

**RESOLUTION NO. 502**

A RESOLUTION OF THE TOWN COUNCIL OF THE  
TOWN OF RUSTON, WASHINGTON, AUTHORIZING  
THE MAYOR TO EXECUTE A LEASE AGREEMENT  
WITH POINT RUSTON, LLC FOR USE OF PORTIONS  
OF THE OLD SCHOOL BUILDING LOCATED AT 5219  
N. SHIRLEY STREET, RUSTON, WASHINGTON.

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WHEREAS, RCW 35.27.010 provides that the Town Council authority to lease real property; and

WHEREAS, the Town has leased portions of the Old School to various entities, including Point Ruston, LLC; and

WHEREAS, the Town desires to consolidate these leases into a single master lease with Point Ruston, LLC in order to clarify the legal relationship; and

WHEREAS, the Town Council finds that it is in the public interest to both consolidate the leases and to increase the rental amounts paid for the space to be more consistent with market rates for office space in this geographic area; and

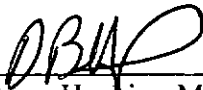
WHEREAS, the Town Council finds it in the public interest to authorize the Mayor to execute the proposed lease which is attached to this Resolution as Exhibit "A";

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF RUSTON, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

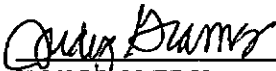
Section 1. The Mayor is hereby authorized to execute the Lease between the Town of Ruston and Point Ruston, LLC for certain portions of the Old School Building located at 5219 N. Shirley Street, Ruston, Washington. The authorized Lease Agreement is attached hereto as Exhibit "A".

RESOLVED this 2<sup>nd</sup> day of April, 2012.

APPROVED:

  
\_\_\_\_\_  
Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
TOWN CLERK

FILED WITH THE TOWN CLERK: \_\_\_\_\_  
PASSED BY THE TOWN COUNCIL: \_\_\_\_\_  
RESOLUTION NO.: 502

**Lease Agreement  
Between  
Town of Ruston and Point Ruston LLC**

**THIS LEASE AGREEMENT** (the "Lease") is entered into and effective as of February 1, 2012 between the Town of Ruston, a Washington municipal corporation ("Landlord") and Point Ruston LLC, a Washington Limited Liability Company ("Tenant"), whose corporate address is 5219 N. Shirley St. Suite 100 Ruston, WA 98407. Landlord and Tenant agree as follows:

**1. LEASE SUMMARY**

- 1.1 Leased Premises.** The leased commercial real estate (the "Premises") consists of a portion of the real property commonly known as 5219 N. Shirley Street, Ruston, WA, and also referred to as the Ruston School House or the "Building", (the Tenants leased portions of the Building are hereinafter referred to as the "Premises"). Tenant shall have the exclusive right to use the Premises, and such Premises consists of partial space on two floors (Main Floor and Ground Floor) which are shown in the drawing attached hereto as Exhibit "A" and incorporated herein by this reference. The total square footage of the Building is 15,717 square feet. The total square footage of the Leased Premises is 7,100 square feet, which is 45.2% of the Building, and includes non-exclusive use by Tenant of both the north end parking lot and the south end parking lot.
- 1.2 Lease Consolidation.** This Lease is a replacement agreement which consolidates the Lessee's use of the Property into a single document. Prior to the Commencement Date, the Lessee occupied a portion of the Property as a lessee or sublessee under three separate lease documents, namely the Asarco Lease dated September 1, 2004 ("Area A"), the Point Ruston LLC Lease dated February 2, 2009 ("Area B"), and the Point Ruston LLC Lease dated February 2, 2009 ("Area C"). This Lease consolidates the relationship between the parties into a single document. After the date this Lease is executed, the prior agreements shall be null and void and in no further effect, but the Premises occupied and used by Tenant under the new terms of this new Lease shall include Area A, Area B and Area C.
- 1.3 Lease Commencement Date.** The term of this Lease shall be for a period of twenty-four (24) months and shall commence on April 1, 2012 ("Commencement Date").
- 1.4 Lease Termination Date.** The term of this Lease shall terminate at midnight on March 31, 2014 ("Termination Date").
- 1.5 Extensions.** There will be a maximum of two one-year extensions under the terms contained in Section 3 below.
- 1.6 Base Rent.** The base monthly rent shall be \$3.06 per square foot (net, net, net) per month ("Base Rent") as adjusted monthly as described in Section 4.3 below. Rent

shall be payable at Landlord's address shown in Section 1.8 below or such other place designated in writing by Landlord.

**1.7 Permitted Use.** The Premises shall be used only for a "Business Office" during the Lease term. A Business Office includes drafting, designing, testing, accounting, legal, secretarial, and other related uses for which Tenant has engaged in. No other use or purpose shall be permitted without the prior written consent of Landlord.

**1.8 Notice and Payment Addresses.**

Landlord:

Town of Ruston  
Attn. Mayor  
5117 N. Winnifred Street  
Ruston WA 98407

Tenant:

Point Ruston LLC  
Attn. Michael Cohen  
5219 N. Shirley Street, Suite 100  
Ruston WA 98407

**2. PREMISES.**

**2.1 Lease of Premises.** Landlord leases to Tenant, and Tenant leases from Landlord the Premises upon the terms specified in this Lease.

**2.2 Acceptance of Premises.** Except as specified elsewhere in this Lease, Landlord makes no representations or warranties to Tenant regarding the Premises, including the structural condition of the Premises or the condition of any or all mechanical, electrical, and other systems on the Premises. Tenant shall be responsible for performing any work necessary to bring the Premises into a condition satisfactory to Tenant. By signing this Lease, Tenant acknowledges that it has had an adequate opportunity to investigate the Premises; acknowledges responsibility for making any corrections, alterations and repairs to the Premises; and acknowledges that the time needed to complete any such items shall not delay the Commencement Date. Tenant has occupied the Premises under different leases or subleases prior to the Commencement Date and is currently in possession of the Premises. As such, Tenant has had ample opportunity to inspect the Premises and accepts the Premises "AS IS."

**2.3 Public Access.** The Tenant acknowledges that Landlord is a Town and that the Ruston School House is a public building that is open to the public and is used by the Town for public meetings, community events, a police station, office space and other public uses. In addition to showing the Premises, Exhibit "A" also shows the public access areas that are adjacent to the Premises. The Tenant agrees to refrain from any activities or use that inhibits the public uses of the building or inhibits the public access for such uses.

### 3. TERM.

**3.1 Term.** Tenant is currently in possession of the Premises. The term of this Lease shall commence on the Commencement Date specified in Section 1. The first "lease year" shall commence on the Commencement Date and shall end on the date which is twelve (12) months from the end of the month in which the Commencement Date occurs. Each successive lease year during the initial term and any extension terms shall be twelve (12) months, commencing on the first day following the end of the preceding lease Year.

**3.2 Options for Extension.** Provided that Tenant fully performs all of its obligations set forth in this Lease during the initial term of this Lease and is not in breach of the Lease, Tenant shall have a maximum of two (2) options to extend the Lease term each for a period of one year. The Landlord shall have the right to approve, deny or condition any extension in its sole discretion. Any request for extension by Tenant shall be in writing no sooner than six (6) calendar months prior to the expiration of the then on-going term of this Lease and no later than three (3) calendar months prior to the expiration of the then on-going Lease term.

### 4. RENT.

**4.1 Payment of Rent.** Tenant shall pay Landlord without notice, demand, deduction, or offset, in lawful money of the United States, the monthly Base Rent stated in Section 1 in advance on or before the first day of each month during the Lease term beginning on the Commencement Date, and shall also pay any other additional payments due to Landlord ("Additional Rent"), including Operating Costs (collectively the "Rent") when required under this Lease. Payments for any partial month at the beginning or end of the Lease shall be prorated. All payments due to Landlord under this Lease, including late fees and interest, shall also constitute Additional Rent, and upon failure of Tenant to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay rent.

**4.2 Triple Net Lease.** This Lease is what is commonly called a "Net, Net, Net" or "triple-net" Lease, which means that, except as otherwise expressly provided herein, Landlord shall receive all Base Rent free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to Base Rent, Tenant shall pay to the parties respectively entitled thereto, or satisfy directly, all Additional Rent and other impositions, insurance premiums, repair and maintenance charges, and any other charges, costs, obligations, liabilities, requirements, and expenses" which arise with regard to the Premises or may be contemplated under any other provision of the Lease during its term, except for costs and expenses expressly made the obligation of Landlord in this Lease.

**4.3 Adjustments to Base Rent.** The parties agree that the monthly base rent shall be increased each month in accordance with the following schedule:

Month	Rate/Square Foot
April 2012	\$ 3.06
May 2012	\$ 3.24
June 2012	\$ 3.44
July 2012	\$ 3.64
August 2012	\$ 3.86
September 2012	\$ 4.09
October 2012	\$ 4.34
November 2012	\$ 4.60
December 2012	\$ 4.88
January 2012	\$ 5.17
February 2012	\$ 5.48
March 2013	\$ 5.74

At the end of the first Lease Year and each year thereafter, if the Lease is extended, the Base Rent shall be increased for the next Lease Year by five percent (5%), such increases to be cumulative from year-to-year.

**4.4 State Leasehold Excise Tax.** In addition to Base Rent as described above, Tenant shall pay to Landlord in advance on or before the first day of each month of the Lease term: (i) the State Leasehold Excise Tax on the Premises defined in Section 1.1 above based on the value of the Base Rent. The Base Rent is consistent with the fair market value for office space in this market and was determined by good faith negotiation of the parties.

**Definitions.** For purposes of this Section 4, the following definitions shall apply:

**"Excise Taxes."** Pursuant to RCW 82.29A, Landlord must collect from Tenant and pay to the Washington Department of Revenue leasehold excise taxes. This amount due the Landlord from the Tenant will be the current rate as described by the Washington Department of Revenue.

**4.5 Additional Rent.** In addition to Base Rent, all other sums to be paid or reimbursed by Tenant to Landlord, whether or not so designated, shall be "Additional Rent" for the purposes of this Lease. If Tenant defaults in the performance of any of its obligations hereunder, Landlord may, but shall not be obligated to, perform such obligations, and cost thereof to Landlord shall also be additional rent. Unless otherwise specifically provided herein, Tenant shall pay Landlord all additional rent upon demand, and in no event later than the date on which the next rent payment hereunder is due and payable.

**4.6 Default.** If any sums payable by Tenant to Landlord under this Lease are not received within five (5) business days after their due date, Tenant shall be in Default under this Lease and Landlord shall have all remedies contained herein or under existing law.

**4.7 Less Than Full Payment.** Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or

compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims. Any portion that remains to be paid by Tenant shall be subject to late charges and default interest provisions of Sections 16 and 17 (Default and Remedies).

## **5. USES.**

**5.1 Permitted Use.** The Premises shall be used only for the Permitted Use specified in Section 1 above, and for no other business or purpose without the prior written consent of Landlord which consent may be withheld for any reason. No act shall be done on or around the Premises that is unlawful or that will increase the existing rate of insurance on the Premises, or cause the cancellation of any insurance on the Premises. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance. Tenant shall not do or permit anything to be done on the Premises which will obstruct or interfere with the rights of other tenants or occupants of the Premises, or their employees, officers, agents, servants, contractors, customers, clients, visitors, guests, members of the public or other licensees or invitees or to injure or annoy such persons.

**5.2 No Unlawful Use.** Tenant shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community of which the Premises or Real Property is a part, or in any manner which is not in the best interests of the Tenants of the Real Property. Tenant shall promptly comply, at its sole cost and expense, with all laws, ordinances, and regulations now in force or hereafter adopted or relating to or affecting the condition, use or occupancy of the Premises.

## **6. COMPLIANCE WITH LAWS.**

Tenant shall not cause or permit the Premises to be used in any way which violates any law, ordinance, or governmental regulation or order. Tenant shall be responsible for complying with all laws applicable to the Premises as a result of the Permitted Use, and Tenant shall be responsible for making any changes or alterations as may be required by law, rule, regulation, or order for Tenant's Permitted Use at its sole cost and expense.

## **7. UTILITIES & OTHER CHARGES.**

### **7.1 Utilities and Services.**

**7.1.1 Tenant's Responsibility.** Tenant shall be solely responsible for and shall promptly pay all charges for utilities based on the Tenant's percentage share of net leasable square footage occupied within the entirety of the Building, with the exception of Tenant's telephone service, which shall be Tenant's sole responsibility. The Premises under this Lease to Tenant equates to 45.2% of the net leasable square footage of the Building, thus Tenant will be responsible for reimbursing the Landlord for 45.2% of the utilities expense for the building. Tenant agrees to keep the temperature of the Premises at such level as may be reasonably required by Landlord to protect the Building and prevent the dissipation of heat or air conditioning in the areas adjacent to the Premises. It

shall be Landlord's responsibility to invoice Tenant such Additional Rent for such utilities charges, and Landlord shall furnish Tenant with actual invoice derived from the utility providers as proof of such utility costs. Tenant shall pay such Additional Rent within 30 days of its receipt of such invoice from Landlord. Utilities and services include gas, water, electricity, sewer, solid waste, and janitorial service (including supplies).

**7.1.2 Interruption.** Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of such services due to any cause whatsoever, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements, or due to accident, strike or conditions or events beyond Landlord's reasonable control shall be deemed an eviction of Tenant or to relieve Tenant from any of Tenant's obligations hereunder or to give Tenant a right of action against Landlord for damages.

**7.2 Licenses and Taxes.** Tenant shall be liable for, and shall pay throughout the term of this Lease, all license and excise fees and occupation taxes covering the business conducted on the Premises and all personal property taxes levied with respect to all personal property located at the Premises. If any governmental authority levies a tax or license fee on rents payable under this Lease or rents accruing from use of the Premises or a tax or license fee in any form against Landlord or Tenant because of or measured by or based upon income derived from the leasing or rental thereof, or a transaction privilege tax, such tax or license fee shall be paid by Tenant, either directly if required by law, or by reimbursing Landlord for the amount thereof upon demand. The Tenant shall maintain a current business license for the Town of Ruston, pay all applicable business and occupation taxes, and all applicable excise taxes as per the Ruston Municipal Code. Excise tax fees will be billed to the tenant on a quarterly basis with remittance due to the Town of Ruston in 30 days from billing date by the Town of Ruston.

**7.3 Alarm Service.** Based upon its share of the building, the Tenant will be responsible for 45.2% of all additional charges as required by the alarm protection company. These monies will be due and payable upon receipt of invoice from the Landlord. In addition to the alarm fees, the Tenant will be charged for false alarm responses at the rate of \$65.00 per call after the initial three (3) per calendar year. These fees will be billed to the Tenant on a quarterly basis with remittance due to the Town of Ruston in 30 days from billing date by the Town of Ruston.

## **8. ALTERATIONS.**

Tenant shall not make any alterations, additions or improvements in or to the Premises without first submitting to Landlord professionally-prepared plans and specifications for such work and obtaining Landlord's prior written approval thereof. Such plans shall be made an exhibit to this agreement and incorporated therein.

Tenant covenants that it will cause all such alterations, additions and improvements to be performed at Tenant's sole cost and expense by a contractor approved by Landlord and in a manner which: (a) is consistent with the Landlord-approved plans and specifications and any



conditions imposed by Landlord in connection therewith; (b) is in conformity with commercial standards; (c) includes acceptable insurance coverage for Landlord's benefit; (d) does not affect the structural integrity of the Building; and (e) does not invalidate or otherwise affect the construction and systems' warranties then in effect with respect to the Real Property.

Tenant shall secure all governmental permits and approvals, as well as comply with all other applicable governmental requirements and restrictions. Tenant shall indemnify, defend and hold Landlord harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorney's fees, but without waiver of the duty to hold harmless) arising from or out of the performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Tenant's breach of its obligations under the terms of this Section in a manner consistent with Section 13 below. This provision shall survive termination.

Tenant shall pay, when due, or furnish a bond for payment (in a form and amount satisfactory to the Town) all claims for labor or materials furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's liens against the Premises or any interest therein.

All alterations, additions and improvements (expressly including all light fixtures, heating, ventilation and air conditioning units and floor coverings), except trade fixtures and appliances and equipment not affixed to the Premises, shall immediately become the property of Landlord without any obligation on its part to pay therefore. If directed by the Landlord, Tenant shall remove such improvements on the termination of this Lease. Tenant shall immediately repair any damage to the Premises caused by removal of Alterations.

## **9. MAINTENANCE AND REPAIRS; SURRENDER.**

**9.1 General Appearance; Maintenance of Premises.** Tenant shall maintain the Premises in a clean, orderly and neat fashion to conform with the high standards of the Real Property, permitting no odors to be emitted from the Premises and neither committing waste nor permitting any waste to be committed thereon. Tenant shall not burn any trash in or about the Premises or permit any accumulation of trash. Tenant shall store trash, refuse and waste material so as not to constitute a health or fire hazard or nuisance, in adequately covered containers which are located within the Premises which are not visible to the general public or in areas designated by Landlord.

**9.2 Maintenance and Repair.** The Tenant agrees at all times, from and after delivery of possession of the premises to the Tenant, and at its own cost and expense, to repair and maintain the Premises in good and tenantable condition, except for the roof, exterior walls, structural elements, utility meters, pipes, conduits, of the Premises and Building, the repairs to which shall be the responsibility of the Landlord.

### **9.3 Failure to Maintain.**

**9.3.1 By Tenant.** If Tenant fails to keep and maintain the Premises in the condition set forth in this Section, Landlord may, at its option, put or cause the same to be put in the condition required hereunder, and in such case, upon receipt of written statements from Landlord, Tenant shall promptly pay the entire cost thereof

as additional rent. Landlord shall have the right to enter the Premises for the purpose of making such repairs upon Tenant's failure to do so.

**9.3.2 By Landlord.** If Landlord fails to keep and maintain the elements under Landlord's responsibility, then Tenant shall notify Landlord in writing of the need for repair including adequate detail for Landlord to understand the specific repairs requested. Landlord shall have five (5) days from the receipt of such notice to commence repair. In the event Landlord does not commence repair, then Tenant shall have the right to withhold further payments of Rent or Additional Rent until the repairs are made. Tenant may choose to make such repairs, or contract to make such repairs, and subtract the reasonable costs of such repair from any Rent or Additional Rent due, or to be due, to Landlord.

**9.4 Surrender of Premises.** At the expiration or termination of this Lease, Tenant shall return the Premises to Landlord in the same condition in which originally received (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by Landlord under terms of the Lease), reasonable wear and tear excepted. In the event the Landlord requests removal of improvement, then Tenant shall complete such removal prior to return of the Premise and repair any damages caused by such removal. In no event shall Tenant remove floor coverings; heating, ventilating and air conditioning equipment; lighting equipment or fixtures; wall coverings; window coverings; or other operating equipment or decorations unless otherwise directed by Landlord. Tenant's obligation to perform this covenant shall survive the expiration or termination of this Lease.

## **10. ACCESS AND RIGHT OF ENTRY.**

After twenty-four (24) hours' notice from Landlord (except in cases of emergency, when no notice shall be required), Tenant shall permit Landlord and its agents, employees and contractors to enter the Premises at all reasonable times to make repairs, inspections, alterations or improvements, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease. After reasonable notice to Tenant, Landlord shall have the right to enter the Premises for the purpose of (a) showing the Premises to prospective purchasers or lenders at any time, and to prospective tenants within one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term; and, (b) for posting 'for lease' signs within one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term.

## **11. SIGNAGE.**

Tenant shall obtain Landlord's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Tenant shall install any approved signage at Tenant's sole expense and in compliance with all applicable laws. Tenant shall not damage or deface the Premises in installing or removing signage and shall repair any injury or damage to the Premises caused by such installation or removal.

## 12. DESTRUCTION OR CONDEMNATION.

**12.1 Damage and Repair.** If the Premises are partially or wholly damaged, whether or not it is rendered untenantable, by fire or other insured casualty, then Landlord may, at its option and at its sole discretion: (a) terminate this Lease as provided herein, or (b) restore the Premises to their previous condition to the extent required below; provided, however, if such casualty event occurs during the last six (6) months of the Lease term (after considering any option to extend the term timely exercised by Tenant) then either Tenant or Landlord may elect to terminate the Lease.

If Landlord fails to notify Tenant of its election to restore the Premises, or if Landlord is unable to restore the Premises within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease upon twenty (20) days' written notice to Landlord unless Landlord, within such twenty (20) day period, notifies Tenant that it will in fact restore the Premises or actually completes such restoration work to the extent required below, as applicable. If Landlord restores the Premises under this Section, the base monthly rent shall be abated in the same proportion as the untenantable portion of the Premises bears to the whole Premises, provided that there shall be a rent abatement only if the damage or destruction of the Premises did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. In such case, then there shall be no rent abatement during the repair period.

No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises. Landlord shall have no obligation to carry insurance of any kind for the protection of Tenant or any alterations or improvements paid for by Tenant (regardless of who may have completed them); Tenant's furniture; or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, all Landlord's restoration obligations hereunder shall not include any obligation to repair any damage thereto or replace the same.

**12.2 Condemnation.** If the Premises are made untenantable by eminent domain, or conveyed under a threat of condemnation, this Lease shall automatically terminate as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises and all Rents and other payments shall be paid to that date. If the condemning authority takes a portion of the Premises that does not render the Premises untenantable, then this Lease shall continue in full force and effect for the reduced area. The Rent shall be reduced consistent with the proportional reduction in the area rented and shall be effective on the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises and Tenant shall make no claim for the value of its leasehold.

### **13. INSURANCE & INDEMNIFICATION.**

**13.1 Indemnification / Hold Harmless.** Tenant shall defend, indemnify, and hold harmless the Landlord, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Tenant's use of Premises, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted, or suffered by Tenant in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the Landlord. This provision (and any other indemnification provision in this Lease) survives termination of the lease, regardless of reason for termination.

**13.2 Insurance.** The Tenant shall procure and maintain for the duration of the Lease, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Tenant's operation and use of the leased Premises. Tenant shall further procure and maintain for the duration of the Lease insurance for Tenant's own personal property.

**13.2.1 No Limitation.** Tenant's maintenance of insurance as required by this Lease shall not be construed to limit the liability of the Tenant to the coverage provided by such insurance, or otherwise limit the Landlord's recourse to any remedy available at law or in equity.

**13.2.2 Minimum Scope of Insurance.** Tenant shall obtain insurance of the types described below:

a. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The Landlord shall be named as an insured on Tenant's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.

b. Property insurance shall be written on an all risk basis.

**13.2.3 Minimum Amounts of Insurance.** Tenant shall maintain the following insurance limits:

a. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

b. Property insurance shall be written covering the full value of Tenant's property and improvements with no coinsurance provisions.

**13.3 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

a. The Tenant's insurance coverage shall be primary insurance as respect the Landlord. Any Insurance, self-insurance, or insurance pool coverage

maintained by the Landlord shall be excess of the Tenant's insurance and shall not contribute with it.

- b. The Tenant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Landlord.

**13.4 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

**13.5 Verification of Coverage.** Tenant shall furnish the Landlord with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Tenant.

**13.6. Waiver of Subrogation.** Tenant and Landlord hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

**13.7 Landlord's Property Insurance.** The Landlord shall purchase and maintain during the term of the lease all-risk property insurance covering the Building for their full replacement value without any coinsurance provisions.

#### **14. ASSIGNMENT AND SUBLETTING.**

Tenant shall not assign, sublet, mortgage, encumber or otherwise transfer any interest in this Lease (collectively referred to as a "Transfer") or any part of the Premises, without first obtaining Landlord's written consent which may be withheld for any reason. No Transfer shall relieve Tenant of any liability under this Lease notwithstanding Landlord's consent to such Transfer. Consent to any Transfer shall not operate as a waiver of the necessity for Landlord's consent to any subsequent transfer. In connection with each request for consent to a Transfer, Tenant shall pay the reasonable cost of processing same, including attorneys' fees, upon demand of Landlord up to a maximum of \$2,000.

If Tenant is a partnership, limited liability company, corporation, or other entity, any transfer of this Lease by merger, consolidation, redemption or liquidation, or any change in the ownership of, or power to vote, which singularly or collectively represents a majority of the beneficial interest in Tenant, shall constitute a Transfer under this Section.

As a condition to Landlord's approval, if given, any potential assignee or sublessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor, if required, for the payment of Rent and performance of all terms of this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases and assumption agreement or documents.

Notwithstanding the prohibition on subletting above, Landlord consents to the Tenant subletting 1,180 square feet (Suite A-07) of Tenant's to the EPA for Tenant's purposes. Such sublet does not in any manner relieve Tenant from the full obligations to Landlord in this Lease.

#### **15. LIENS.**

Tenant is not authorized to subject the Landlord's assets to any liens or claims of lien. Tenant shall keep the Premises free from any liens created by or through Tenant. Tenant shall indemnify and hold Landlord harmless from liability for any such liens including, without limitation, liens arising from any Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall, within 10 days after Landlord's demand, at Tenant's expense, either remove the lien or furnish to Landlord a bond in form and amount and issued by a surety satisfactory to Landlord, indemnifying Landlord and the Premises against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.

#### **16. DEFAULT.**

**16.1 Tenant's Default.** The following occurrences shall each constitute a default by Tenant (an "Event of Default"):

**16.1.1 Failure To Pay.** Failure by Tenant to pay any sum, including Rent of any type, due under this Lease following three (3) days' notice from Landlord of the failure to pay.

**16.1.2 Vacation/Abandonment.** Vacation by Tenant of the Premises (defined as an absence for at least fifteen (15) consecutive days without prior notice to Landlord), or abandonment of the Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Premises shall not be subject to any notice or right to cure.

**16.1.3 Insolvency.** Tenant's insolvency or bankruptcy (whether voluntary or involuntary), or appointment of a receiver, assignee or other liquidating officer for Tenant's business; provided, however, that in the event of any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within sixty (60) days after its institution or commencement.

**16.1.4 Levy or Execution.** The taking of Tenant's interest in this Lease or the Premises, or any part thereof, by execution or after process of law directed against Tenant, or attachment of Tenant's interest in this Lease by any creditor of Tenant, if such attachment is not discharged within fifteen (15) days after being levied.

**16.1.5 Other Non-Monetary Defaults.** The breach by Tenant of any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section or elsewhere in this Lease, which breach continues for a period of thirty (30) days after notice by Landlord to Tenant of the breach.

**16.1.6 Failure to Take Possession.** Failure by Tenant to take possession of the Premises on the Commencement Date or failure by Tenant to commence any Tenant's Work in a timely fashion.

**16.2 Landlord's Default.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event less than sixty (60) days after notice by Tenant to Landlord. If Landlord fails to commence cure any such default within the 60 days, Tenant's sole remedy shall be to give notice of termination of this Lease, with unearned rent being prorated to the date of termination.

**16.3 Notice Periods.** Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.

## **17. REMEDIES.**

Landlord shall have the following remedies upon an Event of Default and material breach of the Lease. Landlord's rights and remedies under this Lease shall be cumulative, and none shall exclude any other right or remedy allowed by law.

**17.1 Termination of Lease.** Landlord may terminate Tenant's interest under the Lease by providing a notice of termination in writing to the address listed in Section 1.8 above. The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount equal to the Rent and other sums that would have been owing by Tenant under this Lease for the balance of the Lease term.

Landlord shall be entitled to either collect damages from Tenant monthly on the days on which rent or other amounts would have been payable under the Lease, or alternatively, Landlord may accelerate Tenant's obligations under the Lease and recover from Tenant: (i) unpaid rent which had been earned at the time of termination; (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided; (iii) the amount by which the unpaid rent for the balance of the term of the Lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which in the ordinary course would be likely to result from the Event of Default.

**17.2 Re-Entry and Re-letting.** Upon Notice of Default as described in Section 16 above, Landlord may, but is not required to, continue this Lease in full force and effect and without demand or notice, re-enter and take possession of the Premises or any part thereof, expel the Tenant from the Premises and anyone claiming through or under the Tenant, and remove the personal property of either. Tenant will pay Landlord the Rent and other sums which would be payable under this Lease if repossession had not occurred.

**17.3 Waiver of Redemption Rights.** Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby

waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Premises or to have a continuance of this Lease for the Lease term or any extension thereof.

**17.4 Nonpayment of Additional Rent.** All costs which Tenant is obligated to pay to Landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of Rent, and Landlord shall have the same rights it has with respect to nonpayment of Rent.

**17.5 Failure to Remove Property.** If Tenant fails to remove any of its property from the Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent.

#### **18. NON-WAIVER.**

Landlord's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of Tenant. The acceptance by Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any previous breach by Tenant

#### **19. HOLDOVER.**

If Tenant shall, without the written consent of Landlord, remain in possession of the Premises and fail to return them to Landlord after the expiration or termination of the term, the tenancy shall be a holdover tenancy and shall be on a month-to-month basis, which may be terminated according to Washington law. During such tenancy, Tenant agrees to pay to Landlord 150% of the rate of rental last payable under this Lease, unless a different rate is agreed upon by Landlord. All other terms of the Lease shall remain in effect. Tenant acknowledges and agrees that this Section does not grant any right to Tenant to holdover, and that Tenant may also be liable to Landlord for any and all damages or expenses which Landlord may have to incur as a result of Tenant's holdover.

#### **20. NOTICES.**

All notices under this lease shall be in writing and effective either when delivered in person or via overnight courier to the other party or three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section 1. The addresses for notices and payment of rent set forth in Section 1 may be modified by either party only by written notice delivered in conformance with this Section.



## **21. COSTS AND ATTORNEYS' FEES.**

If Tenant or landlord engage the services of an attorney to collect monies due or to bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or other payments, or possession of the Premises, the losing party shall pay the prevailing party its reasonable attorneys fees and costs in such action, whether in mediation or arbitration, at trial, on appeal, and in any bankruptcy proceeding.

## **22. TRANSFER OF LANDLORD'S INTEREST.**

This Lease shall be assignable by Landlord without the consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for collateral purposes only, upon the assumption of this Lease by the transferee, Landlord shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, including any liability for any retained security deposit or prepaid rent, for which the transferee shall be liable, and Tenant shall attorn to the transferee.

## **23. LANDLORD'S LIABILITY.**

Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord but are made and intended for the purpose of binding only the Landlord's interest in the Premises, as the same may from time to time be encumbered. In no event shall Landlord or its elected officials, appointed officials, employees, contractors or volunteers, as the case may be, ever be personally liable hereunder.

## **24. HAZARDOUS MATERIAL.**


As used herein, the term "Hazardous Material" means any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local governmental authority, the State of Washington, or the United States Government, due to its potential harm to the health, safety or welfare of humans or the environment. Landlord represents and warrants to Tenant that, to Landlord's knowledge without duty of investigation, there is no Hazardous Material on, in, or under the Premises as of the Commencement Date except as may otherwise have been disclosed to Tenant in writing before the execution of this Lease. If there is any Hazardous Material on, in, or under the Premises as of the Commencement Date which has been or thereafter becomes unlawfully released through no fault of Tenant, then Landlord shall indemnify, defend and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including without limitation sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, incurred or suffered by Tenant either during or after the Lease term as the result of such contamination.

Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about or disposed of on the Premises by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, except with Landlord's prior consent and then only upon strict compliance with all applicable federal, state

LEASE AGREEMENT

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Updated 3/30/2012



and local laws, regulations, codes and ordinances. If Tenant breaches the obligations stated in the preceding sentence, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including, without limitation, diminution in the value of the Premises; damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, or elsewhere; damages arising from any adverse impact on marketing of space at the Premises; and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees incurred or suffered by Landlord either during or after the Lease term.

These indemnifications by Landlord and Tenant include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, whether or not required by any federal, state or local governmental agency or political subdivision, because of Hazardous Material present in the Premises, or in soil or ground water on or under the Premises. Tenant shall immediately notify Landlord of any inquiry, investigation or notice that Tenant may receive from any third party regarding the actual or suspected presence of Hazardous Material on the Premises.

Without limiting the foregoing, if the presence of any Hazardous Material brought upon, kept or used in or about the Premises by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, results in any unlawful release of any Hazardous Materials on the Premises or any other property, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises or any other property to the condition existing prior to the release of any such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval may be withheld at Landlord's sole discretion. The provisions of this Section shall survive expiration or termination of this Lease.

## **25. QUIET ENJOYMENT.**

So long as Tenant pays the Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.

## **26. MERGER.**

The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing sub-tenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such sub-tenancies.

## **27. GENERAL.**

**27.1 Heirs and Assigns.** This Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.

**27.2 Brokers' Fees.** Tenant represents and warrants to Landlord that it has not engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Landlord against any loss, cost, liability or expense incurred by Landlord as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Tenant. Landlord represents and warrants to Tenant that it has not

engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Tenant against any loss, cost, liability or expense incurred by Tenant as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Landlord.

**27.3 Entire Agreement.** This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Premises. No prior or contemporaneous agreements or understandings pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended to except in writing signed by Landlord and Tenant

**27.4 Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.

**27.5 Force Majeure.** Time periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife.

**27.6 Governing Law; Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of Washington. The jurisdiction and venue for any proceeding shall be in Pierce County Superior Court, Washington.

**27.7 Memorandum of Lease.** Neither this Lease nor any memorandum or 'short form' thereof shall be recorded without Landlord's prior consent

**27.8 Submission of Lease Form Not an Offer.** One party's submission of this Lease to the other for review shall not constitute an offer to lease the Premises. This Lease shall not become effective and binding upon Landlord and Tenant until it has been ratified by the Town Council of the Town of Ruston and fully signed by both parties.

**27.9 No Light, Air or View Easement.** Tenant has not been granted an easement or other right for light, air or view to or from the Premises. Any diminution or shutting off of light, air or view by any structure which may be erected on or adjacent to the Premises shall in no way effect this lease or the obligations of Tenant hereunder or impose any liability on Landlord.

**27.10 Authority of Parties.** Each party signing this Lease represents and warrants to the other that it has the authority to enter into this Lease, that the execution and delivery of this Lease has been duly authorized, and that upon such execution and delivery, this Lease shall be binding upon and enforceable against the party on signing.

**27.11 Time.** "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business in the state where the Premises are situated. Any period of time which would otherwise end on a

non-business day shall be extended to the next following business day. Time is of the essence of this Lease.

**28. EXHIBITS AND RIDERS.**

The following exhibits and riders are made a part of this Lease, and the terms thereof shall control over any inconsistent provision in the sections of this Lease:

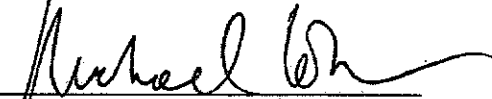
**Exhibit A** -- Legal Description of the Premises, with Tenant areas and Public Areas identified for Ground and Main Floor of Property.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands the date first above written.

**LANDLORD: TOWN OF RUSTON**

\_\_\_\_\_  
By: Bruce Hopkins  
Its: Mayor

**TENANT: POINT RUSTON LLC**

  
\_\_\_\_\_  
By: Michael Cohen  
Its: Manager

**ATTEST**

\_\_\_\_\_  
Town Clerk

**APPROVED AS TO FORM**

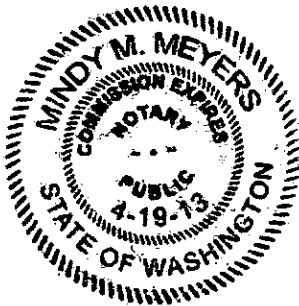
\_\_\_\_\_  
Office of the Town Attorney

STATE OF WASHINGTON )  
 )  
County of Pierce )

ss.

On this day before me personally appeared Michael Cohen to me known to be the Manager of Point Ruston LLC., and who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN under my hand and official seal this 30<sup>th</sup> day of March, 2012.



Mindy M. Meyers  
Printed Name: Mindy M. Meyers  
NOTARY PUBLIC in and for the State  
of Washington, residing at Pierce County, WA  
My Commission Expires: 4-19-2013

STATE OF WASHINGTON )  
 )  
County of Pierce )

ss.

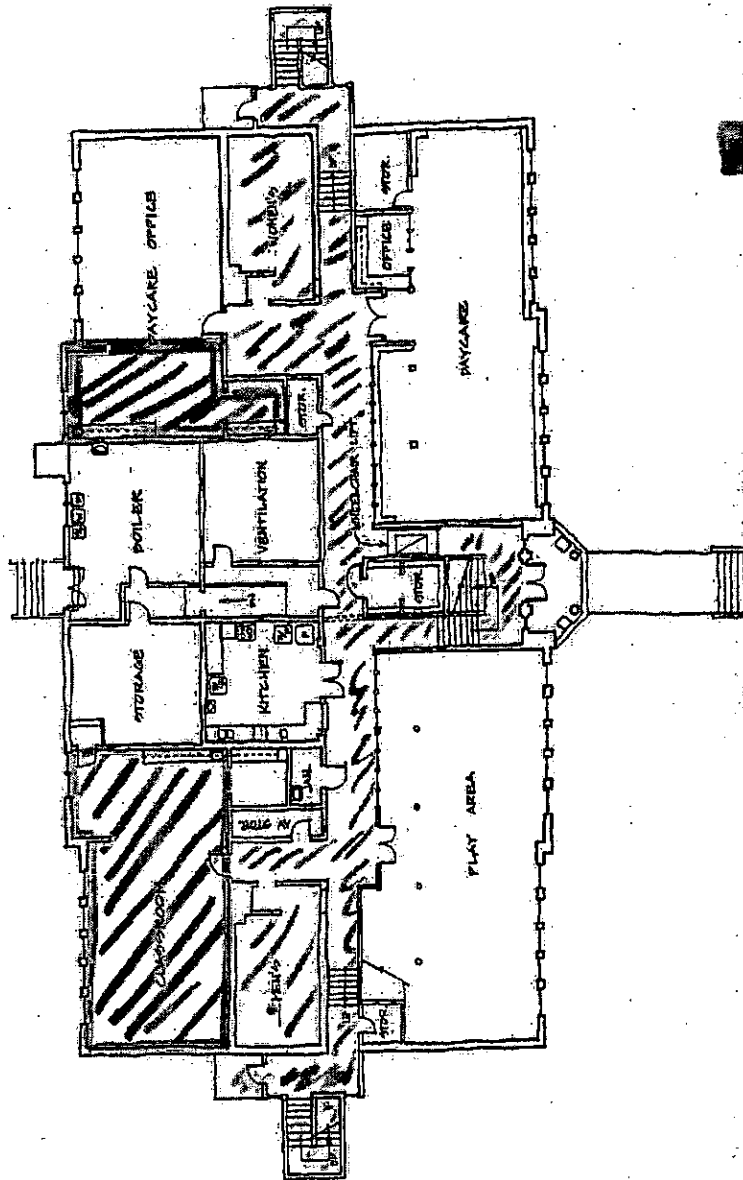
On this day before me personally appeared BRUCE HOPKINS, to me known to be the Mayor of the Town of Ruston, Washington, and who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

A handwritten signature or mark, possibly a stylized "M", located in the bottom right corner of the page.

# EXHIBIT A

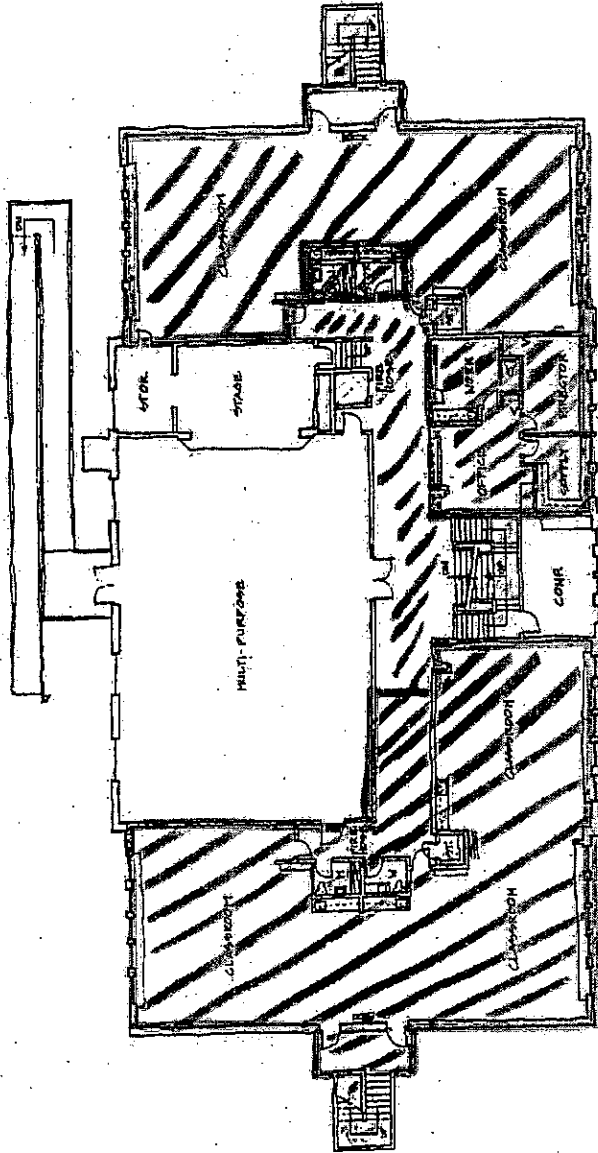


**PUBLIC AREAS**

10	Town of Ruston Facilities Study	"As-Built"	GROUND FLOOR PLAN RUSTON SCHOOL	Monte Stafford Architects 6 Tacoma Av. N Tacoma, WA 98403 (206) 627-0535	BASE CONDITIONS
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# EXHIBIT A, CONT.



11	Town of Ruston Facilities Study	1994 BUILT	<del>1994</del> <del>1994</del> PLAN RUSTON SCHOOL	Monte Stafford Architects Tacoma, WA 98403 (206) 827-0535	EXISTING CONDITIONS
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**PUBLIC  
AREAS**

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