

# AGENDA

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

Tuesday, October 29, 2019  
2:00 p.m.

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. APPROVAL OF AGENDA**

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

**V. CONSENT AGENDA**

- A. Approval of Direct Deposit and ePayments Dated October 17, 2019
- B. Approval of Warrant Register Dated October 22, 2019
- C. Approval of Warrant Register Dated October 29, 2019
- D. Approval of Regular Commission Business Meeting Minutes October 8, 2019

**VI. PRESENTATIONS**

- A. Potential Land Sale – Oak Street (AMBER)
- B. 2019 Year in Review (LARRY)

**VII. PUBLIC HEARINGS**

- A. Amend Comprehensive Scheme of Development and Harbor Improvements (Surplus West Richland former Raceway Property); Resolution 2019-27 (LARRY)
- B. Levy Certification; Resolution 2019-28 (NICK)
- C. Increase in Tax Capacity; Resolution 2019-29 (NICK)

**VIII. NEW BUSINESS**

- A. Cedars Lease; Resolution 2019-26 (AMBER)

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

- A. West Richland Land Sale Update (AMBER)
- B. Commissioner Meetings (formal and informal meetings with groups or individuals)
- C. Non-Scheduled Items

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

**XI. EXECUTIVE SESSION**

- A. Real Estate, Minimum Price, per RCW 42.30.110(1)(c) (AMBER)
- B. Potential Litigation, per RCW 42.30.110(1)(i) (LUCY)  
*(Ask public if they are staying, and if not, where they can be located if the Executive Session ends early.)*

**XII. ADJOURNMENT**

***PLEASE SILENCE CELL PHONES***



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

**DRAFT**

**OCTOBER 8, 2019 MINUTES**

Commission President Thomas Moak called the Regular 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:** Thomas Moak, President  
Don Barnes, Vice-President  
Skip Novakovich, Secretary

**Staff Members:** Tim Arntzen, Chief Executive Officer  
Tana Bader Inglima, Deputy Chief Executive Officer  
Amber Hanchette, Director of Real Estate and Operations  
Larry Peterson, Director of Planning and Development  
Lisa Schumacher, Special Projects Coordinator  
Lucinda Luke, Port Counsel

## **PLEDGE OF ALLEGIANCE**

Commissioner Moak led the Pledge of Allegiance.

## **APPROVAL OF THE AGENDA**

***MOTION:*** Commissioner Novakovich moved to approve the Agenda; Commissioner Barnes seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

## **PUBLIC COMMENT**

No comments were made.

## **CONSENT AGENDA**

- A. Approval of Direct Deposit and E-Payments Dated October 2, 2019**  
Direct Deposit and E-Payments totaling \$85,777.84
- B. Approval of Warrant Register Dated October 1, 2019**  
Expense Fund Voucher Number 101463 for a grand total of \$148,283.38.
- C. Approval of Warrant Register Dated October 8, 2019**  
Expense Fund Voucher Number 101464 through 101504 for a grand total of \$824,800.05
- D. Approval of Special Commission Business Meeting Minutes September 24, 2019**
- E. Approval of West Richland Purchase & Sale Agreement; Resolution 2019-22 (Ratifying decision from September 24, 2019 Commission Meeting)**

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 8, 2019 MINUTES

**DRAFT**

---

**MOTION:** *Commissioner Barnes moved for approval of the Consent Agenda as presented; Commissioner Novakovich seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

## OLD BUSINESS

### **A. *West Richland Purchase & Sale Agreement; Resolution 2019-25***

Ms. Hanchette stated before the Commission is a Purchase and Sale Agreement (PSA) for the Port and the City of West Richland for the purchase of the former Tri-City Racetrack. Ms. Hanchette reported on the history of events that began with the July 25, 2019 letter of interest from the City. At a Special Commission meeting on July 30, 2019 the offer was presented to the Commission and after considerable discussion, staff was given direction to move forward with land sale negotiations and research several issues including financing and worth of the property. An appraisal was requested on August 8, 2019 and the subsequent weeks were filled with ongoing negotiations between the Port and City staff, discussions between legal counsel for both entities regarding purchase and sale agreement terms, and regular staff updates at Commission Meetings.

Port staff received a restricted appraisal report of the property on September 30, 2019.

- Hypothetical Conditions Assumed: (1) that all improvements related to the former use as the Tri-City Raceway have removed; (2) that all improvements related to the current use for production of alfalfa have been removed; and (3) only 18 certificated feet of water rights inure to the benefit of the site.
- Concluded Value: \$3,000,000 [\$32,394 per acre / \$0.74 per square foot]
- Sales Comparison Approach
- Industrial Use

On October 4, 2019, City of West Richland representative, Mayor Brent Gerry informed Port staff that a special City of West Richland council meeting will be held on Monday, October 7, 2019 at 5:30 p.m. to discuss the appraisal and a potential revised offer.

Ms. Luke stated before the Commission is the redline version of the PSA that was presented at the September 24, 2019 Commission Meeting. Several revisions as proposed by the City were agreed upon and on page one of PSA, the price proposed is now the assessed value of the property, \$1,816,000 further, the City will pay \$500,000 in cash at closing and the balance of the purchase price will be handled, as previously proposed, through a promissory note and deed of trust and through the transfer of Rural County Capital Fund (RCCF) credits. The only revision to the PSA are the inclusion of the new offer price and closing costs. Ms. Luke inquired if the Commission had any questions regarding the redline PSA.

Commissioner Novakovich confirmed that the only thing the Commission is approving or disapproving is price.

Ms. Luke stated that is correct and the \$500,000 paid at closing, which was not a term proposed by the City previously.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 8, 2019 MINUTES

**DRAFT**

---

Commissioner Novakovich inquired if the 2% art fund remains in the PSA.

Ms. Luke stated that is correct, no other terms have changed. The 2% of the purchase price is proposed to be paid at closing and up to \$20,000 for administrative and legal fees incurred by the Port.

Commissioner Novakovich confirmed the art fund has been increased to \$11,320.

Ms. Luke would need to confirm the number. Ms. Luke asked the Commission to review the deed of trust and stated there was some concern expressed by the City regarding the due on sale clause. On page 3, paragraph 9, the new, highlighted language was proposed and the City accepted. The language excludes the building of the police station from the due on sale clause; the City can proceed without any further engagement with the Port as that has been the intended use by the City throughout the negotiations. Ms. Luke stated that is the only change to the deed of trust and there were no changes made to the promissory note. Ms. Luke inquired if the Commission had any questions.

Commissioner Moak asked Mr. Arntzen if he has anything to add.

Mr. Arntzen stated he does not have anything else to add.

Commissioner Moak stated the appraisal came in significantly higher than 2016 appraisal and asked Ms. Hanchette if she could explain why there was such a large discrepancy from the same appraiser for the same property. Commissioner Moak inquired what factors could change the valuation of the property.

Ms. Hanchette stated the appraiser did a very comprehensive job on the appraisal and the document can stand on its own. Additionally, the appraiser had a peer review performed. There are not a lot of comparables with the same size of property, but we have had a very active market, not only in residential, but in industrial in the greater tri-city over the last three years.

## **PUBLIC COMMENT**

Mayor Brent Gerry, 5401 Kalakaua Court, West Richland. Mayor Gerry thanked the Commission and Port and City staff for their hard work on this proposal, in such a short period of time. Mayor Gerry stated it has not been easy and most of us were quite shocked at price from three years ago, from \$1,750,000 to \$3,000,000 and as Ms. Hanchette alluded to, comparables were probably a big challenge. The City does not have a lot of comparables in regards to property such as that and imagines an appraiser would have to rely on more competitive markets outside of West Richland. The City determined the proposed purchase price by utilizing the Benton County assessed value. Additionally, the City felt that it was important to the Commission to offer cash at closing and added another \$500,000 to the offer, in addition to the approximately \$600,000 in RCCF credits available, the Port will have \$1,100,000 at closing to invest in Vista Field or Columbia Drive. Mayor Gerry thanked the Commission and staff and encouraged the Port to take the opportunity to invest in economic opportunities in West Richland. The City has done very well with the Belmont Business District and anticipates the same success at the former racetrack property.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 8, 2019 MINUTES

**DRAFT**

---

Mayor Gerry appreciates the consideration given to the City and he looks forward to partnering with the Port on that development and making the Port proud of their decision.

There were no further comments.

**MOTION:** *Commissioner Novakovich moved for approval of Resolution 2019-25, amending Resolution 2019-22, establishing a purchase price of \$1,816,000 with payment terms of \$500,000 cash plus \$1,316,000 of Rural Capital County Funds, with approximately \$600,000 available at closing; and authorizing the Port's Chief Executive Officer to execute all necessary documents associated with the land sale of 92.61 acres to the City of West Richland and to take all other action necessary to close this transaction; and further ratifies and approves all action by port officers and employees in furtherance hereof, considering that the draft document the Commission received today with the updated information be the document that is used; Commissioner Moak seconded.*

### ***Discussion:***

*Commissioner Novakovich stated the Commission has discussed this several times and there are a lot of things the Port can and should do for our constituents and one of them concerns public safety. Commissioner Novakovich believes this is an excellent opportunity to partner with the City of West Richland to provide public safety for the City. Commissioner Novakovich feels the appraised price is pretty high, granted it may be justifiable by some means; however, he has a hard time believing it could almost double in three years. Commissioner Novakovich believes the offer that has been put forth by the City is more than justifiable and as he stated previously, the Port has the option to transfer property to another jurisdiction for little or no payment. Commissioner Novakovich stated the Port is doing a great service for our constituents and jurisdictional partner and would like to see the PSA move forward.*

*Commissioner Barnes appreciates the increase in the price offered by City, but even with increase in price, he cannot support this. Commissioner Barnes appreciates Commissioner Novakovich's comments about how the Port can do things that are in the public interest for public safety; however, there are four major reasons that he cannot support the PSA. First, Commissioner Barnes believes the purchase price is too low, especially against the appraisal. Commissioner Barnes has seen industrial property values increase significantly over the past two or three years. Commissioner Barnes suggested calling Nicki Lynn Morgan in the Franklin County Assessor's Office for specific examples that may involve his name. Secondly, Commissioner Barnes does not believe there is a sufficient Return on Investment (ROI) for this property, given the holding period and the Port's investment and what the Comprehensive Scheme of Harbor Improvements and our Work Plan. Commissioner Barnes believes this PSA favors District 3, over the other two Port Districts. Additionally, this is an indication of inconsistencies at the Port of Kennewick, where we are auctioning land in Southridge to try to cash in on that investment so that those proceeds could be diverted to other project area. An auction was not even considered for the former racetrack and not too long ago, there were fabulous auction results on Red Mountain. Commissioner Barnes stated the price increase is an improvement, but his position has not changed and he would like to*

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 8, 2019 MINUTES

**DRAFT**

---

*see the offer closer to appraised value. Commissioner Barnes believes it is a fair appraisal and at less than 50 cents per square foot this would be an excellent investment opportunity.*

*Commissioner Moak stated that we have two different perspectives and believes it is healthy within an organization. Commissioner Moak thinks Commissioner Barnes' asked how much does it cost to hold the property and the answer was very minimal. It would not hurt the Port to hold on to this particular property and he agrees; but the question that wasn't asked and doesn't have an easy answer is, what opportunities are lost by not taking this money. We commissioned Mr. Arntzen to go out and find money for our various projects and we find it difficult to raise money. The Port has projects, whether at Vista Field or at any other place and money does not just grow on trees. Commissioner Moak has stated multiple times that the Port would have developed this property and believes in the vision, but it is not going to happen, and it won't happen by the Port of Kennewick. Commissioner Moak has adjusted his thinking to "what do we do." The Port has not received any offers on this property other than the City of West Richland. The Port could go through the auction process if dollars were the only thing we were looking for is money. When Commissioner Moak looks at this property and sees what it could mean to the City and to the Port of Kennewick, he thinks it is time to choose a different path. Nothing has changed in the past two weeks, but today, the City offered \$500,000 more, because it is worth that much more to them. Commissioner Moak did not create the appraisal and does not know what the property is worth. Right now, the Port is not planning to develop the property and we do not have a good plan to develop it, but the City of West Richland does. At least some of that development will benefit the tax payers, not just District 3, but benefit all the tax payers of the Port district. Commissioner Moak does not look at this benefiting only District 3 and reminded Commissioner Barnes that he has Vista Field. Commissioner Moak sees that the PSA benefits the Port district and it is our good fortune that Mr. Arntzen wanted an appraisal, even though we did not have to one and Commissioner Moak appreciates that and it means a lot to the Port. Commissioner Moak does not believe the Port is screwing West Richland and he does not think they are screwing us either. It is a deal that is a necessity to the City and an important one that moves this Port ahead. Commissioner Moak cannot say he is happy to vote for this because he still harbors the thought of "if only what could have happened otherwise." Commissioner Moak does it with a sense of this is important, it is important to the Chief and to the West Richland Police Department and the citizens. The Port was able to make a deal with Fire District No. 4 for two acres and public safety is important. Commissioner Moak will vote aye.*

*Commissioner Novakovich thinks the difference between Southridge and this property is that there have not been any offers on the Southridge property and asked Ms. Hanchette to confirm.*

*Ms. Hanchette stated the Port received an offer on the Southridge property after the Commission moved forward with the auction process, but prior to that, no.*

*Commissioner Novakovich stated there is an offer on West Richland and he wanted to clarify.*



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 8, 2019 MINUTES

**DRAFT**

---

*With no further discussion, motion carried. All in favor 2 (Commissioner Moak and Commissioner Novakovich); 1 Nay (Commissioner Barnes).*

## ***B. Citizen Complaint Update***

### ***1. Selection of Neutral***

Ms. Luke is working with Commissioner Barnes' legal counsel and Port counsel with regards to obtaining information and determining which neutral will be available. We are trying to move that process forward and will bring the Commission an update at the next meeting.

## **REPORTS, COMMENTS AND DISCUSSION ITEMS**

### ***A. Commission Meeting Audio Recordings Posted on Website***

Commissioner Barnes reached out to Mr. Arntzen and Ms. Scott to include audio recordings on this Agenda with him as the presenter. Commissioner Barnes stated this is something that he has touched upon briefly at the Commission level a few times in the past. It is Commissioner Barnes' understanding that the Port records the audio of each Commission Meeting and has been doing this for some time. It is his understanding that the Port can provide a copy of the audio recording when requested. Commissioner Barnes indicated that Mayor Gerry has requested audio regarding the racetrack. Commissioner Barnes believes that the Port would be taking a positive step in the transparency arena and making it easier for any constituent or citizen that wanted to sit and listen to audio of a Commission Meeting, to be able to go to the website and listen. Commissioner Barnes is not sure how difficult it would be to make the audio available on the Port website. Commissioner Barnes asked staff to do this and believes it would be good for our citizens and the Port of Kennewick and requested that we go back to January 2019. If this is something my fellow Commissioners would agree to or want to see happen, then staff could have a Resolution ready at the next meeting to formalize. Commissioner Barnes asked staff for comments and how difficult it would be. Commissioner Barnes stated if this is a monumental undertaking that is difficult, costly, and expensive, then he would like the opportunity to rethink his request. It is his understanding that it is a straight forward process with a nominal cost.

Commissioner Moak asked if staff has looked into the question of cost or bandwidth issues.

Mr. Arntzen stated to my understanding staff has not looked into this, even though it may sound easy, he would like a chance to review. Mr. Arntzen stated there is a lot of backlogged work in front of us and he would like to put this on the "to do" list and come back to the Commission early next year with information. Mr. Arntzen would like to have marketing and legal review in case there are any issues. Mr. Arntzen stated there are some things that have been backlogged due to a number of reasons; processing of the citizen complaint, the appeal process, and compressing the timeline on the West Richland PSA. There are several projects that have been previously assigned by the Commission that have been backlogged. With that being said, Mr. Arntzen asked if staff can work on the backlog and then provide a briefing to the Commission early next year.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 8, 2019 MINUTES

**DRAFT**

---

Commissioner Moak is comfortable with that concept and does not believe it takes precedence over other projects that we have had to delay.

Commissioner Barnes stated this topic does not rise to the top of the list given everything else that is going on at the Port. It has been mentioned at least twice to his knowledge in the past and stated it is easy to kick the can down the road. Commissioner Barnes does not believe this is a difficult thing according to everyone he has spoken to. Commissioner Barnes agrees with Commissioner Moak and stated there are some very important things under way, things that needs to be processed. Commissioner Barnes stated the time frame that Mr. Arntzen mentioned is fine.

Mr. Arntzen will sit down with Ms. Scott, Ms. Luke, and Ms. Bader Inglima to discuss adding audio to the website and if we find any issues, we will report back to the Commission. Staff will begin researching and update the Commission after the first of the year, if that is acceptable to the Commission.

## ***B. Commission Meetings***

### ***1. October 22, 2019 rescheduled to October 29, 2019***

The October 22, 2019 Commission Meeting has been rescheduled to accommodate the Washington Public Ports Association Small Ports Conference.

### ***2. November 12, 2019 Commission Business Meeting***

Regular Commission Meeting, as scheduled.

### ***3. November 15, 2019 Special Commission Meeting at Musser Auction Facility at 11:00 a.m.***

There will be a Special Commission Meeting on November 15, 2019 to discuss the outcome of the Southridge auction.

### ***4. November 26, 2019 Possible Cancellation***

### ***5. December 24, 2019 Possible Cancellation***

*Consensus of Commission to cancel the following Commission Meetings: November 26 and December 24, 2019.*

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

Commissioners reported on their respective committee meetings.

## ***D. Non-Scheduled Items***

1. Ms. Luke reminded the Commission that next Monday, October 21, 2019 is the due date for the Commission input evaluation forms for the CEO evaluation, so that she can compile them for the next Commission Meeting.



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 8, 2019 MINUTES

**DRAFT**

---

## **PUBLIC COMMENTS**

Lynn Rogers, 3702 Meadowview Drive, Pasco. Mr. Rogers is representing the Sand and Sage Sports Car Club and stated the Port purchased 92 acres with a racetrack on it 11 years ago and today is the end of a chapter for the Port. The Club has concerns with their future, but that is a conversation to be had with the City of West Richland. The Club knows it was not the vision of the Port to buy and maintain racetrack, and as part of the team that worked with staff to use the racetrack, it is fitting that he is the one to say thank you. Mr. Rogers gave a brief history of what the club has done over the past 11 years:

- Hosted 192 events;
- 10,684 participants at the events;
- Ten cancer charity events for the Cancer Center Foundation of Tri-Cities;
- Three teen traffic safety events;
- Six trainings for driving instructors;
- Police trainings.

The racetrack has seen more activity since the Port purchased it and it has been very active over the past 11 years and Mr. Rogers thanked the Port and expressed his gratitude for the time we had.

Commissioner Moak thanked Mr. Rogers for his words.

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick stated the Mid-Columbia Symphony's second concert will be held on November 2, 2019 at the Hanford High Auditorium.

No further were made comments.

## **COMMISSION COMMENTS**

No comments were made.

## **ADJOURNMENT**

With no further business to bring before the Board; the meeting was adjourned 2:44 p.m.

**APPROVED:**

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

---

*Thomas Moak, President*

---

*Don Barnes, Vice President*

---

*Skip Novakovich, Secretary*



## AGENDA REPORT

**TO: Port Commission**

**FROM: Larry Peterson, Director of Planning & Development**

**MEETING DATE: October 29, 2019**

**AGENDA ITEM: Resolution 2019-27 Amending Comprehensive Scheme of Development**

---

**I. REFERENCE(S):** Resolution 2019-27

**II. FISCAL IMPACT:** N/A

**III. DISCUSSION:** State Law (RCW 53.20) requires Port district's to have a Comprehensive Scheme of Development and Harbor Improvements (Comp Scheme) and capital expenditures must be consistent with the Comp Scheme. The Port of Kennebec's Comp Scheme was recently updated and revised in November 2016 by Resolution 2016-33 and the further amended in October 2017 by Resolution 2017-19 to incorporate newly approved master plans for both the former Vista Field Airport and former Tri-City Raceway sites.

The Tri-City Raceway Redevelopment Master Plan adopted on March 28, 2017 by Resolution 2017-07 identified development opportunities, phasing and costs for improvement of the 92+ acre site. Due to both site specific triggers and implications of other planned Port actions this mater plan identified a 4-7 year holding period before initial development was to commence.

In July 2019 the Mayor of West Richland approached the Port with an offer to purchase the entire 92+acres with the immediate intent to locate a municipal facility (Police Station) on 5 acres of the site. The Port Commission considered this offer and approved the sale of the entire 92+ to the City of West Richland through passage of Resolution 2019-22 of September 24, 2019 and Resolution 2019-25 on October 8, 2019. One of the sale contingencies is the amendment of the Port's Comprehensive Scheme of Development to declare this Port holding as surplus to the Port's needs.

A public hearing was scheduled and advertised for October 29, 2019 at the Port Commission's Special Meeting at 2:00 pm. Following conduct and closure of the public hearing, the Commission could elect to consider approving the attached resolution which would officially amend the 2016 Comprehensive Scheme of Harbor

Improvement document to determine the former Tri-City Raceway site to be surplus to the Port's needs.

**IV. ACTION REQUESTED OF COMMISSION: Motion:** I move approval of Resolution 2019-27 amending the Comprehensive Scheme of Development; and that all action by port officers and employees in furtherance hereof is ratified and approved; and further that the port Chief Executive Officer is authorized to take all action and to pay all expenses necessary in furtherance hereof.

***PORT OF KENNEWICK***

***Resolution No. 2019-27***

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF  
KENNEWICK AMENDING ITS COMPREHENSIVE SCHEME OF DEVELOPMENT AND  
HARBOR IMPROVEMENTS***

**WHEREAS**, RCW 53.20 requires port districts to adopt a Comprehensive Scheme of Development and Harbor Improvements (Comp Scheme) which serves as the guide for future Port investment and actions; and

**WHEREAS**, the Port adopted a Comprehensive Scheme of Development by Resolution 2016-33 on November 8, 2016; and

**WHEREAS**, the Port amended the Comprehensive Scheme of Development by Resolution 2017-19 on October 24, 2017; and

**WHEREAS**, the Port of Kennewick has and will continue to play a role in accommodating economic growth by acquiring, developing, selling and leasing land; and

**WHEREAS**, the City of West Richland expressed interest to purchase the entire former Tri-City Raceway site for the location of a municipal facility (Police Station) on 5-acres and eventual development of the remaining 87+ acres; and

**WHEREAS**, on Tuesday, October 29, 2019, after public notice, as required by law, the Board of Commissioners conducted a public hearing, held in the Commission Chambers of the Port Offices located at 350 Clover Island Drive, Kennewick, WA to amend the Comp Scheme to determine the former Tri-City Raceway property to be surplus to the Port's needs; and

**WHEREAS**, notice of such hearing was given as provided by law in the Tri-City Herald on October 20, October 23, and October 27, 2019 and such public hearing was held at such time and place and on said date; and

**WHEREAS**, after discussion and consideration of the proposed amendment to said Comprehensive Scheme, the Board of Commissioners determined that said scheme should be amended.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Board of Commissioners of the Port of Kennewick that after and pursuant to a public hearing held on the 29<sup>th</sup> day of October 2019, after notice thereof duly given in the manner required by law, the Board of Commissioners of the Port of Kennewick does hereby amend the Comprehensive Scheme of Development to identify the former Tri-City Raceway site as surplus to the Port's needs.

**BE IT FURTHER RESOLVED** that the Port 2019-2020 Work Plan is amended to reflect the determination the entire 92+ acre site is surplus to the Port's needs.

**BE IT FURTHER RESOLVED** that all action by port officers and employees in furtherance hereof is ratified and approved; and further that the port Chief Executive Officer is authorized to take all action and to pay all expenses necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of Port of Kennewick on the 29th day of October 2019.

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

By: \_\_\_\_\_  
THOMAS MOAK, *President*

By: \_\_\_\_\_  
DON BARNES, *Vice President*

By: \_\_\_\_\_  
SKIP NOVAKOVICH, *Secretary*



## AGENDA REPORT

**TO:** Port Commission

**FROM:** Nick Kooiker, CFO/Auditor

**MEETING DATE:** October 29, 2019

**AGENDA ITEM:** Resolution 2019-28; Levy Certification  
Resolution 2019-29; Increase in tax capacity

---

- I. REFERENCE(S):** None.
- II. FISCAL IMPACT:** Estimated \$4,300,000. Depends on final tax certification.
- III. DISCUSSION:** Every year, the Port must take action in order to certify their tax levy for the next calendar year. The first resolution (Levy Certification) is the formal document certifying the amount of property taxes to be certified in 2020. The second resolution (Increase in tax capacity) allows the Port to take the statutory 1% levy increase.

**STAFF RECOMMENDATION:**  
Approve the resolutions.

**IV. ACTION REQUESTED OF COMMISSION:**

***Motion:** I move approval of Resolution 2019-28, certifying the Port of Kennewick's tax levy for 2020 collections, and Resolution 2019-29, increasing the Port of Kennewick's tax levy capacity in 2020.*



# PORT OF KENNEWICK

## RESOLUTION NO. 2019-28

### A RESOLUTION OF THE BOARD OF COMMISSIONERS FOR THE PORT OF KENNEWICK CERTIFYING THE PORT'S 2019 LEVY FOR 2020 COLLECTION

**WHEREAS**, the Board of Commissioners of the Port of Kennewick met and considered its budget for the calendar year 2019 and 2020 at a regular meeting on October 23, 2018, a quorum of the Commission being present; and

**WHEREAS**, a legal notice of public hearing on the Preliminary Budget of Port of Kennewick for the calendar year of 2019 and 2020 was published in accordance with RCW 53.35.020, RCW 53.35.045 and RCW 84.52.020, and such hearing being held on the 9<sup>th</sup> day of October, 2018; and

**WHEREAS**, the Port's actual levy amount from 2019 year was \$4,179,955; and

**WHEREAS**, the population of the Port is more than 10,000; and

**WHEREAS**, the Board of Commissioners of Port of Kennewick after hearing and after duly considering all relevant evidence and testimony presented, determined that the Port of Kennewick requires a regular levy for the 2020 tax year in the amount of \$5,200,000, which includes an increase in property tax revenue from the previous year, amounts resulting from the addition of new construction, improvements to property, any increase in the value of state-assessed property, and amounts authorized by law as a result of any annexations that have occurred and refunds made, in order to discharge the expected expenses and obligations of the district and in its best interest.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Commissioners of the Port of Kennewick substantiate that an increase in the regular property tax levy is hereby authorized for the levy to be collected in 2020 tax year. The dollar amount of the increase over the actual levy amount from the previous year shall be approximately \$45,000, which is a one-percent increase from the previous year. This increase is exclusive of additional revenue resulting from new construction, improvements to property, any increase in the value of state assessed property, any annexations that have occurred and refunds made.

**BE IT FURTHER RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby direct the Chief Financial Officer/Auditor to certify a copy of this resolution and forward the same to the Clerk of the Board of the County Commissioners in accordance with RCW 84.52.020.

**APPROVED** and dated by the Commissioners of the Port of Kennewick at a Special Meeting on October 29, 2019.

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

By: \_\_\_\_\_  
THOMAS MOAK, President

By: \_\_\_\_\_  
DON BARNES, Vice-President

By: \_\_\_\_\_  
SKIP NOVAKOVICH, Secretary

## CERTIFICATION OF TAX LEVY

**STATE OF WASHINGTON**  
**County of Benton**

In accordance with RCW 84.52.020, I, **Nick Kooiker**, CFO/Auditor for Port of Kennewick, do hereby certify to the Benton County legislative authority that the Commissioners of said district request that the following levy amounts be collected in 2020 as provided in the district's budget, which was adopted following a public hearing held on October 23, 2018. I hereby request the Board of County Commissioners of Benton County, Washington, to make said regular levy of the Kennewick Port District, as set forth below, and that said regular levy is for operation, maintenance, land acquisition, construction, and the levy is to be distributed as follows:

Expense (General) Fund	\$5,170,000
Administration Refund Fund	\$30,000
<b><i>Total Regular Levy</i></b>	<b><i>\$5,200,000</i></b>
<i>Population Certification:</i>	<i>Above 10,000</i>

*If the above certification is more than the Assessor's levy calculations, the Assessor's Office is directed to reduce the Expense (General) Fund amount to the actual Assessor's levy calculation.*

**CERTIFIED** this 29<sup>th</sup> day of October, 2019.

***CERTIFIED BY:***

**PORT of KENNEWICK  
CFO/AUDITOR**



---

Nick Kooiker

**Ordinance / Resolution No.** 2019-28  
**RCW 84.55.120**

**WHEREAS**, the Commission of The Port of Kennewick has met and considered  
(Governing body of the taxing district) (Name of the taxing district)  
its budget for the calendar year 2020; and,

**WHEREAS**, the districts actual levy amount from the previous year was \$ 4,179,955; and,  
(Previous year's levy amount)

**WHEREAS**, the population of this district is  more than or  less than 10,000; and now, therefore,  
(Check one)

**BE IT RESOLVED** by the governing body of the taxing district that an increase in the regular property tax levy is hereby authorized for the levy to be collected in the 2020 tax year.  
(Year of collection)

The dollar amount of the increase over the actual levy amount from the previous year shall be \$ 45,000.00  
which is a percentage increase of 1.0 % from the previous year. This increase is exclusive of  
(Percentage increase)

additional revenue resulting from new construction, improvements to property, newly constructed wind turbines, solar, biomass, and geothermal facilities, and any increase in the value of state assessed property, any annexations that have occurred and refunds made.

Adopted this 29 day of October, 2019.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Thomas Monk, President  
Don Barnes, Vice President  
Skip Novakovich, Secretary

**If additional signatures are necessary, please attach additional page.**

This form or its equivalent must be submitted to your county assessor prior to their calculation of the property tax levies. A certified budget/levy request, separate from this form is to be filed with the County Legislative Authority no later than November 30<sup>th</sup>. As required by RCW 84.52.020, that filing certifies the total amount to be levied by the regular property tax levy. The Department of Revenue provides the "Levy Certification" form (REV 64 0100) for this purpose. The form can be found at: <http://dor.wa.gov/docs/forms/PropTx/Forms/LevyCertf.doc>.

To ask about the availability of this publication in an alternate format, please call 1-800-647-7706. Teletype (TTY) users may use the Washington Relay Service by calling 711. For tax assistance, call (360) 534-1400.

**PORT OF KENNEWICK**

**RESOLUTION NO. 2019-29**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF  
THE PORT OF KENNEWICK AUTHORIZING  
AN INCREASE IN TAX LEVY CAPACITY PURSUANT  
TO RCW 84.55.120 AND WAC 458-19-005**

**WHEREAS**, a public hearing was held by the Board of Commissioners for the Port of Kennewick regarding the 2019 and 2020 budget; and

**WHEREAS**, pursuant to RCW 84.55.120 and WAC 458-19-005, the rate of inflation (IPD rate) for 2020 is 1.396% and the limit factor for property taxes for 2020 is 101%; and

**WHEREAS**, the Port of Kennewick's levy amount from the previous year was approximately \$4,179,955; and

**WHEREAS**, the Port has set its increase in tax levy capacity for the 2019 and 2020 budget at one percent (1%) and finds there is substantial need to set the levy limit at one hundred and one percent (101%); and

**WHEREAS**, the Board of Commissioners of the Port of Kennewick Taxing District, after hearing and after duly considering all relevant evidence and testimony presented, finds there is a substantial need to set the levy limit at one hundred one percent (101%), in order to discharge the expected expenses and obligations of the district and in its best interest; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners of the Port of Kennewick Taxing District that an increase in the regular property tax levy, in addition to the increase resulting from the addition of new construction and improvements to property and any increase in levy value of state assessed property, is hereby authorized for the 2020 levy in the amount of approximately \$45,000 which is a one (1%) percentage increase from the previous year.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick at a Special Meeting held this 29<sup>th</sup> day of October 2019; and duly signed by its proper officers in the authentication of its passage on said date.

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

By: \_\_\_\_\_  
THOMAS MOAK, President

By: \_\_\_\_\_  
DON BARNES, Vice-President

By: \_\_\_\_\_  
SKIP NOVAKOVICH, Secretary

**PORT OF KENNEWICK**

**Resolution No. 2019-26**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK AUTHORIZING THE CHIEF EXECUTIVE OFFICER  
TO EXECUTE A LEASE AGREEMENT WITH BOULDER HEIGHTS LLC (CEDARS)***

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

**WHEREAS**, Boulder Heights LLC, wishes to enter into a ground lease with the port upon their purchase of building and assets from DDM Investments LLC; and

**WHEREAS**, said ground lease would include Clover Island parcels identified in Exhibit A; and

**WHEREAS**, the Port agrees to accept a personal guaranty in lieu of a monetary deposit; and

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

**WHEREAS**, after consideration of the attached Lease, 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 approves a ground lease with Boulder Heights LLC upon purchase of building and assets from DDM Investments LLC; and that all action by port officers and employees in furtherance hereof is ratified and approved; and further, the Port Chief Executive Officer is authorized to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 29th day of October, 2019.

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

By:

\_\_\_\_\_  
THOMAS MOAK, *President*

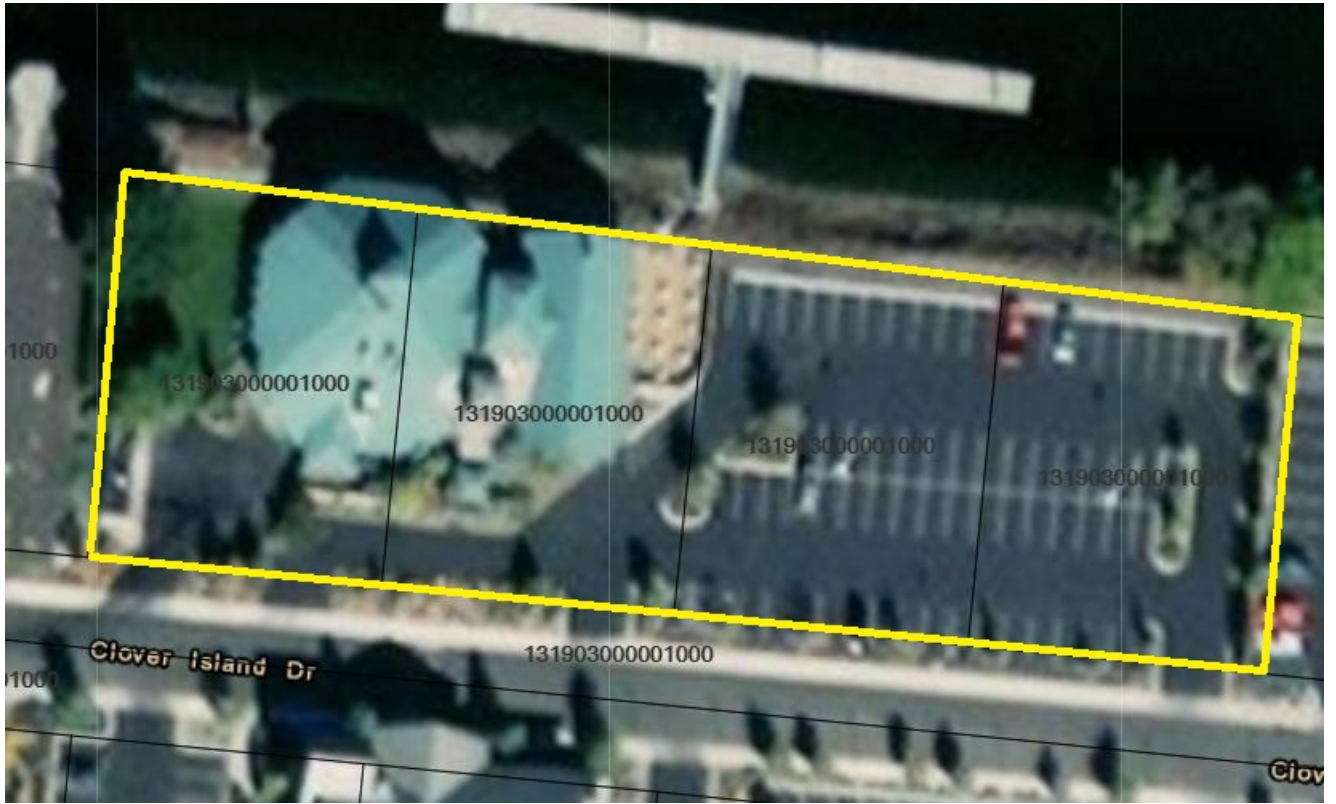
By:

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

By:

\_\_\_\_\_  
SKIP NOVAKOVICH, *Secretary*

EXHIBIT A





**LEASE AGREEMENT**

**Between**

**Port of Kennewick**

**And**

**Boulder Heights, LLC**

**Dated**

**November 1, 2019**

DRAFT

## TABLE OF CONTENTS

<b>ARTICLE 1. <u>Basic Lease Terms</u></b> .....	1
Section 1.1 <u>Address of the Landlord</u> .....	1
Section 1.2 <u>Address of the Tenant</u> .....	1
Section 1.3 <u>Premises</u> .....	1
Section 1.4 <u>Initial Lease Term</u> .....	1
Section 1.5 <u>Renewal Lease Term</u> .....	1
Section 1.6 <u>Permitted Use</u> .....	1
Section 1.7 <u>Base Rent</u> .....	1
Section 1.8 <u>Security for Rent</u> .....	2
Section 1.9 <u>Other Charges</u> .....	2
<b>ARTICLE 2. <u>Premises</u></b> .....	2
Section 2.1 <u>Premises and Demise</u> .....	2
<b>ARTICLE 3. <u>Base Rent and Operating Costs</u></b> .....	2
Section 3.1 <u>Amount of Payment</u> .....	2
Section 3.2 <u>Payment of Rent</u> .....	2
Property Taxes .....	3
Section 3.4 <u>Late Charges, Interest</u> .....	3
<b>ARTICLE 4. <u>Permitted Usage</u></b> .....	3
Section 4.1 <u>Permitted Uses</u> .....	3
Section 4.2 <u>Limitation on Use</u> .....	4
Section 4.3 <u>Compliance With Laws</u> .....	4
Section 4.4 <u>Encumbrances</u> .....	4
<b>ARTICLE 5. <u>Security Deposit</u></b> .....	4
Section 6.1 <u>Lease Terms, Renewal</u> .....	5
Section 6.2 <u>Possession</u> .....	5
Section 6.3 <u>Condition of Premises On Delivery</u> .....	5
Section 6.4 <u>Hold-Over</u> .....	5
Section 6.5 <u>The Landlord's Access</u> .....	6
<b>ARTICLE 7. <u>Services and Utilities</u></b> .....	6
Section 7.1 <u>Utilities</u> .....	6
Section 7.2 <u>Interruption of Services, Utilities</u> .....	6
<b>ARTICLE 8. <u>Indemnification; Public Liability Insurance; Waiver of Subrogation</u></b> .....	6
Section 8.1 <u>Indemnification</u> .....	6
Section 8.2 <u>Public Liability Insurance</u> .....	7
Section 8.3 <u>Waiver of Subrogation</u> .....	7
<b>ARTICLE 9. <u>Condition and Occupancy of Premises, Duties</u></b> .....	7
Section 9.1 <u>The Tenant's Basic Duties</u> .....	7
Section 9.2 <u>The Tenant's Maintenance Responsibilities</u> .....	8
Section 9.3 <u>Surrender of Premises</u> .....	8
Section 9.4 <u>Unlawful Occupation</u> .....	8

<b>ARTICLE 10. <u>Maintenance and Repair</u></b> .....	8
Section 10.1 <u>Tenant’s Duties</u> .....	8
Section 10.2 <u>Landlord’s Duties</u> .....	8
<b>ARTICLE 11. <u>Alterations to the Premises</u></b> .....	9
Section 11.1 <u>Alterations by the Tenant</u> .....	9
Section 11.2 <u>Liens</u> .....	9
<b>ARTICLE 13. <u>Signs; Advertising</u></b> .....	9
<b>ARTICLE 14. <u>Default and Remedies</u></b> .....	10
Section 14.1 <u>Tenant’s Defaults</u> .....	10
Section 14.2 <u>Remedies in Default</u> .....	10
Section 14.3 <u>Cumulative Remedies</u> .....	11
Section 14.4 <u>Right to Perform</u> .....	11
<b>ARTICLE 15. <u>Abandoned Property</u></b> .....	11
<b>ARTICLE 16. <u>Non-Waiver of Breach</u></b> .....	12
Section 16.1 <u>Non-Waiver</u> .....	12
Section 16.2 <u>Acceptance of Rent</u> .....	12
Section 16.3 <u>Consent to Act</u> .....	12
<b>ARTICLE 17. <u>Costs, Attorneys’ Fees</u></b> .....	12
<b>ARTICLE 18. <u>Notices and Payments</u></b> .....	12
<b>ARTICLE 19. <u>Subordination; Estoppel</u></b> .....	13
Section 19.1 <u>Subordination to Mortgages</u> .....	13
Section 19.2 <u>Estoppel Certificate</u> .....	13
Section 19.3 <u>Nondisturbance</u> .....	13
<b>Miscellaneous Provisions</b> .....	13
Descriptive Headings.....	13
Section 20.2 <u>Recording</u> .....	13
Section 20.3 <u>Interpretation</u> .....	13
Section 20.4 <u>Construction</u> .....	14
Section 20.5 <u>Merger</u> .....	14
Section 20.6 <u>Time of the Essence</u> .....	14
Section 20.7 <u>Binding Effect</u> .....	14
Section 20.8 <u>Governing Law</u> .....	14
Section 20.9 <u>Severability</u> .....	14
Section 20.10 <u>Force Majeure</u> .....	14
Section 20.11 <u>Signage</u> .....	15

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into this 1st day of November, 2019 by and between Port of Kennewick, a Washington municipal corporation, (herein the "Landlord") and Boulder Heights, LLC, a Washington limited liability company, (herein the "Tenant"). The Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord the Premises (as described hereafter) on the following terms and conditions:

### **ARTICLE 1. Basic Lease Terms.**

This Article 1 contains the Basic Initial Lease Terms of this Lease between the Landlord and the Tenant. The Articles, Sections and Paragraphs of this Lease explain, expand and define the Basic Lease Terms and shall be deemed and construed to incorporate all of the terms of this Article One.

Section 1.1 Address of the Landlord. 350 Clover Island Drive, Suite 200  
Kennewick, WA 99336

Section 1.2 Address of the Tenant. 3405 S. Johnson Street  
Kennewick, WA 99337

Section 1.3 Premises. The Premises which is the subject of this Lease is commonly known as: 355 Clover Island Drive, in the City of Kennewick, Benton County, Washington (herein the "Premises"). The Premises is legally described in Exhibit A, attached hereto and incorporated by this reference.

Section 1.4 Initial Lease Term. This Lease shall be for sixteen (16) months initial term (herein the "Initial Lease Term") commencing on November 1, 2019 (herein the "Date of Commencement") and shall expire on the 28th day of February, 2021 (herein the "Date of Expiration").

Section 1.5 Renewal Lease Term. Pursuant to Section 6.1 hereof, the term of this Lease may be renewed by the Tenant for an additional lease term which shall commence on the 1st day of March, 2021 and which shall expire on the 28<sup>th</sup> day of February, 2031 (herein the "Renewal Lease Term"). The Initial Lease Term and the Renewal Lease Term shall be referred to herein collectively as the "Lease Terms". Pursuant to Section 6.1 hereof, the term of this Lease may thereafter be renewed by the Tenant for three additional consecutive ten (10) year lease terms.

Section 1.6 Permitted Use. The Tenant may use the Premises for all uses and purposes appurtenant to or in relationship to a restaurant and bar and for all other accessory, related, associated, necessary and legal purposes.

Section 1.7 Base Rent. Tenant shall pay rent monthly in advance as set forth below commencing on the Date of Commencement of this Lease and continuing monthly thereafter on

the first day of each succeeding month as follows: (Rates below for Renewal Lease Terms apply only if renewal term option is validly exercised.)

Initial Lease Term:

November 1, 2019 through February 28, 2021: \$3,500 per month

Renewal Lease Terms:

March 1, 2021 through February 28, 2031 3.5% increase each lease year; e.g., March 1, 2021 through February 28, 2022 monthly rent will be \$3,622.50; the following lease year monthly rent will be \$3,749.29, with 3.5% increase added in the same manner each year thereafter.

Leasehold Tax: In addition to the rent provided for herein, Tenant shall pay the Leasehold Tax as required by the Revised Code of Washington Chapter 82.29A, as the statute may be hereafter amended. The Leasehold tax shall be paid with each installment of rent. The current Leasehold Tax rate is 12.84% (“Leasehold Tax”).

Section 1.8 Security for Rent. The provisions of RCW 53.08.085 provide Tenant must have rental secured by rental insurance, bond, or other security satisfactory to Landlord, which security shall be on file with Landlord at all time during the term of this Lease (herein the “Security Deposit”).

Section 1.9 Other Charges. In addition to the Base Rent and Leasehold Tax, the Tenant shall pay to the Landlord the Property Taxes as specified in Section 3.4 hereof and shall pay all other costs, charges, expenses and payments required by the terms hereof.

**ARTICLE 2. Premises.**

Premises and Demise. The Premises is described in Section 1.3 hereof and is depicted in the site plan of the Premises attached hereto as Exhibit B. The Premises includes the right to use and occupy the existing building on the Premises (herein the “Building”), and all other improvements, including the lighting for the Premises, all water, sewer and communications facilities, connections, piping and furnishings. Additionally, the Landlord and Tenant may jointly use the dock immediately adjacent to the Premises. The Landlord will maintain the dock structure; the Tenant will maintain the dock’s cleanliness.

**ARTICLE 3. Base Rent and Operating Costs.**

Section 3.1 Amount of Payment. The Base Rent specified in Paragraph 1.7 hereof and all other sums due hereunder shall be paid by the Tenant when and as due, without notice, demand, deduction or offset, in lawful money of the United States in advance on or before the first day of each month during the Lease Terms.

Section 3.2 Payment of Rent. The Base Rent and other sums due under this Lease will be paid by the Tenant to Landlord at Landlord’s address above or to such other account or to

such alternative address as the Landlord shall specify to the Tenant, in writing, from time to time.

Section 3.3 Property Taxes, Other Taxes and Assessments. The Tenant shall pay, when and as payable to the taxing authority, the actual amount of all “Property Taxes” assessed against the Premises during the Lease Terms and Renewal Lease Terms. 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. 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.

Section 3.4 Late Charges, Interest. Time is of the essence in all payments due hereunder. Any late payment by the Tenant to the Landlord of Base Rent or Property Taxes or other sums due hereunder will cause the Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to processing and accounting charges, and late charges which may be imposed upon the Landlord by terms of any mortgage or trust deed covering the Premises. If any installment of Base Rent, Property Taxes or of other sums due hereunder shall not be received by the Landlord or the Landlord’s designee within fifteen (15) days after the date the same is due and payable, then the Tenant shall pay to the Landlord as additional rental a late charge equal to the greater of (i) Fifty Dollars (\$50.00), or (ii) five (5%) percent of the delinquent amount. The Tenant hereby agrees that such late charge represents a fair and reasonable estimate of the cost that the Landlord will incur by reason of the late payment by the Tenant.

In the event that any portion of the Base Rent, Property Taxes or other sum due hereunder is not paid when due, the unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the due date of such Base Rent, Property Taxes or other sum due hereunder, until the full amount thereof is paid in full. Said interest shall be deemed additional rent.

The interest and late charges specified in this Section 3.5 are separate and cumulative and are in addition to and shall not diminish or represent a substitute for any or all of the Landlord’s rights or remedies under any other provision of this Lease.

#### **ARTICLE 4. Permitted Usage.**

Section 4.1 Permitted Uses. The Premises are to be used for the uses specified in Section 1.6 hereof (herein the “Permitted Use”), and for no other business or purpose without the



Landlord's prior written consent. The Landlord shall not unreasonably withhold consent to a change in the Permitted Use. The definition of the Permitted Use shall be broadly construed.

Section 4.2 Limitation on Use. The Tenant shall not commit or allow any waste to be committed, suffer any public or private nuisance upon the Premises or use the Premises in any manner that is unlawful.

Section 4.3 Compliance With Laws. At all times, the Tenant shall comply with all laws, regulations, ordinances, codes or conditions imposed by all municipalities or governmental agencies having jurisdiction over the Premises (herein "Laws"). The Tenant shall pay, throughout the Lease Terms, all license and excise fees and occupational taxes covering the Tenant's business at the Premises.

Nothing in this Section or in this Lease shall be construed to impose upon the Tenant the duty or obligation to undertake capital improvements or capital repairs in order to bring the Premises into compliance with any Laws which have been enacted following the date upon which the Building on the Premises was constructed; provided however, the provisions of this subparagraph shall not apply and no duty on the Landlord's part shall accrue if the capitol repairs or capital improvements result from the intentional or negligent act of the Tenant, its employees, agents or representatives.

Section 4.4 Encumbrances. The Tenant shall not cause or suffer to be placed, filed or recorded against the title to the Premises or any part thereof, any mortgage, deed of trust, security agreement, financing statement, lien or other encumbrances; and further, in no event shall the lien of the Tenant's mortgage, deed of trust, or other security agreement or financing statement cover the Premises.

## **ARTICLE 5. Security for Rent.**

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" OR 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. Lease Terms and Possession.**

Section 6.1 Lease Terms, Renewal. This Lease and the obligations hereunder shall bind the Tenant and the Landlord for the Lease Terms and for any renewals or extensions thereof. The Tenant may exercise its right to renew this Lease for the Renewal Lease Term, by providing notice of this exercise at any time prior to the Date of Commencement of the Renewal Lease Term.

Section 6.2 Possession. The Landlord delivered possession of the Premises to the Tenant on the Date of Commencement specified in Section 1.4 hereof, and the Tenant occupied the same as of that date.

Section 6.3 Condition of Premises on Delivery. The Tenant has accepted the Premises in the condition existing as of the Date of Commencement of this Lease, subject to the following warranties by the Landlord:

(a) The Tenant shall not be liable or responsible for the cure or correction of any defects or deficiencies which existed on the Premises on or before the Date of Commencement of the Initial Lease Term. The Landlord is unaware of the existence of any defects or deficiencies on the Premises.

(b) The Tenant shall not be required to remediate, remove or to otherwise treat any hazardous substances, hazardous wastes, or toxic substances (as those terms are defined under CERCLA, 42 USC § 9601 et seq., RCRA, 42 USC § 6901 et. seq., or TSCA, 15 USC § 2401 et seq., or other applicable Washington State Statutes) which had been released or deposited on, at or under the Premises prior to the Date of Commencement of the Initial Lease Term.

The Landlord shall indemnify and hold the Tenant harmless from and against all damages, liability, fines, penalties, costs, attorney fees or losses arising from the Landlord's warranties in this Section 6.3.

Section 6.4 Hold-Over. The Tenant may, with the prior written consent of the Landlord, hold over after the Date of Expiration of the Lease Terms specified in Sections 1.4 and 1.5 hereof. Such consent shall not be unreasonably withheld.

In the event that the Tenant holds over with the Landlord's written consent, such hold-over tenancy shall be for an indefinite period of time on a month-to-month basis and may be terminated on twenty (20) days written notice given prior to the end of each monthly period. During such permissive hold-over the Tenant's monthly rent obligations hereunder shall be equal to the Base Rent, Leasehold Tax, and Property Taxes payable on a monthly basis in the last month of the Renewal Lease Term and the Landlord and the Tenant shall be bound by all other provisions, covenants and conditions hereof.

Section 6.5 The Landlord's Access. The Tenant shall permit the Landlord and its agents and employees to enter into and upon the Premises at reasonable times for the purpose of inspecting the same. The Landlord, it agents and employees may enter the Premises as may be reasonably necessary to view alterations, repairs, improvements or damage to the Premises and to inspect any change or restriction in egress or ingress which is required by law or caused by the action of a third party.

The Landlord shall indemnify and hold the Tenant harmless from all liability arising or accruing as the result of the negligence or intentional misconduct of the Landlord or the Landlord's agents, contractors or employees during any entry onto the Premises.

#### **ARTICLE 7. Services and Utilities.**

Section 7.1 Utilities. The Tenant shall pay to the appropriate supplier before delinquency, at its sole cost and expense, all charges for water, gas, heat, electricity, refuse removal, power, telephone service, sewer service charges and all other utilities or services used in, upon or about the Premises during the Lease Terms.

Section 7.2 Interruption of Services, Utilities. The Landlord shall not be liable for any actual, incidental or consequential loss, injury or damage to business, persons or property, however occurring, directly or indirectly caused by or resulting from any unavailability, variation, interruption or failure of any services or utilities to the Premises unless caused or resulting from the Landlord's acts, conduct, negligence or intentional misconduct or that of the Landlord's contractors, agents or employees.

#### **ARTICLE 8. Indemnification; Public Liability Insurance; Waiver of Subrogation.**

Section 8.1 Indemnification. Except as specifically provide in this Lease, the Tenant shall be solely responsible for all losses to the Tenant's business and all leasehold improvements, equipment, personal property and fixtures in the Premises and the Tenant must insure against any loss or damage of any nature thereto regardless of cause. Except as specifically set forth herein, the Tenant shall defend, indemnify and hold the Landlord harmless from and against any and all demand, liability, claim, damages, loss, penalty, cost or expense in connection with damages, loss or injury suffered or alleged to be suffered, loss of life, personal injuries, mental suffering and damage to property arising from or out the occupancy or use, non-use, condition or development of the Premises or occasioned by the negligent acts, intentional misconduct or omissions by the Tenant, and/or the Tenant's agents or employees.

To the extent permitted by law, the Landlord shall not be liable for any loss, damage, injury, including injury to the Tenant's business (including loss of income therefrom), death or injury to person or damage to property sustained, except for such liability arising directly or indirectly from the acts, conduct, negligence or intentional misconduct of the Landlord and/or its contractors, agents or employees.

The indemnification provisions of this Section shall survive the termination of this Lease.

Section 8.2 Public Liability Insurance. The Tenant shall at its sole expense keep and maintain in full force and effect during the Lease Terms, a policy or policies of commercial general liability insurance (broad form comprehensive general liability insurance) insuring the Landlord and the Tenant against all loss or liability for personal injury, death or damage to property (including loss of use of property) arising from the Tenant's activities and/or omissions, and those of the Tenant's agents, contractors or employees and from the use, operation, occupancy and maintenance of the Premises, the Building and all areas appurtenant thereto by the Tenant and its contractors, agents or employees (herein the "Tenant's Insurance"). The limits of the comprehensive public liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for each occurrence.

The Tenant shall also obtain and keep in force during the Lease Terms a policy of insurance covering loss or damage to the Premises, the Building and all fixtures, equipment, personal property and leasehold improvements therein, in the amount of the full replacement value thereof providing protection against all perils, including fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), plate glass coverage, boiler and machinery coverage.

The Landlord shall be named as an additional insured on the policies of insurance specified herein and a copy thereof or certificates in evidence thereof shall be delivered to the Landlord.

In the event that the Tenant fails at any time to procure or maintain the insurance required by this Section 8.2, the Landlord may cause such insurance to be issued for the account of the Tenant and the Tenant shall pay or reimburse the Landlord for the amount of the premium therefor.

Section 8.3 Waiver of Subrogation. Whether the loss or damage is due to the acts, actions, omissions or negligence of either the Landlord or the Tenant, their contractors, customers, agents, invitees, employees or contractors, or any other cause, the Landlord and the Tenant do each herewith and hereby release and relieve the other and their respective principals, officers, agents, employees and related parties from responsibility for, and waive their entire claim and right of recovery against the other for any loss, damage or destruction of the Premises, the Building or the personal property, equipment, fixtures or leasehold improvements of either located in the Building arising out of or incident to the occurrence of any of the perils which are covered by their respective insurance policies, with extended coverage endorsements.

The Landlord and the Tenant shall procure an appropriate clause in, or an endorsement on, any policy of insurance or extended coverage endorsement covering or connected with the Premises, pursuant to which the respective insurance carriers waive subrogation or consent to a waiver of right to recovery against the other party.

## **ARTICLE 9. Condition and Occupancy of Premises, Duties.**

Section 9.1 The Tenant's Basic Duties. The Tenant shall at all times maintain, clean, keep and preserve the Premises (including but not limited to all plumbing, heating, air

conditioning, electrical, lighting, ventilating and windows), leasehold improvements and all fixtures in as good order, and repair as they are at the commencement of the Initial Lease Term or may thereafter be put to and shall maintain the same in a neat, clean and sanitary condition, reasonable wear and tear and damage by fire or other casualty excepted.

Section 9.2 The Tenant's Maintenance Responsibilities. The Tenant is solely responsible for (i) the maintenance of all fixtures, personal property and leasehold improvements to the Premises and any decorating or redecorating of the Premises; (ii) repairs resulting directly or indirectly from or necessitated by the act or negligence of the Tenant, the Tenant's agents or resulting directly or indirectly from burglary or attempted burglary of the Premises; (iii) maintenance, cleaning and repair to the Premises, to preserve the condition required herein.

Section 9.3 Surrender of Premises. At the expiration or earlier termination of the Initial Lease Terms, at the option of the Landlord: (i) the Tenant shall quit and surrender the Premises, the leasehold improvements and all fixtures in a neat and clean condition to the reasonable satisfaction of the Landlord, and in as good condition as at the commencement of the Initial Lease Term or as may hereafter be put, ordinary wear and tear and damage by fire or other casualty excepted, and will deliver up all keys belonging to the Premises to the Landlord; or (ii) all or any portion of the leasehold improvements and all fixtures shall be expeditiously removed by the Tenant and the Premises restored to its original condition, ordinary wear and tear and damage by fire or other casualty excepted, all at the sole cost of the Tenant.

Section 9.4 Unlawful Occupation. In the event of the enactment or existence of any law, ordinance, rule, ruling or regulation prohibiting the use of the Premises for any one or more of the specific automobile related purposes for which they are hereby leased, including the prohibition of the use in and on the Premises of any appliance necessary or related to the use of the Premises for any one or more of said purposes, or whether the use of the Premises for one or more of such purposes is prohibited because of the location or condition of the Premises or otherwise, then and in that event, at the option of the Tenant, this Lease shall terminate and all liability hereunder shall cease from and after the date such prohibition becomes effective, and any rent paid in advance by the Tenant shall be apportioned and refunded to it.

## **ARTICLE 10. Maintenance and Repair.**

Section 10.1 Tenant's Duties. The Tenant shall maintain the Premises, including all improvements thereon, in a condition and state of repair as good as they may be on the Date of Commencement of the Initial Lease Term specified in Section 1.4 hereof, or may thereafter be put, reasonable wear and tear and damage by fire or other casualty accepted.

Except to the extent of the application of the provisions of Section 8.3 hereof, the Tenant shall pay the full cost of any repairs caused by the negligence or intentional misconduct of the Tenant, its agents and employees.

Section 10.2 Landlord's Duties. The Landlord shall not be called upon to make any improvements, alterations, or repairs of any kind with respect to the Building or the Premises.

**ARTICLE 11. Alterations to the Premises.**

Section 11.1 Alterations by the Tenant. The Tenant may make such alterations, additions or leasehold improvements in the Premises and the Building, subject to the advance written consent of the Landlord, which consent shall not be unreasonably withheld. All such undertakings shall be at the sole cost and expense of the Tenant, and shall remain the property of the Tenant until termination or earlier expiration of this Lease. All alterations, additions and leasehold improvements shall be constructed in full compliance with all laws, ordinances, rules and regulations applicable to the Premises.

Upon the termination of this Lease or of the Tenants right to occupy the Premises, whichever first occurs, the Tenant shall comply with the demand by the Landlord, as required by the provisions of Section 9.3 hereof and either: remove all alterations, additions or leasehold improvements from the Premises and restore the same to the condition required by the provisions of Section 9.3(i) hereof or the condition required by Section 9.3(ii) hereof.

Section 11.2 Liens. The Tenant shall keep the Premises free from any liens arising out of any work performed, materials ordered, obligations incurred by or on behalf of the Tenant.

**ARTICLE 12. Assignment; Subletting.**

The Tenant may assign all or any portion of its interest under this Lease and may sublet or transfer its rights in and to the Premises (hereafter collectively "Assignment") only with the prior written consent of the Landlord, which consent shall not be unreasonably withheld or unreasonably delayed. The Landlord's approval of the Assignment of the entirety of the Tenant's interest under this Lease shall be deemed a release of the Tenant's duties and obligations hereunder. All assignees shall become directly liable to the Landlord hereunder.

The granting of any consent or its waiver thereof shall not be construed as consent or waiver of consent of any subsequent event in which the Landlord's consent is required. The Landlord's acceptance of rent from an unapproved assignee or subtenant shall not be deemed to be a waiver of the Landlord's right to consent to such assignment or subtenancy.

**ARTICLE 13. Signs; 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 14. Default and Remedies.**

Section 14.1 Tenant's Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by the Tenant:

(a) The failure by the Tenant to make any payment of Base Rent, Property Taxes or any other payment required to be made by the Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof by the Landlord to the Tenant. Time is of the essence hereof.

(b) The failure by the Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by the Tenant, other than the obligation to pay rental where such failure shall continue for a period of thirty (30) days after written notice thereof by the Landlord to the Tenant. Provided, however, that if the nature of the Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then the Tenant shall not be deemed to be in default if the Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(c) The Tenant becomes insolvent, a receiver or other officer is appointed for the Tenant or the Tenant makes a general assignment or a general arrangement or assignment for the benefit of creditors is made; or the filing by or against the Tenant of a petition to have the Tenant adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy or the appointment of a trustee or a receiver to take possession of substantially all of the Tenant's assets located at the Premises or of the Tenant's interest in this Lease, or the attachment, execution or other judicial seizure of substantially all of the Tenant's assets located at the Premises or of the Tenant's interest in this Lease, where such an assignment, petition, arrangement, appointment, attachment, execution or seizure is not discharged or dismissed within sixty (60) days thereof.

The Landlord's waiver of a specific breach or default by the Tenant of duty arising under the terms of this Lease shall not constitute a waiver of subsequent breaches or defaults of the same terms of this Lease.

Section 14.2 Remedies in Default. In the event of any default by the Tenant, the Landlord may at any time thereafter, following the notice required by law:

(a) Terminate the Tenant's right to possession of the Premises by obtaining a Writ of Restitution from the Superior Court for Benton County directing the Sheriff to expel, remove or put out or lock out the Tenant and any other persons who may be therein, from the Premises.

(b) Maintain the Tenant's right to possession, in which case this Lease shall continue in effect whether or not the Tenant shall have abandoned the Premises. In such event the Landlord shall be entitled to enforce all of the Landlord's rights and remedies under this Lease, including the right to recover all Base Rent, Property Taxes or other charges as they

becomes due and including the right to accelerate all Base Rent payable through the balance of the Lease Term.

(c) Enter the Premises and remove and store the Tenant's trade fixtures, equipment and inventory, all for the account of the Tenant (such entry and removal shall not be deemed to be an acceptance of the Tenant's surrender of the Premises or a termination of this Lease.

(d) Pursue any other remedy now or hereafter available to the Landlord under the laws or judicial decisions of the State of Washington.

The Landlord shall be entitled to recover from the Tenant all direct damages incurred by the Landlord by reason of the Tenant's default including, but not limited to, the cost of recovering possession of the Premises and reasonable attorneys' fees. Unpaid installments of Base Rent, Property Taxes, other charges and liability hereunder shall bear interest from the date due at the rate of twelve (12%) percent per annum. In the event the Tenant shall have abandoned the Premises, the Landlord shall have the option of (a) taking possession of the Premises and recovering from the Tenant the amount specified in this Paragraph, or (b) proceeding under the provisions of the subparagraph (b) or (c) hereinabove.

Section 14.3 Cumulative Remedies. All rights and remedies of the Landlord herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law. In addition to the other remedies in this Lease provided, the Landlord shall be entitled to restrain by injunction the violation or attempted violation of any of the covenants, agreement or conditions of this Lease.

Section 14.4 Right to Perform. If the Tenant shall fail to pay any sum of money, other than Rent or Property Taxes, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for thirty (30) days after notice thereof by the Landlord, the Landlord may, but shall not be obligated so to do, and without waiving or releasing the Tenant from any obligations of the Tenant, make any such payment or perform any such other act on the Tenant's part to be made or performed as provided in this Lease. The Landlord shall (in addition to any other right or remedy of the Landlord provided by law) have the same rights and remedies in the event of the nonpayment of sums due under this Section 14.4 as in the case of default by the Tenant in the payment of Base Rent.

#### **ARTICLE 15. Abandoned Property.**

If the Tenant has vacated or abandoned the Premises and has failed to remove any of its trade fixtures, equipment or personal property from the Premises or the Building at the termination of this Lease or when the Landlord has the right of re-entry, the Landlord may, at its option, remove and store said property without liability for loss or damage thereto, such storage to be for the account and at the expense of the Tenant. In the event that the Tenant shall not pay the cost of removing, moving and storing any such property after it has been stored for a period of sixty (60) days or more, the Landlord may, upon notice to the Tenant in writing, at its option, sell, or permit to be sold, any or all of such property at public sale, in such manner and at such



times and places as may be commercially reasonable. The Landlord shall apply the proceeds of such sale, first to the cost and expense of such sale, including reasonable attorneys' fees actually incurred, second, to the payment of the cost or charges for removing, moving and storing any such property, third, to the payment of any other sums of money which may then be or thereafter become due the Landlord from the Tenant under any of the terms hereof, and fourth, the balance if any, to the Tenant.

**ARTICLE 16. Non-Waiver of Breach.**

Section 16.1 Non-Waiver. The waiver by the Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or of any existing, continuing or subsequent breach of the same or any other term covenant or condition herein contained.

Section 16.2 Acceptance of Rent. The acceptance by the Landlord of Base Rent, Property Taxes or other amounts due and payable by the Tenant hereunder shall not be deemed to be a waiver, an accord or satisfaction or compromise of any existing, continuing or subsequent breach by the Tenant of any term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular rental so accepted, regardless of the Landlord's knowledge of such breach at the time of acceptance of such rent or other amounts due.

Section 16.3 Consent to Act. The consent or approval by the Landlord to or of any act by the Tenant of any nature requiring the consent or approval hereunder shall not be deemed to be a waiver or render unnecessary consent to or approval of any subsequent act.

**ARTICLE 17. Costs, Attorneys' Fees.**

In the event either party employs an attorney to enforce the terms of this Lease, or to commence, prosecute or defend any action or arbitration arising out of this Lease, then in any such event the net prevailing party shall be entitled to recover from the other all reasonable costs and attorneys' fees incurred. For the purpose of this Lease, the parties agree that the actual attorneys' fees and costs incurred in any such action shall be deemed "reasonable" and the parties direct the finder of fact to so find. For purposes of this Lease, an "action" shall include any arbitration, administrative hearing, bankruptcy or other judicial proceeding, including appeals therefrom.

**ARTICLE 18. Notices and Payments.**

Notices required to be served upon the Landlord shall be sent to the Landlord at the address specified in Section 1.1 hereof, or such other address as the Landlord may require. Notices required to be served upon the Tenant shall be sent to the Tenant at the Premises.

All notices shall be in writing, personally delivered or sent by U.S. mail, certified mail, postage prepaid, return receipt requested. Notices shall be deemed delivered upon personal delivery or three (3) days following deposit in the U.S. mails in accordance herewith.

In the event that Landlord is required or permitted to send any notices under the terms of this Lease, the same shall be directed to the Tenant at the Premises with a copy thereof to Tenant at the address set forth in Section 1.2 above.

**ARTICLE 19. Subordination; Estoppel.**

Section 19.1 Subordination to Mortgages. This Lease, at the Landlord's option shall be subordinated to all present and future mortgages, deeds of trust or any other hypothecation for security affecting the Premises and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacement and extensions thereof. Subject to the provisions of Section 19.3, the Tenant shall execute, at no expense to the Landlord, within thirty (30) days of demand therefor, a statement reasonably necessary to further effect the subordination of this Lease to any mortgage or deed of trust.

Section 19.2 Estoppel Certificate. The Tenant shall, from time to time within thirty (30) days of demand therefor, at no expense to the Landlord, submit to the Landlord, or to any person designated by the Landlord, in such form as the Landlord reasonably requests, a statement in writing certifying: that this Lease is unmodified and in full force and effect (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), that to the knowledge of the Tenant no uncured default exists hereunder or if such uncured default does exist, specifying the same), the dates to which the rental and other sums and charges payable hereunder have been paid, and that the Tenant has no claims against the Landlord and no defenses or offsets to rental (or if the Tenant has any such claims, defenses or offsets, specifying the same).

Section 19.3 Nondisturbance. As a condition to the Tenant's obligation to subordinate this Lease, the Landlord shall obtain and deliver to the Tenant, the original, signed and notarized unconditional statement of the Landlord's lender certifying that in the event of any foreclosure of the Landlord's interest in the Premises, that said lender and its successors and assigns shall recognize this Lease and the Tenant's rights hereunder and that the Tenant will not be disturbed in its right of quiet enjoyment, use or occupancy of the Premises, so long as the Tenant attorns to the lender following the Landlord's default under such mortgages, deeds of trust or the documents secured thereby.

**ARTICLE 20. Miscellaneous Provisions.**

The Tenant and the Landlord shall abide by and be bound by the following miscellaneous provisions, which shall be considered as covenants of this Lease:

Section 20.1 Descriptive Headings. The descriptive headings of this Lease are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Lease and shall not be used to interpret or construe the provisions thereof.

Section 20.2 Recording. A memorandum of this Lease may be recorded by the Tenant.

Section 20.3 Interpretation. In interpreting or construing this Lease, it is understood that each of the parties may be more than one person, that if the context so requires, the singular

pronoun shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations, partnerships and individuals. References to the Tenant's obligation during the Initial Lease Term shall apply to the Renewal Lease Term any renewals or extensions hereof.

Section 20.4 Construction. All parties have carefully reviewed and considered all provisions of this Lease. Therefore no stricter construction of any provision of this Lease may be applied against either party hereto. All items and provisions hereof are to be construed as covenants and conditions as though the words imparting such covenants and conditions were used in each separate paragraph hereof.

Section 20.5 Merger. This Lease contains all of the covenants and agreements between the Landlord and the Tenant relating to the Premises. There are no oral agreements between the parties hereto affecting this Lease. This Lease supersedes and cancels any and all previous negotiations, arrangements, Leases, agreements and understandings, between the parties hereto with respect to this Lease and the subject matter thereof. This instrument contains all of the agreements made between the parties to this Lease and may not be modified or amended orally or in any other manner than by an agreement in writing signed by all of the parties to the Lease or their respective successors in interest.

Section 20.6 Time of the Essence. Time is of the essence in the performance by the respective parties of each duty, obligation, covenant or provision of this Lease.

Section 20.7 Binding Effect. This Lease shall be binding upon and inure to the benefit of the parties, and their respective heirs, legal representatives, successors and assigns.

Section 20.8 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Washington and any action to enforce the provisions hereof shall be laid in Benton County, Washington.

Section 20.9 Severability. If any portion of this Lease or the application thereof to any party or person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to either party or to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 20.10 Force Majeure. Anything in this Lease to the contrary notwithstanding, the Tenant and the Landlord shall not be deemed in default with respect to the performance of any obligation on its part to be performed under this Lease if such default shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulation or controls, or through acts of God or other cause or causes whether similar or dissimilar to those enumerated beyond the control of the Tenant or the Landlord, as the case may be, and the period for the Tenant or the Landlord to perform such obligation shall be extended by a period equal to the period of delay caused by such reason.

Section 20.11 Signage. All signs, now or hereafter erected on the Premises by or at the direction of the Tenant shall be: (i) subject to all municipal and other governmental sign codes, (ii) erected and maintained at the Tenants sole cost and expense, and (iii) included within the scope of the Tenants insurance coverage for the Premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year in this instrument first above written.

**LANDLORD:**

**TENANT:**

PORT OF KENNEWICK

BOULDER HEIGHTS, LLC

By: \_\_\_\_\_  
Tim Arntzen, CEO

By: \_\_\_\_\_  
Douglas Lundgren, Managing Member

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF BENTON                    )

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
NAME: \_\_\_\_\_  
(Print Name)

Notary Public in and for the State of Washington.  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF BENTON                )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument as a \_\_\_\_\_ on behalf of \_\_\_\_\_ pursuant to the provisions of the partnership agreement of said general partnership and acknowledged said instrument to be the free and voluntary act of said \_\_\_\_\_ for the uses and purposes mentioned in said instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NAME: \_\_\_\_\_  
(Print Name)

Notary Public in and for the State of Washington.

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description**

**EXHIBIT B**

**Personal Guaranty**