

RENEWAL AND MODIFICATION OF LEASE

THIS RENEWAL AND MODIFICATION OF LEASE is made and entered into this ____ day of _____, 2023, by and between the PORT OF BELLINGHAM, a municipal corporation, (hereinafter "Lessor"), and **WHATCOM COUNTY**, a Washington County (hereinafter referred to as "Lessee"),

WITNESSETH:

WHEREAS, Lessor and Lessee entered into an Airport Industrial Park Lease on June 5, 2018, (the "Lease"), covering certain Premises located at 3720 Williamson Way, Bellingham, Washington, for a five (5) year term beginning June 1, 2018 ending May 31, 2023 and,

WHEREAS, it is now the desire of Lessee to renew the lease for a five (5) year term beginning June 1, 2023, ending May 31, 2028, and

NOW, THEREFORE, the Lease shall be renewed and modified as follows:

1. **TERM.** The term of this Lease shall continue for a five (5) year term beginning June 1, 2023, ending May 31, 2028, and
2. **RENT:** Effective June 1, 2023 through May 31, 2028, Lessee shall pay Lessor monthly rent according to the following schedule, plus applicable Washington State leasehold excise tax.

<u>Dates</u>	<u>Monthly Rent</u>
06/01/2023 – 12/31/2023	\$1,416.34
01/01/2024 – 12/31/2024	\$1,458.83
01/01/2025 – 12/31/2025	\$1,502.60
01/01/2026 – 12/31/2026	\$1,547.68
01/01/2027 – 12/31/2027	\$1,594.11
01/01/2028 – 05/31/2028	\$1,641.93

*Plus applicable Washington State leasehold excise tax

3. **RENEWAL:** Section 2.3 "Renewal" contained in the Lease shall be deleted and replaced as follows:

2.3 **RENEWAL.** Subject to the terms and conditions herein, Lessee shall have the right to renew this Lease for one (1) consecutive five (5) year period. One hundred-eighty (180) days prior to the lease expiration date, Lessor and Lessee shall notify one another of the lease expiration to determine if the Lessee will exercise the option to renew the Lease. Lessee shall not be entitled to renew the 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 the Lease, except that Base 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 standard Airport Industrial Park Agreement.

4. **CASUALTY LOSS OF LESSEE.** Section 5.1 “Casualty Loss of Lessee” contained in the in the Lease shall be deleted and replaced as follows:

5.1 **CASUALTY LOSS OF LESSEE.** The parties hereto agree that the Lessor, its commissioners and employees, 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 sole 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 Lessor, Lessee, third party, or act of nature. Lessee hereby releases and discharges the Lessor its commissioners and employees, Lessor’s insurance carrier, and Lessor’s casualty policy from any claims for loss or damage to Lessee’s property.

5. **INSURANCE.** Section 5.2 “Insurance” contained in the Lease shall be deleted and replaced as follows:

5.2 **INSURANCE.** Lessee shall procure and maintain a comprehensive general liability policy or the equivalent self-insurance program covering all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises or Lessor’s property) arising on the Premises or Lessor’s property as a result of, or arising out of, Lessee’s operations under this Lease. The limits of liability shall be not less than Two Million Dollars (\$2,000,000.00) for each occurrence and in the aggregate unless the Lessee requests and Lessor approves in writing, a lesser liability limit. If the Lessee maintains higher insurance limits than the minimums required herein, the Lessor shall be insured for the full available limits of Commercial General and/or Excess or Umbrella liability maintained by the Lessee, irrespective of whether such limits maintained by the Lessee are greater than those required by this Lease or whether any certificate of insurance furnished to the Lessor evidences the lower limits of liability set forth above. Lessor may impose changes in the limits of liability: (i) on any Adjustment Date; (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 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 **Policy Provisions.** The foregoing insurance policy shall name Lessor as an additional named insured by way of a policy endorsement. 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. 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 defense and indemnification of the Lessor as an "additional insured" will not be effected by any act or omission by Lessee which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another; and (vii) provide for coverage for damage to the Lessor's property caused by the Lessee.

Sections 5.2.2, 5.2.3, and 5.2.4 contained in the Lease shall remain the same.

6. **ENVIRONMENTAL INDEMNIFICATION.** Section 6.1 "Environmental Indemnification" contained in the Lease shall be deleted and replaced as follows:

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 or Lessor's property caused in whole or in part by the activity of the Lessee, its agents, subtenants, or any other person or entity (i) on the Premises as a result of, arising out of, or relating to Lessee's operations under this Lease or any previous lease or agreement or (ii) on the Lessor's property as a result of, arising out of, or relating to Lessee's operations under 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 or Lessor's property as a result of, arising out of, or relating to Lessee's operations since Lessee first occupied the Premises or other portion of the Lessor's property 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. 1251 et seq.; the Clean Air Act, 42 USC Sec. 7401 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxics Control Act, RCW 70A.305, all as amended and subject to all regulations promulgated thereunder.

Sections 6.1.1 and 6.1.2 contained in the Lease shall remain the same.

7. **INDEMNIFICATION AND HOLD HARMLESS.** Section 7.4 "Indemnification and Hold Harmless" contained in the Lease shall be deleted and replaced as follows:

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, (i) occasioned by either the negligent or willful conduct of the Lessee, its agents, or (ii) made by 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. This indemnification and hold harmless shall not apply to the extent the damages were caused by the gross negligence or willful misconduct of the Lessor.

7.4.1 **LIMITED WAIVER OF IMMUNITY UNDER WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW AND OTHER SIMILAR INDUSTRIAL INSURANCE SCHEMES**. For purposes of the foregoing indemnification provision, and only to the extent of claims against Lessee by Lessor under such indemnification provision, Lessee specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, The United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligation under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the parties hereto.

8. **SIGNS**. Section 7.8 "Signs" contained in the Lease shall be deleted and replaced as follows:

7.8 **SIGNS**. No signs shall be installed without the prior written permission of Lessor. In the event that an unauthorized sign has been installed and after twenty-four hours (24) notification to remove the sign by the Lessor, Lessee shall pay the Lessor a penalty of \$100 per day for each day the sign remains in place after such notification. The penalty shall automatically resume, without notice, if the sign is reinstalled after having been removed. The penalty accrued shall be paid with the next month's Base Rent. In addition, the Lessor reserves the right to provide notice of, and treat an unauthorized sign as, a non-monetary default of this Lease.

9. **COUNTERPARTS AND ELECTRONIC TRANSMISSION**. This Renewal and Modification of Lease may be signed in counterparts. Electronic transmission of any signed original document and retransmission of any signed electronic transmission shall be the same as delivery of an original document.

ALL OTHER TERMS AND CONDITIONS of the Lease dated June 5, 2018, as renewed and modified shall remain the same.

IN WITNESS WHEREOF, Lessor has caused this instrument to be signed by its Executive Director by authority of the Port Commission of the Port of Bellingham, and Lessee has caused this instrument to be signed by its proper officer's thereunto duly authorized, the day and year first above written.

LESSEE

WHATCOM COUNTY

By: _____

Printed Name: _____

Its: _____

LESSOR

PORT OF BELLINGHAM

Rob Fix, Executive Director

STATE OF WASHINGTON:

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COUNTY OF WHATCOM:

ON THIS _____ day of _____, 2023, 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 _____:

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COUNTY OF _____:

ON THIS _____ day of _____, 2023, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared before me _____ known to me to be the _____ of **WHATCOM COUNTY**, a Washington County, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath verified that he/she was authorized to execute this document on behalf of the limited liability company for the uses and purposes therein mentioned.

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

Print Name: _____
NOTARY PUBLIC in and for the
State of _____, residing at _____
My commission expires: _____