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**State of Washington**  
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**NO. 53256-5-II**

**COURT OF APPEALS, DIVISION II**  
**OF THE STATE OF WASHINGTON**

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JUBITZ CORPORATION, an Oregon corporation,

Appellant/Cross-Respondent,

v.

VANCOUVER HOSPITALITY PARTNERS, LLC, a Washington limited  
liability company, Respondent; and

ROBERT HOLMSTROM and ELIZABETH HOLMSTROM, individuals,  
Respondents/Cross-Appellants.

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**APPELLANT'S OPENING BRIEF**

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## **I. INTRODUCTION**

Appellant/Cross-Respondent Jubitz Corporation ("Jubitz") filed the underlying lawsuit for declaratory relief and quiet title with respect to the validity of a parking easement which both its neighbor, Respondent Vancouver Hospitality Partners, LLC ("VHP"), and its lessors and sellers, Respondents/Cross-Appellants Robert Holmstrom and Elizabeth Holmstrom (collectively, the "Holmstroms"), asserted was a burden on Jubitz's property, and for breach of contract and fraud against the Holmstroms for entering into a lease and purchase agreement with Jubitz for the property without disclosing the easement.

VHP counterclaimed for declaratory relief, quiet title and reformation with respect to the validity of the parking easement, along with claims for trespass and prescriptive easement, and claims of negligence, indemnification and breach of contract against the Holmstroms (who also sold VHP their property). The Holmstroms, for their part, counterclaimed for rescission and reformation of the purchase agreement with Jubitz, and for indemnity against Jubitz.

After a multi-phase court trial, the trial court ruled that Jubitz was bound by the parking easement, and that the Holmstroms had breached their lease and purchase agreement with Jubitz by not disclosing the parking easement at the time of lease and sale. The trial court erred in

several respects in holding that Jubitz was bound by the parking easement, which contained several defects (each of which made the easement void from its inception), and of which Jubitz had no knowledge. This Court should reverse and find that the parking easement does not bind Jubitz and does not burden the property leased and purchased by Jubitz.

## **II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL**

### **A. Assignments of Error**

Appellant makes the following assignments of error:

1. The trial court erred by entering Conclusion of Law No. 4 of the Findings of Fact, Conclusions of Law and Order Following Non-Jury Trial entered July 16, 2018 ("July 2018 Findings and Conclusions"): "The RPAs were documents within the chain of title of the northern property. These documents referred to the original parcel at a time when the northern and southern parcels were in common ownership and the documents purported to burden and benefit both parcels (along with the Krenzler property). The names of the landholders were indexed along with the legal description." CP 2123; App. A.

2. The trial court erred by entering Conclusion of Law No. 5 of the July 2018 Findings and Conclusions: "Because the RPAs were recorded within the chain of title of the northern parcel, the documents gave constructive notice to Jubitz of the existence of the parking

agreement. Inquiry within the documents themselves would disclose that overflow parking was contemplated on the original parcel, which included both the northern property and the southern property. Although the RPAs did not accurately described [sic] exactly which properties benefitted from the parking easement, sufficient information (for example, the name of the eventual owners of the southern property and the need for a truck loading area for the hotel) would have provided inquiry notice which would have naturally led any purchaser to the true state of affairs." CP 2123-24; App. A.

3. The trial court erred by entering Conclusion of Law No. 8 of the July 2018 Findings and Conclusions, as amended by the Supplemental Findings of Fact and Conclusions of Law entered on March 22, 2019:

"Because the RPAs were within the recorded chain of title for the northern property at the time Jubitz leased and purchased the oil company business, the plaintiff is deemed to have constructive notice of the existence and terms of this document. As between Jubitz and VHP, the agreements are enforceable according to their terms. These documents should be reformed to correct the mutual mistake concerning the attached legal descriptions and to add the correct tax parcel identification numbers. Exhibit A of the RPAs shall be reformed to include a description only of the northern property. Exhibit B of the RPAs shall be reformed to include

a description only of the southern property." CP 2124, App. A; CP 2190, App. C.

4. The trial court erred by entering Conclusion of Law No. 6 of the July 2018 Findings and Conclusions: "The RPAs were not void because Salmon Creek Lodging, LLC, did not exist at the time these documents were recorded. The corporation ratified the actions of its promoters after its creation and that ratification binds the original parties and their successors." CP 2124, App. A

**B. Statement of Issues**

1. **Chain of Title.** Whether a trial court errs by holding that a subsequent purchaser has constructive notice of an easement that is not within the chain of title for the property actually purchased. (First Assignment of Error).

2. **Inquiry Notice.** Whether a trial court errs by holding that a subsequent purchaser is charged with any knowledge beyond that actually contained within the chain of title and the information received when it did inquire. (Second Assignment of Error).

3. **Reformation.** Whether a trial court errs by holding that a void easement may be "reformed" into a new easement that binds an intervening purchaser. (Third Assignment of Error).

4. **Ratification.** Whether a trial court errs by holding that a void easement may be ratified. (Fourth Assignment of Error).

### III. STATEMENT OF THE CASE

On or about December 1, 2012, the Holmstroms, as landlords, entered into a Commercial Lease with Jubitz, as tenant ("Lease") with respect to real property and improvements located at 1503 N.E. 136th Street, Vancouver, Washington ("Jubitz Property"). Ex. 8, App. D. The Holmstroms and Jubitz also entered into a Purchase Agreement on or about December 1, 2012 for the sale of the Jubitz Property to Jubitz to close on January 6, 2023. Ex. 9, App. E. In or about 2016, Jubitz noticed cars and large trucks parked on the Jubitz Property that were not affiliated with Jubitz. CP 2122, App. A (FoF 14). Jubitz immediately notified VHP that its customers were not allowed to park on the Jubitz Property. *Id.* It was during this period that VHP first asserted a right to parking on the Jubitz Property, and that "Jubitz first learned of the existence of these agreements." *Id.*

The Reciprocal Parking Easement Agreement was recorded in the real property records of Clark County, Washington on July 8, 1999 as Document No. 3126970. Ex. 15, App. F. An Amended Reciprocal Parking Easement Agreement was recorded in the real property records of

Clark County, Washington on August 6, 1999 as Document No. 3138611. Ex. 16, App. G. The Amended Reciprocal Parking Easement Agreement amended the purported easements to be for "11 parking spaces and one truck berth (12'x35')" on one "parcel" and for "12 parking spaces" on the other "parcel." *Id.*<sup>1</sup> The trial court referred to the Reciprocal Parking Easement Agreement and the Amended Reciprocal Parking Easement Agreement collectively as the "RPAs." CP 2119-2120, App. A.

The RPAs were originally between the Holmstroms and an entity that didn't exist at the time of the RPAs, and referred to two parcels of property, neither of which was the Jubitz Property. The trial court acknowledged that the RPAs were defective, but held that Jubitz had constructive knowledge of them and that they could be reformed. Jubitz appeals those determinations.

#### **IV. SUMMARY OF ARGUMENT**

The trial court holdings are contrary to established law regarding chain of title, constructive notice, inquiry notice, reformation and ratification. It is incorrect to hold that a bona fide purchaser is bound by an easement that: (1) was not within the chain of title for the relevant

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<sup>1</sup> Prior to amendment, the initial Reciprocal Parking Easement Agreement purported to set forth two easements for "11 parking spaces" each. Ex. 15, App. F.

property, (2) had fatal defects that rendered it void, and (3) was not discoverable with either constructive notice or inquiry notice. It is also incorrect to attempt to reform a void easement and then burden an intervening purchaser with that reformed easement.

## V. ARGUMENT

### A. First Assignment of Error: Trial Court Conclusion of Law No. 4 of July 2018 Findings and Conclusions (Chain of Title)

#### 1. Standard of Review

Questions of law and conclusions of law are reviewed *de novo*. *Dumas v. Gagner*, 137 Wn.2d 268, 280, 971 P.2d 17 (1999). Conclusions of law must flow from, and be supported by, the findings of fact. *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999); *Am. Nursery Prods., Inc. v. Indian Wells Orchards*, 115 Wn.2d 217, 222, 797 P.2d 477 (1990).

#### 2. Argument

Trial Court Conclusion of Law No. 4 of the July 2018 Findings and Conclusions erroneously holds that:

"The RPAs were documents within the chain of title of the northern property. These documents referred to the original parcel at a time when the northern and southern parcels were in common ownership and the documents purported to burden and benefit both parcels (along with

the Krenzler property). The names of the landholders were indexed along with the legal description."

CP. 2123, App. A. It is well recognized that a "bona fide purchaser of land without actual or constructive notice of the existence of an easement in such land takes title free from the burden of the easement." *Crescent Harbor Water Co. v. Lyseng*, 51 Wn. App. 337, 346, 753 P.2d 555 (1988). The "bona fide purchaser" doctrine applies not just to purchasers of fee title interests, but also to lessees. *Hendricks v. Lake*, 12 Wn. App. 15, 528 P.2d 491 (1974). In this case, Jubitz was both. The trial court correctly found that Jubitz did not have actual notice of the RPAs. CP 2121, App. A (FoF 12). Therefore, Jubitz would have had to have had constructive notice of the RPAs. Constructive notice may be given "either by means of a public record or by inquiry notice." *Ellingsen v. Franklin County*, 117 Wn.2d 24, 33, 810 P.2d 910 (1991) (dissent).

With respect to the public record, the trial court erroneously held that the RPAS were "within the chain of title of the [Jubitz] parcel," which "gave constructive notice to Jubitz of the existence of the parking agreement."<sup>2</sup>

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<sup>2</sup> The issue of inquiry notice was set forth in Conclusion of Law No. 5, which is addressed in the Second Assignment of Error, below.

But the RPAs were not within the chain of title of the Jubitz Property. As the trial court recognized, the RPAs reflected an easement agreement between: (1) a former parcel of property that no longer existed, and (2) an unrelated neighboring property. The first parcel of property (Tax Lot No. 186848) had been owned by the Holmstroms and divided into two separate parcels in the process of a boundary line adjustment with their neighbor, the Krenzler Corporation. One resulting parcel became the VHP Property (Tax Lot No. 186848) and the other resulting parcel became the Jubitz Property (Tax Lot No. 186584).

The trial court erroneously held that the RPAs were documents within the chain of title of the Jubitz Property because the RPAs "referred to the original parcel at a time when the northern and southern parcels were in common ownership and the documents purported to burden and benefit both parcels (along with the Krenzler property). The names of the landholders were indexed along with the legal description." This incorrect holding evidences a fundamental misunderstanding of the concept of a "chain of title." This Court addressed this issue in *Dickson v. Kates*, 132 Wn. App. 724, 133 P.3d 498 (2006):

"Thus, we must decide whether the Dicksons had constructive knowledge. Both parties cite case law from other jurisdictions discussing whether properties from a common grantor are within each other's chain of title. We have been unable to find any published Washington law directly bearing on this question, but

there is some authority indicating that our courts and our recording statutes regard properties with a common grantor as having separate chains of title once they are segregated and have separate legal descriptions."

*Id.* at 736. The chain of title for the Jubitz Property was created in 1995 as a result of a boundary line adjustment. Its chain of title followed that description. *Id.* at 737 ("Where existing property is described, the index and the recorded document give notice only as to matters within its chain of title. Thus, one searching the index has a right to rely upon the index and recorded documents and is not bound to search the record outside the chain of title of the property presently being conveyed.").

It is not sufficient or legally correct to point to the pre-boundary line adjustment legal description and say that it's "close enough." *Berg v. Ting*, 125 Wn.2d 544, 549, 886 P.2d 564 (1995). In fact, to comply with the statute of frauds, an easement is "required to convey an easement which encumbrances a specific servient estate" and the "servient estate must be sufficiently described." *Id.* at 551 (emphasis added). The RPAs do not identify any specific servient estate that actually existed at the time in their Exhibit A, and they certainly do not sufficiently describe or identify the Jubitz Property as a servient estate. Therefore, the RPAs are void on their face. *Id.* at 550-53 (recognizing that an easement which does not comply with the statute of frauds is "void on its face," and

acknowledging that the "Legislature has recognized the vital importance of being able to determine the exact legal description from the record").

**B. Second Assignment of Error: Trial Court Conclusion of Law No. 5 of July 2018 Findings and Conclusions (Inquiry Notice)**

1. Standard of Review

The standard of review with respect to Trial Court Conclusion of Law No. 5 of the July 2018 Findings and Conclusions is the same as that set forth in Section A(1), above.

2. Argument

Trial Court Conclusion of Law No. 5 of the July 2018 Findings and Conclusions erroneously holds that:

"Because the RPAs were recorded within the chain of title of the northern parcel, the documents gave constructive notice to Jubitz of the existence of the parking agreement. Inquiry within the documents themselves would disclose that overflow parking was contemplated on the original parcel, which included both the northern property and the southern property. Although the RPAs did not accurately described [sic] exactly which properties benefitted from the parking easement, sufficient information (for example, the name of the eventual owners of the southern property and the need for a truck loading area for the hotel) would have provided inquiry notice which would have naturally led any purchaser to the true state of affairs."

CP 2123-24, App. A. The trial court seems to concede that the RPAs were insufficient on their face, which only confirms the position set forth in Section A(2) above that the RPAs were void.

However, the trial court went on to assert that "inquiry notice" would have "naturally led any purchaser to the true state of affairs." First, this holding evidences a fundamental misunderstanding about the purpose of a recorded document in a chain of title. As set forth in Section A(2) above, a bona fide purchaser is not bound to do any investigation beyond the relevant chain of title:

"Where existing property is described, the index and the recorded document imparts notice only as to matters within its chain of title. Therefore, one searching the index has a right to rely upon what the index and recorded document discloses and is not bound to search the record outside the chain of title of the property presently being conveyed. \* \*  
\* To [require otherwise] would impose an almost impossible burden upon a party seeking to become a bona fide purchaser in that each and every conveyance shown of record and involving a common grantor would have to be investigated beyond the auditor's records for possible error to avoid a claim of inquiry notice. This would destroy the strength of our recording system and any justifiable reliance thereon."

*Koch v. Swanson*, 4 Wn. App. 456, 459, 481 P.2d 915 (1971).

Second, even if the RPAs were located within the chain of title, they were void on their face, as set forth in Section A(2) above (and as

conceded by the trial court's conclusion that the RPAs "did not accurately described [sic]" the properties involved).

Third, even if Jubitz could somehow be found to have been charged with inquiry notice, it would not have led to the discovery of the encumbrance VHP and the Holmstroms are now trying to enforce:

"It is a well-settled rule that where a purchaser has knowledge or information of facts which are sufficient to put an ordinarily prudent [person] upon inquiry, and the inquiry, if followed with reasonable diligence, would lead to the discovery of defects in the title or of equitable rights of others affecting the property in question, the purchaser will be held chargeable with knowledge thereof and will not be heard to say that he did not actually know of them. In other words, knowledge of facts sufficient to excite inquiry is constructive notice of all that the inquiry would have disclosed."

*Ellingsen v. Franklin County*, 117 Wn.2d 24, 33, 810 P.2d 910 (1991)

(dissent). In this case, if Jubitz had any actual knowledge of the RPAs (which the trial court found it did not), it would have put Jubitz on notice only of a potential easement agreement between a Tax Parcel now held by VHP and a neighboring property, owned by Krenzler Construction. In no way could the agreement be read to be an easement between the VHP Property and the Jubitz Property, which is what VHP and the Holmstroms now contend. To hold that Jubitz would have had any duty to investigate any further is contrary to the purpose of the recording system. *Olson v. Trippel*, 77 Wn. App. 545, 553, 893 P.2d 634 (1995) (finding that to

"require that a subsequent purchaser investigate not only the chain of title, but also the 'context' within which each conveyance in the chain was executed" would be "an impractical burden, perhaps an impossible one, and would virtually destroy the utility of the real state recording system").

In addition, Jubitz did inquire about the state of title, and received both a title report and unequivocal warranties from the Holmstroms that there was no encumbrance on the Jubitz Property. There is no authority for the proposition that Jubitz can be charged with any knowledge beyond that actually contained within the RPAs and the information received when it did inquire. *See, e.g., Paganelli v. Swendsen*, 50 Wn.2d 304, 310, 311 P.2d 676 (1957) ("Neither, taken one at a time or cumulatively, can any circumstance relied on by the plaintiffs as constituting constructive notice be considered as indicating that [the purchaser] did not have a right to rely on the record title and the willingness of the title company, after its inquiry, to insure title \* \* \*").<sup>3</sup>

**C. Third Assignment of Error: Trial Court Conclusion of Law No. 8 of July 2018 Findings and Conclusions, as Amended by the Supplemental Findings of Fact and**

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<sup>3</sup> In this case, Jubitz relied on the express warranties of the Holmstroms, as well as a title insurance report that did not identify the RPAs as an encumbrance. Ex. 9, App. E.

## **Conclusions of Law entered on March 22, 2019**

### **(Reformation)**

#### 1. Standard of Review

The standard of review with respect to Trial Court Conclusion of Law No. 8 of the July 2018 Findings and Conclusions, as amended by the Supplemental Findings of Fact and Conclusions of Law entered on March 22, 2019 is the same as that set forth in Section A(1), above.

#### 2. Argument

Trial Court Conclusion of Law No. 8 of the July 2018 Findings and Conclusions, as amended by the Supplemental Findings of Fact and Conclusions of Law entered on March 22, 2019, erroneously holds that:

"Because the RPAs were within the recorded chain of title for the northern property at the time Jubitz leased and purchased the oil company business, the plaintiff is deemed to have constructive notice of the existence and terms of this document. As between Jubitz and VHP, the agreements are enforceable according to their terms. These documents should be reformed to correct the mutual mistake concerning the attached legal descriptions and to add the correct tax parcel identification numbers. Exhibit A of the RPAs shall be reformed to include a description only of the northern property. Exhibit B of the RPAs shall be reformed to include a description only of the southern property."

CP 2124, App. A; CP 2190, App. C. The trial court states that the RPAs are "enforceable according to their terms," but then states that those terms

actually need to be reformed in order to change the legal descriptions of the properties involved.

As an initial matter, the RPAs are void and unable to be reformed. First, the RPAs do not comply with the statute of frauds, as set forth above. *See also Howell v. Inland Empire Paper Co.*, 28 Wn. App. 494, 495, 624 P.2d 739 (1981) ("It is also well settled that a description which designates the land conveyed as a portion of a larger tract without identifying the particular part conveyed does not meet the requirements of this rule. \* \* \* An agreement containing an inadequate legal description of the property to be conveyed is void, and is not subject to reformation.").

Second, it is undisputed that the Holmstroms owned both the VHP Property and the Jubitz Property at the time the RPAs were executed. CP 2119-2120, App. A (FoF 4). That is a fact that cannot be avoided by correction of legal descriptions, and it results in an agreement that is void at its inception because "one cannot have an easement in his own property." *Coast Storage Co. v. Schwartz*, 55 Wn.2d 848, 853, 351 P.2d 520 (1960); *see also Butler v. Craft Eng. Constr., Inc.*, 67 Wn. App. 684, 698, 843 P.2d 1071 (1992) ("one cannot have and does not need an easement over land which he has purchased in fee, unless and until he conveys or leases the land subject to any privilege of easement which he may desire to retain").

Even if the Court were willing to allow reformation of the RPAs, reformation may not be used to create an entirely new easement, as VHP and the Holmstroms sought to do. *Weyerhaeuser Timber Co. v. Skaglund*, 16 Wn.2d 29, 32, 132 P.2d 724 (1942) ("Courts of equity may not make new contracts for the parties to an action for the reformation of a written instrument"); *Maxwell v. Maxwell*, 12 Wn.2d 589, 596, 123 P.2d 335 (1942) (refusing to allow reformation of a legal description when " the description of the land is so vague and indefinite that effect could not be given the instrument without writing new, material language into it").

Finally, even if reformation were allowed, it would not have any impact on Jubitz's rights, as a subsequent purchaser. *See, e.g., Biles-Coleman Lumber Co. v. Lesamiz*, 49 Wn.2d 436, 438, 302 P.2d 198 (1956) (holding that, if there was in fact a mutual mistake, "the recorded defective deed did not establish notice of such mistake to a subsequent purchaser. As to such subsequent purchaser the status of the record was tantamount to a failure to record a conveyance").

**D. Fourth Assignment of Error: Trial Court Conclusion of Law No. 6 of July 2018 Findings and Conclusions (Ratification)**

1. Standard of Review

The standard of review with respect to Trial Court Conclusion of

Law No. 6 of the July 2018 Findings and Conclusions is the same as that set forth in Section A(1), above.

2. Argument

Trial Court Conclusion of Law No. 6 of the July 2018 Findings and Conclusions erroneously holds that:

"The RPAs were not void because Salmon Creek Lodging, LLC, did not exist at the time these documents were recorded. The corporation ratified the actions of its promoters after its creation and that ratification binds the original parties and their successors."

CP 2124, App. A. Salmon Creek Lodging, LLC did not exist at the time of the RPAs, and it has never owned the Krenzler Parcel. CP 2120, App. A (FoF 5). With respect to corporate existence, there can be no real dispute that Jubitz is a third party to the RPAs and that the RPAs are therefore void as a matter of law as to Jubitz. *In re Corporate Dissolution of Ocean Shores Park, Inc.*, 132 Wn. App. 903, 914-15, 134 P.3d 1188 (2006) ("A deed to a corporation made before its organization is valid between the parties but is void when asserted against third parties").

But, even if Salmon Creek Lodging, LLC had existed at the time of the Agreement, it has never owned the Krenzler Parcel. Therefore, for a reason entirely separate from corporate existence, the RPAs have never been valid. See, e.g., RCW 64.04.070 (recognizing the doctrine of "after

acquired title" only for those who as a matter of fact acquire property to land previously sold or conveyed).

**VI. RAP 18.1 FEE REQUEST**

Jubitz requests an award of its fees and costs incurred in this appeal pursuant to the terms of the RPAs, Lease and Purchase Agreement at issue in this litigation and RAP 18.1.

**VII. CONCLUSION**

This Court should reverse the erroneous conclusions of law of the trial court and hold that the RPAs are void and unenforceable as to Jubitz and the Jubitz Property. This Court should also award Jubitz the fees and costs it incurred in this appeal.

RESPECTFULLY SUBMITTED this 23rd day of October, 2019.

McEWEN GISVOLD LLP

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



Katie Jo Johnson, WSBA No. 46143  
Of Attorneys for Appellant/Cross-  
Respondent Jubitz Corporation

# APPENDIX A

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JUL 16 2018

Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR CLARK COUNTY

JUBITZ CORPORATION,	)	
	)	NO. 17-2-05075-3
	)	
Plaintiff,	)	FINDINGS OF FACT, CONCLUSIONS
vs.	)	OF LAW AND ORDER FOLLOWING
	)	NON-JURY TRIAL
VANCOUVER HOSPITALITY	)	
PARTNERS, LLC, and ROBERT	)	
and ELIZABETH HOLMSTROM,	)	[CLERK'S ACTION REQUIRED]
	)	
Defendants.	)	

THIS MATTER came on regularly for hearing before the undersigned judge on June 11-12, 2018, for non-jury trial. Plaintiff Jubitz Corporation (hereinafter Jubitz) was represented by and through its attorney, Kurt Kraemer. Defendant Vancouver Hospitality Partners, LLC, (hereinafter VHP) was represented by and through its attorney, Denise Lukins. Defendants Robert and Elizabeth Holmstrom (hereinafter the Holmstroms) were represented by and through their attorney, Steve Leatham.

The court considered the records and files herein, the exhibits and deposition designations admitted into evidence and the testimony of the following witnesses: Todd Shaw, Victor Davis Stibolt, Jerry Olson, Mark Gram, Kirk Haebe, Roy Pulliam, Scott Hogan, Douglas Milner, Robert Bruce Holmstrom and John Jandial. The court is fully advised.

Based upon the credible evidence in the record, the court makes the following Findings of Fact:

### **FINDINGS OF FACT**

1. The Holmstroms were the owners of commercial real property located in the Salmon Creek area of Clark County, Washington. This land (hereinafter the original parcel) is legally described in attached Exhibit A.

2. The Holmstroms participated in a boundary line adjustment with the owners of a neighboring piece of real property, owned by the Krenzler Corporation (hereinafter the Krenzler property). As part of the boundary line adjustment, the Holmstroms divided the original parcel into two separate parcels. The northern parcel was used for a card lock oil company business. The Holmstroms planned to develop a hotel business on the southern parcel.

3. In order to assist with the development of the southern parcel, the Holmstroms prepared a reciprocal parking agreement. This agreement was intended to allow the owners of the northern and southern parcels to use each other's respective properties for overflow parking and for a truck loading area. This agreement was necessary to allow the hotel to be developed to the number of rooms contemplated by the Holmstroms and their development partners. The partners also contemplated the formation of a limited liability company to own and operate the hotel.

4. The initial reciprocal parking agreement (hereinafter the RPA) was originally recorded on July 8, 1999. An amended RPA was recorded on August 6, 1999. Both of the RPAs attached the legal description of the original parcel, but referenced this

description as the northern property. At that time, the Holmstroms continued to own the original parcel as a single property. Both of the RPAs attached the legal description of the Krenzler property, and incorrectly referenced this description as the southern property.

5. After the RPAs were recorded, the Holmstroms sold the southern parcel to Salmon Creek Lodging, LLC. This limited liability company was referenced in the RPAs, but had not been created at the time those documents were recorded. Although the Holmstroms were members of Salmon Creek Lodging, LLC, they did not retain an individual interest in the southern property after its sale.

6. The hotel was developed on the southern property and the card-lock oil company business continued to operate on the northern property. Each property maintained its own parking areas and these areas were used primarily by their respective employees and customers. An open lane was maintained across the northern property to a public street. The fence between the properties did not extend across this lane, so occupants of either property could access the street (and the other property) directly through this opening.

7. Hotel customers would occasionally park in the employee parking area on the northern property. These vehicles usually left the area early in the morning, before the oil company needed to occupy these spaces. If the presence of a hotel vehicle caused a problem for the oil company business, hotel management was contacted and the vehicle was moved. Hotel management did not assert that hotel patrons had a right to use this overflow parking.

8. Oil company employees and customers occasionally parked in the hotel's lot. The oil company held customer appreciation barbecues and these annual events were the primary reason for a lack of parking on the northern property. There was no evidence that hotel management complained about this occasional parking, or that oil company management asserted a right to use this overflow parking pursuant to the RPAs.

9. The open lane on the northern property was infrequently blocked by parked trucks. When this occurred, oil company management advised the offending vehicle operator that the lane was required to be kept clear. Signs were posted to this effect. No evidence was presented to establish that hotel trucks were ever loaded or unloaded on the northern property.

10. Salmon Creek Lodging, LLC sold the southern parcel to VHP, in April, 2007. The deed specifically referenced the RPAs.

11. The Holmstroms agreed to first lease, then sell, the northern property and other properties associated with the oil company to Jubitz in 2012. For business reasons, Jubitz agreed to lease the northern property from the Holmstroms until 2023. After the lease expires, Jubitz will purchase the property pursuant to the terms of a purchase and sale agreement (hereinafter the PSA).

12. Prior to the execution of the lease and the PSA, the Holmstroms did not disclose the existence of the RPAs to any person associated with Jubitz. The legal description of the northern parcel used in the Lease and the PSA does not refer to the RPAs. No person associated with Jubitz had actual knowledge of the existence of the RPAs prior to entering into the Lease and PSA.

13. The Holmstroms warranted their ability to provide Jubitz with quiet enjoyment of the northern property during the lease, and with clear title to the northern property at closing on the PSA, except for a list of encumbrances provided by a title insurance company and included in the PSA. The list of exceptions did not include the RPAs. At some point during the sale negotiations, the Holmstroms obtained a list of encumbrances from a different title insurance company. Although this list of exceptions included the RPAs, the Holmstroms did not attach this document to the PSA, or disclose the list to any representative of Jubitz.

14. In 2015-16, VHP's occupancy improved and more hotel customers parked on the northern property in the parking spaces normally used by Jubitz employees. Both the frequency of overflow parking incidents and the number of cars involved in each incident increased. Jubitz complained to hotel staff and eventually began to tow some of these cars. It was during this period that VHP first asserted a right to overflow parking under the RPAs and that Jubitz first learned of the existence of these agreements. Even employees of Jubitz who had formerly worked for the Holmstroms and their oil company were unaware of the existence of any written reciprocal agreement concerning parking.

15. After this action was commenced, the Holmstroms recorded a corrected RPA that replaced the legal descriptions of the original property and the Krenzler property with the correct legal descriptions for the northern property and the southern property.

Based on the foregoing Findings of Fact, the Court enters the following  
Conclusions of Law:

## CONCLUSIONS OF LAW

1. This court has jurisdiction over the subject matter of this proceeding and over the parties.
2. At the time of its entry into the PSA, Jubitz did not have actual knowledge of the existence of the RPAs. The Holmstroms did not advise Jubitz of these agreements and nothing about the physical characteristics of, or activities on, the northern or southern properties in 2012 would have alerted Jubitz representatives to the likelihood that a binding overflow parking agreement had been entered into between the oil company and the hotel.
3. Occasional use of the northern property for parking by overflow cars from the southern property did not create a prescriptive parking easement. The sporadic use was not adverse to the owner, who was able to have stray cars removed upon request. The use was not open, notorious, continuous or uninterrupted during any period of time. The owners of the northern property would not have knowledge that this use was hostile to their interest.
4. The RPAs were documents within the chain of title of the northern property. These documents referred to the original parcel at a time when the northern and southern parcels were in common ownership and the documents purported to burden and benefit both parcels (along with the Krenzler property). The names of the landholders were indexed along with the legal description
5. Because the RPAs were recorded within the chain of title of the northern parcel, the documents gave constructive notice to Jubitz of the existence of the parking agreement. Inquiry within the documents themselves would disclose that overflow

parking was contemplated on the original parcel, which included both the northern property and the southern property. Although the RPAs did not accurately described exactly which properties benefitted from the parking easement, sufficient information (for example, the name of the eventual owners of the southern property and the need for a truck loading area for the hotel) would have provided inquiry notice which would have naturally led any purchaser to the true state of affairs.

6. The RPAs were not void because Salmon Creek Lodging, LLC, did not exist at the time these documents were recorded. The corporation ratified the actions of its promoters after its creation and that ratification binds the original parties and their successors.

7. The corrected RPA, filed after this litigation commenced, is not effective and does not bind any other party to these proceedings.

8. Because the RPAs were within the recorded chain of title for the northern property at the time Jubitz leased and purchased the oil company business, the plaintiff is deemed to have constructive notice of the existence and terms of this document. As between Jubitz and VHP, the agreements are enforceable according to their terms. These documents should be reformed, to correct the mutual mistake concerning the attached legal descriptions. Exhibit A of the RPAs shall be reformed to include a description only of the northern property. Exhibit B of the RPAs shall be reformed to include a description only of the southern property.

9. There is no basis to reform any portion of the Lease or the PSA. The Holmstroms are bound by their representations and warranties. Any unilateral mistake they may have made, including their negligence in reading the lease and sale documents,

is not a basis for modification of these contracts to Jubitz's detriment. By stipulation of the parties, the question of the remedies available under the lease or PSA in the event of breach of warranty, and whether any damages are recoverable as the result of a breach, are reserved for later determination.

### **ORDER**

Based on the records and files herein, the court has entered these Findings of Fact and Conclusions of Law. The clerk shall note this case for hearing on the Department 9 Civil Motion Docket on Friday, August 17, 2018 at 9:00am, for entry of orders consistent with these rulings. The court shall provide a copy of these Findings and Conclusions to the attorneys for each party. The copy of this document shall serve as notice of the hearing date and time.

DATED this 13<sup>th</sup> day of July, 2018.

/s/ ROBERT A. LEWIS

Judge Robert A. Lewis



**Exhibit "A"**

The West one half of the Southwest one quarter of the Northeast one quarter of the Northwest one quarter, of Section 26, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT therefrom that portion conveyed to the State of Washington by deed recorded in Book D-47, Page 556-B, records of Clark County, Washington.

ALSO EXCEPT County Roads.

RECIPROCAL PARKING EASEMENT AGREEMENT - 6

# APPENDIX B

**COPY  
ORIGINAL FILED  
FEB 05 2019**

*Scott G. Weber, Clerk, Clark Co.*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR CLARK COUNTY

JUBITZ CORPORATION,	)	
	)	NO. 17-2-05075-3
	)	
Plaintiff,	)	FINDINGS OF FACT, CONCLUSIONS
vs.	)	OF LAW AND ORDER FOLLOWING
	)	CONTINUED NON-JURY TRIAL
	)	(DAMAGES AND REMAINING ISSUES)
VANCOUVER HOSPITALITY	)	
PARTNERS, LLC, and ROBERT	)	
and ELIZABETH HOLMSTROM,	)	
	)	
Defendants.	)	

THIS MATTER came on regularly for hearing before the undersigned judge on August 13, 2018, for continued non-jury trial. Plaintiff Jubitz Corporation (hereinafter Jubitz) was represented by and through its attorney, Kurt Kraemer. Defendant Vancouver Hospitality Partners, LLC, (hereinafter VHP) was represented by and through its attorney, Denise Lukins. Defendants Robert and Elizabeth Holmstrom (hereinafter the Holmstroms) were represented by and through their attorneys, Steve Leatham and David Meyer.

The court considered the records and files herein, the exhibits and deposition designations admitted into evidence and the testimony of the witnesses previously presented at the initial phase of the trial, conducted June 11-12, 2018. In addition, the court considered the exhibits admitted on the date of the continued trial and the testimony

of the witnesses presented on that date: Richard Herman, Mark Gram, Donald Palmer, Jerry Olson and Robert "Bruce" Holmstrom. The court is fully advised and entered a decision on the remaining issues on December 21, 2018. These Findings of Fact and Conclusions of Law described the basis for that decision.

Based upon the credible evidence in the record, the court makes the following Findings of Fact:

### **FINDINGS OF FACT**

1. The Holmstroms were the owners of commercial real property located in the Salmon Creek area of Clark County, Washington. The Holmstroms divided their original parcel into two separate parcels. The northern parcel was used for a card lock oil company business. The southern parcel was used for a hotel business.

2. In order to assist with the development of the southern parcel, the Holmstroms prepared a reciprocal parking agreement. This agreement was intended to allow the owners of the two parcels to use each other's respective properties as follows: (a) overflow parking of up to 11 vehicles for the benefit of the southern parcel on the northern parcel, (b) overflow parking of up to 12 vehicles for the benefit of the northern parcel on the southern parcel, and (c) a truck loading area for the benefit of the southern parcel on the northern parcel.

3. The initial reciprocal parking agreement (hereinafter the RPA) was recorded on July 8, 1999. An amended RPA was recorded on August 6, 1999. Both RPAs attached the legal description of the original parcel, but incorrectly referenced this description as the northern property. At that time, the Holmstroms continued to own the original parcel as a single property. Both RPAs attached the legal description of a

neighboring parcel, known as the Krenzler property, and incorrectly referenced this description as the southern property.

4. After the RPAs were recorded, the Holmstroms sold the southern parcel to Salmon Creek Lodging, LLC. This limited liability company was partially owned by the Holmstroms. Salmon Creek Lodging, LLC sold the southern parcel to VHP in April, 2007. The deed specifically referenced the RPAs.

5. The hotel business operated on the southern property and the card-lock oil company continued to operate on the northern property. Each property maintained its own parking areas and these areas were used primarily by their respective employees and customers. An open lane was maintained across the northern property to a public street. The fence between the properties did not extend across this lane, so occupants of either property could access the street (and the other property) directly through this opening.

6. Hotel customers would occasionally park in the employee parking area on the northern property. Oil company employees and customers occasionally parked in the hotel's lot on the southern property. Neither property owner asserted a right to park on the other's property pursuant to the RPAs. Sporadic complaints about occasional parking problems were handled informally.

7. The open lane on the northern property was infrequently blocked by parked trucks. When this occurred, oil company management advised the offending vehicle operator that the lane was required to be kept clear. Signs were posted to this effect. No evidence established that hotel trucks were ever loaded or unloaded on the northern property.

8. In 2012, the Holmstroms agreed to first lease, then sell, the northern property to Jubitz, along with other properties associated with the oil company. For business reasons, Jubitz agreed to lease the northern property from the Holmstroms until 2023. After the lease expires, Jubitz will purchase the property pursuant to the terms of a purchase and sale agreement (hereinafter the PSA).

9. Prior to the execution of the lease and the PSA, the Holmstroms did not disclose the existence of the RPAs to Jubitz. The legal description of the northern parcel used in the lease and the PSA does not refer to the RPAs. No person associated with Jubitz had actual knowledge of the existence of the RPAs prior to entering into the lease and PSA.

10. The Holmstroms warranted their ability to provide Jubitz with quiet enjoyment and possession of the northern property during the lease term, and with clear title to the northern property at closing on the PSA, except for a list of encumbrances included in the PSA. The list of exceptions did not include the RPAs. By the terms of the lease and the PSA, these obligations survived the closing of the transactions between Jubitz and the Holmstroms. The lease and the PSA included written agreements that Jubitz was entitled to pursue “any remedy available under applicable law” for a breach of these warranties.

11. In 2015-16, the hotel’s occupancy rates improved and hotel customers parked on the northern property more frequently. Both the number of overflow parking incidents and the number of cars involved in each incident increased. Jubitz complained to hotel staff and eventually began to tow some of these cars. It was during this period that Jubitz first learned of the existence of the RPAs.

12. After this action was commenced, Jubitz stopped towing vehicles parked on their property by hotel customers. Some of Jubitz's employees now park on an adjoining parcel of property controlled by Jubitz, when parking spaces on the northern property are fully occupied.

13. The fair market value of the lease and the PSA was less than the price agreed between Jubitz and the Holmstroms, because of the existence of the RPAs as a continuing encumbrance on the northern property. Although the ability to park on adjacent property is a mutually conferred benefit, the right to park on the southern property is of minimal value to the owners of the northern property. The fair market value impact caused by the RPAs, as a recorded encumbrance on the northern parcel during the lease, and as a continuing encumbrance after completion of the sale in 2023, is \$295,000.00. This amount includes both the impact on the price of the periodic payments during the rental period and the purchase price at the time of sale.

14. Overflow parking on the northern property did not actually damage the plaintiff in any way prior to 2015-16. After that period, the damage has been primarily annoyance and inconvenience. The evidence does not establish that Jubitz was required to expend any money to provide replacement parking or to repair any portion of the northern property because of overuse of its parking spaces. Jubitz did not establish a loss of business customers, employees or potential employees caused by unavailable parking.

15. No truck has ever actually loaded or unloaded materials or supplies for the hotel on the northern property. The evidence does not establish any likelihood that Jubitz will be required to expend money to accommodate regular truck loading or unloading in the future.

16. The Holmstroms are not entitled to indemnity damages from Jubitz as a result of VHP's claims against the Holmstroms in this litigation. The indemnity provisions of the lease specifically exclude matters "arising out of the breach by Landlord of a warranty made in this Lease or in the Purchase Agreement or of a warranty made by Seller in the Agreement."

Based on the foregoing Findings of Fact, the Court enters the following Conclusions of Law:

### **CONCLUSIONS OF LAW**

1. This court has jurisdiction over the subject matter of this proceeding and over the parties.
2. At the time of its entry into the PSA, Jubitz did not have actual knowledge of the existence of the RPAs. The Holmstroms did not advise Jubitz of these agreements and nothing about the physical characteristics of, or activities on, the northern or southern properties in 2012 would have alerted Jubitz representatives to the likelihood that a binding overflow parking agreement had been entered into between the oil company and the hotel.
3. The Holmstrom's failure to disclose the existence of the RPAs was not intentional and did not constitute fraud.
4. The failure of the Holmstroms to remove the encumbrance imposed on the northern parcel by the existence of the RPAs breached the warranty for quiet enjoyment and possession in the lease. Jubitz has not waived its right to seek monetary damages resulting from this breach.

5. The failure of the Holmstroms to remove the encumbrance imposed on the northern parcel by the existence of the RPAs breached the warranty to provide Jubitz with clear title at the time of sale, free of any encumbrance not approved by Jubitz, as provided in the PSA. Jubitz has not waived its right to seek monetary damages resulting from this breach.

6. The damages caused by the Holmstroms' breaches of the warranties contained in the lease and the PSA total \$295,000.00. Jubitz is entitled to judgment against the Holmstroms in that amount.

7. The Holmstroms are not entitled to indemnity from Jubitz for fees and expenses incurred by the Holmstroms in defending claims filed by VHP in this action.

#### **ORDER**

Based on the records and files herein, the court has entered these Findings of Fact and Conclusions of Law. The court shall provide a copy of these Findings and Conclusions to the attorneys for each party. Any party may note this matter for presentation of judgment, based upon this court's decisions.

DATED this 4<sup>th</sup> day of February, 2019.

**/s/ ROBERT A. LEWIS**

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Judge Robert A. Lewis

# APPENDIX C

**FILED**

MAR 22 2019 9:27AM

Scott G. Weber, Clerk, Clark Co.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

JUBITZ CORPORATION, an Oregon Corporation,  
  
Plaintiff,  
  
vs.  
  
VANCOUVER HOSPITALITY PARTNERS, LLC, a Washington Limited Liability Company; ROBERT HOLMSTROM and ELIZABETH HOLMSTROM, individuals,  
  
Defendants.

CASE NO. 17-2-05075-3  
SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER was tried to the Court, without a jury, on June 11-12, 2018, for a non jury trial. The undersigned Judge presided at trial.

Plaintiff appeared at trial through their attorney of record; J. Kurt Kraemer. Defendant Vancouver Hospitality Partners, LLC, appeared at trial through its attorney of record, Denise J. Lukins. Defendant Robert Holmstrom and Elizabeth Holmstrom appeared at trial through their attorneys, Steve Leatham and David Meyer.

The presiding Judge entered Findings of Fact, Conclusions of Law and Order Following Continued Non-Jury Trial on July 16, 2018 (“July 2018 Findings and Conclusions”). These Supplemental Findings of Fact and Conclusions of Law are intended to Supplement and Amend the July 16, 2018 Findings and Conclusions.

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

*Law Office of Denise J. Lukins*  
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Telephone: (360) 448-2854  
Facsimile: (360) 397-0163  
dlukins@lukinslaw.com SMB

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The July 2018 Findings and Conclusions identify “John Jandial” as a witness.

The correct name of the witness is Satya Pal Jandial.

Based on the evidence presented at trial, the Court makes the following Supplemental Findings and Conclusion:

FINDINGS OF FACT

1. Finding of Fact 2 of the July 2018 Findings and Conclusions is amended as follows:

In 1995, the Holmstroms participated in a boundary line adjustment with the owners of a neighboring piece of real property, owned by the Krenzler Corporation (hereinafter the Krenzler property). As part of the boundary line adjustment, the Holmstroms divided the original parcel into two separate parcels. The northern parcel was used for a card lock oil company business. The Holmstroms planned to develop a hotel business on the southern parcel.

2. Finding of Fact 3 of the July 2018 Findings and Conclusions is amended as follows:

In order to assist with the development of the southern parcel, the Holmstroms prepared a reciprocal parking agreement. This agreement was intended to allow the owners of the northern and southern parcels to use each other’s respective properties for overflow parking, and for the southern parcel to be able to use the northern parcel for a truck loading area. This agreement was required by Clark County for development of the hotel with the number of rooms contemplated by Holmstroms and their development partners. The partners also contemplated the formation of a limited liability company to own and operate the hotel.

3. Finding of Fact 9 of the July 2018 Findings and Conclusions is amended as follows:

From time to time, vehicles parked in such a way as to impede the use of the open lane on the northern property. When this occurred, oil company management advised the

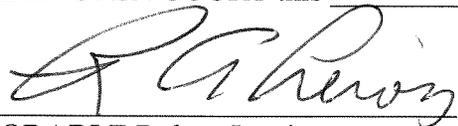
1 offending vehicle operator that the lane was required to be kept clear. Signs were posted  
2 to this effect. ~~The approved site plan also shows a 12 x 35 truck berth.~~ No evidence was  
3 presented to establish that hotel trucks were ever loaded or unloaded on the northern  
4 property.

5  
6 CONCLUSIONS OF LAW

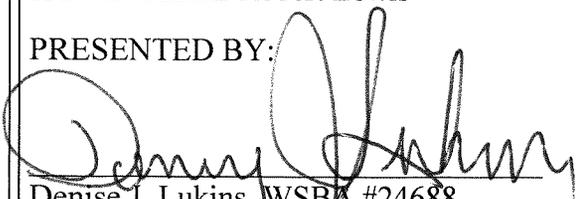
7 1. Conclusion of Law 8 of the July 2018 Findings and Conclusions is amended as  
8 follows:

9 Because the RPAs were within the recorded chain of title for the northern property at the  
10 time Jubitz leased and purchased the oil company business, the plaintiff is deemed to  
11 have constructive notice of the existence and terms of this document. As between Jubitz  
12 and VHP, the agreements are enforceable according to their terms. These documents  
13 should be reformed to correct the mutual mistake concerning the attached legal  
14 descriptions and to add the correct tax parcel identification numbers. Exhibit A of the  
15 RPAs shall be reformed to include a description only of the northern property. Exhibit B  
16 of the RPAs shall be reformed to include a description only of the southern property.

17 DONE IN OPEN COURT this 27 day of March, 2019.

18   
19 HONORABLE Robert Lewis

20 PRESENTED BY:

21   
22 Denise J. Lukins, WSBA #24688  
23 Of Attorneys for DEFENDANT VANCOUVER HOSPITALITY PARTNERS, LLC  
24  
25

1 APPROVED AS TO FORM; COPY RECEIVED;  
2 NOTICE OF PRESENTATION WAIVED

3 

4 J. KURT KRAEMER, WSBA # WSBA #29509  
5 Of Attorneys for PLAINTIFF JUBITZ CORPORATION

6 APPROVED AS TO FORM; COPY RECEIVED;  
7 NOTICE OF PRESENTATION WAIVED

8 

9 STEPHEN G. LEATHAM, WSBA # WSBA #15572  
10 Of Attorneys for Defendants Robert and Elizabeth Holmstrom

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# APPENDIX D

**COMMERCIAL LEASE**  
**(Tenney Acres—Headquarters Buildings)**

This Commercial Lease (this "*Lease*") is entered into on December 1, 2012 by and between ROBERT B. HOLMSTROM and ELIZABETH HOLMSTROM (together, "*Landlord*"), whose address is 18212 N.W. 67<sup>th</sup> Avenue, Ridgefield, Washington 98642, and JUBITZ CORPORATION, an Oregon corporation ("*Tenant*"), whose address is 33 N.E. Middlefield Road, Portland, Oregon 97211.

RECITALS:

A. Tenant, and Landlord's affiliates Vancouver Oil Company, Inc., and Pacific Fuel Transport, Inc. ("*Sellers*") have entered into an Asset Sale Agreement (the "*Agreement*") dated November 28, 2012. Tenant and Landlord's affiliates have also entered into other Commercial Leases (the "*Other Leases*"). The conditions to closing the transaction described in the Agreement include the parties' execution and delivery of this Lease and the Other Leases. Pursuant to the Agreement, Tenant has acquired certain buildings, structures, facilities, fixtures, overhangs, tanks, pumps and other improvements located on the Premises (collectively the "*Cardlock Facilities*").

B. The premises that are the subject of this Lease consist of approximately 1.49 acres located at 1503 NE 136th Street, Vancouver, Washington and more particularly described on Exhibit A attached hereto, consisting of an office, warehouse, and cardlock facility (the "*Premises*") and all Improvements (which shall not include the Cardlock Facilities already owned by Tenant).

THE PARTIES AGREE:

1. Lease of Premises; Term; Agreement to Buy.

(a) Lease of Premises. For the rents and other consideration and under the terms and conditions of this Lease, Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises and Improvements from Landlord.

(b) Term; Commencement Date. The Premises are leased for a term (the "*Term*") beginning on the date hereof (the "*Commencement Date*") and ending December 31, 2022, except as this Lease otherwise provides.

(c) Agreement to Buy. Contemporaneously with the execution of this Lease, the parties have entered into an Agreement for Purchase and Sale of Real Property (the "*Purchase Agreement*") establishing the terms and conditions of Tenant's agreement to buy the Premises.

(d) Effect of Tenant's Purchase of Premises. If and when Tenant buys or acquires ownership of the Premises, this Lease will terminate, and all of Landlord's and Tenant's obligations accruing thereafter will also terminate and be of no further force or effect.

(e) Definitions. In addition to words and terms defined in the heading and elsewhere in this Lease, the definitions of certain capitalized terms are in paragraph 10(f).

2. Rents; Additional Rents. As part of the consideration for this Lease, Tenant shall promptly and fully pay each of the following rents:

(a) Base Rent. Tenant shall pay to Landlord, promptly when due, without notice or demand and without deduction or set-off of any amount whatsoever, annual "Base Rent" as follows:

<u>Year</u>	<u>Amount</u>
2013	\$77,647
2014	\$78,817
2015	\$79,999
2016	\$81,199
2017	\$82,417
2018	\$83,653
2019	\$84,908
2020	\$86,181
2021	\$87,474
2022	\$88,787

All Base Rent is due and shall be paid in advance, beginning on the Commencement Date and then due on the fifteenth day of each calendar year during the Term. If the Commencement Date falls on a day other than the fifteenth day of a calendar year, Base Rent for the period between the Commencement Date and the first day of the first full calendar year is due and shall be paid on the Commencement Date, pro-rated for the number of days in that first partial year. Similarly, if the last day of the Term ends (whether on expiration or earlier termination of this Lease) on a day other than the last day of a calendar year, Base Rent for the last partial year of the Term is due and shall be paid on the fifteenth day of such calendar year, pro-rated for the number of days in that last partial year.

(b) Additional Rents. Tenant shall also pay without notice, except as may be provided in this Lease, and without abatement, deduction, or set-off, as additional rents, all sums, impositions, costs, and other payments that Tenant assumes or agrees to pay pursuant to this Lease, together with all interest and penalties that may accrue if Tenant fails to pay any of those items. All other damages, costs, expenses, and sums that Landlord may suffer or incur, or that may become due, by reason of any default of Tenant or failure by Tenant to comply with the terms and conditions of this Lease shall also be deemed to be additional rents. If there is any non-payment, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law in the case of non-payment of Base Rent.

(c) Payment of Rents. All amounts payable under this paragraph 2, as well as all other amounts payable by Tenant to Landlord under this Lease, shall be paid at the address of Landlord set forth on the first page of this Lease, or at any other place Landlord may from time

to time designate by notice to Tenant, in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment.

(d) No Abatement of Rents. No abatement, diminution, or reduction of rent shall be claimed or allowed to Tenant or any person claiming under it under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from the making of alterations, improvements, or repairs to the Premises, because of any Legal Requirements, or arising from and during the restoration of the Premises after destruction or damage by fire or other cause or the taking or condemnation of a portion of the Premises except as provided in paragraph 9.

(e) Interest on Rent and Other Charges. Any rent or other payment required of Tenant by this Lease shall, if not paid within 10 days after it is due, bear interest at the rate of 10% per annum (but not in any event at a rate greater than the maximum rate of interest permitted by law) from the due date until paid. In addition, if Tenant fails to make any rent or other payment required by this Lease to be paid to Landlord within 10 days after it is due, Landlord may elect to impose a late charge of 5 cents per dollar of the overdue payment to reimburse Landlord for the costs of collecting the overdue payment. Tenant shall pay the late charge upon demand by Landlord. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and imposition of a late charge shall not waive the breach caused by the late payment.

(f) "Triple-Net" Lease and Net Rents. Tenant's obligations under this Lease, including obligations to pay for all taxes, insurance, maintenance, and upkeep, make this Lease a "triple-net" lease. It is intended that the rents provided for in this paragraph 2 shall be an absolutely net return to Landlord throughout the Term, free of any expense, charge, or other deduction whatsoever, including all claims, demands, or setoffs of any nature whatsoever.

3. Use; Maintenance; Repairs; Utilities; Legal Requirements.

(a) Use. Tenant may use the Premises in connection with its operation of its petroleum products distribution and transportation business, and for other uses permitted by law.

(b) Maintenance, Repairs, and Utilities. This Lease, the Premises and the Improvements, and Tenant's use of the Premises and the Improvements are subject to the following provisions for maintenance, repairs, and utilities:

(i) Throughout the Term, Tenant shall maintain, repair, and replace the Premises and the Improvements as necessary to keep them in as good of order, condition, and repair throughout the entire Term as the Premises and Improvements are in as of the Commencement Date. Tenant's obligations shall extend to both structural and non-structural items and to all maintenance, repair, and replacement work, including unforeseen and extraordinary items. Tenant shall keep the Premises free of rubbish, trash, snow, and ice. Landlord shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Premises, except as may be provided in the Agreement.

(ii) Throughout the Term, Tenant shall pay for all electricity, water, gas, sewer, garbage collection, and other services and utilities consumed in connection with Tenant's occupancy of the Premises. Tenant shall pay the provider of the services directly. Landlord shall not be required to furnish to Tenant any facilities or services of

any kind whatsoever during the Term, such as, but not limited to, water, steam heat, gas, hot water, electricity, light, or power.

(iii) Landlord assigns to Tenant, without recourse, the rights, if any, Landlord may have against any parties causing damage to the Improvements to sue for and recover amounts expended by Tenant as a result of the damage.

(c) Alterations, Additions, and New Improvements. The term "Modifications" means any demolition, improvement, alteration, change, or addition, of, in, or to all or any part of the Premises or the Improvements. The term "Minor Modifications" means any Modifications costing less than \$100,000, and the term "Major Modifications" means any and all Modifications other than Minor Modifications. Multiple Modifications occurring within a Lease Year shall be deemed a single Modification for purposes of this paragraph 3(c). At any time during the Term and at Tenant's own cost and expense, Tenant may make or permit to be made any Minor Modifications, provided there is no existing and un-remedied default on the part of Tenant, of which Tenant has received notice of default, under any of the terms, covenants, and conditions of this Lease. Major Modifications shall require the prior written consent of Landlord, which shall not be unreasonably withheld, so long as the Modifications do not result in a diminution of the value of the Premises or change the primary purpose for which the Premises may be used. All Modifications shall be made in a workmanlike manner and shall not weaken or impair the structural strength of any Improvements. Before commencement of any work, Tenant shall be responsible for having all plans and specifications filed with and approved by all governmental departments or authorities having jurisdiction and by any provider of a utility having an interest, and all work shall be done in accordance with Legal Requirements. The plans and specifications for any Modifications shall also be submitted to Landlord before the commencement of any work for written approval, which shall not be unreasonably withheld.

(d) Compliance with Legal Requirements. Tenant shall comply with Legal Requirements as follows:

(i) Throughout the Term, Tenant shall promptly comply with all Legal Requirements that may apply to the Premises or to the use or manner of uses of the Premises or the Improvements or the owners or users of the Improvements, whether or not the Legal Requirements affect the interior or exterior of the Improvements, necessitate structural changes or improvements, necessitate obtaining permits from any governmental or public authority, or interfere with the use and enjoyment of the Premises or the Improvements. Tenant shall pay all costs of compliance with Legal Requirements.

(ii) Tenant shall have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Tenant or Landlord or both, but without cost or expense or liability to Landlord or to the Premises, the validity or application of any Legal Requirement. If, by the terms of any Legal Requirement, compliance may lawfully be delayed pending the prosecution of any such proceeding without incurring any lien, charge, or liability of any kind against all or any part of the Premises or the Improvements and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure to comply, Tenant may delay compliance until the final determination of the proceeding.

(e) No Waste. Tenant shall not do or allow any waste or damage, disfigurement, or injury to the Premises or the Improvements.

4. Liens; Taxes; Insurance; Security.

(a) Liens. This Lease, the Premises and the Improvements, and Tenant's use of the Premises and the Improvements, are subject to the following restrictions with respect to liens:

(i) Tenant shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the reversion or other estate of Landlord or on any interest of Landlord in the Premises.

(ii) Tenant shall not allow or permit any liens to be filed of record against the interest of Landlord in all or any part of the Premises or Improvements by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Tenant or anyone occupying or holding an interest in all or any part of the Improvements through or under Tenant. If any such lien is at any time filed against the Premises, Tenant shall cause the lien to be discharged as a lien against the Premises within 30 days after the date of its filing, either by payment, deposit, or bond. If Tenant receives any notice of any lien, or of any right to claim a lien, or any such notice is placed on or delivered to the Premises in any way whatsoever, Tenant shall immediately furnish Landlord a copy of the notice.

(iii) Nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Landlord, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to claim or file any lien against Landlord's interest in the Premises or in the Improvements. Landlord shall have the right to post and keep posted at all reasonable times on the Premises and on the Improvements any notices that Landlord may deem appropriate to post for the protection of Landlord and of the Premises and of the Improvements from any such lien.

(b) Taxes and Other Charges. This Lease, the Premises, and the Improvements, and Tenant's use of the Premises and the Improvements, are subject to the following provisions with respect to taxes and other charges:

(i) Tenant shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for non-payment, all real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, sales taxes, assessments that benefit the Premises (including assessments for public improvements or benefits, and including any assessments and impositions that may be levied against Landlord, Tenant, or the Premises in lieu of or to replace property taxes), and all other governmental impositions and charges of every kind and nature whatsoever, whether or not now customary or within the contemplation of the parties and regardless of whether they are extraordinary or ordinary, general or special, unforeseen or foreseen, or similar or dissimilar to any of the foregoing, that are or become due and payable at any time during the Term, and that (A) are levied, assessed, or imposed against the Premises or the Improvements or any interest of Landlord or Tenant under this Lease, or (B) are or become liens against the Premises or the Improvements or any interest of Landlord or Tenant under this Lease, or (C) are levied, assessed, or imposed on or against Landlord

by reason of any actual or asserted engagement by Landlord or Tenant, directly or indirectly, in any business, occupation, or other activity in connection with the Premises or the Improvements, or (D) are levied, assessed, or imposed on or in connection with the ownership, leasing, operation, management, maintenance, repair, rebuilding, use, or occupancy of the Premises or the Improvements; in any of the foregoing events under or by virtue of any present or future Legal Requirements, it being the intention of the parties that, insofar as it may lawfully be done, Landlord shall be free from all such expenses and all such real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, sales taxes, occupational license taxes, water charges, sewer charges, assessments, and all other governmental impositions and charges of every kind and nature whatsoever (all taxes, charges, assessments, and other governmental impositions and charges that Tenant is obligated to pay being collectively called "Tax" or "Taxes").

(ii) Nothing in this Lease requires Tenant to pay any franchise, estate, inheritance, succession, capital levy, or transfer tax of Landlord, or any income, excess profits, or revenue tax, business and occupation taxes, or any other tax, assessment, charge, or levy on any rents payable by Tenant under this Lease; *provided, however*, if at any time during the Term the methods of taxation prevailing at the Commencement Date are altered so that in lieu of any Tax under this paragraph 4(b) there is levied, assessed, or imposed a tax, assessment, levy, imposition, or charge, wholly or partially as a capital license fee measured by any rents payable by Tenant under this Lease, all such taxes, assessments, levies, impositions, or charges or the parts so measured or based, shall be deemed to be included within the term "Tax" for purposes of this Lease, to the extent that they would be payable if the Premises were the only property of Landlord subject to them, and Tenant shall pay and discharge them in the same way as provided for the payment of Taxes.

(iii) If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Tenant may, whether or not interest accrues on the unpaid balance, pay the Tax, and any accrued interest on any unpaid balance, in installments as each installment becomes due and payable, but in all events before any fine, penalty, interest, or cost may be added for non-payment of any installment or interest.

(iv) Any Tax relating to a fiscal period of the taxing authority, a part of which is within the Term and a part of which is before or after the Term, whether or not the Tax is assessed, levied, imposed, or becomes a lien on the Premises or the Improvements, or becomes payable, during the Term, shall be apportioned and adjusted between Landlord and Tenant so that Tenant shall pay only the portions that correspond with the portion of the fiscal periods included within the Term. As to any Tax for public improvements or benefits that by law is payable, or at the option of the taxpayer may be paid, in installments, Landlord shall pay the installments that become due and payable prior to commencement of the Term or after the Term expires, and Tenant shall pay all such installments that become due and payable at any time during the Term.

(v) Tenant shall have the right at Tenant's expense to contest or review the amount or validity of any Tax or to seek a reduction in the assessed valuation on which any Tax is based, by appropriate legal proceedings, as long as such contest is conducted

in a manner that does not cause any risk that Landlord's interest in the Premises will be foreclosed for nonpayment.

(vi) Any contest as to the validity or amount of any Tax, or assessed valuation on which the Tax was computed or based, whether before or after payment, may be made by Tenant in the name of Landlord or of Tenant, or both, as Tenant shall determine, and Landlord will, at Tenant's expense, cooperate with Tenant in any such contest to the extent Tenant may reasonably request, it being understood, however, that Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Tenant, and Tenant shall indemnify and save Landlord harmless from all such costs and expenses, including attorney fees. Tenant shall be entitled to any refund of any such Tax and penalties or interest that have been paid by Tenant or by Landlord and reimbursed to Landlord by Tenant.

(vii) The parties shall use reasonable efforts to see that all communications from governmental authorities about Taxes are sent directly by the authorities to Tenant.

(c) Property Insurance. The Premises and the Improvements are subject to the following provisions with respect to property insurance:

(i) During the Term, Tenant shall maintain, at Tenant's sole cost and expense and for the mutual benefit of Tenant and Landlord property insurance covering the full replacement cost of the Improvements. If such insurance becomes unavailable, Tenant shall insure the Improvements with the coverage as is customary from time to time for comparable properties in the Vancouver, Washington metropolitan area. The amount of this insurance coverage shall be increased from time to time as the full replacement cost of the Improvements increases.

(ii) If there is any casualty damage to the Improvements, Landlord may make proof of loss if Tenant fails to do so within 15 days of the casualty. The proceeds of any insurance (the "Proceeds") on the Improvements shall be delivered to Tenant. Tenant shall promptly repair or replace the damaged and destroyed Improvements in substantially the form they were in on the date of the casualty or in a manner reasonably satisfactory to Landlord. Any proceeds not used for repair, restoration, or replacement of the Improvements shall be distributed on the same basis as any condemnation proceeds under paragraph 9. Any dispute over the distribution of Proceeds shall be determined by arbitration.

(d) Liability Insurance. Tenant shall, at Tenant's expense, maintain at all times during the Term commercial general liability insurance for the Premises and the conduct or operation of Tenant's business, with Landlord as an additional insured, with \$2,000,000 minimum combined-single-limit coverage, or its equivalent and "underground tank" insurance with \$1,000,000 minimum combined-single-limit coverage, or its equivalent (or such higher amount as may be required by law). All casualty insurance policies shall include contractual-liability, severability-of-interest, and cross-liability endorsements.

(e) Insurance Policies. All policies of insurance required under this Lease shall be issued and maintained as follows:

(i) Tenant shall deliver to Landlord copies of the fully paid-for policies or original certificates of insurance, in forms reasonably acceptable to Landlord, issued by

the insurance company or its authorized agent, within 30 days after the Commencement Date. Tenant shall procure and pay for renewals of the insurance from time to time before the expiration, and Tenant shall deliver to Landlord a copy of the renewal policy or original certificate at least 30 days before the expiration of any existing policy. All certificates of insurance shall contain provisions whereby the company writing the policy will give Landlord 30 days' written notice in advance of any cancellation, modification, substantial change of coverage, or the effective date of any reduction in amount of insurance.

(ii) All insurance policies shall be written as primary policies, providing coverage on either an occurrences basis or on a claims-made basis, as determined by Tenant, and shall not be contributing with or be in excess of the coverage that either Landlord or Tenant may carry. All policies shall be issued in the name of Tenant, shall be primary to any insurance available to Landlord. Property insurance shall name Landlord and Tenant each as a loss payee as their respective interests may appear. Liability insurance shall name Landlord as an additional insured.

(iii) All policies of insurance shall be issued by good, responsible companies, reasonably acceptable to Landlord and that hold a certificate of authority to transact insurance in the State of Washington.

(iv) The obligations of Tenant to carry the insurance provided for may be brought within the coverage of a so-called blanket policy or policies of insurance; *provided, however*, that (A) the policy or policies shall specify, or Tenant shall furnish Landlord a written statement from the insurers under the policy or policies specifying, the amount of the insurance allocated to the Premises, which shall not be less than the coverage required under paragraph 4(c)(i), (B) the amounts so specified will be sufficient to prevent any one of the insureds from becoming a co-insurer within the terms of the applicable policy or policies, (C) the coverage afforded will not be reduced or diminished by reason of the use of the blanket policy of insurance, and (D) the requirements set forth in paragraphs 4(c), 4(d), and this paragraph 4(e) are otherwise satisfied.

(f) Waiver of Subrogation. Neither party shall be liable to the other for any loss or damage to the extent the loss or damage is covered under this Lease by a property insurance policy. All claims or rights of recovery for any and all such loss or damage, however caused (including by the negligence of either Landlord or Tenant or by any of their respective principals, agents, officers, directors, servants, or employees), are hereby waived, except for claims equal to or less than the deductible amount in the property insurance policy, claims for loss or damage to the property of third parties (including employees or contractors of the parties hereto), personal injury or other third-party claims, and any claims or losses that are excluded from insurance policies.

#### 5. Representations and Warranties.

(a) Representations and Warranties of Tenant. Tenant represents and warrants to Landlord that (i) Tenant has full right, power, and authority to execute this Lease, to lease the Premises as provided in this Lease, and to carry out all of Tenant's obligations under this Lease, and (ii) Tenant is financially capable of performing and satisfying, or has obtained sufficient financial assurance to satisfy, in full, Tenant's obligations under this Lease.

(b) Representations and Warranties of Landlord with Respect to the Transaction. Landlord represents and warrants to Tenant that (i) Landlord (A) has power adequate for the execution, delivery, and performance of its obligations under this Lease and (B) has taken all necessary action required to make this Lease the valid and enforceable obligation it purports to be, (ii) this Lease has been duly executed and delivered by Landlord; (iii) the structural and non-structural components of any Improvements shall, on the Commencement Date, be in good repair and operating condition; and (iv) applicable laws, ordinances, regulations, and restrictive covenants in effect on the date hereof permit the Premises to be used in connection with the business acquired under the Agreement.

(c) Representations and Warranties of Landlord with Respect to the Premises.

(i) To Landlord's Knowledge, the Premises can be used after the Commencement Date as it has been used by the respective Seller prior to the Commencement Date without violating any Legal Requirement or private restriction, and such uses are legal conforming uses. There are no proceedings or amendments pending and brought by or, to the Knowledge of Landlord, threatened by, any third party which would result in a change in the allowable uses of the Premises or which would modify the right of Tenant to use the Premises as contemplated after the Commencement Date.

(ii) Landlord has made available to Tenant all engineering, geologic, and other similar reports, documentation, and maps relating to the Premises in the possession or control of Landlord or Sellers.

(iii) None of Landlord, Sellers, or the Premises is, or to the Knowledge of Landlord ever has been, involved in any litigation or administrative proceeding seeking to impose fines, penalties, or other liabilities or seeking injunctive relief for violation of any Legal Requirements.

(iv) To the Knowledge of Landlord, no Person, other than Landlord and the respective Seller, has a present or future right to possession of all or any part of the Premises.

(v) There are no levied or pending special assessments affecting all or any part of the Premises owed to any governmental entity and, to the Knowledge of Landlord, none is threatened.

(vi) There are no pending or, to the Knowledge of Landlord, threatened condemnation or eminent domain proceedings affecting all or any part of the Premises.

(viii) To the Knowledge of Landlord, there are no material structural defects in the Improvements, nor are there any major repairs required to operate the Improvements as currently operated by the business acquired under the Agreement.

(ix) Landlord has not received any written notices from any insurance company of any defects or inadequacies in the Premises.

(d) No Other Representations. Except as provided in this Lease, no representations, statements, or warranties, express or implied, have been made by or on behalf of either party in respect to the Premises and the Improvements. Tenant warrants it has had full and adequate opportunity to make all inspections and tests of the Premises (including tests of environmental, subsurface, and soil conditions) Tenant believes are appropriate, and accepts the Premises as

fully suitable for all of Tenant's intended purposes, AS-IS, and in their present condition. Tenant's sole and exclusive remedy for Landlord's breach of any representation or warranty in this Lease will be to terminate this Lease.

6. Tenant's Additional Covenants.

(a) Notices. Promptly upon receipt, Tenant or Landlord, as the case may be (the "Receiving Party") shall provide the other party with a copy of any notice (i) from any governmental body that is served upon or received by the Receiving Party claiming an actual or threatened violation of Legal Requirements, (ii) requiring any work, repairs, construction, alterations, or installation on or in connection with the Premises in order to comply with Legal Requirements, (iii) of any pending or threatened lawsuit, claim, administrative proceeding, or enforcement action resulting from an actual or threatened violation of Legal Requirements, or (iv) of any land use application or action pertaining to the Premises or property in the vicinity of the Premises..

(b) Hazardous Substances. Tenant shall indemnify, protect and hold harmless Landlord and each of its respective subsidiaries from and against all costs and damages incurred by Landlord in connection with the presence, emanation, migration, disposal, release or threatened release of any Hazardous Substances on in, or to or from the Premises as a result of (i) the operations of the Tenant after the Commencement Date and (ii) the activities of third parties affiliated with Tenant or invited on the Premises by Tenant.

(c) Corrective Action. If Tenant knows of or has reason to believe that a release of a Hazardous Substance has occurred or come to be located on or beneath the Premises, Tenant shall promptly (i) give written notice of this knowledge or belief to Landlord, (ii) report to appropriate governmental agencies any release of a reportable quantity of Hazardous Substances on or beneath the Premises as required by Legal Requirements, and (iii) diligently undertake all removal or remediation procedures as may be required by Legal Requirements. If it is determined in Landlord's reasonable opinion that Hazardous Substances are being improperly stored, used, or disposed of on the Premises, Tenant shall immediately take all corrective action as reasonably requested by Landlord. If Tenant fails to take the corrective action promptly within a reasonable period of time, Landlord shall have the right to perform the work, and Tenant shall promptly reimburse Landlord for costs associated with the work.

(d) Acts of Third Parties. During the Term, Tenant shall be solely responsible for protecting against intentional or negligent acts or omissions of third persons that might result in the discharge, release, disposal, or other placement of Hazardous Substances on or beneath the Premises.

(e) Assignment and Subletting Restricted. Tenant may assign this Lease or sublease the Premises to a limited liability company, partnership, or corporation in which Tenant holds an ownership interest and which is controlled by Tenant, but assignment or sublease will not release Tenant from its liability under this Lease. In the event of the assignment, Tenant shall notify Landlord, and Tenant and the assignee shall sign and deliver to Landlord an appropriate form, prepared by Landlord, of assignment and assumption. Otherwise, Tenant shall not sell, assign, or in any other manner transfer this Lease or any interest in this Lease or the estate of Tenant under this Lease without the prior written consent of Landlord, which consent will not unreasonably be withheld. This provision shall apply to all transfers by operation of law, including any transfer of a majority voting interest in Tenant. No consent in one instance shall

prevent the provision from applying to a subsequent instance. In determining whether to consent to assignment, Landlord may consider the financial ability and business experience of the proposed assignee to determine that it is reasonably sufficient to operate the business on the Premises and to perform the obligations of the Tenant hereunder.

(f) Surrender. In the event Tenant fails to purchase the Premises in accordance with the terms of the Purchase Agreement, the following provisions apply to surrender of the Premises on the expiration or earlier termination of this Lease:

(i) Except as otherwise provided in this Lease, Tenant shall, on the last day of the Term or earlier termination of this Lease, surrender and deliver up the Premises and all Improvements to the possession and use of Landlord without fraud or delay, free and clear of all lettings and occupancies other than subleases then terminable at the option of Landlord or subleases to which Landlord shall have specifically consented in writing, and free and clear of all liens and encumbrances other than those, if any, now existing or created or suffered by Landlord, without any payment or allowance whatever by Landlord on account of any Improvements.

(ii) Tenant shall surrender the Improvements vacant and broom-clean. When furnished by or at the expense of Tenant or any subtenant, furniture, fixtures, and equipment shall be removed by Tenant at its sole cost and expense when or before this Lease terminates; *provided, however*, the removal must not injure the Premises or the Improvements or necessitate changes in or repairs to them. At Landlord's request (i) Tenant shall at Tenant's expense restore the Premises and Improvements to substantially their condition as on the Commencement Date, reasonable wear and tear excepted, and (ii) Tenant shall at Tenant's expense remove all of the Cardlock Facilities (including underground storage tanks) and restore the Premises to substantially their condition prior to construction of the Cardlock Facilities. Tenant shall pay all Remediation Costs and other costs of repairing any damage arising from the restoration of the Premises, the Improvements and/or the Cardlock Facilities.

(iii) Without waiving the provisions of paragraph 6(f)(ii), any personal property of Tenant or any subtenant that remains on the Premises after the termination of this Lease and the removal of Tenant or the subtenant from the Premises may, at the option of Landlord, be deemed to have been abandoned by Tenant or the subtenant and may either be retained by Landlord as Landlord's property or be disposed of, without accountability, in any manner Landlord may see fit, or if Landlord gives written notice to Tenant to that effect, the property shall be removed by Tenant at Tenant's sole cost and expense. If this Lease terminates early for any reason other than the default of Tenant, Tenant or any subtenant shall have a reasonable time thereafter to remove its personal property, anything to the contrary notwithstanding.

(iv) Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant or any subtenant.

The provisions of this paragraph 6(f) shall survive the expiration or earlier termination of this Lease, but shall be extinguished upon the purchase of the Premises pursuant to the Purchase Agreement.

(g) Holdover. If Tenant does not surrender the Premises at the time required and pay all costs required under paragraph 6(f):

(i) Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term and renewal and at a rental rate equal to 150% of the highest monthly rents due from Tenant during the last year of the Term, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Lease shall constitute a failure to vacate to which this paragraph 6(g)(i) shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose, including preparation for a new tenant.

(ii) If Landlord elects to treat Tenant as having a month-to-month tenancy pursuant to paragraph 6(g)(i), the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than 10 days before the termination date specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

7. Landlord's Rights and Remedies. In addition to the rights set forth elsewhere in this Lease (including those provided under paragraph 8 on default) and as provided by applicable law, Landlord has and may freely exercise the following rights and have the following remedies with respect to the Premises and this Lease:

(a) Landlord's Right to Transfer. Landlord may sell, exchange, assign, transfer, convey, contribute, distribute, or otherwise dispose of all or any part of Landlord's interest in the Premises or this Lease (including Landlord's reversion); *provided, however*, any such sale, exchange, assignment, transfer, conveyance, contribution, distribution, or other disposition shall not release Landlord from liability under this Lease or the Purchase Agreement and shall be subject to Tenant's interests under and pursuant to this Lease and the Purchase Agreement.

(b) No Encumbrances by Landlord. Landlord shall not encumber, mortgage, pledge, or otherwise hypothecate Landlord's fee simple interest in the Premises. Any such encumbrance, mortgage, pledge, or hypothecation made in violation of this Section shall be subject to Tenant's interests under and pursuant to this Lease and the Purchase Agreement.

(c) Inspection and Access. This Lease, the Premises and the Improvements, and Tenant's use of the Premises and the Improvements are subject to the following provisions for inspection and access:

(i) Tenant shall permit Landlord, or the authorized representative of Landlord, to enter the Premises and the Improvements upon reasonable notice at all reasonable times during usual business hours for purposes of inspecting the Premises and making any repairs or performing any work that Tenant has neglected or refused to make in accordance with the terms, covenants, and conditions of this Lease. Nothing in this Lease shall imply any duty or obligation on the part of Landlord to do any such work or to make any improvements of any kind whatsoever to the Premises (including repairs and other restoration work made necessary due to any fire, other casualty, or partial condemnation, irrespective of the sufficiency or availability of any fire or other insurance proceeds, or any award in condemnation, that may be payable). The performance of any

work by Landlord shall not constitute a waiver of Tenant's default in failing to perform the work.

(ii) During the progress of any work on the Premises or improvements performed by Landlord pursuant to this paragraph 7(c) or paragraph 7(d), Landlord may keep and store on the Premises all necessary materials, tools, supplies, and equipment. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of Tenant or any user by reason of making the repairs or performing any such work, or on account of bringing materials, tools, supplies, and equipment onto the Premises or into the Improvements during the course of the work, and the obligations of Tenant under this Lease shall not be affected by the work.

(iii) Landlord shall have the right to enter on the Premises and the Improvements upon reasonable notice at all reasonable times during usual business hours for the purpose of showing them to prospective purchasers of Landlord's interest.

(d) Landlord's Right to Perform Tenant's Covenants. Landlord may perform Tenant's covenants as follows:

(i) If Tenant at any time fails to pay any Tax in accordance with this Lease or fails to make any other payment or perform any other act on Tenant's part to be made or performed, Landlord may, after 30 days' written notice to Tenant (or without notice in case of an emergency) and without waiving or releasing Tenant from any obligation of Tenant in this Lease or from any default by Tenant and without waiving Landlord's right to take the action as may be permissible under this Lease as a result of the default (but shall be under no obligation to) (A) pay any Tax payable by Tenant pursuant to this Lease, or (B) make any other payment or perform any other act on Tenant's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take all such action Landlord may deem necessary.

(ii) All sums so paid by Landlord and all costs and expenses incurred by Landlord, including reasonable attorney fees, in connection with the performance of any such act, together with, if Tenant does not pay them within the 30-day period after notice from Landlord, interest at 10% per annum from the date of the payment or incurring by Landlord of the cost and expense until paid, shall constitute additional rents due from and payable by Tenant under this Lease, and shall be paid by Tenant to Landlord on demand.

(e) Landlord's Exculpation and Indemnity. This Lease, the Premises and the Improvements, and Tenant's use of the Premises and the Improvements are subject to the following provisions for exculpation and indemnity of Landlord:

(i) Tenant is and shall be in exclusive control of the Premises and of the Improvements, and Landlord shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Improvements, or for any injury or damage to the Premises or the Improvements or to any property, whether belonging to Tenant or to any other person, caused by any fire, breakage, leakage, defect, or bad condition in any part or portion of the Premises or of the Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Improvements from the drains, pipes,

or plumbing work of the Premises or the Improvements, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of all or any of the Improvements, or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the Improvements, including defects in construction of the Improvements, latent or otherwise; provided, however, that this Section 7(e)(i) shall not relieve Landlord for liability arising (A) from the breach of any warranty made in this Lease or in the Purchase Agreement, or (B) the negligence or intentional misconduct of Landlord, its employees, or agents.

(ii) Tenant shall completely and fully defend, indemnify, and hold Landlord harmless against and from all actions, causes of action, charges, claims, costs, damages, demands, expenses (including reasonable architect and attorney fees), liabilities, obligations, and penalties that may be imposed on or incurred by or asserted against Landlord by reason of any of the following occurrences during the Term: (A) any work or thing done in, on, or about all or any part of the Premises or the Improvements by Tenant or any person other than Landlord, its affiliates, agents, or contractors; (B) any use, non-use, possession, occupancy, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements or any adjacent alley, sidewalk, curb, vault, passageway, or space by Tenant or any person other than Landlord, its affiliates, agents, or contractors; (C) any negligence on the part of Tenant or any of Tenant's agents, contractors, servants, employees, subtenants, licensees, or invitees; (D) any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements; and (E) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations in this Lease to be performed or complied with by Tenant, unless caused by the negligence or misconduct of Landlord, its affiliates, agents, or contractors. Notwithstanding the foregoing, the above indemnity shall not apply to any matter arising out of the breach by Landlord of a warranty made in this Lease or in the Purchase Agreement or of a warranty made by Seller in the Agreement.

(iii) If any action or proceeding is brought against Landlord by reason of any such claim, Tenant shall, upon written notice from Landlord and at Tenant's expense, resist or defend the action or proceeding by counsel approved by Landlord in writing, which approval shall not be unreasonably withheld. Landlord shall not make any claim against Tenant for any of the risks for which Tenant has furnished Landlord with insurance policies or certificates of insurance and evidencing coverage of the risks, as required under this Lease, unless and until the insurer fails or refuses to defend and/or pay all or any part of a third-party claim.

(iv) The obligation of Tenant to indemnify Landlord pursuant to this paragraph 7(e) shall apply to any common-law cause of action, whether or not codified, including causes of action arising in tort, trespass, nuisance, and strict liability, to federal and state statutory causes of action, and to proceedings or causes of action based on Legal Requirements; and this obligation shall survive the termination or expiration of this Lease.

8. Default and Remedies.

(a) Events of Default; Landlord's Remedies. Time is of the essence for payment of rents and performance of all of Tenant's obligations under this Lease. In addition to Landlord's remedies set forth elsewhere in this Lease, the following provisions for default and remedies apply to this Lease and to the parties:

(i) The occurrence of any one or more of the following events of default constitutes a breach of this Lease by Tenant:

(A) Tenant's failure to make, in full and within 10 days after Landlord has given Tenant a notice that payment is past due, any payment of any rents, whether Base Rent or additional rents, payable under this Lease.

(B) Tenant's failure, whether by action or inaction, to pay or perform any of Tenant's obligations under this Lease (other than a failure to make a payment of any rents) and the failure continues and is not remedied within 30 days after Landlord has given Tenant a notice specifying the default, or, in the case of a default that can be cured but not within a period of 30 days, if Tenant has not notified Landlord of Tenant's intention to cure the default and begun curing the default within the 30-day period, and continuously and diligently completed the cure of the default.

(C) If Tenant or any guarantor, while Tenant is in possession, files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or voluntarily takes advantage of any such act by answer or otherwise, or makes an assignment for the benefit of creditors.

(D) If involuntary proceedings under any bankruptcy law or insolvency act are instituted against Tenant or any guarantor, or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant or any guarantor, and the proceedings are not dismissed or the receivership or trusteeship vacated within 10 days after the institution or appointment.

(E) If Tenant vacates or abandons the Premises, or if this Lease or the Premises are transferred to or pass to any other person or entity, except as expressly permitted under this Lease

(F) If Tenant or any of its affiliates commits an event of default after the expiration of any applicable notice and cure period under any of the Other Leases.

(ii) During any Lease Year, Tenant shall be entitled to only two notices pursuant to paragraph 8(a)(i)(A) or 8(a)(i)(B), as the case may be, and Landlord, having given two such notices during any Lease Year, may thereafter exercise all remedies for Tenant's default without the necessity of any prior notice to Tenant.

(iii) Upon the occurrence of an event of default, Landlord may exercise any one or more of the remedies set forth in this paragraph 8 or any other remedy available under applicable law or in this Lease:

(A) Landlord or Landlord's agents and employees may immediately or at any time thereafter reenter the Premises either by summary eviction

proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the Premises, and may remove any person from the Premises, to the end that Landlord may have, hold, and enjoy the Premises.

(B) Landlord may relet the whole or any part of the Premises from time to time, either in the name of Landlord or otherwise, to the tenants, for the terms ending before, on, or after the expiration date of the Term, at the rentals and on any other conditions (including concessions and free rent) Landlord may determine to be appropriate. To the extent allowed under Washington law, Landlord shall have no obligation to relet all or any part of the Premises and shall not be liable for refusal to relet the Premises, or, if there is such a reletting, for refusal or failure to collect any rent due on the reletting; and any action of Landlord shall not operate to relieve Tenant of any liability under this Lease or otherwise affect the liability. Landlord at Landlord's option may make any physical changes to the Premises that Landlord, in Landlord's sole discretion, considers advisable and necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting Tenant's liability.

(C) Whether or not Landlord retakes possession or relets the Premises, Landlord has the right to recover Landlord's damages, including all lost rents, all legal expenses, all costs incurred by Landlord in restoring the Premises or otherwise preparing the Premises for reletting, and all costs incurred by Landlord in reletting the Premises.

(D) Landlord may split Landlord's cause of action to permit the institution of a separate action for Base Rent, additional rents, or any one or more of them, and neither the institution of any such action, nor the entry of any judgment in any such action, shall bar Landlord from bringing a separate action for the other rent or rents, it being understood that Landlord's forbearance in instituting any such action or in the entry of any judgment for rents, whether Base Rent or additional rent, shall not serve as a defense against or prejudice a subsequent action for the other rent or rents. Tenant waives the right to claim a merger of Base Rent or additional rents in the previous action or in the judgment entered in it. Claims for Base Rent and additional rents may be regarded by Landlord, if it so elects, as separate claims capable of being assigned separately.

(E) To the extent permitted under Washington law, Landlord may sue periodically for damages as they accrue without barring a later action for further damages. Landlord may in one action recover accrued damages plus damages attributable to the remaining Term equal to the difference between the rents reserved in this Lease for the balance of the Term after the time of award, and the fair rental value of the Premises for the same period, discounted at the time of award at a rate of 7% per annum. If Landlord has relet the Premises for the period that otherwise would have constituted all or part of the unexpired portion of the Term, the amount of rent reserved on the reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(F) In the event of a breach or a threatened breach by Tenant of any of the terms or conditions of this Lease, Landlord shall have the right of injunction to restrain Tenant and the right to invoke any remedy allowed by law or in equity, as if the specific remedies of indemnity or reimbursement were not provided in this Lease.

(b) No Waiver. No failure by a party to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance by Landlord of full or partial rent during the continuance of any such breach by Tenant, constitutes a waiver of any such breach or of the agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by a party, and no breach by a party, shall be waived, altered, or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

(c) Rights and Remedies Cumulative. Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

(d) Costs and Attorney Fees. If any suit or action is filed by any party to enforce this Lease or otherwise with respect to the subject matter of this Lease, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of the suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court, and if any petition on review is taken from the decision of the appellate court, reasonable attorney fees as fixed by the higher court.

9. Condemnation and Taking. If there is any condemnation or taking by right of eminent domain or purchase in lieu of condemnation affecting the Premises, the Premises and the Improvements, and Tenant's use of the Premises and the Improvements are subject to the following provisions with respect to condemnation and taking:

(a) Total Taking. If all the Premises and the Improvements are condemned or otherwise taken by right of eminent domain or by purchase in lieu of condemnation, or if the portion of the Premises or the Improvements are so taken or condemned that the portion remaining is not sufficient and suitable as determined in Tenant's reasonable discretion to permit the restoration of the Improvements following the taking or condemnation, this Lease and the Term shall cease and terminate as of the date on which the condemning authority takes possession (any taking or condemnation of the land described in this paragraph 9(a) being called a "*Total Taking*"), and all rents shall be apportioned and paid to the date of the Total Taking.

(b) Parties' Interests on Total Taking. If this Lease expires and terminates as a result of a Total Taking, the rights and interests of the parties shall be determined as follows:

(i) The total award or awards for the Total Taking shall be apportioned and paid in the following order of priority:

(A) Landlord shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award, which is defined and referred to as the "Land Award", and Tenant shall not be entitled to receive any part of the Land Award. The term the "Land Award" means that portion of the award in condemnation or change-of-grade proceedings that represents the fair market value of the Premises (considered as vacant and undeveloped but capable of being developed and of producing the rents provided in this Lease), the consequential damage to any part of the Premises that may not be taken, the diminution of the assemblage or plottage value of the Premises not so taken, and all other elements and factors of damage to the Premises; but in all events the damage or valuation shall take into consideration that the Premises are encumbered by this Lease.

(B) Tenant shall have the right to and shall be entitled to receive directly from the condemning authority that portion of the award referred to as the "Leasehold Award". The term the "Leasehold Award" means that portion of the award in condemnation proceedings that represents the fair market value of Tenant's interest in the Improvements and the fair market value of Tenant's leasehold estate as so taken and, provided this Lease is not terminated as a result of the condemnation or taking, the consequential damages to any part of the Improvements.

(C) It is the intent of the parties that the Land Award and Leasehold Award will equal the total amount of the awards for a Total Taking.

(ii) If the court (or other lawful authority authorized to fix and determine the awards) fails to fix and determine, separately and apart, the Land Award and the Leasehold Award, the awards shall be determined and fixed by written agreement mutually entered into by and between Landlord and Tenant, and if an agreement is not reached within 20 days after the judgment or decree is entered in the proceedings, the controversy shall be resolved in the same court as the condemnation action is brought, in the proceedings as may be appropriate for adjudicating the controversy.

(iii) If the condemning authority refuses or otherwise fails to deduct from the Leasehold Award any rents or other money due from Tenant to Landlord and to pay it directly to Landlord, Tenant shall execute and deliver to Landlord a written and acknowledged assignment of the amount payable out of the Leasehold Award, and if, nevertheless, the full amount of the Leasehold Award is paid to Tenant, Tenant shall hold in trust for Landlord and pay over to Landlord forthwith on the receipt of the award the amount or amounts so due.

(iv) Notwithstanding the foregoing, Tenant shall have the option by notice to Landlord given within 30 days after the amount of the total award is determined to purchase the Premises pursuant to the terms of the Purchase Agreement, whereupon Tenant shall be entitled to receive the Land Award in addition to the Leasehold Award.

(c) Partial Taking. If, during the Term, there is a taking or condemnation of the Premises or the Improvements that is not a Total Taking, or if there is a change in the grade of the streets or avenues on which the Premises abuts, this Lease and the Term shall not cease or terminate but shall remain in full force and effect with respect to the portion of the Premises and of the Improvements not taken or condemned, and in that event the total award or awards for the taking shall be apportioned and paid in the following order of priority: (i) Landlord shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award that equals the Land Award, and Tenant shall not be entitled to receive any part of the Land Award; and (ii) Tenant shall have the right to and shall be entitled to receive directly from the condemning authority the balance of the award, to be applied by Tenant as it shall deem appropriate. Notwithstanding the foregoing, Tenant shall have the option by notice to Landlord given within 30 days after the amount of the total award is determined to purchase the Premises pursuant to the terms of the Purchase Agreement, whereupon Tenant shall be entitled to receive the Land Award in addition to the Leasehold Award.

(d) Disputes over Takings. If there is any dispute between Tenant and Landlord with respect to any issue of fact arising out of a taking mentioned in this paragraph 9, the dispute shall be resolved by the same court in which the condemnation action is brought, in proceedings appropriate for adjudicating the dispute.

10. Miscellaneous.

(a) Amendments. This Lease may be amended only by an instrument in writing executed by Landlord and Tenant.

(b) Applicable Law. This Lease shall be governed by, and construed in accordance with, the laws of the State of Washington.

(c) Binding Effect. This Lease binds and benefits Landlord, and Landlord's successors and assigns, and Tenant, Tenant's successors, and, without waiving restrictions on assignment, Tenant's assigns. Nothing in this Lease, express or implied, confers, or shall be construed or deemed to confer, upon any person, firm, or other entity not a party to this Lease, or the legal representatives of any such person, firm, or entity, any rights, claims, or remedies of any nature or kind whatsoever under, with respect to, or by reason of, this Lease. Each person signing this Lease warrants authority to do so and to bind principals.

(d) Captions and Paragraph Numbers. The captions and paragraph numbers appearing in this Lease are inserted only as a matter of convenience, and in no way define, limit, construe or describe the scope or intent of the paragraphs of this Lease, or in any way affect this Lease. All references to "paragraph", "paragraphs", "Recital", or "Recitals" refer to the corresponding paragraph, paragraphs, Recital, or Recitals of this Lease.

(e) Construction. The parties have participated jointly in the negotiation and drafting of this Lease. If an ambiguity or question of intent or interpretation arises, this Lease shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Lease. Any reference to parties in this Lease is a reference to Landlord and Tenant. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word

“including” means including without limitation or exclusion. All words used in this Lease will be construed to be of the gender or number circumstances require.

(f) Defined Terms. The following words and terms have the following meanings for all purposes of this Lease:

“Agreement” has the meaning set forth in Recital paragraph A.

“Base Rent” has the meaning set forth in paragraph 2(a).

“Cardlock Facilities” has the meaning set forth in Recital paragraph A.

“Commencement Date” has the meaning set forth in paragraph 1(b).

“Hazardous Substances” means and includes (i) any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”, 42 USC § 9601(14), as amended), and any regulations promulgated under that act, (ii) any hazardous waste within the meaning of the Resource Conservation and Recovery Act (“RCRA”, 42 USC §§ 6901 *et seq.*), and any regulations promulgated under that act, (iii) any chemical substance or mixture regulated under the Toxic Substances Control Act (“TSCA”, 15 USC §§ 2601 *et seq.*), and any regulations promulgated under that act, (iv) items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR § 172.101) or designated as hazardous substances by the United States Environmental Protection Agency (40 CFR Part 302), (v) any substance regulated under any state environmental, pollution, or hazardous waste laws or regulations, and (vi) any other pollutant or contaminant of any kind.

“Hazardous Substances” specifically includes, among other things, asbestos, PCBs, petroleum, is fractions, and petroleum products.

“Improvements” means and includes all improvements now on the Premises owned by Landlord (currently consisting of office and warehouse buildings) and any future alterations, additions, replacements, or modifications to the Premises and to such improvements during the Term, but specifically excluding the Cardlock Facilities.

“Knowledge” means the actual knowledge of Landlord.

“Land Award” has the meaning set forth in paragraph 9(b)(i)(A).

“Landlord” has the meaning set forth in the first paragraph of this Lease.

“Lease” means this Commercial Lease, as it may be amended from time to time pursuant to paragraph 10(a).

“Lease Year” means each consecutive yearly period beginning on the Commencement Date and each following anniversary of the Commencement Date and ending on the day before the next such anniversary except for the last Lease Year, which shall end on the last day of the Term or earlier termination date of this Lease.

“Leasehold Award” has the meaning set forth in paragraph 9(b)(i)(B).

“Legal Requirements” means and includes all present and future laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, foreseen or unforeseen, ordinary as well as extraordinary, and including all environmental protection laws such as CERCLA, RCRA, TSCA, the Federal Water Pollution Control Act (33 USC §§ 6901 *et seq.*), the Federal Water Pollution

Control Act (33 USC §§ 1257 *et seq.*), and the Clean Air Act (42 USC §§ 2001 *et seq.*), all regulations under the foregoing federal acts, and all state laws and regulations and local ordinances governing the use, generation, transport, storage, treatment, handling, release, removal, remediation, recovery, or disposal of Hazardous Substances and the control or prevention of the release or discharge of Hazardous Substances into the land, air, or water.

“Modifications” has the meaning set forth in paragraph 3(c).

“Purchase Agreement” has the meaning set forth in paragraph 1(c).

“Person” means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof).

“Premises” has the meaning set forth in Recital paragraph B.

“Proceeds” has the meaning set forth in paragraph 4(c)(ii).

“Remediation Costs” means and includes the costs of investigations and of feasibility or remedial studies and any and all costs incurred in mitigating or remedying any environmental conditions at, on, or about the Premises arising as a result of Tenant’s activities on or occurring on the Premises on or after the Commencement Date, including removal, transportation, and disposal costs; on-site remedial costs; costs associated with air, surface, and/or groundwater and soil remediation; and all other similar costs and expenses incurred to remediate contamination that originated on the Premises on or after the Commencement Date, or resulting from Tenant’s activities on the Premises.

“Sellers” has the meaning set forth in Recital paragraph A.

“Tax” and “Taxes” has the meaning set forth in paragraph 4(b)(i).

“Tenant” means each and every person or party holding part of the interest granted to Tenant herein, but does not include a leasehold mortgagee so long as the only interest held by the leasehold mortgagee is a security interest without a right to immediate possession. Where the context allows it, “Tenant” also includes persons or parties acting with the permission of Tenant.

“Term” has the meaning set forth in paragraph 1(b).

“Total Taking” has the meaning set forth in paragraph 9(a).

“Trustee” has the meaning set forth in paragraph 4(c)(ii).

(g) Invalidity of Particular Provisions. If any term or provision of this Lease or the application of the Lease to any person or circumstances is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(h) No Partnership, etc. No provision of this Lease creates, or shall be deemed to create, a partnership, joint venture, or other relationship between Landlord and Tenant except that of landlord and tenant. Landlord shall have no liability for Tenant’s debts, liabilities, or obligations whatsoever.

(i) No Recordation of Lease. This Lease shall not be recorded. On the execution of this Lease, the parties shall execute, acknowledge, and deliver a memorandum of this Lease which Tenant may record in the real property records. Tenant shall pay the recording costs.

(j) Non-Merger. Upon acquisition of fee title to the Premises by Tenant pursuant to the Purchase Agreement, there shall be a merger of this Lease and of the leasehold estate created by this Lease, with the fee estate in the Premises; provided that such a merger shall not relieve a party for liability that may have occurred prior to the merger or which by its terms survives the termination of this Lease.

(k) Notices. The following provisions govern all notices required or permitted under this Lease:

(i) Any notice required or permitted by the terms of this Lease shall be deemed given if delivered personally to an officer of the party to be notified or sent by United States certified mail, postage prepaid, return-receipt requested, and addressed to the party at its address stated on the first page of this Lease, or any other addresses designated by either party by written notice to the other. Except as otherwise provided in this Lease, every notice, demand, request, or other communication shall be deemed to have been given or served on actual receipt.

(ii) Tenant shall immediately send to Landlord, in the manner prescribed above for giving notice, copies of all notices with respect to the Premises or Improvements given by Tenant to, and copies of all such notices that Tenant receives from, any government authorities, fire regulatory agencies, and similarly constituted bodies, and copies of Tenant's responses to the notices.

(iii) Notwithstanding anything in this paragraph 10(k) to the contrary, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this paragraph 10(k) shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of the person or party to accept delivery of the notice.

(l) Quiet Enjoyment. Landlord represents and warrants that Tenant, on paying the rents and observing and keeping all covenants, agreements, and conditions of this Lease on Tenant's part to be kept, shall quietly have and enjoy the Premises during the Term without hindrance or molestation by anyone, subject, however, to the exceptions, reservations, and conditions of this Lease.

(m) Entire Agreement. This Lease (including exhibits) sets forth the parties' complete, entire, and exclusive understanding and agreement about the subject matter of this Lease and supersedes any and all prior understandings and agreements, whether written or oral, between the parties about the subject matter.

[Signature Page Follows]

TENANT:

JUBITZ CORPORATION, an Oregon corporation

By: *Fred Jubitz*  
Fred Jubitz, President and CEO

LANDLORD:

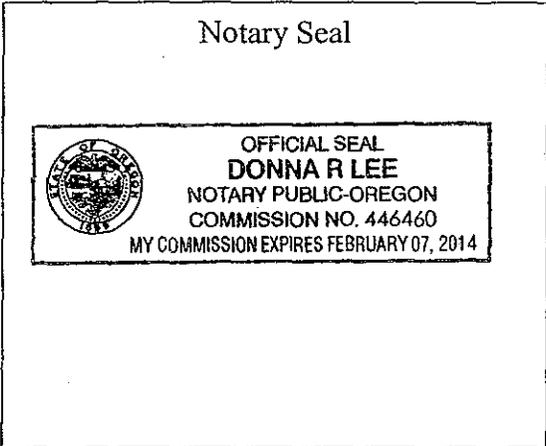
*R. Bruce Holmstrom*  
R. Bruce Holmstrom

*Elizabeth Holmstrom*  
Elizabeth Holmstrom

State of Oregon            )  
  ) ss.  
County of Multnomah    )

I certify that I know or have satisfactory evidence that Fred Jubitz is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President and CEO of Jubitz Corporation, an Oregon corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 7, 2012.



*Donna R. Lee*  
Notary Public for Oregon

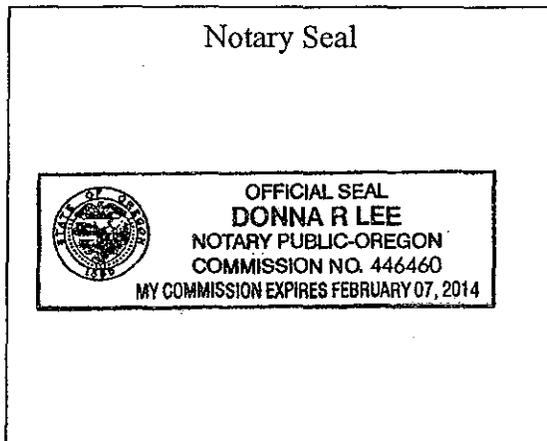
*Donna R. Lee*  
Name of Notary

My appointment expires: *2/7/12*

State of Oregon                    )  
  ) ss.  
County of Multnomah            )

I certify that I know or have satisfactory evidence that Robert Holmstrom and Elizabeth Holmstrom are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: December 7, 2012.



Donna R. Lee  
Notary Public for Oregon

Donna R. Lee  
Name of Notary

My appointment expires: 2/7/14

## EXHIBIT A

### Legal Description of Leased Premises

#### PARCEL I:

A parcel of property situated in the West half of the Southwest quarter of the Northeast quarter of the Northwest quarter of Section 26, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

COMMENCING at the Northeast corner of Lot 13, Block B, TENNY ACRES, according to the plat thereof, recorded in Book "E" of Plats, page 26, Record of Clark County Washington thence South  $00^{\circ}21'20''$  East along the East line of said Lot 13 a distance of 20.55 feet to the True Point of Beginning; thence North  $88^{\circ}33'17''$  East 213.75 feet to the West turnback line of SR5, as shown on Washington Department of Transportation plans, dated August 14, 1992, Main Street to Junction 205 Vic. sheet 23 of 28; thence North  $00^{\circ}41'17''$  West along said West turnback line 310.84 feet to the Easterly extension of the South line of NE 136th Street, said point being 30.00 feet South of, when measured at right angles to, the Easterly extension of the centerline of said NE 136th Street; thence South  $89^{\circ}25'14''$  West along the Easterly extension of said South line and said South line 211.91 feet to the East line of Lot 1 of said Block B; thence South  $00^{\circ}21'20''$  East along the East line of said Lot 1 a distance of 314.07 feet to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Washington, acting by and through its Department of Transportation, by Warranty Deed recorded July 27, 2011 as Recording No. 4781255.

#### PARCEL II:

TOGETHER WITH an easement for ingress, egress and utilities over a 24 foot strip as more fully set forth in documents recorded under Auditor's File Nos. 9311170480 and 9311170483.

# APPENDIX E

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**  
**(Tenney Acres—Headquarters Buildings)**

This AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (this "Agreement") is entered into as of December 1, 2012 by and between Robert B. Holmstrom and Elizabeth Holmstrom (collectively, the "Sellers"), and Jubitz Corporation, an Oregon corporation ("Buyer"). Buyer and Sellers are sometimes referred to herein singularly as a "Party" and collectively as the "Parties."

**RECITALS**

A. Buyer and the Sellers' affiliates have entered into that certain Asset Sale Agreement dated November 28, 2012 (the "Asset Sale Agreement"). Capitalized terms not expressly defined in this Agreement are used as defined in the Asset Sale Agreement, and those definitions are incorporated herein by this reference. Buyer and Seller's affiliates have also entered into other Agreements for Purchase and Sale of Real Property (the "Other RESPAs").

B. Sellers are the owners of certain improved real property consisting of approximately 1.49 acres located at 1503 NE 136th Street, Vancouver, Washington, a legal description of which is attached hereto as Exhibit A (collectively the "Land") consisting of an office, warehouse, and cardlock facility. Under a Commercial Lease dated December 1, 2012, by and among the Parties (the "Lease"), Buyer is occupying and conducting business on the Land.

C. Buyer is desirous of purchasing the Property (as defined herein) and Sellers are desirous of selling the Property all subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows

1. **Purchase of Property.**

Sellers hereby agree to sell and convey to Buyer, and Buyer hereby agrees to purchase from Sellers, the Property, subject to the terms and conditions contained herein. As used in this Agreement, the term "Property" shall include: (a) the Land, (b) any buildings, structures, or other improvements or fixtures owned by Sellers and located on the Land and (c) all rights, privileges, and easements appurtenant to the Land, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on or under the Land (to the extent owned by Sellers) as well as all development rights, air rights, water, water rights, and water stock relating to the Land, and any other easements, rights-of-way or appurtenances used in connection with or existing for the benefit of the Land.

2. **Purchase Price.**

2.1 **Payment.** The purchase price for the Property shall be One Million One Hundred Thousand Dollars (\$1,100,000) (the "Purchase Price"), and shall be paid to Sellers at Closing (as defined herein) in immediately available funds.

2.2 **Credits.** In payment of the Purchase Price, the Buyer shall be credited an amount equal to any Lien arising from the incurrence of indebtedness or other monetary obligation by the Sellers or any of their affiliates.

3. **Title to Property.**

3.1 **Conveyance.** On the Closing Date (defined below), Sellers shall convey to Buyer fee title to the Property by execution and delivery of a warranty deed in the form attached hereto as Exhibit "B" (the "Deed").

3.2 **Title Commitment.** The Buyer hereby acknowledges that it has approved the condition of title to the Seller's interests in the Property as set forth in the title commitment issued by First American Title Company (the "Title Company") and attached hereto as Schedule 3.2 (the "Title Commitment"). On and after the date of this Agreement, the Sellers shall not encumber (voluntarily or involuntarily) the Property with any mortgages, pledges, security

interests, deeds of trust, liens, claims, or other encumbrances or restrictions of any nature ("Lien") materially affecting title to, or Buyer's intended use of, the Property.

3.3 **Title Policy.** On the Closing Date, the Title Company shall be irrevocably committed to issue to Buyer, subject only to payment of the premiums therefor a standard coverage owners policy or policies of title insurance with liability coverage in the amount of the Purchase Price, insuring fee simple title to the Property in Buyer, subject only to those exceptions agreed to or deemed agreed to by Section 3.2 above (collectively, the "Title Policy").

3.4 **Tax-Free Exchange.** Either Buyer or Sellers may elect to structure the sale of the Property as a like-kind exchange under Internal Revenue Code Section 1031 at the sole cost and expense of the electing party. The other party shall reasonably cooperate therein, provided that: (i) the Closing Date shall in no event be extended as a result of the exchange, (ii) the other party shall incur no additional costs, expenses or liabilities in connection with the exchange, (iii) the other party shall not be required to take title to or contract for the purchase or sale of any other property, (iv) and the electing party shall remain fully liable hereunder, and (v) the electing party shall indemnify, defend, protect and hold the other party harmless from and against any and all loss, cost, damage or expense (including attorney fees) incurred by the other party relating to or arising out of its participation in such exchange. The other party agrees that the electing party may at the electing party's sole option, assign this Agreement to a qualified exchange intermediary for purposes of structuring a tax deferred exchange for the electing party's benefit. If the electing party uses a qualified intermediary to effectuate the exchange, any assignment of the rights or obligations of the electing party hereunder shall not relieve, release, or absolve the electing party of its obligations under this Agreement.

4. **Buyer's Conditions to Closing.**

Buyer's obligation to purchase the Property under this Agreement is subject to the fulfillment, on or before the Closing Date, of each of the following conditions, each of which is for the benefit of Buyer and any or all of which may be waived by Buyer in writing at its option:

4.1 **Title Commitment.** Buyer shall have received, a binding commitment from the Title Company to issue the Title Policy required under Section 3.

4.2 **Conveyance Documents.** Buyer shall have received the duly executed and notarized Deed, in recordable form, conveying the Property to Buyer.

4.3 **Performance and Accuracy of Representations.** Sellers shall have timely performed all obligations required by the terms of this Agreement to be performed by Sellers, and all representations of Sellers shall continue to be accurate and correct as of the Closing Date.

4.4 **Non-Foreign Status.** Sellers shall have delivered to Buyer before the Closing Date, the affidavit, certification or notice of Sellers' non-foreign status, required under Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, in a form satisfactory to relieve Buyer of any potential transferee withholding liability under that Code Section.

5. **Sellers' Conditions to Closing.**

Sellers' obligation to sell the Property under this Agreement is subject to the fulfillment, on or before the Closing Date, of the following condition, which is for the benefit of Sellers and which may be waived by Sellers in writing at their option:

5.1 **Performance and Accuracy of Representations.** Buyer shall have timely performed all obligations required by the terms of this Agreement to be performed by Buyer, and all representations of Buyer shall continue to be accurate and correct as of the Closing Date.

5.2 **Simultaneous Closings.** Buyer and Sellers' affiliates shall simultaneously close the transactions contemplated by the Other RESPAs.

6. **Closing.**

6.1 **Location and Timing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place in escrow at the offices of the Title Company on January 6, 2023, or such earlier or later date as the Parties may agree to in writing (the "Closing Date").

**6.2 Deliveries at the Closing.**

(a) Provided that all of the conditions to closing set forth in Section 4 have been satisfied or have been waived, and further provided that the Title Company is prepared to deliver to Buyer the Title Policy required under Section 3, at the Closing, Buyer shall deliver to Sellers the Purchase Price, subject to any credits specified in Section 2.2 above.

(b) Provided that all of the conditions to closing set forth in Section 5 have been satisfied or have been waived, at Closing, Sellers shall execute and deliver the Deed to Buyer for recordation in the Official Records of the county in which the Property is located.

**6.3 No Prorations.** Because Buyer's obligations under the Lease are "triple-net", there will be no prorations of real estate taxes or assessments affecting the Property. All delinquent taxes and assessments, if any, affecting the Property shall be paid at the Closing from Buyer's funds and not from any funds accruing to Sellers.

**6.4 Closing Expenses.** Sellers shall pay the premium for the Title Policy. Subject to the provisions of Section 11.12 herein, all other closing costs, including, without limitation, recording costs and transfer fees, if any, shall be shared by the Parties in accordance with standard practice in the county in which the Property is located.

**6.5 Payment of Liens.** Any Lien arising from the incurrence of indebtedness or other monetary obligation by the Sellers or any of their affiliates, if any, affecting the Property shall be paid from funds accruing to Sellers.

**7. Representations and Warranties of Sellers.**

Sellers, jointly and severally, represent and warrant to Buyer that the statements contained in this Section 7 are correct and complete as of the date of this Agreement (the "Effective Date Representations and Warranties") and will be correct and complete as of the Closing Date as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Section 7 (the "Closing Date Representations and Warranties"):

7.1 **Authority of Seller.** Sellers have the full power, right and authority to enter into this Agreement and to consummate the transaction contemplated hereby. All documents executed by Sellers which are to be delivered to Buyer hereunder are or at the Closing Date will be duly authorized, executed and delivered by Sellers and do not and will not violate any provisions of any agreement or judicial order to which Sellers are a party or to which Sellers or the Property is subject.

7.2 **Validity of Agreement.** This Agreement and all documents or instruments to be executed by Sellers are and shall be valid and binding obligations of Sellers, enforceable against Sellers in accordance with their terms.

7.3 **Agreements.** Other than this Agreement, the Lease, and the Asset Sale Agreement, there are no (or after the Closing Date, there will be no) agreements made by the Sellers or their affiliates, oral or written, affecting or relating to the Property or the use or possession thereof subsequent to the recordation of the Deed, except as may be reflected in the Title Policy and approved by Buyer pursuant to Section 3.3 above.

7.4 **Brokers' Fees.** Sellers have no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated.

7.5 **Title.** Seller represents and warrants to Buyer that Seller owns fee title to the Property, free and clear from all encumbrances except those disclosed on the Title Commitment approved by Buyer pursuant to Section 3.2 above. Except for encumbrances approved by Buyer pursuant to Section 3.2, the Property will be transferred to Buyer pursuant to this Agreement free and clear of all mortgages, deeds of trust, security interests, liens, pledges, charges, encumbrances, claims, liabilities or debts of any kind or nature.

7.6 **Notice of Developments.** The Sellers will give prompt written notice to the Buyer of any adverse development occurring after the Effective Date which would result in a Closing Date Representation and Warranty being materially inaccurate effective as of the Closing Date. If any Closing Date Representation and Warranty will be inaccurate due to any adverse development between the Effective Date and the Closing Date, the Buyer shall have no obligation to consummate the Closing, but (provided that the Sellers have properly notified the

Buyer pursuant to this Section 7.6), if the Buyer elects to waive (or is deemed to waive) the inaccuracy of the Closing Date Representation and Warranty, the Closing Date Representation and Warranty shall be deemed to be amended, qualified, supplemented and corrected by the information contained in the notice for purposes of the Closing Date Representations and Warranties. Within five (5) business days of receipt of notice from any of the Sellers of any event resulting in any Closing Date Representation and Warranty of the Seller becoming inaccurate, the Buyer must either elect to terminate this Agreement, or the Buyer will be deemed to have waived the inaccuracy of such Closing Date Representation and Warranty for all purposes. If any Effective Date Representation or Warranty is inaccurate as of the Effective Date and the Closing Date, the Buyer shall have no obligation to consummate the Closing, but if the Buyer elects to consummate the Closing, the Buyer will not be deemed to have waived the inaccuracy of such Effective Date Representation and Warranty and may pursue any remedy available under applicable law.

**7.7 Disclaimer of Other Representations and Warranties.** Except as expressly set forth in this Section 7, the Sellers make no representation or warranty, express or implied, at law or in equity, in respect of the Property, and any such other representations or warranties are hereby expressly disclaimed. The Buyer hereby acknowledges and agrees that, except to the extent specifically set forth in this Section 7, the Buyer is purchasing the Property on an "AS-IS, WHERE-IS" basis.

**8. Representations and Warranties of Buyer.**

Buyer represents and warrants to the Sellers that the statements contained in this Section 8 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Section 8):

**8.1 Organization.** Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Oregon.

**8.2 Authorization of Transaction.** Buyer has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of Buyer, enforceable in accordance with its terms and

conditions. Buyer need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement.

8.3 **Brokers' Fees.** Buyer has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Sellers could become liable or obligated

8.4 **Noncontravention.** Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Buyer is subject or any provision of its charter or bylaws or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any material agreement, contract, lease, license, instrument, or other arrangement to which Buyer is a party or by which it is bound or to which any material amount of its assets is subject.

8.5 **Buyer's Investigation.** Buyer is entering this Agreement and buying the Property from the Sellers on the basis of the Buyer's own investigation and knowledge of and familiarity with the Property and not on any representation or warranty of the Sellers, except as expressly stated in Section 7 of this Agreement.

9. **Possession; Effect of Closing.**

Possession of the Property shall be delivered to Buyer upon Closing. Upon the Closing, and Buyer's delivery of the Purchase Price to the Sellers, the term of the Lease will terminate, and Buyer's obligations to pay rent falling due thereafter will terminate; provided, however, Buyer's obligations to indemnify and hold Sellers harmless as set forth in the Lease will survive the Closing and will be observed, paid, and performed by Buyer in accordance with their terms.

10. **General.**

10.1 ***Incorporation of Recitals, Exhibits and Schedules.*** The Recitals, Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

10.2 ***No Third-Party Beneficiaries.*** Except as specifically provided in Section 10.5 hereof, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

10.3 ***Joint Party.*** The obligations under this Agreement of the persons comprising Sellers shall be joint and several.

10.4 ***Entire Agreement.*** This Agreement (including the documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they related in any way to the subject matter hereof.

10.5 ***Succession and Assignment.*** This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of his or her or its rights, interests, or obligations hereunder without the prior written approval of Buyer and the Sellers; provided, however, that Buyer may (i) assign any or all of its rights and interests hereunder to one or more of its affiliates, or any successor to all or any substantial part of the business and assets of Buyer, and (ii) designate one or more of its affiliates to perform its obligations hereunder (in any or all of which cases Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder).

10.6 ***Counterparts.*** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

10.7 *Headings.* The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

10.8 *Notices.* All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

(a) if to the Sellers, to:

R. Bruce Holmstrom  
18212 N.W. 67<sup>th</sup> Avenue  
Ridgefield, Washington 98642

with a required copy to:

Slovak Baron & Empey LLP  
1800 E. Tahquitz Canyon Way  
Palm Springs, California 92262  
Attention: Marc E. Empey

(b) if to the Purchaser, to:

Jubitz Corporation  
33 Middlefield Road  
Portland, Oregon 97211  
Attention: Vic Stibolt

with a required copy to:

Miller Nash LLP  
111 S.W. Fifth Avenue, Suite 3400  
Portland, Oregon 97204  
Attention: Mike Ryan

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party set forth above may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

10.9 *Governing Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of Washington without giving effect to any choice or conflict of law provision or rule (whether of the State of Washington or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Washington.

10.10 *Amendments and Waivers.* No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyer and Sellers. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

10.11 *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

10.12 *Expenses.* Each of the Parties will bear his or its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

10.13 *Construction.* The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation. The Parties intend that each representation, warranty, and covenant contained herein shall have independent significance. If any Party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant. If there is any conflict between a provision of this Agreement and a provision of the Asset Sale Agreement, the provision of the Asset Sale Agreement will control.

10.14 *Specific Performance.* Each of the Parties acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each Party agrees that, in addition to all other remedies available under applicable law, the other Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter, in addition to any other remedy to which they may be entitled, at law or in equity.

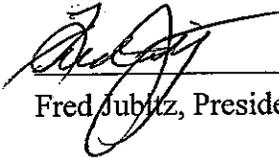
10.15 *Litigation Expenses.* The Parties agree that, in the case of any dispute arising over the terms of this Agreement, the prevailing Party shall be entitled to receive as a component of its recovery all of its costs and expenses of litigation, at trial and on appeal (including, without limitation, costs of investigation, attorneys' fees and expenses, and court costs).

10.16 *No Recordation of Agreement.* This Agreement shall not be recorded. On the execution of this Agreement, the parties shall execute, acknowledge, and deliver a memorandum of this Agreement, which Buyer may record in the real property records. Buyer shall pay the recording costs.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

BUYER:

JUBITZ CORPORATION, an Oregon corporation

By:   
Fred Jubitz, President and CEO

SELLERS:

  
Robert B. Holmstrom

  
Elizabeth Holmstrom

**EXHIBIT "A"**

Legal Description of the Property

**PARCEL I:**

A parcel of property situated in the West half of the Southwest quarter of the Northeast quarter of the Northwest quarter of Section 26, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

COMMENCING at the Northeast corner of Lot 13, Block B, TENNY ACRES, according to the plat thereof, recorded in Book "E" of Plats, page 26, Record of Clark County Washington thence South 00°21'20" East along the East line of said Lot 13 a distance of 20.55 feet to the True Point of Beginning; thence North 88°33'17" East 213.75 feet to the West turnback line of SR5, as shown on Washington Department of Transportation plans, dated August 14, 1992, Main Street to Junction 205 Vic. sheet 23 of 28; thence North 00°41'17" West along said West turnback line 310.84 feet to the Easterly extension of the South line of NE 136th Street, said point being 30.00 feet South of, when measured at right angles to, the Easterly extension of the centerline of said NE 136th Street; thence South 89°25'14" West along the Easterly extension of said South line and said South line 211.91 feet to the East line of Lot 1 of said Block B; thence South 00°21'20" East along the East line of said Lot 1 a distance of 314.07 feet to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Washington, acting by and through its Department of Transportation, by Warranty Deed recorded July 27, 2011 as Recording No. 4781255.

**PARCEL II:**

TOGETHER WITH an easement for ingress, egress and utilities over a 24 foot strip as more fully set forth in documents recorded under Auditor's File Nos. 9311170480 and 9311170483.

**EXHIBIT "B"**  
**Deed to Property**

**Return Address:** Jonathon L. Goodling  
Miller Nash LLP  
111 S.W. Fifth Avenue, Suite 3400  
Portland, Oregon 97204

**AUDITOR/RECORDER'S INDEXING FORM**

<b>Document Title(s):</b> 1.
<b>Reference Number(s) of Documents assigned or released:</b>
<b>Grantor(s):</b> 1. <input type="checkbox"/> Additional names on page _____ of document
<b>Grantee(s):</b> 1. <input type="checkbox"/> Additional names on page _____ of document
<b>Legal Description):</b> (abbreviated) <input type="checkbox"/> Additional legal is on page _____ of document
<b>Assessor's Property Tax Parcel/Account Number:</b>

**STATUTORY WARRANTY DEED**

Robert B. Holmstrom and Elizabeth Holmstrom, GRANTORS, for valuable consideration in hand paid, convey and warrant to Jubitz Corporation, an Oregon corporation, GRANTEE the real property located in Clark County, Washington, described on Exhibit A attached hereto, subject to the encumbrances described on Exhibit B attached hereto.





## EXHIBIT A

### Legal Description

#### PARCEL I:

A parcel of property situated in the West half of the Southwest quarter of the Northeast quarter of the Northwest quarter of Section 26, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

COMMENCING at the Northeast corner of Lot 13, Block B, TENNY ACRES, according to the plat thereof, recorded in Book "E" of Plats, page 26, Record of Clark County Washington thence South 00°21'20" East along the East line of said Lot 13 a distance of 20.55 feet to the True Point of Beginning; thence North 88°33'17" East 213.75 feet to the West turnback line of SR5, as shown on Washington Department of Transportation plans, dated August 14, 1992, Main Street to Junction 205 Vic. sheet 23 of 28; thence North 00°41'17" West along said West turnback line 310.84 feet to the Easterly extension of the South line of NE 136th Street, said point being 30.00 feet South of, when measured at right angles to, the Easterly extension of the centerline of said NE 136th Street; thence South 89°25'14" West along the Easterly extension of said South line and said South line 211.91 feet to the East line of Lot 1 of said Block B; thence South 00°21'20" East along the East line of said Lot 1 a distance of 314.07 feet to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Washington, acting by and through its Department of Transportation, by Warranty Deed recorded July 27, 2011 as Recording No. 4781255.

#### PARCEL II:

TOGETHER WITH an easement for ingress, egress and utilities over a 24 foot strip as more fully set forth in documents recorded under Auditor's File Nos. 9311170480 and 9311170483.

EXHIBIT B

Permitted Encumbrances

1. Reservation of all existing and future rights to light, view and air, together with the rights of access to and from the State Highway constructed on lands conveyed in Deed from the State of Washington:  
Recorded: April 22, 1958  
Recording No.: G238261
  
2. Easement, including terms and provisions contained therein:  
Recording Information: March 11, 1959 as Recording No. G257684  
In Favor of: Public Utility District No. 1 of Clark County  
For: Water pipelines
  
3. Easement, including terms and provisions contained therein:  
Recording Information: March 6, 1975 as Recording No. G683636  
In Favor of: Public Utility District No. 1 of Clark County  
For: Sewer
  
4. Easement, including terms and provisions contained therein:  
Recording Information: November 17, 1993 as Recording No. 9311170479  
In Favor of: Adjacent property owners  
For: Storm drainage
  
5. The terms and provisions contained in the document entitled "Agreement for Exchange of Easements" recorded November 17, 1993 as Recording No. 9311170483 of Official Records.
  
6. Covenants, conditions, restrictions and/or easements:  
Recorded: July 31, 1996  
Recording No.: 9607310237

7. Easement, including terms and provisions contained therein:  
Recording Information: September 16, 1996 as Recording No. 9609160005  
In Favor of: Clark County  
For: Existing utilities in vacated street area
8. Reservation of all existing and future rights to light, view and air, together with the rights of access to and from the State Highway constructed on lands conveyed in Deed from the State of Washington:  
Recorded: July 27, 2011  
Recording No.: 4781255
9. Easement, including terms and provisions contained therein:  
Recording Information: July 27, 2011 as Recording No. 4781256  
In Favor of: The State of Washington, acting by and through its Department of Transportation  
For: Construction of a retaining a wall (NOTE: Said easement is temporary and terminates on December 31, 2014)

**SCHEDULE 3.2**

Title Commitment

(attached)

1. WA Commercial Commitment

Form WA-5 (6/76)  
Commitment Face Page

File No. NCS-567181-1-OR1



**COMMITMENT FOR TITLE INSURANCE**

Issued by

**FIRST AMERICAN TITLE INSURANCE COMPANY**

First American Title Insurance Company, herein called the Company, for valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagor of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor, all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of the Commitment or by subsequent endorsement.

This Commitment if preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six (6) months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company. This Commitment shall not be valid or binding until countersigned by an authorized officer or agent.

IN WITNESS WHEREOF, the Company has caused this commitment to be signed and sealed, to become valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws. This Commitment is effective as of the date shown in Schedule A as "Effective Date."



*First American Title Insurance Company*

By: *[Signature]* President

Attest: *[Signature]* Secretary

By: *[Signature]* Countersigned

*First American Title Insurance Company*

Form WA-5 (6/76)  
Commitment

File No.: NCS-567181-1-OR1  
Page No. 1



**First American Title Insurance Company**  
**National Commercial Services**  
200 SW Market Street, Suite 250, Portland, OR 97201  
(503)795-7600 - FAX (866)678-0581

Rachael Rodgers  
(503)795-7608  
rrogers@firstam.com

Melinda Dee Sylvester  
(503)795-7697  
mdeesylvester@firstam.com

To: Jubitz Corporation, Via Stiboltz  
33 NE Middlefield Road  
Portland, OR 97211  
Attn: Via Stiboltz

File No.: NCS-567181-1-OR1  
Your Ref No.: Jubitz Purchase /  
1503 NE 136th Street, Vancouver

**SCHEDULE A**

1. Commitment Date: September 14, 2012 at 7:30 A.M.

2. Policy or Policies to be Issued:

	AMOUNT	PREMIUM	TAX
ALTA Standard Owner Policy - 2006	\$ TBD	\$ TBD	\$ TBD

Proposed Insured:  
Jubitz Corporation

3. The estate or interest in the land described on Page 2 herein is Fee Simple, and title thereto is at the effective date hereof vested in:

R. Bruce Holmstrom and Elizabeth Holmstrom, husband and wife

4. The land referred to in this Commitment is described as follows:

The land referred to in this report is described in Exhibit "A" attached hereto.

*First American Title Insurance Company*

First American Title

**EXHIBIT 'A'**

**LEGAL DESCRIPTION:**

**PARCEL I:**

A parcel of property situated in the West half of the Southwest quarter of the Northeast quarter of the Northwest quarter of Section 26, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

COMMENCING at the Northeast corner of Lot 13, Block B, TENNY ACRES, according to the plat thereof, recorded in Book "E" of Plats, page 26, Record of Clark County Washington thence South 00°21'20" East along the East line of said Lot 13 a distance of 20.55 feet to the True Point of Beginning; thence North 88°33'17" East 213.75 feet to the West turnback line of SR5, as shown on Washington Department of Transportation plans, dated August 14, 1997, Main Street to Junction 205 Vld. sheet 23 of 26; thence North 00°41'17" West along said West turnback line 310.84 feet to the Easterly extension of the South line of NE 136th Street, said point being 30.00 feet South of, when measured at right angles to, the Easterly extension of the centerline of said NE 136th Street; thence South 89°25'14" West along the Easterly extension of said South line and said South line 211.91 feet to the East line of Lot 1 of said Block B; thence South 00°21'20" East along the East line of said Lot 1 a distance of 314.07 feet to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Washington, acting by and through its Department of Transportation, by Warranty Deed recorded July 27, 2011 as Recording No. 4781255.

**PARCEL II:**

TOGETHER WITH an easement for ingress, egress and utilities over a 24 foot strip as more fully set forth in documents recorded under Auditor's File Nos. 9311170480 and 9311170483.

*First American Title Insurance Company*

First American Title

**SCHEDULE B - SECTION 1  
REQUIREMENTS**

The following are the Requirements to be complied with:

- Item (A) Payment to or for the account of the Grantors or Mortgageors of the full consideration for the estate or interest to be insured.
- Item (B) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record.
- Item (C) Pay us the premiums, fees and charges for the policy.
- Item (D) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.

**SCHEDULE B - SECTION 2  
GENERAL EXCEPTIONS**

The Policy or Policies to be issued will contain Exceptions to the following unless the same are disposed of to the satisfaction of the Company:

- A. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
- B. Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of person in possession thereof.
- C. Easements, claims of easement or encumbrances which are not shown by the public records.
- D. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
- E. (1) Unpatented mining claims; (2) reservations or exceptions in patents or in acts authorizing the issuance thereof; (3) Water rights, claims or title to water, whether or not the matters excepted under (1), (2) or (3) are shown by the public records; (4) Indian Tribal Codes or Regulations, Indian Treaty or Aboriginal Rights, including easements or equitable servitudes.
- F. Any lien, or right to a lien, for services, labor, materials or medical assistance theretofore or hereafter furnished, imposed by law and not shown by the public records.
- G. Any service, installation, connection, maintenance, construction, tap or reimbursement charges/costs for sewer, water, garbage or electricity.
- H. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgages thereon covered by this Commitment.

*First American Title Insurance Company*

**SCHEDULE B - SECTION 2  
(continued)  
SPECIAL EXCEPTIONS**

1. Lien of the Real Estate Excise Sales Tax and Surcharge upon any sale of said premises, if unpaid. As of the date herein, the excise tax rate for the City of Vancouver is at 1.78%. Levy/Area Code: 037.076

For all transactions recorded on or after July 1, 2005:

- A fee of \$10.00 will be charged on all exempt transactions;
- A fee of \$5.00 will be charged on all taxable transactions in addition to the excise tax due.

2. General Taxes for the year 2012.

Tax Account No.:	186584000
Amount Billed:	\$ 11,720.58
Amount Paid:	\$ 5,860.72
Amount Due:	\$ 5,859.86
Assessed Land Value:	\$ 275,800.00
Assessed Improvement Value:	\$ 532,441.00

3. City liens, if any, for the city of Vancouver.

4. These premises are within the boundaries of the Clean Water Program District and are subject to the levies and assessments thereof.

5. Reservation of all existing and future rights to light, view and air, together with the rights of access to and from the State Highway constructed on lands conveyed in Deed from the State of Washington:

Recorded:	April 22, 1958
Recording No.:	G238261

6. Easement, including terms and provisions contained therein:

Recording Information:	March 11, 1959 as Recording No. G257684
In Favor of:	Public Utility District No. 1 of Clark County
For:	Water pipelines

7. Easement, including terms and provisions contained therein:

Recording Information:	March 6, 1975 as Recording No. G683636
In Favor of:	Public Utility District No. 1 of Clark County
For:	Sewer

8. Easement, including terms and provisions contained therein:

Recording Information:	November 17, 1993 as Recording No. 9311170479
In Favor of:	Adjacent property owners
For:	Storm drainage

*First American Title Insurance Company*

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First American Title

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Form WA-5 (5/76)  
Covenant

File No.: NCS-567181-1-0R1  
Page No. 3

9. The terms and provisions contained in the document entitled "Agreement for Exchange of Easements" recorded November 17, 1993 as Recording No. 9311170483 of Official Records.
10. Covenants, conditions, restrictions and/or easements:  
Recorded: July 31, 1996  
Recording No.: 9607310237
11. Easement, including terms and provisions contained therein:  
Recording Information: September 16, 1996 as Recording No. 9609160005  
In Favor of: Clark County  
For: Existing utilities in vacated street area
12. Reservation of all existing and future rights to light, view and air, together with the rights of access to and from the State Highway constructed on lands conveyed in Deed from the State of Washington:  
Recorded: July 27, 2011  
Recording No.: 4781255
13. Easement, including terms and provisions contained therein:  
Recording Information: July 27, 2011 as Recording No. 4781256  
In Favor of: The State of Washington, acting by and through its Department of Transportation  
For: Construction of a retaining wall (NOTE: Said easement is temporary and terminates on December 31, 2014)
14. Unrecorded leaseholds, if any, rights of vendors and security agreement on personal property and rights of tenants, and secured parties to remove trade fixtures at the expiration of the term.

*First American Title Insurance Company*

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First American Title

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INFORMATIONAL NOTES

- A. Effective January 1, 1997, and pursuant to amendment of Washington State Statutes relating to standardization of recorded documents, the following format and content requirements must be met. Failure to comply may result in rejection of the document by the recorder.
- B. Any sketch attached hereto is done so as a courtesy only and is not part of any title commitment or policy. It is furnished solely for the purpose of assisting in locating the premises and First American expressly disclaims any liability which may result from reliance made upon it.
- C. The description can be abbreviated as suggested below if necessary to meet standardization requirements. The full text of the description must appear in the document(s) to be insured.
- Ptn W½ of SW¼NE¼NW¼ Sec 26, T3N, R1E
- APN: 186584000
- APN:
- Property Address: 1503 Northeast 134th Street, Vancouver, WA
- D. A fee will be charged upon the cancellation of this Commitment pursuant to the Washington State Insurance Code and the filed Rate Schedule of the Company.

END OF SCHEDULE B

*First American Title Insurance Company*



*First American Title Insurance Company*  
*National Commercial Services*

**COMMITMENT**  
**Conditions and Stipulations**

1. The term "mortgage" when used herein shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of a defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment, other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option, may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of Policy or Policies committed for, and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the Policy or Policies committed for and such liability is subject to the insuring provisions, exclusion from coverage, and the Conditions and Stipulations of the form of policy or Policies committed for in favor of the proposed Insured which are hereby incorporated by reference, and are made a part of this Commitment except as expressly modified herein.
4. Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest or the lien of the Insured mortgage covered hereby or any action asserting such claim, shall be restricted to the provisions and Conditions and Stipulations of this Commitment.

*First American Title Insurance Company*

## CLOSING CERTIFICATE

Vancouver Oil Company, Inc., a Washington corporation, Pacific Fuel Transport, Inc. a Washington corporation, and R. Bruce Holmstrom (collectively "Sellers") hereby certify as of December 7, 2012, that the undersigned are officers of the Sellers and that, as such, the undersigned are authorized to execute and deliver this closing certificate (this "Certificate") in the name and on behalf of the Sellers in connection with the Asset Sale Agreement dated November 28, 2012 (the "Sale Agreement"), by and among the Sellers and Jubitz Corporation, an Oregon corporation ("Purchaser").

Unless otherwise defined herein, capitalized terms used in this Certificate shall have the meanings set forth in the Sale Agreement.

Pursuant to Section 5.2(b) of the Sale Agreement, Sellers certify that:

All representations and warranties of the Sellers contained in Article II of the Sale Agreement are true and correct in all material respects at and as of the Closing, except to the extent such representations and warranties are expressly made only as of an earlier date, in which case as of such earlier date, and except to the extent such representations and warranties are supplemented or modified pursuant to Section 4.6, and the Sellers have performed and complied in all material respects with their respective covenants and obligations under the Sale Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Certificate as of the date first written above.

### SELLERS:

Vancouver Oil Company, Inc.,  
a Washington Corporation

By:   
Name: R. Bruce Holmstrom  
Title: Chief Executive Officer

Pacific Fuel Transport, Inc.,  
a Washington Corporation

By:   
Name: R. Bruce Holmstrom  
Title: President

  
R. Bruce Holmstrom

# APPENDIX F

4

Real Estate Excise Tax  
Ch. 11 Rev. Laws 1991  
EXEMPT  
For details of tax paid see  
Doug Lasher  
Clark County Treasurer  
RS 7/8/99

RETURN ADDRESS

Olson Engineering Inc.  
1111 Broadway  
Vancouver, WA 98660

Please print neatly or type information

Document Title(s)

Reciprocal Parking Easement Agreement

Reference Numbers of related documents

Additional Reference #'s on page

Grantor(s) (Last, First and Middle Initial)

Holmstrom, R. Bruce Holmstrom, Elizabeth  
Salmon Creek Lodging, LLC.

Additional grantors on page

Grantee(s) (Last, First and Middle Initial)

Salmon Creek Lodging, LLC.  
Holmstrom, R. Bruce Holmstrom, Elizabeth

Additional grantees on page

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

NW 1/4 of Section 26, Township 3 North, Range 1 East of the Willamette  
Meridian, Clark County, Washington. Additional legal is on page

Assessor's Property Tax Parcel / Account Number

186848 (357) Additional parcel #'s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

z/masterforms/6363.recording

Exhibit 16  
12.4.17  
Date: Holmstrom  
Rider & Associates  
800-869-0864

**AFTER RECORDING, RETURN TO:**

Brian R. Heurlin  
Heurlin, Potter & Leatham, P.S.  
P.O. Box 611  
Vancouver WA 98666-0611



Space above this line reserved for Recorder's use

**RECIPROCAL PARKING EASEMENT AGREEMENT**

**THIS RECIPROCAL PARKING EASEMENT AGREEMENT ("Agreement")** is entered into as of July 2, 1999 between **R. BRUCE HOLMSTROM** and **ELIZABETH HOLMSTROM**, husband and wife, their successors and assigns ("**HOLMSTROM**") and **SALMON CREEK LODGING, LLC.**, a limited liability company, its successors and assigns ("**LODGING**").

A. **HOLMSTROM** is the owner of real property described on the attached **Exhibit A ("Parcel 1")**.

B. **LODGING** is the owner of the real property described on the attached **Exhibit B ("Parcel 2")**.

C. **HOLMSTROM** and **LODGING** wish to establish reciprocal easements for the mutual use of 11 parking spaces by each of the owners on the other's parcel as described herein which 11 parking spaces shall be located upon each of said Parcel 1 and Parcel 2 without specific designation as to location (the "**Easement Area**").

**AGREEMENT**

1. **GRANT OF EASEMENTS.** **HOLMSTROM** hereby grants and conveys to **LODGING** a mutual, reciprocal, perpetual and non-exclusive easement for parking consisting of 11 parking spaces to be located within Parcel 1. **LODGING** hereby grants and conveys to **HOLMSTROM** a mutual, reciprocal, perpetual and nonexclusive easement for parking consisting of 11 parking spaces to be located within Parcel 2. (The easements are collectively referred to herein as "Easement").

2. **NO BARRIERS.** No fences, walls or barriers to access will be erected or permitted that would unreasonably interfere with the access between Parcel 1 and Parcel 2 for the use of such parking spaces or with the use of such parking spaces.

RECIPROCAL PARKING EASEMENT AGREEMENT - 1



3. **RIGHTS OF USE.** Each party, its tenants, and the agents, employees, customers and invitees of such parties and of their tenants, shall have the non-exclusive right to use the parking spaces as herein described.

4. **MAINTENANCE OF THE EASEMENT AREA.** Each of the parties hereto shall maintain their respective parking areas in good condition at the sole expense of the owner of the property on which the parking spaces are located. Maintenance obligations shall include repair, patching, sweeping, paving, striping, trimming/pruning of landscape and snow and debris removal.

5. **TAXES.** Each party shall pay when due all real property taxes, assessments or other charges against the portion of the Easement Area to which such party holds fee title and on which the parking spaces are located. There shall be no right of contribution from the other party for such items.

6. **CONDEMNATION.** In the event that any part of the parcels of real estate described herein is taken by power of eminent domain, the proceeds from any such condemnation shall belong exclusively to the fee title owner of the property so taken.

7. **TERMINATION, MODIFICATION AND ABANDONMENT.** This Agreement may be terminated, modified, or abandoned at any time by recording in the real property records of Clark County, Washington, an instrument executed by all of the parties, referring to this Agreement and declaring the Easement terminated, modified or abandoned.

8. **DEDICATION.** The Easement shall be for the private use of the persons or entities described in this Agreement. The Easement is not intended to create, nor shall it be construed as creating, any rights in or for the benefit of the general public.

9. **INDEMNIFICATION AND INSURANCE.** HOLMSTROM and LODGING shall forever defend, indemnify and hold the other harmless from any claim, loss or liability arising out of or in any way connected with that party's use of the Easement located on the other's property. Upon execution hereof, each party shall procure and thereafter maintain a commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability and medical payments with a general aggregate limit of not less than \$500,000.00 and a per occurrence limit of not less than \$100,000.00. Such insurance shall cover all risks arising directly or indirectly out of such party's activities on the Easement Area or any condition of the portion of the Easement Area to which such party holds fee title.

10. **TERM.** This Agreement shall be perpetual (except as provided below) and shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors, or assigns. By unanimous consent, HOLMSTROM and LODGING (or their successors and assigns, as owners of the respective properties) may agree to terminate this Agreement, in which case they shall cause to be recorded an instrument acknowledging such termination.

RECIPROCAL PARKING EASEMENT AGREEMENT - 2

11. **STATUS OF TITLE.** This Agreement is granted subject to all prior easements and encumbrances of record. Concurrently with the execution hereof, HOLMSTROM shall deliver to LODGING a fully executed Consent and Agreement from all current lienholders with liens affecting Parcel 1 in the form attached as **Exhibit C** and LODGING shall deliver to HOLMSTROM a fully executed consent from all current lienholders with liens affecting Parcel 2 in the form attached as **Exhibit C**. Each party warrants that it will defend the title and the other party's interest under this Agreement against any mortgage, tax lien of construction lien claim affecting Parcel 1 or Parcel 2 which asserts priority over the interest of the other party under this Agreement and which is attributable to the party itself or its tenants.

12. **PROTECTION OF RIGHTS OF MORTGAGEES.** No breach of the provisions in this Agreement shall defeat or render invalid the lien of any mortgage(s) or deed(s) of trust now or hereunder executed which affects the parties' respective interests pursuant to this Agreement; provided, however, that upon the sale under foreclosure of any mortgage(s) or under the provisions of any deed(s) of trust, any purchaser at such sale, and its successors and assigns, shall hold any and all property interest so purchased subject to all of the provisions of this Agreement.

13. **WAIVER.** Failure at any time to require performance of any provision of this Agreement shall not limit a party's right to enforce the provision. Any waiver of any breach of any provision shall not be a waiver of any succeeding breach or a waiver of any provision of this Agreement.

14. **ATTORNEYS' FEES.** In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on appeal of such suit or action, and on any petition for review, in addition to all other sums provided by law.

15. **INDENMITY.** Each party shall defend, indemnify and hold the other harmless from any claim, loss, liability, or expense (including reasonable attorneys' fees) arising out of or in connection with the party's own negligence or failure to comply with the terms, restrictions and provisions of this Agreement.

16. **ENTIRE AGREEMENT.** This Agreement supersedes and replaces all written and oral arrangements previously made or existing between HOLMSTROM and LODGING with respect to the parking space matters set forth above.

17. **GOVERNING LAW.** This Agreement will be governed and construed in accordance with the laws of the State of Washington.

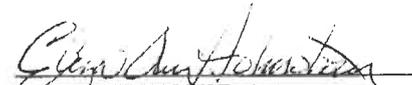
18. **APPURTENANT RIGHTS.** This Agreement shall be binding upon the parties hereto, their respective successors and assigns, and appurtenant to the real property described on the attached Exhibits.

19. **COVENANTS RUNNING WITH THE LAND.** The terms, covenants and conditions of this Agreement shall be considered covenants running with the land and shall inure to the benefit of, and shall be binding upon, the parties hereto and their successors and assigns.
20. **AMENDMENTS.** Except as otherwise set forth herein, this Agreement may not be modified, amended, or terminated except by the written agreement of both parties. A party may waive one or more of its rights under this Agreement in writing signed by the party, and such writing need not be recorded. Otherwise, no modification or amendment of any provision of this Agreement shall be binding unless signed by both parties and recorded in the real property records of Clark County, Washington.
21. **EFFECT OF INVALIDATION.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the validity of the remaining provisions of this Agreement shall not be affected thereby.
22. **INJUNCTIVE RELIEF.** In the event of any violation or threatened violation by any party hereto of this Agreement, the other party shall have the right to adjoin such violation or threatened violation in a Court of competent jurisdiction. The parties hereto do hereby acknowledge that there would be no adequate remedy of law available to the nondefaulting party in the event of a violation of this agreement and consequently, the nondefaulting party should be entitled to such an injunction in addition to any and all other remedies which may be provided by law.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed as the day and year first written above.

HOLMSTROM:

  
R. BRUCE HOLMSTROM

  
ELIZABETH HOLMSTROM

LODGING

SALMON CREEK LODGING, L.L.C., a  
Washington Limited Liability Company

By:   
Its: MEMBER

STATE OF WASHINGTON )  
 ) ss.  
County of Clark )

This instrument was acknowledged before me on July 2, 1999, by R. BRUCE HOLMSTROM and ELIZABETH HOLMSTROM.



Signature: [Signature]  
Name (Print): JOHANN MORGAN  
NOTARY PUBLIC in and for the State of  
Washington, residing at Clark Co  
My appointment expires: 5/02

STATE OF WASHINGTON )  
 ) ss.  
County of Clark )

This instrument was acknowledged before me on July 2, 1999, by David Heald as President of SALMON CREED LODGING, L.L.C. a Washington limited liability company.



Signature: [Signature]  
Name (Print): JOHANN MORGAN  
NOTARY PUBLIC in and for the State of  
Washington, residing at Clark Co  
My appointment expires: 5/02

RECIPROCAL PARKING EASEMENT AGREEMENT - 5



**Exhibit "A"**

The West one half of the Southwest one quarter of the Northeast one quarter of the Northwest one quarter of Section 26, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT therefrom that portion conveyed to the State of Washington by deed recorded in Book D-47, Page 556-B, records of Clark County, Washington.

ALSO EXCEPT County Roads.

RECIPROCAL PARKING EASEMENT AGREEMENT - 6



**Exhibit "B"**

**LEGAL DESCRIPTION FOR LODGING PROPERTY**

Lot 12, Block B, TENNY ACRES, according to the plat thereof, recorded in volume "E" of Plats, page 26, records of Clark County, Washington.

SUBJECT TO any taxes, assessments or charges that may be due Clark County Public Sewer District No. 1 by reason of the land being situated in said District or by reason of services received from said District.

and

That portion of the South 200 feet of Lot 13, Block "B", Tenny Acres, according to the plat thereof recorded in volume "E" of Plats, page 26, records of said county, lying northerly of a line described as beginning at a point opposite Highway Engineer's Station 134<sup>th</sup> St. 4+50 on the 134<sup>th</sup> Street Line Survey of SR 5, Main St. to Jet SR 205 Vic. and 50 feet northerly therefrom; thence northeasterly to a point opposite Highway Engineer's Station 134<sup>th</sup> St. 6+ ( ) on said Line Survey and 70 feet northerly therefrom; thence easterly, parallel with said Line Survey to the East Line of said Lot 13 and the end of this line description.

RECIPROCAL PARKING EASEMENT AGREEMENT - 7

# APPENDIX G

RETURN ADDRESS

Olson Engineering Inc.  
1111 Broadway  
Vancouver, WA 98660

Real Estate Excise Tax  
Ch. 11 Rev. Laws 1995  
EXEMPT  
Affd. # 0 Date 8/6/99  
By [Signature] Deputy

Please print neatly or type information

Document Title(s)

Reciprocal Parking Easement Agreement  
(Amendment to recording 3126970, 7/8/99)

Reference Numbers of related documents

\_\_\_\_\_ Additional Reference #'s on page \_\_\_\_\_

Grantor(s) (Last, First and Middle Initial)

Holmstrom, R. Bruce Holmstrom, Elizabeth  
Salmon Creek Lodging, LLC.  
\_\_\_\_\_ Additional grantors on page \_\_\_\_\_

Grantee(s) (Last, First and Middle Initial)

Salmon Creek Lodging, LLC.  
Holmstrom, R. Bruce Holmstrom, Elizabeth  
\_\_\_\_\_ Additional grantees on page \_\_\_\_\_

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

NW 1/4 of Section 26, Township 3 North, Range 1 East of the Willamette  
Meridian, Clark County, Washington. Additional legal is on page \_\_\_\_\_

Assessor's Property Tax Parcel / Account Number

186848 (357)  
\_\_\_\_\_ Additional parcel #'s on page \_\_\_\_\_

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

z/masterforms/6363 recording

Exhibit 17  
12.4.17  
Date: Holmstrom  
Rider & Associates  
800-869-0864

**AFTER RECORDING, RETURN TO:**

Brian R. Heurlin  
Heurlin, Potter & Leatham, P.S.  
P.O. Box 611  
Vancouver WA 98666-0611

Space above this line reserved for Recorder's use

**RECIPROCAL PARKING EASEMENT AGREEMENT**

**THIS RECIPROCAL PARKING EASEMENT AGREEMENT ("Agreement")** is entered into as of July 2, 1999 between **R. BRUCE HOLMSTROM** and **ELIZABETH HOLMSTROM**, husband and wife, their successors and assigns ("**HOLMSTROM**") and **SALMON CREEK LODGING, LLC.**, a limited liability company, its successors and assigns ("**LODGING**").

A. **HOLMSTROM** is the owner of real property described on the attached **Exhibit A ("Parcel 1")**.

B. **LODGING** is the owner of the real property described on the attached **Exhibit B ("Parcel 2")**.

C. **HOLMSTROM** and **LODGING** wish to establish reciprocal easements for the mutual use of 11 parking spaces by each of the owners on the other's parcel as described herein which 11 parking spaces shall be located upon each of said Parcel 1 and Parcel 2 without specific designation as to location (the "**Easement Area**").

**AGREEMENT**

1. **GRANT OF EASEMENTS.** **HOLMSTROM** hereby grants and conveys to **LODGING** a mutual, reciprocal, perpetual and non-exclusive easement for parking consisting of 11 parking spaces and one truck berth (12'x35') to be located within Parcel 1. **LODGING** hereby grants and conveys to **HOLMSTROM** a mutual, reciprocal, perpetual and nonexclusive easement for parking consisting of 12 parking spaces to be located within Parcel 2. (The easements are collectively referred to herein as "Easement").

2. **NO BARRIERS.** No fences, walls or barriers to access will be erected or permitted that would unreasonably interfere with the access between Parcel 1 and Parcel 2 for the use of such parking spaces or with the use of such parking spaces.

3. **RIGHTS OF USE.** Each party, its tenants, and the agents, employees, customers and invitees of such parties and of their tenants, shall have the non-exclusive right to use the parking spaces as herein described.
4. **MAINTENANCE OF THE EASEMENT AREA.** Each of the parties hereto shall maintain their respective parking areas in good condition at the sole expense of the owner of the property on which the parking spaces are located. Maintenance obligations shall include repair, patching, sweeping, paving, striping, trimming/pruning of landscape and snow and debris removal.
5. **TAXES.** Each party shall pay when due all real property taxes, assessments or other charges against the portion of the Easement Area to which such party holds fee title and on which the parking spaces are located. There shall be no right of contribution from the other party for such items.
6. **CONDEMNATION.** In the event that any part of the parcels of real estate described herein is taken by power of eminent domain, the proceeds from any such condemnation shall belong exclusively to the fee title owner of the property so taken.
7. **TERMINATION, MODIFICATION AND ABANDONMENT.** This Agreement may be terminated, modified, or abandoned at any time by recording in the real property records of Clark County, Washington, an instrument executed by all of the parties, referring to this Agreement and declaring the Easement terminated, modified or abandoned.
8. **DEDICATION.** The Easement shall be for the private use of the persons or entities described in this Agreement. The Easement is not intended to create, nor shall it be construed as creating, any rights in or for the benefit of the general public.
9. **INDEMNIFICATION AND INSURANCE.** HOLMSTROM and LODGING shall forever defend, indemnify and hold the other harmless from any claim, loss or liability arising out of or in any way connected with that party's use of the Easement located on the other's property. Upon execution hereof, each party shall procure and thereafter maintain a commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability and medical payments with a general aggregate limit of not less than \$500,000.00 and a per occurrence limit of not less than \$100,000.00. Such insurance shall cover all risks arising directly or indirectly out of such party's activities on the Easement Area or any condition of the portion of the Easement Area to which such party holds fee title.
10. **TERM.** This Agreement shall be perpetual (except as provided below) and shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors, or assigns. By unanimous consent, HOLMSTROM and LODGING (or their successors and assigns, as owners of the respective properties) may agree to terminate this Agreement, in which case they shall cause to be recorded an instrument acknowledging such termination.

RECIPROCAL PARKING EASEMENT AGREEMENT - 2

11. **STATUS OF TITLE.** This Agreement is granted subject to all prior easements and encumbrances of record. Concurrently with the execution hereof, HOLMSTROM shall deliver to LODGING a fully executed Consent and Agreement from all current lienholders with liens affecting Parcel 1 in the form attached as **Exhibit C** and LODGING shall deliver to HOLMSTROM a fully executed consent from all current lienholders with liens affecting Parcel 2 in the form attached as **Exhibit C**. Each party warrants that it will defend the title and the other party's interest under this Agreement against any mortgage, tax lien of construction lien claim affecting Parcel 1 or Parcel 2 which asserts priority over the interest of the other party under this Agreement and which is attributable to the party itself or its tenants.

12. **PROTECTION OF RIGHTS OF MORTGAGEES.** No breach of the provisions in this Agreement shall defeat or render invalid the lien of any mortgage(s) or deed(s) of trust now or hereunder executed which affects the parties' respective interests pursuant to this Agreement; provided, however, that upon the sale under foreclosure of any mortgage(s) or under the provisions of any deed(s) of trust, any purchaser at such sale, and its successors and assigns, shall hold any and all property interest so purchased subject to all of the provisions of this Agreement.

13. **WAIVER.** Failure at any time to require performance of any provision of this Agreement shall not limit a party's right to enforce the provision. Any waiver of any breach of any provision shall not be a waiver of any succeeding breach or a waiver of any provision of this Agreement.

14. **ATTORNEYS' FEES.** In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on appeal of such suit or action, and on any petition for review, in addition to all other sums provided by law.

15. **INDEMNITY.** Each party shall defend, indemnify and hold the other harmless from any claim, loss, liability, or expense (including reasonable attorneys' fees) arising out of or in connection with the party's own negligence or failure to comply with the terms, restrictions and provisions of this Agreement.

16. **ENTIRE AGREEMENT.** This Agreement supersedes and replaces all written and oral arrangements previously made or existing between HOLMSTROM and LODGING with respect to the parking space matters set forth above.

17. **GOVERNING LAW.** This Agreement will be governed and construed in accordance with the laws of the State of Washington.

18. **APPURTENANT RIGHTS.** This Agreement shall be binding upon the parties hereto, their respective successors and assigns, and appurtenant to the real property described on the attached Exhibits.

19. **COVENANTS RUNNING WITH THE LAND.** The terms, covenants and conditions of this Agreement shall be considered covenants running with the land and shall inure to the benefit of, and shall be binding upon, the parties hereto and their successors and assigns.

20. **AMENDMENTS.** Except as otherwise set forth herein, this Agreement may not be modified, amended, or terminated except by the written agreement of both parties. A party may waive one or more of its rights under this Agreement in writing signed by the party, and such writing need not be recorded. Otherwise, no modification or amendment of any provision of this Agreement shall be binding unless signed by both parties and recorded in the real property records of Clark County, Washington.

21. **EFFECT OF INVALIDATION.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the validity of the remaining provisions of this Agreement shall not be affected thereby.

22. **INJUNCTIVE RELIEF.** In the event of any violation or threatened violation by any party hereto of this Agreement, the other party shall have the right to adjoin such violation or threatened violation in a Court of competent jurisdiction. The parties hereto do hereby acknowledge that there would be no adequate remedy of law available to the nondefaulting party in the event of a violation of this agreement and consequently, the nondefaulting party should be entitled to such an injunction in addition to any and all other remedies which may be provided by law.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed as the day and year first written above.

HOLMSTROM:

  
R. BRUCE HOLMSTROM

  
ELIZABETH HOLMSTROM

LODGING

SALMON CREEK LODGING, L.L.C., a  
Washington Limited Liability Company

By:   
Its: President - Salmon Creek Lodging LLC

STATE OF WASHINGTON )  
 ) ss.  
County of Clark )

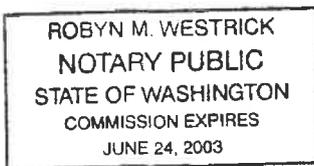
This instrument was acknowledged before me on July 27, 1999, by R. BRUCE HOLMSTROM and ELIZABETH HOLMSTROM.



Signature: John C Morgan  
Name (Print): John Morgan  
NOTARY PUBLIC in and for the State of  
Washington, residing at Clark Co  
My appointment expires: 5/08/02

STATE OF WASHINGTON )  
 ) ss.  
County of Clark )

This instrument was acknowledged before me on July 28, 1999, by David Heald as President of SALMON CREED LODGING, L.L.C. a Washington limited liability company.



Signature: Robyn M Westrick  
Name (Print): Robyn Westrick  
NOTARY PUBLIC in and for the State of  
Washington, residing at Vanouver  
My appointment expires: 6/24/03

RECIPROCAL PARKING EASEMENT AGREEMENT - 5



**Exhibit "A"**

The West one half of the Southwest one quarter of the Northeast one quarter of the Northwest one quarter of Section 26, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT therefrom that portion conveyed to the State of Washington by deed recorded in Book D-47, Page 556-B, records of Clark County, Washington.

ALSO EXCEPT County Roads.

RECIPROCAL PARKING EASEMENT AGREEMENT - 6



**Exhibit "B"**

**LEGAL DESCRIPTION FOR LODGING PROPERTY**

Lot 12, Block B, TENNY ACRES, according to the plat thereof, recorded in volume "E" of Plats, page 26, records of Clark County, Washington.

SUBJECT TO any taxes, assessments or charges that may be due Clark County Public Sewer District No. 1 by reason of the land being situated in said District or by reason of services received from said District.

and

That portion of the South 200 feet of Lot 13, Block "B", Tenny Acres, according to the plat thereof recorded in volume "E" of Plats, page 26, records of said county, lying northerly of a line described as beginning at a point opposite Highway Engineer's Station 134<sup>th</sup> St. 4+50 on the 134<sup>th</sup> Street Line Survey of SR 5, Main St. to Jet SR 205 Vic. and 50 feet northerly therefrom: thence northeasterly to a point opposite Highway Engineer's Station 134<sup>th</sup> St. 6+ ( ) on said Line Survey and 70 feet northerly therefrom; thence easterly, parallel with said Line Survey to the East Line of said Lot 13 and the end of this line description.

RECIPROCAL PARKING EASEMENT AGREEMENT - 7

FILED  
Court of Appeals  
Division II  
State of Washington  
10/23/2019 4:10 PM

NO. 53256-5-II

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION TWO

**JUBITZ CORPORATION**, an Oregon  
Corporation,

Appellant/Cross-Respondent,

v.

**VANCOUVER HOSPITALITY  
PARTNERS, LLC**, a Washington limited  
liability company, Respondent; and  
**ROBERT HOLMSTROM and  
ELIZABETH HOLMSTROM**, individuals,

Respondents/Cross-Appellants.

Clark County Superior Court  
Case No. 17-2-05075-3

**DECLARATION OF SERVICE**

I certify that on the date set forth below, I served a copy of Appellant's Opening Brief and Declaration of Service on the following of counsel:

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Law Office of Denise J. Lukins  
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Of Attorneys for Respondent Vancouver Hospitality Partners, LLC

- U.S. Mail
- Facsimile
- Hand Delivery
- E-Mail

**DECLARATION OF SERVICE**  
PAGE 1 of 2

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LLC

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Of Attorneys for Respondent/Cross-Appellants Robert and  
Elizabeth Holmstrom

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- Facsimile
- Hand Delivery
- E-Mail

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated: October 23, 2019.

McEWEN GISVOLD LLP

By:

  
Katie Jo Johnson, WSBA No. 46143  
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Of Attorneys for Appellant/Cross-  
Respondent Jubitz Corporation

**MCEWEN GISVOLD LLP**

**October 23, 2019 - 4:10 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 53256-5  
**Appellate Court Case Title:** Jubitz Corp., App/Cross-Resp v. Vancouver Hospitality Partners, et al.,  
Resp/Cross-App  
**Superior Court Case Number:** 17-2-05075-3

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