



Commission Meeting
Monday, December 12, 2022
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 December 8, 2022.

<https://www.portolympia.com/commission>

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

<https://us02web.zoom.us/j/82517824119?pwd=bitPRGFDdjIBbHZSVktiME5md1g1QT09>

Passcode: 774897

or Telephone: 1 253 215 8782

Webinar ID: 825 1782 4119

Please note that the Zoom link changes for each meeting.

Written public comments may be submitted to 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.

Individual public comments are limited to 3 minutes per person.

Executive Session:

The Commission will hold an executive session on Monday, December 12, 2022 at 4:00 p.m. to review the performance of a public employee (RCW 42.30.110(1)(g)).

The executive session is expected to last approximately 60 minutes with no action to be made or decisions to follow.

AGENDA

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

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

Port of Olympia Mission

Create economic opportunities by connecting Thurston County to the world by air, land & sea.

- 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.

F. Consent Calendar

1. Challain, Inc. Assignment – Allyn Roe, Business Development and Real Estate Director

G. Pending Issues or Business

1. Resolution 2022-XX Apprenticeship Utilization – Policy Revision
2. Northwest Asphalt Contract Amendment
3. CACC Letter
4. Marine Center: Thomas Architecture Contract Amendment No. 3
5. Marine Center: MIG Architecture Contract
6. FAA Land Release

H. Action Calendar

1. Large Airport Lease – Allyn Roe, Business Development and Real Estate Director
2. Mojo Strategies Contract Amendment – Lisa Parks, Executive Services Director
3. The Beckett Group Contract Amendment – Lisa Parks, Executive Services Director
4. Resolution 2022-13 Revision of Policy No. 207 – Employment Salary Review and Pay for Performance – Ben McDonald, Human Resources and Administrative Director
5. Resolution 2022-14 to Adopt Re-Districting Plan – Sam Gibboney, Executive Director

I. Action/Other Calendar

1. Resolution 2022-15 POCAC Resolution Revision – Dan Penrose, SCJ Alliance
2. POCAC Recommendation on Slate of Candidates to Serve as New POCAC Members – Dan Penrose, SCJ Alliance
3. Public Comment

J. Advisory Calendar

1. None
2. Public Comment on Advisory Items

K. Commissioner Reports/Discussion

L. Other Business

M. Meeting Announcements

N. Adjourn



COMMISSION MEETING

<u>BRIEFING DATE/TIME:</u>	December 12, 2022
<u>DEPARTMENT:</u>	Business Development & Real Estate
<u>STAFF CONTACT:</u>	Allyn Roe, Director Telephone: 360.528.8012 Email: AllynR@portolympia.com
<u>TOPIC:</u>	Technical Assignment of Lease
<u>PURPOSE:</u> <i>Check all that apply</i>	☐ Information only ☒ Decision needed ☐ Follow up from previous briefing
<u>BACKGROUND & OVERVIEW:</u>	
The Port of Olympia entered into a lease agreement with Challain, Inc. on February 1997 for a term of 50 years, which expires February 2047. Challain Inc., owned and operated Batdorf & Bronson Coffee Roasters. Majority stockholders of Challain Inc., sold their stocks in a 100% stock sale. The operation will remain the same and key personnel will remain as part of the new team under Challain, Inc. SPC. The customary due diligence was conducted by Port staff, and as called out in the lease agreement, Paragraph 24 – Assignment or Sublease, any transfer of ownership for more than ½ of the outstanding shares, and the corporation now belonging to any stockholders other than those who owned the shares at the time of the Lease execution, the change of ownership is considered an assignment of the Lease. Therefore, the attached assignment is being presented for your approval.	
<u>DOCUMENTS ATTACHED:</u>	
▪ COPY OF LEASE ASSIGNMENT	
<u>SUMMARY & FINANCIAL IMPACT:</u>	
None.	
<u>AFFECTED PARTIES:</u>	
None.	
<u>STAFF RECOMMENDATION:</u>	
Approve Assignment of Lease from Challain Inc., to Challain, Inc. SPC.	

ASSIGNMENT OF LEASE,

ACCEPTANCE OF ASSIGNMENT OF LEASE (ASSIGNEE),

AND CONSENT TO ASSIGNMENT OF LEASE (LANDLORD)

THIS ASSIGNMENT OF LEASE, ACCEPTANCE, AND CONSENT is made and entered into this _____ day of _____, 2022, by and between the **PORT OF OLYMPIA**, a Washington municipal corporation, hereinafter called the "**Port**," **CHALLAIN, INC.**, hereinafter called the "**Tenant**," and **CHALLAIN, INC. SPC**, hereinafter called the "**Assignee**."

WHEREAS, Tenant entered into a Lease Agreement with the Port dated February 14, 1997, (the "Lease") as amended by Amendment No. 1 dated July 14, 1997, Amendment No. 2 dated January 24, 2001, Amendment No. 3 dated March 21, 2002, Amendment No. 4 dated February 10, 2003, Amendment No. 5 dated March 21, 2005, Amendment No. 6 dated March 19, 2007, and Amendment No. 7 dated April 5, 2017, regarding premises located at NewMarket Industrial Campus consisting of approximately 1.46 acres, and commonly known as 200 Market Street NE, Olympia, Washington 98501, in the Port's Market District, as generally shown on Exhibit A hereto attached (the "Premises"); and,

WHEREAS, Tenant has provided the Port with notice that a majority interest in Challain, Inc. was sold in a stock sale to Assignee, which took place June 30, 2022; and,

WHEREAS, pursuant to Paragraph 24 of the Lease, any change of majority ownership of the Tenant to persons other than those who held such interest at the time of execution of the Lease is deemed to be an assignment of the Lease, which requires the Port's written consent; and

WHEREAS, Tenant desires to assign its interest in the Lease and in the Premises to Assignee;

WHEREAS, Assignee desires to accept assignment of the Lease from Tenant; and

WHEREAS, the Port is willing to consent to assignment of the lease from Tenant to Assignee, upon and subject to the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the promises, covenants, conditions, and agreements herein, and other good and valuable consideration, the parties hereby agree as follows:

1. Tenant hereby assigns to Assignee all of its right, title, and interest in and to the Lease and the Premises, effective as of June 30, 2022.

2. Tenant hereby further acknowledges that upon mutual execution of this Assignment of Lease, Acceptance, and Consent by all parties, Tenant waives notice of any subsequent changes or amendments to the Lease, or any default under the Lease.

3. Assignee hereby accepts assignment of Tenant's right, title, and interest in the Lease and the Premises, and assumes and agrees to make all the payments and to perform all the terms, conditions, and covenants of the Lease (including all changes and additions thereto) that are to be performed by the Tenant therein, effective as of June 30, 2022.

4. Assignee acknowledges its obligations and agrees to act as guarantor and to guarantee to the Port and its successors and assigns the full, faithful, and punctual performance and observance by

Tenant of all obligations, covenants, and conditions to be performed and/or observed by Tenant as set forth in the Lease.

5. Assignee hereby further agrees to post security and liability insurance in amounts and form in accordance with the terms of the Lease and satisfactory to the Port prior to the effective date of such assignment.

6. Assignee hereby further acknowledges and agrees that it has received and reviewed a photocopy of the Lease, including all exhibits and other papers relating thereto and any changes or additions made to any of the above, that it is familiar with the terms thereof and accepts the same as stated, and that Assignee is not relying on any representations, warranties, or assurances of any kind by the Port with respect thereto.

7. Assignee hereby further acknowledges and agrees that it has made a full and complete inspection of the Premises and accepts the same "AS IS" in their present condition, and that the Assignee is not relying on any representations, warranties, or assurances of any kind by the Port with respect thereto.

8. Tenant and Assignee hereby further acknowledge and agree that the Port's consent to this assignment does not waive the requirement of the Port's consent, or the Port's right to object or withhold consent, to any future assignment or subletting of the Lease or the Premises.

9. The Port hereby consents to Tenant's assignment of its interest in the Lease and the Premises to Assignee, and hereby accepts Assignee herein as the Tenant under the Lease, effective as of June 30, 2022, upon and subject to the terms and conditions stated herein, and subject to approval or ratification by the Port of Olympia Commission within thirty (30) days from the date hereof as provided below.

10. In any action or proceeding, including but not limited to arbitration, and including all appeals, brought to enforce this Agreement, to determine or declare the rights and duties under this Agreement, or to resolve a dispute, breach, or default in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs, including expert witness fees, incurred in such action or proceeding, in addition to any other relief to which such party may be entitled.

SIGNATURES ON THE NEXT PAGE

TENANT:

CHALLAIN, INC.

By: [Signature]
Printed Name: DAVID J. WASSON
Title: PRESIDENT / CEO

By: _____
Printed Name: _____
Title: _____

Contact Information:
Address: 200 Market St. NE
City/State: Olympia, WA
Phone: 360-754-5282
Email: dwasson@dancinggoats.com

ASSIGNEE:

CHALLAIN, INC. SPC

By: [Signature]
Printed Name: DAVID J. WASSON
Title: PRESIDENT / CEO

By: [Signature]
Printed Name: DON ZIMMER
Title: VP

Contact Information:
Address: 200 Market St. NE
City/State: Olympia, WA
Phone: 360-754-5282
Email: _____

APPROVED AS TO FORM:

By: _____
Printed Name: _____
Port Legal Counsel

PORT:

PORT OF OLYMPIA

By:

SAM GIBBONEY

STATE OF WASHINGTON)
COUNTY OF THURSTON) ss

On this 24 day of October, 2022, personally appeared before me David Washton, to me known or sufficiently proven to be the person(s) named in the within and foregoing **Assignment of Lease, Acceptance, and Consent as Assignee**, and said person(s) acknowledged that he/she/they signed said instrument, on oath stated that he/she/they is/are authorized to sign said instrument and acknowledged it as the President/CEO of Challain, Inc. to be the free and voluntary act and deed of such party for the uses and purposes mentioned in said instrument.

In witness whereof, I have hereunto set my hand and seal the day and year above written.

BREANNE ANDRINGA
Notary Public
State of Washington
Commission # 20102041
My Comm. Expires Nov 27, 2023

Breanne Andringa
Printed Name: Breanne Andringa
Notary Public in and for the State of Washington
Residing at: Olympia, WA
My commission expires: NOV. 27, 2023

STATE OF WASHINGTON)
COUNTY OF THURSTON) ss

On this 24 day of October, 2022, personally appeared before me Don Zimmer, to me known or sufficiently proven to be the person(s) named in the within and foregoing **Assignment of Lease, Acceptance, and Consent as Assignee**, and said person(s) acknowledged that he/she/they signed said instrument, on oath stated that he/she/they is/are authorized to sign said instrument and acknowledged it as the VP of Challain, Inc. SPC to be the free and voluntary act and deed of such party for the uses and purposes mentioned in said instrument.

In witness whereof, I have hereunto set my hand and seal the day and year above written.

BREANNE ANDRINGA
Notary Public
State of Washington
Commission # 20102041
My Comm. Expires Nov 27, 2023

Breanne Andringa
Printed Name: Breanne Andringa
Notary Public in and for the State of Washington
Residing at: Olympia, WA
My commission expires: NOV. 27 2023

STATE OF WASHINGTON)

) SS

COUNTY OF THURSTON

On this ____ day of _____, 2022, personally appeared before me **SAM**

corporation named in the within and foregoing **Assignment of Lease, Acceptance, and Consent**, and

and voluntary act and deed of such party for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal the day and year above written.

Printed Name: _____

Notary Public in and for the State of Washington

Residing at: _____

My commission expires: _____

This Assignment of Lease, Acceptance, and Consent 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 hereof. This Assignment of Lease, Acceptance, and Consent shall be effective and binding on the parties until such time (and thereafter if ratified), the Executive Director having the authority to sign this Assignment of Lease, Acceptance, and Consent and to bind the Port to all of its material terms subject to ratification by the Port Commission. If this Assignment of Lease, Acceptance, and Consent is not ratified as required herein, then it shall terminate and be of no further force and effect.

PORT OF OLYMPIA COMMISSION

Date: _____

In witness whereof, I have hereunto set my hand and seal the day and year above written.

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COMMISSION MEETING

<u>BRIEFING DATE/TIME:</u>	December 12, 2022
<u>DEPARTMENT:</u>	Executive
<u>STAFF CONTACT/TITLE:</u>	Sam Gibboney Telephone: 360.528.8001 Email: samg@portolympia.com
<u>TOPIC:</u>	Resolution 2022-XX Apprenticeship Utilization Requirement
<u>PURPOSE:</u> <i>Check all that apply</i>	☐ Information only ☒ Decision needed ☐ Follow up from previous briefing
<u>BACKGROUND & OVERVIEW:</u>	
The Port Commission tasked the Port of Olympia Citizen Advisory Committee (POCAC) with determining the viability of changing the language within the scope of work of contracts over \$1 million to include mandating apprenticeship utilization. The POCAC delivered a report to the Commission dated September 10, 2018 and entitled Apprenticeship & Training subcommittee. In August of 2022, Commissioner Iyall requested that Port staff and legal counsel prepare a revision to Port policy to create an Apprenticeship Utilization Incentive or requirement. The State of Washington has created requirements for apprenticeship utilization for certain public works contracts. In doing so the state recognizes that a well-trained construction trades workforce is critical to the ability to construct public works and that without a concerted effort to train new workers there will be an inadequate supply of skilled workers in the construction industry. Apprenticeship training programs are particularly effective in providing training and experience to individuals seeking to enter or advance in the workforce. By providing for apprenticeship utilization on public works projects, a government agency can create opportunities for training and experience that will help assure that a trained workforce will be available in sufficient numbers in the future for the construction of public works. Staff and legal counsel prepared revisions to Port Policy 1004 Public Works Contracting to create an Apprenticeship Utilization Requirement for public works projects estimated to cost more than \$1,000,000 (One Million Dollars) and presented them to the Commission at the November 14, 2022, meeting. Commissioners provided feedback and additional revisions are provided in the attached resolution. Text in blue font represents the updated suggested revisions.	
<u>DOCUMENTS ATTACHED:</u>	

▪ Power Point Presentation ▪ Resolution 2022-XX Apprenticeship Utilization Requirement ▪ POCAC Apprenticeship & Training Utilization Sub-Committee
<u>AFFECTED PARTIES:</u>
Public Works contractors Apprentices in construction trades and those seeking such
<u>NEXT STEPS/TIMEFRAME:</u> <i>Based on the Commission's recommendation, describe the next steps required in order to bring this item to conclusion. Include the time frame for each step.</i>
If the resolution is approved, staff will update procedures accordingly.

APPRENTICESHIP UTILIZATION

DECEMBER 12, 2022
SAM GIBBONEY
EXECUTIVE DIRECTOR

1

Apprenticeship Utilization Policy

Background

- POCAC Report – September 2018
- Commissioner Iyall initiated policy revision regarding apprenticeship utilization
- Contracts and Acquisitions policies last updated in 2019 (Resolution 2019-06)

2

2

Public Works Contracting Procedures

Policy 1004

- Policy approval authority is with the Commission
- Administrative authority delegated to Executive Director
(Resolution 2019-06)
- Creation and administration of procedures delegated to Executive Director
(Resolution 2016-06)

3



3

Public Works Contracting Procedures

Policy 1004

Revisions Proposed

- Definitions & Policy

Apprenticeship Utilization Requirement:

For Public Works contracts with an estimated cost of more than \$1,000,000, no less than 15 percent of the total reported labor hours involved shall be performed by apprentices. This apprenticeship utilization requirement applies even if the bid awarded is less than \$1,000,000 provided the estimated cost as determined by the Port was in excess of \$1,000,000 at the time the request for bids was published.

4



4

Public Works Contracting

Additional Update - Policy 1004

Reduction or waiver:

The Executive Director may in their discretion reduce or waive the requirements of this policy for a specific project for the following reasons:

- a) An emergency exists;*
- b) The demonstrated lack of availability of apprentices in specific geographic areas;*
- c) The reasonable and necessary requirements of the contract render apprentice utilization financially infeasible at the required levels.*
- d) Where an apprentice utilization requirement is precluded by law or regulatory requirements such as, but not limited to, Federal Aviation Administration (FAA) contracting requirements.*
- e) Any other reason that in the judgement of the Executive Director would not be in the best interest of the Port.*

The Executive Director shall report to the Board of Commissioners the intent to waive or reduce these requirements at a regular Commission meeting before taking such action or, in the case of an emergency where immediate action is necessary, at the next regular Commission meeting following such action.

Grant funding:

The provisions of this section shall not apply to the extent they are deemed to be in conflict with state or federal grant funding requirements.

5



5

Apprenticeship Utilization Requirement

Action

- Commission Action
 - Approve Resolution 2022-16
 - Revise Policy 1004
- Staff establishes procedures

6



6

Sample Motion

Move to approve Resolution 2022-16
creating an apprenticeship utilization requirement
for public works projects with a cost estimate
of more than \$1,000,000 (One Million Dollars)

7



PORT OF OLYMPIA COMMISSION
Resolution 2022-16

A Resolution, of the Port of Olympia Commission, creating an apprenticeship utilization requirement for public works projects with a cost estimate of more than \$1,000,000 (One Million Dollars)

WHEREAS, the State of Washington recognizes that a well-trained construction trades workforce is critical to the ability to construct public works and codifies the purpose of apprenticeship training programs in RCW 39.04.300, and:

WHEREAS, the Port Commission last established a master policy directive for matters related to Port Contract and Acquisitions Policies with the adoption of Resolution 2019-06 that includes Policy 1004 Public Works Contracting; and

WHEREAS, the Port Commission wishes to update Policy 1004 Public Works Contracting to add a requirement for the utilization of apprenticeships for public works projects that exceed \$1,000,000 (One Million Dollars) in estimated costs; and

WHEREAS, Section 53.12.270 of the Revised Code of Washington provides authority to the Port Commission for delegation of powers to the Executive Director; and

WHEREAS, the Port Commission has adopted policy directives delegating administrative authority to the Executive Director and his/her designees for the purpose of expeditious administration of the Port; and

WHEREAS, the Port Commission has from time to time found it necessary to amend and revise such directives due to changes in law and/or operations of the Port;

THEREFORE, BE IT RESOLVED, that Port Policy 1004 Public Works Contracting as adopted previously by Resolution 2019-06, is amended as set forth in Exhibit “A” attached to this Resolution and incorporated herein by such reference for the purpose of providing an Apprenticeship Utilization Policy for the Port of Olympia.

BE IT FURTHER RESOLVED that the Port of Olympia Commission delegates the authority to the Executive Director to create procedures for the above listed policy.

ADOPTED BY THE Port of Olympia Commission this ____ day of December, 2022.

PORT OF OLYMPIA COMMISSION

Charles Iyall, President

Amy Evans Harding, Vice President

Joe Downing, Secretary-Treasurer

PORT OF OLYMPIA COMMISSION
Resolution 2022-16

A Resolution, of the Port of Olympia Commission, creating an apprenticeship utilization requirement for public works projects with a cost estimate of more than \$1,000,000 (One Million Dollars)

Exhibit A

Public Works Contracting (Policy 1004)

The Port shall ensure that its contracts for construction of public works comply with applicable laws and regulations. All public works contracts shall be executed by the Executive Director and administered by the Port's Environmental, Public Works and Planning Director or designee.

Policy Definitions:

- **Apprentice** means an apprentice enrolled in an apprenticeship training program approved or recognized by the Washington State Apprenticeship and Training Council.
- **Apprentice utilization requirement** means the requirement that no less than 15 percent of the total reported labor hours involved in a public works project estimated by the Port to cost in excess of \$1 million be performed by apprentices.
- **Contractor** means a person, corporation, partnership, limited liability company, public agency, or joint venture entering into a contract with the Port to construct a public work.
- **Emergency** means unforeseen circumstances beyond the control of the Port that either present an immediate threat to the proper performance of essential functions, or will likely result in material loss or damage to property or bodily injury if immediate action is not taken.
- **Labor hours** means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" shall include hours performed by workers, including foremen, employed by the contractor and all subcontractors working on the project. "Labor hours" shall exclude hours worked by superintendents, owners, and workers who are not subject to prevailing wage requirements.
- Public Works is defined by Washington State law to include "all work, construction, alteration, repair or improvement, other than ordinary maintenance, performed at public cost on any property".
- Ordinary Maintenance means work not performed by contract and that is performed by the employees of the Port on a regularly scheduled basis (e.g. daily, weekly, monthly, seasonally, semiannually, annually) to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to keep existing infrastructure in good usable, operational condition. Maintenance work by contractors is not Ordinary Maintenance.

- Small Public Works is the procedure created by Washington State statute authorizing the solicitation of public works bids from a limited number of contractors in lieu of formal advertisement to bid.
- **Subcontractor** means a person, corporation, partnership, limited liability company, public agency, or joint venture that has contracted with the contractor to perform all or part of the work to construct a public work by a contractor.

Policies

Competitive Selection:

The Port shall observe a competitive solicitation process for the purposes of contracting Public Works, as determined by the approved Port Signing Authority and Spending Thresholds, in compliance with contracting law, and as is governed by RCW.

Signing Authority and Spending Thresholds for Public Work Contracts:

\$0 to \$40,000 – No solicitation requirements apply, although it is best practice to use at least a roster procurement process (i.e. “rosters”). Port staff may perform Public Work projects with in-house resources.

\$0 to \$300,000 – Both formal, competitively bid or Small Works Roster contracts shall be authorized and executed by the Executive Director (see Policy #1002, “Small Works Roster Procedures”).

\$300,000 or more - The Commission shall authorize all contracts prior to execution by the Executive Director.

The Commission shall authorize any change order if the new contract not to exceed amount exceeds \$300,000 or 10% of the Commission last approved amount. The Executive Director is authorized to execute change orders up to this threshold.

Apprenticeship Utilization Requirement:

For Public Works contracts with an estimated cost of more than \$1,000,000, no less than 15 percent of the total reported labor hours involved shall be performed by apprentices. This apprenticeship utilization requirement applies even if the bid awarded is less than \$1,000,000 provided the estimated cost as determined by the Port was in excess of \$1,000,000 at the time the request for bids was published.

Reduction or waiver:

The Executive Director may in their discretion reduce or waive the requirements of this policy for a specific project for the following reasons:

- a. An emergency exists;
- b. The demonstrated lack of availability of apprentices in specific geographic areas;
- c. The reasonable and necessary requirements of the contract render apprentice utilization financially infeasible at the required levels.
- d. Where an apprentice utilization requirement is precluded by law or regulatory requirements such as, but not limited to, Federal Aviation Administration (FAA) contracting requirements.

- e. Any other reason that in the judgement of the Executive Director would not be in the best interest of the Port.

The Executive Director shall report to the Board of Commissioners the intent to waive or reduce these requirements at a regular Commission meeting before taking such action or, in the case of an emergency where immediate action is necessary, at the next regular Commission meeting following such action.

Grant funding:

The provisions of this section shall not apply to the extent they are deemed to be in conflict with state or federal grant funding requirements.



COMMISSION MEETING

<u>BRIEFING DATE/TIME:</u>	December 12, 2022
<u>DEPARTMENT:</u>	Executive
<u>STAFF CONTACT/TITLE:</u>	Rudy Rudolph, A.A.E. Telephone: 360.528.8000 Email: Rudyr@portolympia.com
<u>TOPIC:</u>	Northwest Asphalt, Inc., Contract Amendment
<u>PURPOSE:</u> <i>Check all that apply</i>	☐ Information only ☒ Decision needed ☐ Follow up from previous briefing
<u>BACKGROUND & OVERVIEW:</u>	
The Northwest Asphalt, Inc. contract (2020-1008) for “Miscellaneous Paving Services” was executed under Executive Director authority on 12/18/20. The contract is in effect through December 31, 2022, for a not to exceed amount of \$300,000. There have been eight (8) invoices for work under the contract totaling \$310,288.01. The last task order knowingly exceeded the contract amount by \$10,288.01 by order of the Port Operations Director. This was associated with repairs deemed an impending safety risk due to rapidly deteriorating pavement on the Marine Terminal. <u>This amount along with other recent Marine Terminal tenant task order work will be reimbursed by the tenant.</u> The request before the Port Commission is the extend the date of the contract through January 31, 2023, in an additional amount of \$30,000 for a new total contract amount not to exceed \$330,000. This time and dollar amount extension would be reserved for any unanticipated work through January 31, 2022, until the execution of a new contract.	
<u>DOCUMENTS ATTACHED:</u>	
▪ Power Point Summary	
<u>SUMMARY & FINANCIAL IMPACT:</u>	
Any expended funds would be in accordance with approved operating budgets, with reimbursements as applicable.	
<u>AFFECTED PARTIES:</u>	
Port staff, contractors and tenants	
<u>OPTIONS WITH PROS & CONS:</u>	

This extension provides routine contract coverage until a new contract is implemented. Lack of an extension would require an emergency authorization for any safety related work.

ENVIRONMENTAL CONSIDERATION:

N/A

STAFF RECOMMENDATION:

Commission approval

Contract Amendment Northwest Asphalt, Inc.

December 12, 2022

Rudy Rudolph, A.A.E.
Operations Director

1

Contract Scope

Miscellaneous Paving Services

- Provide labor, equipment, materials and incidentals to perform multiple work-order paving projects which include grading, paving, tack coat, crushed surface base course, bank-run gravel, grinding asphalt, slurry seal surfacing, asphalt fog sealing, painted traffic lines, adjustment of structures embedded in asphalt, and shoulder restoration as directed by the Project Manager on Port Properties.

2

2

Contract History

October 23, 2020:	Request for Proposals
November 9, 2020:	Bid Opening
Contractor Selected:	Northwest Asphalt
Not to Exceed Amount:	\$300,000
Contract Executed:	12/18/2020

3



3

Contract History

Not to Exceed Amount	\$300,000.00
Eight Invoices For Work	\$310,288.01
Contract Exceedance	\$10,288.01

4



4

Sample Motion

I move to authorize the Executive Director to execute a contract amendment for Contract No. 2020-1008 with Northwest Asphalt, Inc., for an additional \$30,000 and a new total amount not to exceed \$330,000, with an expiration date of January 31, 2023.



COMMISSION MEETING

<u>BRIEFING</u> <u>DATE/TIME:</u>	December 12, 2022
<u>DEPARTMENT:</u>	Real Estate
<u>STAFF CONTACT:</u>	Name: Allyn Roe, Director of Business Development and Real Estate Telephone: 360.528.8012 Email: allynr@portolympia.com
<u>TOPIC:</u>	95-acre Ground Lease for Airport Property
<u>PURPOSE:</u> <i>Check all that apply</i>	☐ Information only ☒ Decision needed ☐ Follow up from previous briefing
<u>BACKGROUND & OVERVIEW:</u>	
The Port's New Market Industrial Campus properties are located in South Tumwater adjacent to the Olympia Regional Airport. Development of these properties, consistent with the Port mission and goals, and aligned with community values has been a long-time goal of the Port. In early January of this year, and in collaboration with our regional economic development partners including Thurston EDC, Thurston County Chamber, City of Olympia, City of Lacey, and City of Tumwater, we entertained a site selection inquiry for a beverage bottling facility. This facility would be a manufacturing use, employ up to 600 individuals, and provide a community investment of approximately \$500M. The collaborative effort determined that the best site that fit the needs of this request would be a 95-acre tract of Port property in the southwest portion of the Olympia Airport. After months of site feasibility work and lease negotiations, Port staff is proud to present the enclosed Ground Lease with Swire Coca-Cola for a 95-acre area of land in the southwest portion of the Olympia Airport. The term of the lease is up to 75 years, provide lease revenues of almost \$2M/year, and be subject to all environmental conditions including requirements set forth in the HCP. The potential development would include buildings for manufacturing, warehousing, distribution, and supporting operations. The initial lease rate is at \$0.48/psf/year and represents a land value of \$8.00-\$6.00/psf based on a 6-8% cap rate respectively. This particular area of property has a restriction where no distribution warehouses can be built (no matter the size) and no building can exceed 200,000 sq ft in size unless it has a manufacturing use designation. For comparison, properties around the 93rd Ave. interchange have recently sold for \$6.50/psf and can be deemed higher value due to their proximity to the interstate and reduced land use restrictions including no building size limitation and the allowance for distribution warehouses. This transaction is comparable to a fee interest land sale valued between \$33.1M-\$24.8M and will provide the Port \$46,000,000 in lease revenue in the first 20 years. Mitigation costs for the HCP will be offset from these revues and estimated to be approximately \$5.7M based on the current draft HCP, however, an allowance of \$9.5M is being factored into the lease – the Port will only pay the actual charge. The Ground Lease is being proposed on the NMIC Ground Lease template which has been a foundation for other NMIC leases after much legal review. All lease revisions have been contained within Section 1 and reviewed by legal counsel. Water requirements for this potential project fit within the forecasted demands of Tumwater's Compressive Water Plan and will be served from the municipal water system (not private well(s)). Wastewater is expected to be minimal in perspective to use.	

About Swire Coca-Cola:

Swire is the local bottler throughout most of the Pacific Northwest. It bottles and distributes Coca-Cola and other beverages in a total of 13 states. Headquartered in Draper, Utah, Swire was founded in 1978 and employs close to 7,400 associates. In Washington, Swire employs 1,034 people across seven facilities, with an annual payroll of \$79.3M. The Swire team delivers approximately 700 products to more than 8,800 outlets. Swire is committed to sustainable development. The company has ambitious goals and a strong track record in the areas of climate protection, packaging and recycling, and water stewardship.

Documents Attached:

- PowerPoint Presentation
- Ground Lease

Ground Lease Agreement Swire Land, Inc.

December 12, 2022

Allyn J. Roe, AAE

Business Development & Real Estate Director

1

Background

Demand for industrial properties

- Panattoni Option July 2020 – 200 Acres
- CRG Option May 2022 - ~113 Acres
- Demand from "Evergreen Project" – Jan 2022



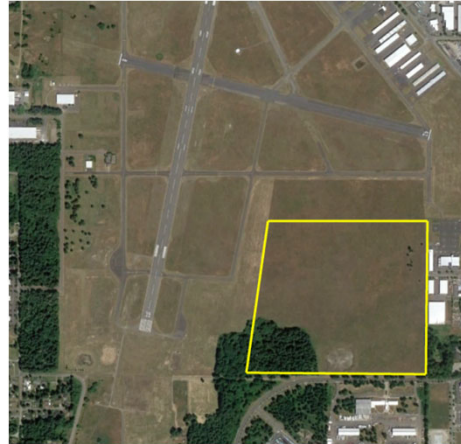
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2

Background

Evergreen Project Overview

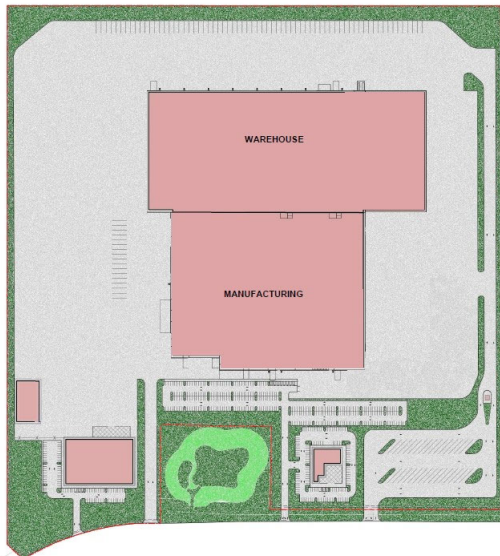
- Strong collaboration w/regional partners
- Manufacturing use w/accessory warehouse
- Up to 600 jobs.
 - 150 production, 200 Warehouse, 200 Sales
 - 50 Fleet
- 95 Acre Request
- \$500M Capital Investment



3



3



 | *Coca-Cola*
SWIRE COCA-COLA

4

POTENTIAL SITE PLAN



4

Who is Swire

5



5

Lease Proposal

Terms

- Panattoni Lease / CRG Option used as template
- All development consistent with Tumwater Airport Related Industrial Zoning
- 50-year Term +25 (75yr total)*
- \$169,666/yr initial (immediately) - \$1,986,336/yr base rent (after satisfactions met)
- HCP & FAA terms

*Adjusted for RCW 53.08.080

6



6

Lease Proposal

Terms – 3rd Review

- Conducted by Chmelik Sitkin & Davis
- Term adjusted as previously noted
- SEPA clarification language suggested
- Table of Contents corrected
- Some Section/Paragraph references corrected

7



7

Lease Proposal

Lease Valuation

- \$0.48 per square foot is initial rate
- \$8.00-\$6.00 per square foot land value based on 6%-8% Cap rate
- Comparable to \$33.1M - \$24.8M land sale
- \$46M in lease revenue in first 20 years (HCP est. \$5.7M w/\$9.5M allowance)
- Land is restricted to no warehouse and under 200k sq ft (non-manufacturing)
- Costco 79 acre site - \$6.78 (Adjacent to freeway, >200k, and HCP) Under Const.
- Crow 77ac site - \$6.85 (Adjacent to freeway, warehouse, and HCP) Under Const.

8

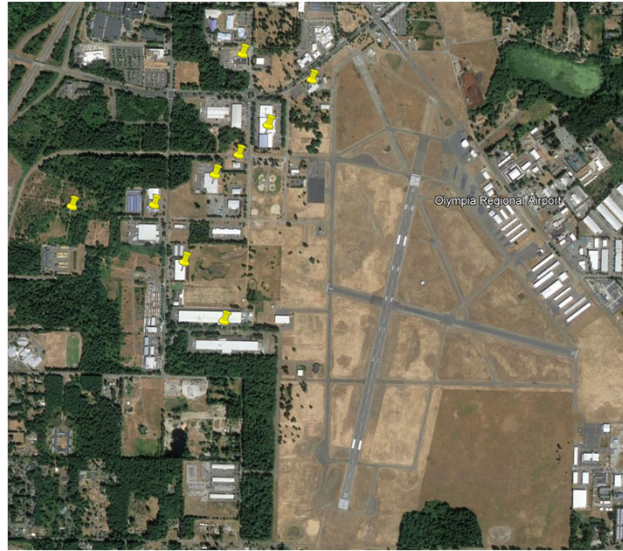


8

Lease Proposal

Lease Internal Comps to \$0.48

- Cardinal \$0.16 23.25 acres
- Center Carting \$0.29 2.8 acres
- Evergreen \$0.38 4.63 acres
- Timberland \$0.45 4.16 acres
- Tumwater Printing \$0.24 1.83 acres
- UPS \$0.50 3.431 acres
- USPS \$0.18 6.96 acres
- DES Printing \$0.06 12.7 acres
- Panattoni \$0.48 (Option)



9



9

Lease Proposal

Special Terms

- Area designated with FAA requiring "Section 163 Determination"
- HCP Gopher & Lark
- Rent Commencement at Occupancy or 24 months after HCP completion

10



10

Lease Proposal

Water

- Served from Water System not wells!
- Tumwater plans for growth in SFR, MFR, Indst, & Largest Users
- Swire's needs fit within Tumwater's planned grown projections.
- Minimal wastewater

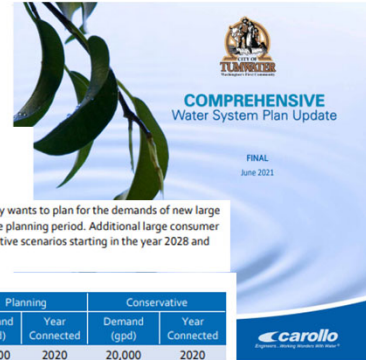
Chapter 3

DEMAND PROJECTIONS

In addition to its existing large consumers, the City wants to plan for the demands of new large consumers that may develop in the City within the planning period. Additional large consumer demand is allocated to the planning and conservative scenarios starting in the year 2028 and 2038 as shown in Table 3.17.

Table 3.17 Future Large Consumers

Parameter	Aggressive		Planning		Conservative	
	Demand (gpd)	Year Connected	Demand (gpd)	Year Connected	Demand (gpd)	Year Connected
Lathrop	11,000	2020	15,000	2020	20,000	2020
New Large Consumer Round 1			680,000	2028	1,360,000	2028
New Large Consumer Round 2			680,000	2038	1,360,000	2038



11



11

Lease Proposal

Assignment & Sublease

- Assignments vs. Subleases
- Assignment language is common
- Subject to the approval of the Port
- Intent of language

ASSIGNMENT, SUBLEASE, OR LEASE MODIFICATION

Tenant shall have the right to assign part or all of the Tenant's interest in the Lease to any other person or entity, after the Tenant and proposed assignee have complied with all of the terms, covenants and conditions of this Lease, **subject to the approval of the Port**, which shall not be unreasonably withheld. Any person or entity to which the Lease is assigned shall be deemed, without further act or deed, to have assumed all of the obligations of the Tenant arising under the Lease on or after the date of such assignment. Any such assignee shall, upon request, execute and deliver to the Port an instrument confirming such assignment. 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, except as otherwise set forth in this Lease.

12



12

Lease Proposal

Next Steps

- Review project in Work Session 09/16/22 - Complete
- Review Lease in Advisory Session 11/28/22 - Complete
- Consider Lease for approval Action 12/12/22 - Now
- Due Diligence
- HCP / HCP Mitigation
- Tenant responsible for land use & building review and permits
- Construction

13



13

Lease Proposal

Suggested Motion

I move to approve the Ground Lease as presented between the Port of Olympia and Swire Land, Inc. for a 95 acre area in the vicinity of the Olympia Regional Airport and authorize the Executive Director to execute such.

14



14

Questions?

Allyn J. Roe, AAE

Business Development & Real Estate Director

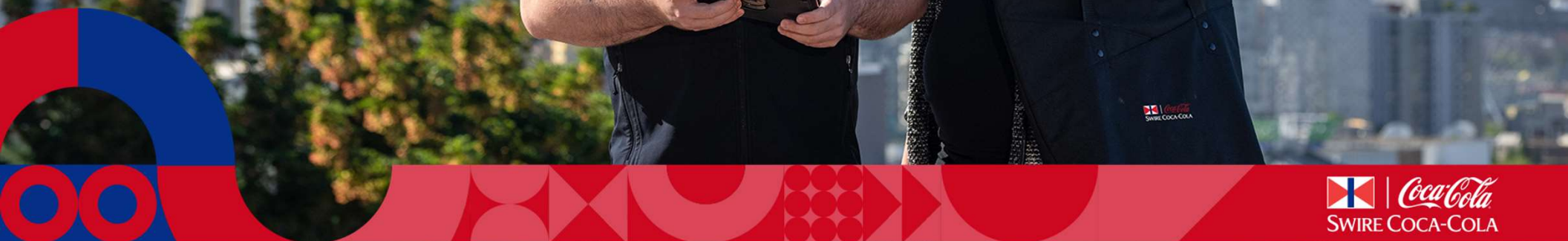
allynr@portolympia.com

15



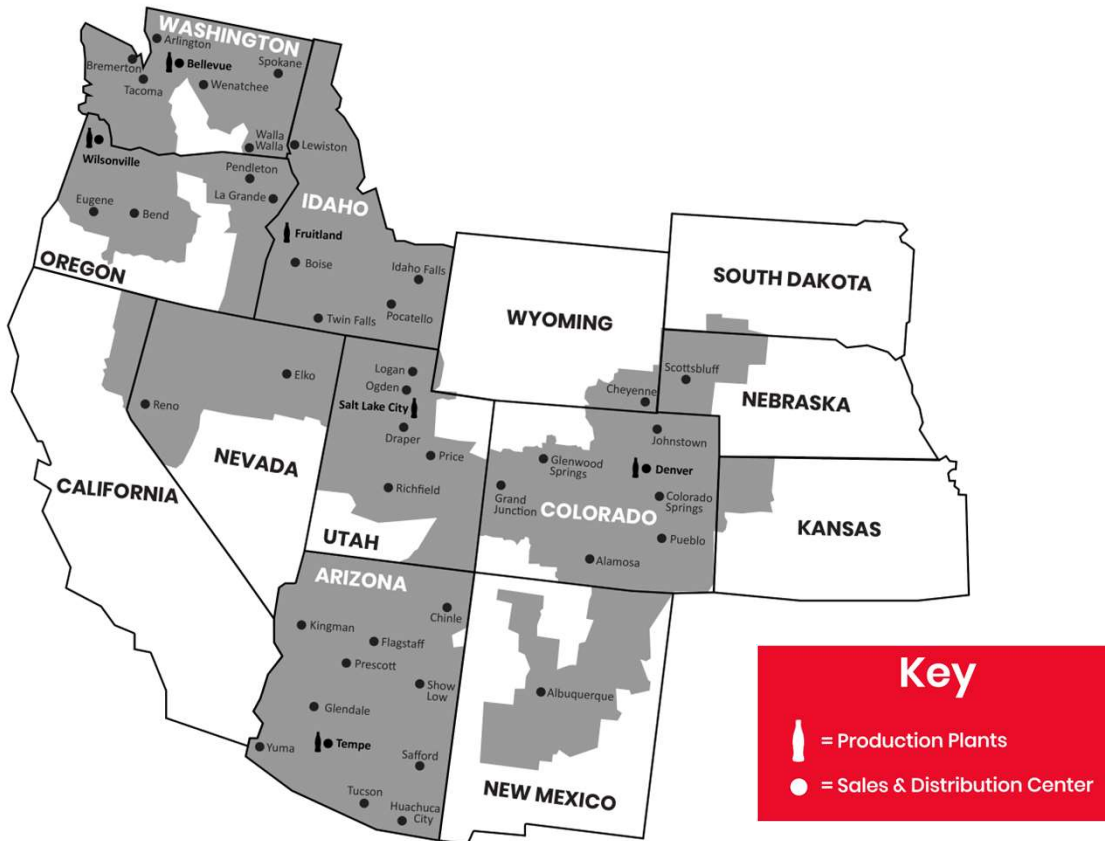
15

Swire Coca-Cola, your **local** bottler,
proudly serving Washington



Swire Coca-Cola

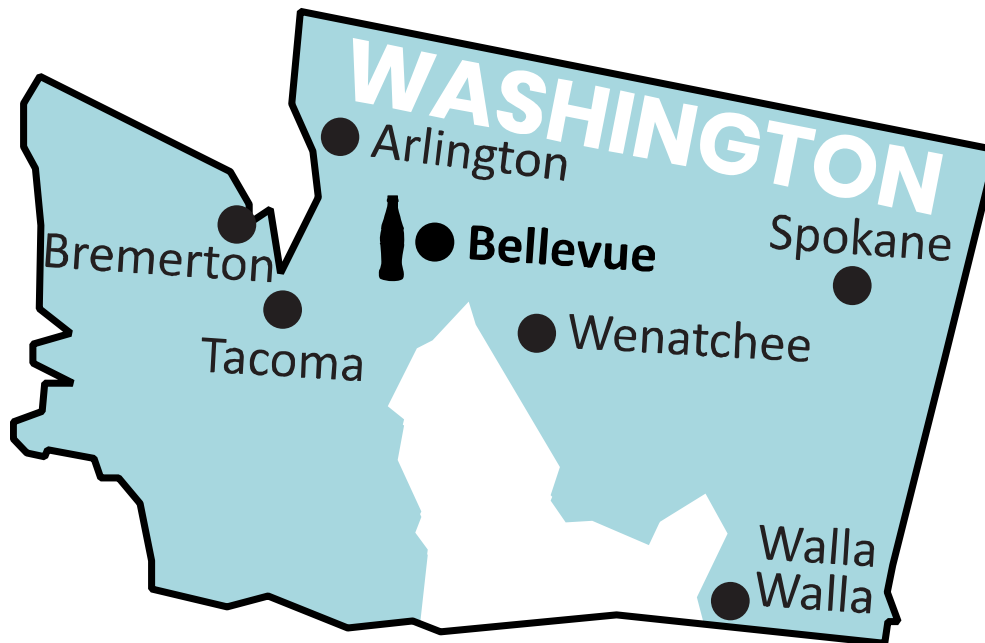
Territory Map



At Swire Coca-Cola, our purpose is to deliver refreshment to the communities we call home.

Swire Coca-Cola

Washington



1,034 Employees



\$79.3 MM Annual Payroll



8,892 Outlets served



7 Facilities



695+ Different products



259 Low & No Calorie Beverages



Swire Coca-Cola Careers

- More than 400 unique employee roles to offer professional growth.
- Full-time, fully benefited employment.
- Employee assistance program, providing mental health assistance, financial education, and other professional support services.
- A career path and training to grow professionally.
- Community service & engagement opportunities.



Laurie Pierson

Bellevue Distribution Manager

Distribution Manager
Full-Service Supervisor 2000 -2022
Merchandising Supervisor 2017-2000
Small Store 2010-2017
Sales Large Store 2005-2010
Merchandiser-2005- 2005

"Starting in an entry-level position with the company, I have learned every aspect of the business as I worked my way through the ranks, making me a better and more well-rounded manager."



Union-Represented Employment

- Over 800 employees are represented by the Teamsters Union in Washington.
- 11 Collective Bargaining Agreements (CBAs).
- CBAs span 2-4 years in length.
- Represented jobs include Machine Operators, Mechanics, CDL & Non-CDL Drivers, & more.
- Career paths and professional training available.

Giving back to the community

- Volunteerism
- Financial Investments
- Product Donations



Partnering for positive impact...



Swire Coca-Cola Sustainability



Driven to Protect

We care for our planet and are committed to minimizing the impact of our business on the environment.



CLIMATE PROTECTION

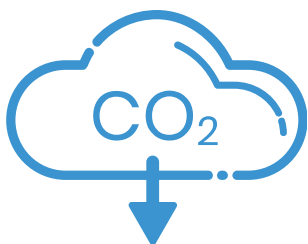


SUSTAINABLE PACKAGING
& RECOVERY



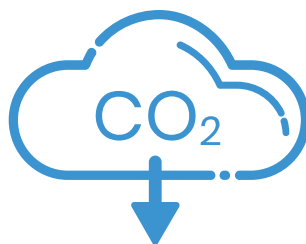
WATER STEWARDSHIP

Climate



70%

Reduction in
Scope 1 & 2 emissions
by 2030



30%

Reduction in
Scope 1, 2 & 3 emissions
by 2030



100%

Renewable electricity
for core operations
by 2026



SCIENCE
BASED
TARGETS

DRIVING AMBITIOUS CORPORATE CLIMATE ACTION

Packaging

Make our primary packaging:



100%

Recyclable by 2025

We aim to achieve:



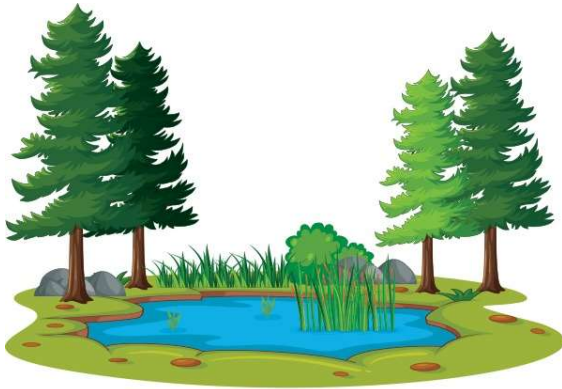
0%

Zero Waste to landfill by 2025

- Swire Coca-Cola's manufacturing plants have a diversion rate greater than 96%.
- Bellevue manufacturing plant has a diversion rate of 99%.
- Packaging innovation.



Water Stewardship



WATERSHED

Source Vulnerability Assessments
Source Water Protection Plans



EFFICIENCIES

Improved efficiency in
manufacturing by 20%



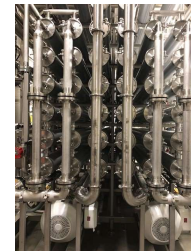
REPLENISH

Return to nature at least 100% of the
water used to produce our products

Water Stewardship



Drought Risk Mitigation



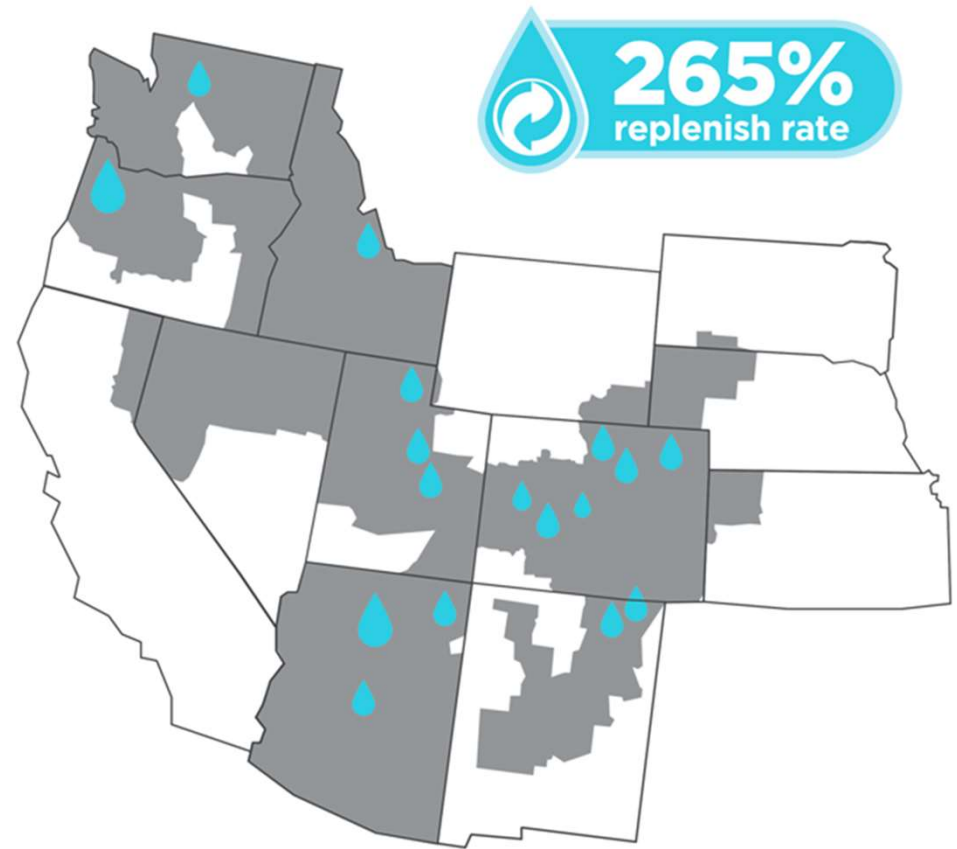
Investments in
Production Plants



Replenish Projects

Water Replenish Projects

- Last year, Swire Coca-Cola replenished 265% of water used in the production of their beverages.
- In partnership with The Coca-Cola Company, Swire Coca-Cola has funded 17 water restoration projects throughout our operating region, including in Washington.



Upper Methow River, Washington



BEFORE



AFTER

Willamette River Pudding Ponds



BEFORE



AFTER

Jesse Creek, Idaho



BEFORE



AFTER

Taylor River, Colorado

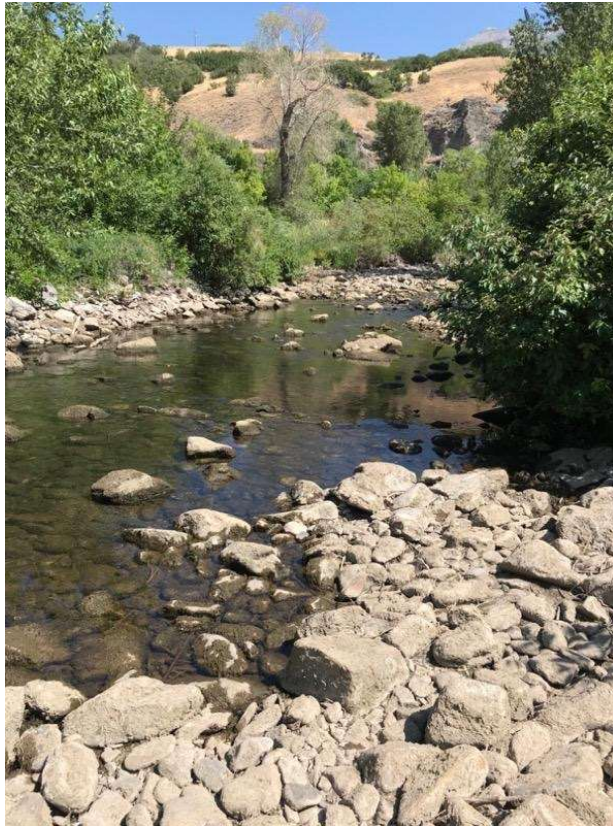


BEFORE

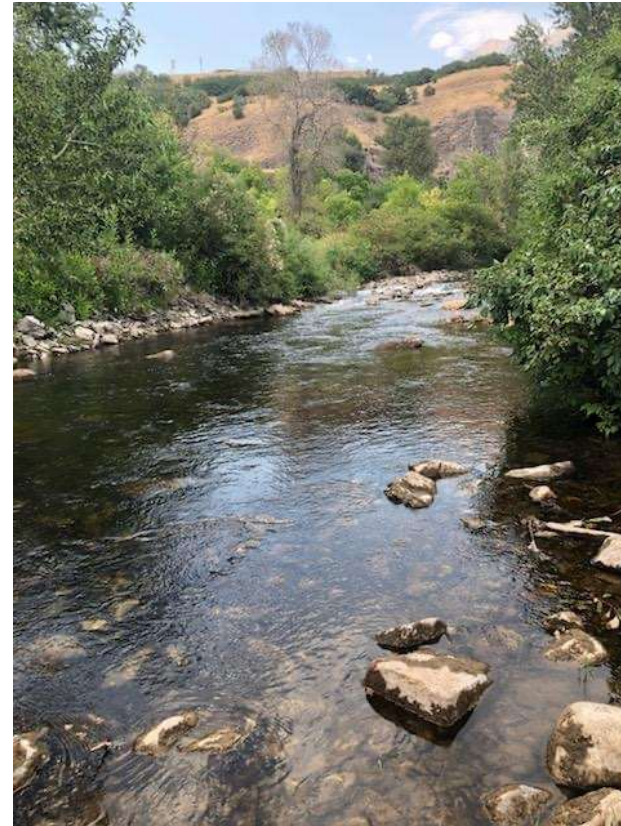


AFTER

Provo River, Utah



BEFORE



AFTER

Verde River, Arizona



BEFORE



AFTER

Bonneville Environmental Foundation Partnership



"Over time, working with Swire Coca Cola, I've begun to understand the depth and the breadth of their environmental goals, whether it's about carbon and renewable energy or whether it's about water."

- Todd Reeve, CEO Bonneville Environmental foundation



Over time, working with Swire Coca-Cola,

PORT OF OLYMPIA GROUND LEASE TUMWATER PROPERTIES

THIS LEASE is made this **12th** day of **December, 2022**, by and between the PORT OF OLYMPIA, a Washington municipal corporation, Lessor, hereinafter referred to as “Landlord” or “Port”, and the Tenant described below, hereinafter referred to as "Tenant", on the following terms and conditions:

1. LEASE SUMMARY.

TENANT

Swire Land, Inc., and/or its assigns
12634 S 265 W
Draper, UT 84020
Phone Number: 1 (801) 816-5300
Email: jyearsley@swirecc.com

PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms and conditions of this Lease, that certain real property consisting of approximately ninety five (95) acres of land or Four Million One Hundred Thirty Eight Two Hundred (4,138,200) square feet, to be mutually agreed upon by the parties, referred to as the “Premises” herein, out of one hundred thirteen (113) acres, located in Tumwater, Thurston County, Washington as generally shown and described in the site plan attached as **Exhibit “A”** hereto, and referred to as the “Property” 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.

Tenant acknowledges and agrees that Tenant is responsible for applying for, processing, obtaining, and recording such approvals as may be necessary for the division of the Premises from the larger property owned by the Port of which the Premises are a part, whether by binding site plan and Tenant shall bear all costs and expenses thereof. The Port shall be given the opportunity to review and approve all applications and submissions made by Tenant in connection therewith prior to submission to the City, with the Port’s approval not to be unreasonably withheld, conditioned or delayed. The Port agrees to execute such documents as Tenant may reasonably request in such regard and for such purpose and the Port further agrees to support and otherwise fully cooperate with such action commenced by Tenant; provided, however, that except as otherwise provided in this Agreement: (i) the Port shall not be required to incur any expense in doing so, (ii) Tenant shall exercise commercially reasonable efforts (not including variances or other processes for deviations from normal code requirements) to cause any such document to be so worded or submitted as to leave the Port and the Property and all other Port property without residual liabilities, obligations or encumbrances should Tenant fail to proceed with the government approvals, (iii) no action affecting the Property or any other Port Property shall be finalized and no document referencing the Property or any other Port property shall be recorded without the Port's express written consent to such finality or recording,

which shall not be unreasonably withheld, conditioned, or delayed (and, unless otherwise indicated, the Port's execution of an application or petition shall not constitute the Port's consent to finalization of the action requested in such application or petition or to recording of any document), and (iv) the terms of such permits and any associated agreements are subject to the approval of the Port to the extent that the terms thereof would bind the Port following expiration or termination of this Agreement, which such approval shall not be withheld with respect to routine development restrictions and covenants that would run with the land developed for a project like the Project (e.g., slope setback and non-disturbance provisions, rights to make cuts and fills for roads, etc.) or restrictions and covenants otherwise required or customary for issuance of the requested approvals (e.g., provisions applicable to decommissioning facilities used in the management of Hazardous Material), and (v) such documents shall provide that the Port shall have no liability during the Term for any costs or other liabilities related solely to such permits or agreements, applicable law or set forth elsewhere in this Agreement.

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

PORT FINAL APPROVAL AUTHORITY

Notwithstanding the foregoing, and consistent with the terms provided in the Permitting and Environmental Review provision in Section 1 of this Lease, the Port retains the right to modify the Lease and otherwise condition the Project following the completion of the State Environmental Policy Act ("SEPA") review and either the Port or the Tenant may terminate the Lease pursuant to the Early Termination provision in this Section 1 of the Lease and Section 3.1 of the Lease.

INITIAL TERM

The "Initial Term" shall be fifty (50) years with an option for an additional period of twenty-five (25) years., Provided, that if there is not a final "Section 163 Determination" of nonaeronautical property by the Federal Aviation Administration ("FAA") with respect to the Property, then the Lease shall not go into effect. The Tenant shall have the exclusive right to extend the lease at the end of the Initial Term. The Port shall not withhold approval of the lease extension at the end of the initial term. The initial term shall begin on a date elected by Tenant, upon verification of the date for the completion and acceptance in writing by Tenant after acceptance of the Habitat Conservation Plan (the "Lease Commencement Date"); 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 an additional option to extend as outlined below.

EARLY TERMINATION

Either the Port or the Tenant may terminate the Lease on or before the completion of the SEPA review pursuant to the condition precedent in the Permitting and Environmental Review provision in Section 1 of this Lease. Either the Port or the Tenant may terminate the Lease within thirty (30) calendar days of the date of completion of the SEPA review process. For the purposes of this paragraph, the date of completion of the SEPA review process means the later date of: (i) the day

following the expiration of any appeal period following a threshold determination of Determination of Non-significance (“DNS”) or a Mitigated Determination of Non-significance (“MDNS”) if no appeals are filed; (ii) a final decision following an appeal and expiration of or exhaustion of any subsequent appeal rights; or (iii) in the case of a threshold Determination of Significance (“DS”), the completion of the Environmental Impact Statement (“EIS”) process and any appeals thereof. To terminate this Lease early under this paragraph, the party intending to terminate shall provide written notice to the other party according to Section 41 of the Lease. In the event of the Early Termination of the Lease, the Port shall retain the Lease Security as provided in Section 5 of the Lease until all outstanding expenses owed to the Port are reimbursed fully by Tenant. Further, the indemnification and liability insurance obligations shall survive the Early Termination of the Lease to the extent such a provision is triggered based upon Tenant’s activities arising from this Lease or the Project.

OPTION TO EXTEND INITIAL TERM

The Tenant is granted by the Port options to extend for an additional period(s), the terms of which will be negotiated in good faith by the parties commencing one (1) year prior to the termination of the Lease, provided, however, this provision is non-binding on the Port except as to the obligation to negotiate in good faith with the Tenant. Such extensions, if they occur, shall be upon the terms, covenants, and conditions contained herein (except for rent, rental adjustments, and the times at which rental adjustments shall be made, all of which shall be determined in accordance with the then current Port policy). The extension terms shall commence on the expiration of the immediately preceding term. Such Option to Extend may be exercised only by written notice to the Port no later than two (2) years prior to the expiration of the then current term. Tenant shall not be entitled to extend this Lease if Tenant is in uncured 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.

INITIAL RENT AND BASE GROUND RENT

Initial Rent: Tenant shall pay monthly base rent in the amount of one-twelfth (1/12) of the annual rental cost of Four and One Tenth Cents (\$0.041 per square foot). According to the Rent Commencement Date described below, the monthly base rent shall increase to one-twelfth of the annual rental cost of Forty Eight Cents (\$0.48 per square foot) (“Base Ground Rent”) in addition to (not including) including Washington State Leasehold Tax, plus Common Area charges..

Rent Adjustments: During the Initial Term, the Base Ground Rent shall be increased every five (5) years by ten percent (10%), with the first adjustment being effective as of the fifth (5th) anniversary of the Lease Commencement Date and each such date being hereafter referred to as a “Rent Adjustment Date”. Provided, however, that the Base Ground Rent shall never be decreased. Each adjustment shall be calculated on the applicable Adjustment Date and shall be effective as of the applicable Adjustment Date. Within thirty (30) days of the date of the Port’s notice of adjustment following completion of an adjustment calculation, Tenant shall pay to the Port the amount of any deficiency in rent paid by Tenant for the period following the subject Adjustment Date, and shall thereafter pay the adjusted rent until receiving the next notice of adjustment from the Port.

Effective as of the beginning of the twenty-sixth (26th) year of the Lease, and every ten (10) years thereafter during the Initial Term, the Base Ground Rent shall be revised to an amount equal to one

twelfth (1/12) of the then-current fair market rental value of the property as agreed to by the Parties hereto, Provided, however, that at no point shall the Base Ground Rent be adjusted downward.

If the Parties cannot agree to a fair market rental value within 30 days after the end of the 26th year of the Lease, the fair market rental value for rental revisions pursuant to this paragraph shall be determined by independent appraiser, as outlined in Paragraph 36, **APPRAISAL PROCEDURE**.

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

RENT COMMENCEMENT DATE

Base Rent shall commence at the earliest to occur of either of: (a) date Tenant receives a temporary Certificate of Occupancy issued by the City of Tumwater, or (b) twenty four (24) months from the Tenant's written approval of the completion of the Habitat Conservation Plan as further defined in the Contingencies provisions herein or commencement date of the Lease term if the Tenant is actually able to commence construction due to receipt of all required governmental approvals, whichever is later.

LEASE SECURITY

In accordance with Paragraph 5 of the Lease, in an amount equal to one (1) year's minimum ground rent plus Washington State Leasehold Excise Tax, in a form acceptable to the Port, which may be either in cash, a bond, letter of credit, or other customary form of security, and adjusted to reflect rental adjustments and other changes to this Lease. Initial amount shall be Two Million Two Hundred Forty-One Thousand Three Hundred Eighty-Two and 00/100 Dollars (\$2,241,382.00) (one times the annual rent plus Washington State Leasehold Excise Tax of 12.84%). The initial security amount shall be posted with the Port by the date of removal of any and all Lease contingencies by the Tenant. Any change in security shall be posted with the Port at least thirty (30) days prior to the effective date of such change. Expiration Date: Ninety (90) days after satisfaction of all obligations under this Lease.

USE OF PREMISES

Tenant may use the Premises for manufacturing, warehouse/distribution and administrative facilities, or other uses as may be allowed on the Premises under zoning and other governmental regulations. Tenant intends to construct a manufacturing, warehouse/distribution and administrative facility on the Premises (the "Project").

PERMITTING AND ENVIRONMENTAL REVIEW

Tenant shall not commence the Project or otherwise develop the Premises prior to obtaining all necessary governmental approvals and permits, including without limitation, completion of SEPA review. This requirement is an express condition precedent of the Lease. Either the Port or Tenant may terminate the Lease if condition precedent identified in this paragraph is not satisfied or pursuant to the Early Termination provision above and Section 3.1 of the Lease.

The Port will not act as the lead agency for the SEPA review, however, the Port remains an agency with jurisdiction over the Project or other development actions on the Premises or Property. Accordingly, the Port retains the right to require Tenant modify of the development, construction,

and operational plans for the Project or other development actions proposed on the Premises to comply with any mitigation conditions, limitations, or other requirements arising from the SEPA review process. For example, and not by way of limitation, the Port may amend this Lease to adopt additional mitigation requirements, heightened insurance requirements, or modify project specifications in response to SEPA review.

INSURANCE

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

Tenant shall submit certificates evidencing compliance with Paragraph 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 prior to their expiration.

ASSIGNMENT, SUBLEASE, OR LEASE MODIFICATION.

Tenant shall have the right to assign part or all of the Tenant's interest in the Lease to any other person or entity, after the Tenant and proposed assignee have complied with all of the terms, covenants and conditions of this Lease, subject to the approval of the Port, which shall not be unreasonably withheld. Any person or entity to which the Lease is assigned shall be deemed, without further act or deed, to have assumed all of the obligations of the Tenant arising under the Lease on or after the date of such assignment. Any such assignee shall, upon request, execute and deliver to the Port an instrument confirming such assignment. 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, except as otherwise sent forth in this Lease.

REAL ESTATE COMMISSIONS AND FEES

A real estate commission shall be paid by the Port to Charlie Cowan/Windermere RE Co., Inc., 301 NE 100th Street, Suite 200, Seattle, Washington 98125 (Broker/Firm), in accordance with the Real Estate Commission Payment Agreement between the Port and such Broker/Firm dated March 28, 2022. Except as set forth above, each party represents and warrants that it has not dealt with any 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.

COMMISSIONS AND FEES

In the absence of any agreement between the parties to the contrary, each party represents and warrants to the other that it has not been represented by, or introduced to the other by, any broker or agent. In the absence of any agreement between the parties to the contrary, each party hereby agrees

to indemnify and hold the other harmless from and against any and all fees, commissions, costs, expenses (including attorney fees), obligations, and causes of action arising against or incurred by the other party by reason of any claim for a real estate commission or a fee or finder's fee by reason of any contract, agreement or arrangement with, or services rendered at the request of, the indemnifying party.

CONTINGENCIES AND DUE DILIGENCE PERIOD

This Lease is expressly contingent upon the Tenant conducting such due diligence as it reasonably determines is necessary and/or appropriate to decide the feasibility of development of the Premises, including but not limited to phase I and phase II environmental studies, source and wastewater studies, geotechnical and soils studies, confirmation of availability of all utilities required at costs Tenant determines as reasonable, final approval from the Tenant's parent company, and securing of needed financing to develop the Premises ("Due Diligence"). The Due Diligence period and all contingencies shall continue until the Tenant approves in writing the Habitat Conservation Plan, which approval or disapproval by Tenant shall occur within sixty (60) days of receipt of the Habitat Conservation Plan. The Tenant shall determine, in its sole discretion, whether the development of the Premises is feasible, and shall promptly advise in writing the Port of its determination upon completion of Tenant's Due Diligence, including but not limited to the Habitat Conservation Plan and all other contingencies. Additionally, the Lease is expressly contingent upon the approval by Tenant in its sole discretion of the Site Development Plan, Airport Layout Plan, actual completion and approval of the Bush Prairie Habitat Conservation Plan by no later than December 31, 2024, and the availability of "mitigation credits". The Tenant shall have the right to terminate the Lease until December 31, 2024, even after waiver or satisfaction of contingencies by Tenant.

ADDITIONAL PROVISIONS

1. **Right of First Refusal.** The Port grants the Tenant a right of first refusal ("ROFR") to lease any portion of the Property not part of this Lease, i.e. the balance remaining of the approximately One Hundred Thirteen (113) acres shown on **Exhibit A** attached hereto. The terms of the ROFR shall be negotiated in good faith between the parties as part of the negotiations with regard to the Lease, e.g. right to inspect the Property, but shall include the right to lease at the same base rent and on the same terms as the Port is willing to accept from a third party.
2. **Exclusivity.** The Port has entered into an Option to Ground Lease with CRG for the Property, with an allowance, for the "Evergreen Project". Notwithstanding the provisions of the grant by the Port to the Tenant of the foregoing ROFR, the Port reserves the right to exercise and support all provisions with CRG.
3. **Confidentiality.** The Port will make all reasonable efforts to be discrete concerning this Lease and the project contemplated to be built on the Premises and the Property by the Tenant, and will not issue any public announcements in any form concerning same. The Tenant has been advised that, as a public entity, the Port is subject to the provisions of the State Public Records Act, Chapter 42.56 of the Revised Code of Washington. It shall not be a violation of this Lease for the Port to comply with the requirements of the Open Public Meetings Act (Chapter 42.30 RCW) and the Public Records Act (Chapter 42.56 RCW).

4. **Facilities.** Facility(ies), both during construction and upon completion, shall comply with all FAA obstruction standards to ensure no impact on existing or future aircraft operations. Additionally, use of any and all facility components – including but not limited to lighting, antennas, solar panels, emissions of any type, heat plumes, electronics, etc. – shall not constitute a hazard to aviation and aerial navigation
5. **Assistance by Port in Mitigation Expenses.** Upon final approval, the Habitat Plan is expected to include a requirement for payment of fee-in-lieu mitigation to the City in order to develop the Property. The Base Rent schedule in this Agreement reflects the fair market value for the Property in fully mitigated condition under the Habitat Plan. In consideration of that valuation, the Port will be responsible for paying fee-in-lieu mitigation imposed by the City for development of the Property, up to a maximum cap of One Hundred Thousand Dollars (\$100,000.00) per acre or Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) in the aggregate.

If the fee-in-lieu mitigation exceeds the maximum cap of One Hundred Thousand Dollars (\$100,000.00) per acre or Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) in the aggregate, the Tenant may, but will have no obligation, to fund the excess over the cap. If the Tenant does not agree to fund the excess over the cap, the Port may immediately terminate this Agreement upon written notice to Tenant with no further liability on the part of either party.

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.

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EXHIBIT "A" – MAP OF PREMISES

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EXHIBIT "C" – LESSOR'S CONSENT AND AGREEMENT

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EXHIBIT “E” – REMOVED

EXHIBIT “F” – MEMORANDUM OF GROUND LEASE

EXHIBIT “G” – FORM OF NON-DISTURBANCE AND ATTORNMEN AGREEMENT

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.

3.1 The initial term of the Lease is subject to the Early Termination provision in Section 1 of the lease

4. RENT.

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

4.2. Tenant agrees to pay as rent for the use and occupancy of the Premises during the term of this Lease, without deduction or offset, the rent specified in 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.

The Security is a part of the consideration for execution of this Agreement. If Tenant shall have fully performed all terms and conditions of this Agreement, the Security (or such portion as remains without claim by the Port) shall be returned to Tenant within thirty (30) days following the termination (or expiration) date; otherwise the Port shall, in addition to any and all other rights and remedies available under this Agreement or at law or equity, retain title to that portion of the Security sufficient to remedy the default.

The Port may apply all or part of the Security to unpaid rent or any other unpaid sum due hereunder, or to cure other defaults of Tenant. If the Port uses any part of the Security, Tenant shall restore the Security to its then-currently required amount within fifteen (15) days after the receipt of the Port's written request to do so. The retention or application of such Security by the Port pursuant to this Section does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.

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 as conditioned and 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. Tenant may install, post, erect and, as Tenant desires or may be required, illuminate exterior facility identification, traffic control, safety, security, ADA, and other code required signage complying with applicable building code, municipal code requirements, and FAA regulations. 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, which shall not be unreasonably withheld, conditioned, or

delayed. 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.

So long as Tenant is not in default under this Agreement and subject to the specific provisions, covenants and agreements contained in this Agreement, the Port covenants and agrees that the quiet and peaceful possession and enjoyment of the Property by Tenant shall not be disturbed or interfered with by the Port or by any other party claiming by or through the Port.

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 reasonable ingress, egress, and utilities to and from the Premises on established roadways, driveway, and corridors and sidewalks provided there is no public road access, 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 or out of any occurrence in or upon the Premises, unless caused by any negligent or other wrongful act or omission of the Port or its agents, contractors, servants or employees. If a court of competent jurisdiction determines that any activity covered by the indemnities under this section of this Lease is subject to RCW 4.24.115, then, in the event of liability for damages arising out of a bodily injury to persons or damage to property caused by or resulting from the concurrent negligence or willful act or omission of Tenant and Landlord, its officers, officials, employees, agents, contractors, or volunteers, the Tenant's and Landlord's liability hereunder shall be only to the extent of each such party's negligence or willful act or omission. It is further specifically and expressly agreed that Tenant hereby waives any immunity it may have under industrial insurance, RCW Title 51, solely for the purposes of this indemnification and only to the extent necessary to render the parties' indemnity obligations enforceable. This waiver was mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Lease.

The Port indemnifies, defends, and holds Tenant harmless from claims that are: (i)(a) for personal injury, death, or property damage or b) for incidents occurring in or about the Premises, building, common areas or project; and (ii) caused by the negligence or wrongful conduct of 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 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; Provided, however, the Port will first determine with its insurance pool that waiver of subrogation is permitted with respect to this Lease.

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. Tenant shall reimburse the Port for all such taxes paid or payable by the Port. All other tax amounts for which the Port is or will be entitled to reimbursement from Tenant shall be payable by Tenant to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Tenant shall be entitled to a minimum of thirty (30) days' written notice of the amounts payable by it. If any governmental authority at any time levies a tax on rentals payable under this lease or a tax in any form against Lessor because of or measured by income derived from the leasing or rental of the Premises, such tax shall be paid by Tenant; provided, however, that Tenant shall not be liable for the payment of any tax imposed generally on Lessor's gross or net income without regard to the source of such income.

17. MAINTENANCE AND REPAIR.

Tenant shall, at its own expense, keep the Premises 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 the Premises, and keep the electrical system and all drains clean and in a good state of repair, and shall protect all sprinkler systems and all pipes and drains so that they will not freeze or become clogged.

Tenant shall replace any and all improvements which become worn out, obsolescent, deteriorated, unsafe or unusable and shall replace such improvements with new fixtures and improvements of at least as good a quality as originally installed at the commencement of this Lease. 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".

Tenant shall also keep the Premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the Premises by Tenant. At the Port's request, Tenant shall furnish the Port with written proof of payment of any item which would or might constitute the basis for such a lien on the

Premises if not paid. Any dispute under this section shall be subject to arbitration under paragraph 38, **ARBITRATION PROCEDURE**.

18. ALTERATIONS AND IMPROVEMENTS -- SIGNAGE.

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

18.2 Signage. Tenant may install, post, erect and, as Tenant desires or may be required, illuminate exterior facility identification, traffic control, safety, security, ADA, and other code required signage complying with applicable building code, municipal code requirements, and FAA regulations. Tenant shall have no right to install Tenant identification signs in any location in or about the Premises that are visible from the exterior of the building, without first obtaining written approval of the Port, which shall not be unreasonably withheld, conditioned or delayed. 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 Paragraph 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 Paragraph 37, **ARBITRATION PROCEDURE.**

20. INSPECTION.

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

21. RESTORATION.

a. At all times during the term of this Lease, Tenant shall maintain in effect upon the 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. Tenant shall provide evidence of renewal 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 sixty (60) 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, and upon termination, the Base Rent, Additional Rent and other charges under this Agreement will be apportioned as of the date of destruction, and Tenant will be discharged from responsibility to repair the damage, shall remove debris and restore the Premises to a clean, graded and safe condition, and all proceeds of insurance covering the loss shall in that circumstance belong to Tenant free of any claim thereto by the Port

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

22. DEFAULTS.

Time is of the essence of this Lease, and in the event of the failure of Tenant to pay the rental, interest or other charges provided in this Lease at the time and in the manner herein specified, or to keep any of Tenant's covenants or agreements herein, the Port may elect to terminate this Lease and reenter and take possession of the Premises with or without process of law, provided, however, that Tenant shall be given thirty (30) days' notice in writing if the default is for the nonpayment of rent or other monetary default, or sixty (60) days' notice in writing for any other default (or such longer period as is reasonably required to cure the Event of Default so long as Tenant commences to cure within such sixty (60) day period and diligently pursues such cure to completion), stating the nature of the default in order to permit such default to be remedied by Tenant within the applicable time period. If the Port issues a notice of default for the nonpayment of rent, in order to cure such default, Tenant must pay the overdue rent, together with interest as set forth in paragraph 4 above, plus a Fifty Dollar (\$50.00) lease reinstatement fee. If during any consecutive twelve-month period, the Port has issued three notices of default, the Port shall not be required to accept the cure of any subsequent default by Tenant and may terminate this Lease or exercise any other rights or remedies available to it immediately by written notice to Tenant without the expiration of any otherwise applicable cure period.

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

23. ADVANCES BY PORT FOR TENANT.

If Tenant shall fail to do anything required to be done by it under the terms of the Lease, after any applicable cure period, 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 one hundred fifty percent (150%) of the then-current rental under the terms of the Lease, unless a different rate shall be agreed upon, and the Tenant shall be bound by all of the additional provisions of this Lease.

25. ASSIGNMENT OR SUBLEASE.

Except as provided below, Tenant shall not assign or transfer (including any assignment or transfer for security purposes) this Lease or any interest therein nor sublet the whole or any part of the Premises, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the advance written consent of the Port, which may be withheld in the Port's sole discretion. Lessor agrees that it will consent to the assignment of this Lease (or any interest herein) for security purposes to a bona fide lender, but only on the terms and conditions contained in the form of Lessor's Consent and Agreement attached hereto as Exhibit "C", which must be signed by such lender. If Tenant is a corporation, 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.

Except for the Permitted Subleases, Tenant may not sublease, license or grant concession rights as to any portion of the Premises without the Port's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed and which consent shall be given if the proposed subtenant is financially capable of performing the obligations of the Tenant under this Agreement for the portion of the Premises or portion of the Term being subleased. Tenant shall at the time the Tenant requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed subtenant, including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed subtenant and the proposed documentation for the transfer as described below. In determining whether to grant such a consent to a sublease, the Port may consider all factors which Lessor reasonably determines in good faith are relevant to its decision. Within twenty (20) days after receipt of all required information, the Port shall, in its sole discretion, elect one of the following: (a) to consent to such proposed sublease or (b) to refuse such consent. Any such sublease shall be subject to all of the covenants, conditions, agreements and terms of this Agreement. As used herein the term "Permitted Sublease" shall mean any sublease by Tenant to a user who will occupy and use some or all of the Premises, so long as Tenant remains the tenant and obligated under this Agreement and the term of the sublease is for a shorter period than the Term of this Agreement and consistent with this Agreement.

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.

In connection and simultaneously with any Permitted Assignment of this Agreement or Permitted Sublease, the Port agrees to execute and deliver to any Permitted Assignee or Permitted Sublessee a non-disturbance and attornment agreement in substantially the form of **Exhibit “G”** attached hereto (the “NDA”), whereby the Port shall agree not to disturb the Permitted Assignee’s or Permitted Sublessee’s occupancy and quiet enjoyment of the Premises so long as Tenant or the Permitted Assignee or Sublessee is not in default beyond applicable notice and cure periods on the terms described in the NDA.

Notwithstanding any assignment or sublease, Tenant, except in the case of a Permitted Assignment, 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, not to exceed \$5,000.00 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.

No sublease by Tenant shall relieve Tenant of any obligation under this Agreement, including Tenant’s obligation to pay Base Rent, fees or Additional Rent hereunder. Any purported sublease contrary to the provisions hereof (or for which consent is not specifically obtained) shall be void. Any sublease shall specifically be subject and subordinate at all times to this Agreement, and to all of its covenants, agreements, terms, provisions, and conditions.

Subject to the terms of a Leasehold Mortgage, in the event that any portion of the Premises is sublet or occupied by anyone other than Tenant, the Port may, upon the default of Tenant, collect rent from the subtenant, licensee, concessionaire or occupant and apply the amount collected to the Rent reserved under the terms of this Agreement, but without thereby affecting Tenant’s liability under this Agreement

26. MORTGAGES OF TENANT’S INTEREST.

a. Prior Notice Required; Limited Purpose. Upon prior notice to the Port, Tenant shall have the right to mortgage its leasehold interest under this Agreement subject to the limitations set forth in this Section 26 and the terms and conditions of Lender’s Consent and Agreement, attached here as **Exhibit C**. Any such mortgage (“**Leasehold Mortgage**”) shall be for a term not to exceed the Term of this Agreement plus any Extension Option that has been exercised, and shall be subject and subordinate to the rights of the Port.

b. No Benefit Without Notice. No holder (“**Leasehold Mortgagee**”) of a Leasehold Mortgage on this Agreement shall have the rights or benefits mentioned in this Section 26 nor shall the Port be bound by this Section 26, unless and until an executed counterpart of such Leasehold Mortgage (or any assignment thereof), together with a written notice setting forth the name, address, contact person (or department) for the Leasehold Mortgagee, is delivered to the Port. The Leasehold Mortgagee may designate other contact information by providing notice thereof to the Port in the manner provided by Section 41 of this Agreement.

c. Obligations to Leasehold Mortgagee. If Tenant mortgages this Agreement in compliance with this Section 26, then so long as such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

i. The Port shall serve upon the Leasehold Mortgagee, in the manner permitted by Section 41 of this Agreement, a copy of any notice of default sent to Tenant and any other notices the Port is required by the terms of this Agreement to provide to Tenant or that will materially affect the leasehold interest, including but not limited to amendments to this Agreement, side letters that affect the economics of this Agreement or any waivers of any rights or obligations under the terms of this Agreement.

ii. The Port, upon providing Tenant any notice of (i) default under this Agreement or (ii) a termination of this Agreement, or (iii) a matter upon which the Port may predicate or claim a default, shall at the same time provide a copy of such notice to every Leasehold Mortgagee. No such notice by the Port to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Leasehold Mortgagee. After such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period after the giving of such notice upon it for remedying any default or causing the same to be remedied as is given Tenant after the giving of such notice to Tenant plus, in each instance, the additional periods of time specified in Sections 26(c)(iii) and 26(c)(iv) to remedy, commence remedying, or cause to be remedied the defaults specified in any such notice. The Port agrees that it shall accept such performance by or at the instance of the Leasehold Mortgagee as if the same had been made by Tenant. For such purpose, the Port and Tenant hereby authorize the Leasehold Mortgagee to enter upon the Premises and to exercise any of Tenant's rights and powers under this Agreement and, subject to the provisions of this Agreement, under the Leasehold Mortgage.

iii. Cure Notice to Leasehold Mortgagee. Notwithstanding anything to the contrary in this Agreement, if any Event of Default shall occur that entitles the Port to terminate this Agreement, the Port shall have no right to terminate this Agreement unless, following the expiration of the period of time given Tenant to cure such default, the Port shall notify ("**Cure Notice**") every Leasehold Mortgagee of the Port's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination if the nature of such default is the failure to pay a sum of money, and at least sixty (60) days in advance of the proposed effective date of such termination if such default is not the failure to pay a sum of money. A six (6) month extension of the date for termination of this Agreement as provided in Section 26(c)(iv) shall be granted by the Port if, during such thirty (30) or sixty (60) day Cure Notice period, any Leasehold Mortgagee:

(a) Notifies the Port of such Leasehold Mortgagee's desire to nullify such Cure Notice; and

(b) Pays or causes to be paid all Base Rent and other payments then due and in arrears as specified in the Cure Notice to such Leasehold Mortgagee and that may become due during such 30- and 60-day period, provided that any Leasehold Mortgagee shall not be required to pay any amount before the same is due and owing under this Agreement; and

(c) Complies or in good faith, with reasonable diligence and continuity, commences to comply with all non-monetary requirements of this Agreement then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee.

Nothing herein obligates such Leasehold Mortgagee to cure any default of Tenant under the terms of this Agreement. Notwithstanding the above, Leasehold Mortgagee shall not be required to cure any default of Tenant resulting from insolvency or bankruptcy of the Tenant.

iv. Six-Month Extension. If the Port shall elect to terminate this Agreement by reason of any default of Tenant, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 26(c)(iii), the specified date for the termination of this Agreement as fixed by the Port in its Cure Notice shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee, during such 6-month period:

(a) Pays or causes to be paid Base Rent and other monetary obligations of Tenant under this Agreement as the same become due, including the payment of any sums due under any Leasehold Mortgage; and

(b) Continues its good faith efforts to perform all of Tenant's other obligations under this Agreement, including during any period during which the Leasehold Mortgagee has possession of the Premises the obligation to operate and maintain the Project and Premises in accordance with the standards set forth by the Port in this Agreement.

v. Termination; New Lease. In the event that this Agreement is terminated by the Port for any reason under the terms of this Agreement or on account of a bankruptcy by or against Tenant, the Port shall serve notice to the Leasehold Mortgagee that the Agreement has been terminated. The notice shall include a statement of any and all sums which would at the time be due under this Agreement but for such termination and of all other defaults under this Agreement then known to the Port. Every Leasehold Mortgagee shall thereupon have an option, which must be exercised within forty-five (45) days after the notice, to obtain a new lease ("**New Lease**") in accordance with and upon the following terms and conditions:

(a) The New Lease shall be effective as of the date of termination of this Agreement, and shall be, for the remainder of the Term of this Agreement, at a rent and fee and upon all of the original agreements, terms, covenants and conditions. Such New Lease shall require the lessee to perform any unfulfilled obligation of the Tenant under this Agreement.

(b) Upon the execution of the New Lease, the lessee therein named shall pay any and all sums which would at the time of the execution thereof be due under this Agreement but for termination and shall pay all expenses, including reasonable attorneys' fees, court costs and disbursements, incurred by the Port in connection with any default and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease.

(c) Nothing herein, however, shall be deemed to obligate the Port to deliver possession of the Premises to the lessee under any New Lease. Upon the execution and delivery of such New Lease, the lessee, in its own name or in the name of the Port, may take all appropriate steps as shall be necessary to remove Tenant from the Premises. The provisions of this Section 26(c) shall survive the termination of this Agreement.

vi. Subject to the provisions of this Section 26, the Leasehold Mortgagee may exercise, with respect to the Premises, any right, power, or remedy under the Leasehold Mortgage. Every Leasehold Mortgagee (or its designee) or any other purchasers in foreclosure proceedings may become the legal owners and holders of Tenant's interest in this Agreement through such foreclosure proceedings or by assignment of this Agreement in lieu of foreclosure and shall provide notice of such assignment and assumption to the Port in compliance with Section 25. Leasehold Mortgagee after a foreclosure or assignment in lieu of foreclosure under the Leasehold Mortgage may subsequently assign the leasehold interest or the New Lease to a third party who shall assume the lease and provide notice of the assumption to the Port and otherwise comply with the Provisions of Section 25. Upon such assumption, the Leasehold Mortgagee shall be released from all liability for the performance or observance of the covenants and conditions in this Agreement (or such New Lease) contained on Tenant's part to be performed and observed from and after the date of such assignment.

vii. Notwithstanding Sections 26(c)(v) and 26(c)(vi), in the event that any person or entity other than Leasehold Mortgagee (a "**Foreclosure Purchaser**") shall acquire title to Tenant's interest in this Agreement as a result of foreclosure or assignment in lieu of foreclosure under the Leasehold Mortgage, or under a New Lease pursuant to this Section 26, the Foreclosure Purchaser may not assign this Agreement (or such New Lease) without the prior written consent of the Port in compliance with the requirements of Section 25. If the Port's consent is obtained, the assignee must assume Tenant's obligations under this Agreement and an executed counterpart of such assumption must be delivered to the Port. Upon

such assumption, the Foreclosure Purchaser shall be released from all liability for the performance or observance of the covenants and conditions in this Agreement (or such New Lease) contained on Tenant's part to be performed and observed from and after the date of such assignment.

viii. Notwithstanding Section 26(c)(a), no agreement between the Port and Tenant modifying, canceling or surrendering this Agreement shall be effective without the prior written consent of the Leasehold Mortgagee.

ix. Tenant's share, as provided by Section 31 of this Agreement of the proceeds arising from an exercise of the power of eminent domain shall, subject to the provisions of such Section 31, be disposed of as provided for by any Leasehold Mortgage.

A Standard Mortgagee Loss Payee Clause naming Leasehold Mortgagee may be added to any and all property insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied to rebuilding in the manner specified in this Agreement and the Leasehold Mortgage shall so provide; *provided, however*, the Leasehold Mortgage may provide a manner for the disbursement of such proceeds.

27. COMPLIANCE WITH PORT REGULATIONS/ALL LAWS.

Tenant agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the Premises are a part or to Tenant's use or occupancy thereof, now in existence or hereafter promulgated for the general health, welfare, safety and convenience of the Port, its various tenants, invitees, licensees and the general public, and payment of all fees and tariffs provided for therein or adopted in accordance therewith, as the same now exist or may hereafter be amended. Tenant further agrees to comply with all applicable federal, state and 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. Compliance includes, without limitation, Tenant's acceptance of any lease modifications, and modifications to development, construction and operational plans related to the use or development of the Property that may be imposed following the completion of the SEPA review process as provided for in Section 1 of the Lease. 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.

28. HAZARDOUS SUBSTANCES.

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

(a) As used in this Section 28, "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 28, "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 by Tenant or its agents.

(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. The provisions of this Section 28(d) shall not apply to, and the following are specifically excepted from, the storage or use by Tenant or any subtenant of any Hazardous Materials in compliance with all Environmental Requirements that are used by Tenant or any subtenant for ordinary cleaning, for office purposes and warehouse maintenance purposes, for refrigeration equipment installed in accordance with the terms of this Lease, for printing, and except for Hazardous Materials contained in any merchandise being handled, stored or distributed by Tenant or any subtenant provided that such merchandise remains in their original sealed and unopened containers, materials used on minor maintenance of Tenant's or any subtenant's trucks and machinery, and fuel (including liquid hydrogen or other alternative fuels) or batteries for any trucks, generators or other machinery (all of which shall be handled by Tenant or any Subtenant only in compliance with all Environmental Requirements and the other terms and conditions of this Lease).

(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 ten (10) business days of the Port's request;

(iii) Within Ten (10) 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 subject to three (3) days' notice, 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 28, 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, upon ten (10) business days' notice and after an opportunity for Tenant to cure, 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 28 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 28: (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) Within sixty (60) days following the expiration date of the Term of this Agreement (or within ninety (90) days after any earlier termination of this Agreement), Tenant shall submit a report ("**Termination Assessment Report**") to the Port describing the results of a comprehensive environmental assessment that reasonably investigates whether Hazardous Material in the Premises or migrating from the Premises (except Pre-existing Hazardous Material) for which the Tenant is responsible remain on the Property or have migrated from the Property. The Termination Assessment Report shall be conducted by an independent qualified environmental professional selected by Tenant or a successor tenant, as applicable, with the Port's reasonable consent, and the scope of the investigation shall be reasonably determined by such independent qualified environmental professional, subject to the reasonable consent of both Tenant, as applicable, and the Port, and to dispute resolution. The scope of the Termination Assessment Report environmental assessment shall include, at a minimum: (i) review of tenant/occupant operational history, audit reports and responses, spill and spill response reports, and other relevant environmental records; (ii) collection and analysis of samples representative of facility operations; equipment, material and waste storage locations; and locations of leaks, spills and other releases, which could reasonably be expected to

have resulted in introduction of Hazardous Material to the environment; and (iii) collection and analysis of samples from random locations, at a rate determined reasonable and appropriate based on best professional judgment considering the recommendations of the independent qualified environmental professional, and to dispute resolution. With respect to Hazardous Material identified in such Termination Assessment Report that were stored, released, spilled, discharged, leaked, emitted, injected, escaped or dumped in, on or about the Premises after the Commencement Date in violation of any Environmental Requirement (i) by Tenant or its employees, agents, invitees or sublessees and (ii) by unassociated third parties, if prevention of the release was within Tenant's control (and, for avoidance of doubt, releases, Tenant shall perform (x) a final remediation of such Hazardous Material pursuant to a plan approved by the Port in the exercise of its reasonable discretion which, to the extent reasonably feasible and practical under the circumstances (and subject to dispute resolution pursuant to Section 14.8), shall meet the standard established under MTCA Method A or, if such standard does not exist, a reasonably comparable replacement standard consistent with Environmental Requirement ("Method A"); and (y) also to the extent reasonably feasible and practical under the circumstances (and subject to dispute resolution pursuant to Section 14.7), a remediation below Method A in areas or circumstances where such residual Hazardous Material at levels compliant with Method A would materially impair the Port's ability, or increase the cost to the Port, to release, or otherwise use, the Property for uses compatible with Airport noise levels and otherwise compliant with 49 U.S.C. 47107(c)(2)(A) (the "**Post Termination Remediation**"). Post Termination Remediation shall be a condition precedent to the Port's payment of any Security to Tenant upon termination or expiration of this Agreement. Notwithstanding the foregoing, with respect to Post Termination Remediation, the Port will reasonably approve less stringent cleanup criteria and investigation, monitoring, removal, institutional controls and restrictive covenants that are not materially burdensome to the Port's releasing or future use of the Premises in light of FAA restrictions otherwise imposed upon the Property. The Post Termination Remediation shall fully and finally resolve Tenant's environmental obligations to the Port under this Agreement, and the Port shall be deemed to accept the Premises upon expiration or earlier termination of this Agreement in their then current condition, AS IS, WHERE IS, WITH ALL FAULTS AND DEFECTS, and subject only to completion of such Post Termination Remediation. As used herein the term "Environmental Requirements" shall mean and refer to any and all Legal Requirements relating to the protection of human health and the environment, including but not limited to all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder

29. 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 Lessor with full and complete copies of any reports or other results of inspections within five (5) days after any remedial or other action required as a result of any inspection. Upon request, Tenant shall provide Lessor with a certificate of insurance evidencing Tenant's compliance with insurance requirements applicable to storage tanks. 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."**

30. INSPECTIONS AND NOTICE OF CHANGE.

a. Tenant agrees that inspections may be required by the Port at the Tenant's expense to assure compliance with paragraphs 28, **HAZARDOUS SUBSTANCES**, and 29, **STORAGE TANK LICENSES**. Such inspections shall be made once every five (5) years or at any time the Port has good cause to believe a problem may exist.

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

31. EMINENT DOMAIN.

If the Premises shall be taken or condemned for any public purpose, or for any reason whatsoever, to such an extent as to render the Premises untenable, either Lessor or Tenant shall have the option to terminate this Lease effective as of the date of taking or condemnation, which shall be the earlier of the date the final condemnation judgment or the date possession is taken by the condemning authority. If the taking or condemnation does not render the Premises untenable, this Lease shall continue in effect, and Lessor shall, if the condemnation award is sufficient therefor, promptly restore the portion not taken to the extent possible to the condition existing prior to the taking. If, as a result of such restoration, the area of the Premises is reduced, the rental shall be reduced proportionately. The phrase "untenable" as used herein means a taking of such scope that the untaken portion of the Premises is insufficient to permit Tenant or its subtenant to occupy the Premises as a high-quality business park, eliminates or material adversely affects access to the Premises or otherwise results in the elimination of parking or truck docks such that the Premises cannot be used for the original intended purpose, or any other then current use of the Premises, as reasonably determined by Tenant.

If title to the whole or materially all of the Premises shall be taken, the rights of the Port and Tenant to share in the net proceeds of any award for the respective Property and Project, and the damages upon the taking, shall be in the following order of priority:

(a) The Port, at all times, regardless of when the taking occurs, shall be entitled to receive, that portion of the award as shall represent compensation for the value of the Property, considered as vacant and improved only to the extent existing at the Commencement Date, but subject to a ground lease similar to this Agreement, such value being hereinafter referred to as the "**Property Value**."

(b) The remaining portion of the award shall be paid to the Tenant, subject to the rights of any Leasehold Mortgagee (the "**Remaining Value**").

(c) In addition, to the extent consistent with Washington eminent domain law, Tenant shall have the right to seek an independent and separate award from the condemning authority for loss of value of the leasehold improvements, relocation benefits, and for any tangible personal property of the Tenant or any subtenant that is taken.

In the event of a taking of less than materially all of the Premises, the rights of the Port and Tenant to share in the net proceeds of any award for the respective Property and Project, and the damages upon the taking, shall be in the following order of priority:

(a) The Port, at all times, regardless of when the taking occurs, shall be entitled to receive that portion of the award as shall represent compensation for the Property Value.

(b) The Remaining Value of the award shall be payable to Tenant, subject to the rights of any Leasehold Mortgagee.

Should, however, the partial taking occur during the last two (2) years of the Term, then Tenant at its option upon thirty (30) days' prior notice to the Port, given at any time within sixty (60) days after the vesting of title in the taking authority, may terminate this Agreement. Upon that termination the Rent and

other charges under this Agreement shall be apportioned as of the date of termination and the Tenant will be discharged from responsibility to restore the Premises. Upon that termination the entire Remaining Value shall belong to the Port free of any claim thereto or any part thereof by Tenant, anything in this Section to the contrary notwithstanding.

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.

32. 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 90 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.

33. PROMOTION OF PORT COMMERCE.

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

34. 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.

35. NONDISCRIMINATION - SERVICES.

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

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

36. NONDISCRIMINATION – SERVICES, CONSTRUCTION, USE.

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

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

37. APPRAISAL PROCEDURE.

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

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

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

38. ARBITRATION PROCEDURE.

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

39. 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.

40. 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.

41. NOTICES.

All default and other substantial notices required under the provisions of this Lease shall 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:

Swire Land, Inc.
12634 S 265 W
Draper, UT 84020
Attn: Jon Yearsley

And copy to:

Crane Dunham PLLC
3600 15th Ave West, Suite 200
Seattle, WA 98119-1330
Attn: Stephen Crane

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.

42. WAIVER.

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

43. BINDER.

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

44. NO RECORDING.

Without the prior written consent of the Port, this Lease shall not be placed of record. The Port and Tenant agree to record a memorandum of this Agreement in the form of **Exhibit "F"** attached hereto.

45. ESTOPPEL CERTIFICATES/ATTORNMEN.T.

Each party shall, at any time and from time to time as requested by the other party, upon not less than thirty (30) days' prior written notice, execute, acknowledge and deliver to the other a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there have been

modifications, that the same is in full force and effect as modified and stating the modifications), certifying the date through which Base Rent, Additional Rent and other charges, if any, have been paid, and stating whether or not, to the best knowledge of the signer, the other party is in default beyond any applicable notice and cure period provided in the performance of any of its obligations under this Agreement, and if so, specifying each such default of which the signer may have knowledge, and such other matters as may be reasonably requested. The parties agree and acknowledge that it is specifically intended that any such statement delivered pursuant to this Section 45 may be relied upon by others with whom the party requesting the certificate may be dealing.

Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage or deed of trust made by the Port, its successors or assigns, encumbering the Premises or any part thereof, and if so requested, attorn to the purchaser upon such foreclosure or sale or upon any grant of a deed in lieu of foreclosure and recognize such purchaser as landlord under this Agreement, provided, that such purchaser recognizes Tenant's rights under this Agreement, Tenant's subleases, and any modification of this Agreement or any sublease and assumes the Port's obligations under this Agreement arising after the date of transfer, and agrees not to disturb Tenant's or its subtenants quiet possession of the Premises for so long as Tenant is not in default hereunder.

Notwithstanding the above, the Port shall not use the Property as security for any monetary obligation or further encumber the Property, except as may be expressly authorized by this Agreement or by prior written approval of Tenant, which approval shall not be unreasonably withheld. So long as Tenant is not in default of this Agreement, this Agreement will not be amended, modified or terminated or subject to termination by any trustee's sale, any action to enforce the security, or by any proceeding or action in foreclosure.

46. 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.

LESSOR:

PORT OF OLYMPIA

TENANT:

SWIRE LAND INC.

By: _____

Sam Gibboney, Executive Director

By: _____

Robby Gehring, Vice President

Approved As To Form

Richard Hughes
Port Counsel

EXHIBIT A PREMISES

NOT FOR RECORDING

BEGINNING at the Southeast corner of the Southwest quarter of the Northeast quarter of Section 14, Township 17 North, Range 2 West, W.M.; Thence North along the Easterly line, 2,076.00 feet; Thence West parallel with the Northerly line, 2,195.00 feet; Thence Southwesterly to the Southwest corner, approximately 2,109.08 feet; Thence East along the Southerly line, 2,642.65 feet to the TRUE POINT OF BEGINNING.

EXCEPT THEREFROM that portion of County Road known as Case Road along the South Boundary of said Premises; Consisting of approximately 113 acres.

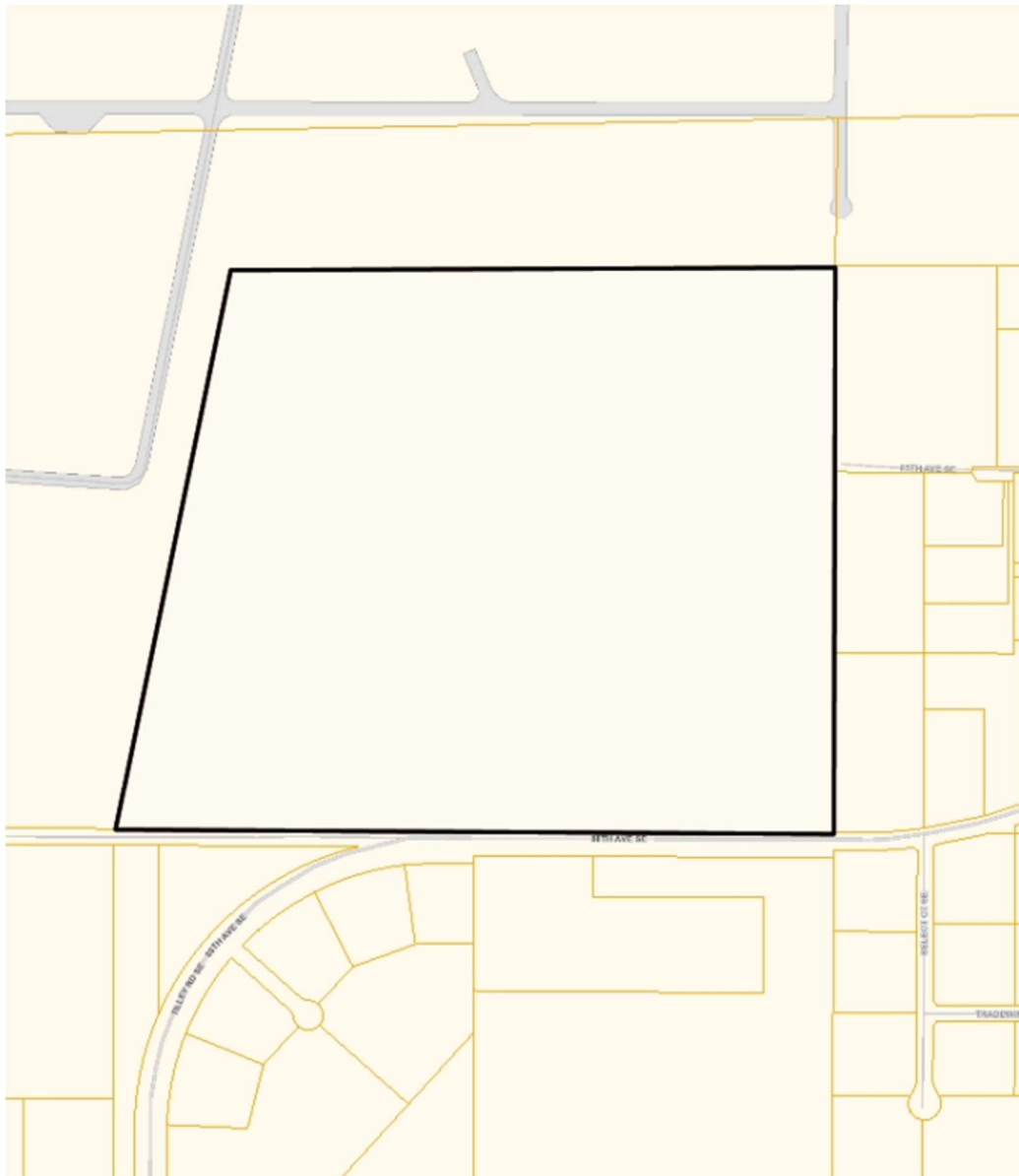


EXHIBIT B

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 final design, density, size, appearance and location thereof and the condition precedent in the Permitting and Environmental provision in Section 1 of this Lease has been satisfied.

Before 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 fifteen (15) days during which to accept and approve or reject such preliminary plans and specifications. Prior to commencing any work or other development, Tenant shall submit to the Port for approval of final plans and specifications for any proposed improvements in the same manner as provided above. The final plans and specifications shall include any required modifications stemming from the permitting and environmental review processes described in Section 1 of this Lease.

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 ten (10) 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 cooperate with Tenant to facilitate the design, permitting and construction of such utility services, including, without limitation, executing applications or other instruments, necessary or appropriate, in Tenant's reasonable discretion, in connection therewith. The Port further agrees to grant any reasonably necessary easements on over or across or under the Port Property necessary to bring the utility services 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. Notwithstanding Substantial Completion of the Premises, Tenant shall use reasonable efforts to cause its contractor to diligently proceed to complete full construction of the Premises and obtain a permanent certificate of occupancy for the Premises once there is an occupant or user for the Premises.

EXHIBIT C
LESSOR'S CONSENT AND AGREEMENT
(For Financing Purposes)

Description of Ground Lease.

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

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

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

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

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

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

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

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

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

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

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

6.1. **Notice of Default.** If Tenant defaults under the Lease or if any event occurs which would give Lessor the right to terminate, modify, amend or shorten the term of the Lease, Lessor shall take no steps to exercise any right it may have under the Lease without first giving Lender written notice of such default. A copy of each and every Notice of Default and any other notices the Port is required by the terms of the Lease to provide to Tenant or that will materially affect the leasehold interest, including but not limited to amendments to this Agreement, side letters that affect the economics of this Agreement or any waivers of any rights or obligations under the terms of this Agreement served or sent by Lessor or its agent to or upon Tenant pursuant to the Lease shall be sent contemporaneously to Lender in accordance with paragraph 13 below. Such Notice of Default shall specify the event or events of default then outstanding and the time period at the end of which the indicated action would become effective.

6.2. **Termination for Monetary Default.** If the Notice of Default given by Lessor to Lender relates to a monetary default and Tenant has not cured such monetary default within time period as provided in the Lease and Tenant's failure to cure results in Lessor desiring to terminate the Lease, Lessor may terminate the Lease if such monetary default is not cured by either Tenant or Lender within the time periods set forth in Section 26(c) of the Lease.

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

(a) within the time period set forth in Section 26(c) of the Lease Lessor's notice to Lender of Tenant's failure to cure (or failure to diligently pursue a cure) Lender notifies Lessor of its intent to realize upon its security interest and commences realization within the time periods set forth in Section 26(c) of the Lease, and diligently pursues realization; and

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

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

Lessor shall not terminate the Lease because of Tenant's breach of any term(s) of the Lease relating to the solvency of Tenant or the institution of any bankruptcy, insolvency, receivership or related action by or against

tenant as long as Lender cures any default under the Lease by Tenant as provided in this Consent and Agreement.

6.3.1. If the non-monetary default is of a nature which requires immediate abatement as a result of which Lender would not normally pursue realization on the collateral, and Tenant has not taken steps to immediately cure the default, then Lender must take immediate steps to cure such default within the time period set forth in Section 26(c) of the Lease after receipt of notice or else the Lessor may terminate the Lease.

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

6.4. **Assumption of the Lease.** If Lender acquires the interest of Tenant at any time or takes possession of the collateral, then Lender shall formally assume the Lease within twenty (20) days thereafter.

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) except under the terms set forth in Section 26 of the Lease.

7. **Disposition of Insurance and Condemnation Proceeds.** Lessor 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 paragraph 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, Lessor agrees that Tenant and Lender shall have the right to such proceeds so long as none of Lessor's property, utilities or other services therein are damaged or such damages are repaired. In the event the Premises are substantially damaged and Tenant's improvements have been repaired, Lessor shall only participate in the insurance proceeds to the extent necessary to repair and restore Lessor's ground and any of Lessor's or Tenant's improvements (excluding buildings and personal property) on or in the ground to the same condition the land was in at the commencement of the Lease, or in the same condition at the time of the casualty. Under the Lease, Lessor has the option of requiring Tenant to demolish the improvements at the end of the Lease term, or to have Tenant convey title to Lessor Tenant's interests in the Leasehold Improvements. In the event Premises and the Leasehold are so severely damaged that Tenant's and Lenders' decision is not to repair or restore the Premises, Lessor shall participate in the insurance proceeds to the extent necessary to remove the remainder of the damaged improvements and to restore the Premises and any utilities or other such improvements (excluding rebuilding the improvements or restoring other personal property of Tenant) to the same condition the land was in at the commencement of the Lease, or in the same condition at the time of the casualty. Other than as described herein, Lessor shall have no claim to insurance proceeds or condemnation proceeds that are attributable to Tenant's interest in the Leasehold, nor shall Lender have any interest in Lessor's condemnation proceeds, if any.

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

9. **Incorporation of Mortgagee Protection Provisions.** To the extent not inconsistent with this Agreement, all provisions of the Lease which by their terms are for the benefit of any leasehold mortgagee, are hereby incorporated herein for the benefit of Lender. Without limited the foregoing, Lender shall be a beneficiary of the warranty and indemnity provided in Section 1, **LEASE SUMMARY**, of the Lease and Section 26 of the Lease.

10. **Right to Remove Collateral.** In the event Lender exercises its rights under its collateral and realizes upon the collateral, Lessor agrees that Lender is entitled to remove Tenant's furniture, movable trade fixtures and equipment installed by Tenant from the 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, Lessor waives any right, title, claim, lien or interest in the above trade fixtures by reason of such fixtures being attached to or located on the Premises. Lender shall use reasonable care in removing the trade fixtures from the Premises and shall repair any damage that may result from such removal which shall be completed in accordance with the terms of the Lease.

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

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

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

If to Lender: _____ (Print)

_____ (Print)

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

IN WITNESS WHEREOF, Lessor has executed these presents this ____ day of _____, 20__.
LESSOR:

PORT OF OLYMPIA, a Washington Municipal corporation

By: _____

Its: _____

AGREED to this ____ day _____, 20__.

TENANT:

By: _____

Its: _____

AGREED to this ____ day _____, 20__.

LENDER:

By: _____

Its: _____

AGREED to this ____ day _____, 20__.

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

Copy of Lease

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”

(REMOVED)

EXHIBIT F
FORM OF MEMORANDUM OF GROUND LEASE

**RECORDED AT THE REQUEST
OF:**

WHEN RECORDED RETURN TO:

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease (“Memorandum”), dated as of _____, 20__, is entered into by and between **SWIRE LAND INC**, a Delaware Corporation, or its assigns (“**Tenant**”), **PORT OF OLYMPIA**, a Washington municipal corporation (“**Landlord**”).

Landlord owns fee title to that certain real property located in the City of Olympia, Thurston County, State of Washington, as is more particularly described in **Exhibit A** attached hereto and incorporated herein (“**Land**”).

On even date herewith, Landlord entered into that Ground Lease Agreement with Tenant (the “**Lease**”) wherein Landlord agreed to lease to Tenant the Land.

The Lease term is for a period of _____ years and commences on _____, 202__ and expires on _____, 20__. Tenant has _____ successive options to extend the term of the Lease each for a _____ year period. After the exhaustion of these options, an extension of the Lease term will be negotiated in good faith by the parties commencing one (1) year prior to the termination of the Lease, provided, however, this provision is non-binding on the Port except as to the obligation to negotiate in good faith with the Tenant.

This Memorandum is solely for recording purposes and shall not be construed to supplement, amend, or otherwise modify the terms and conditions contained in the Lease.

This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease regarding Assignment.

This Memorandum and the Lease are governed by the laws of the State of Washington.

Signatures are on the next page.

SIGNATURE PAGE
to Memorandum of Option to Ground Lease

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date set forth above.

[ALL SIGNATURES MUST BE NOTARIZED]

LANDLORD:

PORT OF OLYMPIA

A Washington municipal corporation

By: _____
Name: _____
Its: _____

TENANT:

SWIRE LAND INC

By:

**Exhibit A to
Memorandum of Ground Lease**

LEGAL DESCRIPTION OF PROPERTY

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____ personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____(SEAL)
Notary Public Signature

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____ personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____(SEAL)
Notary Public Signature

EXHIBIT G

Form of Non-Disturbance and Attornment Agreement

RECOGNITION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, is made as of _____, 20__, by and among _____, a _____ (hereinafter referred to as “**Prime Lessor**”), and _____, a _____ (hereinafter referred to as “**Prime Lessee**”), and _____, LLC, a Delaware limited liability company (hereinafter referred to as “**Tenant**”), with reference to the following facts:

A. Prime Lessor has entered into a Lease with Prime Lessee dated _____ (the “**Prime Lease**”) for [the building located at _____] (the “**Property**”) as more fully described in the Prime Lease;

B. By a certain sublease entered into between Prime Lessee and Tenant dated _____ (hereinafter called the “**Sublease**”), Prime Lessee leased to Tenant [a portion of] the Property and the improvements to be erected thereon as more particularly described in the Sublease (said portion of the Property and the improvements now or hereafter erected thereon being hereinafter called the “**Demised Premises**”);

C. The parties hereto desire to provide for the recognition and nondisturbance to Tenant by the Prime Lessor; and

D. The parties hereto desire to provide for Tenant’s agreement to pay Prime Lessor the rent payments due under the Prime Lease and to assume the Prime Lease after the occurrence of a default by Prime Lessee not cured within any applicable cure period.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto intending to be legally bound hereby agree as follows:

1. Prime Lessor agrees that as long as the Sublease shall be in full force and effect:

(a) The possession by Tenant of the Demised Premises and the Tenant’s rights thereto shall not be disturbed, affected or impaired by, nor will the Sublease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding upon the Prime Lease, or by the termination of the Prime Lease or the enforcement of any rights under the Prime Lease or any other documents held by the Prime Lessor, or by any judicial sale or execution or other sale of the Demised Premises, or (ii) any default under the Prime Sublease; and

(b) Prime Lessor will not exercise any of its rights under the Prime Lease in a manner which would effectively prohibit Prime Lessee from performing the Sublease in accordance with its terms.

2. If the Prime Lessor shall terminate the Prime Lease with Prime Lessee or its assigns or if the Property shall be sold as a result of any action or proceeding to terminate the Prime Lease, or transfer of ownership given in lieu of termination, prior to expiration of the Sublease, the Sublease shall continue in full force and effect as a direct lease between Prime Lessor, or their successor in interest, as landlord, and Tenant, as tenant, upon and subject to the terms and conditions contained in the Sublease, without

necessity for executing any new lease, as a direct lease between Tenant and the then owner of the Property, as “landlord.” In such event:

(a) Tenant shall be bound to the Prime Lessor or such new owner under all of the terms, covenants and provisions of the Sublease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to the Prime Lessor or such new owner, as the case may be, and to recognize the Prime Lessor or such new owner shall, from and after the date the Prime Lessor or new owner succeeds to the interest of “landlord” under the Sublease, have the same remedies against Tenant for the breach of any covenant contained in the Sublease that landlord might have had under the Sublease against Tenant; and

(b) The Prime Lessor or such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Sublease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term of the Sublease). Tenant shall, from and after the date the Prime Lessor or new owner succeeds to the interest of “landlord” under the Sublease, have the same remedies against the Prime Lessor or new owner for the breach of any covenant contained in the Prime Lease that Tenant might have had under the Sublease against landlord if the Prime Lessor or new owner had not succeeded to the interest of landlord.

3. Prime Lessee hereby agrees to protect, defend, indemnify and hold Tenant harmless from and against any and all claims, damages, costs and expenses (including not limited to reasonable attorneys’ fees) incurred by Tenant as a result of the violation of this Agreement by Prime Lessee or the breach by Prime Lessee of the Prime Lease, including but not limited to any breach which result in termination of the Prime Lease. Tenant hereby agrees to protect, defend, indemnify and hold Prime Lessee harmless from and against any and all claims, damages, costs and expenses (including but not limited to reasonable attorneys’ fees) arising from Tenant’s violation of the terms of this Agreement.

4. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage paid or reliable overnight courier to each of the parties at their respective addresses as hereinabove set forth or at such other address as a party may designate by notice given in accordance with this paragraph. Notices shall be deemed delivered upon actual receipt as evidenced by the return receipt.

5. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

Signatures are on the next page.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

PRIME LESSOR:

By: _____
Name:
Title:

PRIME LESSEE:

_____, LLC,
a Delaware limited liability company

By: XXXXX,
a Delaware limited liability company,
Manager

By: _____
_____,
Local Partner

TENANT:

By: _____
Name:
Title:

PORT OF OLYMPIA GROUND LEASE TUMWATER PROPERTIES

THIS LEASE is made this **12th** day of **December, 2022**, by and between the PORT OF OLYMPIA, a Washington municipal corporation, Lessor, hereinafter referred to as “Landlord” or “Port”, and the Tenant described below, hereinafter referred to as "Tenant", on the following terms and conditions:

1. LEASE SUMMARY.

TENANT

Swire Land, Inc., and/or its assigns
12634 S 265 W
Draper, UT 84020
Phone Number: 1 (801) 816-5300
Email: jyearsley@swirecc.com

PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms and conditions of this Lease, that certain real property consisting of approximately ninety five (95) acres of land or Four Million One Hundred Thirty Eight Two Hundred (4,138,200) square feet, to be mutually agreed upon by the parties, referred to as the “Premises” herein, out of one hundred thirteen (113) acres, located in Tumwater, Thurston County, Washington as generally shown and described in the site plan attached as **Exhibit “A”** hereto, and referred to as the “Property” 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.

Tenant acknowledges and agrees that Tenant is responsible for applying for, processing, obtaining, and recording such approvals as may be necessary for the division of the Premises from the larger property owned by the Port of which the Premises are a part, whether by binding site plan and Tenant shall bear all costs and expenses thereof. The Port shall be given the opportunity to review and approve all applications and submissions made by Tenant in connection therewith prior to submission to the City, with the Port’s approval not to be unreasonably withheld, conditioned or delayed. The Port agrees to execute such documents as Tenant may reasonably request in such regard and for such purpose and the Port further agrees to support and otherwise fully cooperate with such action commenced by Tenant; provided, however, that except as otherwise provided in this Agreement: (i) the Port shall not be required to incur any expense in doing so, (ii) Tenant shall exercise commercially reasonable efforts (not including variances or other processes for deviations from normal code requirements) to cause any such document to be so worded or submitted as to leave the Port and the Property and all other Port property without residual liabilities, obligations or encumbrances should Tenant fail to proceed with the government approvals, (iii) no action affecting the Property or any other Port Property shall be finalized and no document referencing the Property or any other Port property shall be recorded without the Port's express written consent to such finality or recording,

which shall not be unreasonably withheld, conditioned, or delayed (and, unless otherwise indicated, the Port's execution of an application or petition shall not constitute the Port's consent to finalization of the action requested in such application or petition or to recording of any document), and (iv) the terms of such permits and any associated agreements are subject to the approval of the Port to the extent that the terms thereof would bind the Port following expiration or termination of this Agreement, which such approval shall not be withheld with respect to routine development restrictions and covenants that would run with the land developed for a project like the Project (e.g., slope setback and non-disturbance provisions, rights to make cuts and fills for roads, etc.) or restrictions and covenants otherwise required or customary for issuance of the requested approvals (e.g., provisions applicable to decommissioning facilities used in the management of Hazardous Material), and (v) such documents shall provide that the Port shall have no liability during the Term for any costs or other liabilities related solely to such permits or agreements, applicable law or set forth elsewhere in this Agreement.

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

PORT FINAL APPROVAL AUTHORITY

Notwithstanding the foregoing, and consistent with the terms provided in the Permitting and Environmental Review provision in Section 1 of this Lease, the Port retains the right to modify the Lease and otherwise condition the Project following the completion of the State Environmental Policy Act ("SEPA") review and either the Port or the Tenant may terminate the Lease pursuant to the Early Termination provision in this Section 1 of the Lease and Section 3.1 of the Lease.

INITIAL TERM

The "Initial Term" shall be ~~seventy-five (75) years, divided into periods with an option for an additional period of thirty (30), twenty-five (25), and twenty (20) years.~~ Provided, that if there is not a final "Section 163 Determination" of ~~non-aeronautical~~ nonaeronautical property by the Federal Aviation Administration ("FAA") with respect to the Property, then the Lease shall not go into effect. The Tenant shall have the exclusive right to extend the lease at the end of ~~each of these periods: the Initial Term.~~ The Port shall not withhold approval of the lease ~~extensions during extension at the end of~~ the initial term. The initial term shall begin on a date elected by Tenant, upon verification of the date for the completion and acceptance in writing by Tenant after acceptance of the Habitat Conservation Plan (the "Lease Commencement Date"); 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~~ an additional option to extend as outlined below.

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EARLY TERMINATION

Either the Port or the Tenant may terminate the Lease on or before the completion of the SEPA review pursuant to the condition precedent in the Permitting and Environmental Review provision in Section 1 of this Lease. Either the Port or the Tenant may terminate the Lease within thirty (30) calendar days of the date of completion of the SEPA review process. For the purposes of this

paragraph, the date of completion of the SEPA review process means the later date of: (i) the day following the expiration of any appeal period following a threshold determination of Determination of Non-significance (“DNS”) or a Mitigated Determination of Non-significance (“MDNS”) if no appeals are filed; (ii) a final decision following an appeal and expiration of or exhaustion of any subsequent appeal rights; or (iii) in the case of a threshold Determination of Significance (“DS”), the completion of the Environmental Impact Statement (“EIS”) process and any appeals thereof. To terminate this Lease early under this paragraph, the party intending to terminate shall provide written notice to the other party according to Section 41 of the Lease. In the event of the Early Termination of the Lease, the Port shall retain the Lease Security as provided in Section 5 of the Lease until all outstanding expenses owed to the Port are reimbursed fully by Tenant. Further, the indemnification and liability insurance obligations shall survive the Early Termination of the Lease to the extent such a provision is triggered based upon Tenant’s activities arising from this Lease or the Project.

OPTION TO EXTEND INITIAL TERM

The Tenant is granted by the Port options to extend for ~~up to three (3) an additional periods, period(s),~~ the terms of which will be negotiated in good faith by the parties commencing one (1) year prior to the termination of the Lease, provided, however, this provision is non-binding on the Port except as to the obligation to negotiate in good faith with the Tenant. Such extensions, if they occur, shall be upon the terms, covenants, and conditions contained herein (except for rent, rental adjustments, and the times at which rental adjustments shall be made, all of which shall be determined in accordance with the then current Port policy). The extension terms shall commence on the expiration of the immediately preceding term. Such Option to Extend may be exercised only by written notice to the Port no later than two (2) years prior to the expiration of the then current term. Tenant shall not be entitled to extend this Lease if Tenant is in uncured 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.

INITIAL RENT AND BASE GROUND RENT

Initial Rent: Tenant shall pay monthly base rent in the amount of one-twelfth (1/12) of the annual rental cost of Four and One Tenths Cents (\$0.041 per square foot). According to the Rent Commencement Date described below, the monthly base rent shall increase to one-twelfth of the annual rental cost of Forty Eight Cents (\$0.48 per square foot) (“Base Ground Rent”) in addition to (not including) including Washington State Leasehold Tax, plus Common Area charges..

Rent Adjustments: During the Initial Term, the Base Ground Rent shall be increased every five (5) years by ten percent (10%), with the first adjustment being effective as of the fifth (5th) anniversary of the Lease Commencement Date and each such date being hereafter referred to as a “Rent Adjustment Date”. Provided, however, that the Base Ground Rent shall never be decreased. Each adjustment shall be calculated on the applicable Adjustment Date and shall be effective as of the applicable Adjustment Date. Within thirty (30) days of the date of the Port’s notice of adjustment following completion of an adjustment calculation, Tenant shall pay to the Port the amount of any deficiency in rent paid by Tenant for the period following the subject Adjustment Date, and shall thereafter pay the adjusted rent until receiving the next notice of adjustment from the Port.

Effective as of the beginning of the twenty-sixth (26th) year of the Lease, and every ten (10) years thereafter during the Initial Term, the Base Ground Rent shall be revised to an amount equal to one-twelfth (1/12) of the then-current fair market rental value of the property as agreed to by the Parties hereto, Provided, however, that at no point shall the Base Ground Rent be adjusted downward.

If the Parties cannot agree to a fair market rental value within 30 days after the end of the 26th year of the Lease, the fair market rental value for rental revisions pursuant to this paragraph shall be determined by independent appraiser, as outlined in Paragraph 36, **APPRAISAL PROCEDURE**.

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

RENT COMMENCEMENT DATE

Base Rent shall commence at the earliest to occur of either of: (a) date Tenant receives a temporary Certificate of Occupancy issued by the City of Tumwater, or (b) twenty four (24) months from the Tenant's written approval of the completion of the Habitat Conservation Plan as further defined in the Contingencies provisions herein or commencement date of the Lease term if the Tenant is actually able to commence construction due to receipt of all required governmental approvals, whichever is later.

LEASE SECURITY

In accordance with Paragraph 5 of the Lease, in an amount equal to one (1) year's minimum ground rent plus Washington State Leasehold Excise Tax, in a form acceptable to the Port, which may be either in cash, a bond, letter of credit, or other customary form of security, and adjusted to reflect rental adjustments and other changes to this Lease. Initial amount shall be Two Million Two Hundred Forty-One Thousand Three Hundred Eighty-Two and 00/100 Dollars (\$2,241,382.00) (one times the annual rent plus Washington State Leasehold Excise Tax of 12.84%). The initial security amount shall be posted with the Port by the date of removal of any and all Lease contingencies by the Tenant. Any change in security shall be posted with the Port at least thirty (30) days prior to the effective date of such change. Expiration Date: Ninety (90) days after satisfaction of all obligations under this Lease.

USE OF PREMISES

Tenant may use the Premises for manufacturing, warehouse/distribution and administrative facilities, or other uses as may be allowed on the Premises under zoning and other governmental regulations. Tenant intends to construct a manufacturing, warehouse/distribution and administrative facility on the Premises (the "Project").

PERMITTING AND ENVIRONMENTAL REVIEW

Tenant shall not commence the Project or otherwise develop the Premises prior to obtaining all necessary governmental approvals and permits, including without limitation, completion of SEPA review. This requirement is an express condition precedent of the Lease. Either the Port or Tenant may terminate the Lease if condition precedent identified in this paragraph is not satisfied or pursuant to the Early Termination provision above and Section 3.1 of the Lease.

The Port will not act as the lead agency for the SEPA review, however, the Port remains an agency with jurisdiction over the Project or other development actions on the Premises or Property. Accordingly, the Port retains the right to require Tenant modify of the development, construction, and operational plans for the Project or other development actions proposed on the Premises to comply with any mitigation conditions, limitations, or other requirements arising from the SEPA review process. For example, and not by way of limitation, the Port may amend this Lease to adopt additional mitigation requirements, heightened insurance requirements, or modify project specifications in response to SEPA review.

INSURANCE

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

Tenant shall submit certificates evidencing compliance with Paragraph 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 prior to their expiration.

ASSIGNMENT, SUBLEASE, OR LEASE MODIFICATION.

Tenant shall have the right to assign part or all of the Tenant's interest in the Lease to any other person or entity, after the Tenant and proposed assignee have complied with all of the terms, covenants and conditions of this Lease, subject to the approval of the Port, which shall not be unreasonably withheld. Any person or entity to which the Lease is assigned shall be deemed, without further act or deed, to have assumed all of the obligations of the Tenant arising under the Lease on or after the date of such assignment. Any such assignee shall, upon request, execute and deliver to the Port an instrument confirming such assignment. 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, except as otherwise sent forth in this Lease.

REAL ESTATE COMMISSIONS AND FEES

A real estate commission shall be paid by the Port to Charlie Cowan/Windermere RE Co., Inc., 301 NE 100th Street, Suite 200, Seattle, Washington 98125 (Broker/Firm), in accordance with the Real Estate Commission Payment Agreement between the Port and such Broker/Firm dated March 28, 2022. Except as set forth above, each party represents and warrants that it has not dealt with any 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.

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COMMISSIONS AND FEES

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

CONTINGENCIES AND DUE DILIGENCE PERIOD

This Lease is expressly contingent upon the Tenant conducting such due diligence as it reasonably determines is necessary and/or appropriate to decide the feasibility of development of the Premises, including but not limited to phase I and phase II environmental studies, source and wastewater studies, geotechnical and soils studies, confirmation of availability of all utilities required at costs Tenant determines as reasonable, final approval from the Tenant's parent company, and securing of needed financing to develop the Premises ("Due Diligence"). The Due Diligence period and all contingencies shall continue until the Tenant approves in writing the Habitat Conservation Plan, which approval or disapproval by Tenant shall occur within sixty (60) days of receipt of the Habitat Conservation Plan. The Tenant shall determine, in its sole discretion, whether the development of the Premises is feasible, and shall promptly advise in writing the Port of its determination upon completion of Tenant's Due Diligence, including but not limited to the Habitat Conservation Plan and all other contingencies. Additionally, the Lease is expressly contingent upon the approval by Tenant in its sole discretion of the Site Development Plan, Airport Layout Plan, actual completion and approval of the Bush Prairie Habitat Conservation Plan by no later than December 31, 2024, and the availability of "mitigation credits". The Tenant shall have the right to terminate the Lease until December 31, 2024, even after waiver or satisfaction of contingencies by Tenant.

ADDITIONAL PROVISIONS

1. **Right of First Refusal.** The Port grants the Tenant a right of first refusal ("ROFR") to lease any portion of the Property not part of this Lease, i.e. the balance remaining of the approximately One Hundred Thirteen (113) acres shown on **Exhibit A** attached hereto. The terms of the ROFR shall be negotiated in good faith between the parties as part of the negotiations with regard to the Lease, e.g. right to inspect the Property, but shall include the right to lease at the same base rent and on the same terms as the Port is willing to accept from a third party.
2. **Exclusivity.** The Port has entered into an Option to Ground Lease with CRG for the Property, with an allowance, for the "Evergreen Project". Notwithstanding the provisions of the grant by the Port to the Tenant of the foregoing ROFR, the Port reserves the right to exercise and support all provisions with CRG.
3. **Confidentiality.** The Port will make all reasonable efforts to be discrete concerning this Lease and the project contemplated to be built on the Premises and the Property by the Tenant, and will not issue any public announcements in any form concerning same. The Tenant has been advised that, as a public entity, the Port is subject to the provisions of the State Public Records Act, Chapter 42.56 of

the Revised Code of Washington. It shall not be a violation of this Lease for the Port to comply with the requirements of the Open Public Meetings Act (Chapter 42.30 RCW) and the Public Records Act (Chapter 42.56 RCW).

4. **Facilities.** Facility(ies), both during construction and upon completion, shall comply with all FAA obstruction standards to ensure no impact on existing or future aircraft operations. Additionally, use of any and all facility components – including but not limited to lighting, antennas, solar panels, emissions of any type, heat plumes, electronics, etc. – shall not constitute a hazard to aviation and aerial navigation
5. **Assistance by Port in Mitigation Expenses.** Upon final approval, the Habitat Plan is expected to include a requirement for payment of fee-in-lieu mitigation to the City in order to develop the Property. The Base Rent schedule in this Agreement reflects the fair market value for the Property in fully mitigated condition under the Habitat Plan. In consideration of that valuation, the Port will be responsible for paying fee-in-lieu mitigation imposed by the City for development of the Property, up to a maximum cap of One Hundred Thousand Dollars (\$100,000.00) per acre or Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) in the aggregate.

If the fee-in-lieu mitigation exceeds the maximum cap of One Hundred Thousand Dollars (\$100,000.00) per acre or Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) in the aggregate, the Tenant may, but will have no obligation, to fund the excess over the cap. If the Tenant does not agree to fund the excess over the cap, the Port may immediately terminate this Agreement upon written notice to Tenant with no further liability on the part of either party.

CONFLICTING PROVISIONS

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

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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 [ParagraphSection 1, LEASE SUMMARY](#) above.

3. TERM.

This Lease shall be for the term specified in [ParagraphSection 1, LEASE SUMMARY](#) above.

[3.1 The initial term of the Lease is subject to the Early Termination provision in Section 1 of the lease](#)

4. RENT.

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

[4.2.](#) Tenant agrees to pay as rent for the use and occupancy of the Premises during the term of this Lease, without deduction or offset, the rent specified in [ParagraphSection 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 [ParagraphSection 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.

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The Security is a part of the consideration for execution of this Agreement. If Tenant shall have fully performed all terms and conditions of this Agreement, the Security (or such portion as remains without claim by the Port) shall be returned to Tenant within thirty (30) days following the termination (or expiration) date; otherwise the Port shall, in addition to any and all other rights and remedies available under this Agreement or at law or equity, retain title to that portion of the Security sufficient to remedy the default.

The Port may apply all or part of the Security to unpaid rent or any other unpaid sum due hereunder, or to cure other defaults of Tenant. If the Port uses any part of the Security, Tenant shall restore the Security to its then-currently required amount within fifteen (15) days after the receipt of the Port's written request to do so. The retention or application of such Security by the Port pursuant to this Section does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.

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 **as conditioned and** only for those purposes stated in **paragraphSection** 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. Tenant may install, post, erect and, as Tenant desires or may be required, illuminate exterior facility identification, traffic control, safety, security, ADA, and other code required signage complying with applicable building code, municipal code requirements, and FAA regulations. 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, which shall not be unreasonably withheld, conditioned, or

delayed. 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.

So long as Tenant is not in default under this Agreement and subject to the specific provisions, covenants and agreements contained in this Agreement, the Port covenants and agrees that the quiet and peaceful possession and enjoyment of the Property by Tenant shall not be disturbed or interfered with by the Port or by any other party claiming by or through the Port.

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 reasonable ingress, egress, and utilities to and from the Premises on established roadways, driveway, and corridors and sidewalks provided there is no public road access, 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 or out of any occurrence in or upon the Premises, unless caused by any negligent or other wrongful act or omission of the Port or its agents, contractors, servants or employees. If a court of competent jurisdiction determines that any activity covered by the indemnities under this section of this Lease is subject to RCW 4.24.115, then, in the event of liability for damages arising out of a bodily injury to persons or damage to property caused by or resulting from the concurrent negligence or willful act or omission of Tenant and Landlord, its officers, officials, employees, agents, contractors, or volunteers, the Tenant's and Landlord's liability hereunder shall be only to the extent of each such party's negligence or willful act or omission. It is further specifically and expressly agreed that Tenant hereby waives any immunity it may have under industrial insurance, RCW Title 51, solely for the purposes of this indemnification and only to the extent necessary to render the parties' indemnity obligations enforceable. This waiver was mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Lease.

The Port indemnifies, defends, and holds Tenant harmless from claims that are: (i)(a) for personal injury, death, or property damage or b) for incidents occurring in or about the Premises, building, common areas or project; and (ii) caused by the negligence or wrongful conduct of 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 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; Provided, however, the Port will first determine with its insurance pool that waiver of subrogation is permitted with respect to this Lease.

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. Tenant shall reimburse the Port for all such taxes paid or payable by the Port. All other tax amounts for which the Port is or will be entitled to reimbursement from Tenant shall be payable by Tenant to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Tenant shall be entitled to a minimum of thirty (30) days' written notice of the amounts payable by it. If any governmental authority at any time levies a tax on rentals payable under this lease or a tax in any form against Lessor because of or measured by income derived from the leasing or rental of the Premises, such tax shall be paid by Tenant; provided, however, that Tenant shall not be liable for the payment of any tax imposed generally on Lessor's gross or net income without regard to the source of such income.

17. MAINTENANCE AND REPAIR.

Tenant shall, at its own expense, keep the Premises 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 the Premises, and keep the electrical system and all drains clean and in a good state of repair, and shall protect all sprinkler systems and all pipes and drains so that they will not freeze or become clogged.

Tenant shall replace any and all improvements which become worn out, obsolescent, deteriorated, unsafe or unusable and shall replace such improvements with new fixtures and improvements of at least as good a quality as originally installed at the commencement of this Lease. 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".

Tenant shall also keep the Premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the Premises by Tenant. At the Port's request, Tenant shall furnish the Port with written proof of payment of any item which would or might constitute the basis for such a lien on the

Premises if not paid. Any dispute under this section shall be subject to arbitration under paragraph 38, **ARBITRATION PROCEDURE**.

18. ALTERATIONS AND IMPROVEMENTS -- SIGNAGE.

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

18.2 Signage. Tenant may install, post, erect and, as Tenant desires or may be required, illuminate exterior facility identification, traffic control, safety, security, ADA, and other code required signage complying with applicable building code, municipal code requirements, and FAA regulations. Tenant shall have no right to install Tenant identification signs in any location in or about the Premises that are visible from the exterior of the building, without first obtaining written approval of the Port, which shall not be unreasonably withheld, conditioned or delayed. 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 Paragraph 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 Paragraph 37, **ARBITRATION PROCEDURE.**

20. INSPECTION.

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

21. RESTORATION.

a. At all times during the term of this Lease, Tenant shall maintain in effect upon the 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. Tenant shall provide evidence of renewal 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 sixty (60) 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, and upon termination, the Base Rent, Additional Rent and other charges under this Agreement will be apportioned as of the date of destruction, and Tenant will be discharged from responsibility to repair the damage, shall remove debris and restore the Premises to a clean, graded and safe condition, and all proceeds of insurance covering the loss shall in that circumstance belong to Tenant free of any claim thereto by the Port

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

22. DEFAULTS.

Time is of the essence of this Lease, and in the event of the failure of Tenant to pay the rental, interest or other charges provided in this Lease at the time and in the manner herein specified, or to keep any of Tenant's covenants or agreements herein, the Port may elect to terminate this Lease and reenter and take possession of the Premises with or without process of law, provided, however, that Tenant shall be given thirty (30) days' notice in writing if the default is for the nonpayment of rent or other monetary default, or sixty (60) days' notice in writing for any other default (or such longer period as is reasonably required to cure the Event of Default so long as Tenant commences to cure within such sixty (60) day period and diligently pursues such cure to completion), stating the nature of the default in order to permit such default to be remedied by Tenant within the applicable time period. If the Port issues a notice of default for the nonpayment of rent, in order to cure such default, Tenant must pay the overdue rent, together with interest as set forth in paragraph 4 above, plus a Fifty Dollar (\$50.00) lease reinstatement fee. If during any consecutive twelve-month period, the Port has issued three notices of default, the Port shall not be required to accept the cure of any subsequent default by Tenant and may terminate this Lease or exercise any other rights or remedies available to it immediately by written notice to Tenant without the expiration of any otherwise applicable cure period.

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

23. ADVANCES BY PORT FOR TENANT.

If Tenant shall fail to do anything required to be done by it under the terms of the Lease, after any applicable cure period, 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 one hundred fifty percent (150%) of the then-current rental under the terms of the Lease, unless a different rate shall be agreed upon, and the Tenant shall be bound by all of the additional provisions of this Lease.

25. ASSIGNMENT OR SUBLEASE.

Except as provided below, Tenant shall not assign or transfer (including any assignment or transfer for security purposes) this Lease or any interest therein nor sublet the whole or any part of the Premises, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the advance written consent of the Port, which may be withheld in the Port's sole discretion. Lessor agrees that it will consent to the assignment of this Lease (or any interest herein) for security purposes to a bona fide lender, but only on the terms and conditions contained in the form of Lessor's Consent and Agreement attached hereto as **Exhibit "C"**, which must be signed by such lender. If Tenant is a corporation, 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.

Except for the Permitted Subleases, Tenant may not sublease, license or grant concession rights as to any portion of the Premises without the Port's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed and which consent shall be given if the proposed subtenant is financially capable of performing the obligations of the Tenant under this Agreement for the portion of the Premises or portion of the Term being subleased. Tenant shall at the time the Tenant requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed subtenant, including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed subtenant and the proposed documentation for the transfer as described below. In determining whether to grant such a consent to a sublease, the Port may consider all factors which Lessor reasonably determines in good faith are relevant to its decision. Within twenty (20) days after receipt of all required information, the Port shall, in its sole discretion, elect one of the following: (a) to consent to such proposed sublease or (b) to refuse such consent. Any such sublease shall be subject to all of the covenants, conditions, agreements and terms of this Agreement. As used herein the term "Permitted Sublease" shall mean any sublease by Tenant to a user who will occupy and use some or all of the Premises, so long as Tenant remains the tenant and obligated under this Agreement and the term of the sublease is for a shorter period than the Term of this Agreement and consistent with this Agreement.

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.

In connection and simultaneously with any Permitted Assignment of this Agreement or Permitted Sublease, the Port agrees to execute and deliver to any Permitted Assignee or Permitted Sublessee a non-disturbance and attornment agreement in substantially the form of **Exhibit "G"** attached hereto (the "NDA"), whereby the Port shall agree not to disturb the Permitted Assignee's or Permitted Sublessee's occupancy and quiet enjoyment of the Premises so long as Tenant or the Permitted Assignee or Sublessee is not in default beyond applicable notice and cure periods on the terms described in the NDA.

Notwithstanding any assignment or sublease, Tenant, except in the case of a Permitted Assignment, 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, not to exceed \$5,000.00 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.

No sublease by Tenant shall relieve Tenant of any obligation under this Agreement, including Tenant's obligation to pay Base Rent, fees or Additional Rent hereunder. Any purported sublease contrary to the provisions hereof (or for which consent is not specifically obtained) shall be void. Any sublease shall specifically be subject and subordinate at all times to this Agreement, and to all of its covenants, agreements, terms, provisions, and conditions.

Subject to the terms of a Leasehold Mortgage, in the event that any portion of the Premises is sublet or occupied by anyone other than Tenant, the Port may, upon the default of Tenant, collect rent from the subtenant, licensee, concessionaire or occupant and apply the amount collected to the Rent reserved under the terms of this Agreement, but without thereby affecting Tenant's liability under this Agreement

26. MORTGAGES OF TENANT'S INTEREST.

a. **Prior Notice Required; Limited Purpose.** Upon prior notice to the Port, Tenant shall have the right to mortgage its leasehold interest under this Agreement subject to the limitations set forth in this Section 26 and the terms and conditions of Lender's Consent and Agreement, attached here as **Exhibit C**. Any such mortgage ("**Leasehold Mortgage**") shall be for a term not to exceed the Term of this Agreement plus any Extension Option that has been exercised, and shall be subject and subordinate to the rights of the Port.

b. **No Benefit Without Notice.** No holder ("**Leasehold Mortgagee**") of a Leasehold Mortgage on this Agreement shall have the rights or benefits mentioned in this Section 26 nor shall the Port be bound by this Section 26, unless and until an executed counterpart of such Leasehold Mortgage (or any assignment thereof), together with a written notice setting forth the name, address, contact person (or department) for the Leasehold Mortgagee, is delivered to the Port. The Leasehold Mortgagee may designate other contact information by providing notice thereof to the Port in the manner provided by Section 41 of this Agreement.

c. **Obligations to Leasehold Mortgagee.** If Tenant mortgages this Agreement in compliance with this Section 26, then so long as such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

i. The Port shall serve upon the Leasehold Mortgagee, in the manner permitted by Section 41 of this Agreement, a copy of any notice of default sent to Tenant and any other notices the Port is required by the terms of this Agreement to provide to Tenant or that will materially affect the leasehold interest, including but not limited to amendments to this Agreement, side letters that affect the economics of this Agreement or any waivers of any rights or obligations under the terms of this Agreement.

ii. The Port, upon providing Tenant any notice of (i) default under this Agreement or (ii) a termination of this Agreement, or (iii) a matter upon which the Port may predicate or claim a default, shall at the same time provide a copy of such notice to every Leasehold Mortgagee. No such notice by the Port to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Leasehold Mortgagee. After such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period after the giving of such notice upon it for remedying any default or causing the same to be remedied as is given Tenant after the giving of such notice to Tenant plus, in each instance, the additional periods of time specified in Sections 26(c)(iii) and 26(c)(iv) to remedy, commence remedying, or cause to be remedied the defaults specified in any such notice. The Port agrees that it shall accept such performance by or at the instance of the Leasehold Mortgagee as if the same had been made by Tenant. For such purpose, the Port and Tenant hereby authorize the Leasehold Mortgagee to enter upon the Premises and to exercise any of Tenant's rights and powers under this Agreement and, subject to the provisions of this Agreement, under the Leasehold Mortgage.

iii. Cure Notice to Leasehold Mortgagee. Notwithstanding anything to the contrary in this Agreement, if any Event of Default shall occur that entitles the Port to terminate this Agreement, the Port shall have no right to terminate this Agreement unless, following the expiration of the period of time given Tenant to cure such default, the Port shall notify ("**Cure Notice**") every Leasehold Mortgagee of the Port's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination if the nature of such default is the failure to pay a sum of money, and at least sixty (60) days in advance of the proposed effective date of such termination if such default is not the failure to pay a sum of money. A six (6) month extension of the date for termination of this Agreement as provided in Section 26(c)(iv) shall be granted by the Port if, during such thirty (30) or sixty (60) day Cure Notice period, any Leasehold Mortgagee:

(a) Notifies the Port of such Leasehold Mortgagee's desire to nullify such Cure Notice; and

(b) Pays or causes to be paid all Base Rent and other payments then due and in arrears as specified in the Cure Notice to such Leasehold Mortgagee and that may become due during such 30- and 60-day period, provided that any Leasehold Mortgagee shall not be required to pay any amount before the same is due and owing under this Agreement; and

(c) Complies or in good faith, with reasonable diligence and continuity, commences to comply with all non-monetary requirements of this Agreement then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee.

Nothing herein obligates such Leasehold Mortgagee to cure any default of Tenant under the terms of this Agreement. Notwithstanding the above, Leasehold Mortgagee shall not be required to cure any default of Tenant resulting from insolvency or bankruptcy of the Tenant.

iv. Six-Month Extension. If the Port shall elect to terminate this Agreement by reason of any default of Tenant, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 26(c)(iii), the specified date for the termination of this Agreement as fixed by the Port in its Cure Notice shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee, during such 6-month period:

(a) Pays or causes to be paid Base Rent and other monetary obligations of Tenant under this Agreement as the same become due, including the payment of any sums due under any Leasehold Mortgage; and

(b) Continues its good faith efforts to perform all of Tenant's other obligations under this Agreement, including during any period during which the Leasehold Mortgagee has possession of the Premises the obligation to operate and maintain the Project and Premises in accordance with the standards set forth by the Port in this Agreement.

v. Termination; New Lease. In the event that this Agreement is terminated by the Port for any reason under the terms of this Agreement or on account of a bankruptcy by or against Tenant, the Port shall serve notice to the Leasehold Mortgagee that the Agreement has been terminated. The notice shall include a statement of any and all sums which would at the time be due under this Agreement but for such termination and of all other defaults under this Agreement then known to the Port. Every Leasehold Mortgagee shall thereupon have an option, which must be exercised within forty-five (45) days after the notice, to obtain a new lease ("**New Lease**") in accordance with and upon the following terms and conditions:

(a) The New Lease shall be effective as of the date of termination of this Agreement, and shall be, for the remainder of the Term of this Agreement, at a rent and fee and upon all of the original agreements, terms, covenants and conditions. Such New Lease shall require the lessee to perform any unfulfilled obligation of the Tenant under this Agreement.

(b) Upon the execution of the New Lease, the lessee therein named shall pay any and all sums which would at the time of the execution thereof be due under this Agreement but for termination and shall pay all expenses, including reasonable attorneys' fees, court costs and disbursements, incurred by the Port in connection with any default and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease.

(c) Nothing herein, however, shall be deemed to obligate the Port to deliver possession of the Premises to the lessee under any New Lease. Upon the execution and delivery of such New Lease, the lessee, in its own name or in the name of the Port, may take all appropriate steps as shall be necessary to remove Tenant from the Premises. The provisions of this Section 26(c) shall survive the termination of this Agreement.

vi. Subject to the provisions of this Section 26, the Leasehold Mortgagee may exercise, with respect to the Premises, any right, power, or remedy under the Leasehold Mortgage. Every Leasehold Mortgagee (or its designee) or any other purchasers in foreclosure proceedings may become the legal owners and holders of Tenant's interest in this Agreement through such foreclosure proceedings or by assignment of this Agreement in lieu of foreclosure and shall provide notice of such assignment and assumption to the Port in compliance with Section 25. Leasehold Mortgagee after a foreclosure or assignment in lieu of foreclosure under the Leasehold Mortgage may subsequently assign the leasehold interest or the New Lease to a third party who shall assume the lease and provide notice of the assumption to the Port and otherwise comply with the Provisions of Section 25. Upon such assumption, the Leasehold Mortgagee shall be released from all liability for the performance or observance of the covenants and conditions in this Agreement (or such New Lease) contained on Tenant's part to be performed and observed from and after the date of such assignment.

vii. Notwithstanding Sections 26(c)(v) and 26(c)(vi), in the event that any person or entity other than Leasehold Mortgagee (a "**Foreclosure Purchaser**") shall acquire title to Tenant's interest in this Agreement as a result of foreclosure or assignment in lieu of foreclosure under the Leasehold Mortgage, or under a New Lease pursuant to this Section 26, the Foreclosure Purchaser may not assign this Agreement (or such New Lease) without the prior written consent of the Port in compliance with the requirements of Section 25. If the Port's consent is obtained, the assignee must assume Tenant's obligations under this Agreement and an executed counterpart of such assumption must be delivered to the Port. Upon

such assumption, the Foreclosure Purchaser shall be released from all liability for the performance or observance of the covenants and conditions in this Agreement (or such New Lease) contained on Tenant's part to be performed and observed from and after the date of such assignment.

viii. Notwithstanding Section 26(c)(a), no agreement between the Port and Tenant modifying, canceling or surrendering this Agreement shall be effective without the prior written consent of the Leasehold Mortgagee.

ix. Tenant's share, as provided by Section 31 of this Agreement of the proceeds arising from an exercise of the power of eminent domain shall, subject to the provisions of such Section 31, be disposed of as provided for by any Leasehold Mortgage.

A Standard Mortgagee Loss Payee Clause naming Leasehold Mortgagee may be added to any and all property insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied to rebuilding in the manner specified in this Agreement and the Leasehold Mortgage shall so provide; *provided, however*, the Leasehold Mortgage may provide a manner for the disbursement of such proceeds.

27. COMPLIANCE WITH PORT REGULATIONS/ALL LAWS.

Tenant agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the Premises are a part or to Tenant's use or occupancy thereof, now in existence or hereafter promulgated for the general health, welfare, safety and convenience of the Port, its various tenants, invitees, licensees and the general public, and payment of all fees and tariffs provided for therein or adopted in accordance therewith, as the same now exist or may hereafter be amended. Tenant further agrees to comply with all applicable federal, state and 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. Compliance includes, without limitation, Tenant's acceptance of any lease modifications, and modifications to development, construction and operational plans related to the use or development of the Property that may be imposed following the completion of the SEPA review process as provided for in Section 1 of the Lease. 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. —

28. HAZARDOUS SUBSTANCES.

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

(a) As used in this Section 28, "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 28, "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 by Tenant or its agents.

(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. The provisions of this Section 28(d) shall not apply to, and the following are specifically excepted from, the storage or use by Tenant or any subtenant of any Hazardous Materials in compliance with all Environmental Requirements that are used by Tenant or any subtenant for ordinary cleaning, for office purposes and warehouse maintenance purposes, for refrigeration equipment installed in accordance with the terms of this Lease, for printing, and except for Hazardous Materials contained in any merchandise being handled, stored or distributed by Tenant or any subtenant provided that such merchandise remains in their original sealed and unopened containers, materials used on minor maintenance of Tenant's or any subtenant's trucks and machinery, and fuel (including liquid hydrogen or other alternative fuels) or batteries for any trucks, generators or other machinery (all of which shall be handled by Tenant or any Subtenant only in compliance with all Environmental Requirements and the other terms and conditions of this Lease).

(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 ten (10) business days of the Port's request;

(iii) Within Ten (10) 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 subject to three (3) days' notice, 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 28, 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, upon ten (10) business days' notice and after an opportunity for Tenant to cure, 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 28 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 28: (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) Within sixty (60) days following the expiration date of the Term of this Agreement (or within ninety (90) days after any earlier termination of this Agreement), Tenant shall submit a report ("**Termination Assessment Report**") to the Port describing the results of a comprehensive environmental assessment that reasonably investigates whether Hazardous Material in the Premises or migrating from the Premises (except Pre-existing Hazardous Material) for which the Tenant is responsible remain on the Property or have migrated from the Property. The Termination Assessment Report shall be conducted by an independent qualified environmental professional selected by Tenant or a successor tenant, as applicable, with the Port's reasonable consent, and the scope of the investigation shall be reasonably determined by such independent qualified environmental professional, subject to the reasonable consent of both Tenant, as applicable, and the Port, and to dispute resolution. The scope of the Termination Assessment Report environmental assessment shall include, at a minimum: (i) review of tenant/occupant operational history, audit reports and responses, spill and spill response reports, and other relevant environmental records; (ii) collection and analysis of samples representative of facility operations; equipment, material and waste storage locations; and locations of leaks, spills and other releases, which could reasonably be expected to

have resulted in introduction of Hazardous Material to the environment; and (iii) collection and analysis of samples from random locations, at a rate determined reasonable and appropriate based on best professional judgment considering the recommendations of the independent qualified environmental professional, and to dispute resolution. With respect to Hazardous Material identified in such Termination Assessment Report that were stored, released, spilled, discharged, leaked, emitted, injected, escaped or dumped in, on or about the Premises after the Commencement Date in violation of any Environmental Requirement (i) by Tenant or its employees, agents, invitees or sublessees and (ii) by unassociated third parties, if prevention of the release was within Tenant's control (and, for avoidance of doubt, releases), Tenant shall perform (x) a final remediation of such Hazardous Material pursuant to a plan approved by the Port in the exercise of its reasonable discretion which, to the extent reasonably feasible and practical under the circumstances (and subject to dispute resolution pursuant to Section 14.8), shall meet the standard established under MTCA Method A or, if such standard does not exist, a reasonably comparable replacement standard consistent with Environmental Requirement ("Method A"); and (y) also to the extent reasonably feasible and practical under the circumstances (and subject to dispute resolution pursuant to Section 14.7), a remediation below Method A in areas or circumstances where such residual Hazardous Material at levels compliant with Method A would materially impair the Port's ability, or increase the cost to the Port, to release, or otherwise use, the Property for uses compatible with Airport noise levels and otherwise compliant with 49 U.S.C. 47107(c)(2)(A) (the "Post Termination Remediation"). Post Termination Remediation shall be a condition precedent to the Port's payment of any Security to Tenant upon termination or expiration of this Agreement. Notwithstanding the foregoing, with respect to Post Termination Remediation, the Port will reasonably approve less stringent cleanup criteria and investigation, monitoring, removal, institutional controls and restrictive covenants that are not materially burdensome to the Port's releasing or future use of the Premises in light of FAA restrictions otherwise imposed upon the Property. The Post Termination Remediation shall fully and finally resolve Tenant's environmental obligations to the Port under this Agreement, and the Port shall be deemed to accept the Premises upon expiration or earlier termination of this Agreement in their then current condition, AS IS, WHERE IS, WITH ALL FAULTS AND DEFECTS, and subject only to completion of such Post Termination Remediation. As used herein the term "Environmental Requirements" shall mean and refer to any and all Legal Requirements relating to the protection of human health and the environment, including but not limited to all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder

29. 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 Lessor with full and complete copies of any reports or other results of inspections within five (5) days after any remedial or other action required as a result of any inspection. Upon request, Tenant shall provide Lessor with a certificate of insurance evidencing Tenant's compliance with insurance requirements applicable to storage tanks. 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."

30. INSPECTIONS AND NOTICE OF CHANGE.

a. Tenant agrees that inspections may be required by the Port at the Tenant's expense to assure compliance with paragraphs 28, **HAZARDOUS SUBSTANCES**, and 29, **STORAGE TANK LICENSES**. Such inspections shall be made once every five (5) years or at any time the Port has good cause to believe a problem may exist.

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

31. EMINENT DOMAIN.

If the Premises shall be taken or condemned for any public purpose, or for any reason whatsoever, to such an extent as to render the Premises untenable, either Lessor or Tenant shall have the option to terminate this Lease effective as of the date of taking or condemnation, which shall be the earlier of the date the final condemnation judgment or the date possession is taken by the condemning authority. If the taking or condemnation does not render the Premises untenable, this Lease shall continue in effect, and Lessor shall, if the condemnation award is sufficient therefor, promptly restore the portion not taken to the extent possible to the condition existing prior to the taking. If, as a result of such restoration, the area of the Premises is reduced, the rental shall be reduced proportionately. The phrase "untenable" as used herein means a taking of such scope that the untaken portion of the Premises is insufficient to permit Tenant or its subtenant to occupy the Premises as a high-quality business park, eliminates or material adversely affects access to the Premises or otherwise results in the elimination of parking or truck docks such that the Premises cannot be used for the original intended purpose, or any other then current use of the Premises, as reasonably determined by Tenant.

If title to the whole or materially all of the Premises shall be taken, the rights of the Port and Tenant to share in the net proceeds of any award for the respective Property and Project, and the damages upon the taking, shall be in the following order of priority:

(a) The Port, at all times, regardless of when the taking occurs, shall be entitled to receive, that portion of the award as shall represent compensation for the value of the Property, considered as vacant and improved only to the extent existing at the Commencement Date, but subject to a ground lease similar to this Agreement, such value being hereinafter referred to as the "**Property Value**."

(b) The remaining portion of the award shall be paid to the Tenant, subject to the rights of any Leasehold Mortgagee (the "**Remaining Value**").

(c) In addition, to the extent consistent with Washington eminent domain law, Tenant shall have the right to seek an independent and separate award from the condemning authority for loss of value of the leasehold improvements, relocation benefits, and for any tangible personal property of the Tenant or any subtenant that is taken.

In the event of a taking of less than materially all of the Premises, the rights of the Port and Tenant to share in the net proceeds of any award for the respective Property and Project, and the damages upon the taking, shall be in the following order of priority:

(a) The Port, at all times, regardless of when the taking occurs, shall be entitled to receive that portion of the award as shall represent compensation for the Property Value.

(b) The Remaining Value of the award shall be payable to Tenant, subject to the rights of any Leasehold Mortgagee.

Should, however, the partial taking occur during the last two (2) years of the Term, then Tenant at its option upon thirty (30) days' prior notice to the Port, given at any time within sixty (60) days after the vesting of title in the taking authority, may terminate this Agreement. Upon that termination the Rent and

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other charges under this Agreement shall be apportioned as of the date of termination and the Tenant will be discharged from responsibility to restore the Premises. Upon that termination the entire Remaining Value shall belong to the Port free of any claim thereto or any part thereof by Tenant, anything in this Section to the contrary notwithstanding.

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.

32. 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 90 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.

33. PROMOTION OF PORT COMMERCE.

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

34. 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.

35. NONDISCRIMINATION - SERVICES.

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

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

36. NONDISCRIMINATION – SERVICES, CONSTRUCTION, USE.

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

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

37. APPRAISAL PROCEDURE.

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

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

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

38. ARBITRATION PROCEDURE.

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

39. 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.

40. 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.

41. NOTICES.

All default and other substantial notices required under the provisions of this Lease shall 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:

Swire Land, Inc.
12634 S 265 W
Draper, UT 84020
Attn: Jon Yearsley

And copy to:

Crane Dunham PLLC
3600 15th Ave West, Suite 200
Seattle, WA 98119-1330
Attn: Stephen Crane

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.

42. WAIVER.

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

43. BINDER.

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

44. NO RECORDING.

Without the prior written consent of the Port, this Lease shall not be placed of record. The Port and Tenant agree to record a memorandum of this Agreement in the form of **Exhibit "F"** attached hereto.

45. ESTOPPEL CERTIFICATES/ATTORNMMENT.

45. Each party shall, at any time and from time to time as requested by the other party, upon not less than thirty (30) days' prior written notice, execute, acknowledge and deliver to the other a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there have been

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modifications, that the same is in full force and effect as modified and stating the modifications), certifying the date through which Base Rent, Additional Rent and other charges, if any, have been paid, and stating whether or not, to the best knowledge of the signer, the other party is in default beyond any applicable notice and cure period provided in the performance of any of its obligations under this Agreement, and if so, specifying each such default of which the signer may have knowledge, and such other matters as may be reasonably requested. The parties agree and acknowledge that it is specifically intended that any such statement delivered pursuant to this Section 45 may be relied upon by others with whom the party requesting the certificate may be dealing.

Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage or deed of trust made by the Port, its successors or assigns, encumbering the Premises or any part thereof, and if so requested, attorn to the purchaser upon such foreclosure or sale or upon any grant of a deed in lieu of foreclosure and recognize such purchaser as landlord under this Agreement, provided, that such purchaser recognizes Tenant's rights under this Agreement, Tenant's subleases, and any modification of this Agreement or any sublease and assumes the Port's obligations under this Agreement arising after the date of transfer, and agrees not to disturb Tenant's or its subtenants quiet possession of the Premises for so long as Tenant is not in default hereunder.

Notwithstanding the above, the Port shall not use the Property as security for any monetary obligation or further encumber the Property, except as may be expressly authorized by this Agreement or by prior written approval of Tenant, which approval shall not be unreasonably withheld. So long as Tenant is not in default of this Agreement, this Agreement will not be amended, modified or terminated or subject to termination by any trustee's sale, any action to enforce the security, or by any proceeding or action in foreclosure.

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46. 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 ~~Paragraph~~Section 1, LEASE SUMMARY above.

LESSOR:

PORT OF OLYMPIA

TENANT:

SWIRE LAND INC.

By: _____
Sam Gibboney, Executive Director
Vice President

By: _____
~~Richard Gourley, Secretary~~
Robby Gehring,

Approved As To Form

Richard Hughes
Port Counsel

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this _____ day of _____, 2022, personally appeared before me **SAM GIBBONEY** to me known to be the Executive Director at the Port of Olympia, the municipal corporation named in the within and foregoing **Lease Agreement**, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

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

Jessie Bensley
NOTARY PUBLIC in and for the State of Washington,
residing at Olympia.
My commission expires: July 15, 2023

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

On this _____ day of _____, 2022, personally appeared before me **RICHARD GOURLEY** **ROBBY GEHRING**, to me known to be the ~~Secretary~~ **Vice President** at the entity named in the within and foregoing **Lease Agreement**, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

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

(Print Name)
NOTARY PUBLIC in and for the State of: _____
residing at _____
My commission expires: _____

**EXHIBIT A
PREMISES**

NOT FOR RECORDING

BEGINNING at the Southeast corner of the Southwest quarter of the Northeast quarter of Section 14, Township 17 North, Range 2 West, W.M.; Thence North along the Easterly line, 2,076.00 feet; Thence West parallel with the Northerly line, 2,195.00 feet; Thence Southwesterly to the Southwest corner, approximately 2,109.08 feet; Thence East along the Southerly line, 2,642.65 feet to the TRUE POINT OF BEGINNING.

EXCEPT THEREFROM that portion of County Road known as Case Road along the South Boundary of said Premises; Consisting of approximately 113 acres.

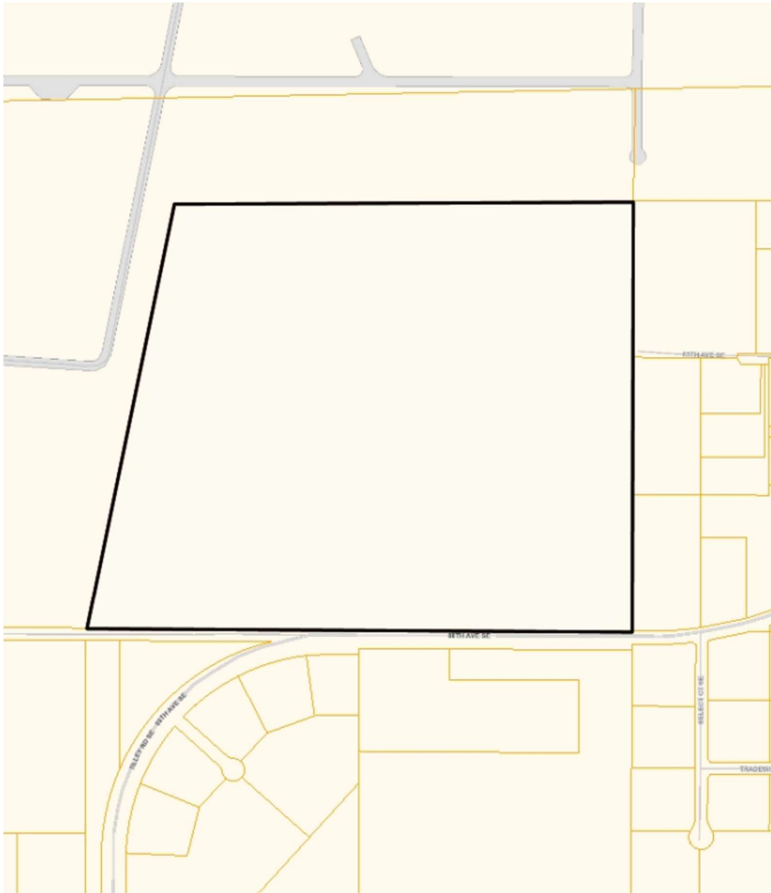


EXHIBIT B REQUIREMENTS AS TO IMPROVEMENTS

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 final design, density, size, appearance and location thereof: ~~and the condition precedent in the Permitting and Environmental provision in Section 1 of this Lease has been satisfied.~~

~~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 fifteen (15) 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~~ Prior to commencing any ~~such work or other development~~, Tenant shall submit to the Port for approval of final plans and specifications for any proposed improvements in the same manner as provided above. The final plans and specifications shall include any required modifications stemming from the permitting and environmental review processes described in Section 1 of this Lease.

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 ten (10) 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~~ 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 cooperate with Tenant to facilitate the design, permitting and construction of such utility services, including, without limitation, executing applications or other instruments, necessary or appropriate, in Tenant's reasonable discretion, in connection therewith. The Port further agrees to grant any reasonably necessary easements on over or across or under the Port Property necessary to bring the utility services 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. Notwithstanding Substantial Completion of the Premises, Tenant shall use reasonable efforts to cause its contractor to diligently proceed to complete full construction of the Premises and obtain a permanent certificate of occupancy for the Premises once there is an occupant or user for the Premises.

EXHIBIT C
LESSOR'S CONSENT AND AGREEMENT
(For Financing Purposes)

Description of Ground Lease.

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

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

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

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_____. 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.

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

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

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

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

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

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

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

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6.1. **Notice of Default.** If Tenant defaults under the Lease or if any event occurs which would give Lessor the right to terminate, modify, amend or shorten the term of the Lease, Lessor shall take no steps to exercise any right it may have under the Lease without first giving Lender written notice of such default. A copy of each and every Notice of Default and any other notices the Port is required by the terms of the Lease to provide to Tenant or that will materially affect the leasehold interest, including but not limited to amendments to this Agreement, side letters that affect the economics of this Agreement or any waivers of any rights or obligations under the terms of this Agreement served or sent by Lessor or its agent to or upon Tenant pursuant to the Lease shall be sent contemporaneously to Lender in accordance with paragraph 13 below. Such Notice of Default shall specify the event or events of default then outstanding and the time period at the end of which the indicated action would become effective.

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6.2. **Termination for Monetary Default.** If the Notice of Default given by Lessor to Lender relates to a monetary default and Tenant has not cured such monetary default within time period as provided in the Lease and Tenant's failure to cure results in Lessor desiring to terminate the Lease, Lessor may terminate the Lease if such monetary default is not cured by either Tenant or Lender within the time periods set forth in Section 26(c) of the Lease.

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

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(a) within the time period set forth in Section 26(c) of the Lease Lessor's notice to Lender of Tenant's failure to cure (or failure to diligently pursue a cure) Lender notifies Lessor of its intent to realize upon its security interest and commences realization within the time periods set forth in Section 26(c) of the Lease, and diligently pursues realization; and

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

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

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

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_____-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 the time period set forth in Section 26(c) of the Lease after receipt of notice or else the Lessor may terminate the Lease.

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

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_____-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.

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_____-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) except under the terms set forth in Section 26 of the Lease.

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_____-7. **Disposition of Insurance and Condemnation Proceeds.** Lessor 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 paragraph 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, Lessor agrees that Tenant and Lender shall have the right to such proceeds so long as none of Lessor's property, utilities or other services therein are damaged or such damages are repaired. In the event the Premises are substantially damaged and Tenant's improvements have been repaired, Lessor shall only participate in the insurance proceeds to the extent necessary to repair and restore Lessor's ground and any of Lessor's or Tenant's improvements (excluding buildings and personal property) on or in the ground to the same condition the land was in at the commencement of the Lease, or in the same condition at the time of the casualty. Under the Lease, Lessor has the option of requiring Tenant to demolish the improvements at the end of the Lease term, or to have Tenant convey title to Lessor Tenant's interests in the Leasehold Improvements. In the event Premises and the Leasehold are so severely damaged that Tenant's and Lenders' decision is not to repair or restore the Premises, Lessor shall participate in the insurance proceeds to the extent necessary to remove the remainder of the damaged improvements and to restore the Premises and any utilities or other such improvements (excluding rebuilding the improvements or restoring other personal property of Tenant) to the same condition the land was in at the commencement of the Lease, or in the same condition at the time of the casualty. Other than as described herein, Lessor shall have no claim to insurance proceeds or condemnation proceeds that are attributable to Tenant's interest in the Leasehold, nor shall Lender have any interest in Lessor's condemnation proceeds, if any.

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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. Lessor, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify Lender of the same.

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9. **Incorporation of Mortgagee Protection Provisions.** To the extent not inconsistent with this Agreement, all provisions of the Lease which by their terms are for the benefit of any leasehold mortgagee, are hereby incorporated herein for the benefit of Lender. Without limited the foregoing, Lender shall be a beneficiary of the warranty and indemnity provided in ~~paragraph 6 of Paragraph~~Section 1, LEASE SUMMARY, of the Lease and Section 26 of the Lease.

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10. **Right to Remove Collateral.** In the event Lender exercises its rights under its collateral and realizes upon the collateral, Lessor agrees that Lender is entitled to remove Tenant's furniture, movable trade fixtures and equipment installed by Tenant from the 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, Lessor waives any right, title, claim, lien or interest in the above trade fixtures by reason of such fixtures being attached to or located on the 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.

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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.

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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.

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

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If to Lender: _____ (Print)

_____ (Print)

If to Lessor:

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

IN WITNESS WHEREOF, Lessor has executed these presents this ____ day of _____, 20__.

LESSOR:

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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”

(REMOVED)

EXHIBIT F
FORM OF MEMORANDUM OF GROUND LEASE

**RECORDED AT THE REQUEST
OF:**

WHEN RECORDED RETURN TO:

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum"), dated as of _____, 20____, is entered into by and between **SWIRE LAND INC**, a Delaware Corporation, or its assigns ("**Tenant**"), **PORT OF OLYMPIA**, a Washington municipal corporation ("**Landlord**").

Landlord owns fee title to that certain real property located in the City of Olympia, Thurston County, State of Washington, as is more particularly described in **Exhibit A** attached hereto and incorporated herein ("**Land**").

On even date herewith, Landlord entered into that Ground Lease Agreement with Tenant (the "**Lease**") wherein Landlord agreed to lease to Tenant the Land.

The Lease term is for a period of _____ years and commences on _____, 202____ and expires on _____, 20____. Tenant has _____ successive options to extend the term of the Lease each for a _____ year period. After the exhaustion of these options, an extension of the Lease term will be negotiated in good faith by the parties commencing one (1) year prior to the termination of the Lease, provided, however, this provision is non-binding on the Port except as to the obligation to negotiate in good faith with the Tenant.

This Memorandum is solely for recording purposes and shall not be construed to supplement, amend, or otherwise modify the terms and conditions contained in the Lease.

This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease regarding Assignment.

This Memorandum and the Lease are governed by the laws of the State of Washington.

Signatures are on the next page.

SIGNATURE PAGE
to Memorandum of Option to Ground Lease

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date set forth above.

[ALL SIGNATURES MUST BE NOTARIZED]

LANDLORD:

PORT OF OLYMPIA
A Washington municipal corporation

By: _____
Name: _____
Its: _____

TENANT:

SWIRE LAND INC

| By: Richard Gourley, Secretary

**Exhibit A to
Memorandum of Ground Lease**

LEGAL DESCRIPTION OF PROPERTY

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____(SEAL)
Notary Public Signature

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____(SEAL)
Notary Public Signature

EXHIBIT G

Form of Non-Disturbance and Attornment Agreement

RECOGNITION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, is made as of _____, 20____, by and among _____, a _____ (hereinafter referred to as “**Prime Lessor**”), and _____, a _____ (hereinafter referred to as “**Prime Lessee**”), and _____, LLC, a Delaware limited liability company (hereinafter referred to as “**Tenant**”), with reference to the following facts:

A. Prime Lessor has entered into a Lease with Prime Lessee dated _____ (the “**Prime Lease**”) for [the building located at _____] (the “**Property**”) as more fully described in the Prime Lease;

B. By a certain sublease entered into between Prime Lessee and Tenant dated _____ (hereinafter called the “**Sublease**”), Prime Lessee leased to Tenant [a portion of] the Property and the improvements to be erected thereon as more particularly described in the Sublease (said portion of the Property and the improvements now or hereafter erected thereon being hereinafter called the “**Demised Premises**”);

C. The parties hereto desire to provide for the recognition and nondisturbance to Tenant by the Prime Lessor; and

D. The parties hereto desire to provide for Tenant’s agreement to pay Prime Lessor the rent payments due under the Prime Lease and to assume the Prime Lease after the occurrence of a default by Prime Lessee not cured within any applicable cure period.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto intending to be legally bound hereby agree as follows:

1. Prime Lessor agrees that as long as the Sublease shall be in full force and effect:

(a) The possession by Tenant of the Demised Premises and the Tenant’s rights thereto shall not be disturbed, affected or impaired by, nor will the Sublease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding upon the Prime Lease, or by the termination of the Prime Lease or the enforcement of any rights under the Prime Lease or any other documents held by the Prime Lessor, or by any judicial sale or execution or other sale of the Demised Premises, or (ii) any default under the Prime Sublease; and

(b) Prime Lessor will not exercise any of its rights under the Prime Lease in a manner which would effectively prohibit Prime Lessee from performing the Sublease in accordance with its terms.

2. If the Prime Lessor shall terminate the Prime Lease with Prime Lessee or its assigns or if the Property shall be sold as a result of any action or proceeding to terminate the Prime Lease, or transfer of ownership given in lieu of termination, prior to expiration of the Sublease, the Sublease shall continue in full force and effect as a direct lease between Prime Lessor, or their successor in interest, as landlord, and Tenant, as tenant, upon and subject to the terms and conditions contained in the Sublease, without

necessity for executing any new lease, as a direct lease between Tenant and the then owner of the Property, as "landlord." In such event:

(a) Tenant shall be bound to the Prime Lessor or such new owner under all of the terms, covenants and provisions of the Sublease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to the Prime Lessor or such new owner, as the case may be, and to recognize the Prime Lessor or such new owner shall, from and after the date the Prime Lessor or new owner succeeds to the interest of "landlord" under the Sublease, have the same remedies against Tenant for the breach of any covenant contained in the Sublease that landlord might have had under the Sublease against Tenant; and

(b) The Prime Lessor or such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Sublease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term of the Sublease). Tenant shall, from and after the date the Prime Lessor or new owner succeeds to the interest of "landlord" under the Sublease, have the same remedies against the Prime Lessor or new owner for the breach of any covenant contained in the Prime Lease that Tenant might have had under the Sublease against landlord if the Prime Lessor or new owner had not succeeded to the interest of landlord.

3. Prime Lessee hereby agrees to protect, defend, indemnify and hold Tenant harmless from and against any and all claims, damages, costs and expenses (including not limited to reasonable attorneys' fees) incurred by Tenant as a result of the violation of this Agreement by Prime Lessee or the breach by Prime Lessee of the Prime Lease, including but not limited to any breach which result in termination of the Prime Lease. Tenant hereby agrees to protect, defend, indemnify and hold Prime Lessee harmless from and against any and all claims, damages, costs and expenses (including but not limited to reasonable attorneys' fees) arising from Tenant's violation of the terms of this Agreement.

4. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage paid or reliable overnight courier to each of the parties at their respective addresses as hereinabove set forth or at such other address as a party may designate by notice given in accordance with this paragraph. Notices shall be deemed delivered upon actual receipt as evidenced by the return receipt.

5. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

Signatures are on the next page.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

PRIME LESSOR:

By: _____
Name:
Title:

PRIME LESSEE:

_____, LLC,
a Delaware limited liability company

By: XXXXX,
a Delaware limited liability company,
Manager

By: _____
_____,
Local Partner

TENANT:

By: _____
Name:
Title:

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COMMISSION MEETING

<u>BRIEFING DATE/TIME:</u>	December 12, 2022
<u>DEPARTMENT:</u>	Executive Services – Communication
<u>STAFF CONTACT/TITLE:</u>	Lisa Parks Telephone: 360.528.8020 Email: Lisap@portolympia.com
<u>TOPIC:</u>	Mojo Strategies Contract Amendment No. 1
<u>PURPOSE:</u> <i>Check all that apply</i>	☐ Information only ☒ Decision needed ☐ Follow up from previous briefing
<u>BACKGROUND & OVERVIEW:</u>	
Midway through 2022, following changes in staffing levels in the Communication, Marketing and Government Affairs department, the Port entered into a Personal Services Agreement with Mojo Strategies to provide extra staffing resources, on an interim, limited basis, to assist with current and on-going work loads. Mojo Strategies is a consulting firm based in Olympia and specializing in government communications and public relations with experience in developing innovative outreach and engagement strategies for local government entities to connect meaningfully with key audiences. The original agreement with Mojo Strategies was executed in August of 2022 under the Executive Director's delegated authority, consistent with both RCWs and Port Policy. The initial term of the Agreement was set to expire on December 31, 2022, and the initial not-to-exceed amount was \$50,000. Through October of this year, approximately \$32,000 of this amount has been spent. Staff is requesting the Commission consider an amendment to this Personal Services Agreement, on a sole source basis, to allow for continued communications staff support through June 30, 2023 and to complete a communications needs assessment and report in support of the Strategic Plan 2025 <i>Communications Initiative</i> (please see attached Scope of Work). The proposed amendment would extend the term of the Agreement to December 31, 2023 and would add an additional \$81,000, creating a new, not-to-exceed amount of \$131,000. Staff is requesting the Commission authorize the Executive Director to sign Amendment No. 1, as outlined above, to Agreement No. 2022-1048 with Mojo Strategies for Interim Communications Support at tonight's meeting.	
<u>DOCUMENTS ATTACHED:</u>	
▪ Power Point Presentation ▪ Scope of Work	

Mojo Strategies Personal Services Agreement – Amendment No. 1

December 12, 2022

Lisa Parks

Executive Services Director

1

Mojo Strategies – Interim Communication Support

Sole Source Personal Services Agreement Amendment No. 1

Amendment Request Summary		
	Existing	Proposed
Term	Ending 12/31/2022	Ending 12/31/2023
NTE	\$50,000	\$131,000
Scope	- On-going communication support - Ballot proposition - Evaluate current strategies and technique	- On-going communication support - Assessment of communications needs and workload - Initial, refreshed communication strategy

2

2

Suggested Motion...

*“...move to authorize the Executive Director to sign a contract amendment with **Mojo Strategies** to continue providing interim communication support, extending the term of the agreement through **December 31, 2023** and adding **\$81,000** for a total not to exceed amount of **\$131,000.**”*

3



520 North St SE, Tumwater, WA 98501 • 206.351.4740
joynjohnston@gmail.com • www.mojostrategies.com

Date: November 18, 2022
Client: Port of Olympia
Attn: Lisa Parks, Executive Services Director
From: Joy Johnston, Chief Executive Officer, Mojo Strategies
Re: **Communications Services – Contract Extension**

PROPOSAL OVERVIEW

Mojo Strategies has been assisting the Port of Olympia's communications program since August 2022. In this brief period of time, we've worked together well to provide effective communications services amidst many changes and challenges. In addition to providing day-to-day support, I was able to complete important foundational work to improve Port communications and better align with Port priorities and achieve Port Commission goals.

Based on this work, it is evident that communications requirements significantly exceed the current staffing/resource model. Looking forward, communications requirements are expected to further intensify, as the Port of Olympia is in the process of strategic planning and communications has been identified as one of the Port's key initiatives:

Increase the community's understanding of the role, value, and limitations of the Port in impacting the local economy and greater Thurston community.

Launch a refreshed communications effort in 2022 to renew the community's understanding of the Port's role in fulfilling its Mission and commitments to the community it serves.

Over the past three months, my skills have been focused on addressing emerging/urgent needs, at the expense of more strategic or proactive work. To put the Port on the best path forward, it's time to take a strategic look at what's needed to help the Port address upcoming communications needs.

A contract extension is necessary to complete this work and continue to support communications until a revised staffing model is in place. The proposed scope of work includes:

- An assessment of communications workload and needs;
- A report and recommendations for staff and/or consultant resources and initial strategies; and
- Communications support during the assessment, recommendations, and transition process.

ABOUT PORT OF OLYMPIA COMMUNICATIONS

The Port's current communications staffing level (1.5 FTE's) is minimal.

Communications are currently managed by a full-time Marketing and Outreach Coordinator, assisted by Mojo Strategies on a part-time basis. An initial assessment showed that the Marketing and Outreach Coordinator is responsible for at least 26 different communications tasks. There is little capacity within that workload for additional responsibilities nor time for strategic planning. Other Port staff share in

communications and marketing, as well. Additional assessment is needed to determine more specifically what staff resources are currently devoted to communications throughout the organization.

Frayed community relationships are creating unnecessary problems.

While the Port has been successful in connecting with community members through events like Summer Nights at the Port, the Port's relationship with the greater Olympia community is often fraught with misunderstanding and distrust. Recent interviews with community leaders demonstrated vague understanding of the Port's contributions to the economy, environment, and community. The Port's 2022 ballot measure passed by a significantly narrower margin than a similar ballot measure for Thurston County, even though the Port and Thurston County coordinated outreach efforts and messages. Some community members are actively calling for the marine terminal to close, petitioning against the airport's future plans, and asking that the Port be disbanded. In this environment, resources are being spent responding to misinformation and community concerns. Local media, primarily The Olympian and JOLT, produce the most consistent news about the Port and have the broadest audience, but unfortunately articles from these outlets about the Port are rarely positive and often lack context.

The impact of strained community relations is far-reaching. Responding to misinformation and community complaints requires time and resources, and can take staff and leaders off task. Community mistrust affects the Port's business lines, puts major projects (such as Budd Inlet Cleanup and Restoration) at risk, and could impact the Port's ability to obtain funding. In the current climate, it would be a monumental feat, if not impossible, to achieve voter approval for a tax levy should the Port ever need to do so to remain viable.

The Port can fix this.

The good news is that a strategic, properly resourced communications program can build trust and expand political capacity. As a public agency with global customers, it's essential for the Port of Olympia to cultivate effective relationships with the people it serves in order to shape a successful economic future that aligns with the community's values. Proactive, transparent, and consistent communications are the building blocks of trust and collaboration. Through communications, the Port can build awareness of its contributions to the region and establish a framework for outreach and engagement that can be relied upon when the Port is proposing a new project, making a significant change, or managing sensitive or potentially controversial issues. Effective communications have the potential to not only increase the community's understanding of the Port, but to also build support for the work the Port is doing.

The Port has recently renewed its commitment to strengthening community relationships through its Citizens Advisory Committee (POCAC). The purpose of the committee of volunteer citizens is to provide advice to the Commission and is an important component of the Port's community engagement.

Other strategies may be:

1. Position the Port as a trusted source of information
2. Create opportunities for meaningful engagement
3. Ensure staff and leaders have a shared understanding of communication priorities
4. Build better media relationships to ensure taxpayers are accurately informed

Additional research is needed to further refine strategies and determine the resources needed to effectively support those strategies.

HOW MOJO STRATEGIES CAN HELP

As CEO of Mojo Strategies, I have provided communications support and strategic guidance for municipalities and special purpose districts throughout Western Washington. With over 17 years of public sector communications experience and as previous director of communications for the cities of Bothell and Mercer Island, I have a deep understanding of the challenges facing leadership and staff, and I know what it

takes to successfully inform, engage, and build trust within communities through effective communications. Mojo Strategies is often called upon to provide communications assistance during staff transitions or when communication needs exceed staff capacity.

Since communication needs can often quickly shift or require specific skills, Mojo Strategies frequently teams up with talented independent consultants with expertise in public relations, media, graphic design, social media, and content creation. More information about the Mojo team can be found at www.mojostrategies.com/our-team. For Port communications, Mojo Strategies will continue to partner with [Lund Faucett](#) and [Sunshine Communications](#), consultants with deep knowledge of public sector communications and extensive track records of success in strategic communications who are already working with the Port. Partnering with these consultants will provide additional expertise and capacity when needed.

SCOPE OF WORK

Assessment of Communications Workload and Needs

- **Staff/commission interviews and other research:** Development of recommendations and an initial strategy requires a more complete understanding of how communications are functioning across the organization. We'll draw on interviews that have already been conducted and will add additional staff and commission interviews to develop a deeper understanding of needs and resources. This research will also look at how peer organizations conduct communications and a deeper review into how the community receives information about the Port.
- **Workload assessment:** To assess staffing needs, it will be important to capture current and needed communications tasks, who is responsible for each task, average time to complete tasks, who is reached through communications, and effectiveness/impact.
- **Tactics inventory and analysis:** A matrix of all current and recommended communications tactics can be a helpful tool for planning outreach initiatives and identifying efficiencies. The matrix will include useful details for each tactic such as time/costs, timelines, quality and outcomes (including audiences reached).

Report, Recommendations, and Follow Up

- **Report and recommendations:** Following research, the Port will receive a report of findings and recommendations for staff and/or consultant resources to support communication needs. The final report will also include initial strategies that can be implemented immediately and then revised/expanded upon when the communications program is fully staffed.
- **Follow up:** Based on the results of research and the Port's budget, the recommended next steps may include hiring additional staff and/or seeking specific consultant resources to supplement the work of staff. Follow up items may include assisting with job description development or consultant qualification requests.

Communications Support

While research and communications program transitions are underway, Mojo Strategies will continue to support ongoing communications on a limited basis (10 hrs/week). Primary services include drafting the Executive Director's weekly staff update, providing media support such as preparing media releases and responding to media inquiries, and weekly progress reports. Services may also include content creation, proofreading, and providing expertise and mentorship for communications staff.

TIMELINE AND ESTIMATED HOURS

Task	Start	Est. Completion	Est. Hours
Staff/commission interviews and other research	14-Nov	15-Jan	50
Current workload assessment	14-Nov	15-Dec	10
Communications tactics inventory and analysis	21-Nov	15-Dec	10
Report and recommendations	15-Jan	15-Feb	50
Follow up items - i.e. job description, RFQ	15-Feb	1-Mar	40
Transition and onboarding	1-May	31-May	40
Ongoing communications support Nov-Mar (10 hrs/week)	15-Nov	30-Jun	330
		TOTAL HRS	530

RATE AND CONTRACT ESTIMATE

Rates:

Consultant Team	Hourly Rate	Estimated Time	Total Estimate
Mojo Strategies	\$145	371 hours	\$53,795.00
Lund Faucett	\$245	96 hours	\$23,373.00
Sunshine Communications	\$245	63 hours	\$15,582.00
		TOTAL	\$92,750.00
		Current contract – estimated remaining amount	\$12,000.00
		TOTAL CONTRACT EXTENSION	\$80,750.00

Current contract maximum: \$50,000.00

New contract maximum amount: \$130,750.00

The Port of Olympia will only be charged for the time it takes to complete requested work. Hours to be billed in 15-minute increments. Invoices will be remitted monthly no later than the fifth day of each month.

The contract estimate is for maximum of 14 hours per week of consultant services to complete agreed upon Port projects. Consultant can provide up to 20 hours of services in a given week if requested by the Port. Work beyond 20 hours per week requires mutual agreement. Please allow at least 24 hours for project turnaround and response, exceptions may be made in emergencies. Work will be performed during regular business hours (8 am to 5 pm, Monday through Friday), exceptions at the Consultant's discretion.

JOY JOHNSTON, Chief Executive Officer

With over 17 years of communications and marketing experience, Joy offers a full range of public relations services including message development, outreach strategy, and project management. Recognized for innovation in outreach and engagement, Joy has been at the forefront of developing smart, effective communications strategies on behalf of government agencies.

Her wide-ranging experience includes work for both public and private sector organizations. Current and recent clients include Northshore Utility District, Peninsula Metropolitan Park District, City of Kenmore, City of Kirkland, City of Duvall, City of Bothell, City of Normandy Park, Snohomish Health District, Daniels Real Estate, Mack Urban Investment and Development, Recycle Systems, and Neighborhood House and she has been a subcontractor for projects for Whatcom County Health Department, King County Flood Control District, BNSF Railway, Roosevelt Development Group, Novartis Pharmaceuticals, the Washington State GET Program, and the City of Lake Stevens. As the former director of communications for both the City of Bothell and the City of Mercer Island, Joy reached out to diverse audiences to build effective relationships between citizens and their government as well as bolster the communities' standing in the region.

The breadth of her work includes the following examples: Joy facilitated Peninsula Metropolitan Park District's strategic planning and overhauled the district's internal and external communications strategies for better efficiency, consistency, and effectiveness. Joy led outreach strategy for the City of Duvall's 9-year, \$330,000 annual levy that was ultimately approved by voters. Joy has managed the City of Kirkland's communications program on four separate occasions during staff transitions, ensuring that the community was informed and engaged regarding issues ranging from the City budget to major development projects. Her work on marketing and media outreach for the City of Bothell's downtown revitalization helped to attract over \$200 million in private investment. She successfully created the position of Communications Coordinator at the City of Mercer Island from the ground up, including development of the City's quarterly newsletter, e-newsletters, and social media program.

Joy holds a Master's degree in Public Administration from the University of Washington.

EDUCATION

- University of Washington, Bachelor's Degree in Social Sciences (Law, Politics & the Economy), 2006
- University of Washington Evans School, Master's Degree in Public Administration, 2009

CERTIFICATIONS

- Advanced Public Information Officer (FEMA L388)
- Certified Woman Business Enterprise (WBE) through Washington State OMWBE

YEARS OF EXPERIENCE

- 17+

EXPERTISE

- Recognized for innovation in public sector communications.
- Skilled at translating highly technical information into engaging narratives.
- Excels at designing integrated communication programs to inform external and internal audiences including websites, social media, e-communications, direct mail, public events, and media placements.

MOJO STRATEGIES PROJECT EXAMPLES

City of Kirkland (2016, 2017, 2018, 2020 to present)

On four separate occasions during staff transitions, Mojo Strategies managed City of Kirkland's communication program. Mojo oversaw all city communications including the city website, e-newsletters, social media and media relations. Currently, Mojo provides communications assistance for the City's high profile, controversial initiatives and programs.

City of Kenmore (2019-2021)

Mojo Strategies provided core communications services for City of Kenmore during recruitment for a fulltime communications manager and continues to manage production of the Kenmore Quarterly.

Peninsula Metropolitan Park District (2019-2020)

Mojo Strategies facilitated a Strategic Planning Session for Peninsula Metropolitan Park District and has since overhauled their internal and external communications for better efficiency, consistency and effectiveness.

City of Seattle Early Design Review Outreach (2018-2020)

On behalf of developers, Mojo Strategies oversaw over 100 outreach projects to meet City of Seattle's new early design review outreach requirements including digital, print, and in-person outreach as well as focused outreach directed to historically underrepresented communities.

City of Duvall (2016)

Mojo Strategies provided strategic guidance and public relations services for City of Duvall's 9-year, \$330,000 annual levy that was ultimately approved by voters.

Snohomish Health District (2014)

Mojo Strategies managed the Snohomish Health District communications program during staff transitions and developed a Strategic Outreach Handbook to integrate outreach to the community, stakeholder groups and legislators.

City of Normandy Park (2013-2014)

Mojo Strategies leveraged in-house talent to develop and implement a comprehensive communications program. Projects included creating a strategic communications plan, capital project outreach, social media strategy, style guide, citizen survey and monthly e-newsletter.

City of Bothell (2012-2014)

After leaving the Public Information Officer position, Joy Johnston of Mojo Strategies was retained as a consultant for two years to run the communications program including quarterly printed newsletters, ongoing e-newsletters, social media, website management and media relations. She was involved in marketing Bothell's downtown revitalization which helped to attract over \$200 million in private investment.

P: 206.351.4740 • E: joynjohnston@gmail.com • W: www.mojostrategies.com



COMMISSION MEETING

<u>BRIEFING DATE/TIME:</u>	December 12, 2022
<u>DEPARTMENT:</u>	Executive Services – Government Affairs
<u>STAFF CONTACT/TITLE:</u>	Lisa Parks Telephone: 360.528.8020 Email: Lisap@portolympia.com
<u>TOPIC:</u>	The Beckett Group Contract Amendment No. 1
<u>PURPOSE:</u> <i>Check all that apply</i>	☐ Information only ☒ Decision needed ☐ Follow up from previous briefing
<u>BACKGROUND & OVERVIEW:</u>	
In late December of 2021, the Port Government Affairs team conducted an informal competitive process to identify both a State and Federal lobbying firm, as anticipated in the 2022 Budget adoption process. The process included requesting statements of interest from a list of firms, evaluation of the responses by the Port team, and interviews with a short list of finalists for both specialties. Because the State legislative session was getting underway in January of 2022, the initial focus was on a State lobbyist, and The Beckett Group was the firm selected. The original Personal Services Agreement with The Beckett Group was executed in January of 2022 under the Executive Director's delegated authority, consistent with both RCWs and Port Policy. The initial term of the Agreement was set to expire on December 31, 2022, and the initial not-to-exceed amount was \$40,000, which has been billed out at a rate of \$3000/month. Staff is requesting the Commission consider an amendment to this Personal Services Agreement to provide for on-going government affairs support as well as advisory and lobbying services related to the State of Washington legislative processes (please see attached Scope of Work). The proposed amendment would extend the term of the Agreement to December 31, 2023 and would add an additional \$50,000, creating a new, not-to-exceed amount of \$90,000. Staff is requesting the Commission authorize the Executive Director to sign Amendment No. 1, as outlined above, to Agreement No. 2022-1004 with The Becket Group for State Legislative Lobbying Support at tonight's meeting.	
<u>DOCUMENTS ATTACHED:</u>	
▪ Power Point Presentation ▪ Scope of Work	



The Beckett Group Personal Services Agreement – Amendment No. 1

December 12, 2022

Lisa Parks

Executive Services Director

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The Beckett Group – State Lobbyist Services

Personal Services Agreement Amendment No. 1

Amendment Request Summary		
	Existing	Proposed
Term	Ending 12/31/2022	Ending 12/31/2023
NTE	\$40,000	\$90,000
Scope	• Session support • Develop/advance strategic issues and relationships • Summarize key outcomes	• Session support • Develop/advance strategic issues and relationships • Summarize key outcomes

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Suggested Motion...

*“...move to authorize the Executive Director to sign an agreement amendment with **The Beckett Group** to continue providing State Legislative Lobbying support, extending the term of the agreement through **December 31, 2023** and adding **\$50,000** for a total not to exceed amount of **\$90,000.**”*

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November 21, 2022

**To: Ms. Lisa Parks, Executive Services Director
Port of Olympia**

From: Bruce Beckett

RE: Proposal for Services – January-December 2023

Thank you for the opportunity to submit a proposal for state government affairs and legislative representation services. I would be thrilled and honored to continue work with the Port of Olympia to assist in achieving the Port's Mission "to create economic opportunities by connecting Thurston County to the world by air, land and sea".

Background:

The Beckett Group provides public affairs, transportation infrastructure, and strategic planning support for public and private sector clients. I have had the privilege of working with the Port of Olympia during 2022 and feel that the Port has positioned the Budd Inlet cleanup effort favorably with state elected and administration officials. The following is a proposed Scope of Work for 2023.

January – May: 2023 Session of the Legislature:

- TBG will provide government affairs support, advisory and lobbying services to the Port of Olympia pursuant to the Port of Olympia Legislative Plan.
- Lobbying support will include:
 - Representing and advocating on priority issues as identified by the Port of Olympia
 - Priority on state support for the cleanup of Budd Inlet
 - Tracking and monitoring of bills and legislative activities (e.g. – budget and work sessions) on issues of importance to the Port of Olympia
 - Regular and ongoing communications with the Port of Olympia to update the status of issues and Port of Olympia positions.
 - Regular and ongoing communications with Legislators that intersect with Thurston County.
 - Represent the Port of Olympia at Washington Public Ports Association Government Affairs Committee meetings and processes during 2023.
 - Prepare and deliver testimony on behalf of Port of Olympia, if needed. Assist and prepare Port of Olympia team members for meetings with Legislators and/or Committee hearings.
- TBG will provide support to the Port of Olympia to advance strategic issues, relationships and government affairs processes as identified by the Port of Olympia.

June-December 2023

- Provide a summary of key outcomes from the 2023 session in a form and manner identified by the Port of Olympia.



- Determine next steps and outreach priorities
- Develop and implement a strategic outreach plan in preparation for the 2024 session and agency efforts during 2023.

TBG will report orally or in writing with respect to all activities and at such times as directed by Lisa Parks.

Proposal:

- Compensation \$3,500/month plus travel and other expenses
- Term January-December 2023

Attached is a description of The Beckett Group and a listing of current clients.

Thank you for the opportunity to present a proposal to the Douglas County PUD, and for your consideration.

Sincerely,



Philosophy:

The Beckett Group understands that long-term success and reputation is more important than short term results. Our experience guides us to conduct all advocacy in a way that does not undermine long-term, sustainable success.

Experience:

Bruce Beckett has more than 28 years' experience providing strategic government affairs and communications services for large corporations, small and medium sized business, and non-profits.

He has been registered to lobby in Washington State since 1995 and has a proven track record of working in a bi-partisan manner to resolve challenging, often polarized, issues. His specific experience includes:

- Sixteen years leading government affairs and communications teams for the Weyerhaeuser Company.
- Eight years building state and local government affairs and communications programs for the Washington Hospitality Association, a trade association with more than 6000 hotel and restaurant members.
- Representing various business and economic development clients.

Bruce has worked on federal legislation to protect the Radar Control System at the Port of Moses Lake, legislation to amend tax laws to entice solar component manufacturers to locate in Washington State, legislation to expand recreational vessel use in Washington waters, funding for the Northern Columbia Basin Railroad project in Moses Lake, legislation and funding to implement aerospace and advanced manufacturers workforce development needs, aviation tax issues, legislation to allow publicly owned wastewater treatment systems to compete for state funding, legislation to establish a state tourism marketing program, legislation authorizing use of local economic development funds to support affordable housing, and several land use and forestry related issues

Bruce has served as a Deputy to the Washington Roundtable, board member of the Association of Washington Business, board member of N.W. River Partners, the Governor's advisory committee on paid family leave, the Legislature's unemployment insurance task force, and Chair of the WFPA Government Affairs Committee. He is a graduate of Washington's Agriculture and Forestry Leadership Foundation program and continues to assist the Foundation by working with classes on their public policy projects, and teaching seminar topics.



The Beckett Group public affairs clients include:

- Port of Moses Lake
- Port of Port Angeles
- Port of Olympia
- American Forest Resource Council
- Washington Retail Association
- Wenatchee Valley Chamber of Commerce
- Mission Ridge Ski and Board Resort
- Douglas County Public Utility District

The Beckett Group transportation and infrastructure clients include:

- | | |
|--|--|
| • Port of Moses Lake | City of Wenatchee |
| • City of Connell | Port of Longview |
| • Port of Montana | Port of Port Angeles |
| • Port of Bellingham | Wa. State Department of Transportation |
| • Macon County and the City of Decatur, Illinois | |
| • Port of Everett | City of Paducah, Kentucky |
| • Snohomish County | Port of Anacortes |
| • Port of Quincy | City of Hoquiam & Aberdeen |
| • Port of Grays Harbor | |

References:

Mr. Don Kersey, Executive Director, Port of Moses Lake
509-392-6434

Ms. Shiloh Burgess, Public Affairs Director, Douglas County PUD
509-662-2116

Mr. Geoff James, Executive Director, Port of Port Angeles
360-457-8527

Mr. Travis Joseph, President and CEO, American Forest Resource Council
503-222-9505

Ms. Renee' Sunde, President and CEO, Washington Retail Association
360-200-6450

Mr. Blair McHaney, President, Washington Fitness Alliance
509-630-7307

Mr. Josh Jorgensen, General Manager, Mission Ridge Ski and Board Resort
509-888-9402



COMMISSION MEETING

<u>BRIEFING DATE/TIME:</u>	December 12, 2022
<u>DEPARTMENT:</u>	Executive
<u>STAFF CONTACT/TITLE:</u>	Ben McDonald Telephone: 360.528.8001 Email: benm@portolympia.com
<u>TOPIC:</u>	Resolution 2022-13 Revision of Policy No. 207 – Approving a prospective retention pay incentive for fiscal year 2023 and suspending pay for performance for one year
<u>PURPOSE:</u> <i>Check all that apply</i>	☐ Information only ☒ Decision needed ☐ Follow up from previous briefing
<u>BACKGROUND & OVERVIEW:</u>	
Policy 207 <i>Pay for Performance</i> was adopted by the Commission and last updated with Resolution 2019-05 <i>Providing the delegation of authority to the Executive Director or his or her designee for matters related to Executive Policies matters related to Executive Policies</i>. The policy reads as follows: <i>POLICY:</i> <i>It is Port policy to conduct performance reviews for all Port employees on an annual basis. It is the policy of the Port to use annual performance reviews as the process for advancing each person within the salary grades and the ranges, and to assess compensation for the Port's pay for performance policy and merit pool allocation, where applicable. The Port aims to meaningfully recognize employee performance through this Policy.</i> The adopted policy along with procedures for its implementation are contained within the attached Policies and Procedure document. The procedures, developed by staff and adopted by the Executive Director, provide for advancement within salary grades and ranges and the merit pool allocation for increases in pay based upon performance review. Port management staff is recommending a different approach to salary increases for 2023 in order to acknowledge the high rate of inflation and to continue to offer a competitive compensation package for our employees. The recommended approach for 2023 is two pronged: • Suspension the Pay for Performance system in FY 2023 and the allocation of a merit pool. Management staff instead recommends a 4% cost of living adjustment for all Port employees. • In further recognition of inflationary times and the Port's desire to retain quality staff members, management staff recommends offering a Retention Incentive in the amount of \$2400 to be paid quarterly in 2023 to each employee should they remain employed. These adjustments, coupled with the existing benefits package, will allow the Port to remain competitive within a tight labor market. While the salary adjustments are prospective, they also serve to demonstrate to Port employees that they are valued and that efforts to retain them are merited.	

<u>DOCUMENTS ATTACHED:</u>
▪ Power Point Presentation ▪ Resolution 2022-13 Approving a prospective retention incentive for one year and suspending pay for performance for one year
<u>SUMMARY & FINANCIAL IMPACT:</u>
Salary adjustments for both the 4% COLA and Retention Incentive are included in the 2023 Operating Budget.
<u>AFFECTED PARTIES:</u>
All Port employees

Pay for Performance & Retention Incentive

December 12, 2022

Ben McDonald

Human Resources & Administrative Director

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Port Policy 207 – Salary Review & Pay for Performance

ADVANCEMENT WITHIN SALARY GRADES & RANGES

- Sets standards for new hires
- Provides guidelines for advancement within grade & range

PAY FOR PERFORMANCE

- Employees' performance is documented at the end of the year in NeoGov which calculates a score based on goals and expectations met or unmet and a salary percentage is given.
- The Port is reviewing the process for Pay for Performance while researching which system is best for performance management and salary increases.

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Staff Recommendations

Suspend pay for performance and merit pool allocation for FY 2023

- Grant a 4% Cost of Living Adjustment (COLA) for all Port staff for FY 2023.

Institute Retention Incentive for FY 2023

The Port recognizes that the cost of living has gone up tremendously and wants to assist staff during these highly inflationary times. To aid in the cost of living and operate within a competitive labor market, as well as to retain our very valued and competent workforce, the Port is offering the following:

- Compensate employees who remain employed at the Port through 2023 a total of \$2,400 to be paid quarterly in \$600 installments.

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Sample Motions

Move to approve Resolution 2022-13 authorizing the suspension of Port Policy 207 – Salary Review & Pay for Performance merit pool allocation for FY 2023 and instituting a Retention Incentive for FY 2023.

Move to implement for all Port staff a Cost-of-Living Adjustment (COLA) of 4% as provided in the 2023 Operating Budget.

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QUESTIONS?

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PORT OF OLYMPIA COMMISSION
Resolution 2022-13

**A RESOLUTION OF THE PORT OF OLYMPIA COMMISSION APPROVING A
PROSPECTIVE RETENTION PAY INCENTIVE FOR FISCAL YEAR 2023 AND
SUSPENDING PAY FOR PERFORMANCE FOR ONE YEAR**

WHEREAS, in the aftermath of the coronavirus pandemic it has become increasingly difficult to attract and retain employees to perform services essential to the Port; and

WHEREAS, cost associated with filling Port positions include staff time and advertising; and

WHEREAS, the Port and those served by the Port benefit from retention of institutional knowledge of the Port's current employees; and

WHEREAS, in Section 200 Employment Practices-Personnel, the Port policy for salary review and pay for performance authorizes pay raises each year based on scores determined through employee performance reviews, subject to Commission approval; and

WHEREAS, the Executive Director has received input from employees and is considering methods by which administration of this type of pay may be improved; and

WHEREAS, while pay for performance is being evaluated for improvement it makes sense to suspend this method of pay for fiscal year 2023.

THEREFORE, BE IT RESOLVED by the Commission of the Port of Olympia:

All Port of Olympia employees will receive a retention pay incentive in the amounts and at the times indicated as follows:

April 10, 2023:	\$600
July 10, 2023:	\$600
October 10, 2023:	\$600
January 10, 2024:	\$600

BE IT FURTHER RESOLVED the aforementioned pay for performance will be suspended temporarily for fiscal year 2023.

BE IT FURTHER RESOLVED an at will employee's status as "at will" or under any contract is not affected by this Resolution. If any employee is separated from employment in 2023 they will only be entitled to the increment of incentive pay received while still employed at the Port.

ADOPTED BY THE Port of Olympia Commission this ____ day of December 2022.

PORT OF OLYMPIA COMMISSION

Bob Iyall, President

Amy Evans Harding, Vice President

Joe Downing, Secretary

 PORT of OLYMPIA POLICIES & PROCEDURES MANUAL		Page:	1 of 2
Section:	200 EMPLOYMENT PRACTICES-PERSONNEL	Revision Date:	10/2019
Policy:	SALARY REVIEW & PAY FOR PERFORMANCE	Policy No.	207
Approver:	COMMISSION	Resolution	Yes

POLICY: It is Port policy to conduct performance reviews for all Port employees on an annual basis. It is the policy of the Port to use annual performance reviews as the process for advancing each person within the assigned salary grades and ranges, and to assess compensation for the Port's pay for performance policy and merit pool allocation, where applicable. The Port aims to meaningfully recognize employee performance through this Policy.

PROCEDURE FOR SALARY REVIEW: To assure that the new hire rate is internally consistent with the salaries paid for other people in the same or similar job and skill level, the following guidelines are used in determining a new hire salary rate.

Illustrative Guidelines For Salary Range Utilization					
Minimum \$		Midpoint \$			Maximum \$
80%	85%	90%	95%	100%	120%
0 to 1 year of service	2 years of service	3 years of service	4 years of service	5 years of service	Beyond 5 years of service based on performance review

Annually, the Port will make salary adjustments to any employee within the first five (5) years of service in that position based on the guidelines above. Once the employee is in the position for more than five (5) years, all future increases are only based on the annual performance review.

These above guidelines are in place to ensure that the internal equity relationships between new hires and already employed people are reviewed and maintained.

The guidelines are intended to provide a reference for where employees should typically be positioned in the assigned salary range.

PROCEDURE FOR PAY FOR PERFORMANCE: The pay for performance program recognizes performance levels and provides for salary advancement through higher levels of performance on a sustained basis. The program recognizes job performance excellence through pay raises, which are determined each year by the score of the performance review. In addition, performance reviews are used to discuss goals and expectations; as well as the achievements, strengths and development needs of people. Performance reviews may also be given without any linkages to pay adjustments.

Annually, the Administrative Services Director shall contact the salary consultants prior to the budget process to obtain "cost of salary" information and recommendations to the Commission for the increase in for the Salary Grades and Ranges chart and for the proposed merit pool. Subject to Commission approval each year, the Port awards a salary merit pool to be distributed to all eligible employees based on performance. Any salary increases will be effective in January of each year. The amount of the individual increase will depend upon the performance

 PORT of OLYMPIA POLICIES & PROCEDURES MANUAL		Page:	2 of 2
Section:	200 EMPLOYMENT PRACTICES-PERSONNEL	Revision Date:	10/2019
Policy:	SALARY REVIEW & PAY FOR PERFORMANCE	Policy No.	207
Approver:	COMMISSION	Resolution	Yes

review for the essential work and goal accomplishment. In addition, pay for performance adjustments will be subject to the total dollar amount approved by the Port Commission.

In the case of an employee reaching the maximum in his/her current job grade and range, a performance raise may be considered based on the percentage that the Salary Grades, and Ranges moves for the "cost of salaries" as well as potentially an additional cash payment disbursed through the 24 pay periods. If given, the cash payment will not carry over year to year as a part of the employee's salary.

Any employee on a Performance Improvement Plan (PIP) at the time of the salary adjustments will not be eligible for a merit increase.

The Port of Olympia expects to continue the total compensation program on an ongoing basis; however, because future conditions cannot be foreseen, the Port reserves the right to change the program at any time.



COMMISSION PUBLIC HEARING

<u>BRIEFING DATE/TIME:</u>	December 12, 2022
<u>DEPARTMENT:</u>	Executive
<u>STAFF CONTACT/TITLE:</u>	Sam Gibboney Telephone: 360.528.8001 Email: samg@portolympia.com
<u>TOPIC:</u>	Resolution 2022-14 adopting a Five Commissioner District map establishing five newly drawn commissioner districts
<u>PURPOSE:</u> <i>Check all that apply</i>	☐ Information only ☒ Decision needed ☐ Follow up from previous briefing
<u>BACKGROUND & OVERVIEW:</u>	
RCW 53.12.115 authorizes the Port Commission, Port of Olympia (Commission) to resolve that a ballot proposition may be submitted to the qualified voters of the Port District to determine whether there should be an increase in the number of port commissioners from three (3) to five (5). On July 25, 2022, the Commission approved resolution No. 2022-07 to submit a proposition to increase the number of Port Commissioners from three (3) to five (5), who will serve in five separate newly drawn districts. Approval of Resolution 2022-07 occurred after approval of a joint resolution between Thurston County and the Port of Olympia was approved on or about December 13, 2021, establishing the mutual intent to collaborate on respective ballot measures from each jurisdiction to increase the number of Commissioners representing each agency from three (3) to five (5), to provide greater clarity to the voters, and share the costs associated with forming newly drawn districts. On July 25, 2022, the Commission approved a Memorandum of Understanding (MOU) between Thurston County and the Port of Olympia which formed a redistricting committee consisting of the Chair of the County Commission, the Chair of the Port Commission, and the County Auditor to serve as a non-voting member, to collaborate with respect to formation of newly drawn jurisdictions. The redistricting committee met several times in meetings open to the public to develop proposed new districts and a timeframe for final approval of the districts, which must occur for the Port no later than December 31, 2022. The aforementioned proposition appeared on the November 8, 2022, election ballot and was approved by a majority of voters. Prior to final approval of the new districts, there were several opportunities for the public to	

provide comment, including a public hearing that was properly noticed and took place on November 29, 2022.

The proposed district map would have districts number one through five, and the three incumbent Port Commissioners would represent their current district numbers, one, two, and three respectively; and the two new Port Commissioners would represent districts four and five respectively.

The attached Resolution 2022-14 Adopting a Five Commissioner District Map Establishing Five Newly Drawn Districts is presented to the Commission for its consideration.

NEXT STEPS/TIMEFRAME: *Based on the Commission's recommendation, describe the next steps required in order to bring this item to conclusion. Include the time frame for each step.*

Resolution 2022-XX, the attached district map and the attached certificate will be delivered to the Thurston County Auditor no later than December 30, 2022.

DOCUMENTS ATTACHED:

- Redistricting Map
- Resolution 2022-14 Adopting a Five Commissioner District Map

SUMMARY & FINANCIAL IMPACT:

Staff estimated one-time costs of redistricting at \$381,000. Ongoing annual costs were estimated at \$145,500 and election costs were estimated at \$200,000 per election cycle.

AFFECTED PARTIES:

Citizens of Thurston County
Port of Olympia Commission
Thurston County Board of County Commissioners
Thurston County Auditor



Five-Member Commission Redistricting

December 12, 2022
SAM GIBBONEY
EXECUTIVE DIRECTOR

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Background

Collaboration & Joint Resolution

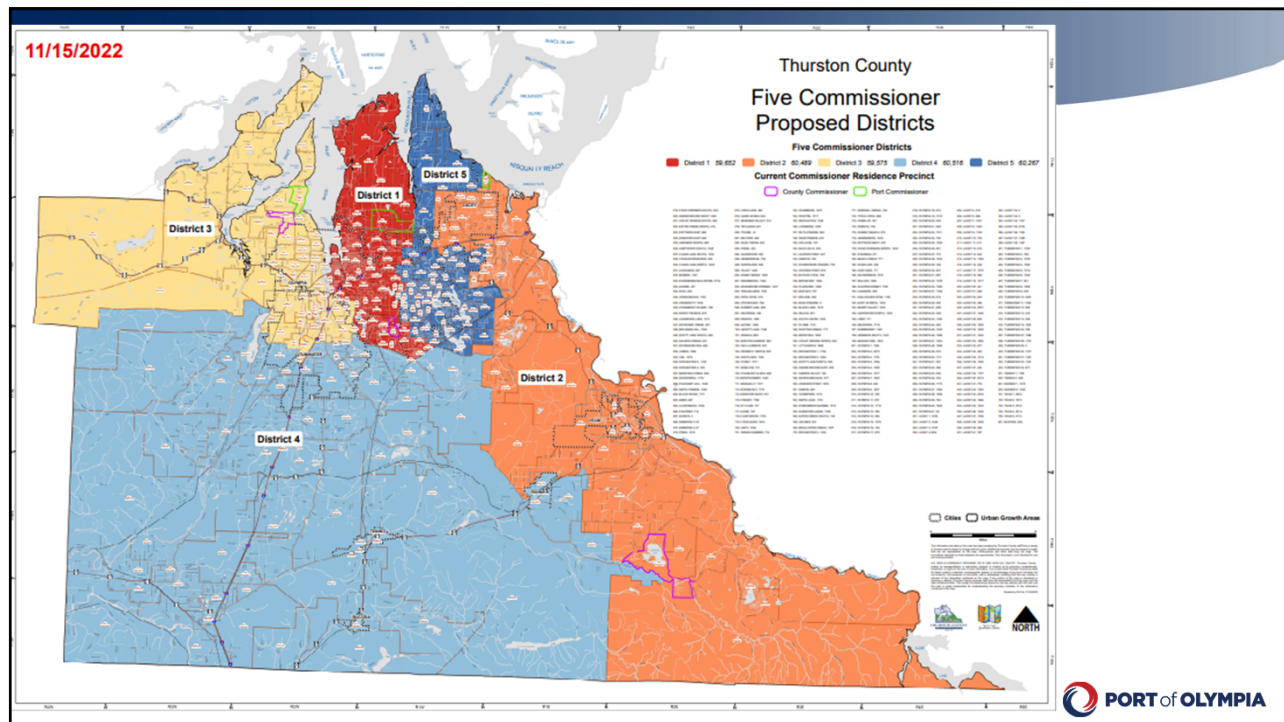
- RCW 53.12.130
- Joint Resolution of Intent – December 2021
- Thurston County passed Resolution on July 19, 2022
- Port Commission passed Resolution 2022-07 July 25, 2022
- Ballot propositions were submitted by August 2, 2022
- Redistricting Committee recommended proposed district map
- Port Commission approved "Alternative C" on October 3, 2022
- Voters approved and vote certified on November 29, 2022
- Public Hearing by Port Commission on November 29, 2022



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Cost Considerations

One Time Costs	2022	2023	Total
Ballot Proposition Election	75,000		
Initial Election Costs for Two New Commissioner Seats		200,000	
Redistricting Plan	15,000		
Ballot Educational Materials	41,000		
Legal	20,000		
Facility Remodel		20,000	
IT & Communication hardware		10,000	
	\$ 151,000	\$ 230,000	\$ 381,000
On-Going Costs	Annual	Election Costs	Total
Additional Stipend & Benefits for Two New Commissioners	82,000		
Additional Travel Costs	3,500		
Additional Administrative Staff Support (0.5 FTE + General Legal)	60,000		
Additional Election Costs (per 4 year cycle)		200,000	
	\$ 145,500	\$ 200,000	\$ 345,500

4

4

Sample Motion

Move to approve Resolution 2022-14 adopting a Five Commissioner District map establishing five newly drawn commissioner districts

5



PORT OF OLYMPIA COMMISSION
Resolution No. 2022-14

A RESOLUTION of the Port of Olympia Commission adopting a Five Commissioner District map establishing five newly drawn commissioner districts.

WHEREAS, the laws of the State of Washington, RCW 53.12.115, authorize the Port Commission, Port of Olympia (Commission) to resolve that a ballot proposition may be submitted to the qualified voters of the Port District to determine whether there should be an increase in the number of port commissioners from three (3) to five (5); and

WHEREAS, on July 25, 2022, the Commission approved resolution No. 2022-07 to submit a proposition to increase the number of Port Commissioners from three (3) to five (5), who will serve in five separate newly drawn districts; and

WHEREAS, the aforementioned proposition appeared on the November 8, 2022, election ballot and was approved by a majority of voters; and

WHEREAS, approval of resolution No. 2022-07 occurred after approval of a joint resolution between Thurston County and the Port of Olympia was approved on or about December 13, 2021, establishing the mutual intent to collaborate on respective ballot measures from each jurisdiction to increase the number of Commissioners representing each agency from three (3) to five (5), to provide greater clarity to the voters, and share the costs associated with forming newly drawn districts; and

WHEREAS, on or about July 25, 2022, the Commission approved a Memorandum of Understanding (MOU) between Thurston County and the Port of Olympia which formed a redistricting committee consisting of the Chair of the County Commission, the Chair of the Port Commission, and the County Auditor to serve as a non-voting member, to collaborate with respect to formation of newly drawn jurisdictions; and

WHEREAS, the redistricting committee met several times in meetings open to the public to develop proposed new districts and a timeframe for final approval of the districts, which must occur for the Port no later than December 31, 2022; and

WHEREAS, prior to final approval of the new districts, there were several opportunities for the public to provide comment, including a public hearing that was properly noticed and took place on November 29, 2022; and

WHEREAS, the Port Board of Commissioners considered the public comment, and has determined that adoption of a district map labelled *Five Commissioner Proposed Districts* and dated 11/15/22, which establishes 5 newly-drawn districts, attached hereto and incorporated herein by reference, is in the best interest of the Port; and

WHEREAS, the district map will have districts number one through five, and the three incumbent Port Commissioners will represent their current district numbers, one, two, and three respectively; and

WHEREAS, the two new Port Commissioners will represent districts four and five respectively;

NOW, THEREFORE, BE IT RESOLVED by the Port Commission of the Port of Olympia, Thurston County, Washington, as follows:

Section 1. The Port Commission hereby approves and adopts the attached “Five Commissioner Proposed Districts” dated 11/15/2022, whereby five newly drawn districts are drawn.

Section 2. One Commissioner will be assigned to represent each of the newly drawn districts as indicated herein.

Section 3. This resolution shall be submitted to the Thurston County Auditor on or before December 20, 2022.

Section 4. This Resolution shall become effective immediately upon adoption and signature as provided by law.

ADOPTED by a majority of the members of the Port Commission of the Port of Olympia, a majority being present and voting on this Resolution at a regular Commission meeting on December 12, 2022, as attested to by the signatures below of the Commissioners this 12th day of December.

PORT OF OLYMPIA COMMISSION

By: _____
Bob Iyall, President

By: _____
Amy Evans Harding, Vice President

By: _____
Joe Downing, Secretary

CERTIFICATE

I, Joe Downing, Secretary of the Port Commission (the "Commission") of the Port of Olympia, Washington (the "Port"), DO HEREBY CERTIFY:

1. That the attached resolution numbered Resolution No. 2022-14 (the "Resolution"), is a true and correct copy of a resolution of the Port, as finally adopted at a meeting of the Commission held on the 12th of December, 2022.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum of the Commission was present throughout the meeting and a legally sufficient number of members of the Commission voted in the proper manner for the adoption of said Resolution; that all other requirements and proceedings incident to the proper adoption of said Resolution have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of December, 2022.

Joe Downing, Secretary

PORT COMMISSION

[ATTACH MAP]

11/15/2022

Thurston County Five Commissioner Proposed Districts

Five Commissioner Districts

District 1 59,652 District 2 60,489 District 3 59,575 District 4 60,516 District 5 60,267

Current Commissioner Residence Precinct

County Commissioner Port Commissioner

- | | | | | | | |
|--------------------------------|----------------------------|--------------------------------|-------------------------------|-----------------------|---------------------|------------------------|
| 019, FOUR CORNERS SOUTH, 524 | 075, LONG LAKE, 282 | 122, CHAMBERS, 1437 | 171, WADDELL CREEK, 763 | 218, OLYMPIA 18, 815 | 305, LACEY 5, 510 | 352, LACEY 52, 2 |
| 020, GRAND MOUND WEST, 1492 | 076, HAWK ACRES, 934 | 124, FRISTOE, 1017 | 172, TYKLE COVE, 699 | 219, OLYMPIA 19, 1210 | 306, LACEY 6, 696 | 353, LACEY 53, 0 |
| 021, VIOLET PRAIRIE SOUTH, 486 | 077, ZENKNER VALLEY, 274 | 125, DESCHUTES, 1766 | 173, CAMELOT, 491 | 220, OLYMPIA 20, 538 | 307, LACEY 7, 1227 | 354, LACEY 54, 1197 |
| 022, EATON CREEK NORTH, 416 | 078, TRI LAKES, 631 | 126, LONGMIRE, 1050 | 174, FRENCH, 705 | 221, OLYMPIA 21, 948 | 308, LACEY 8, 1450 | 355, LACEY 55, 2018 |
| 023, PATTONS EAST, 880 | 080, TOLMIE, 14 | 127, RUTH PRAIRIE, 593 | 175, SUNSET BEACH, 975 | 223, OLYMPIA 23, 1131 | 309, LACEY 9, 1150 | 356, LACEY 56, 1156 |
| 024, KINWOOD EAST, 948 | 081, MILITARY, 464 | 128, WEIR PRAIRIE, 619 | 176, HENDERSON, 1035 | 224, OLYMPIA 24, 730 | 310, LACEY 10, 720 | 357, LACEY 57, 1208 |
| 025, HENNESS NORTH, 680 | 082, GLEN TERRA, 304 | 129, COLLEGE, 727 | 177, PATTONS WEST, 423 | 225, OLYMPIA 25, 1252 | 311, LACEY 11, 417 | 358, LACEY 58, 1367 |
| 026, HARTWOOD SOUTH, 1048 | 083, PRINE, 253 | 130, BALD HILLS, 505 | 178, FOUR CORNERS NORTH, 1434 | 226, OLYMPIA 26, 651 | 313, LACEY 13, 614 | 401, TUMWATER 1, 1720 |
| 027, CLEAR LAKE SOUTH, 1618 | 084, GLENWOOD, 350 | 131, HUNTER POINT, 637 | 180, STEDMAN, 811 | 227, OLYMPIA 27, 774 | 314, LACEY 14, 602 | 402, TUMWATER 2, 795 |
| 028, COUGAR MOUNTAIN, 295 | 086, GREENRIDGE, 739 | 132, GRIFFIN, 750 | 183, BEACH CREST, 771 | 228, OLYMPIA 28, 1533 | 315, LACEY 15, 1782 | 403, TUMWATER 3, 1378 |
| 030, CLEAR LAKE NORTH, 1400 | 088, WOODLAND, 555 | 133, SCHNEIDERS PRAIRIE, 728 | 184, SCHELLER, 396 | 229, OLYMPIA 29, 746 | 316, LACEY 16, 426 | 404, TUMWATER 4, 1263 |
| 031, LACKAMAS, 367 | 089, TILLEY, 1495 | 134, COOPER POINT, 674 | 185, FAIR OAKS, 711 | 230, OLYMPIA 30, 837 | 317, LACEY 17, 1072 | 405, TUMWATER 5, 1313 |
| 032, MORRIS, 1351 | 090, SWEET BRIAR, 1563 | 135, BUTLER COVE, 766 | 186, WILDERNESS, 1510 | 231, OLYMPIA 31, 887 | 318, LACEY 18, 985 | 406, TUMWATER 6, 1304 |
| 033, EVERGREEN BALLROOM, 2716 | 091, DEERBRUSH, 1554 | 136, BROADWAY, 1399 | 187, MULLEN, 1595 | 232, OLYMPIA 32, 1378 | 319, LACEY 19, 1017 | 407, TUMWATER 7, 841 |
| 035, KAISER, 431 | 092, MUSHROOM CORNER, 1337 | 139, PLAINVIEW, 1285 | 189, SLEATER KINNEY, 1183 | 235, OLYMPIA 35, 1590 | 320, LACEY 20, 441 | 408, TUMWATER 8, 1265 |
| 036, RICH, 954 | 093, TRAILBLAZER, 1180 | 140, MUD BAY, 747 | 190, LAKESIDE, 682 | 237, OLYMPIA 37, 1769 | 321, LACEY 21, 568 | 409, TUMWATER 9, 929 |
| 039, JONES BEACH, 1192 | 094, FRYE COVE, 978 | 141, MCLANE, 693 | 191, GALLAGHER COVE, 1136 | 239, OLYMPIA 39, 615 | 322, LACEY 22, 620 | 410, TUMWATER 10, 2047 |
| 043, UNIVERSITY, 1038 | 095, OYSTER BAY, 756 | 143, BUSH PRAIRIE, 3 | 192, EAST OLYMPIA, 1303 | 240, OLYMPIA 40, 520 | 323, LACEY 23, 486 | 411, TUMWATER 11, 1334 |
| 044, STEAMBOAT ISLAND, 748 | 096, SUMMIT LAKE, 805 | 144, BLACK LAKE, 1013 | 193, BERRY VALLEY, 1232 | 241, OLYMPIA 41, 698 | 324, LACEY 24, 2091 | 412, TUMWATER 12, 835 |
| 045, ROCKY PRAIRIE, 874 | 097, DELRIDGE, 254 | 145, DELPHI, 831 | 194, HARTWOOD NORTH, 1335 | 242, OLYMPIA 42, 438 | 327, LACEY 27, 1262 | 413, TUMWATER 13, 475 |
| 046, LAWRENCE LAKE, 1511 | 098, MARVIN, 1282 | 146, SOUTH UNION, 1494 | 195, LIBBY, 711 | 243, OLYMPIA 43, 1352 | 328, LACEY 28, 605 | 414, TUMWATER 14, 548 |
| 047, WOODARD CREEK, 901 | 099, ALPINE, 1368 | 147, PLUMB, 1113 | 196, MEADOWS, 1710 | 244, OLYMPIA 44, 455 | 329, LACEY 29, 1992 | 415, TUMWATER 15, 1627 |
| 048, MICHIGAN HILL, 1029 | 100, HEWITT LAKE, 1186 | 148, SCATTER CREEK, 717 | 197, SUMMERSET, 1481 | 245, OLYMPIA 45, 1242 | 330, LACEY 30, 1805 | 424, TUMWATER 24, 799 |
| 049, SCOTT LAKE SOUTH, 904 | 101, ZANGLE, 688 | 149, MCINTOSH, 1832 | 198, HENNESS SOUTH, 1441 | 246, OLYMPIA 46, 1289 | 331, LACEY 31, 1942 | 427, TUMWATER 27, 1285 |
| 050, SALMON CREEK, 637 | 102, BOSTON HARBOR, 822 | 150, VIOLET PRAIRIE NORTH, 840 | 199, BEAVER CRK, 1822 | 247, OLYMPIA 47, 1203 | 332, LACEY 32, 1680 | 428, TUMWATER 28, 1721 |
| 051, SPURGEON CRK, 468 | 103, GULL HARBOR, 537 | 151, LITTLEROCK, 1668 | 201, OLYMPIA 1, 1166 | 248, OLYMPIA 48, 1984 | 333, LACEY 33, 677 | 429, TUMWATER 29, 2 |
| 052, JAMES, 1288 | 104, FRIENDLY GROVE, 552 | 153, ROCHESTER 1, 1744 | 202, OLYMPIA 2, 2473 | 249, OLYMPIA 49, 974 | 334, LACEY 34, 463 | 430, TUMWATER 30, 1317 |
| 053, VAIL, 1275 | 105, SOUTH BAY, 1129 | 154, ROCHESTER 2, 1065 | 203, OLYMPIA 3, 1179 | 250, OLYMPIA 50, 1111 | 335, LACEY 35, 1014 | 431, TUMWATER 31, 1351 |
| 054, ROCHESTER 5, 1190 | 106, PUGET, 1071 | 155, SCOTT LAKE NORTH, 592 | 204, OLYMPIA 4, 1056 | 251, OLYMPIA 51, 297 | 336, LACEY 36, 1292 | 432, TUMWATER 32, 1351 |
| 055, ROCHESTER 4, 976 | 107, BIGELOW, 731 | 156, GRAND MOUND EAST, 299 | 205, OLYMPIA 5, 1299 | 252, OLYMPIA 52, 466 | 337, LACEY 37, 244 | 433, TUMWATER 33, 871 |
| 057, MEDICINE CREEK, 652 | 108, PLEASANT GLADE, 686 | 157, GIBSON VALLEY, 196 | 206, OLYMPIA 6, 1277 | 253, OLYMPIA 53, 926 | 339, LACEY 39, 1707 | 501, TENINO 1, 1105 |
| 058, SKIDOMOSH, 1779 | 110, MONTGOMERY, 1042 | 158, SPOOKUMCHUCK, 977 | 207, OLYMPIA 7, 1652 | 254, OLYMPIA 54, 533 | 340, LACEY 40, 2214 | 502, TENINO 2, 925 |
| 059, PLEASANT HILL, 1426 | 111, NISQUALLY, 1517 | 160, JOHNSON POINT, 1003 | 208, OLYMPIA 8, 644 | 256, OLYMPIA 56, 1773 | 341, LACEY 41, 775 | 601, RAINIER 1, 1470 |
| 060, SMITH PRAIRIE, 1540 | 112, ROCKEFELLER, 1175 | 161, WARD, 462 | 209, OLYMPIA 9, 1607 | 257, OLYMPIA 57, 1084 | 342, LACEY 42, 252 | 602, RAINIER 2, 1040 |
| 062, BLACK RIVER, 1711 | 113, KINWOOD WEST, 351 | 162, THOMPSON, 1110 | 210, OLYMPIA 10, 750 | 258, OLYMPIA 58, 1698 | 343, LACEY 43, 2023 | 701, YELM 1, 2949 |
| 063, JAMES, 697 | 115, FOREST, 1762 | 163, SMITH LAKE, 1170 | 211, OLYMPIA 11, 572 | 259, OLYMPIA 59, 753 | 344, LACEY 44, 1666 | 702, YELM 2, 1672 |
| 065, LUPRA BEACH, 1039 | 116, ST CLAIR, 741 | 164, EVERGREEN SHORES, 1013 | 212, OLYMPIA 12, 1719 | 260, OLYMPIA 60, 1606 | 345, LACEY 45, 1043 | 703, YELM 3, 2733 |
| 066, FISHTRAP, 714 | 117, HICKS, 167 | 165, SUNWOOD LAKES, 1789 | 213, OLYMPIA 13, 780 | 261, OLYMPIA 61, 95 | 346, LACEY 46, 1590 | 704, YELM 4, 2014 |
| 067, QUINCE, 2 | 118, FLEETWOOD, 1732 | 166, EATON CREEK SOUTH, 145 | 214, OLYMPIA 14, 585 | 301, LACEY 1, 1255 | 347, LACEY 47, 1259 | 705, YELM 5, 2113 |
| 069, SIMMONS 3, 39 | 119, LYDIA HAWK, 1814 | 168, HOLMES, 631 | 215, OLYMPIA 15, 1075 | 302, LACEY 2, 1466 | 348, LACEY 48, 1639 | 801, BUCODA, 608 |
| 070, SIMMONS 4, 57 | 120, HAYS, 1036 | 169, MCALISTER CREEK, 1577 | 216, OLYMPIA 16, 145 | 303, LACEY 3, 1070 | 349, LACEY 49, 498 | |
| 074, PINES, 1519 | 121, INDIAN SUMMER, 714 | 170, ROCHESTER 3, 1334 | 217, OLYMPIA 17, 678 | 304, LACEY 4, 996 | 351, LACEY 51, 787 | |

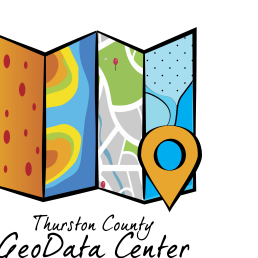
Cities Urban Growth Areas

0 1 2 3 4 5 Miles

The information included on this map has been compiled by Thurston County staff from a variety of sources and is subject to change without notice. Additional elements may be present in reality that are not represented on the map. Ortho-photos and other data may not align. The boundaries depicted by these datasets are approximate. This document is not intended for use as a survey product.

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COMMISSION MEETING

<u>BRIEFING DATE/TIME:</u>	December 12, 2022
<u>DEPARTMENT:</u>	Commission - POCAC
<u>STAFF CONTACT/TITLE:</u>	Dan Penrose, AICP Contract Planner Telephone: 360-352-1465 Email: dan.penrose@scjalliance.com
<u>TOPIC:</u>	Amendment to Resolution regarding Port of Olympia Citizen Advisory Committee (POCAC)
<u>PURPOSE:</u> <i>Check all that apply</i>	☐ Information only ☒ Decision needed ☐ Follow up from previous briefing
<u>BACKGROUND & OVERVIEW:</u>	
In April 2022, two POCAC members resigned from the committee, leaving just four members in a group that is required to have a minimum of nine and allows a maximum of 13 volunteers. The Port conducted a recruitment process over the Summer and Fall. The first series of applications were reviewed and interviews were held with five candidates on October 18. At that meeting the interview team decided to extend the application deadline for another three weeks. On November 8 the committee reviewed another set of applications and interviewed five more candidates. Section 2 of Resolution 2021-06 states: Composition: The POCAC shall consist of up to 13 with no less than 9 members serving as selected by the Port Commission. On November 29, the interview panel, comprised of Commissioner Evans Harding, Executive Director Gibboney and POCAC chair Pattin recommended approval of all ten candidates interviewed, which would exceed the current maximum of 13 by one. The interview panel recommended amending Resolution 2021-06 to increase the maximum number of POCAC members to 17 in order to allow the Commission flexibility to consider additional applications in 2023.	
<u>DOCUMENTS ATTACHED:</u>	
▪ Power Point Presentation ▪ Draft Amended Resolution	
<u>OPTIONS WITH PROS & CONS:</u>	
The Commission can approve, deny or modify the POCAC interview panel recommendation to increase the maximum number of POCAC members from 13 to 17. If the Commission chooses to deny the amendment to the resolution, the maximum number of POCAC members will remain at 13 and one of the ten candidates from the applicant pool will need to be removed from consideration.	

If the Commission chooses to approve the amendment to bring the maximum membership to 17, the additional positions would allow the Commission flexibility to consider POCAC applications in 2023. The size of the POCAC (minimum of 9, maximum of 17) would mean there are increased opportunities for smaller groups of POCAC members to form subcommittees to work on individual tasks. While groups of this size provide a diversity of opinions and viewpoints, they can be challenging to administer and keep on track.

STAFF RECOMMENDATION:

Approval of Resolution 2022-15.

Revision to POCAC Resolution

December 12, 2022
DAN PENROSE, AICP
CONTRACT PLANNER

1

Revision to POCAC Resolution

To increase the number of Citizen Advisory Council Members to 17

- Since April 2022 the Port's Citizen Advisory Council (POCAC) has had just four members – five short of the minimum nine required by Resolution 2021-06.
- Between April and October the Port sought volunteers for the POCAC.
- The first round of review of applicants was on October 18.
- A second round of application reviews was held on November 8.

2

2

Revision to POCAC Resolution

To increase the number of Citizen Advisory Council Members to 17

- On November 29 the interview panel, comprised of Commissioner Amy Evans Harding, Executive Director Sam Gibboney and POCAC chair Debby Pattin recommended that all ten candidates be invited to join the POCAC.
- 14 members of the POCAC would violate Section 2 Resolution 2021-06:
Composition: The POCAC shall consist of up to 13 with no less than 9 members serving as selected by the Port Commission.
- The interview panel recommends that the Port Commission amend the resolution to increase the maximum number of POCAC members to 17.

3



3

Suggested Motion

"...move to approve Resolution 2022-15, as presented, increasing the maximum number of Citizen Advisory Council Members to 17."

4



4

PORT OF OLYMPIA COMMISSION

RESOLUTION 2022-~~xx15~~1-06

A RESOLUTION OF THE PORT OF OLYMPIA COMMISSION regarding the citizen advisory committee known as the Port of Olympia Citizens Advisory Committee (POCAC) and superseding Resolution 2021-06, 2019-03 & 2019-10

WHEREAS, the Port of Olympia desires to have a citizen advisory POCAC to advise the Port Commission on matters it may wish to assign to the citizen advisory POCAC from time-to-time; and

WHEREAS, this Resolution supersedes Port of Olympia Commission Resolution 2021-06, 2019-03 and 2019-10.

NOW, THEREFORE, BE IT RESOLVED, after due consideration it is the determination of the Port of Olympia Commission that:

1. The Port of Olympia Citizen Advisory Committee (POCAC):

The Port of Olympia Citizens Advisory Committee (POCAC) is a Committee of citizens selected through an application process as determined by the Port of Olympia Commission ("Port Commission"). The purpose of the POCAC is to provide advice to the Port Commission on tasks as assigned by the Port Commission. The POCAC is the successor of a former Committee referred to as the Planning Advisory Committee.

2. Composition:

The POCAC shall consist of up to ~~12~~17 with no less than 9 members serving as selected by the Port Commission.

3. Duties:

The POCAC shall advise the Port Commission on matters assigned by the Port Commission. It shall forward written, unsolicited public input received by POCAC members to the Port's Communication Manager who will determine how such unsolicited input shall be handled.

The Port shall supply an administrative assistant to publish the notice for scheduled meetings, to assist the POCAC by taking meeting minutes, recording discussion items, scheduling meetings, and other duties as agreed to by the administrative assistant and the POCAC.

The Executive Director may serve as ex-officio, non-voting member of the POCAC. The Executive Director will provide guidance when requested by the POCAC, and assign Port staff for expertise, if required.

4. Assignments:

The Port Commission may consider advice from the POCAC, the Port Commission will meet with the POCAC to discuss the scope of the assignment. This meeting will be held in accordance with RCW 42.30 (Open Public Meetings Act).

The Port Commission will identify the type of work products to be delivered by the POCAC. More than one product type may be requested:

- a. **Report or White Paper:** This product will help to create an awareness of policy issues among the Port Commission, staff and the public and to encourage an exchange of information and analysis. It can also serve as an educational tool. The Port Commission may or may not take action or give further direction to the Executive Director upon receipt of this product. The Port Commission may also choose to produce a supplemental document providing comment on a POCAC report of white paper.
- b. **Policy recommendation:** This product will explain the need for a new policy or modification or amendment to an existing policy to better align Port practices with Port values and focus areas. If the Port Commission decides to take action on such a recommendation, direction would be given to the Executive Director and or legal counsel for further analysis and preparation of proposed policy language for Port Commission consideration.
- c. **Project recommendation:** This product would present a recommendation for implementation by the Port. Should the Port Commission choose to take action, direction would be given to the Executive Director to include in the Port's annual budget process.
- d. **Advice to Executive Director:** This product serves to provide analysis and suggestions on current Port operations. Should the Port Commission choose, this product would be forwarded to the Executive Director for consideration. The Executive Director would report back to the Port Commission within a reasonable timeframe on the feasibility of implementation of suggestions and recommendations.

5. Work Plan:

The POCAC shall assign a Sub-Committee which will develop a work plan consistent with the assignments provided by the Port Commission.

6. Scheduled Meetings:

The POCAC will establish a meeting schedule consistent with the time necessary to complete a work plan and the assignment. The chair of the POCAC shall report periodically and no less than once a year to the Port Commission. Meetings and documents created by and for the POCAC are subject to the Open Public Meetings Act Chapter 42.30 and the Public Records Act Chapter 42.56 RCW.

7. Community Involvement:

The POCAC shall have the authority to solicit public involvement in many ways, consistent with the work plan.

Any matter referred to a POCAC Sub-Committee must ultimately be presented to the full POCAC for the POCAC's consideration and approval prior to forwarding any recommendation to the Port Commission.

All of the POCAC's scheduled meetings will be open to the public. A portion of the POCAC's scheduled meetings will be designated for public comment related to the POCAC's assignment(s) and consistent with the time limit of 15 minutes with 3 minute per speaker. The Chair or Vice Chair should promptly direct any other public comment not related to the POCAC's assignment(s) to the Port Commission or Port Staff via the most expedient means such as e-mail, telephone, website, etc.

8. Rules of Procedure:

The Port Commission will provide a copy of "Rules of Operation" for review and discussion by the POCAC. The Port Commission approved Rules of Operation will be utilized by the POCAC to accomplish objectives. Thereafter, if there are any proposed changes to the "Rules of Operation" the POCAC Chair will discuss such changes with the Port Commission to consider. The Port Commission may consider the POCAC's proposed changes and may consider approval of an amended copy of the Rules of Operation.

9. Officers and Sub-Committees:

The officers of the POCAC shall be a Chair and Vice Chair to preside and facilitate POCAC meetings and present special reports. The Chair and Vice Chair shall serve no more than two (2) consecutive one-year terms. The Chair and Vice Chair shall be elected by the POCAC members.

The Chairperson of the POCAC, or a designated representative of the POCAC, shall report to the Port Commission no less than ~~twice~~ once each year on POCAC activities. This report may be provided, in writing, or given verbally at a Joint POCAC/Port Commission meeting. The Chairperson of the POCAC shall determine the appropriate format for the report.

Commented [DP1]: Change made for consistency with section 6.

Each Sub-Committee will select a member to serve as a chair. The Sub-Committee Chair shall submit updates to the POCAC at regularly scheduled POCAC meeting and present the final report or presentation to the Port Commission.

10. Terms:

The POCAC members shall each serve no more than two (2) consecutive terms for a total of six (6) years. A full term is three-years. Each year the Port Commission shall appoint or reappoint persons to fill the expiring terms. At its discretion, the Port Commission will decide when it will fill a vacancy of an unexpired term. If four or more member's terms will expire simultaneously, the Port Commission has discretion to establish a different schedule for the appointments or reappointments to prevent simultaneous expirations.

11. Selection of New Members:

The process to select new members will consist of press releases to local media advertising the vacancy, recruitment process, and posted on the Port's website. The interview team will consist of the Port Commission Vice President or Port Commissioner Designee, the Executive Director, and the incoming Chair of the POCAC. Copies of each application will also be sent to the other two Port Commissioners for their review.

The Port may use automated tools, such as NEOGOV®, or similar software, to intake and process applications for new POCAC members.

The interview team will interview and evaluate each applicant based on past volunteer activities, private/public work experience, experience or knowledge regarding the Port of Olympia, representation of the three Port Commissioner Districts in Thurston County, and reason(s) for wanting to serve on the POCAC. In making recommendations for appointment, the interview team will strive to maintain at least two members of the POCAC from each of the three Port Commissioner Districts in Thurston County. After completion of all applicant interviews, the Port Commissioner serving on the interview team will recommend the appointment of the new member(s) at a regularly scheduled Port Commission meeting.

Commented [DP2]: Will need to be updated to 5.

Commented [DP3]: Same comment

12. Approval of Travel and Other Expenses:

The Port Commission will budget annually for unanticipated expenses and travel for POCAC members. The POCAC Chair shall request approval of travel and other expenses for POCAC members to the Executive Director. Any amount over the annual budget will come back to the Port Commission for approval.

ADOPTED by a majority of the members of the Port Commission for the Port of Olympia, a majority being present and voting on this Resolution at a regular Port Commission meeting on, _____, 2022~~2~~⁴, as attested to by the signatures below of the Port Commissioners physically present this ____ day of _____.

PORT OF OLYMPIA COMMISSION

By: _____
President

By: _____
Vice President

By: _____
Secretary



COMMISSION MEETING

<u>BRIEFING DATE/TIME:</u>	December 12, 2022
<u>DEPARTMENT:</u>	Commission - POCAC
<u>STAFF CONTACT/TITLE:</u>	Dan Penrose, AICP Contract Planner Telephone: 360-352-1465 Email: dan.penrose@scjalliance.com
<u>TOPIC:</u>	Appointing new members to Port of Olympia Citizen Advisory Committee (POCAC)
<u>PURPOSE:</u> <i>Check all that apply</i>	☐ Information only ☒ Decision needed ☐ Follow up from previous briefing
<u>BACKGROUND & OVERVIEW:</u>	
In April 2022, two POCAC members resigned from the committee, leaving just four members in a group that is required to have a minimum of nine and allows a maximum of 13 volunteers. The Port conducted a recruitment process over the Summer and Fall. The first series of applications were reviewed and interviews were held with five candidates on October 18. The applicants interviewed were: - Don Krug - Harry Branch - Quentin Phillips - Shannon Glenn - Sue Patnude At that meeting the interview team decided to extend the application deadline for another three weeks. On November 8 the committee reviewed another set of applications and interviewed five more candidates. - Anthony Hemstad - Bob Butts - Bob Wubbena - Darlene Kemery - James Thornton On November 29, the interview panel, comprised of Commissioner Evans Harding, Executive Director Gibboney and POCAC chair Pattin, recommended approval of all ten candidates interviewed. A full POCAC term is three years, with members allowed to serve two terms simultaneously. No recommendation was made by the interview panel on the staggering of terms for new members. Commissioners are permitted to establish a schedule for the appointments or reappointments to prevent losing a quorum in future years. Current POCAC members are: - Joel Hansen, (January 2020) first term - Deborah Pattin, Chair, (January 2018 – present) second term - Tom Symoniak, (January 2019 – present) second term - Cameron Wilson, (January 2018- present) second term	

<u>DOCUMENTS ATTACHED:</u>
▪ Power Point Presentation
<u>OPTIONS WITH PROS & CONS:</u>
The Commission can approve, deny or modify the POCAC interview panel recommendation to appoint these 10 candidates to the Citizens Advisory Committee. If the Commission chooses to approve all 10 candidates it would bring the total to 14. Staggered terms should be assigned to new POCAC members to prevent a ten-member turnover in January 2026. These terms could be assigned by Commissioners now or the staggering of terms could be discussed and consulted with incoming POCAC members at their January meeting. Some incoming members may prefer serving a partial term (less than three years) prior to seeking a full three year term.
<u>STAFF RECOMMENDATION:</u>
Approval of POCAC Candidates



APPOINTMENTS TO CITIZEN ADVISORY COMMITTEE

December 12, 2022
DAN PENROSE, AICP
CONTRACT PLANNER

1

Appointment of new members to POCAC

Adding 10 members to the Citizen Advisory Council

- Since April 2022 the Port's Citizen Advisory Council (POCAC) has had just four members – five short of the minimum nine required by Resolution 2021-06.
- Between April and October the Port sought volunteers for the POCAC.
- The first round of review of applicants was on October 18 and a second round of application reviews was held on November 8.

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POCAC Candidates

The panel interviewed the following candidates:

- Don Krug
- Harry Branch
- Quentin Phillips
- Shannon Glenn
- Sue Patnude
- Anthony Hemstad
- Bob Butts
- Bob Wubbena
- Darlene Kemery
- James Thornton

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Action Needed

Approve, deny or modify the slate of candidates.

Apply terms to candidates or request that the POCAC discuss and make a recommendation

- Staggered terms should be assigned to new POCAC members to prevent a ten-member turnover in January 2026.
- These terms could be assigned by Commissioners now or the staggering of terms could be discussed and consulted with incoming POCAC members at their January meeting.
- Some incoming members may prefer serving a partial term (less than three years) prior to seeking a full three-year term.

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Suggested Motion

"...move to appoint the 10 candidates, as presented, to serve on the Port of Olympia Citizens' Advisory Committee, and to determine staggered terms for these 10 members during the first calendar quarter of 2023."

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