

LEASE AGREEMENT
Draft as of (March 4)-2014
(Modified Gross)

THIS LEASE AGREEMENT ("Lease") is made as of the date set forth below between the **City of Olympia**, a Washington municipal corporation, a Washington municipal corporation ("Landlord"), and **Fire Protection District No. 3, Thurston County** ("Tenant"). Landlord and Tenant hereby agree:

BASIC LEASE TERMS

1) BASIC LEASE INFORMATION AND EXHIBITS. The following terms as used herein shall have the meanings provided in this Section 1, unless otherwise specifically modified by provisions of this Lease:

- a) Commencement Date: _____
- b) Tenant: Lacey Fire Protection District No. 3
- c) Address of Tenant: 1231 Franz St SE
Lacey, WA 98503
- d) Landlord: City of Olympia
- e) Address of Landlord: City of Olympia
Attn: Fire Chief
100 Eastside St NE
Olympia, WA 98506-4081
- f) Premises: Lease of The Storage and SCBA Building (the "Building") located at 1305 Fones Road SE, Olympia, Washington 98501 having approximately 1,200 square feet and SCBA compressor, all of which is situated on the land legally described in Exhibit A attached hereto.
- g) Term: 35 years
- h) Basic Rent: \$6.50 per square foot for a total of \$5,850 per year (exclusive use of 600 square feet at \$6.50/foot = \$3,900, together with shared use of 600 square feet at \$3.25/foot = \$1,950).
- i) Additional Rent: All other costs, other than Basic Rent, payable by Tenant to Landlord hereunder.
- j) Security Deposit: n/a
- k) Permitted Use: Fire protection vehicle, fire apparatus and Tenant vehicle(s) and equipment storage in 600 square feet

exclusive to Tenant, and equipment storage in a portion of the remaining 600 square feet jointly shared with Olympia, and access to use of an SCBA compressor, if any, and for no other use or purpose without Landlord's prior consent.

l) Exhibits:

Exhibit A – Legal Description of parcel of Land upon which the building is located.

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GENERAL LEASE TERMS

- 2) PREMISES. Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, upon the terms and conditions set forth herein, the Premises described in Section 1, located on the land legally described on Exhibit A attached hereto. Landlord represents to Tenant that (i) fee title in the Premises is vested in Landlord, and (ii) Landlord has the authority to enter into this Lease.
- 3) COMMENCEMENT AND TERMINATION DATES. The Initial Term of this Lease shall commence on the Commencement Date set forth in Section 1 above.
- 4) RENT; RENT CREDIT. Tenant shall pay Landlord \$5,850 per year based on the following: 600 square feet of area for exclusive use by the Tenant and joint use of the remaining 600 square feet of the Building. Together the rented space is expressed as 900 square feet, which has been calculated at \$6.50 per square foot = \$5,850. Rent will be exclusively paid by Tenant through Landlord annual deduction from a Tenant credit of \$205,000 ("Rent Credit") previously transferred to the Landlord for the construction of the Building in 2014. This is estimated to be exhausted at thirty five (35) years.
- 5) ADDITIONAL RENT. Any additional amounts shall be paid directly to Landlord by Tenant and shall not be taken from the Rent Credit in Section 4.
 - a) Modified Gross Lease. It is the intention of Landlord and Tenant that this Lease is a modified gross lease, so that all costs of owning, operating and maintaining the Building, the SCBA compressor and Premises shall be borne by Landlord except as set forth herein. Tenant shall remain responsible for, and shall pay all costs of repair of damage caused by Tenant's negligence or misuse of the Premises, which shall be deemed Additional Rent hereunder, and shall be payable to Landlord upon demand.
 - b) Personal Property and Lease Excise Taxes. Unless exempt, Tenant shall also pay, prior to delinquency, all personal property taxes and lease excise taxes payable with respect to all property of Tenant located on the Premises, Building or Land, including any improvements paid for by Tenant, and promptly, upon request of Landlord, shall provide written proof of such payment or exemption.
- 6) TERM. Thirty five (35) years.
- 7) EARLY TERMINATION OF LEASE. If the Landlord requests early termination of the Lease, the Landlord will provide the Tenant 90 days' written notice and a calculation of Rent Credit remaining will be made and refunded to the Tenant as provided in the table below. If Tenant requests early termination of this Lease before 10 years from the commencement date, any refund is at the discretion of the Landlord. If after year 10, the Tenant requests early termination of the lease, the Tenant will provide the Landlord 90 days' written notice. A calculation of Rent Credit remaining will be made using the table below. Rent Credit will be applied to the end of the calendar year and then the balance of the Rent Credit remaining will be refunded to the Tenant.

Rent Credit Table

Funding received from Tenant = \$205,000

	Year 1-10	Year 11-35
Tenant requesting to end lease	No refund of funds transferred by Tenant to Landlord, except at the discretion of Landlord.	Rent Credit = number of full lease years remaining X \$5,850
Landlord requesting to end lease*	Rent Credit = number of months remaining X \$487.50	Rent Credit = number of months remaining X \$487.50

* Includes early termination under Lease Articles 18 and 19.

8) **SERVICES AND UTILITIES.**

- a) **Standard Services.** Landlord shall furnish the Premises with electricity service. Tenant understands that there are no other utilities to the building, specifically, no water or sewer. There is no janitorial, trash removal, or any other service provided by Landlord.
- b) **Interruption of Services.** Except to the extent caused by the gross negligence or intentional misconduct of Landlord or its agents, employees or contractors, failure by Landlord to any extent to furnish or cause to be furnished anything described in this Lease, or any cessation or interruption thereof, resulting from any cause, including without limitation, mechanical breakdown, overhaul or repair of equipment, strikes, riots, acts of God, shortages of labor or material, compliance by Landlord with any voluntary or similar governmental or business guidelines, governmental laws, regulations or restrictions, or any other similar causes, shall not render the Landlord liable in any respect for damages to either person or property, for any economic loss or other consequential damages incurred by Tenant as a result thereof, be construed as an eviction of Tenant, result in an abatement of rent, or relieve Tenant from its obligation to perform or observe any covenant or agreement contained in this Lease.

9) **SECURITY DEPOSIT.** There is no Security Deposit requirement under this Lease.

10) **USES.** The Premises are to be used only for the Permitted Uses set forth in Section 1 above and for no other business or purpose. Tenant shall not commit any act that will increase the then existing rate of insurance on the Building and will immediately pay any such increase to Landlord as Additional Rent. Tenant shall not use the area around the Premises for parking vehicles for extended periods. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance or other act which is unlawful. Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders and requirements, including without limitation laws and regulations prohibiting discrimination on the basis of race, gender, religion, national origin, age or disability, or any other status protected by law, in effect during the term hereof, including without limitation the Americans With Disabilities Act, regulating the use, occupancy or improvement of the Premises.

11) **CHANGES OF USE BY THE LANDLORD.** Changes of use by the Landlord are allowed without alteration to this Lease

as long as such changes do not prevent the Tenant exclusive use of 600 square feet of the building for vehicle storage and joint use of the remaining 600 square feet of whatever the new use of the building may become.

- 12) IMPROVEMENTS. Upon expiration or sooner termination of this Lease, all improvements and additions to the Premises, except Tenant's trade fixtures, shall be deemed the property of Landlord.
- 13) ACCEPTANCE OF PREMISES. Tenant hereby accepts the Premises and the Building "as-is" in their condition existing as of the date of the execution hereof, and that Landlord shall have no obligation of any kind to alter, repair, improve, or rebuild the Premises in connection with Tenant's occupancy thereof except to the extent specifically set forth elsewhere in this Lease. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the suitability of the Premises for the conduct of Tenant's business, and Tenant hereby waives any rights, claims or actions against Landlord under any express or implied warranties of suitability.
- 14) CARE OF PREMISES. Landlord shall maintain the structural portions of the Building in reasonably good order and condition, except for damage occasioned by act or omission of Tenant or its contractors, agents, invitees, licensees or employees, the repair of which damage shall be paid by Tenant. Tenant shall, at Tenant's sole cost and expense, keep every other part of the Premises in good condition and repair, damage thereto from causes beyond the reasonable control of Tenant and ordinary wear and tear excepted. If Tenant fails to perform Tenant's obligations under this Section, Landlord may at Landlord's option enter upon the Premises after ten (10) days' prior notice to Tenant and put the same in good order, condition and repair and the cost thereof together with interest thereon at the rate of 12% per annum shall be due and payable as Additional Rent to Landlord together with Tenant's next installment of Basic Rent. All structural repairs required to be made by Landlord shall be those reasonably determined by Landlord as necessary to maintain the structural integrity of the Premises and the Building.
- 15) ALTERATIONS AND ADDITIONS.
 - a) Tenant shall not make any alterations, improvements, additions, or utility installations in or about the Premises (collectively, "Alterations") without first obtaining the written consent of Landlord and, where appropriate, in accordance with plans and specifications approved by Landlord. Any alterations required to be made to the Premises by any applicable building, health, safety, fire, nondiscrimination, or similar law or regulation shall be made at Tenant's sole expense and shall be subject to the prior written consent of Landlord. Tenant shall reimburse Landlord for any sums expended for examination and approval or architectural or mechanical plans and specifications of the Alterations. Landlord may require a lien and completion bond for such construction, or require the improvements be removed at the expiration of the Term. Landlord's approval of the plans, specifications and working drawings for Tenant's alterations shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with all laws, rules and regulations of governmental agencies or authorities.
 - b) Tenant shall pay, when due, all claims for labor or materials furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanics' or material suppliers' liens against the Premises or any interest therein.
 - c) Unless Landlord requires their removal, all Alterations (other than trade fixtures and movable equipment) which may be made on the Premises shall become the property of

Landlord and remain upon and be surrendered with the Premises at the expiration of the term.

- 16) ACCESS. Tenant shall permit Landlord and its agents to enter the 600 foot area exclusively leased by Tenant on the Premises at all reasonable times for the purpose of inspecting, repairing, altering or improving the Premises or the Building. Landlord may temporarily close any portion of the Building or Premises without liability to Tenant by reason of such closure, and such closure shall not constitute an eviction of Tenant or release Tenant from any Rent hereunder.
- 17) DAMAGE OR DESTRUCTION. If all the Premises or such portions of the Building as may be required for the reasonable use of the Premises are damaged by fire or other casualty, this Lease shall automatically terminate as of the date of such casualty. In the event of casualty to a material part, but less than all, of the Building, where Landlord shall determine that the remaining portions of the Building cannot be economically and effectively used by it (whether on account of physical, economic, aesthetic or other reasons) or where Landlord determines the Building should be restored in such a way as to materially alter the Premises, Landlord shall forward a written notice to Tenant of such determination not more than sixty (60) days after the date of such damage. The term of this Lease shall expire upon such date as Landlord shall specify in such notice but not earlier than sixty (60) days after the date of such notice. If this Lease is not terminated as aforesaid, it shall continue in full force and effect and the Rent shall be equitably reduced during such reconstruction, unless the casualty was due to the negligence or intentional misconduct of Tenant, in which event Rent shall not be abated. If this Lease is terminated as aforesaid, no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any damage or destruction to any portion of the Premises or the Building. Landlord will not carry insurance of any kind on any Tenant improvements or on Tenant's furniture, furnishings, fixtures, equipment or appurtenances of Tenant under this Lease and Landlord shall not be obligated to repair any damage thereto or replace the same. Landlord shall insure the Building.
- 18) CONDEMNATION.
- a) Entire Taking. If all of the Premises or such portions of the Building as may be required for the reasonable use of the Premises are taken by eminent domain, this Lease shall automatically terminate as of the date title vests in the condemning authority. In the event of a taking of a material part, but less than all, of the Building, where Landlord shall determine that the remaining portions of the Building cannot be economically and effectively used by it (whether on account of physical, economic, aesthetic or other reasons) or where Landlord determines the Building should be restored in such a way as to materially alter the Premises, Landlord shall forward a written notice to Tenant of such determination not more than sixty (60) days after the date of taking. The term of this Lease shall expire upon such date as Landlord shall specify in such notice but not earlier than sixty (60) days after the date of such notice. In the case of taking of a part of the Premises, or a portion of the Building not required for the reasonable use of the Premises, then this Lease shall continue in full force and effect and the Rent shall be equitably reduced based on the proportion by which the floor area of the Premises is reduced.
- b) Awards and Damages. Landlord reserves all rights to damages to the Premises for any partial, constructive, or entire taking by eminent domain, and Tenant hereby assigns to Landlord any right Tenant may have to such damages or award, and Tenant shall make no claim against Landlord or the condemning authority for damages for termination of the leasehold interest or interference with Tenant's business. Tenant shall have the right,

however, to claim and recover from the condemning authority compensation for any loss to which Tenant may be put for Tenant's moving expenses or taking of Tenant's personal property, provided that such damages may be claimed only if they are awarded separately and not out of or as part of the damages recoverable by Landlord.

19) INDEMNIFICATION.

- a) Indemnity. Tenant shall indemnify, defend and hold Landlord harmless from and against all loss, cost and expense, including attorneys' fees, arising from any act, omission, or negligence of Tenant or its officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors in or about the Building, Premises or Land or arising from any injury or damage to any person or property, occurring in or about the Building, Premises or Land as a result of any act, omission or negligence of Tenant, or its officers, contractors, licensees, agents, employees, guests, or visitors or arising from any breach or default under this Lease by Tenant. The foregoing provisions shall not be construed to make Tenant responsible for loss, damage, liability or expense resulting from injuries to third parties caused solely by the negligence or intentional misconduct of Landlord, or its officers, contractors, licensees, agents, employees, invitees or other tenant of the Building.
- b) Exemption of Landlord from Liability. As a material part of the consideration to Landlord, Tenant hereby agrees that, notwithstanding anything to the contrary in Section 19(a) above, Landlord shall in no event be liable for injury to Tenant's business or assets or any loss of income therefrom or for damage to Tenant's employees, invitees, customers, or any other person in or about the Premises, whether such damage, loss or injury results from conditions arising upon the Premises or upon other portions of the Building of which Premises are a part, or from other sources or places, and regardless of whether the cause of such damage, loss or injury or the means of repairing the same is inaccessible to Tenant. Tenant further agrees that notwithstanding anything to the contrary in Section 19(a) above, Landlord shall in no event be liable for any injury or damage to any person or property of Tenant, Tenant's employees, invitees, customers, agents or contractors arising from any act or neglect of any tenant or occupant of the Building or any other third person. The foregoing provisions shall not be construed to make Tenant responsible for loss, damage, liability or other expense resulting from injuries to third parties caused solely by the negligence or intentional misconduct of Landlord, or its officers, contractors, licensees, agents, employees, invitees or other tenant of the Building.
- c) Waiver of Subrogation. Landlord and Tenant each waive any and all rights to recover against the other, or against the officers, directors, shareholders, partners, joint ventures, employees, agents, customers, invitees or business visitors of such other third party, for any loss or damage to such waiving party arising from any cause covered by any property insurance required to be carried pursuant to this Lease or any other property insurance actually carried by such party. Industrial Insurance Act Waiver. Solely for the purpose of effectuating Tenant's indemnification obligations under this Lease, and not for the benefit of any third parties (including but not limited to employees of Tenant), Tenant specifically and expressly waives any immunity that may be granted it under applicable federal, state or local Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts. Furthermore, the indemnification obligations 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 Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts. The parties acknowledge that the foregoing provisions of this Section have been specifically and mutually negotiated between the parties.

20) HAZARDOUS SUBSTANCES. Tenants shall be solely responsible and liable for, and shall indemnify, defend and hold harmless Landlord for, from and against any and all Hazardous Substances existing on the Premises, or present in or on the air, ground water, soil, buildings or other improvements or otherwise in, on, under or about the Premises or any other property, resulting from the handling by Tenant of any Hazardous Substance during the period of Tenant's occupancy or use of the Premises. Without limiting the generality of the foregoing, Tenant shall, at any time during the term of the Lease and at the end of the term of the Lease, perform all work necessary to render the Premises or any other property "clean" and free of all Hazardous Substances handled by Tenant, in accordance with all present and then-applicable laws. 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 effect pertaining to environmental protection, contamination or cleanup, including without limitation any substance, waste or material which now or hereafter is designated as a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), or under any local or state rule or regulation. Without limiting the foregoing, Hazardous Substances shall include, but not be limited to, any substance which after being released into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer and or/genetic abnormalities. In addition, Tenant agrees to indemnify, defend and hold harmless Landlord against any and all loss, cost and expense (including, without limitation, consultant fees, attorneys' fees and disbursements) which may be imposed on, incurred or paid by, or asserted against Landlord or the Building, Premises or land by reason of, or in connection with (i) any misrepresentation, breach of warranty or other default by Tenant under this Lease, or (ii) the acts or omissions by Tenant under this Lease, or (ii) the acts or omissions of Tenant, or any sublessee or other person for whom this Tenant would otherwise be liable, resulting in the release of any hazardous waste or materials.

21) INSURANCE.

- a) General. Tenant shall, throughout the term of this Lease and any renewal or extension hereof, and at its own expense, keep and maintain in full force and affect the following:
 - i) Commercial general liability insurance on an occurrence basis with at least Five Million Dollars (\$5,000,000) per occurrence limit and Ten Million Dollars (\$10,000,000) general aggregate limit;
 - ii) Property insurance covering its leasehold improvements to the Premises, furniture, fixtures, equipment, inventory and other personal property located on the Premises in an amount which is not less than one hundred percent (100%) of the insurable replacement value with no coinsurance penalty; and
 - iii) Fire Legal Liability coverage in the amount of \$300,000.

- b) Policy Requirements. Coverage may be achieved through the use of VFIS risk pool which meets the requirements of this Section. Tenant shall deliver to Landlord an "Evidence of Coverage" letter prior to delivery of the Premises to Tenant, for all insurance required to be carried by Tenant hereunder. All policies of insurance provided for herein shall not contain a deductible greater than \$1,000 or any self-insured retention unless expressly approved in writing by Landlord. All liability and property policies of Tenant shall be written as primary

policies, not contributing with, and not in excess of coverage which Landlord may carry, and in no event shall the policy limits of such insurance policy or policies be deemed to limit the liability of Tenant thereunder. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant pursuant to the terms of this Section so that at no time shall the insurance coverage required hereby lapse. All policies of insurance delivered to Landlord must contain a provision that the company writing such policy will give to Landlord and/or Landlord's property manager at least thirty (30) days' notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amount of or other material change of insurance.

- c) Adequacy of Insurance. Landlord makes no representation or warranty to Tenant that the amount of insurance to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interests. If Tenant believes that the amount of any such insurance is insufficient, Tenant is encouraged to obtain, at its sole cost and expense, such additional insurance as Tenant may deem desirable or adequate. Tenant acknowledges that Landlord shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Tenant hereby expressly assumes full responsibility therefor and all liability, if any with respect thereto.
- d) Landlord's Right to Obtain Insurance. If Tenant fails to acquire or maintain any insurance or provide any certificate or policy required by this Section, Landlord may, but shall not be required to, obtain such insurance for Landlord's benefit and Tenant shall reimburse Landlord for the costs of the premiums of such insurance within ten (10) days of receipt of a written request for reimbursement from the Landlord. Such amounts shall be Additional Rent payable by Tenant hereunder and in the event of non-payment thereof, Landlord shall have rights with respect to such non-payment as it has with respect to any other non-payment of rent hereunder.

22) ASSIGNMENT AND SUBLETTING. Neither this Lease nor any interest therein may be assigned, mortgaged, transferred or encumbered, nor shall all or any part of the Premises be sublet except with the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. Any assignee or subtenant (each, a "Transferee") shall assume all of Tenant's obligations under this Lease and be jointly and severally liable with Tenant hereunder. No assignment, mortgage, transfer, encumbrance or sublease, whether consented to by Landlord or not, shall effect any release of Tenant's liability hereunder.

23) LIENS AND INSOLVENCY. Tenant shall keep its interest in this Lease and any property of Tenant (other than unattached personal property) and the Premises, the land and the Building free from any liens arising out of any work performed or materials ordered or obligations incurred by or on behalf of Tenant and hereby indemnifies and holds Landlord harmless from any liability from any such lien. Tenant shall have no right or authority to cause or allow the Premises, Building or land to be subjected to any such lien. Tenant shall provide Landlord written notice of intended construction, alteration or repair work at least twenty (20) days before the commencement thereof to afford Landlord an opportunity to post notices of non-responsibility.

24) DEFAULT.

- a) Default By Tenant. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant: (i) the failure by Tenant to

make any undisputed payment required to be made by Tenant hereunder, and such failure continues for more than five (5) days after written notice from Landlord (provided that a dispute not giving rise to a default hereunder is made in good faith); (ii) the failure by Tenant to observe or perform any of the other covenants, conditions or provisions of the Lease, where such failure shall continue for a period of twenty (20) days after written notice from Landlord, provided, however, if more than 20 days are reasonably required for its cure then Tenant shall not be deemed to be in default if Tenant commences such cure within said 20-day period and thereafter diligently prosecutes such cure to completion; (iii) the making by Tenant of any general assignment or general arrangement for the benefit of creditors; (iv) the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days; (v) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in the Lease, where possession is not restored to Tenant within thirty (30) days; (vi) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days, or (vii) the assignment or other transfer of all or any interest of Tenant in this Lease, or the subletting of all or any portion of the Premises, in either case which is in violation of Section 20 above. All notice and cure periods set forth above are in lieu of and not in addition to any notice required pursuant to applicable unlawful detainer/eviction statutes.

- b) Landlord's Remedies upon Tenant Default. All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law or in equity, and all of the following may be exercised with or without legal process as then may be provided or permitted by the laws of the state in which the Premises are situated:
- i) Upon any default under this Lease, Landlord may reenter the Premises and remove or put out Tenant or any other persons found therein. No such reentry shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant.
 - ii) Landlord may elect to re-let the Premises or any part thereof upon such terms and conditions, including rent, term and remodeling or renovation, as Landlord in its sole discretion may deem advisable. To the fullest extent permitted by law, the proceeds of any reletting shall be applied: first, to pay Landlord all costs and expenses of such reletting (including without limitation, costs and expenses incurred in retaking or repossessing the Premises, removing persons or property therefrom, securing new tenants, and, if Landlord maintains and operates the Premises, the costs thereof); second, to pay any indebtedness of Tenant to Landlord; and third, the residue, if any, shall be held by Landlord and applied in payment of other or future obligations of Tenant to Landlord as the same may become due and payable, and Tenant shall not be entitled to receive any portion of such revenue.
 - iii) Landlord may also elect to terminate the Lease and all rights of Tenant by giving notice to Tenant of such election. If Landlord elects to terminate the Lease, Landlord shall have the right to reenter the Premises and remove all persons, and to take possession of and remove all equipment and fixtures of Tenant in the Premises. Tenant hereby waives all damages that may be caused by Landlord's reentering and taking possession of the Premises or removing or storing the property thereof, and Tenant shall save Landlord harmless therefrom, and no such reentry shall be considered a forcible entry. If

Landlord so elects to terminate the Lease, Landlord may also recover from Tenant any amount necessary to compensate the Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom and at Landlord's election, such other amounts in addition to or in lieu of the foregoing that may be permitted from time to time by applicable law.

- c) Nothing in this Section 22 shall be deemed to affect Landlord's right to indemnification for liability or liabilities arising prior to termination of this Lease for personal injury or property damage under the indemnification provisions or other provisions of this Lease.

25) SURRENDER OF POSSESSION. Subject to the terms of Section 15 relating to damage and destruction, upon expiration of the term of this Lease, whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the Premises to Landlord "broom-clean" and in as good condition as when received by Tenant from Landlord or as thereafter improved, reasonable use, wear and tear excepted. Tenant shall remove all of its personal property and trade fixtures from the Premises at the expiration of the term; any property not so removed shall be deemed abandoned and may be sold or otherwise disposed of as Landlord deems advisable.

26) NON-WAIVER. Waiver by Landlord of any term, covenant or condition herein contained or any breach thereof shall not be deemed to be a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained.

27) LANDLORD'S LIABILITY. Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord except Landlord's interest in the Premises and Building, but are made and intended for the purpose of binding only the Landlord's interest in the Premises and Building, as the same may from time to time be encumbered.

28) TRANSFER OF LANDLORD'S INTEREST. In the event of any transfer of Landlord's interest in the Premises or in the Building, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer and such transferee shall have no obligation or liability with respect to any matter occurring or arising prior to the date of such transfer. Tenant agrees to attorn to the transferee.

29) RIGHT TO PERFORM. If Tenant shall fail to pay any sum of money required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for ten (10) days after notice thereof by Landlord, Landlord may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make such payment or perform any such other act on Tenant's part to be made or performed as provided in this Lease.

30) GENERAL.

- a) Headings. Titles to Sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.
- b) Successors and Assigns. All of the covenants, agreements, terms and conditions contained in this Lease shall inure to and be binding upon the Landlord and Tenant and their respective administrators, successors and assigns.

- c) Authority. Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant, and that this Lease is binding upon Tenant in accordance with its terms.
- d) No Brokers. Tenant represents and warrants to Landlord that it has not engaged any broker, finder or other person who would be entitled to any commission or fees in respect of the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Landlord against any loss, cost, liability or expense incurred by Landlord as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Tenant.
- e) Entire Agreement. This Lease is the final and complete expression of Landlord and Tenant relating in any manner to the leasing, use and occupancy of the Premises, to Tenant's use of the Building and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by both Landlord and Tenant.
- f) Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.
- g) Force Majeure. Except for the payment of Rent, Additional Rent or other sums payable by Tenant to Landlord, time periods for Tenant's or Landlord's performance under any provisions of this Lease shall be extended for periods of time during which Tenant's or Landlord's performance is prevented due to circumstances beyond Tenant's or Landlord's control, including without limitation, embargoes, shortages of labor or materials, governmental regulations, acts of God, war or other strife.
- h) Notices. All notices under this Lease shall be in writing and delivered in person or sent by registered or certified mail, postage prepaid, to Landlord and to Tenant at the addresses provided in Section 1 ; or such other addresses as may from time to time be designated by any such party in writing. Notices mailed as provided in this section shall be deemed given on the date of such mailing.
- i) Costs and Attorney's Fees; Waiver of Jury Trial. If Tenant or Landlord shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent, Additional Rent or other payments hereunder or possession of the Premises each party shall, and hereby does, to the extent permitted by law, waive trial by jury and the losing party shall pay the prevailing party a reasonable sum for attorneys' fees in such suit, at trial and on appeal, and such attorneys' fees shall be deemed to have accrued on the commencement of such action. If Landlord retains an attorney in connection with the default of Tenant hereunder, Tenant shall pay Landlord's reasonable attorneys' fees whether or not suit is filed.
- j) Governing Law; Venue. This Lease shall be governed by and construed in accordance with the internal laws of the State of Washington. The venue for any action arising under the Lease shall be the Superior Court of Washington in Thurston County.
- k) Recording. Tenant shall not record this Lease or a memorandum hereof without Landlord's prior written consent and such recordation shall, at the option of Landlord, constitute a non-curable default of Tenant hereunder.
- l) Waivers. No waiver by Landlord of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other

provision. Landlord's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance or Rent hereunder by Landlord shall not be a waiver of any preceding breach at the time of acceptance of such Rent.

- m) Time of Essence. Time is of the essence for the performance of all of the obligations specified hereunder.
- n) Quiet Enjoyment. Subject to other terms of this Lease, Landlord covenants that Tenant shall, and may peacefully have, hold and enjoy the Premises for the Term free of any claims by any party claiming by, through or under Landlord, provided that Tenant pays the rent to be paid by Tenant under this Lease and performs all of Tenant's covenants and agreements herein provided.
- o) Merger. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing sub-tenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all such sub-tenancies.

DRAFT

IN WITNESS WHEREOF this Lease has been executed the day and year first above set forth.

LANDLORD: **CITY OF OLYMPIA**, a Washington Municipal Corporation

By: _____

Name: _____

Its: _____

Approved as to form:

By: _____

Assistant City Attorney

TENANT: **FIRE PROTECTION DISTRICT No. 3, THURSTON COUNTY**,
a Washington Municipal Corporation

By: _____

Name: _____

Its: _____

Approved as to form:

By: _____

[**Attach notary acknowledgement blocks for each signatory if required**]

EXHIBIT A

LEGAL DESCRIPTION OF LAND

ALL THAT PORTION OF PARCEL 3 OF THE CITY OF OLYMPIA SHORT SUBDIVISION NO. SS-5803, AS RECORDED JULY 22, 1996 UNDER AUDITOR'S FILE NO. 3042139, THURSTON COUNTY, WASHINGTON;

EXCEPT THAT PORTION OF SAID PARCEL 3 LYING NORTH OF THE WESTERLY EXTENSION OF THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 18 NORTH, RANGE 1 WEST, W.M., OF SAID COUNTY;

TOGETHER WITH ALL THAT PORTION OF THE WEST 85.00 FEET OF THE EAST 120.00 FEET OF THE SOUTH 212.00 FEET OF THE HEREINABOVE DESCRIBED PORTION BEING EXCEPTED FROM SAID PARCEL 3.