



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 22, 2018 MINUTES

## CALL TO ORDER

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  
Nick Kooiker, Chief Financial Officer/Auditor  
Larry Peterson, Director of Planning and Development  
Lisa Schumacher, Special Projects Coordinator  
Bridgette Scott, Executive Assistant  
Lucinda Luke, Port Counsel

## PLEDGE OF ALLEGIANCE

Commissioner Novakovich led the Pledge of Allegiance.

## APPROVAL OF THE AGENDA

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

## PUBLIC COMMENT

Christie Holechek, 4314 Irvington Avenue, Jacksonville. Ms. Holechek, Director of Art in Public Places, City of Jacksonville, Florida, is accompanying Andrew Reid with the Latino Mural Art installation at Columbia Gardens. Ms. Holechek has been working with the Jacksonville public art program, the City of Jacksonville, and City Council to continue the conversation for downtown revitalization. The Art in Public Places program is a percent for art program that is county wide. Ms. Holechek is very humbled, as well as inspired by the Port and City of Kennewick and will confidently return to Jackson and present the city leadership with the numerous pictures she took. The Port and City are doing a great job revitalizing the area and you can see the pride in the workmanship that is displayed. Ms. Holechek stated she has learned a lot about Kennewick through the public art, display plaques, and regional industries.

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Don Britain, 6010 West Okanogan Way, Kennewick. Mr. Britain, Mayor of Kennewick, thanked the Commission for the partnership between the two entities and stated that it is rewarding to enter into partnership with an entity and see movement and see things accomplished, such as the current development at Columbia Gardens and the future development at Vista Field. These projects were able to come about because of the cooperation between Mr. Arntzen and Ms. Mosley and Port and City staff and the trust that the two entities share. Mr. Britain stated the Port and City began working together over four years ago when we signed the Interlocal Agreement (ILA) to develop Columbia Gardens and the partnership has grown tremendously.

Marie Mosley, 210 West 6<sup>th</sup> Avenue, Kennewick. Ms. Mosley, Kennewick City Manager, reiterated Mayor Britain's comments, and thanked the Commission for the work they have done and the leadership provided in allowing for the partnership we have today. Ms. Mosley stated the relationship between the Port and City is better than it has ever been and it has been an honor and privilege to work with Mr. Arntzen and his staff. Ms. Mosley and Mr. Arntzen meet on a monthly basis and both staff's work together very well and are able to produce amazing things in our community. Ms. Mosley contributes the success to the City Council and Port Commission in fostering the relationship, by entering into an ILA, one of the key items to our relationship. The Port and City have made an investment in the community and have been able to leverage those funds to obtain grants and work with other government agencies to establish partnerships, such as Benton County and the Rural Capital County Funds and Columbia Basin College. Ms. Mosley appreciates the Commission's leadership and how, one joint meeting several years ago, lead to the revitalization of Columbia Drive with the development of Columbia Gardens. Ms. Mosley is excited for the future of Columbia Gardens and Vista Field.

Commissioner Moak appreciates the kind words and stated the Commission takes our improved relationship with the City very seriously and wants to continue to work in partnership. There is a lot of excitement from the community and the Port about how we can move forward at Columbia Gardens, The Willows and Vista Field. The ILA is a model, in terms of working with others, and sets the bar high; and it has provided the opportunity to leverage funds with other government entities. Commissioner Moak thanked Mayor Britain and Ms. Mosley for their continued partnership.

No further comments were made.

### CONSENT AGENDA - A

- A. Approval of Direct Deposit and E-Payments Dated May 2, 2018**  
Direct Deposit and E-Payments totaling \$55,180.24
- B. Approval of Warrant Register Dated May 4, 2018**  
Expense Fund Voucher Number 100081 for a grand total of \$19,079.73
- C. Approval of Warrant Register Dated May 8, 2018**  
Expense Fund Voucher Numbers 100082 through 100131 for a grand total of \$174,434.80
- D. Approval of Direct Deposit and E-Payments Dated May 16, 2018**  
Direct Deposit and E-Payments totaling \$53,382.38
- E. Approval of Warrant Register Dated May 22, 2018**  
Expense Fund Voucher Numbers 100132 through 100156 and 100158 through 100166 for a grand total of \$76,088.51
- F. Approval of Special Commission Business Meeting Minutes April 19, 2018**
- G. Approval of Regular Commission Business Meeting Minutes April 24, 2018**

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

## CONSENT AGENDA - B

### ***A. Approval of Warrant Register for PS Media Dated May 22, 2018***

Expense Fund Voucher Number 100157 for a grand total of \$19,707.96

**MOTION:** *Commissioner Barnes moved for approval of the Consent Agenda B; Commissioner Moak seconded.*

### ***Discussion:***

*Commissioner Novakovich stated he would like to recuse himself from any action on Consent Agenda - B, because on April 12, 2011, he disclosed that Esprit, the company he and his wife owns, has a contract with PS Media to print the Port's newsletter and other printed materials. Esprit does not get paid directly from the Port; they get paid from PS Media.*

*Consent Agenda - B is a payment to PS Media and in the interest of any kind of perception that there could be a conflict, he would like to recuse himself from any action on this item.*

***With no further discussion, motion carried. All in favor 2:0, (Commissioners Moak and Barnes) 1 abstained (Commissioner Novakovich).***

## PRESENTATION

### ***A. Columbia Gardens Latino Heritage Murals, Andrew Reid***

Ms. Bader Ingleima introduced Andrew Reid, artist of the Latino Heritage Mural (LHM) and Barb Carter, Port art liaison, who has shepherded the LHM project over the past two years.

Andrew Reid resides in Miami, Florida and his studio is in Little Haiti, where there is a flourishing art scene. Mr. Reid extended his thanks to the Commission, Mr. Arntzen, Ms. Bader Ingleima and especially Ms. Carter, who helped him navigate the mural project. Mr. Reid appreciated Ms. Carter's assistance in the interviews and reaching people who are represented, in Pasco and other areas of the Tri-Cities. Mr. Reid stated the community opened up their homes and allowed him to ask personal questions about their heritage, and for that, he is grateful. Mr. Reid applied a clear coat for protection from the extreme weather and graffiti. Mr. Reid stated Miami is a successful art town and once a year, hosts Art Basil. The economic impact on Miami from Art Basil is enormous and Mr. Reid believes Columbia Gardens will be the future anchor for economic development within Kennewick. Mr. Reid is excited for the Celebration Event and believes there will be a good turnout, because this is a community project, honoring the Latino field workers. When Jon Lindeman approached Mr. Arntzen with the idea of a mural, a great concept evolved and that is the key to success. Mr. Reid expressed his gratitude to Ms. Carter and Mr. Lindeman and hope the LHM is a great success for economic development and thanked the Port for the opportunity.

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Ms. Bader Inglima stated Mr. Reid is very humble, and as an artist, he has been willing to work with community to reflect not his vision of their story, but to truly tell their story. Ms. Bader Inglima thanked Mr. Reid for his flexibility, his depiction of the story of the Latino community through his art, and the ability to create and infuse the murals with story of the local region. Ms. Bader Inglima stated Mr. Reid created the line art for the LHM and gave the Port permission to create a line art coloring page as a take-a-way for the Celebration Event. Ms. Bader Inglima thanked the LHM committee, who remained actively engaged during the entire process and had the idea to create a coloring page of the LHM.

Commissioner Barnes is looking forward to the Celebration Event and stated the LHM is spectacular.

Commissioner Novakovich stated Mr. Reid is an amazing artist and great person and hopes he has a chance to return to the area.

Commissioner Moak appreciated the work of everyone involved in the LHM and the way Mr. Reid listened to the people tell their stories and reflected it in the LHM.

Mr. Reid stated if the LHM had not been done properly, it would not be as impactful, therefore, it was very important to listen to the stories and listen to the LHM committee to get it right.

Commissioner Moak stated the Port tries to go above and beyond and do things the right way and hopes the Celebration Event is a great expression of that.

Mr. Arntzen thanked staff for all their work and stated the Coyote Crew assisted with the installation of the mural. Mr. Arntzen expressed his respect for Mr. Reid and Ms. Carter and stated the process has been long and some challenges occurred along the way. The Commission let the LHM Committee and Mr. Reid take the lead on the LHM, to create a uniquely community driven project.

Commissioner Moak stated the Commission is very pleased with the outcome and praised Mr. Reid, the LHM Committee, and Ms. Carter for their dedication to the LHM.

## NEW BUSINESS

### ***A. Amendment to Ground Lease for DDM Investments LLC (Cedars); Resolution 2018-09***

Ms. Hanchette presented Resolution 2018-09, which is a ground lease amendment request from DDM Investments, who own Cedars. Cedars restaurant has been a Clover Island destination since 1974. Dave and Darci Mitcham of DDM Investments LLC purchased the restaurant and assumed a ground lease agreement with the Port of Kennewick effective January 2, 2006. For the benefit of current and future owners, DDM Investments LLC is requesting two additional ten year options for a potential fifty-five year ground lease. The current 15 year lease began in 2006-2021, with two optional ten year options.

A key benefit of the lease amendment to the Port of Kennewick is the continuation of vitality on Clover Island that Cedars restaurant has attracted over many years as a dining destination. The

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additional options provide increased revenue to Port operations and projects, along with clarification of dock usage and maintenance. The proposed amendment incorporates the Port's current late fee, interest, and NSF policies as standard lease language bringing continuity and cost savings to Port administration.

Mr. Kooiker stated the Port uses a blanket billing system for tenants, but were unable to utilize this procedure with Cedars because they were not on the standard lease. The ground lease amendment moves Cedars to the standard lease format, which will be a benefit for the Port.

Mr. Arntzen thanked staff for their efforts and stated Cedars is a flagship establishment on Clover Island and it is important for the Port to help keep them viable. Mr. Arntzen believes it will be a good transition and the amendment of the lease language is worth considering.

Commissioner Barnes confirmed that the lease began September 2005 and are currently in year 13 of the lease and the schedule of rents is for year 10-15.

Ms. Hanchette stated the lease was assigned from Ray Gillette on March 1, 2006 and they are currently in their 13<sup>th</sup> year.

Commissioner Barnes confirmed that DDM Investments leases four lots, 6, 7, 8, and 9, and inquired what the total acreage was.

Ms. Hanchette stated it is 1.14 acres/50,240 square feet.

Commissioner Barnes agrees with Mr. Arntzen's comment and believes the Mitcham's have done a good job with the restaurant. Commissioner Barnes support actions by the Port to make the property more attractive to a buyer and it is consistent with what the Port is trying to accomplish on Clover Island, and helps bring vibrancy to the Island.

## PUBLIC COMMENT

No comments were made.

***MOTION:*** Commissioner Novakovich moved for approval of Resolution 2018-09, approving a ground lease amendment for two additional ten year options added to the end of the Port's current ground lease with DDM Investments; Commissioner Barnes seconded.

### ***Discussion:***

*Commissioner Moak would have liked to have seen additional external benefits to the Port, other than internal processes. Commissioner Moak is not concerned about 40 years from now, but is very interested in what happens on Clover Island over the next 5-10 years. Commissioner Moak inquired if DDM Investments has a purchaser for the building.*

*Ms. Hanchette does not believe DDM Investments has a purchaser at this time and they are awaiting the appraisal of value to determine a sales package.*

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*With no further discussion, motion carried. All in favor 2:1 (Commissioner Moak nay).*

## OLD BUSINESS

### ***A. Five Year Lease Renewal with Bruker AXS Handheld 60 Day Lease Extension; Resolution 2018-10***

Ms. Hanchette reported that the Port has been negotiating the lease renewal with Bruker AXS Handheld since December 2017. The Port of Kennewick leases approximately 21,000 sf of space to Bruker AXS Handheld Inc. in Vista Field Development Facility A at 415 N. Quay Street, Kennewick. Bruker has requested a five year lease agreement and removal of Article 23 from the standard lease language. It was important to Bruker that that clause be removed and Ms. Luke reviewed that section and felt it was reasonable to accommodate their request.

Bruker is a long-term port tenant with 38 employees in various professional positions: scientists, engineers, research and development, applications, assembly/production and administration. With more than 6,000 employees worldwide, Bruker Corporation is a publicly traded global manufacturer of high-end analytical instruments used within the academic and government, pharma/biotech, clinical diagnostic and industrial markets. The Kennewick Bruker office is one of six locations in the United States. Locally, Bruker is conducting research, development, design, assembly, shipping and service for a proprietary line of handheld, mobile and portable spectrometers. Vendors and Bruker employees come to Kennewick from all over the world for product training, often times visiting for a week at a time and contributing to the local economy by staying in area hotels, shopping and dining.

Commissioner Barnes stated the current rate is .51 cents a square foot and confirmed that the Port recently made a substantial investment to the building, approximately \$759,000, for deferred maintenance.

Ms. Hanchette stated the building went through a remodel and a large portion of deferred maintenance was addressed. Ms. Hanchette reported that all of the heating and cooling units and furnaces were replaced, and the addition of a fire alarm system. Some of the monies from the remodel will benefit other tenants, because the Port was able to create two additional spaces within the same building.

Commissioner Barnes inquired if the Port sought any outside help with the rent determination because the building is considered light industrial with office space.

Ms. Hanchette spoke with several 3<sup>rd</sup> party real estate agents, however, because it is light industrial with office space, with an open warehouse space, it is hard to determine a good rate. Ms. Hanchette stated there is no comparable rate but the Port does use a blended rate and does not adjust for office or warehouse space.

Commissioner Barnes asked if the Port has obligations for maintenance.

Ms. Hanchette stated the Port has maintenance obligations; however, with the new lease, routine expenses were shifted back Bruker. During the remodel, Bruker paid for all of the landscape

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renovations and added additional outside lighting to the buildings. Furthermore, Bruker pays for the landscaping to be maintained, which benefits all of the tenants,

Commissioner Moak inquired if removing clause 23 is valuable to the Port's tenants as a whole.

Ms. Hanchette stated clause 23 is also used in the Port's agricultural leases, where the property eventually becomes industrial.

Ms. Luke stated Bruker's length of lease is five years and stipulates a firm end date, as it relates to a termination. Ms. Luke stated the Port stood firm on all the terms, but felt we could negotiate away clause 23 on this particular lease. Clause 23 is an important piece for the Port lease, for purposes of planning and flexibility if circumstances arise, and if the tenant is not meeting expectations. Ms. Luke stated it is unusual for the Port to exercise, but it is important to maintain and is a fairly standard term.

Commissioner Moak asked how long the Port has been using the new, standard lease and if some Port tenants are still on the old lease format.

Ms. Hanchette stated the Port has been using the new lease agreement for about four years and there are only a few tenants on the old lease format. The Port has transitioned the majority of commercial tenants and all of the agriculture leases to the new lease format.

### PUBLIC COMMENT

No comments were made.

**MOTION:** *Commissioner Novakovich moved approval of Resolution 2018-10 approving a five year lease with Bruker AXS Handheld; Commissioner Moak seconded.*

#### ***Discussion:***

*Commissioner Barnes was initially concerned about the rate; however, it is not unusual to see rates at 50 cents per square foot for basic warehouse space. Given the Port's recent investment of \$759,000 in upgrades Commissioner Barnes felt that the rate was low; however, the fact that the tenant remained in the building during the remodel, invested their own funds in upgrades, and adds very valuable high paying jobs to our community, visitors, customers, local economy he supports the lease. As stipulated in the lease term, at the end of five years, the rate is fair and equitable and in line with the market. Commissioner Barnes stated the legal description shows the number eight and believes it should be degrees.*

*Ms. Hanchette confirmed with Assessors website and the eight should be degrees.*

*Ms. Luke will work on cleaning up the legal description.*

*Commissioner Moak thanked staff for completing the lease amendment and as Commissioner Barnes mentioned, the deferred maintenance has been completed and the Port continues to stay on top of those issues. It is good to have Bruker in the community and as a tenant.*

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*Commissioner Barnes inquired if the Commission needs to restate the motion because of the discrepancy with the legal description,*

*Ms. Luke stated a notation in the discussion is sufficient.*

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

### REPORTS, COMMENTS AND DISCUSSION ITEMS

#### **A. Vista Field Update**

##### **1. Vista Field Policy Matters**

Mr. Arntzen stated Mr. Peterson is currently working with Parametrix to complete the engineered drawings for Vista Field Phase 1A and incorporating community and Commission comments. Mr. Arntzen listed the following administration or policy matters that will need to be addressed by the Commission over the next several months:

- a. Street names;
- b. Vista Field Logo: Ms. Plater-Zyberk suggested branding of the airport, separate from the Port;
- c. Business Improvement District/Home Owners Association: mechanism to collect dues for programming and maintenance;
- d. Financing;
- e. Model sales strategy/marketing;
- f. Collaborative Design process; and
- g. Art policy.

Commissioner Moak stated all of the items are important and in order to move forward with the development, the Commission needs to come to conclusions.

Commissioner Novakovich inquired about installing fiber at Vista Field.

Mr. Arntzen recognized that fiber should be included on the list, especially since Port's now have the ability to build telecommunications infrastructure.

Commissioner Novakovich asked for an update regarding the fiber.

Mr. Arntzen stated staff spoke with the Port of Whitman, who installed fiber to the rural areas of the Port of Whitman. Mr. Peterson met with Benton PUD, and NoaNet (fiber provider) and Parametrix to discuss both the electrical and fiber system improvements at Vista Field. Vista Field would receive electrical and fiber from three locations. This would give Benton PUD and NoaNet the opportunity to pull the electrical and fiber to tie into the existing network. Mr. Arntzen stated the Port commissioned a study with Todd Coleman of Parametrix, who specializes in fiber and because Vista Field is not in a rural area, it would be prudent for Benton PUD and NoaNet to install fiber. The Port could discuss the addition of fiber with Benton PUD and see if there are ways to form a collaborative partnership. Mr. Arntzen believes the Port and Benton PUD could partner with a private wholesaler, such as Spectrum or CenturyLink to



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provide the service. However, the economic study indicate it would take the Port 21 years to break-even if the Port installed the fiber on its own.

Commissioner Moak inquired where is fiber on the list of importance.

Mr. Arntzen stated fiber should be at the top, because it makes the property more desirable; however, before staff initiates a conversation with Benton PUD, Mr. Arntzen would like to confirm if the Commission would like to partner with Benton PUD or for the Port to install fiber.

Commissioner Moak believes it is about the service to the properties not who the installs the fiber, especially if the Port can partner with Benton PUD and NoaNet.

Commissioner Novakovich confirmed that the Port could partner with Benton PUD and NoaNet for the installation and a wholesaler would provide the service.

Mr. Arntzen stated either the Port or Benton PUD would install conduit and then collaboratively decide who would be the wholesaler for the area. Mr. Arntzen can begin discussions with Benton PUD regarding a partnership which would be very beneficial for the community.

Commissioner Barnes stated this is a one-time endeavor and not the Port's expertise and it would be practical to explore a partnership with Benton PUD and NoaNet. Commissioner Barnes expressed his concern for subsidizing the project.

Mr. Arntzen believes wholesalers are providing the copper strand, however, fiber is an upgrade. If there is an opportunity for a government to install fiber, then there could be a competitive advantage for the development. Mr. Arntzen stated his preference is to partner with the installation rather than add a new business line for the Port.

Mr. Peterson stated they standard conduit is two inches and NoaNet uses three inch, which does not cost much more if it is installed when the ditch is open.

Commissioner Moak asked Mr. Arntzen to speak with Benton PUD and see if this is a direction the Port might take for Vista Field.

## **2. *Financing Strategy***

Mr. Kooiker presented the Key Banc Capital Markets draft calendar for the financing strategy for Vista Feld. Mr. Kooiker stated the Port contracted with three consulting firms; Key Banc Capital Market, who will arrange the loan agreement; Foster Pepper, who is the Bond Council; and Martin Nelson, the third party fiduciary. Based on the draft calendar, the Port will receive Requests for Proposals (RFP) for the loan on July 16, 2018 and thereafter select a bank as a lender.

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Commissioner Novakovich thanked Mr. Kooiker for his diligence and for explaining the process.

Mr. Kooiker explained that the Port is not getting a bond for Vista Field but a private placed bond (loan), Washington RCW states any public debt is a bond. The approximate issuance cost for the loan is \$50,000.

Commissioner Barnes confirmed that the Port would take out a \$5,000,000 private loan and the cost to the Port will be \$50,000.

Mr. Kooiker stated that is correct, but that amount does not include interest on the loan.

Commissioner Barnes inquired if the loan is tax exempt.

Mr. Kooiker stated the loan is tax exempt and if the Port had decided to remodel the hangars as part of Phase 1A, that would not be tax exempt. The infrastructure, plaza, and water feature are all non-taxable.

Mr. Arntzen stated Mr. Kooiker has researched the process and obtained expert advice for the process. Mr. Arntzen indicated the RFP will not garner an apple to apple comparison and stated the consultants will help staff determine the best proposals. Mr. Arntzen inquired if the Commission is comfortable with staff and the consultants proceeding forward for the RFP and if the Commission would like staff to bring the top proposals forward for review.

Commissioner Moak is comfortable moving forward with the process if there is a clear front runner; however, if there are a few proposals that are similar, then he would like staff to present the different benefits from each proposal.

Commissioner Barnes agrees with Commissioner Moak's suggestion.

Mr. Kooiker stated Key Banc explained a process where the Commission gives delegation to a committee to make the recommendation because it can be hours of review.

Mr. Arntzen confirmed that the Commission delegates to committee the ability to make a recommendation, whereby the final decision is made by the Commission. Mr. Arntzen inquired if the Commission is agreeable to the process.

Commissioner Novakovich stated he is fine with the process as long as there is justification about the recommendation.

Commissioner Moak agrees with Commissioner Novakovich and stated the consultant should be able to defend the recommendation.

Mr. Kooiker stated the Port will continue to move forward in an open and transparent process.

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Mr. Arntzen stated he would like to see the Commission remain in charge of the process and allow the committee to review the RFP's. Staff and the Committee will bring back a recommendation to the Commission and at that time the Commission can decide the next steps.

### ***B. Clover Island Master Plan Update***

Mr. Arntzen is enlisting the services of Makers Architecture & Urban Design, the original owners of Clover Island Master Plan, to meet with the Commission and public to create a scope of work for a potential refresh of the 2005 Master Plan. Julie Bassuk worked on the 2005 Master Plan and will be able to meet with the Port Commission in September. This works to the Port's advantage, because there is not currently funding for the Clover Island Master Plan update; however, it can be added to the 2019-2020 Budget.

Commissioner Moak inquired if Mr. Arntzen has spoken to the City of Kennewick about updating the Master Plan. Commissioner Moak believes updating the Clover Island Master Plan should tie into the City's revitalization plan for the greater Bridget to Bridge area.

Mr. Arntzen has spoken to Ms. Mosley regarding the Master Plan update and indicated that the City would like have some input in the Port's Master Plan process, but would like it to remain the Port's process. Mr. Arntzen believes if the Port were to include other areas, it would slow down the process. Mr. Arntzen will visit with Ms. Mosley about updating the Clover Island Master Plan and what the City foresees for the future of the area.

Commissioner Barnes is concerned the Port needs a comprehensive review of Clover Island, The Willows and Columbia Gardens. The relationship to each other is important and should be addressed. Commissioner Barnes understands it is a larger project, but does not believe there is value in updating the Master Plan if the other properties are not considered.

Mr. Arntzen will speak with Ms. Mosley about Clover Island and stated if the Port does decide to include The Willows and Columbia Garden in the Master Plan Update, the process may become larger than he originally anticipated.

### ***C. Congress of New Urbanism Report***

Commissioner Moak stated the Congress of New Urbanism (CNU) Conference was very informative and he appreciates the opportunities to travel to educational conferences such as CNU.

The Conference discussed items such as incremental development and building places, not just buildings. Commissioner Moak stated the Port should focus on creating an experience, programming space, and highlighted the importance of landscape and trees at Vista Field. Additionally, the topic of strengthening core areas of town and how much public entities spend on infrastructure was addressed. Commissioner Moak stated Elizabeth Plater-Zyberk of DPZ Partners discussed the recent Vista Field meeting with Mr. Arntzen and Mr. Peterson. Commissioner Moak reported that the 2019 CNU Conference will be held in Louisville, Kentucky.

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### ***D. Washington Public Ports Association (WPPA) Conference Report***

Mr. Arntzen and Commissioner Novakovich attended the Washington Public Ports Association (WPPA) Spring Conference earlier this month, where the Port was presented the Creative Partnership Award.

Ms. Bader Inglima stated the award is a recognition of the Port for the creative partnership that was undertaken at Columbia Gardens. The Port submitted an application, similar to the Governor's Award application, for partnership at Columbia Gardens. WPPA recognized the Commission's leadership and how they encouraged partnerships with the City of Kennewick, Benton County, Columbia Basin College, the Hanford Economic Investment Fund Advisory Committee, and all of the other entities/groups that were part of the Port's vision to redevelop and transform Columbia Drive.

Commissioner Novakovich stated it is rare for ports and cities to partner on projects and the attendees were impressed with our partnership. Together we are better and can make things happen.

Mr. Arntzen stated it was an honor to be recognized by the WPPA and stated Ms. Bader Inglima did an outstanding job on the application.

Ms. Bader Inglima will forward the application to the Commissioners.

Commissioner Moak stated Columbia Gardens is a great project and many entities stepped up to partner with the Port. Furthermore, the Port has garnered a reputation of building great projects and entities want to be a part of that.

Ms. Bader Inglima continues to leverage our partnerships and reported that she is working with Spectrum for the Latino Celebration Event; Spectrum is providing free WIFI for the live Spanish-language interpretation of the program.

### ***E. Real Property Auction Plan***

Mr. Arntzen stated staff and the Commission have been discussing the possibility of utilizing an auction firm for the Southridge property and using the proceeds for the next phase of Vista Field. Mr. Arntzen suggested if the Commission is considering using an auction firm for Southridge, several conditions should be in place, such as:

- The Port does not begin the process until the bids for Vista Field Phase 1 infrastructure are received;
- Use an Request for Proposal for services;
- Consider auctioning the property in spring of 2019; and
- Factor in the evolving conditions of hospital administration issues and that impact on the surrounding neighborhood.

Commissioner Moak is agreeable to Mr. Arntzen's conditions and stated the timing should be based on when Mr. Kooiker believes the Port needs the funds.

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Commissioner Barnes listened to the audio of Mr. Musser's presentation and stated many of the properties that were mentioned were unique and considered trophy lots. Commissioner Barnes expressed his concern about the up-front marketing fee and stated the Port could invite a top rate realtor to give a presentation about things the Port could do to achieve a sale at Southridge, which does not require an up-front investment.

Commissioner Novakovich believes that is a good idea, because if the Port waits until next spring to possibly auction the property, we can in the meantime invite a realtor to a Commission Meeting and look at implementing their suggestions and see if the property might sell without an auction.

Mr. Arntzen stated if the Port were to sell the property now, it would make things easier; however, he believes selling the property between now and September is unrealistic. Mr. Arntzen explained the Phase 1A does not include the sale of Southridge funds, but staff does not know how much Phase 1A will cost. The Commission can consider auctioning the property if the funds were needed by September.

Commissioner Moak believes if the hospital can conclude their administrative transaction by fall, the Port may want to wait on moving the property.

Mr. Arntzen confirmed that staff will continue on the same course and look at enhanced techniques to sell the property. The Port has a policy that states that the Port does not offer exclusives; however, this is something the Commission could amend if necessary.

Commissioner Novakovich inquired if there are any laws in place that say the Port cannot offer exclusives.

Ms. Luke stated it is a matter of policy and the Commission can amend their policies as needed.

Commissioner Novakovich likes Commissioner Barnes's idea of inviting a realtor to present possibilities about a strategy for the property.

Ms. Hanchette can reach out to local commercial agents and review the Port's current marketing efforts to see if there are additional strategies the Port can use.

Commissioner Barnes inquired what the initial investment with an auction house would cost.

Mr. Arntzen believes approximately \$30,000 for marketing.

Mr. Kooiker stated the Port pays a substantial amount on advertising and marketing on a reoccurring basis.

Ms. Hanchette stated the property is advertised on Loopnet, Zoomprospector (TRIDEC website) and is advertised monthly in the *Tri-City Journal of Business*. Ms. Hanchette has received some feedback and indicated there is already a lot of inventory in that neighborhood and not enough traffic for a big box store.

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Mr. Arntzen stated staff will continue on course and review marketing efforts and bring back a report in the fall.

Commissioner Barnes inquired if there is a non-exclusive agency listing for the MLS.

Ms. Hanchette believes there is; however, she believes MLS has restrictions and will confirm with Tri-Cities Association of Realtors.

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

Commissioners reported on their respective committee meetings.

## ***G. Non Scheduled Items***

1. Commissioner Novakovich reported on the WPPA Legislative Report, which addressed public works contracting, unit-price contracting, competitive bid process and telecom authority and tourism funding.

Recently the WPPA hired a communication and marketing professional who has a differing view from the Organization's mission and the PR committee. The committee believes the WPPA should promote the port districts and WPPA, whereas the new hire wants to create marketing methods for ports to market themselves.

2. Commissioner Moak received a phone call recently from a constituent regarding the Latino Heritage Mural, who inquired what the Port had done to recognize others in the community. Commissioner Moak relayed there have been several things done already pertaining to the heritage of others and suggested that they visit Clover Island and the Benton County Historical Museum.
3. Ms. Scott reported that Ali Madison from Ben Franklin Transit requested a letter of support from the Port for a grant that they are pursuing to replace two diesel buses with electric buses. Ms. Scott spoke with Ms. Bader Inglima, who will draft a letter of support, if the Commission so desires. The Commission agreed.

Recently the City of Kennewick gave a tour of the effluent treatment facility at the Wine Village to the Academy of Certified Hazardous Materials Mangers. The Academy sent a thank you letter to the City, with a copy to the Port stating:

*"The Wine Village pre-treatment is a good example and model for addressing future discharges to the city treatment systems. And, that it is forward thinking and includes planning for future development and enhanced compliance."*

4. Ms. Bader Inglima stated the Port has done letters for Ben Franklin Transit in the past in support of their grants for buses. She will prepare that letter as requested.

Ms. Bader Inglima appreciates Commissioner Moak's response to the inquiry about how the Port has supported other groups and sighted The Call of the River and The Gathering Place as examples.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 22, 2018 MINUTES

Ms. Bader Inglima reminded the public about the Latino Heritage Celebration Event tomorrow, May 23, 2018, at Columbia Gardens, with a social hour to begin at 2:00 p.m. and formal program following at 2:30 p.m.

5. Mr. Arntzen presented the JUB Engineering report for the City of Richland and Port of Benton rail proposal which studied the truck traffic on Highway 240.

Commissioner Moak believes Mr. Arntzen should speak to Brian Malley at Benton Franklin Council of Governments, who are the regional transportation specialists.

6. Mr. Peterson recently visited Suncadia Resort and reported that Suncadia cost approximately \$1,000,000,000. The private sector spent \$65,000,000 on permits and entitlements, about 6.5% of the overall project, whereas, Vista Field permits and entitlements may cost about 0.5%.
7. Mr. Kooiker reported that the Financial Reports have been filed and stated the Port has received 22 years of clean audits.
8. Ms. Hanchette shared photos of the new blade signs and entrance sign for Columbia Gardens.

## PUBLIC COMMENTS

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick stated that the Port should consider using a local internet company as the wholesaler for Vista Field and suggested One World Telecommunications, who is a local company that is already on Port property.

No further comments were made.

## ADJOURNMENT

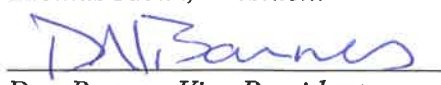
With no further business to bring before the Board; the meeting was adjourned 4:48 p.m.

### **APPROVED:**

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**



Thomas Moak, President



Don Barnes, Vice President



Skip Novakovich, Secretary

# PORT OF KENNEWICK

## Resolution No. 2018-09

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK AUTHORIZING THE CHIEF EXECUTIVE OFFICER  
TO EXECUTE AN AMENDMENT TO COMMERCIAL LEASE AGREEMENT WITH  
DDM INVESTMENTS 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**, DDM Investments LLC commonly known as Cedars Restaurant has a long-term ground lease effective November 22, 2005 through assignment of lease from original tenant effective after January 2, 2006 on the port's Clover Island property; and

**WHEREAS**, an Amendment for two additional ten (10) year lease renewal options has been negotiated by port staff and legal counsel; 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 legal counsel have reviewed the proposed Lease Amendment and find it is in proper form and it is in the Port's best interest; and

**WHEREAS**, after consideration of the attached lease amendment, 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 two additional ten (10) year lease renewal options with DDM Investments LLC as presented and authorizes the Port's Chief Executive Officer 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 22nd day of May 2018.

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

By:

  
THOMAS MOAK, *President*

By:

  
DON BARNES, *Vice President*

By:

  
SKIP NOVAKOVICH, *Secretary*



## **AMENDMENT TO GROUND LEASE**

THIS AMENDMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Port of Kennewick, a Washington municipal corporation (hereinafter referred to as “Port”), and DDM Investments LLC, a Washington limited liability company (hereinafter referred to as “Tenant”),

### **WITNESSETH**

WHEREAS, on November 22, 2005, Port and Tenant’s predecessor in interest entered into a Ground Lease (with Option to Purchase)(the “Ground Lease”) for the lease of Lots 6, 7, 8 and 9, Clover Island Plat, Kennewick, Washington, such plat recorded under Auditor’s File No. 317685, records of Benton County, Washington and as shown on Exhibit A of the Ground Lease (the “Property”). A true and correct copy of the Ground Lease is attached hereto and incorporated by reference herein as Exhibit “1”. On December 30, 2005, effective from and after January 2, 2006, the Ground Lease was assigned from the original Tenant, Cedars Pier One, Inc. to DDM Investments LLC pursuant to an Assignment of Lease. A true and correct copy of the Assignment of Lease is attached hereto and incorporated by reference herein as Exhibit “2”.

AND, WHEREAS, the Port and Tenant wish to set forth their agreement to provide Tenant with additional lease term renewal options, to address dock usage, and to address rent for the additional lease terms.

NOW, THEREFORE, it is agreed by and between the parties, as follows:

1. The following sentences are added before the last sentence of Section I, “Lease”:

The Port and the Tenant may jointly use the dock immediately adjacent to the property. The Port will maintain the dock structure while the Tenant shall maintain dock cleanliness.

2. Section II, Term, “Renewal Options”, of the Ground Lease Agreement is amended to read as follows:

Provided that Tenant is in possession of the premises, and that this Lease is not previously cancelled or terminated by either party as in this Lease provided, by operation of law or otherwise, and further provided that Tenant has faithfully complied with and performed all of the terms of this Lease, and any extension of said term, and is not in default at the time of exercise of this option, then Port and Tenant covenant and agree that Tenant shall have the option to extend the term of this Lease for four (4) successive terms of ten (10) years each, each successive term commencing at the expiration of the prior term of this Lease, upon the same terms, covenants and provisions herein set forth except for rent as hereinafter provided. The option(s) for said renewal term(s) shall be exercised by Tenant giving Port not less than ninety (90) days written notice prior to the expiration of the then applicable Lease term of Tenant’s intention to exercise the renewal option.

3. Section III – RENT of the lease is hereby amended to read in full as follows:

SECTION III  
RENT

**Base Rent:** Tenant shall pay rent monthly in advance as set forth below commencing on the first day of this Lease and continuing monthly thereafter on the first day of each succeeding month as follows: (Rates for years 16 through 55 apply only if renewal term option is validly exercised.)

YEAR 1	\$1,800
YEAR 2	\$2,000
YEAR 3	\$2,200
YEAR 4	\$2,500
YEARS 5 THROUGH 9	\$3,000
YEARS 10 THROUGH 15	\$3,500
YEARS 16 THROUGH 20	\$4,500
YEARS 21 THROUGH 25	\$6,000
YEARS 26 THROUGH 30	\$6,500
YEARS 31 THROUGH 35	\$7,000
YEARS 36 THROUGH 55 (2.5% increase each lease year; e.g., Year 36 rate will be \$7175; Year 37 rate will be \$7354.38, with 2.5% 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%.

**Place of Payment:** The rent payment shall be made payable to the Port of Kennewick and shall be paid at the Port offices at 350 Clover Island Drive, Kennewick, Washington 99336, or at such other address as the Port shall direct in writing.

**Late Fees:** If any sums payable by Tenant to Port 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 Port 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.

**Interest:** Any rent payment not paid within thirty days of the date upon which the payment is due shall accrue interest on the unpaid rent at the rate of one percent (1%) per month.

**Insufficient Funds:** If a Tenant check is returned by the bank for any reason, Tenant shall pay a NSF fee of Fifty Dollars (\$50.00) for administrative costs related to collecting and handling

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

4. All remaining terms and conditions of the parties' Ground Lease Agreement and Assignment of Lease (Exhibits 1 and 2 attached), not inconsistent herewith, remain unchanged.

By: Tim Arntzen, Chief Executive Officer

Lucinda Luke, Port Counsel

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

On this day personally appeared before me **Tim Arntzen** to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said

municipal corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

\_\_\_\_\_  
Notary Public in and for the State of Washington

Residing at: \_\_\_\_\_

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

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

On this day personally appeared before me \_\_\_\_\_ to me known to be the  
\_\_\_\_\_ of the **DDM Investments, LLC**, the limited liability company that  
executed the foregoing instrument, and acknowledged the said instrument to be the free and  
voluntary act and deed of said limited liability company for the uses and purposes therein mentioned,  
and on oath stated he/she is authorized to execute the said instrument.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

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

# PORT OF KENNEWICK

## Resolution No. 2018-10

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK AUTHORIZING THE CHIEF EXECUTIVE OFFICER  
TO EXECUTE A COMMERCIAL LEASE AGREEMENT WITH  
BRUKER AXS HANDHELD INC.***

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

**WHEREAS**, Bruker AXS Handheld Inc. is a current long-term tenant in the port's Vista Field Development Facility Building A at 415 N. Quay, Kennewick leasing approximately 21,000 square feet of building space; and

**WHEREAS**, a five (5) year lease with Bruker AXS Handheld Inc. effective June 1, 2018 has been negotiated by port staff and legal counsel; 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 approves a five (5) year lease with Bruker AXS Handheld Inc. as presented and authorizes the Port's Chief Executive Officer 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 22nd day of May 2018.

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

By:

  
THOMAS MOAK, *President*

By:

  
DON BARNES, *Vice President*

By:

  
SKIP NOVAKOVICH, *Secretary*

**DRAFT**

# **COMMERCIAL PROPERTY LEASE AGREEMENT**

**BETWEEN  
PORT OF KENNEWICK,  
LANDLORD**

**AND**

**Bruker AXS Handheld Inc.,  
TENANT**

**VISTA FIELD DEVELOPMENT FACILITIES**

**415 N. Quay Building A, Kennewick**

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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: June 1, 2018.
- B. Landlord: Port of Kennewick,  
a Washington municipal corporation
- C. Tenant: Bruker AXS Handheld, Inc.
- D. Premises: The Premises shall mean the real property located at 415 N. Quay Building A, Kennewick, as described on Exhibit "A" and Exhibit "B" attached hereto and incorporated herein by reference, and any improvements located thereon.
- E. Permitted Use: Check all that apply:  
☒ Light manufacturing  
☐ Wholesale receiving/shipping  
☒ Administrative offices  
☐ Other: (Describe) \_\_\_\_\_
- F. Term: Commencing on the Lease Commencement Date and terminating on the Expiration Date.
- G. Lease Commencement Date: June 1, 2018
- H. Expiration Date: May 31, 2023.
- I. Total Square Feet Leased: 21,000 square feet
- J. Base Annual Rent Calculation: \$6.12 psf
- K. Annual Price Adjustment: 3% annual price increase to Base Monthly Rent (not including LET) effective June 1 each year starting 6/1/2019.
- L. Base Monthly Rent (not including LET): Year 1: \$10,710.00  
Year 2: \$11,031.30  
Year 3: \$11,362.24  
Year 4: \$11,703.12  
Year 5: \$12,054.20
- 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): Year 1: \$12,085.16  
Year 2: \$12,447.72  
Year 3: \$12,821.15  
Year 4: \$13,205.80  
Year 5: \$13,601.96
- O. Monthly Utilities: See Article 7 of Lease.
- P. Rent Due Date: The Lease Commencement Date and the first day of each month thereafter.
- Q. Financial Security: Check all that apply:  
☒ \$24,115.00 ON FILE deposit  
☐ Corporate surety bond  
☐ Personal Guaranty  
☐ Other financial security (Describe) \_\_\_\_\_
- R. Landlord's Address for Notices and Rent Payments:  
  
Port of Kennewick  
350 Clover Island Drive, Suite 200  
Kennewick, WA 99336
- S. Tenant's Address for Notices: Bruker AXS Handheld  
415 N. Quay Bldg. A  
Kennewick, WA 99336  
John Landefeld  
(509) 783-9850  
[John.Landefeld@bruker.com](mailto:John.Landefeld@bruker.com)
- T. Exhibits: Exhibit "A" Legal Description of Premises  
Exhibit "B" Floor Plan

## **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, sidewalks, loading areas, and parking areas. 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 the Basic Lease provisions, this **Article 4** and as otherwise set forth in this Lease, at the Landlord's address set forth in the Basic Lease Provisions.

### **4.1     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.

### **4.2     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.

#### 4.3 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 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 procuring and maintaining, during the term of this Lease, a deposit in the amount set forth in the Basic Lease Provisions, or by providing other financial security satisfactory to Landlord.

Upon any default by Tenant of its obligations under this Lease, Landlord may collect on the deposit to offset the Tenant's liability to Landlord. Collection on the deposit 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**

Landlord shall pay all assessments, charges and/or fees for garbage and common area utilities. Landlord shall pay water and sewer assessments if water and sewer is not separately metered to the Premises. Tenant shall be solely responsible for payment of all separately metered electrical, water and sewer 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: \_\_\_\_\_

Water Meters Assigned to Landlord: \_\_\_\_\_

Irrigation Meters Assigned to Landlord: 39823729

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:

8.1.1 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.

8.1.2 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;

8.1.3 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

8.1.4 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 23 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 untenantable, 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 untenantable 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; provided, however, that if Landlord has not completed its restoration of the Premises or does not anticipate completing its restoration of the Premises within nine (9) months of the date of such casualty, Tenant may elect to terminate this Lease by delivering written notice of such election to Landlord.

If the Premises are entirely destroyed, or partially damaged and rendered untenantable, 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 untenantable, 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 untenantable 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 untenantable 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 untenantable, 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 including all supplies, material, labor and equipment. Tenant shall keep the Premises in neat, orderly, and sanitary condition to include the control/prevention of rodents, insects and pests.

### 13.2 Landscaping and Common Area

Tenant, at its cost, will provide landscaping care and maintenance, sidewalk snow removal and general sweeping of Tenant's portion of building. Landlord, at its cost, will provide parking lot sweeping and parking lot snow removal.

### 13.3 Other Maintenance and Repairs

Landlord will maintain exterior of building, roof, walls, foundation, lighting 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. Tenant shall be responsible for all minor plumbing repairs and maintenance including but not limited to plumbing line blockages and minor leaks. Tenant shall be responsible to replace all light bulbs and light fixture ballasts located in Tenant's leased space. Tenant shall be responsible for the maintenance and repair of all overhead and/or sliding doors located in Tenant's Premises. Landlord shall be responsible for testing and maintaining Landlord-owned interior fire systems, smoke detectors, and fire extinguishers.

### 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 shall not be unreasonably withheld. 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.

## **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 DEFAULT AND REMEDIES**

### **23.1    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.

### **23.2    Remedies**

23.2.1 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:

- (a) 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
- (b) 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

- (c) 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.

23.2.2 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.

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

- (a) 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
- (b) 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
- (c) 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
- (d) 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
- (e) 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.

23.2.4 Definitions. As used in Paragraphs 23.223.2.3(a) and 23.223.2.3(b) 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 23.223.2.3(c) 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.

23.2.5 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.

### 23.3 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 24 ATTORNEYS' FEES AND COSTS

If the Tenant requests an amendment to this Lease Agreement other than the revisions contained herein, or other revision to the Landlord's standardized terms or forms, Tenant agrees that it shall pay the Landlord for all costs and legal fees incurred by the Landlord as the result of request.

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 25 MISCELLANEOUS

### 25.1 Miscellaneous Provisions

The following miscellaneous provisions shall apply to this Lease:

25.1.1 Time is of the essence hereof.

25.1.2 If any portion of this Lease shall be deemed void, illegal or unenforceable, the balance of this Lease shall not be affected thereby.

25.1.3 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.

25.1.4 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.

25.1.5 This Lease shall be binding upon the heirs, executors, administrators, successors, and assigns of both parties hereto, except as otherwise provided for herein;

25.1.6 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.

25.1.7 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.

25.1.8 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.

25.1.9 Landlord will not utilize Washington State Department of Corrections ("DOC") work crew labor within fifty feet (50') of the Premises except for special projects previously approved by Tenant, which such approval shall not be unreasonably withheld, or in an emergency situation such as heavy snow accumulation on the Premises roof or similar emergency, in which case the Landlord will provide prior notification to Tenant before emergency work commences.

25.1.10 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.



**PORT OF KENNEWICK**

**By:** \_\_\_\_\_  
**Tim Arntzen, Chief Executive Officer**

**Reviewed:**

**By:** \_\_\_\_\_  
**Nick Kooiker, Port CFO**

**BRUKER AXS HANDHELD INC**

**By:** \_\_\_\_\_  
**John Landefeld, Managing Director**

**Approved as to form:**

**By:** \_\_\_\_\_  
**Lucinda Luke, Port Legal Counsel**

STATE OF WASHINGTON

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

ss.

I certify that I know or have satisfactory evidence that John Landefeld 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 Managing Director of Bruker AXS Handheld Inc., a Delaware 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 OF WASHINGTON

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

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 Chief Executive Officer 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 of Washington, residing at \_\_\_\_\_

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

## **EXHIBIT "A"**

**PTN: 1-3299-400-0004-002**

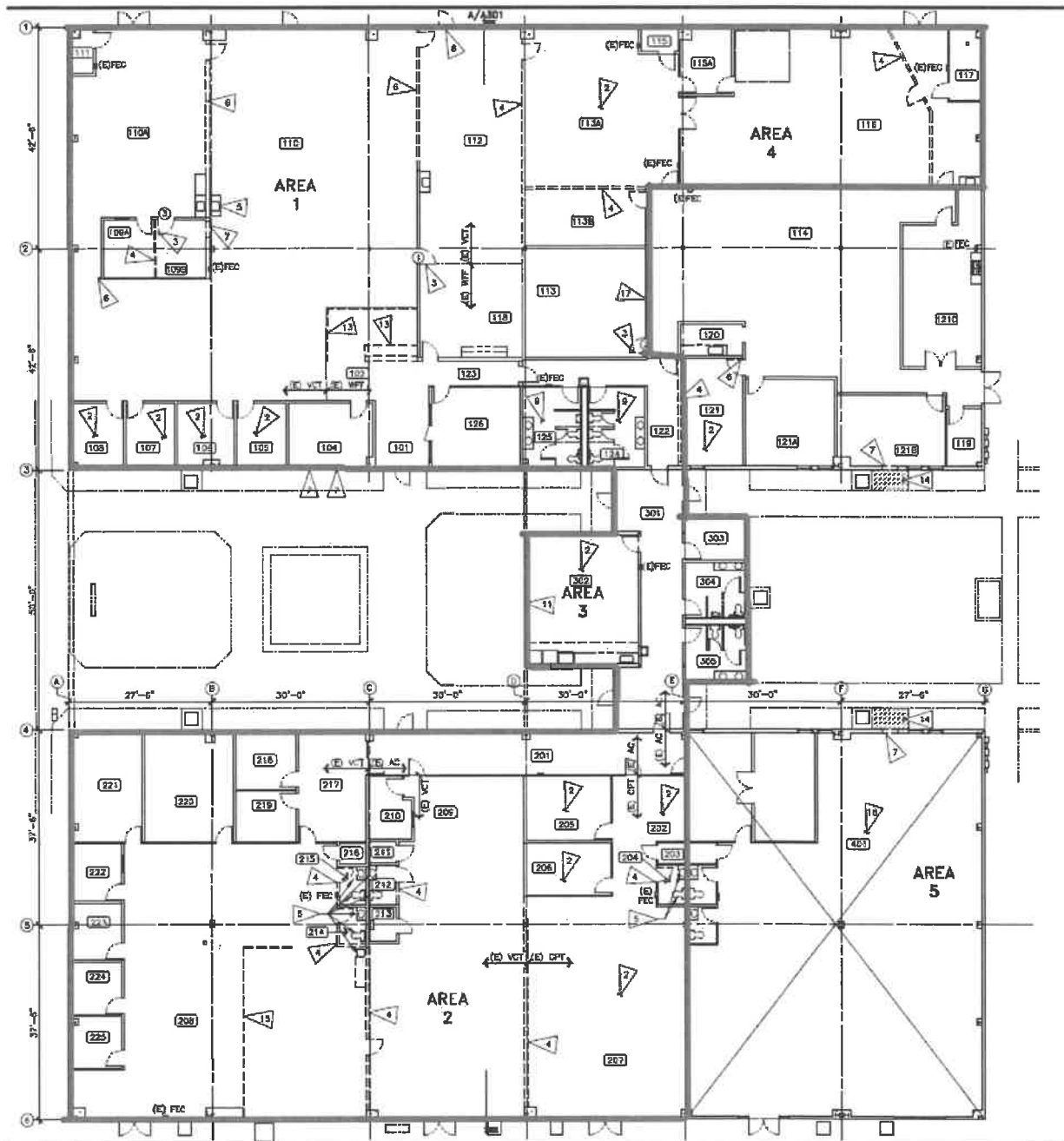
**Commonly Known as a Portion of:  
415 N. Quay Building A, Kennewick**

### **LEGAL DESCRIPTION:**

THAT PORTION OF THE SOUTH HALF OF SECTION 32 DESCRIBED AS FOLLOWS COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 32. THENCE SOUTH 89°08' 33" EAST 356.15 FEET TO THE NORTHWEST CORNER OF SECTION 5, TOWNSHIP 8 NORTH, RANGE 29. THENCE CONTINUING ALONG THE SOUTH LINE OF SECTION 32, SOUTH 89°16' 47" EAST 1044.66 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, THE RADIUS POINT OF WHICH BEARS NORTH 08° 43' 13" EAST 820 FEET. THENCE NORTHEASTERLY ALONG SAID CURVE 651.70 FEET, TO THE END OF SAID CURVE. THENCE NORTH 45°11' 04" EAST 261.64 FEET. THENCE NORTH 44°48' 56" WEST 40 FEET. THENCE NORTH 45°11' 04" EAST 1052.11 FEET. THENCE SOUTH 44°48' 56" EAST 460 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 44°48' 56" EAST 365 FEET. THENCE SOUTH 45°11' 04" WEST 416.17 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF A CITY STREET, KNOWN AS SOUTH QUAY STREET, SAID POINT BEING ON A CURVE THE RADIUS POINT OF WHICH BEARS SOUTH 32° 36' 30" WEST 50 FEET. THENCE WESTERLY ALONG SAID CURVE AND ALONG SAID RIGHT-OF-WAY 37.18 FEET, TO POINT OF REVERSE CURVATURE OF A CURVE THE RADIUS POINT OF WHICH BEARS NORTH 98°59' 27" WEST 20 FEET. THENCE WESTERLY ALONG SAID CURVE AND ALONG SAID RIGHT-OF-WAY 19.26 FEET. THENCE NORTH 44°48' 56" WEST ALONG SAID RIGHT-OF-WAY 318.42 FEET. THENCE NORTH 45°11' 04" EAST 445 FEET, TO THE SAID TRUE POINT OF BEGINNING (#89-2452 2/24/89) CORRECTION DEED FILED 3/29/89 #89-4201 PROTECTIVE COVENANTS A#92-3453 2/19/92 PERPETUAL SETBACK EASEMENT FOR EMERGENCY PURPOSES AND NON EXCLUSIVE RIGHT OF INGRESS AND EGRESS PER AF#2007-007291, 3/9/2007; TOGETHER OF THE PORTION OF VACATED ROAD RIGHT OF WAY DESCRIBED AS FOLLOWS; BEGINNING AT THE NORTHWEST CORNER OF A 3.71 ACRE LOT AS DEPICTED ON RECORD OF SURVEY 1189; THENCE SOUTH 44° 48' 56" EAST ALONG THE NORTHERLY RIGHT OF WAY LINE OF QUAY STREET FOR A DISTANCE OF 318.42 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 45° 11' 04" WEST FOR A DISTANCE OF 4.00 FEET; THENCE SOUTH 44°48' 56" EAST FOR A DISTANCE OF 104.84 FEET TO A POINT ON A NON TANGENT 50.00 FOOT RADIUS CURVE TO THE LEFT (THE RADIUS POINT OF WHICH BEARS NORTH 63° 26' 52" WEST); THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 126°32' 35" FOR AN ARC DISTANCE OF 110.43 FEET (CHORD BEARING NORTH 36°43' 09" WEST CHORD LENGTH 89.31 FEET), TO THE POINT OF REVERSE CURVATURE ON A 20.00 FOOT CURVE TO THE RIGHT (THE RADIUS POINT OF WHICH BEARS NORTH 09° 59' 29" WEST); THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°10' 33" FOR AN ARC DISTANCE OF 19.26 FEET, (CHORD BEARING NORTH 72°24' 13" EAST CHORD LENGTH 18.52 FEET) TO THE TRUE POINT OF BEGINNING. (DESCRIPTION CHANGE PER CITY ORDINANCE #5174 FOR VACATED QUAY ST, AF#2007-010370, 4/04/2007).

## EXHIBIT "B"

### FLOOR PLAN



**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.