



200511040141

Skagit County Auditor

11/4/2005 Page 1 of 18 10:10AM

COVER SHEET FOR RECORDING

Return To: City Of Mount Vernon
Public Works Department
P.O. Box 809
Mount Vernon, WA 98273

DOCUMENT TITLE: LEASE

GRANTORS: COMMERCIAL COLD STORAGE, INC.

GRANTEES: CITY OF MOUNT VERNON

ABBREVIATED LEGAL DESCRIPTION:

A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER
OF SECTION 19, TOWNSHIP 34 NORTH, RANGE 4 EAST OF THE
WILLAMETTE MERIDIAN

Additional legal on page 14 of document.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER(S):

P26489

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

NOV 04 2005

Amount Paid \$
Skagit Co. Treasurer
By *HP* Deputy

LEASE

THIS LEASE AGREEMENT is made and entered into this 28 th day of October, 2005, by and between the CITY OF MOUNT VERNON, a Washington municipal corporation (hereinafter referred to as "TENANT"), and COMMERCIAL COLD STORAGE, INC., a Washington corporation (hereinafter referred to as "LANDLORD").

WITNESSETH:

1. Lease Data and Exhibits.

Lease

Exhibit "A" - Legal Description of Leased Property.

Exhibit "B" - Design, Construction, and Maintenance Requirements.

Exhibit "C" - Description of Landscaping and Drainage requirements.

Exhibit "D" - Description of Leased Parking Areas

1.1 Date. The effective date of this Agreement shall be October 28, 2005.

1.2 Address of Premises.

1011 South First Street
Mount Vernon, Washington 98273

1.3 Notices. Notices shall be addressed as follows:

LANDLORD:

Commercial Cold Storage, Inc.
Attn: Gary Thor
1011 South First Street
Mount Vernon, WA 98273



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18 10:10AM

TENANT:

City of Mount Vernon.
Attn: Michele Myers
P.O. Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273

With copy to:

City of Mount Vernon City Attorney's Office
Attn: Kevin Rogerson
P.O. Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273

1.4 Term. 15 years
Commencement Date. October 18, 2005
Expiration Date. October 18, 2020

1.5 Options. 2 option periods; 10-year term and 5-year term

1.6 Consideration: As consideration for this lease, TENANT shall design, construct and maintain an asphalt paved parking lot ("the Work") on LANDLORD's property, all as described herein. The parties hereto agree that the reasonable value of such consideration is \$40,000.00 or \$2,666.67 per year, during the 15 year term of this Lease. As consideration to TENANT and in lieu of payment for the Work, LANDLORD agrees to lease the TENANT exclusive possession and use of the northerly half of the lot, which is sufficient to provide approximately 26 parking spaces, as described in Exhibit D attached hereto and incorporated by this reference herein.

2. Premises. LANDLORD hereby leases to TENANT, and TENANT hereby leases from LANDLORD the premises situated in Skagit County, Washington, generally described in Section 1.6 which includes the northerly portion of that property legally described in Exhibit "A," and identified in Exhibit "D" attached hereto (hereinafter "Premises"). The parties agree that the Premises are currently undeveloped and without any permanent structures.

3. Lease Term.

3.1 TERM. Subject to the provisions of this Lease, the Term of this Lease is as designated in Section 1.4, commencing on the Commencement Date and ending, unless earlier terminated pursuant to the provisions of this Lease, at midnight on the Expiration Date.

3.2 Option Terms. At the expiration of the initial Term of this Lease, and at the expiration, Tenant may extend the Term additional periods as set forth in Section 1.5 (each period, an "Option Term"), provided that Tenant has not been in default of any material



provision of this Lease during the Term expiring, and is not in default of any provision of the Lease at the time of exercise or at any time thereafter prior to the commencement of the Option Term. Such Option Terms are to be exercised by Tenant giving Landlord irrevocable and unconditional written notice two months prior to the expiration of the term of the Lease. All of the terms and conditions of this Lease, except this right to extend the Term and the Monthly Rent, will apply to the Option Terms so far as is applicable. Tenant's failure to exercise any option to extend will nullify the remaining options to extend.

3.3 Nontransferable Option. The option to extend the Term is personal to Tenant, and may not be transferred to any assignee or sublessee of Tenant without the express written consent of Landlord.

3.4 Rent Arbitration. If Tenant shall exercise the option for a renewal term under the provisions of this Lease, and if the parties shall not have agreed in writing at least 90 days before the expiration of the initial term upon the amount of the rent to be paid during the renewal term, then the rent shall be determined by arbitration. Each party shall appoint an arbitrator prior to 60 days from the termination of the initial term. Upon the failure of either party to appoint an arbitrator within ten days after notification of the appointment by the other party, the person appointed as arbitrator may appoint an arbitrator to represent the party in default. The two arbitrators appointed in either manner shall then proceed to determine the rent payable. In the event of their inability to reach a result, they shall select a third arbitrator, in which event an award by two of the three arbitrators shall be binding upon the parties. If the two arbitrators are unable to agree on a third arbitrator, then the Presiding Judge of the Superior Court then sitting in Skagit County shall appoint him or her. The Landlord and Tenant shall each pay one-half of the expenses and reasonable fees of the arbitrators, and shall be bound by their award. The arbitrators shall each be real estate brokers and/or appraisers who shall have had at least ten years of experience in appraising real estate or acting as brokers of real estate in Skagit County.

4. Taxes on Rent. The TENANT shall pay any tax upon leasing of the Premises or rents collected, including any business and occupation or similar gross receipts tax, and any leasehold excise tax, but not including any federal or state income tax of the LANDLORD or any franchise tax.

5. Operating Covenants.

5.1 CONSTRUCTION. Within eight months of execution of this Agreement, TENANT shall have constructed on the Premises and opened for use as vehicular parking a paved parking lot ("the parking lot"), from which TENANT shall continuously maintain for the Permitted Use. In connection with the construction of the parking lot:

(a) The design, construction, and maintenance of the parking lot shall be in accordance with those provisions set forth in Exhibit "B."



(b) The construction and maintenance of landscaping improvements and drainage improvements shall be in accordance with those provisions set forth in Exhibit "C" and in compliance with all municipal codes and requirements.

(c) TENANT may, pursuant to permits duly obtained, remove dirt, and grade the site in accordance with the overall purposes of this lease and as it deems proper. Any amounts received by TENANT in the course of such activity may be used to reduce the cost of improvements upon the Property.

5.2 LANDLORD USE. TENANT shall provide LANDLORD with free access to the southerly half of parking lot identified in Exhibit "D" for that amount of time set forth in Section 1.6 above, for use by LANDLORD to provide additional vehicular parking to its employees and customers, guests or invitees, provided that LANDLORD may not alter, repair, or remove any improvements to the parking lot or add any structures upon the parking lot. Such use by LANDLORD shall be without cost to LANDLORD. Such use by LANDLORD shall be in accordance with the following:

(a) To the extent liability for use of the facilities is not precluded by RCW 4.24.210, as that statute reads as of the date of this Lease, liability for death or personal injury resulting from use of the Premises by the LANDLORD shall be consistent with the provisions set forth in Section 13.

5.3 DARK RENT. The creation and availability of parking opportunities for the LANDLORD its guests and invitees is a material consideration for this Lease. Accordingly, TENANT shall continuously during the entire Term, maintain and keep open the southerly half of the Premises for vehicular parking; PROVIDED that this provision shall not apply if the Premises should be closed on account of maintenance, remodeling, repair, or renovation as necessary. TENANT covenants and agrees to provide sufficient personnel to keep the Premises adequately maintained and striped so as to provide the LANDLORD with full and unrestricted use of the southerly half of the parking lot.

5.4 SECUREMENT OF PARKING LOT FACILITY. TENANT may at its discretion take such reasonable steps as may be required to secure the parking lot, including but not limited to improving roadways accessing the Premises erection of signs, video monitoring equipment and fencing to protect property parked on the premise.

6. TENANT's Property.

REMOVAL OF PROPERTY. The TENANT shall have the right to remove all equipment, personal property, and fixtures which may have been placed on the premises by TENANT during the term of this Lease, provided that the same are removed from the Premises upon the termination of this Lease. Any such equipment, personal property, and fixtures not removed from the premises at the conclusion of this Lease shall revert to the LANDLORD, provided that the LANDLORD shall notify the TENANT in writing at least 10 business days



prior to such reversion becoming effective so as to allow the TENANT to remove such items. Following the removal of such property, the premises shall be restored to its original condition, or to a condition satisfactory to LANDLORD, prior to the termination of this Lease, normal wear and tear excepted. The parties hereby stipulate that the TENANT's property shall not be considered to be a "fixture" as that term is defined by Title 62A of the Revised Code of Washington.

7. Maintenance and Repair.

7.1 TENANT MAINTENANCE. TENANT shall, at its sole cost and expense and as additional rent, clean and maintain the parking lot, and make repairs, restorations, and replacements to the parking lot, including without limitation the striping and repairing of the asphalt when required and shall be responsible for correcting any unsafe conditions. All such repairs, restorations, and replacements will be in quality and workmanship at least equal to the original work or installations. TENANT agrees that at the expiration of the term of this Lease, or sooner termination or assignment thereof, it will quit and surrender the leased Property in the same condition and repair as of the completion of construction, reasonable wear and tear excepted. LANDLORD shall notify TENANT of any deficiencies in the parking lot which LANDLORD becomes aware.

7.2 LANDSCAPING SERVICES. At its sole cost and expense, TENANT shall keep the Premises clean, and shall provide landscaping maintenance services such that landscaping on the Premises remain healthy, attractive, and well-maintained.

7.3 WASTE. TENANT shall not commit or cause to be committed any waste on the Premises.

8. Improvements.

8.1 FUNDING. TENANT shall be solely responsible for providing adequate funding for the design and construction of the asphalt paved parking lot up to forty-thousand dollars (\$40,000.00). Any alterations or improvements, including those improvements described in Section 5.1, and such alterations or improvements shall be made without cost to LANDLORD.

8.2 PREVAILING WAGES. TENANT shall comply with any prevailing wage requirements set forth in Chapter 39.12 RCW, and Section 39.04.260 RCW, which may be applicable to the construction of TENANT's improvements.

8.3 PUBLIC WORK. It is understood by the parties that any alteration, repair, or improvement to the Premises may be considered to be a Public Work, as that term is defined in Section 39.04.010 RCW, and must therefore conform to local and state requirements governing public works. TENANT shall remain solely responsible for complying with such requirements.



9. Use of Premises. TENANT will use and occupy the leased premises throughout the entire term hereof for the purpose of providing parking facilities.

10. Signs. TENANT may place and maintain upon the leased property such neat and appropriate signs, that comply with applicable code regulations, as it is necessary to regulate and maintain the northerly half of the parking lot. Upon the termination of this Lease, TENANT shall remove all such signs and repair any damage to the leased property caused by the erection, maintenance, or removal of such signs, if so directed by LANDLORD.

11. Representations. LANDLORD represents that it has the legal right, interest and title in fee with respect to the premises to convey exclusive possession of that portion of the Parking Lot as described in Exhibit "D" and that no liens or encumbrances, other than a mortgage, currently exist on the Premise.

12. Liens and insolvency. TENANT shall keep the leased premises free from lien arising out of any work performed, materials furnished, or obligations incurred by TENANT. In the event that TENANT becomes insolvent, voluntarily bankrupt, or is a receiver, assignee, or other liquidating officer is appointed for the business of the TENANT, then LANDLORD may cancel this Lease at LANDLORD's option

13. Waiver and Indemnification.

13.1 LANDLORD INDEMNITY. Except as otherwise provided in this Section, LANDLORD shall indemnify, defend (using legal counsel acceptable to TENANT), and hold TENANT, its officers, agents, employees and contractors, harmless from and against any and all claims, demands, causes of action, penalties, fines, liabilities, suits or judgments, and expenses (including TENANT's personnel and overhead costs and attorney's fees and other expenses incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (a) LANDLORD's ownership, use or improvement of the Premise, or that of its employees, agents, or contractors; (b) LANDLORD's breach of its obligations hereunder; or (c) any act or omission of LANDLORD or any subtenant, licensee, assignee, transferee, or concessionaire of LANDLORD, or of any officer, employee, guest, or invitee of LANDLORD, or of any such entity in or about the Premises. LANDLORD agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to constitute a waiver of LANDLORD's immunity under Washington's industrial Insurance Act, Title 51 RCW, to the extent necessary to provide TENANT with a full and complete indemnity from claims made by LANDLORD and its employees, to the extent of their negligence, provided that this section and this Lease agreement shall not be construed so as to create a benefit for any third party. **LANDLORD AND**



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Skagit County Auditor

TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

13.2 LIMITATION OF INDEMNITY. In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which LANDLORD or TENANT (the "Indemnitor") agrees to indemnify the other (the "Indemnitee") against liability for damages arising out of bodily injury to Persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of any building, road, or other structure, project, development, or improvement to real estate, including any buildings to be constructed pursuant to this Lease, (a) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents or employees, and (b) to the extent caused by or resulting from the concurrent negligence of (i) the Indemnitee or the Indemnitee's agents or employees, and (ii) the Indemnitor or the Indemnitor's agents or employees shall apply only to the extent of the Indemnitor's negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this Section shall automatically and without further act by either LANDLORD or TENANT be deemed amended so as to remove any of the restrictions contained in this Section no longer required by then applicable law.

13.3 RELEASE; WAIVER OF SUBROGATION. Notwithstanding any other provision of this Lease, neither LANDLORD nor TENANT shall be liable to the other party or to any insurance company (by subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or tangible personal property of the other occurring in or about the Premises, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees, if such loss or damage is covered by insurance issued by an insurance carrier authorized or licensed by the Insurance Commissioner of the State of Washington to issue lines of insurance, benefiting the party suffering such loss or damage or was required under the terms of this Lease to be covered by insurance by the party covering the loss.

14. Destruction of Premises. In the event of damage to the Premises by fire, flood, earthquake, or other casualty, the TENANT may elect not to repair or reconstruct the Premises, in which event either party may terminate this Lease upon 30 days prior written notice. Alternatively, the TENANT may proceed to rebuild and restore the Premises, or such part thereof as may be injured as aforesaid. LANDLORD shall then share fifty percent (50%) in the total costs to rebuild and restore the Premises to its original condition or better.

15. Assignment.

TENANT may not assign, transfer, encumber, or sublet, in whole or in part, this lease, or any right herein without the prior consent of the LANDLORD.



16. Attornment. TENANT shall in the event of the sale or assignment of LANDLORD's interest in the building of which the Premises form a part, attorn to the purchaser and recognize such purchaser as LANDLORD under this Lease thereafter.

17. Compliance with Law. TENANT shall use the Premises in accordance with all statutes, ordinances, and regulations of any governmental entity having jurisdiction.

18. Default. If TENANT shall default in performance of any of its obligations under this lease or shall violate any term or provision of this lease, the LANDLORD shall have the option of giving notice, in writing, of its intention to terminate this lease by personal service upon, or by written notice directed to TENANT. Such notice of intention to terminate shall specify the default or defaults then outstanding. Waiver or acceptance of any default of terms of this lease by the LANDLORD shall not operate to release TENANT of the responsibility for any prior or subsequent default. After the expiration of 30 days from the giving of such notice in the case of default, if one or more defaults remain unremedied, or attempts to cure have not begun, the LANDLORD may terminate this lease and initiate action to recover damages. Upon termination of this lease, TENANT shall cease using the Premises for parking. In the event TENANT fails to vacate the Premises on the date of termination, TENANT shall be liable for any and all costs to the LANDLORD arising from such failure including reasonable attorney fees.

18.2 REMEDIES. If any of the above events of default are not cured, or attempts to cure have not begun, within the period stated above, LANDLORD may immediately or at any time thereafter and without further notice or demand, terminate the Lease, and/or re-enter into and upon the Premises or any part thereof and take possession of the same, fully and absolutely. Upon termination, any outstanding balance for the Work shall become damages due including the full compensation for the development costs of \$40,000.00 with credit given for each year the TENANT has been allowed full and unrestricted use of the northerly half of the parking lot in the amount of \$2,666.67 and a pro rata share of any of any portion thereof.

18.3 ADDITIONAL REMEDIES. The statement of specific remedies as set forth above is not exclusive, and the parties shall, at its option, have available any and all other remedies for default available to it under the laws of the State of Washington.

18.4 LANDLORD's Default. LANDLORD will be in default if LANDLORD fails to perform an obligation within thirty (30) days after notice by TENANT, which notice must specify the alleged breach; provided that if the nature of LANDLORD's obligation is such that more than thirty [30] days are reasonably required for cure, then LANDLORD will not be in default if LANDLORD commences to cure within thirty [30] days of TENANT's notice and thereafter diligently pursues completion and completes performance within a reasonable time; PROVIDED HOWEVER that should the LANDLORD prevent the TENANT from full and unrestricted use of the northerly half of the parking spaces TENANT agrees to remit \$2,666.67 payable to the City of Mount Vernon for each year or portion thereof the City is not allowed full and unrestricted use. Said payment shall be compensation for development costs of \$40,000.00 prorated over the 15 year term of the Agreement.



19. Access.

19.1 ENTRY. LANDLORD may enter the Premises at all times to inspect; provide services required hereunder; or determine TENANT's compliance with the provisions of this Lease, all without being deemed a constructive eviction. Any person or persons who may have an interest in the purpose of LANDLORD's visit may accompany LANDLORD.

19.2 TENANT'S OBLIGATION TO PERFORM. Nothing herein shall imply any duty upon LANDLORD to do any work which under any provision of this Lease TENANT may be required to perform, and the performance thereof by LANDLORD shall not constitute a waiver of TENANT's default.

20. Right to Show Property. TENANT shall permit inspection of the Premises by or on behalf of prospective purchasers of said premises, during business hours, at any time during the Lease term or any extension thereof. During the two months prior to the expiration of the term of this Lease or of any extension hereof, if the renewal option has not been exercised, TENANT shall permit inspection of the Premises during reasonable hours by LANDLORD's agents.

21 Notices. Any notice required or permitted hereunder must be in writing and will be effective upon the earlier of personal delivery or three days after being mailed by certified mail, return receipt requested, addressed to TENANT or to LANDLORD at the address for that party designated in Section 1.3 of this Lease. Either party may specify a different address for notice purposes by written notice to the other.

22. Vacation of Premises - Holding Over. Upon written notice from LANDLORD given at any time prior to the expiration of the Term, TENANT shall promptly vacate the Premises on or before the last day of the Term, leaving the Premises as described in Section 33. If TENANT holds over after the expiration or earlier termination of the Term without the express written consent of LANDLORD, TENANT will be a monthly leasehold TENANT subject to rents in the amount two-hundred twenty two dollars and twenty three cents per month (\$222.23/month) and otherwise subject to the terms, covenants, and conditions herein specified, insofar as applicable. The provisions of this section are in addition to and do not affect LANDLORD's right of re-entry or any other rights of LANDLORD hereunder or as otherwise provided by law. TENANT hereby indemnifies and agrees to hold harmless LANDLORD from all loss, injury, or liability arising from TENANT's failure to surrender the Premises upon the expiration or termination of this Lease.

23. Brokers. TENANT and LANDLORD both warrant that they have had no dealings with any real estate brokers or agents in connection with the negotiation of this Lease, and that they know of no other real estate brokers or agents who is or might be entitled to a commission in



connection with this Lease. If TENANT or LANDLORD dealt with any other person or real estate broker with respect to leasing or renting space in the Property, each party shall be solely responsible for the payment of any fee due to that person or firm, and shall indemnify and hold the other party harmless from and against any liability in respect thereof.

24. Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions, and provisions of this Lease are binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns. If LANDLORD sells or otherwise conveys its title to the Property without prior approval from the TENANT, LANDLORD will continue to retain liability under this Lease to TENANT and TENANT may seek performance from LANDLORD or LANDLORD's purchaser or successor in title.

25. Surrender of Premises. The voluntary or other surrender of this Lease by TENANT, or a mutual cancellation thereof, shall not work a merger, and will, at the option of LANDLORD, operate as an assignment to it of any or all subleases. TENANT shall on the last day of the Lease term, or upon the sooner termination of the term, peaceably and quietly surrender the Premises to LANDLORD and all the alterations and additions thereto, broom clean. The TENANT shall have the right to remove all equipment, personal property, and fixtures which may have been placed on the premises by TENANT during the term of this Lease, provided that the same are removed from the Premises upon the termination of this Lease. Any such equipment, personal property, and fixtures not removed from the premises at the conclusion of this Lease shall revert to the LANDLORD, provided that the LANDLORD shall notify the TENANT in writing at least 10 business days prior to such reversion becoming effective so as to allow the TENANT to remove such items. Following the removal of such property, the premises shall be restored to its original condition, or to a condition satisfactory to LANDLORD, prior to the termination of this Lease, normal wear and tear excepted. The parties hereby stipulate that the TENANT's property shall not be considered to be a "fixture" as that term is defined by Title 62A of the Revised Code of Washington. Any of TENANT's property not so removed by TENANT shall become the property of LANDLORD unless the LANDLORD notifies the tenant to remove. If notice has been given then LANDLORD can remove and tenant agrees to pay all reasonable expenses incurred by LANDLORD.

26. Americans with Disabilities Act. Within ten days after receipt, TENANT shall advise LANDLORD in writing, and provide LANDLORD with copies of (as applicable): (a) any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Premises; (b) any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Premises; or (c) any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Premises. TENANT shall fully comply with the ADA.

27. Execution Required. Submission of this instrument for examination or signature by TENANT does not constitute a reservation of or option for lease, and is not effective as a lease or otherwise until execution by and delivery to both LANDLORD and TENANT.



28. Time of Essence. Time is of the essence of this Lease and of every provision hereof.

29. Quiet Enjoyment. TENANT, on performing all the covenants and conditions hereof, shall, at all times during the demised term, peaceably and quietly have, hold, and enjoy the leased property.

30. Covenants Real. Every covenant in this Lease shall be deemed and treated to be a covenant real running with the Premises during the term hereof, and shall extend to the heirs, legal representatives, successors and assigns of the parties. No change in LANDLORD's ownership of the premises, or rights to the rents payable hereunder, however accomplished, shall operate to enlarge the obligations or reduce the rights of TENANT. No change in LANDLORD's ownership in the premises shall be binding upon TENANT for any purpose until TENANT shall have been given notice thereof.

31. Prior Agreements. This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement, letter of intent or understanding pertaining to any such matter will be effective for any purpose. No oral modification of, or amendment to, this Lease shall be effective; however, this Lease may be modified or amended by a written agreement signed by both parties to this Lease.

32. Severability. Any provision of this Lease which proves to be invalid, void, or illegal will in no way affect, impair, or invalidate any other provision hereof, and such other provisions will remain in full force and effect.

33. Applicable Law and Venue. This Lease is made pursuant to and shall be construed in accordance with the laws of the State of Washington. LANDLORD and TENANT hereby agree that venue of any action relating to this Lease will be in Skagit County, Washington.

34. Hazardous Substances.

34.1 DEFINITION. As used herein, the term "Hazardous Substance" means any hazardous, toxic, or dangerous substance, waste, or material, which is or becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law now or hereafter in affect pertaining to environmental protection, contamination, or cleanup.

34.2 INDEMNIFICATION. TENANT agrees to hold harmless, protect, indemnify, and defend LANDLORD from and against any damage, loss, claim, or liability, INCLUDING Attorney's fees and costs, resulting from TENANT's use, disposal, transportation, generation, and/or sale of any Hazardous Substances. LANDLORD agrees to hold harmless, protect, indemnify, and defend TENANT from and against any damage, loss, claim, or liability, including attorney's fees and costs, resulting from (a) Hazardous Substances existing on the Premises as of the Commencement Date of this Lease; or (b) Hazardous Substances thereafter used, disposed of, or generated on the Premises by the LANDLORD. These indemnities will survive the termination of this Lease, whether by expiration of the Term or otherwise.

35. Possession. TENANT shall be entitled to possession of the Premises as of the effective date of this Lease.

36. Other Documents. Each party undertakes to execute such additional or other documents as may be required to fully implement the intent of this agreement.

37. Paragraph Headings, Gender, and Number. Paragraph headings are not to be construed as binding provisions of this Lease; they are for the convenience of the parties only. The masculine, feminine, singular and plural of any word or words shall be deemed to include and refer to the gender and number appropriate in the context.

38. Counterparts. This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

39. Nonwaiver of Breach. The failure of LANDLORD to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such rights, or any other covenants or agreements, but the same shall be and remain in full force and effect.

40. Construction. Nothing contained herein shall create the relationship of principal and agent or of partnership or of joint venture between the parties hereto, and neither the method of computation of rent nor any other provision contained herein shall be deemed to create any relationship between the parties hereto other than the relationship of LANDLORD and TENANT.

41. Attorney's Fees, Costs. In any action brought to enforce any provision of this Lease, including actions to recover sums due or for the breach of any covenant or condition of this Lease, or for the restitution of the Premises to LANDLORD or eviction of TENANT during the term or after expiration thereof, the substantially prevailing party shall be entitled to recover from the other party all reasonable costs and reasonable attorney's fees incurred, including, without limitation, the fees of accountants, appraisers, and other professionals, at trial, on appeal, or without resort to suit..

IN WITNESS WHEREOF the parties have hereunto set their hands on the day and year first above written.



By Bud Norris
BUD NORRIS, Mayor

By GARY THOR
GARY THOR, General Manager

ALICIA D. HUSCHKA, Finance Director

KEVIN ROGERSON, City Attorney

On this 21st day of October, 2005, before me personally appeared GARY THOR, to me known to be the individual who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned

A circular notary seal for Charlene J. Nelson, a Notary Public in the State of Washington. The seal features a rope-like border. Inside the border, the text "CHARLENE J. NELSON" is at the top, "COMMISSION EXPIRES" is on the left, "NOTARY" is in the center with a double-headed arrow below it, "PUBLIC" is below the arrow, and "8-17-08" is at the bottom. The words "STATE OF WASHINGTON" are written along the bottom inner edge of the seal.

Charles J. Nelson
NOTARY PUBLIC in and for the State of
Washington, residing at Mount Vernon
My Commission Expires: 8-17-08
Printed name: Charles J. Nelson

EXHIBIT "A"

LEGAL DESCRIPTION:

The northerly 187 feet of the following described parcel A:

PARCEL A:

That portion of the Southeast Quarter of the Southeast Quarter of Section 19, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

Commencing 60 feet West of the Southwest corner of Block 7, Riverside Addition to the Town of Mount Vernon, according to the plat thereof recorded in Volume 3 of Plats, page 24, said point being the intersection of the North line of Snoqualmie Street, if the same were extended, and the West line of First Street;

Thence Northerly, along the West line of said First Street, 75 feet to the Northeast corner of that certain tract of land conveyed to Stokely-Van Camp, Inc. an Indiana corporation, by Deed recorded under Auditor's File No. 518834, records of Skagit County, Washington, and the true point of beginning;

Thence continuing Northerly along the West line of First Street, to a point 85 feet Northerly of the intersection of said West line of First Street with the North line of Broadway, if extended Westerly;

Thence Westerly, at right angles, to the Skagit River,

Thence Southerly along said river to intersect a line 75 feet Northerly of and parallel with the North line of Snoqualmie Street, if the same were extended Westerly;

Thence Easterly, along said line, to the true point of beginning.



EXHIBIT "B"

Design, Construction, and Maintenance Requirements

1. The City shall fill and grade the premises to a uniform slope and place asphalt pavement to provide a finished surface.
2. The area of the asphalt surface or size of asphalt surface shall be approximately 17,000 square feet and in the formation as described in the attached Exhibit "D."
3. The City will paint stripe 47 parking space as shown on the site plan in the attached Exhibit "D." Striping shall include handicap accessible parking stalls where applicable.
4. The City shall maintain said parking lot for the duration of the term of the City lease while the City has full and unrestricted use of the northerly portion of the lot as identified in the attached Exhibit "D."
5. The City shall be solely responsible for all permit fees, impact fees, and other fees, and obtaining all applicable permits from all government agencies. TENANT shall pay from its own funds all costs of construction.
7. The City shall be solely responsible for the cost of all architectural, engineering, and surveying fees.



EXHIBIT "C"

Landscape and Drainage Improvements

1. The City shall install drainage improvements as required to prevent erosion and protect the natural environment as identified in the attached Exhibit "D".
2. The City shall install landscaping as required by the Mount Vernon Municipal Code 17.93 et. seq. currently in effect on the date of the execution of this agreement as identified in the attached Exhibit "D."
3. The City shall maintain the landscaping and drainage improvements for the duration of the term of the City lease while the City has full and unrestricted use of the northerly portion of the lot as identified in the attached Exhibit "D."



EXHIBIT "D"

