

GROUND LEASE AGREEMENT

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GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the "Agreement") is made as of this ____ day of April, 2003 by and between the PORT OF SEATTLE, a Washington municipal corporation, and _____, a _____ corporation.

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

ARTICLE 1: DEFINITIONS

The following terms shall have the meanings specified in this Article, unless otherwise specifically provided. Other terms may be defined in other parts of the Agreement.

1.1 Additional Rent. "Additional Rent" shall have the meaning set forth in Section 4.3 below.

1.2 Agreement. "Agreement" shall mean and refer to this agreement, together with the Exhibits and all agreements supplemental to or modifying this agreement, whether made contemporaneously herewith or subsequent hereto.

1.3 Agreement Year. "Agreement Year" shall mean and refer to each successive year during the Term of this Agreement, beginning with the first day of the first full month to begin after the Commencement Date.

1.4 Alteration. "Alteration" shall have the meaning set forth in Section 7.1 below.

1.5 Authorities. "Authorities" shall mean and refer to the United States, State, County, City or other local governmental or quasi-governmental authorities, or any department, office, or agency of the foregoing now existing or hereafter created.

1.6 Base Rent. "Base Rent" shall have the meaning set forth in Section 4.2 below.

1.7 Broker. "Broker" shall mean and refer to _____ for Tenant. The Port is not represented by a Broker in connection with this transaction.

1.8 Commencement Date. "Commencement Date" shall mean and refer to _____.

1.9 Consumer Price Index. "Consumer Price Index" shall mean and refer to the Consumer Price Index – All Urban Consumers (All Items) for the Seattle-Tacoma-Bremerton Area. If at any time prior to the expiration of earlier termination of this Agreement, the Consumer Price Index – All Urban Consumers (All Items) for the Seattle-Tacoma-Bremerton Area is no longer

published, the parties shall use such substituted index as is then generally recognized and accepted for similar determinations of purchasing power.

1.10 Default Rate. “Default Rate” shall mean and refer to 18% per annum or the maximum interest rate permitted by law for this transaction in the State of Washington, whichever is less.

1.11 Environmental Laws. “Environmental Laws” shall mean and refer to any and all Legal Requirements relating to the protection of human health and the environment.

1.12 Event of Default. “Event of Default” shall have the meaning set forth in Section 20.1 below.

1.13 Final Plans. “Final Plans” shall have the meaning set forth in Section 6.3.3 below.

1.14 Hazardous Substance. “Hazardous Substance” shall mean and refer to any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 172.101) or by the United States Environmental Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), petroleum products and their derivatives, and such other substances, materials and wastes as are or become regulated or subject to cleanup authority by any jurisdiction under any Environmental Laws.

1.15 Legal Requirements. “Legal Requirements” shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements (whether now or hereafter in effect) of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, which may be applicable to or have jurisdiction over the Property, or the sidewalks or streets adjacent thereto and all requirements, obligations and conditions of all instruments of record on the date of this Agreement.

1.16 Lien. “Lien” shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Property, Project or Premises and any Alteration, fixture, improvement or appurtenance thereto.

1.17 Notice of Default. “Notice of Default” shall mean and refer to written notice of any Event of Default to Tenant. Such notice, for all purposes, shall be in lieu of, and not in addition to, any notice required as a prerequisite to an unlawful detainer or similar action for possession of the Premises.

1.18 Operating Expenses. “Operating Expenses” shall have the meaning set forth in Section 11.1 below.

1.19 Permitted Encumbrances. “Permitted Encumbrances” means any and all encumbrances of record together with such matters that would be disclosed by a detailed inspection and/or survey of the Property.

1.20 Port. “Port” or “the Port” shall mean and refer to the Port of Seattle, whose street address for purposes of notice is 2711 Alaskan Way, Seattle, Washington 98121, Attention: Manager, Seaport Properties and whose mailing address for purposes of notice is P. O. Box 1209, Seattle, Washington 98111, Attention: Manager, Seaport Properties.

1.21 Premises. “Premises” shall mean and refer to the leased Property together with the Project to be erected by Tenant on the Property.

1.22 Project. “Project” shall mean and refer to that _____ together with other improvements, fixtures, structures and appurtenances related thereto, to be built on the Property by Tenant, all of which is more particularly described in Exhibit C hereto.

1.23 Property. “Property” means the parcel of land legally described in Exhibit A hereto and depicted on Exhibit B hereto, subject to the Permitted Encumbrances.

1.24 Rent. “Rent” shall mean and refer collectively to sums denominated as either Base Rent, Additional Rent or any such other sums or charges otherwise payable by Tenant under the terms of this Agreement. Failure by Tenant to pay any sum denominated as Rent shall entitle the Port to pursue any or all remedies specified in this Agreement as well as remedies specified in RCW Chapter 59.12 or otherwise allowed by law.

1.25 Security. “Security” shall have the meaning set forth in Section 5.1 below.

1.26 Substantial Completion. “Substantial Completion” shall have the meaning set forth in Section 6.9 below.

1.27 Tenant. “Tenant” shall mean _____, whose address for purposes of notice is _____.

1.28 Tenant’s Operations. “Tenant’s Operations” shall mean and refer to all operations of Tenant in the conduct of Tenant’s business as a _____ and/or all operations on or about the Premises or conducted off the Premises and related to operations conducted on or about the Premises.

1.29 Term. “Term” shall have the meaning set forth in Section 3.1 below.

ARTICLE 2: LEASE OF PROPERTY; CONDITION AND USE OF PROPERTY

2.1 Agreement. Subject to the provisions, covenants and agreements contained in this Agreement, the Port hereby leases to Tenant and Tenant hereby leases from the Port the Property for the Term.

2.2 Condition and Use of Property. Tenant is fully familiar with the physical condition of the Property, has received the same in good order and condition and accepts it in its present condition. Tenant may use the Property for the uses set forth in ARTICLE 8 hereof so long as such uses are in conformity with all Legal Requirements affecting the Property, and Tenant will not, by action or inaction, take or allow any action or thing which is contrary to any legal or insurable requirement or which constitutes a public or private nuisance or waste.

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

2.4 License for Access. The Port, for itself and its successors and assigns, grants to Tenant an irrevocable license for reasonable ingress and egress from and to the Property on established roadways and sidewalks, *provided* the Port may at any time relocate, reconstruct or modify the location of such ingress and egress in its sole discretion without recourse by Tenant.

2.5 Rights Reserved to the Port. Tenant acknowledges that Tenant's right to utilize the Property shall at all times be subject to the Port's reserved right described in Sections 21.2 and 25.10.

ARTICLE 3: TERM

3.1 Term. The Term of this Agreement shall commence on the Commencement Date and shall extend for a period of ten (10) years from the Commencement Date. If the Commencement Date falls other than on the first day of a calendar month, then the Term of this Agreement shall extend and continue for a period of ten (10) years from the first day of the calendar month next following such Commencement Date.

ARTICLE 4: RENT

4.1 Payment of Base Rent. The Base Rent shall be paid in advance on the first day of each and every month during the Term to the Port without any prior demand therefor and without any abatement, deduction or setoff whatsoever. If the Term commences on any day other than the first day of a calendar month, Base Rent for any fractional month shall be prorated based upon the actual number of days in such fractional month.

4.2 Base Rent. For the first Agreement Year (including any period prior to the first Agreement Year for which Base Rent is payable) the base rent (“Base Rent”) shall be the sum of _____ per month. The Base Rent shall be subject to adjustment as follows:

4.2.1 *Insert Adjustment Methodology.*

4.3 Absolute Net Agreement; Additional Rent. It is the intent of the parties that the Base Rent provided in this Agreement shall be an absolutely net payment to the Port. Accordingly, in addition to the Base Rent described in Section 4.2 above, Tenant covenants and agrees to pay as Additional Rent, the following: (a) general property taxes; (b) insurance costs; (c) operating expenses; (d) utility charges; (e) maintenance and repair expenses and (f) any other cost or expense associated with Tenant’s Operations on or occupation of the Property, of whatever description, and whether imposed in the first instance on the Port or Tenant. Any Additional Rent shall become due with the next monthly installment of Base Rent unless otherwise provided and shall be paid to the Port without deduction, set-off or abatement whatsoever. Tenant, however, shall not be required to pay any mortgage indebtedness or any interest on any mortgage that at any time may encumber the interest of the Port in the Property.

4.4 Remittance Address. Any and all payments due to the Port by Tenant shall be remitted to the following address: Port of Seattle, P. O. Box 34249, Seattle, WA 98124-1249, or at such other place as the Port may direct in writing.

4.5 Late Payment. If any payment of Rent is not received by the Port within ten (10) days of when due, Tenant shall pay to the Port a late payment charge equal to five percent (5%) of the amount of such delinquent payment of Rent in addition to the installment of Rent then owing, regardless of whether or not a Notice of Default has been given by the Port. In addition, if such delinquent payment of Rent and late charge are not received within fifteen (15) days of when such delinquent payment of Rent was originally due, Tenant shall further pay interest on such delinquent payment of Rent and late charge thereafter at the Default Rate. The Port and Tenant recognize that the damages which the Port will suffer as a result of Tenant’s failure to timely pay Rent are difficult or impracticable to ascertain, and agree that said interest and late charge are a reasonable approximation of the damages that the Port will suffer in the event of Tenant’s late payment. This provision shall not relieve Tenant from payment of Rent at the time and in the manner herein specified. Acceptance by the Port of any such interest and late charge shall not constitute a waiver of Tenant’s default with respect to said overdue amount, nor shall it prevent the Port from exercising any other rights or remedies available to the Port.

ARTICLE 5: BOND OR OTHER SECURITY

5.1 Security. Tenant shall, upon execution of this Agreement, obtain and deliver to the Port a good and sufficient corporate surety company bond, irrevocable stand-by letter of credit, cash deposit or other security in an amount equal to _____ (\$_____) (hereinafter referred to as “Security”), to secure Tenant’s full performance of this Agreement, including the payment of all fees and other amounts now or hereafter payable to the Port hereunder.

The amount, form, provisions and nature of the Security, and the identity of the surety or other obligor thereunder, shall at all times be subject to the Port's approval. The Security shall remain in place at all times throughout the full term of this Agreement and throughout any holdover period. No interest shall be paid on the Security and the Port shall not be required to keep the Security separate from its other accounts. No trust relationship is created with respect to the Security.

5.2 Return of Security. The Security is a part of the consideration for execution of this Agreement. If Tenant shall have fully performed all terms and conditions of this Agreement, any cash deposit security shall be paid to Tenant within thirty (30) days following the termination (or expiration) date without interest; otherwise the Port shall, in addition to any and all other rights and remedies available under this Agreement or at law or equity, retain title thereto.

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

ARTICLE 6: CONSTRUCTION, OPERATION AND OWNERSHIP OF THE PROJECT

6.1 Construction of the Project. On or before _____, Tenant shall commence the construction of the Project designed for the uses permitted by ARTICLE 8. The Project shall be of fireproof construction according to the standards and ratings of the local fire insurance rating organization. It shall be constructed in good and workmanlike manner and in accordance with all Legal Requirements, and with the requirements of the foregoing rating organization. Tenant shall obtain all necessary permits, including any discretionary permits. The plans and specifications shall be prepared by a duly qualified architect (and engineer, if necessary) licensed in the State of Washington and employed by Tenant.

6.2 Project Fully Contained Within the Property. The Project shall be a complete independent building or buildings erected wholly within the boundary lines of the Property. Furthermore, all appurtenances thereto, specifically including but not limited to any parking necessary for Tenant or for any agent, employee, guest or invitee of any such person, shall also be erected or constructed within the boundary lines of the Property.

6.3 Port Review of Project. Before any construction of the Project is commenced on the Property, and before any building materials have been delivered to the Property by Tenant or under Tenant's authority, Tenant shall comply with all the following conditions or procure the Port's written waiver of the condition or conditions specified in the waiver:

6.3.1 Deliver to the Port for the Port's approval two full sets of preliminary construction plans and specifications of the Project, including but not limited to preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress

to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, canopies, and landscaping, all sufficient to enable potential contractors and subcontractors to make reasonably accurate bid estimates and to enable the Port to make an informed judgment about the design and quality of construction, about any effect on the reversion and about the impact of the Project on the surrounding properties owned or managed by the Port. All improvements shall be constructed within the exterior property lines of the Property; provided that required work beyond the Property on utilities, access, and conditional use requirements do not violate this provision. The Port shall not unreasonably disapprove preliminary plans and specifications. Approval or disapproval shall be communicated in the manner provided for notices, and disapproval shall be accompanied by specification of the grounds for disapproval; Tenant shall not deliver working drawings to any governmental body for a building permit until preliminary plans are approved as in this Section. Following the Port's first or any subsequent disapproval, Tenant shall submit revised plans and specifications.

6.3.2 Deliver to the Port the written approval of the plans and specifications by the financial institution that shall have made the commitment for financing the construction.

6.3.3 Prepare final plans and specifications ("Final Plans") substantially conforming to preliminary plans previously approved by the Port and submit them to the Port for approval, which approval shall not be unreasonably withheld or delayed.

6.3.4 Furnish to the Port a true copy of the Tenant's contract with the general contractor and with evidence of the general contractor's financial condition for the Port's approval, which shall not be unreasonably withheld or delayed. The contract shall give the Port the right but not the obligation to assume Tenant's obligations and rights under that contract if Tenant should default.

6.4 Reimbursement of Expense for Review. Tenant will reimburse the Port, as Additional Rent, for the reasonable cost and expense incurred by the Port for the services of an architect (and for the services of an engineer for heating, ventilating, and structural matters) to review for the Port the preliminary and Final Plans.

6.5 Commitment for Financing. Tenant agrees not later than _____ to obtain and exhibit to the Port a written commitment by one or more banking corporations authorized to do business in the State of Washington, which commitment shall have been duly accepted by Tenant and which shall provide for the financing of the cost of construction of the Project.

6.6 Building Permits. After completion, acceptance and initialing of the Final Plans by the parties hereto, Tenant shall, at its expense, promptly submit the Final Plans and any other documents required for construction of the Project to all Authorities having jurisdiction with respect to the erection of the Project for any and all governmental approvals. The Port and Tenant hereby agree not to unreasonably withhold their consent to the modification of the Final Plans in order to secure governmental approvals. Tenant shall use its best efforts to obtain all necessary governmental approvals from said Authorities as soon as practicably possible.

6.7 Completion Bond. Tenant shall deliver to the Port a contractor's completion bond (or, in lieu of a completion bond, a payment and performance bond in the full amount of any construction contract) of a surety company licensed to do business in the State of Washington, running to the Port conditioned on the completion of the Project in accordance with the Final Plans and the provisions of this Agreement, free and clear of all mechanics' or other liens and free and clear of all financing statements under the Uniform Commercial Code. This bond shall be in an amount and in a form and written by a company as the Port shall approve, which approval the Port shall not unreasonably withhold.

6.8 Modification of Plans of Commitment.

6.8.1 Tenant shall have the right to change or modify any loan commitment so long as it remains in compliance with the terms of this Agreement, or substitute another commitment by an eligible lender for the same purpose.

6.8.2 Tenant may, at any time during the course of construction, request that the Final Plans be modified in such particulars as may be specified by Tenant, and the Port agrees that it will not unreasonably withhold or delay its consent to such changes.

6.9 Diligent Prosecution of Construction. After construction is commenced, it shall be prosecuted diligently, in accordance with the Final Plans, in good workmanlike manner and in compliance with all Legal Requirements and pursuant to the conditions of the governmental approvals. Allowing only for delays beyond Tenant's reasonable control, Tenant agrees not later than _____, the project shall be substantially completed. Substantial completion ("Substantial Completion") of the Project shall be deemed to have occurred when all of the following conditions have been met:

6.9.1 Tenant's construction in the interior of the Project has been completed to such an extent, and all government permits and approvals and occupancy certificates necessary have been obtained so that the Project may be opened for the public, notwithstanding that minor or insubstantial details of construction, mechanical adjustment or decoration remain to be performed, the non-completion of which would not interfere with opening the Project for business; and

6.9.2 The parking areas, entrances and exits for the Premises shall have been paved and striped and the parking lot lighting substantially installed and operating.

6.10 Permanent Certificate of Occupancy. Notwithstanding that the Project has been substantially completed, Tenant shall diligently proceed to complete full construction of the Project and obtain a permanent certificate of occupancy for the Project.

6.11 As-Built Drawings. Tenant shall deliver to the Port full and complete "as built" drawings of the Project in machine readable format in full conformance with the Port's CAD Standards Manual and complete Operations and Maintenance Manuals.

6.12 No Interference with Port Operations. Notwithstanding anything to the contrary hereof, construction of the Project by Tenant shall be done in such a manner which does not materially interfere with the business of the Port or any its tenants, and in completing such construction, Tenant will not (i) store construction equipment or materials on Port property other than the Property; (ii) permit construction workers, whether employees or agents of Tenant or its contractors or subcontractors, to park on Port property other than the Property; and (iii) fence in the construction area to prevent debris from entering onto any adjoining property.

6.13 Compliance with Deadlines in this Article. This Agreement and the Port's obligations hereunder are expressly conditioned upon Tenant's strict compliance with all of the time limits set forth in this Article. In the event Tenant fails to comply with the deadline set forth in Section 6.9 of this Agreement, Tenant acknowledges that the breach of its agreement to construct the Project will result in damage to the Port because of (among other things) the failure to improve the Property in accordance with this ARTICLE 6. Tenant further recognizes that the dollar amount of the damages to which the Port would be entitled on the breach by Tenant of its agreement to construct the Project is difficult to ascertain because of the reasons and circumstances mentioned above. Consequently, it is agreed that if Tenant shall fail to comply with the deadline set forth in Section 6.9, Tenant shall pay to the Port the sum of _____ per day for each day beyond the date set forth in that Section that commencement of operation is delayed.

6.14 Ownership of Project. Tenant shall own the Project as it is built "brick by brick." At all times while this Agreement is in force, title to the Project shall belong solely to the Tenant. Upon expiration or earlier termination of this Agreement (and subject to ARTICLE 16), title to the Project then situated on the Property shall pass automatically to the Port, without payment therefor, and Tenant shall have no further rights therein.

ARTICLE 7: ALTERATIONS; OWNERSHIP OF CERTAIN INSTALLATIONS

7.1 Alterations. Tenant, after completion of the Project, may from time to time during the Term make such non-structural changes, alterations, additions, substitutions or improvements (collectively referred to as "Alterations") to the Project as Tenant may reasonably consider necessary and desirable to adapt or equip the Project for Tenant's use and occupancy. All such Alterations shall be done at Tenant's sole cost and expense and at such times and in such manner as the Port may from time to time designate.

7.2 Limitations on Alterations. Tenant shall make no Alterations that will (i) cost in excess of \$10,000; or (ii) involve structural work or changes; or (iii) involve work changes to the electrical, natural gas, water, sewer or other utility systems of the Project, unless Tenant shall first deliver plans and specifications therefor to the Port and obtain the Port's prior written approval thereof which shall not be unreasonably withheld or delayed.

7.3 Requirements for All Alterations. Any Alteration (whether permitted of right or subject to approval) shall be performed (i) in a good and workmanlike manner, (ii) in compliance

with all Legal Requirements, and (iii) in a manner that will not unreasonably interfere with or disturb the Port or its tenants.

7.4 Trade Fixtures. Tenant shall retain ownership of all trade fixtures and business equipment and furnishings from time to time installed in the Project by Tenant at its expense. Tenant may remove any of such fixtures, equipment or furnishings at any time during the Term and shall remove all thereof prior to the expiration of the Term. Any such property not removed at the expiration of the Term shall, at the election of the Port, become the property of the Port without payment to Tenant, or be deemed abandoned and removed by the Port, at Tenant's expense. Upon any removal of such property, Tenant shall promptly repair any and all damage to the Premises caused thereby and reimburse the Port for its costs and expenses in removing any such property not removed by Tenant and repairing any such damage not repaired by Tenant; this covenant shall survive the termination of this Agreement.

ARTICLE 8: USE

8.1 Use of Premises. Subject to and in accordance with all present and future Legal Requirements, Tenant covenants and agrees that it shall use the Premises solely as a _____ and for no other purpose or use.

8.2 General Standards Governing Use.

8.2.1 Tenant shall not use or occupy or permit the Premises or any part thereof to be used or occupied, not do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way (i) violate any present or future Legal Requirements, or (ii) violate any of the covenants, agreements, provisions and conditions of this Agreement, or (iii) violate the certificate of occupancy then in force with respect thereto, or (iv) may make it difficult for either the Port or Tenant to obtain fire or other insurance required hereunder, or (v) as will constitute a public or private nuisance.

8.2.2 Tenant shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which, in the Port's reasonable judgment, may or tends to, impair or interfere with (i) the character, reputation or appearance of the Premises, the Project or the Port; or (ii) the use of any other Port property, or occasion discomfort, inconvenience or annoyance to, the Port or any of its tenants or occupants of any adjacent property.

8.3 Signs. No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on or within the Premises, including the walls, windows and doors thereof, without the prior written approval of the Port. At the termination or sooner expiration of this Agreement, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Tenant shall be removed by Tenant at its own expense, and Tenant shall repair any damage or injury to the Premises and correct any unsightly condition caused by the maintenance and removal of said signs, etc.

ARTICLE 9: REAL AND PERSONAL PROPERTY TAXES

9.1 Payment of Real Property Taxes by Tenant. Tenant shall be liable for, and shall pay throughout the term of this Agreement, all license and excise fees payable for, or on account of, the activities conducted on the Premises and all taxes on the property of Tenant on the Premises and any taxes on the Premises and/or on the leasehold interest created by this Agreement and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, fees payable hereunder, whether imposed on Tenant or on the Port. Tenant shall reimburse the Port for all such taxes paid or payable by the Port. With respect to any such taxes payable by the Port that are on or measured by the rent or fee payments hereunder, Tenant shall pay to the Port with each rent or fee 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 Tenant shall be payable by Tenant to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Tenant shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by it.

9.2 Tenant's Personal Property Taxes. Tenant shall pay or cause to be paid, prior to delinquency, any and all taxes and assessments levied upon all trade fixtures, inventories and other real or personal property placed or installed in and upon the Premises by Tenant. If any such taxes on Tenant's personal property or trade fixtures are levied against the Port or the Port's property, and if the Port pays the taxes based upon such increased assessment, Tenant shall, upon demand, repay to the Port the taxes so levied.

ARTICLE 10: INDEMNITY AND INSURANCE

10.1 Indemnity.

10.1.1 The Port, its officers, employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Tenant or by others, including but not limited to all persons directly or indirectly employed by Tenant, or any agents, contractors, subcontractors, licensees or invitees of Tenant, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to Tenant's use or occupancy of the Premises and of areas adjacent thereto.

10.1.2 Tenant shall defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port and its Commissioners, officers, agents and employees from any and all loss, damages, expenses, attorneys' fees, consultants' fees, court costs and other costs for or from: (a) anything and everything whatsoever arising from the condition the Premises or out of the occupancy by the Tenant or subtenant, licensee, invitee or concessionaire of Tenant; and (b) any accident, injury, death or damage to any party however caused in or about the Premises or upon the sidewalks adjacent to the Premises, whether or not caused by the negligence of Tenant or any third party; and (c) any fault or negligence by Tenant or any sublessee, licensee, invitee or concessionaire

of the Tenant or of any officer, agent, employee, guest or invitee of any such person; and (d) any failure on Tenant's part to comply with any of the covenants, terms and conditions contained in this Agreement; *provided, however*, nothing herein shall require Tenant to indemnify the Port from any accident, injury, death or damage arising the sole negligence of the Port or its Commissioners, officers, agents and employees. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus Tenant expressly waives its immunity under industrial insurance, Title 51, as necessary to effectuate this indemnity.

10.1.3 Notwithstanding the foregoing, in the event of the concurrent negligence of Tenant, its subtenants, licensees, assignees, concessionaires, agents, employees, or contractors on the one hand and the negligence of the Port, its agents, employees or contractors on the other hand, which concurrent negligence results in injury or damage to persons or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Premises such that RCW 4.24.115 is applicable, Tenant's obligation to indemnify the Port as set forth in this Section shall be limited to the extent of Tenant's negligence and that of Tenant's officers, sublessees, assignees, agents, employees, contractors or licensees, including Tenant's proportional share of costs, court costs, attorneys' fees, consultants' fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage.

10.1.4 TENANT AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

10.2 Insurance. Tenant shall obtain and keep in force, at its sole cost and expense, during the Term of this Agreement the following types of insurance, in the amounts specified and in the form hereinafter provided for:

10.2.1 Liability Insurance. Tenant shall obtain and keep in force during the Term of this Agreement a commercial general liability policy of insurance protecting Tenant and the Port, as an additional insured using ISO Form 20 26 11 85 or equivalent, against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the tenancy, use, occupancy or maintenance of the Property or Premises and all areas appurtenant thereto, and specifically including the action/inaction of any subtenant, licensee or concessionaire permitted by Section 24.1. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$_____ per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations.

10.2.2 Builder's Risk Insurance. Before the commencement of the Project, and until final completion of the Project and obtaining a permanent Certificate of Occupancy, Tenant shall obtain and keep in force "Special Extended" or "all risk" builder's risk insurance in an amount equal to the agreed value of the Project, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees.

10.2.3 Property Insurance. Tenant shall obtain and keep in force during the Term of this Agreement “Special Extended” or “all risk” property insurance, specifically including earthquake and flood coverage, with loss payable to the Port, insuring loss or damage to the Premises. The policy shall include coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of the Premises including any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any Legal Requirement as the result of a covered cause of loss. The amount of such insurance shall be equal to the full replacement cost of the Premises (or the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost). The policy shall also contain an agreed valuation provision in lieu of any coinsurance clause.

10.2.4 Rental Value Insurance. Lessee shall obtain and keep in force during the term of this lease a policy or policies, with loss payable to the Port, insuring the loss of the full rental and other charges payable by Lessee under this lease for one (1) year (including all real estate taxes, insurance costs, and any scheduled rental increase). Said insurance shall provide that in the event the lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year’s loss of rental revenues from the date of any such loss. The insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected aggregate Rent payable by Lessee, for the next twelve (12) month period.

10.2.5 Other Insurance. Tenant shall further obtain and keep in force such other and further insurance as Landlord may from time to time reasonably request for the protection by insurance of its interest in the premises.

10.3 Insurance Policies. Insurance required hereunder shall be in companies duly licensed to transact business in the State of Washington, and maintaining during the policy term a General Policyholders Rating of ‘A-’ or better and a financial rating of ‘IX’ or better, or such other rating as may be required by a lender having a lien on the Premises, as set forth in the most current issue of “Best’s Insurance Guide.” Tenant shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Article. Tenant shall cause to be delivered to the Port certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insureds and loss payable clauses as required by this Agreement. No such policy shall be cancelable or subject to non-renewal or modification except after forty five (45) days prior written notice to the Port. Tenant 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 order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant to the Port upon demand. No insurance required herein shall contain a deductible or self-insured retention in excess of \$10,000 without the prior written consent of the Port.

10.4 Waiver of Subrogation. Without affecting any other rights or remedies, Tenant (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to Tenant arising out of or incident to the perils required to be insured against under this Article. Accordingly, Tenant shall cause each insurance policy required by this Article to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

10.5 Miscellaneous Insurance Provisions.

10.5.1 The limits of insurance required by this Agreement or as carried by Tenant shall not limit the liability of Tenant nor relieve Tenant of any obligation hereunder. All insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by the Port, whose insurance shall be considered excess insurance only. If at any time during the Term, Tenant shall have in full force and effect a blanket policy of commercial general liability and umbrella liability insurance covering the Premises and other premises and/or properties of Tenant, such insurance shall satisfy the requirements hereof, provided said policy contains a specific endorsement providing a minimum amount of coverage applicable to the Premises equal to or greater than the amount required above.

10.5.2 The amounts and types of insurance specified in this Agreement shall be subject to periodic adjustment to reflect changes in insuring practices for similar properties in the same geographic area and changes in insurance products.

10.5.3 In the event the proceeds payable to the Port under any policy of insurance maintained by Tenant are limited or reduced on account of deductible(s) maintained by Tenant in excess of One Thousand Dollars (\$1,000.00), Tenant shall pay to the Port at the time the Port receives such proceeds (or should have received such proceeds, if no proceeds are due) an amount equal to the reduction or limitation.

ARTICLE 11: OPERATING EXPENSES; UTILITIES

11.1 Operating Expenses; Responsibility for Operations and Maintenance. Beginning on the Commencement Date and continuing thereafter during the Term of this Agreement, Tenant shall pay, as Additional Rent, directly to all third parties the total of all the costs and expenses incurred with respect to the operation and maintenance of the Premises and the services provided for the benefit of the Tenant (the "Operating Expenses"), it being understood and agreed that the Port shall not be required to furnish any services and/or utilities of any nature to the Premises during the Term of the Agreement, Tenant hereby assuming full and sole responsibility for the supply and payment for all services, operational costs and utilities.

11.2 Utilities. Tenant shall, at its sole cost and expense, arrange for the furnishing of all utilities, including natural gas, electricity, water and sewer, necessary for the operation of the Project, and Tenant covenants and agrees to pay all charges therefor directly, to the applicable public utility or governmental authority furnishing such service to the Property, the amounts due for such services as indicated by meters measuring Tenant's consumption thereof. In the event that the Premises (or any portion thereof) is part of a building or any larger premises to which any of these utilities services are furnished on a consolidated or joint basis, Tenant shall pay a pro rata share of such utilities. Tenant's pro rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required.

11.3 Energy Conservation. The Port shall have the right to institute such reasonable policies, programs and measures as may be necessary or desirable, in the Port's discretion, for the conservation and/or preservation of energy or energy related services, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary.

11.4 Port Not Responsible.

11.4.1 The Port shall not be required to furnish any services or utilities of any nature to the Property during the term of this Agreement, Tenant hereby assuming full and sole responsibility for the supply of and payment for all utilities and services. Furthermore, the Port shall not be liable in any way to Tenant for any failure or defect in the supply or character of electrical energy or water and sewer service furnished to the Premises by reason of any requirement, act or omission of the public utility providing such service or for any other reason.

11.4.2 With respect to any utility service provided to the Premises as a part of a building or any larger premises of which the Premises are a part, the Port shall have the right to shut down electrical or other utility services to the Premises when necessitated by safety, repairs, alterations, connections, upgrades, relocations, reconnections, or for any other reason, with respect to any such utility system (singularly or collectively, "Utility Work"), regardless of whether the need for such Utility Work arises in respect of the Premises, any other part of the building or larger premises. Whenever possible, the Port shall give Tenant no less than two (2) days prior notice for such utility shutdown. The Port shall not be liable to Tenant for any losses, including loss of income or business interruption, resulting from any interruptions or failure in the supply of any utility to the Premises, except when such losses result from the Port's gross negligence.

ARTICLE 12: REPAIR AND MAINTENANCE; COMPLIANCE WITH LAWS

12.1 Duty to Repair and Maintain. The Premises, both outside and inside, together with all Alterations, equipment and installations therein and the appurtenances thereto, shall be put and kept in good order, maintenance and repair by Tenant at Tenant's sole cost and expense, and Tenant shall undertake all maintenance and make all repairs and replacements, ordinary, as well as extraordinary, foreseen and unforeseen, structural or otherwise, which may be necessary or required so that at all times the Premises and all Alterations, equipment, installations and appurtenances shall be in thorough good order, condition and repair.

12.2 Continuing Compliance. Throughout the Term of this Agreement, Tenant shall, at its own cost and expense, promptly and diligently observe and comply with:

12.2.1 All Legal Requirements and the requirements of any fire insurance rating organization and all insurance companies writing policies covering the Premises or any part or parts thereof, whether or not such compliances herewith shall require structural repairs, changes or alterations in and about the Premises, or repairs, changes or alterations incident to or as the result of any use or occupation of the Premises or interfere with the use and enjoyment of the Property or any part therefor, and whether or not the same now are in force or at any time in the future may be passed, enacted, or directed;

12.2.2 Procure, maintain and comply with all permits, licenses, franchises and other authorizations required for any use of the Property or any part thereof then being made and for proper erection, installation, operation and maintenance of any improvements or any part thereof; and

12.2.3 Comply with any instruments of record at the time in force affecting the Property or any part thereof.

Tenant shall defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding and all costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of or be imposed because of the failure of Tenant to comply with this covenant. Tenant's obligations of indemnity under this Section shall survive the expiration or earlier termination of this Agreement.

12.3 Waste. Tenant will not do or permit or suffer any waste, damages, disfigurement or injury to or upon the Premise or any part thereof.

ARTICLE 13: COMPLIANCE WITH ENVIRONMENTAL LAWS

13.1 Hazardous Substances. Tenant shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Environmental Law. Tenant shall not allow any Hazardous Substances to migrate off the Premises, or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. Tenant shall provide the Port with Tenant's USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets (MSDS), Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Tenant receives from, or provides to, any governmental unit or agency in connection with Tenant's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.

13.2 Violation of Environmental Law. If Tenant, or the Premises, is in violation of any Environmental Law concerning the presence or use of Hazardous Substances or the handling or

storing of hazardous wastes, Tenant shall promptly take such action as is necessary to mitigate and correct the violation. If Tenant does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Tenant (Tenant hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Tenant is in violation of any Environmental Law, or that Tenant's actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Tenant upon presentation of an invoice therefor.

13.3 Inspection; Test Results. The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Tenant shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port's expense. Tenant shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent. Tenant shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Tenant, and Tenant shall provide copies to the Port.

13.4 Removal of Hazardous Substances. Prior to vacation of the Premises, in addition to all other requirements under this Agreement, Tenant shall remove any Hazardous Substances placed on the Premises during the term of this Agreement or Tenant's possession of the Premises, and shall demonstrate such removal to the Port's satisfaction. This removal and demonstration shall be a condition precedent to the Port's payment of any Security to Tenant upon termination or expiration of this Agreement.

13.5 Remedies Not Exclusive. No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Tenant whenever the Port incurs any costs resulting from Tenant's use or management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).

13.6 Environmental Indemnity. In addition to all other indemnities provided in this Agreement, Tenant agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any Hazardous Substance from the Premises to other properties or into the surrounding environment, whether (1) made, commenced or

incurred during the term of this Agreement, or (2) made, commenced or incurred after the expiration or termination of this Agreement if arising out of events occurring during the term of this Agreement. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

ARTICLE 14: DAMAGE OR DESTRUCTION

14.1 Duty to Repair. If the Project or any other improvement at any time on the Premises shall be damaged or destroyed by any cause whatsoever during the Term of this Agreement, Tenant shall, with reasonable promptness, repair and replace the same at its own expense, to at least the condition existing immediately prior to the damage or destruction, and shall do so, even though the proceeds of any insurance policies covering the loss shall be insufficient to reimburse Tenant therefor; *provided, however*, that if the proceeds of insurance are more than sufficient to pay the cost of the rebuilding, Tenant shall be entitled to retain that surplus.

14.2 Abatement of Rent. Tenant shall not be entitled to any abatement of rent, nor shall its obligations under this Agreement be terminated during the Term, notwithstanding any destruction or damage to the Premises by any cause whatsoever; *provided, however*, that if the whole or materially all of the Premises are destroyed by fire or other casualty at any time during the last two (2) years of the Term, then Tenant may terminate this Agreement by written notice given to the Port within sixty (60) days after the date of such destruction, and the Base Rent, Additional Rent and other charges under this Agreement will be apportioned as of the date of destruction and Tenant will be discharged from responsibility to repair the damage, but all proceeds of insurance covering the loss shall in that circumstance belong to the Port free of any claim thereto by Tenant.

14.3 Application of Insurance Proceeds. Any and all fire or other insurance proceeds that become payable at any time during the Term of this Agreement because of damage to or destruction of any buildings or improvements on the Property shall be paid to the Port. In the event that such proceeds are less than Ten Thousand Dollars (\$10,000.00), the Port shall immediately deliver such funds to Tenant, to be used for reconstruction purposes. In the event that such proceeds exceed Ten Thousand Dollars (\$10,000.00), the Port shall hold such funds, and disburse them to Tenant on a percentage of completion basis in the manner of a construction lender's disbursement account for application toward the cost of repairing and restoring the damaged or destroyed buildings or improvements in the manner required by this Agreement; *provided, however*, that should Tenant exercise its option to terminate this Agreement because of damage to or destruction of buildings or improvements on the Property during the last two (2) years of the term, then, in that event, any and all fire or other insurance proceeds that become payable because of such damage or destruction shall be paid to the Port to compensate the Port, at least in part, for the loss to its fee estate of the damaged or destroyed buildings or improvements.

ARTICLE 15: CONDEMNATION

15.1 Termination on Substantial Taking. If any competent authority for any public or quasi-public use or purpose takes or condemns (hereafter "takes" or "taking") the whole or

materially all of the Premises at any time during the Term, this Agreement shall terminate and all Base Rent, Additional Rent, and other charges under this Agreement shall be apportioned as of the date of vesting of title in such taking or proceedings. For the purposes of this Article, a taking of “materially all” of the Premises, as distinguished from a taking of the whole of the Premises, means a taking of such scope that the untaken portion of the determined premises is insufficient to permit the restoration of the then-existing improvements thereon so as to constitute a complete rentable Project capable of producing a proportionately fair and reasonable net annual income, taking into consideration the payment of all operating expenses, thereof, including but not limited to the Base Rent, Additional Rent, and all other charges reserved in this Agreement and after the performance of all covenants, agreements, and provisions herein provided to be performed by Tenant. The determination of what constitutes a fair and reasonable net annual income shall be governed by reference to the average net annual income produced by the Premises during the two (2) year period immediately preceding the taking. As used in this Section, the term “operating expenses” does not include depreciation, income taxes, or franchise taxes.

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

15.2.1 The Port, at all times, regardless of when the taking occurs, shall be entitled to receive, with interest thereon as allowed by the taking authority, that portion of the award as shall represent compensation for the value of the Premises, considered as vacant and improved only to the extent existing at the commencement of this Agreement, such value being hereinafter referred to as the “Property Value.” The Port shall also be entitled to costs awarded in the condemnation proceeding proportionately attributable to that Property Value.

15.2.2 The balance of the award, which balance is hereinafter referred to as the “Award Balance,” shall be payable to the Port and Tenant as follows:

(a) The Port shall be entitled to that percentage of the Award Balance that equals the percentage of the Term of this Agreement that *has* expired as of the date of the vesting of title in the taking authority, together with interest thereon as allowed by the taking authority and such costs awarded in the condemnation proceeding proportionately attributable to the Port’s portion of the Award Balance;

(b) Tenant shall be entitled to that percentage of the Award Balance that equals the percentage of the Term of this Agreement that *has not* expired as of the date of the vesting of title in the taking authority, together with interest thereon as allowed by the taking authority and such costs awarded in the condemnation proceeding proportionately attributable to Tenant’s portion of the Award Balance.

15.3 No Termination on Partial Taking. In the event of a taking of less than materially all of the Premises, this Agreement (except as hereinafter provided) shall nevertheless continue, but the

Base Rent to be paid by Tenant shall thereafter be reduced in the ratio that the rental value of the portion of the Premises taken bears to the rental of the entire Premises at the time of the taking, and Tenant shall promptly restore the Premises as below provided. The Tenant shall undertake the work of repair and restoration as soon as reasonably practicable; and Tenant shall make the repairs and restoration even if the Award Balance is insufficient for that purpose.

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

15.4.1 The Port, at all times, regardless of when the taking occurs, shall be entitled to receive, with interest thereon as allowed by the taking authority, that portion of the award as shall represent compensation for the value of the Premises, considered as vacant and improved only to the extent existing at the commencement of this Agreement, such value being hereinafter referred to as the "Property Value." The Port shall also be entitled to costs awarded in the condemnation proceeding proportionately attributable to that Property Value.

15.4.2 The balance of the award, which balance is hereinafter referred to as the "Award Balance," shall be payable to the Port and Tenant as follows:

(a) First: so much as shall be necessary to repair and restore the Premises as nearly as reasonably possible to the condition existing prior to the taking or condemnation shall be deposited with the Port. The Port shall hold such funds, and disburse them to Tenant on a percentage of completion basis in the manner of a construction lender's disbursement account for application toward the cost of repairing and restoring the Premises.

(b) Second: the balance shall be shared by the Port and Tenant in the same proportion that they would have shared in the Award Balance were there to have been a taking of the whole or materially all of the Premises at the time of the partial taking as set forth in Section 15.2.2.

Should, however, the partial taking occur during the last two (2) years of the Term, then Tenant at its option upon thirty (30) days prior notice to the Port, given at any time within sixty (60) days after the vesting of title in the taking authority, may terminate this Agreement. Upon that termination the Rent and other charges under this Agreement shall be apportioned as of the date of termination and the Tenant will be discharged from responsibility to restore the Premises. Upon that termination the entire Award Balance shall belong to the Port free of any claim thereto or any part thereof by Tenant, anything in this Article to the contrary notwithstanding.

15.5 Value of Respective Interests. If the Property Value is determined in the proceeding pursuant to which the Premises shall have been taken, the Property Value and consequent Award Balance so determined shall be conclusive upon the Port and Tenant. If these values shall not have been so determined, they shall be fixed by agreement between the Port and Tenant.

15.6 Temporary Taking. This Agreement shall not be affected if the taking authority by the exercise of its power of eminent domain shall take the use or occupancy of the Premises or any part thereof for a temporary period (hereafter “temporary taking”). The Tenant shall continue to pay, in the manner and at the time specified in this Agreement, the full amounts of the Base Rent, fees and all Additional Rent and other charges payable by the Tenant under this Agreement. Except only to the extent that the Tenant may be prevented from so doing pursuant to the terms of the order of the taking authority, Tenant shall also continue to perform and observe all its other obligations under this Agreement, as though the temporary taking had not occurred. Tenant shall be entitled to receive the entire amount of any award made for the temporary taking, whether paid by way of damages, rent, or otherwise, unless the period of temporary use or occupancy shall extend to or beyond the expiration date of the Term of this Agreement, in which case the award shall be apportioned between the Port and Tenant as of the date of expiration of the Term, but the Port shall in that circumstance receive the entire portion of the award that is attributable to physical damage to the Premises and the restoration thereof to the condition immediately prior to the taking. The Tenant covenants that, upon the termination of any temporary taking, prior to the expiration of the Term, it will, at its sole cost and expense, restore the Premises, as nearly as may be reasonably possible, to the condition in which the same was immediately prior to the temporary taking.

ARTICLE 16: SURRENDER AND HOLDING OVER

16.1 Port’s Option for Removal of Modifications; Surrender. Prior to expiration and not later than ten (10) days following earlier termination of this Agreement, the Port, at its sole election and discretion, may elect to have Tenant: (i) remove the improvements or modifications to the Property at Tenant’s sole cost and expense or (ii) allow the same to remain on the Property. Different elections may be made as to various portions of the improvements or modifications on the Property. In the event that the Port elects for the removal of any or all of the improvements or modifications to the Property, Tenant shall diligently complete such removal within not more than sixty (60) days of the Port’s election or termination (including by expiration) of this Agreement, whichever is later. Provided Tenant diligently proceeds with removal and accomplishes such within the time provided, the Port shall automatically be deemed to have consented to Tenant’s holding over for such period (but only such period). In any event, Tenant shall quit and surrender the Property, together with any remaining improvements or modifications, in good condition and repair, normal wear and tear excepted.

16.2 Holding Over. If the Premises are not surrendered as provided in this Article, Tenant shall indemnify and hold the Port harmless against loss or liability resulting from the delay by Tenant in so surrendering the Premises, including, without limitation, any claims made by any succeeding occupant founded on such delay. Any holding over with the consent of the Port after expiration or earlier termination of this Agreement shall be construed to be a tenancy from month-to-month upon the same terms and conditions provided in this Agreement. Any holding over without the consent of the Port after expiration or earlier termination of this Agreement shall be construed to be tenancy at sufferance upon the same terms and conditions provided in this Agreement, except that

Base Rent shall be one hundred fifty percent (150%) of that which it was immediately prior to expiration or earlier termination of this Agreement.

16.3 Survival. Tenant's obligations under this Article shall survive the expiration or earlier termination of this Agreement. No modification, termination or surrender to the Port of this Agreement or surrender of the Property or any part thereof, or of any interest therein by Tenant, shall be valid or effective unless agreed to and accepted in writing by the Port, and no act by any representative or agent of the Port, other than such written agreement and acceptance, shall constitute an acceptance thereof.

ARTICLE 17: IMPAIRMENT OF TITLE

17.1 Liens. Tenant will not directly or indirectly create or permit to be created and/or to remain a Lien upon the Property, Project, Premises, and any Alterations, fixtures, improvements or appurtenances thereto except those Liens expressly permitted by this Agreement. In the event any such Lien(s) have been created by or permitted by Tenant in violation of this provision, Tenant shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Tenant shall also defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding which may be brought on or for the enforcement of such lien(s).

ARTICLE 18: ESTOPPEL CERTIFICATES, ATTORNMENT AND SUBORDINATION

18.1 Estoppel Certificates. Each party shall, at any time and from time to time as requested by the other party, upon not less than ten (10) days' prior written notice, execute, acknowledge and deliver to the other a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), certifying the date through which Base Rent, Additional Rent and other charges, if any, have been paid, and stating whether or not, to the best knowledge of the signer, the other party is in default beyond any applicable grace periods provided in the performance of any of its obligations under this Agreement, and if so, specifying each such default of which the signer may have knowledge. The parties agree and acknowledge that it is specifically intended that any such statement delivered pursuant to this Section 18.1 may be relied upon by others with whom the party requesting the certificate may be dealing.

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

18.3 Subordination. The rights of Tenant hereunder are and shall be, at the election of any mortgagee or the beneficiary of a deed of trust encumbering the Premises or any part thereof, subject and subordinate to the lien of such mortgage or deed of trust, or the lien resulting from any other method of financing or refinancing, now or hereafter in force against the Premises or any part thereof, and to all advances made or hereafter to be made upon the security thereof; *provided, however,* that notwithstanding such subordination, so long as Tenant is not in default under any of the terms, covenants and conditions of the Agreement, neither the Agreement nor any of the rights of Tenant hereunder shall be terminated or subject to termination by any trustee's sale, any action to enforce the security, or by any proceeding or action in foreclosure. If requested, Tenant agrees to execute whatever documentation may be required to further effect the provisions of this Article.

18.4 Recording. Tenant covenants and agrees with the Port that Tenant shall not record this Agreement or any memorandum thereof without the Port's prior written consent. In the event that the Port or its lender requires this Agreement or a memorandum thereof to be recorded in priority to any mortgage, deed of trust or other encumbrance which may now or at any time hereafter affect the Premises in whole or in part, and whether or not any such mortgage, deed of trust or other encumbrance shall affect only the Premises, any part thereof, or shall be a blanket mortgage, deed of trust or encumbrance affecting other premises as well, the Tenant covenants and agrees with the Port that the Tenant shall execute promptly upon request from the Port any certificate, priority agreement or other instrument which may from time to time be requested to give effect thereto and the Tenant hereby irrevocably appoints the Port as agent and attorney for the Tenant with full power and authority to execute and deliver such instruments for and in the name of the Tenant.

ARTICLE 19: MORTGAGES OF TENANT'S INTEREST.

19.1 Prior Notice Required; Limited Purpose. Upon prior notice to the Port, Tenant shall have the right to mortgage its leasehold interest under this Agreement subject to the limitations set forth in this Article. Any such mortgage ("Leasehold Mortgage") shall be in connection with the improvements made or to be made by Tenant to the Premises under ARTICLE 6, shall be for a term not to exceed the fixed term of this Agreement without options (if any), shall not secure a principal amount in excess of the improvements made or to be made by Tenant to the Premises under ARTICLE 6, and shall be subject and subordinate to the rights of the Port.

19.2 No Benefit Without Notice. No holder ("Leasehold Mortgagee") of a Leasehold Mortgage on this Agreement shall have the rights or benefits mentioned in this Article, nor shall the Port be bound by this Article, unless and until an executed counterpart of such Leasehold Mortgage (or any assignment thereof), together with a written notice setting forth the name, address, contact person (or department) and facsimile number for the Leasehold Mortgagee, is delivered to the Port. The Leasehold Mortgagee may designate other contact information by providing notice thereof to the Port in the manner provided by Section 25.1 of this Agreement.

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

19.3.1 The Port shall serve upon the Leasehold Mortgagee, in the manner permitted by Section 25.1 of this Agreement, a copy of any notice of default sent to Tenant.

19.3.2 In the event of any default by Tenant under the provisions this Agreement, the Leasehold Mortgagee will have the same concurrent grace periods as are given to Tenant for remedying such default. The Port agrees that it shall accept such performance by or at the instance of the Leasehold Mortgagee as if the same had been made by Tenant. For such purpose, the Port and Tenant hereby authorize the Leasehold Mortgagee to enter upon the Premises and to exercise any of the Tenant's rights and powers under this Agreement and, subject to the provisions of this Agreement, under the Leasehold Mortgage.

19.3.3 In the event of any curable default under this Agreement, and if prior to the expiration of any applicable grace period specified in this Section 19.3, the Leasehold Mortgagee gives the Port written notice that it intends to cure such default, or cause the same to be cured, then the Port will not terminate or take any action to effect a termination of this Agreement or re-enter, take possession of or relet the Premises so long as the Leasehold Mortgagee is, with all due diligence and in good faith, engaged in the curing of such default (whether or not pursuing foreclosure of the Leasehold Mortgage). The Leasehold Mortgagee shall not, however, be required to continue in possession of the Premises (or continue any foreclosure proceedings) if such default shall be cured. The term "curable default" means any default under this Agreement which can be cured by the Leasehold Mortgagee. The term "incurable default" means any default which cannot be reasonably cured by the Leasehold Mortgagee.

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

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

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

(c) Nothing herein, however, shall be deemed to obligate the Port to deliver possession of the Premises to the lessee under any New Lease. Upon the execution and delivery of such New Lease, the lessee, in its own name or in the name of the Port, may take all appropriate steps as shall be necessary to remove Tenant from the Premises. The provisions of this Section 19.3.4 shall survive the termination of this Agreement.

19.3.5 Subject to the provisions of this Article, the Leasehold Mortgagee may exercise, with respect to the Premises, any right, power, or remedy under the Leasehold Mortgage. The Leasehold Mortgagee (or its designee) or any other purchasers in foreclosure proceedings may, on compliance with the requirements of ARTICLE 23, become the legal owner and holder of Tenant's interest in this Agreement through such foreclosure proceedings or by assignment of this Agreement in lieu of foreclosure.

19.3.6 In the event that the Leasehold Mortgagee shall acquire title to Tenant's interest in this Agreement (whether through foreclosure or assignment in lieu of foreclosure) or under a New Lease pursuant to this Section, the Leasehold Mortgagee may assign such lease in accordance with the provisions of ARTICLE 23 and shall, upon full assumption of the lease by the assignee, be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Tenant's part to be performed and observed from and after the date of such assignment.

19.3.7 No agreement between the Port and Tenant modifying, canceling or surrendering this Agreement shall be effective without the prior written consent of the Leasehold Mortgagee.

ARTICLE 20: DEFAULT

20.1 Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" on the part of the Tenant with or without notice from the Port:

20.1.1 The vacating or abandonment of the Premises by Tenant.

20.1.2 The failure by Tenant to make any payment of rent, fees or any other payment required by this Agreement, when due.

20.1.3 The failure by Tenant to observe or perform any covenant, condition, or agreement to be observed or performed by Tenant in this Agreement.

20.1.4 The discovery by the Port that any financial or background statement provided to the Port by Tenant, any successor, grantee, or assign was materially false.

20.1.5 The filing by Tenant of a petition in bankruptcy, Tenant being adjudged bankrupt or insolvent by any court, a receiver of the property of Tenant being appointed in any proceeding brought by or against Tenant, Tenant making an assignment for the benefit of creditors,

or any proceeding being commenced to foreclose any mortgage or other lien on Tenant's interest in the Premises or on any personal property kept or maintained on the Premises by Tenant.

20.2 Remedies. In addition to, and not in lieu or to the exclusion of, any other remedies provided in this Agreement or to any other remedies available to the Port at law or in equity:

20.2.1 Whenever any default (other than a default under Section 20.1.5 above, upon which termination of this Agreement shall, at the Port's option, be effective immediately without further notice) continues unremedied in whole or in part for 30 days after Notice of Default is provided by the Port to Tenant (or for 10 days after Notice of Default in the case of default for failure to pay any rent, fees or other required payment when due), this Agreement and all of Tenant's rights under it will automatically terminate if the Notice of Default so provides. Upon termination, the Port may reenter the Premises using such force as may be necessary and remove all persons and property from the Premises. The Port will be entitled to recover from Tenant all unpaid Rent, fees or any other payments and damages incurred because of Tenant's default including, but not limited to, the costs of re-letting, including tenant improvements, necessary renovations or repairs, advertising, leasing commissions, and attorney's fees and costs ("Termination Damages"), together with interest on all Termination Damages at the Default Rate, from the date such Termination Damages are incurred by the Port until paid.

20.2.2 In addition to Termination Damages, and notwithstanding termination and reentry, Tenant's liability for all Rent, fees or other charges which, but for termination of this Agreement, would have become due over the remainder of the Agreement term ("Future Charges") will not be extinguished and Tenant agrees that the Port will be entitled, upon termination for default, to collect as additional damages, a Rental Deficiency. "Rental Deficiency" means, at the Port's election, either:

(a) An amount equal to Future Charges, less the amount of actual rent and fees, if any, which the Port receives during the remainder of the Agreement term from others to whom the Premises may be rented, in which case such Rental Deficiency will be computed and payable at the Port's option either:

(i) In an accelerated lump-sum payment discounted to present worth, or

(ii) In monthly installments, in advance, on the first day of each calendar month following termination of this Agreement and continuing until the date on which the Agreement term would have expired but for such termination, and any suit or action brought to collect any portion of Rental Deficiency attributable to any particular month or months, shall not in any manner prejudice the Port's right to collect any portion of Rental Deficiency by a similar proceeding; or

(b) An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining Agreement term, reduced to present worth. In this case, the

Rental Deficiency must be paid to the Port in one lump sum, on demand, and will bear interest at the Default Rate until paid. For purposes of this subsection, “present worth” is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

20.2.3 If this Agreement is terminated for default as provided in this Agreement, the Port shall use reasonable efforts to re-let the Premises in whole or in part, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the Agreement term), for such use or uses and, otherwise on such terms and conditions as the Port, in its sole discretion, may determine, but the Port will not be liable for, nor will Tenant’s obligations under this Agreement be diminished by reason for any failure by the Port to re-let the Premises or any failures by the Port to collect any rent due upon such re-letting.

20.2.4 If upon any reentry permitted under this Agreement, there remains any personal property upon the Premises, the Port, in its sole discretion, may remove and store the personal property for the account and at the expense of Tenant. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Tenant of the Port’s action. All risks associated with removal and storage shall be on Tenant. Tenant shall reimburse the Port for all expenses incurred in connection with removal and storage as a condition to regaining possession of the personal property. The Port has the right to sell any property which has been stored for a period of 30 days or more, unless Tenant has tendered reimbursement to the Port for all expenses incurred in removal and storage. The proceeds of sale will be applied first to the costs of sale (including reasonable attorneys’ fees), second to the payment of storage charges, and third to the payment of any other amounts which may then be due and owing from Tenant to the Port. The balance of sale proceeds, if any, will then be paid to Tenant.

20.3 Remedies Cumulative. All rights, options and remedies of the Port contained in this Agreement shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and the Port shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Agreement.

20.4 No Counterclaim or Setoff. If the Port shall commence any proceeding for non-payment of Rent, fees or of any other payment of any kind to which the Port may be entitled or which the Port may claim under this Agreement, Tenant will not interpose any counterclaim or setoff of any nature or description in any such proceeding; the parties specifically agreeing the Tenant’s covenant to pay Rent, fees or any other payments under this Agreement are independent of all other covenants and agreements in this Agreement; *provided, however*, this shall not be construed as a waiver of Tenant’s right to assert such a claim in any separate action brought by Tenant.

ARTICLE 21: TERMINATION; RELOCATION; EASEMENTS

21.1 Termination for Major Capital Improvement. In the event the Port requires the Premises for a major capital improvement of the Airport, the Port shall give Tenant one (1) year advance notice of termination pursuant to this provision. In such event, the Port shall be obligated to reimburse Tenant, on or before the effective date of termination, the Unamortized Net Book Value of Tenant's fixed improvements made pursuant to ARTICLE 6 of this Agreement, determined as of the effective date of termination. For purposes of computing the "Unamortized Net Book Value" of fixed improvements, the Tenant's approved and certified cost for such fixed improvements shall be depreciated/amortized over the "useful economic life" of such improvements, which "useful economic life" shall in no instance exceed the period of time commencing on the date such fixed improvement is installed and terminating on the date on which this Agreement would otherwise expire, or any lesser period that may be specified in any consent, sublease or other writing, on a straight-line basis with no salvage value. As used in this Section, "useful economic life" shall specifically be determined with respect to the initial investment in the fixed improvements, Tenant's repair and maintenance of the improvement, and Tenant's custom and usage (if any) for assets similar to the improvements.

21.2 Easements.

21.2.1 The Parties recognize that the Port facilities are continuously being modified to improve the utilities, services and premises used and provided by the Port. The Port, or its agents, shall have the right to enter the Premises of Tenant, and to cross over, construct, move, reconstruct, rearrange, alter, maintain, repair and operate the sewer, water, and drainage lines, and the electrical service, fiber and communication service and all other services and facilities, all as required by the Port for its own use or benefit. The Port and its authorized utility service provider is hereby granted a continuous easement or easements that the Port believes is necessary within the Property and Premises, without any additional cost to the Port for the purposes expressed hereinabove. *Provided, however,* that the Port by virtue of such use, does not substantially deprive Tenant from its beneficial use or occupancy of the Property or Premises for an unreasonable period of time, not to exceed thirty (30) working days, without consent of Tenant.

21.2.2 In the event that the Port permanently deprives Tenant from such beneficial use or occupancy, then an equitable reimbursement of pre-paid rent or an adjustment in rent for any extension, or in the cost required to modify its Premises to allow the Tenant to operate its business, will be negotiated and paid by the Port to Tenant. In the event that such entry by the Port is temporary in nature, then the Port shall reimburse Tenant for the cost required to modify its Premises for the temporary period that Tenant is inconvenienced by such entry. The Port will not be responsible to Tenant for any reduced efficiency or loss of business occasioned by such entry.

ARTICLE 22: NO WAIVER; LANDLORD'S RIGHT TO PERFORM

22.1 Receipt of Monies Following Termination. No receipt of monies by the Port from Tenant after the termination or cancellation of this Agreement in any lawful manner shall (a) reinstate, continue or extend the Term of this Agreement; (b) affect any notice theretofore given to Tenant; (c) operate as a waiver of the rights of the Port to enforce the payment of any Rent and fees

then due or thereafter falling due; or (d) operate as a waiver of the right of the Port to recover possession of the Premises by proper suit, action, proceeding or remedy; it being agreed that after the service of notice to terminate or cancel this Agreement, or after the commencement of suit, action or summary proceedings, or any other remedy, or after a final order or judgment for the possession of the Premises, the Port may demand, receive and collect any monies due, or thereafter falling due, without in any manner affecting such notice, proceeding, suit, action, order or judgment; and any and all such monies collected shall be deemed to be payments on account of the use and occupation and/or Tenant's liability hereunder.

22.2 No Waiver of Breach. The failure of the Port to insist in any one or more instances, upon a strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver of or relinquishment for the future of the performance of such covenant, or the right to exercise such option, but the same shall continue and remain in full force and effect. The receipt by the Port of the Rent or fees, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Port of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Port. The consent or approval of the Port to or of any act by Tenant requiring the Port's consent or approval shall not be deemed to waive or render unnecessary the Port's consent or approval to or of any subsequent similar acts by Tenant.

22.3 No Waiver of Rent. The receipt by the Port of any installment of the Base Rent, fees or of any Additional Rent shall not be a waiver of any Base Rent or Additional Rent then due.

22.4 Application of Payments. The Port shall have the right to apply any payments made by Tenant to the satisfaction of any debt or obligation of Tenant to the Port, in the Port's sole discretion and regardless of the instructions of Tenant as to application of any such sum, whether such instructions be endorsed upon Tenant's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by the Port of a check or checks drawn by others than Tenant shall in no way affect Tenant's liability hereunder nor shall it be deemed an approval of any assignment of this Agreement or subletting by Tenant.

22.5 Port's Right to Perform. Upon Tenant's failure to perform any obligation or make any payment required of Tenant hereunder, the Port shall have the right (but not the obligation) to perform such obligation of Tenant on behalf of Tenant and/or to make payment on behalf of Tenant to such parties. Tenant shall reimburse the Port the reasonable cost of the Port's performing such obligation on Tenant's behalf, including reimbursement of any amounts that may be expended by the Port, plus interest at the Default Rate, as Additional Rent.

ARTICLE 23: ASSIGNMENT

23.1 Prohibition on Assignment. Except as otherwise specifically permitted in this Agreement, Tenant shall not, in whole or in part, assign all or any part of this Agreement (as to all or any part of the Premises) or sublease all or substantially all of the Premises, without the prior written consent of the Port in each instance. Tenant shall at the time the Tenant requests the consent of the

Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee (or subtenant of all or substantially all of the entire Premises) including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee (or subtenant of all or substantially all of the entire Premises). Within twenty (20) business days after receipt of all required information, the Port shall, in its sole discretion, elect one of the following: (a) to consent to such proposed assignment or (b) to refuse such consent.

23.1.1 As a condition for the Port's consent to any assignment, Tenant shall deliver to the Port a true copy of the fully executed instrument of assignment (or sublease or all or substantially all of the Premises) and an agreement executed by the assignee in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee (or sublease or all or substantially all of the Premises) assumes and agrees to be bound by the terms and provisions of this Agreement and perform all the obligations of Tenant hereunder.

23.1.2 In the event of any assignment, Tenant and each respective assignor, waives notice of default by the tenant in possession in the payment and performance of the Rent, covenants and conditions of this Agreement and consents that the Port may in each and every instance deal with the tenant in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Agreement and modify the same, and in general deal with the tenant then in possession without notice to or consent of any assignor, including Tenant; and any and all extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Tenant and of each respective assignor.

23.1.3 No assignment (or sublease or all or substantially all of the Premises) shall relieve Tenant of any obligation under this Agreement, including Tenant's obligation to pay Base Rent, Additional Rent or other amounts due hereunder. Any purported assignment contrary to the provisions hereof without consent shall be void. The consent by the Port to any assignment (or sublease or all or substantially all of the Premises) shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

23.1.4 Tenant shall reimburse the Port in the sum of Five Hundred Dollars (\$500.00) plus any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Tenant for consent to an assignment (or sublease or all or substantially all of the Premises).

23.2 Excess Rental. If in connection with any assignment (or sublease or all or substantially all of the Premises), Tenant receives rent or other monetary consideration, either initially or over the term of the assignment, in excess of the Rent called for hereunder after appropriate adjustments to assure that all other payments called for hereunder and out-of-pocket expenditures, operating costs or concessions incurred by Tenant in connection with such assignment (or sublease or all or substantially all of the Premises) are appropriately taken into account, Tenant shall pay to the Port, as Additional Rent hereunder, fifty percent (50%) of the excess of each such payment of rent or other consideration received by Tenant after its receipt.

23.3 Scope. The prohibition against assignment (or sublease or all or substantially all of the Premises) contained in this Article shall be construed to include a prohibition against any assignment or subletting by operation of law. Furthermore, for purposes of this Article, any sale, transfer or other disposition in the aggregate of fifty percent (50%) or more of the equity ownership in Tenant (i.e. stock with respect to tenant corporation, partnership interests with respect to a tenant partnership, etc.) shall be deemed an assignment. If this Agreement be assigned, or if the underlying beneficial interest of Tenant is transferred, or if the Premises are occupied (other than pursuant to a sublease specifically allowed by ARTICLE 24) anybody other than Tenant, the Port may collect rent from the assignee or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of Section 23.2, but no such assignment, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. No assignment shall affect the continuing primary liability of Tenant (which, following assignment, shall be joint and several with the assignee), and Tenant shall not be released from performing any of the terms, covenants and conditions of this Agreement.

ARTICLE 24: SUBLEASE

24.1 Sublease. Tenant may sublease, license or grant concession rights as to (for convenience in this ARTICLE 24, “sublease”) less than all or substantially all of the Premises without the Port’s prior written consent. Any such sublease shall be subject to all of the covenants, conditions, agreements and terms of this Agreement, and Tenant covenants that notwithstanding any such sublease, Tenant shall and will remain fully and primarily liable for the payment of Rent due and to become due under this Agreement and for the performance of all the covenants, conditions, agreements and terms contained in this Agreement on the part of Tenant to be performed.

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

24.1.2 Tenant agrees that any sublease will contain a provision in substance that if there be any termination whatsoever of this Agreement then the subtenant, licensee or concessionaire, at the request of the Port, will attorn to the Port and the subtenant, licensee or concessionaire, if the Port so requests, shall continue in effect with the Port, but the Port shall be bound to the subtenant, licensee or concessionaire in such circumstances only by privity of estate. Nothing herein shall be deemed to require the Port to accept such attornment.

24.1.3 Tenant further agrees that any sublease will contain a provision in substance requiring each and every subtenant, licensee or concessionaire to maintain commercial liability insurance protecting against claims for bodily injury, personal injury and property damage in such

amounts, and on such forms, as is commercially reasonable in light of the then-existing insurance and real estate markets.

24.1.4 Tenant agrees that the Port is not, and will not be, responsible for the payment of any brokerage commissions, or finder's fees or similar charges of any nature in connection with any sublease, and Tenant agrees to indemnify and hold the Port harmless from and against any claims liability, losses or expenses, including reasonable attorneys fees, incurred by the Port in connection with any claims for a commission by any broker or agent in connection with any sublease (including any direct relationship with any subtenant, licensee or concessionaire that may result by way of attornment).

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

24.2 Copies of Sublease. Upon request from the Port, Tenant shall deliver to the Port a true and correct list of all subtenants, licensees and/or concessionaires to which Tenant has granted a right to occupy the Premises, an identification of the specific portion of the Premises that each such subtenant, licensee and concessionaire is permitted to occupy, the term of permitted occupancy for each such subtenant, licensee and concessionaire, and a copy of the fully executed instrument of the sublease for each such subtenant, licensee and concessionaire.

ARTICLE 25: MISCELLANEOUS

25.1 Notices. All notices required to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery, to the appropriate address indicated in ARTICLE 1 hereof or at such other place or places as either the Port or Tenant may, from time to time, respectively, designate in a written notice given to the other. Notices shall be deemed sufficiently served upon the earlier of actual receipt or the expiration of three (3) days after the date of mailing thereof.

25.2 Brokers. The Port and Tenant each warrant to the other that it has had no discussions, negotiations and/or other dealings with any real estate broker or agent other than the Broker(s) listed in Section 1.7 in connection with the negotiation of this Agreement, and that it knows of no other real estate broker or agent who is or may be entitled to any commission or finder's fee in connection with this Agreement. The Port and Tenant each agree to indemnify and hold the other harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, attorneys' fees and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent other than Broker(s). This Section is not intended to benefit any third parties and shall not be deemed to give any rights to brokers or finders. No commission(s) or finders fee(s) shall be paid to Tenant, employee(s) of Tenant or any unlicensed representative of Tenant. The Port and Tenant shall each pay its respective Broker pursuant to their

respective separate agreements with such Broker; *provided, however*, Landlord's Broker (if any) shall be free (but without obligation, except as separately agreed between Landlord's Broker and Tenant's Broker) to share the commission payable to it with Tenant's Broker as Landlord's Broker sees fit.

25.3 Assignment by Port. In the event of a sale, conveyance, or other transfer by the Port of the Property or in the event of an assignment of this Agreement by the Port, the same shall operate to release transferor from any further liability upon any of the covenants or conditions, express or implied, contained in this Agreement on the part of the Port, and from any and all further liability, obligations, costs and expenses, demands, causes of action, claims or judgments arising out of this Agreement from and after the effective date of said release. The effective date of such release shall be the effective date of an assumption by the assignee whereby the assignee agrees to assume all of the Port's obligations and liabilities with respect to this Agreement. In such event, Tenant agrees to look solely to the successor in interest of transferor. If any Security has been provided by Tenant to secure performance of Tenant's covenants hereunder, the Port may transfer such Security to any purchaser and thereupon the Port shall be discharged from any further liability with respect to the Security.

25.4 Title Insurance. To the extent desired or otherwise required, the Port and Tenant agree that each shall insure their respective interests in title as those interests may appear, from reputable title insurance companies to be approved by the Port, at their own expense.

25.5 Promotion of Port Commerce. Tenant agrees that throughout the term of this Agreement it will, insofar as practicable, promote and aid the movement of passengers and freight through facilities within the territorial limits of the Port. Tenant further agrees that all incoming shipments of commodities that it may be able to control or direct shall be made through facilities within the territorial limits of the Port if there will be no resulting cost or time disadvantage to Tenant.

25.6 Labor Disputes. Tenant agrees to use its best efforts to avoid disruption to the Port, its tenants or members of the public, arising from labor disputes involving Tenant, and in the event of a strike, picketing, demonstration or other labor difficulty involving Tenant, to use its good offices, including the utilization of available legal remedies, to minimize and/or eliminate any disruption to the Port, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

25.7 Non-Discrimination – Services.

25.7.1 Tenant agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, sex, age, creed, color or national origin in furnishing, or by refusing to furnish, to such person, or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby.

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

25.8 Non-Discrimination – Employment. Lessee covenants and agrees that in all matters pertaining to the performance of this lease, Lessee shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons without respect to race, sex, age, color, creed or national origin and, in particular:

25.8.1 Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of racial or other minorities, and

25.8.2 Lessee will comply strictly with all requirements of applicable federal, state and local laws or regulations issued pursuant thereto relating to the establishment of nondiscriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, sex, age, creed, color or national origin.

25.9 Successors Bound. This Agreement and each of its covenants and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective assignees, subject to the provisions hereof. Whenever in this Agreement a reference is made to the Port, such reference shall be deemed to refer to the person in whom the interest of the Port shall be vested, and the Port shall have no obligation hereunder as to any claim arising after the transfer of its interest in the Premises. Any successor or assignee of the Tenant who accepts an assignment of the benefit of this Agreement and enters into possession or enjoyment hereunder shall thereby assume and agree to perform and be bound by the covenants and conditions thereof. Nothing herein contained shall be deemed in any manner to give a right of assignment to Tenant without the prior written consent of the Port and otherwise in compliance with ARTICLE 23 hereof.

25.10 Access to Premises. The Port shall have the right to show the Premises at all reasonable times during business hours of Tenant to any prospective purchasers, tenants or mortgagees of the same, and may at any time enter upon the Premises, or any part thereof, for the purpose of ascertaining the condition of the Premises or whether Tenant is observing and performing the obligations assumed by it under this Agreement, all without hindrance or molestation from the Tenant. The Port shall also have the right to enter upon the Premises for the purpose of making any necessary repairs and performing any work that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance notice to Tenant (except that no notice shall be required in the event of an emergency) or an authorized employee of Tenant at the Premises, which notice may be given orally.

25.11 Time. Time is of the essence of each and every one of Tenant's obligations, responsibilities and covenants under this Agreement.

25.12 Consent. Whenever the Port's prior consent or approval is required by this Agreement, the same shall not be unreasonably delayed but may, unless otherwise specifically provided by this Agreement, be granted or denied in the Port's sole and absolute discretion.

25.13 Attorneys' Fees. In the event either party requires the services of an attorney in connection with enforcing the terms of this Agreement or in the event suit is brought for the recovery of any Rent or fees due under this Agreement or the breach of any covenant or condition of this Agreement, or for the restitution of the Premises to the Port and/or eviction of Tenant during the Term of this Agreement, or after the expiration thereof, the prevailing party will be entitled to a reasonable sum for attorneys' fees, consultants' fees, witness fees and other costs, both at trial and on appeal.

25.14 Captions and Article Numbers. The captions, article and section numbers and table of contents appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Agreement nor in any way affect this Agreement.

25.15 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

25.16 Applicable Law; Waiver of Trial by Jury. This Agreement, and, the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of Washington. In any action on or related to the terms of this Agreement, the parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

25.17 Submission of Agreement. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of or option for leasing the Premises. This document shall become effective and binding only upon execution and delivery hereof by the Port and Tenant. No act or omission of any officer, employee or agent of the Port or Tenant shall alter, change or modify any of the provisions hereof.

25.18 Security Measures. Tenant hereby acknowledges that the Rent payable to the Port hereunder does not include the cost of guard service or other security measures, and that the Port shall have no obligation whatsoever to provide same. Tenant assumes all responsibility for the protection of the Premises, Tenant, its agents and invitees and their property from the acts of third parties.

25.19 Entire Agreement; Modification. This Agreement sets forth all covenants, promises, agreements, conditions and understandings between the Port and Tenant concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Port and Tenant other than as are herein set forth. No subsequent alteration, amendment, change or addition to the Agreement shall be binding upon the Port or Tenant unless reduced to writing and signed by the Port and Tenant.

25.20 Relationship of the Port and Tenant. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Agreement nor any acts of Tenant and the Port shall be deemed to create any relationship other than that of Tenant and the Port.

25.21 Exhibits. Exhibits A, B, and C are attached to this Agreement after the signatures and by this reference incorporated herein.

ARTICLE 26: SIGNATURES

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

PORT OF SEATTLE

By: _____
Its: _____

By: _____
Its: _____

ARTICLE 27: ACKNOWLEDGMENTS

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of October, 2001 before me personally appeared _____, to me known to be the _____ of the PORT OF SEATTLE, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)
(Print Name)
Notary Public, in and for the State of Washington,
residing at _____
My Commission expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of October, 2001, before me personally appeared _____, to me known to be the _____ of _____, the corporation that executed the within and foregoing instrument at Tenant, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)
(Print Name)
Notary Public, in and for the State of Washington,
residing at _____
My Commission expires: _____

EXHIBIT A

-- Legal Description --

EXHIBIT B

-- Map of Premises --

EXHIBIT C

-- Project --