

COMMERCIAL LEASE

THIS COMMERCIAL LEASE ("Lease") is made and entered into this ___ day of _____, 2017 by and between the **PORT OF PORT ANGELES**, a Washington municipal corporation (the "**Port**"), and **THE COMPOSITE RECYCLING TECHNOLOGY CENTER**, a Washington non-profit corporation ("**CRTC**" or "**Lessee**").

RECITALS

WHEREAS, the Port has identified the development of collection, processing and repurposing technology with respect to carbon fiber composite waste material as a unique and viable economic development opportunity for Clallam County; and

WHEREAS, the Port has found that the pursuit of this economic development opportunity by a non-profit corporation that can establish partnerships with various private and public entities, including Peninsula College and potential suppliers of carbon fiber composite scrap and waste material, will advance manufacturing, industrial and general economic development within Clallam County; and

WHEREAS, CRTC is a Washington nonprofit corporation with broad board representation from the public and private sectors, incorporated for the purpose of developing such collection, processing and repurposing technology; and

WHEREAS, CRTC will have and develop the requisite expertise, industry connections, market and technical knowledge, research and development capabilities, and advanced manufacturing infrastructure and equipment to facilitate the Port's development of a composite recycling industry in Clallam County; and

WHEREAS, CRTC can assist the Port in achieving the Port's economic and industrial development purposes by contracting with potential partners, gathering and reporting on market information, delivering a CRTC strategic plan to demonstrate the viability of the CRTC and its ability to support the Port's vision for a composite recycling industry in Clallam County, engaging in activities and partnerships consisting of research and product development, contracting for plant improvements and equipment acquisition, developing a workforce training program with Peninsula College and other partners, and promoting investment in businesses in Clallam County; and

WHEREAS, the Port and CRTC have identified certain Port-owned property and equipment which CRTC desires to lease from the Port for the purpose of developing collection, processing and repurposing technology carbon fiber composite scrap and waste material, and related uses, in accordance with the terms and conditions of this Lease.

WHEREAS, CRTC understands that this Lease must be approved by the Economic Development Authority (“**EDA**”) as a condition of grant funding received by the Port, and further acknowledges that the Lease will not receive final approval from the Port until the EDA has provided such approval.

NOW, THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
Summary of Lease Terms and Definitions

The Port: Port of Port Angeles
338 W First St.
Port Angeles, WA 98362

Lessee: The Composite Recycling Technology Center
2220 W 18th Street
Port Angeles, WA 98363

Premises: Approximately 18,500 square feet of warehouse and office space together with 1,400 square feet of Shared Space located at 2220 W. 18th Street in Port Angeles, Washington, all as depicted in the Map of Premises attached to this Lease as **Exhibit A.**

Equipment: In addition to the Premises described above, Lessee is leasing certain Port-owned equipment, including, without limitation:

- Two built-in/walk-in freezer units
- Glycol pumps/piping
- Back-up generator
- Vacuum pumps/piping
- Air compressor/piping
- Dust collection system

Lessee’s use of the Equipment is expressly subject to the provisions of Section 2.1.1 and other applicable provisions under this Lease.

Shared Space: Reception, restrooms, hallways, mechanical, electric and data rooms.

Use of Premises: Research and development of recycled carbon fiber composite materials and manufacture of products from the recycled materials.

Commencement Date: [REDACTED]

Term: Ten (10) years.

Renewals: Two (2) – Ten (10) year terms.

Base Rent:

- Years 1-3: \$8,985.60 per month.
- Years 4 and annually thereafter. Base Rent shall be adjusted by application of the Consumer Price Index for the United State Western Region, All Urban Consumers, as issued by the U.S. Department of Labor, Bureau of Labor Statistics, or the closest comparable index if the above index is no longer published

Common Area Maintenance (“CAM”) Expenses: Lessee’s Pro Rata Share as defined in Section 3.2.5 herein.

Abated Rent: Base Rent and CAM Expenses for Years 1 and 2 of the initial Term of this Lease will be abated in the amounts indicated below. The total amount of Abated Rent shall be amortized over the eight (8) years remaining under the initial Term of the Lease, and shall be repaid in monthly installments during this period, in addition to the applicable monthly Base Rent amounts owing during such period. It is anticipated that the total Abated Rent will be **\$215,654.40**, with the resulting amortized monthly payment due for the remaining term of the lease, totaling **\$2,246.40**. Abated Rent is subject to Section 3.3 herein. During the period of Abated Rent, Lessee shall remain responsible for payment of applicable Leasehold Excise Tax, as indicated below.

Initial Amount of Rental Bond or Blocked Account: Rental Bond/Security requirement waived by the Port Commission on [REDACTED], 2017.

ARTICLE II
Premises, Term, Renewals

2.1 **PREMISES:** In consideration of the rents hereinafter reserved and of the covenants and conditions herein set forth to be performed by Lessee, the Port does hereby lease the Premises to Lessee.

2.1.1 **Equipment.** Lessee’s rental and use of the Equipment shall be subject to this Section 2.1.1 and other relevant provisions of this Lease. Lessee leases and uses the Equipment in its “as is” condition. The Port makes no warranties, express or implied related to the Equipment, including its design, capacity, performance, workmanship or fitness for any particular purpose, or that it will or does meet the requirements of any laws, regulations or rules. The Port shall not be liable in any event to Lessee for any loss, delay, or damage of any kind or character resulting from defects, conditions or inefficiency of the Equipment. Lessee’s

indemnification obligations to the Port under this Lease for its use of the Premises shall likewise be applicable to the Equipment and its use thereof. All maintenance, repair and/or replacement costs related to the Equipment shall be the sole responsibility of Lessee, and the Port is relieved from any responsibility to maintain, repair or replace such equipment. Lessee's obligations, duties and rights related to the Premises, shall likewise be applicable to the Equipment.

2.2 **TERM:** The term of this Lease shall be for ten (10) years 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 two (2) consecutive ten (10) year periods by giving written notice of such intention to the Port at least one hundred eighty (180) 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 Lessee is not in default under the terms of this Lease or any other lease or agreement with the Port. 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 Port's Commercial Lease Agreement.

ARTICLE III **Rent, Rental Adjustment**

3.1 **RENT:** The term "**Rent**" as used herein includes Base Rent, CAM Expenses (if any), applicable Washington State leasehold excise tax, and other fees and charges assessed herein. Based Rent, CAM Expenses (if any) and leasehold excise tax shall be paid without the requirement that the Port provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement. Any other fees and charges which may be assessed by the Port herein, the Port shall first provide written notice thereof, and Lessee shall pay such fees and/or charges within thirty (30) days of receipt of such written notice without any counterclaim, setoff, deduction, defense or abatement.

3.1.1 Rent shall be paid 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. If Rent is not received by the twentieth (20th) day of any month, Lessee shall pay the Port 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 twentieth (20th) day of the month following that month in which such interest or late charges accrued.

3.1.2 **Base Rent Adjustment:** Base Rent shall be subject to adjustment effective for the first (1st) month of the fourth (4th) year of the initial Term of this Lease and annually thereafter (the "**Adjustment Date**"). The rental rate shall be automatically adjusted effective upon the Adjustment Date to reflect the percentage change over the one (1) year period

immediately preceding such date in the Consumer Price Index for the United State Western Region, All Urban Consumers, as issued by the U.S. Department of Labor, Bureau of Labor Statistics, or the closest comparable index if the above index is no longer published. If the resulting rent rate adjustment is negative, then the rental rate shall not be decreased but shall remain the same as the preceding period.

In addition to the foregoing, prior to the commencement of any renewal term of this Lease, the Port may, in its discretion, complete a rental rate market analysis for the Premises to determine whether the Base Rent rate for the Premises paid by Lessee during the final year of the then-present term represents a reasonable market rate for the Premises. If the market analysis reveals the Base Rent rate for the Premises is unreasonably below or above market rate (as determined by the Port in its sole discretion), the Port may adjust the Base Rent amount for the renewal term to reflect the determined market rate.

3.2 **COMMON AREAS**

3.2.1 **Common Areas; Definition:** The term "**Common Areas**" shall mean those areas in and around the Premises owned by the Port that are provided and designated by the Port from time-to-time for the general non-exclusive use of the Port, Lessee, other tenants of the Port, and/or the respective employees, suppliers, shippers, customers, clients, invitees and licensees of such parties. Common Areas may include, but are not limited to, lobbies, hallways, common restrooms, electrical and mechanical areas, supply and janitorial rooms, exterior wall surfaces of the Premises walkways, driveways, parking areas, service areas, landscaped areas, and other Port owned areas provided for the non-exclusive use of its tenants. The Port or its agents shall operate, manage, equip, light, repair, replace and maintain the Common Areas for their intended purpose at such times and in such manner as the Port shall reasonably determine.

3.2.2 **Lessee's Common Area Lease Rights:** The Port hereby grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, customers, clients and invitees during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time-to-time, subject to any rights, powers and privileges reserved by the Port under the terms hereof or under the terms of any rules, regulations or restrictions governing the use of the Common Areas. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by prior written consent of the Port or the Port's designated agent, which consent may be revoked at any time. In the event that such unauthorized storage shall occur, then the Port shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be payable on demand by the Port.

3.2.3 **Changes to Common Areas:** The Port shall have the right from time-to-time to make changes to the Common Areas, including, without limitation: (i) changes in the location, size, shape and number thereof; (ii) to temporarily close any of the Common Areas for maintenance and public purposes so long as reasonable access to the Premises remains available; (iii) to add additional improvements to the Common Areas; and (iv) to use Common Areas while

engaged in making additional improvements, repairs or alterations to the Premises or any portion thereof, as the Port may, in the exercise of sound business judgment, deem appropriate. The Port shall nevertheless diligently perform construction, repair or maintenance work to minimize interruptions in the use of Common Areas.

3.2.4 **Common Area Maintenance Expenses; Definition**: The term “**Common Area Maintenance Expenses**” or “**CAM Expenses**” as used herein shall mean the sum of the costs and expenses incurred by the Port with respect to maintenance, upkeep and repair of and to the Common Areas.

3.2.5 **Payment of CAM Expenses**. Lessee shall pay to the Port Lessee’s agreed pro rata share of the CAM Expenses (“**Pro Rata Share**”). Lessee’s Pro Rata Share is based on the percentage obtained by dividing the square footage of the Premises (including fifty percent (50%) of the Shared Space) by the square footage of the tenant buildings which comprise the Port’s Composite Manufacturing Campus (as presently developed or expanded in the future). The parties agree that Lessee’s Pro Rata Share under this Lease is %, thereby resulting in an initial monthly payment of for each month under this Lease.

3.2.6 **Adjustment of CAM Expenses**. At least once annually after establishing the Pro Rata Share, at such time as it reasonably determines, the Port will establish an estimate of a year's total CAM Expenses, and Lessee shall pay Lessee’s Pro Rata Share on a monthly basis in accordance with the monthly rental payment obligations set forth in Section 3.1 of this Lease. Within sixty (60) days after the expiration of each Lease year, the Port shall deliver to Lessee a reasonably detailed statement showing Lessee's Pro Rata Share of the actual total of CAM Expenses incurred during the preceding year. If Lessee's payments during the preceding year were less than Lessee's Pro Rata Share as indicated on said statement, Lessee shall pay to the Port the amount of the deficiency within fifteen (15) days after delivery by the Port to Lessee of said statement; any overpayment made by Lessee shall be credited toward Lessee's liability for Additional Rent for succeeding months.

This Section shall survive expiration or sooner termination of this Lease.

3.3 **ABATED RENT**. If this Lease provides for a postponement of any monthly rental payments or other rent concession, such postponed 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, including, if applicable, Abated Rent, and all other monetary obligations and the surrender of the Premises in the condition required by 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.

3.4 **LEASEHOLD AND OTHER TAXES**. Lessee shall be liable for, and shall pay

throughout the term of this Lease, all license fees and excise and occupation taxes covering the business conducted on the Premises and all taxes on property of Lessee on the Premises and any taxes on the leasehold interest created by this Lease, whether imposed on Lessee or on the Port. Lessee shall also pay, or reimburse the Port for all taxes, other than any net income taxes payable by the Port, including ad valorem taxes or taxes levied in lieu of an ad valorem tax or tax on the leasehold interest created by this Lease and/or measured by the rent payments hereunder. With respect to any such taxes payable by the Port which are measured by the rent payments hereunder, Lessee shall pay to the Port with each rent payment an amount equal to the tax on, or measured by, that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Lessee shall be payable by Lessee to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved: provided, that Lessee shall be entitled to a minimum of ten (10) days written notice of the amounts payable by it.

3.5 **SALES AND USE TAX DEFERRAL (RCW 82.60).** The Port has been granted a sales and use tax deferral by the State of Washington Department of Revenue (“DOR”) pursuant to RCW 82.60 for qualified buildings and machinery/equipment located on the Premises. Pursuant to RCW 82.60.025, the Port agrees to pass the economic benefit of the deferral to CRTC in an amount no less than the amount of the tax deferred by DOR for the qualified buildings and/or machinery/equipment located on the Premises (and in an amount allocable to CRTC’s pro rata use of the qualified buildings and/or machinery/equipment), as determined by DOR upon completion of the construction of the improvements and installation of any qualifying machinery/equipment; provided that CRTC agrees in writing with DOR to complete the annual survey required under RCW 82.60.070. At the time of this Lease, DOR has not determined the final allowable tax deferral amount.

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: Recycling carbon fiber composite materials and manufacture of products from the recycled materials (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 ninety (90) consecutive 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, dangerous or hazardous materials, excepting only which are necessary to conduct the Authorized Use. At the request of the Port, Lessee shall provide a list of all flammable, dangerous or hazardous materials stored or used on the Premises.

4.2 **ACCEPTANCE OF PREMISES:** Lessee accepts the Premises, including all existing

improvements thereon, "as is" without further maintenance liability on the part of the Port, except as otherwise specifically noted herein. Lessee is not relying on any representations of the Port as to condition, suitability, zoning restrictions or usability, except the Port's right to grant a lease of the Premises.

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

4.3.1 Subject to obtaining the Port'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 the Port's approval, not unreasonably withheld. The Port reserves the right to condition its approval upon Lessee providing payment and/or performance bonds satisfactory to the Port. Lessee shall submit plans to and obtain written approval from the Port before commencing any Tenant Improvements. The Port shall have a reasonable period of time to review such plans prior to issuing a decision. Upon the provision of written notice to Lessee that the Port's review of plans will require extraordinary staff review time, the Port may charge Lessee a reasonable pre-established 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 the Port upon the Port'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 **Unauthorized Improvements:** Any Tenant Improvements made on the Premises without the Port's prior written consent or which are not in conformance with the plans submitted to and approved by the Port ("**Unauthorized Improvements**") shall immediately become the property of the Port, unless the Port elects otherwise. Regardless of the ownership of Unauthorized Improvements, the Port 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 **TITLE TO TENANT IMPROVEMENTS AND PERSONAL PROPERTY AT END OF LEASE:** Except as otherwise provided in the description of the Premises in Article I above, as of the Commencement Date, all existing structures, buildings, installations, and improvements of any kind located on the Premises are owned by and title thereto is vested in the Port. Prior to the conclusion of the Lease, at the Port's option, Lessee shall remove the following from the Premises:

- a. All equipment;
- b. All personal property;
- c. All Tenant Improvements not designated as fixtures; and

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

a. Upon the expiration of thirty (30) days' written notice to Lessee that equipment, personal property and/or Tenant Improvements remaining on the Premises will be removed therefrom, the Port may remove any or all of the items and dispose of them without liability to Lessee. The Port 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 the Port'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 the Port 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 the Port.

c. To commence suit against Lessee for damages or for specific performance.

4.4.2 During any period of time employed by Lessee under this Section to remove structures, buildings, installations, improvements, machines, appliances, equipment and trade fixtures, Lessee shall continue to pay a rent due and all other fees or expenses due and owing to the Port in accordance with this Lease on a prorated daily basis.

4.4.3 The foregoing remedies are cumulative, and the Port shall not be required to elect its remedies.

4.5 **MAINTENANCE OF PREMISES:** Except as otherwise provided herein, maintenance and repair of the Premises, all improvements thereon, and all Equipment, 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, Equipment, as well as damage caused by Lessee, its employees, agents, licensees, invitees or anyone on the Premises as a result of Lessee's activities. If upon exercising its right of inspection of the Premises, the Port identifies maintenance or repair issues which have not been addressed by Lessee, the Port reserves the right to provide notice to Lessee of such issue and demand Lessee complete such maintenance or repair within thirty (30) days of such notice. If such maintenance or repair is not completed within the timeframe established in the notice, the Port reserves the right to complete such maintenance and repair and to then invoice Lessee for the costs of such maintenance or repair. Lessee shall pay the invoice within thirty (30) days of receipt thereof.

4.6 **UTILITIES AND SERVICES:** Lessee shall be liable for and shall pay throughout the term of this Lease all charges for all utility services furnished to the Premises, including but not

limited to, light, heat, gas, janitorial services, garbage, disposal, security, electricity, water, stormwater and sewerage, including any connection fees and any fire protection, police protection, or emergency health services as furnished by local authorities and as may be the subject of a contract between the Port and such local authorities or as imposed by ordinance or statute. If the Premises are part of a building or part of any larger Premises to which any utility services are furnished on a consolidated or joint basis, Lessee agrees to pay to the Port Lessee's pro-rata share of the cost of any such utility services. Lessee's pro-rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required. 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 COMPLIANCE WITH PORT REGULATIONS, ALL LAWS AND EDA COVENANT:

4.7.1 Lessee agrees to take reasonable action to comply with all applicable rules and regulations of the Port pertaining to the Premises now in existence or hereafter promulgated for the general safety and convenience of the Port, its various lessees, invitees, licensees and the general public upon receipt of notice of the adoption of such regulations.

4.7.2 Lessee agrees to comply with all applicable federal, state and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters. Any fees for any inspection of the Premises during the Lease term by any federal, state or municipal officer related to Lessee use and occupancy of the Premises and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

4.7.3 Lessee agrees to use the Premises in conformance with the use requirements of the EDA Covenant of Purpose, Use and Ownership, a copy of which is attached to this Lease as **Exhibit B**.

4.8 RETENTION OF LEASE-RELATED RECORDS: All records in the possession of Lessee pertaining to this Lease shall be retained for a period of three (3) years after the expiration of the Lease or any extensions thereof. All records shall be retained beyond the three (3) year period if audit findings have not been resolved within that period or if other disputes have not been resolved. At any time during normal business hours and as frequently as is deemed necessary, Lessee shall make available to the Port and EDA, or EDA's authorized agents, for their examination, all of its records pertaining to matters covered by this Lease and only matters relating to the Lease.

ARTICLE V
Insurance and Financial Security

5.1 **CASUALTY LOSS OF LESSEE:** The parties hereto agree that the Port shall not be responsible to Lessee for any property loss or damage done to Lessee's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall

be Lessee's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Port, Lessee, third party, or act of nature.

5.2 **INSURANCE:**

5.2.1 **Liability 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) for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate unless Lessee requests and the Port approves in writing, a lesser liability limit. The Port 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 Authorized 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 the Port. 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 the Port. The foregoing insurance policy shall name the Port as an additional insured.

5.2.2 **Property Insurance.** At all times during the term of this Lease, Lessee shall maintain in effect on Lessee-owned improvements fire and extended coverage property insurance for physical loss and damage *excluding* earthquake and flood insurance. Such policy or policies shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of Lessee's improvements thereon, which amount shall be adjusted not less frequently than annually.

5.2.3 Lessee shall provide certificates of insurance and, if requested, copies of any policy to the Port. Receipt of such certificate or policy by the Port does not constitute approval by the Port of the terms of such policy. Furthermore, the policy or policies 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 the Port except upon forty-five (45) days' prior written notice from the insurance company to the Port; (iii) contain an express waiver of any right of subrogation by the insurance company against the Port and the Port's elected officials, employees or agents; and (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.

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

5.2.5 Lessee believes and states that the insurance obligation herein does not exceed

that which Lessee would otherwise normally place upon itself and obtain in order to operate its business in a prudent manner.

5.3 **WAIVER OF SUBROGATION**: The Port and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective insurance contracts including any extended coverage endorsements thereto provided that this paragraph shall be inapplicable to the extent it would have the effect of invalidating any insurance coverage of the Port or Lessee. Each party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

5.4 **FINANCIAL SECURITY**:

5.4.1 In compliance with the requirements of RCW 53.08.085 (as presently codified or hereafter amended) and other laws of the State of Washington, Lessee agrees it will secure its 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 the Port (the “**Bond**”), in an amount totaling:

- One-sixth of the total Rent for the then-current term of this Lease.
- Not less than One-Hundred percent (100%) of the sum of annual Rent.
- Other: It is anticipated the Port Commission will exercise its authority and discretion pursuant to RCW 53.08.085 to waive any security requirement for the Lease.

5.4.2 The Bond shall be in a form and issued by a surety company acceptable to the Port and shall comply with the requirements of Washington law. Lessee shall obtain such Bond and forward evidence thereof to the Port within thirty (30) 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 the Port. 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. No future amendment or extension to this Lease shall be effective until the Port, surety or insurer has given its consent thereto and the amount of the Bond has been adjusted as required.

5.4.3 Upon any default by Lessee in its obligations under this Lease, and Lessee’s failure to cure such default in accordance with its right to do so under this Lease, the Port may collect on the Bond to offset the liability of Lessee to the Port. Collection on the Bond shall not relieve Lessee of liability for any amounts not offset by the amount collected under the Bond, shall not limit any of the Port’s other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

5.4.4 Any Bond may provide for termination on the anniversary date thereof upon not

less than one (1) year's written notice to the Port if the Lease is not in default at the time of said notice. In the event of any such termination, Lessee shall obtain a new Bond or other security, also subject to the Port approval, to replace the security being so terminated to be effective on or before the date of termination.

ARTICLE VI

Environmental Liability

6.1 **ENVIRONMENTAL INDEMNIFICATION:** Lessee shall defend (with legal counsel suitable to the Port), indemnify and hold the Port 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 Lessee, its agents or subtenants during the term of this Lease or any previous lease or agreement. 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 the Port'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 commencement of its leasehold relationship with the Port (whether by this Lease or any prior lease agreements), Lessee shall be responsible for the costs of any environmental investigations or remediation arising from any development or use of the Premises by Lessee, and Lessee hereby releases the Port from any contribution claim for those costs. By way of example only, if Lessee excavates soil on the Premises which contains Hazardous Substances, then Lessee will be responsible for the cost associated with disposing of those disturbed soils.

6.2 **CURRENT CONDITIONS AND DUTY OF LESSEE:** The Port 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, Lessee shall provide prior written notice to the Port. Lessee shall provide the Port with the results of all such investigations.

6.3 **NOTIFICATION AND REPORTING:** Lessee shall immediately notify the Port 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 the Port's request, provide the Port 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.

6.3.2 Upon expiration or sooner termination of this Lease, Lessee shall remove from the Premises any soils or other media impacted by Hazardous Substances where such materials were deposited on the Premises by Lessee or its employees, representatives or agents. Any failure to complete such removal by the expiration or sooner termination of this Lease and upon the expiration of thirty (30) days' notice that such materials remain on the Premises, Lessee shall be deemed a hold over and subject to the provision of Section 7.22 (HOLDING OVER). Lessee shall represent and warrant that, upon termination of the Lease, all Hazardous Substances that Lessee is required to remove from the Premises pursuant to this subsection have been removed from the Premises.

ARTICLE VII

Miscellaneous Provisions

7.1 **NONDISCRIMINATION:** Lessee agrees that it will not discriminate against anyone on the basis of his/her race, color, national origin, sex, age, or physical or mental disability in

connection with the exercise of its rights and obligations under the Lease, or activities on or use of the Premises, specifically including the Authorized Use.

7.2 **LESSEE WILL OBTAIN PERMITS:** Lessee agrees to obtain and comply with all necessary permits for any Authorized Use or leasehold improvement. If Lessee fails to obtain and comply with such permits, then Lessee accepts full responsibility for any and all resulting costs incurred by the Port, 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 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 Premises. If such a lien is placed or recorded, Lessee shall cause it to be discharged of record, at its own expense, within thirty (30) days of the Port's demand. Failure to comply with the Port's demand within thirty (30) days shall be a default under the terms of this Lease. Notwithstanding the foregoing, the Port acknowledges that Lessee may use its Tenant Improvements as security for a loan, and the Port agrees to reasonably cooperate with Lessee and its creditor(s) to allow such creditor(s) to obtain such security.

7.4 **INDEMNIFICATION AND HOLD HARMLESS:** The Port, its employees and/or agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Lessee or by others as a result of any condition (including existing or future defects in the Premises) or occurrence whatsoever related in any way to the Premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the Premises and of the areas adjacent thereto. Lessee agrees to defend and to hold and save the Port (including its commissioners, employees and/or agents) harmless from all liability or expense (including attorneys' fees, costs and all other expenses of litigation) in connection with any such items of actual or alleged injury or damage. Lessee specifically agrees that any bond or other security provided pursuant to any provisions of this Lease shall extend to the indemnity agreed to herein. Lessee acknowledges that it expressly and specifically waives immunity under the industrial insurance statute of the state of Washington, Title 51 RCW, for purposes of this indemnification provision and further acknowledges that this waiver was mutually negotiated by the parties. It is expressly agreed and understood that Lessee's indemnification obligations under this Section 7.4 apply to the Equipment leased to and used by Lessee under this Lease.

7.5 **LAWS AND REGULATIONS:** Lessee agrees to conform to and abide by all applicable rules, codes, laws, regulations, the EDA Covenant 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 the Port), indemnify and hold harmless the Port from

any fine, penalty or damage which may be imposed by any lawful authority, which may arise as a result of 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 **DAMAGE AND DESTRUCTION**:

7.7.1 Except as otherwise stated herein, should the Premises be partially damaged by fire or other casualty, or rendered partially unfit for use by reason of fire or other casualty, the Premises shall be repaired with due diligence by the Port, and in the meantime the Rent (as defined in Section 3.1 above) shall be abated in the same proportion that the untenable portion of the Premises bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs. Lessee shall cooperate fully in obtaining and making available proceeds of insurance provided by Lessee in furtherance of such repairs.

7.7.2 If any building or improvement erected by Lessee on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Lessee may, at its option and at its sole cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the Port. Lessee shall provide the Port notice of its intention to repair or restore the Premises within sixty (60) days after the damage or loss occurs. Such work of repair or restoration shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed with due diligence but not longer than one (1) year, if possible, or as soon thereafter as is reasonably possible after such work is commenced, and such work shall be otherwise done in accordance with the requirements of the provisions hereof pertaining to the construction of improvements upon the Premises. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration, or if Lessee elects not to repair or restore, to the cost of removing, demolishing, or clearing off the building or improvements. If (i) there are not insurance proceeds, or (ii) the same shall be insufficient for said purpose, Lessee shall make up the deficiency out of its own funds. Should Lessee fail or refuse to make the repair, restoration or removal as hereinabove provided, then in such event said failure or refusal shall constitute a default under the covenants and conditions hereof, and all insurance proceeds so collected shall be forthwith paid over to and be retained by the Port on its own account, and the Port may, but shall not be required to, sue and apply the same for and to the repair, restoration or removal of said improvements, and the Port may, at its option, terminate this Lease as elsewhere provided herein.

7.7.3 Except as otherwise stated herein, should the Premises be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the Premises are rendered wholly unfit for their accustomed uses, the Port shall have the option to terminate this Lease on thirty (30) days' notice, effective as of any date not more than thirty (30) days after the occurrence. In the event that this Section shall become applicable, the Port shall advise Lessee

within thirty (30) days after the happening of any such damage whether the Port has elected to continue the Lease in effect or to terminate it. If the Port shall elect to continue this Lease, it shall commence and prosecute with due diligence any work necessary to restore or repair the Premises. If the Port shall fail to notify Lessee of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this Lease, and the Lease shall automatically terminate thirty (30) days after the occurrence of the damage. For the period from the occurrence of the damage to the Premises as described in this Section to the date of completion of the repairs to the Premises (or to the date of termination of the Lease if the Port shall elect not to restore the Premises), Rent due hereunder shall be abated in the same proportion as the untenable portion of the Premises bears to the whole thereof.

7.8 **SIGNS**: Lessee shall obtain Port's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Lessee shall install any approved signage at Lessee's sole expense and in compliance with all applicable laws, rules and regulations. Lessee shall not damage or deface the Premises in installing or removing signage and shall repair any injury or damage to the Premises caused by such installation or removal.

7.9 **ATTORNEYS' FEES AND COURT COSTS**: In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

7.10 **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 the Port and EDA, 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 the Port and EDA 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.

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

7.10.2 No consent by the Port or EDA 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 the Port following an assignment or sublease, whether or not the Port 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.

7.10.3 A minimum handling and transfer fee ("**Transfer Fee Deposit**") of Three

Hundred Dollars (\$300.00) shall be payable by Lessee to the Port if Lessee requests the Port's consent to a proposed assignment (including an assignment to a creditor for security purposes), sublease or modification of this Lease. The Port reserves the right to increase the Transfer Fee Deposit up to Five Hundred Dollars (\$500.00) if, in the Port's sole judgment, the transaction will necessitate the expenditure of substantial time and expense on the part of the Port. Such Transfer Fee Deposit shall be submitted to the Port at the same time that Lessee requests the Port's consent to the proposed sublease, assignment or modification. If the Port's reasonable and customary attorneys' fees exceed the Transfer Fee Deposit, then Lessee agrees to reimburse the Port 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, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.10.4 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 the Port, as additional rent expenses hereunder, fifty percent (50%) of the excess of each such payment of Rent received by Lessee after its receipt.

7.10.5 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, the Port 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.

7.10.6 Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by the Port to any assignee or sublessee or failure of the Port to take action against any assignee or sublease, Lessee hereby agrees that the Port 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.

7.11 **REIMBURSEMENT FOR EXPENSES:** Should 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 Lease between the parties during the term of this Lease or any renewal thereof, then Lessee agrees to reimburse the Port for all customary and reasonable

attorney fees paid by the Port for the review and opinion of such attorney acting on the request. A failure to reimburse the Port 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, Lessee shall not be obligated to reimburse the Port in any case where an assignment, sublease, or modification is not accomplished due to total refusal on the part of the Port to grant its consent to the request.

7.12 **TERMINATION**: Upon expiration or sooner termination of this Lease or any extension thereof, whether by expiration of the stated term or sooner termination thereof, as herein provided, Lessee shall surrender to the Port 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 the Port permits to remain on the Premises.

7.12.1 If the Port, at its sole discretion, shall require the use of the Premises for a public use in connection with the business of the Port not involving the lease thereof to another private lessee or in the event that the Port, at its sole discretion, shall require the use of the Premises for a major capital improvement for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to Lessee not less than ninety (90) days before the termination date specified in the notice, unless the need for such use constitutes an emergency, in which case this Lease shall terminate as soon as is practicable.

7.12.2 If the United States Government, the State of Washington, or any agency or instrumentality of said government shall take title, possession, the rights of the Premises or any part thereof, the Port shall have the option to terminate this Lease, and if the taking has substantially impaired the utility of the Premises to Lessee, Lessee shall have the option to terminate this Lease. Both options shall be exercisable as of the date of said taking. If Lessee is not in default under any of the provisions of this Lease on the date of such taking, any rental prepaid by Lessee shall be promptly refunded to Lessee to the extent allocable to any period subsequent to said date, and all further obligations of the parties shall terminate except liabilities, which shall be accrued prior to such date. To the extent Lessee owns certain improvements upon the Premises and is not otherwise directly compensated therefore by the taking entity, Lessee shall receive a fair allocation of any award received by the Port due to termination for government use. Nothing herein contained shall preclude Lessee from independently pursuing a direct claim for compensation from the taking entity for the value of its improvements to the Premises or its leasehold interest therein.

7.12.3 If any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that occurred prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date

of the termination, be promptly refunded to Lessee.

7.13 **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 then, at the Port's sole option, upon three (3) days' written notice, this Lease may be terminated and the Port may enter upon and take possession of the Premises. Without limiting the generality of the foregoing, Lessee expressly authorizes the Port 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.

7.13.1 If Lessee shall fail to perform any term or condition of this Lease, other than the payment of Rent or other monetary obligations, then upon providing Lessee thirty (30) days' written notice of such default, and if Lessee fails to cure such default within the thirty (30) day notice thereof, the Port 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.

7.13.2 If within any one (1) year period, the Port serves upon 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 Lessee (including failure to pay Rent), be deemed to be in unlawful detainer, and the Port 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.

7.13.3 The following shall also constitute a default under the terms of this Lease: (i) A default by Lessee under any other agreement or lease with the Port; (ii) insolvency of Lessee; (iii) an assignment by Lessee for the benefit of creditors; (iv) the filing by Lessee of a voluntary petition in bankruptcy; (v) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; (vi) 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; and (vii) 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.

7.13.4 A default under this Lease shall constitute a default under any other lease or agreement which Lessee has with the Port (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 the Port shall, without limiting any other remedies it may have, be entitled to terminate this Lease upon five (5) days' written notice to Lessee.

7.13.5 In addition to the foregoing remedies specified in this article, the Port may exercise any remedies or rights under the laws of the State of Washington. Under no

circumstances shall the Port be held liable in damages or otherwise by reason of any lawful re-entry or eviction. The Port 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.

7.13.6 The Port 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.

7.13.7 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.

7.14 **NON WAIVER:** Neither the acceptance of Rent nor any other act or omission of the Port after a default by Lessee shall operate as a waiver of any past or future default by Lessee, or to deprive the Port of its right to terminate this Lease, or be construed to prevent the Port from promptly exercising any other right or remedy it has under this Lease. Any waiver by the Port shall be in writing and signed by the Port in order to be binding on the Port.

7.15 **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 addresses as follows:

TO THE PORT Port of Port Angeles
 P.O. Box 1350
 Port Angeles, Washington, 98362

TO LESSEE: The Composite Technology Recycling Center
 2220 W 18th Street
 Port Angeles, WA 98363

or 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.

7.16 **AGENT FOR SERVICE:** Lessee agrees that if Lessee is in unlawful detainer, pursuant to Chapter 59.12 RCW, and the Port is unable to serve Lessee with the unlawful detainer pleadings after one service attempt, then the Port shall be deemed to have complied with the service requirements of Chapter 59.12 RCW if it mails such pleadings via certified mail to the address set forth in the notice section of this Lease and posts such pleadings in a conspicuous location on the Premises. Service shall be deemed complete on the third (3rd) day following the day of posting or day of mailing, whichever is later.

7.17 **SECURITY:** Lessee specifically acknowledges that the Port has no duty to provide

security for any portion of the Premises or surrounding areas. Lessee assumes sole responsibility and liability for the security of itself, its employees, customers, and invitees, and their respective property in or about the Premises. Lessee agrees that to the extent the Port elects to provide any security, the Port is not warranting the effectiveness of any such security personnel, services, procedures or equipment and that Lessee is not relying and shall not hereafter rely on such security personnel, services, procedures or equipment. The Port shall not be responsible or liable in any manner for failure of any such security personnel, services, procedures or equipment to prevent or control, or apprehend anyone suspected of personal injury or property damage in, on or around the Premises.

7.18 **QUIET ENJOYMENT:** The Port acknowledges that it has ownership of the Premises and that it has the legal authority to lease the Premises to Lessee. The Port covenants that Lessee shall have quiet enjoyment of the Premises during the term of this Lease so long as the terms are complied with by Lessee and subject to the Port's right of entry onto the Premises as set forth herein.

7.18.1 The Port 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 Lessee is putting the Premises, or interfere unduly with the approved plan of development for the Premises. No easement or other land uses shall be granted to third parties, until damages to the Lessee have been dealt with appropriately, or waiver signed by Lessee.

7.18.2 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 the Port 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 the Port, Lessee agrees that such interruptions shall not be deemed a violation of this Lease or the Covenant of Quiet Enjoyment.

7.19 **PORT/EDA MAY ENTER PREMISES; INSPECTION:** The Port reserves the right, for itself and the EDA, to inspect the Premises after written notice (except where the Port reasonably believes there exists or is about to exist an emergency, in which case no notice is required) at any and all reasonable times throughout the term of this Lease, provided that it shall not unduly interfere with Lessee's operations. The right of inspection reserved to the Port and EDA hereunder shall impose no obligation on the Port or EDA to make inspections to ascertain the condition of the Premises, and shall impose no liability upon the Port or EDA for failure to make such inspections. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the Premises for a reasonable period of time prior to the expiration or sooner termination of the Lease.

7.20 **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.

7.21 **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 Port or Lessee. If any provision is found to be ambiguous, the language shall not be construed against either the Port 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.

7.22 **HOLDING OVER**: If Lessee remains in possession of said Premises after the date of expiration of this Lease without the Port'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 rent owed during the immediately preceding month under this Lease and otherwise upon the terms and conditions in this Lease and shall continue to be responsible for payment of applicable CAM Expenses and leasehold excise tax obligations. If Lessee holds over with the Port'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 the Port 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.

7.23 **PROMOTION OF PORT COMMERCE**: Lessee agrees that throughout the term of this Lease it will, insofar as practicable, promote the activities of the Port.

7.24 **SURVIVAL**: All obligations of 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 Clallam County, Washington.

7.26 **ESTOPPEL CERTIFICATES**: At Lessee's request, the Port agrees to execute and deliver to Lessee or its lender(s), a customary estoppel certificate in a form acceptable to the Port 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) the Port's knowledge of any breaches or anticipated breaches of the Lease. The Port shall have no obligation to execute an estoppel certificate which requests any information other than as set forth above. Lessee agrees to reimburse the Port for all attorneys' fees paid by the Port 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 the Port within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease.

7.27 **ATTORNTMENT**: 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 the Port 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 the Commission of the Port of Port Angeles, or its designee.

7.29 **COMMISSIONS AND FEES.** In the absence of any agreement between the parties to the contrary, each party represents and warrants to the other that it has not been represented by, or introduced to the other by, any broker or agent. In the absence of any agreement between the parties to the contrary, each party hereby agrees to indemnify and hold the other harmless from and against any and all fees, commissions, costs, expenses (including attorneys' fees) obligations and causes of actions arising against or incurred by the other party by reason of any claim for a real estate commission or a fee or finder's fee by reason of any contract, agreement or arrangement with, or services rendered at the request of, the indemnifying party.

7.30 **VALIDATION:** IN WITNESS WHEREOF, the Port has caused this instrument to be signed by its Executive Director, or other designee, by authority of the Commission of the Port of Port Angeles, and this instrument has been signed and executed by Lessee, the day and year first above written.

LESSOR:

PORT OF PORT ANGELES

Karen F. Goschen

Its: Interim Executive Director

LESSEE:

THE COMPOSITE RECYCLING
TECHNOLOGY CENTER

Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF CLALLAM)

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 **Karen F. Goschen**, to me known to be the **Interim Executive Director of the Port of Port Angeles**, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

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

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF CLALLAM)

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 _____, to me known to be the _____ of the **Composite Recycling Technology Center** the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

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

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My Commission Expires: _____