

ORIGINAL

LEASE
(ZRZ south lot on west side of Moody Avenue)

DATED: December 3, 2010

BETWEEN: ZRZ REALTY CO.
3121 S.W. Moody Avenue
Portland, Oregon 97201

“LESSOR”

AND: CITY OF PORTLAND
Bureau of Transportation
1120 SW Fifth Ave., Room 1100
Portland, OR 97204

“LESSEE”

Lessee wishes to lease from Lessor the following premises (the "Property") located in Multnomah County, State of Oregon and described as follows:

Lots 1-4 Block 119, Caruthers Addition, more particularly and generally outlined in Exhibit A attached hereto (ZRZ's south lot on west side of Moody Avenue).

NOW, THEREFORE, Lessor hereby leases the Property to Lessee on the following terms:

1. Term: Possession.

1.1 Term. The initial lease term shall commence January 1, 2011 and continue through December 31, 2011.

1.2 Extension. Provided this lease is still in effect and has not been terminated for any reason and provided that Lessee notifies Lessor of Lessee's election so to do, Lessee is hereby given the right, at Lessee's option, to extend the term of this lease on a month to month basis, through December 31, 2012. The option for month to month renewal shall be exercised by Lessee giving Lessor not less than sixty (60) days notice of intention so to renew prior to the expiration of the initial term of the lease.

1.3 Acceptance of Property. Lessee has inspected and accepts the Property in its present condition. Lessor shall not be required to perform any work to ready the Property for Lessee's occupancy.

2. Rental.

2.1 Rent. Lessee shall pay to Lessor as rent for the use of Property and without previous demand therefore a lump sum payment of Two Hundred Thousand Dollars and No Cents (\$ 200,000.00). All rent shall be due and payable to Lessor at 3121 S.W. Moody Avenue, Portland, Oregon, within fifteen (15) days of commencement of the lease term.

2.2 Extension Rent. Lessee shall pay to Lessor as rent during any month-to-month extension term, Sixteen Thousand Dollars Six Hundred Sixty Six Dollars and No Cents (\$16,666.00) per month, such rent due and payable on the first day of each month during such month to month extension term.

3. Use of Property.

3.1 Permitted Use. Lessee shall not use or allow the Property to be used or occupied for any purposes other than in accordance with applicable governmental laws and regulations. Subject to such limitations and the provisions of this Lease, Lessee shall be permitted to use the Property for parking of vehicles, and for support activities associated with pedestrian bridge construction, and for no other purpose without Lessor's prior written approval. Micro-tunneling and sewer construction shall not occur on the Property.

3.2 Compliance with Laws. Lessee shall comply with any and all applicable laws and regulations of any public authority applicable to the Property and its use.

3.3 Maintenance of Property and Improvements. Lessee, at its expense, shall at all times during this Lease keep and maintain or cause to be kept and maintained in good repair and good condition (ordinary wear and tear accepted), the Property and shall use all reasonable precaution to prevent waste, damage or injury. Lessee shall maintain or cause to be kept and maintained reasonable vehicle access provided to the Property. Lessor shall have no obligation to make any repairs or perform any maintenance on the Property, or to renew or replace the Property.

3.4 Construction, Changes and Alterations. Lessee shall not have the right at any time during the lease term to make improvements to the Property.

3.5 Workers Compensation Insurance. Lessee's contractor shall maintain at its sole cost and expense, Workers Compensation Insurance covering all persons employed by Lessee's contractor in connection with Lessee's activities on the Property. Such insurance shall be in a company or companies of recognized responsibility and licensed to do business in the State of Oregon. Lessor acknowledges that Lessee is a self-insured Municipal government.

3.6 Acceptance of the Property. Subject to previous inspection, Lessee accepts the Property in its present condition, AS-IS, without any representation or warranties by Lessor, expressed or implied. Lessor shall not be required to perform any work to ready the Property for Lessee's use, occupancy or improvements, nor shall Lessor be obligated to extend water, sewer or other utility lines from their present location to the Property.

3.7 No Offensive Activities. Lessee shall not conduct or permit any activities on the Property that create a nuisance or damage the reputation of Lessor or of the Property, or are reasonably offensive to Lessor, or other owners or users of adjoining property.

3.8 Insurance Coverage. Lessee shall refrain from any use of the Property that would invalidate or impair the coverage afforded by any insurance maintained with respect to the Property or which would unreasonably increase the danger of fire upon the Property.

4. Environmental.

4.1 Definitions.

a) The term "Environmental Laws" shall mean any and all federal, state and local statutes; regulations and ordinances, as presently existing or as may be amended or adopted in the future, pertaining to the protection of human health and/or the environment.

b) The term "Hazardous Waste" shall mean any and all hazardous, or dangerous waste as defined or listed under the Resource Conservation and Recovery Act, as amended ("RCRA"), or applicable state statutes or any regulations promulgated under RCRA or such state statutes.

c) The term "Hazardous Substance" shall mean any and all hazardous, toxic, infectious or radioactive substance; wastes or materials listed or defined by any Environmental Law and specifically shall include Hazardous Waste and petroleum oil and its fractions.

4.2 Use of Hazardous Substances.

a) Except as pursuant to Lessor's written consent, Lessee shall not cause or permit any Hazardous Substances to be used, generated, treated, stored or otherwise handled on the Property.

b) Lessee shall not cause or permit any conduct on the Property that would cause the Property or any part thereof, to be deemed a hazardous waste treatment, storage or disposal facility requiring a permit, interim status or any other special authorization under RCRA or any other environmental law.

c) Lessee shall comply fully with all laws pertaining to the protection of human health and the environment, including but not limited to employee and community right-to-know laws and all laws regarding the use, generation, storage, transportation, treatment, disposal or other handling of Hazardous Substances. Lessee shall promptly advise Lessor in writing of any Hazardous Substances regulated by such laws that are used, generated, manufactured, stored, transported or otherwise handled on the Property. Lessee shall exercise extreme care in handling any Hazardous Substances and shall not cause or permit Hazardous Substances to be spilled, leaked, disposed of or otherwise released on the Property. The term "Hazardous Substances" is used in its very broadest sense, and refers to materials which, because of their quantity, concentration, or physical, chemical, or infectious characteristics may cause or pose a present or potential hazard to human health or the environment when improperly handled, treated, stored, transported, disposed of or otherwise managed. The term shall include, but is not limited to, all Hazardous Substances, hazardous materials and hazardous wastes listed by the U.S. Environmental Protection Agency and the state in which the Property is located under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the RCRA, the Toxic Substances Control Act ("TSCA"), and the Federal Water Pollution Control Act ("FWPCA"), and comparable state statutes.

4.3 Notices. Lessee shall immediately notify Lessor upon becoming aware of any of the following:

a) Any leak, spill, release or disposal of a Hazardous Substances on, under or adjacent to the Property or threat of or reasonable suspicion of any of the same.

b) Any notice or communication from a governmental agency or any other person directed to Lessee relating to the Hazardous Substances on, under or adjacent to the Property or any violation of any Environmental Law with respect to the Property or

activities on the Property.

4.4 Spills and Releases. In the event of a leak, spill or release of a Hazardous Substance on the Property or the threat of or reasonable suspicion of the same, Lessee shall immediately undertake or cause to be undertaken all emergency response necessary to contain, clean up and remove the Hazardous Substance and shall undertake or cause to be undertaken within a reasonable time all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substance is eliminated. Within thirty (30) days following the completion of such investigatory, remedial and/or removal action, Lessee shall provide Lessor with a certification acceptable to Lessor signed by an independent registered professional engineer that such contamination has been eliminated to Lessor's satisfaction.

5. Liability to Third Persons.

5.1 Liens.

a) Lessee shall pay as due all claims for work done on or for services rendered or material furnished to the Property, and shall keep the Property free from any liens arising from such work. If Lessee fails to pay such claims or to discharge any lien, Lessor may do so and collect such amount as additional rent. Amounts paid by Lessor hereunder shall bear interest at the annual rate of nine (9) percent from the date of expenditure by Lessor and shall be payable on demand. Such payment by Lessor shall not constitute a waiver of any right or remedy Lessor may have because of Lessee's default.

b) Lessee may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Lessor's Property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall within ten (10) days after knowledge of the filing secure the discharge of lien or deposit with Lessor cash, letter of credit or sufficient corporate surety bonds or other securities reasonably satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorneys' fees, and other charges that could accrue as result of a foreclosure or sale under the lien. Lessor shall not utilize or expend such security except to satisfy a lien.

6. Indemnification.

6.1 Indemnification by Lessee. To the extent allowed under the Oregon Constitution and Oregon Tort Claims Act, Lessee shall indemnify, defend and hold harmless Lessor and its employees, agents, successors, heirs, assigns and all entities (including corporations, partnerships and sole proprietorships) with which Lessor may be affiliated, without limitation including Zidell Marine Corporation, Tube Forgings of America, Inc., ZRZ Realty Company, and their affiliates from and against any and all liability, claims, damages, penalties or judgments arising from death or injury to persons or damage to or loss of property sustained by anyone, including Lessee's employees, in or about the Property resulting from any activity, act or omission of Lessee and all losses arising out of or in any way relating to:

a) Lessee's use or operation of, or activities on, the Property.

b) The breach of any of Lessee's representations, warranties or covenants contained in this Lease.

6.2 Notice of Claims/Limitations of Survival. Upon receiving notice of any loss subject to Subsection 6.1, the indemnitee shall give prompt notice to the Lessee. The Lessee's obligations under this Section 6 shall survive the expiration or

termination of this Lease.

7. Insurance and Damage

7.1 Liability Insurance. Lessee or Lessee's Contractor shall continuously maintain at its sole expense, auto and comprehensive general liability insurance with limits of liability not less than two million dollars (\$2,000,000.00) for bodily injury to one person, four million dollars (\$4,000,000.00) for bodily injury in aggregate, and four million dollars (\$4,000,000.00) property damage. Lessee shall also maintain workmen's' compensation insurance that complies with the State of Oregon and federal requirements including Longshoremen's and Harbor Worker's Compensation Act where applicable. Such insurance shall name Lessor as an additional insured and shall contain a contractual liability endorsement referring to this Lease. Certificates evidencing such insurance and bearing endorsements requiring ten (10) days' written notice to Lessor prior to any change or cancellation shall be furnished to Lessor prior to Lessee's occupancy of the Property.

7.2 Property Damage Insurance. Lessee shall be responsible for insuring the Property, and all its personal property, equipment and trade fixtures located on the Property. Lessor will be named as an additional insured. The policies shall be in form, amount and with companies reasonably acceptable to Lessor. Lessee will deliver to Lessor certificates of coverage bearing endorsements requiring ten (10) days' written notice to Lessor prior to a cancellation or reduction in coverage.

7.3 Waiver of Subrogation & Priority of Coverage. Neither party shall be liable to the other for any loss or damage caused by water damage or any of the risks covered by standard fire insurance policy with extended coverage endorsements, and there shall be no subrogated claim by one party's insurance carrier against the other party arising out of any such loss. All insurance required of Lessee shall be primary to any coverage, which may be held by Lessor.

7.4 Restoration of Damage. In the case of loss or damage to the Property resulting from Lessee's acts or omissions, Lessee shall, at its sole cost and expense, repair and rebuild the same with reasonable diligence and shall be entitled to avail itself of all proceeds and benefits afforded by any and all insurance procured and maintained in accordance with the terms of this Lease, or otherwise, insuring against losses or damage of the kind suffered by it as a result of such fire or other casualty. The parties shall cooperate fully in making proofs of loss or declarations required, necessary or convenient to enable Lessee to avail itself of the benefits and coverage afforded by such insurance as soon as reasonably practicable after the occurrence of such loss or damage. Rent shall be abated during the period of such damage or restoration.

8. Condemnation.

If the entire Property is condemned, or if a portion is taken which causes the remainder to be unsuited to the use permitted hereunder, then this Lease shall terminate on the date upon which possession of the Property is taken by the condemning authority. Otherwise, at Lessee's option, Lessee shall proceed to make necessary repairs and alterations to the Property to permit Lessee to continue its operations thereon. Rent shall not be abated during the period of restoration and shall be reduced for the remainder of the Lease term to the extent and in the same proportion as the reduction in the reasonable rental value of the Property for Lessee's use caused by the condemnation. All condemnation proceeds shall belong to Lessor. Sale of all or a part of the Property to a purchaser with the power of eminent domain in the face of a threat or the probability of

the exercise of the power shall be treated as a taking by condemnation. In no event shall Lessor incur expenses for restoration in excess of the amount of condemnation proceeds received by Lessor after payment of all reasonable costs, expenses and attorneys' fees incurred by Lessor in connection therewith.

9. Transfer by Lessee.

9.1 Prohibition of Transfer. Lessee shall not assign, mortgage, pledge, hypothecate or encumber the Property or Lessee's leasehold estate, or sublet any portion of the Property, or license the use of any portion of the Property, or otherwise transfer any interest in the Property (whether voluntary, involuntary, by operation of law or otherwise).

10. Default. The following shall be events of default:

10.1 Payment Default. Lessee fails to make any rent or other payment under this Lease when it is due.

10.2 Default in Other Covenants. Lessee fails to comply with any other term or condition or fulfill any other obligation of this Lease within ten (10) days after written notice to Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be remedied fully within the ten (10) day period, this requirement shall be satisfied if Lessee begins correction of the default within the ten (10) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as possible.

10.3 Insolvency Defaults. Dissolution, termination of existence, insolvency on a balance sheet basis or business failure of Lessee; the commencement by Lessee of a voluntary case under the federal bankruptcy laws or under any other federal or state law relating to insolvency or debtor's relief; the entry of a decree or order for relief against Lessee in an involuntary case under the federal bankruptcy laws or under any other applicable federal or state law relating to insolvency or debtor's relief; the appointment of or the consent by Lessee to the appointment of a receiver, trustee, or custodian of Lessee or of any of Lessee's property; an assignment for the benefit of creditor by Lessee; Lessee's failure generally to pay its debts as such debts become due; the making or suffering by Lessee of a fraudulent transfer under applicable federal or state law; concealment by Lessee of any of its property in fraud of creditors; the making or suffering by Lessee of a preference within the meaning of the federal bankruptcy law; or the imposition of a lien through legal proceedings or distraint upon any of the Property of Lessor which is not discharged or bonded.

11. Remedies on Default.

Upon default, Lessor may exercise any one or more of the following remedies, or any other remedy available under applicable law.

11.1 Retake Possession. Lessor may re-enter and retake possession of the Property, without notice, either by summary proceedings, force, any other applicable action or proceeding, or otherwise. Lessor may use the Property for Lessor's own purposes or relet it upon any reasonable terms without prejudice to any other remedies that Lessor may have by reason of Lessee's default. None of these actions will be deemed an acceptance of surrender by Lessee.

11.2 Damages for Default. Whether or not Lessor retakes possession or

relets the Property, Lessor may recover all damages caused by the default (including but not limited to unpaid rent, attorneys' fees relating to the default, and costs of reletting). Lessor may sue periodically to recover damages as they accrue during the remainder of the Lease term without barring a later action for further damages. Lessor may at any time bring an action for accrued damages plus damages for the remaining lease term equal to the difference between the rent specified in this Lease and the reasonable rental value of the Property for the remainder of the term, discounted to the time of judgment at the rate of ten (10) percent per annum.

11.3 Cure of Lessee's Default. Without prejudice to any other remedy for default, Lessor may perform any obligation or make any payment required to cure a default by Lessee. The cost of performance, including attorneys' fees and all disbursements, shall immediately be repaid by Lessee upon demand, together with interest from the date of expenditure until fully paid at the rate of eighteen (18) percent per annum, but not in any event at a rate greater than the maximum rate of interest permitted by law.

12. Surrender or Expiration.

12.1 Condition of Property. Upon expiration of the Lease term or earlier termination on account of default, Lessee shall deliver all keys to Lessor and surrender the Property in good condition. Depreciation and wear from ordinary use for the purpose for which the Property was let need not be restored, but all repair for which Lessee is responsible shall be completed to the latest practical date prior to such surrender.

12.2 Fixtures. Upon termination of the Lease, Lessee must have removed all its improvements, furnishings, furniture and trade fixtures and restore all damage caused by such removal. If Lessee fails to do so, this shall be an abandonment of the property and Lessor may retain such property and all rights of Lessee with respect to it shall cease, or, by notice in writing to Lessee within twenty (20) days after removal was required may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Lessor for the cost of such removal, restoration, transportation and storage with interest on all such expenses as provided in Section 11.3.

12.3 Holdover. If Lessee does not vacate the Property at the time required, Lessor shall have the option to treat Lessee as a continuing tenant from month to month, subject to all of the provisions of this Lease (except that the Rent will be one hundred fifty (150) percent of the amount of Base Rent then being paid by Lessee), or to eject Lessee from the Property and recover damages caused by wrongful holdover. Failure of Lessee to remove furniture, furnishings, or trade fixtures which Lessee is required to remove under this Lease shall constitute a failure to vacate to which this paragraph shall apply if the property not removed substantially interferes with occupancy of the Property by another tenant or with occupancy by Lessor for any purpose including preparation for a new tenant. If a continuing month-to-month tenancy results from a holdover by Lessee, the tenancy shall be terminable at the end of any monthly rental period on written notice from Lessor given not less than ten (10) days prior to the termination date which shall be specified in the notice. Lessee waives any notice, which would otherwise be provided by law with respect to this holdover month-to-month tenancy.

13. Warranty of Quiet Enjoyment.

So long as Lessee complies with all terms of the Lease, Lessee shall be entitled to peaceable and undisturbed possession of the Property free from any interference by Lessor or those claiming through Lessor.

14. General Provisions.

14.1 Time of Essence. Time is of the essence of the performance of Lessee's obligations under this Lease

14.2 Modifications. This Lease may not be modified except by endorsement in writing attached to this Lease, dated and signed by the parties.

14.3 No Appurtenances. This Lease does not create any rights, easements or licenses, by implication or otherwise, except as expressly set forth in this Lease or its exhibits.

14.4 Nonwaiver Waiver of performance of any provisions of this Lease shall not be waiver of or prejudice a party's right otherwise to require performance of the same provision or any other provision.

14.5 Succession. Subject to the limitations on transfer of Lessee's interest, this Lease shall bind and inure to the benefit of the parties, their respective heirs, successors and assigns.

14.6 Inspection. Lessor and its authorized representatives may enter at any time to determine Lessee's compliance with this Lease, to make necessary repairs, or to show the Property to any prospective tenants or purchasers.

14.7 Attornment. In the event any proceeding is brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or trust deed made by Lessor covering the Property, Lessee shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchasers as Lessor under this Lease.

14.8 Subordination of Mortgages. This Lease, at Lessor's option, shall be subordinate to the lien of any trust deed or mortgage subsequently placed upon the Property and to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, that as to the lien of any such trust deed or mortgage, Lessee's right to quiet possession of the Property shall not be disturbed if Lessee is not in default and so long as Lessee pays the rent and observes and performs all of the provisions of this Lease.

14.9 Estoppel Certificates. Within ten (10) days after Lessor's written request, Lessee shall deliver written statement stating the date to which the rent and other charges have been paid, whether the Lease is unmodified and in full force and effect, and any other matters that may reasonably be requested by Lessor.

14.10 Notices. Notices under this Lease shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed postage prepaid to the address for the party stated in this Lease, or to such other address as either party may specify by notice to the other. Rent shall be payable to Lessor at the same address and in the same manner.

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

14.12 Applicable Law. This Lease shall be construed, applied or enforced in accordance with the laws of the State of Oregon.

14.13 Prior Agreements. This Lease is the entire, final and complete agreement of the parties with respect to the matters set forth in this Lease, and supersedes and replaces all prior written and oral agreements between the parties or their representatives with respect to such matters.

14.14 Validity of Provisions. If any provisions in this Lease shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Lease shall not be affected.

14.15 Conveyance by Lessor. In the event that Lessor sells or transfers its interest in the Property during the term of this Lease, Lessor shall be discharged from any obligations and responsibilities under this Lease from and after the effective date of the sale or transfer, except for those already accrued.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.

LESSOR:

ZRZ REALTY CO.

BY: _____

NAME: Jay Zidell

TITLE: President

LESSEE:

City of Portland

BY: _____

NAME: _____

TITLE: _____

APPROVED AS TO FORM

[Signature]
CITY ATTORNEY
12/3/10

EXHIBIT A

RECORD OF SURVEY

U.S.D.
MILWAUKEE COUNTY
JAN 17 1908
Z. S. Z. Realty Company

