

Port of Port Angeles

Port Angeles, Washington

Commissioner's Resolution No. **21-1240**

RESOLUTION OF THE PORT OF PORT ANGELES LEASE AND PROPERTY USE POLICY.

WHEREAS, under RCW 53.08.080, the Port Commission of the Port of Port Angeles is authorized to lease all lands, wharves, docks and real and personal property owned and controlled by the Port for purposes and upon such terms as the Commission deems proper; and

WHEREAS, state law requires no lease shall be for a period longer than fifty years with option for extensions for up to an additional thirty years unless the property involved is or is to be devoted to airport purposes; and

WHEREAS, state law permits property involved in being or will be devoted to airport purposes, the lease said property for such period as may equal the estimated useful life of such work or facilities, but not to exceed seventy-five years; and

NOW THEREFORE BE IT RESOLVED that the Port of Port Angeles Lease and Property Use Policy as set forth in **Exhibit A** attached hereto and by this reference incorporated herein, is adopted for the purpose of establishing the Port of Port Angeles Lease and Property Use Policy, including the standardized lease templates attached as its enclosures.

ADOPTED by the Port Commission of the Port of Port Angeles at a regular meeting thereof held this 27th day of July 2021.

PORT OF PORT ANGELES
BOARD OF COMMISSIONERS



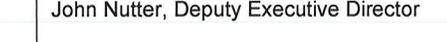
Steve D. Burke, President



Colleen M. McAleer, Vice President



Connie L. Beauvais, Secretary

Approval Required: (check box) <input checked="" type="checkbox"/> Commissioners (Policy) <input checked="" type="checkbox"/> Executive Director <input type="checkbox"/> Director	Submitted By:  Geoffrey James, Executive Director  John Nutter, Deputy Executive Director	Approval Reference: (if applicable) Res 21-1240 Adopted Date: October 16, 2017 revised September 9, 2014, rescinded July 27, 2021, adopted
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Purpose

For the purpose of establishing the administrative authority of the Executive Director related to certain leasing matters and providing guidance to staff on negotiating tentative lease terms that will be presented to the Commission.

Policy

I. Lease Terms:

1. Any lease of Port property shall be under a written agreement. Agreements shall be made in accordance with the Port’s standard form of lease found at the enclosures unless a deviation is approved by the Commission.
2. The lease rate for Port property shall be fair market value for such property. In no case will the rental amount be discounted more than 10 percent without approval by the Commission.
3. The intended use for Port property in any lease shall be expressly stated in such lease and shall be in accordance with the reasonable standards of use for such property.
4. The terms of a lease shall be generally consistent with other existing Port leases in the same or similar circumstances, and otherwise consistent with the Port’s policies, practices and guidelines.
5. Any lease that imposes any financial obligation on the Port for improvements to the leased property, in excess of \$10,000 will require Commission approval.

II. Preference for Term Lease over Month-to-Month:

1. Preference is to be given to term leases for the benefits of predictability of occupancy for the Port tenants, stability of lease revenue for the Port, and clarity as to the present and future ownership status of tenant improvements on Port property.
2. It is acceptable to enter into month-to-month leases:
 - i. When the Port intends to use the subject property for future planning or other engagements and needs the flexibility; or
 - ii. When the term of a tenant lease is unlikely to be for more than 1 year.

3. Depending on the circumstances, staff may need to take either a firm stance or provide a concession to those tenants in “holdover” status when negotiating for new term leases.¹ For renewal options, a short holdover status is acceptable while the Port is engaged in negotiating adjustments to fair market lease/use rate or other terms contemplated in the renewal option or when necessary for administrative reasons to process the renewal option.
4. Port staff will seek Commission review and approval of all Port tenants whose holdover status is likely to exceed a period of 12 months.
5. During the first quarter of each calendar year, Port staff will advise the Commission on the status of all month-to-month leases and holdover tenancies.

III. Bond/Security:

It is the preference of the Commission to obtain appropriate security for Port lease agreements in conformance with RCW 53.08.085. However, the Commission acknowledges certain circumstances exist which may justify the Commission’s exercise of discretion to waive or reduce the lease security requirement which may be presented to the Commission for consideration, including though not limited to:

1. Duration of a tenant’s tenancy with Port of 7 years or more, with consistent and timely satisfaction of lease payment, bond/security, and insurance obligations.
2. Value of tenant improvements.
3. Security value shortage falls within 20% of current range (due to CPI and other rent adjustments).
4. During the first quarter of each calendar year, Port staff will advise the Commission of the status of (i) all tenancies for which a lease security waiver was previously authorized by the Commission; (ii) all tenancies for which lease security is or may be deficient.

Commission review of lease security waiver/reduction is required if the circumstances related to the decision to waive or reduce the security requirement have materially changed. For example, if a lease rate increases due to CPI, the statutorily required security amount increases by the same amount. Even if the Commission previously waived or reduced a lease security requirement for a tenant in this circumstance, the Commission must determine whether justification for potential loss exposure is still appropriate in light of the increased total security requirement. Another example is if there has been a material change in the condition or value of the tenant improvement which served as the basis for waiving or reducing the security requirement.

For month-to-month leases, a minimum of one month’s rent shall be collected in advance and held by the Port as a security deposit for the full duration of the leasehold.

1. A tenant is in “holdover” status when it occupies the leased premises after the expiration of the term of the written lease agreement. Upon entering into holdover status, a tenant’s occupancy status becomes month-to-month.

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In addition to the security deposit, the Executive Director may require a damage or cleaning deposit in an amount the Executive Director deems appropriate.

Staff will report to the Commission annually on the number of leases and the total amount of potential loss exposure related to waived or reduced security requirements.

IV. Fair Market Value: Staff shall take reasonable steps to establish value for fair market rent rate, using the following guidelines:

1. Review market conditions every 3 – 5 years (depending on economic climate).
2. Employ a qualified independent professional to evaluate and/or establish current market rates.
3. Staff is authorized to establish a threshold variation from current market rental value of 10% (+/-) based on:
 - i. Economic value.
 - ii. Property condition.
 - iii. Tenant improvements vs Port improvements.
 - iv. Synergies with the Port or other Port tenants.
4. Any deviation from the 10% range shall be approved by Commissioners based on economic impact or other significant factors.

V. Insurance:

All leases shall be accompanied by evidence of premises liability and casualty insurance in fulfillment of the requirements of the lease.

VI. Other Agreements for the Use of Port Property: Licenses and agreements for the use of Port facilities, property and equipment shall be memorialized in writing, and shall require the user to provide adequate insurance or other suitable risk avoidance for the Port. Additionally, all property use agreements, including easements, the use of the Port real property shall meet the following conditions:

1. Limited to uses of Port property that are consistent or otherwise compatible with uses to which such property may otherwise reasonably be let.
2. Charges are at a reasonable rate, or otherwise establishes fair compensation for the use of Port property, except in those cases authorized by any separate policy or policies to waive or reduce Port facility or property use fees.
3. Are less than one year in duration unless approved by the Commission.

VII. Fees Paid to a Broker for Lease or Sales Transactions:

1. All real estate professionals and brokers with whom the Port conducts business with must be licensed in the State of Washington. To qualify for receipt of a broker fee from the Port, a broker must be the procuring

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cause of the lease or sale of Port property. A broker fee will not be paid on leases involving existing tenants for new leases, expansion, renewals, or options exercised.

2. For lease transactions, the broker fee will not exceed five percent (5%) of the net annual base rent for the initial term of the lease not to exceed five (5) years. For sale transactions, the broker fee will not exceed three percent (3%) of the total sales price.
3. All broker fees greater than \$50,000 shall be subject to the additional approval of the Port Commission. For broker fees over \$50,000 the broker fee and payout would be determined prior to listing as approved by the Port Commission.
4. Licensed Real Estate Professional. All real estate professionals and brokers whom the Port conducts business with must be licensed in the State of Washington.
5. Broker Must be the Procuring cause. In order to qualify for receipt of a broker commission fee from the Port, a Broker must be the procuring cause of the lease or sale of Port property.
6. The Port will retain the right to list Port property upon approval by the Commission.
7. Details concerning broker commissions is found within the Broker Commission Procedure.

VIII. References:

- Delegation of Administrative Authority to Executive Director
- RCW 53.08.080 Lease of Property – Authorized duration
- RCW 53.08.085 Lease of Property – Security for rent

IX. Enclosures:

1. Standard Commercial Lease
2. Standard Commercial Ground Lease
3. Standard Commercial Month to Month Lease
4. Standard Berthage Agreement
5. Standard Port Management Area Commercial Lease

Base Rent:

<u>Months of Lease Term</u>	<u>Rent Per Acre/Square ft. (per mo.)</u>	<u>Monthly Total</u>
Months: ___	\$ _____	\$ _____ plus applicable Leasehold Excise Tax

[Explanation of how lease rate increases from year to year and/or term to term]

Financial Security (see Section 5.4 for more information): \$ _____

Additional Unique Terms and Conditions:

ARTICLE II
Premises, Term, Renewals

2.1 **PREMISES:** In consideration of the rents hereinafter reserved and of the covenants and conditions set forth herein to be performed by Lessee, the Port does hereby lease the Premises to Lessee.

2.2 **TERM:** The term of this Lease shall be for _____ () years beginning _____, 20____, through _____, 20____. If Lessee takes possession of the Premises before the Commencement Date, Lessee shall pay the pro rata rent for the period prior to commencement of the Lease term.

2.3 **RENEWAL:** Subject to the terms and conditions herein, Lessee shall have the right to renew this Lease for _____ () consecutive _____ () year periods by giving written notice of such intention to the Port at least _____ () days prior to the expiration of the term of this Lease or any renewal thereof. Lessee shall not be entitled to renew this Lease unless the Lease is in good standing at the time of renewal and Lessee is not in default under the terms of this Lease or any other lease or agreement with the Port. The terms and conditions of any renewal shall be the same as set forth in this Lease, except that rent shall be recalculated as provided herein and the terms of this Lease shall be updated to be consistent with the terms and conditions then existing in the Port's Commercial Lease Agreement.

[OPTIONAL] Lessee's right of renewal is likewise subject to and contingent upon the Port's acceptance of Lessee's renewal notice, which the Port may withhold in its sole discretion. Should the Port decline to accept Lessee's renewal notice, this Lease will terminate upon the expiration of the then-existing term.

ARTICLE III
Rent, Rental Adjustment

3.1 **RENT:** The term "**Rent**" as used herein includes Base Rent, CAM Expenses (if any), applicable Washington State leasehold excise tax, and other fees and charges assessed herein. Base

Rent and Washington State leasehold excise tax shall be paid without the requirement that the Port provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement. Any other fees and charges which may be assessed by the Port herein, the Port shall first provide written notice thereof, and Lessee shall pay such fees and/or charges within thirty (30) days of receipt of such written notice without any counterclaim, setoff, deduction, defense or abatement.

3.1.1 Rent shall be paid on or before the first (1st) day of each month beginning on the Commencement Date. A late charge of one percent (1%) per month will be assessed against past due Rent from the date such Rent became due. If Rent is not received by the twentieth (20th) day of any month, Lessee shall pay the Port an additional fee of \$100 or five percent (5%) of the delinquent payment, whichever is greater, to defray costs of collecting and handling such late payment. All accrued interest and late charges shall be paid no later than the twentieth (20th) day of the month following that month in which such interest or late charges accrued.

3.1.2 **Base Rent Adjustment:** The Port may, in its discretion, adjust the Base Rent hereunder upon the provision of written notice prior to the anniversary of the Commencement Date. Upon the provision of such notice, the rental rate shall be automatically adjusted effective upon the month of the anniversary of the Commencement Date to reflect the percentage change in the Consumer Price Index for All Items in West - Size Class B/C, All Urban Consumers, as issued by the U.S. Department of Labor, Bureau of Labor Statistics, or the closest comparable index if the above index is no longer published, over the last full 12-month period immediately preceding the anniversary of the Commencement Date for which such data are available. If the resulting rent rate adjustment is negative, then the rental rate shall not be decreased but shall remain the same as the preceding period.

[OPTIONAL SECTION – USE WHEN THERE ARE COMMON AREA MAINTENANCE EXPENSES BEING SHARED BETWEEN TENANTS OR TENANTS AND THE PORT]

3.2 **COMMON AREAS:**

3.2.1 **Common Areas; Definition:** The term “Common Areas” shall mean those areas in and around the Premises owned by the Port that are provided and designated by the Port from time-to-time for the general non-exclusive use of the Port, Lessee, other tenants of the Port, and/or the respective employees, suppliers, shippers, customers, clients, invitees and licensees of such parties. Common Areas may include, but are not limited to, lobbies, hallways, common restrooms, electrical and mechanical areas, supply and janitorial rooms, exterior wall surfaces of the Premises walkways, driveways, parking areas, service areas, landscaped areas, and other Port owned areas provided for the non-exclusive use of its tenants. The Port or its agents shall operate, manage, equip, light, repair, replace and maintain the Common Areas for their intended purpose at such times and in such manner as the Port shall reasonably determine.

3.2.2 **Lessee’s Common Area Lease Rights:** The Port hereby grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, customers, clients and invitees during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time-to-time, subject to any rights, powers and privileges

reserved by the Port under the terms hereof or under the terms of any rules, regulations or restrictions governing the use of the Common Areas. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by prior written consent of the Port or the Port's designated agent, which consent may be revoked at any time. In the event that such unauthorized storage shall occur, then the Port shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be payable on demand by the Port.

3.2.3 **Changes to Common Areas:** The Port shall have the right from time-to-time to make changes to the Common Areas, including, without limitation: (i) changes in the location, size, shape and number thereof; (ii) to temporarily close any of the Common Areas for maintenance and public purposes so long as reasonable access to the Premises remains available; (iii) to add additional improvements to the Common Areas; and (iv) to use Common Areas while engaged in making additional improvements, repairs or alterations to the Premises or any portion thereof, as the Port may, in the exercise of sound business judgment, deem appropriate. The Port shall nevertheless diligently perform construction, repair or maintenance work to minimize interruptions in the use of Common Areas.

3.2.4 **Common Area Maintenance Expenses; Definition:** The term “**Common Area Maintenance Expenses**” or “**CAM Expenses**” as used herein shall mean the sum of the costs and expenses incurred by the Port with respect to maintenance, upkeep and repair of and to the Common Areas.

3.2.5 **Payment of CAM Expenses:** Lessee shall pay to the Port Lessee's agreed pro rata share of the CAM Expenses (“**Pro Rata Share**”). Lessee's Pro Rata Share is based on the percentage obtained by dividing the agreed rentable area of the Premises by the agreed building area. The parties agree that Lessee's Pro Rata Share under this Lease is ___ percent (____ %), thereby resulting in a monthly payment of _____ Dollars (\$ _____) for the first twelve months of this Lease.

3.2.6 **Adjustment of CAM Expenses:** Each year of this Lease or renewal term (as the case may be), the Port will establish an estimate of a year's total CAM Expenses, and Lessee shall pay Lessee's Pro Rata Share on a monthly basis in accordance with the monthly rental payment obligations set forth in Section 3.1 of this Lease. Within sixty (60) days after the expiration of each Lease year, the Port shall deliver to Lessee a reasonably detailed statement showing Lessee's Pro Rata Share of the actual total of CAM Expenses incurred during the preceding year. If Lessee's payments under this Paragraph during the preceding year were less than Lessee's Pro Rata Share as indicated on said statement, Lessee shall pay to the Port the amount of the deficiency within thirty (30) days after delivery by the Port to Lessee of said statement; any overpayment made by Lessee shall be credited toward Lessee's liability for Rent for succeeding months.

3.3 **ABATED RENT:** If this Lease provides for a postponement of any monthly rental payments or other rent concession, such postponed rent is called the “**Abated Rent.**” Lessee shall be credited with having paid all of the Abated Rent on the expiration of the term of this Lease only if Lessee has fully, faithfully and punctually performed all of Lessee's obligations hereunder,

including the payment of all Rent, including, if applicable, Abated Rent, and all other monetary obligations and the surrender of the Premises in the condition required by this Lease. If Lessee defaults and does not cure within any applicable grace period, the Abated Rent shall immediately become due and payable in full and this Lease shall be enforced as if there were no such rent abatement or other rent concession. In such case, Abated Rent shall be calculated based on the full initial rent payable under this Lease, plus interest thereon at the rate of twelve percent (12%) per annum from date each monthly rental payment was postponed.

3.4 **LEASEHOLD AND OTHER TAXES:** Throughout the term of this Lease, Lessee shall be liable for, and shall pay or, as applicable, reimburse the Port for, all license fees and excise and occupation taxes covering the business conducted on the Premises, all taxes on property of Lessee on the Premises, ad valorem taxes or taxes levied in lieu of an ad valorem tax, and any taxes on the leasehold interest created by this Lease and/or measured by the rent payments hereunder, whether imposed on Lessee or on the Port. With respect to the leasehold excise tax payable hereunder, Lessee shall pay to the Port with each rent payment an amount equal to the tax. All other tax amounts for which the Port is or will be entitled to reimbursement from Lessee shall be paid by Lessee to the Port at least fifteen (15) days prior to the due dates of the tax amounts involved, provided that Lessee shall be given at least ten (10) days' prior written notice of the amounts payable by Lessee.

ARTICLE IV

Use of Premises, Condition of Property, Improvements, Removal of Property, Maintenance, and Utilities

4.1 **LESSEE'S USE OF THE PREMISES:** Lessee shall conduct only the following activity on the Premises: _____ (the "Authorized Use") and such additional uses incidental or otherwise related to such Authorized Use.

4.1.1 Lessee shall be in default under this Lease if it: (i) ceases conducting the Authorized Use for any period of time exceeding one hundred twenty (120) consecutive days; or (ii) conducts any other business or activity on the Premises without first obtaining a validly executed lease modification. In conducting the Authorized Use, Lessee shall properly and fairly serve the public, providing reasonable hours of operation, and reasonably suitable service.

4.1.2 Notwithstanding the foregoing described use, the Premises shall not be used to store, distribute or otherwise handle flammable, dangerous or hazardous materials, excepting only those necessary to conduct the Authorized Use. At the request of the Port, Lessee shall provide a list of all flammable, dangerous or hazardous materials stored or used on the Premises.

4.2 **ACCEPTANCE OF PREMISES:** Lessee accepts the Premises, including all existing improvements thereon, "as is" without further maintenance liability on the part of the Port, except as otherwise specifically noted herein. Lessee is not relying on any representations of the Port as to condition, suitability, zoning restrictions or usability, except the Port's right to grant a lease of the Premises.

4.3 **CONSTRUCTION OF TENANT IMPROVEMENTS:** Lessee shall abide by the following terms with regard to making any tenant improvements on the Premises (“**Tenant Improvements**”):

4.3.1 Subject to obtaining the Port’s written approval, Lessee may make and install, at its own expense, such Tenant Improvements as are normal and customary in connection with the Authorized Use set forth herein. Lessee’s contractor, if any, shall be subject to the Port’s approval, not unreasonably withheld. The Port reserves the right to condition its approval upon Lessee providing payment and/or performance bonds satisfactory to the Port. Lessee shall submit plans to and obtain written approval from the Port before commencing any Tenant Improvements. The Port shall have a reasonable period of time to review such plans prior to issuing a decision. Upon the provision of written notice to Lessee that the Port’s review of plans will require extraordinary staff review time, the Port may charge Lessee a reasonable pre-established fee for staff, consultant or attorney time required to review the plans. All Tenant Improvements which are to be designated fixtures shall be so designated by the Port upon the Port’s approval of the plans for such improvements. Unless otherwise agreed, all improvements by Lessee shall conform to the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq. (the “**ADA**”).

4.3.2 **Unauthorized Improvements:** Any Tenant Improvements made on the Premises without the Port’s prior written consent or which are not in conformance with the plans submitted to and approved by the Port (“**Unauthorized Improvements**”) shall be subject to removal by Lessee upon sixty (60) days’ written notice from the Port.

4.4 **TITLE TO LESSEE IMPROVEMENTS AND PERSONAL PROPERTY AT END OF LEASE:** Except as otherwise provided in the description of the Premises in Article I above, as of the Commencement Date, all existing structures, buildings, installations, and improvements of any kind located on the Premises are owned by and title thereto is vested in the Port. Prior to the conclusion of the Lease, Lessee shall remove the following from the Premises:

- a. All equipment;
- b. All personal property;
- c. All Tenant Improvements not designated as fixtures; and
- d. All Lessee Improvements not designated as fixtures in Article I above or pursuant to Section 4.3.1 above.

4.4.1 If any of the foregoing items are not removed from the Premises by the conclusion of the Lease or when the Port has the right of re-entry, then the Port may, at its sole option, elect any or all of the following remedies:

- a. Upon the expiration of thirty (30) days’ written notice to Lessee that equipment, personal property and/or Lessee Improvements remaining on the Premises will be removed therefrom, the Port may remove any or all of the items and dispose of them without

4.6 **UTILITIES AND SERVICES:** Lessee 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. The Lessee will ensure all utility services are transferred to their name upon commencement of this agreement. 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, Lessee agrees to pay to the Port Lessee's pro-rata share of the cost of any such utility services. Lessee'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. At the conclusion of this Lease, Lessee shall arrange for such utility services to be terminated and for the final bill to be sent to Lessee. Lessee shall be liable for all utility charges that accrue if it fails to so terminate services.

4.7 **COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS:**

4.7.1 Lessee agrees to take reasonable action to comply with all applicable rules and regulations of the Port pertaining to the Premises now in existence or hereafter promulgated for the general safety and convenience of the Port, its various lessees, invitees, licensees and the general public upon receipt of notice of the adoption of such regulations.

4.7.2 Lessee agrees to comply with all applicable federal, state and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters. Any fees for any inspection of the Premises during the Lease term by any federal, state or municipal officer related to Lessee use and occupancy of the Premises and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

[4.8 **MARINE TARIFF:** Lessee's use of the terminal and/or dock is subject to currently published marine tariff rates. Lessee is solely responsible for payment of marine tariffs.]

ARTICLE V
Insurance and Financial Security

5.1 **CASUALTY LOSS OF LESSEE:** The parties hereto agree that the Port shall not be responsible to Lessee for any property loss or damage done to Lessee's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be Lessee's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Port, Lessee, third party, or act of nature.

5.2 **INSURANCE:**

5.2.1 **Liability:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease a comprehensive general liability policy covering on an occurrence basis all claims for personal injury (including death) and property damage (including

all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. This policy shall also include contractual liability coverage for all indemnities provided under this Lease. Limit per occurrence shall not be less than \$2,000,000, or the equivalent. General aggregate limit shall not be less than \$4,000,000, when applicable (and will be endorsed to apply separately to each site or location.) Limit per claim and in the aggregate shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$4,000,000. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to the Port.

5.2.2 **Property Insurance.** At all times during the term of this Lease, Lessee shall maintain in effect on Lessee-owned improvements fire and extended coverage property insurance for physical loss and damage *excluding* earthquake and flood insurance. Such policy or policies shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of Lessee's improvements thereon, which amount shall be adjusted not less frequently than annually.

AND/OR

5.2.2 **Property:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease fire and extended coverage property insurance for physical loss and damage, written on an "all risks" basis *excluding* earthquake and flood insurance, to the Leased Premises and to all Lessee-owned improvements, with the Port named as a loss payee. Such policy or policies shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement value, which amount shall be adjusted not less frequently than annually. The proceeds of such insurance in case of loss or damage shall be first applied on account of the obligation of the Port to repair and/or rebuild the Leased Premises to the extent that such proceeds are required for such purpose. Lessee shall also procure and maintain during the term of this Lease and any extensions or renewals of this Lease business interruption insurance by which Rent will be paid to the Port for a period of up to one (1) year if the Premises are destroyed or rendered inaccessible by a risk insured against by a policy of fire and extended coverage property insurance, with vandalism and malicious mischief endorsements.

5.2.3 **Workers' Compensation; Employer's Liability/Stop Gap:** If Lessee has employees, Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease and any renewals or extensions of this Lease, Workers' Compensation as required by the State of Washington, with statutory limits, and Employer's Liability/Stop Gap Insurance with limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

5.2.4 **Pollution Legal Liability and Remediation:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease, Pollution Legal Liability and Remediation insurance for all operations, with a limit no less than \$2,000,000 per claim or occurrence and \$4,000,000 aggregate per policy period of one year. This policy shall include coverage for bodily injury, property damage personal injury and environmental site restoration, including fines and penalties in accordance with applicable EPA or state regulations. Lessee shall maintain this coverage for a minimum of five (5) years after the expiration or earlier termination of this Lease.

5.2.5 **Excess Liability/Umbrella Coverage:** Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease and any extension or renewal of this Lease, Umbrella Liability Insurance providing excess coverage over primary liability coverages, including Employer's Liability, of not less than \$4,000,000.

5.2.6 **Verification of Coverage:** For each insurance policy required herein, Lessee shall provide to the Port, prior to Lessee's occupancy of the Premises, original certificates of insurance, all required amendatory endorsements establishing coverage required under this Lease, a copy of each policy declarations and endorsements page, and complete copies of each policy. Provided, the Port's failure to obtain the required documents prior to Lessee's occupancy shall not be deemed a waiver of Lessee's obligation to provide them. Receipt of such certificate or policy by the Port does not constitute approval by the Port of the terms of such policy.

5.2.7 **Additional Insured; Primary Coverage; Non-Contributory:** Each insurance policy required herein shall name the Port, and only the Port, as an additional insured. For any claims related to this Lease, Lessee's insurance coverage shall be primary insurance coverage as to the Port. Any insurance or self-insurance maintained by the Port shall be excess of Lessee's insurance and shall not contribute with it.

5.2.8 **Changes in Coverage Requirements:** The Port reserves the right to modify any insurance requirements set forth herein, including limits, at the same time as revaluation of the annual Rent, as a condition of approval of assignment or sublease of this Lease, upon any breach of the environmental liability provision herein, upon a material change in the condition of any improvements, upon a change in the Authorized Use, or under other special circumstances as determined by the Port. Lessee shall obtain new or modified insurance coverage within thirty (30) days after changes are required by the Port.

5.2.9 **Substitute Coverage:** If Lessee fails to procure and maintain any insurance required herein, the Port shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums, chargeable to Lessee. Lessee shall pay to the Port upon demand the full amount paid by the Port.

5.2.10 **Negligence of Lessee:** Each insurance policy required herein shall expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance.

5.2.11 **Self-Insured Retentions:** If Lessee is self-insured, self-insured retentions must be declared to and approved by the Port. At the Port's option, either (i) Lessee shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Port; or (ii) Lessee shall provide a financial guarantee satisfactory to the Port guaranteeing payment of losses and related investigation, claim administration and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Port.

5.2.12 **Acceptability of Insurers:** All insurance required herein shall be placed with insurers authorized to conduct business in the state of Washington with a current A.M. Best's rating of no less than A-VII, unless otherwise specifically authorized by the Port.

5.2.13 **Notice of Cancellation:** Each insurance policy required herein shall expressly provide that coverage shall not be canceled or changed except with prior written notice to the Port of no less than thirty (30) days. Lessee shall provide the Port with any revised endorsements, policy declarations and endorsements pages, and policies as soon as practicable after any changes are made to any policy.

THE FOLLOWING SECTIONS (5.2.) ARE PROVIDED FOR INCLUSION GIVEN THE APPROPRIATE SITUATION.

5.2. **Airport General Liability:** Lessee shall procure and maintain during the term of this Lease Airport General Liability Insurance on an occurrence basis. This insurance shall include personal injury and property damage liability coverage, contractual liability coverage for all indemnities provided under this Lease, and fuel storage and self-fueling operations liability. Limit per occurrence shall not be less than \$5,000,000. The general aggregate limit shall not be less than \$7,000,000 when applicable. Limit per claim and in the aggregate shall not be less than \$5,000,000. The annual aggregate limit shall not be less than \$7,000,000.

5.2. **Aircraft Liability:** Lessee shall procure and maintain during the term of this Lease Aircraft Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000, and no less than \$1,000,000 per seat for passenger liability.

5.2. **Hangar Keeper's:** Lessee shall procure and maintain during the term of this Lease Hangar Keeper's Insurance in an amount not less than \$1,000,000 combined single limit for each aircraft.

5.2. **Marine General Liability:** [To be used in place of Liability Insurance under 5.2.1.] Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease Marine General Liability insurance covering on an occurrence basis all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. This policy shall also include coverage for Contractual Liability, Products/Completed Operations, Sudden and Accidental Pollution, and Marina Operators Legal Liability. Limit per occurrence shall not be less than \$2,000,000, or the equivalent. General aggregate limit shall not be less than \$4,000,000, when applicable. Limit per claim and in the aggregate shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$4,000,000. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to the Port.

5.2. **Protection and Indemnity:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease Protection and Indemnity Insurance, in an amount not less than \$1,000,000, and Hull and Machinery Coverage, for any vessel owned by Lessee.

5.2. **Automobile Liability:** Lessee shall procure and maintain an Automobile Liability policy covering all owned, not-owned and hired automobiles. The limits of liability shall be not less than \$1,000,000.00. The foregoing insurance policy shall name the Port as an additional insured.

5.3 **WAIVER OF SUBROGATION:** The Port and Lessee 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 Lessee. Each party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

5.4 **FINANCIAL SECURITY:**

5.4.1 In compliance with the requirements of RCW 53.08.085 (as presently codified or hereafter amended) and other laws of the State of Washington, Lessee agrees it will secure its performance of all obligations under this Lease by procuring and maintaining, during the term of this Lease, a corporate surety bond (the “**Bond**”), or by providing other financial security satisfactory to the Port, in an amount totaling:

- One-sixth of the total Rent for the then-current term of this Lease.
 - Not less than One Hundred Percent (100%) of the sum of annual Rent.
 - Other: _____
-
-

5.4.2 The Bond shall be in a form and issued by a surety company acceptable to the Port and shall comply with the requirements of Washington law. Lessee shall obtain such Bond and forward evidence thereof to the Port or shall provide to the Port such other financial security as may be required hereunder, within thirty (30) days of execution of this Lease, but in no event later than the Commencement Date of this Lease. Such Bond shall be kept in effect during the term of this Lease.

5.4.3 If the financial security amount required hereunder is to be not less than 100% of the sum of annual Rent, that financial security amount is subject to increases to reflect any Base Rent adjustments as provided in Section 3 above. In that event, at no time may the security amount be less than 80% of the then-current annual Rent, and the Port may at any time require Lessee to provide sufficient additional security to restore the security amount to no less than 100% of the then-current total annual Rent due hereunder. No future amendment or extension to this Lease shall be effective until the adjusted financial security amount has been provided as required.

5.4.4 Upon any default by Lessee in its obligations under this Lease and Lessee's failure to cure such default in accordance with its rights to do so under this Lease, the Port may collect on the Bond or other financial security to offset the liability of Lessee to the Port. Collection on the Bond or other financial security shall not relieve Lessee of liability for any amounts not offset by the amount collected, shall not limit any of the Port's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

5.4.5 Any Bond may provide for termination on the anniversary date thereof upon not less than one (1) year's written notice to the Port if the Lease is not in default at the time of said notice. In the event of any such termination, Lessee shall obtain a new Bond or other security, also subject to the Port approval, to replace the security being so terminated to be effective on or before the date of termination.

5.4.6 If the Port Commission exercises its discretion pursuant to RCW 53.08.085 to reduce or waive Lessee's Bond requirement under this Lease, the Port may at any time make a determination that changes in the material circumstances related to Lessee no longer support such reduction or waiver, and thereafter increase Lessee's Bond requirement up to that required by RCW 53.08.085.

ARTICLE VI

Environmental Liability

6.1 **ENVIRONMENTAL INDEMNIFICATION**: Lessee shall defend (with legal counsel suitable to the Port), indemnify and hold the Port harmless from any and all claims, demands, judgments, orders or damages resulting from Hazardous Substances on the Premises caused in whole or in part by the activity of Lessee, its agents or subtenants during any period of time that Lessee has occupied all or a portion of the Premises during the term of this Lease or any previous lease or agreement. The term "Hazardous Substances" as used herein shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sec. 1257 et seq.; the Clean Air Act, 42 USC Sec. 2001 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxic Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated there under.

6.1.1 Lessee's defense and indemnity obligations under this article are unconditional, shall not be discharged or satisfied by the Port's re-entry of the Premises or exercise of any other remedy for Lessee's default under this Lease, shall continue in effect after any assignment or sublease of this Lease, and shall continue in effect after the expiration or earlier termination of this Lease.

6.1.2 Although Lessee shall not be liable for any Hazardous Substances that existed on the Premises prior to commencement of its leasehold relationship with the Port (whether by this Lease or any prior lease agreements), Lessee shall be responsible for the costs of any environmental investigations or remediation arising from any development or use of the Premises by Lessee, and Lessee hereby releases the Port from any contribution claim for those costs. By

way of example only, if Lessee excavates soil on the Premises which contains Hazardous Substances, then Lessee will be responsible for the cost associated with disposing of those disturbed soils.

6.2 **CURRENT CONDITIONS AND DUTY OF LESSEE:** The Port makes no representation about the condition of the Premises. Hazardous Substances may exist in, on, under or above the Premises. Lessee should, but is not required to, conduct environmental assessments or investigations of the Premises prior to or during this Lease to determine the existence, scope and location of any Hazardous Substances. If there are any Hazardous Substances in, on, under or above the Premises as of the Commencement Date, Lessee shall exercise the utmost care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions.

6.2.1 Prior to conducting any environmental investigation of the subsurface of the Premises, Lessee shall provide prior written notice to the Port. Lessee shall provide the Port with the results of all such investigations.

6.3 **NOTIFICATION AND REPORTING:** Lessee shall immediately notify the Port if Lessee becomes aware of any of the following:

a. A release or threatened release of Hazardous Substances in, on under or above the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises;

b. Any problem or liability related to or derived from the presence of any Hazardous Substance in, on under or above the Premises, any adjoining property or any other property subject to use by Lessee in conjunction with its use of the Premises;

c. Any actual or alleged violation of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances with respect to the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises; or

d. Any lien or action with respect to any of the foregoing.

6.3.1 Lessee shall, at the Port's request, provide the Port with copies of any and all reports, studies or audits which pertain to environmental issues or concerns and to the Premises, and which are or were prepared by or for Lessee and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

6.3.2 Upon expiration or sooner termination of this Lease, Lessee shall remove from the Premises any soils or other media impacted by Hazardous Substances where such materials were deposited on the Premises by Lessee or its employees, representatives or agents. Any failure to

complete such removal by the expiration or sooner termination of this Lease, and upon the expiration of thirty (30) days' notice that such materials remain on the Premises, Lessee shall be deemed a holding over by Lessee subject to the provision of Section 7.21 (HOLDING OVER). Lessee shall represent and warrant that, upon termination of the Lease, all Hazardous Substances that Lessee is required to remove from the Premises pursuant to this subsection have been removed from the Premises.

ARTICLE VII

Miscellaneous Provisions

7.1 **LESSEE WILL OBTAIN PERMITS:** Lessee agrees to obtain and comply with all necessary permits for any Authorized Use or leasehold improvement. If Lessee fails to obtain and comply with such permits, then Lessee accepts full responsibility for any and all resulting costs incurred by the Port, including actual attorneys' fees. In this way, Lessee agrees to be solely responsible for all damages, costs and expenses incurred as a result of Lessee's failure to fully comply with any necessary permit process and requirements.

7.2 **LIENS:** Lessee agrees to keep the Premises free and clear of all liens and charges whatsoever. Lessee shall not allow any mechanics' and materialmen's or other liens to be placed upon the Premises. If such a lien is placed or recorded, Lessee shall cause it to be discharged of record, at its own expense, within thirty (30) days of the Port's demand. Failure to comply with the Port's demand within thirty (30) days shall be a default under the terms of this Lease. Notwithstanding the foregoing, the Port acknowledges that Lessee may use its Tenant Improvements as security for a loan, and the Port agrees to reasonably cooperate with Lessee and its creditor(s) to allow such creditor(s) to obtain such security.

7.3 **INDEMNIFICATION AND HOLD HARMLESS:** The Port, its employees and/or 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 Lessee or by others as a result of any condition (including existing or future defects in the Premises) or occurrence whatsoever related in any way to the Premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the Premises and of the areas adjacent thereto. Lessee agrees to defend and to hold and save the Port (including its commissioners, employees and/or agents) harmless from all liability or expense (including attorneys' fees, costs and all other expenses of litigation) in connection with any such items of actual or alleged injury or damage. Lessee specifically agrees that any bond or other security provided pursuant to any provisions of this Lease shall extend to the indemnity agreed to herein. Lessee acknowledges that it expressly and specifically waives immunity under the industrial insurance statute of the state of Washington, Title 51 RCW, for purposes of this indemnification provision and further acknowledges that this waiver was mutually negotiated by the parties.

7.4 **LAWS AND REGULATIONS:** Lessee agrees to conform to and abide by all applicable rules, codes, laws, regulations and Port policies in connection with its use of the Premises and the construction of improvements and operation of Lessee's business thereon and not to permit said

Premises to be used in violation of any applicable rule, code, law, regulation, Port policy, or other authority.

7.4.1 Lessee's obligations herein shall include, but in no way be limited to, the obligation to comply with all State and Federal environmental laws and regulations.

7.5 **WASTE AND REFUSE**: Lessee agrees not to allow conditions of waste and refuse to exist on the Premises and to keep the Premises in a neat, clean and orderly condition and to be responsible for all damages caused to the Premises by Lessee, its agents, or any third party on the Premises.

7.6 **DAMAGE AND DESTRUCTION**:

7.6.1 **Port Owned Buildings/Improvements**: Except as otherwise stated herein, should the Premises be partially damaged by fire or other casualty, or rendered partially unfit for use by reason of fire or other casualty, the Premises shall be repaired with due diligence by the Port, and in the meantime the Rent (as defined in Section 3.1 above) shall be abated in the same proportion that the untenable portion of the Premises bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs. Lessee shall cooperate fully in obtaining and making available proceeds of insurance provided by Lessee in furtherance of such repairs.

7.6.2 **Lessee Owned Buildings/Improvements**: If any building or improvement erected by Lessee on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Lessee may, at its option and at its sole cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the Port. Lessee shall provide the Port notice of its intention to repair or restore the Premises within sixty (60) days after the damage or loss occurs. Such work of repair or restoration shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed with due diligence but not longer than one (1) year, if possible, or as soon thereafter as is reasonably possible 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, or if Lessee elects not to repair or restore, to the cost of removing, demolishing, or clearing off the building or improvements. If (i) there are not insurance proceeds, or (ii) the same shall be insufficient for said purpose, Lessee shall make up the deficiency out of its own funds. Should Lessee fail or refuse to make the repair, restoration or removal as hereinabove provided, then in such event said failure or refusal shall constitute a default under the covenants and conditions hereof, and all insurance proceeds so collected shall be forthwith paid over to and be retained by the Port on its own account, and the Port may, but shall not be required to, sue and apply the same for and to the repair, restoration or removal of said improvements, and the Port may, at its option, terminate this Lease as elsewhere provided herein.

7.6.3 Except as otherwise stated herein, should the Premises be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the Premises are rendered

wholly unfit for their accustomed uses, the Port shall have the option to terminate this Lease on thirty (30) days' notice, effective as of any date not more than thirty (30) days after the occurrence. In the event that this Section shall become applicable, the Port shall advise Lessee within thirty (30) days after the happening of any such damage whether the Port has elected to continue the Lease in effect or to terminate it. If the Port shall elect to continue this Lease, it shall commence and prosecute with due diligence any work necessary to restore or repair the Premises. If the Port shall fail to notify Lessee of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this Lease, and the Lease shall automatically terminate thirty (30) days after the occurrence of the damage. For the period from the occurrence of the damage to the Premises as described in this Section to the date of completion of the repairs to the Premises (or to the date of termination of the Lease if the Port shall elect not to restore the Premises), Rent due hereunder shall be abated in the same proportion as the untenable portion of the Premises bears to the whole thereof.

7.7 **SIGNS**: Lessee may place in or upon the Premises only such signs as are related to the Authorized Use of the Premises, PROVIDED that Lessee shall first obtain Port's written consent as to size, location, materials, method of attachment, and appearance. Lessee shall install any approved signs at Lessee's sole expense and in compliance with all applicable laws, ordinances, rules and regulations. Lessee shall not damage or deface the Premises in installing or removing signs and shall repair any damage to the Premises caused by such installation or removal.

7.8 **ATTORNEYS' FEES AND COURT COSTS**: In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Lease (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Lease, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

7.9 **ASSIGNMENT OF LEASE**: Lessee shall not assign, rent or sublease any portions of this Lease or any extension thereof, without the prior written consent of the Port, which consent shall not be unreasonably withheld, and no rights hereunder in or to said Premises shall pass by operation of law or other judicial process, or through insolvency proceedings. Otherwise, the rights and obligations hereof shall extend to and be binding upon their respective successors, representatives and assigns, as the case may be. Lessee shall furnish the Port with copies of all such proposed assignment, sublease or rental documents. For the purposes of this Lease, any change of ownership including sale, liquidation or other disposition of some or all of the corporate stock or limited liability company units will be considered an assignment. Should the Port consent to an assignment made by Lessee for the purposes of obtaining a loan or other consideration from a third party, then the Port's consent shall be made in accordance with the consent to assignment document used by the Port for these specific assignments. A copy of this consent form shall be provided by the Port upon request of Lessee.

7.9.1 If the Port refuses to consent to an assignment, Lessee's sole remedy shall be the right to bring a declaratory action to determine whether the Port was entitled to refuse such assignment under the terms of this Lease.

7.9.2 No consent by the Port to any assignment or sublease shall be a waiver of the requirement to obtain such consent with respect to any other or later assignment or sublease.

Acceptance of Rent or other performance by the Port following an assignment or sublease, whether or not the Port has knowledge of such assignment or sublease, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same.

7.9.3 A minimum handling and transfer fee (“Transfer Fee Deposit”) of Three Hundred Dollars (\$300.00) shall be payable by Lessee to the Port if Lessee requests the Port’s consent to a proposed assignment (including an assignment to a creditor for security purposes), sublease or modification of this Lease. The Port reserves the right to increase the Transfer Fee Deposit up to Five Hundred Dollars (\$500.00) if, in the Port’s sole judgment, the transaction will necessitate the expenditure of substantial time and expense on the part of the Port. Such Transfer Fee Deposit shall be submitted to the Port at the same time that Lessee requests the Port’s consent to the proposed sublease, assignment or modification. If the Port’s reasonable and customary attorneys’ fees exceed the Transfer Fee Deposit, then Lessee agrees to reimburse the Port for such additional reasonable and customary attorneys’ fees. Lessee’s failure to remit this additional amount within sixty (60) days of the mailing of the notice of such charges, shall constitute a default under this Lease. Notwithstanding anything to the contrary herein, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.9.4 If, pursuant to any assignment or sublease, Lessee receives rent, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in the case of a sublease, a portion of the Premises in excess of such Rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder are appropriately taken into account, Lessee shall pay to the Port, as additional rent expenses hereunder, fifty percent (50%) of the excess of each such payment of Rent received by Lessee after its receipt.

7.9.5 If this Lease is assigned, or if the underlying beneficial interest of Lessee is transferred, or if the Premises or any part thereof is sublet to or occupied by anybody other than Lessee, the Port may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. No assignment or subletting shall affect the continuing primary liability of Lessee (which, following assignment, shall be joint and several with the assignee), and Lessee shall not be released from performing any of the terms, covenants and conditions of this Lease.

7.9.6 Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by the Port to any assignee or sublessee or failure of the Port to take action against any assignee or sublease, Lessee hereby agrees that the Port may, at its option, and upon not less than three (3) days’ notice to Lessee, proceed against Lessee without having taken action against or joined such assignee or sublessee, except that Lessee shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee.

7.10 **REIMBURSEMENT FOR EXPENSES**: Should Lessee seek to assign this Lease to any creditor as security for a loan or forbearance from such creditor, or attempt to otherwise assign, sublease, or modify this Lease between the parties during the term of this Lease or any renewal thereof, then Lessee agrees to reimburse the Port for all customary and reasonable attorney fees paid by the Port for the review and opinion of such attorney acting on the request. A failure to reimburse the Port within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease. Notwithstanding anything to the contrary herein, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease, or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.11 **TERMINATION**: Upon expiration or sooner termination of this Lease or any extension thereof, whether by expiration of the stated term or sooner termination thereof, as herein provided, Lessee shall surrender to the Port the Premises peaceably and quietly. Lessee shall restore the Premises to the condition existing at the time of initiation of this Lease, except for: (i) normal wear and tear, and (ii) any improvements which the Port permits to remain on the Premises.

7.11.1 If the Port, at its sole discretion, shall require the use of the Premises for a public use in connection with the business of the Port not involving the lease thereof to another private lessee or in the event that the Port, at its sole discretion, shall require the use of the Premises for a major capital improvement for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to Lessee not less than ninety (90) days before the termination date specified in the notice, unless the need for such use constitutes an emergency, in which case this Lease shall terminate as soon as is practicable.

7.11.2 If the United States Government, the State of Washington, or any agency or instrumentality of said government shall take title, possession, the rights of the Premises or any part thereof, the Port shall have the option to terminate this Lease, and if the taking has substantially impaired the utility of the Premises to Lessee, Lessee shall have the option to terminate this Lease. Both options shall be exercisable as of the date of said taking. If Lessee is not in default under any of the provisions of this Lease on the date of such taking, any rental prepaid by Lessee shall be promptly refunded to Lessee to the extent allocable to any period subsequent to said date, and all further obligations of the parties shall terminate except liabilities, which shall be accrued prior to such date. To the extent Lessee owns certain improvements upon the Premises and is not otherwise directly compensated therefore by the taking entity, Lessee shall receive a fair allocation of any award received by the Port due to termination for government use. Nothing herein contained shall preclude Lessee from independently pursuing a direct claim for compensation from the taking entity for the value of its improvements to the Premises or its leasehold interest therein.

7.11.3 If any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that occurred prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default

under any of the provisions of this Lease on the effective date of such termination, any rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

7.12 DEFAULT, CROSS DEFAULT, AND REMEDIES: Failure to pay Rent or any other monetary obligations by the first day of each month shall constitute a default under the terms of this Lease. If Lessee is in default in the payment of Rent or other monetary obligations then, at the Port's sole option, upon three (3) days' written notice, this Lease may be terminated and the Port may enter upon and take possession of the Premises. Without limiting the generality of the foregoing, Lessee expressly authorizes the Port to obtain a prejudgment writ of restitution in the event of default by Lessee. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.12.1 If Lessee shall fail to perform any term or condition of this Lease, other than the payment of Rent or other monetary obligations, then upon providing Lessee thirty (30) days' written notice of such default, and if Lessee fails to cure such default within the thirty (30) day notice thereof, the Port may terminate this Lease and enter upon and take possession of the Premises. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.12.2 If within any one (1) year period, the Port serves upon Lessee three notices requiring Lessee either to: (i) comply with the terms of this Lease or to vacate the Premises or (ii) pay Rent or vacate (collectively referred to herein as "Default Notices"), then Lessee shall, upon a subsequent violation of any term of this Lease by Lessee (including failure to pay Rent), be deemed to be in unlawful detainer, and the Port may, in addition to any other remedies it may have, immediately terminate the Lease and/or commence an unlawful detainer action without further notice to Lessee.

7.12.3 The following shall also constitute a default under the terms of this Lease: (i) A default by Lessee under any other agreement or lease with the Port; (ii) insolvency of Lessee; (iii) an assignment by Lessee for the benefit of creditors; (iv) the filing by Lessee of a voluntary petition in bankruptcy; (v) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; (vi) the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; and (vii) attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure a discharge of the attachment or release of the levy of execution within ten (10) days.

7.12.4 A default under this Lease shall constitute a default under any other lease or agreement which Lessee has with the Port (hereinafter such other agreements shall be referred to as "Collateral Agreements"). Likewise, any material breach or default under any Collateral Agreements shall be deemed a material breach or default under the terms of this Lease. If any Collateral Agreements are terminated for a material breach or default of Lessee, then the Port shall, without limiting any other remedies it may have, be entitled to terminate this Lease upon five (5) days' written notice to Lessee.

7.12.5 In addition to the foregoing remedies specified in this article, the Port may exercise any remedies or rights under the laws of the State of Washington. Under no circumstances shall the Port be held liable in damages or otherwise by reason of any lawful re-entry or eviction. The Port shall not, by any re-entry or other act, be deemed to have accepted any surrender by Lessee of the Premises or be deemed to have otherwise terminated this Lease or to have relieved Lessee of any obligation hereunder.

7.12.6 The Port shall be under no obligation to observe or perform any covenant of this Lease after the date of any material default by Lessee unless and until Lessee cures such default.

7.12.7 A fee of Five Hundred Dollars (\$500.00) shall be assessed to Lessee for each Default Notice issued to Lessee to defray the costs associated with preparing, issuing, and serving such notice. This fee shall be payable on the first (1st) day of the month following the issuance of the notice.

7.13 **NON WAIVER**: Neither the acceptance of Rent nor any other act or omission of the Port after a default by Lessee shall operate as a waiver of any past or future default by Lessee, or to deprive the Port of its right to terminate this Lease, or be construed to prevent the Port from promptly exercising any other right or remedy it has under this Lease. Any waiver by the Port shall be in writing and signed by the Port in order to be binding on the Port.

7.14 **NOTICES**: Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the addresses as follows:

TO THE PORT

Port of Port Angeles
P.O. Box 1350
Port Angeles, Washington, 98362

TO LESSEE: _____

or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

7.15 **AGENT FOR SERVICE**: Lessee agrees that if Lessee is in unlawful detainer, pursuant to Chapter 59.12 RCW, and the Port is unable to serve Lessee with the unlawful detainer pleadings after one service attempt, then the Port shall be deemed to have complied with the service requirements of Chapter 59.12 RCW if it mails such pleadings via certified mail to the address set forth in the notice section of this Lease and posts such pleadings in a conspicuous location on the Premises. Service shall be deemed complete on the next third day following the day of mailing.

7.16 **SECURITY**: Lessee specifically acknowledges that the Port has no duty to provide security for any portion of the Premises or surrounding areas. Lessee assumes sole responsibility

and liability for the security of itself, its employees, customers, and invitees, and their respective property in or about the Premises. Lessee agrees that to the extent the Port elects to provide any security, the Port is not warranting the effectiveness of any such security personnel, services, procedures or equipment and that Lessee is not relying and shall not hereafter rely on such security personnel, services, procedures or equipment. The Port shall not be responsible or liable in any manner for failure of any such security personnel, services, procedures or equipment to prevent or control, or apprehend anyone suspected of personal injury or property damage in, on or around the Premises.

7.17 **QUIET ENJOYMENT**: The Port acknowledges that it has ownership of the Premises and that it has the legal authority to lease the Premises to Lessee. The Port covenants that Lessee shall have quiet enjoyment of the Premises during the term of this Lease so long as the terms are complied with by Lessee and subject to the Port's right of entry onto the Premises as set forth herein.

7.17.1 The Port reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses applied for will not unduly interfere with the use to which Lessee is putting the Premises or interfere unduly with the approved plan of development for the Premises. No easement or other land uses shall be granted to third parties, until damages to the Lessee have been dealt with appropriately, or waiver signed by Lessee.

7.17.2 Lessee understands that various federal agencies, including the Department of Homeland Security and U.S. Coast Guard, have the authority to restrict access to certain areas on property owned by the Port in order to counter a terrorist or other threat. Such restrictions could impact Lessee's ability to access the Premises for an indefinite period of time. Since such restrictions on access are outside the control of the Port, Lessee agrees that such interruptions shall not be deemed a violation of this Lease or the Covenant of Quiet Enjoyment.

7.18 **PORT MAY ENTER PREMISES; INSPECTION**: The Port reserves the right to inspect the Premises after written notice (except where the Port reasonably believes there exists or is about to exist an emergency, in which case no notice is required) at any and all reasonable times throughout the term of this Lease, provided that it shall not unduly interfere with Lessee'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 the Lease.

7.19 **TIME**: It is mutually agreed and understood that time is of the essence of this Lease and that a waiver of any default of Lessee shall not be construed as a waiver of any other default.

7.20 **INTERPRETATION**: This Lease has been submitted to the scrutiny of the parties hereto and their counsel, if desired. In any dispute between the parties, the language of this Lease shall, in all cases, be construed as a whole according to its fair meaning and not for or against either the Port or Lessee. If any provision is found to be ambiguous, the language shall not be construed against either the Port or Lessee solely on the basis of which party drafted the provision. If any

word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such finding shall in no way affect the remaining provisions of this Lease.

7.21 **HOLDING OVER**: If Lessee remains in possession of said Premises after the date of expiration of this Lease without the Port's prior written consent, such holding over shall constitute and be construed as tenancy at sufferance only, at a monthly rent equal to one hundred fifty percent (150%) of the rent owed during the immediately preceding month under this Lease and otherwise upon the terms and conditions in this Lease and shall continue to be responsible for payment of applicable CAM Expenses and leasehold excise tax obligations. If Lessee holds over with the Port's prior written consent, then until such time as a new written Lease is executed by the parties hereto, Lessee shall continue to make payments to the Port on a month-to-month basis as provided for in this Lease. Such holdover tenancy may be terminated by either party at the end of any such monthly period by sending written notice not less than five (5) days before the end of such period. Such holdover tenancy shall be subject to all terms and conditions contained herein.

7.22 **PROMOTION OF PORT COMMERCE**: Lessee agrees that throughout the term of this Lease it will, insofar as practicable, promote the activities of the Port.

7.23 **SURVIVAL**: All obligations of Lessee, as provided for in the Lease, shall not cease upon the termination of this Lease and shall continue as obligations until fully performed. All clauses of this Lease, which require performance beyond the termination date, shall survive the termination date of this Lease.

7.24 **GOVERNING LAW**: This Lease, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action jurisdiction and venue shall lie exclusively in Clallam County, Washington.

7.25 **ESTOPPEL CERTIFICATES**: At Lessee's request, the Port agrees to execute and deliver to Lessee or its lender(s), a customary estoppel certificate in a form acceptable to the Port which sets forth the following information: (i) the terms and conditions of this Lease, (ii) the status of the Rent payments under the Lease; and (iii) the Port's knowledge of any breaches or anticipated breaches of the Lease. The Port shall have no obligation to execute an estoppel certificate which requests any information other than as set forth above. Lessee agrees to reimburse the Port for all attorneys' fees paid by the Port for the review and opinion of such attorney acting on the request for such estoppel certificate and in negotiating acceptable language in the estoppel certificate. A failure to reimburse the Port within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease.

7.26 **ATTORNTMENT**: In the event the Premises are sold, Lessee shall attorn to the purchaser upon the sale provided that the purchaser expressly agrees in writing that, so long as Lessee is not in default under the Lease, Lessee's possession and occupancy of the Premises will not be disturbed and that such purchaser will perform all obligations of the Port under the Lease.

7.27 **ENTIRE AGREEMENT**: This Lease contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made

by the other as a basis for this Lease which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Lease executed with all necessary legal formalities by the Commission of the Port of Port Angeles, or its designee.

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

7.29 **VALIDATION:** IN WITNESS WHEREOF, the Port has caused this instrument to be signed by its Executive Director, or other designee, by authority of the Commission of the Port of Port Angeles, and this instrument has been signed and executed by Lessee, on the day and written below.

LESSOR:

LESSEE:

PORT OF PORT ANGELES

Geoffrey C. James

Its: Executive Director

Its: _____

Date: _____

Date: _____

STATE OF WASHINGTON)
) ss.
County of Clallam)

On this ____ day of _____, 20____, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Geoffrey C. James**, to me known to be the **Executive Director of the Port of Port Angeles**, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

If tenant is an entity:

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 20____, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____ the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

If the tenant is an individual:

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 20 ____, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, known to be the individual named in and who executed the within and foregoing Commercial Lease, and acknowledged to me that s/he signed the same as her/his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

Base Rent:

<u>Months of Lease Term</u>	<u>Rent Per Acre/Square ft. (per mo.)</u>	<u>Monthly Total</u>
Months: ___	\$ _____	\$ _____ plus applicable Leasehold Excise Tax

Escalation:

Financial Security (see Section 5.4 for more information): \$ _____

Additional Unique Terms and Conditions:

ARTICLE II
Premises, Term, Renewals

2.1 **PREMISES**: In consideration of the rents hereinafter reserved and of the covenants and conditions set forth herein to be performed by Lessee, the Port does hereby lease the Premises to Lessee.

2.2 **TERM**: The term of this Lease shall be for _____ () years beginning _____, 20___, through _____, 20___. If Lessee takes possession of the Premises before the Commencement Date, Lessee shall pay the pro rata rent for the period prior to commencement of the Lease term.

2.3 **RENEWAL**: Subject to the terms and conditions herein, Lessee shall have the right to renew this Lease for _____ () consecutive _____ () year periods by giving written notice of such intention to the Port at least _____ () days prior to the expiration of the term of this Lease or any renewal thereof. Lessee shall not be entitled to renew this Lease unless the Lease is in good standing at the time of renewal and Lessee is not in default under the terms of this Lease or any other lease or agreement with the Port. The terms and conditions of any renewal shall be the same as set forth in this Lease, except that rent shall be recalculated as provided herein, and the terms of this Lease shall be updated to be consistent with the terms and conditions then existing in the Port's Commercial Lease Agreement.

[OPTIONAL] Lessee's right of renewal is likewise subject to and contingent upon the Port's acceptance of Lessee's renewal notice, which the Port may withhold in its sole discretion. Should the Port decline to accept Lessee's renewal notice, this Lease will terminate upon the expiration of the then-existing term.

ARTICLE III
Rent, Rental Adjustment

3.1 **RENT**: The term “**Rent**” as used herein includes Base Rent, CAM Expenses (if any), applicable Washington State leasehold excise tax, and other fees and charges assessed herein. Base Rent and Washington State leasehold excise tax shall be paid without the requirement that the Port provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement. Any other fees and charges which may be assessed by the Port herein, the Port shall first provide written notice thereof, and Lessee shall pay such fees and/or charges within thirty (30) days of receipt of such written notice without any counterclaim, setoff, deduction, defense or abatement.

3.1.1 Rent shall be paid on or before the first (1st) day of each month beginning on the Commencement Date. A late charge of one percent (1%) per month will be assessed against past due Rent from the date such Rent became due. If Rent is not received by the twentieth (20th) day of any month, Lessee shall pay the Port an additional fee of \$100 or five percent (5%) of the delinquent payment, whichever is greater, to defray costs of collecting and handling such late payment. All accrued interest and late charges shall be paid no later than the twentieth (20th) day of the month following that month in which such interest or late charges accrued.

3.1.2 **Base Rent Adjustment**: The Port may, in its discretion, adjust the Base Rent hereunder upon the provision of written notice prior to the anniversary of the Commencement Date. Upon the provision of such notice, the rental rate shall be automatically adjusted effective upon the month of the anniversary of the Commencement Date to reflect the percentage change in the Consumer Price Index for All Items in West - Size Class B/C, All Urban Consumers, as issued by the U.S. Department of Labor, Bureau of Labor Statistics, or the closest comparable index if the above index is no longer published, over the last full 12-month period immediately preceding the anniversary of the Commencement Date for which such data are available. If the resulting rent rate adjustment is negative, then the rental rate shall not be decreased but shall remain the same as the preceding period.

[OPTIONAL SECTION – USE WHEN THERE ARE COMMON AREA MAINTENANCE EXPENSES BEING SHARED BETWEEN TENANTS OR TENANTS AND THE PORT]

3.2 **COMMON AREAS**

3.2.1 **Common Areas; Definition**: The term "**Common Areas**" shall mean those areas in and around the Premises owned by the Port that are provided and designated by the Port from time-to-time for the general non-exclusive use of the Port, Lessee, other tenants of the Port, and/or the respective employees, suppliers, shippers, customers, clients, invitees and licensees of such parties. Common Areas may include, but are not limited to, lobbies, hallways, common restrooms, electrical and mechanical areas, supply and janitorial rooms, exterior wall surfaces of the Premises walkways, driveways, parking areas, service areas, landscaped areas, and other Port owned areas provided for the non-exclusive use of its tenants. The Port or its agents shall operate, manage, equip, light, repair, replace and maintain the Common Areas for their intended purpose at such times and in such manner as the Port shall reasonably determine.

3.2.2 **Lessee's Common Area Lease Rights:** The Port hereby grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, customers, clients and invitees during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time-to-time, subject to any rights, powers and privileges reserved by the Port under the terms hereof or under the terms of any rules, regulations or restrictions governing the use of the Common Areas. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by prior written consent of the Port or the Port's designated agent, which consent may be revoked at any time. In the event that such unauthorized storage shall occur, then the Port shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be payable on demand by the Port.

3.2.3 **Changes to Common Areas:** The Port shall have the right from time-to-time to make changes to the Common Areas, including, without limitation: (i) changes in the location, size, shape and number thereof; (ii) to temporarily close any of the Common Areas for maintenance and public purposes so long as reasonable access to the Premises remains available; (iii) to add additional improvements to the Common Areas; and (iv) to use Common Areas while engaged in making additional improvements, repairs or alterations to the Premises or any portion thereof, as the Port may, in the exercise of sound business judgment, deem appropriate. The Port shall nevertheless diligently perform construction, repair or maintenance work to minimize interruptions in the use of Common Areas.

3.2.4 **Common Area Maintenance Expenses; Definition:** The term “**Common Area Maintenance Expenses**” or “**CAM Expenses**” as used herein shall mean the sum of the costs and expenses incurred by the Port with respect to maintenance, upkeep and repair of and to the Common Areas.

3.2.5 **Payment of CAM Expenses.** Lessee shall pay to the Port Lessee's agreed pro rata share of the CAM Expenses (“**Pro Rata Share**”). Lessee's Pro Rata Share is based on the percentage obtained by dividing the agreed rentable area of the Premises by the agreed building area. The parties agree that Lessee's Pro Rata Share under this Lease is ___ percent (____ %), thereby resulting in a monthly payment of _____ Dollars (\$_____) for the first twelve months of this Lease.

3.2.6 **Adjustment of CAM Expenses.** Each year of this Lease or renewal term (as the case may be), the Port will establish an estimate of a year's total CAM Expenses, and Lessee shall pay Lessee's Pro Rata Share on a monthly basis in accordance with the monthly rental payment obligations set forth in Section 3.1 of this Lease. Within sixty (60) days after the expiration of each Lease year, the Port shall deliver to Lessee a reasonably detailed statement showing Lessee's Pro Rata Share of the actual total of CAM Expenses incurred during the preceding year. If Lessee's payments under this Paragraph during the preceding year were less than Lessee's Pro Rata Share as indicated on said statement, Lessee shall pay to the Port the amount of the deficiency within thirty (30) days after delivery by the Port to Lessee of said statement; any overpayment made by Lessee shall be credited toward Lessee's liability for Additional Rent for succeeding months.

3.3 **ABATED RENT.** If this Lease provides for a postponement of any monthly rental payments or other rent concession, such postponed rent is called the "**Abated Rent.**" Lessee shall be credited with having paid all of the Abated Rent on the expiration of the term of this Lease only if Lessee has fully, faithfully and punctually performed all of Lessee's obligations hereunder, including the payment of all Rent, including, if applicable, Abated Rent, and all other monetary obligations and the surrender of the Premises in the condition required by this Lease. If Lessee defaults and does not cure within any applicable grace period, the Abated Rent shall immediately become due and payable in full and this Lease shall be enforced as if there were no such rent abatement or other rent concession. In such case, Abated Rent shall be calculated based on the full initial rent payable under this Lease, plus interest thereon at the rate of twelve percent (12%) per annum from date each monthly rental payment was postponed.

3.4 **LEASEHOLD AND OTHER TAXES.** Lessee shall be liable for, and shall pay throughout the term of this Lease, all license fees and excise and occupation taxes covering the business conducted on the Premises and all taxes on property of Lessee on the Premises and any taxes on the leasehold interest created by this Lease, whether imposed on Lessee or on the Port. Lessee shall also pay, or reimburse the Port for all taxes, other than any net income taxes payable by the Port, including ad valorem taxes or taxes levied in lieu of an ad valorem tax or tax on the leasehold interest created by this Lease and/or measured by the rent payments hereunder. With respect to any such taxes payable by the Port which are measured by the rent payments hereunder, Lessee shall pay to the Port with each rent payment an amount equal to the tax on, or measured by, that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Lessee shall be payable by Lessee to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved: provided, that Lessee shall be entitled to a minimum of ten (10) days written notice of the amounts payable by it.

ARTICLE IV

Use of Premises, Condition of Property, Improvements, Removal of Property, Maintenance, and Utilities

4.1 **LESSEE'S USE OF THE PREMISES:** Lessee shall only conduct the following activity on the Premises: _____ (the "**Authorized Use**") and such additional uses incidental or otherwise related to such Authorized Use.

4.1.1 Lessee shall be in default under this Lease if it: (i) ceases conducting the Authorized Use for any period of time exceeding one hundred twenty (120) consecutive days; or (ii) conducts any other business or activity on the Premises without first obtaining a validly executed lease modification. In conducting the Authorized Use, Lessee shall properly and fairly serve the public, providing reasonable hours of operation, and reasonably suitable service.

4.1.2 Notwithstanding the foregoing described use, the Premises shall not be used to store, distribute or otherwise handle flammable, dangerous or hazardous materials, excepting only those necessary to conduct the Authorized Use. At the request of the Port, Lessee shall provide a list of all flammable, dangerous or hazardous materials stored or used on the Premises.

4.2 **ACCEPTANCE OF PREMISES**: Lessee accepts the Premises, including all existing improvements thereon, "as is" without further maintenance liability on the part of the Port, except as otherwise specifically noted herein. Lessee is not relying on any representations of the Port as to condition, suitability, zoning restrictions or usability, except the Port's right to grant a lease of the Premises.

4.3 **CONSTRUCTION OF TENANT IMPROVEMENTS**: Lessee shall abide by the following terms with regard to making any tenant improvements on the Premises ("**Tenant Improvements**"):

4.3.1 Subject to obtaining the Port's written approval, Lessee may make and install, at its own expense, such Tenant Improvements as are normal and customary in connection with the Authorized Use set forth herein. Lessee's contractor, if any, shall be subject to the Port's approval, not unreasonably withheld. The Port reserves the right to condition its approval upon Lessee providing payment and/or performance bonds satisfactory to the Port. Lessee shall submit plans to and obtain written approval from the Port before commencing any Tenant Improvements. The Port shall have a reasonable period of time to review such plans prior to issuing a decision. Upon the provision of written notice to Lessee that the Port's review of plans will require extraordinary staff review time, the Port may charge Lessee a reasonable pre-established fee for staff, consultant or attorney time required to review the plans. All Tenant Improvements which are to be designated fixtures shall be so designated by the Port upon the Port's approval of the plans for such improvements. Unless otherwise agreed, all improvements by Lessee shall conform to the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq. (the "ADA").

4.3.2 **Unauthorized Improvements**: Any Tenant Improvements made on the Premises without the Port's prior written consent or which are not in conformance with the plans submitted to and approved by the Port ("**Unauthorized Improvements**") shall be subject to removal by Lessee upon sixty (60) days' written notice from the Port.

4.4 **TITLE TO TENANT IMPROVEMENTS AND PERSONAL PROPERTY AT END OF LEASE**: Except as otherwise provided in the description of the Premises in Article I above, as of the Commencement Date, all existing structures, buildings, installations, and improvements of any kind located on the Premises are owned by and title thereto is vested in the Port. Prior to the conclusion of the Lease, at the Port's option, Lessee shall remove the following from the Premises:

- a. All equipment;
- b. All personal property;
- c. All Tenant Improvements not designated as fixtures; and
- c. All Lessee Improvements not designated as fixtures in Article I above or pursuant to Section 4.3.1 above.

4.4.1 If any of the foregoing items are not removed from the Premises by the conclusion of the Lease or when the Port has the right of re-entry, then the Port may, at its sole option, elect any or all of the following remedies:

a. Upon the expiration of thirty (30) days' written notice to Lessee that equipment, personal property and/or Tenant Improvements remaining on the Premises will be removed therefrom, the Port may remove any or all of the items and to dispose of them without liability to Lessee. The Port shall not be required to mitigate its damages, to dispose of the items in a commercially reasonable manner, or to make any effort whatsoever to obtain payment for such items. Lessee agrees to pay the Port's costs and damages associated with Lessee's failure to remove such items, including, but not limited to, the following: storage, demolition, removal, transportation and lost rent (collectively "**Disposal Costs**"); provided, however, that any net proceeds recovered by the Port in excess of its Disposal Costs will be deducted from Lessee's financial obligation set forth herein. Lessee's financial obligations herein shall survive the termination of this Lease.

b. To have the title to any or all of such items revert to the Port.

c. To commence suit against Lessee for damages or for specific performance.

4.4.2 During any period of time employed by Lessee under this Section to remove structures, buildings, installations, improvements, machines, appliances, equipment and trade fixtures, Lessee shall continue to pay a rent due and all other fees or expenses due and owing to the Port in accordance with this Lease on a prorated daily basis.

4.4.3 The foregoing remedies are cumulative, and the Port shall not be required to elect its remedies.

4.5 **MAINTENANCE OF PREMISES**: Maintenance and repair of the Premises and all improvements thereon are the sole responsibility of Lessee. Without limiting the generality of the foregoing, Lessee shall maintain the Premises in good condition including, without limitation, repairing damage caused by Lessee, its employees, agents, licensees, invitees or anyone on the Premises as a result of Lessee's activities. The Port and Lessee specifically acknowledge and agree that the Port has no responsibility to maintain, repair or replace the Lessee-owned Improvements described in Article I above.

4.6 **UTILITIES AND SERVICES**: Lessee 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. The Lessee will ensure all utility services are transferred to their name upon commencement of this agreement. 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, Lessee

agrees to pay to the Port Lessee's pro-rata share of the cost of any such utility services. Lessee'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. At the conclusion of this Lease, Lessee shall arrange for such utility services to be terminated and for the final bill to be sent to Lessee. Lessee shall be liable for all utility charges that accrue if it fails to so terminate services.

4.7 **COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS:**

4.7.1 Lessee agrees to take reasonable action to comply with all applicable rules and regulations of the Port pertaining to the Premises now in existence or hereafter promulgated for the general safety and convenience of the Port, its various lessees, invitees, licensees and the general public upon receipt of notice of the adoption of such regulations.

4.7.2 Lessee agrees to comply with all applicable federal, state and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters. Any fees for any inspection of the Premises during the Lease term by any federal, state or municipal officer related to Lessee use and occupancy of the Premises and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

ARTICLE V
Insurance and Financial Security

5.1 **CASUALTY LOSS OF LESSEE:** The parties hereto agree that the Port shall not be responsible to Lessee for any property loss or damage done to Lessee's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be Lessee's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Port, Lessee, third party, or act of nature.

5.2 **INSURANCE:**

5.2.1 **Liability:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease a comprehensive general liability policy covering on an occurrence basis all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. This policy shall also include contractual liability coverage for all indemnities provided under this Lease. Limit per occurrence shall not be less than \$2,000,000, or the equivalent. General aggregate limit shall not be less than \$4,000,000, when applicable (and will be endorsed to apply separately to each site or location.) Limit per claim and in the aggregate shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$4,000,000. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to the Port.

5.2.2 **Property Insurance.** At all times during the term of this Lease, Lessee shall maintain in effect on Lessee-owned improvements fire and extended coverage property

insurance for physical loss and damage *excluding* earthquake and flood insurance. Such policy or policies shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of Lessee's improvements thereon, which amount shall be adjusted not less frequently than annually.

AND/OR

5.2.2 **Property:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease fire and extended coverage property insurance for physical loss and damage, written on an "all risks" basis *excluding* earthquake and flood insurance, to the Leased Premises and to all Lessee-owned improvements, with the Port named as a loss payee. Such policy or policies shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement value, which amount shall be adjusted not less frequently than annually. The proceeds of such insurance in case of loss or damage shall be first applied on account of the obligation of the Port to repair and/or rebuild the Leased Premises to the extent that such proceeds are required for such purpose. Lessee shall also procure and maintain during the term of this Lease and any extensions or renewals of this Lease business interruption insurance by which Rent will be paid to the Port for a period of up to one (1) year if the Premises are destroyed or rendered inaccessible by a risk insured against by a policy of fire and extended coverage property insurance, with vandalism and malicious mischief endorsements.

5.2.3 **Workers' Compensation; Employer's Liability/Stop Gap:** If Lessee has employees, Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease and any renewals or extensions of this Lease, Workers' Compensation as required by the State of Washington, with statutory limits, and Employer's Liability/Stop Gap Insurance with limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

5.2.4 **Pollution Legal Liability and Remediation:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease, Pollution Legal Liability and Remediation insurance for all operations, with a limit no less than \$2,000,000 per claim or occurrence and \$4,000,000 aggregate per policy period of one year. This policy shall include coverage for bodily injury, property damage personal injury and environmental site restoration, including fines and penalties in accordance with applicable EPA or state regulations. Lessee shall maintain this coverage for a minimum of five (5) years after the expiration or earlier termination of this Lease.

5.2.5 **Excess Liability/Umbrella Coverage:** Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease and any extension or renewal of this Lease, Umbrella Liability Insurance providing excess coverage over primary liability coverages, including Employer's Liability, of not less than \$4,000,000.

5.2.6 **Verification of Coverage:** For each insurance policy required herein, Lessee shall provide to the Port, prior to Lessee's occupancy of the Premises, original certificates of insurance, all required amendatory endorsements establishing coverage required under this Lease, a copy of each policy declarations and endorsements page, and complete copies of each policy. Provided, the Port's failure to obtain the required documents prior to Lessee's occupancy

shall not be deemed a waiver of Lessee's obligation to provide them. Receipt of such certificate or policy by the Port does not constitute approval by the Port of the terms of such policy.

5.2.7 **Additional Insured; Primary Coverage; Non-Contributory**: Each insurance policy required herein shall name the Port, and only the Port, as an additional insured. For any claims related to this Lease, Lessee's insurance coverage shall be primary insurance coverage as to the Port. Any insurance or self-insurance maintained by the Port shall be excess of Lessee's insurance and shall not contribute with it.

5.2.8 **Changes in Coverage Requirements**: The Port reserves the right to modify any insurance requirements set forth herein, including limits, at the same time as revaluation of the annual Rent, as a condition of approval of assignment or sublease of this Lease, upon any breach of the environmental liability provision herein, upon a material change in the condition of any improvements, upon a change in the Authorized Use, or under other special circumstances as determined by the Port. Lessee shall obtain new or modified insurance coverage within thirty (30) days after changes are required by the Port.

5.2.9 **Substitute Coverage**: If Lessee fails to procure and maintain any insurance required herein, the Port shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums, chargeable to Lessee. Lessee shall pay to the Port upon demand the full amount paid by the Port.

5.2.10 **Negligence of Lessee**: Each insurance policy required herein shall expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance.

5.2.11 **Self-Insured Retentions**: If Lessee is self-insured, self-insured retentions must be declared to and approved by the Port. At the Port's option, either (i) Lessee shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Port; or (ii) Lessee shall provide a financial guarantee satisfactory to the Port guaranteeing payment of losses and related investigation, claim administration and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Port.

5.2.12 **Acceptability of Insurers**: All insurance required herein shall be placed with insurers authorized to conduct business in the state of Washington with a current A.M. Best's rating of no less than A-VII, unless otherwise specifically authorized by the Port.

5.2.13 **Notice of Cancellation**: Each insurance policy required herein shall expressly provide that coverage shall not be canceled or changed except with prior written notice to the Port of no less than thirty (30) days. Lessee shall provide the Port with any revised endorsements, policy declarations and endorsements pages, and policies as soon as practicable after any changes are made to any policy.

THE FOLLOWING SECTIONS (5.2.) ARE PROVIDED FOR INCLUSIONNN GIVEN THE

APPROPRIATE SITUATION.

5.2. **Airport General Liability:** Lessee shall procure and maintain during the term of this Lease Airport General Liability Insurance on an occurrence basis. This insurance shall include personal injury and property damage liability coverage, contractual liability coverage for all indemnities provided under this Lease, and fuel storage and self-fueling operations liability. Limit per occurrence shall not be less than \$5,000,000. The general aggregate limit shall not be less than \$7,000,000 when applicable. Limit per claim and in the aggregate shall not be less than \$5,000,000. The annual aggregate limit shall not be less than \$7,000,000.

5.2. **Aircraft Liability:** Lessee shall procure and maintain during the term of this Lease Aircraft Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000, and no less than \$1,000,000 per seat for passenger liability.

5.2. **Hangar Keeper's:** Lessee shall procure and maintain during the term of this Lease Hangar Keeper's Insurance in an amount not less than \$1,000,000 combined single limit for each aircraft.

5.2. **Marine General Liability:** [To be used in place of Liability Insurance under 5.2.1.] Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease Marine General Liability insurance covering on an occurrence basis all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. This policy shall also include coverage for Contractual Liability, Products/Completed Operations, Sudden and Accidental Pollution, and Marina Operators Legal Liability. Limit per occurrence shall not be less than \$2,000,000, or the equivalent. General aggregate limit shall not be less than \$4,000,000, when applicable. Limit per claim and in the aggregate shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$4,000,000. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to the Port.

5.2. **Protection and Indemnity:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease Protection and Indemnity Insurance, in an amount not less than \$1,000,000, and Hull and Machinery Coverage, for any vessel owned by Lessee.

5.2. **Automobile Liability:** Lessee shall procure and maintain an Automobile Liability policy covering all owned, not-owned and hired automobiles. The limits of liability shall be not less than \$1,000,000.00. The foregoing insurance policy shall name the Port as an additional insured.

5.3 **WAIVER OF SUBROGATION:** The Port and Lessee 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 Lessee. Each party agrees to

cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

5.4 **FINANCIAL SECURITY:**

5.4.1 In compliance with the requirements of RCW 53.08.085 (as presently codified or hereafter amended) and other laws of the State of Washington, Lessee agrees it will secure its performance of the rental portion of this Lease by procuring and maintaining, during the term of this Lease, a corporate surety bond, or by providing other financial security satisfactory to the Port (the “**Bond**”), in an amount totaling:

- One-sixth of the total Rent for the then-current term of this Lease.
- Not less than One-Hundred percent (100%) of the sum of annual Rent.
- Other:

5.4.2 The Bond shall be in a form and issued by a surety company acceptable to the Port and shall comply with the requirements of Washington law. Lessee shall obtain such Bond and forward evidence thereof to the Port within thirty (30) days of execution of this Lease, but in no event later than the Commencement Date of this Lease. Failure to comply with this requirement shall be grounds for termination of this Lease without notice by the Port. Such Bond shall be kept always in effect during the term of this Lease. Failure to comply with this requirement shall render Lessee in default. The Bond shall be increased annually to reflect any adjustments in annual Rent. No future amendment or extension to this Lease shall be effective until the Port, surety or insurer has given its consent thereto and the amount of the Bond has been adjusted as required.

5.4.3 Upon any default by Lessee in its obligations under this Lease and Lessee’s failure to cure such default in accordance with its rights to do so under this Lease, the Port may collect on the Bond to offset the liability of Lessee to the Port. Collection on the Bond shall not relieve Lessee of liability for any amounts not offset by the amount collected under the Bond, shall not limit any of the Port’s other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

5.4.4 Any Bond may provide for termination on the anniversary date thereof upon not less than one (1) year's written notice to the Port if the Lease is not in default at the time of said notice. In the event of any such termination, Lessee shall obtain a new Bond or other security, also subject to the Port approval, to replace the security being so terminated to be effective on or before the date of termination.

5.4.5 If the Port Commission exercises its discretion pursuant to RCW 53.08.085 to reduce or waive Lessee’s Bond requirement under this Lease, the Port may at any time make a determination that changes in the material circumstances related to Lessee no longer support

such reduction or waiver, and thereafter increase Lessee's Bond requirement up to that required by RCW 53.08.085.

ARTICLE VI

Environmental Liability

6.1 **ENVIRONMENTAL INDEMNIFICATION**: Lessee shall defend (with legal counsel suitable to the Port), indemnify and hold the Port harmless from any and all claims, demands, judgments, orders or damages resulting from Hazardous Substances on the Premises caused in whole or in part by the activity of Lessee, its agents, or subtenants during any period of time that Lessee has occupied all or a portion of the Premises during the term of this Lease or any previous lease or agreement. The term "Hazardous Substances" as used herein shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sec. 1257 et seq.; the Clean Air Act, 42 USC Sec. 2001 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxic Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated there under.

6.1.1 Lessee's defense and indemnity obligations under this article are unconditional, shall not be discharged or satisfied by the Port's re-entry of the Premises or exercise of any other remedy for Lessee's default under this Lease, shall continue in effect after any assignment or sublease of this Lease, and shall continue in effect after the expiration or earlier termination of this Lease.

6.1.2 Although Lessee shall not be liable for any Hazardous Substances that existed on the Premises prior to commencement of its leasehold relationship with the Port (whether by this Lease or any prior lease agreements), Lessee shall be responsible for the costs of any environmental investigations or remediation arising from any development or use of the Premises by Lessee, and Lessee hereby releases the Port from any contribution claim for those costs. By way of example only, if Lessee excavates soil on the Premises which contains Hazardous Substances, then Lessee will be responsible for the cost associated with disposing of those disturbed soils.

6.2 **CURRENT CONDITIONS AND DUTY OF LESSEE**: The Port makes no representation about the condition of the Premises. Hazardous Substances may exist in, on, under or above the Premises. Lessee should, but is not required to, conduct environmental assessments or investigations of the Premises prior to or during this Lease to determine the existence, scope and location of any Hazardous Substances. If there are any Hazardous Substances in, on, under or above the Premises as of the Commencement Date, Lessee shall exercise the utmost care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions.

6.2.1 Prior to conducting any environmental investigation of the subsurface of the Premises, Lessee shall provide prior written notice to the Port. Lessee shall provide the Port with

the results of all such investigations.

6.3 **NOTIFICATION AND REPORTING:** Lessee shall immediately notify the Port if Lessee becomes aware of any of the following:

a. A release or threatened release of Hazardous Substances in, on under or above the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises;

b. Any problem or liability related to or derived from the presence of any Hazardous Substance in, on under or above the Premises, any adjoining property or any other property subject to use by Lessee in conjunction with its use of the Premises;

c. Any actual or alleged violation of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances with respect to the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises; or

d. Any lien or action with respect to any of the foregoing.

6.3.1 Lessee shall, at the Port's request, provide the Port with copies of any and all reports, studies or audits which pertain to environmental issues or concerns and to the Premises, and which are or were prepared by or for Lessee and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

6.3.2 Upon expiration or sooner termination of this Lease, Lessee shall remove from the Premises any soils or other media impacted by Hazardous Substances where such materials were deposited on the Premises by Lessee or its employees, representatives or agents. Any failure to complete such removal by the expiration or sooner termination of this Lease, and upon the expiration of thirty (30) days' notice that such materials remain on the Premises, Lessee shall be deemed a holding over by Lessee subject to the provision of Section 7.21 (HOLDING OVER). Lessee shall represent and warrant that, upon termination of the Lease, all Hazardous Substances that Lessee is required to remove from the Premises pursuant to this subsection have been removed from the Premises.

ARTICLE VII

Miscellaneous Provisions

7.1 **LESSEE WILL OBTAIN PERMITS:** Lessee agrees to obtain and comply with all necessary permits for any Authorized Use or leasehold improvement. If Lessee fails to obtain and comply with such permits, then Lessee accepts full responsibility for any and all resulting costs incurred by the Port, including actual attorneys' fees. In this way, Lessee agrees to be solely responsible for all damages, costs and expenses incurred as a result of Lessee's failure to

fully comply with any necessary permit process and requirements.

7.2 **LIENS**: Lessee agrees to keep the Premises free and clear of all liens and charges whatsoever. Lessee shall not allow any mechanics' and materialmen's or other liens to be placed upon the Premises. If such a lien is placed or recorded, Lessee shall cause it to be discharged of record, at its own expense, within thirty (30) days of the Port's demand. Failure to comply with the Port's demand within thirty (30) days shall be a default under the terms of this Lease. Notwithstanding the foregoing, the Port acknowledges that Lessee may use its Tenant Improvements as security for a loan, and the Port agrees to reasonably cooperate with Lessee and its creditor(s) to allow such creditor(s) to obtain such security.

7.3 **INDEMNIFICATION AND HOLD HARMLESS**: The Port, its employees and/or 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 Lessee or by others as a result of any condition (including existing or future defects in the Premises) or occurrence whatsoever related in any way to the Premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the Premises and of the areas adjacent thereto. Lessee agrees to defend and to hold and save the Port (including its commissioners, employees and/or agents) harmless from all liability or expense (including attorneys' fees, costs and all other expenses of litigation) in connection with any such items of actual or alleged injury or damage. Lessee specifically agrees that any bond or other security provided pursuant to any provisions of this Lease shall extend to the indemnity agreed to herein. Lessee acknowledges that it expressly and specifically waives immunity under the industrial insurance statute of the state of Washington, Title 51 RCW, for purposes of this indemnification provision and further acknowledges that this waiver was mutually negotiated by the parties.

7.4 **LAWS AND REGULATIONS**: Lessee agrees to conform to and abide by all applicable rules, codes, laws, regulations and Port policies in connection with its use of the Premises and the construction of improvements and operation of Lessee's business thereon and not to permit said Premises to be used in violation of any applicable rule, code, law, regulation, Port policy, or other authority.

7.4.1 Lessee's obligations herein shall include, but in no way be limited to, the obligation to comply with all State and Federal environmental laws and regulations.

7.5 **WASTE AND REFUSE**: Lessee agrees not to allow conditions of waste and refuse to exist on the Premises and to keep the Premises in a neat, clean and orderly condition and to be responsible for all damages caused to the Premises by Lessee, its agents, or any third party on the Premises.

7.6 **DAMAGE AND DESTRUCTION**:

7.6.1 Except as otherwise stated herein, should the Premises be partially damaged by fire or other casualty, or rendered partially unfit for use by reason of fire or other casualty, the Premises shall be repaired with due diligence by the Port, and in the meantime the Rent (as defined in Section 3.1 above) shall be abated in the same proportion that the untenable portion

of the Premises bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs. Lessee shall cooperate fully in obtaining and making available proceeds of insurance provided by Lessee in furtherance of such repairs.

7.6.2 If any building or improvement erected by Lessee on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Lessee may, at its option and at its sole cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the Port. Lessee shall provide the Port notice of its intention to repair or restore the Premises within sixty (60) days after the damage or loss occurs. Such work of repair or restoration shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed with due diligence but not longer than one (1) year, if possible, or as soon thereafter as is reasonably possible 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, or if Lessee elects not to repair or restore, to the cost of removing, demolishing, or clearing off the building or improvements. If (i) there are not insurance proceeds, or (ii) the same shall be insufficient for said purpose, Lessee shall make up the deficiency out of its own funds. Should Lessee fail or refuse to make the repair, restoration or removal as hereinabove provided, then in such event said failure or refusal shall constitute a default under the covenants and conditions hereof, and all insurance proceeds so collected shall be forthwith paid over to and be retained by the Port on its own account, and the Port may, but shall not be required to, sue and apply the same for and to the repair, restoration or removal of said improvements, and the Port may, at its option, terminate this Lease as elsewhere provided herein.

7.6.3 Except as otherwise stated herein, should the Premises be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the Premises are rendered wholly unfit for their accustomed uses, the Port shall have the option to terminate this Lease on thirty (30) days' notice, effective as of any date not more than thirty (30) days after the occurrence. In the event that this Section shall become applicable, the Port shall advise Lessee within thirty (30) days after the happening of any such damage whether the Port has elected to continue the Lease in effect or to terminate it. If the Port shall elect to continue this Lease, it shall commence and prosecute with due diligence any work necessary to restore or repair the Premises. If the Port shall fail to notify Lessee of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this Lease, and the Lease shall automatically terminate thirty (30) days after the occurrence of the damage. For the period from the occurrence of the damage to the Premises as described in this Section to the date of completion of the repairs to the Premises (or to the date of termination of the Lease if the Port shall elect not to restore the Premises), Rent due hereunder shall be abated in the same proportion as the untenable portion of the Premises bears to the whole thereof.

7.7 **SIGNS**: Lessee may place in or upon the Premises only such signs as are related to the Authorized Use of the Premises, PROVIDED that Lessee shall first obtain Port's written consent as to size, location, materials, method of attachment, and appearance. Lessee shall install any approved signs at Lessee's sole expense and in compliance with all applicable laws, ordinances,

rules and regulations. Lessee shall not damage or deface the Premises in installing or removing signs and shall repair any damage to the Premises caused by such installation or removal.

7.8 **ATTORNEYS' FEES AND COURT COSTS:** In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Lease (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Lease, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

7.9 **ASSIGNMENT OF LEASE:** Lessee shall not assign, rent or sublease any portions of this Lease or any extension thereof, without the prior written consent of the Port, which consent shall not be unreasonably withheld, and no rights hereunder in or to said Premises shall pass by operation of law or other judicial process, or through insolvency proceedings. Otherwise, the rights and obligations hereof shall extend to and be binding upon their respective successors, representatives and assigns, as the case may be. Lessee shall furnish the Port with copies of all such proposed assignment, sublease or rental documents. For the purposes of this Lease, any change of ownership including sale, liquidation or other disposition of some or all of the corporate stock or limited liability company units will be considered an assignment. Should the Port consent to an assignment made by Lessee for the purposes of obtaining a loan or other consideration from a third party, then the Port's consent shall be made in accordance with the consent to assignment document used by the Port for these specific assignments. A copy of this consent form shall be provided by the Port upon request of Lessee.

7.9.1 If the Port refuses to consent to an assignment, Lessee's sole remedy shall be the right to bring a declaratory action to determine whether the Port was entitled to refuse such assignment under the terms of this Lease.

7.9.2 No consent by the Port to any assignment or sublease shall be a waiver of the requirement to obtain such consent with respect to any other or later assignment or sublease. Acceptance of Rent or other performance by the Port following an assignment or sublease, whether or not the Port has knowledge of such assignment or sublease, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same.

7.9.3 A minimum handling and transfer fee ("**Transfer Fee Deposit**") of Three Hundred Dollars (\$300.00) shall be payable by Lessee to the Port if Lessee requests the Port's consent to a proposed assignment (including an assignment to a creditor for security purposes), sublease or modification of this Lease. The Port reserves the right to increase the Transfer Fee Deposit up to Five Hundred Dollars (\$500.00) if, in the Port's sole judgment, the transaction will necessitate the expenditure of substantial time and expense on the part of the Port. Such Transfer Fee Deposit shall be submitted to the Port at the same time that Lessee requests the Port's consent to the proposed sublease, assignment or modification. If the Port's reasonable and customary attorneys' fees exceed the Transfer Fee Deposit, then Lessee agrees to reimburse the Port for such additional reasonable and customary attorneys' fees. Lessee's failure to remit this additional amount within sixty (60) days of the mailing of the notice of such charges, shall constitute a default under this Lease. Notwithstanding anything to the contrary herein, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease or modification is not accomplished due to total refusal on the part of the Port to grant its consent to

the request.

7.9.4 If, pursuant to any assignment or sublease, Lessee receives rent, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in the case of a sublease, a portion of the Premises in excess of such Rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder are appropriately taken into account, Lessee shall pay to the Port, as additional rent expenses hereunder, fifty percent (50%) of the excess of each such payment of Rent received by Lessee after its receipt.

7.9.5 If this Lease is assigned, or if the underlying beneficial interest of Lessee is transferred, or if the Premises or any part thereof is sublet to or occupied by anybody other than Lessee, the Port may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. No assignment or subletting shall affect the continuing primary liability of Lessee (which, following assignment, shall be joint and several with the assignee), and Lessee shall not be released from performing any of the terms, covenants and conditions of this Lease.

7.9.6 Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by the Port to any assignee or sublessee or failure of the Port to take action against any assignee or sublease, Lessee hereby agrees that the Port may, at its option, and upon not less than three (3) days' notice to Lessee, proceed against Lessee without having taken action against or joined such assignee or sublessee, except that Lessee shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee.

7.10 **REIMBURSEMENT FOR EXPENSES:** Should Lessee seek to assign this Lease to any creditor as security for a loan or forbearance from such creditor, or attempt to otherwise assign, sublease, or modify this Lease between the parties during the term of this Lease or any renewal thereof, then Lessee agrees to reimburse the Port for all customary and reasonable attorney fees paid by the Port for the review and opinion of such attorney acting on the request. A failure to reimburse the Port within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease. Notwithstanding anything to the contrary herein, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease, or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.11 **TERMINATION:** Upon expiration or sooner termination of this Lease or any extension thereof, whether by expiration of the stated term or sooner termination thereof, as herein provided, Lessee shall surrender to the Port the Premises peaceably and quietly. Lessee shall restore the Premises to the condition existing at the time of initiation of this Lease, except for: (i) normal wear and tear, and (ii) any improvements which the Port permits to remain on the Premises.

7.11.1 If the Port, at its sole discretion, shall require the use of the Premises for a public use in connection with the business of the Port not involving the lease thereof to another private lessee or in the event that the Port, at its sole discretion, shall require the use of the Premises for a major capital improvement for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to Lessee not less than ninety (90) days before the termination date specified in the notice, unless the need for such use constitutes an emergency, in which case this Lease shall terminate as soon as is practicable.

7.11.2 If the United States Government, the State of Washington, or any agency or instrumentality of said government shall take title, possession, the rights of the Premises or any part thereof, the Port shall have the option to terminate this Lease, and if the taking has substantially impaired the utility of the Premises to Lessee, Lessee shall have the option to terminate this Lease. Both options shall be exercisable as of the date of said taking. If Lessee is not in default under any of the provisions of this Lease on the date of such taking, any rental prepaid by Lessee shall be promptly refunded to Lessee to the extent allocable to any period subsequent to said date, and all further obligations of the parties shall terminate except liabilities, which shall be accrued prior to such date. To the extent Lessee owns certain improvements upon the Premises and is not otherwise directly compensated therefore by the taking entity, Lessee shall receive a fair allocation of any award received by the Port due to termination for government use. Nothing herein contained shall preclude Lessee from independently pursuing a direct claim for compensation from the taking entity for the value of its improvements to the Premises or its leasehold interest therein.

7.11.3 If any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that occurred prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

7.12 **DEFAULT, CROSS DEFAULT, AND REMEDIES:** Failure to pay Rent or any other monetary obligations by the first day of each month shall constitute a default under the terms of this Lease. If Lessee is in default in the payment of Rent or other monetary obligations then, at the Port's sole option, upon three (3) days' written notice, this Lease may be terminated and the Port may enter upon and take possession of the Premises. Without limiting the generality of the foregoing, Lessee expressly authorizes the Port to obtain a prejudgment writ of restitution in the event of default by Lessee. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.12.1 If Lessee shall fail to perform any term or condition of this Lease, other than the payment of Rent or other monetary obligations, then upon providing Lessee thirty (30) days' written notice of such default, and if Lessee fails to cure such default within the thirty (30) day notice thereof, the Port may terminate this Lease and enter upon and take possession of the

Premises. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.12.2 If within any one (1) year period, the Port serves upon Lessee three notices requiring Lessee either to: (i) comply with the terms of this Lease or to vacate the Premises or (ii) pay Rent or vacate (collectively referred to herein as “**Default Notices**”), then Lessee shall, upon a subsequent violation of any term of this Lease by Lessee (including failure to pay Rent), be deemed to be in unlawful detainer, and the Port may, in addition to any other remedies it may have, immediately terminate the Lease and/or commence an unlawful detainer action without further notice to Lessee.

7.12.3 The following shall also constitute a default under the terms of this Lease: (i) A default by Lessee under any other agreement or lease with the Port; (ii) insolvency of Lessee; (iii) an assignment by Lessee for the benefit of creditors; (iv) the filing by Lessee of a voluntary petition in bankruptcy; (v) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; (vi) the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; and (vii) attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure a discharge of the attachment or release of the levy of execution within ten (10) days.

7.12.4 A default under this Lease shall constitute a default under any other lease or agreement which Lessee has with the Port (hereinafter such other agreements shall be referred to as “**Collateral Agreements**”). Likewise, any material breach or default under a Collateral Agreements shall be deemed a material breach or default under the terms of this Lease. If any Collateral Agreements are terminated for a material breach or default of Lessee, then the Port shall, without limiting any other remedies it may have, be entitled to terminate this Lease upon five (5) days’ written notice to Lessee.

7.12.5 In addition to the foregoing remedies specified in this article, the Port may exercise any remedies or rights under the laws of the State of Washington. Under no circumstances shall the Port be held liable in damages or otherwise by reason of any lawful re-entry or eviction. The Port shall not, by any re-entry or other act, be deemed to have accepted any surrender by Lessee of the Premises or be deemed to have otherwise terminated this Lease or to have relieved Lessee of any obligation hereunder.

7.12.6 The Port shall be under no obligation to observe or perform any covenant of this Lease after the date of any material default by Lessee unless and until Lessee cures such default.

7.12.7 A fee of Five Hundred Dollars (\$500.00) shall be assessed to Lessee for each Default Notice issued to Lessee to defray the costs associated with preparing, issuing, and serving such notice. This fee shall be payable on the first (1st) day of the month following the issuance of the notice.

7.13 **NON WAIVER:** Neither the acceptance of Rent nor any other act or omission of the Port after a default by Lessee shall operate as a waiver of any past or future default by Lessee, or to deprive the Port of its right to terminate this Lease, or be construed to prevent the Port from

promptly exercising any other right or remedy it has under this Lease. Any waiver by the Port shall be in writing and signed by the Port in order to be binding on the Port.

7.14 **NOTICES:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the addresses as follows:

TO THE PORT

Port of Port Angeles
P.O. Box 1350
Port Angeles, Washington, 98362

TO LESSEE: _____

or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

7.15 **AGENT FOR SERVICE:** Lessee agrees that if Lessee is in unlawful detainer, pursuant to Chapter 59.12 RCW, and the Port is unable to serve Lessee with the unlawful detainer pleadings after one service attempt, then the Port shall be deemed to have complied with the service requirements of Chapter 59.12 RCW if it mails such pleadings via certified mail to the address set forth in the notice section of this Lease and posts such pleadings in a conspicuous location on the Premises. Service shall be deemed complete on the third (3rd) day following the day of posting or day of mailing, whichever is later.

7.16 **SECURITY:** Lessee specifically acknowledges that the Port has no duty to provide security for any portion of the Premises or surrounding areas. Lessee assumes sole responsibility and liability for the security of itself, its employees, customers, and invitees, and their respective property in or about the Premises. Lessee agrees that to the extent the Port elects to provide any security, the Port is not warranting the effectiveness of any such security personnel, services, procedures or equipment and that Lessee is not relying and shall not hereafter rely on such security personnel, services, procedures or equipment. The Port shall not be responsible or liable in any manner for failure of any such security personnel, services, procedures or equipment to prevent or control, or apprehend anyone suspected of personal injury or property damage in, on or around the Premises.

7.17 **QUIET ENJOYMENT:** The Port acknowledges that it has ownership of the Premises and that it has the legal authority to lease the Premises to Lessee. The Port covenants that Lessee shall have quiet enjoyment of the Premises during the term of this Lease so long as the terms are complied with by Lessee and subject to the Port's right of entry onto the Premises as set forth herein.

7.17.1 The Port reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses applied for will not unduly interfere with the use

to which Lessee is putting the Premises or interfere unduly with the approved plan of development for the Premises. No easement or other land uses shall be granted to third parties, until damages to the Lessee have been dealt with appropriately, or waiver signed by Lessee.

7.17.2 Lessee understands that various federal agencies, including the Department of Homeland Security and U.S. Coast Guard, have the authority to restrict access to certain areas on property owned by the Port in order to counter a terrorist or other threat. Such restrictions could impact Lessee's ability to access the Premises for an indefinite period of time. Since such restrictions on access are outside the control of the Port, Lessee agrees that such interruptions shall not be deemed a violation of this Lease or the Covenant of Quiet Enjoyment.

7.18 **PORT MAY ENTER PREMISES; INSPECTION:** The Port reserves the right to inspect the Premises after written notice (except where the Port reasonably believes there exists or is about to exist an emergency, in which case no notice is required) at any and all reasonable times throughout the term of this Lease, provided that it shall not unduly interfere with Lessee'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 the Lease.

7.19 **TIME:** It is mutually agreed and understood that time is of the essence of this Lease and that a waiver of any default of Lessee shall not be construed as a waiver of any other default.

7.20 **INTERPRETATION:** This Lease has been submitted to the scrutiny of the parties hereto and their counsel, if desired. In any dispute between the parties, the language of this Lease shall, in all cases, be construed as a whole according to its fair meaning and not for or against either the Port or Lessee. If any provision is found to be ambiguous, the language shall not be construed against either the Port or Lessee solely on the basis of which party drafted the provision. If any word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such finding shall in no way affect the remaining provisions of this Lease.

7.21 **HOLDING OVER:** If Lessee remains in possession of said Premises after the date of expiration of this Lease without the Port's prior written consent, such holding over shall constitute and be construed as tenancy at sufferance only, at a monthly rent equal to one hundred fifty percent (150%) of the rent owed during the immediately preceding month under this Lease and otherwise upon the terms and conditions in this Lease and shall continue to be responsible for payment of applicable CAM Expenses and leasehold excise tax obligations. If Lessee holds over with the Port's prior written consent, then until such time as a new written Lease is executed by the parties hereto, Lessee shall continue to make payments to the Port on a month-to-month basis as provided for in this Lease. Such holdover tenancy may be terminated by either party at the end of any such monthly period by sending written notice not less than five (5) days before the end of such period. Such holdover tenancy shall be subject to all terms and conditions contained herein.

7.22 **PROMOTION OF PORT COMMERCE**: Lessee agrees that throughout the term of this Lease it will, insofar as practicable, promote the activities of the Port.

7.23 **SURVIVAL**: All obligations of Lessee, as provided for in the Lease, shall not cease upon the termination of this Lease and shall continue as obligations until fully performed. All clauses of this Lease, which require performance beyond the termination date, shall survive the termination date of this Lease.

7.24 **GOVERNING LAW**: This Lease, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action jurisdiction and venue shall lie exclusively in Clallam County, Washington.

7.25 **ESTOPPEL CERTIFICATES**: At Lessee's request, the Port agrees to execute and deliver to Lessee or its lender(s), a customary estoppel certificate in a form acceptable to the Port which sets forth the following information: (i) the terms and conditions of this Lease, (ii) the status of the Rent payments under the Lease; and (iii) the Port's knowledge of any breaches or anticipated breaches of the Lease. The Port shall have no obligation to execute an estoppel certificate which requests any information other than as set forth above. Lessee agrees to reimburse the Port for all attorneys' fees paid by the Port for the review and opinion of such attorney acting on the request for such estoppel certificate and in negotiating acceptable language in the estoppel certificate. A failure to reimburse the Port within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease.

7.26 **ATTORNMENT**: In the event the Premises are sold, Lessee shall attorn to the purchaser upon the sale provided that the purchaser expressly agrees in writing that, so long as Lessee is not in default under the Lease, Lessee's possession and occupancy of the Premises will not be disturbed and that such purchaser will perform all obligations of the Port under the Lease.

7.27 **ENTIRE AGREEMENT**: This Lease contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Lease which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Lease executed with all necessary legal formalities by the Commission of the Port of Port Angeles, or its designee.

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

7.29 **VALIDATION:** IN WITNESS WHEREOF, the Port has caused this instrument to be signed by its Executive Director, or other designee, by authority of the Commission of the Port of Port Angeles, and this instrument has been signed and executed by Lessee, the day and year first above written.

LESSOR:

LESSEE:

PORT OF PORT ANGELES

COMPANY NAME

Geoffrey C. James

Name:

Its: Executive Director

Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF CLALLAM)

On this ____ day of _____, 20__, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Geoffrey C. James**, to me known to be the **Executive Director of the Port of Port Angeles**, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

If tenant is an entity:

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 20__, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____ the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

If the tenant is an individual:

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 20____, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, known to be the individual named in and who executed the within and foregoing Commercial Lease, and acknowledged to me that s/he signed the same as her/his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

Term: Month-to-month.

Base Rent:

Financial Security (see Section 5.4 for more information): \$ _____

Additional Unique Terms and Conditions:

ARTICLE II
Premises, Term, Termination

2.1 **PREMISES:** In consideration of the rents hereinafter reserved and of the covenants and conditions herein set forth to be performed by Lessee, the Port does hereby lease the Premises to Lessee.

2.2 **TERM:** This Lease shall begin on the Commencement Date and shall continue thereafter on a month-to-month basis until such time as it is terminated by either party in accordance with the terms of this Lease. If Lessee takes possession of the Premises before the Commencement Date, Lessee shall pay the pro rata rent for the period prior to commencement of the Lease term.

2.3 **TERMINATION:** Except as otherwise provided herein, either party may terminate this Lease upon the provision of thirty (30) days' written notice to the other. Upon the expiration of the thirty (30) day termination notice period, Lessee shall surrender the Premises to the Port peaceably and quietly. Lessee shall restore the Premises to the condition existing at the time of initiation of this Lease, except for: (i) normal wear and tear, and (ii) any improvements which the Port permits to remain on the Premises.

ARTICLE III
Rent, Rental Adjustment

3.1 **RENT:** The term "**Rent**" as used herein includes Base Rent, CAM Expenses (if any), applicable Washington State leasehold excise tax, and other fees and charges assessed herein. Base Rent and Washington State leasehold excise tax shall be paid without the requirement that the Port provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement. Any other fees and charges which may be assessed by the Port herein, the Port shall first provide written notice thereof, and Lessee shall pay such fees and/or charges within thirty (30) days of receipt of such written notice without any counterclaim, setoff, deduction, defense or abatement.

3.1.1 Rent shall be paid on or before the first (1st) day of each month beginning on the Commencement Date. A late charge of one percent (1%) per month will be assessed against past due Rent from the date such Rent became due. If Rent is not received by the twentieth (20th)

day of any month, Lessee shall pay the Port an additional fee of \$100 or five percent (5%) of the delinquent payment, whichever is greater, to defray costs of collecting and handling such late payment. All accrued interest and late charges shall be paid no later than the twentieth (20th) day of the month following that month in which such interest or late charges accrued.

3.1.2 **Base Rent Adjustment:** The Port may, in its discretion, adjust the Base Rent hereunder upon the provision of written notice prior to the anniversary of the Commencement Date. Upon the provision of such notice, the rental rate shall be automatically adjusted effective upon the anniversary of the Commencement Date to reflect the percentage change in the Consumer Price Index for All Items in West - Size Class B/C, All Urban Consumers, as issued by the U.S. Department of Labor, Bureau of Labor Statistics, or the closest comparable index if the above index is no longer published, over the last full 12-month period immediately preceding the anniversary of the Commencement Date for which such data are available. If the resulting rent rate adjustment is negative, then the rental rate shall not be decreased but shall remain the same as the preceding period.

[OPTIONAL SECTION – USE WHEN THERE ARE COMMON AREA MAINTENANCE EXPENSES BEING SHARED BETWEEN TENANTS OR TENANTS AND THE PORT]

3.2 **COMMON AREAS:**

3.2.1 **Common Areas; Definition:** The term “Common Areas” shall mean those areas in and around the Premises owned by the Port that are provided and designated by the Port from time-to-time for the general non-exclusive use of the Port, Lessee, other tenants of the Port, and/or the respective employees, suppliers, shippers, customers, clients, invitees and licensees of such parties. Common Areas may include, but are not limited to, lobbies, hallways, common restrooms, electrical and mechanical areas, supply and janitorial rooms, exterior wall surfaces of the Premises walkways, driveways, parking areas, service areas, landscaped areas, and other Port owned areas provided for the non-exclusive use of its tenants. The Port or its agents shall operate, manage, equip, light, repair, replace and maintain the Common Areas for their intended purpose at such times and in such manner as the Port shall reasonably determine.

3.2.2 **Lessee’s Common Area Lease Rights:** The Port hereby grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, customers, clients and invitees during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time-to-time, subject to any rights, powers and privileges reserved by the Port under the terms hereof or under the terms of any rules, regulations or restrictions governing the use of the Common Areas. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by prior written consent of the Port or the Port’s designated agent, which consent may be revoked at

any time. In the event that such unauthorized storage shall occur, then the Port shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be payable on demand by the Port.

3.2.3 **Changes to Common Areas:** The Port shall have the right from time-to-time to make changes to the Common Areas, including, without limitation: (i) changes in the location, size, shape and number thereof; (ii) to temporarily close any of the Common Areas for maintenance and public purposes so long as reasonable access to the Premises remains available; (iii) to add additional improvements to the Common Areas; and (iv) to use Common Areas while engaged in making additional improvements, repairs or alterations to the Premises or any portion thereof, as the Port may, in the exercise of sound business judgment, deem appropriate. The Port shall nevertheless diligently perform construction, repair or maintenance work to minimize interruptions in the use of Common Areas.

3.2.4 **Common Area Maintenance Expenses; Definition:** The term “**Common Area Maintenance Expenses**” or “**CAM Expenses**” as used herein shall mean the sum of the costs and expenses incurred by the Port with respect to maintenance, upkeep and repair of and to the Common Areas.

3.2.5 **Payment of CAM Expenses:** Lessee shall pay to the Port Lessee’s agreed pro rata share of the CAM Expenses (“**Pro Rata Share**”). Lessee’s Pro Rata Share is based on the percentage obtained by dividing the agreed rentable area of the Premises by the agreed building area. The parties agree that Lessee’s Pro Rata Share under this Lease is ___ percent (____ %), thereby resulting in a monthly payment of _____ Dollars (\$_____) for the first twelve months of this Lease.

3.2.6 **Adjustment of CAM Expenses:** Each year of this Lease or renewal term (as the case may be), the Port will establish an estimate of a year’s total CAM Expenses, and Lessee shall pay Lessee’s Pro Rata Share on a monthly basis in accordance with the monthly rental payment obligations set forth in Section 3.1 of this Lease. Within sixty (60) days after the expiration of each Lease year, the Port shall deliver to Lessee a reasonably detailed statement showing Lessee’s Pro Rata Share of the actual total of CAM Expenses incurred during the preceding year. If Lessee’s payments under this Paragraph during the preceding year were less than Lessee’s Pro Rata Share as indicated on said statement, Lessee shall pay to the Port the amount of the deficiency within thirty (30) days after delivery by the Port to Lessee of said statement; any overpayment made by Lessee shall be credited toward Lessee’s liability for Rent for succeeding months.

3.4 **LEASEHOLD AND OTHER TAXES.** Throughout the term of this Lease, Lessee shall be liable for, and shall pay or, as applicable, reimburse the Port for, all license fees and excise and occupation taxes covering the business conducted on the Premises, all taxes on property of Lessee on the Premises, ad valorem taxes or taxes levied in lieu of an ad valorem tax, and any taxes on the leasehold interest created by this Lease and/or measured by the rent payments hereunder, whether imposed on Lessee or on the Port. With respect to the leasehold excise tax

payable hereunder, Lessee shall pay to the Port with each rent payment an amount equal to the tax. All other tax amounts for which the Port is or will be entitled to reimbursement from Lessee shall be paid by Lessee to the Port at least fifteen (15) days prior to the due dates of the tax amounts involved, provided that Lessee shall be given at least ten (10) days' prior written notice of the amounts payable by Lessee.

ARTICLE IV
Use of Premises, Condition of Property,
Improvements, Removal of Property, Maintenance, and Utilities

4.1 **LESSEE'S USE OF THE PREMISES:** Lessee shall only conduct the following activity on the Premises: _____ (the “**Authorized Use**”) and such additional uses incidental or otherwise related to such Authorized use.

4.1.1 Lessee shall be in default under this Lease if it: (i) ceases conducting the Authorized Use for any period of time exceeding one hundred twenty (120) consecutive days; or (ii) conducts any other business or activity on the Premises without first obtaining a validly executed lease modification. In conducting the Authorized Use, Lessee shall properly and fairly serve the public, providing reasonable hours of operation, and reasonably suitable service.

4.1.2 Notwithstanding the foregoing described use, the Premises shall not be used to store, distribute or otherwise handle flammable, dangerous or hazardous materials, excepting only those necessary to conduct the Authorized Use. At the request of the Port, Lessee shall provide a list of all flammable, dangerous or hazardous materials stored or used on the Premises.

4.2 **ACCEPTANCE OF PREMISES:** Lessee accepts the Premises, including all existing improvements thereon, "as is" without further maintenance liability on the part of the Port, except as otherwise specifically noted herein. Lessee is not relying on any representations of the Port as to condition, suitability, zoning restrictions or usability, except the Port's right to grant a lease of the Premises.

4.3 **CONSTRUCTION OF TENANT IMPROVEMENTS:** Lessee shall abide by the following terms with regard to making any tenant improvements on the Premises (“**Tenant Improvements**”):

4.3.1 Subject to obtaining the Port's written approval, Lessee may make and install, at its own expense, such Tenant Improvements as are normal and customary in connection with the Authorized Use set forth herein. Lessee's contractor, if any, shall be subject to the Port's approval, not unreasonably withheld. The Port reserves the right to condition its approval upon Lessee providing payment and/or performance bonds satisfactory to the Port. Lessee shall submit plans to and obtain written approval from the Port before commencing any Tenant Improvements. The Port shall have a reasonable period of time to review such plans prior to issuing a decision. Upon the provision of written notice to Lessee that the Port's review of plans

will require extraordinary staff review time, the Port may charge Lessee a reasonable pre-established fee for staff, consultant or attorney time required to review the plans. All Tenant Improvements which are to be designated fixtures shall be so designated by the Port upon the Port's approval of the plans for such improvements. Unless otherwise agreed, all improvements by Lessee shall conform to the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq. (the "ADA").

4.3.2 **Unauthorized Improvements**: Any Tenant Improvements made on the Premises without the Port's prior written consent or which are not in conformance with the plans submitted to and approved by the Port ("**Unauthorized Improvements**") shall be subject to removal by Lessee upon sixty (60) days' written notice from the Port.

4.4 **TITLE TO TENANT IMPROVEMENTS AND PERSONAL PROPERTY AT END OF LEASE**: Except as otherwise provided in the description of the Premises in Article I above, as of the Commencement Date, all existing structures, buildings, installations, and improvements of any kind located on the Premises are owned by and title thereto is vested in the Port. Prior to the conclusion of the Lease, Lessee shall remove the following from the Premises:

- a. All equipment;
- b. All personal property;
- c. All Lessee Improvements not designated as fixtures in Article I above or pursuant to Section 4.3.1 above.

4.4.1 If any of the foregoing items are not removed from the Premises by the conclusion of the Lease or when the Port has the right of re-entry, then the Port may, at its sole option, elect any or all of the following remedies:

a. Upon the expiration of thirty (30) days' written notice to Lessee that equipment, personal property and/or Tenant Improvements remaining on the Premises will be removed therefrom, the Port may remove any or all of the items and to dispose of them without liability to Lessee. The Port shall not be required to mitigate its damages, to dispose of the items in a commercially reasonable manner, or to make any effort whatsoever to obtain payment for such items. Lessee agrees to pay the Port's costs and damages associated with Lessee's failure to remove such items, including, but not limited to, the following: storage, demolition, removal, transportation and lost rent (collectively "**Disposal Costs**"); provided, however, that any net proceeds recovered by the Port in excess of its Disposal Costs will be deducted from Lessee's financial obligation set forth herein. Lessee's financial obligations herein shall survive the termination of this Lease.

- b. Claim and take title in the Port to any or all such items; and
- c. Commence suit against Lessee for damages or for specific performance.

4.4.2 During any period of time employed by Lessee under this Section to remove structures, buildings, installations, improvements, machines, appliances, equipment and trade fixtures, Lessee shall continue to pay a rent due and all other fees or expenses due and owing to the Port in accordance with this Lease on a prorated daily basis.

4.4.3 The foregoing remedies are cumulative, and the Port shall not be required to elect its remedies.

The Port and Lessee hereby acknowledge the rights, obligations and remedies set forth in this Section 4.4.

Initials:

Port

Lessee

4.5 **MAINTENANCE OF PREMISES:** The maintenance and repair of the Premises are the sole responsibility of Lessee, except as set forth in the Maintenance Inclusion List attached hereto as **Exhibit B** and incorporated herein by this reference; PROVIDED, however, that the Port shall be responsible for repairing at its own cost any interior damage resulting from a roof leak. Lessee shall notify the Port immediately upon discovering any indication of a roof leak. Lessee shall maintain the Premises in good condition, and shall repair all damage caused by Lessee, its employees, agents, licensees, invitees or anyone on the Premises as a result of Lessee's activities. In lieu of common area maintenance charges, Lessee's exterior Premises maintenance and repair responsibilities include, without limitation and by way of example only, mowing, general landscape maintenance, snow removal, parking lot sweeping, parking lot striping, and parking lot, curb and sidewalk repairs. The Port and Lessee specifically acknowledge and agree that the Port has no responsibility to maintain, repair or replace the Lessee-owned Improvements described in Article I above.

Initials:

Port

Lessee

4.6 **UTILITIES AND SERVICES:** Lessee 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. The Lessee will ensure all utility services are transferred to their name upon commencement of this agreement. 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, Lessee agrees to pay to the Port Lessee's pro-rata share of the cost of any such utility services. Lessee'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. At the conclusion of

this Lease, Lessee shall arrange for such utility services to be terminated and for the final bill to be sent to Lessee. Lessee shall be liable for all utility charges that accrue if it fails to so terminate services.

4.7 **COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS:**

4.7.1 Lessee agrees to take reasonable action to comply with all applicable rules and regulations of the Port pertaining to the Premises now in existence or hereafter promulgated for the general safety and convenience of the Port, its various lessees, invitees, licensees and the general public upon receipt of notice of the adoption of such regulations.

4.7.2 Lessee agrees to comply with all applicable federal, state and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters. Any fees for any inspection of the Premises during the Lease term by any federal, state or municipal officer related to Lessee use and occupancy of the Premises and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

ARTICLE V
Insurance and Financial Security

5.1 **CASUALTY LOSS OF LESSEE:** The parties hereto agree that the Port shall not be responsible to Lessee for any property loss or damage done to Lessee's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be Lessee's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Port, Lessee, third party, or act of nature.

5.2 **INSURANCE:**

5.2.1 **Liability:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease a comprehensive general liability policy covering on an occurrence basis all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. This policy shall also include contractual liability coverage for all indemnities provided under this Lease. Limit per occurrence shall not be less than \$2,000,000, or the equivalent. General aggregate limit shall not be less than \$4,000,000, when applicable (and will be endorsed to apply separately to each site or location.) Limit per claim and in the aggregate shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$4,000,000. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to the Port.

5.2.2 **Property Insurance.** At all times during the term of this Lease, Lessee shall maintain in effect on Lessee-owned improvements fire and extended coverage property insurance for physical loss and damage *excluding* earthquake and flood insurance. Such policy or policies

shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of Lessee's improvements thereon, which amount shall be adjusted not less frequently than annually.

AND/OR

5.2.2 **Property:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease fire and extended coverage property insurance for physical loss and damage, written on an "all risks" basis *excluding* earthquake and flood insurance, to the Leased Premises and to all Lessee-owned improvements, with the Port named as a loss payee. Such policy or policies shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement value, which amount shall be adjusted not less frequently than annually. The proceeds of such insurance in case of loss or damage shall be first applied on account of the obligation of the Port to repair and/or rebuild the Leased Premises to the extent that such proceeds are required for such purpose. Lessee shall also procure and maintain during the term of this Lease and any extensions or renewals of this Lease business interruption insurance by which Rent will be paid to the Port for a period of up to one (1) year if the Premises are destroyed or rendered inaccessible by a risk insured against by a policy of fire and extended coverage property insurance, with vandalism and malicious mischief endorsements.

5.2.3 **Workers' Compensation; Employer's Liability/Stop Gap:** If Lessee has employees, Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease and any renewals or extensions of this Lease, Workers' Compensation as required by the State of Washington, with statutory limits, and Employer's Liability/Stop Gap Insurance with limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

5.2.4 **Pollution Legal Liability and Remediation:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease, Pollution Legal Liability and Remediation insurance for all operations, with a limit no less than \$2,000,000 per claim or occurrence and \$4,000,000 aggregate per policy period of one year. This policy shall include coverage for bodily injury, property damage personal injury and environmental site restoration, including fines and penalties in accordance with applicable EPA or state regulations. Lessee shall maintain this coverage for a minimum of five (5) years after the expiration or earlier termination of this Lease.

5.2.5 **Excess Liability/Umbrella Coverage:** Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease and any extension or renewal of this Lease, Umbrella Liability Insurance providing excess coverage over primary liability coverages, including Employer's Liability, of not less than \$4,000,000.

5.2.6 **Verification of Coverage:** For each insurance policy required herein, Lessee shall provide to the Port, prior to Lessee's occupancy of the Premises, original certificates of insurance, all required amendatory endorsements establishing coverage required under this

Lease, a copy of each policy declarations and endorsements page, and complete copies of each policy. Provided, the Port's failure to obtain the required documents prior to Lessee's occupancy shall not be deemed a waiver of Lessee's obligation to provide them. Receipt of such certificate or policy by the Port does not constitute approval by the Port of the terms of such policy.

5.2.7 **Additional Insured; Primary Coverage; Non-Contributory**: Each insurance policy required herein shall name the Port, and only the Port, as an additional insured. For any claims related to this Lease, Lessee's insurance coverage shall be primary insurance coverage as to the Port. Any insurance or self-insurance maintained by the Port shall be excess of Lessee's insurance and shall not contribute with it.

5.2.8 **Changes in Coverage Requirements**: The Port reserves the right to modify any insurance requirements set forth herein, including limits, at the same time as Rent revaluation is performed (typically conducted annually), as a condition of approval of assignment or sublease of this Lease, upon any breach of the environmental liability provision herein, upon a material change in the condition of any improvements, upon a change in the Authorized Use, or under other special circumstances as determined by the Port. Lessee shall obtain new or modified insurance coverage within thirty (30) days after changes are required by the Port.

5.2.9 **Substitute Coverage**: If Lessee fails to procure and maintain any insurance required herein, the Port shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums, chargeable to Lessee. Lessee shall pay to the Port upon demand the full amount paid by the Port.

5.2.10 **Negligence of Lessee**: Each insurance policy required herein shall expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance.

5.2.11 **Self-Insured Retentions**: If Lessee is self-insured, self-insured retentions must be declared to and approved by the Port. At the Port's option, either (i) Lessee shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Port; or (ii) Lessee shall provide a financial guarantee satisfactory to the Port guaranteeing payment of losses and related investigation, claim administration and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Port.

5.2.12 **Acceptability of Insurers**: All insurance required herein shall be placed with insurers authorized to conduct business in the state of Washington with a current A.M. Best's rating of no less than A-VII, unless otherwise specifically authorized by the Port.

5.2.13 **Notice of Cancellation**: Each insurance policy required herein shall expressly provide that coverage shall not be canceled or changed except with prior written notice to the Port of no less than thirty (30) days. Lessee shall provide the Port with any revised endorsements, policy declarations and endorsements pages, and policies as soon as practicable

after any changes are made to any policy.

THE FOLLOWING SECTIONS (5.2.) ARE PROVIDED FOR INCLUSIONN GIVEN THE APPROPRIATE SITUATION.

5.2. **Airport General Liability**: Lessee shall procure and maintain during the term of this Lease Airport General Liability Insurance on an occurrence basis. This insurance shall include personal injury and property damage liability coverage, contractual liability coverage for all indemnities provided under this Lease, and fuel storage and self-fueling operations liability. Limit per occurrence shall not be less than \$5,000,000. The general aggregate limit shall not be less than \$7,000,000 when applicable. Limit per claim and in the aggregate shall not be less than \$5,000,000. The annual aggregate limit shall not be less than \$7,000,000.

5.2. **Aircraft Liability**: Lessee shall procure and maintain during the term of this Lease Aircraft Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000, and no less than \$1,000,000 per seat for passenger liability.

5.2. **Hangar Keeper's**: Lessee shall procure and maintain during the term of this Lease Hangar Keeper's Insurance in an amount not less than \$1,000,000 combined single limit for each aircraft.

5.2. **Marine General Liability**: [To be used in place of Liability Insurance under 5.2.1.] Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease Marine General Liability insurance covering on an occurrence basis all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. This policy shall also include coverage for Contractual Liability, Products/Completed Operations, Sudden and Accidental Pollution, and Marina Operators Legal Liability. Limit per occurrence shall not be less than \$2,000,000, or the equivalent. General aggregate limit shall not be less than \$4,000,000, when applicable. Limit per claim and in the aggregate shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$4,000,000. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to the Port.

5.2. **Protection and Indemnity**: Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease Protection and Indemnity Insurance, in an amount not less than \$1,000,000, and Hull and Machinery Coverage, for any vessel owned by Lessee.

5.2. **Automobile Liability**: Lessee shall procure and maintain an Automobile Liability policy covering all owned, not-owned and hired automobiles. The limits of liability shall be not less than \$1,000,000.00. The foregoing insurance policy shall name the Port as an additional insured.

5.2.13 **Notice of Cancellation:** Each insurance policy required herein shall expressly provide that coverage shall not be canceled or changed except with prior written notice to the Port of no less than thirty (30) days. Lessee shall provide the Port with any revised endorsements, policy declarations and endorsements pages, and policies as soon as practicable after any changes are made to any policy.

5.3 **WAIVER OF SUBROGATION:** The Port and Lessee 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 Lessee. Each party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

5.4 **FINANCIAL SECURITY:** Lessee agrees it will secure its performance under this Lease (including payment of rent and all other Lessee obligations) by placing with the Port a security deposit totaling three month's rent, including Leasehold Excise Tax, initially in the amount of \$_____, (the "Security Deposit") plus a refundable cleanup deposit of \$500.00, which shall be payable upon execution of this Lease. The Security Deposit will be retained and used by the Port in the normal course of its business, and any interest paid on the Security Deposit shall accrue to the benefit of the Port. The Security Deposit may be used by the Port at any time to ensure Lessee complies with all terms and conditions of this Lease and performs all obligations herein. In the event it becomes necessary for the Port to utilize the Security Deposit to cure any default or breach by Lessee, Lessee shall be required to provide additional funds to Port upon ten (10) days written notice from Port to Lessee to replenish the Security Deposit to the agreed amount. The Port's necessary utilization of the Security Deposit shall not relieve Lessee of liability for any amounts not offset by the amount collected, shall not limit any of the Port's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default. Within thirty (30) days after the termination of this Lease, the Port shall provide Lessee with an itemized statement of the basis for retaining any of the Security or Cleaning Deposit together with the payment of any refund of the Security or Cleaning Deposit due to Lessee.

5.4.1 If the Port Commission exercises its discretion to reduce or waive Lessee's Bond requirement under this Lease, the Port may at any time make a determination that changes in the material circumstances related to Lessee no longer support such reduction or waiver, and thereafter increase Lessee's Bond requirement up to three month's rent.

5.4.2 The Bond shall be in a form and issued by a surety company acceptable to the Port and shall comply with the requirements of Washington law. Lessee shall obtain such Bond and forward evidence thereof to the Port, or shall provide to the Port such other financial security

as may be required hereunder, within thirty (30) days of execution of this Lease, but in no event later than the Commencement Date of this Lease. Such Bond shall be kept in effect during the term of this Lease.

5.4.3 If the financial security amount required hereunder is to be not less than 100% of the sum of annual Rent, that financial security amount is subject to increases to reflect any Base Rent adjustments as provided in Section 3 above. In that event, at no time may the security amount be less than 80% of the then-current annual Rent, and the Port may at any time require Lessee to provide sufficient additional security to restore the security amount to no less than 100% of the then-current total annual Rent due hereunder. No future amendment or extension to this Lease shall be effective until the adjusted financial security amount has been provided as required.

5.4.4 Upon any default by Lessee in its obligations under this Lease and Lessee's failure to cure such default in accordance with its rights to do so under this Lease, the Port may collect on the Bond or other financial security to offset the liability of Lessee to the Port. Collection on the Bond or other financial security shall not relieve Lessee of liability for any amounts not offset by the amount collected, shall not limit any of the Port's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

5.4.5 Any Bond may provide for termination on the anniversary date thereof upon not less than one (1) year's written notice to the Port if the Lease is not in default at the time of said notice. In the event of any such termination, Lessee shall obtain a new Bond or other security, also subject to the Port approval, to replace the security being so terminated to be effective on or before the date of termination.

5.4.6 If the Port Commission exercises its discretion pursuant to RCW 53.08.085 to reduce or waive Lessee's Bond requirement under this Lease, the Port may at any time make a determination that changes in the material circumstances related to Lessee no longer support such reduction or waiver, and thereafter increase Lessee's Bond requirement up to that required by RCW 53.08.085.

ARTICLE VI

Environmental Liability

6.1 **ENVIRONMENTAL INDEMNIFICATION**: Lessee shall defend (with legal counsel suitable to the Port), indemnify and hold the Port harmless from any and all claims, demands, judgments, orders or damages resulting from Hazardous Substances on the Premises caused in whole or in part by the activity of Lessee, its agents or subtenants during any period of time that Lessee has occupied all or a portion of the Premises during the term of this Lease or any previous lease or agreement. The term "Hazardous Substances" as used herein shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sec. 1257 et

seq.; the Clean Air Act, 42 USC Sec. 2001 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxic Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated there under.

6.1.1 Lessee's defense and indemnity obligations under this article are unconditional, shall not be discharged or satisfied by the Port's re-entry of the Premises or exercise of any other remedy for Lessee's default under this Lease, shall continue in effect after any assignment or sublease of this Lease, and shall continue in effect after the expiration or earlier termination of this Lease.

6.1.2 Although Lessee shall not be liable for any Hazardous Substances that existed on the Premises prior to commencement of its leasehold relationship with the Port (whether by this Lease or any prior lease agreements), Lessee shall be responsible for the costs of any environmental investigations or remediation arising from any development or use of the Premises by Lessee, and Lessee hereby releases the Port from any contribution claim for those costs. By way of example only, if Lessee excavates soil on the Premises which contains Hazardous Substances, then Lessee will be responsible for the cost associated with disposing of those disturbed soils.

6.2 **CURRENT CONDITIONS AND DUTY OF LESSEE:** The Port makes no representation about the condition of the Premises. Hazardous Substances may exist in, on, under or above the Premises. Lessee should, but is not required to, conduct environmental assessments or investigations of the Premises prior to or during this Lease to determine the existence, scope and location of any Hazardous Substances. If there are any Hazardous Substances in, on, under or above the Premises as of the Commencement Date, Lessee shall exercise the utmost care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions.

6.2.1 Prior to conducting any environmental investigation of the subsurface of the Premises, Lessee shall provide prior written notice to the Port. Lessee shall provide the Port with the results of all such investigations.

6.3 **NOTIFICATION AND REPORTING:** Lessee shall immediately notify the Port if Lessee becomes aware of any of the following:

a. A release or threatened release of Hazardous Substances in, on under or above the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises;

b. Any problem or liability related to or derived from the presence of any Hazardous Substance in, on under or above the Premises, any adjoining property or any other property subject to use by Lessee in conjunction with its use of the Premises;

c. Any actual or alleged violation of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances with respect to the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises; or

d. Any lien or action with respect to any of the foregoing.

6.3.1 Lessee shall, at the Port's request, provide the Port with copies of any and all reports, studies or audits which pertain to environmental issues or concerns and to the Premises, and which are or were prepared by or for Lessee and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

6.3.2 Upon termination of this Lease, Lessee shall remove from the Premises any soils or other media impacted by Hazardous Substances where such materials were deposited on the Premises by Lessee or its employees, representatives or agents. Any failure to complete such removal by the expiration or sooner termination of this Lease, and upon the expiration of thirty (30) days' notice that such materials remain on the Premises, Lessee shall be deemed a holding over by Lessee subject to the provision of Section 7.20 (HOLDING OVER). Lessee shall represent and warrant that, upon termination of the Lease, all Hazardous Substances that Lessee is required to remove from the Premises pursuant to this subsection have been removed from the Premises.

ARTICLE VII

Miscellaneous Provisions

7.1 **LESSEE WILL OBTAIN PERMITS:** Lessee agrees to obtain and comply with all necessary permits for any Authorized Use or leasehold improvement. If Lessee fails to obtain and comply with such permits, then Lessee accepts full responsibility for any and all resulting costs incurred by the Port, including actual attorneys' fees. In this way, Lessee agrees to be solely responsible for all damages, costs and expenses incurred as a result of Lessee's failure to fully comply with any necessary permit process and requirements.

7.2 **LIENS:** Lessee agrees to keep the Premises free and clear of all liens and charges whatsoever. Lessee shall not allow any mechanics' and materialmen's or other liens to be placed upon the Premises. If such a lien is placed or recorded, Lessee shall cause it to be discharged of record, at its own expense, within thirty (30) days of the Port's demand. Failure to comply with the Port's demand within thirty (30) days shall be a default under the terms of this Lease. Notwithstanding the foregoing, the Port acknowledges that Lessee may use its Tenant Improvements as security for a loan, and the Port agrees to reasonably cooperate with Lessee and its creditor(s) to allow such creditor(s) to obtain such security.

7.3 **INDEMNIFICATION AND HOLD HARMLESS:** The Port, its employees and/or 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 Lessee or by others as a result of any condition (including existing or future defects in the Premises) or occurrence whatsoever related in any way to the Premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the Premises and of the areas adjacent thereto. Lessee agrees to defend and to hold and save the Port (including its commissioners, employees and/or agents) harmless from all liability or expense (including attorneys' fees, costs and all other expenses of litigation) in connection with any such items of actual or alleged injury or damage. Lessee specifically agrees that any bond or other security provided pursuant to any provisions of this Lease shall extend to the indemnity agreed to herein. Lessee acknowledges that it expressly and specifically waives immunity under the industrial insurance statute of the state of Washington, Title 51 RCW, for purposes of this indemnification provision and further acknowledges that this waiver was mutually negotiated by the parties.

7.4 **LAWS AND REGULATIONS:** Lessee agrees to conform to and abide by all applicable rules, codes, laws, regulations and Port policies in connection with its use of the Premises and the construction of improvements and operation of Lessee's business thereon and not to permit said Premises to be used in violation of any applicable rule, code, law, regulation, Port policy, or other authority.

7.4.1 Lessee's obligations herein shall include, but in no way be limited to, the obligation to comply with all State and Federal environmental laws and regulations. .

7.5 **WASTE AND REFUSE:** Lessee agrees not to allow conditions of waste and refuse to exist on the Premises and to keep the Premises in a neat, clean and orderly condition and to be responsible for all damages caused to the Premises by Lessee, its agents, or any third party on the Premises.

7.6 **DAMAGE AND DESTRUCTION:**

7.6.1 Except as otherwise stated herein, should the Premises be partially damaged by fire or other casualty, or rendered partially unfit for use by reason of fire or other casualty, the Premises shall be repaired with due diligence by the Port, and in the meantime the Rent (as defined in Section 3.1 above) shall be abated in the same proportion that the untenable portion of the Premises bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs. Lessee shall cooperate fully in obtaining and making available proceeds of insurance provided by Lessee in furtherance of such repairs.

7.6.2 If any building or improvement erected by Lessee on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Lessee may, at its option and at its sole cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in

writing by the Port. Lessee shall provide the Port notice of its intention to repair or restore the Premises within sixty (60) days after the damage or loss occurs. Such work of repair or restoration shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed with due diligence but not longer than one (1) year, if possible, or as soon thereafter as is reasonably possible 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, or if Lessee elects not to repair or restore, to the cost of removing, demolishing, or clearing off the building or improvements. If (i) there are not insurance proceeds, or (ii) the same shall be insufficient for said purpose, Lessee shall make up the deficiency out of its own funds. Should Lessee fail or refuse to make the repair, restoration or removal as hereinabove provided, then in such event said failure or refusal shall constitute a default under the covenants and conditions hereof, and all insurance proceeds so collected shall be forthwith paid over to and be retained by the Port on its own account, and the Port may, but shall not be required to, sue and apply the same for and to the repair, restoration or removal of said improvements, and the Port may, at its option, terminate this Lease as elsewhere provided herein.

7.6.3 Except as otherwise stated herein, should the Premises be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the Premises are rendered wholly unfit for their accustomed uses, the Port shall have the option to terminate this Lease on thirty (30) days' notice, effective as of any date not more than thirty (30) days after the occurrence. In the event that this Section shall become applicable, the Port shall advise Lessee within thirty (30) days after the happening of any such damage whether the Port has elected to continue the Lease in effect or to terminate it. If the Port shall elect to continue this Lease, it shall commence and prosecute with due diligence any work necessary to restore or repair the Premises. If the Port shall fail to notify Lessee of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this Lease, and the Lease shall automatically terminate thirty (30) days after the occurrence of the damage. For the period from the occurrence of the damage to the Premises as described in this Section to the date of completion of the repairs to the Premises (or to the date of termination of the Lease if the Port shall elect not to restore the Premises), Rent due hereunder shall be abated in the same proportion as the untenable portion of the Premises bears to the whole thereof.

7.7 **SIGNS**: Lessee may place in or upon the Premises only such signs as are related to the Authorized Use of the Premises, PROVIDED that Lessee shall first obtain Port's written consent as to size, location, materials, method of attachment, and appearance. Lessee shall install any approved signs at Lessee's sole expense and in compliance with all applicable laws, rules and regulations. Lessee shall not damage or deface the Premises in installing or removing signs and shall repair any damage to the Premises caused by such installation or removal.

7.8 **ATTORNEYS' FEES AND COURT COSTS**: In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Lease (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Lease, the

prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

7.9 **ASSIGNMENT OF LEASE**: Lessee shall not assign, rent or sublease any portions of this Lease or any extension thereof, without the prior written consent of the Port, which consent shall not be unreasonably withheld, and no rights hereunder in or to said Premises shall pass by operation of law or other judicial process, or through insolvency proceedings. Otherwise, the rights and obligations hereof shall extend to and be binding upon their respective successors, representatives and assigns, as the case may be. Lessee shall furnish the Port with copies of all such subassignment, sublease or rental documents. For the purposes of this Lease, any change of ownership including sale, liquidation or other disposition of some or all of the corporate stock or limited liability company units will be considered an assignment. Should the Port consent to an assignment made by Lessee for the purposes of obtaining a loan or other consideration from a third party, then the Port's consent shall be made in accordance with the consent to assignment document used by the Port for these specific assignments. A copy of this consent form shall be provided by the Port upon request of Lessee.

7.9.1 If the Port refuses to consent to an assignment, Lessee's sole remedy shall be the right to bring a declaratory action to determine whether the Port was entitled to refuse such assignment under the terms of this Lease.

7.9.2 No consent by the Port to any assignment or sublease shall be a waiver of the requirement to obtain such consent with respect to any other or later assignment or sublease. Acceptance of Rent or other performance by the Port following an assignment or sublease, whether or not the Port has knowledge of such assignment or sublease, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same.

7.9.3 A minimum handling and transfer fee ("**Transfer Fee Deposit**") of Three Hundred Dollars (\$300.00) shall be payable by Lessee to the Port if Lessee requests the Port's consent to a proposed assignment (including an assignment to a creditor for security purposes), sublease or modification of this Lease. The Port reserves the right to increase the Transfer Fee Deposit up to Five Hundred Dollars (\$500.00) if, in the Port's sole judgment, the transaction will necessitate the expenditure of substantial time and expense on the part of the Port. Such Transfer Fee Deposit shall be submitted to the Port at the same time that Lessee requests the Port's consent to the proposed sublease, assignment or modification. If the Port's reasonable and customary attorneys' fees exceed the Transfer Fee Deposit, then Lessee agrees to reimburse the Port for such additional reasonable and customary attorneys' fees. Lessee's failure to remit this additional amount within sixty (60) days of the mailing of the notice of such charges, shall constitute a default under this Lease. Notwithstanding anything to the contrary herein, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.9.4 If, pursuant to any assignment or sublease, Lessee receives rent, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in the

case of a sublease, a portion of the Premises in excess of such Rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder are appropriately taken into account, Lessee shall pay to the Port, as additional rent expenses hereunder, fifty percent (50%) of the excess of each such payment of Rent received by Lessee after its receipt.

7.9.5 If this Lease is assigned, or if the underlying beneficial interest of Lessee is transferred, or if the Premises or any part thereof is sublet to or occupied by anybody other than Lessee, the Port may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. No assignment or subletting shall affect the continuing primary liability of Lessee (which, following assignment, shall be joint and several with the assignee), and Lessee shall not be released from performing any of the terms, covenants and conditions of this Lease.

7.9.6 Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by the Port to any assignee or sublessee or failure of the Port to take action against any assignee or sublease, Lessee hereby agrees that the Port may, at its option, and upon not less than three (3) days' notice to Lessee, proceed against Lessee without having taken action against or joined such assignee or sublessee, except that Lessee shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee.

7.10 **REIMBURSEMENT FOR EXPENSES:** Should Lessee seek to assign this Lease to any creditor as security for a loan or forbearance from such creditor, or attempt to otherwise assign, sublease, or modify this Lease between the parties during the term of this Lease or any renewal thereof, then Lessee agrees to reimburse the Port for all customary and reasonable attorney fees paid by the Port for the review and opinion of such attorney acting on the request. A failure to reimburse the Port within fifteen (15) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease. Notwithstanding anything to the contrary herein, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease, or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.11 **TERMINATION:** Upon expiration or sooner termination of this Lease or any extension thereof, whether by expiration of the stated term or sooner termination thereof, as herein provided, Lessee shall surrender to the Port the Premises peaceably and quietly. Lessee shall restore the Premises to the condition existing at the time of initiation of this Lease, except for: (i) normal wear and tear, and (ii) any improvements which the Port permits to remain on the Premises.

7.11.1 If the Port, at its sole discretion, shall require the use of the Premises for a public use in connection with the business of the Port not involving the lease thereof to another private

lessee or in the event that the Port, at its sole discretion, shall require the use of the Premises for a major capital improvement for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to Lessee not less than ninety (90) days before the termination date specified in the notice, unless the need for such use constitutes an emergency, in which case this Lease shall terminate as soon as is practicable.

7.11.2 If the United States Government, the State of Washington, or any agency or instrumentality of said government shall take title, possession, the rights of the Premises or any part thereof, the Port shall have the option to terminate this Lease, and if the taking has substantially impaired the utility of the Premises to Lessee, Lessee shall have the option to terminate this Lease. Both options shall be exercisable as of the date of said taking. If Lessee is not in default under any of the provisions of this Lease on the date of such taking, any rental prepaid by Lessee shall be promptly refunded to Lessee to the extent allocable to any period subsequent to said date, and all further obligations of the parties shall terminate except liabilities, which shall be accrued prior to such date. To the extent Lessee owns certain improvements upon the Premises and is not otherwise directly compensated therefore by the taking entity, Lessee shall receive a fair allocation of any award received by the Port due to termination for government use. Nothing herein contained shall preclude Lessee from independently pursuing a direct claim for compensation from the taking entity for the value of its improvements to the Premises or its leasehold interest therein.

7.11.3 If any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that occurred prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

7.12 **DEFAULT, CROSS DEFAULT, AND REMEDIES:** Failure to pay Rent or any other monetary obligations by the first day of each month shall constitute a default under the terms of this Lease. If Lessee is in default in the payment of Rent or other monetary obligations then, at the Port's sole option, upon three (3) days' written notice, this Lease may be terminated and the Port may enter upon and take possession of the Premises. Without limiting the generality of the foregoing, Lessee expressly authorizes the Port to obtain a prejudgment writ of restitution in the event of default by Lessee. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.12.1 If Lessee shall fail to perform any term or condition of this Lease, other than the payment of Rent or other monetary obligations, then upon providing Lessee thirty (30) days' written notice of such default, and if Lessee fails to cure such default within the thirty (30) day notice thereof, the Port may terminate this Lease and enter upon and take possession of the

Premises. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.12.2 If within any one (1) year period, the Port serves upon Lessee three notices requiring Lessee either to: (i) comply with the terms of this Lease or to vacate the Premises or (ii) pay Rent or vacate (collectively referred to herein as “Default Notices”), then Lessee shall, upon a subsequent violation of any term of this Lease by Lessee (including failure to pay Rent), be deemed to be in unlawful detainer, and the Port may, in addition to any other remedies it may have, immediately terminate the Lease and/or commence an unlawful detainer action without further notice to Lessee.

7.12.3 The following shall also constitute a default under the terms of this Lease: (i) A default by Lessee under any other agreement or lease with the Port; (ii) insolvency of Lessee; (iii) an assignment by Lessee for the benefit of creditors; (iv) the filing by Lessee of a voluntary petition in bankruptcy; (v) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; (vi) the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; and (vii) attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure a discharge of the attachment or release of the levy of execution within ten (10) days.

7.12.4 A default under this Lease shall constitute a default under any other lease or agreement which Lessee has with the Port (hereinafter such other agreements shall be referred to as “Collateral Agreements”). Likewise, any material breach or default under any Collateral Agreements shall be deemed a material breach or default under the terms of this Lease. If any Collateral Agreements are terminated for a material breach or default of Lessee, then the Port shall, without limiting any other remedies it may have, be entitled to terminate this Lease upon five (5) days’ written notice to Lessee.

7.12.5 In addition to the foregoing remedies specified in this article, the Port may exercise any remedies or rights under the laws of the State of Washington. Under no circumstances shall the Port be held liable in damages or otherwise by reason of any lawful re-entry or eviction. The Port shall not, by any re-entry or other act, be deemed to have accepted any surrender by Lessee of the Premises or be deemed to have otherwise terminated this Lease or to have relieved Lessee of any obligation hereunder.

7.12.6 The Port shall be under no obligation to observe or perform any covenant of this Lease after the date of any material default by Lessee unless and until Lessee cures such default.

7.12.7 A fee of Five Hundred Dollars (\$500.00) shall be assessed to Lessee for each Default Notice issued to Lessee to defray the costs associated with preparing, issuing, and serving such notice. This fee shall be payable on the first (1st) day of the month following the issuance of the notice.

7.13 **NON WAIVER**: Neither the acceptance of Rent nor any other act or omission of the

Port after a default by Lessee shall operate as a waiver of any past or future default by Lessee, or to deprive the Port of its right to terminate this Lease, or be construed to prevent the Port from promptly exercising any other right or remedy it has under this Lease. Any waiver by the Port shall be in writing and signed by the Port in order to be binding on the Port.

7.14 **NOTICES**: Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the addresses as follows:

TO THE PORT

Port of Port Angeles
P.O. Box 1350
Port Angeles, Washington, 98362

TO LESSEE:

or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

7.15 **AGENT FOR SERVICE**: Lessee agrees that if Lessee is in unlawful detainer, pursuant to Chapter 59.12 RCW, and the Port is unable to serve Lessee with the unlawful detainer pleadings after one service attempt, then the Port shall be deemed to have complied with the service requirements of Chapter 59.12 RCW if it mails such pleadings via certified mail to the address set forth in the notice section of this Lease and posts such pleadings in a conspicuous location on the Premises. Service shall be deemed complete on the next third day following the day of mailing.

7.16 **SECURITY**: Lessee specifically acknowledges that the Port has no duty to provide security for any portion of the Premises or surrounding areas. Lessee assumes sole responsibility and liability for the security of itself, its employees, customers, and invitees, and their respective property in or about the Premises. Lessee agrees that to the extent the Port elects to provide any security, the Port is not warranting the effectiveness of any such security personnel, services, procedures or equipment and that Lessee is not relying and shall not hereafter rely on such security personnel, services, procedures or equipment. The Port shall not be responsible or liable in any manner for failure of any such security personnel, services, procedures or equipment to prevent or control, or apprehend anyone suspected of personal injury or property damage in, on or around the Premises.

7.17 **QUIET ENJOYMENT**: The Port acknowledges that it has ownership of the Premises and that it has the legal authority to lease the Premises to Lessee. The Port covenants that Lessee shall have quiet enjoyment of the Premises during the term of this Lease so long as the terms are complied with by Lessee and subject to the Port's right of entry onto the Premises as set forth

herein.

7.17.1 The Port reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses applied for will not unduly interfere with the use to which Lessee is putting the Premises or interfere unduly with the approved plan of development for the Premises. No easement or other land uses shall be granted to third parties, until damages to the Lessee have been dealt with appropriately, or waiver signed by Lessee.

7.17.2 Lessee understands that various federal agencies, including the Department of Homeland Security and U.S. Coast Guard, have the authority to restrict access to certain areas on property owned by the Port in order to counter a terrorist or other threat. Such restrictions could impact Lessee's ability to access the Premises for an indefinite period of time. Since such restrictions on access are outside the control of the Port, Lessee agrees that such interruptions shall not be deemed a violation of this Lease or the Covenant of Quiet Enjoyment.

7.18 **PORT MAY ENTER PREMISES; INSPECTION**: The Port reserves the right to inspect the Premises after written notice (except where the Port reasonably believes there exists or is about to exist an emergency, in which case no notice is required) at any and all reasonable times throughout the term of this Lease, provided that it shall not unduly interfere with Lessee'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 the Lease.

7.19 **TIME**: It is mutually agreed and understood that time is of the essence of this Lease and that a waiver of any default of Lessee shall not be construed as a waiver of any other default.

7.20 **INTERPRETATION**: This Lease has been submitted to the scrutiny of the parties hereto and their counsel, if desired. In any dispute between the parties, the language of this Lease shall, in all cases, be construed as a whole according to its fair meaning and not for or against either the Port or Lessee. If any provision is found to be ambiguous, the language shall not be construed against either the Port or Lessee solely on the basis of which party drafted the provision. If any word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such finding shall in no way affect the remaining provisions of this Lease.

7.21 **HOLDING OVER**: If Lessee remains in possession of said Premises after the date of expiration of this Lease without the Port's prior written consent, such holding over shall constitute and be construed as tenancy at sufferance only, at a monthly rent equal to one hundred fifty percent (150%) of the rent owed during the immediately preceding month under this Lease and otherwise upon the terms and conditions in this Lease and shall continue to be responsible for payment of applicable CAM Expenses and leasehold excise tax obligations. If Lessee holds over with the Port's prior written consent, then until such time as a new written Lease is executed

by the parties hereto, Lessee shall continue to make payments to the Port on a month-to-month basis as provided for in this Lease. Such holdover tenancy may be terminated by either party at the end of any such monthly period by sending written notice not less than five (5) days before the end of such period. Such holdover tenancy shall be subject to all terms and conditions contained herein.

7.22 **PROMOTION OF PORT COMMERCE**: Lessee agrees that throughout the term of this Lease it will, insofar as practicable, promote the activities of the Port.

7.23 **SURVIVAL**: All obligations of Lessee, as provided for in the Lease, shall not cease upon the termination of this Lease and shall continue as obligations until fully performed. All clauses of this Lease, which require performance beyond the termination date, shall survive the termination date of this Lease.

7.24 **GOVERNING LAW**: This Lease, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action jurisdiction and venue shall lie exclusively in Clallam County, Washington.

7.25 **ESTOPPEL CERTIFICATES**: At Lessee's request, the Port agrees to execute and deliver to Lessee or its lender(s), a customary estoppel certificate in a form acceptable to the Port which sets forth the following information: (i) the terms and conditions of this Lease, (ii) the status of the Rent payments under the Lease; and (iii) the Port's knowledge of any breaches or anticipated breaches of the Lease. The Port shall have no obligation to execute an estoppel certificate which requests any information other than as set forth above. Lessee agrees to reimburse the Port for all attorneys' fees paid by the Port for the review and opinion of such attorney acting on the request for such estoppel certificate and in negotiating acceptable language in the estoppel certificate. A failure to reimburse the Port within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease.

7.26 **ATTORNMENT**: In the event the Premises are sold, Lessee shall attorn to the purchaser upon the sale provided that the purchaser expressly agrees in writing that, so long as Lessee is not in default under the Lease, Lessee's possession and occupancy of the Premises will not be disturbed and that such purchaser will perform all obligations of the Port under the Lease.

7.27 **ENTIRE AGREEMENT**: This Lease contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Lease which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Lease executed with all necessary legal formalities by the Commission of the Port of Port Angeles, or its designee.

7.28 **COMMISSIONS AND FEES**: In the absence of any agreement between the parties to

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

7.29 **VALIDATION**: IN WITNESS WHEREOF, the Port has caused this instrument to be signed by its Executive Director, or other designee, by authority of the Commission of the Port of Port Angeles, and this instrument has been signed and executed by Lessee, on the day and written below.

LESSOR:

LESSEE:

PORT OF PORT ANGELES

Geoffrey C. James

Its: Executive Director

Its:

Date: _____

Date: _____

STATE OF WASHINGTON)
) ss.
County of Clallam)

On this ____ day of _____, 2019, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Geoffrey C. James**, to me known to be the **Executive Director of the Port of Port Angeles**, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

If tenant is an entity:

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 20____, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____ the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

If the tenant is an individual:

STATE OF _____)
) ss.

County of _____)

On this ____ day of _____, 20____, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, known to be the individual named in and who executed the within and foregoing Commercial Lease, and acknowledged to me that s/he signed the same as her/his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

BERTHAGE AGREEMENT

THIS BERTHAGE AGREEMENT ("Agreement") is made as of the date last written below, by and between the **PORT OF PORT ANGELES** (the "**Port**"), a duly organized Washington State public port district, and the owner of vessel(s), _____, _____ and collectively referred to as the "**Party**."

ARTICLE I

Summary of Berthage Terms and Definitions

The Port: PORT OF PORT ANGELES
338 W. First St.
Port Angeles, WA 98362

Owner of Vessel(s): _____

Berthage Site Description: _____
As depicted in **Exhibit A**, the "**Berthage**").

Berthage Fee:

Use of Berthage: (See Section 4.1 for more information).

Benefit to the Public: _____

Party owned Improvements:

As of the Commencement Date as defined herein, the following fixtures and improvements are owned by the Party and are not part of this Agreement:

[Describe the Party's improvements. **Designate all fixtures as "Fixtures" in the description in anticipation of reversion to the Port under Section 4.5.**]

Initials: _____
Port

_____ Party

Commencement/Effective Date:

Term:

Renewals:

Escalation: (See Section 3.2 for further information). Annual escalation using the Northwest Marine Trades Association’s (NWMTA) CPI published annually in December.

Financial Security: (See Section 5.5 for more information):

Utilities:

ARTICLE II

Term and Renewals

2.1 **TERM:** The term of this Agreement shall be for _____ commencing and effective on _____, ending on _____. This Agreement covers periods of either continuous or intermittent occupancy during the above term. During this term the Port reserves the right from time to time to require the Party to vacate the Berthage if required by the Port's operations.

2.2 **RENEWAL:** Subject to the terms and conditions herein, the Party shall have the opportunity to request that this Agreement be renewed for three (3) consecutive two (2) year periods by giving written notice of such intention to the Port at least ninety (90) days prior to the expiration of the term of this Agreement or any renewal thereof (“**Renewal Notice**”). The Party shall not be entitled to renew this Agreement unless the Agreement is in good standing at the time of renewal and the Party is not in default under the terms of this Agreement with the Port. The terms and conditions of any renewal shall be the same as set forth in this Agreement, except that all fees shall be recalculated as provided herein and the terms of this Agreement shall be updated to be consistent with the terms and conditions then existing in the Port's Berthage Agreement. The Party’s right of renewal is likewise subject to and contingent upon the Port's acceptance of the Party’s Renewal Notice, which the Port may withhold in its sole discretion. Should the Port decline to accept the Party’s Renewal Notice, this Agreement will terminate upon the expiration of the then-existing term.

ARTICLE III

Berthage Fee and Adjustment

3.1 **BERTHAGE FEE:** The term “**Fee**” as used herein includes the berthage fee, applicable Washington State leasehold excise tax, and other fees and charges assessed herein. The Fee and Washington State leasehold excise tax shall be paid without the requirement that the Port provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement. As for any other fees and charges which may be assessed by the Port herein, the Port shall first provide written notice thereof, and Lessee shall pay such fees and/or charges within thirty (30) days of receipt of such written notice without any counterclaim, setoff, deduction, defense or abatement.

3.1.1 The Fee shall be paid on or before the first (1st) day of each month beginning on the Commencement Date. A late charge of one percent (1%) per month will be assessed against past due Fees from the date such Fees became due. If the Fee is not received by the twentieth (20th) day of any month, the Party shall pay the Port an additional fee of \$100 or five percent (5%) of the delinquent payment, whichever is greater, to defray costs of collecting and handling such late payment. All accrued interest and late charges shall be paid no later than the twentieth (20th) day of the month following that month in which such interest or late charges accrued.

3.2 **FEE ADJUSTMENT**: The Port may, in its discretion, adjust the Fee hereunder upon the provision of written notice prior to the anniversary of the Commencement Date. Upon the provision of such notice, the Fee shall be automatically adjusted effective upon the month of the anniversary of the Commencement Date to reflect the percentage change in the Consumer Price Index issued by the Northwest Marine Trades Association (NWMTA), or the closest comparable index if the above index is no longer published, over the last full 12-month period immediately preceding the anniversary of the Commencement Date for which such data are available. If the resulting Fee adjustment is negative, then the Fee shall not be decreased but shall remain the same as the preceding period. However, in no case shall the adjusted Fee increase by more the four percent (4%) of the then current amount.

3.3 **ABATED FEES**: If this Agreement provides for a postponement of any monthly fees or other fee concession, such postponed fees are called the "**Abated Fees**." The Party shall be credited with having paid all of the Abated Fees on the expiration of the term of this Agreement only if the Party has fully, faithfully and punctually performed all of the Party's obligations hereunder, including the payment of all Fees, including, if applicable, Abated Fees, and all other monetary obligations and the surrender of the Berthage in the condition required by this Agreement. If the Party defaults and does not cure within any applicable grace period, the Abated Fee shall immediately become due and payable in full and this Agreement shall be enforced as if there were no such fee abatement or other fee concession. In such case, Abated Fees shall be calculated based on the full initial fee payable under this Agreement, plus interest thereon at the rate of twelve percent (12%) per annum from date each monthly fee payment was postponed.

3.4 **LEASEHOLD AND OTHER TAXES**: Throughout the term of this Agreement, the Party shall be liable for, and shall pay or, as applicable, reimburse the Port for, all license fees and excise and occupation taxes covering the business conducted at the Berthage, all taxes on the Party property on the Berthage, ad valorem taxes or taxes levied in lieu of an ad valorem tax, and any taxes on the leasehold interest created by this Agreement and/or measured by the fee payments hereunder, whether imposed on the Party or on the Port. With respect to the leasehold excise tax payable hereunder, the Party shall pay to the Port with each Fee payment an amount equal to the tax. All other tax amounts for which the Port is or will be entitled to reimbursement from the Party shall be paid to the Port at least fifteen (15) days prior to the due dates of the tax amounts involved, provided that the Party shall be given at least ten (10) days' prior written notice of the amounts payable.

ARTICLE IV
Use of Berthage, Condition of Berthage,
Improvements, Removal of Property, Maintenance, Utilities, and Vessel Loading

4.1 **'S USE OF THE BERTHAGE:** The Port grants to the Party the exclusive right to use the Berthage for the following vessel(s): _____, along with the Party's agents, subcontractors and invitees, provided that (i) such persons comply with the reasonable rules and regulations of the Port relating to safety and security; (ii) as between Port and the Party is solely responsible for liability for any damages caused by such persons to the Site, other Port property, or any other person or property; and (iii) the use of the Site by such persons will not increase the scope of use of the Site granted to the Party hereunder, including, without limitation, the vessel size specified in **Exhibit A** hereto. Such use shall be on a twenty-four (24) hour basis, 365 (or 366, as the case may be) days a year during the term of this Agreement; provided, however, that the Party agrees to comply with any and all reasonable rules and regulations of the Port regarding access to secured areas of the Port's property and regarding the proper identification of all visitors to the Berthage.

4.2 **INGRESS, EGRESS AND RELOCATION:** The Port retains the right to berth other vessels at the Berthage when it is not in use and retain revenues therefrom, and the Party reserves the right of watercraft egress and ingress only from and to the Berthage. Access to the Berthage from and across Terminal 7 is strictly prohibited, until such time the pier is restored.

4.2.1 Upon reasonable notice, the Port may request that the Party temporarily relocate vessels to accommodate the Port's operations. The Party will agree to requested relocations as long as the Party personnel and vessel safety, security and operational requirements are not jeopardized or hindered. The Port shall cause any alternate berth to be furnished with the same or better facilities available to the Party at their previous berth subject to the Party's approval prior to relocation. All expenses incurred by the Party related to such relocation will be borne by the Port, including but not limited to, overtime labor costs, tug costs, etc.

4.2.2 The Port agrees to not undertake any filling or installation of facilities or improvements which result in a denial of access to surrounding waters, it being the intention of the Parties that the boundaries of the real property owned by the Port and on which the Berthage is located shall remain riparian to the surrounding waters.

4.3 **CONDITION OF BERTHAGE AREA/IMPROVEMENTS:** The Party has inspected the Berthage, is aware of its condition, and accepts it as it is. It is expressly understood that this Agreement is for berthing space only and is granted with the understanding that the Party is responsible for determining if the Berthage facilities provide for safe and sound moorage of its vessels and safe and sound access and working conditions for its employees, contractors, guests and invitees. The Party accepts the Berthage on an as-is-where-is basis and assumes liability for repair of any damage to the Berthage caused by the Party vessel(s). At the expiration or sooner termination of this Agreement, the Party shall return the Berthage in the same condition in which received, normal wear and tear excepted. A survey will be performed of the dock prior to commencement of this Agreement. During the periods that the Party is not utilizing the Berthage and the Port elects to use the Berthage as provided for in Section 4.2 herein above, the Port and the Party will jointly inspect the Berthage before other vessels are berthed and again before the Party returns to berth. If the Port does not berth any other vessels during the Party's absence, no survey will be required.

4.4 **CONSTRUCTION OF TENANT IMPROVEMENTS:** The Party shall abide by the following terms with regard to making any tenant improvements to the Berthage ("**Tenant Improvements**"):

4.4.1 Subject to obtaining the Port's written approval, the Party may make and install, at its own expense, such Tenant Improvements as are normal and customary in connection with the Authorized Use set forth herein. the Party's contractor for such Tenant Improvements, if any, shall be subject to the Port's approval, which shall not be unreasonably withheld. The Port reserves the right to condition its approval upon the Party providing payment and/or performance bonds satisfactory to the Port. The Party shall submit plans to and obtain written approval from the Port before commencing any Tenant Improvements. The Port shall have a reasonable period of time to review such plans prior to issuing a decision. Upon the provision of written notice to the Party that the Port's review of plans will require extraordinary staff review time, the Port may charge the Party a reasonable pre-established fee for staff, consultant or attorney time required to review the plans. All Tenant Improvements which are to be designated fixtures shall be so designated by the Port upon the Port's approval of the plans for such improvements.

4.4.2 **Unauthorized Improvements:** Any Tenant Improvements made on the Berthage without the Port's prior written consent or which are not in conformance with the plans submitted to and approved by the Port ("**Unauthorized Improvements**") shall be subject to removal by the Party upon sixty (60) days' written notice from the Port.

4.5 **TITLE TO the Party IMPROVEMENTS AND PERSONAL PROPERTY AT END OF AGREEMENT:** Except as otherwise provided in the description of the Berthage in Article I above, as of the Commencement Date, all existing structures, installations, and improvements of any kind located on the Berthage are owned by and title thereto is vested in the Port. Prior to the conclusion of the Agreement, the Party shall remove the following from the Berthage:

- a. All equipment;
- b. All personal property;
- c. All the Party improvements or fixtures designated as such in Article I above, provided however Port fixtures installed pursuant to Section 4.4 above shall be removed only upon written request of the Port.

4.5.1 If any of the foregoing items are not removed from the Berthage by the conclusion of the Agreement or when the Port has the right of re-entry, then the Port may, at its sole option, elect any or all of the following remedies:

- a. Upon the expiration of thirty (30) days' written notice to the Party that equipment, personal property and/or the Party improvements remaining on the Berthage will be removed therefrom, the Port may remove any or all of the items and dispose of them without liability to the Party. The Port shall not be required to mitigate its damages, to dispose of the items in a commercially reasonable manner, or to make any effort whatsoever to obtain payment for such items. The Party agrees to pay the Port's costs and damages associated with Party's failure to remove such items, including, but

to be committed any waste with respect to the Berthage or any improvement now or hereafter located thereon and shall not perform or suffer to be performed any act which constitutes a nuisance, or which constitutes a disturbance or risk to the safe operation of the Port of Port Angeles or any of its other customers. Port or its agents shall have access at all times to Party's vessels or other storage for the purposes of inspection, firefighting or the remedying of any actual or potential hazard. the Party shall defend, indemnify, and hold Port harmless against all claims, costs (including but not limited to attorney fees), fees, fines, penalties, liabilities, losses, and damages that Port may incur by reason of any charge, claim, litigation, or enforcement action related to any actual or claimed violation of any of the foregoing.

ARTICLE V

Waiver of Responsibility, Insurance and Financial Security

5.1 **WAIVER OF RESPONSIBILITY:** It is mutually agreed that the Port does not accept and shall not be liable or responsible in any manner, for the safekeeping and condition of Party's vessels, its tackle, apparel, fixtures, equipment, furnishings, or materials stored. It is further agreed that Port will not be liable or responsible for any personal injuries or damages suffered by the Party or its agents, employees, contractors, licensees, invitees, or guests arising from any cause upon the vessels, Port of Port Angeles Berthage, or areas adjacent thereto. The Party acknowledges that it has inspected the Berthage and accepts them in their present condition. The Party agrees to keep its space and byways neat, clean and orderly, including docks, and paved areas adjacent to the Berthage.

If vessels moored by the Party shall sink in or near said berths or in the channel leading to or from said berths, the Party agrees to remove same at its own expense and without delay; provided however that if such sinking was caused solely by the fault of Port, Port shall reimburse the Party for the entirety of the expense incurred by the Party for removing same without delay.

5.2 **CASUALTY LOSS OF VESSEL(S):** The parties hereto agree that the Port shall not be responsible to the Party for any property loss or damage done to Party's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be Party's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Port, the Party, third party, or act of nature.

5.3 **INSURANCE:**

5.3.1 **Marine General Liability:** the Party shall procure and maintain during the term of this Agreement and any extensions or renewals of this Agreement Marine General Liability insurance covering on an occurrence basis all claims for illness, personal injury (including death) and property damage (including all real and personal property located on the Berthage) arising on the Berthage or arising out of Party's operations. the Party shall provide the Port evidence of protection and indemnity insurance against claims for loss of life, injury, illness, property damage, as well as coverage for wreck removal and legal expenses that arise out of the tenancy, use, occupancy or maintenance of the Berthage and all areas appurtenant thereto as defined in this Agreement. The policy shall be written on Marine Form SP 38, SP 23 or its equivalent for no

less than \$2,000,000 per occurrence, per vessel. The “Port of Port Angeles” shall be endorsed as an Additional Insured co-assured with respect to misdirected arrow coverage on these policies. MSTC shall also obtain coverage for Contractual Liability, Products/Completed Operations, Sudden and Accidental Pollution, and Marina Operators Legal Liability. Limit per occurrence shall not be less than \$2,000,000, or the equivalent. General aggregate limit shall not be less than \$4,000,000, when applicable. Limit per claim and in the aggregate shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$4,000,000. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to the Party and to the Port.

5.3.2 **Property Insurance**. At all times during the term of this Agreement, the Party shall maintain in effect on the Party -owned improvements fire and extended coverage property insurance for physical loss and damage. Such policy or policies shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of Party's improvements thereon, which amount shall be adjusted not less frequently than annually.

5.3.3 **Protection and Indemnity**: the Party shall procure and maintain during the term of this Agreement and any extensions or renewals of this Agreement Protection and Indemnity Insurance, in an amount not less than \$1,000,000, and Hull and Machinery Coverage, for any vessel owned by the Party.

5.3.4 **Workers' Compensation; Employer's Liability/Stop Gap**: If the Party has employees, the Party shall obtain, at Party's expense, and keep in effect during the term of this Agreement and any renewals or extensions of this Agreement, Workers' Compensation as required by the State of Washington, with statutory limits, and Employer's Liability/Stop Gap Insurance with limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury, illness or disease and, if applicable, the insurance requirements that pertain to the United States Longshore and Harbor Worker’s Compensation Act and the Jones Act.

5.3.5 **Additional Insured; Primary Coverage; Non-Contributory**: Each insurance policy required herein shall name the Port, and only the Port, as an additional insured with respect to misdirected arrow coverage. For any claims related to this Agreement, Party's insurance coverage shall be primary insurance coverage as to the Port. Any insurance or self-insurance maintained by the Port shall be excess of Party's insurance and shall not contribute with it.

5.3.6 **Verification of Coverage**: For each insurance policy required herein, the Party shall provide to the Port, prior to Party's occupancy of the Berthage, original certificates of insurance, all required amendatory endorsements establishing coverage required under this Agreement, a copy of each policy declarations and endorsements page, and complete copies of each policy. Provided, the Port's failure to obtain the required documents prior to Party's occupancy shall not be deemed a waiver of Party's obligation to provide them. Receipt of such certificate or policy by the Port does not constitute approval by the Port of the terms of such policy.

5.3.7 **Acceptability of Insurers:** All insurance required herein shall be placed with insurers authorized to conduct business in the state of Washington with a current A.M. Best's rating of no less than A-VII, unless otherwise specifically authorized by the Port.

5.3.8 **Notice of Cancellation:** The Party shall provide the Port with any revised endorsements, policy declarations and endorsements pages, and policies as soon as practicable after any changes are made to any policy. No policy of insurance required under this Agreement shall be cancelable or subject to non-renewal or modification except after forty-five (45) days prior written notice to the Port. The Party shall, at least forty-five (45) days prior to the expiration of such policies, furnish the Port with evidence of renewals or "insurance binders" evidencing renewal thereof, or the Port may but is not required to order such insurance and charge the cost thereof to the Party, which amount shall be payable by the Party to the Port upon demand.

5.3.9 **Changes in Coverage Requirements:** The Port reserves the right to modify any insurance requirements set forth herein, including limits, at the same time as revaluation of the annual berthage fee, as a condition of approval of assignment or sublease of this Agreement, upon any breach of the environmental liability provision herein, upon a material change in the condition of any improvements, upon a change in the Authorized Use, or under other special circumstances as determined by the Port. The Party shall obtain new or modified insurance coverage within thirty (30) days after changes are required by the Port.

5.3.10 **Substitute Coverage:** If the Party fails to procure and maintain any insurance required herein, the Port shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums, chargeable to the Party. The Party shall pay to the Port upon demand the full amount paid by the Port.

5.3.11 **Self-Insured Retentions:** If the Party is self-insured, self-insured retentions must be declared to and approved by the Port. At the Port's option, either (i) the Party shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Port; or (ii) the Party shall provide a financial guarantee satisfactory to the Port guaranteeing payment of losses and related investigation, claim administration and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Port.

5.3.12 **Negligence:** Each insurance policy required herein shall expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of the Party which might otherwise result in a forfeiture of said insurance.

5.4 **WAIVER OF SUBROGATION:** The Party and its insurers shall waive all subrogation against the Port of Port Angeles. All vessels and all furnishings, equipment, and personal property thereon or related thereto shall be at the Party's sole risk. The Party shall indemnify, defend, and hold harmless the Port of Port Angeles and each of its members, commissioners, officers, employees and agents from and against any and all loss, liability, damages, claims, suits, costs, and expenses, including but not limited to attorney fees, arising out of or related to any injury or death of any person, or damage to any property, sustained or alleged to have been sustained by the Party or any other person or entity as a result in whole or in part of any act, omission or negligence of the Party, its contractors, licensees, agents, servants, employees,

invitees, or visitors or guests, or due to any accident or occurrence of whatsoever kind or nature and from whatsoever cause in, on, or about the Berthage; provided, however, that the Party shall not be required to defend, indemnify, or hold harmless Port with respect to any loss or damage to the extent caused by the negligence of Port.

5.5 FINANCIAL SECURITY:

5.5.1 In compliance with the requirements of RCW 53.08.085 (as presently codified or hereafter amended) and other laws of the State of Washington, the Party agrees it will secure its performance of all obligations under this Agreement by procuring and maintaining, during the term of this Agreement, a corporate surety bond (the "**Bond**"), or by providing other financial security satisfactory to the Port, in an amount totaling:

- One-sixth of the total Berthage Fee for the then-current term of this Agreement.
- X Not less than One Hundred Percent (100%) of the sum of the annual Berthage Fee including Washington State Leasehold Excise Tax.
- Other:

5.5.2 The Bond shall be in a form and issued by a surety company acceptable to the Port and shall comply with the requirements of Washington law. The Party shall obtain such Bond and forward evidence thereof to the Port or shall provide to the Port such other financial security as may be required hereunder, within thirty (30) days of execution of this Agreement, but in no event later than the Commencement Date of this Agreement. Such Bond shall be kept in effect during the term of this Agreement.

5.5.3 If the financial security amount required hereunder is to be not less than 100% of the sum of the annual Berthage Fee, that financial security amount is subject to increases to reflect any Fee adjustments as provided in Section 3 above. In that event, at no time may the security amount be less than 80% of the then-current annual Berthage Fee, and the Port may at any time require the Party to provide sufficient additional security to restore the security amount to no less than 100% of the then-current total annual Berthage Fee due hereunder. No future amendment or extension to this Agreement shall be effective until the adjusted financial security amount has been provided as required.

5.5.4 Upon any default by the Party in its obligations under this Agreement and Party's failure to cure such default in accordance with its rights to do so under this Agreement, the Port may collect on the Bond or other financial security to offset the liability of the Party to the Port. Collection on the Bond or other financial security shall not relieve the Party of liability for any amounts not offset by the amount collected, shall not limit any of the Port's other remedies, and shall not reinstate or cure the default or prevent termination of the Agreement because of the default.

5.5.5 Any Bond may provide for termination on the anniversary date thereof upon not less than one (1) year's written notice to the Port if the Agreement is not in default at the time of said notice. In the event of any such termination, the Party shall obtain a new Bond or other

security, also subject to the Port approval, to replace the security being so terminated to be effective on or before the date of termination.

5.5.6 If the Port Commission exercises its discretion pursuant to RCW 53.08.085 to reduce or waive the Party's Bond requirement under this Agreement, the Port may at any time decide that changes in the material circumstances related to the Party no longer support such reduction or waiver, and thereafter increase the Party's Bond requirement up to that required by RCW 53.08.085.

ARTICLE VI

Environmental Liability

6.1 **ENVIRONMENTAL COMPLIANCE:** Without limiting any other provision of this Agreement, the Party shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, permits and permit requirements, orders, and decrees of all governmental bodies having authority over the Berthage or any activity conducted thereon, and all rules, regulations and special instructions issued by the Port's managers or agents, related to any hazardous, toxic, dangerous, or extremely dangerous substance, material, vapor, or waste, pollutant, or pollution, which is or becomes regulated by the United States, the State of Washington, or any local governmental authority, or any substance containing any of the above, or any release thereof, as those terms are defined by applicable federal, state, and local law. The Party shall defend (with attorneys approved in writing by the Port), indemnify and hold the Port and its agents harmless from any loss, claim, fine or penalty arising from the release of hazardous substances or any violation of applicable environmental laws affecting the Berthage to the extent caused by the Party or its employees, agents, representatives, contractors, customers, licensees, invitees, visitors, or guests, or related to the Party's tenancy under this Agreement. Such obligation shall include, but shall not be limited to, environmental response and remedial costs, other cleanup costs, environmental consultants' fees, attorneys' fees, fines and penalties, laboratory testing fees, claims by third parties and governmental authorities for death, personal injuries, property damage, natural resource damages and any other costs, and the Port's actual damages and expenses. The Party's obligation under to this subparagraph shall survive expiration or other termination of this Agreement. Notwithstanding any provision of this Agreement, neither Party shall be liable for any consequential or punitive damages relating in any way to this Agreement.

6.1.1 The Party agrees to comply with all applicable rules and regulations of the Port pertaining to the Berthage in existence or hereafter promulgated for water quality and pollution prevention, for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. The Party further agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters. The Party agrees to comply with RCW 90.48.080 which states that it shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the Department of Ecology. The Party agrees to comply with RCW 90.48.010 which requires the use of all known, available and reasonable methods to prevent and control the pollution of waters of the state. The Party agrees to limit ship or boat repair to minor modification to the superstructure, deck and hull

above the waterline which are not extensive (i.e. 25% or less of the vessel's surface area above the waterline). User will not clean any portion of a vessels' hull below the waterline unless it is in full compliance with the Department of Ecology and the US Environmental Protection Agency policies, and specifically authorized by the Port. All permits covering this activity will be provided to the Port 5 days before work occurs. The Party agrees to comply with RCW 90.48.090 which allows site access by the Department of Ecology personnel during normal working hours to investigate pollution incidents. Any fees for any inspection of the Berthage during or for the Agreement term by a federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by the Party. Further, the Party will remove from the Berthage any and all wastes, materials and equipment removed from or used in maintenance or repair of any marine vessel, and shall comply with the Best Management Practices for Commercial Vessels, as attached hereto as **Exhibit B**.

6.1.2 The Party's defense and indemnity obligations under this article are unconditional, shall not be discharged or satisfied by the Port's re-entry of the Berthage or exercise of any other remedy for the Party's default under this Agreement, shall continue in effect after any assignment of this Agreement, and shall continue in effect after the expiration or earlier termination of this Agreement.

6.2 **NOTIFICATION AND REPORTING**: The Party shall immediately notify the Port if the Party becomes aware of any of the following:

- a. A release or threatened release of Hazardous Substances in, on under or above the Berthage, any adjoining property, or any other property subject to use by the Party in conjunction with its use of the Berthage;
- b. Any problem or liability related to or derived from the presence of any hazardous substance in, on, under or above the Berthage, any adjoining property or any other property subject to use by the Party in conjunction with its use of the Berthage;
- c. Any actual or alleged violation of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances with respect to the Berthage, any adjoining property, or any other property subject to use by the Party in conjunction with its use of the Berthage; or
- d. Any lien or action with respect to any of the foregoing.

ARTICLE VII

Miscellaneous Provisions

7.1 **INDEMNIFICATION AND HOLD HARMLESS**: 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 the Party or by others, including but not limited to all persons directly or indirectly employed by the Party, or any agents, contractors, or subcontractors of the Party, as a result of any condition (including existing or future defects in the Berthage) or occurrence (including failure or

interruption of utility service) whatsoever related in any way to the Berthage and the areas adjacent thereto, or related in any way to the Party's use or occupancy of the Berthage and of areas adjacent thereto. the Party agrees to defend and to hold and save the Port harmless from all liability or expenses (including reasonable attorneys' fees, costs, and all expenses of litigation) in connection with any such items of actual or alleged injury or damage, except when such injury or damage is caused by the sole negligence of the Port. the Party expressly agrees that its duty to defend and indemnify the Port includes negligent acts which are concurrent, contributory, or both by the Port, resulting in said damage or injury. However, to the extent this Agreement is construed to be subject to RCW 4.24.115, and where the injury or damage arises from the concurrent negligence of the Port and the Party, the Party's indemnity will only extend to its negligence. The Port agrees to defend and to hold and save the Party harmless from all liability and expenses (including reasonable attorneys' fees, costs, and expenses of litigation) arising out of or related to any injury or death of any person, or damage to any property, sustained or alleged to have been sustained by the Party or any other person or entity as a result in whole or in part of any act, omission, or negligence of the Port, its contractors, licensees, agents, servants, employees, invitees, or visitors or guests, or due to any accident or occurrence of whatsoever kind or nature and from whatsoever cause in, on, or about the premises; provided, however, that the Port shall not be required to defend and to hold and save harmless the Party with respect to any loss or damage to the extent caused by the negligence of the Party. Notwithstanding any provision of this Agreement, neither Party shall be liable for any consequential or, punitive, or special damages relating in any way to this Agreement. the Party specifically agrees that any bond or other security provided pursuant to any provisions of this Agreement shall extend to the indemnity agreed to herein.

the Party HEREBY WAIVES ANY IMMUNITY IT MAY HAVE UNDER RCW 51, SOLELY FOR THE PURPOSES OF ITS INDEMNITY OBLIGATIONS UNDER THIS SECTION, AND ONLY TO THE EXTENT NECESSARY TO RENDER THE INDEMNITY OBLIGATIONS UNDER THIS SECTION ENFORCEABLE. THIS WAIVER WAS NEGOTIATED BY THE PARTIES. THE PART'S OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR OTHER TERMINATION OF THIS AGREEMENT.

7.2 **DAMAGE AND DESTRUCTION:**

7.2.1 **Port Terminal/Improvements:** Except as otherwise stated herein, should the Berthage be partially damaged by fire or other casualty, or rendered partially unfit for use by reason of fire or other casualty, and should the Port, with due diligence, decide to repair the Berthage, the Berthage Fee (as defined in Section 3.1 above) shall be abated in the same proportion that the untenable portion of the Berthage bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs. The Party shall cooperate fully in obtaining and making available proceeds of insurance provided by the Party in furtherance of such repairs.

7.2.2 **the Party Owned Improvements:** If any improvement erected by the Party on the Berthage or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Agreement, the Party may, at its option and at its sole cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the Port. The Party shall provide the Port notice of its intention to repair or restore the Berthage within fifteen (15) days after the damage or loss occurs.

Such work of repair or restoration shall be commenced within one hundred forty-five (45) days after the damage or loss occurs and shall be completed with due diligence but not longer than six (6) months, if possible, or as soon thereafter as is reasonably possible 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 Berthage. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration, or if the Party elects not to repair or restore, to the cost of removing, demolishing, or clearing off the building or improvements. If (i) there are not insurance proceeds, or (ii) the same shall be insufficient for said purpose, the Party shall make up the deficiency out of its own funds. Should the Party fail or refuse to make the repair, restoration or removal as hereinabove provided, then in such event said failure or refusal shall constitute a default under the covenants and conditions hereof, and all insurance proceeds so collected shall be forthwith paid over to and be retained by the Port on its own account, and the Port may, but shall not be required to, sue and apply the same for and to the repair, restoration or removal of said improvements, and the Port may, at its option, terminate this Agreement as elsewhere provided herein.

7.2.3 Except as otherwise stated herein, should the Berthage be completely destroyed by fire or other casualty, or should it be damaged to such an extent that the Berthage is rendered wholly unfit for its accustomed uses, the Port shall have the option to terminate this Agreement on thirty (30) days' notice, effective as of any date not more than thirty (30) days after the occurrence. In the event that this Section shall become applicable, the Port shall advise the Party within thirty (30) days after the occurrence of any such damage whether the Port has elected to continue the Agreement in effect or to terminate it. If the Port shall elect to continue this Agreement, it shall commence and prosecute with due diligence any work necessary to restore or repair the Berthage. If the Port shall fail to notify the Party of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this Agreement, and the Agreement shall automatically terminate thirty (30) days after the occurrence of the damage. For the period from the occurrence of the damage to the Berthage as described in this Section to the date of completion of the repairs to the Berthage (or to the date of termination of the Agreement if the Port shall elect not to restore the Berthage), the Berthage Fee due hereunder shall be abated in the same proportion as the untenable portion of the Berthage bears to the whole thereof.

7.3 **ATTORNEYS' FEES AND COURT COSTS:** In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

7.4 **ASSIGNMENT OF AGREEMENT:** The Party shall not assign, license, rent or sublease any portions of this Agreement or any extension thereof, without the prior written consent of the Port, which consent shall not be unreasonably withheld, and no rights hereunder in or to said Premises shall pass by operation of law or other judicial process, or through insolvency proceedings. Otherwise, the rights and obligations hereof shall extend to and be binding upon their respective successors, representatives and assigns, as the case may be. the Party shall furnish the Port with copies of all such proposed assignment, sublease, license or rental documents. For the purposes of this Agreement, any change of ownership including sale, liquidation or other disposition of some or all of the corporate stock or limited liability company units will be considered an assignment. Should the Port consent to an assignment made by the Party for the

purposes of obtaining a loan or other consideration from a third party, then the Port's consent shall be made in accordance with the consent to assignment document used by the Port for these specific assignments. A copy of this consent form shall be provided by the Port upon request of the Party.

7.4.1 If the Port refuses to consent to an assignment, the Party's sole remedy shall be the right to bring a declaratory action to determine whether the Port was entitled to refuse such assignment under the terms of this Agreement.

7.4.2 No consent by the Port to any assignment or sublease shall be a waiver of the requirement to obtain such consent with respect to any other or later assignment or sublease. Acceptance of rent or fees or other performance by the Port following an assignment or sublease, whether or not the Port has knowledge of such assignment or sublease, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same.

7.4.3 A minimum handling and transfer fee ("Transfer Fee Deposit") of Three Hundred Dollars (\$300.00) shall be payable by to the Port if the Party requests the Port's consent to a proposed assignment (including an assignment to a creditor for security purposes), sublease or modification of this Agreement. The Port reserves the right to increase the Transfer Fee Deposit up to Five Hundred Dollars (\$500.00) if, in the Port's sole judgment, the transaction will necessitate the expenditure of substantial time and expense on the part of the Port. Such Transfer Fee Deposit shall be submitted to the Port at the same time that the Party requests the Port's consent to the proposed sublease, assignment or modification. If the Port's reasonable and customary attorneys' fees exceed the Transfer Fee Deposit, then the Party agrees to reimburse the Port for such additional reasonable and customary attorneys' fees. The Party's failure to remit this additional amount within sixty (60) days of the mailing of the notice of such charges, shall constitute a default under this Agreement. Notwithstanding anything to the contrary herein, the Party shall not be obligated to reimburse the Port in any case where an assignment, sublease or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.4.4 If, pursuant to any assignment or sublease, the Party receives rent or fees, either initially or over the term of the assignment or sublease, in excess of the Rent or Fees called for hereunder, or in the case of a sublease, a portion of the Premises in excess of such Rent or Fees fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder are appropriately taken into account, the Party shall pay to the Port, as additional rent or fee expenses hereunder, fifty percent (50%) of the excess of each such payment of Rent or Fees received by the Party after its receipt.

7.4.5 If this Agreement is assigned, or if the underlying beneficial interest of the Party is transferred, or if the Premises or any part thereof is sublet to or occupied by anybody other than the Party, the Port may collect Rent or Fees from the assignee, subtenant or occupant and apply the net amount collected to the Rent or Fees herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of the Party from the further performance by the Party of covenants on the part of the Party herein contained. No assignment or subletting shall affect the continuing primary liability of the Party (which, following assignment, shall be joint and several with the assignee), and the Party shall not be released from performing any of the terms, covenants and conditions of this Agreement.

7.4.6 Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by the Port to any assignee or sublessee or failure of the Port to take action against any assignee or sublease, the Party hereby agrees that the Port may, at its option, and upon not less than three (3) days' notice to the Party, proceed against the Party without having taken action against or joined such assignee or sublessee, except that the Party shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee.

7.5 **REIMBURSEMENT FOR EXPENSES**: Should the Party seek to assign this Agreement to any creditor as security for a loan or forbearance from such creditor or attempt to otherwise assign or modify this Agreement between the parties during the term of this Agreement or any renewal thereof, then the Party agrees to reimburse the Port for all customary and reasonable attorney fees paid by the Port for the review and opinion of such attorney acting on the request. A failure to reimburse the Port within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Agreement. Notwithstanding anything to the contrary herein, the Party shall not be obligated to reimburse the Port in any case where an assignment or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.6 **TERMINATION**: Upon expiration or sooner termination of this Agreement or any extension thereof, whether by expiration of the stated term or sooner termination thereof, as herein provided, the Party shall surrender to the Port the Berthage peaceably and quietly. The Party shall restore the Berthage to the condition existing at the time of initiation of this Agreement, except for: (i) normal wear and tear, and (ii) any improvements which the Port permits to remain on the Berthage.

7.6.1 If the Port, at its sole discretion, shall require the use of the Berthage for a public use in connection with the business of the Port not involving the lease thereof to another private lessee or in the event that the Port, at its sole discretion, shall require the use of the Berthage for a major capital improvement for public or private use in connection with the operation of the business of the Port, then this Agreement may be terminated by the Port by written notice delivered or mailed by the Port to the Party not less than ninety (90) days before the termination date specified in the notice, unless the need for such use constitutes an emergency, in which case this Agreement shall terminate as soon as is practicable.

7.6.2 If the United States Government, the State of Washington, or any agency or instrumentality of said government shall take title, possession, the rights of the Berthage or any part thereof, the Port shall have the option to terminate this Agreement, and if the taking has substantially impaired the utility of the Berthage to the Party, the Party shall have the option to terminate this Agreement. Both options shall be exercisable as of the date of said taking. If the Party is not in default under any of the provisions of this Agreement on the date of such taking, any fees prepaid by the Party shall be promptly refunded to the Party to the extent allocable to any period subsequent to said date, and all further obligations of the parties shall terminate except liabilities, which shall be accrued prior to such date. To the extent the Party owns certain improvements upon the Berthage and is not otherwise directly compensated therefore by the taking entity, the Party shall receive a fair allocation of any award received by the Port due to termination

for government use. Nothing herein contained shall preclude the Party from independently pursuing a direct claim for compensation from the taking entity for the value of its improvements to the Berthage or its leasehold interest therein.

7.6.3 If any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Agreement, then either party hereto may terminate this Agreement by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that occurred prior to the effective date of termination) shall thereupon terminate. If the Party is not in default under any of the provisions of this Agreement on the effective date of such termination, any fees prepaid by the Party shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to the Party.

7.7 **DEFAULT, CROSS DEFAULT, AND REMEDIES:** In the event the Party does not timely pay, as herein provided, the fees and other charges which are accrued in favor of the Port, or the Party otherwise violates the provisions of this Agreement, the Port may, upon thirty (30) business days advance notice, take possession of the Party's vessels, its tackle, apparel, fixtures, equipment and furnishings and retain such possessions at the Port, or elsewhere, until all charges then owing and all charges which shall thereafter accrue are fully paid and all violations of this Agreement cured. In addition, and at its option, the Port may terminate the Party's right to further space, upon thirty (30) business days advance notice, all without prejudice to the right of the Port to collect fees and utility charges under this Agreement and until such time as the Party's vessels are removed from the Port.

The remedies provided herein are in addition to and shall not be deemed in lieu of any other rights which the Port may have by virtue of federal and state laws and local ordinances. In any action or proceeding for the collection of any sums or charges which may be payable hereunder, the Party agrees to pay, in addition thereto, a reasonable sum for attorney fees and court costs.

7.7.1 If within any one (1) year period, the Port serves upon the Party three notices requiring the Party either to: (i) comply with the terms of this Agreement or to vacate the Berthage or (ii) pay the Berthage Fee or vacate (collectively referred to herein as "Default Notices"), then the Party shall, upon a subsequent violation of any term of this Agreement by the Party (including failure to pay Berthage Fees), be deemed to be in unlawful detainer, and the Port may, in addition to any other remedies it may have, immediately terminate the Agreement without further notice to the Party.

7.7.2 The following shall also constitute a default under the terms of this Agreement: (i) A default by the Party under any other agreement or lease with the Port; (ii) insolvency of the Party; (iii) an assignment by the Party for the benefit of creditors; (iv) the filing by the Party of a voluntary petition in bankruptcy; (v) an adjudication that the Party is bankrupt or the appointment of a receiver of the properties of the Party; (vi) the filing of an involuntary petition of bankruptcy and failure of the Party to secure a dismissal of the petition within thirty (30) days after filing; and (vii) attachment of or the levying of execution on the leasehold interest and failure of the Party to secure a discharge of the attachment or release of the levy of execution within ten (10) days.

7.7.3 A default under this Agreement shall constitute a default under any other lease or Agreement which the Party has with the Port (hereinafter such other agreements shall be referred to as "Collateral Agreements"). Likewise, any material breach or default under any Collateral Agreements shall be deemed a material breach or default under the terms of this Agreement. If any Collateral Agreements are terminated for a material breach or default of the Party, then the Port shall, without limiting any other remedies it may have, be entitled to terminate this Agreement upon five (5) days' written notice to the Party.

7.7.4 The Port shall be under no obligation to observe or perform any covenant of this Agreement after the date of any material default by the Party unless and until the Party cures such default.

7.7.5 A fee of Five Hundred Dollars (\$500.00) shall be assessed to the Party for each Default Notice issued to the Party to defray the costs associated with preparing, issuing, and serving such notice. This fee shall be payable on the first (1st) day of the month following the issuance of the notice.

7.8 **NON WAIVER**: Neither the acceptance of Fees nor any other act or omission of the Port after a default by the Party shall operate as a waiver of any past or future default by the Party, or to deprive the Port of its right to terminate this Agreement, or be construed to prevent the Port from promptly exercising any other right or remedy it has under this Agreement. Any waiver by the Port shall be in writing and signed by the Port in order to be binding on the Port.

7.9 **NOTICES**: Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the addresses as follows:

TO THE PORT	Port of Port Angeles P.O. Box 1350 Port Angeles, Washington, 98362
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TO ____:

or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested. Notice by email shall be effective upon written acknowledgment of receipt by the addressee. Each Party may change its notice address and information by written notice to the other Party pursuant to this section

7.10 **SECURITY**: The Party specifically acknowledges that the Port has no duty to provide security for any portion of the Berthage or surrounding areas. The Party assumes sole responsibility and liability for the security of itself, its employees, customers, and invitees, and their respective property in or about the Berthage. The Party agrees that to the extent the Port elects to provide any security, the Port is not warranting the effectiveness of any such security

personnel, services, procedures or equipment and that the Party is not relying and shall not hereafter rely on such security personnel, services, procedures or equipment. The Port shall not be responsible or liable in any manner for failure of any such security personnel, services, procedures or equipment to prevent or control, or apprehend anyone suspected of personal injury or property damage in, on or around the Berthage.

7.11 **QUIET ENJOYMENT**: The Port acknowledges that it has ownership of the Berthage and that it has the legal authority to lease the Berthage to the Party. The Port covenants that the Party shall have quiet enjoyment of the Berthage during the term of this Agreement so long as the terms are complied with by the Party and subject to the Port's right of entry onto the Berthage as set forth herein.

7.11.1 The Party understands that various federal agencies, including the Department of Homeland Security and U.S. Coast Guard, have the authority to restrict access to certain areas on property owned by the Port in order to counter a terrorist or other threat. Such restrictions could impact the Party's ability to access the Berthage for an indefinite period of time. Since such restrictions on access are outside the control of the Port, the Party agrees that such interruptions shall not be deemed a violation of this Agreement or the Covenant of Quiet Enjoyment.

7.12 **PORT MAY ENTER BERTHAGE; INSPECTION**: The Port reserves the right to inspect the Berthage after written notice (except where the Port reasonably believes there exists or is about to exist an emergency, in which case no notice is required) at any and all reasonable times throughout the term of this Agreement, provided that it shall not unduly interfere with the Party'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 Berthage and shall impose no liability upon the Port for failure to make such inspections.

7.13 **TIME**: It is mutually agreed and understood that time is of the essence of this Agreement and that a waiver of any default of the Party shall not be construed as a waiver of any other default.

7.14 **INTERPRETATION**: This Agreement has been submitted to the scrutiny of the Parties hereto and their counsel, if desired. In any dispute between the Parties, the language of this Agreement shall, in all cases, be construed as a whole according to its fair meaning and not for or against either the Port or the Party. If any provision is found to be ambiguous, the language shall not be construed against either the Port or the Party solely on the basis of which Party drafted the provision. If any word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one Party or the other, then such finding shall in no way affect the remaining provisions of this Agreement.

7.15 **HOLDING OVER**: If the Party remains in possession of said Berthage after the date of expiration of this Agreement without the Port's prior written consent, such holding over shall constitute and be construed as tenancy at sufferance only, at a monthly fee equal to one hundred fifty percent (150%) of the Berthage Fee owed during the immediately preceding month under this Agreement and otherwise upon the terms and conditions in this Agreement and shall continue to be responsible for payment of applicable expenses and leasehold excise tax obligations. If the Party holds over with the Port's prior written consent, then until such time as a new written Agreement is executed by the Parties hereto, the Party shall continue to make payments to the Port

on a month-to-month basis as provided for in this Agreement. Such holdover tenancy may be terminated by either Party at the end of any such monthly period by sending written notice not less than five (5) days before the end of such period. Such holdover tenancy shall be subject to all terms and conditions contained herein.

7.16 **PROMOTION OF PORT COMMERCE**: The Party agrees that throughout the term of this Agreement it will, insofar as practicable, promote the activities of the Port.

7.17 **SURVIVAL**: All obligations of the Party, as provided for in the Agreement, shall not cease upon the termination of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement, which require performance beyond the termination date, shall survive the termination date of this Agreement.

7.18 **ATTORNMENT**: In the event the Berthage are sold, the Party shall attorn to the purchaser upon the sale provided that the purchaser expressly agrees in writing that, so long as the Party is not in default under the Agreement, the Party's possession and occupancy of the Berthage will not be disturbed and that such purchaser will perform all obligations of the Port under the Agreement.

7.19 **ENTIRE AGREEMENT**: This Agreement contains all of the understandings between the Parties. Each Party represents that no promises, representations or commitments have been made by the other as a basis for this Agreement which have not been reduced to writing herein. No oral promises or representations shall be binding upon either Party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Agreement executed with all necessary legal formalities by the Commission of the Port, or its designee.

7.20 **VALIDATION**: IN WITNESS WHEREOF, the Port has caused this instrument to be signed by its Executive Director, or other designee, by authority of the Commission of the Port, and the Party warrants that this instrument has been signed and executed on behalf of the Party, by an authorized agent of the Party who has full authority from to do so on the day and written below.

PORT OF PORT ANGELES

NATIONAL RESPONSE CORPORATION

Geoffrey C. James
Its: Executive Director

Its:

Date: _____

Date: _____

STATE OF WASHINGTON)
) ss.
County of Clallam)

On this _____ day of _____, 2021, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Geoffrey C. James**, to me known to be the **Executive Director of the Port of Port Angeles**, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 2021, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ **of the** _____, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

EXHIBIT A

EXHIBIT B
BEST MANAGEMENT PRACTICES FOR COMMERCIAL VESSELS
Commercial Docks and Industrial Properties
ECOLOGY REQUIREMENTS RELATED TO VESSEL MOORAGE
(Updated: July 21, 2021)

The Party (“You” or “Your”) has requested use of berthing facilities at a Port marine terminal facility. Prior to acceptance of your request, this is to notify you that the Port Terminal facilities are not boatyards, and any in-water maintenance and repair is subject to state, federal, and other laws. Extensive work or modifications must be conducted at a boatyard or shipyard. This is to advise you that upon receipt of the Port’s berth assignment, your acceptance for use of the berth, includes acceptance of the following best management practices, as referenced in the lower portion of the application and by attachment.

Management of Bilge Water Discharges

- It is illegal to discharge contaminated bilge water, ballast water, or any water with an oily sheen or contamination into the waters of the State. The fine for such discharges can be as high as \$32,500 per day per violation. In addition to the Oil Pollution Control Act enforced by the U.S. Coast Guard, a discharge that displays turbidity, oil sheen or discoloration to the receiving water has not met the Washington Department of Ecology’s water quality standard in RCW 90.48. The discharge of bilge water from vessels moored at Port facilities is prohibited.
- It is the responsibility of the vessel owner to contact a service provider to dispose of contaminated products, including bilge water, in an appropriate manner.
- Dispose of oil-soaked absorbents when all liquids are fully absorbed. Used absorbents should be properly sealed/packaged and disposed of in accordance with all applicable laws.

Used Oil

- Used oil, oil sludge and filters should only be removed from the site by an approved service provider. Please note that any over the water transfer of petroleum products are subject to U.S. Coast Guard and Washington State bunkering regulations.

Sewage Management and Gray Water

- The discharge of sewage and gray water into adjoining bodies of water is illegal and is prohibited. Sewage is defined as “black water and/or sludge, from toilets.
- Graywater discharge from sinks, laundry, showers and vessel rinse-down may be harmful to aquatic life within the harbor and may contain bacteria in sufficient quantities to be a public health concern. The discharge of laundry water from a vessel is prohibited. Reduce gray water generation by reducing the use of sinks, soaps and detergents and by rinsing your vessel with clean water. If you must use soap, use more environmentally friendly soaps (no chlorine or petroleum distillates). The discharge of gray water from vessels moored at Port

facilities is prohibited. Graywater should not be discharged in quantities that violate water quality standards or cause a visible sheen, film, sludge, or emulsion on the water, in the water, or on the shoreline.

Management of Ballast Water

- Pre-arrival ballast exchange is required prior to discharge into Washington waters. Refer to the current Washington Code and the Washington Department of Fish and Wildlife for permissible exceptions.
- Vessels voyaging along the west coast are required to perform open sea exchange in depth of 2,000 meters or more. If transit does not allow exchange to this depth, then exchange should be accomplished at least 50 nautical miles off-shore.
- Vessels arriving from outside the United States Exclusive Economic Zone (EEZ) must exchange ballast at least 200 nautical miles off-shore.
- **Reporting:** The State of Washington requires mandatory reporting at least 24 hours prior to entering Washington water, using the approved U.S. Coast Guard Ballast Water Reporting Form. The form must be completed and submitted regardless of whether or not ballast water discharge occurs. Vessels not intending to discharge ballast water into Washington State waters should submit the form with Section 1 completed and with “not discharging” written in the history section. Submit the form to The Marine Exchange of Puget Sound: FAX 360-902-2845 or e-mail ballastwater@dfw.wa.gov. The form must also be sent to the National Ballast Information Clearinghouse.

Bunkering Procedures

- Vessels allowed to receive bunkers must be in compliance with all Fire Department, U.S. Coast Guard and Washington bunkering (WAC Chapter 317-40) requirements. In addition, Port management must be notified prior to any fueling while alongside the pier. Washington State oil spill regulations require any vessel performing bunkering operations at a rate of 500 gallons or greater (Rate A) to follow the advance notice and containment requirements found in WAC Chapter 173-184. Vessels transferring at a rate of 500 gallons or less (Rate B) should refer to WAC Chapter 173-184 for alternative requirements.

Management of Hazardous Chemicals, Cleaners and Wastes

- Hazardous or flammable chemical materials, gas cylinders, and batteries shall not be improperly stored at Cargo Piers & Industrial Property facilities for extended durations. Proper storage locations and procedures must be pre-approved by the on-site Port representative.
- Hazardous materials or chemicals should be stored on the vessel in accordance with local, state, and federal laws, rules, ordinances and regulations.

- The disposal of used oil, antifreeze, paints, solvents, varnishes, gas cylinders, preservatives and batteries in the garbage is prohibited. These materials are not to be discharged to the sanitary sewer or to the marine waters.
- Clear and contain any debris, trash, sanding dust, paint chips, slag, etc., from work areas as soon as practical after any maintenance or repair activity. Do not wash solids into water or storm drains.
- Unless items are in transport, do not abandon drums or containers of hazardous materials, empty drums or gas cylinders on the dock. If materials are left behind, the vessel operator will be contacted and a fee assessed based on the cost of cleanup/disposal charges incurred by the Port.

Spill Prevention and Response

- Sufficient absorbent materials and spill containment instruments to confine a spill must be on hand and/or aboard the vessel per local, state, and federal requirements.
- If a spill occurs, stop the spill or leakage source and contain the spill. Report spills into the water immediately to the U.S. Coast Guard National Response Center at 1-800-424-8802 and the Department of Ecology at 1-800-OILS-911 or 1-800 258-5990 and contact the Port.
- Immediately clean up any spills on the dock or vessel and dispose of wastes according to local, state, and federal requirements.

Vessel Repair, Paint Activity and Pier Storage

The following activities potentially trigger the requirement to apply for and comply with Ecology's Industrial permit on Port facilities:

1. Vehicle Maintenance Activity,
2. Equipment Cleaning Operations

Vehicle Maintenance means the rehabilitation, mechanical repairing, painting, fueling, and/or lubricating of a motor-driven conveyance that transports people or freight, such as an automobile, truck, train, or airplane. Any maintenance, cleaning, and/or repair performed on Port properties must comply with the appropriate Stormwater Pollution Prevention Plan, applicable Source Control Requirements and/or must be covered by a tenant held NPDES permit. If these activities are to be conducted, the entity performing those activities must apply for and conduct the activities in accordance with the proper Ecology Stormwater Permit.

- Repairs, modification, surface preparation, or coating as defined by the Washington State Department of Ecology, are limited to 25 percent of the vessel's deck surface and super structure per year. Hull work shall conform to all Washington State Department of Ecology requirements. Extensive vessel repair work and ALL bottom cleaning must occur in a commercially permitted boatyard or shipyard.

- Painting, scraping and refinishing of vessels, when in the water is limited to minor touch-ups*. For the purposes of these Best Management Practices, minor touch-ups include a small area on the superstructure, deck and hull above the waterline that requires repair for mostly cosmetic purposes. Extensive repair work and bottom cleaning must occur in a permitted, boatyard or shipyard. All painting activities require an adequate paint spill kit capable of responding to spillage of the product being used.
- Any vessel painting, scraping and refinishing must be contained utilizing appropriate best management practices and all debris must be collected. All paint mixing must be done with the can placed inside containment that will catch spillage. Tarping or other adequate containment of the work area is required to prevent any release of sanding debris or paint to the marine environment. All collected debris and materials must be cleaned up regularly to prevent their release.
- In-water hull cleaning of non-ablative paints is prohibited unless the activity is coordinated and has received Department of Ecology and Washington Department of Fish & Wildlife approval prior to commencement of cleaning.
- Perform paint and solvent mixing, fuel mixing, and similar handling of liquids in a contained location so that nothing can spill directly into the water.
- Outside painting or sanding activities during weather conditions that render containment ineffective is prohibited. The Port Management may make this determination.
- Paint burning or use of spray guns is prohibited.
- Piers are **not** areas where vessel repair or vehicle repair or maintenance, vehicle or equipment washing, storage of equipment, supplies, etc. is allowed. These activities are only allowed if complete containment for these activities is provided and ALL discharges are hauled and disposed of at an appropriate facility or discharged under a pre-approved sewer discharge permit. These activities must be performed in accordance with all local, state, and federal regulations. Ecology prohibits the discharge from vehicle maintenance or repair, vehicle or equipment washing, storage of equipment, supplies, etc. to the storm system. If materials such as paints, thinners, oils, etc must be stored on the pier these items must be contained and covered.
- Clean water under pressure may be used to remove salt from the outside of the vessel and to wash windows; however, any turbidity, oil sheen or discoloration to the receiving water is a violation of RCW 90.48 and is prohibited.

Signature

Signature

Date

Date

PORT MANAGEMENT AREA (PMA) COMMERCIAL LEASE

THIS PMA COMMERCIAL LEASE (“Lease”) is made and entered into as of the date last written below, by and between the **PORT OF PORT ANGELES**, a Washington municipal corporation (the “**Port**”), and _____, a _____ (“**Lessee**”).

ARTICLE I
Summary of Lease Terms and Definitions

The Port: Port of Port Angeles
338 W First St.
Port Angeles, WA 98362

Lessee: _____

Premises: _____ square feet of _____ located on _____ in Port Angeles, Washington as depicted in the Map of Premises attached to this Lease as **Exhibit A.**

OR [as applicable]

_____ square feet of **[improved or unimproved]** vacant land located on _____ in Port Angeles, Washington as depicted in the Map of Premises attached to this Lease as **Exhibit A.**

Lessee-owned Improvements:

As of the Commencement Date as defined herein, the following fixtures and improvements are owned by Lessee and are not part of this Lease:

[Describe Lessee improvements. Designate all fixtures as “Fixtures” in the description in anticipation of reversion to the Port under Section 4.4.]

Initials: _____
Port Lessee

Use of Premises: _____

Benefit to the Public: _____

Definitions: The following defined terms are in addition to any other terms defined within the Lease:

- 1. “**DNR**” refers to the Department of Natural Resources (“**DNR**”), which owns some or all of the real property upon which the Premises are located.

2. "PMA" is the Port Management Agreement entered into by and between the Port and DNR dated September 23, 1985, including all present and future amendments or modifications.

3. "PMA Property" is that portion of the Premises owned by DNR and subject to the PMA. The PMA Property consists of the real property and improvements within those sections of the Premises identified as _____.

4. "Non-PMA Property" is that portion of the Premises owned by the Port and not subject to the PMA. The Non-PMA Property consists of the real property and improvements within those sections of the Premises identified as _____.

5. "Water Dependent Use" is defined in RCW 79.105.060 as a use that cannot logically exist in any location but on the water.

6. "Water Oriented Use" is defined in RCW 79.105.060 as a use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront.

7. "Non-Water Dependent Use" is defined in RCW 79.105.060 as a use which can operate in a location other than on the waterfront.

8. "Base Rent" is defined to mean the rents paid for the Non-PMA Property ("Non-PMA Base Rent") and the rents paid for the PMA Property ("PMA Base Rent").

Commencement Date: _____

Term: _____

Renewals: _____

- Lessee's sole option
- Requires Port consent

Base Rent:

Months of Lease Term	Rent Per Acre/Square ft. (per mo.)	Monthly Total
Months: ____	\$ _____	\$ _____ plus applicable Leasehold Excise Tax

[Explanation of how lease rate increases from year to year and/or term to term]

Financial Security (see Section 5.4 for more information): \$ _____

Additional Unique Terms and Conditions:

ARTICLE II
Premises, Term, Renewals

2.1 **PREMISES**: In consideration of the rents hereinafter reserved and of the covenants and conditions set forth herein to be performed by Lessee, the Port does hereby lease the Premises to Lessee.

2.1.1 **PMA**: Lessee hereby understands that the Port manages all or a portion of the Premises pursuant to the PMA, a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference. With regard to the PMA Property, Lessee understands that this Lease is subject to all the terms and conditions of the PMA, and Lessee hereby agrees to abide by all of the terms and conditions of the PMA. Lessee further understands that if Lessee's tenancy under this Lease extends beyond the term of the PMA, the Lease shall survive the PMA.

2.1.2 **Premises Removed from PMA**: Pursuant to the terms and conditions of the PMA, if either (i) the PMA is terminated or (ii) any portion of the Premises subject to the PMA is deleted from the PMA, then DNR shall become the lessor for that portion of the Premises which was formerly subject to the PMA.

2.2 **TERM**: The term of this Lease shall be for _____ beginning _____, 20___, through _____, 20___. If Lessee takes possession of the Premises before the Commencement Date, Lessee shall pay the pro rata rent for the period prior to commencement of the Lease term.

2.3 **RENEWAL**: Subject to the terms and conditions herein, Lessee shall have the right to renew this Lease for _____ consecutive _____ periods by giving written notice of such intention to the Port at least _____ days prior to the expiration of the term of this Lease or any renewal thereof. Lessee shall not be entitled to renew this Lease unless the Lease is in good standing at the time of renewal and Lessee is not in default under the terms of this Lease or any other lease or agreement with the Port. The terms and conditions of any renewal shall be the same as set forth in this Lease, except that rent shall be recalculated as provided herein and the terms of this Lease shall be updated to be consistent with the terms and conditions then existing in the Port's Commercial Lease Agreement.

[OPTIONAL] Lessee's right of renewal is likewise subject to and contingent upon the Port's acceptance of Lessee's renewal notice, which the Port may withhold in its sole discretion. Should the Port decline to accept Lessee's renewal notice, this Lease will terminate upon the expiration of the then-existing term.

ARTICLE III
Rent, Rental Adjustment

3.1 **RENT:** The term “**Rent**” as used herein includes Base Rent, CAM Expenses (if any), applicable Washington State leasehold excise tax, and other fees and charges assessed herein. Base Rent and Washington State leasehold excise tax shall be paid without the requirement that the Port provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement. Any other fees and charges which may be assessed by the Port herein, the Port shall first provide written notice thereof, and Lessee shall pay such fees and/or charges within thirty (30) days of receipt of such written notice without any counterclaim, setoff, deduction, defense or abatement.

3.1.1 Rent shall be paid on or before the first (1st) day of each month beginning on the Commencement Date. A late charge of one percent (1%) per month will be assessed against past due Rent from the date such Rent became due. If Rent is not received by the twentieth (20th) day of any month, Lessee shall pay the Port an additional fee of \$100 or five percent (5%) of the delinquent payment, whichever is greater, to defray costs of collecting and handling such late payment. All accrued interest and late charges shall be paid no later than the twentieth (20th) day of the month following that month in which such interest or late charges accrued.

3.1.2 Upon mutual execution of this Lease, the Port shall provide a copy to DNR. Lessee understands that DNR may disagree with the characterization of Lessee’s use of the PMA Property as set forth herein. In the event of a disagreement, the Port shall avail itself, at its own expense, of the “Dispute Resolution” procedure set forth in the PMA; provided, however, that during such Dispute Resolution proceeding, Lessee shall pay any greater rental amount that Lessee would be required to pay if DNR’s characterization is ultimately upheld. The results of the Dispute Resolution proceeding shall be binding on Lessee. If the result of such proceeding is to uphold the Port’s characterization, then the Port shall refund any overpayments to Lessee. If the result is to uphold DNR’s characterization, then the Lessee shall continue to pay the greater amount based on DNR characterization of the use.

3.2 **Base Rent Adjustment:** The Port may, in its discretion, adjust the Base Rent hereunder upon the provision of written notice prior to the anniversary of the Commencement Date. Upon the provision of such notice, the rental rate shall be automatically adjusted effective upon the month of the anniversary of the Commencement Date to reflect the percentage change in the Consumer Price Index for All Items in West - Size Class B/C, All Urban Consumers, as issued by the U.S. Department of Labor, Bureau of Labor Statistics, or the closest comparable index if the above index is no longer published, over the last full 12-month period immediately preceding the anniversary of the Commencement Date for which such data are available. If the resulting rent rate adjustment is negative, then the rental rate shall not be decreased but shall remain the same as the preceding period.

3.2.1 **PMA Base Rent Adjustment.** The Port shall adjust the PMA Base Rent as follows for that portion of the PMA Property which has a Water Dependent or Water Oriented Use (“**Water Dependent Rent**”) pursuant to state law as it now exists or may hereafter be amended.

a. **Inflation Adjustment.** The Port shall adjust the Water Dependent Rent annually by the inflation rate for the previous year pursuant to RCW 79.105.240 *et seq.*, except when the PMA

Base Rent is revalued as provided herein. This adjustment shall be effective on the Adjustment Date.

b. Revaluation of Rent. The Port shall revalue the Water Dependent Rent as required by RCW 79.105.240 *et seq.*

c. Rent Cap. After the initial year of this Lease, Water Dependent Rent may likewise increase by operation of the inflation adjustment or revaluation provisions herein. If application of the statutory rent formula for Water Dependent Use would result in an increase in the rent attributable to such use of more than fifty percent (50%) in any one year, the actual increase implemented in such year shall be limited to fifty percent (50%) of the then-existing Water Dependent Rent in accordance with RCW 79.105.260. The balance of the increase determined by the formula shall be deferred to subsequent years and added to the next and subsequent years' rental increases until the full amount of the increase is lawfully implemented.

d. Should the Port and Lessee disagree as to the proper method of calculating any portion of PMA Base Rent under state law, the Port's calculation shall control until such time as the parties receive written direction from DNR, which shall then control the method of calculating rent.

e. All PMA Base Rent adjustments which the Port shall make for (i) inflation adjustments or for (ii) revaluations of Rent attributable to Water Dependent or Non-Water Dependent Uses shall be sent pursuant to the notice provision herein within ninety (90) days of the anniversary of the Commencement Date of the Lease and shall be retroactive to the anniversary of the Commencement Date

[OPTIONAL SECTION – USE WHEN THERE ARE COMMON AREA MAINTENANCE EXPENSES BEING SHARED BETWEEN TENANTS OR TENANTS AND THE PORT]

3.3 **COMMON AREAS:**

3.3.1 **Common Areas; Definition:** The term “Common Areas” shall mean those areas in and around the Premises owned by the Port that are provided and designated by the Port from time-to-time for the general non-exclusive use of the Port, Lessee, other tenants of the Port, and/or the respective employees, suppliers, shippers, customers, clients, invitees and licensees of such parties. Common Areas may include, but are not limited to, lobbies, hallways, common restrooms, electrical and mechanical areas, supply and janitorial rooms, exterior wall surfaces of the Premises walkways, driveways, parking areas, service areas, landscaped areas, and other Port owned areas provided for the non-exclusive use of its tenants. The Port or its agents shall operate, manage, equip, light, repair, replace and maintain the Common Areas for their intended purpose at such times and in such manner as the Port shall reasonably determine.

3.3.2 **Lessee's Common Area Lease Rights:** The Port hereby grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, customers, clients and invitees during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the

Common Areas as they exist from time-to-time, subject to any rights, powers and privileges reserved by the Port under the terms hereof or under the terms of any rules, regulations or restrictions governing the use of the Common Areas. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by prior written consent of the Port or the Port's designated agent, which consent may be revoked at any time. In the event that such unauthorized storage shall occur, then the Port shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be payable on demand by the Port.

3.3.3 **Changes to Common Areas:** The Port shall have the right from time-to-time to make changes to the Common Areas, including, without limitation: (i) changes in the location, size, shape and number thereof; (ii) to temporarily close any of the Common Areas for maintenance and public purposes so long as reasonable access to the Premises remains available; (iii) to add additional improvements to the Common Areas; and (iv) to use Common Areas while engaged in making additional improvements, repairs or alterations to the Premises or any portion thereof, as the Port may, in the exercise of sound business judgment, deem appropriate. The Port shall nevertheless diligently perform construction, repair or maintenance work to minimize interruptions in the use of Common Areas.

3.3.4 **Common Area Maintenance Expenses; Definition:** The term "**Common Area Maintenance Expenses**" or "**CAM Expenses**" as used herein shall mean the sum of the costs and expenses incurred by the Port with respect to maintenance, upkeep and repair of and to the Common Areas.

3.3.5 **Payment of CAM Expenses:** Lessee shall pay to the Port Lessee's agreed pro rata share of the CAM Expenses ("**Pro Rata Share**"). Lessee's Pro Rata Share is based on the percentage obtained by dividing the agreed rentable area of the Premises by the agreed building area. The parties agree that Lessee's Pro Rata Share under this Lease is ___ percent (____ %), thereby resulting in a monthly payment of _____ Dollars (\$_____) for the first twelve months of this Lease.

3.3.6 **Adjustment of CAM Expenses:** Each year of this Lease or renewal term (as the case may be), the Port will establish an estimate of a year's total CAM Expenses, and Lessee shall pay Lessee's Pro Rata Share on a monthly basis in accordance with the monthly rental payment obligations set forth in Section 3.1 of this Lease. Within sixty (60) days after the expiration of each Lease year, the Port shall deliver to Lessee a reasonably detailed statement showing Lessee's Pro Rata Share of the actual total of CAM Expenses incurred during the preceding year. If Lessee's payments under this Paragraph during the preceding year were less than Lessee's Pro Rata Share as indicated on said statement, Lessee shall pay to the Port the amount of the deficiency within thirty (30) days after delivery by the Port to Lessee of said statement; any overpayment made by Lessee shall be credited toward Lessee's liability for Rent for succeeding months.

3.4 **ABATED RENT:** If this Lease provides for a postponement of any monthly rental payments or other rent concession, such postponed rent is called the "**Abated Rent.**" Lessee shall be credited with having paid all of the Abated Rent on the expiration of the term of this Lease only

if Lessee has fully, faithfully and punctually performed all of Lessee's obligations hereunder, including the payment of all Rent, including, if applicable, Abated Rent, and all other monetary obligations and the surrender of the Premises in the condition required by this Lease. If Lessee defaults and does not cure within any applicable grace period, the Abated Rent shall immediately become due and payable in full and this Lease shall be enforced as if there were no such rent abatement or other rent concession. In such case, Abated Rent shall be calculated based on the full initial rent payable under this Lease, plus interest thereon at the rate of twelve percent (12%) per annum from date each monthly rental payment was postponed.

3.5 **LEASEHOLD AND OTHER TAXES:** Throughout the term of this Lease, Lessee shall be liable for, and shall pay or, as applicable, reimburse the Port for, all license fees and excise and occupation taxes covering the business conducted on the Premises, all taxes on property of Lessee on the Premises, ad valorem taxes or taxes levied in lieu of an ad valorem tax, and any taxes on the leasehold interest created by this Lease and/or measured by the rent payments hereunder, whether imposed on Lessee or on the Port. With respect to the leasehold excise tax payable hereunder, Lessee shall pay to the Port with each rent payment an amount equal to the tax. All other tax amounts for which the Port is or will be entitled to reimbursement from Lessee shall be paid by Lessee to the Port at least fifteen (15) days prior to the due dates of the tax amounts involved, provided that Lessee shall be given at least ten (10) days' prior written notice of the amounts payable by Lessee.

ARTICLE IV

Use of Premises, Condition of Property, Improvements, Removal of Property, Maintenance, and Utilities

4.1 **LESSEE'S USE OF THE PREMISES:** Except as otherwise approved in writing by the Port, Lessee shall use the Premises as follows: _____ (the "PMA Authorized Use").

4.1.1 Lessee shall be in default under this Lease if it: (i) ceases conducting the Authorized Use for any period of time exceeding one hundred twenty (120) consecutive days; or (ii) conducts any other business or activity on the Premises without first obtaining a validly executed lease modification. In conducting the Authorized Use, Lessee shall properly and fairly serve the public, providing reasonable hours of operation, and reasonably suitable service.

4.1.2 Notwithstanding the foregoing described use, the Premises shall not be used to store, distribute or otherwise handle flammable, dangerous or hazardous materials, excepting only those necessary to conduct the Authorized Use. At the request of the Port, Lessee shall provide a list of all flammable, dangerous or hazardous materials stored or used on the Premises.

4.2 **ACCEPTANCE OF PREMISES:** Lessee accepts the Premises, including all existing improvements thereon, "as is" without further maintenance liability on the part of the Port, except as otherwise specifically noted herein. Lessee is not relying on any representations of the Port as to condition, suitability, zoning restrictions or usability, except the Port's right to grant a lease of the Premises.

4.3 **CONSTRUCTION OF TENANT IMPROVEMENTS:** Lessee shall abide by the following terms with regard to making any tenant improvements on the Premises (“**Tenant Improvements**”):

4.3.1 Subject to obtaining the Port’s written approval, Lessee may make and install, at its own expense, such Tenant Improvements as are normal and customary in connection with the Authorized Use set forth herein. Lessee’s contractor, if any, shall be subject to the Port’s approval, not unreasonably withheld. The Port reserves the right to condition its approval upon Lessee providing payment and/or performance bonds satisfactory to the Port. Lessee shall submit plans to and obtain written approval from the Port before commencing any Tenant Improvements. The Port shall have a reasonable period of time to review such plans prior to issuing a decision. Upon the provision of written notice to Lessee that the Port’s review of plans will require extraordinary staff review time, the Port may charge Lessee a reasonable pre-established fee for staff, consultant or attorney time required to review the plans. All Tenant Improvements which are to be designated fixtures shall be so designated by the Port upon the Port’s approval of the plans for such improvements. Unless otherwise agreed, all improvements by Lessee shall conform to the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq. (the “**ADA**”).

4.3.2 **Unauthorized Improvements:** Any Tenant Improvements made on the Premises without the Port’s prior written consent or which are not in conformance with the plans submitted to and approved by the Port (“**Unauthorized Improvements**”) shall be subject to removal by Lessee upon sixty (60) days’ written notice from the Port.

4.4 **TITLE TO LESSEE IMPROVEMENTS AND PERSONAL PROPERTY AT END OF LEASE:** Except as otherwise provided in the description of the Premises in Article I above, as of the Commencement Date, all existing structures, buildings, installations, and improvements of any kind located on the Premises are owned by and title thereto is vested in the Port. Prior to the conclusion of the Lease, Lessee shall remove the following from the Premises:

- a. All equipment;
- b. All personal property;
- c. All Lessee Improvements not designated as fixtures in Article I above or pursuant to Section 4.3.1 above.

4.4.1 If any of the foregoing items are not removed from the Premises by the conclusion of the Lease or when the Port has the right of re-entry, then the Port may, at its sole option, elect any or all of the following remedies:

a. Upon the expiration of thirty (30) days’ written notice to Lessee that equipment, personal property and/or Lessee Improvements remaining on the Premises will be removed therefrom, the Port may remove any or all of the items and dispose of them without liability to Lessee. The Port shall not be required to mitigate its damages, to dispose of the items in a commercially reasonable manner, or to make any effort whatsoever to obtain payment for such

items. Lessee agrees to pay the Port's costs and damages associated with Lessee's failure to remove such items, including, but not limited to, the following: storage, demolition, removal, transportation and lost rent (collectively "**Disposal Costs**"); provided, however, that any net proceeds recovered by the Port in excess of its Disposal Costs will be deducted from Lessee's financial obligation set forth herein. Lessee's financial obligations herein shall survive the termination of this Lease;

- b. Claim and take title in the Port to any or all such items; and
- c. Commence suit against Lessee for damages or for specific performance.

4.4.2 During any period of time employed by Lessee under this Section to remove structures, buildings, installations, improvements, machines, appliances, equipment and trade fixtures, Lessee shall continue to pay a rent due and all other fees or expenses due and owing to the Port in accordance with this Lease on a prorated daily basis.

4.4.3 The foregoing remedies are cumulative, and the Port shall not be required to elect its remedies.

The Port and Lessee hereby acknowledge the rights, obligations and remedies set forth in this Section 4.4.

Initials: _____ _____
 Port Lessee

4.5 **MAINTENANCE OF PREMISES:** The maintenance and repair of the Premises are the sole responsibility of Lessee, except as set forth in the Maintenance Inclusion List attached hereto as **Exhibit B** and incorporated herein by this reference; PROVIDED, however, that the Port shall be responsible for repairing at its own cost any interior damage resulting from a roof leak. Lessee shall notify the Port immediately upon discovering any indication of a roof leak. Lessee shall maintain the Premises in good condition, and shall repair all damage caused by Lessee, its employees, agents, licensees, invitees or anyone on the Premises as a result of Lessee's activities. In lieu of common area maintenance charges, Lessee's exterior Premises maintenance and repair responsibilities include, without limitation and by way of example only, mowing, general landscape maintenance, snow removal, parking lot sweeping, parking lot striping, and parking lot, curb and sidewalk repairs. The Port and Lessee specifically acknowledge and agree that the Port has no responsibility to maintain, repair or replace the Lessee-owned Improvements described in Article I above.

Initials: _____ _____
 Port Lessee

4.6 **UTILITIES AND SERVICES:** Lessee 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, Lessee agrees to pay to the Port Lessee's pro-rata share of the cost of any such utility services. Lessee'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. At the conclusion of this Lease, Lessee shall arrange for such utility services to be terminated and for the final bill to be sent to Lessee. Lessee shall be liable for all utility charges that accrue if it fails to so terminate services.

4.7 **COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS:**

4.7.1 Lessee agrees to take reasonable action to comply with all applicable rules and regulations of the Port pertaining to the Premises now in existence or hereafter promulgated for the general safety and convenience of the Port, its various lessees, invitees, licensees and the general public upon receipt of notice of the adoption of such regulations.

4.7.2 Lessee agrees to comply with all applicable federal, state and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters. Any fees for any inspection of the Premises during the Lease term by any federal, state or municipal officer related to Lessee use and occupancy of the Premises and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

[4.8 **MARINE TARIFF:** Lessee's use of the terminal and/or dock is subject to currently published marine tariff rates. Lessee is solely responsible for payment of marine tariffs.]

ARTICLE V **Insurance and Financial Security**

5.1 **CASUALTY LOSS OF LESSEE:** The parties hereto agree that the Port shall not be responsible to Lessee for any property loss or damage done to Lessee's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be Lessee's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Port, Lessee, third party, or act of nature.

5.2 **INSURANCE:**

5.2.1 **Liability:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease a comprehensive general liability policy covering on an occurrence basis all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. This policy shall also include contractual liability coverage for all

indemnities provided under this Lease. Limit per occurrence shall not be less than \$2,000,000, or the equivalent. General aggregate limit shall not be less than \$4,000,000, when applicable (and will be endorsed to apply separately to each site or location.) Limit per claim and in the aggregate shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$4,000,000. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to the Port.

5.2.2 **Property Insurance.** At all times during the term of this Lease, Lessee shall maintain in effect on Lessee-owned improvements fire and extended coverage property insurance for physical loss and damage *excluding* earthquake and flood insurance. Such policy or policies shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of Lessee's improvements thereon, which amount shall be adjusted not less frequently than annually.

AND/OR

5.2.2 **Property:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease fire and extended coverage property insurance for physical loss and damage, written on an "all risks" basis *excluding* earthquake and flood insurance, to the Leased Premises and to all Lessee-owned improvements, with the Port named as a loss payee. Such policy or policies shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement value, which amount shall be adjusted not less frequently than annually. The proceeds of such insurance in case of loss or damage shall be first applied on account of the obligation of the Port to repair and/or rebuild the Leased Premises to the extent that such proceeds are required for such purpose. Lessee shall also procure and maintain during the term of this Lease and any extensions or renewals of this Lease business interruption insurance by which Rent will be paid to the Port for a period of up to one (1) year if the Premises are destroyed or rendered inaccessible by a risk insured against by a policy of fire and extended coverage property insurance, with vandalism and malicious mischief endorsements.

5.2.3 **Workers' Compensation; Employer's Liability/Stop Gap:** If Lessee has employees, Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease and any renewals or extensions of this Lease, Workers' Compensation as required by the State of Washington, with statutory limits, and Employer's Liability/Stop Gap Insurance with limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

5.2.4 **Pollution Legal Liability and Remediation:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease, Pollution Legal Liability and Remediation insurance for all operations, with a limit no less than \$2,000,000 per claim or occurrence and \$4,000,000 aggregate per policy period of one year. This policy shall include coverage for bodily injury, property damage personal injury and environmental site restoration, including fines and penalties in accordance with applicable EPA or state regulations. Lessee shall maintain this coverage for a minimum of five (5) years after the expiration or earlier termination of this Lease.

5.2.5 **Excess Liability/Umbrella Coverage:** Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease and any extension or renewal of this Lease, Umbrella Liability Insurance providing excess coverage over primary liability coverages, including Employer's Liability, of not less than \$4,000,000.

5.2.6 **Verification of Coverage:** For each insurance policy required herein, Lessee shall provide to the Port, prior to Lessee's occupancy of the Premises, original certificates of insurance, all required amendatory endorsements establishing coverage required under this Lease, a copy of each policy declarations and endorsements page, and complete copies of each policy. Provided, the Port's failure to obtain the required documents prior to Lessee's occupancy shall not be deemed a waiver of Lessee's obligation to provide them. Receipt of such certificate or policy by the Port does not constitute approval by the Port of the terms of such policy.

5.2.7 **Additional Insured; Primary Coverage; Non-Contributory:** Each insurance policy required herein shall name the Port, and only the Port, as an additional insured. For any claims related to this Lease, Lessee's insurance coverage shall be primary insurance coverage as to the Port. Any insurance or self-insurance maintained by the Port shall be excess of Lessee's insurance and shall not contribute with it.

5.2.8 **Changes in Coverage Requirements:** The Port reserves the right to modify any insurance requirements set forth herein, including limits, at the same time as revaluation of the annual Rent, as a condition of approval of assignment or sublease of this Lease, upon any breach of the environmental liability provision herein, upon a material change in the condition of any improvements, upon a change in the Authorized Use, or under other special circumstances as determined by the Port. Lessee shall obtain new or modified insurance coverage within thirty (30) days after changes are required by the Port.

5.2.9 **Substitute Coverage:** If Lessee fails to procure and maintain any insurance required herein, the Port shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums, chargeable to Lessee. Lessee shall pay to the Port upon demand the full amount paid by the Port.

5.2.10 **Negligence of Lessee:** Each insurance policy required herein shall expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance.

5.2.11 **Self-Insured Retentions:** If Lessee is self-insured, self-insured retentions must be declared to and approved by the Port. At the Port's option, either (i) Lessee shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Port; or (ii) Lessee shall provide a financial guarantee satisfactory to the Port guaranteeing payment of losses and related investigation, claim administration and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Port.

5.2.12 **Acceptability of Insurers:** All insurance required herein shall be placed with insurers authorized to conduct business in the state of Washington with a current A.M. Best's rating of no less than A-VII, unless otherwise specifically authorized by the Port.

5.2.13 **Notice of Cancellation:** Each insurance policy required herein shall expressly provide that coverage shall not be canceled or changed except with prior written notice to the Port of no less than thirty (30) days. Lessee shall provide the Port with any revised endorsements, policy declarations and endorsements pages, and policies as soon as practicable after any changes are made to any policy.

THE FOLLOWING SECTIONS (5.2.) ARE PROVIDED FOR INCLUSIONN GIVEN THE APPROPRIATE SITUATION.

5.2. **Airport General Liability:** Lessee shall procure and maintain during the term of this Lease Airport General Liability Insurance on an occurrence basis. This insurance shall include personal injury and property damage liability coverage, contractual liability coverage for all indemnities provided under this Lease, and fuel storage and self-fueling operations liability. Limit per occurrence shall not be less than \$5,000,000. The general aggregate limit shall not be less than \$7,000,000 when applicable. Limit per claim and in the aggregate shall not be less than \$5,000,000. The annual aggregate limit shall not be less than \$7,000,000.

5.2. **Aircraft Liability:** Lessee shall procure and maintain during the term of this Lease Aircraft Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000, and no less than \$1,000,000 per seat for passenger liability.

5.2. **Marine General Liability:** **[To be used in place of Liability Insurance under 5.2.1.]** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease Marine General Liability insurance covering on an occurrence basis all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. This policy shall also include coverage for Contractual Liability, Products/Completed Operations, Sudden and Accidental Pollution, and Marina Operators Legal Liability. Limit per occurrence shall not be less than \$2,000,000, or the equivalent. General aggregate limit shall not be less than \$4,000,000, when applicable. Limit per claim and in the aggregate shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$4,000,000. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to the Port.

5.2. **Protection and Indemnity:** Lessee shall procure and maintain during the term of this Lease and any extensions or renewals of this Lease Protection and Indemnity Insurance, in an amount not less than \$1,000,000, and Hull and Machinery Coverage, for any vessel owned by Lessee.

5.2. **Automobile Liability:** Lessee shall procure and maintain an Automobile Liability policy covering all owned, not-owned and hired automobiles. The limits of liability shall be not

less than \$1,000,000.00. The foregoing insurance policy shall name the Port as an additional insured.

5.3 **WAIVER OF SUBROGATION:** The Port and Lessee 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 Lessee. Each party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

5.4 **FINANCIAL SECURITY:**

5.4.1 In compliance with the requirements of RCW 53.08.085 (as presently codified or hereafter amended) and other laws of the State of Washington, Lessee agrees it will secure its performance of all obligations under this Lease by procuring and maintaining, during the term of this Lease, a corporate surety bond (the “**Bond**”), or by providing other financial security satisfactory to the Port, in an amount totaling:

- One-sixth of the total Rent for the then-current term of this Lease.
 - Not less than One Hundred Percent (100%) of the sum of annual Rent.
 - Other: _____
-
-

5.4.2 The Bond shall be in a form and issued by a surety company acceptable to the Port and shall comply with the requirements of Washington law. Lessee shall obtain such Bond and forward evidence thereof to the Port, or shall provide to the Port such other financial security as may be required hereunder, within thirty (30) days of execution of this Lease, but in no event later than the Commencement Date of this Lease. Such Bond shall be kept in effect during the term of this Lease.

5.4.3 If the financial security amount required hereunder is to be not less than 100% of the sum of annual Rent, that financial security amount is subject to increases to reflect any Base Rent adjustments as provided in Section 3 above. In that event, at no time may the security amount be less than 80% of the then-current annual Rent, and the Port may at any time require Lessee to provide sufficient additional security to restore the security amount to no less than 100% of the then-current total annual Rent due hereunder. No future amendment or extension to this Lease shall be effective until the adjusted financial security amount has been provided as required.

5.4.4 Upon any default by Lessee in its obligations under this Lease and Lessee’s failure to cure such default in accordance with its rights to do so under this Lease, the Port may collect on the Bond or other financial security to offset the liability of Lessee to the Port. Collection on the

Bond or other financial security shall not relieve Lessee of liability for any amounts not offset by the amount collected, shall not limit any of the Port's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

5.4.5 Any Bond may provide for termination on the anniversary date thereof upon not less than one (1) year's written notice to the Port if the Lease is not in default at the time of said notice. In the event of any such termination, Lessee shall obtain a new Bond or other security, also subject to the Port approval, to replace the security being so terminated to be effective on or before the date of termination.

5.4.6 If the Port Commission exercises its discretion pursuant to RCW 53.08.085 to reduce or waive Lessee's Bond requirement under this Lease, the Port may at any time make a determination that changes in the material circumstances related to Lessee no longer support such reduction or waiver, and thereafter increase Lessee's Bond requirement up to that required by RCW 53.08.085.

ARTICLE VI

Environmental Liability

6.1 **ENVIRONMENTAL INDEMNIFICATION**: Lessee shall defend (with legal counsel suitable to the Port), indemnify and hold the Port harmless from any and all claims, demands, judgments, orders or damages resulting from Hazardous Substances on the Premises caused in whole or in part by the activity of Lessee, its agents or subtenants during any period of time that Lessee has occupied all or a portion of the Premises during the term of this Lease or any previous lease or agreement. The term "Hazardous Substances" as used herein shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sec. 1257 et seq.; the Clean Air Act, 42 USC Sec. 2001 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxic Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated there under.

6.1.1 Lessee's defense and indemnity obligations under this article are unconditional, shall not be discharged or satisfied by the Port's re-entry of the Premises or exercise of any other remedy for Lessee's default under this Lease, shall continue in effect after any assignment or sublease of this Lease, and shall continue in effect after the expiration or earlier termination of this Lease.

6.1.2 Although Lessee shall not be liable for any Hazardous Substances that existed on the Premises prior to commencement of its leasehold relationship with the Port (whether by this Lease or any prior lease agreements), Lessee shall be responsible for the costs of any environmental investigations or remediation arising from any development or use of the Premises by Lessee, and Lessee hereby releases the Port from any contribution claim for those costs. By way of example only, if Lessee excavates soil on the Premises which contains Hazardous Substances, then Lessee will be responsible for the cost associated with disposing of those disturbed soils.

6.2 **CURRENT CONDITIONS AND DUTY OF LESSEE:** The Port makes no representation about the condition of the Premises. Hazardous Substances may exist in, on, under or above the Premises. Lessee should, but is not required to, conduct environmental assessments or investigations of the Premises prior to or during this Lease to determine the existence, scope and location of any Hazardous Substances. If there are any Hazardous Substances in, on, under or above the Premises as of the Commencement Date, Lessee shall exercise the utmost care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions.

6.2.1 Prior to conducting any environmental investigation of the subsurface of the Premises, Lessee shall provide prior written notice to the Port. Lessee shall provide the Port with the results of all such investigations.

6.3 **NOTIFICATION AND REPORTING:** Lessee shall immediately notify the Port if Lessee becomes aware of any of the following:

a. A release or threatened release of Hazardous Substances in, on under or above the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises;

b. Any problem or liability related to or derived from the presence of any Hazardous Substance in, on under or above the Premises, any adjoining property or any other property subject to use by Lessee in conjunction with its use of the Premises;

c. Any actual or alleged violation of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances with respect to the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises; or

d. Any lien or action with respect to any of the foregoing.

6.3.1 Lessee shall, at the Port's request, provide the Port with copies of any and all reports, studies or audits which pertain to environmental issues or concerns and to the Premises, and which are or were prepared by or for Lessee and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

6.3.2 Upon expiration or sooner termination of this Lease, Lessee shall remove from the Premises any soils or other media impacted by Hazardous Substances where such materials were deposited on the Premises by Lessee or its employees, representatives or agents. Any failure to complete such removal by the expiration or sooner termination of this Lease, and upon the expiration of thirty (30) days' notice that such materials remain on the Premises, Lessee shall be deemed a holding over by Lessee subject to the provision of Section 7.21 (HOLDING OVER).

Lessee shall represent and warrant that, upon termination of the Lease, all Hazardous Substances that Lessee is required to remove from the Premises pursuant to this subsection have been removed from the Premises.

ARTICLE VII **Miscellaneous Provisions**

7.1 **LESSEE WILL OBTAIN PERMITS**: Lessee agrees to obtain and comply with all necessary permits for any Authorized Use or leasehold improvement. If Lessee fails to obtain and comply with such permits, then Lessee accepts full responsibility for any and all resulting costs incurred by the Port, including actual attorneys' fees. In this way, Lessee agrees to be solely responsible for all damages, costs and expenses incurred as a result of Lessee's failure to fully comply with any necessary permit process and requirements.

7.2 **LIENS**: Lessee agrees to keep the Premises free and clear of all liens and charges whatsoever. Lessee shall not allow any mechanics' and materialmen's or other liens to be placed upon the Premises. If such a lien is placed or recorded, Lessee shall cause it to be discharged of record, at its own expense, within thirty (30) days of the Port's demand. Failure to comply with the Port's demand within thirty (30) days shall be a default under the terms of this Lease. Notwithstanding the foregoing, the Port acknowledges that Lessee may use its Tenant Improvements as security for a loan, and the Port agrees to reasonably cooperate with Lessee and its creditor(s) to allow such creditor(s) to obtain such security.

7.3 **INDEMNIFICATION AND HOLD HARMLESS**: The Port, its employees and/or 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 Lessee or by others as a result of any condition (including existing or future defects in the Premises) or occurrence whatsoever related in any way to the Premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the Premises and of the areas adjacent thereto. Lessee agrees to defend and to hold and save the Port (including its commissioners, employees and/or agents) harmless from all liability or expense (including attorneys' fees, costs and all other expenses of litigation) in connection with any such items of actual or alleged injury or damage. Lessee specifically agrees that any bond or other security provided pursuant to any provisions of this Lease shall extend to the indemnity agreed to herein. Lessee acknowledges that it expressly and specifically waives immunity under the industrial insurance statute of the state of Washington, Title 51 RCW, for purposes of this indemnification provision and further acknowledges that this waiver was mutually negotiated by the parties.

7.4 **LAWS AND REGULATIONS**: Lessee agrees to conform to and abide by all applicable rules, codes, laws, regulations and Port policies in connection with its use of the Premises and the construction of improvements and operation of Lessee's business thereon and not to permit said Premises to be used in violation of any applicable rule, code, law, regulation, Port policy, or other authority.

7.4.1 Lessee's obligations herein shall include, but in no way be limited to, the obligation to comply with all State and Federal environmental laws and regulations.

7.5 **WASTE AND REFUSE**: Lessee agrees not to allow conditions of waste and refuse to exist on the Premises and to keep the Premises in a neat, clean and orderly condition and to be responsible for all damages caused to the Premises by Lessee, its agents, or any third party on the Premises.

7.6 **DAMAGE AND DESTRUCTION**:

7.6.1 **Port Owned Buildings/Improvements**: Except as otherwise stated herein, should the Premises be partially damaged by fire or other casualty, or rendered partially unfit for use by reason of fire or other casualty, the Premises shall be repaired with due diligence by the Port, and in the meantime the Rent (as defined in Section 3.1 above) shall be abated in the same proportion that the untenable portion of the Premises bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs. Lessee shall cooperate fully in obtaining and making available proceeds of insurance provided by Lessee in furtherance of such repairs.

7.6.2 **Lessee Owned Buildings/Improvements**: If any building or improvement erected by Lessee on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Lessee may, at its option and at its sole cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the Port. Lessee shall provide the Port notice of its intention to repair or restore the Premises within sixty (60) days after the damage or loss occurs. Such work of repair or restoration shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed with due diligence but not longer than one (1) year, if possible, or as soon thereafter as is reasonably possible 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, or if Lessee elects not to repair or restore, to the cost of removing, demolishing, or clearing off the building or improvements. If (i) there are not insurance proceeds, or (ii) the same shall be insufficient for said purpose, Lessee shall make up the deficiency out of its own funds. Should Lessee fail or refuse to make the repair, restoration or removal as hereinabove provided, then in such event said failure or refusal shall constitute a default under the covenants and conditions hereof, and all insurance proceeds so collected shall be forthwith paid over to and be retained by the Port on its own account, and the Port may, but shall not be required to, sue and apply the same for and to the repair, restoration or removal of said improvements, and the Port may, at its option, terminate this Lease as elsewhere provided herein.

7.6.3 Except as otherwise stated herein, should the Premises be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the Premises are rendered wholly unfit for their accustomed uses, the Port shall have the option to terminate this Lease on thirty (30) days' notice, effective as of any date not more than thirty (30) days after the occurrence. In the event that this Section shall become applicable, the Port shall advise Lessee within thirty (30) days after the happening of any such damage whether the Port has elected to continue the Lease in effect or to terminate it. If the Port shall elect to continue this Lease, it shall commence

and prosecute with due diligence any work necessary to restore or repair the Premises. If the Port shall fail to notify Lessee of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this Lease, and the Lease shall automatically terminate thirty (30) days after the occurrence of the damage. For the period from the occurrence of the damage to the Premises as described in this Section to the date of completion of the repairs to the Premises (or to the date of termination of the Lease if the Port shall elect not to restore the Premises), Rent due hereunder shall be abated in the same proportion as the untenable portion of the Premises bears to the whole thereof.

7.7 **SIGNS**: Lessee may place in or upon the Premises only such signs as are related to the Authorized Use of the Premises, PROVIDED that Lessee shall first obtain Port's written consent as to size, location, materials, method of attachment, and appearance. Lessee shall install any approved signs at Lessee's sole expense and in compliance with all applicable laws, ordinances, rules and regulations. Lessee shall not damage or deface the Premises in installing or removing signs and shall repair any damage to the Premises caused by such installation or removal.

7.8 **ATTORNEYS' FEES AND COURT COSTS**: In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Lease (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Lease, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

7.9 **ASSIGNMENT OF LEASE**: Lessee shall not assign, rent or sublease any portions of this Lease or any extension thereof, without the prior written consent of the Port, which consent shall not be unreasonably withheld, and no rights hereunder in or to said Premises shall pass by operation of law or other judicial process, or through insolvency proceedings. Otherwise, the rights and obligations hereof shall extend to and be binding upon their respective successors, representatives and assigns, as the case may be. Lessee shall furnish the Port with copies of all such proposed assignment, sublease or rental documents. For the purposes of this Lease, any change of ownership including sale, liquidation or other disposition of some or all of the corporate stock or limited liability company units will be considered an assignment. Should the Port consent to an assignment made by Lessee for the purposes of obtaining a loan or other consideration from a third party, then the Port's consent shall be made in accordance with the consent to assignment document used by the Port for these specific assignments. A copy of this consent form shall be provided by the Port upon request of Lessee.

7.9.1 If the Port refuses to consent to an assignment, Lessee's sole remedy shall be the right to bring a declaratory action to determine whether the Port was entitled to refuse such assignment under the terms of this Lease.

7.9.2 No consent by the Port to any assignment or sublease shall be a waiver of the requirement to obtain such consent with respect to any other or later assignment or sublease. Acceptance of Rent or other performance by the Port following an assignment or sublease, whether or not the Port has knowledge of such assignment or sublease, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same.

7.9.3 A minimum handling and transfer fee (“Transfer Fee Deposit”) of Three Hundred Dollars (\$300.00) shall be payable by Lessee to the Port if Lessee requests the Port’s consent to a proposed assignment (including an assignment to a creditor for security purposes), sublease or modification of this Lease. The Port reserves the right to increase the Transfer Fee Deposit up to Five Hundred Dollars (\$500.00) if, in the Port’s sole judgment, the transaction will necessitate the expenditure of substantial time and expense on the part of the Port. Such Transfer Fee Deposit shall be submitted to the Port at the same time that Lessee requests the Port’s consent to the proposed sublease, assignment or modification. If the Port’s reasonable and customary attorneys’ fees exceed the Transfer Fee Deposit, then Lessee agrees to reimburse the Port for such additional reasonable and customary attorneys’ fees. Lessee’s failure to remit this additional amount within sixty (60) days of the mailing of the notice of such charges, shall constitute a default under this Lease. Notwithstanding anything to the contrary herein, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.9.4 If, pursuant to any assignment or sublease, Lessee receives rent, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in the case of a sublease, a portion of the Premises in excess of such Rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder are appropriately taken into account, Lessee shall pay to the Port, as additional rent expenses hereunder, fifty percent (50%) of the excess of each such payment of Rent received by Lessee after its receipt.

7.9.5 If this Lease is assigned, or if the underlying beneficial interest of Lessee is transferred, or if the Premises or any part thereof is sublet to or occupied by anybody other than Lessee, the Port may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. No assignment or subletting shall affect the continuing primary liability of Lessee (which, following assignment, shall be joint and several with the assignee), and Lessee shall not be released from performing any of the terms, covenants and conditions of this Lease.

7.9.6 Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by the Port to any assignee or sublessee or failure of the Port to take action against any assignee or sublease, Lessee hereby agrees that the Port may, at its option, and upon not less than three (3) days’ notice to Lessee, proceed against Lessee without having taken action against or joined such assignee or sublessee, except that Lessee shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee.

7.10 **REIMBURSEMENT FOR EXPENSES:** Should Lessee seek to assign this Lease to any creditor as security for a loan or forbearance from such creditor, or attempt to otherwise assign, sublease, or modify this Lease between the parties during the term of this Lease or any renewal thereof, then Lessee agrees to reimburse the Port for all customary and reasonable attorney fees paid by the Port for the review and opinion of such attorney acting on the request. A failure to

reimburse the Port within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease. Notwithstanding anything to the contrary herein, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease, or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.11 **TERMINATION**: Upon expiration or sooner termination of this Lease or any extension thereof, whether by expiration of the stated term or sooner termination thereof, as herein provided, Lessee shall surrender to the Port the Premises peaceably and quietly. Lessee shall restore the Premises to the condition existing at the time of initiation of this Lease, except for: (i) normal wear and tear, and (ii) any improvements which the Port permits to remain on the Premises.

7.11.1 If the Port, at its sole discretion, shall require the use of the Premises for a public use in connection with the business of the Port not involving the lease thereof to another private lessee or in the event that the Port, at its sole discretion, shall require the use of the Premises for a major capital improvement for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to Lessee not less than ninety (90) days before the termination date specified in the notice, unless the need for such use constitutes an emergency, in which case this Lease shall terminate as soon as is practicable.

7.11.2 If the United States Government, the State of Washington, or any agency or instrumentality of said government shall take title, possession, the rights of the Premises or any part thereof, the Port shall have the option to terminate this Lease, and if the taking has substantially impaired the utility of the Premises to Lessee, Lessee shall have the option to terminate this Lease. Both options shall be exercisable as of the date of said taking. If Lessee is not in default under any of the provisions of this Lease on the date of such taking, any rental prepaid by Lessee shall be promptly refunded to Lessee to the extent allocable to any period subsequent to said date, and all further obligations of the parties shall terminate except liabilities, which shall be accrued prior to such date. To the extent Lessee owns certain improvements upon the Premises and is not otherwise directly compensated therefore by the taking entity, Lessee shall receive a fair allocation of any award received by the Port due to termination for government use. Nothing herein contained shall preclude Lessee from independently pursuing a direct claim for compensation from the taking entity for the value of its improvements to the Premises or its leasehold interest therein.

7.11.3 If any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that occurred prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

7.12 **DEFAULT, CROSS DEFAULT, AND REMEDIES:** Failure to pay Rent or any other monetary obligations by the first day of each month shall constitute a default under the terms of this Lease. If Lessee is in default in the payment of Rent or other monetary obligations then, at the Port's sole option, upon three (3) days' written notice, this Lease may be terminated and the Port may enter upon and take possession of the Premises. Without limiting the generality of the foregoing, Lessee expressly authorizes the Port to obtain a prejudgment writ of restitution in the event of default by Lessee. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.12.1 If Lessee shall fail to perform any term or condition of this Lease, other than the payment of Rent or other monetary obligations, then upon providing Lessee thirty (30) days' written notice of such default, and if Lessee fails to cure such default within the thirty (30) day notice thereof, the Port may terminate this Lease and enter upon and take possession of the Premises. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.12.2 If within any one (1) year period, the Port serves upon Lessee three notices requiring Lessee either to: (i) comply with the terms of this Lease or to vacate the Premises or (ii) pay Rent or vacate (collectively referred to herein as "Default Notices"), then Lessee shall, upon a subsequent violation of any term of this Lease by Lessee (including failure to pay Rent), be deemed to be in unlawful detainer, and the Port may, in addition to any other remedies it may have, immediately terminate the Lease and/or commence an unlawful detainer action without further notice to Lessee.

7.12.3 The following shall also constitute a default under the terms of this Lease: (i) A default by Lessee under any other agreement or lease with the Port; (ii) insolvency of Lessee; (iii) an assignment by Lessee for the benefit of creditors; (iv) the filing by Lessee of a voluntary petition in bankruptcy; (v) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; (vi) the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; and (vii) attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure a discharge of the attachment or release of the levy of execution within ten (10) days.

7.12.4 A default under this Lease shall constitute a default under any other lease or agreement which Lessee has with the Port (hereinafter such other agreements shall be referred to as "Collateral Agreements"). Likewise, any material breach or default under any Collateral Agreements shall be deemed a material breach or default under the terms of this Lease. If any Collateral Agreements are terminated for a material breach or default of Lessee, then the Port shall, without limiting any other remedies it may have, be entitled to terminate this Lease upon five (5) days' written notice to Lessee.

7.12.5 In addition to the foregoing remedies specified in this article, the Port may exercise any remedies or rights under the laws of the State of Washington. Under no circumstances shall the Port be held liable in damages or otherwise by reason of any lawful re-entry or eviction. The Port shall not, by any re-entry or other act, be deemed to have accepted any surrender by Lessee

of the Premises or be deemed to have otherwise terminated this Lease or to have relieved Lessee of any obligation hereunder.

7.12.6 The Port shall be under no obligation to observe or perform any covenant of this Lease after the date of any material default by Lessee unless and until Lessee cures such default.

7.12.7 A fee of Five Hundred Dollars (\$500.00) shall be assessed to Lessee for each Default Notice issued to Lessee to defray the costs associated with preparing, issuing, and serving such notice. This fee shall be payable on the first (1st) day of the month following the issuance of the notice.

7.13 **NON WAIVER**: Neither the acceptance of Rent nor any other act or omission of the Port after a default by Lessee shall operate as a waiver of any past or future default by Lessee, or to deprive the Port of its right to terminate this Lease, or be construed to prevent the Port from promptly exercising any other right or remedy it has under this Lease. Any waiver by the Port shall be in writing and signed by the Port in order to be binding on the Port.

7.14 **NOTICES**: Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the addresses as follows:

TO THE PORT

Port of Port Angeles
P.O. Box 1350
Port Angeles, Washington, 98362

TO LESSEE:

or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

7.15 **AGENT FOR SERVICE**: Lessee agrees that if Lessee is in unlawful detainer, pursuant to Chapter 59.12 RCW, and the Port is unable to serve Lessee with the unlawful detainer pleadings after one service attempt, then the Port shall be deemed to have complied with the service requirements of Chapter 59.12 RCW if it mails such pleadings via certified mail to the address set forth in the notice section of this Lease and posts such pleadings in a conspicuous location on the Premises. Service shall be deemed complete on the next third day following the day of mailing.

7.16 **SECURITY**: Lessee specifically acknowledges that the Port has no duty to provide security for any portion of the Premises or surrounding areas. Lessee assumes sole responsibility and liability for the security of itself, its employees, customers, and invitees, and their respective property in or about the Premises. Lessee agrees that to the extent the Port elects to provide any security, the Port is not warranting the effectiveness of any such security personnel, services, procedures or equipment and that Lessee is not relying and shall not hereafter rely on such security

personnel, services, procedures or equipment. The Port shall not be responsible or liable in any manner for failure of any such security personnel, services, procedures or equipment to prevent or control, or apprehend anyone suspected of personal injury or property damage in, on or around the Premises.

7.17 **QUIET ENJOYMENT**: The Port acknowledges that it has ownership of the Premises and that it has the legal authority to lease the Premises to Lessee. The Port covenants that Lessee shall have quiet enjoyment of the Premises during the term of this Lease so long as the terms are complied with by Lessee and subject to the Port's right of entry onto the Premises as set forth herein.

7.17.1 The Port reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses applied for will not unduly interfere with the use to which Lessee is putting the Premises, or interfere unduly with the approved plan of development for the Premises. No easement or other land uses shall be granted to third parties, until damages to the Lessee have been dealt with appropriately, or waiver signed by Lessee.

7.17.2 Lessee understands that various federal agencies, including the Department of Homeland Security and U.S. Coast Guard, have the authority to restrict access to certain areas on property owned by the Port in order to counter a terrorist or other threat. Such restrictions could impact Lessee's ability to access the Premises for an indefinite period of time. Since such restrictions on access are outside the control of the Port, Lessee agrees that such interruptions shall not be deemed a violation of this Lease or the Covenant of Quiet Enjoyment.

7.18 **PORT MAY ENTER PREMISES; INSPECTION**: The Port reserves the right to inspect the Premises after written notice (except where the Port reasonably believes there exists or is about to exist an emergency, in which case no notice is required) at any and all reasonable times throughout the term of this Lease, provided that it shall not unduly interfere with Lessee'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 the Lease.

7.19 **TIME**: It is mutually agreed and understood that time is of the essence of this Lease and that a waiver of any default of Lessee shall not be construed as a waiver of any other default.

7.20 **INTERPRETATION**: This Lease has been submitted to the scrutiny of the parties hereto and their counsel, if desired. In any dispute between the parties, the language of this Lease shall, in all cases, be construed as a whole according to its fair meaning and not for or against either the Port or Lessee. If any provision is found to be ambiguous, the language shall not be construed against either the Port or Lessee solely on the basis of which party drafted the provision. If any word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such finding shall in no way affect the remaining provisions of this Lease.

7.21 **HOLDING OVER**: If Lessee remains in possession of said Premises after the date of expiration of this Lease without the Port's prior written consent, such holding over shall constitute and be construed as tenancy at sufferance only, at a monthly rent equal to one hundred fifty percent (150%) of the rent owed during the immediately preceding month under this Lease and otherwise upon the terms and conditions in this Lease and shall continue to be responsible for payment of applicable CAM Expenses and leasehold excise tax obligations. If Lessee holds over with the Port's prior written consent, then until such time as a new written Lease is executed by the parties hereto, Lessee shall continue to make payments to the Port on a month-to-month basis as provided for in this Lease. Such holdover tenancy may be terminated by either party at the end of any such monthly period by sending written notice not less than five (5) days before the end of such period. Such holdover tenancy shall be subject to all terms and conditions contained herein.

7.22 **PROMOTION OF PORT COMMERCE**: Lessee agrees that throughout the term of this Lease it will, insofar as practicable, promote the activities of the Port.

7.23 **SURVIVAL**: All obligations of Lessee, as provided for in the Lease, shall not cease upon the termination of this Lease and shall continue as obligations until fully performed. All clauses of this Lease, which require performance beyond the termination date, shall survive the termination date of this Lease.

7.24 **GOVERNING LAW**: This Lease, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action jurisdiction and venue shall lie exclusively in Clallam County, Washington.

7.25 **ESTOPPEL CERTIFICATES**: At Lessee's request, the Port agrees to execute and deliver to Lessee or its lender(s), a customary estoppel certificate in a form acceptable to the Port which sets forth the following information: (i) the terms and conditions of this Lease, (ii) the status of the Rent payments under the Lease; and (iii) the Port's knowledge of any breaches or anticipated breaches of the Lease. The Port shall have no obligation to execute an estoppel certificate which requests any information other than as set forth above. Lessee agrees to reimburse the Port for all attorneys' fees paid by the Port for the review and opinion of such attorney acting on the request for such estoppel certificate and in negotiating acceptable language in the estoppel certificate. A failure to reimburse the Port within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease.

7.26 **ATTORNNMENT**: In the event the Premises are sold, Lessee shall attorn to the purchaser upon the sale provided that the purchaser expressly agrees in writing that, so long as Lessee is not in default under the Lease, Lessee's possession and occupancy of the Premises will not be disturbed and that such purchaser will perform all obligations of the Port under the Lease.

7.27 **ENTIRE AGREEMENT**: This Lease contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Lease which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a

modification to this Lease executed with all necessary legal formalities by the Commission of the Port of Port Angeles, or its designee.

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

7.29 **VALIDATION:** IN WITNESS WHEREOF, the Port has caused this instrument to be signed by its Executive Director, or other designee, by authority of the Commission of the Port of Port Angeles, and this instrument has been signed and executed by Lessee, on the day and written below.

LESSOR:

LESSEE:

PORT OF PORT ANGELES

Geoffrey C. James

Its: Executive Director

Its: _____

Date: _____

Date: _____

STATE OF WASHINGTON)
) ss.
County of Clallam)

On this ____ day of _____, 20____, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Geoffrey C. James** to me known to be the **Executive Director of the Port of Port Angeles**, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

If tenant is an entity:

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 20____, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____ the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

If the tenant is an individual:

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 20 ____, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, known to be the individual named in and who executed the within and foregoing Commercial Lease, and acknowledged to me that s/he signed the same as her/his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____