

PORT OF BROOKINGS HARBOR
Special Commission Meeting
Thursday, July 6, 2023 • 10:00am
Teleconference / Meeting Room (limited capacity)
16350 Lower Harbor Road Suite 202, Harbor OR, 97415

Teleconference Call-In Number: 1 (253) 215-8782

Meeting ID: 771 205 4017

Passcode: 76242023

(to mute/unmute: * 6)

TENTATIVE AGENDA

	PAGE
1. CALL MEETING TO ORDER	
• Roll Call	
• Modifications, Additions, and Changes to the Agenda	
• Declaration of Potential Conflicts of Interest	
2. APPROVAL OF AGENDA	
3. ELECTION OF COMMISSION OFFICERS	
A. One-year term of office from July 1 until June 30.	
• President	
• Vice President	
• Secretary/Treasurer	
4. PUBLIC COMMENTS – Limited to a maximum of three minutes per person. Please email your comments to danielle@portofbrookingsharbor.com prior to the meeting if you are calling in.	
5. ACTION ITEMS	
A. Commissioner Range Resignation Letter.....	2
B. Chetco Dustless Blasting Lease Agreement.....	12
6. INFORMATION ITEMS	
A. Brookings Real Estate Lease Agreement.....	24
7. COMMISSIONER COMMENTS	
8. REGULAR MEETING DATE – Wednesday, July 19, 2023 at 2:00pm	
9. ADJOURNMENT	

A request for an interpreter for the hearing impaired, for those who want to participate but do not have access to a telephone, or for other accommodations for persons with disabilities should be made at least 48 hours in advance of the meeting to Port of Brookings Harbor Office at 541-469-2218.

ACTION ITEM – A

DATE: July 6, 2023
RE: Commissioner Range Resignation Letter
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Travis Webster, Port Manager

OVERVIEW

- The Board and the Port Manager received a letter from Commissioner Ken Range dated June 18, 2023 regarding his resignation with the Port of Brookings Harbor Board of Commissioners effective June 20, 2023.
- Ken Range held position number 5 ending on June 30, 2025.
- Past vacancies process has been to place an advertisement into the Curry Pilot, receiving resumes and bios, then a scoring system is used to select candidate.

DOCUMENTS

- Letter of Resignation, 1 page
- Board of Commissioners, 1 page
- Curry Pilot Advertisement, 1 page
- June 15, 2018 Meeting Minutes & Packet Information, 5 pages

COMMISSIONERS ACTION

- Recommended Motion:
Motion to approve Ken Range's resignation with the Port of Brookings Harbor Board of Commissioners, and to have the Port Manager place an advertisement into the Curry Pilot regarding a request for a candidate for the Port of Brookings Harbor Board of Commissioners and be brought back to the Board at August Regular Meeting.

Kenneth L. Range

June 18, 2023

Port of Brookings Harbor Commissioners

President Richard Heap

Vice President Sharon Hartung

Treasurer Joe Spears

Larry Jonas

16330 Lower Harbor Road

Brookings, OR 97415

Commissioners,

Please accept this letter as a formal notice of my resignation as of June 20, 2023, from my position as elected Port Commissioner.

Due to medical concerns it is in my best interest to resign at this time.

It has been a pleasure to serve on the Commission with you. My sincerest best wishes to each of you.



Kenneth L. Range

Cc Travis Webster, Port Manager



Port of Brookings Harbor

16330 Lower Harbor Road / PO Box 848
Brookings, Oregon 97415
Phone (541) 469-2218
Fax (541) 359-3999
www.portofbrookingsharbor.com

Board of Commissioners

Richard Heap, President
Joseph Speir, Vice-President
Sharon Hartung, Secretary/Treasurer
Kenneth Range
Larry Jonas

BOARD OF COMMISSION

Position Number	Name and Address	Term Starts	Term Ends
1	Joseph Speir – Vice President Brookings, OR 97415 Mobile Phone: (541) 661- Email: joe@portofbrookingsharbor.com	July 1, 2021	June 30, 2025
2	Sharon Hartung – Secretary/Treasurer Brookings, OR 97415 Home Phone: (541) 469- Email: sharon@portofbrookingsharbor.com	July 1, 2023	June 30, 2027
3	Larry Jonas – Board Member Brookings, OR 97415 Mobile Phone: (602) 779- Email: larry@portofbrookingsharbor.com	July 1, 2023	June 30, 2027
4	Richard Heap – President Brookings, OR 97415 Mobile Phone: (541) 661- Email: richard@portofbrookingsharbor.com	July 1, 2021	June 30, 2025
5	 Brookings, OR 97415 Mobile Phone: Email:		June 30, 2025

Registered Agent

Travis Webster, Port Manager
P.O. Box 848
Brookings, Oregon 97415
Email: Travis@portofbrookingsharbor.com

PUBLIC NOTICE

**REQUEST FOR A CANDIDATE FOR PORT
COMMISSIONER
FOR THE PORT OF BROOKINGS HARBOR**

The Port of Brookings Harbor is seeking an interested individual to fill the vacancy of Commissioner for Position #2. The term would be for 13 months ending June 30, 2019.

Resumes and bios of interested applicants requesting appointment can be sent to the Port of Brookings Harbor, P.O. Box 848, Brookings, OR 97415 or dropped off to the Port Office, 16330 Lower Harbor Rd, Brookings, OR 97415.

Publish April 21, 25, & 28, May 2, 5, & 9, 2018
No. 71180461

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Publish April 21, 25, & 28, May 2, 5, & 9, 2018
No. 71180461

An audio recording and transcript was made of these proceedings. The recording and the full commission agenda is available on the Ports website: www.portofbrookingsharbor.com and the transcript is available only by request at the Port Office.

PORT OF BROOKINGS HARBOR

Board of Commissioners

Regular Meeting Agenda

Previous Port Office
16340 Lower Harbor Road Suite 103
Harbor OR 97415

Friday, June 15, 2018 • 6:00 pm

Commissioners present: Position 3, Roy Davis, Position 4, Richard Heap, and Position 5, Kenneth Range Also present were, Kathy Lindley Hall, Interim Manager, Travis Webster, Harbormaster, participating staff members and members of the public.

1. Call to Order, Pledge of Allegiance, and Roll Call

Davis called the meeting to order at 6:00 pm. Board and audience stated the pledge of allegiance.

2. Election of Officers for June

Heap made a motion to nominate Roy Davis to be Chairman. Second by Range. Motion passed 3-0. Range made a motion to nominate Richard Heap for Vice Chair. Second by Davis. Motion passed 3-0. Heap made a motion to nominate Ken Range for Secretary/Treasurer. Second by Davis. Motion passed 3-0.

3. Approval of Agenda

Heap moved to approve the agenda as written. Second by Range. Motion passed 3-0

4. Agenda Related Public Comments *

Bill Wood: recommended Leroy and Joe Speir for the commissioner position.
Barbara Ciaramella: recommended Joe Speir and Sharon Hartung for the commissioner position.
Gary Klein: recommended Joe Speir and Leroy Blodgett for the commissioner position.
Mike: recommended Joe Speir and Russell Burkman for the commissioner position.
Dave Hood: recommended Leroy Blodgett and Joe Speir for the commissioner position.
John Kehoe: recommended Joe Speir and Leroy Blodgett for the commissioner position.
Daniel Fraser: recommended Joe Speir, Russell Burkman, and Leroy Blodgett for the commissioner position.

5. Old Business

- a. No Old Buisness

6. New Business

a. Appointment of 1 or 2 Commissioners

Davis explained that we will be using the same system as the county, a scoring system, and each candidate will be given three minutes to speak. Davis called on each candidate. Jacob Pressure withdrew his candidacy. Davis announced that Position one goes to Joe Speir and Position two goes to Wesley Ferraccioli. Kim Boom, Financial Officer/Notary Public swore in both newly appointed commissioners, had them state the oath of office.

b. Approve Signatures for Bank Accounts

Davis made a motion to approve signatures for bank accounts. Second by Heap. Motion passed 5-0.

7. Commissioners Report

Davis is just glad the recall is over, satisfied with the board that has been elected. Thanked Kathy for coming on board, and staff for still being here.

Heap has been hearing that the port is broken, but doesn't think that the port is, staff came to work and did their job, we have a budget and improvements are still going on. Believes what is broken is the public's trust and confidence in this board and this commission and that we have to fix.

Range agreed with Heap and asked that if there are any issues don't let them fester.

8. Non-Agenda Related Public Comments *

No non-agenda related public comments, but Davis asked the public if they had anything they would like to say.

Public members gave kudos to the new docks and what the south coast fisherman have done to the fish cleaning station.

Dave Hoover wanted to add in that as far as getting the dock done, the company doing the epoxy has gotten hung up on a job in Coos Bay as soon as they are done they will be ready, thinking about another 2 weeks.

Dan Fraser wanted to comment how nice the atmosphere was tonight.

Tom Beene agreed with how upbeat we are tonight compared to the last budget meeting they had.

Christa thanked Davis for all of his help during Memorial Day weekend.

9. Adjournment

Davis adjourned the meeting at 7:01 pm.

President

Secretary

Date Signed

An audio recording and transcript was made of these proceedings. The recording and the full commission agenda is available on the Ports website: www.portofbrookingsharbor.com and the transcript is available only by request at the Port Office.

PORT OF BROOKINGS HARBOR
Board of Commissioners
Regular Meeting Agenda
Previous Port Office
16340 Lower Harbor Road Suite 103
Harbor OR 97415

Friday, June 15, 2018 • 6:00 pm

Agenda

- 1. Call to Order, Pledge of Allegiance, and Roll Call**
- 2. Election of Officers for June**
- 3. Approval of Agenda**
- 4. Agenda Related Public Comments ***
- 5. Old Business**
 - a. No Old Buisness
- 6. New Business**
 - a. Appointment of 1 or 2 Commissioners
 - b. Approve Signatures for Bank Accounts
- 7. Commissioners Report**
- 8. Non-Agenda Related Public Comments ***
- 9. Adjournment**

* Limited to a maximum of three minutes per person. A "Public Comment Request", located near the entrance, must be completed and turned into the President prior to the beginning of the meeting.

FULL MEETING PACKET AVAILABLE AT www.portofbrookingsharbor.com

This Institution is an Equal Opportunity Provider.

NEW BUSINESS AGENDA ITEM A

DATE: *June 15, 2018*
RE: *Appointments of 1 or 2 Commissioners*
TO: *Port of Brookings Harbor, Board of Commissioners*
ISSUED BY:

BACKGROUND

- Secretary Andy Martin resigned on April 13, 2018
- Treas. Thompson resigned on April 17, 2018
- We have (7) Applicants:
 - 1) Jacob Pressure
 - 2) Sharon Hartung
 - 3) Leroy Blodgett
 - 4) Joseph Speirs
 - 5) Russell Burkman
 - 6) Wesley J. Ferraccioli
 - 7) Larry Brocker
- May 3, Carlton Strom withdrew his application
- June 13, Curry County Commissioners elected Richard Heap for position 4 and Kenneth Range for position 5

DOCUMENTS

- None.

COMMISSIONERS ACTION

- Appoint 1 or 2 commissioners.

Applicant	Page Number	Score 1 - 7
Jacob Pressure	3	
Sharon Hartung	4	
Leroy Blodgett	9	
Joseph Speir	14	
Russell Burkman	15	
Wesley Ferraccioli	17	
Larry Bocker	22	

ACTION ITEM – B

DATE: July 6, 2023
RE: Chetco Dustless Blasting Lease Agreement
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Travis Webster, Port Manager

OVERVIEW

- Board approved Chetco Dustless Blasting Lease Agreement on June 21, 2023.
- After some consideration from the Owner, Anthony Bond, it was requested to increase the square footage from 1,500 to 3,600 square feet.
- Mr. Bond would also like to pour a slab of concrete and install a trench drain and catch basin to help collect pollutants and debris from getting onto the ground and into the harbor.

DOCUMENTS

- Revised Lease Agreement, 11 pages

COMMISSIONERS ACTION

- Recommended Motion:
Motion to approve Chetco Dustless Blasting Lease Agreement.

COMMERCIAL LEASE AGREEMENT
Chetco Dustless Blasting

This Commercial Lease Agreement ("Agreement") is made and entered into in Brookings, Oregon, effective the 1st day of _____, 2023, by and between the **Port of Brookings Harbor**, an Oregon special district (the "Landlord") and **Chetco Dustless Blasting** (the "Tenant").

1. **Leased Premises.** Landlord hereby leases to Tenant the following described property located in the Port of Brookings Harbor on the terms and conditions stated herein:

a. Approximately 3600 square feet of bare ground, (the "Leased Premises," as shown highlighted in red in Exhibit "1"), as a portion of Curry County APN R38693, Taxlot 4113-08A-01300-00, more commonly known as 16060 Lower Harbor Road, Brookings, Oregon.

2. **Lease Term and Base Rental Rate.**

a. **Initial Term.** The initial term of this lease is one (1) year commencing _____ 1st, 2023 ("Lease Commencement Date") and continuing through _____ 30, 2024 ("Lease Termination Date").

b. **Base Rental Rate.** The base rental rate for the Leased Premises is Three Hundred Sixty Dollars (\$360.00) per month, as calculated below, payable on the first day of each month commencing _____ 1, 2023. The base rental rate is calculated at \$0.10 per square foot per month, for a total of Three Hundred Sixty Dollars (\$360.00) per month for 1500 square-feet of bare ground space.

c. **Option to Renew.** Upon termination of the Initial Term of this Agreement, Landlord grants to Tenant the option to renew this Agreement in whole or in part of the Leased Premises, for three (3) additional three (3) year-terms at terms and conditions to be negotiated, provided that: (a) Tenant is not in default of this Agreement at the time the option is exercised; (b) Landlord does not need the ground for its own use; and (c) Landlord is otherwise satisfied with Tenant's use of the Leased Premises during the Initial Term. The parties agree to negotiate in good faith with respect to the renewal terms and conditions on terms at least as favorable as those offered to any other tenant of Landlord at the time.

d. **Notice of Intent.** Tenant shall notify the Landlord in writing ninety (90) days prior to expiration of this Agreement of Tenant's intent to exercise all or any portion of Tenant's option to extend the lease. Failure to provide such notice is a default and a material breach of this Agreement and Landlord may terminate this Agreement on the expiration date and retake possession of the Leased Premises with or without process of law.

3. **Base Rent Payment.**

a. **Annual Adjustment.** Tenant must pay the base rent for the Leased Premises and any additional rent provided herein without deduction or offset. If Tenant exercises the option to renew contemplated in Section 2(c) of this Agreement, the base rent will increase annually, on each anniversary of the Lease Commencement Date for the second and each subsequent year, according to the Consumer Price Index for All Urban Consumers (CPI-U). The base rent increase will be for the total amount of the base rent due. Base rent includes all prior percentage increases. In the event that the CPI-U is negative, the base rent will remain the same and will not increase or decrease.

b. **Proration.** Rent for any partial month during the lease term will be prorated to reflect the number of days during the month that Tenant actually occupied the Leased Premises.

c. **Additional Rent.** Additional rent means any other sums payable by Tenant to Landlord under this lease.

d. Fees and Charges. Should any rent or other payment required of Tenant by this Agreement not be paid within 10 days after it is due, a late charge of 1.5% per month (18% per annum) will be assessed. In the event any suit or action is instituted to collect any amount owed on this account, the Tenant agrees to pay reasonable attorney's fees, collection agency fees and any other costs associated with such action. A \$50.00 fee will be assessed on any returned payment.

4. **Lease Consideration/Security Deposit.** Upon execution of this Agreement, Tenant's base rent is due the first day of the month of the lease term for which rent is payable. Tenant is required to pay a security deposit of One Hundred Fifty Dollars (\$150.00). Landlord may apply the security deposit to pay the cost of performing any obligation that Tenant fails to perform within the time required by this lease, but such application by Landlord shall not be the exclusive remedy for Tenant's default. If the security deposit is applied by the Landlord, Tenant must on demand pay the sum necessary to replenish the security deposit to its original amount. To the extent not applied by Landlord to cure defaults by Tenant, the security deposit will be returned to Tenant upon termination of this Agreement, or, by mutual agreement between Landlord and Tenant, applied against the rent payable for the last month of the term.
5. **Use.** Tenant may use the Leased Premises for dustless blasting and for no other purpose without Landlord's written consent. In connection with its use of the Leased Premises, Tenant must, at its sole expense, promptly comply with all applicable laws, ordinances, best management practices, rules and regulations of any public authority, including those of the Port of Brookings Harbor, and not unreasonably annoy, obstruct or interfere with the rights of other tenants of the Port of Brookings Harbor, wherever located. Tenant must not create or maintain any nuisance or any objectionable fumes, noise, or vibrations while using the Leased Premises.
6. **Equipment.** Tenant may install in the Leased Premises only such equipment as is customary for the intended **use**, as specified in Section 5, and must not overload the electrical circuits of the Leased Premises or alter the plumbing or wiring of the Leased Premises, without the prior written consent of Landlord. Landlord must approve, in advance, the location and manner of installing any electrical, heat generating or communication equipment or exceptionally heavy articles. Any equipment installed by Tenant will remain Tenant's property and must be installed and operated at Tenant's expense. Any air conditioning required because of heat-generating equipment or special lighting installed by Tenant must also be installed and operated at Tenant's expense.
7. **Sign.** No signs, awnings, antennas, or other apparatus may be positioned as to be visible from outside the Leased Premises without Tenant obtaining Landlord's prior written approval as to design, size, location, and color. All signs installed by Tenant must comply with Landlord's standards for signs, and all applicable codes and signs and sign hardware must be removed upon termination of this Agreement with the sign location restored to its former state unless Landlord elects to retain all or any portion thereof.
8. **Utilities and Services.** Landlord will not furnish utilities up to the Leased Premises and Tenant will be directly responsible for any and all electrical charges or fees for electrical service and must make arrangements to be billed directly from the local electric co-op (Coos-Curry Electric Cooperative, Inc.). Tenant must also make the necessary arrangements to have a meter installed in the name of Tenant for billing purposes. Water and Sewer usage will be billed to Tenant separately. Tenant must comply with all government laws or regulations regarding the use or reduction of use of utilities on the Leased Premises. Tenant is responsible for all waste generated by the business and disposal of the waste. Unless caused by Landlord's negligence or intentional act, the interruption, limitation, curtailment, or rationing of services or utilities may not be deemed

an eviction or disturbance of Tenant's use and possession of the Leased Premises, render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this lease. Landlord must take all reasonable steps to correct any interruption in service.

9. Maintenance and Repair – Tenant's Obligations

- a. Tenant is at all times during the term of this Agreement, and at Tenant's sole cost and expense, obligated to keep the entire of the Leased Premises and every part thereof in good condition and repair, excepting ordinary wear and tear and damage to the Leased Premises by earthquakes, hurricanes, floods or other natural disasters. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, decorate, or paint the Leased Premises or any part thereof. Landlord has the right to erect scaffolding and other apparatus necessary for the purpose of making repairs, and Landlord will have no liability for interference with Tenant's use because of repairs and installations. Tenant will have no claim against Landlord for any interruption or reduction of services or interference with Tenant's occupancy, and no such interruption or reduction shall be construed as a constructive or other eviction of Tenant.
- b. Tenant will be responsible for any repairs necessitated by Tenant's breach of this Agreement or the negligent or intentional acts of Tenant, its agents, employees, and invitees, excepting repairs that would otherwise be the responsibility of Landlord under Section 10 or Section 15.
- c. Tenant is responsible for all other repairs to the Leased Premises which Landlord is not required to make under Section 10 or Section 15.
- d. If Tenant fails to perform Tenant's obligations under this Section 9 or under any other Section of this Agreement, Landlord may enter upon the affected portion of the Leased Premises after ten (10) days' prior written notice to Tenant (except in case of emergency, in which no notice shall be required), perform such obligations on Tenant's behalf and put the Leased Premises in good order, condition and repair, and the cost thereof together with interest thereon at the maximum rate then allowable by law will be due and payable as additional rent to Landlord together with Tenant's next base rent installment.
- e. On the last day of the term hereof, or upon any sooner termination, Tenant must surrender the Leased Premises to Landlord in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Leased Premises will not be deemed ordinary wear and tear if the same could have been prevented by commercially reasonable maintenance practices. Tenant shall leave fencing, vegetation, and other improvements which were on the Leased Premises prior to the Lease Commencement Date, in good operating condition.

10. Maintenance and Repair - Landlord's Obligations. The following will be the responsibility of Landlord:

- a. Provide adequate means of ingress and egress to the Leased Premises.
- b. Repair and maintain any structural element of the space that does not meet the definition of Major Damage as provided in Section 15, with respect to the Leased Premises.

11. Alterations. Tenant must not make any alterations, additions, or improvements to the Leased Premises without Landlord's prior written consent. Any such additions, alterations, or improvements, except for removable machinery and trade fixtures, will at once become part of the realty and belong to the Landlord. Landlord may at its option require that Tenant remove any alterations and restore the Leased Premises to the original condition upon termination of this Agreement. Landlord will have the right to approve the contractor used by Tenant for any work

on the Leased Premises, and to post notices of non-responsibility in connection with any work being performed by Tenant in the Leased Premises.

12. Indemnity.

- a. Tenant may not allow any liens to attach to the Leased Premises or Tenant's interest in the Leased Premises as a result of its activities. In the event that a materialman, mechanics, or other lien is filed, or a claim of lien is made for work claimed to have been done for Tenant, Landlord will have the option in its sole discretion to require Tenant to post a Surety Bond within ten (10) days at Tenant's expense or to pay and discharge the lien. Tenant agrees to reimburse Landlord promptly upon demand. These Landlord remedies are not exclusive as Landlord has other remedies as provided by law including requiring Tenant to pay for Landlord's attorney's fees and costs relating to any such lien.
- b. Except as otherwise stated herein, Tenant hereby waives all claims against Landlord for damage to any property or injury, illness, or death of any person in, upon, or about the Leased Premises arising at any time and from any cause whatsoever other than by reason of the willful act of Landlord, its officers or employees. Tenant must defend, indemnify and hold Landlord harmless from any and all claims or liability for damage to any property or injury, illness, or death of any person (a) occurring in or on the Leased Premises or any part thereof arising at any time and from any cause whatsoever other than by reason of the willful act of Landlord, its officers, employees, invitees, licensees or agents; or (b) occurring in, on, or about any part of the Leased Premises when such damage, injury, illness, or death was caused by the act, negligence, omission, or fault of Tenant, its agents, servants, employees, invitees, or licensees. Except as otherwise stated herein, Landlord will have no liability to Tenant because of loss or damage caused by the acts or omissions of other tenants of Landlord, or by third parties. The provisions of this paragraph will survive the termination of this Agreement with respect to any damage, injury, illness, or death occurring prior to such termination.

13. Insurance. During the term of this Agreement, Tenant must comply with the following insurance requirements:

- a. **General Liability.** Tenant must carry commercial general liability insurance at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2 million per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- b. **Property.** Tenant must carry property insurance against all risk of loss to any tenant improvement or betterments, at full replacement cost with no coinsurance penalty provision.
- c. **Workers' Compensation.** If Tenant has employees, Tenant must carry workers' compensation insurance as required by State law and Employer's Liability Insurance with limits of no less than \$1 million per accident for bodily injury or disease.
- d. **Excess Coverage.** If Tenant maintains broader coverage and/or higher limits than the minimums shown above, Landlord will be entitled to the broader coverage and/or the higher limits maintained by Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage will be available to Landlord.
- e. **Additional Insureds.** The Port of Brookings Harbor, its officers, officials, employees, and agents are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Tenant including materials, parts, or equipment furnished in connection with such work or operations. General liability

coverage can be provided in the form of an endorsement of the Tenant's insurance (at least as broad as ISO Form CG 20 10).

- f. **Certificates of Coverage.** Tenant must furnish certificates of insurance to Port's General Manager, P.O. Box 848, Brookings, Oregon 97415 certifying the existence of such insurance no later than five (5) days prior to commencement of this Agreement. Each insurance policy required by this clause must be endorsed to state that coverage will not be suspended, voided, canceled, or reduced in coverage or limits or not renewed without fourteen (14) days advance written notice to the Landlord and Landlord's agent, if any, and a renewal certificate must be furnished at least 14 days prior to the expiration of any policy.
- g. **Primary Insurance.** The insurance required herein will be primary and without right of contribution from other insurance that may be in effect and without subordination. Any other insurance carried by the Landlord is excess. The insurance policies must be underwritten by a company licensed in the State of Oregon and carry a minimum Best's rating of "A-VI" or better.
- h. **Lapse of Policy.** If Tenant's policies lapse or are canceled at any time during the term of this Agreement, Landlord will have the right to immediately terminate this Agreement. Tenant will be responsible to Landlord and must reimburse and hold Landlord harmless for any bodily injury, fire or property damage not covered by Tenant's insurance.

14. **Exemption of Landlord from Liability.** Tenant hereby agrees that Landlord will not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Leased Premises or the Port, nor will Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, wires or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Leased Premises or upon other premises of the Port, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord will not be liable for any damages arising from any act or neglect of any other tenant, occupant or user of the Port, nor from the failure of Landlord to enforce the provisions of any other lease of the Port.

15. **Major Damage.** Major damage means damage by fire or other casualty to the Leased Premises that causes the Leased Premises or any substantial portion of the Leased Premises to be unusable. In the event that major damage occurs without negligence or willful misconduct of Tenant or its employees, agents, or licensees, then either Landlord or Tenant may elect to terminate this Agreement by providing written notice to the other party within thirty (30) days after the occurrence of the damage. If this Agreement is not terminated following major damage, or if damage occurs that is not major damage, Landlord must promptly restore the Leased Premises to the condition existing just prior to the damage, with the exception of damage to Tenant improvements. Restoration of any Tenant improvements or alterations installed by Tenant, and the costs thereof, will be the responsibility of the Tenant. Rent will be reduced from the date of damage until the date restoration work being performed by the Landlord is substantially complete, with the reduction to be in proportion to the area of the Leased Premises not useable by Tenant.

16. **Waiver of Subrogation.** Tenant will be responsible for insuring its personal property and trade fixtures located on the Leased Premises and any alterations or Tenant improvements it has made to the Leased Premises. Neither Landlord nor Tenant will be liable to the other for any loss or damage caused by any of the risks that are or could be covered by a standard all risk insurance policy with the extended coverage endorsement, or for any business interruption. There may be

no subrogated claims by one party's insurance carrier against the other party arising out of any loss.

17. **Eminent Domain.** If a condemning authority takes title by eminent domain or by agreement in lieu thereof to the entire Leased Premises or a portion sufficient to render the Leased Premises unsuitable for Tenant's use, then either party may elect to terminate this Agreement effective on the date that possession is taken by the condemning authority; provided, however, that a condition to the exercise by Tenant of such right to terminate will be that the portion of the Leased Premises taken must be of such extent and nature as to substantially handicap, impede, or impair Tenant's use of the balance of the Leased Premises for the purpose intended. Rent will be reduced for the remainder of the term in an amount proportionate to the reduction in area of the Leased Premises caused by the taking. All condemnation proceeds will belong to Landlord, and Tenant will have no claims against Landlord or the condemnation award because of the taking.
18. **Assignment and Subletting.** This Agreement binds and inures to the benefit of the parties, their respective heirs, successors, and assigns, provided that Tenant may not assign its interest under this Agreement or sublet all or any portion of the Leased Premises without first obtaining Landlord's consent in writing. This provision applies to all transfers by operation of law including but not limited to mergers and changes in control of Tenant. No assignment may relieve Tenant of its obligation to pay rent or perform other obligations required by this Agreement and no consent to one assignment or subletting may be deemed consent to any further assignment or subletting. Tenant will pay any costs incurred by Landlord in connection with a request for assignment or subletting, including reasonable attorney's fees.
19. **Default.**
- a. Any of the following constitute a default by Tenant under this Agreement:
1. Tenant's failure to pay rent or any other charge under this Agreement within ten (10) days after it is due, or failure to comply with any other term or condition within twenty (20) days following written notice from Landlord specifying the noncompliance. If such noncompliance cannot be cured within the 20-day period, this provision will be satisfied if Tenant commences corrective action within such period and thereafter proceeds in good faith and with reasonable diligence to effect compliance as soon as possible. Time is of the essence of this Agreement.
 2. Tenant's insolvency, business failure or assignment for the benefit of its creditors. Tenant's commencement of proceedings under any provision of any bankruptcy or insolvency law or failure to obtain dismissal of any petition filed against it under such laws within the time required to answer, or the appointment of a receiver for Tenant's property.
 3. Assignment or subletting by Tenant in violation of this Agreement.
 4. Vacation or abandonment of the Leased Premises for more than three (3) months without the written consent of Landlord.
 5. If this Agreement is levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days.
 6. If the Tenant fails to comply with any other requirements or obligations under this Agreement.
20. **Remedies for Default.** In case of default as described in Section 19 above, Landlord will have the right to the following remedies, which are intended to be cumulative and in addition to any other remedies provided under applicable law.

- a. Landlord may terminate this Agreement and reenter, retake possession of the Leased Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. Following such retaking of possession, efforts by Landlord to relet the Leased Premises will be sufficient if Landlord follows its usual procedures for finding tenants for the Leased Premises at rates not less than the current rates for other comparable space on property owned by Landlord. If Landlord has other vacant space available, prospective tenants may be placed in such other space without prejudice to Landlord's claim to damages to loss of rentals from Tenant.
- b. Landlord may recover all damages caused by Tenant's default, which include an amount equal to rent lost because of the default and all attorney's fees and costs. Landlord may sue periodically to recover damages as they occur throughout the lease term, and no action for accrued damages will bar a later action for damages subsequently accruing. Landlord may elect in any one action to recover accrued damages plus damages attributable through the remaining term of the Agreement. Such damages will be measured by the difference between the rent under this Agreement and the reasonable rental value of the Leased Premises for the remainder of the term, discounted to the time of judgment at the prevailing interest rate on judgments.
- c. Landlord may make any payment or perform any obligation that Tenant has failed to perform, in which case Landlord will be entitled to recover from Tenant upon all demand all amounts so expended plus interest from the date of the expenditure at the rate of one and one-half percent (1.5%) per month. Any such payment or performance by Landlord will not waive Tenant's default.

21. **Regulations.** Landlord will have the right (but not the obligation) to make, revise, and enforce commercially reasonable regulations or policies consistent with this Agreement for the purpose of promoting safety, order, economy, cleanliness, and good service to all tenants of the Landlord, provided that if Landlord passes a regulation or policy that interferes with Tenant's quiet enjoyment or unreasonably interferes with Tenant's use of the Leased Premises, then Tenant may terminate this Agreement. All such regulations and policies must be complied with as if part of this Agreement.

22. **Access.** During times, other than normal business hours, Tenant's officers and employees or those having business with Tenant may be required to identify themselves or show passes in order to gain access to the Leased Premises. In such event, Landlord will have no liability for permitting or refusing to permit access to anyone. With reasonable notice to Tenant, Landlord will have the right to enter upon the Leased Premises at any time by passkey or otherwise to determine Tenant's compliance with this Agreement, to perform necessary services, maintenance and repairs to the Leased Premises, or to show the Leased Premises to any prospective tenant or purchasers. Except in cases of emergency, such entry will be with at least 24 hours prior notice and at such times and in such manner as to minimize interference with the reasonable business use of the Leased Premises by Tenant.

23. **Notices.** Notices to the parties relating to the Agreement must be in writing, effective when delivered, or if mailed, effective on the second day following mailing, postage prepaid, to the address for the party stated in this Agreement or to such other address as either party may specify by notice to the other. Notice to Tenant may always be delivered to the Leased Premises. Rent will be payable to Landlord at the same address and in the same manner but will be considered paid only when received.

24. **Subordination.** This Agreement will be subject and subordinate to any mortgages, deeds of trust, or land sale contracts (hereafter collectively referred to as encumbrances) now existing against the Leased Premises. At Landlord's option this Agreement will be subject and subordinate to any future encumbrance hereafter placed against the Leased Premises (including the underlying land) or any modifications of existing encumbrances. Tenant must execute such documents as may reasonably be requested by Landlord or the holder of the encumbrance to evidence this subordination.
25. **Transfer of Premises.** If the Leased Premises is sold or otherwise transferred by Landlord or any successor, Tenant will attorn to the purchaser or transferee and recognize it as the landlord under this Agreement, and, provided the purchaser assumes all obligations hereunder, the Landlord (transferor) will have no further liability hereunder.
26. **Estoppel.** Either party will within twenty (20) days after notice from the other party execute, acknowledge and deliver to the other party a certificate reciting: whether or not this Agreement has been modified and is in full force and effect; whether there are any modifications or alleged breaches by the other party; the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent; and any other facts that may be reasonably requested. Failure to deliver the certificate within the specified time will be conclusive upon the party of whom the certificate was requested that the Agreement is in full force and effect and has not been modified except as may be represented by the party requesting the certificate. If requested by the holder of any encumbrance or any ground lessor, Tenant will agree to give such holder or lessor notice of and an opportunity to cure any default by Landlord under this Agreement.
27. **Attorney's Fees.** In the event, any action, suit, or other proceeding is instituted by either party to this Agreement to enforce any provision of this Agreement or any matter arising therefrom or to interpret any provision of this Agreement, the prevailing party will be entitled to an award of reasonable attorney's fees and costs of suit, including expert witness fees. In the event, any such action, suit, or other proceeding is appealed to any higher court or courts, the prevailing party will be entitled to an award of reasonable attorney's fees and costs for prosecuting or defending such appeal or appeals, in addition to the reasonable attorney's fees and costs in the lower court, or courts.
28. **Quiet Enjoyment.** Landlord warrants that so long as Tenant complies with all material terms of this Agreement, Tenant is entitled to peaceable and undisturbed possession of the Leased Premises free from any eviction or disturbance by Landlord. Landlord will have no liability to Tenant for loss or damages arising out of the acts of other tenants of Port property or third parties, nor any liability for any reason which exceeds the value of its interest in the Leased Premises.
29. **Complete Agreement.** This Agreement and the attached exhibits constitute the entire agreement of the parties and supersede all prior written and oral agreements and representations. Neither Landlord nor Tenant is relying on any representations other than those expressly set forth herein. Any modification to this Agreement must be in writing and signed by both parties.
30. **Nonwaiver.** Waiver by either party of strict performance of any provision of this Agreement may not be deemed a waiver of or prejudice of the party's right to require strict performance of the same provision in the future or of any other provision.
31. **Real Property Taxes.**



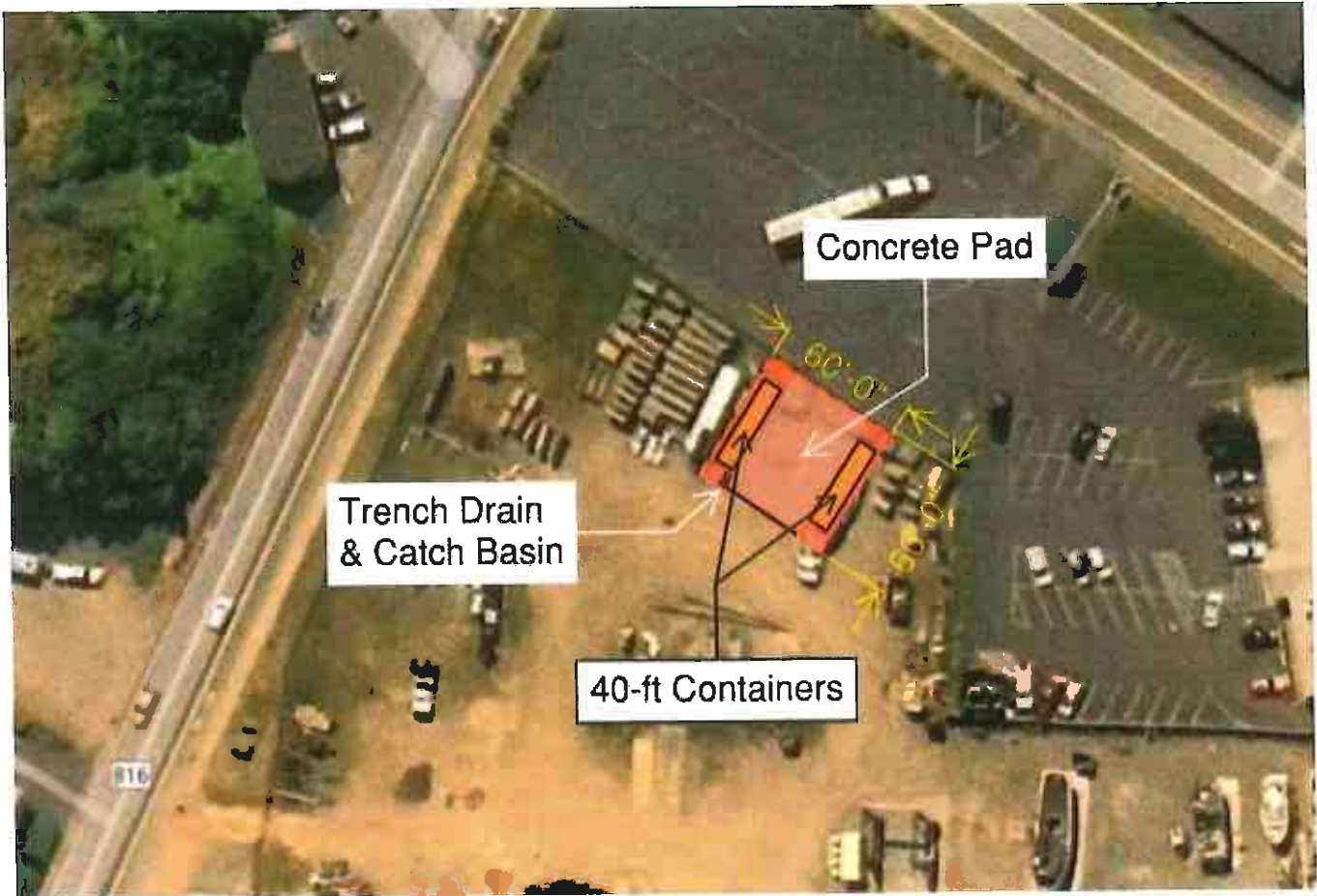
- a. **Payment of Taxes.** Tenant must pay all real and personal property taxes, if any, applicable to Tenant's portion of the use and possession of the Leased Premises.
 - b. **Additional Improvements.** Tenant will be responsible for paying any increase in real property tax specified in the Tax Assessor's records and worksheets caused by additional improvements placed upon the Leased Premises by Tenant or by Landlord for use by Tenant.
 - c. **Definition of "Real Property Tax".** As used herein, the term "real property tax" includes any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Port or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof.
32. **Severability.** The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction, may in no way affect the validity of any other provisions herein.
33. **Time of Essence.** Time is of the essence with respect to the obligations to be performed under this Agreement.
34. **Security Measures.** Each party acknowledges that they have no obligation whatsoever to provide guard service or other security measures for the benefit of the other party or their property. Each party assumes full responsibility for the protection of itself, its agents and invitees and its property from acts of third parties. Nothing herein contained prevents Landlord, at Landlord's sole option from providing security protection for the Port or any part thereof.
35. **No Warranties.** The Leased Premises are leased "as-is" and in their current condition as of the first day of the lease term. No warranties, express or implied, are provided by Landlord regarding the condition or fitness for purpose of the Leased Premises.
36. **Parking.** Landlord does not assign any specific parking spaces to Tenant under this Agreement. Tenant and Tenant's employees and invitees are permitted to use any un-restricted Port public parking areas.
37. **Headings.** The headings in this Agreement are for the convenience of the parties only and are not to be used in the interpretation of its provisions.

IN WITNESS, WHEREOF, the duly authorized representatives of the parties have executed this Agreement as of the last date written below.

PORT OF BROOKINGS HARBOR, Landlord	Chetco Dustless Blasting, Tenant
Dated: _____	Dated: _____
By: _____	By: <u>Anthony Bord</u>
ATTEST: _____	By: <u>[Signature]</u>
	Name: _____ Its: Member / Owner
Mailing Address: P.O. Box 848 Brookings, OR 97415 Phone: 541-469-2218 Fax:	Mailing Address: <u>1218 Emory St.</u> Brookings, OR 97415 Phone: (541)661-0440 Fax:

[Signature]

EXHIBIT "1"



Drawing NTS

Total Square Feet = 3,600

INFORMATION ITEM – A

DATE: July 6, 2023
RE: Brookings Real Estate Lease Agreement
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Travis Webster, Port Manager

OVERVIEW

- Building located at 16118 Lower Harbor Road became vacant February 1, 2023.
- An advertisement was published in the Curry Pilot along with the Port's website advertising proposals for the building.
- The Board approved the Port Manager to negotiate the lease terms and create a draft lease with Brookings Real Estate (Augustino Estate & Vineyard) for Board approval on April 10, 2023.
- Port Counsel has created a letter of intent that the Board approved on June 21, 2023 Regular Commissioner Meeting.
- Port Counsel has created a lease agreement based on the approved letter of intent.
- To complete the lease agreement tenant will need to provide the Port with the legal description of the premises, Exhibit A, and preliminary plans, Exhibit B.

DOCUMENTS

- Lease Agreement, 38 pages

GROUND LEASE

This GROUND LEASE (this "Lease") is made and entered into on _____, 2023 (the "Commencement Date"), by and between the Port of Brookings Harbor, an Oregon special district ("Landlord"), and Brookings Real Estate, LLC, an Oregon limited liability company ("Tenant").

RECITALS

A. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the real property legally described on attached Exhibit A, comprising [4,280] square feet of a larger parcel owned by the Port known as 16118 Lower Harbor Road, Brookings, Oregon, together with any and all rights, privileges, easements, and appurtenances (collectively, the "Premises").

B. Tenant intends to renovate the existing improvements on the Premises (the "Building") and related site improvements including but not limited to repairing exterior siding, building foundation skirting, painting the exterior, and any other improvements necessary to comply with Legal Requirements, as generally depicted on the preliminary plans attached hereto as Exhibit B (collectively, the "Initial Renovations"). The Building, the Initial Renovations, and any future alterations, additions, replacements, or modifications to the Building following the Initial Renovations during the Term (defined in Section 2.2) of this Lease are collectively referred to in this Lease as the "Improvements."

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

ARTICLE 1

PREMISES

Landlord does hereby demise, lease, and let unto Tenant, and Tenant does hereby take and lease from Landlord, the Premises for the term and on the rents, conditions, and provisions herein.

ARTICLE 2

LEASE TERM

2.1 Initial Term. Starting on the Commencement Date, the Premises will be leased for a term of twenty-five (25) years (the "Initial Term"), unless earlier terminated pursuant to the terms of this Lease.

2.2 Extended Term. If Tenant is not in default under the Lease, Tenant has the option to extend the Initial Term for an additional period of twenty-five (25) years (the "Extended Term") by providing written notice thereof ("Tenant's Extension Notice") to Landlord no less

than one hundred eighty (180) days before the expiration of the Initial Term, but no sooner than 1 year before the expiration of the Initial Term (the Initial Term, if and as extended by the Extended Term, is referred to in this Lease as the "Term"). Upon exercise of this option to extend, the term of this Lease will be extended through the expiration date of the Extended Term, on the same terms and conditions as contained in this Lease, except for Rent (which will be determined in accordance with Section 3.2 below) and except that Tenant will no longer have an extension option. Upon the expiration of the Extended Term, Landlord will consider re-leasing the Premises to Tenant, if requested by Tenant, at the Port's sole discretion.

ARTICLE 3

RENT

3.1 Rent for Initial Term. Tenant agrees to pay to Landlord monthly rent in the amount of Four Hundred Twenty Eight Dollars (\$428.00) the base rental rate is calculated at \$0.10 per square foot per month of the Premises ("Rent") beginning on the Commencement Date. On the fifth annual anniversary of the Commencement Date and every five years thereafter (each, an "Adjustment Date"), Rent will increase to one-hundred twelve percent (112%) of the Rent immediately before the Adjustment Date.

3.2 Rent For Extended Term. Rent for the first five years of the Extended Term will adjust to the then-current Fair Market Rent (as defined below) as long as that rate does not result in adjusting Rent downward. On each Adjustment Date after the Adjustment Date that coincides with the beginning of the Extended Term, Rent will increase to one-hundred twelve percent (112%) of the Rent immediately before the Adjustment Date.

3.2.1 Following Landlord's receipt of Tenant's Extension Notice, Landlord will provide written notice to Tenant setting forth the Fair Market Rent for the Premises for the first year of the Extended Term, as reasonably determined by Landlord (the "Landlord Market Rent"). If Tenant does not object in a writing delivered to Landlord within thirty (30) days after Tenant's receipt of Landlord's notice setting forth the Landlord Market Rent, the Landlord Market Rent shall be deemed to be the Fair Market Rent for the first year of the Extended Term.

3.2.2 If Tenant objects to the Landlord Market Rent by written notice given to Landlord ("Tenant's Objection Notice") within such thirty (30)-day period, Landlord and Tenant shall have thirty (30) days after Tenant's Objection Notice is given in which to agree on the Fair Market Rent. If Landlord and Tenant are unable to agree on the Fair Market Rent within such thirty (30)-day period, then each party shall, within fifteen (15) days after the expiration of such thirty (30)-day period, appoint its own real estate appraiser with an MAI designation and no fewer than ten (10) years of commercial appraisal experience in the southern Oregon area and give notice to the other party of such appointment. If a party fails to appoint an appraiser and notify the other party of such appointment within such fifteen (15)-day period, the appraiser appointed by the other party shall be the sole appraiser and shall set the Fair Market Rent. If the two appraisers are appointed by the parties as stated in this paragraph, they shall promptly attempt to agree on the Fair Market Rent. Each party shall be responsible for the costs and fees of its own appointed appraiser. If the parties and their appraisers are unable to agree on the Fair Market Rent within thirty (30) days after the expiration of the fifteen (15)-day period for

appointment of the appraisers, the parties shall, within twenty (20) days after the expiration of such thirty (30)-day period, select a third appraiser (the "Third Appraiser") meeting the qualifications stated in this paragraph. The Third Appraiser shall be a person who has not previously acted in any substantial capacity for either party. If Landlord and Tenant are unable to agree on the Third Appraiser within such twenty (20)-day period, either Landlord or Tenant may file a claim with the Arbitration Service of Portland, Inc. (the "ASP") (or if the ASP is not then in existence, with the American Arbitration Association ("AAA")), for the appointment of a single arbitrator (the "Arbitrator") to determine the Fair Market Rent by binding arbitration in Brookings, Oregon (the "Arbitration"), in accordance with the then-effective rules of the ASP (or the then-effective rules of AAA, if the ASP is not then in existence) and the provisions of this Section 3.2. Subject to 3.2.3, Landlord and Tenant shall each pay one-half (1/2) of any upfront fee requested by the Third Appraiser or the Arbitrator.

3.2.3 If the Third Appraiser is appointed, then within twenty (20) days after the Third Appraiser's appointment, the appraiser appointed by Landlord and the appraiser appointed by Tenant shall each submit to the Third Appraiser their respective written determinations of Fair Market Rent (such determinations shall hereinafter be collectively referred to as "Determinations" and each, as a "Determination"); if either appraiser fails to do so, the Determination submitted by the other appraiser shall establish the Fair Market Rent. The two appraisers appointed by the parties shall, upon the request of the Third Appraiser, meet with the Third Appraiser to discuss their respective Determinations. Within forty-five (45) days following his or her appointment, the Third Appraiser shall select the Determination that in the Third Appraiser's opinion most closely reflects the Fair Market Rent, and the Determination selected by the Third Appraiser shall establish the Fair Market Rent for the first five years of the Extended Term and shall be final and binding upon the parties. The parties shall pay the fee of the Third Appraiser equally. If, pursuant to Section 3.2.2 of this Lease, an Arbitrator is appointed to determine the Fair Market Rent, each party shall submit to the Arbitrator the written Determination of such party's appraiser, the Arbitrator shall be instructed by Landlord and Tenant to select the Determination that in the Arbitrator's opinion most closely reflects the Fair Market Rent, and the Determination selected by the Arbitrator shall establish the Fair Market Rent for the first five years of the Extended Term and shall be final and binding upon the parties. The parties shall pay the fee of the Arbitrator equally, and each party shall bear its own attorney fees in preparing for such arbitration. For the avoidance of doubt, in determining the Fair Market Rent, the Third Appraiser or Arbitrator shall be limited to selecting one of the two Determinations submitted by the parties; the Third Appraiser or Arbitrator shall not have the right to provide any alternative value.

3.2.4 In the event the Fair Market Rent for the first five years of the Extended Term has not been determined pursuant to the procedure set forth in Section 3.2.1 to Section 3.2.3 above as of the commencement of the Extended Term, and the parties have not otherwise agreed on the amount of Rent payable for the first five year of the Extended Term, Tenant shall continue to pay monthly installments of Rent in the amounts of the Rent in effect for the last month of the initial Term until the Fair Market Rent has been determined. If the amount of the monthly Rent payable for the first five year of the Extended Term, as determined by the above-described procedure, is greater than the amount of Rent payable for the last month of the initial Term, Tenant shall, within twenty (20) days after the Fair Market Rent has been determined, pay to Landlord the difference between (i) the total amount that should have been paid by Tenant as

Rent with respect to the period from the commencement of the Extended Term to the date of Tenant's payment (based on the above-described procedure) and (ii) the total amount actually paid by Tenant with respect to such period.

3.3 Payment of Rent. Rent is payable in advance, commencing on the Commencement Date and thereafter on the first day of each month throughout the Term, without notice or demand and without abatement, deduction or setoff except as otherwise provided in this Lease. If the Commencement Date is a day other than the first day of a month, Rent payable on the Commencement Date will be prorated based on the number of days that will elapse during that month after the Commencement Date. Rent and all other amounts payable to Landlord under the terms of this Lease must be delivered to Landlord at its office, located at 16330 Lower Harbor Road, PO Box 848, Brookings, OR 97415, or at another place that Landlord may designate by notice to Tenant, in lawful money of the United States.

3.4 Late Charge and Interest. If Rent or any other amount payable by Tenant to Landlord is not paid within 10 days of its due date, Tenant will pay to Landlord a late charge of five percent of the amount due. The parties agree that the late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment. Collection of the late charge will not be considered a waiver of default nor of any other right or remedy. In addition, all delinquent amounts must bear interest at the rate of 9% percent per annum or the highest rate permitted by law, whichever is lower (the "Default Rate"), from the date first due until the date paid in full.

3.5 Net Lease. This Lease is a totally net lease, and it is intended that the rent provided for in this Lease will be an absolutely net return to Landlord throughout the Term. Tenant will be responsible for paying all costs and expenses relating to the Premises and the Improvements, including real and personal property taxes, utilities, maintenance, repairs, interior and exterior structural repairs, interior and exterior nonstructural repairs, insurance, and all other costs and expenses relating to the Premises and the Improvements. Without notice or demand and without abatement, deduction, or setoff except as may be otherwise provided in this Lease, Tenant is required to pay, as additional rent, all sums, impositions, costs, and other payments that Tenant assumes or agrees to pay in any provision of this Lease. If Tenant fails to make a payment, Landlord will have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law for nonpayment of the Rent.

ARTICLE 4

INTENTIONALLY OMITTED

ARTICLE 5

USE AND COMPLIANCE WITH LEGAL REQUIREMENTS

5.1 Permitted Use. Tenant will use and occupy the Premises during the Term for the development and construction of the Project and for the operation of a wine tasting room, and for no other purpose (the "Permitted Use") except with the prior written consent of Landlord, not be

unreasonably withheld, and in any case, in compliance with all applicable Legal Requirements (as defined in Section 5.2 below) (including but not limited to those relating to the consumption, serving, and sale of alcohol).

5.2 Compliance with Legal Requirements. Tenant will observe and comply with all Legal Requirements that may apply to the Premises, or to the use or manner of uses of the Premises, or the Improvements or the owners or users of the Improvements, whether or not the Legal Requirements affect the interior or exterior of the Improvements, necessitate structural changes or improvements, or interfere with the use and enjoyment of the Premises or the Improvements, and whether or not compliance with the Legal Requirements is required by reason of any condition, event, or circumstance existing before or after the Term commences. Tenant will pay all costs of compliance with Legal Requirements.

“Legal Requirements” means all applicable present and future laws, ordinances, orders, rules, regulations, codes, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, that now or hereafter apply to the Premises, the Improvements, or any component hereof or any activity conducted thereon, including but not limited to those pertaining to Environmental Laws and the use and storage of Hazardous Substances (as these terms are defined below).

“Environmental Laws” means all present or future federal, state, and local laws or regulations related to the protection of health or the environment, including the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC § 9601 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), the Federal Water Pollution Control Act (the Clean Water Act) (33 USC § 1251 et seq.), the Clean Air Act (42 USC § 7401 et seq.), amendments to the foregoing, and any rules and regulations promulgated thereunder.

“Hazardous Substances” means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local, state, or federal governmental authority, including without limitation, any hazardous material, hazardous substance, ultra-hazardous material, toxic waste, toxic substance, pollutant, radioactive material, petroleum product, and PCB, as those and similar terms are commonly used or defined by Environmental Laws.

5.3 Right to Contest. Tenant will have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Tenant or Landlord or both, without cost or expense to Landlord, the validity or application of any Legal Requirement subject to the following: (a) if, by the terms of any Legal Requirement, compliance may legally be delayed pending the prosecution of any such proceeding without the incurrence of any lien, charge, or liability of any kind against all or any part of the Premises or the Improvements and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure to comply, Tenant may delay compliance until the final determination of the proceeding; or (b) if any lien, charge, or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest the matter and delay compliance as long as the delay would not subject Landlord to criminal liability or fine, and Tenant furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of the contest or delay, and prosecutes the contest with due diligence. Landlord will execute and deliver

any appropriate papers that may be necessary or proper to permit Tenant to contest the validity or application of any Legal Requirement as long as Tenant has satisfied all the requirements of this section and Landlord will incur no cost.

5.4 Prohibited Uses. Tenant will not use or occupy the Premises or the Improvements, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied: (a) for any unlawful or illegal business, use, or purpose; (b) in any manner so as to constitute a nuisance of any kind; (c) for the growth, production, sale, or use of cannabis or hemp; (d) for any purpose or in any way in violation of the certificate of occupancy, or of any Legal Requirements, including Legal Requirements respecting Hazardous Substances; or (e) for any business, use, or purpose deemed disreputable, in Landlord's sole discretion. Any dispute between Landlord and Tenant arising under the provisions of subsection (d) above will be submitted to final and binding arbitration conducted in accordance with the rules of the Arbitration Service of Portland, Inc., if that service is available at the time or, if not available, any similar service (which may include the American Arbitration Association) selected by the party that initiates the arbitration. The award in such arbitration may be enforced on the application of either party by the order of judgment of a court of competent jurisdiction. The arbitrators will determine and award the prevailing party in the arbitration the reasonable fees and costs of its lawyers, appraisers, and any other consultants or experts incurred in connection with the arbitration.

5.5 No Waste. Tenant will not cause or permit any waste, damage, disfigurement, or injury to the Premises or the Improvements, but Tenant will have the right to demolish and remove any and all the Improvements on the Premises pursuant to and in accordance with the terms of Article 6 below.

ARTICLE 6

IMPROVEMENTS

6.1 Construction, Modification, and Demolition of Improvements.

As used in this Section 6.1, the "Materiality Threshold" means an amount equal to \$25,000 for the first year of the Term, such amount to be increased on each anniversary of the Commencement Date to an amount equal to 103% of the previously effective Materiality Threshold. Provided the cost of such project does not exceed the Materiality Threshold, Tenant has the right, at any time and from time to time during the Term, at its cost and expense, and without having to obtain Landlord's prior consent, or if the project exceeds the Materiality Threshold, with Landlord's prior consent, not to be unreasonably withheld, conditioned or delayed, to construct, reconstruct, remove, replace, or remodel, on any part or all of the Improvements on the Premises, except as follows:

(a) Regardless of whether the cost of the project exceeds the Materiality Threshold, Tenant may not demolish or remove any portion of the Improvements without the prior written consent of Landlord, in Landlord's sole discretion;

(b) Regardless of whether the cost of the project exceeds the Materiality Threshold, Tenant may not (i) construct, reconstruct, replace, remodel, or rebuild the exterior or structural components of the Building or any future Improvement, (ii) materially expand or alter the then-existing footprint of the Building or any future Improvement on the Premises, or construct any new improvements upon the Premises visible from outside the Premises (including but not limited to buildings, sidewalks, or paving), or (iii) materially alter the exterior appearance of the Premises, including but not limited to changes in the paint, siding, architectural treatment, of, or number or type of windows on, the Premises, in each case under subsections (i)-(iii) without the prior written consent of Landlord, in Landlord's sole discretion;

(c) If Tenant desires to undergo any project requiring Landlord's consent, Tenant will furnish Landlord with proposed plans and specifications for such work and Landlord will have 60 days after receipt of such plans and specifications to either approve the plans and specifications or provide Tenant with comments on the plans and specifications (which Tenant must address and then submit revised plans and specifications to Landlord for approval). If the project requires Landlord's consent under 6.1(a) or 6.1(b), Landlord's failure to respond within such 60-day period shall be Landlord's disapproval of the project. If the project requires Landlord's consent solely because its cost would exceed the Materiality Threshold, Landlord's failure to respond within such 60-day period shall be Landlord's approval of the project.

(d) Upon completion of or modification to any building requiring Landlord's consent, Tenant will provide Landlord with as-built plans for the completed work.

6.2 Title to Improvements. Title to all Improvements existing upon the Premises as of the Commencement Date and all Improvements constructed by Tenant thereafter will be and will remain in Tenant during the Term of the Lease and such Improvements may be demolished, changed, altered, or removed by Tenant at any time, except as otherwise provided in Section 6.1 above. During the Term, Tenant is entitled, for all taxation purposes, to claim cost-recovery deductions and the like on all Improvements constructed by Tenant. At the expiration or earlier termination of the Lease, title to any Improvements remaining on the Premises will automatically pass to, vest in, and belong to Landlord without further action on the part of either party and without cost or charge to Landlord.

6.3 Notice of Construction. Regardless of whether Landlord's consent is required under this Article 6 Tenant agrees to notify Landlord in writing of Tenant's intention to commence construction of an Improvement at least 30 days before commencement of any such work or delivery of any materials. The notice must specify the approximate location and nature of the intended Improvements, and the anticipated date that work will be commenced. Landlord will have the right at any time and from time to time to post and maintain on the Premises notices of nonresponsibility and such other notices as Landlord deems necessary to protect Landlord's interest in the Premises and the Improvements from the liens of mechanics, laborers, materialmen, suppliers, or vendors; and Landlord will have the right to inspect the Premises and the Improvements in relation to the construction at all reasonable times. Tenant shall record a notice of completion as defined and provided for in ORS 87.045.

6.4 Landlord Cooperation. Without limiting Landlord's ability to withhold consent as provided by this Article 6, Landlord agrees to reasonably cooperate with Tenant in all respects in

connection with Tenant's construction of any Improvements, including but not limited to, executing the applications and other instruments reasonably necessary for construction of the Improvements, provided that Landlord will not be required to pay any application fees or incur any other costs or liabilities in connection with the Improvements beyond Landlord's fees for any professional advice Landlord desires. Landlord will appear as a witness in any legal or administrative proceedings to the extent reasonably necessary to construct the Improvements. Any approvals by Landlord with respect to any Improvements shall not make Landlord responsible for the Improvements or the construction thereof with respect to which approval is given.

6.5 Easements and Dedications. Tenant and Landlord each recognize that in order to provide for the development of the Premises, it may be necessary, desirable, or required that street, water, sewer, drainage, gas, power line, and other easements and dedications and similar rights be granted or dedicated over or within portions of the Premises and adjacent real property owned by Landlord. Landlord agrees that it will, upon request of Tenant, join with Tenant in executing and delivering such documents, from time to time, and throughout the Term of this Lease as may be appropriate, necessary, or required by any governmental agency or public utility company for the purpose of granting such easements and dedications, in such locations as are reasonably approved by Landlord, provided that Landlord will not be required to pay any application fees or incur any other costs or liabilities in connection with the Improvements beyond Landlord's fees for any professional advice Landlord desires.

Landlord has the right to grant to others (or itself) in the future non-exclusive utility easements over, under, through, across, or on the Premises in locations that will not unreasonably interfere with Tenant's use of the Premises. Any interference arising as a result of construction of improvements related to such utility systems and facilities granted by Landlord that are not requested by Tenant or on Tenant's behalf shall be temporary, and all work on the Premises and/or such easement areas shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Premises and/or such easement areas. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises and/or such easement areas, or any portion thereof, including but not limited to, pavement, curbs, and sidewalks, Landlord shall promptly repair the same, or cause the same to be promptly repaired, at no cost or expense to Tenant.

6.6 Initial Renovation of the Premises. Tenant shall promptly apply for and obtain all necessary permits and approvals to construct the Initial Renovations in accordance with the final plans and specifications approved by Landlord and applicable Legal Requirements, which approval shall not be unreasonably withheld or delayed. In the event of any dispute regarding the design of the Project, the matter shall be arbitrated in accordance with the provisions of Section 5.4 of this Lease. Construction shall begin promptly after obtaining all necessary permits and approvals for the Initial Renovations. The work shall be performed in accordance with all Legal Requirements and in a good and professional manner by licensed contractors. Landlord shall have the right to inspect the work at reasonable intervals subject to the supervision of Tenant and in a manner that will minimize any interference with the work. Tenant shall deliver to Landlord prior to commencement of construction certificates of insurance evidencing coverage as specified in Article 8. Tenant shall maintain, keep in force, and pay all

premiums required to maintain and keep in force all required insurance at all times during which construction work is in progress.

6.7 Indemnification of Landlord. Tenant shall indemnify, protect, defend (with legal counsel reasonably acceptable to Landlord), and hold Landlord harmless from and against all liability and all claims of liability (including, without limitation, reasonable attorneys' fees and costs) arising during the Term for damage or injury to persons or property or for death of persons arising from, out of, or in connection with such Improvements (including the Initial Renovation) or construction. All contracts and subcontracts involving work on the Improvements (including the Initial Renovation) shall specifically provide that the contractor(s) agree to indemnify, defend, and hold Landlord harmless from all claims, costs, liability or loss arising from personal injury, death, or property damage resulting from the negligent or willful acts, errors, or omissions of the contractor(s).

6.8 Construction Site. Tenant shall confine construction operations to the Premises and will not store or suffer to be stored any material or equipment on property of the Landlord outside the boundaries of the Premises, except as approved in writing and subject to such conditions as may be specified and approved by Landlord, including but not limited to the following:

6.8.1 Tenant shall protect all work and shall at all times keep and cause its contractors to keep the construction site reasonably clean and free from waste materials and rubbish.

6.8.2 Tenant shall, if required by Landlord, also fence all areas of the construction site appropriately to protect the site and to prevent unauthorized entry by anyone not specifically identified by the Landlord to be or remain on the site for Landlord's specific purposes.

6.8.3 Tenant will coordinate with Landlord regarding:

- (a) Minimizing noise and dust;
- (b) Placement of construction trailers and locations of substantial quantities of materials;
- (c) Parking areas for contractor and subcontractor vehicles;
- (d) All trash and recyclable materials removal; and
- (e) Overall safety plans for the work site and adjacent property.

6.9 Prevailing Wage. Tenant acknowledges that Tenant shall be independently responsible for reviewing and understanding the applicable law and regulations with respect to the payment of prevailing wages and complying therewith. Tenant shall indemnify, defend, and hold the Landlord and its agents and employees, harmless from and against any claims, injury, liability, loss, damage, fine, penalty, fee, cost, or expenses (including reasonable attorneys' fees, expert witness fees, and court costs), whether asserted, levied, or claimed by any governmental

authority or by a private person or entity, arising from, or which are in any way related to, the failure of Tenant, its officers, employees, agents, volunteers, contractors, or subcontractors, to pay prevailing wages in accordance with applicable laws, with respect to any alterations, improvements, additions, or other work on or about the Premises.

ARTICLE 7

TAXES AND UTILITIES

7.1 Taxes Defined. As used in this Lease, the terms "Tax" and "Taxes" mean any and all taxes, service payments in lieu of taxes, general or special assessments, excise taxes, transit charges, utility assessments, and any and all charges, levies, fees, or costs, general or special, ordinary or extraordinary, of any kind that are levied or at the direction of laws, rules, or regulations of any federal, state, or local authority on the Premises or the Improvements, or based on or otherwise in connection with the use, occupancy, or operations of the Premises or the Improvements, or with respect to services or utilities in connection with the use, occupancy, or operations of the Premises or the Improvements, or on Landlord with respect to the Premises or the Improvements, or on any act of leasing space in the Improvements, or in connection with the business of leasing space in the Improvements, including any tax on rents, whether direct or as a part of any "gross receipts" tax, and whether or not in lieu of, in whole or in part, ad valorem property taxes. Taxes will include, but not be limited to, state and local real-property taxes, levies, and assessments, and any tax, fee, or other excise, however described, that may be levied or assessed in lieu of, or as a substitute, in whole or in part, for, or as an addition to any other taxes, and all other governmental impositions and governmental charges of every kind and nature relating to the Premises or the Improvements, including, but not limited to, any road-user or transportation-system-maintenance fee and any charges or fees measured by trip generation or length, parking spaces, impervious surfaces, buildings, vehicle usage, or similar bases for measurement.

7.2 Payment of Taxes. Throughout the Term, Tenant will pay all Taxes as they become due. If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Tenant may pay the same in installments as each installment becomes due and payable, but in any event must do so before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest. Taxes for the year in which this Lease commences and expires will be prorated between the parties as of the Commencement Date or expiration date as the case may be and, on the Commencement Date, Tenant will pay its pro rata share of the current year's taxes.

7.3 Contesting Taxes. If Tenant in good faith desires to contest the validity or the amount of any Tax, Tenant will be permitted to do so by giving to Landlord written notice thereof before commencement of such contest. Landlord will, at Tenant's expense (including reimbursement of attorney fees reasonably incurred by Landlord), cooperate with Tenant in any such contest to the extent that Tenant may reasonably request, but Landlord will not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Tenant, and Tenant will indemnify and save Landlord harmless from any such costs or expenses. Any rebates on account of the Taxes required to be paid and paid by Tenant under the provisions of this Lease will belong to Tenant, except that to the extent any rebates or refunds are

related to a period of time in which this Lease is not in effect (either before commencement or after expiration or termination), the portion of the rebate attributable to such time will be returned to Landlord to the extent previously paid by Landlord. Any contest as to the validity or amount of any Tax, or assessed valuation on which the Tax was computed or based, whether before or after payment, may be made by Tenant in the name of Landlord or of Tenant, or both, as Tenant will determine.

7.4 Evidence of Payment. Promptly after payment, Tenant will provide Landlord with evidence reasonably satisfactory to Landlord that all Taxes required to be paid by Tenant have been paid.

7.5 Personal-Property Taxes. Tenant must pay before delinquency all taxes assessed against and levied on improvements, fixtures, furnishings, equipment, and all other personal property of Tenant contained in the Premises, and when possible Tenant must cause said improvements, fixtures, furnishings, equipment, and other personal property to be assessed and billed separately from the real property of Landlord.

7.6 Utilities and Services. Tenant will pay, directly to the appropriate supplier, for all water, sanitary sewer, storm sewer, gas, electric, telephone, internet, cable, garbage pickup, and all other utilities and services used by Tenant on the Premises as they become due, together with any taxes thereon, from and after the Commencement Date. Landlord will not be in default hereunder nor be liable in damages or otherwise for any failure or interruption of any utility or other service being furnished to the Premises, and no such failure or interruption will entitle Tenant to terminate this Lease or to abate payment of any portion of Rent due hereunder. Subject to 6.5, Tenant shall be solely responsible for obtaining all utilities and services to serve the Premises.

ARTICLE 8

INSURANCE

8.1 Property Insurance. Tenant, at its cost and expense, will keep all Improvements insured against loss or damage by property insurance written on the standard Insurance Services Office (ISO) "special-form" policy, or its nearest equivalent in use at the time. Tenant will obtain endorsements to its special-form policy to maintain the following types of coverage to the extent required by Landlord (a) flood, (b) earthquake, (c) business interruption and extra expense coverage, (d) indirect loss, (e) boiler and machinery perils, (f) debris removal in an amount sufficient to size and cost of the Building, and (g) ordinance and law. The property insurance must cover the full replacement value of the Improvements (excluding foundation and excavation cost), less a deductible not to exceed \$5,000, and require that all losses are payable to Landlord and Tenant as their interests may appear. Any loss adjustment must require written consent of both parties, which will not be unreasonably withheld, conditioned, or delayed. The amount of the insurance policy will be increased from time to time, not more than once every 5 years, as the full replacement value of the Improvements increases, provided that Landlord may require Tenant to increase amount of the insurance policy after each time Tenant has constructed substantial Improvements upon the Premises.

8.2 Property Insurance During Construction. During construction of any Improvements (including the Initial Renovation) on the Premises, Tenant shall obtain and maintain builder's risk insurance against "all risk" of physical loss, including, without limitation, the perils of flood, collapse and transit, covering the total cost of work performed, equipment, supplies and materials furnished on a replacement cost basis. Tenant shall also maintain insurance covering the cost of delay in completion of said construction caused by the "all risk" perils referred to above, which shall cover not less than the Rent due to Landlord hereunder and the rent which reasonably would have been due to Landlord if the Improvements had been completed, and shall cover not less than 12 months of such payments of Rent under this Lease. Tenant shall also obtain and maintain earthquake insurance if such insurance is available at commercially reasonable rates with commercially reasonable deductibles to Tenant. All contractors shall be included as additional insureds under such policies or under policies maintained by Tenant's general contractor or Tenant shall furnish separate certificates and endorsements for each subcontractor to the Landlord for review and approval. All coverages for contractors shall be subject to all of the requirements stated herein.

8.3 Liability Insurance. Tenant, at its cost and expense, will maintain commercial general liability insurance covering the Premises, the Improvements, and the conduct or operation of its business with limits of loss of at least Two Million Dollars (\$2,000,000) per occurrence, Two Million Dollars (\$2,000,000) general aggregate, and comprehensive liquor liability, of not less than Two Million Dollars (\$2,000,000) per occurrence. The insurance policies must be primary to any insurance available to Landlord, contain a severability-of-interest or cross-liability clause, include contractual-liability coverage for Tenant's indemnification obligations contained in this Lease, and name Landlord as an additional insured. Landlord has the right from time to time to increase the amount of liability insurance required under this Lease based on then-current market conditions for properties comparable to the Premises.

8.4 Worker's Compensation and Employers' Liability. Tenant, at its cost and expense, will maintain Worker's Compensation and Employers' Liability Insurance as prescribed by applicable law.

8.5 Additional Requirements. Tenant's insurance carriers must be reputable insurance companies reasonably acceptable to Landlord, licensed to do business in the State of Oregon, and have a minimum A-VIII rating as determined by the then-current edition of *Best's Insurance Reports* published by A.M. Best Co. Tenant will provide Landlord with certificates of insurance concurrently with the execution of this Lease and upon renewal of each such policy thereafter to establish that Tenant's insurance obligations have been met and that the policies are not subject to cancellation or material change without at least 30 days advance written notice to Landlord; provided, however, that Landlord reserves the right to inspect and require full copies of all insurance policies to be provided to Landlord.

8.6 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any other risks enumerated in the insurance policies described in this Article 8, whether due to negligence or any other cause. Notwithstanding the foregoing, to the extent Tenant fails to maintain the insurance required under the terms of this Lease, such failure shall not be a defense to any claim asserted by

Landlord against Tenant of any loss sustained by Landlord due to circumstances that would have been covered had such required insurance been maintained. In the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Tenant agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

ARTICLE 9

RELEASE AND INDEMNIFICATION

9.1 Release. Tenant is and will be in exclusive control of the Premises and the Improvements, and Landlord will not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Improvements, or any injury or damage to the Premises or the Improvements or to any property, whether belonging to Tenant or to any other person, caused by any fire, breakage, leakage, defect, or bad condition on any part of the Premises or the Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or because of the use, misuse, or abuse of all or any of the Improvements, or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the Improvements, including defects in construction of the Improvements, latent or otherwise; and Tenant hereby releases Landlord from and against any and all liabilities resulting from any such injuries and damages. Landlord acknowledges that it remains responsible for liability to any third party to the extent that the liability arises from Landlord's gross negligence or willful misconduct.

9.2 Indemnification. Except to the extent caused by the gross negligence or willful misconduct of Landlord, Tenant agrees to indemnify, defend and hold Landlord, its agents and employees harmless from and against any and all liabilities, obligations, damages, fines, penalties, claims, costs, charges, and expenses (including, without limitation, reasonable attorney fees and costs at trial and on appeal; environmental response and remedial costs; environmental consultant and laboratory fees; and natural resource damages) that may be imposed on or incurred by or asserted against Landlord by reason of any of the following occurrences during the Term:

- (a) Any work or thing done in, on, or about all or any part of the Premises or the Improvements by Tenant or any party other than Landlord;
- (b) Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements or any adjacent alley, sidewalk, curb, vault, passageway, or space;
- (c) Any negligence on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees;

(d) Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements, even if caused in part by the negligence of Landlord, but only up to the limits of Tenant's liability insurance coverage with respect to any such negligence of Landlord; and

(e) Any failure of Tenant to comply with or to perform any covenant, agreement, term, provision, condition, or limitation that this Lease requires Tenant to comply with or to perform, including without limitation Tenant's compliance with the Legal Requirements and the release of Hazardous Substances in violation of Environmental Laws.

ARTICLE 10

LIENS

10.1 No Liens. Tenant will not suffer or permit any construction liens to attach to or be filed against any part the Premises or the Improvements by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Tenant or any person occupying or holding an interest in any part of the Premises or the Improvements. If any such lien is filed against any portion of the Premises or the Improvements, Tenant will cause the same to be discharged of record within 15 days after the date of its filing by payment, deposit, or bond. If Tenant (or any contractor or subcontractor, as applicable) does not cause to be recorded the bond described in ORS 87.076, or otherwise protect the Premises and Improvements under any alternative or successor statute, and a final judgment has been rendered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic's, materialman's, contractor's or subcontractor's lien claim, and if Tenant fails to stay the execution of judgment by lawful means or to pay the judgment, Landlord shall have the right, but not the duty, to pay or otherwise discharge, stay or prevent the execution of, any such judgment or lien or both. Upon any such payment by Landlord, Tenant shall immediately, upon receipt of written request therefor made by Landlord, reimburse Landlord for all sums paid by Landlord under this paragraph, together with all Landlord's reasonable attorneys' fees and costs, plus interest at the rate of 9%, from the date of payment until the date of reimbursement.

10.2 No Right to Lien Landlord's Interest. Nothing in this Lease may be deemed to be, or be construed in any way as constituting, the consent or request of Landlord, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Landlord's interest in the Premises or against Landlord's interest, if any, in the Improvements. Tenant is not intended to be an agent for the landlord.

ARTICLE 11

REPAIRS AND MAINTENANCE

11.1 Tenant Obligation. Tenant must maintain, repair and replace the Premises and the Improvements as and when needed so as to keep them in a clean and attractive condition, and in good condition and repair, throughout the entire Term. Tenant's obligations extend to both structural and nonstructural items and to all maintenance, repair, and replacement work.

11.2 Landlord Obligation. Landlord is not required to furnish to Tenant, the Premises, or the Improvements any facilities, utilities, or services of any kind whatsoever during the Term, such as, but not limited to, water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, or any other utilities or services used by Tenant. Landlord is not required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs to any portion of the Premises or the Improvements during the Term.

11.3 Limited Assignment of Rights. Landlord assigns to Tenant, without recourse, any rights that Landlord may have against any parties causing damage to the Improvements on the Premises to sue for and recover amounts expended by Tenant as a result of the damage.

ARTICLE 12

SIGNAGE

Provided Tenant obtains Landlord's prior written approval as to design, size, location, and color, Tenant is permitted to install signage on the Premises and the Improvements as long as Tenant complies with all applicable Legal Requirements and Landlord's standards for signs. All signs and sign hardware must be removed upon termination of this Lease with the sign location restored to its former state unless Landlord elects to retain all or any portion thereof.

ARTICLE 13

INSPECTION AND ACCESS

Tenant will permit Landlord or its authorized representative to enter the Premises and the Improvements at all reasonable times during normal business hours for purposes of inspecting them for compliance with the terms of this Lease and making any repairs or performing any work that Tenant has neglected or refused to make in accordance with the terms of this Lease. Nothing in this Lease implies any duty or obligation, however, on Landlord's part to make such inspections or perform such work (including, but not limited to, repairs and other restoration work made necessary because of any fire or other casualty or partial condemnation, irrespective of the sufficiency or availability of any property or other insurance proceeds, or any award in condemnation, that may be payable). Landlord's performance of any work will not constitute a waiver of Tenant's default in failing to perform the same.

ARTICLE 14

DAMAGE AND DESTRUCTION

If any Improvements on the Premises are damaged or destroyed by fire or other casualty, Rent will not abate and Tenant must promptly restore the damaged Improvements to substantially the same condition existing before the casualty. The proceeds available from Tenant's property insurance policy (the "Proceeds") must be used for such restoration. If the Proceeds are not sufficient for Tenant to restore the damaged Improvements, Tenant must pay the difference.

If the Proceeds equal more than 10 percent of the replacement cost of the damaged Improvements or \$50,000, whichever is greater, then all Proceeds will be paid to an escrow agent (the "Trustee") selected by Tenant (subject to the reasonable approval of Landlord) as trustee for the parties and disbursed as provided below. If the Proceeds are less than such amount, then the Proceeds will be delivered to Tenant. The Trustee will pay or reimburse Tenant from the Proceeds for the cost of restoring the damaged Improvements on satisfactory proof of expenditure by Tenant, satisfactory evidence of sufficient progress on the work, and satisfactory evidence of sufficient funds available to complete restoration. The Trustee will not be liable to the parties except in the event of gross negligence or fraud. The Trustee will be entitled to deduct a customary and reasonable charge for its services.

If Tenant fails to file a claim or proof of loss with its property insurance carrier within 15 days after the casualty, Landlord may file such claim or proof of loss on behalf of Tenant after providing Tenant with written notice of its intention to do so. Any dispute regarding the distribution or use of the Proceeds will be arbitrated in the manner described in Section 5.4 above, and any Proceeds not used to repair or restore the damaged Improvements will be delivered to Tenant (except as otherwise provided below).

Notwithstanding the foregoing to the contrary, if the casualty occurs during the last three years of the Term and the Improvements are damaged to the extent of 35 percent or more of the total replacement cost of all Improvements on the Premises (exclusive of foundations), then either Landlord or Tenant may terminate this Lease by providing written notice thereof to the other party within 30 days after the date of the casualty; provided, however, that if Landlord elects to terminate the Lease under this section but Tenant has the right to extend the Term of this Lease under Section 2.2, then Tenant may elect to exercise its extension right within five days after receiving notice of Landlord's election to terminate the Lease, in which case Landlord's notice of termination is void, the Term is extended as provided in Section 2.2 and Tenant must perform its restoration obligation as provided above. Upon the exercise of the option to terminate this Lease by either party hereto (unless Tenant vitiates Landlord's termination of the Lease by extending the Term as provided above), this Lease will terminate upon Tenant (a) removing all damaged Improvements (including foundations) and leaving the Premises in a clean, attractive, and safe condition, and (b) delivering the balance of the Proceeds to Landlord.

ARTICLE 15

CONDEMNATION

15.1 Total Taking. If all the Premises and the Improvements are taken or condemned by right of eminent domain or by purchase in lieu of condemnation (a "Taking"), or if in Tenant's reasonable judgment the Taking of any portion of the Premises or the Improvements renders the portion remaining insufficient and unsuitable to permit the restoration of the Improvements following the Taking, then Tenant may terminate this Lease by providing written notice thereof to Landlord within 30 days after Tenant is notified of the Taking, in which case the Lease will cease and terminate (except those provisions intended to survive the expiration or termination of the Lease) as of the date on which the condemning authority takes possession (any Taking in this section being called a "Total Taking") and the Rent will be apportioned and paid to the date of the Total Taking.

15.2 Award for Total Taking. If this Lease terminates as a result of a Total Taking, the rights and interests of the parties will be determined as follows:

15.2.1 The total award or awards for the Total Taking will be apportioned and paid in the following order of priority:

(a) Landlord will have the right to receive directly from the condemning authority, in its entirety and not subject to any trust, a portion of the award that is defined and referred to as the Land Award (as defined below), and neither Tenant nor any Permitted Leasehold Mortgagee will be entitled to receive any part of the Land Award. The term "Land Award" means that portion of the award in the condemnation proceeding that represents the fair market value of the Premises, which should be considered as vacant, unimproved but encumbered by this Lease; the consequential damage to any part of the Premises that may not be taken; the diminution of the assemblage or plottage value of the Premises not so taken; and all other elements and factors of damage to the Premises; but in all events the damage or valuation will take into consideration that the Premises are encumbered by this Lease.

(b) Tenant will have the right to receive directly from the condemning authority that portion of the award referred to as the Leasehold Award (as defined below), subject, however, to the rights of any Permitted Leasehold Mortgagee. The term "Leasehold Award" means that portion of the award in the condemnation proceeding that represents the fair market value of Tenant's interest in the Improvements and the fair market value of Tenant's leasehold estate as so taken and, if this Lease is not terminated as a result of the Taking, the consequential damages to any part of the Improvements.

(c) It is the intent of the parties that the Land Award and the Leasehold Award will equal the total amount of the awards respecting the Total Taking.

15.2.2 If a court or another lawful authority that is authorized to fix and determine the awards fails to fix and determine, separately and apart, the Land Award and the Leasehold Award, the awards will be determined and fixed by written agreement mutually entered into by and among Landlord, Tenant, and First Leasehold Mortgagee, if any, and if an

agreement is not reached within 30 days after the judgment is entered in the proceeding, the controversy will be resolved in the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the controversy; and

15.2.3 If the condemning authority refuses or otherwise fails to deduct from the Leasehold Award any Rent or other money due from Tenant to Landlord and to pay the same directly to Landlord, then Tenant and the First Leasehold Mortgagee, if any, will execute and deliver to Landlord a written and acknowledged assignment of the amount payable out of the Leasehold Award, and if, nevertheless, the full amount of the Leasehold Award is paid to Tenant or any First Leasehold Mortgagee, the recipient will hold in trust for Landlord and pay over to Landlord forthwith on the receipt of the award the amount so due.

15.3 Partial Taking and Award for Partial Taking. If, during the Term, there is a Taking of the Premises or the Improvements, but the Taking is not a Total Taking and not a temporary taking of the kind described in Section 15.4, or if a change occurs in the grade of the streets or avenues on which the Premises abuts, this Lease will not terminate but will remain in full force and effect with respect to the portion of the Premises and the Improvements not taken (any Taking or change of grade of the kind described in this section being referred to as a "Partial Taking"), and in that event the total award or awards for the taking will be apportioned and paid in the following order of priority:

(a) Landlord will have the right to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award that equals the Land Award, and neither Tenant nor any Permitted Leasehold Mortgagee will be entitled to receive any part of the award; and

(b) If at the time of the Taking, a First Leasehold Mortgage is held by a Lending Institution, then that Lending Institution, or, if there is no First Leasehold Mortgage, then Tenant, will have the right to receive directly from the condemning authority the balance of the award, to be applied by the recipient as it deems appropriate.

15.4 Temporary Taking. If there is a Taking of all or a part of the Premises or the Improvements for temporary use, this Lease will continue without change, as between Landlord and Tenant, and Tenant will be entitled to the entire award made for that use. Tenant will also have the right to file and prosecute any claim against the condemnor for damages, and to recover the same, for any negligent use, waste, or injury to the Premises or the Improvements throughout the balance of the then-current Term. The amount of damages so recovered will belong to Tenant.

15.5 Dispute Resolution. In the event of any dispute between Tenant and Landlord regarding any issue of fact arising out of a Taking mentioned in this Article, the dispute will be resolved by the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the dispute.

ARTICLE 16

ASSIGNMENT AND SUBLETTING

16.1 Limitations on Transfers. Except as permitted under sections 16.2 and 18 below, Tenant must not, voluntarily or by operation of law, sell, assign, or transfer this Lease or any interest therein, sublet the Premises or any part thereof, or grant any right to use the Premises, the Improvements, or any respective part thereof (each a "Transfer") without the prior written consent of Landlord, which must not be unreasonably withheld, conditioned or delayed. Any attempted Transfer without such prior written consent will be void. Landlord's consent to a Transfer will in no event release Tenant, any assignee, or any guarantor from their respective liabilities or obligations under this Lease or any guaranty of this Lease (including any liabilities or obligations arising during the Extended Term), nor relieve Tenant from the requirement of obtaining Landlord's prior written consent to any further Transfer. Landlord's acceptance of Rent from any other person will not be deemed to be a waiver by Landlord of any provision of this Lease or consent to any Transfer. For the avoidance of doubt, the use of the Premises by any transferee following a Transfer must be consistent with the Permitted Use, unless consented-to by Landlord, in Landlord's sole discretion.

If Tenant is a corporation, partnership, limited liability company, or other entity or unincorporated association, then any Transfer of this Lease by merger, consolidation, liquidation, or change in the ownership of or power to vote the majority of the ownership interest of Tenant, or manage Tenant, will constitute a Transfer for the purposes of this Article.

16.2 Assignments Prohibited. An assignment prohibited within the meaning of this Section 16.1 includes, without limitation, one or more sales or transfers, direct or indirect, by operation of law or otherwise, or the creation of new stock or ownership interests, by which ownership or control of an aggregate of more than 50 percent of Tenant's stock or ownership interests must vest in a party or parties who are non-stockholders, partners, or members, as applicable, as of the Commencement Date.

16.3 Review of Proposed Transfer. In the event of a proposed assignment of this Lease or a proposed sublease of all or any portion of the Premises, Tenant shall, at least thirty (30) days prior to the effective date of any proposed assignment or sublease, provide Landlord with a copy of the proposed assignment or sublease and such information as Landlord reasonably requests concerning the proposed assignee or subtenant to allow Landlord to make an informed judgment as to the financial condition, reputation, operations, and general desirability of the proposed assignee or subtenant. Tenant shall pay a review fee of \$2,000 (which amount shall increase on each Adjustment Date to 112% of the review fee previously in effect), and Landlord's reasonable attorney fees incurred in connection with any request by Tenant for an assignment or sublease.

16.4 Sublease Terms. Each sublease will contain the following terms and conditions:

(a) The sublease will incorporate the terms, conditions, and covenants set forth in, and state that it is subject and subordinate to, this Lease and to any extensions, modifications, or amendments of this Lease, unless Landlord specifically requires that the sublease be prior and superior to this Lease;

(b) That rents due under the sublease (i) have been assigned to Landlord (and Tenant hereby assigns the rents to Landlord), subject to the rights of any leasehold mortgagee, to support performance of Tenant's covenants under this Lease, which assignment will be effective only on the occurrence of any event of default by Tenant under this Lease; (ii) will not be paid more than one month in advance; and (iii) will, on receipt of written notification from Landlord that an event of default has occurred under this Lease, be paid by the subtenant directly to Landlord until the subtenant receives written notice from Landlord that Tenant has cured the event of default or is in the process of curing the event of default in a manner reasonably satisfactory to Landlord;

(c) That if this Lease is canceled or terminated before the expiration of the Term, the subtenant will make full and complete attornment to Landlord for the balance of the term of the sublease with the same force and effect as though the sublease were originally made directly from Landlord, as long as the subtenant has received a Sublease Nondisturbance Agreement from Landlord, as provided below; and

(d) If any act or omission of Tenant would give subtenant the right, immediately or after lapse of a period of time, to cancel or terminate the sublease, or to claim a partial or total eviction, subtenant will not exercise that right: (i) until it has given written notice of the act or omission to Landlord; and (ii) until a reasonable period of time for Landlord to cure the condition has passed.

16.5 Sublease Nondisturbance Agreements. Landlord will issue a commercially reasonable nondisturbance and attornment agreement (each a "Sublease Nondisturbance Agreement") to each subtenant requesting the same within 30 days after receipt of a request therefor, as long as the rent under the sublease is fair market rent, and the other terms of the sublease are consistent with then-current market conditions. The Sublease Nondisturbance Agreement will require the subtenant to acknowledge in writing that this Lease is prior to and paramount to the sublease, and will provide that Landlord will recognize the sublease and not disturb the subtenant's possession under the sublease as long as subtenant is not in default under its sublease and agrees to attorn to Landlord for the balance of the term of the sublease with the same force and effect as though said sublease were originally made directly from Landlord to subtenant, except Landlord will not: (a) be liable for any previous act or omission of Tenant under the sublease; (b) be subject to any offset, deficiency, or defense that will have accrued to subtenant against Tenant; (c) be bound by any previous modification of the sublease or by any previous prepayment of more than one month's rent under the sublease, unless the modification or prepayment will have been expressly approved in writing by the Landlord; or (d) be liable for the return of any security deposit on the sublease that was not actually transferred to the Landlord.

16.6 Right of First Offer. If Tenant wishes to sell, assign, or transfer all of Tenant's entire interest in (a) the Premises, (b) the Improvements, and (c) this Lease, Tenant will first offer Tenant's Interest to Landlord pursuant to a written offer (the "Offer") setting forth all of the terms and conditions on which Tenant is willing to sell Tenant's Interest. Landlord shall have until 45 days from the date of its receipt of the Offer to elect to accept the Offer and purchase Tenant's Interest on the terms and conditions set forth in said Offer (except that a formal purchase and sale agreement documenting all terms and conditions shall be prepared by Tenant

and presented to Landlord within 10 days of Landlord's election, and subject to Landlord's reasonable approval). If Landlord does not exercise its right to acquire Tenant's Interest by notifying Tenant in writing of its election to do so within said 30-day period or if Landlord notifies Tenant in writing before the expiration of that period that it does not elect to accept the offer, then Tenant may, for a period of six months following the expiration of said 45-day period or receipt of Landlord's notice not to accept the offer, whichever is earlier, sell Tenant's entire interest at a purchase price no less than that set forth in the Offer and on terms not materially more favorable to Tenant than those contained in the offer to Landlord. Nothing in this Section 16.6 shall serve to circumvent Landlord's approval rights to any assignment or partial assignment or other Transfer under this Article 16.

ARTICLE 17

LANDLORD MORTGAGES AND SUBORDINATION

17.1 Landlord Mortgages. Landlord has the right at any time and from time to time to borrow against and encumber its interest in the Premises, the Improvements, and this Lease without having to obtain the consent of Tenant.

17.2 Subordination. This Lease will at all times be subject and subordinate to any mortgage or deed of trust (an "Encumbrance") now existing or hereafter placed on Landlord's interest in the Premises or the Improvements or any portion thereof, and to any and all modifications, renewals, or extensions of an Encumbrance. If Landlord's interest in the Premises and the Improvements are sold or transferred in connection with the judicial or nonjudicial foreclosure of any Encumbrance, or by deed in lieu of foreclosure, Tenant will attorn to the purchaser as Landlord (the "Successor Landlord"), and any such Successor Landlord will recognize this Lease and will not disturb the quiet enjoyment and possession of the Premises and the Improvements by the Tenant under this Lease as long as Tenant is not in default of the Lease, except that the Successor Landlord will not: (a) be liable for any previous act or omission of Landlord under this Lease; (b) be subject to any offset, deficiency, or defense that will have accrued to Tenant against Landlord; (c) be bound by any previous modification of this Lease or by any previous prepayment of more than one month's Rent, unless the modification or prepayment will have been expressly approved in writing by the Encumbrance holder; or (d) be liable for the return of any security deposit that was not actually transferred to the Successor Landlord. Within 15 days after request by Landlord or any existing or prospective lender of Landlord, Tenant will execute a commercially reasonable form of subordination, nondisturbance, and attornment agreement that is consistent with this Section 17.2. If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant will not exercise such right: (i) until it has given written notice of the act or omission to Landlord and each Encumbrance holder whose name and address have previously been furnished to Tenant, and (ii) until a reasonable period of time for the parties to cure the condition has passed.

ARTICLE 18

LEASEHOLD MORTGAGES

18.1 Right to Mortgage Leasehold. In addition to any other rights granted and without any requirement to obtain Landlord's consent, Tenant has the right to mortgage or grant a security interest in Tenant's interest in this Lease, the Premises, and the Improvements under one or more leasehold mortgages to one or more Lending Institutions (as defined in Section 18.2 below), and to assign this Lease as collateral security for those leasehold mortgages, on the condition that all rights acquired under the leasehold mortgages are subject to every covenant, condition, and restriction set forth in this Lease, and to all rights and interests of Landlord, none of which covenants, conditions, restrictions, rights, or interests is or may be waived by Landlord by reason of the right given to mortgage or grant a security interest in Tenant's interest in this Lease and the Premises and the Improvements, except as expressly provided otherwise, and further provided the following shall apply:

(a) The Landlord shall not be required to sign any Permitted Leasehold Mortgage, or otherwise become obligated thereunder;

(b) No such lien, charge or encumbrance shall constitute a lien or encumbrance upon the Landlord's fee title in the Premises or its reversionary interest in the Improvements;

(c) Any interest in the Premises which the Permitted Leasehold Mortgage establishes in a trustee, and any lien which it creates, shall expire on or before the date of expiration of this Lease;

(d) The Permitted Leasehold Mortgage imposes no financial obligations on the Landlord, contingent or otherwise;

(e) The Permitted Leasehold Mortgage shall neither subordinate nor affect the Landlord's right to convey, mortgage, encumber or otherwise hypothecate in any way the Landlord's fee or leasehold title (respectively) or reversionary interest in the Improvements or the Premises;

(f) Except as otherwise provided herein, no Permitted Leasehold Mortgagee or anyone claiming by, through or under such Leasehold Mortgagee shall, by virtue of such claim, acquire any greater rights than Tenant then had under this Lease;

(g) The Permitted Leasehold Mortgage shall be subject to all conditions, covenants and restrictions of this Lease and to all rights of Landlord hereunder;

(h) The Landlord will accept performance under this Lease by any Permitted Leasehold Mortgagee as though the same had been performed by Tenant;

(i) The time available to a Permitted Leasehold Mortgagee to initiate foreclosure proceedings, to proceed with foreclosure proceedings, or to obtain possession of the leasehold interest shall be deemed extended by the number of days of delay occasioned by

judicial restriction or application or operation of law against any such initiation or occasion by other circumstances beyond such Permitted Leasehold Mortgagee's control;

(j) If two or more Leasehold Mortgagees exercise their rights under this Lease, the First Leasehold Mortgagee shall prevail; provided, however, that any priority issues between multiple lenders will not be determined by Landlord;

(k) The Permitted Leasehold Mortgage shall provide that, prior to the institution of any proceedings to foreclose the Permitted Leasehold Mortgage or of negotiations to accept an assignment in lieu of the foreclosure of the Permitted Leasehold Mortgage, the holder or beneficiary thereof shall notify Landlord in writing that such proceedings or negotiations are to be commenced, and Landlord shall have the right, but not the obligation, within 60 days after receiving of such notice to purchase the Permitted Leasehold Mortgage and the indebtedness which it secures at a purchase price equal to the full amount then owing under said Permitted Leasehold Mortgage, including accrued interest, reasonable attorneys' fee for the holder or beneficiary, and applicable statutory costs and allowances if any foreclosure proceedings shall have commenced. All loan agreements in connection with any Improvements, including but not limited to construction loans, long term loans and refinancing permitted by the terms of this Lease shall contain the written agreement of the Permitted Leasehold Mortgagee that Landlord shall be notified by the Permitted Leasehold Mortgagee within 30 days of any default by Tenant on any such loan and shall be given the opportunity to correct the default and assume the loan(s) prior to initiation of foreclosure actions other than the filing of a notice of default pursuant to ORS 86.752;

(l) Tenant shall give Landlord written notice of any Leasehold Mortgage prior to the execution and/or recording of same by Tenant, and shall accompany such notice with a true copy of such Leasehold Mortgage and the Note secured thereby; and

(m) Tenant shall give Landlord written notice when the Leasehold Mortgage is extinguished and no longer in effect as soon as possible after such extinguishment;

(n) All insurance proceeds arising from damage or destruction of the Improvements shall be available for restoration thereof to the extent Tenant is obligated under the terms of this Lease to restore the Improvements following such damage or destruction.

(o) No loan may be in an amount that exceeds 70 percent of the fair market value of the Improvements at the time the loan is entered into.

18.2 Defined Terms. Any mortgage, deed of trust, financing statement, security agreement, or other financing instrument granted by Tenant pursuant to this Article 18 is referred to as a "Permitted Leasehold Mortgage," and the holder of or secured party under a Permitted Leasehold Mortgage is referred to as a "Permitted Leasehold Mortgagee." The Permitted Leasehold Mortgage that is prior in lien or interest among those in effect is referred to as the "First Leasehold Mortgage," and the holder of or secured party under the First Leasehold Mortgage is referred to as the "First Leasehold Mortgagee." For the purposes of any rights created under this Article, any so-called wraparound lender will be considered a First Leasehold Mortgagee. If a First Leasehold Mortgage and a Permitted Leasehold Mortgage that is second in

priority in lien or interest among those in effect are both held by the same Permitted Leasehold Mortgagee, the two Permitted Leasehold Mortgages are collectively referred to as the First Leasehold Mortgage. The term "Lending Institution" means any commercial, national, or savings bank, savings and loan association, trust company, pension trust, foundation, or insurance company, and any other entity, person, corporation, partnership, or otherwise making a loan on the security of Tenant's interest in this Lease or any portion of the Premises or the Improvements.

18.3 Lender Protections. If a Permitted Leasehold Mortgagee sends to Landlord a true copy of its Permitted Leasehold Mortgage, together with written notice specifying the name and address of the Permitted Leasehold Mortgagee, then as long as the Permitted Leasehold Mortgage remains unsatisfied of record or until written notice of satisfaction is given by the holder to Landlord, the following provisions will apply (in respect of the Permitted Leasehold Mortgage and of any other Permitted Leasehold Mortgages):

(a) This Lease may not be (i) amended or modified, or (ii) terminated or canceled by reason of the exercise of any option or election by Tenant, or by the giving of any notice by Tenant, unless such amendment, modification, termination, or cancellation by Tenant is assented to in writing by the Permitted Leasehold Mortgagee. Any such attempted amendment or modification, termination, or cancellation by Tenant without the Permitted Leasehold Mortgagee's assent is void. Furthermore, no mergers will result from the acquisition by, or devolution upon, any one entity of the fee and the leasehold estates in the Premises or the Improvements.

(b) Upon serving Tenant with any notice under this Lease, whether of default or any other matter, Landlord will simultaneously serve a copy of the notice on the Permitted Leasehold Mortgagee, and no notice to Tenant will be deemed given unless a copy is so served on the Permitted Leasehold Mortgagee in the manner provided in this Lease for giving notices.

(c) In the event of any default by Tenant under this Lease, each Permitted Leasehold Mortgagee has the same period as Tenant has, plus 30 days, after service of notice on it of the default, to remedy or cause to be remedied or commence to remedy and complete the remedy of the default complained of, and Landlord must accept that performance by or at the instigation of the Permitted Leasehold Mortgagee as if the same had been done by Tenant. Each notice of default given by Landlord must state the amount of any Rent that is then claimed to be in default.

(d) Landlord agrees that if this Lease is terminated by reason of any default by Tenant, other than for nonpayment of the Rent and other payments herein provided for, Landlord will enter into a new lease for the Premises and the Improvements with the holder of the then First Leasehold Mortgage on this Lease, or with its nominee or designee, for the remainder of the Term, effective as of the date of the termination, at the Rent and on the other terms and provisions as herein contained and subject only to the same conditions of title as this Lease was subject on the date of the execution hereof, and to the rights, if any, of any parties then in possession of the Premises or any portion thereof, provided as follows: (i) The holder will request the new lease within 30 days after the date of termination of the Lease; (ii) the

holder will pay to Landlord at the time of execution and delivery of the new lease all sums as to which the First Leasehold Mortgagee will have been provided with prior notice and which would at the time of execution and delivery thereof be due under this Lease had it not terminated, together with any expenses, including reasonable attorney fees, to which Landlord will have been subjected by reason of the default; (iii) Landlord will not warrant possession of the Premises to the tenant under the new lease; (iv) the new lease will be expressly made subject to the rights, if any, of Tenant under this terminated Lease; (v) tenant under the new lease will have the same right, title, and interest in and to the Premises as Tenant had under this Lease (except as otherwise provided herein); and (vi) the holder will not be obligated to perform any obligations of Tenant hereunder until the holder actually acquires possession of the Premises.

(e) Nothing herein contained will require any holder of a Permitted Leasehold Mortgage or its nominee or designee to cure any default of Tenant arising out of its bankruptcy, insolvency, reorganization, or other proceeding under the bankruptcy or insolvency laws of the United States or the State of Oregon or otherwise.

(f) Landlord agrees to amend this Lease from time to time to the extent reasonably requested by a Lending Institution proposing to make Tenant a loan secured by a Permitted Leasehold Mortgage, as long as such proposed amendments do not materially and adversely affect the rights, obligations, or liabilities of Landlord or Landlord's interest in the Premises or the Improvements. All reasonable expenses Landlord incurs in connection with any such amendment will be paid by Tenant.

(g) Landlord agrees that the name of the Permitted Leasehold Mortgagee may be added to the "loss payable endorsement" of any or all insurance policies required to be carried by Tenant.

ARTICLE 19

ESTOPPEL CERTIFICATE

Within 15 days after a request is made by a party, the other party will, without charge, give a certification in writing to any person, firm, or corporation reasonably specified by the requesting party stating (a) that this Lease is then in full force and effect and unmodified, or if modified, stating the modifications; (b) that Tenant is not in default in the payment of Rent to Landlord, or if in default, stating the default; (c) that as far as the maker of the certificate knows, neither party is in default in performing or observing any other covenant or condition to be performed or observed under this Lease, or if either party is in default, stating the default; (d) that as far as the maker (if Landlord) of the certificate knows, no event has occurred that authorized, or with the lapse of time will authorize, Tenant to terminate this Lease, or if such an event has occurred, stating the event; (e) that as far as the maker of the certificate knows, neither party has any offsets, counterclaims, or defenses, or, if so, stating them; (f) the dates to which Rent has been paid; and (g) any other matters that may be reasonably requested by the requesting party.

ARTICLE 20

DEFAULT

The occurrence of any one or more of the following constitutes an event of default under this Lease:

(a) Failure by Tenant to pay Rent or any other amount required to be paid by Tenant to Landlord under this Lease within 10 days after written notice of such nonpayment is given to Tenant; provided, however, that Landlord is not required to give Tenant more than one such notice in any consecutive 12-month period. After giving the first such notice to Tenant during a consecutive 12-month period, Tenant will be deemed in default under this Lease for failure to pay Rent or any other amount within 10 days after the same becomes due, without notice or opportunity to cure;

(b) Failure by Tenant to obtain and maintain any insurance or provide evidence of insurance as required by the terms of this Lease and such failure continues and is not remedied within 10 days after written notice thereof is given to Tenant;

(c) Failure by Tenant, whether by action or inaction, to comply with any term or condition or fulfill any obligation under this Lease (other than as set forth in subsections (a) and (b) above) and such failure continues and is not remedied within 30 days after written notice thereof is given to Tenant; provided, however, that if the failure is of such a nature that it cannot be cured within said 30-day period, then this provision is satisfied if Tenant begins the cure within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the cure within 90 days after Landlord's notice is given to Tenant;

(d) If a levy under execution or attachment shall be made against the Premises and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of 30 days.

(e) Tenant becomes insolvent; Tenant makes an assignment for the benefit of creditors; Tenant files a voluntary petition in bankruptcy; Tenant is adjudged bankrupt or a receiver is appointed for Tenant's properties; the filing of any involuntary petition of bankruptcy and Tenant's failure to secure a dismissal of the petition within 75 days after filing; or the attachment of or the levying of execution on the leasehold interest and Tenant's failure to secure discharge of the attachment or release of the levy of execution within 30 days.

ARTICLE 21

REMEDIES

21.1 Remedies. Upon the occurrence of an event of default, Landlord may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:

(a) Landlord may terminate this Lease by written notice to Tenant.

(b) Landlord or Landlord's agent or employee may immediately or at any time thereafter, without terminating the Lease, reenter the Premises and the Improvements either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Premises and the Improvements, to the end that Landlord may have, hold, and enjoy the Premises and the Improvements. RE-ENTRY OR TAKING POSSESSION OF THE PREMISES OR THE IMPROVEMENTS BY LANDLORD WILL NOT BE CONSTRUED AS AN ELECTION ON ITS PART TO TERMINATE THIS LEASE UNLESS A WRITTEN NOTICE OF SUCH INTENTION IS GIVEN TO TENANT.

(c) Landlord may, without terminating the Lease, relet the whole or any part of the Premises and the Improvements from time to time, either in the name of Landlord or otherwise, to any persons, for any terms ending before, on, or after the expiration date of the Term, at any rentals and on any other conditions (including concessions and free rent) that Landlord determines to be appropriate. To the extent allowed under Oregon law, Landlord will have no obligation to relet all or any part of the Premises or the Improvements and will not be liable for refusing to relet the Premises or the Improvements, or, in the event of reletting, for refusing or failing to collect any rent due on such reletting; and any action of Landlord will not operate to relieve Tenant of any liability under this Lease or otherwise affect such liability. Landlord at its option may make any physical change to the Premises or the Improvements that Landlord, in its sole discretion, considers advisable and necessary in connection with any reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting Tenant's liability.

(d) Whether or not Landlord retakes possession of or relets the Premises and the Improvements, Landlord has the right to recover its damages, including without limitation all lost rentals, all legal expenses, all costs incurred by Landlord in restoring the Premises or otherwise preparing the Premises and the Improvements for reletting, and all costs incurred by Landlord in reletting the Premises and the Improvements.

(e) To the extent permitted under Oregon law, Landlord may sue periodically for damages as they accrue without barring a later action for further damages. Landlord may in one action recover accrued damages plus damages attributable to the remaining Term equal to the difference between the Rent reserved in this Lease for the balance of the Term after the time of award and the fair rental value of the Premises and the Improvements for the same period, discounted at the time of award at a reasonable rate not to exceed 10 percent per annum. If Landlord relets the Premises and the Improvements for the period that otherwise would have constituted all or part of the unexpired portion of the Term, the amount of rent reserved on the reletting will be deemed to be the fair and reasonable rental value for the part or the whole of the Premises and the Improvements so relet during the term of the reletting.

21.2 Landlord's Self-Help Right. If Tenant at any time (a) fails to pay any Tax in accordance with the provisions of this Lease, (b) fails to make any other payment required under this Lease, or (c) fails to perform any other obligation on its part to be made or performed under this Lease, then after 10 days' written notice to Tenant (or without notice in the event of an emergency) and without waiving or releasing Tenant from any obligation of Tenant contained in

this Lease or from any default by Tenant and without waiving Landlord's right to take any action that is permissible under this Lease as a result of the default, Landlord may, but is under no obligation to, (i) pay any Tax or make any other payment required of Tenant under this Lease, and (ii) perform any other act on Tenant's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take any action that may be necessary. All payments so made by Landlord and all costs and expenses incurred by Landlord, including reasonable attorney fees, in connection with the performance of any such act will constitute additional rent payable by Tenant under this Lease and must be paid to Landlord on demand.

21.3 No Waiver. No failure by Landlord to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Tenant, and no breach by Tenant, may be waived, altered, or modified except by a written instrument executed by Landlord. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.

21.4 Remedies Cumulative and Nonexclusive. Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for now or hereafter existing at law or in equity or by statute or otherwise, and Landlord's or Tenant's exercise or beginning to exercise of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 22

SALE BY LANDLORD AND LIMITATION OF LANDLORD'S LIABILITY

22.1 Sale by Landlord. If the original Landlord under this Lease, or any successor owner of the Premises, sells or conveys the same, and the new owner assumes the obligations of Landlord under this Lease, all liabilities and obligations on the part of the original Landlord or the successor owner under this Lease accruing thereafter will terminate, and thereupon all such liabilities and obligations will be binding on the new owner. Tenant agrees to attorn to the new owner.

22.2 Nonrecourse Obligation. Tenant agrees that, regarding any claim against Landlord, including any claim of default by Landlord under this Lease or in any claim or cause of action arising under this Lease or arising out of the landlord-tenant relationship created by this Lease, the sole and exclusive remedy of Tenant will be against the interests of Landlord in the Premises and its reversionary interest in the Improvements and Landlord will have no other liability hereunder. Tenant will not enforce any judgment against Landlord except against the interest of Landlord in the Premises and its reversionary interest in the Improvements. In no

event will any shareholder, member, partner, officer, employee, or agent of Landlord have any personal liability to Tenant. Tenant agrees that this provision will apply to any and all liabilities, claims, and causes of action whatsoever, including those based on any provision of this Lease, any implied covenant, or any statute or common-law principle. Notwithstanding any other provision of this Lease, in no event whatsoever will Landlord be responsible for any consequential or incidental damages or for any action that Landlord believes in good faith is necessary to comply with Legal Requirements with respect to the Premises or the Improvements.

ARTICLE 23

SURRENDER AND HOLDOVER

23.1 Condition of Premises and Improvements. Upon expiration of the Term or earlier termination of this Lease, Tenant will deliver all keys to Landlord and surrender the Premises and the Improvements in good condition and repair and broom clean (reasonable wear and tear excepted), free and clear of all occupancies other than subleases to which Landlord has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by Landlord. Tenant's obligations under this Article will be subject to the provisions of Article 14 relating to damage or destruction and Article 15 relating to condemnation.

23.2 Tenant's Property. Before the expiration or earlier termination of this Lease, Tenant will remove all furnishings, furniture, and trade fixtures that remain Tenant's property (the "Tenant's Property"). If Tenant fails to do so, at Landlord's option, (a) the failure to remove Tenant's Property will be deemed an abandonment of Tenant's Property, and Landlord may retain Tenant's Property and all rights of Tenant with respect to it will cease; or (b) by written notice given to Tenant, Landlord may elect to hold Tenant to Tenant's obligation of removal, in which case Landlord may effect the removal, transportation, and storage of Tenant's Property and Tenant will reimburse Landlord for the costs incurred in connection therewith on demand.

23.3 Holding Over. Any holding over after the expiration of the Term with the written consent of Landlord will be construed to be a tenancy from month-to-month, at 175 percent of the Rent payable for the period immediately before the expiration of the Term and will otherwise be on the terms and conditions of this Lease. If Landlord consents to Tenant holding over, either party may thereafter terminate the tenancy at any time on 30 days' advance written notice to the other party.

Any holding over after the expiration of the Term without the written consent of Landlord will be construed as a tenancy at sufferance (which Landlord may terminate at any time without notice) and Tenant will be liable for any and all damages resulting from such unauthorized holdover (including, but not limited to, any and all damages that Landlord is required to pay a new tenant for failing to timely deliver any portion of the Premises or the Improvements).

ARTICLE 24

CONDITION OF PREMISES

Tenant acknowledges that it has examined the physical condition of the Premises (including whether the Premises contains any Hazardous Substances or fails to comply with any Environmental Laws) and as a result agrees to accept the Premises in "as-is" condition, with all faults. Tenant further acknowledges that no representations or warranties regarding the condition of the Premises have been made by Landlord or any agent or person acting for Landlord.

ARTICLE 25

QUIET ENJOYMENT

On paying the Rent and adhering to all covenants, agreements, and conditions of this Lease, Tenant will have quiet enjoyment of the Premises during the Term without hindrance or disturbance by any person claiming by, through, or under Landlord, subject, however, to the Permitted Exceptions.

ARTICLE 26

CERTAIN COVENANTS AND REPRESENTATIONS OF TENANT

26.1 Non Discrimination. During the term of this Lease, Tenant and its subcontractors shall not deny the benefits of this Lease to any person on the basis of religion, color, race, ethnic group identification, sex, gender, age, physical or mental disability, national origin, ancestry, medical condition, or marital status, or any protected class under Legal Requirements, nor shall they discriminate unlawfully against any employee or applicant for employment because of any of the foregoing. Tenant shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Tenant will require its contractors for Improvements to use good faith efforts in the solicitation of minority, women, veteran, and emerging small businesses for the Improvements and will maintain records of such efforts and the actual usage of such businesses.

26.2 Fair Employment and Housing. Tenant shall permit access by representatives of the Oregon's Bureau of Labor and Industries and the Landlord upon reasonable notice at any time during the normal business hours, but in no case less than 24-hours' notice, to such of its books, records, accounts, other sources of information, and its facilities as said Department or Landlord shall require to ascertain compliance with this clause.

26.3 Subcontracts. All of Tenant's contracts with subcontractors regarding or involving Tenant's Interest shall contain provisions similar to those contained in this Article 26.

ARTICLE 27

NOTICES

27.1 Notice Parties and Means of Delivery. All notices, consents, demands, communications or approvals required or permitted by this Lease shall be in writing and shall be delivered personally, by overnight courier, or by certified or registered mail, in all events with copy by email to the email addresses indicate below, return receipt requested, addressed as follows:

If to Landlord: _____

Attn: _____

Email: _____

If to Tenant: _____

Attn: _____

Email: _____

Notice shall be deemed given when delivered to the intended recipient or, if the intended recipient refuses to accept delivery or has provided an incorrect or out-of-date address, at the time delivery was attempted

27.2 Duplicate Notice to Permitted Leasehold Mortgagees. A copy of each notice from Landlord to Tenant must be contemporaneously delivered to each Permitted Leasehold Mortgagee who previously delivered to Landlord its name and address and the other items required by Section 18.3 above.

27.3 Copies of Certain Notices to Tenant. Tenant will immediately send to Landlord, in the manner prescribed in this Article, copies of all notices that Tenant gives to or receives from any Permitted Leasehold Mortgagee as well as copies of all notices that it receives with respect to the Premises or the Improvements from any government authority, fire regulatory agency, or similarly constituted body, and copies of its responses to those notices.

27.4 Failure to Notify of Change of Address or Refusal to Accept a Notice. Notwithstanding anything in this Article to the contrary, any notice mailed to the last-designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this Article will not be deemed ineffective if actual delivery cannot be made because of a change of address of the person or party to which the notice is directed or the failure or refusal of such a person or party to accept delivery of the notice.

ARTICLE 28

MISCELLANEOUS

28.1 Survival. All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required before the expiration or earlier termination of this Lease, will survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

28.2 Invalidity. If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

28.3 Force Majeure. If either party's performance of an obligation under this Lease (excluding payment of Rent or any other monetary obligation) is delayed or prevented in whole or in part by (a) any Legal Requirement (and not attributable to an act or omission of the party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the party's control, whether or not the cause is specifically mentioned in this Lease, the party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.

28.4 Nonmerger. There may be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease, may be held, directly or indirectly, by or for the account of any person who owns the fee estate in the Premises or any interest in such fee estate. No merger will occur unless and until all persons having an interest in the fee estate in the Premises and all persons (including all Permitted Leasehold Mortgagees) having an interest in this Lease, or in the leasehold estate created by this Lease, join in a written instrument effecting the merger and duly record the same.

28.5 Costs and Attorney Fees. If any suit, action, arbitration, or other proceeding of any nature whatsoever, including (without limitation) any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action seeking a declaration of rights or an action for rescission, is instituted to interpret or enforce this Lease or any provision of this Lease, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees as well as reasonable fees for paralegals, accountants, and other experts and professionals and all other fees, costs, and expenses actually incurred and reasonably necessary in connection with the proceeding, including (without limitation) deposition and expert fees and costs incurred in creating exhibits and reports, as determined by the judge or arbitrator at trial or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

28.6 Entire Agreement; Counterparts. This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. Tenant and Landlord mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of counterparts, including by fax signatures, each of which will constitute an original, but all of which will constitute one Lease.

28.7 Applicable Law. This Lease will be governed by, and construed in accordance with, the laws of the State of Oregon.

28.8 Brokerage. Landlord and Tenant represent to each other that they have not employed any brokers in negotiating and consummating the transaction set forth in this Lease, but have negotiated directly with each other. Each party agrees to indemnify, defend, and hold harmless the other party from and against any real estate brokerage commissions or other such obligations incurred by the indemnified party as the result of any agreement or act of the indemnifying party giving rise to a claim for such commission or other obligation.

28.9 Binding Effect. The covenants and agreements contained in this Lease are binding on and inure to the benefit of Landlord, Tenant, and their respective successors and assigns.

28.10 Recordation of Lease. This Lease shall not be recorded. Landlord and Tenant shall execute a Memorandum of Lease in the form attached hereto as Exhibit C, which Tenant may, but is not obligated to, record in the official records of Curry County, Oregon. Tenant will pay the recording costs.

28.11 Time Is of the Essence. Time is of the essence as to the performance of all the covenants, conditions, and agreements of this Lease.

28.12 Interpretation. In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon must be given equal weight, and there must be no inference, by operation of law or otherwise, that any provision of this Lease may be construed against either party hereto. Landlord and Tenant acknowledge that they and their counsel have reviewed and revised this Lease and that any otherwise applicable rule of construction or any other presumption to the effect that any ambiguities are to be resolved against the drafting party will not be used in the interpretation of this Lease or any exhibit or amendment hereto.

28.13 Headings, Captions, and References. The headings and captions contained in this Lease are for convenience only and do not in any way define, describe, limit, or amplify the scope or intent of this lease or any term or provision in it. The use of the term "Herein" refers to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The use of a masculine or neuter gender in this Lease includes the masculine, feminine, and neuter genders and the singular form includes the plural when the context so requires.

28.14 Relationship of Parties. Nothing contained in this Lease is to be deemed or construed, either by the parties to this Lease or by any third party, to create the relationship of

principal and agent or to create any partnership, joint venture, or other association between Landlord and Tenant.

28.15 USA PATRIOT Act Compliance. Tenant represents to Landlord that Tenant is not (and is not engaged in this transaction on behalf of) a person or entity with which Landlord is prohibited from doing business pursuant to Antiterrorism Laws. "Antiterrorism Laws" means any law, regulation, or executive order pertaining to national security and specifically includes, but is not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the PATRIOT Act) (Pub L 107-56, 115 Stat 272); the Bank Secrecy Act (31 USC § 5311 *et seq.*); the Trading with the Enemy Act (50 USC App § 1 *et seq.*); the International Emergency Economic Powers Act (50 USC §§ 1701–1706); sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control, as well as laws related to the prevention and detection of money laundering in 18 USC sections 1956 to 1957. Tenant hereby agrees to indemnify, defend, and hold Landlord harmless from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney fees and costs at trial and on appeal) arising from or related to any breach of the foregoing warranty, representation, and certification. Following a Transfer, Tenant will cause the transferee (including, but not limited to, an assignee, subtenant, and licensee), for the benefit of Landlord, to reaffirm, on behalf of such transferee, the representations of, and to otherwise comply with the obligations set forth in this Section 28.15, and it is reasonable for Landlord to refuse to consent to a Transfer in the absence of such reaffirmation and compliance.

[signature page follows]

IN WITNESS WHEREOF, Tenant and Landlord have caused this Lease to be executed by their duly authorized representatives as of the day and year first written above.

LANDLORD:

PORT OF BROOKINGS HARBOR,
an Oregon special district

By: _____
Richard Heap, President

TENANT:

BROOKINGS REAL ESTATE, LLC, an Oregon
limited liability company

By: _____
Reggie J. Boltz, Manager

EXHIBIT A

Legal Description of the Premises

EXHIBIT B

Preliminary Plans

Exhibit C

Form of Memorandum of Lease