

# AGENDA

***Port of Kennewick  
Regular Commission Business Meeting  
Port of Kennewick Commission Chambers  
350 Clover Island Drive, Suite 200, Kennewick, Washington***

Tuesday, January 13, 2015  
2:00 p.m.

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. PUBLIC COMMENT** *(Please state your name and address for the public record)*

**IV. CONSENT AGENDA**

- A. Approval of Direct Deposit and ePayments Dated December 17, 2014
- B. Approval of Warrant Register Dated December 23, 2014
- C. Approval of Direct Deposit and ePayments Dated December 31, 2014
- D. Approval of Warrant Registers Dated December 31, 2014
- E. Approval of Warrant Registers Dated January 13, 2015
- F. Approval of Special Commission Meeting Minutes Dated December 16, 2014
- G. Approval to Sell and Convey Surplus Property (John Deer Loader); Resolution 2015-01

**V. NEW BUSINESS**

- A. West Richland Urban Growth Area Update, City of West Richland Planning and Economic Development Manager Nicole Stickney (**LARRY**)
- B. Approval of One-Year Lease with KLS Air Express, dba Freight Solution Providers; Resolution 2015-02 (**AMBER**)
- C. Approval of Three-Year Lease with NulytIQ LLC; Resolution 2015-03 (**AMBER**)

**VI. REPORTS, COMMENTS AND DISCUSSION ITEMS**

- A. Commission Procedures Review (**TIM/TAMMY/BRIDGETTE**)
- B. January 27, 2015 Commission Meeting (**TIM/BRIDGETTE**)
- C. Invitation to Schedule Special Commission Meeting at the REACH (**TIM/BRIDGETTE**)
- D. Tri-Cities Legislative Council Trip, February 12-13, 2015 (**TIM**)
- E. Clover Island Artwork Update (**AMBER**)
- F. Columbia Drive Update (**AMBER**)
- G. City of Kennewick Partnership Discussion regarding Vista Field Planning Issues (**TIM**)
- H. Commissioner Meetings (formal and informal meetings with groups or individuals)
- I. Non-Scheduled Items

**VII. PUBLIC COMMENT** *(Please state your name and address for the public record)*

**VIII. EXECUTIVE SESSION, if necessary** *(Ask public if they are staying, and if not, where they can be located if the Executive Session ends early.)*

- A. Real Estate, per RCW 42.30.110(1)(b) – Site Selection
- B. Real Estate, per RCW 42.30.110(1)(c) – Minimum Price

**IX. ADJOURNMENT**

***PLEASE SILENCE CELL PHONES***



# SPECIAL COMMISSION MEETING

PORT OF KENNEWICK

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## CALL TO ORDER

Commission President Don Barnes called the Special Commission meeting to order at 2:00 p.m. in the Port of Kennewick Commission Chambers located at 350 Clover Island Drive, Suite 200, Kennewick, Washington 99336.

### The following were present:

**Board Members:** Don Barnes, President  
Skip Novakovich, Vice-President  
Thomas Moak, Secretary

**Staff Members:** Tim Arntzen, Executive Director  
Tana Bader Ingle, Director of Governmental Relations and Marketing  
Tammy Fine, Director of Finance/Auditor  
Amber Hanchette, Director of Real Estate and Operations  
Larry Peterson, Director of Planning and Development  
Bridgette Scott, Executive Assistant  
Lucinda Luke, Port Counsel  
Lisa Schumacher, Special Projects Coordinator

## PLEDGE OF ALLEGIANCE

Mr. Gene Wagner led the Pledge of Allegiance.

Mr. Barnes inquired if any items on the Consent Agenda needed to be removed and placed further down on the Agenda.

***Motion:*** Commissioner Barnes moved that Item C (Award of Bid) under New Business, be moved to item A under New Business, and subsequent items follow. Furthermore, Item L, under the Consent Agenda (Resolution 2014-39), be removed and placed under New Business as Item D. Commissioner Novakovich seconded. With no further discussion, all in favor 3:0. Motion to adjust the Agenda carried unanimously.

## PUBLIC COMMENT

Justin Raffa (Artistic Director for the Mid-Columbia Mastersingers, Secretary of the Mid-Columbia Performing Arts Center, and a member of the Vista Vision Task Force), 1214 Gowen Avenue, Richland. Mr. Raffa wanted to take the opportunity to express that he is delighted with the entire process for the re-visioning of Vista Field. Mr. Raffa believes the Port is handling the redevelopment the right way, by being candid and open; and he stated the Charrette was a wonderfully informative, public event, with opportunities for public input. Mr. Raffa is pleased with the work of the Port and thanked the Commission for doing the right thing for the community. As a member of the Vista Vision Task Force and a representative of the performing arts community, he supports the Commission and is excited to help guide the process along, to have a successful outcome for the community. Mr. Raffa applauded the Commission for their work on the redevelopment of Vista Field.

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No further comments were made.

## CONSENT AGENDA

The consent agenda consisted of the following:

- A. *Approval of Direct Deposit and E-Payments Dated December 2, 2014*  
Direct Deposit totaling \$63,308.13.
- B. *Approval of Warrant Registers Dated December 9, 2014*  
Expense Fund Voucher Numbers 36338 through 36392 for a grand total of \$417,222.75.
- C. *Approval of Special Commission Meeting Minutes dated October 21, 2014*
- D. *Approval of Special Commission Meeting Minutes dated November 4, 2014*
- E. *Approval of Special Commission Meeting Minutes dated November 10, 2014*
- F. *Approval of Special Commission Meeting Minutes dated November 12, 2014*
- G. *Approval of Special Commission Meeting Minutes dated November 13, 2014*
- H. *Approval of Special Commission Meeting Minutes dated November 15, 2014*
- I. *Approval of Special Commission Meeting Minutes dated November 18, 2014*
- J. *Approval of Special Commission Meeting Minutes dated December 2, 2014*
- K. *Correction of Resolution 2014-26 approving the Purchase and Sale Agreement with Ag-Reserves Inc.*
- L. *Approval of Amendments to the Port's Personnel Manual; Resolution 2014-40*

Mr. Barnes reiterated Resolution 2014-39, has been removed from the Consent Agenda and placed under New Business.

**MOTION:** *Commissioner Novakovich moved for approval of the Consent Agenda, with removal of Item C and Item L.*

*Mr. Barnes clarified that it had been Item C under New Business that was elevated to Item A under New Business, that Item C had not been removed from the Consent Agenda.*

*Mr. Novakovich wished to clarify that for Item C, under the Consent Agenda, for the Special Commission Meeting Minutes dated October 21, 2014, Mr. Moak is showing present, however, he was excused from that meeting.*

*Mr. Barnes noted the correction.*

**MOTION:** *Commission Novakovich moved for approval of the Consent Agenda, as amended, with removal of item L (Resolution 2014-39), and the correction to the minutes under Item C. Commissioner Moak seconded. With no further discussion, all in favor, 3:0. Motion carried unanimously.*

## PRESENTATION

### A. *2014 Friend of the Port*

Mr. Arntzen stated in 2008 the Port implemented a Friend of the Port award and stated the only requisite is that the recipient has been helpful to the Port as a team or entity. Today, the Port is recognizing a woman who has her fingerprints on projects throughout this community, Kris Watkins. From the lowering of the shoreline levees, to construction of the Three Rivers





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Convention Center, and establishing the Tourism Promotion Area as a dedicated and reliable source of marketing funds, to construction of the Tri-Cities Business & Visitor Center in partnership with the Tri-Cities Area Regional Chamber and TRIDEC. From the Playground of Dreams and Family Fishing Pond, to the regional community branding and most recently the designation of the Manhattan Project National Historic Park. Ms. Watkins has done much to expand the portfolio of our community and has worked hard to ensure a strong tourism industry, and a healthy business climate.

Mr. Arntzen presented a plaque which read: “In recognition of your work on river shore enhancement; for advocating product development to create a vibrant economy; and for your early leadership and continued support of Vista Field redevelopment.”

Ms. Watkins thanked the Port for this honor and commended the Port for their effort in helping promote Tri-City tourism. Ms. Watkins has enjoyed being able to voice her opinion as a member of the Vista Vision Task Force and thanked the Commission for their leadership and stepping forward for the region. Ms. Watkins stated it is a great treasure, and a deep honor to have been recognized.

Mr. Barnes thanked Ms. Watkins for her all of her work and stated it is a pleasure working with her on Visit Tri-Cities!

## ***B. Columbia Drive Transition 2008-2014***

Mr. Peterson reviewed photographs of Port properties on Columbia Drive illustrating the conditions upon the purchase of the properties and the improvements that have been made by the Port, Corps of Engineers, and community volunteers, in preparation for the demolition of the 205 East Columbia Drive through 421 East Columbia Drive.

Mr. Moak stated the presentation was a good reminder of the history of Columbia Drive and how far the Port has come with the area. Mr. Moak acknowledged former Commissioner Wagner and staff for their contribution to the project and taking a chance on the area. Mr. Moak thanked Mr. Peterson for his presentation.

Mr. Barnes thanked Mr. Peterson and stated it is important to reflect on the history of Columbia Drive to keep the Port focused on revitalizing the area.

## **NEW BUSINESS**

### ***A. Award of Bid: Columbia Drive Demolition: Resolution 2014-41***

Ms. Hanchette stated the Port is working toward the Columbia Drive Urban Revitalization process, to prepare the site for redevelopment. Staff has worked with several contractors and utility providers, to prepare Columbia Drive for the demolition phase. As we proceed towards demolition, the Commission approved \$350,000 for building and site demolition on Columbia Drive. Hall Engineering was contracted to detail the subsurface specifications of the site, which would enable the Port to come up with a detailed technical specification of the site demolition.



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Port staff utilized the technical specification to come up with the bid and broke it down into the base bid plus three alternates. The base bid included the 211 shed and the buildings at 219, 305, 307 and 421 East Columbia Drive.

The alternate bid included:

- #1 Concrete and asphalt that is around the building structure.
- #2. 205 East Columbia Drive: foundation and slab removal.
- #3. Demolition of the house located at Cable Greens.

Hall Engineering estimated the base bid at \$220,000 plus an additional \$100,000 for all three alternates. This was a public bid due to the amount being over the \$300,000 threshold, and was publicized on the Port website and in the *Tri-City Herald*. The Port received five construction bids and staff and the project engineer certified that the bids received were in compliance with the plans and specifications, which ranged from \$158,000 to \$315,000. Big D's Construction of Tri-Cities, Inc. was certified as the most responsible and lowest bid by Port staff and the project engineer. The amount of \$158,551.20 including applicable tax for the base bid work and the alternate bid items.

Mr. Novakovich inquired why there was such a huge discrepancy between bids.

Ms. Hanchette indicated Duane Howard of Big D's Construction is able to recycle some concrete from the demolition to use in other projects. Also, he is a local contractor that does not need to bring in heavy equipment or pay for travel expenses.

Mr. Novakovich stated Big D's has done a great job for us in the past and thanked Ms. Hanchette for a thorough presentation.

Mr. Moak asked, on which Port projects has Big D's worked.

Mr. Peterson stated Big D's has worked on several projects for the Port, including:

- Currently completing two art work installations.
- The treated surface (orange) parking lot.
- Site/civil work for yacht building and the lighthouse.
- Causeway work: from the lighthouse to the levy.

Mr. Peterson further stated, Big D's is familiar with Port requirements regarding tribal relations and has done very well for us.

## PUBLIC COMMENTS

No comments were made.

***Motion:*** Commissioner Novakovich move approval of Resolution 2014-41, authorizing the Port's Executive Director to execute the contract with Big D's Construction of Tri-Cities, Inc. for the demolition and removal of designated structures and materials within the Columbia Drive Urban Revitalization Area, for the sum of \$158,551.20, including applicable tax. Commissioner Moak seconded the motion.



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***Discussion:***

*Mr. Novakovich stated Big D's has done an excellent job for the Port in the past.*

*Mr. Barnes stated Big D's is the lowest, responsible bid and has demonstrated their capabilities in the past for the Port and he is supportive of Resolution 2014-41.*

***With no further discussion, motion carried unanimously. All in favor 3:0.***

***B. Vista Vision Charrette Update, Michael Mehaffy, Laurence Qamar (see presentation)***

Mr. Peterson introduced Michael Mehaffy and Laurence Qamar of Duany Plater-Zyberk (DPZ).

Mr. Mehaffy thanked the Commission and reported that DPZ is in the process of completing the written report and identifying key issues, from the November Charrette, and hope to have it completed by the end of January. DPZ was pleased with the Charrette and were met with enthusiasm and great ideas from the public. During the Charrette, DPZ was able to meet with City of Kennewick elected officials and staff, and Barb Johnson and Corey Peterson from the Kennewick Public Facilities District (KPFD). Our hope is for the Port and KPFD to potentially integrate the Vista Field plan with the expansion of the Three Rivers Convention Center, to reach an exceptional development.

Mr. Mehaffy stated the two main issues for the Port to consider and recommend to other stake holders for consideration are:

- DPZ finds benefits for the region, which, if they are to be realized, must be identified and developed through a coordinated partnership strategy.
- A “go it alone” approach (by the Port, or by its potential partners) will fail to realize the potential benefits for the region.

Mr. Mehaffy summarized the potential benefits for the area:

- Direct economic benefits (jobs, taxes, etc.).
- Regional competitiveness benefits (amenity to assist with recruitment and retention)
- Strategic development benefits (opportunity sites, co-location synergies, etc.).
- Regional identity benefits (landmark amenity, reinforcement of other elements like wine, etc.).
- Quality of life benefits (parks, public spaces, etc.).

Vista Field has the potential to “fix the gaps” that were identified by Roger Brooks International:

- There is a scarcity of amenities that serve to attract and retain key employees in growing business, such as knowledge economy employees and notable, vibrant districts that offer evening recreational activities.
- There is a lack of cultural amenities and larger gathering places that contribute to the region's identity and attractiveness.
- There is a lack of locally developed and locally distinctive businesses, particularly those that serve tourism, young professionals, and other economically important sectors.

Mr. Mehaffy stated the Port needs to be collaborative, inclusive and visionary and commended



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the Port for making the effort to gather community input during the 2012 and 2014 Charrette. Mr. Mehaffy reiterated that nothing will be possible unless the Port has a strong collaboration with their partners; the City of Kennewick and the KPFd.

Mr. Qamar stated the vision of Vista Field can be achieved through the collaborative process of multiple agencies working together. Mr. Qamar indicated it is not only about the Port owned 113 acres, or the addition of the Convention Center and entertainment district, or the mall, but the scope that needs to be achieved is the street connectivity from the railroads to major arterials along the edges. The plan that came out of the Charrette is a framework on how to proceed forward, which will connect to the entertainment district and show a gradual development. The goal is to use greenways to place infrastructure (utilities) and utilize the current pavement to create a lean development. Mr. Qamar stated that a Performing Arts Center was discussed on numerous occasions during the Charrette and it was deemed a desire of the community to see that included in the redevelopment.

Mr. Mehaffy concluded the presentation, stating the most delicate issue is the Port cannot connect the 113 acres without the help from jurisdictional partners.

Mr. Novakovich stated connectivity is critical, wanted, needed and necessary for the redevelopment of Vista Field. Mr. Novakovich indicated the proposal for a Performing Arts Center is critical; with Port property and structures and a public/private partnership, a Performing Arts Center could be created without having to raise taxes. He believes this could be a cornerstone for Vista Field, along with the Convention Center and the Toyota Center, and would draw a massive amount of people to the area and attract other business and spur future development. Mr. Novakovich believes the Port should establish a non-competitive, collaborative action, and if the Port has the land and structures to support building a Performing Arts Center, the Port should look at a partnership to make it happen.

Mr. Moak stated he would like to see the Port properties help other entities, such as the Convention Center and the local shopping area. He further stated, to elevate the region with the current amenities surrounding Vista Field will take a partnership, to see the vision come to fruition. The Port has been open throughout the process, by engaging the community as a whole and the work that DPZ has done with other entities makes this a project that will benefit the community significantly. The connectivity issue is very important and Mr. Moak would like to see a network that extends to Richland and Pasco, whether it is by car, bike or pedestrian use. Mr. Moak expressed his excitement to see more pieces come together and appreciated Mr. Raffa's comments.

Mr. Barnes indicated the term "coordinated partnership strategy" resonates immensely and stated the Port cannot accomplish the redevelopment alone, and needs the City of Kennewick; the KPFd; the private sector; surrounding property owners; and the community to complete this vision. With the Port's limited resources and the redevelopment potential, we cannot wait until we are able to marshal only our resources, we cannot waste time or opportunities. Mr. Barnes believes the Port has the best interest in the community and needs to partner with other entities to make this a successful project.



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Mr. Mehaffy stated connecting the Three Rivers Campus to Vista Field will be a competitive advantage for the region and will offer the dining and entertainment options the area currently lacks.

Mr. Arntzen indicated there are two key points of connectivity that are at risk: the coliseum/convention center alley and Grandridge Boulevard. Port staff and DPZ met with KPFD and discussed the area. Currently the KPFD has plans to close access to Grandridge Boulevard and does not plan to develop the alleyway. Mr. Arntzen stated if the two areas are not developed, we would have two separate centers, and the area could not achieve the most positive benefit. Mr. Arntzen believes critical action needs to take place soon to preserve opportunities of connectivity and stated it should be addressed as soon as possible.

Mr. Barnes is concerned about the connectivity to the Three Rivers Convention Center. He does not want to see it closed off from Vista Field and indicated the need for site permeability and connectivity that makes sense for every property owner. There needs to be a coordinated partnership strategy to address potential issues, such as connectivity, site permeability and the initial cost of infrastructure. The Port cannot succeed in creating the community vision alone, we need our partners to help us address these issues and find a solution that makes sense for everyone.

Mr. Peterson stated there is potential for disconnect between the Three Rivers Convention Center and the future core of Tri-Cities. An urban core would help create a vibrant Convention Center and the Port will need to engage in discussions with all surrounding property owners and development partners. The Port and jurisdictional partners will be able to achieve far more with a coordinated partnership, than by working alone.

Mr. Novakovich agrees with Mr. Peterson and Mr. Arntzen and stated the community wants this and he feels the Port needs to make it happen.

Mr. Moak stated the key is to recognize that each entity has a plan and we should continue to work together in an open and transparent way, and create a plan that will benefit the community the most.

Mr. Barnes encourages DPZ and staff to continue working with our partners and potential partners.

Mr. Arntzen stated the Commission has the opportunity to receive public comment at any time and may want to do so, given the significance of the topic.

Mr. Barnes stated he will open the floor for discussion after the Vista Vision Task Force update.

## ***C. Vista Vision Task Force Update with Chair Rich Cummins***

Mr. Arntzen recapped the history of the Vista Vision Task Force (V. V. T. F.), which was formulated by the Commission in June. Chairman Rich Cummins is here today to update the Commission on what the V. V. T. F. has accomplished to date, where they are headed and to request direction from the Commission on further topics.



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Mr. Cummins thanked the Commission for the invitation to apprise them of the progress the V. V. T. F. has made over the past few months. Mr. Cummins stated he received an invitation from Mr. Novakovich, asking if he would be willing to chair the V. V. T. F., and after many conversations with staff, he felt it would be interesting to be involved with the V. V. T. F. Mr. Cummins stated, as a committee, we are citizens, who were given some rules, but were given a wide berth to operate, and report back to our leadership exactly what the people were interested in seeing. Mr. Cummins indicated the task force works with an agenda, however, they invite the public to sit at the table, which creates an informal, inclusive process. In preparation for the Charrette, Mr. Cummins approached the *Tri-City Herald Editorial Board* regarding an article, in which all task force members were invited to participate. Mr. Cummins stated the Port received a glowing editorial endorsement from the *Tri-City Herald*, which applauded the Port's transparent process and the call for community action and strategic partnership conversations. Mr. Cummins stated the article created a positive buzz for the Charrette, which helped drive traffic to the meetings and he is proud to be a part of the process. Moving forward, the task force will review the DPZ plan and make recommendations to the Commission based on task force conversations. Mr. Cummins stated this process is creating a great example for community conversations and transparency.

Mr. Novakovich stated Mr. Cummins is doing a marvelous job overseeing the V. V. T. F. and believes he has taken the committee to a new level by encouraging participation from everyone who attends the meetings. Mr. Novakovich inquired if there is a way to educate our partners on potentially game changing opportunities, in a non-threatening way.

Mr. Cummins stated it would be helpful to show our partners examples of developments that do not work, for example, the Portland Rose Garden. Mr. Cummins believes the more information our partners and community have, the more educated we become.

Mr. Moak stated the task force is a solid representation of the Tri-Cities and the members have the knowledge and the background to help the Commission throughout the redevelopment process. Mr. Moak appreciates the inclusion of the public who attend the meetings and as a non-political body, the task force has the flexibility and freedom to have those important conversations. Mr. Moak is looking forward to hearing the task force recommendations once the DPZ plan has been reviewed. Mr. Moak expressed his appreciation for the task force and the open process Mr. Cummins is employing.

Mr. Cummins stated, when Columbia Basin College decided to remodel the Hawk Union Building (HUB), we asked a team of students, architects, and the Vice President of Student Services to help create a viable plan. The HUB used to be three rectangular blocks, which did not attract students, now, it is packed at any given moment. Mr. Cummins offered, if you go to the users and ask their desires, there may be ideas that were not considered. He believes diversity demands inclusiveness, which is the most powerful principle in a complex system, to help achieve the broadest set of ideas.

Mr. Mehaffy stated it is very important to create diversity and DPZ's approach has been to listen and incorporate ideas and create a flexible framework that can evolve and accommodate many different activities.





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Mr. Barnes thanked Mr. Cummins for volunteering to chair the V. V. T. F. He believes there are important aspects of the task force that will help the Port achieve the best possible redevelopment of Vista Field. Mr. Barnes understands that there are differing points of view and he appreciates that the task force explores these points in the best interest of our partnerships and community. Mr. Barnes reiterated his appreciation for Mr. Cummins and the task force and stated there are numerous issues that need to be addressed and stated the task force is critical to the redevelopment process.

Mr. Arntzen requested direction from the Commission regarding topics for the V. V. T. F. to consider. Mr. Arntzen feels the Commission can either provide a list of formal topics for the task force or interface with Mr. Peterson on items the Commission believes are critical and need to be addressed.

Mr. Barnes would like to identify a short list for the V. V. T. F. to pursue, due to timing issues.

Mr. Moak stated the task force should look higher level strategic items.

Mr. Novakovich agrees with Mr. Arntzen and stated if the V. V. T. F. is comfortable taking on issues that need to be addressed quickly, then he believes they should pursue those topics.

Mr. Peterson stated Ms. Jao, secretary of the V. V. T. F. suggested creating sub-committees within the task force, by expertise, to look at several key items:

- Overall connectivity: Port, City and KFPD properties.
- Undergrounding of utilities versus overhead: economic and community perception.
- Performing Arts Center: site selection.
- Overall Financing.

Mr. Peterson offered that the task force should be able to critique and criticize the master plan early on and vet out any elements that may not work.

Mr. Cummins would like to include a minority report, along with the critique of the master plan, so the Commission receives a fully voiced set of recommendations.

Mr. Barnes invited public comment.

## PUBLIC COMMENT

Ed Frost, 609 West Albany Avenue, Kennewick. Mr. Frost stated he is concerned about the multiple plans for this area of Kennewick and the lack of congruency. Mr. Frost believes if the Port, KFPD, and the City are unable to create a unified vision, the redevelopment will never reach the expectations of the community. Mr. Frost suggested a public meeting be held, which include the Port Commission, the Kennewick City Council and the KFPD to openly discuss the redevelopment effort. During the Charrette, Mr. Duany repeatedly asked where the issue with the redevelopment is and people did not speak up about prior plans for the area. Mr. Frost stated the Port did an exceptional job getting information to the public and hopes we can get the three organizations working together.



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Chuck Eaton, 2309 Davison Avenue. Richland. Mr. Eaton is a member the Arts Center Task Force and the Arts Foundation of the Mid-Columbia, and informed the Commission that a public, joint meeting will be held at 6:00 p.m. tonight at the Mid-Columbia Library Union Street Branch. This joint meeting is bringing together the graphic, visual, literary, and performing artists, to engage in a discussion regarding the Vista Field Plan. The Vista Field planning process has brought together artists of all kinds, who ultimately will have an interest and investment in a center for the arts. Performing and visual artists relate differently, which has always been a hurdle, however, the Vista Field plan is bringing us together. Mr. Eaton emphasized the need for a dedicated center of the arts at Vista Field.

Mr. Arntzen stated he is unable to attend the meeting tonight, but asked if Mr. Eaton could come back and update the Commission at a later date. Mr. Arntzen stated during the Charrette process, the Port received numerous view-points and not all projects originated from the Port. Mr. Arntzen is very impressed that there is a scheduled open public forum to address a center for the arts, and asked that Mr. Frost and Mr. Eaton update him on the meeting.

*Mr. Barnes called for a recess of the meeting at 4:10 p.m. for approximately six minutes.*

*Mr. Barnes reconvened the meeting at 4:16 p.m.*

***C. Approval of Commissioner Compensation; Resolution 2014-39: (moved from Consent Agenda)***

Ms. Fine reported that in June 2014, the Port faced a vacancy in the accounting department. In an effort to reduce costs while maintaining the current levels of service, the Port has chosen to not replace the vacant accounting position and instead find ways to absorb duties and improve efficiencies. Port staff has significantly streamlined many processes since June of 2014 and the accounting department recommends streamlining the Office of Financial Management (OFM) requirements for Commissioner meeting reporting and calculation, by using a flat compensation amount. Cost savings is anticipated due to Commissioner and staff time reduction when eliminating detail tracking, reporting, and auditing requirements of the per-diem calculation as per OFM. Furthermore, this eliminates potential audit issues.

Mr. Novakovich verified that the Commission compensation remains the same, and the only modification is how compensation is tracked. Mr. Novakovich inquired if the change will go into effect after a Commissioner is reelected.

Ms. Fine stated if the Resolution is passed today, it would go into effect January 1, 2015, however, it would follow the election schedule if it was not passed today. Ms. Fine further stated she and Ms. Luke have been working on additional policy revisions to reduce audit issues and create more efficiencies, which will be presented later this year.

**PUBLIC COMMENTS**

No comments were made.

***Motion: Commissioner Novakovich moved for approval of Resolution 2014-39. Commissioner Moak seconded.***



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## **Discussion:**

*Mr. Barnes stated he believed it was appropriate to move Resolution 2014-39 off the Consent Agenda as there was a need for discussion. Mr. Barnes appreciates that Commission Compensation will not increase, and by making the change it will significantly reduce accounting paperwork. Mr. Barnes supports Resolution 2014-39.*

*Mr. Moak reported he has been assigned to work on policies and Ms. Fine was able to address his concerns regarding the change. Mr. Moak supports Resolution 2014-39.*

***With no further discussion, all in favor 3:0. Motion carried unanimously.***

## **REPORTS COMMENTS AND DISCUSSION ITEMS**

### **A. 2015 Unified Wine & Grape Symposium, January 27-25, 2015**

Mr. Arntzen reported that he has asked Ms. Bader Inglema to attend the 2015 Unified Wine and Grape Symposium (Wine Expo) to promote the Columbia Drive Wine Village. Ms. Walsh and Ms. Estes-Cross from the City of Kennewick will be attending the wine expo as well. The Port is exploring a joint venture with Mr. Gary Black and hopes to display promotional materials and potentially the model Mr. Black designed. The wine expo is a good opportunity to market the Columbia Drive Wine Village property. Mr. Arntzen inquired if Commissioner Moak would like to attend the wine expo with Port and City staff. Currently, staff is working on looking at rescheduling the DPZ Florida trip with Mr. Barnes, and Mr. Novakovich has indicated he would like to travel to Denver to attend the conference on New Urbanism.

Mr. Barnes indicated he would like the opportunity to attend the Florida trip.

Mr. Novakovich stated Mr. Barnes should travel to Florida as it is beneficial to the Commission. Mr. Novakovich has attended the wine expo several times and believes Mr. Moak should attend the wine expo, if he is interested.

Mr. Moak expressed his interest in attending the wine expo and believes there will be numerous opportunities to promote Columbia Drive and Vista Field. Mr. Moak believes it would be beneficial for Mr. Barnes to go to Florida and spend time with the DPZ Miami group.

Mr. Arntzen apologized for the short notice and will work with staff on tentative travel arrangements and indicated there are additional conferences in 2015 if the Commission desires. Staff will explore a travel strategy for 2015, and be cognizant of public expenditures.

### **B. Delegation of Authority and Policies and Procedures**

Ms. Fine reported that she is currently in the process of overhauling Port policies and procedures and at this time, Ms. Luke has reviewed the Delegation of Authority Policy, the Personnel Manual and the Bidding and Purchasing Manual. Ms. Fine stated that Mr. Moak is on the Policy review committee as well and is doing a very thorough job reviewing the policies. Ms. Fine will be reviewing other examples of Port policies located on Municipal Research and will look at refining the policies from an operational standpoint. Ms. Fine stated her priority at this time is the annual financial report, working on the chart of accounts and implementing the new



# SPECIAL COMMISSION MEETING

PORT OF KENNEWICK

DRAFT

DECEMBER 16, 2014 MINUTES

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accounting software. She hopes to present the revisions to the Port policies to the Commission mid-2015.

**C. Commissioner Meetings (formal and informal meetings with groups or individuals)**

Commissioners reported on their respective committee meetings.

**D. Non-Scheduled Items**

1. Mr. Moak reported this meeting concludes his first year and wanted to thank his fellow Commissioners, staff and public. He appreciates being a part of the Port and is excited for the upcoming projects.
2. Mr. Barnes reflected on 2014 and is proud of what the Port has accomplished and commended staff for their hard work. Mr. Barnes believes the Port of Kennewick has established a positive trend, by working with our public and private partners, and are seeing tangible and visible results along Columbia Drive and other Port properties.
3. Mr. Novakovich stated Mr. Peterson received a letter from Mr. Steven Wiley regarding a potential performing arts center. Mr. Novakovich would like staff to follow up with Mr. Wiley and see what the interest is and if the Port can establish a relationship with the Arts Center Task Force.
4. Mr. Novakovich reported that a Richland doctor has been routinely riding his bike from Richland to Clover Island and is excited about what is taking place on Columbia Drive and Clover Island.
5. Ms. Bader Inglima thanked Ms. Pihl from the *Tri-City Herald* for all her hard work covering the Charrette and relaying the message to the public. Ms. Bader Inglima also stated the *Journal of Business* article regarding the Charrette and the master planning process came out December 15, 2014.
6. Mr. Arntzen inquired if the Commission would like him to draft a response letter to Mr. Wiley of the Arts Center Task Force stating staff would like an opportunity to meet and discuss their mission.
  - Mr. Moak stated a formal letter from the Port would be helpful.
  - Mr. Novakovich stated an invitation to a meeting with staff would be appropriate.
7. Ms. Luke appreciates working with the Commission and staff and is looking forward to 2015.
8. Mr. Peterson reported that the Arts Center Task Force is made up of the following groups:
  - Mid-Columbia Ballet
  - Mid-Columbia Master Singers
  - Musical Theater
  - Mid-Columbia Symphony
9. Ms. Fine reported that Clifton Larson Allen is almost finished with the Port's annual financial audit and will hold a public exit conference mid-January, with a pre-exit meeting with staff. At this time, Clifton Larson Allen has not found any errors and are having the audit examined by two Governmental Accounting Standards Board reviewers.
10. Ms. Fine briefed the Commission on the budget and stated the following:
  - The operating revenues are over budget at 102%;
  - The operating expenses are under budget at 92%, however, we are still receiving December invoices, may put us at 100% or over;



# SPECIAL COMMISSION MEETING

PORT OF KENNEWICK

**DRAFT**

DECEMBER 16, 2014 MINUTES

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- Non-operating revenues have exceeded the budget;
  - Non-operating expense are under budget at 48%;
  - Capital expenditure are at 40%.
11. Mr. Peterson updated the Commission on the progress of the Columbia Gardens Wine and Artisan Village. Mr. Thornhill and staff have been working with winemaker, Charlie Hoppes and have altered the plan to allow for two production winery buildings and the third building will be utilized for barrel storage. Mr. Arntzen stated the barrel storage will help the city's effluent treatment strategy as well.

## PUBLIC COMMENTS

Steve Mallory, 5822 West Yellowstone Kennewick. Mr. Mallory applauded the Port on a successful year. He thanked staff for placing the Christmas lights on the tree at the entrance of Clover Island and stated it was a beautiful sight.

No further comments.

## COMMISSIONER COMMENTS

No further comments were made.

## ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned at 5:09 p.m.

**APPROVED:**

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

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*Don Barnes, President*

---

*Skip Novakovich, Vice President*

---

*Thomas Moak, Secretary*

***PORT OF KENNEWICK***

**RESOLUTION 2015-01**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE  
PORT OF KENNEWICK AUTHORIZING THE PORT EXECUTIVE DIRECTOR  
TO SELL AND CONVEY SURPLUS PROPERTY***

**WHEREAS**, the Board of Commissioners of the Port of Kennewick met this 13th day of January, 2015, a quorum of the Commissioners being present; and

**WHEREAS**, from time to time it is necessary to surplus items no longer needed for Port District purposes; and

**WHEREAS**, RCW 53.08.090 authorizes that the Port Commissioners may sell and convey property no longer needed for Port District purposes; and

**WHEREAS**, prior to each disposition of Port property, the Port Executive Director is directed to present to the Commission an itemized list of the property and to make written certification that the listed property is no longer needed for Port District purposes; and

**NOW, THEREFORE, BE IT RESOLVED** by the Port of Kennewick Commissioners to authorize the Port Executive Director to surplus Port property no longer needed for Port purposes as attached in "Exhibit A"; and

**ADOPTED** by the Board of Commissioners of Port of Kennewick this 13th day of January 2015.

***PORT OF KENNEWICK  
BOARD OF COMMISSIONERS***

By: \_\_\_\_\_  
DON BARNES

By: \_\_\_\_\_  
SKIP NOVAKOVICH

By: \_\_\_\_\_  
TOM MOAK



***RESOLUTION 2015-01***  
***“EXHIBIT A”***

| Asset | Disposition | Property Description        | Date In Service | Cost      |
|-------|-------------|-----------------------------|-----------------|-----------|
| 783   | Obsolete    | John Deer Loader Model 544D | 12/9/04         | 36,659.55 |

# **PORT OF KENNEWICK**

## **Resolution No. 2015-02**

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING A ONE YEAR LEASE AGREEMENT WITH KLS AIR EXPRESS INC DBA FREIGHT SOLUTION PROVIDERS***

**WHEREAS**, the Port of Kennewick (Port) is authorized to enter into certain leases upon such terms as the Port Commission deems proper; and

**WHEREAS**, a one (1) year lease with KLS Air Express dba Freight Solution Providers effective January 12, 2015, has been negotiated by Port staff; and

**WHEREAS**, the Port Commission has called a regularly scheduled public meeting with notice of such meeting given as provided by law and such public meeting was held at such time and on said date; and

**WHEREAS**, Port staff and the Port attorney have reviewed the proposed Lease Agreement and find it is in proper form and it is in the Port's best interest; and

**WHEREAS**, after consideration of the attached lease agreement, the Port Commission has determined that the lease is proper.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby approve a one (1) year lease with KLS Air Express Inc dba Freight Solution Providers as presented and authorizes the Port's Executive Director to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 13<sup>th</sup> day of January, 2015.

***PORT of KENNEWICK  
BOARD of COMMISSIONERS***

By:

\_\_\_\_\_  
DON BARNES, *President*

By:

\_\_\_\_\_  
SKIP NOVAKOVICH, *Vice President*

By:

\_\_\_\_\_  
THOMAS MOAK, *Secretary*



## AGENDA REPORT

**TO:** Port Commission

**FROM:** Amber Hanchette, Director of Operations & Real Estate

**MEETING DATE:** January 13, 2015

**AGENDA ITEM:** Resolution 2015-02; to approve a 1-Year Lease at Oak Street Industrial Park – KLS AIR EXPRESS INC (DBA Freight Solution Providers)

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**I. REFERENCE(S):** Resolution 2015-xx and Lease Agreement

**II. FISCAL IMPACT:** Operational income of \$26,808.00 for a twelve month lease period.

**III. DISCUSSION:** Freight Solution Providers is a freight transport company based in California. This will be a new location for FSP and a new business to the Tri-Cities with 2 full-time employees to start. Parameters of the negotiated lease are:

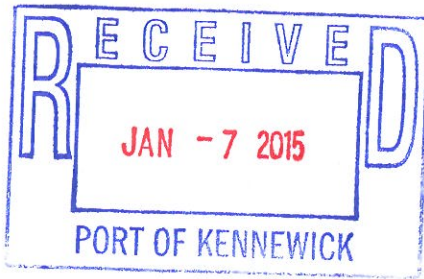
- Lease 5,585 square feet for office and warehouse at the Oak Street Industrial Park Development Building A (DB-1);
- One (1) year lease effective January 12, 2015
- Lessee responsible for separately metered electricity, water/sewer and garbage; excluding common area landscape and parking.
- Monthly rent for the premises is \$2,234.00 plus leasehold tax.
- According to Port of Kennewick Policies and Procedures, POK-ED-001, 3.1.2(b). Leases in which the monthly rental amount exceeds \$2,000 per month shall be submitted to the Commission for approval.

**IV. STAFF RECOMMENDATION:**

Approve the one (1) year lease as negotiated, effective January 12, 2015.

**V. ACTION REQUESTED OF COMMISSION:**

***Motion:** I move approval of Resolution 2015-02 approving a one (1) year lease with KLS Air Express, Inc. doing business as Freight Solution Providers and authorizing the Executive Director to execute the contract.*



# **COMMERCIAL PROPERTY LEASE AGREEMENT**

**BETWEEN  
PORT OF KENNEWICK,  
LANDLORD**

**AND**

**KLS AIR EXPRESS INC  
dba FREIGHT SOLUTION PROVIDERS,  
TENANT**

**OAK STREET INDUSTRIAL PARK**

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**PORT OF KENNEWICK LEASE AGREEMENT  
(Commercial Property)**

Landlord hereby leases to Tenant and Tenant hereby leases and accepts from Landlord the premises hereinafter described on the terms and conditions set forth in this Lease Agreement, hereinafter called "this Lease".

**BASIC LEASE PROVISIONS**

The following Basic Lease Provisions are hereby incorporated herewith as part of this Lease:

- A. Lease Date: JANUARY 12, 2015.
- B. Landlord: Port of Kennewick,  
a Washington municipal corporation
- C. Tenant: KLS AIR EXPRESS INC dba FREIGHT SOLUTION  
PROVIDERS
- D. Premises: The Premises shall mean the real property located at 1426 E. 3<sup>rd</sup>  
Ave Suite 120, Kennewick, WA 99336, as described on Exhibit  
"A" attached hereto and incorporated herein by reference, and  
any improvements located thereon.
- E. Permitted Use: Check all that apply:
- F.        Light manufacturing;  
       X Wholesale receiving/shipping;  
       Administrative offices  
       Other: (Describe) \_\_\_\_\_  
\_\_\_\_\_
- G. Term: Commencing on the Lease Commencement Date and  
terminating on the Expiration Date.
- H. Lease Commencement Date: The date which is the earlier of (a) JANUARY 12, 2015, and  
(b) the date Tenant begins using the Premises for any reason.
- I. Expiration Date: JANUARY 31, 2016
- J. Price Per Square Foot: \$.40 per square foot.
- K. Total Square Feet Leased: 5,585 square feet.

L. Base Monthly Rent (not including LET): \$ 2,234.00 per month.

M. Leasehold Tax (LET): Current Washington State Leasehold Tax shall be added to Base Rent. Current effective rate is 12.84%.

N. **Total Monthly Rent (includes LET): \$ 2,520.85 per month.**

O. Amount Collected: \$ 1,626.40 January 2015 Prorate Rent (20 days @ \$81.32/day)  
\$ 2,520.85 February 2015 Rent  
\$ 2,520.85 Deposit  
\$ 6,668.10 Amount Due Prior to Occupying Space

P. Monthly Utilities: See Article 7 of Lease.

Q. Rent Due Date: The Lease Commencement Date and the first day of each month thereafter.

R. Financial Security: Check all that apply:

☒ \$ 2,520.85 deposit;

☐ Corporate surety bond;

☒ Personal Guaranty as set forth in Exhibit B;

☐ Other financial security: (Describe) \_\_\_\_\_

S. Landlord's Address for Notices and Rent Payments:

Port of Kennewick  
350 Clover Island Drive, Suite 200  
Kennewick, WA 99336

T. Tenant's Address for Notices:

KLS AIR EXPRESS INC  
2851 Gold Tailings Court  
Rancho Cordova, CA 95670

S. Exhibits: Exhibit "A" Legal Description of Premises  
Exhibit "B" Personal Guaranty Form

**ARTICLE 1  
PREMISES**

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the Premises, which Premises are more particularly described in the Basic Lease provisions above.

**ARTICLE 2  
USE OF PREMISES**

Tenant shall occupy and use the Premises for such uses as described in the Basic Lease provisions above. Tenant may not use the Premises for any other business purpose except as may be authorized in writing by Landlord at Landlord's sole discretion. No smoking shall be allowed within any portion of the Premises and within twenty-five (25) feet of all entryways.

**ARTICLE 3  
TERM**

The Term hereof shall commence on the Lease Commencement Date defined in the Basic Lease Provisions and shall terminate on the Expiration Date defined in the Basic Lease Provisions, unless earlier terminated.

**ARTICLE 4  
RENT**

On or before the first day of each month of this Lease, Tenant shall pay to Landlord the Total Monthly Rent and all other assessment, charges, and fees as provided in this Article 4 and as otherwise set forth in this Lease, at the Landlord's address set forth in the Basic Lease Provisions.

(a) Late Fee.

If any sums payable by Tenant to Landlord under this Lease are not received by the fifteenth (15<sup>th</sup>) day of the month in which they are due, Tenant shall pay Landlord an additional amount for the cost of collecting and handling such late payment as a late fee in an amount equal to the greater of (i) Fifty Dollars (\$50.00), or (ii) five percent (5%) of the overdue amount.

(b) Interest.

In addition to any applicable late fees, 12% APR interest (1% per month), shall be applied to the total unpaid balances calculated from the original due date to the date of payment.

(c) Non-Sufficient Funds (NSF).

If a Tenant check is returned by the bank for any reason, Tenant shall pay a NSF fee of Fifty Dollars (\$50) for administrative costs related to collecting and handling such returned check. The Tenant shall also pay any associated bank fees charged to the Port related to the returned check. Landlord may require, at Landlord's sole discretion that Tenant's future payments be made by cash, cashier's check or money order.

Landlord and Tenant hereby agree that these charges represent a fair and reasonable estimate of what the Landlord might incur by reason of Tenant's late or NSF payment. These fees are due and payable with the current rent payment. Landlord's acceptance of any late charge, interest or NSF fee shall not be deemed an extension of the date rent is due or prevent Landlord from exercising any other rights or remedies under this Lease.

The Landlord reserves the right to revise its policy regarding late payment, interest and NSF check charges without notice to Tenant.

## **ARTICLE 5**

### **FINANCIAL SECURITY**

In compliance with the requirements of the state law, Tenant agrees that it will secure the performance of the rental portion of this Lease by providing a Personal Guaranty in the form as set forth in Exhibit "B" and one or more of the following: 1) a deposit in the amount set forth in the Basic Lease Provisions, or 2) procuring and maintaining, during the term of this Lease, a corporate surety bond ("Bond"), or 3) by providing other financial security satisfactory to Landlord.

The Bond shall be in a form and issued by a surety company acceptable to Landlord and shall comply with the requirements of Washington law. Tenant shall obtain such Bond and forward evidence thereof to Landlord within fourteen (14) days of execution of this Lease, but in no event later than the Lease Commencement Date. Failure to comply with this requirement shall be grounds for immediate termination of this Lease without notice by Landlord. Such Bond shall be kept in effect during the term of this Lease; failure to comply with this requirement shall render Tenant in default. The Bond shall be increased to reflect any increases in Rent.

Upon any default by Tenant of its obligations under this Lease, Landlord may collect on the Bond to offset the Tenant's liability to Landlord. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of Landlord's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

## **ARTICLE 6**

### **TAXES & ASSESSMENTS**

#### **6.1     Property Taxes.**

Landlord will pay property tax on Premise's real property and any building or structure that is permanently attached to the real property.

#### **6.2     Personal Property Taxes**

Tenant shall pay when due all license fees, public charges, taxes and assessments on the Tenant-owned trade fixtures, furniture, other fixtures, equipment, inventory and all other personal property of or being used by Tenant in the Premises, whether or not owned by Tenant.

6.3 Additional Taxes/Assessments; Leasehold Excise Tax (LET)

Tenant shall also pay: (a) all special taxes and assessments (including irrigation assessments) or license fees now or hereafter levied, assessed or imposed by law or ordinance, by reason of Tenant's use of the Premises; (b) all business and occupation tax and any tax, assessment, levy or charge assessed on the Rent paid under this Lease; (c) the statutory leasehold excise tax imposed in connection with the Rent due hereunder or otherwise due as a consequence of this Lease; and (d) any excise, transaction, sales, privilege, or other tax (other than net income and/or estate taxes) now or in the future imposed by the city, county, state or any other government or governmental agency upon Landlord and attributable to or measured by the Rent or other charges or prorations payable by Tenant pursuant to this Lease.

**ARTICLE 7**  
**UTILITIES**

Tenant acknowledges that Landlord shall have no obligation to provide any utilities or services to the Premises. Tenant shall be solely responsible for the payment of all assessments, charges and/or fees pertaining to the Premises, including, but not limited to, water assessments, charges for public utilities, license and permit fees which may, during the Lease Term, be assessed, levied, charged, confirmed or imposed i) on the Premises or any part thereof, ii) on improvements now or hereafter comprising a part thereof, and iii) on the use or occupancy of the Premises. Tenant shall pay all such assessments, charges and/or fees when due.

Electricity Meters Assigned to Tenant: 251775

Water Meters Assigned to Tenant: 74521136

Interruptions: There shall be no abatement of rent and Landlord shall not be liable for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Landlord's reasonable control or in cooperation with governmental request or directions.

**ARTICLE 8**  
**INSURANCE**

8.1 Insurance

Tenant, at its own expense, shall provide and keep in force all insurance deemed appropriate for the purposes that the Premises are to be used and with companies reasonably acceptable to Landlord, including but not limited to the following:

(a) Commercial General Liability Insurance

Commercial General Liability (CGL) insurance for the benefit of Landlord and Tenant jointly against liability for bodily injury and property damage for a combined single limit of not less than One Million Dollars (\$1,000,000) for any one occurrence for this location, including coverage for contractual liability and personal injury, with a \$2,000,000 aggregate limit;. Landlord reserves the right to require higher liability limits and/or to change insurance requirements at any time during the term of the lease with thirty (30) days' notice to Tenant.

(b) Statutory Workers' Compensation

Statutory Workers' Compensation, including at least \$250,000 Employer's Contingent Liability (Stop Gap) coverage in Tenant's commercial general liability insurance;

(c) Automobile Liability Insurance

Automobile Liability Insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000, including all owned, non-owned and hired vehicles and covering claims for damages because of bodily injury or death of any person or property damage arising out of ownership, maintenance or use of any motor vehicle; and

(d) Property Insurance

Property insurance covering all leasehold improvements to the Premises, furniture, fixtures, equipment, inventory and other personal property located on the Premises (and, at Landlord's election, on all buildings and other improvements now or hereafter existing at the Premises) in an amount of not less than one hundred percent (100%) insurable replacement value minimum co-insurance of 80%, "Special Form—Causes of Loss", with Flood Insurance if Landlord reasonably deems such insurance to be necessary or desirable, and replacement cost coverage to protect against loss of owned or rented equipment and tools brought onto or used at the Property by Tenant.

8.2 Requirements

The foregoing insurance requirements shall be placed with an insurance company or companies admitted to do business in the State of Washington and shall have an A.M. Best's rating of A-/ or better. Tenant shall furnish Landlord with a copy of the certificate of such policies before the Commencement Date of this Lease and, upon request by Landlord, shall provide proof satisfactory to Landlord that all such policies are in full force and effect. Tenant's liability insurance policies shall list Landlord as an additional insured and Tenant's property insurance policies shall reflect Landlord as a loss-payee as its interests may appear, and all of Tenant's insurance policies shall be primary and non-contributing with any insurance carried by Landlord. Such policies shall not be cancelable or materially altered without forty-five (45) days' prior written notice to Landlord. In addition, the policies shall provide for ten (10) days' written notice to Landlord in the event of cancellation for non-payment of premium. Tenant's failure to deliver the policies or certificates to Landlord as required above shall constitute an event of default pursuant to **Article 24** hereof.

8.3 Mutual Waiver of Subrogation

Each party hereby waives, and each party shall cause their respective property insurance policy or policies to include a waiver of such carrier's entire right of recovery (i.e., subrogation) against the other party, and the officers, directors, agents, representatives, employees, successors and assigns of the other party, for all claims which are covered or would be covered by the property insurance required to be carried hereunder or which is actually carried by the waiving party.

8.4 Destruction or Condemnation.

8.4.1 Damage and Repair. If the Premises are partially damaged but not rendered untenable, by fire or other insured casualty, then Landlord shall diligently restore the Premises and this Lease shall not terminate. The Premises shall not be deemed untenable if less than twenty-five percent



(25%) of the Premises are damaged. Landlord shall have no obligation to restore the Premises if insurance proceeds are not available to pay the entire cost of such restoration. If insurance proceeds are available to Landlord but are not sufficient to pay the entire cost of restoring the Premises, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within sixty (60) days of the date of such casualty.

If the Premises are entirely destroyed, or partially damaged and rendered untenable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises to their previous condition. If, within 60 days after receipt by Landlord from Tenant of written notice that Tenant deems the Premises untenable, Landlord fails to notify Tenant of its election to restore the Premises, or if Landlord is unable to restore the Premises within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease.

If Landlord restores the Premises under this Article 8.4.1, Landlord shall proceed with reasonable diligence to complete the work, and the base monthly rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole Premises, provided that there shall be a rent abatement only if the damage or destruction of the Premises did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's officers, contractors, licensees, subtenants, agents, servants, employees, guests, invitees or visitors. Provided, Landlord complies with its obligations under this Article, no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises. Landlord will not carry insurance of any kind for the protection of Tenant or any improvements paid for by Tenant or on Tenant's furniture or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, and Landlord shall not be obligated to repair any damage thereto or replace the same unless the damage is caused by Landlord's negligence or willful misconduct.

8.4.2 If the Premises are made untenable by eminent domain, or conveyed under a threat of condemnation, this Lease shall automatically terminate as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises and all Rents and other payments shall be paid to that date. In case of taking of a part of the Premises that does not render the Premises untenable, then this Lease shall continue in full force and effect and the base monthly rental shall be equitably reduced based on the proportion by which the floor area of any structures is reduced, such reduction in Rent to be effective as of the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate claim against the condemning authority for moving expenses or damages resulting from interruption in its business, provided that in no event shall Tenant's claim reduce Landlord's award.

## **ARTICLE 9**

### **ACCEPTANCE AND CARE OF PREMISES**

Tenant has inspected the Premises and accepts the Premises "AS IS" in its present condition and acknowledges that Landlord is not responsible to provide, and has made no representations or warranties that it will provide, any improvements to the Premises whatsoever, except as set forth in Article 10, Alterations and Improvements, below. Tenant shall, at its sole cost, keep the Premises in as good working order, cleanliness, repair, and condition, as that which existed at the Lease Commencement Date. In the event that Tenant fails to comply with the obligations set forth in this Article 9, Landlord may, but shall not be obligated to, perform any such obligation on behalf of, and for the account of Tenant, and Tenant shall reimburse Landlord for all costs and expenses paid or incurred on behalf of

Tenant in connection with performing the obligations set forth herein. Tenant expressly waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

## **ARTICLE 10**

### **ALTERATIONS AND IMPROVEMENTS**

Tenant shall not make any alterations, additions, renovations or improvements to the Premises without first obtaining the written consent of Landlord. All alterations, additions, renovations and improvements made shall be at the sole cost and expense of Tenant and shall become a part of the real property and belong to Landlord and shall remain in and be surrendered with the Premises as a part thereof at the termination of this Lease. Tenant further agrees to indemnify, defend, and hold Landlord harmless from, and against, any and all damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of said work.

## **ARTICLE 11**

### **ACCIDENTS AND INDEMNIFICATION**

Tenant shall indemnify Landlord and hold it harmless from and against, and shall defend with counsel acceptable to Landlord, any and all suits, actions, damages, claims, liability, and expense in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or from the Premises, or the occupancy or use by Tenant of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees, or concessionaires; provided that Tenant shall not be liable to Landlord to the extent such damages, liability, claims or expenses are caused by or result from the negligence or intentional misconduct of Landlord.

Tenant hereby expressly waives claims against Landlord, and Landlord shall not be responsible or liable at any time, for any loss or damage to Tenant's personal property or to Tenant's business, including any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting, or adjoining property, unless and only to the extent due to Landlord's gross negligence or intentional misconduct, and in no event shall Landlord be liable for Tenant's consequential damages. Tenant shall use and enjoy the Premises and improvements at its own risk, and hereby releases Landlord, to the full extent permitted by law and except as expressly provided above, from all claims of every kind resulting in loss of life, personal or bodily injury, or property damage.

Solely for the purpose of effectuating the indemnification obligations under this Lease, and not for the benefit of any third parties (including but not limited to employees of Tenant), Tenant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Furthermore, the indemnification obligations under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts. Tenant shall cause Contractors and their subcontractors and material suppliers to execute similar waivers of industrial insurance immunity. The parties, by their execution hereof, acknowledge that the foregoing provisions of this Article 11 have been specifically and mutually negotiated between the parties.

## **ARTICLE 12 COMPLIANCE WITH LAWS**

Tenant shall comply fully at its sole expense with all federal and state laws and local or city ordinances (including all applicable zoning ordinances) now or hereafter in force with respect to the Premises and Tenant's activities therein. Tenant warrants and represents to Landlord that Tenant shall use the Premises only for lawful purposes.

## **ARTICLE 13 MAINTENANCE**

Tenant shall keep the premises in a neat, clean, and sanitary condition at all times. Tenant shall keep all improvements to the Premises in good condition.

13.1 Janitorial: Tenant will provide janitorial service inside the Premises, restrooms and window washing on inside of windows.

13.2 Landscaping and Common Area Sweeping: Landlord, at its cost, will provide landscaping care and common area repairs, maintenance, and sweeping outside the building.

13.3 Other Maintenance and Repairs: Landlord will maintain exterior of building, roof, foundation, and electrical, heating and plumbing, in a good state of repair. Tenant shall pay the reasonable cost of repairs of all damage caused by Tenant, its agents, servants, employees, or invitees within Ten (10) days of receipt of an invoice stating the repairs performed and the cost thereof. All light bulbs and fixtures are guaranteed by Landlord for sixty (60) days after Lease Commencement Date. After this sixty-day period, Tenant shall replace light bulbs in Tenant's leased office space; Landlord will replace warehouse light bulbs in multi-tenant locations.

13.4 HVAC: HVAC and all mechanical systems shall be in satisfactory operating condition and will be maintained by Landlord during the term of the Lease.

## **ARTICLE 14 LANDLORD'S ACCESS**

Landlord shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, inspecting, altering, exhibiting, or improving the Premises, but nothing contained in this Lease shall be construed so as to impose any obligation on Landlord to make any repairs, alterations or improvements not otherwise expressly set forth elsewhere herein.

The Landlord reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses will not unduly interfere with the use of the Premises by Tenant.

## **ARTICLE 15 SIGNS AND ADVERTISING**

Tenant shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster or any advertising matter whatsoever anywhere in or about the Premises, without first obtaining Landlord's written consent thereto.

**ARTICLE 16**  
**WASTE AND UNLAWFUL USE**

Tenant shall not commit or suffer any waste upon the Premises, or make or suffer any nuisance, undue or unseemly noise, or otherwise, and will not do or permit to be done in or about the Premises anything which is illegal, unlawful, or dangerous, or which will increase Landlord's insurance rates upon the Premises.

**ARTICLE 17**  
**SUCCESSORS**

All the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors, marital communities and assigns. Any assignment or subletting of the Premises or any interest in this Lease shall not relieve Tenant of primary responsibility for the performance of the terms and payment of the sums to be paid by Tenant hereunder.

**ARTICLE 18**  
**HAZARDOUS MATERIALS**

Tenant shall not dispose of or otherwise allow the release of any hazardous waste or materials in, on, or under the Premises, or any adjacent property. Tenant represents and warrants to Landlord that Tenant's intended use of the Premises does not involve the use, production, or disposal of any hazardous waste or materials. As used herein, "**hazardous waste or materials**" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state, or local statute, regulation, rule or ordinance now or hereafter in effect. In the event Tenant brings or uses hazardous waste or materials on the Premises in violation of this **Article 18**, Tenant shall, at its sole cost, properly dispose of all such hazardous waste or materials. Tenant shall be responsible for complying with all federal, state and local laws and regulations in regard to the handling of and disposing of hazardous waste or materials, and agrees to indemnify, defend, and hold Landlord harmless from and against all losses, costs, and expenses (including but not limited to site cleanup, investigation, and remediation costs and attorneys fees and costs related thereto) arising from a breach by Tenant of its obligations under this **Article 18**.

**ARTICLE 19**  
**ASSIGNMENT AND SUBLETTING**

Tenant shall not transfer, dispose, assign, mortgage, or hypothecate this Lease, in whole or in part, or permit the use of the Premises by any person or persons other than Tenant, or sublet the Premises, or any part thereof (any of which, a "**Transfer**") without the prior written consent of Landlord in each instance, which may be given, withheld, or conditioned in Landlord's sole discretion. In no event shall Tenant be released or relieved of any liability hereunder due to any Transfer whether or not consented to by Landlord.

Landlord shall have the right to transfer, dispose, assign, mortgage, or hypothecate this Lease, in whole or in part without the prior written consent of the Tenant. See also Landlord rights to terminate this Lease as set forth in **Article 23** below.

## **ARTICLE 20**

### **SURRENDER OF POSSESSION**

#### **20.1    Surrender**

At the expiration of the tenancy created hereunder, whether by lapse of time or otherwise, Tenant shall surrender the Premises in substantially the as good condition or better as they were at the Lease Commencement Date, and shall remove all of its personal property, furniture, non-permanent fixtures installed by or for Tenant, Tenant's equipment, and all cabling and wiring installed by or for Tenant. Tenant's obligations shall include the repair of any damage occasioned by the installation, maintenance or removal of Tenant's personal property, furniture, non-permanent fixtures installed by or for Tenant, and Tenant's equipment.

#### **20.2    Removal of Property**

In the event of any entry in, or taking possession of, the Premises or upon the termination of this Lease, Landlord shall have the right, but not the obligation, to remove from the Premises all personal property remaining on the Premises, and may store the same in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of the Tenant thereof, with the right to sell such stored property, as per applicable statutory requirements. The proceeds of such sale shall be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof, with the balance, if any, to be paid to Tenant.

#### **20.3    Holding Over**

If Tenant fails to surrender the Premises at the expiration or earlier termination of this Lease, occupancy of the Premises after the termination or expiration shall be that of a tenancy at sufferance. Tenant's occupancy of the Premises during the holdover shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount due on the first of each month of the holdover period, without reduction for partial months during the holdover, equal to 150% of the greater of: (1) the monthly Total Monthly Rent (including Leasehold Tax), and any other charge due, for the monthly period immediately preceding the holdover; or (2) the fair market value for gross monthly rental for the Premises as reasonably determined by Landlord. No holdover by Tenant or payment by Tenant after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Landlord from immediate recovery of possession of the Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover, Tenant shall be liable to Landlord for all damages, including, without limitation, consequential damages, that Landlord suffers from Tenant's holdover. Nothing herein shall be construed as Landlord's consent to such holding over. During the holdover Tenant shall remain responsible for payment of all utilities, taxes, and other assessments, charges and/or fees due under this Lease.

## **ARTICLE 21**

### **NOTICES**

All notices, requests and demands to be made hereunder shall be in writing at the address set forth in the Basic Lease Provisions, as applicable, by any of the following means: (a) personal service (including service by recognized overnight delivery/courier service, such as UPS or FEDEX); or (b) registered or certified first class mail, return receipt requested. Such addresses may be changed by written notice to the other party given in the same manner provided above. Any notice, request, or



demand sent pursuant to clause (a) of this **Article 21** shall be deemed received upon such personal delivery or service (or the date of refusal, if personal service or delivery is refused), and if sent pursuant to clause (b), shall be deemed received three (3) days following deposit in the mails.

## **ARTICLE 22**

### **LIENS AND ENCUMBRANCES**

Tenant shall keep the Premises free and clear of any liens and encumbrances arising out of the use and occupancy of the Premises by Tenant. Should Tenant fail to discharge any lien of the nature described in this **Article 22** Landlord may, at Landlord's election, pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title and the cost thereof shall be immediately due from Tenant as rent under this Lease.

## **ARTICLE 23**

### **LANDLORD'S TERMINATION RIGHT**

Notwithstanding anything to the contrary elsewhere in the Lease, in the event that Landlord elects to use the Land and/or Premises for industrial development or other public or port-related purposes, Landlord shall have the right to terminate this Lease by providing sixty (60) days' written notice. If Landlord elects to terminate the Lease early as provided herein, the early termination date chosen by Landlord shall operate as if that date is the Expiration Date set forth in the Basic Lease Provisions. The parties recognize that the foregoing early termination right is important to Landlord and that any delay caused by the failure of Tenant to vacate the Premises pursuant to this **Article 23** when required can cause irreparable harm to the Landlord and future tenants. Therefore, Landlord and Tenant agree that time is of the essence of this **Article 23** and that if any dispute arises between Landlord and Tenant with respect to the provisions of this **Article 23**, any other provisions of this Lease notwithstanding, Tenant will vacate the Premises on or before the early termination date selected by Landlord, and Tenant shall be deemed to have waived any rights in law or equity to possession of the Premises.

In the event of the insolvency or bankruptcy of the Tenant, Landlord may, at Landlord's option, immediately take full possession of the premises to the exclusion of all persons. Exercising such option shall not alleviate Tenant's obligations under this Lease and Landlord shall have the right to seek all remedies set forth in this Lease.

## **ARTICLE 24**

### **DEFAULT AND REMEDIES**

#### **24.1    Default**

The occurrence of any one or more of the following events shall constitute a material breach and default of this Lease (each, an "**Event of Default**"):

- (a) Any failure by Tenant to pay Rent and Leasehold Tax when due, or any other assessment, charge and/or fee when due;
- (b) Any failure by Tenant to obtain and keep in full force and affect the insurance coverage(s) required hereunder to be carried by Tenant;
- (c) Any failure to immediately remedy an emergency condition that poses a significant risk of injury or damage;
- (d) Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease; or
- (e) Tenant bankruptcy

## 24.2 Remedies.

### (a) Re-entry and Termination

Upon and during the continuance of an Event of Default, Landlord, in addition to any other remedies available to Landlord at law or in equity, at Landlord's option, may without further notice or demand of any kind to Tenant or any other person:

1. Declare the Lease Term ended and reenter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim to the Premises; or
2. Without declaring this Lease ended, reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid Rent, Leasehold Tax, and other charges, which have become payable, or which may thereafter become payable; or
3. Even though Landlord may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

### (b) Express Termination Required

If Landlord re-enters the Premises under the provisions of this Article, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Rent, Leasehold Tax, or other assessments, charges and/or fees thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions of this Lease, by any such re-entry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that Landlord had elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of Washington State and surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease.

### (c) Damages

If Landlord elects to terminate this Lease pursuant to the provisions of this Article, Landlord may recover from Tenant as damages, the following:

1. The worth at the time of award of any unpaid Rent, Leasehold Tax, and other assessments, charges and/or fees which had been earned at the time of such termination; plus
2. The worth at the time of award of the amount by which the unpaid Rent, Leasehold Tax, and other charges which would have been earned after termination until the time of award exceeds the amount of such loss Tenant proves could have been reasonably avoided; plus
3. The worth at the time of award of the amount by which the unpaid Rent, Leasehold Tax, and other assessments, charges and/or fees due for the balance of



the Lease Term after the time of award exceeds the amount of such loss that Tenant proves could be reasonably avoided; plus

4. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorneys' fees, (ii) maintaining or preserving the Premises after the occurrence of an Event of Default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (iv) leasing commissions, and (v) any other costs necessary or appropriate to relet the Premises; plus
5. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted by the laws of Washington State.

(d) Definitions

As used in **Paragraphs 24.2(c)1** and **24.2(c)2** above, the "worth at the time of award" is computed by allowing interest at the rate of twelve percent (12%) per annum compounded monthly. As used in **Paragraph 24.2(c)3** above, the "**worth at the time of award**" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Property at the time of award plus one (1) percentage point.

(e) No Waiver

The waiver by Landlord of any breach of any term, covenant or condition herein contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition of this Lease. The subsequent acceptance of Rent, Leasehold Tax, and other charges due hereunder shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular amount so accepted regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such amount. No covenant, term, or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver shall be in writing and signed by Landlord.

24.3 Interest

Any sum accruing to Landlord under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the interest rate provided herein from the date the same becomes due and payable by the terms and provisions of this Lease until paid, unless otherwise specifically provided in this Lease. The interest rate which shall apply shall be the lesser of (i) twelve percent (12%) per annum (1% per month), or (ii) the highest rate allowed by applicable law.

**ARTICLE 25**  
**ATTORNEYS' FEES AND COSTS**

If either party hereto shall file any action or bring any proceeding against the other party arising out of this Lease or for the declaration of any rights hereunder, the prevailing party therein shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees,

incurred by the prevailing party as determined by the court. If either party (“**secondary party**”) without its fault is made a party to litigation instituted by or against the other party (the “**primary party**”), the primary party shall pay to the secondary party all costs and expenses, including reasonable attorneys’ fees, incurred by the secondary party in connection therewith.

## **ARTICLE 26 MISCELLANEOUS**

### **26.1 Miscellaneous Provisions**

The following miscellaneous provisions shall apply to this Lease:

- (a) Time is of the essence hereof.
- (b) If any portion of this Lease shall be deemed void, illegal or unenforceable, the balance of this Lease shall not be affected thereby.
- (c) This Lease shall be interpreted according to the laws of the State of Washington. The parties agree that the Superior Court of the State of Washington for Benton County shall have sole jurisdiction over any question, claim, loss or injury arising hereunder.
- (d) Tenant acknowledges that, except as expressly set forth in this Lease, that neither Landlord nor any other person has made any representation or warranty with respect to the Premises.
- (e) This Lease shall be binding upon the heirs, executors, administrators, successors, and assigns of both parties hereto, except as otherwise provided for herein;
- (f) Landlord does not by this Lease, in any way or for any purpose, become a partner or joint venturer of Tenant in the conduct of its business or otherwise.
- (g) The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Lease.
- (h) Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Landlord’s control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or service, or acts of God.
- (i) This Lease and the Exhibits, Riders, and/or Addenda, if any, attached hereto, constitute the entire agreement between the parties. This Lease covers in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning this Lease and all preliminary negotiations, inducements, representations, and agreements of whatsoever kind or nature are merged herein, and there are not oral agreements or implied covenants. Both parties represent they have had the opportunity to seek legal counsel prior to signing this Lease. All Exhibits, Riders, or Addenda mentioned in this Lease are incorporated herein by reference. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties. The captions and section numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of any section.

Tenant and Landlord hereby represent and warrant that they have not employed any broker with regard to this Lease and that they have no knowledge of any broker being instrumental in bringing about

this Lease transaction. Each party shall indemnify the other against any expense as a result of any claim for brokerage or other commissions made by any broker, finder, or agent, whether or not meritorious, employed by them or claiming by, through or under them. Tenant acknowledges that Landlord shall not be liable for any representations of Landlord's leasing agent or other agents of Landlord regarding this Lease transaction except for the representations and covenants of Landlord expressly set forth in this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

**LANDLORD:**

**PORT OF KENNEWICK,**  
a Washington municipal corporation

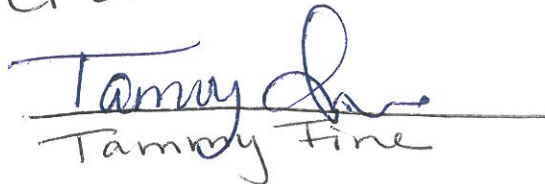
By: \_\_\_\_\_  
Name: Tim Arntzen  
Its: Executive Director

**TENANT:**

**KLS AIR EXPRESS INC dba FREIGHT  
SOLUTION PROVIDERS**

By: \_\_\_\_\_  
Name: Lelanie Steers  
Its: President 

CFO:

  
\_\_\_\_\_  
Tammy Fine

## ACKNOWLEDGMENT

State of California

County of SACRAMENTO)

On 1-6-15 before me, REBECCA A BENSON NOTARY PUBLIC  
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Rebecca A Benson (Seal)



STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Port of Kennewick, a Washington municipal corporation, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE/Commonwealth OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

ss.

I certify that I know or have satisfactory evidence that Tim Arntzen is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Executive Director of Port of Kennewick, a municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State/Commonwealth of \_\_\_\_\_, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_





EXHIBIT "B"

PERSONAL GUARANTY TO THE PORT OF KENNEWICK  
TO GUARANTEE PERFORMANCE OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, as personal guarantor, is firmly bound unto the Port of Kennewick, a municipal corporation, in the sum of all monthly rent, plus leasehold tax, and any other assessments, charges and/or fees due as per Lease Agreement dated January 12, 2015.

The conditions of this obligation are as follows:

WHEREAS, LieLani Steers & Kenneth Steers entered into a lease with the PORT OF KENNEWICK for land as described in Exhibit "A", located in Benton County, Washington, which Lease provides for the payment of monthly rent, leasehold tax, and other assessments, charges and/or fees; and

WHEREAS, the laws of the State of Washington require a bond to the Port District in accordance with the terms of RCW 53.08.085, for a minimum of one year's rent; and

WHEREAS, this guaranty incorporates the Lease hereinabove referred to;

NOW THEREFORE, the undersigned agrees that in place of such bond called for under RCW 53.08.085, he/she/they agree to be personally liable and guarantee the payment of all sums due from him/her/they to the Port of Kennewick.

DATED this 6 day of January, 2015.

GUARANTORS:

  
Name: LieLani Steers

  
Name: Kenneth Steers





## AGENDA REPORT

**TO:** Port Commission

**FROM:** Amber Hanchette, Director of Operations & Real Estate

**MEETING DATE:** January 13, 2015

**AGENDA ITEM:** Resolution 2015-03; to approve a 3-Year Lease at Clover Island West Marina Professional Building– NULYTIQ LLC

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- I. REFERENCE(S):** Resolution 2015-03 and Lease Agreement
- II. FISCAL IMPACT:** Operational income of \$95,351.04 for a thirty-six month lease period.
- III. DISCUSSION:** NulytIQ LLC is a software and services company with sister offices in Seattle, WA and Albany, OR (Concept Systems Inc). This location will consolidate local team members into one space and allow their operations to grow from 5 current full-time employees to a projection of 10 full-time employees by the end of 2015. Parameters of the negotiated lease are:
- Lease 2,759 square feet for office space in the Clover Island West Marina Professional Building;
  - Three (3) year lease effective April 1, 2015
  - Lessee is responsible for separately metered utilities including electricity; excluding water, common area landscape, restrooms, garbage and parking.
  - Monthly rent for the premises is \$2,648.64 plus leasehold tax.
  - According to Port of Kennewick Policies and Procedures, POK-ED-001, 3.1.2(b). Leases in which the monthly rental amount exceeds \$2,000 per month shall be submitted to the Commission for approval.
- IV. STAFF RECOMMENDATION:**  
Approve the three (3) year lease as negotiated, effective April 1, 2015.
- V. ACTION REQUESTED OF COMMISSION:**

***Motion:** I move approval of Resolution 2015-03 approving a three (3) year lease with NulytIQ LLC and authorizing the Executive Director to execute the contract.*

## David McKay

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**From:** David McKay  
**Sent:** Friday, January 2, 2015 12:29 PM  
**To:** 'amber@portofkennewick.org'  
**Subject:** Economic growth opportunity for NulytIQ

Good afternoon Amber, and thank you for the education on the phone earlier. NulytIQ (pronounced "new lit ik"), is a 2 year old software company that is currently headquartered in the Tri-cities. Headquarters is somewhat of a strong statement, as we are just now looking for a unified location. Our investor group has another company with significant office space in Seattle with a direct fiber connection to a telco provider, and is beginning to about relocation to Seattle to combine costs and provide greater recruitment options. We are currently at 5 people, and our budget for 2015 is forecasting an additional 9-10 during 2015. At a minimum, we will add 5, and one of our current team members is remote and will remain remote, so that puts us at around 10 local employees by the end of 2015.

We are a software and services company (our services are all around deploying our software), and our profile of employees are typically degreed software developers, software engineers, and project management staff. We develop software that is game changing in the manufacturing sector, and our growth is expected to continue to be rapid. Our current customer base includes aviation, semiconductor, food processing, discrete manufacturing and automotive.

Our three basic requirements are:

1. Very cost effective space that is creatively supportive (in it's look and feel);
2. The ability to add a Fiber connection to a local telco supplier (like Verizon) by May of 2015;
3. The ability to be flexible on lease terms should our growth continue to explode and we outgrow the facility.

I have been staunch in supporting the area as an able supplier of both economic support and high end talent, and I look forward to working with you to help build our case and keep NulytIQ here!

Cheers,

David McKay | President  
NulytIQ - Smarter Manufacturing Through Decision Science  
Phone: +1 509.203.4206 x.7001 | Fax: +1 509.203.4202 | Mobile: +1 509.378.2601  
Email: [dmckay@nulytiq.com](mailto:dmckay@nulytiq.com)

# **PORT OF KENNEWICK**

## **Resolution No. 2015-03**

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING A THREE YEAR LEASE AGREEMENT WITH NULYTIQ LLC***

**WHEREAS**, the Port of Kennewick (Port) is authorized to enter into certain leases upon such terms as the Port Commission deems proper; and

**WHEREAS**, a three (3) year lease with NulytIQ LLC effective April 1, 2015, has been negotiated by Port staff; and

**WHEREAS**, the Port Commission has called a regularly scheduled public meeting with notice of such meeting given as provided by law and such public meeting was held at such time and on said date; and

**WHEREAS**, Port staff and the Port attorney have reviewed the proposed Lease Agreement and find it is in proper form and it is in the Port's best interest; and

**WHEREAS**, after consideration of the attached lease agreement, the Port Commission has determined that the lease is proper.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby approve a three (3) year lease with NulytIQ LLC as presented and authorizes the Port's Executive Director to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 13<sup>th</sup> day of January, 2015.

***PORT of KENNEWICK  
BOARD of COMMISSIONERS***

By:

\_\_\_\_\_  
DON BARNES, *President*

By:

\_\_\_\_\_  
SKIP NOVAKOVICH, *Vice President*

By:

\_\_\_\_\_  
THOMAS MOAK, *Secretary*

# COMMERCIAL PROPERTY LEASE AGREEMENT

BETWEEN  
**PORT OF KENNEWICK,**  
LANDLORD

AND

**NulytIQ LLC,**  
TENANT

CLOVER ISLAND  
WEST MARINA PROFESSIONAL BUILDNG

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**PORT OF KENNEWICK LEASE AGREEMENT  
(Commercial Property)**

Landlord hereby leases to Tenant and Tenant hereby leases and accepts from Landlord the premises hereinafter described on the terms and conditions set forth in this Lease Agreement, hereinafter called “this **Lease**”.

## BASIC LEASE PROVISIONS

The following Basic Lease Provisions are hereby incorporated herewith as part of this Lease:

- A. Lease Date: April 1, 2015.
- B. Landlord: Port of Kennewick,  
a Washington municipal corporation
- C. Tenant: NulytIQ LLC
- D. Premises: The Premises shall mean the real property located at 104 Clover Island Drive Suite 202, Kennewick, WA 99336, as described on Exhibit "A" attached hereto and incorporated herein by reference, and any improvements located thereon.
- E. Permitted Use: Check all that apply:
- F. \_\_\_\_\_ Light manufacturing;  
\_\_\_\_\_ Wholesale receiving/shipping;  
\_\_\_\_\_ X Administrative offices  
\_\_\_\_\_ Other: (Describe)  
\_\_\_\_\_  
\_\_\_\_\_
- G. Term: Commencing on the Lease Commencement Date and terminating on the Expiration Date.
- H. Lease Commencement Date: April 1, 2015
- I. Expiration Date: March 31, 2018.
- J. Annual Price Per Square Foot: \$11.50 PSF (April 1, 2015 – March 31, 2016)  
\$12.00 PSF (April 1, 2016 – March 31, 2017)  
\$12.50 PSF (April 1, 2017 – March 31, 2018)



K.

L. Total Square Feet Leased: 2,759 (office = 2,660 sq ft, 50% kitchen = 99 sq ft)

|  |            |       |            |
|--|------------|-------|------------|
| M. Base Monthly Rent Calculation: YEAR 1 | \$ .96 PSF | 2,759 | \$2,648.64 |
| YEAR 2                                   | \$1.00 PSF | 2,759 | \$2,759.00 |
| YEAR 3                                   | \$1.04 PSF | 2,759 | \$2,869.36 |

N. Base Monthly Rent (not including LET): \$ 2,648.64 (April 1, 2015 – March 31, 2016)  
\$ 2,759.00 (April 1, 2016 – March 31, 2017)  
\$ 2,869.36 (April 1, 2017 – March 31, 2018)

O. Leasehold Tax (LET): Current Washington State Leasehold Tax shall be added to Base Rent. Current effective rate is 12.84%.

P. **Total Monthly Rent (includes LET):** **\$ 2,988.73 (April 1, 2015 – March 31, 2016)**  
**\$ 3,113.26 (April 1, 2016 – March 31, 2017)**  
**\$ 3,237.79 (April 1, 2017 – March 31, 2018)**

Q. Monthly Utilities: See Article 7 of Lease.

R. Rent Due Date: The Lease Commencement Date and the first day of each month thereafter.

S. Financial Security: Check all that apply:

☒ \$ 2,648.64 deposit;

☐ Corporate surety bond;

☒ Personal Guaranty as set forth in Exhibit B;

☐ Other financial security: (Describe)\_\_\_\_\_

\_\_\_\_\_.

T. Landlord's Address for Notices and Rent Payments:

Port of Kennewick  
350 Clover Island Drive, Suite 200  
Kennewick, WA 99336

U. Tenant's Address for Notices:

|  |
|--|
|  |
|  |
|  |

S. Exhibits:                      Exhibit "A" Legal Description of Premises  
   Exhibit "B" Personal Guaranty Form

## **ARTICLE 1**

### **PREMISES**

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the Premises, which Premises are more particularly described in the Basic Lease provisions above.

## **ARTICLE 2**

### **USE OF PREMISES**

Tenant shall occupy and use the Premises for such uses as described in the Basic Lease provisions above. Tenant may not use the Premises for any other business purpose except as may be authorized in writing by Landlord at Landlord's sole discretion. No smoking shall be allowed within any portion of the Premises and within twenty-five (25) feet of all entryways.

Landlord shall give Tenant and its authorized representatives, the nonexclusive and reasonable right to use the Common Areas in Tenant's ordinary course of business, provided however, that such use is consistent with the purposes of the Common Areas. The term "Common Areas" means areas and facilities outside the Premises that are provided for the general use and convenience of Tenant and of other Tenants and their respective authorized representatives, guests, and invitees. Common Areas include, without limitation, landscaped areas, public lobbies and hallways, sidewalks, loading areas, parking areas, service corridors and restrooms. Tenant shall not store any items or objects in Common Areas except as authorized in writing by Landlord.

## **ARTICLE 3**

### **TERM**

The Term hereof shall commence on the Lease Commencement Date defined in the Basic Lease Provisions and shall terminate on the Expiration Date defined in the Basic Lease Provisions, unless earlier terminated.

## **ARTICLE 4**

### **RENT**

On or before the first day of each month of this Lease, Tenant shall pay to Landlord the Total Monthly Rent and all other assessment, charges, and fees as provided in this Article 4 and as otherwise set forth in this Lease, at the Landlord's address set forth in the Basic Lease Provisions.

(a) Late Fee.

If any sums payable by Tenant to Landlord under this Lease are not received by the fifteenth (15<sup>th</sup>) day of the month in which they are due, Tenant shall pay Landlord an additional amount for the cost of collecting and handling such late payment as a late fee in an amount equal to the greater of (i) Fifty Dollars (\$50.00), or (ii) five percent (5%) of the overdue amount.

(b) Interest.

In addition to any applicable late fees, 12% APR interest (1% per month), shall be applied to the total unpaid balances calculated from the original due date to the date of payment.

(c) Non-Sufficient Funds (NSF).

If a Tenant check is returned by the bank for any reason, Tenant shall pay a NSF fee of Fifty Dollars (\$50) for administrative costs related to collecting and handling such returned check. The Tenant shall also pay any associated bank fees charged to the Port related to the returned check. Landlord may require, at Landlord's sole discretion that Tenant's future payments be made by cash, cashier's check or money order.

Landlord and Tenant hereby agree that these charges represent a fair and reasonable estimate of what the Landlord might incur by reason of Tenant's late or NSF payment. These fees are due and payable with the current rent payment. Landlord's acceptance of any late charge, interest or NSF fee shall not be deemed an extension of the date rent is due or prevent Landlord from exercising any other rights or remedies under this Lease.

The Landlord reserves the right to revise its policy regarding late payment, interest and NSF check charges without notice to Tenant.

## **ARTICLE 5**

### **FINANCIAL SECURITY**

In compliance with the requirements of the state law, Tenant agrees that it will secure the performance of the rental portion of this Lease by providing a Personal Guaranty in the form as set forth in Exhibit "B" and one or more of the following: 1) a deposit in the amount set forth in the Basic Lease Provisions, or 2) procuring and maintaining, during the term of this Lease, a corporate surety bond ("Bond"), or 3) by providing other financial security satisfactory to Landlord.

The Bond shall be in a form and issued by a surety company acceptable to Landlord and shall comply with the requirements of Washington law. Tenant shall obtain such Bond and forward evidence thereof to Landlord within fourteen (14) days of execution of this Lease, but in no event later than the Lease Commencement Date. Failure to comply with this requirement shall be grounds for immediate termination of this Lease without notice by Landlord. Such Bond shall be kept in effect during the term of this Lease; failure to comply with this requirement shall render Tenant in default. The Bond shall be increased to reflect any increases in Rent.

Upon any default by Tenant of its obligations under this Lease, Landlord may collect on the Bond to offset the Tenant's liability to Landlord. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of Landlord's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

## **ARTICLE 6**

### **TAXES & ASSESSMENTS**

#### **6.1 Property Taxes.**

Landlord will pay property tax on Premise's real property and any building or structure that is permanently attached to the real property.

6.2 Personal Property Taxes

Tenant shall pay when due all license fees, public charges, taxes and assessments on the Tenant-owned trade fixtures, furniture, other fixtures, equipment, inventory and all other personal property of or being used by Tenant in the Premises, whether or not owned by Tenant.

6.3 Additional Taxes/Assessments; Leasehold Excise Tax (LET)

Tenant shall also pay: (a) all special taxes and assessments (including irrigation assessments) or license fees now or hereafter levied, assessed or imposed by law or ordinance, by reason of Tenant's use of the Premises; (b) all business and occupation tax and any tax, assessment, levy or charge assessed on the Rent paid under this Lease; (c) the statutory leasehold excise tax imposed in connection with the Rent due hereunder or otherwise due as a consequence of this Lease; and (d) any excise, transaction, sales, privilege, or other tax (other than net income and/or estate taxes) now or in the future imposed by the city, county, state or any other government or governmental agency upon Landlord and attributable to or measured by the Rent or other charges or prorations payable by Tenant pursuant to this Lease.

**ARTICLE 7**  
**UTILITIES**

Tenant shall be solely responsible to Landlord for the payment of all assessments, charges and/or fees pertaining to the Premises, including but not limited to, water assessments, charges for public utilities, license and permit fees which may, during the Lease Term, be assessed, levied, charged, confirmed or imposed i) on the Premises or any part thereof, ii) on improvements now or hereafter comprising a part thereof, and iii) on the use or occupancy of the Premises. Tenant shall pay all such assessments, charges and/or fees to Landlord when due.

Landlord shall pay all assessments, charges and/or fees for sewer, garbage, common area utilities and maintenance. Landlord shall pay water assessments if water is not separately metered to the Premises. Tenant shall be solely responsible for payment of all separately metered electrical and water assessments charged to the Premises. Tenant shall pay all such charges directly to utility provider when due. Tenant shall be solely responsible for all separately metered electrical and water assessments which may, during the Lease Term, be assessed, levied, charged, confirmed or imposed i) on the Premises or any part thereof, ii) on improvements now or hereafter comprising a part thereof, and iii) on the use or occupancy of the Premises. Tenant shall pay all such assessments, charges and/or fees when due.

Electricity Meters Assigned to Tenant:   232413  

Water Meters Assigned to Tenant:   NONE  

Interruptions: There shall be no abatement of rent and Landlord shall not be liable for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Landlord's reasonable control or in cooperation with governmental request or directions.

**ARTICLE 8**  
**INSURANCE**

8.1 Insurance

Tenant, at its own expense, shall provide and keep in force all insurance deemed appropriate for the purposes that the Premises are to be used and with companies reasonably acceptable to Landlord, including but not limited to the following:

(a) [Commercial General Liability Insurance](#)

Commercial General Liability (CGL) insurance for the benefit of Landlord and Tenant jointly against liability for bodily injury and property damage for a combined single limit of not less than One Million Dollars (\$1,000,000) for any one occurrence for this location, including coverage for contractual liability and personal injury, with a \$2,000,000 aggregate limit;. Landlord reserves the right to require higher liability limits and/or to change insurance requirements at any time during the term of the lease with thirty (30) days' notice to Tenant.

(b) [Statutory Workers' Compensation](#)

Statutory Workers' Compensation, including at least \$250,000 Employer's Contingent Liability (Stop Gap) coverage in Tenant's commercial general liability insurance;

(c) [Automobile Liability Insurance](#)

Automobile Liability Insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000, including all owned, non-owned and hired vehicles and covering claims for damages because of bodily injury or death of any person or property damage arising out of ownership, maintenance or use of any motor vehicle; and

(d) [Property Insurance](#)

Property insurance covering all leasehold improvements to the Premises, furniture, fixtures, equipment, inventory and other personal property located on the Premises (and, at Landlord's election, on all buildings and other improvements now or hereafter existing at the Premises) in an amount of not less than one hundred percent (100%) insurable replacement value minimum co-insurance of 80%, "Special Form—Causes of Loss", with Flood Insurance if Landlord reasonably deems such insurance to be necessary or desirable, and replacement cost coverage to protect against loss of owned or rented equipment and tools brought onto or used at the Property by Tenant.

8.2 [Requirements](#)

The foregoing insurance requirements shall be placed with an insurance company or companies admitted to do business in the State of Washington and shall have an A.M. Best's rating of A- or better. Tenant shall furnish Landlord with a copy of the certificate of such policies before the Commencement Date of this Lease and, upon request by Landlord, shall provide proof satisfactory to Landlord that all such policies are in full force and effect. Tenant's liability insurance policies shall list Landlord as an additional insured and Tenant's property insurance policies shall reflect Landlord as a loss-payee as its interests may appear, and all of Tenant's insurance policies shall be primary and non-contributing with any insurance carried by Landlord. Such policies shall not be cancelable or materially altered without forty-five (45) days' prior written notice to Landlord. In addition, the policies shall provide for ten (10) days' written notice to Landlord in the event of cancellation for non-payment of premium. Tenant's failure to deliver the policies or certificates to Landlord as required above shall constitute an event of default pursuant to **Article 24** hereof.

### 8.3 Mutual Waiver of Subrogation

Each party hereby waives, and each party shall cause their respective property insurance policy or policies to include a waiver of such carrier's entire right of recovery (i.e., subrogation) against the other party, and the officers, directors, agents, representatives, employees, successors and assigns of the other party, for all claims which are covered or would be covered by the property insurance required to be carried hereunder or which is actually carried by the waiving party.

### 8.4 Destruction or Condemnation.

8.4.1 Damage and Repair. If the Premises are partially damaged but not rendered untenable, by fire or other insured casualty, then Landlord shall diligently restore the Premises and this Lease shall not terminate. The Premises shall not be deemed untenable if less than twenty-five percent (25%) of the Premises are damaged. Landlord shall have no obligation to restore the Premises if insurance proceeds are not available to pay the entire cost of such restoration. If insurance proceeds are available to Landlord but are not sufficient to pay the entire cost of restoring the Premises, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within sixty (60) days of the date of such casualty.

If the Premises are entirely destroyed, or partially damaged and rendered untenable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises to their previous condition. If, within 60 days after receipt by Landlord from Tenant of written notice that Tenant deems the Premises untenable, Landlord fails to notify Tenant of its election to restore the Premises, or if Landlord is unable to restore the Premises within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease.

If Landlord restores the Premises under this Article 8.4.1, Landlord shall proceed with reasonable diligence to complete the work, and the base monthly rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole Premises, provided that there shall be a rent abatement only if the damage or destruction of the Premises did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's officers, contractors, licensees, subtenants, agents, servants, employees, guests, invitees or visitors. Provided, Landlord complies with its obligations under this Article, no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises. Landlord will not carry insurance of any kind for the protection of Tenant or any improvements paid for by Tenant or on Tenant's furniture or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, and Landlord shall not be obligated to repair any damage thereto or replace the same unless the damage is caused by Landlord's negligence or willful misconduct.

8.4.2 If the Premises are made untenable by eminent domain, or conveyed under a threat of condemnation, this Lease shall automatically terminate as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises and all Rents and other payments shall be paid to that date. In case of taking of a part of the Premises that does not render the Premises untenable, then this Lease shall continue in full force and effect and the base monthly rental shall be equitably reduced based on the proportion by which the floor area of any structures is reduced, such reduction in Rent to be effective as of the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate



claim against the condemning authority for moving expenses or damages resulting from interruption in its business, provided that in no event shall Tenant's claim reduce Landlord's award.

## **ARTICLE 9**

### **ACCEPTANCE AND CARE OF PREMISES**

Tenant has inspected the Premises and accepts the Premises "AS IS" in its present condition and acknowledges that Landlord is not responsible to provide, and has made no representations or warranties that it will provide, any improvements to the Premises whatsoever, except as set forth in Article 10, Alterations and Improvements, below. Tenant shall, at its sole cost, keep the Premises in as good working order, cleanliness, repair, and condition, as that which existed at the Lease Commencement Date. In the event that Tenant fails to comply with the obligations set forth in this Article 9, Landlord may, but shall not be obligated to, perform any such obligation on behalf of, and for the account of Tenant, and Tenant shall reimburse Landlord for all costs and expenses paid or incurred on behalf of Tenant in connection with performing the obligations set forth herein. Tenant expressly waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

## **ARTICLE 10**

### **ALTERATIONS AND IMPROVEMENTS**

Landlord agrees to make one-time modifications to Tenant leased space that are considered reusable and to the benefit of future tenants in an amount not to exceed [Ten Thousand dollars & no/100] (\$ 10,000.00).

Tenant shall not make any alterations, additions, renovations or improvements to the Premises without first obtaining the written consent of Landlord. All alterations, additions, renovations and improvements made shall be at the sole cost and expense of Tenant and shall become a part of the real property and belong to Landlord and shall remain in and be surrendered with the Premises as a part thereof at the termination of this Lease. Tenant further agrees to indemnify, defend, and hold Landlord harmless from, and against, any and all damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of said work.

## **ARTICLE 11**

### **ACCIDENTS AND INDEMNIFICATION**

Tenant shall indemnify Landlord and hold it harmless from and against, and shall defend with counsel acceptable to Landlord, any and all suits, actions, damages, claims, liability, and expense in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or from the Premises, or the occupancy or use by Tenant of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees, or concessionaires; provided that Tenant shall not be liable to Landlord to the extent such damages, liability, claims or expenses are caused by or result from the negligence or intentional misconduct of Landlord.

Tenant hereby expressly waives claims against Landlord, and Landlord shall not be responsible or liable at any time, for any loss or damage to Tenant's personal property or to Tenant's business, including any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting, or adjoining property, unless and only to the extent due to Landlord's gross negligence or intentional misconduct, and in no event shall Landlord be liable for Tenant's consequential damages. Tenant shall use and enjoy the Premises and improvements at its own risk, and hereby releases Landlord, to the full extent permitted by law and except as expressly

provided above, from all claims of every kind resulting in loss of life, personal or bodily injury, or property damage.

Solely for the purpose of effectuating the indemnification obligations under this Lease, and not for the benefit of any third parties (including but not limited to employees of Tenant), Tenant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Furthermore, the indemnification obligations under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts. Tenant shall cause Contractors and their subcontractors and material suppliers to execute similar waivers of industrial insurance immunity. The parties, by their execution hereof, acknowledge that the foregoing provisions of this **Article 11** have been specifically and mutually negotiated between the parties.

## **ARTICLE 12** **COMPLIANCE WITH LAWS**

Tenant shall comply fully at its sole expense with **all federal and** state laws and local or city ordinances (including all applicable zoning ordinances) now or hereafter in force with respect to the Premises and Tenant's activities therein. Tenant warrants and represents to Landlord that Tenant shall use the Premises only for lawful purposes.

## **ARTICLE 13** **MAINTENANCE**

Tenant shall keep the premises in a neat, clean, and sanitary condition at all times. Tenant shall keep all improvements to the Premises in good condition.

13.1 Janitorial: Tenant will provide janitorial service inside the Premises and window washing on inside of windows. Landlord will provide janitorial service for common area restrooms, entry, hallways and exterior window washing. Tenant shall keep shared kitchen in neat and tidy condition with all personal items washed and stored, sinks cleaned after use, floors and tables free of garbage and debris.

13.2 Landscaping and Common Area Sweeping: Landlord, at its cost, will provide landscaping care and common area repairs, maintenance, and sweeping outside the building.

13.3 Other Maintenance and Repairs: Landlord will maintain exterior of building, roof, foundation, and electrical, heating and plumbing, in a good state of repair. Tenant shall pay the reasonable cost of repairs of all damage caused by Tenant, its agents, servants, employees, or invitees within Ten (10) days of receipt of an invoice stating the repairs performed and the cost thereof. All light bulbs and fixtures are guaranteed by Landlord for sixty (60) days after Lease Commencement Date. After this sixty-day period, Tenant shall replace light bulbs in Tenant's leased office space; Landlord will replace warehouse light bulbs in multi-tenant locations.

13.4 HVAC: HVAC and all mechanical systems shall be in satisfactory operating condition and will be maintained by Landlord during the term of the Lease.

**ARTICLE 14**  
**LANDLORD'S ACCESS**

Landlord shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, inspecting, altering, exhibiting, or improving the Premises, but nothing contained in this Lease shall be construed so as to impose any obligation on Landlord to make any repairs, alterations or improvements not otherwise expressly set forth elsewhere herein.

The Landlord reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses will not unduly interfere with the use of the Premises by Tenant.

**ARTICLE 15**  
**SIGNS AND ADVERTISING**

Tenant shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster or any advertising matter whatsoever anywhere in or about the Premises, without first obtaining Landlord's written consent thereto.

**ARTICLE 16**  
**WASTE AND UNLAWFUL USE**

Tenant shall not commit or suffer any waste upon the Premises, or make or suffer any nuisance, undue or unseemly noise, or otherwise, and will not do or permit to be done in or about the Premises anything which is illegal, unlawful, or dangerous, or which will increase Landlord's insurance rates upon the Premises.

**ARTICLE 17**  
**SUCCESSORS**

All the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors, marital communities and assigns. Any assignment or subletting of the Premises or any interest in this Lease shall not relieve Tenant of primary responsibility for the performance of the terms and payment of the sums to be paid by Tenant hereunder.

**ARTICLE 18**  
**HAZARDOUS MATERIALS**

Tenant shall not dispose of or otherwise allow the release of any hazardous waste or materials in, on, or under the Premises, or any adjacent property. Tenant represents and warrants to Landlord that Tenant's intended use of the Premises does not involve the use, production, or disposal of any hazardous waste or materials. As used herein, "**hazardous waste or materials**" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state, or local statute, regulation, rule or ordinance now or hereafter in effect. In the event Tenant brings or uses hazardous waste or materials on the Premises in violation of this **Article 18**, Tenant shall, at its sole cost, properly dispose of all such hazardous waste or materials. Tenant shall be responsible for complying with all federal, state and local laws and regulations in regard to the handling of and disposing of hazardous waste or materials, and agrees to indemnify, defend, and hold Landlord harmless from and against all losses, costs, and expenses (including but not limited to site cleanup, investigation, and remediation costs and attorneys fees and costs related thereto) arising from a breach by Tenant of its obligations under this **Article 18**.

## **ARTICLE 19**

### **ASSIGNMENT AND SUBLETTING**

Tenant shall not transfer, dispose, assign, mortgage, or hypothecate this Lease, in whole or in part, or permit the use of the Premises by any person or persons other than Tenant, or sublet the Premises, or any part thereof (any of which, a “**Transfer**”) without the prior written consent of Landlord in each instance, which may be given, withheld, or conditioned in Landlord’s sole discretion. In no event shall Tenant be released or relieved of any liability hereunder due to any Transfer whether or not consented to by Landlord.

Landlord shall have the right to transfer, dispose, assign, mortgage, or hypothecate this Lease, in whole or in part without the prior written consent of the Tenant. See also Landlord rights to terminate this Lease as set forth in **Article 23** below.

## **ARTICLE 20**

### **SURRENDER OF POSSESSION**

#### 20.1 [Surrender](#)

At the expiration of the tenancy created hereunder, whether by lapse of time or otherwise, Tenant shall surrender the Premises in substantially the as good condition or better as they were at the Lease Commencement Date, and shall remove all of its personal property, furniture, non-permanent fixtures installed by or for Tenant, Tenant’s equipment, and all cabling and wiring installed by or for Tenant. Tenant’s obligations shall include the repair of any damage occasioned by the installation, maintenance or removal of Tenant’s personal property, furniture, non-permanent fixtures installed by or for Tenant, and Tenant’s equipment.

#### 20.2 [Removal of Property](#)

In the event of any entry in, or taking possession of, the Premises or upon the termination of this Lease, Landlord shall have the right, but not the obligation, to remove from the Premises all personal property remaining on the Premises, and may store the same in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of the Tenant thereof, with the right to sell such stored property, as per applicable statutory requirements. The proceeds of such sale shall be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof, with the balance, if any, to be paid to Tenant.

#### 20.3 [Holding Over](#)

If Tenant fails to surrender the Premises at the expiration or earlier termination of this Lease, occupancy of the Premises after the termination or expiration shall be that of a tenancy at sufferance. Tenant’s occupancy of the Premises during the holdover shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount due on the first of each month of the holdover period, without reduction for partial months during the holdover, equal to 150% of the greater of: (1) the monthly Total Monthly Rent (including Leasehold Tax), and any other charge due, for the monthly period immediately preceding the holdover; or (2) the fair market value for gross monthly rental for the Premises as reasonably determined by Landlord. No holdover by Tenant or payment by Tenant after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Landlord

from immediate recovery of possession of the Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover, Tenant shall be liable to Landlord for all damages, including, without limitation, consequential damages, that Landlord suffers from Tenant's holdover. Nothing herein shall be construed as Landlord's consent to such holding over. During the holdover Tenant shall remain responsible for payment of all utilities, taxes, and other assessments, charges and/or fees due under this Lease.

## **ARTICLE 21**

### **NOTICES**

All notices, requests and demands to be made hereunder shall be in writing at the address set forth in the Basic Lease Provisions, as applicable, by any of the following means: (a) personal service (including service by recognized overnight delivery/courier service, such as UPS or FEDEX); or (b) registered or certified first class mail, return receipt requested. Such addresses may be changed by written notice to the other party given in the same manner provided above. Any notice, request, or demand sent pursuant to clause (a) of this **Article 21** shall be deemed received upon such personal delivery or service (or the date of refusal, if personal service or delivery is refused), and if sent pursuant to clause (b), shall be deemed received three (3) days following deposit in the mails.

## **ARTICLE 22**

### **LIENS AND ENCUMBRANCES**

Tenant shall keep the Premises free and clear of any liens and encumbrances arising out of the use and occupancy of the Premises by Tenant. Should Tenant fail to discharge any lien of the nature described in this **Article 22** Landlord may, at Landlord's election, pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title and the cost thereof shall be immediately due from Tenant as rent under this Lease.

## **ARTICLE 23**

### **LANDLORD'S TERMINATION RIGHT**

Notwithstanding anything to the contrary elsewhere in the Lease, in the event that Landlord elects to use the Land and/or Premises for industrial development or other public or port-related purposes, Landlord shall have the right to terminate this Lease by providing sixty (60) days' written notice. If Landlord elects to terminate the Lease early as provided herein, the early termination date chosen by Landlord shall operate as if that date is the Expiration Date set forth in the Basic Lease Provisions. The parties recognize that the foregoing early termination right is important to Landlord and that any delay caused by the failure of Tenant to vacate the Premises pursuant to this **Article 23** when required can cause irreparable harm to the Landlord and future tenants. Therefore, Landlord and Tenant agree that time is of the essence of this **Article 23** and that if any dispute arises between Landlord and Tenant with respect to the provisions of this **Article 23**, any other provisions of this Lease notwithstanding, Tenant will vacate the Premises on or before the early termination date selected by Landlord, and Tenant shall be deemed to have waived any rights in law or equity to possession of the Premises.

In the event of the insolvency or bankruptcy of the Tenant, Landlord may, at Landlord's option, immediately take full possession of the premises to the exclusion of all persons. Exercising such option shall not alleviate Tenant's obligations under this Lease and Landlord shall have the right to seek all remedies set forth in this Lease.

## **ARTICLE 24**

### **DEFAULT AND REMEDIES**

#### 24.1 Default

The occurrence of any one or more of the following events shall constitute a material breach and default of this Lease (each, an “**Event of Default**”):

- (a) Any failure by Tenant to pay Rent and Leasehold Tax when due, or any other assessment, charge and/or fee when due;
- (b) Any failure by Tenant to obtain and keep in full force and affect the insurance coverage(s) required hereunder to be carried by Tenant;
- (c) Any failure to immediately remedy an emergency condition that poses a significant risk of injury or damage;
- (d) Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease; or
- (e) Tenant bankruptcy

#### 24.2 Remedies.

##### (a) Re-entry and Termination

Upon and during the continuance of an Event of Default, Landlord, in addition to any other remedies available to Landlord at law or in equity, at Landlord’s option, may without further notice or demand of any kind to Tenant or any other person:

- 1. Declare the Lease Term ended and reenter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim to the Premises; or
- 2. Without declaring this Lease ended, reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid Rent, Leasehold Tax, and other charges, which have become payable, or which may thereafter become payable; or
- 3. Even though Landlord may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

##### (b) Express Termination Required

If Landlord re-enters the Premises under the provisions of this Article, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Rent, Leasehold Tax, or other assessments, charges and/or fees thereafter accruing, or to have terminated Tenant’s liability for damages under any of the provisions of this Lease, by any such re-entry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that Landlord had elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of Washington State and surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease.

(c) Damages

If Landlord elects to terminate this Lease pursuant to the provisions of this Article, Landlord may recover from Tenant as damages, the following:

1. The worth at the time of award of any unpaid Rent, Leasehold Tax, and other assessments, charges and/or fees which had been earned at the time of such termination; plus
2. The worth at the time of award of the amount by which the unpaid Rent, Leasehold Tax, and other charges which would have been earned after termination until the time of award exceeds the amount of such loss Tenant proves could have been reasonably avoided; plus
3. The worth at the time of award of the amount by which the unpaid Rent, Leasehold Tax, and other assessments, charges and/or fees due for the balance of the Lease Term after the time of award exceeds the amount of such loss that Tenant proves could be reasonably avoided; plus
4. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorneys' fees, (ii) maintaining or preserving the Premises after the occurrence of an Event of Default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (iv) leasing commissions, and (v) any other costs necessary or appropriate to relet the Premises; plus
5. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted by the laws of Washington State.

(d) Definitions

As used in **Paragraphs 24.2(c)1** and **24.2(c)2** above, the "worth at the time of award" is computed by allowing interest at the rate of twelve percent (12%) per annum compounded monthly. As used in **Paragraph 24.2(c)3** above, the "**worth at the time of award**" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Property at the time of award plus one (1) percentage point.

(e) No Waiver

The waiver by Landlord of any breach of any term, covenant or condition herein contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition of this Lease. The subsequent acceptance of Rent, Leasehold Tax, and other charges due hereunder shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular amount so accepted regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such amount. No



covenant, term, or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver shall be in writing and signed by Landlord.

24.3 [Interest](#)

Any sum accruing to Landlord under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the interest rate provided herein from the date the same becomes due and payable by the terms and provisions of this Lease until paid, unless otherwise specifically provided in this Lease. The interest rate which shall apply shall be the lesser of (i) twelve percent (12%) per annum (1% per month), or (ii) the highest rate allowed by applicable law.

**ARTICLE 25**  
**ATTORNEYS' FEES AND COSTS**

If either party hereto shall file any action or bring any proceeding against the other party arising out of this Lease or for the declaration of any rights hereunder, the prevailing party therein shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party as determined by the court. If either party ("**secondary party**") without its fault is made a party to litigation instituted by or against the other party (the "**primary party**"), the primary party shall pay to the secondary party all costs and expenses, including reasonable attorneys' fees, incurred by the secondary party in connection therewith.

**ARTICLE 26**  
**MISCELLANEOUS**

26.1 [Miscellaneous Provisions](#)

The following miscellaneous provisions shall apply to this Lease:

- (a) Time is of the essence hereof.
- (b) If any portion of this Lease shall be deemed void, illegal or unenforceable, the balance of this Lease shall not be affected thereby.
- (c) This Lease shall be interpreted according to the laws of the State of Washington. The parties agree that the Superior Court of the State of Washington for Benton County shall have sole jurisdiction over any question, claim, loss or injury arising hereunder.
- (d) Tenant acknowledges that, except as expressly set forth in this Lease, that neither Landlord nor any other person has made any representation or warranty with respect to the Premises.
- (e) This Lease shall be binding upon the heirs, executors, administrators, successors, and assigns of both parties hereto, except as otherwise provided for herein;
- (f) Landlord does not by this Lease, in any way or for any purpose, become a partner or joint venturer of Tenant in the conduct of its business or otherwise.
- (g) The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Lease.

(h) Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Landlord's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or service, or acts of God.

(i) This Lease and the Exhibits, Riders, and/or Addenda, if any, attached hereto, constitute the entire agreement between the parties. This Lease covers in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning this Lease and all preliminary negotiations, inducements, representations, and agreements of whatsoever kind or nature are merged herein, and there are not oral agreements or implied covenants. Both parties represent they have had the opportunity to seek legal counsel prior to signing this Lease. All Exhibits, Riders, or Addenda mentioned in this Lease are incorporated herein by reference. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties. The captions and section numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of any section.

Tenant and Landlord hereby represent and warrant that they have not employed any broker with regard to this Lease and that they have no knowledge of any broker being instrumental in bringing about this Lease transaction. Each party shall indemnify the other against any expense as a result of any claim for brokerage or other commissions made by any broker, finder, or agent, whether or not meritorious, employed by them or claiming by, through or under them. Tenant acknowledges that Landlord shall not be liable for any representations of Landlord's leasing agent or other agents of Landlord regarding this Lease transaction except for the representations and covenants of Landlord expressly set forth in this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

**LANDLORD:**

**PORT OF KENNEWICK,**  
a Washington municipal corporation

By: \_\_\_\_\_  
Name: Tim Arntzen  
Its: Executive Director

**TENANT:**

**NULYTIQ LLC**

By: \_\_\_\_\_  
Name: David McKay  
Its: President

STATE OF WASHINGTON

ss.

COUNTY OF \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Port of Kennewick, a Washington municipal corporation, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE/Commonwealth OF

ss.

COUNTY OF \_\_\_\_\_

I certify that I know or have satisfactory evidence that Tim Arntzen is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Executive Director of Port of Kennewick, a municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State/Commonwealth of \_\_\_\_\_, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

## EXHIBIT "A"

### LEGAL DESCRIPTION

PTN: 831903000040000

BEGINNING AT THE SOUTHEAST CORNER OF LOT 14, PLAT OF CLOVER ISLAND THENCE SOUTH 84°18'00" EAST A DISTANCE OF 18.6 FEET MORE OR LESS, THENCE SOUTH 05°42'00" WEST A DISTANCE OF 23.4 FEET MORE OR LESS TO

COMMONLY KNOWN AS 104 CLOVER ISLAND DRIVE, KENNEWICK



## EXHIBIT "B"

PERSONAL GUARANTY TO THE PORT OF KENNEWICK

TO GUARANTEE PERFORMANCE OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, as personal guarantor, is firmly bound unto the Port of Kennewick, a municipal corporation, in the sum of all monthly rent, plus leasehold tax, and any other assessments, charges and/or fees due as per Lease Agreement dated \_\_\_\_\_.

The conditions of this obligation are as follows:

WHEREAS, \_\_\_\_\_ entered into a lease with the PORT OF KENNEWICK for land as described in Exhibit "A", located in Benton County, Washington, which Lease provides for the payment of monthly rent, leasehold tax, and other assessments, charges and/or fees; and

WHEREAS, the laws of the State of Washington require a bond to the Port District in accordance with the terms of RCW 53.08.085, for a minimum of one year's rent; and

WHEREAS, this guaranty incorporates the Lease hereinabove referred to;

NOW THEREFORE, the undersigned agrees that in place of such bond called for under RCW 53.08.085, he/she/they agree to be personally liable and guarantee the payment of all sums due from him/her/them to the Port of Kennewick.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

GUARANTORS:

\_\_\_\_\_  
Name: Michael Gurney

\_\_\_\_\_  
Name: Ed Diehl

## KNOWING THE WATERS by Frank Chmelik



As another year of *Knowing the Waters* comes to an end and as I look forward here is a brief checklist for your first meeting of next year (and maybe the second or third).

**Set the time and place of the commission meetings for next year.** RCW 42.30.070 requires that the commission set the time and place of the regularly scheduled meetings for the year. Some commissions have set the time and place until further change and some commissions set the schedule annually. In any event make sure the port's regular meeting schedule and meeting place is set.

**Appoint the officers of the commission.** RCW 53.12.245 requires that the commission elect a president and a secretary. Along with these appointments, consider appointing commissioners to represent the port in the various state and local organizations such as the WPPA, the COG and the local economic development entity.

**Consider affirming the appointment of the port auditor and the port attorney.** Other than the manager or executive director, the port auditor and the port attorney are the commission's only direct appointments. RCW 53.36.010 requires the appointment of a port auditor. Some commissions make these appointments until further change and some commissions make these appointments annually. In any event, it is a good practice to confirm that these appointments are in place.

**Consider any revisions to the commission's resolution governing the transaction of its business.** RCW 53.12.245 requires such a resolution. The compliance with this requirement varies widely amongst port commissions. Some port commissions adopt a simple resolution to "move, second, discuss and adopt" motions or resolutions. Others adopt some form of Robert's Rules of Order\*. And, still others adopt some form of "policy-governance" resolutions available from a variety of sources. My non-legal advice from years of attending various open public meetings is, keep it simple. The idea is simple – introduce the motion or resolution, hear from the staff, let (and encourage) all commissioners to weigh in and then vote. If the issue needs further thought or discussion put it over until the next meeting. It seems the less that elected bodies get bogged down in procedural issues the more time they have to discuss the merits of the issue.

**Consider any revisions to the port's "Delegation of Powers Resolution."** RCW 53.12.270 provides the port commissions may "delegate to the managing official of a port district such administrative powers and duties of the commission as it may deem proper for the efficient and proper management of port district operations." It is worth a discussion with a port's manager or executive director to see if there are changes to be made to improve the efficiency and proper management of port operations and free up commission meeting time for important issues. One of the truly limited resources of a port district is the commission meeting time. A proper delegation of powers resolution can remove items where there is no real need for commission action thereby saving time for issues that need commission attention and direction.

**Consider a resolution authorizing the executive director or manager to sell port district property of ten thousand or less in value.** RCW 53.08.090 allows such a resolution but it is not mandatory. However, any such resolution is only good for one calendar year so a new resolution must be passed every year.

**Consider setting commission goals for the year.** This is pure non-legal advice but I have seen elected bodies have very productive years when they set goals for the coming year. Some local governments approve an outline of an entire year's agenda. This requires identification of significant issues and identifying the meetings throughout the year where each of these issues will be presented. It allows (and maybe helps) the commission to identify the important issues that must or should be addressed in the coming year. It allows (and maybe helps) the port commission and the senior staff to move from reactive to proactive and from immediate to strategic. It allows staff to plan and organize their year's work so they can meet the commission's expectations. Sure, things do and always will come up and nothing is set in stone, but it might be helpful to know what the commission sees as big issues and when during the year those big issues will be considered. Another advantage of this approach is it allows the commission to evaluate its performance at the end of the year and really see how it did on identifying and addressing the big issues.

Happy New Year! As always, please contact your port counsel with any legal questions regarding this topic. **And, if you have a particular topic for a *Knowing the Waters* please email me at [fchmelik@chmelik.com](mailto:fchmelik@chmelik.com).**

*\*US Army Colonel Henry Martyn Robert (May 2, 1837 – May 11, 1923) was the author of Robert's Rules of Order, which is the most widely used manual of parliamentary procedure in the United States. Robert graduated fourth in his class at West Point in 1857. He became a military engineer. As a lieutenant, under command of Silas Casey during the 1859 Pig War, he built fortifications on San Juan Island – now the dominion of the Port of Friday Harbor.*

## EMPLOYMENT OPPORTUNITIES

[Dock Superintendent](#)—Port of Everett

[Environmental Technician](#)—Port of Longview

[Environmental Manager](#)—Port of Longview

[Planner](#)—Port of Everett