LEASE

THIS INDENTURE OF LEASE, made in quadruplicate this ___ day of March, 1956, by and between the City of Port Townsend, a municipal corporation of the State of Washington (hereinafter called the "City"), party of the first part, and Crown Zellerbach Corporation, a corporation (hereinafter sometimes called "Lessee" and sometimes called "Crown"), party of the second part, WITNESSETH:

In consideration of the mutual agreements herein contained, the City and Crown agree as follows:

The City hereby leases to Crown and Crown hereby leases from the City all that part of its waterworks and system lying outside of the City limits constructed or to be constructed pursuant to:

The plan and system specified and adopted in Ordinance No. 947, approved July 19, 1927, entitled: "An ordinance specifying and adopting a system or plan for the making of additions or betterments to and extensions of the existing municipal waterworks system of the City of Port Townsend, declaring the estimated cost thereof, as near as may be, providing for the issuance and sale of bonds to secure funds therefor, and submitting such plan or system to the qualified voters of said City at a special election to be held therein on August 18th, 1927," which plan or system was afterwards approved at a special election of the voters of Port Townsend on August 18, 1927; and

The plan and system specified and adopted in Ordinance No. 1318, approved January 17, 1956, entitled "An ordinance of the City of Port Townsend adopting a plan for the acquisition, construction, and installation of certain additions, betterments, and improvements to and replacements and extensions of the water supply and distribution system of the City and declaring the estimated cost thereof, providing for the issuance of water revenue bonds of the City in the principal sum of $2,200,000 to provide the funds necessary to pay such cost, and declaring an emergency";

more particularly described hereinafter in Section I and upon the following terms and conditions:
LEASE AND PROPERTY SUBJECT TO LEASE

The property leased hereby is all that part of the City's waterworks and system lying outside of the City limits more particularly described as follows:

A. Existing Water System.

(1) **Snow Creek--Olympic Gravity Water System.** The head-works and diversion dam on Snow Creek, in Section 4, Township 28 North, Range 2 West, W. M., Jefferson County, Washington, and the pipe line and right of way leading from said head-works and diversion dam in a general Easterly direction to a junction with the pipe line constructed from the Big Quilcene River in the Northwest Quarter of the Southwest Quarter of Section 1, Township 28 North, Range 2 West, W. M.

(2) **Big Quilcene Water Extension Project.** The head-works and diversion dam erected under the plan or system known as the "Big Quilcene Water Extension Project," which dam is constructed across the Big Quilcene River immediately below its confluence with Tunnel Creek at a point located in Section 31, Township 27 North, Range 2 West, W. M., and within the Olympic National Forest, Jefferson County, Washington, together with right of way and pipe line from said head-works on the Big Quilcene in an Easterly and Southerly direction to a point on or near the South line of Section 33, Township 27 North, Range 2 West, W. M., and thence in a Northerly direction to a junction with the pipe line from Snow Creek, in Section 1, Township 28 North, Range 2 West, W. M.; thence in a Northerly direction across Section 6, Township 28 North, Range 1 West, W. M., to the North line of said Section 6; thence paralleling the City of Port Townsend's water line from Snow Creek (known as the Olympic Gravity Water System) in a general Northerly direction to the Southerly boundary line of the City of Port Townsend.

(3) **City Lake.** The storage basin formed by City Lake, situated in Section 19, Township 29 North, Range 1 West, W. M., together with the real estate owned by the City of Port Townsend surrounding the same, described as the Northeast Quarter of the Southeast Quarter, the Southeast Quarter of the Northeast Quarter, and the South Half of the Northwest Quarter of the Southeast Quarter, all in Section 19, Township 29 North, Range 1 West, W. M.

B. Lords Lake Development.

The head-works and diversion dam to be constructed across the Little Quilcene River in the Northwest...
Quarter of the Southeast Quarter of Section 32 in Township 28 North, Range 2 West, W. M., and within the Olympic National Forest, Clallam County, Washington, at a point (Point "A") bearing South 70°26' West, 7,827 feet from an iron pipe (Point "0") marking the Northeast corner of Section 33, Township 28 North, Range 2 West, W. M., in Jefferson County, Washington, together with the right of way to be acquired and pipe line to be constructed from the said head-works at Point "A" on the Little Quilcene River in a South-easterly direction across the North Half of the Southeast Quarter of Section 32, Township 28 North, Range 2 West, W. M. and within the Olympic National Forest, Clallam County, Washington; thence in a South-easterly direction across the West Half of the Southwest Quarter of Section 33, Township 28 North, Range 2 West, W. M., which is located both in Clallam County and in Jefferson County, Washington; thence Easterly and North-easterly across the East Half of the Southwest Quarter of Section 33, Township 28 North, Range 2 West, W. M., Jefferson County, Washington, and thence North-easterly and North-westerly across portions of the Northwest Quarter of the Southeast Quarter of said Section 33 to a point (Point "B") on the North Boundary of the Southeast Quarter of the said Section 33 which bears South 43°15' West 3,625 feet, more or less, from the aforementioned iron pipe at Point "0"; and together with right of way for pipe line, flume or open surface drainage to be located from Point "B" to the Lords Lake Storage Basin and from the Lords Lake Storage Basin to a point on the existing pipe line lying immediately East of the Lords Lake Storage Basin; also the storage basin formed and to be formed by Lords Lake as enlarged, situated in Sections 33 and 28 of the aforementioned Township and Range in Jefferson County, Washington, including dams and spillways to be constructed at Lords Lake and together with the real estate owned by the City of Port Townsend surrounding the Lords Lake Storage Basin and described as those portions of the Northeast Quarter of said Section 33 and the Southeast Quarter of said Section 28, all in Township 28 North, Range 2 West, W. M., in Jefferson County, Washington, which are located between the outer margin of said Lords Lake Storage Basin, as enlarged, and a line located in a direction away from the storage basin and 150 feet distant in the horizontal plane from the contour line surrounding the storage basin at the 925 foot elevation, subject to easement for the Forest Service Little Quilcene Access Road which crosses the Northeast Quarter of the Southeast Quarter, the East Half of the Southwest Quarter and a portion of the West Half of the Southwest Quarter of Section 33, Township 28 North, Range 2 West, W. M., in Jefferson County, Washington, all of which development is to be accomplished pursuant to the plan and system specified and adopted in Ordinance No. 1318 approved January 17, 1956;
together with all water rights, permits, easements, rights of way, diversion works, dams, pipe lines, storage basins, reservoirs, additions, betterments and extensions and all other equipment, facilities and appurtenances of every kind and character, real, or personal, constructed or to be constructed, used or useful in connection with the operation of the portions of the waterworks and system hereinbefore described, whether now owned by the City or hereafter acquired; but excluding:

(a) Any distribution pipe lines (as distinguished from transmission pipe lines) used in connection with the same to supply customers of the City of Port Townsend outside of said City's limits;

(b) The City's chlorinating system and appurtenances thereto; and excluding also

(c) Any part of said waterworks and system within the City limits of the City of Port Townsend.

II

TERM

This lease shall become operative as soon as the Mayor of Port Townsend, pursuant to Chapter 137 of the Laws of 1917, proclaims the result of the City's special election of March 13, 1956 approving this lease and shall be operative and in force for a period of forty-four years expiring March 15, 2000 A.D.

The existing lease, dated August 7, 1944, between the City, as Lessor, and Crown, as Lessee, leasing until September 30, 1968, a portion of the waterworks and system leased hereunder (which lease is recorded under Auditor's Receipt No. 103238 in Volume 4 of Leases at page 243, Records of Jefferson County, Washington), shall terminate when this lease becomes operative, as aforesaid, pursuant to Chapter 137 of the Laws of 1917.
III

POSSESSION - ALLOCATION OF WATER

The lessee shall have full possession, control, use and enjoyment of that part of the waterworks and system leased hereby throughout the period of said lease, including all of the water supply flowing through said waterworks and system not expressly reserved herein to the City. The City reserves from said water supply flowing through said waterworks and system a quantity of water sufficient to serve the demands of all present and future consumers served by the City, whether within or without the limits of said City, including such water as may be needed by the City for its own purposes, not exceeding, however, at any time the maximum amount of four million gallons of water in any one day, which water so reserved shall be taken by the City at the City limits by the City there maintaining a connection with that part of the waterworks and system so leased.

A. Out-of-City User. The City may maintain its present six-inch connection with the pipe line of said waterworks and system located at approximately Station 161\(\frac{1}{4}\)\, and may use said connection to supply the following users of water and no others:

1. Hadlock and Irondale; and
2. Users located on Discovery Bay near what is known as "Four Corners"; and
3. United States Government for use only on Indian Island; and
4. Users located on Marrowstone Island; and
5. Chimacum,

which water so supplied to said users shall be a part of and included in the maximum of four million gallons of water reserved
by the City as aforesaid on the following terms and conditions, namely: That the quantity of water diverted through said connection shall not exceed at any time 400,000 gallons per 24-hour day, the valve located on said six-inch connection will be kept locked in a position to pass only said maximum amount of 400,000 gallons per 24-hour day, and the City shall maintain at all times in good operating condition an accurate water meter on said connection for the purpose of measuring all water passing from the main pipe line through said connection.

B. Snow Creek Contingency. If the City at any time during the term of this lease should desire to develop the water supply from Snow Creek to meet its additional municipal water needs, the Lessee, upon request of the City, shall release to the City so much of the Snow Creek water supply as the City may require and shall permit the City to build a pipe line on and along the leased right-of-way for the purpose of conducting water from Snow Creek to the City. Lessee shall execute and deliver to the City, when so requested by the City, all necessary subleases, assignments and transfers to afford to the City the full use and enjoyment of the Snow Creek water supply, in addition to the maximum of four million gallons daily reserved to the City from the Big Quilcene Water Extension Project.

IV

REPAIR, REPLACEMENT AND BETTERMENT

The maintenance, repair, replacement and betterment of that part of the waterworks and system leased hereby shall devolve upon the parties as follows:

A. Repair and Maintenance. The repair and maintenance of that part of the waterworks and system leased hereby, including not
only the existing waterworks and system but also the waterworks and system to be acquired and constructed, shall devolve upon the parties as follows:

(1) **Lessor's Obligations.** The City, as Lessor, at its own cost and expense, shall maintain, repair and keep that part of the waterworks and system known as the "Olympic Gravity Water System" with head-works on Snow Creek, in such a state of repair as shall be necessary and proper, so long as the same continues to be used in connection with that part of the waterworks and system leased to Lessee; but the City, at its option, may discontinue the use of the "Olympic Gravity Water System" in connection with that part of the system leased to the Lessee.

(2) **Lessee's Obligations.** The Lessee, at its own cost and expense, shall maintain, repair and keep those portions of the waterworks and system identified hereinbelow in good and reasonable state of repair at all times, reasonable wear and tear, deterioration and obsolescence excepted, to-wit:

(a) "Big Quilcene Water Extension Project" as described hereinabove and in Ordinance No. 947;

(b) "City Lake" as described hereinabove; and

(c) "Lords Lake Development" as described hereinabove and in Ordinance No. 1318 adopted January 17, 1956.

**B. City's Engineer.** For all purposes of this lease, the term "City's Engineer" shall mean any duly qualified civil engineer of the requisite training and experience to engineer and supervise work of the kind and character herein contemplated, selected and specially employed by the City for any purpose or purposes set forth in this lease. All replacements and betterments required by this lease shall be made under the supervision and direction of the City's Engineer.
C. Replacement. Immediately upon this lease becoming effective, the City will proceed to replace the portions of the waterworks and system requiring replacement pursuant to Ordinance No. 1318, adopted January 17, 1956, with pipe of a size described in said Ordinance and of a character and construction equal to or better than that, when new, of said pipe to be replaced. If, at any time or times hereafter during the term of this lease, it shall be determined by joint agreement of the City's Engineer and any duly qualified engineer employed by the Lessee for the purpose, that, by reason of wear or deterioration, it is necessary to replace all or any part of the waterworks or system leased hereby, the City, at its own cost and expense, immediately shall proceed with such replacement or replacements with materials of a character and construction equal to or better than that, when new, of the waterworks and system to be replaced.

In the event that any part or all of the waterworks and system leased hereby becomes inoperative by reason of any catastrophe or act of God, including but not limited to, slides, washouts, erosion-and earthquakes, neither party shall be obligated to replace such part of the leased properties so damaged. If, on mutual agreement of the City's and Lessee's engineers, such parts are so replaced by the City or by Lessee, the City shall pay four-fourteenths (4/14ths) of such cost of replacement and Lessee shall pay ten-fourteenths (10/14ths) thereof; provided, however, that the City shall not be obligated to pay more than the balance then existing in the "Transmission Line Replacement Fund", as defined in Section F of this Section IV.

D. Betterment. Immediately upon this lease becoming effective, the City will proceed to construct the improvement
between Stations 434 and 477 authorized by Section 1B of Ordinance No. 1318, adopted January 17, 1956. Also, immediately upon this lease becoming effective, the City will proceed to construct the project known as the Lords Lake Development pursuant to the plan and system specified in Section 1A of said Ordinance No. 1318. If, at any time or times hereafter during the term of this lease, it shall be determined by joint agreement of the City's Engineer and any duly qualified engineer employed by the Lessee for the purpose that, by reason of wear or deterioration, it is necessary to replace all or any part of the waterworks or system leased hereby, and that it is mutually desirable to relocate all or any part of the waterworks or system thus to be replaced by reason of wear or deterioration, the City, at its own cost and expense, shall proceed with such replacement and relocation pursuant to plans and specifications mutually to be agreed upon by the aforementioned engineers. Likewise, whenever, replacement being necessary by reason of wear or deterioration, the aforementioned engineers shall agree upon plans and specifications for the improvement and betterment of those parts of the waterworks or system hereby leased, the City, at its own cost and expense, shall proceed with such improvement or betterment.

E. Financing of Replacements and Betterments. The actual cost to the City of any and all of the replacements and betterments to be made and constructed immediately upon this lease becoming effective, including all reasonable and proper professional and other expenses incidental to such construction, shall be borrowed by the City from the public by the sale of water revenue bonds in the amount of $2,200,000.00, having a maximum maturity of thirty years, pursuant to Ordinance
No. 1318 adopted January 17, 1956. The funds which it thus will borrow shall be made available by the City from time to time following the issuance and sale of such bonds, as funds are required for the replacements and betterments specified in said Ordinance No. 1318. The City acknowledges hereby that Lessee, at its own initial cost and expense in the neighborhood of $75,000.00, has made comprehensive engineering studies of those parts of the waterworks and system now to be replaced and improved and has undertaken the clearing of the Lords Lake Reservoir pursuant to City Council's Resolution No. 55-5 dated October 4, 1955. The City acknowledges hereby that these expenses, insofar as they are reasonable in amount, are necessary expenditures for the replacements and betterments to be accomplished pursuant to Ordinance No. 1318, and agrees to repay said amounts, insofar as they are necessary and reasonable, to Lessee from the proceeds of the bond issue.

F. Transmission Line Replacement Fund. In order to provide the City with funds reserved for future replacements or betterments of the waterworks and system subject to this lease, which shall be made necessary by reason of wear or deterioration or by reason of any catastrophe or act of God as described in the last paragraph of subsection C of this section, the City shall create, immediately upon this lease becoming effective and said bonds being issued, a fund to be used only for future replacements and betterments of the property subject to this lease to be called "The Transmission Line Replacement Fund". This Fund shall be in addition to any surplus moneys that may be made available for replacement purposes in the manner contemplated by Ordinance No. 1318.
On or before November 1 of each year during the full 44-year term of this lease the City shall deposit in said fund the sum of $15,000.00, more or less, to be accumulated, invested and reinvested, either by the City Treasurer or by a bank nominated by the City, which bank shall act as trustee or agent of the City in the administration of said Fund. Periodically, upon the mutual agreement of the City Engineer and of Lessee's engineer, that replacements or betterments or both are to be accomplished, the sums theretofore accumulated in the Transmission Line Replacement Fund shall be drawn down to pay for the projects thus agreed upon. The City shall publish or cause to be published an annual statement of the status of said Fund and Lessee shall have the right at all reasonable times to audit the books of accounts and records of said Fund. When it becomes necessary for the City to finance repairs, replacements, or improvements of its intra-city water distribution system or any part of its waterworks or system other than that leased herein, the funds theretofore deposited in the Transmission Line Replacement Fund shall not be used by the City to pay for any such repairs, replacements or improvements and shall not be pledged by the City as security for the financing of any necessary bond issue, but the Transmission Line Replacement Fund shall be preserved in trust only for the uses and purposes aforementioned. In the event that the City finances by bond issue repairs, replacements or improvements of any part of its waterworks or system other than the property subject to this lease, Lessee agrees that the City's obligation to make the $15,000.00 annual payments to the Transmission Line Replacement Fund may be subordinated to the City's pledge of water revenues and to its other obligations to said bond
holders; provided, however, that the City will contribute as much to the Transmission Line Replacement Fund as is consistent with the requirements of said bond issue and, provided further that, in any event, the principal and interest in the Transmission Line Replacement Fund shall be accumulated at such rate or rates that, over the full 44-year term of said lease, the accumulated principal and interest shall aggregate not less than $660,000.00.

V

RENT

Subject to the following terms and conditions, the full rent to be paid by Lessee under this lease for the full 44-year term hereof shall be $3,627,042.17, which the Lessee hereby covenants and agrees to pay in the following amounts at the following times and in the following manner:

A. First Thirty Years. Subject to the following terms and conditions the rent to be paid by Lessee hereunder during the first thirty years of the term of this lease shall be $3,395,840.50, payable as follows:

(1) Payments. During said first thirty-year period rent payment shall be made either to the City Treasurer or to an agent or trustee nominated by the City for this purpose and according to the following schedule and upon the following terms and conditions:

(a) Initial Payment. Within thirty (30) days of this lease becoming operative, pursuant to Section II hereof, Lessee shall pay the sum of $189,384.58, said sum being the sum of (1) annual rental stipulated hereinbelow for the period expiring March 15, 1957, plus (ii) the stipulated annual rental for the thirtieth (30th) year of the term.
expiring March 15, 1986, less the sum of $36,270.42, the latter sum being the amount deposited by Lessee upon the making of its bid pursuant to Resolution 56-1 and which amount shall be retained by the City and is credited hereby to Lessee's rental account.

(b) Semi-annual Payments. On and after March 15, 1957, rents shall be paid in advance in semiannual installments on or before March 15 and September 15 of each and every year through September 15, 1984 as follows:

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$3,395,840.50

(c) Guaranty. Rental payments shall be made as aforesaid regardless of when the replacements and betterments to the leased waterworks and system provided for in
Ordinance No. 1318 are constructed; regardless of whether Lessee uses said waterworks and system or any part thereof during the first thirty years of the term of this lease; and regardless of any other happening or contingency whatsoever, including any default or claimed default on the part of the City, until the full amount of the rentals to be paid by Lessee during said first thirty years has been paid to the City. Lessee's covenant to pay rent shall be deemed for all purposes to be an independent covenant.

(d) **Acceleration.** Lessee, at its option, may accelerate rental payments or may pay larger semiannual payments than are stipulated and all of said accelerated payments and the excess of all such enlarged payments shall be credited to rent not theretofore prepaid and last falling due during the first thirty years of the term.

(2) **Reduced Rental Contingencies.** Notwithstanding anything heretofore set forth to the contrary, rent payments to be made during the first thirty years of the term of this lease may be reduced on and after the occurrence of either one or both of the two following events, to-wit:

(a) If any surplus money out of the proceeds of the sale of the bonds is transferred to the Bond Redemption Fund as authorized in Section 3 of Ordinance No. 1318, the semiannual rent payments next coming due after such transfer may be reduced by the amount so transferred.

(b) If all the outstanding bonds of the issue authorized by Ordinance No. 1318 of the City and described in Section IV E hereof, or if all the outstanding bonds issued to refund the same are retired by the issuance of refunding bonds that will require smaller amounts to be paid each year for
principal and interest coming due thereon than required in the
same years for payment of the principal of and interest on the
bonds being refunded, the semiannual rental payments provided
for in this section may be correspondingly reduced to the
amounts required each year to pay only the principal of and
interest on such refunding bonds.

Whenever Lessee has paid rentals to the City in an
amount that is sufficient, with all interest earned by the
investment of any rental payments, to redeem and retire all
of such bonds, or any bonds issued to refund the same, with
interest and premiums, if any, to the date of such redemption,
and all of such bonds have been redeemed in full and retired,
then no more rentals need be paid the City by Lessee for the
first thirty years of this lease.

B. Last Fourteen Years. Subject to the following
terms and conditions, the rent for the last fourteen years of
the term of this lease shall be $231,201.67. The City acknow-
ledges hereby that, under the March 3, 1928 lease between the
City, as Lessor, and Crown, as Lessee, as modified and extended
by the August 7, 1944 lease between the parties hereto (which
lease is identified in Section II hereof), Lessee has pre-
paid rent for the period that would have commenced April 1,
1956 and would have expired January 1, 1968 in the sum of
$231,201.67 and acknowledges also that Lessee has not received
value or consideration for said prepayment under the said 1928
lease, as modified and extended by said 1944 lease, which now
shall be terminated pursuant to Section II hereof. Therefore,
the City hereby credits to Lessee's rental account hereunder
the sum of $231,201.67, all of which shall be applied to
rental falling due on and after March 16, 1968.
VI

REMEDIES

In addition to any and all remedies at law or in Equity that either of the parties to this lease would have against the other for any breach of the covenants of this lease, the following specific remedies shall be available to the party or parties indicated, subject to the following terms and conditions:

A. Special Default. If any one or any combination of the following situations, to-wit:

If the Lessee should abandon its Port Townsend plant or should cease to operate the same or cease to take water from the leased properties;

The filing of a petition or the existence of any proceedings by or against Lessee for adjudication of Lessee as a bankrupt under the federal Bankruptcy Act, as now or hereafter amended or supplemented, or under any future federal bankruptcy act for the same or similar relief of debtors;

The commencement or existence of any action or proceeding for the appointment of a receiver or of a trustee of the property of Lessee;

The dissolution or liquidation or the commencement or existence of any action or proceeding for the dissolution or liquidation of Lessee, whether instituted by or against Lessee, or the taking possession of the property of Lessee by any governmental officer or agency pursuant to statutory authority for Lessee's dissolution or liquidation;

The existence of or the making of an assignment by Lessee for the benefit of creditors should concur with the situation wherein Lessee, having defaulted in two consecutive rental payments, shall be or shall remain in default as to all or any part thereof, the City shall have the election either:

1. Termination. To terminate this lease without prior notice and to resume possession and control of that part of the waterworks and system leased hereunder and, if this remedy is elected, the City may cut off all water flowing to
Lessee from and through the leased premises and shall retain any and all rental payments theretofore made hereunder in liquidation of all damages sustained by it; or

(2) Acceleration of Rental. Without prior notice, to declare the entire rent remaining unpaid under this lease at once due and payable and to bring a suit to recover the full amount thereof that remains to be paid.

The filing of a petition by or against Lessee for reorganization or for an arrangement within the meanings of Chapters X and XI, respectively, of the federal Bankruptcy Act, as now or hereafter amended, or under any future federal law for relief of debtors by way of reorganization or arrangement, shall not constitute an event which, when occurring in combination with the particular kind of rental default described above in this paragraph A of Section VI, will give the City the election of the remedies described immediately above; provided, however, that in any such reorganization or arrangement proceedings the City shall be deemed to be a preferred creditor to the extent of any and all accrued and unpaid rentals; and provided, further, that no such reorganization or arrangement shall have the effect of reducing the rentals payable hereunder nor in any manner affecting the obligation of Lessee or any successor lessee to pay the rentals hereunder in the amounts herein provided.

B. Ordinary Default. In the event of the Lessee's failure to pay on time any installment of rent or to perform in a timely manner any of the terms and conditions of this lease, the City may give Lessee written notice specifying the amount of rent due or the nature of the default or failure claimed by the City. Any such notice shall be given by
registered mail addressed to Lessee's resident manager at Port Townsend. Promptly upon receipt of any such notice, Lessee shall commence to rectify the default and shall prosecute said rectification diligently and continuously until the default is completely remedied. If the default has not been rectified within sixty days or, if the default cannot reasonably be remedied within sixty days, then, if it has not been rectified within a reasonable time, the City may terminate this lease; provided, however, that the City shall not declare either termination or forfeiture of this lease and shall not resume possession and control of the leased premises if the Lessee's alleged default or failure is the subject of a dispute between the parties and Lessee in good faith is proceeding to have the point in dispute determined in a manner prescribed by law or by a court of competent jurisdiction. In the event of any such dispute and during the course of any such litigation as may occur, Lessee shall continue to pay the stipulated semiannual installments of rent at or before the time said payments become due and there shall be no reduction, interruption or cessation by the City of the flow of water through the waterworks and system leased hereunder. All such payments of rental shall be made without prejudice to the rights of either party to the dispute. Any such termination as the City is entitled to declare, subject to the foregoing, shall be declared by written notice given to Lessee in the same manner as the aforementioned notice of default. Upon the valid termination of this lease in the foregoing manner, the City may resume possession and control of the leased premises and, in such event, any rental payments theretofore made hereunder shall be retained by the City in liquidation of all damages sustained by the City.

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C. **Specific Performance.** The parties hereto mutually acknowledge and agree that Lessee is the City's principal industrial water user; that, by the nature of Lessee's pulp and paper manufacturing business, Lessee daily consumes unusually large quantities of water; that, by virtue of Lessee's extremely large water consumption, the City requires much more water than other cities of its size; that, in order to acquire a supply of water adequate for all of the City's requirements, including Lessee's, and to transmit it to the City, it has been necessary to construct and maintain at great expense to the City the extremely long and complex waterworks and system leased hereunder; that the waterworks and system leased hereunder and the construction, repair, maintenance and replacement thereof are and will be vitally necessary to the life and health and to the economic well-being of the inhabitants of the City, a great many of whom earn their livelihood in Lessee's said manufacturing plant, and to the continued operation of Lessee's said plant; that it is not feasible for the City either to finance the construction of a smaller, more economical water system or to finance the adequate maintenance and replacement of the present extensive waterworks and system without the cooperation of Lessee; that it is not and will not be practically or economically feasible for Lessee to obtain an adequate water supply elsewhere; that the City and the Lessee are mutually dependent upon this unique and extensive waterworks and system and that, for the foregoing reasons, the City and Lessee mutually deem it to be urgently essential to continue the landlord-tenant relationship which heretofore, since 1928, has been mutually necessary, beneficial and agreeable. Because of the unique character of this lease, of the property leased and of the parties' mutual
dependency thereon, as revealed by the aforementioned acknowledgments and considerations, this lease shall be subject to specific performance by any court of competent jurisdiction. The parties hereto hereby waive irrevocably the defenses of "an adequate remedy at law" and "lack of mutuality of remedy" as well as any other defenses which might be asserted as a bar to the remedy of specific performance in an action brought by either party for specific performance of the obligations of the other under this lease. Under said provision each party shall reserve the right to defend any such action for specific performance on the merits, the foregoing waiver of defenses being directed solely to the nature of the relief which may be granted should the plaintiff prevail.

D. Costs and Expenses of Litigation. In any suit, action or proceeding either at law or in Equity brought by either party for damages or to enforce the provisions of this lease, the prevailing party shall be entitled to recover its costs and expenses of the litigation, including reasonable attorneys' fees, from the other party.

VII

TITLE--WARRANTIES

The City covenants that it owns and has the right to lease the existing waterworks and system, including water and water rights related thereto, and that it has acquired or shall acquire promptly all rights, titles and interests, including all water rights, permits, easements and other interests necessary to make the additions, betterments and improvements and replacements and extensions described in Ordinance No. 1318 and to perform its duties as Lessor for the full term of said lease. If and when requested by Lessee, the City shall
make available to the Lessee all deeds, permits and all other conveyances, documents and instruments evidencing the City's right, title and interest in and to its waterworks and system as improved and extended pursuant to Ordinance No. 1318 and all such evidence of water rights and water permits and other rights necessary to afford the Lessee full enjoyment of the part of said waterworks and system so leased. The City covenants also that said waterworks and system will carry and deliver at or near the southerly City limits of said City fourteen million gallons, more or less, of water daily, at a head of not less than 175 feet. This covenant shall be independent of Lessee's covenant to pay rent.

VIII
COVENANT NOT TO SELL WATER

The Lessee agrees hereby that it will not sell or otherwise dispose of any of the water taken by it from said waterworks and system leased, in competition with the City of Port Townsend.

IX
SUCCESSORS AND ASSIGNS

All the provisions, terms and conditions of this lease shall be binding upon and accrue to the benefit of the successors and assigns of the parties to said lease; provided, however, that this lease may not be assigned by Lessee without the consent of the City acting by and through its duly and
regularly constituted Council, and no such assignment shall operate to relieve the Lessee from any of its obligations hereunder.

IN WITNESS WHEREOF, the City of Port Townsend has caused this lease to be executed in its name and behalf, by its Mayor and City Clerk, and its corporate seal to be hereunto affixed, after due proceedings had in accordance with law, and the said Crown Zellerbach Corporation has caused this lease to be executed by its officers thereunto duly authorized, and its corporate seal to be hereunto affixed, the day and year first herein written, in quadruplicate hereof.

THE CITY OF PORT TOWNSEND

By _______________________________ MAYOR

ATTEST:

_______________________________ City Clerk

CROWN ZELLERBACH CORPORATION

By _______________________________ President

ATTEST:

_______________________________ Its Secretary
MODIFICATION OF LEASE

THIS MODIFICATION OF LEASE is made and entered into, to be effective as of the date indicated below, by and between the CITY OF PORT TOWNSEND, a municipal corporation (hereinafter referred to as the "City"), and PORT TOWNSEND PAPER CORPORATION, a Washington corporation (hereinafter referred to as "PTPC").

WHEREAS, the City and CROWN ZELLERBACH CORPORATION, a corporation (hereinafter referred to as "Crown"), entered into that certain Lease dated on or about March 15, 1956 (the "Lease"), by the terms of which the City leased to Crown certain property pertaining to a water transmission line for a period of forty-four (44) years from March 15, 1956 to March 15, 2000; and

WHEREAS, the Lease covered then existing water systems known as Snow Creek-Olympic Gravity Water System, Big Quilcene Water Extension Project and City Lake; and further included new works to be known as Lord's Lake Development; and included the distribution, chlorinating system and all other parts of the water transmission and distribution systems thereto pertaining; and

WHEREAS, the Lease, in paragraph "III" thereof limited the City use of water in the water supply therein mentioned to an amount not exceeding four million gallons of water in any one day, and further limited the City to the diversion of four hundred thousand gallons per day from a certain point therein stated to be at "approximately station 1614"; and
WHEREAS, subsequent thereto the City has caused to be made improvements in the transmission line which is the subject matter of the Lease, particularly in that the diameter of pipe at a place called "Woodmans Gulch" has been increased, resulting in a substantial increase in water supply; and

WHEREAS, Crown has assigned or intends to assign the Lease and all of Crown's rights and obligations thereunder to PTPC; and

WHEREAS, the City desires to consent to the assignment of the Lease to PTPC; and

WHEREAS, it appears in the best interest of the parties that the term of the Lease should be extended twenty (20) years to March 15, 2020 A.D., and that certain other modifications be made to the Lease;

NOW, THEREFORE, in exchange for the mutual promises and covenants herein contained, and for other good and valuable consideration, the mutual receipt of which is hereby mutually acknowledged:

1. IT IS AGREED that Section "II" of the Lease be and is hereby amended to the extent that the termination date of March 15, 2000 A.D. is changed to March 15, 2020 A.D.

2. IT IS FURTHER AGREED, that Section "III" of the Lease be and is hereby amended to read as follows:

"III

POSSESSION-ALLOCATION OF WATER

The Lessee shall have full possession, control, use and enjoyment of that part of the waterworks and system leased hereby throughout the period of said lease, including all of the water supply flowing through said waterworks and system not expressly reserved herein to the City. The City
reserves from said water supply flowing through said waterworks and system a quantity of water sufficient to serve the demands of all present and future consumers served by the City, whether within or without the limits of said City, including such water as may be needed by the City for its own purposes, at a maximum rate of 7.74 cubic feet per second, not exceeding, however, at any time the maximum amount of five million gallons of water in any one day, which water so reserved shall be taken by the City at the City limits by the City there maintaining a connection with that part of the waterworks and systems so leased.

A. Out-of-City User. The City may maintain its present connection with the pipeline of said waterworks and system located at approximately Station 1614, and may use said connection to supply the following users of water and no others:

(1) Hadlock and Irondale; and
(2) Users located on Discovery Bay near what is known as "Four Corners"; and
(3) United States Government for use only on Indian Island; and
(4) Users located on Marrowstone Island;
(5) Chimacum, and
(6) Such other users as the limitations herein may permit;

which water so supplied to said users shall be a part of and included in the maximum of five million gallons of water reserved by the City as aforesaid on the following terms and conditions, namely: That the quantity of water diverted through said connection shall not exceed at any time 1,000,000 gallons per 24-hour day, the valve located on said six-inch connection will be kept locked in a position to pass
only said maximum amount of 1.54 cubic feet per second, and the City shall maintain at all times in good operating condition an accurate water meter on said connection for the purpose of measuring all water passing from the main pipeline through said connection.

E. **Snow Creek Contingency.** If the City at any time during the terms of this lease should desire to develop the water supply from Snow Creek to meet its additional municipal water needs, the Lessee, upon request of the City, shall release to the City so much of the Snow Creek water supply as the City may require and shall permit the City to build a pipeline on and along the leased right-of-way for the purpose of conducting water from Snow Creek to the City. Lessee shall execute and deliver to the City, when so requested by the City, all necessary subleases, assignments and transfers to afford to the City the full use and enjoyment of the Snow Creek water supply, in addition to the maximum of Five million gallons daily reserved to the City from the Big Quilcene Water Extension Project."

3. **IT IS FURTHER AGREED** that the last full paragraph of Section C of Section IV on page 8 of the Lease is amended to read as follows:

"In the event that any part or all of the waterworks and system leased hereby becomes non-operative by reason of any catastrophe or act of God, including but not limited to, slides, washouts, erosion and earthquakes, neither party shall be obligated to replace such part of the leased properties so damaged. If, on mutual agreement of the City's and Lessee's engineers, such parts are so replaced by the City or by Lessee, the City shall pay five-eighteenths (5/18ths) of such cost of replacement and Lessee shall pay
thirteen-eighths (13/18ths) thereof; provided, however, the City shall not be obligated to pay more than the balance then existing in the 'Transmission Line Replacement Fund,' as defined in Section F of this Section IV."

4. **IT IS FURTHER AGREED** that the City, pursuant to Section IX of the Lease, hereby consents to the assignment of the Lease and all of the Lessee's rights and obligations thereunder, as amended hereby, to FTPC. From and after the effective date of said assignment, FTPC agrees to perform all obligations of Lessee under the Lease as amended hereby. All reference to the "Lessee" in the Lease and this Modification shall hereinafter refer to FTPC.

5. **IT IS FURTHER AGREED** that, except as modified hereby, all the terms and conditions of the Lease, which is incorporated by this reference herein, remain in full force and effect and binding upon the City and FTPC. The effective date of this Modification shall be the date written below.

IN WITNESS WHEREOF, the City of Port Townsend has caused this Modification of Lease to be executed in its name and behalf, by its Mayor and City Clerk, and its corporate seal to be hereunto affixed, after due proceedings had in accordance with law, and Port Townsend Paper Corporation has caused this Modification of Lease to be executed by its officers thereunto duly authorized, in quadruplicate hereof.

Effective Date: **December 21, 1983**

THE CITY OF PORT TOWNSEND

[Signature]

Mayor
PORT TOWNSEND PAPER CORPORATION, a Washington corporation

By: Juan del Valle, President

ATTEST:

City Clerk

E.P. Swain, Jr., Secretary

APPROVED AS TO FORM:

Attorney for the City of Port Townsend

STATE OF WASHINGTON )
COUNTY OF JEFFERSON ) ss:

On this 15th day of November, 1983, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Brent S. Shirley and David Grove, to me known to be the Mayor and City Clerk, respectively, of THE CITY OF PORT TOWNSEND, the municipality that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipality, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

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

NOTARY PUBLIC in and for the State of Washington, residing at ____________

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STATE OF WASHINGTON

COUNTY OF KING

On this 15th day of November, 1983, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JUAN del VALLE and E. P. SWAIN, JR., to me known to be the President and Secretary, respectively, of PORT TOWNSEND PAPER CORPORATION, a Washington corporation, the corporation that executed the foregoing instrument, and acknowledged the 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 they were authorized to execute the said instrument and that the seal affixed is the corporate seal 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 Seattle.