

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
DOUG SUTHERLAND, Commissioner of Public Lands

REGION FILE

OLYMPIA FILE  
20-B12517  
FIELD FILE

AQUATIC LANDS NET PEN LEASE No. 20-B12517

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**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
DOUG SUTHERLAND, Commissioner of Public Lands**

**AQUATIC LANDS NET PEN LEASE**

**AQUATIC LANDS AQUACULTURE LEASE NO. 20-B12517**

THIS LEASE is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and AMERICAN GOLD SEAFOODS, LLC, a Washington Corporation ("Tenant").

**BACKGROUND**

Tenant desires to lease the aquatic lands commonly known as Deep Water Bay, which are bedlands located in Skagit County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease.

THEREFORE, the parties agree as follows:

**SECTION 1 PROPERTY**

**1.1 Property Defined.** State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property"). This Lease is subject to all valid interests of third parties noted in the records of Skagit County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes. Except to the extent specifically authorized in Subsection 2.1, below, this Lease does not include any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable

materials. State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not unreasonably interfere with Tenant's Permitted Use.

**1.2 Survey, Maps, and Plans.** In executing this lease, State is relying on the surveys, plats, diagrams, and/or legal descriptions provided by Tenant. Tenant is not relying upon and State is not making any representations about any survey, plat, diagram, and/or legal description provided by State. Before taking possession of the Property, Tenant shall have the Property surveyed by a registered land surveyor. The survey map shall be signed and certified by the surveyor. The survey shall be attached to this Lease as Exhibit A.

**1.3 Inspection.** State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property or the existence of hazardous substances on the Property. Tenant has inspected the Property and accepts it "AS IS."

## SECTION 2 USE

**2.1 Permitted Use.** Tenant shall use the Property for anchorage, maintenance and operation of Fish rearing pens (the "Permitted Use"), and for no other purpose. The Permitted Use is described or shown in greater detail in Exhibit B, the terms and conditions of which are incorporated by reference and made a part of this Lease. If at any time the Property ceases to be used for the Permitted Use, this Lease shall terminate and State may reenter and take possession of the Property.

**2.2 Restrictions on Use.** Tenant shall not cause or permit any damage to natural resources on the Property. Tenant shall also not cause or permit any filling activity to occur on the Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in or on the Property, except as approved in writing by State. Tenant shall neither commit nor allow waste to be committed to or on the Property set out in this Subsection 2.2, State shall notify Tenant and provide Tenant a reasonable time to take all steps necessary to remedy the failure. If Tenant fails to do so in a timely manner, than State may take any steps reasonably necessary to remedy this failure. Upon demand by State, Tenant shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property. This section shall not in any way limit Tenant's liability under Section 8, below.

The prohibitions in this section against damage to natural resources, filling, deposition of any unapproved materials, and waste, shall also apply to protect state-owned aquatic lands adjacent to the Property from any of Tenant's activities related to Tenant's occupation of the Property. All obligations imposed by this section on Tenant to cure any violation of the prohibited activities in

this section shall also extend to state-owned aquatic lands adjacent to the Property when the violation arose from Tenant's activities related to Tenant's occupation of the Property.

**2.3 Conformance with Laws.** Tenant shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use or occupancy of the Property.

**2.4 Liens and Encumbrances.** Tenant shall keep the Property free and clear of any liens and encumbrances arising out of or relating to its use or occupancy of the Property, unless authorized by State.

### SECTION 3 TERM

**3.1 Term Defined.** The term of this Lease is Fifteen (15) years (the "Term"), beginning on the 1<sup>st</sup> day of January, 2008 (the "Commencement Date"), and ending on the 31<sup>st</sup> day of December, 2023 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

**3.2 Renewal of the Lease.** Tenant shall have the option to renew this Lease for Zero (0) additional terms of Zero (0) years each. The initial Term of this Lease, and all renewal terms, shall not exceed Fifteen (15) years in the aggregate. Tenant shall exercise this option by providing written notice of its election to renew at least ninety (90) days prior to the Termination Date of the initial Term or any renewal term of this Lease. Tenant shall not be entitled to renew if it is in default under the terms of this Lease at the time the option to renew is exercised. The terms and conditions of any renewal term shall be the same as set forth in this Lease, except that rent shall be recalculated, the required amounts of financial security may be revised, and provisions dealing with hazardous waste or impacts to natural resources may be changed at the time of the renewal.

**3.3 Delay in Delivery of Possession.** If State, for any reason whatsoever, cannot deliver possession of the Property to Tenant on the Commencement Date, this Lease shall not be void or voidable, nor shall State be liable to Tenant for any loss or damage resulting from the delay in delivery of possession. In such event, the date of delivery of possession shall be the Commencement Date for all purposes, including the payment of rent. In the event Tenant takes possession before the Commencement Date, the date of possession shall be the Commencement Date for all purposes, including the payment of rent. If the Lease Term commences earlier or later than the scheduled Commencement Date, the Termination Date shall be adjusted accordingly.

**3.4 End of Term.** Upon the expiration or termination of the Term or extended term, as applicable, Tenant shall surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

**3.5 Holdover.** If Tenant remains in possession of the Property after the Termination Date, the occupancy shall not be an extension or renewal of the Term. The occupancy shall be a

month-to-month tenancy, on terms identical to the terms of this Lease, which may be terminated by either party on thirty (30) days written notice. The monthly rent during the holdover shall be the same rent which would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms. If State provides a notice to vacate the Property prior to termination of this Lease or at any time thereafter and Tenant fails to do so within the time set forth in the notice, then Tenant shall be a trespasser and shall owe State all amounts due under RCW 79.01.760 or other applicable law.

## SECTION 4 RENT

**4.1 Fixed Minimum Annual Payment.** Tenant shall pay State a Fixed Minimum Annual Payment of Twenty Five Thousand Dollars (\$25,000.00), which shall be due and payable in full on or before the Commencement Date, and on or before the same date of each year thereafter.

- (a) The Fixed Minimum Annual Payment for any lease year shall be a credit against Production Payments computed under Subsection 4.2 and due for the same lease year.
- (b) At the end of each quarter Tenant shall compute the Production Payment due under Subsection 4.2 for that quarter. At the end of the quarter in which the aggregate of all the Production Payments thus computed exceeds the Fixed Minimum Annual Payment already paid, Tenant shall pay State an amount equal to the excess. Thereafter, Tenant shall pay in full each quarterly Production Payment computed under Subsection 4.2.
- (c) In the event that the Fixed Minimum Annual Payment for a particular contract year exceeds the sum of Production Payments for that year, Tenant shall not be entitled to a refund. There shall be no carry-backs or carry-forwards of such excess from one contract year to another.

**4.2 Production Payment.** Tenant shall pay State a Production Payment. The Production Payment shall be computed as follows: the total volume in pounds from the then-current quarterly report, times the average price per pound shown on the quarterly report, times the applicable royalty rate, equals the quarterly Production Payment. The applicable royalty rate shall be determined by reference to Exhibit C, attached, which specifies the royalty rate to be applied against any particular average price.

**4.3 Reporting and Payment.** Tenant shall keep accurate records and accounts of all production of Salmon from or on the Property. Tenant shall provide to State, within thirty (30) days following the end of each quarter and on a form acceptable to State, an itemized account of the production for the preceding quarter. The quarterly report shall be submitted by Tenant to the Washington State Department of Fish and Wildlife listing Tenant's fish production. The fish weight reported shall be "Whole." The price used to calculate the Rental Payment in poundage in Exhibit C of this Lease shall be the "Wholesale Price." The average price per pound reported shall be the average of actual prices received by Tenant during the quarter from Salmon produced from or on the Property. At the time of providing the quarterly report, Tenant shall pay to State the Production Payment due for that quarter in accordance with Subsections 4.1 and 4.2.

**4.4 Payment Place.** Payment is to be made to Financial Management Division. 1111 Washington St SE, PO BOX 47041. Olympia WA 98504-7041.

**4.5 Audit.** State shall be allowed to inspect and audit the books, contracts, and accounts of Tenant to determine whether or not State is being paid the full amount owed to it under this Lease. If the audit discloses that Tenant has underpaid the amount due to State by two percent (2%) or more, Tenant shall pay to State, on demand, the cost of the audit. Any deficiency shall be paid to State within thirty (30) days of delivery of the audit to Tenant.

## **SECTION 5 OTHER EXPENSES**

During the Term, Tenant shall pay the following additional expenses:

**5.1 Utilities.** Tenant shall pay all fees charged for utilities in connection with the use and occupancy of the Property, including but not limited to electricity, water, gas, and telephone service.

**5.2 Taxes and Assessments.** Tenant shall pay all taxes and other governmental charges, of any kind whatsoever, applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

**5.3 Right to Contest.** Tenant may, in good faith, contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against any loss or liability by reason of such contest.

**5.4 Proof of Payment.** Tenant shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of any amounts required to be paid under the terms of this Lease.

**5.5 Failure to Pay.** If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with the provision of Section 6.

## **SECTION 6 LATE PAYMENTS AND OTHER CHARGES**

**6.1 Late Charge.** If any rental payment is not received by State within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State as a result of the delay.

**6.2 Interest Penalty for Past Due Rent and Other Sums Owed.** If rent is not received by State within thirty (30) days of the date due, then Tenant shall, in addition to paying the late charges determined under Subsection 6.1, above, pay interest on the amount outstanding at the



rate of one percent (1%) per month until paid. If State pays or advances any amounts for or on behalf of Tenant, including but not limited to leasehold taxes pursuant to Chapter 82.29A RCW, taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Section 2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance.

**6.3 No Accord and Satisfaction.** If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. In the absence of an election, the payment or receipt shall be applied first to accrued taxes which State has advanced or may be obligated to pay, then to other amounts advanced by State, then to late charges and accrued interest, and then to the earliest rent due. State may accept any payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment shall constitute or be construed as accord and satisfaction.

**6.4 No Counterclaim, Setoff, or Abatement of Rent.** Except as expressly set forth elsewhere in this Lease, rent and all other sums payable by Tenant pursuant to this Lease shall be paid without the requirement that State provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

## SECTION 7 IMPROVEMENTS

**7.1 Existing Improvements.** On the Commencement Date, the following improvements are located on the Property: Each of the net pen sites located in Deepwater Bay consists of a rectangular raft of floating cages and their associated walkways, a mooring system and fish nets that are held by an underwater weighting system. Site 1, contains eight (8) Marine Construction 24 meter by 24 meter square cages; Site 2, contains ten (10) Marine Construction 24 meter by 24 meter square cages; Site 3, contains twelve (12) Marine Construction 24 meter by 24 meter square cages. The associated walkways are made up of a frame work of heavy gauged, galvanized steel box beams with galvanized metal walkway grating welded on top of it. The walkways all have multiple foam filled plastic floats bolted in place underneath the frame work that is used for the floatation of the structure. For further description of the existing improvements refer to Exhibit B. These improvements are the property of Tenant.

**7.2 New Improvements.** So long as this Lease remains in effect, no new improvements shall be placed on the Property without (a) State's prior written consent, which shall not be unreasonably withheld, and (b) Tenant's acquisition of a performance and payment bond, in an amount equal to 150 % of the estimated cost of constructing and installing the new improvements.

**7.3 Unauthorized Improvements.** Improvements made on the Property without State's prior written consent or which are not in conformance with the plans submitted to and approved by the State ("Unauthorized Improvements") shall immediately become the property of State, unless

State elects otherwise. Regardless of ownership of Unauthorized Improvements, State may, at its option, require Tenant to sever, remove and dispose of them, charge Tenant rent for the use of them, or both.

**7.4 Removal of Improvements.** All Tenant-owned improvements and all Unauthorized Improvements shall be removed by Tenant from the Property on or before the Termination Date unless State consents that the improvements may remain. If such improvements remain on the Property after the Termination Date without State's consent, State may elect to remove the improvements and Tenant shall, upon demand, pay the costs of removing and disposing of them.

## **SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

**8.1 Definition.** "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 *et seq.*

**8.2 Use of Hazardous Substances.** Tenant covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under, or above the Property, except in accordance with all applicable laws.

**8.3 Current Conditions, Duty of Utmost Care, and Duty to Investigate.**

- (a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property. With regard to any Hazardous Substances that may exist in, on, under, or above the Property, State disclaims any and all responsibility to conduct investigations, to review any State records, documents or files, or to obtain or supply any information to Tenant.
- (b) Tenant shall exercise the utmost care with respect to both Hazardous Substances in, on, under, or above the Property as of the Commencement Date, and any Hazardous Substances that come to be located in, on, under, or above the Property during the Term of this agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection 8.3 includes, but is not limited to, the following requirements:
  - (1) Tenant shall not undertake activities that will cause, contribute to, or exacerbate contamination of the Property;
  - (2) Tenant shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Property or undertake activities that result in human or environmental exposure to contaminated sediments on the Property;

- (3) Tenant shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;
  - (4) If requested, Tenant shall allow reasonable access to the Property by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies; and
  - (5) If requested, Tenant shall allow reasonable access to potentially liable or responsible parties who are the subject of an order or consent decree which requires access to the Property. Tenant's obligation to provide access to potentially liable or responsible parties may be conditioned upon the negotiation of an access agreement with such parties, provided that such agreement shall not be unreasonably withheld.
- (c) It shall be Tenant's obligation to gather sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property, or adjoining the Property, that allows Tenant to effectively meet its obligations under this lease.

#### **8.4 Notification and Reporting.**

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
- (1) A release or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
  - (2) Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
  - (3) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
  - (4) Any lien or action with respect to any of the foregoing; or,
  - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Upon request, Tenant shall provide State with copies of any and all reports, studies, or audits which pertain to environmental issues or concerns associated with the Property, and which were prepared for Tenant and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

## 8.5 Indemnification.

- (a) Tenant shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of, or are in any way related to:
- (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property;
  - (2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination, in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, which release, threatened release, or exacerbation occurs or occurred during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property, and as a result of:
    - (i) Any act or omission of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates; or,
    - (ii) Any foreseeable act or omission of a third party unless Tenant exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.
- (b) In addition to the indemnifications provided in Subsection 8.5(a), Tenant shall fully indemnify State for any and all damages, liabilities, costs or expenses (including attorneys' fees and disbursements) that arise out of or are in any way related to Tenant's breach of the obligations of Subsection 8.3(b). This obligation is not intended to duplicate the indemnity provided in Subsection 8.5(a) and applies only to damages, liabilities, costs, or expenses that are associated with a breach of Subsection 8.3(b) and which are not characterized as a release, threatened release, or exacerbation of Hazardous Substances.

**8.6 Cleanup.** If a release of Hazardous Substances occurs in, on, under, or above the Property, or other State-owned property, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. Tenant's obligation to undertake a cleanup under this Subsection 8.6 shall be limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards. Tenant shall also be solely responsible for all cleanup,

administrative, and enforcement costs of governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above. Tenant may undertake a cleanup pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that: (1) Any cleanup plans shall be submitted to State (DNR) for review and comment at least thirty (30) days prior to implementation (except in emergency situations), and (2) Tenant must not be in breach of this lease. Nothing in the operation of this provision shall be construed as an agreement by State that the voluntary cleanup complies with any laws or with the provisions of this Lease.

**8.7 Sampling by State, Reimbursement, and Split Samples.**

- (a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Property, any adjoining property, any other property subject to use by Tenant in conjunction with its use of the Property, or any natural resources. If such Tests, along with any other information, demonstrates the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall promptly reimburse State for all costs associated with such Tests.
- (b) State's ability to seek reimbursement for any Tests under this Subsection shall be conditioned upon State providing Tenant written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, unless such Tests are performed in response to an emergency situation in which case State shall only be required to give such notice as is reasonably practical.
- (c) Tenant shall be entitled to obtain split samples of any Test samples obtained by State, but only if Tenant provides State with written notice requesting such samples within twenty (20) calendar days of the date Tenant is deemed to have received notice of State's intent to conduct any non-emergency Tests. The additional cost, if any, of split samples shall be borne solely by Tenant. Any additional costs State incurs by virtue of Tenant's split sampling shall be reimbursed to State within thirty (30) calendar days after a bill with documentation for such costs is sent to Tenant.
- (d) Within thirty (30) calendar days of a written request (unless otherwise required pursuant to Subsection 8.4(b), above), either party to this Lease shall provide the other party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Property performed by or on behalf of State or Tenant. There is no obligation to provide any analytical summaries or expert opinion work product.

**8.8 Reservation of Rights.** The parties have agreed to allocate certain environmental risks, liabilities, and responsibilities by the terms of Section 8. With respect to those environmental liabilities covered by the indemnification provisions of Subsection 8.5, that subsection shall exclusively govern the allocation of those liabilities. With respect to any environmental risks, liabilities, or responsibilities not covered by Subsection 8.5, the parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the

presence, release, or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, that either party may have against the other under federal, state, or local laws, including but not limited to, CERCLA, MTCA, and the common law. No right, claim, immunity, or defense either party may have against third parties is affected by this Lease and the parties expressly reserve all such rights, claims, immunities, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release either party from, or affect either party's liability for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

## SECTION 9 ASSIGNMENT AND SUBLETTING

**9.1 State Consent Required.** Tenant shall not sell, convey, mortgage, assign, pledge, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Property without State's prior written consent, which shall not be unreasonably conditioned or withheld.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon (1) changes in the terms and conditions of this Lease, including the Annual Rent and other terms; and/or (2) the agreement of Tenant or transferee to conduct Tests for hazardous substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.

**9.2 Event of Assignment.** If Tenant is a corporation, a dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant shall be deemed to be an assignment of this Lease. If Tenant is a partnership, a dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant shall be deemed an assignment of this Lease.

**9.3 Rent Payments Following Assignment.** The acceptance by State of the payment of rent following an assignment or other transfer shall not constitute consent to any assignment or transfer.

**9.4 Terms of Subleases.** All subleases shall be submitted to State for approval and shall meet the following requirements:

- (a) The sublease shall be consistent with and subject to all the terms and conditions of this Lease;
- (b) The sublease shall confirm that if the terms of the sublease conflict with the terms of this Lease, this Lease shall control;
- (c) The term of the sublease (including any period of time covered by a renewal option) shall end before the Termination Date of the initial Term or any renewal term;
- (d) The sublease shall terminate if this Lease terminates, whether upon expiration of the Term, failure to exercise an option to renew, cancellation by State, surrender or for any other reason;
- (e) The subtenant shall receive and acknowledge receipt of a copy of this Lease;
- (f) The sublease shall prohibit the prepayment to Tenant by the subtenant of more than one month's rent;
- (g) The sublease shall identify the rental amount to be paid to Tenant by the subtenant;
- (h) The sublease shall confirm that there is no privity of contract between the subtenant and State;
- (i) The sublease shall require removal of the subtenant's improvements and trade fixtures upon termination of the sublease; and,
- (j) The subtenant's permitted use shall be within the Permitted Use authorized by this Lease.

## **SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE**

**10.1 Indemnity.** Tenant shall indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability, damages (including bodily injury, personal injury and damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys' fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Property by Tenant, its subtenants, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Tenant shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. Tenant's liability to State for hazardous substances, and its obligation to indemnify, defend, and hold the State harmless for hazardous substances, shall be governed exclusively by Section 8.

### **10.2 Financial Security.**

- (a) At its own expense, Tenant shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Fifty Thousand Dollars (\$50,000.00), which shall secure Tenant's full performance of its obligations under this Lease, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond:

