance.** Purchaser may, at Purchaser's expense, obtain a policy of title insurance insuring the Purchaser of good and marketable title to the Building and/or its leasehold estate under the Ground Lease.

7. **Closing Costs.** In addition to the Purchase Price as stated above, the Purchaser shall pay the recording cost of this and land Lease Agreement. The Port shall pay the following costs at Closing: None. Pursuant to RCW 60.80.020(1) the parties hereby waive services of the Escrow Agent in administering the disbursement of closing funds necessary to satisfy any unpaid utility charges except as specifically directed in escrow instructions hereafter delivered to Escrow Agent. The Parties acknowledge that the transfer contemplated in this Agreement is not subject to the real estate excise tax in accordance with WAC 458-61A-205.

8. **Possession.** Purchaser shall be entitled to possession on the Lease Commencement Date, as defined in the Ground Lease.

9. **"As-Is/Where-Is" Condition.** Purchaser acknowledges and confirms that Purchaser shall accept the Port's conveyance of the Building to Purchaser in an "As-Is" and "Where-Is" condition, free of any warranty by the Port, except as otherwise expressly provided for in this Agreement and in the documents executed and delivered by the Port at Closing, and free of any obligation by the Port to perform any repairs or other improvement work with respect to the Building or Real Property. Purchaser expressly acknowledges that THE PORT MAKES NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, A WARRANTY OF

CONDITION, HABITABILITY, HAZARDOUS WASTE OR ENVIRONMENTAL CONTAMINATION, OR USE OF THE BUILDING OR REAL PROPERTY FOR A PARTICULAR PURPOSE. THE PORT SHALL NOT IN ANY WAY BE LIABLE FOR OR WITH RESPECT TO THE CONDITION OF THE REAL OR PERSONAL PROPERTY OR ANY BUILDINGS, STRUCTURES, OR IMPROVEMENTS. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE CLOSING IN PERPETUITY.

**10. Purchaser's Indemnity.** Purchaser agrees to indemnify, defend and hold harmless the Port, its commissioners, employees, and agents, from any and all costs, expenses, and damages, and any and all claims, demands, or liability, on account or by reason of any third-party claim, act, lawsuit, demand or action brought against the Port following the Closing of sale in regards to the Property, including claims for hazardous waste related to the Building after the Closing Date, property damage claims, personal injury claims, and governmental enforcement actions, and Purchaser shall defend the same at its own cost and expense and shall pay any judgment rendered therein against the Port or any of its commissioners, employees or agents. The indemnity provided in this Section shall survive Closing.

**11. Right to Independent Counsel.** Purchaser acknowledges that it has had the right to have this Agreement and all other documents related to this transaction reviewed by independent legal counsel.

**12. Brokerage Commission.** The Purchaser and Port represent that neither party has employed the services of a real estate broker or agent in connection with this Agreement or the transactions contemplated herein, or, if such agents have been employed, that the party employing said agent shall pay any and all expenses outside the closing of this Agreement. Each party shall indemnify and hold harmless the other party from and against any claim for commissions and/or fees due to any real estate broker or agent where such claim is based on the purported employment or authorization of such real estate broker or agent by the indemnifying party. The indemnities provided in this Section shall survive the Closing and termination of this Agreement.

**13. FIRPTA – Tax Withholding at Closing.** The Escrow Agent is instructed to prepare a certification that the Port is not a foreign person within the meaning of the Foreign Investment in Real Property Tax Act. The Port agrees to sign this certification.

**14. Default.**

**14.1. By the Port.** In the event of a default by the Port, Purchaser shall be entitled to terminate this Agreement and receive a refund of the Earnest Money as its sole and exclusive remedy.

**14.2. By Purchaser.** In the event of any default by Purchaser, the Port's sole and exclusive remedy will be to terminate this Agreement and receive the Earnest Money as liquidated damages.

**14.3. General.** Neither Purchaser nor the Port may recover consequential

damages such as lost profits. If Purchaser or the Port institutes suit against the other concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses. Upon termination under this Section, all documents deposited in escrow will be returned to the party who deposited them, and the defaulting party will be required to pay any and all costs of terminating the escrow.

**15. Condemnation or Destruction.**

**15.1. Condemnation.** The Port hereby represents and warrants that the Port has no knowledge of any action or proceeding pending or instituted for condemnation or other taking of all or any part of the Building by friendly acquisition or statutory proceeding by any governmental entity. The Port agrees to give Purchaser immediate written notice of such actions or proceedings that may result in the taking of all or a portion of the Property. If, prior to Closing, all or any part of the Building is subject to a bona fide threat or is taken by eminent domain or condemnation, or sale in lieu thereof, then Purchaser, by notice to the Port given within five (5) calendar days of Purchaser's receiving actual notice of such threat, condemnation, or taking by any governmental entity, may elect to terminate this Agreement. In the event Purchaser continues or is obligated to continue this Agreement, the Port shall, at Closing, assign to Purchaser its entire right, title and interest in and to any condemnation award attributable to the Building. During the term of this Agreement, the Port shall not stipulate or otherwise agree to any condemnation award without the prior written consent of Purchaser.

**15.2. Damage or Destruction.** Prior to Closing the risk of loss of or damages to the Building by reason of any insured or uninsured casualty shall be borne by the Port.

**15.3. Termination.** If this Agreement is terminated, neither party hereto shall have any further rights or obligations under this Agreement whatsoever, except for such rights and obligations that, by the express terms hereof, survive any termination of the Agreement.

**16. Miscellaneous.**

**16.1 Counterparts; Electronic Transmission.** This Agreement may be executed in one or more identical counterparts and may be delivered by electronic transmission.

**16.2 Notices.** All notices, demands, and any and all other communications which may be or are required to be given to or made by either party to the other in connection with this Agreement shall be in writing and shall be deemed to have been properly given if delivered by hand, sent by fax, sent by email, sent by registered or certified mail, return receipt requested, or sent by recognized overnight courier service to the addresses set out below or at such other addresses as specified by written notice and delivered in accordance herewith. Any such notice, request or other communication shall be considered given or delivered, as the case maybe, on the date of hand, fax or courier delivery or on the date of deposit in the U.S. Mail as provided above. However, the time period within which a response to any notice or request must be given, if any, shall commence to run from the date of actual receipt of such notice, request, or other communication by the addressee thereof.

**PORT:** Port of Olympia  
Real Estate Division  
606 Columbia Street NW Suite 300  
Olympia, WA 98501  
E-mail: [claritam@portolympia.com](mailto:claritam@portolympia.com)  
Phone: (360) 528-8070

**PURCHASER:** LAUNCH NEGOTIATIONS LLC  
210 Tumwater Blvd  
Tumwater WA 98506  
503-422-5970  
[russpet14310@gmail.com](mailto:russpet14310@gmail.com)

**16.3 Entire Agreement.** This Agreement embodies and constitutes the entire understanding between the parties hereto with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

**16.4 Modification.** Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except to the extent provided herein or by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought.

**16.5 Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Washington with venue in Thurston County.

**16.6 Binding Effect; Assignment; Nominee.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns. No party shall be entitled to assign their interest in or rights under this Agreement without the prior written consent of all parties hereto.

**16.7 Further Acts.** The parties shall execute and deliver such further instruments and documents and take such other further actions as may be reasonably necessary to carry out the intent and provisions of this Agreement.

**16.8 Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions all be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

**SIGNATURES ON NEXT PAGE**

**PORT:**

**PORT OF OLYMPIA**

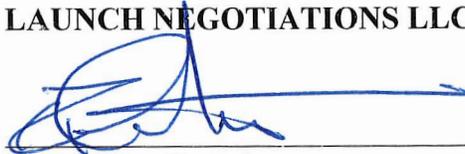


By: Robert Rudolph, Jr.  
Its: Interim Executive Director

Date: 2/15/24

**PURCHASER:**

**LAUNCH NEGOTIATIONS LLC**



By: Ruslan Petrusha  
Its: Owner / Member

Date: 01/24/24

**EXHIBIT A**

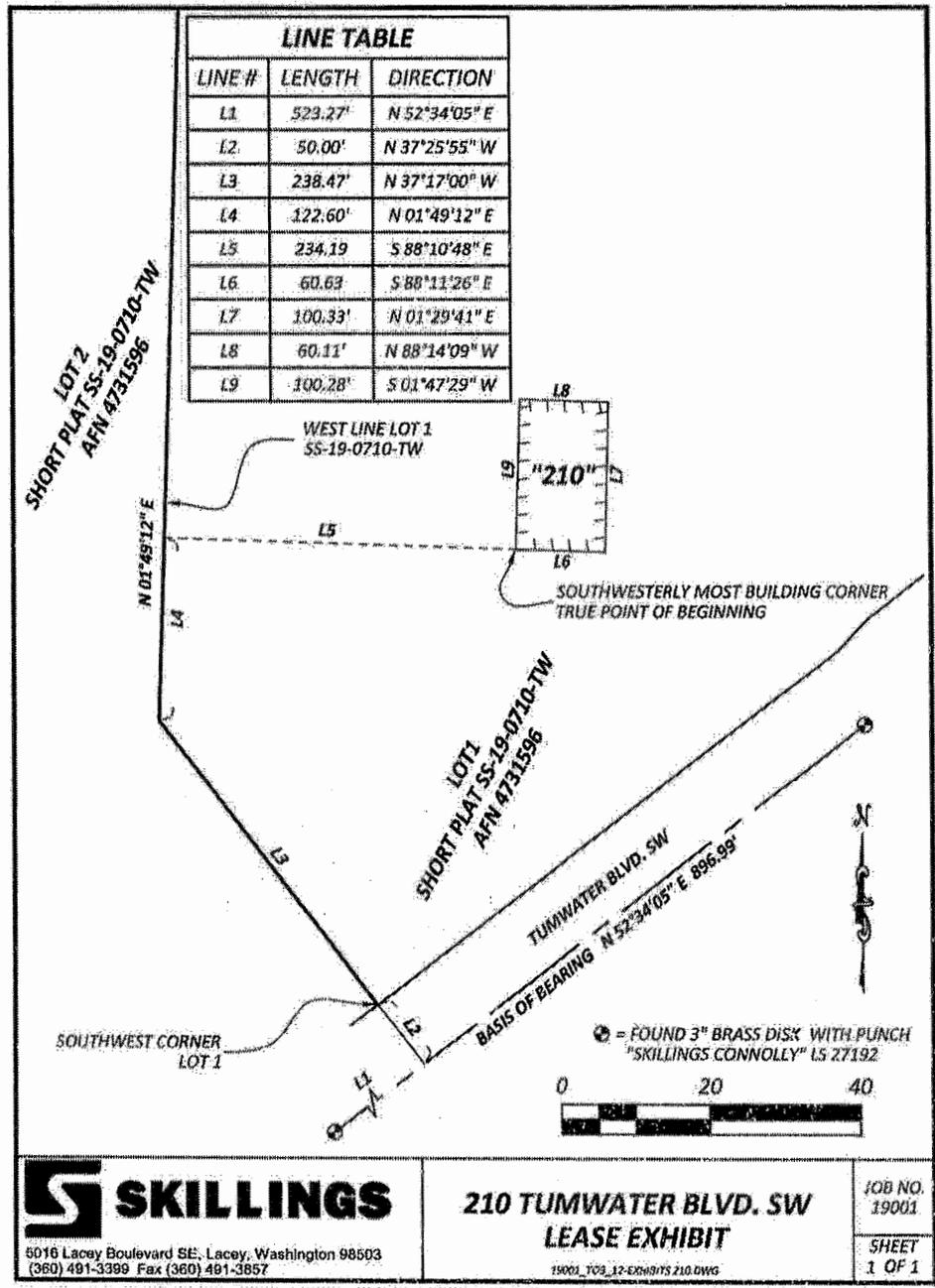
**LEASE DESCRIPTION  
(210 Tumwater Boulevard SW)**

That portion of Lot 1 of City of Tumwater Short Plat SS-19-0710-TW, as recorded under Auditor's File No. 4731596, records of Thurston County, Washington, particularly described as follows:

Commencing at the Southwest corner of said Lot 1; Thence N 37°17'00" W along the West line of said Lot 1, 238.47 Feet and N 01°49'12" E, 122.60 feet; Thence S 88°10'48" E, 234.19 feet to the Southwesterly most corner of "Building 210" Tumwater Boulevard" and the True Point Of Beginning; Thence S 88°11'26" E along the South line of said building, 60.63 Feet to the Southeast corner of said building; Thence N 01°29'41" E along the East line of said building, 100.33 Feet to the Northeast corner of said building; Thence N 88°14'09" W along the North line of said building, 60.11 Feet to the Northwest corner of said building; Thence S 01°47'29" W along the West line of said building, 100.28 Feet to the True Point of Beginning.

Lease area APPROXIMATELY 6,055 Sq. ft.

DEPICTION – 210 Tumwater Blvd. Tumwater WA 98506



5016 Lacey Boulevard SE, Lacey, Washington 98503  
(360) 481-3389 Fax (360) 481-3857

210 TUMWATER BLVD. SW  
LEASE EXHIBIT

19001\_T03\_12-EXHIBIT5 210.DWG

JOB NO.  
19001

SHEET  
1 OF 1

**EXHIBIT B**  
**Form of Deed**

**After recording return to:**  
Port of Olympia  
606 Columbia St NW  
Olympia WA 98501

---

## QUIT CLAIM DEED (IMPROVEMENTS ONLY)

Grantor(s):	PORT OF OLYMPIA, a Washington Port District
Grantee(s):	LAUNCH NEGOTIATIONS LLC, a Washington Limited Liability Company
Abbreviated Legal Description:	PTN of Lot 1, SS-19-0710-TW, AFN 4731596 (Improvements Only)
Assessor's Property Tax Parcel/Account No.:	PTN of 82701600100 (Improvements Only)
Reference Numbers of Documents Assigned or Released:	N/A

---

WHEREAS, the real property described on the attached **Exhibit A** (the "Real Property") is owned by the PORT OF OLYMPIA, a Washington port district ("Grantor"); and

WHEREAS, the Real Property is being leased to **LAUNCH NEGOTIATIONS LLC**, a Washington limited liability company ("Grantee") by Grantor by that certain Port of Olympia Ground Lease dated **February 26, 2024**, between Grantor as Lessor and Grantee as Lessee; and

WHEREAS, pursuant to Port of Olympia Commission Resolution 2016-06 the improvements located on the Real Property have been found to be surplus to the Port's needs and a negotiated transfer of the improvements for consideration has been permitted and approved.

NOW, THEREFORE, Grantor, subject to the reservations from and exceptions to transfer below, hereby releases, relinquishes, assigns, conveys, and quit claims to Grantee **all structures and improvements** located on the Real Property as of the date of this Deed, together with all rights and appurtenances thereto.

The foregoing release, relinquishment, assignment, conveyance, and quit claim is effective as to the current **structures and improvements located on the described real estate only**. The foregoing release, relinquishment, assignment, conveyance, and quit claim is not effective as to future structures or improvements to be located or constructed on the underlying real property.

IT IS THE INTENTION OF THE PARTIES THAT THE REAL PROPERTY (UPON WHICH THE TRANSFERRED IMPROVEMENTS ARE LOCATED) SHALL REMAIN VESTED WITH THE PORT OF OLYMPIA AND THAT THIS INSTRUMENT CONVEYS ONLY THE IMPROVEMENTS LOCATED ON THE REAL PROPERTY.

GRANTOR:

PORT OF OLYMPIA

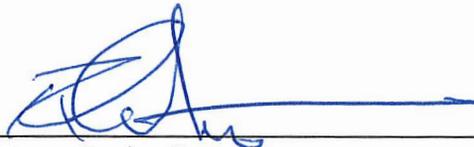


Dated: 2/15/24

By: Robert Rudolph, Jr.  
Its: Interim Executive Director

GRANTEE:

LAUNCH NEGOTIATIONS LLC



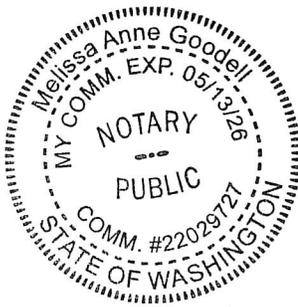
Dated: 01/24/24

By: Ruslan Petrusha  
Its: Owner / Member

ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

This record was acknowledged before me on February 15, 2024 by Robert Rudolph, Jr., as the Interim Executive Director of the Port of Olympia.



Melissa Anne Goodell  
(Signature of Notary Public)

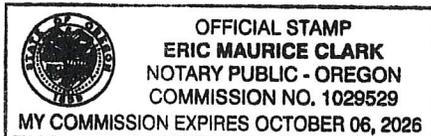
Melissa Anne Goodell  
(Name)

Notary Public  
(Title of Office)

My appointment expires: 5/13/2026

STATE OF OREGON )  
 ) ss.  
COUNTY OF CLACKAMAS )

This record was acknowledged before me on January 24, 2024 by Ruslan Petrusha as the owner/member of LAUNCH NEGOTIATIONS LLC.



Eric Maurice Clark  
(Signature of Notary Public)

Eric Maurice Clark  
(Name)

NOTARY PUBLIC  
(Title of Office)

My appointment expires: October 6, 2026

**EXHIBIT A  
TO QUIT CLAIM DEED  
LEGAL DESCRIPTION**

**(210 Tumwater Boulevard SW)**

That portion of Lot 1 of City of Tumwater Short Plat SS-19-0710-TW, as recorded under Auditor's File No. 4731596, records of Thurston County, Washington, particularly described as follows:

Commencing at the Southwest corner of said Lot 1; Thence N 37°17'00" W along the West line of said Lot 1, 238.47 Feet and N 01°49'12" E, 290.58 feet; Thence S 88°10'48" E, 294.29 feet to the Southerly most corner of "Building 210 Tumwater Boulevard" and the True Point Of Beginning; Thence N 52°29'34" E along the Southerly line of said building, 100.35 Feet to the Easterly corner of said building; Thence N 37°27'30" W along the Easterly line of said building, 60.19 Feet to the Northerly corner of said building; Thence S 52°29'34" W along the Northerly line of said building, 100.35 Feet to the Westerly corner of said building; Thence S 37°27'30" E along the Westerly line of said building, 60.19 Feet to the True Point Of Beginning.

Lease area APPROXIMATELY 6,040 Sq. ft.

**PORT OF OLYMPIA GROUND LEASE  
TUMWATER PROPERTIES**

**CLEANWATER CENTRE**

THIS LEASE is made this \_\_\_\_\_ day of \_\_\_\_\_ 2024, by and between the **PORT OF OLYMPIA**, a Washington municipal corporation, Lessor, hereinafter referred to as "Port", and the Tenant described below, hereinafter referred to as "Tenant", on the following terms and conditions:

**1. LEASE SUMMARY.**

TENANT

Name:	<b>Launch Negotiations LLC</b>
Address:	210 Tumwater Blvd
City, State, Zip Code:	Tumwater WA 98506
Phone Numbers:	503-422-5970
Email:	<a href="mailto:russpet14310@gmail.com">russpet14310@gmail.com</a>

PREMISES

The Port hereby leases to Tenant, and Tenant hereby leases from Port, upon and subject to the terms and conditions of this Lease, that certain real property consisting of approximately 6,000 of square feet of land located in the Port's Cleanwater Centre in Tumwater, Thurston County, Washington as generally shown and described in Exhibit "A" hereto, and commonly known as **210 Tumwater Boulevard, Tumwater, Washington**, subject to encumbrances, rights, and reservations as shown therein or provided in this Lease, and as presently existing or hereafter arising pursuant to governmental authority (the "Premises").

TERM

The initial term shall be thirty (30) years beginning **February 26, 2024** (the "Lease Commencement Date") and ending **February 25, 2054**, the "Initial Term"); provided that the commencement of this Lease is subject to the Port's receipt of first month's rent, lease security in a form acceptable to the Port, and certificate of insurance in a form acceptable to the Port. Tenant shall also have one option to extend as outlined below. The "Initial Lease Year" shall be the twelve (12) month period immediately following the Lease Commencement Date, and every successive twelve (12) month period after that shall be a "Lease Year."

## OPTION TO EXTEND TERM

Tenant shall have one (1) option(s) to extend for an additional period of twenty (20) years (the "Option to Extend"). The extension term 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 provisions herein). The extension term shall commence on the expiration of the immediately preceding term. The Option to Extend 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 extend this Lease if Tenant is in default of the performance of its obligations hereunder at the date notice of extension is due or at the date the extension term is to commence. In addition, Tenant shall not be entitled to renew this Lease if Tenant is a corporation, limited liability company or other entity whose stated duration will expire prior to the end of the renewal term.

## MINIMUM GROUND RENT

**Initial Rent:** Tenant shall pay monthly rent in the amount of Two Thousand Five Hundred US Dollars and No Cents (\$2,500.00 USD) ("Base Rent") plus Washington State Leasehold Tax, provided leasehold tax will be adjusted consistent with adjustments by the Department of Revenue, if any, and applicable Common/Operational charges described below.

**Rent Adjustments:** Base Rent shall be automatically adjusted on February 1st of each year by an increase of two percent (2%) during the Initial Term.

**Appraisal – Rent Adjustment:** On the 15<sup>th</sup> anniversary of the Land Lease the Port and Tenant shall ascertain the fair market value for base rent via appraisal pursuant to Section 33, **APPRAISAL PROCEDURE** and rent shall be adjusted based on the then Port Commission policy, but in no event shall the rent be reduced or less than the rent amount at the time of the appraisal.

**Option Period Rent:** Tenant's notice to the Port of its intent to exercise its Option to Extend shall include Tenant's nomination of an appraiser to appraise the Premises to determine appropriate base rent for the extension term. The Port and Tenant shall ascertain the fair market value for base rent during the extension term via appraisal pursuant to Section 33, **APPRAISAL PROCEDURE**.

Rental adjustments for the extension term shall be in accordance with the then current Port Commission Policy.

## RENT COMMENCEMENT DATE

- Rent shall commence upon Tenant's occupancy of the building located on the Premises.
- The earliest to occur of (a) date Tenant receiving a temporary Certificate of Occupancy issued by the City of Tumwater or (b) fourteen (14) months from the Lease Commencement Date, whichever occurs first.

## LEASE SECURITY

Tenant shall deposit a lease security in accordance with Section 5 of the Lease, in an amount equal to one (1) year's base rent plus Washington State Leasehold Excise Tax and Operating Cost, in a form acceptable to the Port, and adjusted to reflect rental adjustments and other changes to this Lease. Initial amount shall be Fourty Thousand Six Hundred Fourty-Two Dollars and No Cents (**\$40,632.00 USD**), the annual rent plus Washington State Leasehold Excise Tax of 12.84% and annual Common

Area Maintenance). The initial security amount shall be posted with the Port by the date of execution of the Lease by Tenant. Any change in security shall be posted with the Port at least thirty (30) days prior to the effective date of such change. Any surety posted as security may not expire prior to ninety (90) days after satisfaction of all obligations under this Lease.

#### USE OF PREMISES

Tenant may use the Premises for re-purposing the existing building to operate office, retail, commercial services, with the exception of a pizza restaurant/eatery, yoga instruction, martial arts, religious services of any kind, childcare, as approved by the City of Tumwater and all intended uses shall be reviewed and approved by the Port and are subject to the Cleanwater Centre zoning under the City of Tumwater zoning codes.

#### INSURANCE

Tenant shall maintain insurance with the following coverage and limits:  
Bodily Injury/Death: Combined Single Limit \$1,000,000 each occurrence.  
Property Damage per Occurrence: \$500,000.

Tenant shall submit certificates evidencing compliance with Section 14, and at the Port's request shall provide the Port with 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.

#### ASSIGNMENT, SUBLEASE, OR LEASE MODIFICATION.

Tenant may not assign its rights under this Lease or sublet the Premises without the Port's consent, which consent shall not be unreasonably withheld. Tenant shall be subject to a fee for any request for assignment, sublease, or modification of this Lease as stated in Port Commission Fee Schedule.

#### REAL ESTATE COMMISSIONS AND FEES (IF APPLICABLE)

Except as set forth above, each party represents and warrants that it has not dealt with any other broker or other person to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement, and that insofar as it knows, no broker or other person is entitled to any commission, charge, or fee in connection with the transactions contemplated by this Agreement. Each party agrees to indemnify, defend, and hold harmless the other party against any loss, liability, damage, cost, claim, or expense, including interest, penalties, and reasonable attorney fees that the other party shall incur or suffer by reason of a breach by the first party of the representations and warranties set forth in the preceding sentence.

#### ADDITIONAL PROVISION

- A. **Purchase & Sale Agreement.** Concurrently with execution of this Lease, the Parties shall enter into a Purchase and Sale Agreement for the purchase and sale of the improvements located on the Premises, which Purchase and Sale Agreement is attached hereto as **Exhibit "F"**. The Purchase and Sale Agreement for the existing improvements shall close within three (3) days of Ratification of the Lease by the Port Commission, or as may be mutually agreed to by the Parties,

but in no event later than **February 29, 2024**. In the event the Purchase and Sale Agreement for the existing improvements fails to close, this Lease shall terminate.

- B. **Permits and Certificate of Occupancy.** Tenant shall provide copies of permits during the building process and a final Certificate of Occupancy upon issuance by the City of Tumwater.
- C. **Common Area:** Tenant shall have the non-exclusive right, in common with other tenants of the Cleanwater Centre, to use the Common Areas (defined below). Tenant shall comply with all rules and regulations adopted by the Port from time to time regarding the Common Areas and shall use its best efforts to cause its employees, contractors, and invitees to comply with those rules and regulations, and not interfere with the use of Common Areas by others. "Common Areas" means all areas, facilities and building systems that are provided and designated from time to time by the Port for the general non-exclusive use and convenience of Tenant with other tenants and which are not leased or held for the exclusive use of a particular tenant. Common Areas include driveways, walkways, loading areas, trash facilities, parking areas roadways, pedestrian sidewalks, landscaped areas, security areas, mall areas, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Without advance notice to Tenant and without any liability to Tenant, the Port may change the size, use, or nature of any Common Areas, erect improvements on the Common Areas, or convert any portion of the Common Areas to the exclusive use of Port or selected tenants, so long as Tenant is not thereby deprived of the substantial benefit of the Premises. The Port reserves the use of exterior systems and the right to install, maintain, use, repair, and replace pipes, and wires leading through the Premises in areas which will not materially interfere with Tenant's use thereof. In making changes or improvements to the Common Areas, the Port may use or temporarily close any of the Common Areas or permanently change their configuration and shall use reasonable efforts to minimize interference with Tenant's normal activities, but no such interference shall constitute constructive eviction or give rise to any abatement of rent or liability of the Port to Tenant.
- D. **Operating Costs and Common Area Maintenance Charges:** Except as otherwise expressly provided herein, the parties intend that the Port receive all Base Rent free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to Base Rent, Tenant shall pay to the Port all other impositions, insurance premiums, repair and maintenance charges, and any other charges, costs, obligations, liabilities, requirements, and expenses, including without limitation the Operating Costs and Common Area Maintenance Charges described below, which arise with regard to the Premises or may be contemplated under any other provision of the Lease during its term, except for costs and expenses expressly made the obligation of the Port in this Lease.

During the Initial Lease Year, Tenant shall pay Operating Costs and Common Area Maintenance Charges for the Premises of \$1.13/s.f./year, payable one-twelfth (1/12) each month at the same time as Base Rent ( $\$1.13 \times 6,000 \text{ s.f.} \times 1/12 = \text{\$565.00 per month}$ ). At or around the beginning of each Lease Year thereafter, the Port shall give Tenant a good faith estimates of Tenant's pro-rata share of Operating Costs and Common Area Maintenance Charges for such year, and Tenant shall pay one-twelfth (1/12) of such amount each month during such Lease year at the same time as Base Rent.

By April 15<sup>th</sup> each year, the Port shall determine and provide to Tenant a statement setting forth the amount of Operating Costs and Common Area Maintenance Charges actually incurred, and the amount of Tenant's pro-rata share of such costs payable by Tenant with respect to the prior Lease Year. If the amount of Tenant's pro-rata share of such costs exceeds the sum of the

monthly installments actually paid by Tenant for such Lease Year, Tenant shall pay to the Port the difference within thirty (30) days following receipt of the statement. If the sum of the monthly installments actually paid by Tenant for such Lease Year exceeds the amount of Tenant's pro-rata share of such costs, the difference shall be applied as a credit to Tenant's future pro-rata share of such costs payable by Tenant pursuant to this section, or if the term of this Lease has expired, the excess shall be refunded to Tenant within thirty (30) days after delivery of such statement.

**Lease pro-rata share being 1/8 of the Common Area Cost of Lot 1.**

If Tenant disputes any amount shown on the Operating Costs and Common Area Maintenance Charges statement, Tenant may, at Tenant's sole expense, audit the Port's books and records for the Lease Year covered by such statement upon written notice to the Port given within thirty (30) days after Tenant's receipt of such statement. If Tenant fails to provide notice of dispute within such thirty (30) day period, the statement shall be deemed accepted by Tenant as final and conclusive. Tenant shall complete any audit conducted pursuant to this provision within sixty (60) days following Tenant's request therefore. If the results of Tenant's audit determine the amount of Tenant's pro-rata share of such costs exceeded the sum of the monthly installments actually paid by Tenant for such Lease Year, Tenant shall pay to the Port the difference within thirty (30) days following completion of the audit. If the sum of the monthly installments actually paid by Tenant for such Lease Year exceeds the amount of Tenant's pro-rata share of such costs actually due and owing, the difference shall be applied as a credit to Tenant's future pro-rata share of such costs payable by Tenant pursuant to this section, or if the term of this Lease has expired, the excess shall be refunded to Tenant within thirty (30) days after completion of the audit. The Port and Tenant shall cooperate as may be reasonably necessary in order to facilitate the timely completion of any audit. Nothing in this section shall in any manner modify Tenant's obligations to make payments as and when provided under this Lease.

"Operating Costs and Common Area Maintenance Charges" as used in this Lease shall mean all costs of operating, maintaining, and repairing the Premises and the Cleanwater Centre, determined in accordance with generally accepted accounting principles, and may include, without limitation, the following: all taxes and assessments (including, but not limited to, real and personal property taxes and assessments, local improvement district assessments and other special purpose assessments, and taxes on rent or gross receipts (other than Washington State leasehold excise tax)); insurance premiums paid by the Port and (to the extent used) deductibles for insurance applicable to the Cleanwater Centre; utilities serving the Cleanwater Centre such as water, sewer, and all other utility charges (other than utilities separately metered and paid directly by Tenant or other tenants); refuse and trash removal; supplies, materials, tools, and equipment used in the operation, repair, and maintenance of the Cleanwater Centre; to the extent serving areas other than just the Premises, pest control; lighting systems, fire detection, and security services; landscape maintenance; management (fees and/or personnel costs); parking lot, road, sidewalk, and driveway patching, resurfacing, and maintenance; snow and ice removal; repair, maintenance, and, where reasonably required, replacement of signage; amortization of capital improvements as the Port may in the future install to comply with governmental regulations and rules or undertaken in good faith with a reasonable expectation of reducing operating costs (the useful life of which shall be a reasonable period of time as determined by the Port); costs of legal services (except those incurred directly relating to a particular occupant of the Cleanwater Centre); and accounting services, labor, supplies, materials and tools.

Operating Costs and Common Area Maintenance Charges shall not include: the Port's income tax or general municipal overhead; real estate broker's commissions; or any costs regarding the operation, maintenance and repair of the Premises or the Cleanwater Centre paid directly by Tenant or other tenants in the Cleanwater Centre, or otherwise reimbursed to the Port. If Tenant

is renting a pad separate from any other structures in the Cleanwater Centre for which the Port separately furnishes the services described in this section, then the term "Operating Costs and Common Area Maintenance Charges" shall not include those costs of operating, repairing, and maintaining the Cleanwater Centre, which can be separately allocated to the other tenants of the other pads. Operating Costs and Common Area Maintenance Charges which cannot be separately allocated to the tenants of other pads may include but are not limited to: insurance premiums; taxes and assessments; management (fees and/or personnel costs); exterior lighting; parking lot, road, sidewalk, and driveway patching, resurfacing, and maintenance; snow and ice removal; and costs of legal services and accounting services.

#### CONFLICTING PROVISIONS

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

## TABLE OF CONTENTS

PARAGRAPH	PAGE
1. LEASE SUMMARY.....	1
2. PREMISES.....	9
3. TERM.....	9
4. RENT.....	9
5. LEASE SECURITY.....	9
6. ACCEPTANCE OF PREMISES.....	9
7. POSSESSION.....	10
8. USE OF PREMISES.....	10
9. REQUIREMENTS AS TO IMPROVEMENTS.....	10
10. RIGHTS-OF-WAY.....	10
11. RESERVATION OF RIGHTS.....	11
12. AIR SPACE RESERVATIONS AND USE RESTRICTIONS.....	11
13. UTILITIES AND SERVICES.....	11
14. INDEMNIFICATION/LIABILITY INSURANCE.....	12
15. WAIVER OF SUBROGATION.....	13
16. TAXES.....	13
17. MAINTENANCE AND REPAIR.....	13
18. ALTERATIONS AND IMPROVEMENTS -- SIGNAGE.....	14
19. DISPOSITION OF IMPROVEMENTS.....	14
20. INSPECTION.....	15
21. RESTORATION.....	15
22. DEFAULTS.....	16
23. ADVANCES BY PORT FOR TENANT.....	17
24. HOLDING OVER.....	17
25. ASSIGNMENT OR SUBLEASE.....	17
26. COMPLIANCE WITH PORT REGULATIONS/ALL LAWS.....	18
27. HAZARDOUS SUBSTANCES.....	18
28. STORAGE TANK LICENSES.....	20
29. INSPECTIONS AND NOTICE OF CHANGE.....	20
30. EMINENT DOMAIN.....	20
31. INSOLVENCY.....	21
32. ATTORNEY'S FEES AND COSTS.....	21
33. APPRAISAL PROCEDURE.....	21
34. ARBITRATION PROCEDURE.....	22
35. JOINT AND SEVERAL LIABILITY.....	22
36. INVALIDITY OF PARTICULAR PROVISIONS.....	22
37. NOTICES.....	22
38. WAIVER.....	23
39. BINDING.....	23
40. NO RECORDING.....	23
41. REAL ESTATE COMMISSIONS AND FEES.....	23

EXHIBIT "A" – MAP OF PREMISES and LEGAL DESCRIPTION

EXHIBIT "B" – REQUIREMENTS AS TO IMPROVEMENTS

EXHIBIT "C" – LESSOR'S CONSENT AND AGREEMENT

EXHIBIT "D" – TOXIC, DANGEROUS AND HAZARDOUS SUBSTANCES STORAGE  
LICENSE

EXHIBIT "E" – DEVELOPMENT GUIDELINES

EXHIBIT "F" – PURCHASE AND SALE AGREEMENT

EXHIBIT "G" – PARKING FOR SPACE LEASES IN THE CLEANWATER CENTRE

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**2. PREMISES.**

The Port hereby leases to Tenant, and Tenant hereby leases from the Port, the Premises described in Section 1, **LEASE SUMMARY** above.

**3. TERM.**

This Lease shall be for the term specified in Section 1, **LEASE SUMMARY** above.

**4. RENT.**

4.1. It is the intention of the parties hereto that the rent specified in this Lease shall be net to the Port in each year during the term of the Lease. Accordingly, all costs, expenses and obligations of every kind relating to the Premises (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 Tenant shall indemnify the Port against such costs, expenses and obligations. All such costs, expenses, and obligations and payments coming due hereunder shall be deemed as "additional rent".

4.2. Tenant shall pay as rent for the use and occupancy of the Premises during the term of this Lease, without deduction or offset, the Base Rent specified in Section 1, **LEASE SUMMARY** 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.

4.3. 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.

**5. LEASE SECURITY.**

Tenant shall, upon execution of this Lease, file with the Port a good and sufficient security in the form of a bond, letter of credit, cash deposit, or other security acceptable to the Port in its sole discretion, in accordance with the requirements of state law RCW 53.08.085 and Section 1, **LEASE SUMMARY** above. The form and terms of the security and the identity of the surety shall be subject to approval of the Port, and the security 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 security instrument having an expiration earlier than the full lease term shall be automatically renewable. Any company issuing such a security instrument must give the Port at least ninety (90) days advance written notice prior to the effective date of cancellation or expiration of such security instrument. These provisions as to lease security 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 Section 1 above and shall not use them for any other purpose without the prior 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 Premises are attached hereto as Exhibit "B" 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 Premises, Tenant shall furnish a survey of the appropriate 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, on reasonable terms and conditions, for the installation and maintenance of necessary and adequate services to the Premises, 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 rights of way upon, over, across, onto or beneath the above-described lands for access ways, driveways, and other roads, pole and wire lines, gas, water and sewage pipes and mains, conduits, and other utilities, and 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 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 and perpetual easement or easements that the Port believe are necessary within the 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.**

There is hereby reserved to the Port, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said air space or landing at, taking off from or operating on the Olympia Regional Airport. Tenant, its successors and assigns, will not erect or permit the erection of any structures nor permit the growth of any tree thereon which would exceed the height limitations set forth in the "Zoning Ordinance", Olympia Regional Airport, Master Plan Update, Thurston County, Washington, dated November, 1996, and as may be amended from time to time. Tenant, its successors and assigns, will comply in all respects with said zoning ordinance, which is hereby made a part of this Lease. Tenant expressly agrees for itself, its successors and assigns to restrict the height of structures, objects or natural growth and other obstructions on the Premises to a maximum height as determined by applicable Federal Aviation Administration standards as currently in effect or as may be hereafter issued or amended.

Tenant expressly agrees for itself, its successors and assigns to prevent any use of the Premises described which would interfere with landing or taking off of aircraft at the Olympia Regional Airport or otherwise constitute an airport hazard as may be determined by the Port or the Federal Aviation Administration (FAA) or any similar agency having jurisdiction over operations at the Olympia Regional Airport. The prohibited use of the Premises referred to in this paragraph includes causing any visual obstruction or radio or similar emission that may tend to interfere with the operations at the Olympia Regional Airport.

If the Premises are located within the approach zone to the Olympia Regional Airport, Tenant would therefore be subject to substantial use restrictions for the benefit of such airport and its uses. In view of these restrictions, Tenant may not sublease the property until such sublessee shall have received written permission from the Port as to the nature and extent of the use to which such the sublessee intends to devote the property in order to ensure that such intended use will not in any way interfere with the operation of the Olympia Regional Airport.

Tenant acknowledges that noise from both flight and non-flight operations may be generated from activities at the Olympia Regional Airport and by other tenants of the Port. Tenant is taking the Premises subject to such condition, whether now existing or hereafter arising, and hereby waives all claims (including, without limitation, claims for damages, nuisance or injunctive relief) relating thereto; provided, however, that Tenant does not waive any right to have applicable statutes and regulations regarding noise enforced.

## **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, licensees, 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 employees, agents, contractors, subcontractors, suppliers, customers, licensees, or invitees. 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 Tenants use of the Premises ~~or out of any occurrence in or upon the Premises,~~ during the term of this Lease, 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 persons or damage to property caused by or resulting from the concurrent negligence or willful act or omission of Tenant and Port, its officers, officials, employees, agents, contractors, or volunteers, the Tenant's and Port'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 the Port, its principals, agents, contractors, or employees. This indemnification and hold harmless shall include reasonable attorney 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 or its equivalent 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; pollution liability; 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. 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 by time of execution of the Lease by Tenant, and at the Port's request shall provide the Port with 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 the Port 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 Port'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 and the buildings, structures and other improvements located on the Premises, and the adjoining roadways, sidewalks and areas, in a neat, clean, safe, sanitary, and good condition, 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 any improvement on 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 fixtures and improvements of at least as good a quality as existed at the commencement of this Lease. If Tenant fails to properly maintain or repair the Premises or any improvements thereon, the Port shall be entitled, but shall not be obligated, to enter the Premises after notice to Tenant and the expiration of any applicable cure period, and perform such work as may be necessary to restore the 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 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".

Unless otherwise consented to by the Port, 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 Section 34, **ARBITRATION PROCEDURE**.

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

**18.1 Alterations and Improvements.** Tenant shall make no alterations to 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 or alterations. All improvements, as defined in Exhibit "B," to the Premises shall be constructed in accordance with Section 9 herein. 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 Section 19, **DISPOSITION OF IMPROVEMENTS**. Any dispute under this section shall be subject to arbitration under Section 34, **ARBITRATION PROCEDURE**.

**18.2 Signage.** 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 any 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 written approval prior to installation; (ii) any covenants, conditions or restriction encumbering the Premises and (iii) any applicable municipal permits and approvals.

## **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 properly graded, filled, compacted, level, and uniform condition, free from all debris, and in accordance with all applicable law and all provisions of this Lease, including but not limited to Section 27, **HAZARDOUS SUBSTANCES**.

b. If the Port, in its sole discretion, elects to have all or any portion of the improvements remain on the Premises, then title to the same shall automatically pass to the Port, free of any right, title, or interest of Tenant therein, or its successors or assigns, without the necessity of executing any further instrument and without any allowance, compensation, or payment by the Port. Tenant hereby grants and conveys to the Port all of its right, title and interest in and to such improvements, to be effective for all purposes only upon the

expiration or termination of this Lease and the Port's election to have such improvements remain upon the Premises. Upon such election by the Port, Tenant further agrees to execute, acknowledge and deliver to the Port contemporaneously with the expiration or termination of this Lease, a proper recordable instrument quit claiming and releasing to the Port to any right, title and interest of Tenant in and to the Premises and in and to all improvements remaining on the Premises pursuant to the election of the Port, and agrees to give such further assurances of title as may be required by the Port. In addition, upon such election by the Port, Tenant shall, upon expiration or termination of the lease, surrender and deliver the Premises and all improvements to remain on the Premises to the Port, without delay and in good order, condition and repair, ordinary wear and tear excepted, and in a neat and clean condition, excepting only Tenant's or any subtenant's movable trade fixtures, machinery, equipment and personal property that can be removed without injury to the Premises. Tenant shall also deliver to the Port all documents necessary or appropriate for the proper operation, maintenance and management of the Premises and remaining improvements.

c. Any dispute under this section shall be subject to arbitration under Section 34, **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 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 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. Tenant shall provide the Port and each other party designated by the Port with certificates of insurance evidencing such coverage, and at the Port's request shall provide copies of the actual policies. Tenant 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 Premises, with limits based on the reasonable value thereof.

b. If any building or improvement erected by Tenant on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Tenant shall, at its own cost and expense, either (i) repair or restore the same according to the original plans thereof, or (ii) repair or restore the same according to such modified plans as shall be previously approved in writing by the Port. Tenant shall elect whether to proceed under (i) or (ii) above. 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 no later 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 Premises. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or

restoration. 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 or restoration 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 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 Premises shall be damaged by fire or other casualty, and if the cost of repairing or restoring the same as provided above 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 provided above, or to terminate this Lease by written notice thereof to the Port.

d. Any dispute under this section shall be subject to arbitration under Section 34 **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 Section 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. At the Port's option, Tenant shall pay such deficiency each month as the amount thereof is ascertained by the Port, or the Port may accelerate all future payments and Tenant shall pay the present value of all future payments at once. 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 Tenant'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. Port 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, limited liability company, limited partnership, partnership, or other form of entity or association, Tenant further agrees that if at any time during the term of this Lease, more than one-half (1/2) of the outstanding beneficial interests of any class of interest in Tenant, or the managerial control of Tenant, shall belong to any persons other than those who hold such interests or managerial control at the time of the execution of this Lease, such change shall be deemed an assignment of this Lease within the meaning of this paragraph. **Upon any sublease of the Premises or any part thereof, Tenant shall include the following provision in the sublease:**

*Port Ground Lease. Lessee understands, acknowledges, and agrees that Lessor's right to the real property on which the Premises are located are pursuant to a Ground Lease between Lessor and the Port of Olympia, a copy of which is attached as Exhibit \_\_ hereto. Lessee understands, acknowledges, and agrees that it shall be bound by all provisions in the Ground Lease to which Lessor is subject, including but not limited to provisions related to protection of air space, environmental provisions, and any limitation on use of the property and Premises. Lessee acknowledges that it has had an opportunity to review the Ground Lease in its entirety and takes no exceptions to any provisions therein.*

Notwithstanding any assignment or sublease, 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. Tenant shall pay all reasonable costs and attorney fees incurred by the Port with respect to any request by Tenant for assignment, sublease, or other encumbrance or transfer of this Lease or the Premises or any interest therein.

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

Tenant agrees to comply with all applicable rules and regulations of the Port pertaining to the Premises and the Cleanwater Centre or other realty of which the Premises are or may become a part, and 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. Tenant further agrees to comply with all applicable federal, state and local laws, rules, regulations, ordinances, permits, orders, and decrees, including, without limitation, those relating to environmental matters, and Americans with Disabilities Act, as currently in effect or as may be hereafter amended or issued. Tenant shall defend, indemnify, and hold harmless the Port from and against all claims, costs, fees, fines, penalties, liabilities, losses, and damages incurred by the Port by reason of any charge, claim, litigation, or enforcement action related to any actual or claimed violation by Tenant of any of the laws, rules, regulations, ordinances, permits, orders and/or decrees referenced in this section. Costs and fees shall include, but not be limited to, all direct and indirect costs and professional fees, including engineering, consultant, and attorney's fees. Any fees for any federal, state or local inspections and/or certificates required for use and occupancy of the Premises shall be paid by Tenant. The Premises are located at the Cleanwater Centre and Tenant agrees to conform and to comply with all rules and regulations related to the Cleanwater Centre as now promulgated or as may be amended in the future, including without limitation, the Development Guidelines attached to this Lease as Exhibit "E".

## 27. HAZARDOUS SUBSTANCES.

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

(a) As used in this Section, "Hazardous Substances" means any chemical, substance, material, waste, vapor, or similar matter defined, classified, listed or designated as harmful, hazardous, extremely hazardous, dangerous, toxic, radioactive, or pollution, 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, rule, regulation, or ordinance presently in effect or that may be promulgated in the future, and as they may be amended from time to time.

(b) As used in this Section, "Other Property" means any real or personal property other than the Premises (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 Premises.

(c) Tenant shall apply for and obtain all necessary federal, state, and local permits and approvals for Tenant's use of the Premises. Tenant shall not commence any activity on the Premises until all permits and approvals required for such activity have been issued and shall conduct all activities on the Premises in compliance with such permits and approvals.

(d) Tenant agrees and warrants for itself and its employees, agents, representatives, contractors, subcontractors, licensees, invitees, subtenants, and assigns (collectively "Tenant's Representatives"), that Tenant and Tenant's Representatives will comply with all applicable federal, state, and local laws, rules, regulations, ordinances, permits, orders, and decrees relating to the generation, recycling, treatment, use, sale, storage, handling, transport, disposal, release, and cleanup of any Hazardous Substances by any person on the Premises or other Port property (collectively "Environmental Laws"). In addition, Tenant and Tenant's Representatives will not, without the Port's prior written consent, keep on or around the Premises or any common areas, for use, disposal, treatment, generation, storage, or sale, any Hazardous Substances.

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

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

(ii) Make available for the Port's review during normal business hours, true and correct copies of all reports, manifests and identification numbers retained by Tenant or submitted to appropriate

governmental authorities, and all documents and communications received from any government agencies, and provide copies to the Port of all documents requested by the Port at no cost to the Port within five (5) business days of the Port's request;

(iii) Within five (5) business days of a written report from the Port, submit a written report 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 applicable Environmental Laws;

(iv) Allow the Port or the Port's agents or representatives to come on the Premises at all reasonable times to check Tenant's compliance with all applicable Environmental Laws; and

(v) Comply with all applicable Environmental Laws, and all requirements and standards established by federal, state, or local governmental agencies responsible for or specifically charged with the regulation of Hazardous Substances.

(f) 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 Premises.

(g) Tenant agrees to immediately notify the Port if Tenant becomes aware of (a) any release of any Hazardous Substances or any other environmental issue or liability with respect to the Premises or any Other Property; or (b) any lien, action or notice resulting from violation of any Environmental Laws. At its own cost, Tenant will take all actions which are necessary to notify relevant and appropriate authorities of any such release and to remediate any Hazardous Substances affecting the Premises, including removal, containment or any other remedial action, whether or not required by governmental authorities.

(h) If Tenant is in non-compliance with any Environmental Laws or is in non-compliance with this Section, it shall promptly take such action as is necessary to mitigate and correct the non-compliance. If Tenant fails to act in a prudent and prompt manner, the Port shall have the right, but not the obligation, to enter the Premises and 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 address or mitigate the non-compliance. 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. Without limiting the foregoing, in the event of Tenant's non-compliance with any requirements in subsections (e)(i) – (v) above, any and all costs incurred by the Port with respect thereto, including but not limited to costs of inspections, monitoring, and attorney fees, shall become immediately due and payable as additional rent upon presentation of an invoice therefor.

(i) Tenant shall be fully and completely liable to the Port for, and shall defend, 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 costs and professional fees, including engineering, consultant, and 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 Premises during Tenant's possession or control of the Premises which directly or indirectly result in the Premises or any Other Property becoming contaminated with Hazardous Substances or otherwise violating any applicable Environmental Laws, and (d) the cleanup of Hazardous Substances at or from the Premises or any Other Property to a level sufficiently protective of human health and the environment in compliance with all applicable Environmental Laws. 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 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.

(j) Tenant's obligations under this Section 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: (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.

(k) Upon expiration or sooner termination of this Lease, Tenant shall have removed from the Premises any Hazardous Substances, contaminated soils or other contaminated or hazardous materials or substances deposited thereon by Tenant in a manner that complies with all applicable Environmental Laws. 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 Section 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 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 Premises and have been properly and lawfully disposed of, and the Premises have been cleaned up to a level that meets all applicable Environmental Laws.

## **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 "D" 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 the Port 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 the Port with a certificate of insurance evidencing Tenant's compliance with insurance requirements applicable to storage tanks. Tenant shall pay any and all costs necessary to comply with the terms of any license required under this section and the costs of complying with any other legal or regulatory requirements associated with Tenant's storage of materials identified in Exhibit "D."

## **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 Sections 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. Tenant shall annually identify any materials listed in Exhibit "D" 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 the Port 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 the Port 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 Base Rent shall be reduced proportionately. All proceeds from any taking or condemnation shall be paid to Port 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. 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.

### **33. APPRAISAL PROCEDURE.**

The fair market value of the property shall be determined by an appraisal conducted by an independent appraiser selected by Tenant and approved by the Port, of which approval will not be unreasonably withheld. 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" means a member in good standing of the Appraisal Institute, or equivalent professional organization. In conducting an appraisal of the Premises, 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 fails to choose an appraiser at least one-hundred and eighty (180) days prior to the date an appraisal is needed for a rental revision, the Port may choose an appraiser.

#### **34. 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 section. 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.

#### **35. 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.

#### **36. 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.

#### **37. 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**  
606 Columbia Street NW, Suite 300  
Olympia, WA 98501

To the Tenant:  
**Launch Negotiations LLC**  
210 Tumwater Blvd  
Tumwater WA 98506  
503-422-5970  
[russpet14310@gmail.com](mailto:russpet14310@gmail.com)

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.

**38. 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 Section 22, **DEFAULTS**.

**39. BINDING.**

Subject to Section 25, **ASSIGNMENT OR SUBLEASE** above, this Lease is binding upon the parties hereto, their heirs, personal representatives, successors in interest and assigns.

**40. NO RECORDING.**

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

**41. REAL ESTATE COMMISSIONS AND FEES.**

Any real estate commissions or fees related to this Lease, and claims related thereto, shall be handled in accordance with **Section 1, LEASE SUMMARY** above.

**SIGNATURES ON THE NEXT PAGE**

**PORT:**

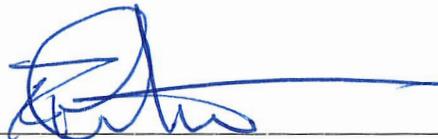
**PORT OF OLYMPIA, a Washington  
Municipal corporation**

By:   
Robert Rudolph, Jr.  
Interim Executive Director

Date: 2/15/24

**TENANT:**

**LAUNCH NEGOTIATIONS LLC**

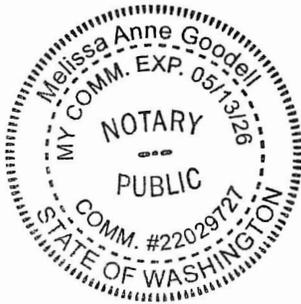
By:   
Ruslan Petrusha  
Owner / Member

Date: 01/24/24

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF THURSTON )

On this 15<sup>th</sup> day of February, 2024, personally appeared before me **ROBERT RUDOLPH, JR.** To me known to be the Interim Executive Director at the Port of Olympia, the municipal corporation named in the within and foregoing **Lease Agreement**, and acknowledged to me that she signed the same on its behalf, as she is so authorized to do, as her 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.

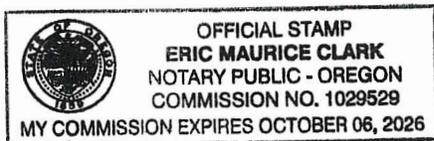


Melissa Anne Goodell  
(Print Name) Melissa Anne Goodell  
NOTARY PUBLIC in and for the State of Washington,  
residing at Olympia  
My commission expires: 5/13/2026

STATE OF OREGON )  
 ) ss  
COUNTY OF CLACKAMAS )

On this 24<sup>th</sup> day of January, 2024, personally appeared before me **RUSLAN PETRUSHA**, to me known to be the OWNER at the entity named in the within and foregoing **Lease Agreement**, and acknowledged to me that they signed the same on its behalf, as they are so authorized to do, as their 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.



Eric Maurice Clark  
(Print Name) [Signature]  
NOTARY PUBLIC in and for the State of ~~Washington~~ OREGON,  
residing at SANDY, OR  
My commission expires: October 6, 2026

**RATIFICATION**

This Lease shall be subject, as a condition subsequent, to ratification by the Port of Olympia Commission within thirty (30) days after the date set forth on Page 1. This Lease shall be effective and binding on the parties until such time (and thereafter if ratified), the Executive Director having the authority to sign this Lease and bind the Port to all of its material terms. If this Lease is not ratified, it shall terminate and be of no further force and effect.

The undersigned confirms that this Lease was ratified by the Port of Olympia Commission on \_\_\_\_\_, 2024.

Port of Olympia Commission

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

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

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

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF THURSTON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the Port of Olympia Commission, the municipal corporation named in the within and foregoing **Lease Agreement**, and acknowledged to me that they signed the same on its behalf, as they are so authorized to do, as their 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  
LEASE PREMISES**

**(210 Tumwater Boulevard)**



LEASE PREMISES  
LEGAL DESCRIPTION

(210 Tumwater Boulevard)

That portion of Lot 1 of City of Tumwater Short Plat SS-19-0710-TW, as recorded under Auditor's File No. 4731596, records of Thurston County, Washington, particularly described as follows:

Commencing at the Southwest corner of said Lot 1; Thence N 37°17'00" W along the West line of said Lot 1, 238.47 Feet and N 01°49'12" E, 122.60 feet; Thence S 88°10'48" E, 234.19 feet to the Southwesterly most corner of "Building 210" Tumwater Boulevard" and the True Point Of Beginning; Thence S 88°11'26" E along the South line of said building, 60.63 Feet to the Southeast corner of said building; Thence N 01°29'41" E along the East line of said building, 100.33 Feet to the Northeast corner of said building; Thence N 88°14'09" W along the North line of said building, 60.11 Feet to the Northwest corner of said building; Thence S 01°47'29" W along the West line of said building, 100.28 Feet to the True Point of Beginning.

Lease area approximately 6,055 Sq.Ft.

**EXHIBIT B**  
**REQUIREMENTS AS TO IMPROVEMENTS**

These conditions relating to improvements in this Exhibit "B" 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 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 Premises, or with the Port Master Plan or other plans or criteria for the Premises in the general area in which the 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 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 Premises of all utilities required by Tenant's use of the Premises, assuming such utility services are available to the 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 Premises, Tenant, at Tenant's sole cost, shall pay for the extension of such utilities to the 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 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 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 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 C**  
**LESSOR'S CONSENT AND AGREEMENT**  
**(For Financing Purposes)**

Description of Ground Lease.

“Port”	The Port of Olympia
“Tenant”	_____
“Lease”:	Ground Lease dated _____
“Leasehold”:	Tenant's interest in the Lease
“Lender(s)”:	_____
	_____
	_____
	_____

NOW, THEREFORE, the Port represents, warrants, covenants and agrees as follows:

1. **Consents.** the Port 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 the Port under the Lease or (b) to the knowledge of the Port, 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 the Port, no event has occurred which now does or hereafter will authorize the Port 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 the Port 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. The Port 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 the Port, subject to the requirements of Section 6.4 below.

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

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

5. **Surrender of the Premises.** No surrender of the Premises or any other act of Tenant shall be deemed to terminate the Lease and the Port 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 the Port the right to terminate, modify, amend or shorten the term of the Lease, the Port 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 the Port or its agent to or upon Tenant pursuant to the Lease shall be sent contemporaneously to Lender in accordance with **Section 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 the Port 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 the Port desiring to terminate the Lease, the Port 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 the Port 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, the Port shall take no action to terminate the Lease if:

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

(b) Lender notifies the Port 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 the Port at time of notification all back rent or other monies or performances due that may be in default up to the date Lender notifies the Port of Lender's intent and further pays all rent that accrues during the period after Lender so notifies the Port and completes such other performances that may be required or come due under the Lease.

The Port 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 Port 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 the Port 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 the Port for such assignment or transfer, which consent will not be unreasonably withheld or delayed provided that Lender has disclosed to the Port (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 the Port 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.** The Port shall be named as an additional insured under any of Tenant's casualty policies on the Premises to the extent of the interests limited in this Section 7. Should the Premises suffer any loss which is covered by casualty insurance, and the insurance proceeds are used to restore any improvements made by Tenant, the Port agrees that Tenant and Lender shall have the right to such proceeds so long as none of the Port's property, utilities or other services therein are damaged or such damages are repaired. In the event the Premises are substantially damaged and Tenant's improvements have been repaired, the Port shall only participate in the insurance proceeds to the extent necessary to repair and restore the Port's ground and any of the Port'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, the Port has the option of requiring Tenant to demolish the improvements at the end of the Lease term, or to have Tenant convey title to the Port Tenant's interests in the Leasehold Improvements. In the event Premises and the Leasehold are so severely damaged that Tenant's and Lenders' decision is not to repair or restore the Premises, the Port shall participate in the insurance proceeds to the extent necessary to remove the remainder of the damaged improvements and to restore the 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, the Port 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 the Port'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 Premises or the interests of Tenant or Lender therein, including without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. The Port, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify Lender of the same.

9. **Incorporation of Mortgage 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.

10. **Right to Remove Collateral.** In the event Lender exercises its rights under its collateral and realizes upon the collateral, the Port agrees that Lender is entitled to remove Tenant's furniture, movable trade fixtures and equipment installed by Tenant from the 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 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, the Port 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 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 the Port 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 the Port:

Port of Olympia  
606 Columbia St. NW, Suite 300  
Olympia, Washington 98501  
Attn: Real Estate Operations

IN WITNESS WHEREOF, the Port 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**

**EXHIBIT "D"**

***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 "E"**

**DEVELOPMENT GUIDELINES**

**EXHIBIT "F"**

**PURCHASE AND SALE AGREEMENT FOR IMPROVEMENTS**

## EXHIBIT "G"

### CLEANWATER CENTRE SPACE LEASE PARKING

**Parking.** The Port agrees that it will provide to Tenant sufficient parking to support its operation of commercial and retail uses in approximately 6,000 s.f. facility in the Port's Cleanwater Centre ("Centre"), commonly known as **210 Tumwater Boulevard SW, Tumwater, WA 98501**, during the term of the Lease and any renewals hereof. Tenant acknowledges that the parking area shown on this **Exhibit F, Page 2**, incorporated as part of the Lease (which includes not less than 236 shared parking stalls, as shared with all tenants of the Cleanwater Centre), and given the hours of operations of commercial/retail/office building, will be sufficient to support such Tenant's operation.

It is understood and agreed that the parking requirement for Tenant's operation as mandated by the City of Tumwater's development standards is \_\_\_\_\_ stalls including \_\_\_ ( ) ADA parking stalls in the immediate proximity of the commercial/retail/office building.

Tenant further acknowledges and agrees that the parking lot included within the common areas (236 stalls) are subject to the Lease, was constructed solely to meet the needs of tenants of the Port for that property, identified as Lot 1 attached here to and by reference incorporated herein. Tenant further agrees and acknowledges that no development on Port property, other than such Lot 1 property, shall share the use of the parking areas. Port further agrees that it will act reasonably by exercising management and control of the parking lot. Tenant shall not be permitted to use the parking area for any other purpose without the explicit written approval by the Port.

**Non-Dedicated Non-Exclusive Parking Area:** Tenant understands and agrees that there is no exclusivity or dedicated parking area for use by Tenant and that use of the parking area in the Port's Cleanwater Centre is 'shared' parking by all Tenants of the Port allowed in the property.

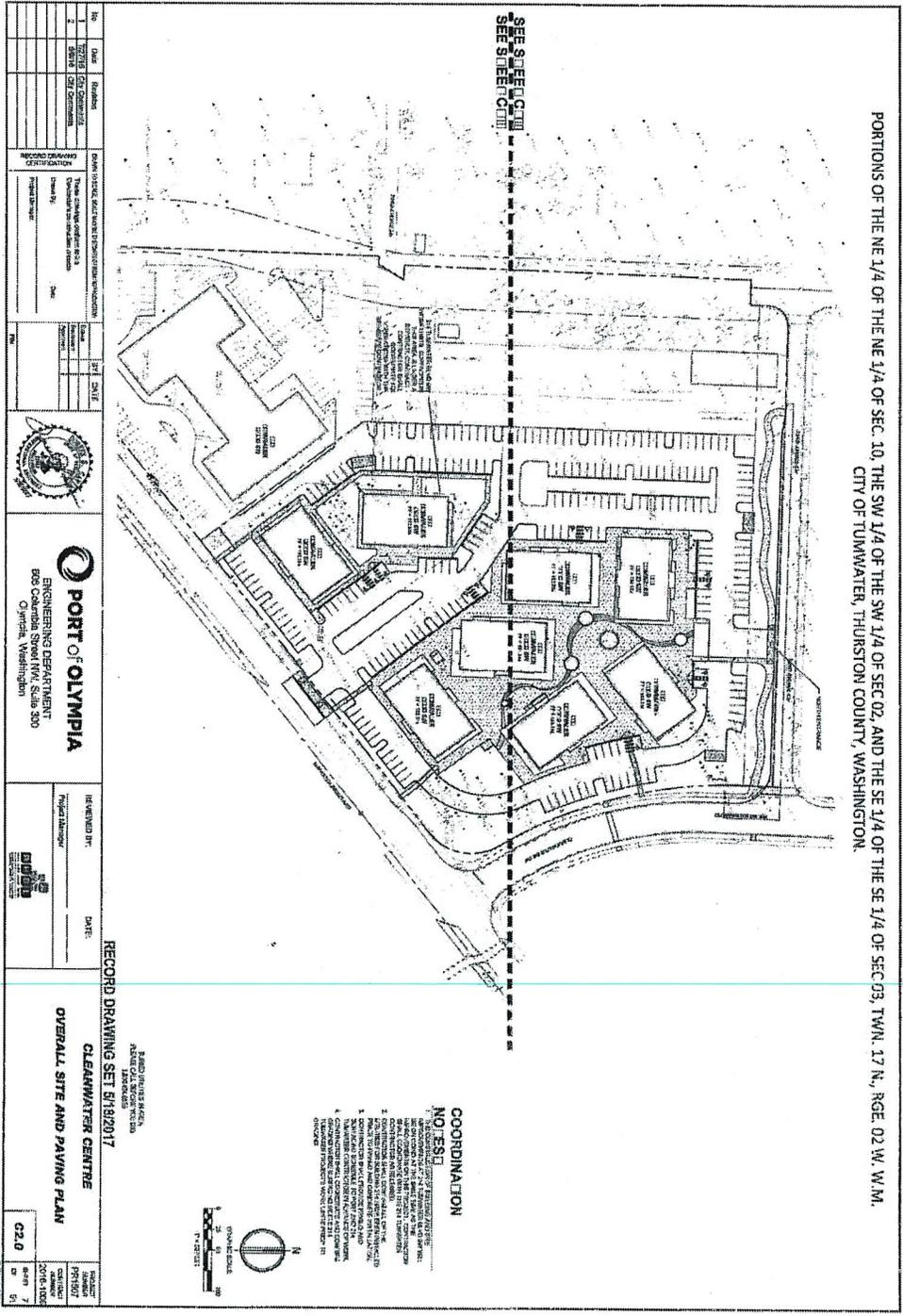
Any dispute regarding this Exhibit F shall be subject to arbitration under paragraph 34, ARBITRATION PROCEDURE, provided that Tenant shall not be excused from payment under this paragraph pending the outcome of arbitration.

**Changes and Maintenance of Parking Areas:** Tenant acknowledges and agrees that maintenance and repairs to the parking areas are subject to the Common Area provisions of the Lease and Tenant shall be responsible for the proportionate rate associated with the Common Area Maintenance cost as stated in the Lease.

The Port reserves the unrestricted right to make reasonable changes in the parking area. The parking area may be elevated, surface or subterranean. The Port shall have the right to make such changes in the parking area as the Port deems necessary and consistent with the purposes and intent of operating, and in respect thereto, provided however, that the Port will not make changes to the parking area that would reduce the parking available to meet the minimum requirements of each Tenant in the Centre

The Parking Area includes all automobile parking areas, access roads, driveways, entrances, exits, sidewalks, landscaping, landscaped areas, lighting and curbs. The parking area shall at all times be subject to the exclusive control and management of the Port and shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to the parking area.

**EXHIBIT "G" – Page 2  
CLEANWATER CENTRE SPACE PARKING AREA**



PORTIONS OF THE NE 1/4 OF THE NE 1/4 OF SEC. 10, THE SW 1/4 OF THE SW 1/4 OF SEC. 02, AND THE SE 1/4 OF THE SE 1/4 OF SEC. 03, T.17N., R.02W., W.M., CITY OF TUMWATER, THURSTON COUNTY, WASHINGTON.

**PORT OF OLYMPIA COMMISSION  
RESOLUTION 2016-06**

**A RESOLUTION OF THE PORT OF OLYMPIA COMMISSION PURSUANT TO RCW  
53.08.090 AND 53.20.010  
TO DECLARE PROPERTY SURPLUS TO ITS NEEDS AND TO AMEND ITS  
COMPREHENSIVE SCHEME OF HARBOR IMPROVEMENTS TO DELETE THE  
PROPERTY FROM ITS SCHEME TO ALLOW A NEGOTIATED TRANSFER FOR  
CONSIDERATION.**

**WHEREAS**, pursuant to RCW 53.08.010, the Port of Olympia has adopted a Comprehensive Scheme of Harbor Improvements for the development of harbor improvements, development of industrial lands, and other lands owned by the Port of Olympia, located in Thurston County, Washington; and

**WHEREAS**, the Port's ownership of land included within the Port's Comprehensive Scheme of Harbor Improvements includes all of those certain improvements located on tax parcel numbers 82701600200, 82701600000, 12710110100, and 82701600100, which consist of ten (10) existing buildings, eight (8) 6,000 square foot buildings, one (1) 22,000 square foot building, and one (1) 4,000 square foot building (the "Cleanwater Centre Improvements"); and

**WHEREAS**, pursuant to RCW 53.08.090, on August 8, 2016, the Port's Executive Director or designee has made written certification to the Port of Olympia Commission that the Cleanwater Centre Improvements are no longer needed for Port district purposes; and

**WHEREAS**, pursuant to RCW 53.08.090, property that is part of the Port's Comprehensive Scheme of Harbor Improvements shall not be disposed of until the Comprehensive Scheme of Harbor Improvements has been modified to find the property surplus to the Port needs, and after public notice and hearing as provided by RCW 53.20.010; and

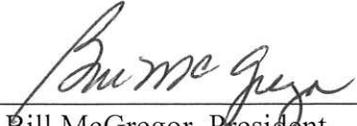
**WHEREAS**, proper public notice was given and a public hearing was held as required by statute.

**NOW, THEREFORE, BE IT RESOLVED** that:

1. The Cleanwater Centre Improvements described herein are no longer needed for Port district purposes and are surplus to the Port's needs, and the sale of such property is in the public interest.
2. The Port's Comprehensive Scheme of Harbor Improvements is hereby amended to find the Cleanwater Centre Improvements surplus to the Port's needs and to remove the Cleanwater Centre Improvements from the Port's Comprehensive Scheme of Harbor Improvements to permit a negotiated transfer of the same for consideration.

**ADOPTED** by a majority of the members of the Port Olympia Commission, a majority being present and voting on this Resolution at a regular Commission meeting on August 8, 2016, as attested to by the signatures below of the Commissioners physically present this 8<sup>th</sup> day of August, 2016.

**PORT OF OLYMPIA COMMISSION**

By:   
Bill McGregor, President

By:   
Joseph Downing, Vice-President

By:   
E.J./Zita, Secretary