



## Board of Commissioners

Dirk Rohne - Chairman  
Robert Stevens – Vice-Chair  
Thaddeus Fickel – Secretary  
James Campbell – Treasurer  
Tim Hill – Assistant Secretary/Treasurer

422 Gateway Ave, Suite 100  
Astoria, OR 97103  
Phone: (503) 741-3300  
Fax: (503) 741-3345  
[www.portofastoria.com](http://www.portofastoria.com)

### Workshop Session

May 19, 2026 @ 4:00 PM  
422 Gateway Ave, Suite 100, Astoria, OR\*

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The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting by calling the Port of Astoria at (503) 741-3300.

\*This meeting will also be accessible via Zoom. Please see page 2 for login instructions.

### Agenda

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. CHANGES/ADDITIONS TO THE AGENDA
5. PUBLIC COMMENT  
This is an opportunity to speak to the Commission for 3 minutes regarding any topic. In person, those wishing to speak must fill out a public comment form. Those participating via Zoom may raise their hands during the public comment period.
6. ACTION
  - a. Pacific Office Automation Contract for Boatyard Printer ..... 3
  - b. Master Lease Agreement – Astoria Port Development, LLC..... 5
7. COMMISSION COMMENTS
8. EXECUTIVE DIRECTOR COMMENTS
9. EXECUTIVE SESSION
  - a. To review and evaluate the performance of an officer, employee or staff member if the person does not request an open meeting in accordance with ORS 162.660(2)(i) and 192.660(8).
10. ACTION
  - a. Executive Director Contract Extension
11. UPCOMING MEETING DATES
  - a. Regular Meeting – June 2, 2026, at 4:00 PM
  - b. Airport Advisory Committee Meeting – June 8, 2026, at 4:00 PM
  - c. Workshop Session – June 16, 2026, at 4:00 PM
12. ADJOURN

Please Note:

Agenda packets are available online at: <https://www.portofastoria.com/commission-meetings>.

Please allow time for the normal posting procedure for agendas and meeting packets.



## Board of Commissioners

### **HOW TO JOIN THE ZOOM MEETING:**

- Online:** Direct link: <https://us02web.zoom.us/j/86905881635?pwd=amhtTTBFcE9NUElxNy9hYTFPQTlzQT09>  
Or go to [Zoom.us/join](https://zoom.us/join) and enter Meeting ID: 869 0588 1635, Passcode: 422
- Dial In:** (669) 900-6833, Meeting ID: 869 0588 1635, Passcode: 422

This meeting is accessible to persons with disabilities or persons who wish to attend but do not have computer access or cell phone access. If you require special accommodations, please contact the Port of Astoria at least 48 hours prior to the meeting by calling [\(503\) 741-3300](tel:5037413300) or via email at [admin@portofastoria.com](mailto:admin@portofastoria.com).

Please Note:

Agenda packets are available online at: <https://www.portofastoria.com/commission-meetings>. Please allow time for the normal posting procedure for agendas and meeting packets.



This Order is incorporated into and made apart of the Total Services Agreement ("TSA") between Customer and POA which governs the imaging equipment and/or services specified below.

BUSINESS NAME Port of Astoria  
TSA # \_\_\_\_\_  
ORDER # \_\_\_\_\_

BILL TO:			PO #	SOLD BY	
422 Gateway Ave #100 Astoria OR 97103				Jacob Fulk	
SHIP TO:			CONTACT PHONE #		
524 Gateway Ave, Astoria OR 97103			503 741 3300		
QTY	ITEM	TYPE	DESCRIPTION	UNIT PRICE	TOTAL
1		New	HP E47528f for boayard		leased
			This machine to be added to the existing service agreement to be covered for all service, parts, labor, supplies less paper and staples. It will bill at the same rates as existing machine of the same model		
MINIMUM MONTHLY PAYMENT (plus applicable taxes) \$ <u>22.00</u> TERM <u>60</u> MONTHS				Device Management	
SERVICE/SUPPLY AGREEMENT	MODELS	MONTHLY MINIMUM NUMBER OF IMAGES	EXCESS PER IMAGE CHARGE	EXCESS BILLING CYCLE	Automated Meter Reading
		pooled	pooled	<input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi-Annual <input type="checkbox"/> Annual	Auto Toner Replenishment
		pooled	pooled		Advanced Scanning
					Security
					MFP Network Support
					Power Filter
CONDITIONS OF SALE, CONTINGENCIES OR COMMENTS					Delivery
Delivery, Installation, Setup, Training Included					
					SUBTOTAL
					SALES TAX
					TOTAL
					leased

By signing this Order, Customer acknowledges and agrees: (a) this Order is NON-Cancelable; (b) this Order will be governed by the TSA General Terms and Conditions, the applicable TSA Additional Terms and Conditions for the Solution and this Order all of which are an integral part of this Order and incorporated herein; and (c) this Order relating to the equipment and services described herein, can only be changed by written agreement signed by both Parties.

**PACIFIC OFFICE AUTOMATION**

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

**CUSTOMER**

BUSINESS LEGAL NAME Melanie Howard

SIGNER NAME & TITLE Melanie Howard Finance & HR Director

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

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**MASTER LEASE AND DEVELOPMENT OPTION AGREEMENT**

**Date:**           **May 20, 2026**

**Between:**       **PORT OF ASTORIA**

422 Gateway Avenue, Suite 100  
Astoria, Oregon 97103  
Ph: 503-741-3300

(“Port”)

**And:**           **ASTORIA PORT DEVELOPMENT, LLC,  
A WASHINGTON LIMITED LIABILITY COMPANY**

66 S. Hanford St., Suite 300  
Seattle, WA 98134

(“Tenant”)

- 1. AGREEMENT.** Port grants to Tenant a master lease (“Master Lease”) of, and the right of first refusal (“Right of First Refusal”) to develop some or all of, the following described property (“Premises”) according to the terms and conditions stated herein (“Agreement”).

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*[Map is attached as Exhibit A.]*

Tenant intends to use the Premises for a variety of uses more precisely described in Exhibit “B,” which is attached hereto and incorporated herein by this reference (“Anticipated Uses”).

- 2. TERM.** The Term of the Agreement shall be as follows:

2.1 Original Term. The original term (“Original Term”) of this Agreement shall be forty (40) years, commencing on May 20, 2026 (“Commencement Date”). The parties’ obligations under this Agreement shall commence on the Commencement Date.

2.2 Renewal Term. Unless Tenant materially defaults under this Agreement and fails to cure or undertake in good faith the process of a cure as provided in this Agreement, Tenant shall have the right to renew the Agreement at the end of the Original Term for two periods of twenty-five (25) years each (“Renewal Term”).

2.3 Amendment. Port reserves the right to amend the terms and conditions of the Agreement at the end of the Original Term or at the end of any Renewal Term so long as it does not materially affect the duration or economic terms of the Agreement.

### 3. DIVISION OF PREMISES.

- 3.1 Tenant's Right of First Refusal; Creation of Lot. Tenant shall have the Right of First Refusal to develop any part of the Premises for an Anticipated Use. Before undertaking the process to develop any portion of the Premises for an Anticipated Use, including before applying for land use approvals or permits, Tenant shall notify Port in writing of Tenant's intention to exercise its Right of First Refusal with respect to such Anticipated Use, and in such notice provide to Port a description of the area of the Premises upon which improvements are proposed. If the area requested for the improvements is consistent with the Anticipated Uses set forth in Exhibit B and otherwise is permitted under this Agreement, the parties shall enter into a separate sub-agreement for development and sublease of the area proposed for development ("Sub-Agreement").
- 3.2 Costs. Port and Tenant shall share equally the cost of creating a Lot. Tenant shall be solely responsible for obtaining all necessary approvals and permits associated with development of each Lot, and for all costs, including construction costs, associated with improvements thereon. The Port will be responsible for costs associated with bringing water, sewer, electricity and related utilities to the Lot.
- 3.3 Forfeiture of Rights; Early Termination.

- (1) Notwithstanding any separate Sub-Agreement pertaining to the 100+-Room Upper End Hotel, should Tenant fail to obtain permits to allow for the construction of the 100 +- Room Upper End Hotel by January 1, 2029, the Port after sixty (60) days' notice and opportunity to cure, may terminate this Agreement and any related Sub-Agreement in its entirety.
- (2) With respect to all Anticipated Uses other than the 100+-Room Upper End Hotel, if, within sixty (60) days of a written demand from Port ("Notice"), Tenant fails to confirm in writing Tenant's intention to exercise its Right of First Refusal with respect to any Anticipated Use; or if, following such Notice, Tenant fails to undertake or continue with good-faith negotiations to enter into a Sub-Agreement for development of any Anticipated Use as provided in subsection 3.1 of this Agreement; Tenant shall be deemed to have forfeited Tenant's rights with respect to such development. Port's obligations to Tenant under this Agreement relating to such Anticipated Use thereafter shall terminate, and Port may pursue development of the Anticipated Use with any other person or entity. Any forfeiture by Tenant under this subsection shall be limited to the Anticipated Use described in the Notice and, except

as provided in subsection 3.3(1), shall not affect Tenant's rights with regard to any other Anticipated Use.

**4. POSSESSION AND OCCUPANCY.** Unless otherwise stated in a Sub-Agreement, and according to the terms of such Sub-Agreement, Tenant's right to possession of each Lot shall commence upon execution of each Sub-Agreement. Tenant may thereafter occupy or enter into any structure existing or developed on the Lot upon obtaining a temporary or final certificate of occupancy for such structure.

**5. RENT.** During the Term of the Agreement, Tenant shall pay directly to Port the following (collectively, "Rent"):

5.1 Base Rent. Each Sub-Agreement entered into by the parties will define the Base Rent for each Anticipated Use, the rent commencement date, rent payment terms, and any other items specific to such Anticipated Use.

5.2 Additional Rent. In addition to Base Rent, Tenant shall pay to Port additional rent including but not limited to, insurance costs and utility charges attributable to the Anticipated Use ("Additional Rent").

5.3 Property Taxes and Assessments. As a public entity, Port does not pay property taxes, but Tenant will be assessed directly by the County for its demised Premises. Whether or not a separate Lot or Lots have been created, Tenant shall pay as due all taxes on its personal property located on the Premises, and all real property taxes against the Premises, before the same become past due. As used herein, "real property taxes" include any fee or charge relating to the ownership, use, or rental of the Premises. Tenant will provide Port with proof of payment of real property taxes before the same become past due.

5.4 Escalation. The Base Rent in any Sub-Agreement shall be increased on the fifth (5<sup>th</sup>) anniversary of this Agreement, and every five (5) years thereafter, by the lesser of 10.41% (2% compounded annually) or the percentage equal to the Percent Annual Increase in the Consumer Price Index published by the United States Bureau of Labor Statistics of the United States Department of Labor (the "CPI"), using the most recently published index titled "CPI-All Urban Consumers, Area West (1982-84=100)," or the nearest comparable data if such index is no longer published. In no event shall the Base Rent be reduced below that of the prior year.

**6. SECURITY DEPOSIT.** N/A.

**7. USE OF THE PREMISES.**

7.1 Permitted Use. The Premises shall be used only as described in this Agreement and any Sub-Agreement approved by the Port (“Permitted Use”). If this use is or becomes prohibited by law or governmental regulation, or the Conditions for Occupancy cease to apply pursuant to Section 4 of this Agreement, Tenant’s obligations to Port with respect to this Agreement shall terminate on thirty (30) days’ written notice to Tenant. Tenant shall be solely liable for any claims, damages, or penalties resulting from any Tenant’s improper or illegal use or occupation of the Premises.

7.2 Terms of Use. In connection with each Permitted Use, at Tenant’s sole cost and expense, Tenant shall comply with all applicable laws, rules, and regulations of Port and any other public authority, including but not limited to complying with all applicable permitting and licensing requirements and all directives and orders issued by any regulatory agency. Unless expressly stated otherwise in this Agreement or prohibited by law, penalties for violations of Port rules and regulations shall be in addition to, and not exclusive of, Port’s other remedies under this Agreement.

7.3 Construction. Any construction on the Premises undertaken by Tenant shall be at Tenant’s sole risk. Port assumes no responsibility or liability for harm or damage caused by or attributable to acts of Tenant or of Tenant’s contractors in the performance of construction activities on the Premises. Port shall not act as, nor be deemed, an agent of Tenant for any construction performed on the Premises. Construction shall be performed in a safe and workmanlike manner and shall comply with all requirements and direction of the Port. Port reserves the right to halt construction at any time Port reasonably determines that construction activities pose an imminent safety hazard or threat to any person or property located on Port premises, or unduly disrupt Port operations or the business operations of other Port tenants.

## 8. COMMON AREAS.

8.1 Definition. “Common Areas” shall mean any parking areas, roadways, sidewalks, landscaped areas, security areas and any other areas owned by Port and located within or without any building located on Premises, where such areas have been or may be designated by Port for use by the general public or for tenants’ common use.

8.2 Tenant’s Use. Tenant, its subtenants, agents, and invitees shall have the non-exclusive right to use Common Areas.

8.3 Port’s Rights. With respect to Common Areas, Port reserves the following rights:

- (1) To establish reasonable rules and regulations for the use of Common Areas.

- (2) To close all or any portion of Common Areas temporarily or permanently as needed to achieve Port's business or operational objectives.
- (3) To construct, alter, or remove buildings or other improvements in Common Areas, and to change the layout of such Common Areas, including modifying their shape and size.
- (4) To exercise any of Port's governmental powers over Common Areas not inconsistent with the terms of the Agreement.

8.4 Common Area Charge. No Common Area charges are due under this Agreement. Notwithstanding the foregoing, Port reserves the right to impose Common Area charges at any time after providing ninety (90) days' written notice to Tenant.

**9. REPAIRS AND MAINTENANCE.** The obligations described in this Section shall be incorporated into any Sub-Agreement entered into between the parties pursuant to this Agreement, whether or not expressly stated therein:

9.1 Port's Obligations. The following shall be the responsibility of Port:

- (1) Routine repairs and maintenance of exterior water, sewage, gas, and electrical services up to the point of entry to the Premises.
- (2) Response within a reasonable time to Tenant's written notification to Port of the need for repairs or maintenance under this subsection.
- (3) Provide a minimum of 30-days' written notice to Tenant describing Premises condition(s) which must be remedied.

9.2 Tenant's Obligations. Tenant will be responsible for the maintenance, repair and replacement of all components of the Premises except for the obligations of Port specified in Section 9.1 above. The following shall be the responsibility of Tenant, at Tenant's sole expense:

- (1) Repairs and routine maintenance of Premises and infrastructure contained within Premises.
- (2) Repairs to any area necessitated by the deliberate acts or negligence of Tenant or any subtenant, their agents, employees, or invitees.

- (3) Any repairs or alterations required under Tenant's obligations to comply with laws and regulations.
- (4) Any repairs described in a 30-day written notice provided by the Port and issued in accordance with Section 9.1(4) above.
- (5) Provide written notice to Port of the need for repairs or maintenance pursuant to subsection 9.1. Port's obligation to make such repairs shall not mature until a reasonable time after Port has received such written notice.

9.3 Reimbursement of Costs. If Tenant fails or refuses to perform its obligations under this Section 9, Port may, but is not obligated to, complete the maintenance and repairs and charge the actual costs thereof to Tenant as Additional Rent. Tenant shall reimburse Port for such expenditures upon demand, together with interest at the rate of nine percent (9%) per annum from the due date of any and all invoices for such work issued by the Port. Except in an emergency, which for purposes of this Section shall include any circumstance creating an immediate risk of personal injury or property damage to subtenant, Leasehold Mortgagee, or any other third party, before undertaking any work under this paragraph, Port shall provide to Tenant a minimum of five (5) days' written notice outlining with reasonable particularity the maintenance or repairs required. If Tenant fails within that time to initiate or perform to completion such maintenance or repairs, Port may commence work as provided in this paragraph.

9.4 Inspection of Premises. Port shall have the right to inspect the Premises at any reasonable time or times pursuant to paragraph 18.6. However, such inspection shall not be deemed to waive Tenant's obligation to provide notice as provided in paragraph 9.2(5).

9.5 Interference with Tenant. In performing its obligations under this Section, Port shall not cause unreasonable interference with Tenant's or any subtenant's use of the Premises. Tenant shall have no right to abatement of rent nor any claim against Port for any reasonable or necessary inconvenience or disturbance resulting from Port's performance of its obligations under this Section.

9.6 Assignment to Subtenants. Subject to Section 13 of this Agreement, Tenant may assign any of Tenant's obligations under this Section in any sublease the Premises. However, failure by any assignee or subtenant to perform its obligations under any assignment or sublease shall not excuse Tenant's obligations hereunder.

## 10. INSURANCE.

10.1 Insurance Required. Before taking possession of any Lot, Tenant shall procure and thereafter during the term of the Agreement continue to carry the following insurance coverages at Tenant's expense:

- (1) Worker's Compensation Insurance coverage as required by law.
- (2) Comprehensive general liability insurance with an insurance company licensed to do business in Oregon having a Financial Strength Rating (FSR) of not less than 'A' and a Financial Size Category (FSC) of not less than 'X' according to Best's Insurance Guide, with limits of not less than not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate, with a \$1,000,000 umbrella or a policy with \$3,000,000 per occurrence limits. Tenant may complete Port's "Insurance Requirements Questionnaire" to apply for lower insurance limits based on Tenant's business operations. Upon receipt of a completed form, Port will notify Tenant in writing if they qualify for a lower insurance requirement. Port reserves the right to request an updated "Insurance Requirements Questionnaire" in the event that the Tenant's business operations change. If Tenant does not complete and submit the "Insurance Requirements Questionnaire," the aforementioned insurance coverage limits are required.

Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities under the Agreement, as well as any risks arising directly or indirectly out of any subtenant's activities under any sublease.

10.2 Certificates. Prior to occupancy, Tenant shall provide to Port certificates evidencing the policies required in Section 10.1, and thereafter on Port's request. Such certificates shall name Port as an additional insured and require that written notice be given to Port a minimum of ten (10) days prior to any change or cancellation of the policy.

10.3 Modifications. Port reserves the right to unilaterally modify insurance requirements under this Agreement, including adding new policies or requiring higher limits of coverage to the extent reasonable, and require Tenant's compliance within sixty (60) days of providing a written notice to Tenant. Port shall not adjust any specific policy or coverage requirement more frequently than once every calendar year without good cause.

10.4 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not

affect coverage under the policy. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

## **11. LIABILITY AND INDEMNITY.**

- 11.1 Liability for Damage. Except as expressly limited under this Agreement, Tenant shall be liable to Port for any and all damage to persons or property caused by or attributable to use of the Premises by Tenant or any subtenant, invitee, licensee, employee, or agent of Tenant.
- 11.2 Liens. Except for activities for which Port is responsible under the Agreement, Tenant shall pay as due all claims for work done on, and for services rendered or material furnished to, the Premises, and shall keep the Premises free from any liens. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure discharge of the lien or file with the Clatsop County Clerk cash or sufficient corporate surety bond or other surety to bond around the lien as provided under Oregon law.
- 11.3. Failure to Discharge Lien. If Tenant fails to pay any claims of lien or to discharge any lien upon demand by Port, Port may do so and collect the cost as Additional Rent, which amount shall bear interest at the rate of nine percent (9%) per annum from the date expended by Port. Such action by Port shall not constitute a waiver of any right or remedy which Port may have on account of Tenant's default.
- 11.4 Disputed Liens. Notwithstanding the parties' rights and obligations under this Section 11, Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, provided Tenant notifies Port in writing of the dispute and bonds around the lien as provided under Oregon law.
- 11.5 Indemnification. Tenant shall indemnify, hold harmless, and defend Port from any claim, loss, or liability arising out of or related to any activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant or any Subtenant of Tenant. Port shall have no liability to Tenant or any subtenant of Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises for which Port is not responsible under this Agreement. Port's liability under this Section, if any, shall be subject to the terms and limitations of the Oregon Tort Claims Act, ORS 30.280 to 30.300.

## **12. "AS-IS"; QUIET ENJOYMENT.**

- 12.1 Condition of Premises. Except as specifically agreed to by the parties under this Agreement, Tenant takes the Premises “AS IS,” with all faults.
- 12.2 Port’s Warranty. Port warrants that it is the owner of the Premises and has the right to lease them. Port warrants that the Tenant shall have the right to quiet enjoyment of the Premises for the purposes described in this Agreement, subject to the terms and conditions stated herein.
- 12.3 Estoppel Certificate. Each party will, within twenty (20) days after notice from the other, execute and deliver to the other party a certificate stating whether or not this Agreement has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the Agreement is in full force and effect and has not been modified except as represented in the notice requesting the certificate

**13. ASSIGNMENT.** Neither this Agreement nor any obligations of Tenant hereunder may be assigned without the express written consent of the Port. Any attempted assignment of this Agreement without the Port’s approval shall be void. This provision shall apply to all transfers by operation of law. If Tenant is a corporation or partnership, this provision shall apply to any transfer of a majority voting interest in stock or partnership interest of Tenant. No consent in one instance shall be deemed a waiver in a subsequent instance.

**14. DEFAULT.**

14.1 By Tenant. The following shall be events of default by Tenant:

- (1) Default in Rent. Failure of Tenant to pay Base Rent, Additional Rent, or other charge due under the Agreement within ten (10) days of the applicable due date stated in any Sub-Agreement.
- (2) Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the Agreement other than the payment of Rent or other charges within sixty (60) days after the date of Port’s written notice to Tenant specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 60-day period, this provision shall be complied with if Tenant begins correction of the default within the 60-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Any failure of any subtenant of

Tenant to perform its obligations under any sublease of Tenant shall not excuse Tenant's failure to comply with the terms and conditions of this Agreement.

- (3) Insolvency. Insolvency of Tenant; assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within sixty (60) days after filing; attachment of or the levying of execution on the Leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Port that they have unconditionally acquired the interest of the one causing the default. If the Agreement has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the Agreement.

- 14.2 By Port. Failure to comply with any of Port's duties and obligations under this Agreement within thirty (30) days of receipt of a written notice from Tenant describing with reasonable particularity the basis for the claimed default. If the claimed default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if Port begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the default as soon as practicable.

## **15. REMEDIES ON DEFAULT.**

### **15.1 Termination.**

- (1) Default by Tenant. In the event of a default by Tenant, at its sole option the Port may terminate the Agreement in its entirety or partially terminate the Agreement only as it pertains to the portion of the Premises covered by Sub-Agreement and not the remaining areas of the Premises by providing sixty (60) days' written notice to Tenant, any affected subtenant of Tenant, and any Leasehold Mortgagee of Tenant. Whether or not the Agreement is partially terminated under this paragraph, Port shall be entitled to recover damages from Tenant for the default, and Port may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and

without liability for damages and without having accepted a surrender. In addition, Port shall be entitled to damages as provided in Section 15.2.

- (2) Default by Port. In the event of a default by Port, Tenant may terminate the Agreement by providing a minimum sixty (60) days' written notice of termination to Port. On the effective date of such termination, Tenant's duties and obligations under the Agreement, including payment of Rent and Additional Rent, shall be excused, provided Tenant has vacated the Premises and complied with all requirements for Surrender at Expiration as provided in Section 16 of this Agreement. Tenant's damages for termination under this paragraph shall be limited to reimbursement of any costs paid in advance to Port, including pre-paid Rent for any unfinished term, less any deductions by Port pursuant to the terms of this Agreement. Port shall not be liable to Tenant for any incidental or consequential damages, resulting from or attributable to Tenant's early termination of the Agreement under this paragraph.

15.2 Port's Damages. In the event of termination or retaking of possession pursuant to Section 15.1(1), Port shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the Agreement term, the following amounts as damages:

- (1) The loss of rental from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying rent.
- (2) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's or Sub-Tenant's property and fixtures, or any other expense occasioned by Tenant's or Sub-Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

15.3 Reletting. In the event of termination or retaking of possession following default by Tenant, Port may relet the portion of the terminated Premises but shall not be required to relet for any use or purpose other than that specified in the Agreement or for a purpose which Port may reasonably consider injurious to the Premises, or to any tenant that Port may reasonably consider objectionable. Port may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Agreement, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

15.4 Right to Sue More than Once. Port may sue periodically to recover damages during the period corresponding to the remainder of the Agreement term, and no action for damages shall bar a later action for damages subsequently accruing.

15.5 Port's Right to Cure Defaults. If Tenant fails to perform any obligation under this Agreement, Port shall have the option to perform such obligation after 60 days' written notice to Tenant. All of Port's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of nine percent (9%) per annum from the date of invoicing by Port. Such action by Port shall not waive any other remedies available to Port because of the default.

15.6 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Port under applicable law.

## **16. SURRENDER AT EXPIRATION OR TERMINATION.**

16.1 Condition of Premises. Upon expiration of the Agreement term or earlier termination for default, Tenant shall deliver all keys to Port and surrender the Premises in first-class condition and broom (vacuum) clean. Alterations constructed by Tenant with permission from Port shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Repairs due to depreciation and wear from ordinary use for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.

16.2 Fixtures. All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Port's option, become the property of Port. If Port so elects, Tenant shall remove any and all equipment, fixtures, furniture, and trade fixtures that would otherwise remain the property and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Port may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

16.3 Personal Property. Except as provided in Section 16.2, upon expiration or termination of the Agreement Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. Tenant's failure to do so shall be deemed an abandonment of such property, and Port may retain such property and all rights of Tenant in such property shall cease. Alternatively, by notice in writing given to Tenant within twenty (20) days after removal was required, Port may elect to require Tenant to remove the property, or to effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Port for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Port.

16.4 Holdover. If Tenant does not vacate the Premises at the time required, Port shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this Agreement except the provisions for term and renewal and at a rental rate equal to one-hundred-fifty percent (150%) of the rent last paid by Tenant during the original term, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Tenant's failure to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Agreement shall constitute a failure to vacate to which this section shall apply. If a month-to-month tenancy results from a holdover by Tenant under this Section, the tenancy shall be terminable at the end of any monthly rental period on written notice from Port given not less than ten (10) days prior to the termination date, which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

**17. TENANT FINANCING OF IMPROVEMENTS AND ASSIGNMENT.**

17.1 Leasehold Mortgages. Tenant, and its successors and assigns, shall have the unrestricted right to mortgage (which term shall include a deed of trust), pledge, and assign Tenant's Leasehold interest in this Agreement and any improvements thereon ("Leasehold Financing") to a holder of a Leasehold Mortgage ("Leasehold Mortgagee). Leasehold Financing may also include an assignment of Tenant's rights under any sublease(s) as well as other collateral. Port consents to such Leasehold Financing provided that Port's fee simple interest in the Premises which are the subject of this Agreement (or the reversionary interest of Tenant in the Property and Improvements) shall not be subjected to such Leasehold Financing or subordinated to it. It shall be a material term of any financing agreement that no foreclosure action may be taken against the Premises.

17.2 Assignment by Leasehold Mortgagee. If any Leasehold Mortgagee shall acquire any portion of Tenant's interest in this Agreement and/or the improvements undertaken hereunder, by foreclosure of a mortgage thereon or by assignment in lieu of foreclosure or by an assignment to a designee or wholly owned subsidiary corporation of such mortgagee, such Leasehold Mortgagee may assume Tenant's interest in the Agreement as it relates to such interest, or may assign this Agreement as it relates to such interest without limitation so long as the assignee assumes the obligations under this Agreement and Port approves of the assignment, which consent shall not be unreasonably withheld, conditioned or delayed. Upon such assignment, the Leasehold Mortgagee shall be released from all liability for the performance or observance of the covenants and conditions of this Agreement as it relates to such interest from and after

the date of such assignment. The foregoing release of liability shall not include a release of liability for damages, injury, fines, or penalties arising under any federal, state or local environmental law, rule or regulation for which the mortgagee has, or may have liability, by reason of its possession or occupancy of the Premises.

- 17.3 Assignment for Security Purposes. Port recognizes that Tenant may have a need, in lieu of encumbering its Leasehold interest with a Leasehold Mortgagee as provided for herein, to assign to a lender, for security purposes, Tenant's Leasehold interest contained herein as it relates to an individual Sub-Agreement. To the extent that such an assignment for security purposes is required, the Parties agree that such an assignment is permissible, with Port's consent, which consent shall not be unreasonably withheld, conditioned or delayed.
- 17.4 Covenant Against Assignments. Except as expressly permitted by Sections 17.1, 17.2, and 17.3 hereof, Tenant shall not, without the prior written consent of Port (which consent shall not be unreasonably withheld, conditioned or delayed), sell, assign, transfer, dispose of, mortgage, pledge or grant a security interest in this Agreement, the Leasehold estate it creates, or any of Tenant's rights hereunder, in whole or in part, nor shall Tenant's rights or interests under or in this Agreement pass or be transferred or assigned by operation of law or otherwise. Tenant's request to assign must be in writing and must show the name and address of the proposed assignee, as well as the financial history and operating plan of said assignee.
- 17.5 Covenants Binding on Successors and Assigns. All the terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon any permitted successors and assigns of the Parties (including a Leasehold Mortgagee who succeeds to Tenant's Leasehold interest). If there occurs any assignment permitted hereunder, or made with the consent of Port, Tenant shall cause to be delivered to Port concurrently with or prior to such assignment, an instrument in writing signed and duly acknowledged by the assignee or successor by which such assignee or successor agrees to perform all terms and provisions of this Agreement applicable to Tenant.
- 17.6 Notice of Default and Opportunity to Cure. Upon the occurrence of a breach and/or an Event of Default under this Agreement, Port, in addition to notifying Tenant, shall also notify in writing any Leasehold Mortgagee of such Event of Default. Upon receipt of such written notice from Port, any Leasehold Mortgagee shall have the right, but not the obligation, to cure the Event of Default on behalf of Tenant. If a Leasehold Mortgagee elects to cure (which election shall be made in writing to Port within thirty (30) days after receipt of the notice of the Event of Default from Port), Leasehold Mortgagee shall have sixty (60) days to cure the Event of Default on behalf of Tenant,

or if such cure would reasonably require more than sixty (60) days to complete, fails to commence performance within the sixty (60) day period or fails to diligently pursue such cure to completion.

## **18. MISCELLANEOUS.**

- 18.1 Nonwaiver. Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 18.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party in such suit or action shall be entitled to recover from the other party its reasonable costs incurred in such action as well as attorney fees determined reasonable by the court, at trial, on petition for review, and on appeal.
- 18.3 Notices. Any notice required or permitted under this Agreement shall be given when actually delivered or forty-eight (48) hours after deposited in United States mail as certified mail addressed to the address first given in this Agreement or to such other address as may be specified from time to time by either of the parties in writing.
- 18.4 Succession. Subject to the above-stated limitations on transfer of Tenant's interest, this Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.
- 18.5 Recording. This Agreement shall not be recorded without the written consent of Port, which will not be unreasonably withheld, conditioned or delayed.
- 18.6 Entry for Inspection. Port shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this Agreement, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser. In addition, Port shall have the right, at any time during the last two (2) months of the term of this Agreement, to place and maintain upon the Premises notices for leasing or selling of any portion of the Premises.
- 18.7 Severability. If a provision hereof shall be declared void or illegal by any court or administrative agency having jurisdiction over the parties to this Agreement, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.
- 18.8 Time of Essence. Time is of the essence of the performance of the parties' obligations under this Agreement.

18.9 Applicable Laws. This Agreement shall be interpreted according to the laws of the State of Oregon without regard to conflict of law provisions. ORS 777.119, ORS 777.258 and U.S.C., Section 46, Chapter 411, shall apply to this Agreement.

18.10 Entire Agreement. This Agreement, including all referenced Exhibits, constitutes the entire agreement between the parties and there are no understandings, agreements, or representations, oral or written, not specified herein. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Any waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

The parties, by signature below of their respective authorized representatives, hereby acknowledge that they have read the entire Agreement, understand it, and agree to be bound by its terms and conditions.

**PORT OF ASTORIA**

**ASTORIA PORT DEVELOPMENT, LLC**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**MAP**

## **EXHIBIT B**

### **ANTICIPATED USES**

1. 100 +/- Room Upper End Hotel
2. Cruise Ship Welcoming Center / Community Center / Retail
3. 5000 SF retail
4. 30,000 SF retail and restaurant space.
5. Stand-alone Kiosks and Service outlets.