

| CLEARANCES | Initial | Date | Date Received in Council Office | Agenda Date | Assigned to: |
|---|---------|-----------------------|--|---------------------------------|-----------------|
| Originator: | tw | 05.01.17 | <div style="text-align: center;"> RECEIVED MAY 09 2017 WHATCOM COUNTY COUNCIL </div> | 05.16.17 | Finance/Council |
| Division Head: | | | | | |
| Dept. Head: | | | | | |
| Prosecutor: | LG | 05/02/17 | | | |
| Purchasing/Budget: | BB | 5/1/17 | | | |
| Executive: | TL | 5/8/17 | | | |
| TITLE OF DOCUMENT: Interlocal Agreement with the Port of Bellingham for the provision of Real Estate Services related to the county owned building located at 3720 Williamson Way in Bellingham, WA. | | | | | |
| ATTACHMENTS: <div style="text-align: center;"> Interlocal Agreement Information Worksheet </div> | | | | | |
| SEPA review required? () Yes (X) NO SEPA review completed? () Yes (X) NO | | | Should Clerk schedule a hearing? () Yes (X) NO Requested Date: | | |
| SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.) Executive Louws requests approval to enter into an interlocal agreement with the Port of Bellingham for the provision of Real Estate Services as they pertain to the property located at 3720 Williamson Way. With approval of the interlocal agreement the council intends that the County Executive serve as the signatory authority to execute commercial leases (see exhibit A of the interlocal agreement) negotiated by the Port on behalf the County. | | | | | |
| COMMITTEE ACTION: | | | COUNCIL ACTION: | | |
| Related County Contract #: | | Related File Numbers: | | Ordinance or Resolution Number: | |
| Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council . | | | | | |

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

201705016

| | |
|---|--------------------|
| Originating Department: | Executive Office |
| Division/Program: (i.e. Dept, Division and Program) | Non-Departmental |
| Contract or Grant Administrator: | Tyler Schroeder |
| Contractor's / Agency Name: | Port of Bellingham |

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☐
 Yes ☒ No ☐ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: _____
 (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement?
 Yes ☐ No ☒ If yes, grantor agency contract number(s): _____ CFDA#: _____

Is this contract grant funded?
 Yes ☐ No ☒ If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process? Contract _____
 Yes ☐ No ☒ If yes, RFP and Bid number(s): _____ Cost Center: _____

Is this agreement excluded from E-Verify? No ☐ Yes ☒ If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

| | |
|---|--|
| <input type="checkbox"/> Professional services agreement for certified/licensed professional. | <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). |
| <input checked="" type="checkbox"/> Contract work is for less than \$100,000. | <input type="checkbox"/> Work related subcontract less than \$25,000. |
| <input type="checkbox"/> Contract work is for less than 120 days. | <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA. |
| <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). | |

| | |
|--|--|
| Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>Revenue generating</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____ | Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, professional services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies or equipment included approved in the budget. 4. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County. |
|--|--|

Summary of Scope: Executive Louws requests approval to enter into an interlocal agreement with the Port of Bellingham for the provision of Real Estate Services as they pertain to the property located at 3720 Williamson Way.

| | |
|-------------------|---|
| Term of Contract: | Expiration Date: Month to month w/ 30 day notice |
|-------------------|---|

| | | |
|-------------------|---|--|
| Contract Routing: | 1. Prepared by: <u>T. Helms</u> 2. Attorney signoff: <u>Daniel L. Gibson</u> 3. AS Finance reviewed: <u>Bennett</u> 4. IT reviewed (if IT related): _____ 5. Contractor signed: _____ 6. Submitted to Exec.: _____ 7. Council approved (if necessary): _____ 8. Executive signed: _____ 9. Original to Council: _____ | Date: <u>05.01.17</u> Date: <u>05/02/17</u> Date: <u>5/2/17</u> Date: _____ Date: _____ Date: <u>5/3/17</u> Date: _____ Date: _____ |
|-------------------|---|--|

**INTERLOCAL AGREEMENT FOR REAL ESTATE SERVICES
AIRPORT INDUSTRIAL PARK**

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2017 by and between the **Port of Bellingham**, a Washington municipal corporation ("Port") and the **Whatcom County** a Washington County ("County").

WHEREAS, the County is owner of a certain building ("the Building") located on Port property at 3720 Williamson Way, Bellingham Washington as depicted on Exhibit "A"; and

WHEREAS, the County is in need of real estate services with specialized skills in negotiating lease agreements with potential tenants and ongoing property management; and

WHEREAS, the Port is willing to provide the services of its Real Estate Division to the County in consideration provided for herein; and

WHEREAS, the Council intends that the County Executive serve as the signatory authority to execute commercial leases negotiated by the Port on behalf of the County.

WHEREAS, the Port and the County desire to enter into this Agreement under the terms and conditions of Chapter 39.34 RCW (the Interlocal Cooperation Act).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Purpose:** The purpose of this Agreement is for the County to receive the real estate services needed to secure a tenant and manage the Building located at the Port's Airport Industrial Park. The services provided by the Port to the County will include negotiating lease agreements with potential tenants as well as management of the same thereafter (the "Services") and presenting negotiated commercial lease agreements (Exhibit A) to the County Executive for signature. The Port will also provide the County with the terms of land lease agreement with the tenant.
2. **Port Property:** The Building is located on Port property defined as the Bellingham International Airport General Binding Site Plan. The site is identified as Specific Binding Site Parcel No. 4 and is comprised of approximately 31,248 square feet as depicted in Exhibit "B". The Port shall collect ground rent from the tenant consistent with the Port Rental Revenue Standard for the parcel and separate from the Building rent.
3. **Building Condition:** Prior to the Port assuming management of the Building as provided for herein, the Port and County shall conduct an inspection of the Building. Said inspection will ensure the Building operating systems and general habitability are acceptable. Should the inspection reveal any material defects, the County shall make reasonable and timely repairs to said defects. The County shall be responsible for any and all repair and maintenance of the

Building not provided for in the lease between the County and the tenant. The Port assumes no liability regarding the ongoing condition or habitability of the Building.

4. **Term:** The term of this Agreement shall commence on **May 1, 2017** and continue on a Month to Month basis until such time as either party provides not less than thirty (30) days prior written notice of their intent to terminate.

5. **Consideration and Payment:** The County shall compensate the Port for the Services in the amount of 20% of the monthly base Building rent ("the Services Payment ") as paid by the Building tenant. Said Services Payment shall be deducted from the monthly base Building rent payment with the balance of the rent payment remitted to the County on a monthly basis. The Port shall also enter into a separate agreement with the tenant for the lease of the land upon which the building is situated.

6. **Indemnification and Hold Harmless:** To the extent permitted by law, the County shall protect, defend, save, indemnify and hold harmless the Port from and against any and all claims, suits and actions arising from the negligent acts or omissions of County in performance of this Agreement. The Port shall likewise protect, defend, save, indemnify and hold harmless the County from and against any and all claims, suits and actions arising from the negligent acts or omissions of the Port in performance of this Agreement.

7. **Assignability:** The County may not assign this Agreement without the prior written consent of the Port, which consent may be withheld for any reason or no reason.

8. **Notices:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the following addresses:

TO THE Port: PORT OF BELLINGHAM
 Shirley McFearn, Director of Real Estate
 1801 Roeder Avenue
 P.O. Box 1677
 Bellingham, WA 98227

TO THE County: WHATCOM COUNTY
 Tyler Schroeder, Deputy Executive
 311 Grand Avenue, Suite 108
 Bellingham, WA 98225

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

9. **Survival:** All obligations of the County as provided for in this Agreement shall not cease upon the termination of this Agreement and shall continue as obligations until fully performed.

All clauses of this Agreement which require performance beyond the termination date shall survive the termination date of this Agreement.

10. **Severability:** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11. **Entire Agreement:** This Agreement contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Agreement, which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Agreement, duly authorized and executed with all necessary legal formalities by both of the parties.

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

WHATCOM COUNTY:

By: _____

Title: _____

THE PORT OF BELLINGHAM:

By: _____

Title: _____

Approved as to form:

Daniel L. Gibson
Chief Civil Deputy Prosecutor

STATE OF WASHINGTON:

ss

COUNTY OF WHATCOM:

ON THIS _____ day of _____, 2017, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **ROB FIX**, known to me to be the **Executive Director** of the **PORT OF BELLINGHAM**, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

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

Name (Print) _____
NOTARY PUBLIC, in and for the State
of Washington, residing at Bellingham
My Commission expires: _____

STATE OF WASHINGTON:

ss

COUNTY OF WHATCOM:

ON THIS _____ day of _____, 2017, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ known to me to be the **COUNTY EXECUTIVE** of Whatcom County who executed the within and foregoing instrument, and acknowledged that he, she, they, signed the same as his, her, their, free and voluntary act and deed for the uses and purposes therein mentioned.

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

Name (Print) _____
NOTARY PUBLIC, in and for the State
of Washington, residing at _____
My Commission expires: _____

EXHIBIT "A"

Interlocal Agreement for Real Estate Services/Whatcom County

COMMERCIAL LEASE

THIS COMMERCIAL LEASE ("Lease") is made and entered into this _____ day of _____, 20_____, by and between the **WHATCOM COUNTY**, a Washington municipal corporation (hereinafter referred to as "Lessor"), and _____, a _____ corporation (hereinafter referred to as "Lessee").

ARTICLE I

Summary of Lease Terms and Definitions

Lessor: Whatcom County
Lessor's Address: County Executive's Office
311 Grand Ave., Suite 108
Bellingham, WA 98225

Lessor's Agent: Port of Bellingham
Agent's Address: 1801 Roeder Avenue
Bellingham, WA 98225

Lessee:
Lessee's Address: Prior to Lease Commencement:

After Lease Commencement:
At the Premises, Attn: _____

Premises: Suite No.
Agreed Rentable Area:

Agreed Building Area: _____
Lessee's Agreed Pro Rata Share: _____ %

Use of Premises:

Exhibits: Exhibit "A" – Legal Description of Premises
Exhibit "B" – Map of Premises

Commencement Date:

Term: Commencing upon the Commencement Date and expiring on the
"Termination Date" .

Renewals:

Base Rent:

| <u>Months of Lease Term</u> | <u>Rent Per SF (Mo)</u> | <u>Monthly Total</u> |
|---------------------------------|-----------------------------|--------------------------|
| Months | | |
| Months | \$ | \$ |

Initial Amount of Rental Bond or Blocked Account: \$

Name and Address of Surety or Bank: _____

ARTICLE II

Premises, Term, Renewals

2.1 **PREMISES**: Lessor, in consideration of the rents hereinafter reserved and of the covenants and conditions herein set forth to be performed by Lessee, does hereby lease to Lessee the real property described above (the "Premises"). The Premises consist of an Agreed Rentable Area of square feet in

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

2.3 **RENEWAL**: Subject to the terms and conditions herein, Lessee shall have the right to renew this Lease for consecutive year periods by giving written notice of such intention to Lessor at least one-hundred twenty (120) days prior to the expiration of the term of this Lease or any renewal thereof. Lessee shall not be entitled to renew this Lease unless the Lease is in good standing at the time of renewal and the Lessee is not in default under the terms of this Lease or any other lease or agreement with the Lessor. The terms and conditions of any renewal shall be the same as set forth in this Lease, except that rent shall be recalculated as provided herein, and the terms of this Lease shall be updated to be consistent with the terms and conditions then existing in the Lessor's Commercial Lease Agreement.

ARTICLE III

Compensation, Rental Adjustment

3.1 **RENT**: The term "Rent" as used herein includes Base Rent, Additional Rent, **plus** applicable Washington State leasehold excise tax, and other fees and charges assessed herein. Except as expressly provided elsewhere herein, Rent and all other sums payable by Lessee pursuant to this Lease shall be paid without the requirement that Lessor provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

3.1.1 Rent shall be paid monthly in advance on or before the first (1st) day of each month beginning on the Commencement Date. A late charge of one percent (1%) per month will be assessed against past due Rent from the date such Rent became due. Additionally, if Rent is not received by the fifth (5th) day of any month, Lessee shall pay Lessor an additional fee of \$100 or five percent (5%) of the delinquent payment, whichever is greater, to defray costs

of collecting and handling such late payment. All accrued interest and late charges shall be paid no later than the first (1st) day of the month following that month in which such interest or late charges accrued.

3.2.1 Base Rent Adjustment: Base Rent shall be subject to adjustment effective on the following dates: _____ and on the first (1st) month of any renewal term (herein such dates shall be collectively referred to as the "Adjustment Date"). The parties agree to renegotiate the amount of Base Rent payable to Lessor, and to agree on the amount of Base Rent at least ninety (90) days prior to each Adjustment Date (hereinafter such ninety (90) day period shall be referred to as the "Renegotiation Deadline"). The adjusted Base Rent for the renewal term shall be consistent with the then existing Financial Guidelines of the Lessor, but in no event less than the fair market rental value of the Premises. If the parties cannot agree on an adjustment of Base Rent before the Renegotiation Deadline, then the Base Rent shall be determined according to the "Appraisal" section herein. Regardless of the manner in which the new Base Rent is determined, the adjusted Base Rent shall not be less than the Base Rent for the preceding Lease year.

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

ARTICLE IV

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

4.1 LESSEE'S USE OF THE PREMISES: Lessee shall only conduct the following activity on the Premises: _____ (the "Authorized Use").

4.1.1 Lessee shall be in default under this Lease if it: (i) ceases conducting the Authorized Use for any period of time exceeding thirty (30) days; or (ii) conducts any other business or activity on the Premises without first obtaining a validly executed lease modification. In conducting the Authorized Use, Lessee shall properly and fairly serve the public, providing reasonable hours of operation, and suitable service.

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

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

4.2.1 **Existing Improvements.** The Premises contain the following improvements: _____ (the "Existing Improvements").

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

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

4.3.2 **Completion Schedule for Major Tenant Improvements by Lessee.** Lessee shall comply with the following requirements with respect to Tenant Improvements to be made at the commencement of the Lease:

- a. To present suitable plans to and obtain approval from Lessor within one hundred eighty (180) days of the date of execution of this Lease;
- b. To commence construction of approved Tenant Improvements no later than _____ days after the Premises is ready for occupancy; and
- c. To substantially complete construction of such approved Tenant Improvements within _____ months of the date that the Premises is ready for occupancy.

4.3.3 **Unauthorized Improvements:** Any Tenant Improvements made on the Premises without Lessor's prior written consent or which are not in conformance with the plans submitted to and approved by the Lessor ("Unauthorized Improvements") shall immediately become the property of Lessor, unless Lessor elects otherwise. Regardless of the ownership of Unauthorized Improvements, Lessor may, at its option, require Lessee to sever, remove and dispose of them, charge Lessee rent for the use of them, or both.

4.4 **REMOVAL OF PERSONAL PROPERTY AND TENANT IMPROVEMENTS AT END OF LEASE:** Prior to the conclusion of the Lease, at Lessor's option, Lessee shall remove the following from the Premises:

- a. All equipment;
- b. All personal property;
- c. All Tenant Improvements that are not designated fixtures; and
- d. The following Existing Improvements: _____.

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

- a. To remove any or all of the items and to dispose of them without liability to Lessee. Lessor shall not be required to mitigate its damages, to dispose of the items in a commercially reasonable manner, or to make any effort whatsoever to obtain payment for such items. Lessee agrees to pay Lessor's costs and damages associated with Lessee's failure to remove such items, including, but not limited to, the following: storage, demolition, removal, transportation and lost rent (collectively "Disposal Costs"); provided, however, that any net proceeds recovered by Lessor in excess of its Disposal Costs will be deducted from Lessee's financial obligation set forth herein. Lessee's financial obligations herein shall survive the termination of this Lease.
- b. To have the title to any or all of such items revert to Lessor.
- c. To commence suit against Lessee for damages or for specific performance.

4.4.2 The foregoing remedies are cumulative, and Lessor shall not be required to elect its remedies.

4.5 **MAINTENANCE OF PREMISES:** Maintenance and repair of the Premises and all improvements thereon is the sole responsibility of Lessee. Without limiting the generality of the foregoing, Lessee shall maintain the Premises in good condition including, without limitation, repairing all walls, floors, ceiling, interior doors, interior and exterior windows and fixtures, as well as damage caused by Lessee, its employees, agents, licensees, invitees or anyone on the Premises as a result of Lessee's activities.

4.6 **UTILITIES AND SERVICES:** Lessee will arrange and pay for all utility connections and services and distribution of such utilities within the Premises. At the conclusion of this Lease, Lessee shall arrange for such utility services to be terminated and for the final bill to be sent to Lessee. Lessee shall be liable for all utility charges that accrue if it fails to so terminate services.

4.7 **FEDERAL AVIATION REQUIREMENTS:** The Lessee agrees that its use of the

Premises will be accomplished in accordance with the following covenants:

4.7.1 Lessee agrees to (a) furnish good, prompt, and efficient service adequate to meet all the demands for its service at the Airport; (b) furnish said services on a fair, equal and nondiscriminatory basis to all users thereof; (c) charge a fair, reasonable and nondiscriminatory price for the sale or service, provided, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers; (d) prevent any use of the Premises which would interfere with landing or taking off of aircraft at the Bellingham International Airport, or otherwise constitute an airport hazard; (e) prevent any operation of the Premises which would produce electromagnetic radiations of a nature that would cause interference with any air navigational or communications aid now or in the future to be installed to serve the Bellingham International Airport, or which would create any interfering or confusing light or cause any restrictions to visibility at the Airport.

4.7.2 Lessor retains the public right of flight for the passage of aircraft in the airspace above the surface of the real property hereinbefore described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in said airspace, and for use of said airspace for landing, taking off from or operating on the Bellingham International Airport.

4.7.3 Lessee understands that it is the policy of the U.S. Department of Transportation that minority business enterprises as defined in 49 CFR, Part 23, shall have the maximum opportunity to participate in the performance of this lease as defined in 49 CFR, Section 23.5, and that this Lease is subject to 49 CFR, Part 23, as applicable. Lessee hereby assures that no person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with 49 CFR, Part 23, on the grounds of race, color, national origin, or sex.

ARTICLE V

Insurance and Financial Security

5.1 **CASUALTY LOSS OF LESSEE:** The parties hereto agree that the Lessor's insurance carrier and Lessor's casualty policy shall not be responsible to the Lessee for any property loss or damage done to the Lessee's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be the Lessee's responsibility to provide its own protection and insurance against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Lessor, Lessee, third party, or act of nature. Lessee shall provide an Additional Insured Endorsement to Lessor as evidence of Whatcom County's designation as an additional insured.

5.2 **INSURANCE:** Lessee shall procure and maintain a comprehensive general liability policy covering all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. The limits of liability shall be not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate unless the Lessee requests, and Lessor approves in writing, a lesser liability limit. Lessor may impose changes in the limits of liability: (i) at the same time as revaluation of the annual Rent; (ii) as a condition of approval of assignment or sublease of this Lease; (iii) upon any breach of the environmental liability provision herein; (iv) upon a material change in the condition of any

improvements; or (v) upon a change in the permitted use. If the liability limits are changed, Lessee shall obtain new or modified insurance coverage within thirty (30) days after changes in the limits of liability are required by Lessor. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to Lessor.

5.2.1 The foregoing insurance policy shall name Lessor as an additional insured. Lessee shall provide certificates of insurance and, if requested, copies of any policy to Lessor. Receipt of such certificate or policy by Lessor does not constitute approval by Lessor of the terms of such policy. Lessee shall provide an Additional Insured Endorsement as evidence of the Lessor's additional insured status. Furthermore, the policy of insurance required herein shall: (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to Lessor except upon forty-five (45) days' prior written notice from the insurance company to Lessor; (iii) contain an express waiver of any right of subrogation by the insurance company against Lessor and Lessor's elected officials, employees or agents; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to Lessor and Lessee.

5.2.2 If Lessee fails to procure and maintain the insurance described above, Lessor shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums. Lessee shall pay to Lessor upon demand the full amount paid by Lessor.

5.2.3 The Lessee believes and states that the insurance obligation herein does not exceed that which the Lessee would otherwise normally place upon itself and obtain in order to operate its business in a prudent manner.

5.3 **FINANCIAL SECURITY**: In compliance with the requirements of state law, Lessee 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 corporate surety bond, or by providing other financial security satisfactory to Lessor (herein referred to as the "Bond") in an amount not less than _____ percent (____%) of the sum of annual Rent, plus state leasehold tax. The Bond shall be in a form and issued by a surety company acceptable to Lessor and shall comply with the requirements of Washington law. Lessee shall obtain such Bond and forward evidence thereof to Lessor within fourteen (14) days of execution of this Lease, but in no event later than the Commencement Date of this Lease. Failure to comply with this requirement shall be grounds for termination of this Lease without notice by Lessor. Such Bond shall be kept always in effect during the term of this Lease; failure to comply with this requirement shall render Lessee in default. The Bond shall be increased annually to reflect any adjustments in annual Rent.

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

ARTICLE VI

Environmental Liability

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

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

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

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

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

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

- a. A release or threatened release of Hazardous Substances in, on under or above the Premises, any adjoining property, or any other

property subject to use by Lessee in conjunction with its use of the Premises;

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

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

ARTICLE VII

Miscellaneous Provisions

7.1 **APPRAISAL**: When Base Rent is to be determined by appraisal, the process in this article shall govern. Within seven (7) calendar days from the Rental Renegotiation Deadline, Lessor and Lessee shall mutually agree upon a disinterested, MAI certified appraiser with at least ten (10) years' experience appraising property in Whatcom County to perform an appraisal of the fair market rental rate for the Premises. The appraiser's costs shall be shared equally by the parties. The rental rate arrived at in the appraisal shall constitute the new Base Rent, which shall be retroactive to the Adjustment Date.

7.1.1 If Lessor and Lessee cannot mutually agree upon an appraiser by the end of the seventh (7th) day as set forth above, then each party shall select an MAI certified appraiser to perform an appraisal of the fair market rental value of the Premises. Each party shall bear the costs of its own appraisal. The appraisals shall be completed no later than ninety (90) days after the Rental Renegotiation Deadline (herein this date shall be referred to as the "Appraisal Completion Date"). The average of the two (2) appraisals shall constitute the new Base Rent which shall be retroactive to the Adjustment Date. If either of the appraisals is not timely completed on or before the Appraisal Completion Date, and unless there were circumstances beyond the appraisers' control that prevented its timely completion, then the rental rate established in the appraisal that was timely completed shall constitute the new Base Rent.

7.2 **LESSEE WILL OBTAIN PERMITS**: Lessee agrees to obtain and comply with all necessary permits for any leasehold improvement. If Lessee fails to obtain and comply with such permits, then Lessee accepts full responsibility for any and all costs incurred by Lessor, including actual attorneys' fees. In this way, Lessee agrees to be solely responsible for all

damages, costs and expenses incurred as a result of Lessee's failure to fully comply with any necessary permit process and requirements.

7.3 **LIENS:** Lessee agrees to keep the Premises described herein free and clear of all liens and charges whatsoever. Lessee shall not allow any mechanics' and materialmen's or other liens to be placed upon the leased Premises. If such a lien is placed or recorded, Lessee shall cause it to be discharged of record, at its own expense, within ten (10) days of Lessor's demand. Failure to comply with Lessor's demand within ten (10) days shall be a default under the terms of this Lease.

7.4 **INDEMNIFICATION AND HOLD HARMLESS:** The Lessee agrees that it will defend (with legal counsel acceptable to Lessor), indemnify and hold harmless the Lessor, its officers, employees and agents from any and all demands, claims, judgments or liability for loss or damage arising as a result of accidents, injuries or other occurrences on the Premises or on Lessor's property, occasioned by either the negligent or willful conduct of the Lessee, its agents, or any person or entity holding under the Lessee, or any person or entity on the Premises or on the Lessor's property as a result of Lessee's activity, regardless of who the injured party may be.

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

7.5.1 Lessee's obligations herein shall include, but in no way be limited to, the obligation to comply with all State and Federal environmental laws and regulations. Lessee shall defend (with legal counsel acceptable to Lessor), indemnify and hold harmless the Lessor from any fine, penalty or damage which may be imposed by any lawful authority, which may arise as a result of the Lessee's failure to comply with the obligations of this article.

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

7.7 **TAXES AND ASSESSMENTS:** Lessee agrees to pay all taxes assessed against the leasehold interest and a pro rata share of any assessments made against the property for installation of public utility systems, based upon a reasonable overall sharing program among all properties within the assessment area.

7.8 **SIGNS:** No signs shall be installed without the prior written permission of Lessor.

7.9 **EQUAL OPPORTUNITY:** Lessee agrees that in the conduct of activities on the Premises, it will be an equal opportunity employer in accordance with Title VII of the Civil Rights Act of 1964, 42 USC §2000 et seq. and shall comply with all requirements of the ADA.

7.10 **LITIGATION:** In the event Lessor shall be made a party to any litigation commenced by or against Lessee (other than actions commenced by Lessee or Lessor concerning the interpretation or enforcement of any of the terms and conditions of this Lease), then Lessee

agrees to pay all costs, expert witness fees, and attorneys' fees, including all customary charges incurred by Lessor in connection with such litigation. However, if Lessor is made a party defendant and Lessee undertakes the defense of the action on behalf of Lessor, then no obligation for costs and attorneys' fees will be chargeable against Lessee by Lessor for costs arising out of such undertaking. Lessee also agrees to pay all costs and attorneys' fees incurred by Lessor in enforcing any of the covenants, agreements, terms and provisions of this Lease.

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

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

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

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

7.11.4 If, pursuant to any assignment or sublease, Lessee receives rent, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in the case of a sublease, a portion of the Premises in excess of such Rent fairly allocable to such

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by the Lessee.

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

7.20 **LESSOR MAY ENTER PREMISES:** It is agreed that the duly authorized officers or agents of Lessor may enter to view said Premises at any time, and if the business or normal function of Lessor should at any time require that it enter upon the Premises to perform any work or make any improvements, it may do so, but not in such manner as to materially injure Lessee with its normal and usual operation.

7.20.1 The Lessor reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses applied for will not unduly interfere with the use to which the Lessee is putting the Premises, or interfere unduly with the approved plan of development of the Premises.

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

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

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

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

7.25 **GOVERNING LAW:** This Lease, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree

that in any such action jurisdiction and venue shall lie exclusively in Whatcom County, Washington.

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

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

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

7.29 **VALIDATION:** IN WITNESS WHEREOF, Lessor has caused this instrument to be signed by its Executive by virtue of the authority assigned to him by the Charter of Whatcom County, and this instrument has been signed and executed by Lessee, the day and year first above written.

LESSEE:

LESSOR:

[LESSEE'S NAME]

WHATCOM COUNTY

President

County Executive

Secretary