

City of Port Orchard
216 Prospect Street
Port Orchard, WA 98366

LEASE AGREEMENT No. 078-16

by and between

City of Port Orchard

and

Ness & Associates, PLLC

Public Right of Way: No Tax Parcel Number Assigned
Legal Description: SE Corner of Lot 15, Block 2, S.M. Stevens Town Plat of Sidney
Full Legal Description: Exhibit "A"

LEASE AGREEMENT made and entered into as of the _____ day of _____ 2016, by and between the CITY OF PORT ORCHARD, a Washington municipal corporation (hereinafter "Landlord"), and Ness & Associates, PLLC, a Washington corporation (hereinafter "Tenant").

WITNESSETH:

WHEREAS, Landlord is the owner of certain right-of-way (ROW) in Kitsap County, Washington, commonly known as ROW adjacent to 420 Cline Avenue, Port Orchard, Washington, and a portion of, which is legally described set forth on attached Exhibit "A" (hereinafter the "Premises").

WHEREAS, Tenant desires to lease the Premises from Landlord and Landlord is willing to lease the Premises to Tenant upon the terms, conditions and provisions set forth below.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises set forth below, the mutual benefits to be derived herefrom, and other good and valuable consideration, the parties hereto agree as follows:

(1) **LEASE OF PREMISES:** Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises, all upon the terms set forth below.

(2) **TERM:**

(a) The term of this lease shall be for a period of five (5) years, commencing on the 10th day of October 2016 and ending on the 9th day of October 2021.

(b) Tenant shall have three five (5) year options to renew. If Tenant intends to exercise any of said options, Tenant shall provide Landlord with notice of intent to renew the lease not less than 90 days prior to the expiration of the applicable term.

(3) **RENTAL:** The Tenant shall pay to the Landlord as rental of the leased premises the following:

(a) The annual rental amount for the initial five-year period of this lease (October 10, 2016 – October 9, 2021) is \$918.00, plus leasehold tax as described in section 3(e) below.

(b) All rentals shall be payable in advance, in lawful money of the United States.

(c) The monthly rent shall be due on or before the 10th day of October 2016 and on the 10th day of each succeeding month during the term hereof.

(d) In the event Tenant exercises a lease option described in paragraph 2(b) above, the annual rent for each five-year option period shall be increased on the first day of June of the option period based on the increase in the Consumer Price Index - Urban for the Seattle – Tacoma – Bremerton Area (the Index). The rent payable shall be increased by the percentage that the Index published for the date nearest preceding the adjustment date has increased over the Index published for the date nearest the first day of the prior lease term from which the adjustment is being measured. For example, the rent for the first option period shall increase in an amount equal to the percentage increase to the Index as published on the date nearest to June 1, 2021 as compared to the Index as published on the date nearest to June 1, 2016. Provided, in no event shall the rent be less than the prior lease term.

(e) In the event Tenant shall fail to make any payment when due, there shall be a late payment penalty of an amount equal to 3% of the amount of rental payment then due for each such delinquent payment. In addition thereto, interest shall accrue on any amounts due and owing to Landlord under this lease at the rate of 1% per month (12% annually).

(f) In addition to the rental amount, the Tenant will be responsible to pay real estate taxes and assessments related to the Premises, if any, and any leasehold tax associated therewith before delinquency. The leasehold tax rate is currently 12.84% but may be subject to change during the term of this lease. Tenant shall pay such amount(s) within thirty (30) days of its due date.

(g) Either party may terminate this lease without cause upon giving ninety (90) days' written notice to the other party in accordance with Section 19 herein.

(4) **USE OF PREMISES:**

(a) The Tenant shall use the premises for parking no more than 6 motor vehicles without reasonable obstruction of traffic that might pass along said right-of-way and uses commonly associated therewith. Tenant shall at all times comply with all local, state and federal laws, rules and regulations applicable to the Premises, and hold harmless, defend and indemnify Landlord from claims relating to noncompliance. It is specifically understood and agreed that Tenant shall not construct, install or maintain on the Premises any buildings, structures, foundations or other improvements without the prior written consent of Landlord.

(b) This lease shall terminate in the event Tenant no longer uses the Premises for parking motor vehicles and uses commonly associated therewith.

(5) **OBLIGATIONS OF TENANT:** During the term of this lease Tenant shall:

(a) Keep the Premises in a neat, clean, and sanitary condition and refrain from the commission of any waste thereon;

(b) Properly dispose of all rubbish, garbage, and waste in a clean and sanitary manner at reasonable and regular intervals and assume all costs of extermination and fumigation for any infestation;

(c) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the Premises.

(d) Not permit any nuisance or common waste on the Premises.

(6) **ASSIGNMENT AND SUBLETTING:**

(a) **Restriction.** Tenant shall not, without the prior written consent of Landlord:

(i) Voluntarily, involuntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or otherwise encumber this lease, or any interest in it, or any right or privilege appurtenant to it;

(ii) Sublet all or any part of the Premises; or

(iii) Allow any other person, except the employees, agents, customers, and invitees of Tenant, to occupy or use any portion of the Premises in the normal course of business.

Any assignment, transfer, encumbrance, subletting, or use without Landlord's consent shall be void and shall, at the option of Landlord, constitute a material default under this lease.

(b) **Included Transfers.** If Tenant is a corporation, any transfer of this lease by merger, consolidation, reorganization, or dissolution shall constitute a transfer for the purposes of this Section. If Tenant is a corporation, any change in the ownership of, or power to vote, a percentage of Tenant's now outstanding stock which results in a change of controlling persons, or any transfer of all or substantially all the assets of Tenant shall constitute a transfer for the purposes of this Section. If Tenant is a partnership, any partial or total withdrawal of any of the present general partners, and any transfer by a general partner of all or part of his partnership interest shall constitute a transfer for the purposes of this Section; except that this restriction shall not apply if such partnership interest passes upon death to the spouse or lineal descendants of a deceased partner.

(c) **Judicially Imposed Assignment.** If the non-assignment provisions of this Section are deemed to be unenforceable in any bankruptcy proceeding, Landlord and Tenant agree that a showing of adequate assurance of future performance by a prospective assignee of this lease must include, without limitation, clear and convincing evidence that:

(i) Landlord will receive the full benefit of each and every term of its bargain in this lease, except for the nonassignment and related termination clauses;

(ii) The Premises will continue to be used solely for the use permitted by this lease; and

(iii) The prospective assignee has the means, expertise, and experience to operate the business to be conducted upon the Premises in a first-class manner.

(d) **Assignment by Landlord.** If Landlord shall assign its interest under this lease or transfer its interest in the Premises, Landlord shall be relieved of any obligation accruing hereunder after such assignment or transfer, and such transferee shall thereafter be deemed to be the Landlord under this lease.

(7) **REPAIRS AND MAINTENANCE:** Tenant shall, at Tenant's sole cost and expense, keep in good condition and repair all portions of the Premises. Tenant shall deliver possession of the Premises to the Landlord upon the termination of this lease in a condition equal to or better than as of the effective date of this lease.

(8) **DIRECT OPERATING EXPENSES OF TENANT:**

(a) **Insurance procured by Tenant.** Throughout the lease Term and any other period(s) of occupancy of the Premises by Tenant, Tenant shall, at Tenant's expense, obtain and maintain the following insurance policies, naming as additional insured the Landlord:

A commercial General Liability insurance policy providing coverage for bodily injury liability, property damage liability and personal injury liability with minimum limits of not less than \$1,000,000 per occurrence, \$2,000,000 annual Aggregate; and Auto Liability insurance with a minimum \$1,000,000 Combined Single Limit. Such insurance policies shall include Blanket Contractual Liability and owners and Contractors Protective

endorsements. The insurance required by this Section shall be on an occurrence basis, and underwritten by an insurer licensed to do business in the State of Washington. The Tenant's insurance shall be primary and written on an "occurrence form", with a company that has a current A.M. Best rating of at least "A VII" or better, and licensed to do business in the State of Washington. The Landlord shall be named by endorsement as an additional insured on all such liability policies, which policies shall in addition provide that they may not be canceled or modified for any reason without fifteen (15) days prior written notice to Landlord. If Tenant is unable to obtain this insurance on an occurrence basis, it may be on a claims made basis provided that, in addition, Tenant, at Tenant's expense, obtains an owner's protective policy, issued in the name of Landlord only, which is on an occurrence basis for the limits required by this Section 8(a).

All insurance provided for herein shall be effected under standard form policies issued by insurers of recognized responsibility and which are acceptable to the Landlord. The Tenant shall provide Landlord with proof of such insurance policies acceptable to the Landlord. The Tenant shall pay all premiums therefor at least 30 days prior to expiration thereof and provide Landlord with proof of such payment. The Tenant shall, at all times, abide by the terms of the applicable policy(s) so as to be in good standing with such insurers. In the event Landlord receives notice of cancellation, Landlord may pay such premium or otherwise effectuate similar coverage, and any amount so paid by Landlord shall be due from Tenant as additional rent on demand from Landlord, plus interest thereon at the rate of 12% per annum until paid in full.

(b) **Personal Property Taxes.** Tenant shall pay, before delinquency, any and all taxes levied or assessed and payable during the lease term upon all Tenant's equipment, furniture, fixtures, and any other personal property located on the Premises.

(c) **Licenses and Taxes.** Tenant shall be liable for, and shall pay throughout the Lease Term, all license and excise fees and occupation taxes covering the business conducted on the Premises. If any governmental authority or unit under any present or future law effective at any time during the Lease Term shall in any manner levy a tax on rents payable under this Lease or rents accruing from the use of the Premises or a tax in any form against Landlord because of, or measured by, income derived from the leasing or rental of said property, such tax shall be paid by Tenant, either directly or through Landlord, and upon Tenant's default therein, Landlord shall have the same remedies as upon failure to pay Rent.

(9) **RIGHT OF INSPECTION:** The Landlord, or its agents and representatives, shall have the right at any and all reasonable times during normal business hours and upon giving Tenant reasonable notice, except in the case of emergency, to enter into or upon the Premises, or any part thereof, for the purpose of examining the condition thereof, or for any other lawful purpose.

(10) **LIENS:** The Tenant shall not permit any lien or any other type of encumbrance to be placed on or imposed upon the Premises without the express, prior written consent of the Landlord.

(11) **CONDEMNATION:** If the whole of the Premises, or such portion thereof as will make the Premises unsuitable for the purposes herein leased and the uses to which said Premises are being made, is condemned, or transferred under threat of condemnation, for any public use or purpose by any legally constituted authority, then in either of such events the lease shall cease from the time when possession is taken by such public authority and the rental shall be prorated between the parties hereto as of the date of the surrender of possession. If only a portion of the Premises are so taken such that the Premises can continue to be used for Tenant's purposes hereunder, this lease shall continue in full force and effect but rent shall be adjusted to reflect any diminution of the Premises' value to Tenant. Landlord shall be entitled to the entire condemnation award except as to such amount that Tenant may separately negotiate or be entitled to receive from such condemning authority.

(12) **ALTERATIONS:** The Tenant shall not make any alterations to the Premises without the express, prior written consent of the Landlord, which consent shall not be unreasonably withheld. The alterations shall become the property of the Landlord upon the termination of this lease (except trade fixtures and equipment which may be removed by Tenant at its own cost and expense, and Tenant agrees to and shall make any repairs to the Premises necessitated by the removal of the same). If the Tenant intends to make changes in the Premises, Tenant shall submit plans to the Landlord, not less than 30 days before the commencement of such changes. Such plans shall become the property of Landlord. Any such alterations shall be made pursuant to any and all applicable

codes or regulations of the governmental authorities having jurisdiction over the same and Tenant shall secure the appropriate permits and approvals therefor, all at Tenant's sole cost and expense.

(13) **RIGHTS AND REMEDIES OF THE PARTIES:** In the event that the Tenant shall, at any time, be in default in the payment of rent as herein required, or the payment or performance of any of its other obligations under this lease, and the Tenant shall fail to remedy such matters within ten (10) days following the mailing of written notice from the Landlord to the Tenant, or in the event that the Tenant shall be adjudged a bankrupt, or shall make an assignment for the benefit of creditors or in the event that a receiver of any property of the Tenant in or about the Premises involved herein shall be attached in any action, suit, or other proceeding, or in the event that the interests of the Tenant in the Premises shall be sold under execution or other legal process, it shall be lawful for the Landlord to enter upon the Premises and again have, repossess, and enjoy the said Premises as if this lease had not been made, and thereupon this lease and everything herein required to be done or performed by the Landlord shall cease and terminate, without prejudice, however, to the right of the Landlord to recover from the Tenant all rents and obligations due and owing to the time of such entry. In addition, in the event of any such default by the Tenant, and such subsequent re-entry by the Landlord, the Landlord shall have the right to relet the Premises involved herein for the remainder of the term hereof, and any extensions hereof, and shall have the right to recover from the Tenant any deficiency between the amount so obtained and that which would have been obtained had the Tenant fulfilled its obligations hereunder. The remedies herein provided shall be cumulative and shall be in addition to any and all other remedies available to the Landlord in law or in equity. In no event shall this lease be considered an asset of Tenant in any bankruptcy or other insolvency proceeding.

(14) **CONDITION OF PREMISES:** The Premises are recognized by the Landlord and the Tenant to be in "as is" condition, with no warranties of any type or nature whatsoever by the Landlord to the Tenant. The Landlord will not incur liability or injuries or property damage suffered because of defects in the Premises at the time of renting or occurring thereafter except as may be caused by breach of warranties expressly set forth herein or Landlord's negligence or failure to perform the terms and conditions of this lease. The Tenant hereby acknowledges that it has had ample opportunity to inspect the Premises.

(15) **ATTORNEY'S FEES AND COURT COSTS:** In the event that any suit, action, or proceeding, including arbitration as hereinafter set forth, shall be instituted to enforce compliance with any of the terms or conditions of this lease, there shall be paid to the substantially prevailing party in such suit, action or proceeding such sums as the court or arbitrator may adjudge and determine to be a reasonable attorney's fee and reasonable costs, with the foregoing applicable to proceedings both in the trial and appellate court levels.

(16) **HOLD HARMLESS AND INDEMNIFICATION:** In consideration of Landlord entering into this lease agreement with the Tenant, the Tenant agrees to and shall hold the Landlord and its council members, employees, agents and representatives harmless from any and all claims of liability or damages and to defend and indemnify said parties for any losses sustained by them from such claims of liability or damages, from any source or sources arising out of or connected with the Tenant's or its employees', agents', representatives', customers', licensees', or invitees' use and occupation of the Premises, except as may be caused by Landlord's own negligence.

(17) **ARBITRATION:** In the event that there is a dispute arising out of any of the terms or conditions or the amount of rent payable as provided in this lease, said dispute shall be referred to arbitration. The Landlord shall appoint an arbitrator and the Tenant shall appoint an arbitrator. The two arbitrators shall then select a third independent arbitrator. The costs of the third arbitrator shall be divided equally between the Landlord and the Tenant. The three arbitrators shall then resolve the dispute between the Landlord and the Tenant by a majority thereof and the decision shall be reduced to writing. Said arbitration award may then be reduced to judgment by entry in the Kitsap County Superior Court.

(18) **HOLDING OVER:** In the event that the Tenant, for any reason, shall hold over in possession of the Premises following the expiration of this lease, or any extensions hereof, such holding over shall not be deemed to operate as a renewal or extension of this Lease, but shall only create a tenancy from month-to-month which may be terminated at will at any time by the Landlord.

(19) **NOTICES:** All written notice required to be given hereunder shall be personally served or sent by certified mail, return receipt requested, postage prepaid, to the Landlord at: City Clerk, City of Port Orchard, 216 Prospect, Port Orchard, Washington 98366; and shall be personally served or sent by certified mail, return receipt requested, postage prepaid, to the Tenant at: Adrian B. Pimentel, Ness & Associates, PLLC, 420 Cline Avenue, Port Orchard, WA 98366; or to such other addresses as the parties may hereinafter designate in writing to the other from time to time hereafter.

(20) **REMOVAL OF PERSONAL PROPERTY:** Upon the termination of this lease, the Tenant shall promptly remove all personal property, trade fixtures, and equipment installed by it. Further, the Tenant shall repair any and all damage occasioned by such removal.

(21) **COVENANT OF QUIET ENJOYMENT:** The Tenant, upon the payment of the rent herein reserved and upon the performance of the terms and covenants of this lease, shall at all times during the lease term, and during any extension or renewal term, peaceably and quietly enjoy the leased Premises without any disturbance from the Landlord or from any other person claiming through the Landlord. Landlord covenants and warrants that it has the right, title, and authority to enter into this lease with the Tenant. It is understood and agreed that the original of this Lease Agreement shall not be recorded but a memorandum thereof may be recorded with the Kitsap County Auditor, at the option and expense of the party.

(22) **WAIVER:** The failure of the Landlord to strictly enforce any of the terms or conditions of this lease, or to exercise any option herein conferred upon it in any one or more instances, shall not be construed so as to constitute a waiver or relinquishment of any of its rights hereunder.

(23) **GOVERNING LAW:** The place of making of this lease shall be deemed to be Port Orchard, Kitsap County, Washington, and the legal rights and obligations of the Landlord and the Tenant shall be determined by the laws of the State of Washington.

(24) **JURISDICTION AND VENUE:** In the event any suit, action or proceeding shall be brought in connection with any of the terms or conditions of this lease, the Landlord and the Tenant hereby stipulate that jurisdiction and venue of such suit, action or proceeding shall be in Kitsap County.

(25) **HEIRS AND ASSIGNS:** All rights, remedies, and liabilities herein given to or imposed upon the Landlord and the Tenant shall extend to, inure to the benefit of, and bind, as the circumstances may require, the heirs, executors, administrators, successors, and, so far as this lease is assignable by the terms hereof, to the assigns of the Landlord and the Tenant.

(26) **SEVERABILITY:** In the event that any section, or any part of any section, of this lease shall be declared invalid by a court of competent jurisdiction, said holding shall have no effect upon the remaining section of this lease, which will remain in full force and effect.

(27) **ENTIRETY:** The lease constitutes the entire agreement and understanding between the Landlord and the Tenant. There are no other agreements or representations, either written or oral, which modify or have any effect upon this lease.

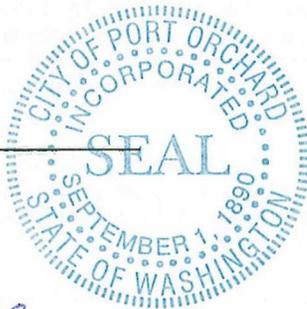
IN WITNESS WHEREOF, this document has been duly executed by the parties hereto, to be effective as of the day and year first above written.

LANDLORD:
CITY OF PORT ORCHARD


Robert Putaansuu, Mayor

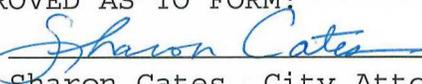
ATTEST/AUTHENTICATE:

Brandy Rinearson, City Clerk



TENANT:
NESS & ASSOCIATES, PLLC

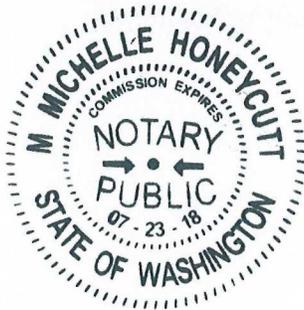

Adrian B. Pimentel, Owner

APPROVED AS TO FORM:
By: 
Sharon Cates, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

On this 27th day of September 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Robert Putaansuu and Brandy Rinearson to me known to be the Mayor and City Clerk of the City of Port Orchard, a Washington municipal corporation, and that he/she/they executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the said municipal corporation, for the uses and purposes mentioned, and on oath stated that he/she/they is/are authorized to execute the said instrument on behalf of said municipal corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.



[Signature]
NOTARY PUBLIC in and for the
State of Washington
Residing at: Kitsap Co.
My commission expires: 7-23-18
Print Name: M.M. Celeste Honeycutt

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

On this 20th day of September 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Adrian B. Pimentel to me known to be the owner of Ness & Associates, PLLC a Washington corporation, and that he/she/they executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she/they is/are authorized to execute the said instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written,

[Signature]
NOTARY PUBLIC in and for the
State of Washington
Residing at: Port Orchard, WA
My commission expires: 11-29-15
Print Name: Sheena Leigh Hudson

A circular notary seal for Sheena Leigh Hudson, Notary Public, State of Washington. The seal contains the text "SHEENA LEIGH HUDSON", "COMMISSION EXPIRES", "NOTARY PUBLIC", and "11-29-15".

EXHIBIT "A"

CITY OF PORT ORCHARD / NESS & ASSOCIATES, PLLC LEASE

LEGAL DESCRIPTION

Beginning at the southeast corner of Lot 15, Block 2, S.M. Stevens Town Plat of Sidney as per plat recorded in Volume I of Plats on Page 1, records of Kitsap County, situate in Kitsap County, Washington; thence South 30 feet; thence West 60 feet; thence North to the Southwest corner of said Lot 15; thence East to the point of beginning.



EXHIBIT "A"

CITY OF PORT ORCHARD / RONALD NESS & ASSOCIATES LEASE

PREMISES DEPICTION

