

**OPEN SESSION**

**PRELIMINARY AGENDA**

**April 20, 2022**

**WORKSHOP** - Future site plan ideas for port owned property around Grove Field **11:00 AM**

**REGULAR MEETING**

**I. OPEN SESSION**

**12:00 PM**

Pledge of Allegiance

**CONSENT ITEMS**

All matters listed under Consent Items have been distributed to each member of the Commission for review, are considered routine, and will be enacted by the motion of the Commission with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Items and placed under Action Items by request.

- A. Approval of Minutes of the Regular Meeting on April 6, 2022
- B. Approval of Checks

**PUBLIC COMMENT**

Speakers are asked to keep their comments to less than 3 minutes. Please feel free to submit comments in writing to the Chief Executive Officer.

**NEW BUSINESS/DISCUSSION ITEMS**

- C. Waterfront Phase 1 Lease
- D. Fourth of July Port Event Relocation

**PUBLIC COMMENT**

Speakers are asked to keep their comments to less than 3 minutes. Please feel free to submit comments in writing to the Chief Executive Officer.

**ACTION ITEMS**

- E. Waterfront Phase 1 Lease

**STAFF REPORTS & COMMENTS**

- F. Chief Executive Officer & Directors

**COMMISSIONER REPORTS & DISCUSSION**

**ADJOURN**

Regular business and other meetings that may be attended by members of the Commission

<u>Date</u>	<u>Meeting</u>
* April 21 <sup>st</sup>	Camas-Washougal Chamber Meeting
* May 4 <sup>th</sup> – May 6 <sup>th</sup>	WPPA Spring Conference (Skamania Lodge)

\*Denotes events that in which two (2) or more Commissioners may attend

\*Meetings are subject to change or cancellation

On March 24, 2020 a new Governor's proclamation went into effect regarding public meetings. By order of Washington State Governor Jay Inslee, Proclamation 20-28.15, the Regular Commission Meeting will be available to the public by conference or video call: (253) 215-8782, Meeting ID: 977 5197 8968, Password: 091071 or via this video link:

<https://zoom.us/j/97751978968?pwd=V2o3bTRNOUVkMlhZMVo3cHkzZDhuQT09>

**MINUTES OF THE REGULAR COMMISSION MEETING**  
**PORT OF CAMAS-WASHOUGAL**  
**April 6, 2022**

By: Juli Burnett, Administrative Assistant

A Regular Meeting of the Commissioners of the Port of Camas-Washougal was held in person and virtually at the Port Office at 24 South 'A' Street, Washougal WA on Wednesday, April 6, 2022, at 5:00 pm.

PRESENT: Commissioners Larry Keister, Cassi Marshall, and John Spencer; Chief Executive Officer David Ripp, Director of Facilities Eric Plantenberg, Administrative Assistant Juli Burnett, Attorney Carolyn Lake, and members of the press and public. General public has access through a designated Zoom conference call line and Zoom video link.

At 5:00 pm, following the Pledge of Allegiance, Commission President Cassi Marshall called the Open Session public meeting to order, noting Governor Inslee's Proclamation 20-28, and the Washington State legislature's Resolution SCR 8402, the Commission Meeting is held virtually and in person. This meeting is being video recorded, and the chat function has been disabled.

**CONSENT ITEMS**

- Minutes & Checks  
Minutes from the Regular Meeting on March 16, 2022, and electronic payments and the issuance of general fund checks 50093-50094 and 7927-7951 in the total amount of \$952,968.10 were presented for approval. After a brief discussion, a motion was made for unanimous consent by Commissioner Spencer and seconded by Commissioner Keister, the minutes and electronic payments and checks were carried unanimously.

**PUBLIC COMMENT #1**

No public comment

**NEW BUSINESS / DISCUSSION ITEMS**

- I-5 Bridge Update  
Chief Executive Officer, David Ripp, shared a video called The Case for the Interstate Bridge Replacement: <https://www.youtube.com/watch?v=eaSMUui4J9k>  
Mike Bomar, the Director of Economic Development from the Port of Vancouver gave a presentation on the importance of the I-5 Bridge replacement. Bomar presented a Purpose and Needs Statement that included the following:
  - 138,000 people cross the bridge daily
  - 10 hours on average of congestion
  - No shoulder lanes cause safety issues
  - Earthquake vulnerability (the bridge is in sand and not bedrock)
  - Freight movement (the bridge is part of the trade route from Canada to Mexico)

Director of Facilities Eric Plantenberg, asked Bomar if there is a toll, will it cause even more traffic congestion and Bomar replied that it shouldn't as it will not be a traditional toll booth. Toll cameras will be installed for license plate photos as well as transponder readers.

Commissioner Marshall asked Bomar about the different lane uses and Bomar replied that if freight priority lanes were implemented it would create more chaos.

Bomar commented that [www.interstatebridge.org](http://www.interstatebridge.org) is a great resource to learn more about the bridge replacement and to see current timelines.

- OHSU Lease Renewal

Chief Executive Officer, David Ripp, presented the OHSU Lease Renewal. The lease is a 5-year term with a 5-year option. OHSU has been a tenant for the last 10 years. The new monthly rate will be \$119.00 (plus 12.84% lease hold tax). The new rate was established by taking their 2012 rate and adding a 3% increase over the last 10 years. The first 5 years will have a 3% increase each year and the same for the option period. Approval will be requested during Action Items.

- Waterfront Phase 1 Lease Draft

Chief Executive Officer, David Ripp, presented the Waterfront Phase 1 Lease Draft. The lease term is 50 years with 3 ten-year options. Payments will start when the occupancy permit is received. Commissioner Spencer commented a concerned citizen reached out to see what the traffic impact will be with the new waterfront development. Ripp replied that a traffic study has been completed and improvements will be made when required based off the trip data. Commission Marshall asked Ripp who is responsible for monitoring if future traffic studies need to be completed and Ripp replied the city is responsible. Commissioner Keister commented this lease will be the basis for subsequent phases.

- Workshop on April 20<sup>th</sup> at 11:00 AM

Chief Executive Officer, David Ripp, announced that there will be a Workshop on April 20<sup>th</sup> at 11:00 AM at the Port Office. It will be open to the public and it will be held in person and virtually. Port staff will be presenting to the commission future site plans for port owned property around Grove Field Airport.

- Reschedule May 4<sup>th</sup> Commission Meeting to May 2<sup>nd</sup>

Chief Executive Officer, David Ripp, commented that the Washington Public Ports Association (WPPA) Spring Conference is at Skamania Lodge on May 4<sup>th</sup> – May 6<sup>th</sup>. The Commission Meeting on May 4<sup>th</sup> will need to be rescheduled to May 2<sup>nd</sup> at 12:00 pm. Approval will be requested during Action Items.

## **PUBLIC COMMENT #2**

Kent Mehrer, Camas-Washougal Aviation Association, commented he is interested in attending the Workshop meeting. Mehrer asked the commissioners how many people he should invite to the Workshop and Commissioner Spencer replied the more the merrier.

Bernie Bacon, marina tenant, commented she is glad to hear that the Port is conducting hybrid meetings!

## **ACTION ITEMS**

- OHSU Lease Renewal  
Commissioner Marshall requested formal approval of the OHSU Lease Renewal. Upon motion by Commissioner Keister, seconded by Commissioner Spencer and carried unanimously, the approval of the OHSU Lease Renewal effective April 6, 2022.
- Reschedule May 4<sup>th</sup> Commission Meeting to May 2<sup>nd</sup> at 12:00 PM  
Commissioner Marshall requested formal approval to Reschedule the May 4<sup>th</sup> Commission Meeting to May 2<sup>nd</sup> at 12:00 pm. Upon motion by Commissioner Keister, seconded by Commissioner Spencer and carried unanimously, the approval to Reschedule the May 4<sup>th</sup> Commission Meeting to May 2<sup>nd</sup> at 12:00 pm effective April 6, 2022.

## **STAFF REPORTS & COMMENTS**

- Chief Executive Officer  
Chief Executive Officer, David Ripp, commented is he presenting to the Community Economic Revitalization Board (CERB) board on May 19<sup>th</sup> for the Rural Broadband Grant (\$50,000). The CERB Planning Grant application has been completed and reviewed by CERB and passed their threshold. If approved, below is the 2022 timeline to complete the study:
  - May – Choose a consultant
  - July – Consultant to begin work
  - September to November – Consultant to draft report
  - December – Project complete

Ripp commented that the Camas-Washougal Chamber meeting is on April 21<sup>st</sup> where both school districts will present their annual reports. All three commissioners will be attending as well as Ripp.

Ripp announced the Pacific Coast Congress (PCC) Spring Conference will be held in Portland, OR on April 12<sup>th</sup> – April 15<sup>th</sup>. Harbormaster Mark Hamrick and Assistant Harbormaster Matt Cox will be giving a tour of the Port's marina to PCC members on April 14<sup>th</sup> at 1:30 pm.

Ripp reminded everyone again that a Workshop will be held to discuss future Grove Field Airport development on April 20<sup>th</sup> from 11:00 am – 12:00 pm. This workshop will be held in person at the Port office and virtually via Zoom. The Workshop is open to the public and no decisions will be made.

## **COMMISSIONER REPORTS & DISCUSSION**

- Commissioner Spencer  
No Comment

- Commissioner Keister

Commissioner Keister commented that emerging Clark County businesses include life sciences, health, and bio-tech. Commissioner Keister stated, we need to start thinking of developing the east end of Steigerwald Commerce Center to accommodate these business opportunities. Commissioner Keister suggested to discuss capitalizing on the beautiful views of the wetlands, gorge, and access to the Dike Trail for future development. There is also the development of residential opportunities at Ninebark and Parkersville Landing. This would provide the live, work, and play concept that has been in discussion. Building 21 A, B, etc. should be developed to accommodate these types of workspaces. A future workshop would be ideal to discuss further.

- Commissioner Marshall

Commissioner Marshall attended the Columbia River Economic Development Council (CREDC) Annual Meeting and was pleased to see the presentation from the Clark County Historical Society. Commissioner Marshall commented she feels good about the continuous communication with both Camas and Washougal cities. Both are supportive of high-speed broadband. Commissioner Marshall announced Parkersville Day will be held on June 4<sup>th</sup> at Parkersville Landing Historical Park.

The meeting adjourned at 6:16 PM.

PORT OF CAMAS-WASHOUGAL COMMISSION

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Commissioners

## GROUND LEASE

This **GROUND LEASE** ("Lease") is made and entered into as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), between **PORT OF CAMAS-WASHOUGAL**, a Washington port district ("Landlord" or "Port"), and \_\_\_\_\_, a \_\_\_\_\_ ("Tenant"), collectively the "Parties".

### RECITALS

- A. Landlord is the owner of a parcel of approximately [REDACTED] developable acres, and adjoining related areas, located in the City of Washougal, County of Clark, State of Washington, more particularly described in **Exhibit A** attached hereto and incorporated herein (collectively the "Land").<sup>1</sup> The Land together with any existing improvements located on the Land are collectively referred to as the "Property". The Property is part of approximately 21.08 acres of waterfront property and rights appurtenant thereto that is the subject of the Master Leasing Agreement – Port of Camas-Washougal Waterfront Development dated June 14, 2021 between the Port of Camas-Washougal as the "Port" and RKM Development, Inc. as "Developer" (the "Master Leasing Agreement").
- B. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Property and to permit Tenant to construct and own buildings and other structures and improvements on the Property at Tenant's sole cost and expense, pursuant to and in accordance with the Master Leasing Agreement and consistent with the Port Waterfront Goals and Vision, Master Plan, Master Plan Documents, Background Information, and Master Development Schedule attached thereto and referenced therein.
- C. Tenant intends to develop the Property in accordance with the Project Memorandum signed by Landlord and Tenant and attached as **Exhibit B** hereto (the "Project Memorandum").<sup>2</sup> The development of the Property and construction of improvements in accordance with the Project Memorandum is referred to as the "Project".

Therefore, the parties intending to be legally bound by the terms of this Lease agree as follows:

### AGREEMENT

#### 1 AGREEMENT TO LEASE

**1.1 Agreement to Lease.** Landlord leases to Tenant and Tenant leases from Landlord the Property for the Permitted Uses in accordance with the provisions of this Lease, and pursuant to and in accordance with the Master Leasing Agreement and the Port Waterfront Goals and Vision and Master Plan attached thereto. Capitalized terms used and not defined in this Lease shall have the same meaning as in the Master Leasing Agreement except where the context requires otherwise.

**1.1.1 Street Right of Way.** The Property subject to this Lease includes areas in addition to the main parcel to be developed pursuant to this Lease, including areas to be developed as streets, as shown and described in Exhibit A and Exhibit B hereto. Upon completion and dedication of the street right of way and utilities located therein to the City of Washougal, such areas shall be deleted from this Lease and Tenant shall have no further obligations with respect thereto under this Lease, except as otherwise provided in this Lease.

**1.1.2 Interim Development.** The Property subject to this Lease includes areas in addition to the main parcel to be developed pursuant to this Lease, including areas to be developed with interim improvements in support of the main parcel to be developed pursuant to this Lease

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<sup>1</sup> Exhibit A attached hereto at the Effective Date is preliminary, and will be replaced by a revised exhibit after the Boundary Line Adjustment for the parcel is finalized and recorded, and the revised exhibit shall be substantially the same as the preliminary Exhibit A attached hereto.

<sup>2</sup> Exhibit B attached hereto at the Effective Date is preliminary, and will be replaced by a revised exhibit after the Project Memorandum is finalized, agreed to, and signed by the Parties, and the revised exhibit shall be substantially the same as the preliminary Exhibit B attached hereto.



and the Port of Camas-Washougal Waterfront Development generally, as shown and described in Exhibit A and Exhibit B hereto. Upon each such area becoming part of a separate lease with Landlord, each such area shall be deleted from this Lease and Tenant shall have no further obligations with respect thereto under this Lease, except as otherwise provided in this Lease or as otherwise agreed to by the Parties.

**1.1.3 Ancillary Development.** This Lease includes the development of areas that comprise the border between the Property and the Port's trail and certain offsite improvements in addition to the main parcel to be developed pursuant to this Lease, including, but not limited to, grading on subsequent phases, and areas to be developed with ancillary improvements by Tenant to include trails, courtyards, paths, seating, or landscape to integrate the Port's trail system with the development and in support of the main parcel to be developed pursuant to this Lease and the Port of Camas-Washougal Waterfront Development generally, as shown and described in Exhibit A and Exhibit B hereto ("Ancillary Development Areas"). With respect to such areas, Tenant shall have the obligations set forth in this Lease or as otherwise agreed to by the Parties.

**1.2 Delivery and Condition of Property.** Tenant shall have the right to possession of the Property and access to the Ancillary Development Areas as of the Effective Date. Tenant acknowledges that it has had an opportunity to examine the Property and Ancillary Development Areas, consult with Landlord, and review documents relevant to the Property and Ancillary Development Areas, agrees to the area of the Property and Ancillary Development Areas as stated in Exhibit A, and accepts the Property and Ancillary Development Areas in its present condition, except as otherwise expressly stated in this Lease. The condition of the Property and Ancillary Development Areas includes, without limitation, the items and conditions noted in the Background Information listed in Exhibit E to the Master Leasing Agreement and in Exhibit [redacted] to the Project Memorandum attached as Exhibit B hereto, and as may be revised from time to time, including, without limitation, the environmental conditions noted therein. Except as otherwise expressly stated in this Lease, Landlord makes no warranties or representations regarding the condition or suitability of the Property or Ancillary Development Areas, including but not limited to environmental conditions, soil or geotechnical conditions, or any other conditions of the Property or Ancillary Development Areas, for any improvements to be constructed by Tenant. Without limiting the foregoing, and except as expressly provided in this Lease, the Property is leased and the Ancillary Development Areas are provided "AS-IS AND WITH ALL FAULTS." Tenant agrees that it has not relied on representations or warranties made by Landlord as to the physical or environmental or any other condition of the Property or Ancillary Development Areas or its suitability for any improvements to be constructed by Tenant, and that Tenant assumes all risk and all costs with respect to the development of the Property and Ancillary Development Areas, except as expressly provided otherwise in this Lease.

**1.2.1 Environmental Conditions.** The environmental conditions of the Property are described in the Background Information. Tenant acknowledges and agrees that it has received all documents listed in the Background Information, has reviewed the environmental documents and reports, and has conducted such other environmental studies as it deems appropriate prior to Project development, and is not relying on any representations from the Port concerning environmental conditions or the completeness or accuracy of these documents and reports. Tenant is responsible for development of the Project consistent with the known environmental conditions of the Property and all obligations related thereto, including but not limited to those contained in the Contaminated Media Management Plan ("CMMP"). Unless otherwise mutually agreed by the Parties, if environmental conditions are discovered on the Property that were not disclosed in the Background Information or otherwise known to Tenant or Developer as of the execution of the Master Leasing Agreement or this Lease, and not otherwise caused by the Developer's or Port's actions since the Effective Date of the Master Leasing Agreement (a "preexisting unknown environmental condition"), the Port shall address such preexisting unknown environmental condition and the cost thereof will be added to the Port's Base Land Value. The Port shall consult with Tenant regarding the means by which such preexisting unknown

environmental condition will be addressed by the Port; however, the final decisions with respect thereto shall be in the Port's sole and absolute discretion. If in the Port's sole and absolute discretion the remediation of such preexisting unknown environmental condition is financially or otherwise unduly burdensome to the Port or impracticable, then the Port may elect to not address such preexisting unknown environmental condition for purposes of development as contemplated under this Lease, and remove the affected area from this Lease. If the method required to address the preexisting unknown environmental condition would be financially or otherwise unduly burdensome to Tenant or impracticable, then Tenant shall no longer be required to perform under this Lease as to the affected area, and such area will be removed from this Lease. The Port shall not be responsible for any delay to Tenant's Project or any other costs or damages to Tenant due to the discovery of, or Port actions to address, or removal of any area from this Lease based on, any preexisting unknown environmental condition. Except as otherwise provided above, Tenant and the Port shall each be responsible for all costs related to any hazardous substances or hazardous materials to the extent caused, contributed to, exacerbated, or released by such Party, as such terms are defined by applicable federal, state, and local law, including responsibility for such costs that arise out of the Tenant's or Port's actions between the Effective Date of the Master Leasing Agreement and the Effective Date of this Lease.

**1.2.2 Geotechnical Conditions.** The geotechnical conditions of the Property are the subject of information provided in the Background Information. Tenant acknowledges and agrees that it has received all documents listed in the Background information, has reviewed the geotechnical documents and reports, and has conducted such other geotechnical studies as it deems appropriate prior to Project development, and is not relying on any representations from the Port concerning geotechnical conditions or the completeness or accuracy of these documents and reports. Tenant is responsible for development of the Project consistent with the geotechnical conditions and is assuming the risk on any and all geological and geotechnical conditions.

**1.2.3 Archaeological Conditions.** If any archaeological discoveries are made during the development of the Project, then Tenant shall consult with the Port and shall address the discovery in accordance with all Applicable Law, and in a way that is mutually agreed to by the Parties and allows development to proceed as contemplated under this Lease. If the method required to address the discovery would be financially or otherwise unduly burdensome to Tenant or impracticable, then Tenant shall no longer be required to perform under this Lease as to the affected area, and such area will be removed from this Lease.

## 2 TERM

**2.1 Lease Term.** This Lease shall commence on the Effective Date and shall expire, if not canceled, extended (including the Extension Options set forth herein), or terminated pursuant to the provisions of this Lease, Fifty (50) years after the Effective Date (the "Expiration Date").

**2.2 Extension Options.** Provided that at the time Tenant gives notice to Landlord of the exercise of Tenant's right to extend the term of this Lease and at the time of the expiration of the then current term of this Lease (i) no Default by Tenant remains outstanding and uncured under the terms of this Lease, unless a cure period for a Default extends beyond the then-current term, in which case the extension option may be exercised if the Parties enter into a written agreement as to the method and time to cure such Default, and (ii) Tenant is a valid legal entity in good standing whose existence will not expire or terminate prior to the expiration date of the Extension Period (as defined below), Tenant shall have the right and option (each an "Extension Option") to extend the term of this Lease for three (3) extension terms of ten (10) years each (each an "Extension Period"), by Tenant delivering written notice of Tenant's exercise of such Extension Option to Landlord ("Extension Exercise Notice") not less than twelve (12) months prior to the expiration of the then current term of this Lease. For all purposes under this Lease, the phrase "Lease Term," and terms of similar import shall mean, collectively, the initial term under Section 2.1 and any Extension Period

exercised by Tenant pursuant to this Section 2.2. The foregoing Extension Option shall also be for the benefit of and a right held by all assignees of Tenant.

### 3 RENT, PROPERTY TAXES, AND LEASE SECURITY

#### 3.1 Base Rent Calculation.

**3.1.1 Initial Base Rent.** The initial annual rental rate (“Base Rent”) for the Property subject to this Lease, as determined in accordance with the Master Leasing Agreement and agreed to by the Parties, shall be \$ [REDACTED] per year.

**3.1.2 Annual Adjustments.** Base Rent shall be automatically adjusted effective as of January 1, 2023, and on each January 1<sup>st</sup> thereafter except in years in which Landlord elects to make a Periodic Adjustment under Section 3.1.3 below (the date for such Annual Adjustments and Periodic Adjustments being each referred to as an “Adjustment Date”), by any increase of the Consumer Price Index (CPI-U, West Region - Size Class A), as measured by the average annual CPI increase over the previous ten (10) years; provided, that the Base Rent shall never be reduced as a result of the Annual Adjustment process. The application of this provision is illustrated by the example in **Exhibit C** attached hereto.

**3.1.3 Periodic Adjustments.** Landlord shall have the option, in its sole and absolute discretion, to adjust Base Rent effective as of January 1, 2033 (10 years after the first Annual Adjustment under Section 3.1.2 above), and every ten (10) years thereafter (each such date being referred to as a “Periodic Adjustment Date”), based on the fair market rental value of the Property, as established by an MAI appraisal obtained by Landlord at its cost. If Landlord does not elect to establish a new Base Rent based on an MAI appraisal as to a Periodic Adjustment Date, then Section 3.1.2 shall apply to such Adjustment Date. Landlord shall give Tenant written notice at least ninety (90) days prior to a Periodic Adjustment Date of Landlord’s election to adjust Base Rent under this section. Based on the result of the MAI appraisal, Landlord may elect to withdraw its election as to a Periodic Adjustment Date and have Section 3.1.2 apply to such Adjustment Date. In no event shall Base Rent ever be reduced as a result of the Periodic Adjustment process.

#### 3.2 Time and Manner of Payment; Step-In Schedule.

**3.2.1** During the Permitting and Construction Period (Effective Date through issuance of the first Certificate of Occupancy or expiration of the Permitting and Construction Period as defined in Section 4.2.2 of this Lease, whichever occurs first), Tenant shall meet the requirements of Section 3.5 and Section 4.2.4.9 of this Lease.

**3.2.2** First Quarter following Rent Commencement Date: The “**Rent Commencement Date**” is the date of issuance of the first Certificate of Occupancy or expiration of the Permitting and Construction Period, whichever occurs first. For the first quarter following the Rent Commencement Date, rent is \$1.00, due three (3) months after the Rent Commencement Date.

**3.2.3** Second Quarter following Rent Commencement Date, due six (6) months after Rent Commencement Date: 33% of the full Base Rent stated above, subject to adjustment as provided above.

**3.2.4** Third Quarter following Rent Commencement Date, due nine (9) months after Rent Commencement Date: 66% of the full Base Rent stated above, subject to adjustment as provided above.

**3.2.5** Fourth Quarter following Rent Commencement Date, due twelve (12) months after Rent Commencement Date: 100% of the full Base Rent stated above, subject to adjustment as provided above.

**3.2.6** After the first twelve (12) months following the Rent Commencement Date, Base Rent shall be 100% of the full Base Rent stated above, subject to adjustment as provided above, and Tenant shall pay Landlord one-twelfth (1/12) of the annual Base Rent monthly in advance, without offset, deduction or prior demand on the first day of each month during the Lease Term. If the Rent Commencement Date falls on a day other than the first day of a calendar month, then Base Rent for the thirteenth (13<sup>th</sup>) month after the Rent Commencement Date shall be prorated based on the number of days in such month from the end of the first twelve (12) month period following the Rent Commencement Date until the first day of the next calendar month. The Base Rent shall be payable at Landlord's address or at such other place as Landlord may designate in writing, in lawful money of the United States.

### **3.3 Property Taxes.**

**3.3.1 Real Property Taxes.** Except as expressly provided herein, Tenant shall pay when due and hold Landlord harmless from any tax, assessment, or charge imposed on the interest of either party in the Property during the Lease Term or imposed on the parties or either of them by reason of this Lease or any improvement now or hereafter located on the Property or any use, occupancy, or operation of the Property or any part thereof or the Project or any improvement now or hereafter located on the Property or any part thereof, or any rents or other receipts from subleasing the Property or any part thereof (including but not limited to any fees, taxes or assessments against, or as a result of, any improvement constructed or installed on the Land by or for the benefit of Tenant), including but not limited to any state and local real property taxes, levies, and assessments, and any other governmental charges relating to the Property or any improvements now or hereafter located thereon, and including all taxes on rent and sublease rent, all of the foregoing whether or not in assessment of or in lieu of, in whole or in part, ad valorem property taxes, and including but not limited to Washington State leasehold excise tax as now or hereafter assessed, currently assessed at 12.84% of taxable rent, hereinafter collectively referred to as the "Real Property Taxes". Washington State leasehold excise tax shall be paid to Landlord with monthly Base Rent in advance on or before the first day of each month (except during the Step-In period under Section 3.2 of this Lease, when such tax shall be paid with Base Rent in arrears). Other Real Property Taxes may be payable in advance or arrears, as indicated for each. Tenant shall provide written proof of payment of Real Property Taxes upon Landlord's written request. If by law any Real Property Taxes are 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, but in such event must do so before any fine, penalty, interest, or cost may be added for nonpayment or late payment of any installment or interest. If Tenant fails to pay the Real Property Taxes when due, Landlord shall have the right, but not the obligation, to pay the taxes, and Tenant shall reimburse Landlord for the amount of such tax payment as Additional Rent. Real Property Taxes for the year in which the Rent Commencement Date occurs shall be prorated between the parties, with the Tenant paying the Real Property Taxes attributed to the portion of such year from the Rent Commencement Date through December 31<sup>st</sup> of said year. Taxes for the year in which the Lease ends shall be prorated between the Landlord and Tenant as of the Expiration Date. Notwithstanding the foregoing, nothing in this Section or this Lease requires Tenant to pay any estate, inheritance, succession, or transfer tax of Landlord, or any income, excess profits, or revenue tax on the Rent payable by Tenant under this Lease, all of which shall be the sole responsibility of Landlord and all of which Landlord shall pay before delinquency; provided, however, that if at any time during the Term the methods of taxation prevailing at the commencement of the Term are altered so that in lieu of any tax under this Section there is levied, assessed, or imposed a tax, assessment, levy, imposition, or charge, wholly or partially as a capital license fee measured by the Rent payable by Tenant under this Lease, or measured by the value of the Property subject to this Lease or by the fair rental value of the Property subject to this Lease, then all such taxes, assessments, levies, impositions, or charges or the part so measured or based, shall be deemed to be

included within the term “Real Property Taxes” for the purposes of this Lease, and Tenant shall pay and discharge the same as provided in respect to the payment of Real Property Taxes.

**3.3.2 Tenant’s Right to Contest Taxes.** If Tenant in good faith desires to contest the validity or the amount of any Real Property Taxes, Tenant may do so after 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 hold Landlord harmless from any such costs or expenses. If Tenant contests Real Property Taxes, Tenant shall nevertheless pay such Real Property Taxes under protest if required by law to contest the same, or if necessary to prevent the Property from being sold under a “tax sale” or similar enforcement proceeding. Any rebates on account of the Real Property 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 the Effective Date 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 Real Property Taxes, or assessed valuation on which the Real Property 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 reasonably determine.

**3.3.3 Personal Property Taxes.** Tenant shall pay all taxes levied or assessed against trade fixtures, furnishings, equipment, and all other personal property and improvements belonging to Tenant. Tenant shall try to have personal property and improvements belonging to Tenant taxed separately from the Land.

**3.4 Late Payment.** Any rental payment or other sum due under this Lease, all of which shall be deemed “Rent”, not received within ten (10) days of the due date shall bear interest from the date due until collected at eighteen percent (18%) per annum.

**3.5 Lease Security.** Tenant shall at all times during the term of this Lease and for ninety (90) days thereafter maintain in effect and on file with Landlord a letter of credit, cash deposit, bond, or other security acceptable to Landlord in its sole discretion. During the Permitting and Construction Period and through issuance of a Certificate of Occupancy for the entire Project, security will be provided in accordance with Section 4.2.4.9 below. In addition, effective on the Rent Commencement Date, lease security shall be provided in an amount equal to six (6) months’ full Base Rent plus Washington State leasehold excise tax. The security shall be conditioned on the performance of all covenants, conditions, and obligations to be observed and performed by Tenant under this Lease. If the security is in the form of a cash deposit, then Landlord’s obligations with respect to the security are those of a debtor and not a trustee, and Landlord may commingle the security deposit with its other funds. If Tenant complies with all covenants, conditions, and obligations to be observed and performed by Tenant under this Lease, then the balance of the security shall be released or returned without interest or other payment within ninety (90) days after surrender of the Property by Tenant in the condition required by this Lease.

## 4 USE OF PROPERTY

**4.1 Permitted Uses.** Tenant shall use the Property for the development, construction, and operation of the Property in accordance with the Project Memorandum signed by Landlord and Tenant and attached as Exhibit B hereto, and such development is referred to as the “Project”. The Property shall not be used for any other purpose without the prior written consent of Landlord, in its sole and absolute discretion. Tenant shall not use the Property or permit the Property or any improvement constructed or installed on the Property to be used or occupied for any illegal purpose. Tenant shall

not cause or permit any waste of the Property or any improvement constructed or installed by Tenant on the Property.

## **4.2 Construction of Improvements and Alterations.**

**4.2.1 General.** Tenant at its sole cost and expense shall develop the Property and construct improvements in accordance with the Project Memorandum signed by Landlord and Tenant and attached as Exhibit B hereto, including all onsite, Ancillary Development, Interim Development, and other improvements to be constructed or installed by Tenant in the development of the Property over the term of the Lease (collectively, the “Tenant Improvements”). Any alterations or additional or replacement improvements completed by Tenant shall also be included in the term “Tenant Improvements”. Tenant shall not make any Material Modification to any Tenant Improvement without the prior written consent of Landlord, which will not be unreasonably withheld, conditioned, or delayed so long as the proposed alterations or additional or replacement improvements are consistent with the Master Plan, Master Plan Documents, and the Project Memorandum signed by Landlord and Tenant and attached as Exhibit B hereto, or an amendment to those documents mutually agreed to by the Parties. The Parties shall meet and confer to discuss any proposed Material Modification. A Material Modification is any material and substantial modification that (i) conflicts with the Project Documents, Master Plan, or Master Plan Documents; (ii) alters the exterior physical appearance of the Project in a material and substantial way; (iii) alters the exterior dimensions or structure of any improvement to be constructed or previously constructed on the Property; (iv) causes the commencement or completion of construction to be delayed by more than sixty (60) days unless such delay can be attributed to Force Majeure or any other exception that is outlined in this Lease; or (v) is the construction of any additional or replacement improvement on the Property. Tenant's modifications to the internal space of a building that do not otherwise fall within (i)-(iv) of the previous sentence are not considered Material Modifications for purposes of this Lease. Upon completion of any Tenant Improvement, including when no Landlord approval is required for such Tenant Improvement, Tenant shall provide as-built drawings (or final design drawings if as-built drawings are not available) for such work to Landlord no later than sixty (60) days after the completion of such work for Landlord's records regarding the Property. Landlord's review and approval of any Tenant Improvement shall not include a peer review by Landlord or be deemed any warranty from Landlord that such Tenant Improvement satisfies all Applicable Law, and shall not constitute any determination by Landlord as to the technical merit, compliance with Applicable Law, or advisability of the business decisions underlying such Tenant Improvement, as these elements remain in the sole discretion and responsibility of Tenant.

**4.2.2 Permitting and Construction Period.** The Permitting and Construction Period shall commence on the Effective Date of this Lease. Construction of a Project is “complete” when it is “Substantially Complete”, as evidenced by a certificate of occupancy, a temporary certificate of occupancy, or by such other means as the parties may mutually agree. "Substantially Complete" means the date on which the following has occurred: (i) the Tenant Improvements required to be developed under the Project are complete in compliance with the Master Leasing Agreement, this Lease, the Project Memorandum, and the Project Construction Schedule for completion of the Project, except for punch list items that do not substantially prevent the use of the Tenant Improvements for their intended purposes; or (ii) the City has issued a temporary or final certificate of occupancy for the building portions of the Tenant Improvements (excluding certificates of occupancy for the interior of retail, office, or commercial space for which further tenant improvements are contemplated). The Permitting and Construction Period for the Project under this Lease shall be no longer than 36 months, unless the Parties agree in writing that substantial progress continues to be made, and that the Permitting and Construction Period shall be extended.

**4.2.3 Conditions Precedent to Commencement of Construction.** The following conditions shall have been satisfied before commencing construction on the Project:

**4.2.3.1** Compliance with Lease. Tenant shall be in compliance with this Lease.

**4.2.3.2** Governmental Approvals and Permits. Tenant shall have applied, at its sole cost, to the appropriate governmental authorities or third parties for, and diligently pursued and obtained, all permits, licenses, permissions, consents or approvals required in connection with the construction of the Project. Landlord will cooperate with Tenant to obtain all such permits, licenses, permissions, consents and approvals, without liability or out-of-pocket cost or expense to Landlord, except Landlord shall pay any of its attorney or consulting fees related to its independent decision to review permits, licenses, permissions, or consents prior to cooperating.

**4.2.4 Conditions Regarding Construction.** Without limiting the foregoing or any other provision of this Lease, Tenant shall diligently perform its obligations under this Lease in accordance with the following:

**4.2.4.1** At Tenant's own cost, promptly apply for and diligently pursue and obtain all required permits and approvals, and furnish all permit fees, impact fees, plans, engineering, supervision, labor, material, supplies, and equipment necessary for completion of the Project and all subsequent Tenant Improvements.

**4.2.4.2** Tenant shall have sole responsibility for construction of the Project and all subsequent Tenant Improvements at Tenant's sole cost.

**4.2.4.3** All construction of the Project and all subsequent Tenant Improvements shall comply with and be performed in accordance with all Applicable Law.

**4.2.4.4** All development and all construction of improvements under this Lease shall comply with and be performed in accordance with all applicable portions of (i) the Master Plan, (ii) the Master Plan Documents, (iii) the Master Leasing Agreement, (iv) this Lease, (v) the Project Memorandum and Project Schedule for completion of the Project, and (vi) all construction documentation that Tenant is required to submit as part of the City of Washougal's design review and permitting process and upon which Tenant's contractors will rely in constructing the improvements (subsection (vi) referenced as the "Project Construction Documents").

**4.2.4.5** Tenant will diligently design, construct, and complete all improvements in accordance with the requirements of the Master Development Schedule, the Project Documents, and the Project Construction Documents, in a good and workmanlike manner, and in conformance with the Project Memorandum.

**4.2.4.6** Subject to Section 15.15, Tenant will promptly start construction once permits are available to be issued, and once construction on a Project has been undertaken Tenant will continuously and diligently continue with the construction until the Project is fully completed.

**4.2.4.7** At all times, the Project will be free and clear of all liens other than in connection with Lender financing consented to by Landlord and those contemplated by this Lease.

**4.2.4.8** Site Preparation; City Infrastructure; Utilities. Landlord shall not be responsible for and Tenant shall be responsible for any demolition or site preparation in connection with the Project. Landlord shall not be responsible for and Tenant shall be responsible for any demolition or site preparation in connection with the

installation of City infrastructure. Landlord will reasonably cooperate, at no expense to Landlord, in providing utility connections to the Property. Consistent with the Master Plan Documents, Tenant shall make arrangements for necessary utility services directly with utility service providers (including private providers and the City). Any impact fees, costs of installation, connection, relocation, or upgrade shall be paid by Tenant, including but not limited to, water, sanitary sewer, stormwater, natural gas, streetlights, traffic lights, electric utilities, telecommunications, and fire hydrants.

**4.2.4.9 Adequate Assurance of Ability to Complete Project.** Upon request by Landlord, Tenant shall provide proof of financing in place to construct the Project or any Material Modification thereto. In addition, upon request by Landlord, Tenant shall provide assurance satisfactory to Landlord that the Project or Material Modification will be constructed and completed as designed, and that if the Project or Material Modification is not constructed and completed as designed, the improvements will be demolished and the site returned to a clean, empty, shovel ready condition. The method of providing this assurance shall be by performance bond or as otherwise mutually agreed by Landlord and Tenant, and shall be provided only during the time period between groundbreaking and the issuance of a Certificate of Occupancy by the City of Washougal for the Project, and during the time period between groundbreaking and the issuance of a Certificate of Occupancy by the City of Washougal for any Material Modification of the Project. The purpose of this section is to eliminate risk to the Landlord associated with a partially built Project or Material Modification.

**4.3 Landlord's Cooperation.** Landlord will reasonably cooperate with, at no out-of-pocket cost or other material liability to Landlord, and at no material and adverse impact to Landlord or other property of Landlord, Tenant's development of the Property in accordance with the terms and conditions of this Lease. Provided, however, that Landlord's agreement to reasonably cooperate shall not in any way limit Landlord's rights contained in this Lease to (i) act in its sole discretion where such a right is granted, (ii) enforce all terms and conditions of this Lease, (iii) declare a default, and (iv) terminate this Lease if an uncured default continues. Landlord agrees that so long as there has been no default by Tenant under this Lease, it will not take actions inconsistent with this Lease. However, nothing herein shall prevent Landlord from (i) non-defamatory evaluation, investigation, or discussions regarding the performance of Tenant, or (ii) declining to waive any term, condition or requirement of this Lease. Further, nothing herein shall require Landlord to violate any Applicable Law. Landlord and Tenant recognize and acknowledge that construction of the Project and any subsequent material additions to or alterations, including, but not limited to, a Material Modification, of the Project will require cooperation and coordination between the parties, including, without limitation, Landlord agrees to promptly join in and execute any Application or Filing (as defined below) as Tenant may from time to time request. The term "Application or Filing" shall mean and refer to any instrument, document, agreement, certificate, or filing (or amendment of any of the foregoing) that is necessary or appropriate for any development or construction contemplated under this Lease, including, without limitation, any application for any utility service or hookup, easement, covenant, condition, restriction, permit, application, subdivision map or plat, subdivision improvement or dedication agreement or such other instruments, or enable Tenant from time to time to seek any approval or to use and operate the Property in accordance with this Lease. Landlord will appear as a witness in any legal or administrative proceedings to the extent reasonably necessary to construct the Project.

**4.4 Title to Improvements; Signage; and Personal Property.**

**4.4.1** All of the Tenant Improvements constructed or installed upon the Land by Tenant pursuant to this Lease shall, at all times during the Lease Term, be and remain real property, with title thereto being vested in Tenant for tax and all other purposes. At the expiration or termination of this Lease, all Tenant Improvements shall either be removed by Tenant at



its expense or shall remain in place and become the property of Landlord, in whole or in part, at Landlord's option in its sole and absolute discretion and at no cost to Landlord. If not removed by Tenant when required, Landlord may remove and dispose of such items at Tenant's cost and risk or such items shall become the property of Landlord, in whole or in part, at Landlord's option in its sole and absolute discretion and at no cost to Landlord. The provisions of this section shall survive the expiration or other termination of this Lease.

**4.4.2** All personal property (which for purposes of this Subpart 4.4.2 shall exclude Tenant Improvements and all infrastructure required for the function of such Tenant Improvements) shall be and remain the property of Tenant, provided that Tenant shall be solely liable for and shall pay when due all costs, charges, payments or other sums due with regard to such personal property. At the expiration or earlier termination of this Lease all such personal property shall be removed by Tenant. If any such personal property to be removed by Tenant is not so removed by Tenant, Landlord may remove and dispose of such items at Tenant's expense or such items shall become the property of Landlord, in whole or in part, at Landlord's option in its sole and absolute discretion and at no cost to Landlord. The provisions of this section shall survive the expiration or other termination of this Lease.

**4.5 Operation, Maintenance, and Repairs.** From the Effective Date through the end of the Lease Term, Tenant shall obtain all permits, licenses, and other authorizations required for Tenant's use, operation, and maintenance of the Property, Ancillary Development Areas, the Project, and all Tenant Improvements, and shall keep all portions of the Property, Ancillary Development Areas, the Project, and all Tenant Improvements, in good, clean, safe, welcoming, inviting, and attractive order, condition, and repair. Such obligation includes all necessary maintenance, repairs, restorations, renewals, and replacements (ordinary as well as extraordinary, foreseen as well as unforeseen, and structural and non-structural, collectively "maintenance") with respect to the Property, Ancillary Development Areas, the Project, and all Tenant Improvements, and shall be promptly performed as and when needed or required to preserve the Property, Ancillary Development Areas, the Project, and all Tenant Improvements in good, clean, safe, welcoming, inviting, and attractive order, condition, and repair at all times. The Parties agree that this Lease provision together with the Project Memorandum satisfies the written agreement required under Section 4.17 of the Master Leasing Agreement, as to development, operation, and maintenance of the Border Area as described in Section 4.17 of the Master Leasing Agreement. [NOTE: Unless the use of such area is adequately dealt with in the Project Memorandum, additional written agreement will be required regarding use.]

**4.5.1 Property.** Tenant will be responsible for operating and maintaining the Property shown in Exhibit A. Operations and maintenance will include, but is not limited to, landscaping, cleaning, and capital repairs of onsite infrastructure such as streets, sidewalks, street furniture, onsite sewer and water lines built by Tenant, and all other existing improvements and Tenant Improvements, and all aspects of the Project. After any part of the Property is dedicated to the City and becomes public land, right of way, or City Streets, and the City agrees to maintain such dedicated land, Tenant will continue to be responsible for maintaining all sidewalks and planter strips within or adjacent to such public land, right of way, or City Streets.

**4.5.2 Port Land.** As between the Parties, the Port will be solely responsible for operating and maintaining the Port Land shown in Exhibit A, including parks, trails, open spaces, and associated parking lots, unless otherwise agreed by the Parties in writing.

**4.5.3 Stormwater.** Landlord and Tenant will share the costs of Landlord's share of operating and maintaining the stormwater outfall as set forth in Section 4.9 below.

**4.5.4 Special Events and Situations.** Operations and maintenance costs related to other activities may be mutually agreed upon by the Parties. During special events such as festivals, farmers markets, concerts, and other events, the Port and Tenant, each in its sole discretion, may collaborate to fund and manage operations and maintenance activities.

**4.6 Compliance with Applicable Law.** Tenant shall comply with all applicable laws, ordinances, regulations, rules, standards, permits, requirements, orders, decrees, and determinations, of all United States federal, Washington State, county, municipal, and local, agency, authority, board, body, bureau, commission, department, or other governmental or quasi-governmental unit, or any subdivision thereof, having jurisdiction over the development, construction, use, marketing, or occupancy of the Property, or any public utility provider serving the Property, having, asserting, or acquiring jurisdiction over or providing utility service to the Project or Tenant Improvements, now or hereafter in effect, whether or not presently contemplated, applicable to Landlord or Tenant, the Property, the Project, or Tenant Improvements, or the ownership, operation or possession of the Property, the Project, or Tenant Improvements, including (without limitation) those relating to parking restrictions, building codes, zoning or other land use matters, the Americans With Disabilities Act of 1990, as amended, the Master Plan Documents, the City land use regulatory code (vested in the Development Agreement or otherwise applicable to the Property), the City Shoreline Management Program, life safety requirements, stormwater regulations and requirements, and environmental laws, orders, decrees, covenants, and agreements with respect to the handling, treatment, storage, disposal, discharge, use, transportation, remediation, and management of hazardous substances (collectively "Applicable Law"). Tenant shall defend, indemnify, and hold Landlord harmless against all claims, costs (including but not limited to reasonable attorney fees), fees, fines, penalties, liabilities, losses, and damages that Landlord may incur by reason of any charge, claim, litigation, or enforcement action related to any actual or claimed violation of any of the foregoing to the extent caused by Tenant or any subtenant, or the directors, officers, employees, agents, representatives, contractors, subcontractors, consultants, subconsultants, customers, vendors, licensees, assignees, subtenants, invitees, or guests of any of the foregoing. Landlord shall defend, indemnify, and hold Tenant harmless against all claims, costs (including but not limited to reasonable attorney fees), fees, fines, penalties, liabilities, losses, and damages that Tenant may incur by reason of any charge, claim, litigation, or enforcement action related to any actual or claimed violation of any of the foregoing to the extent caused by Landlord.

**4.7 Hazardous Material.**

**4.7.1 General.** Tenant shall not violate any law or regulation of any federal, state or local governmental authority having jurisdiction over Hazardous Material. As used in this Lease, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "pollutant", or "pollution", now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are now or subsequently found to have adverse effects on the environment or the health and safety of persons. As used in this Lease, the term Release shall have the meaning as defined in 42 U.S.C. 9601 and RCW 70A.305.020. In the event a conflict exists between the two definitions, the broader definition shall apply. The term Release shall also include a threatened Release.

**4.7.2 Monitoring.** Landlord or its designated agents may, at Landlord's sole discretion and at reasonable times and after at least forty eight (48) hours prior written notice (except in the event of an emergency), and after detailing to Tenant the reason justifying such monitoring, enter upon the Property for the purpose of (1) monitoring Tenant's and subtenants' activities conducted thereon if Landlord reasonably believes a breach of Tenant's obligations under this Section 4.7 has occurred, and (2) conducting environmental testing and sampling to determine compliance with Applicable Law and the terms of this Lease (collectively "Monitoring Activities"). If such Monitoring Activities disclose the presence or Release of Hazardous Materials caused by Tenant or any subtenant, or the directors, officers, employees, agents, representatives, contractors, subcontractors, consultants,

subconsultants, customers, vendors, licensees, assignees, subtenants, invitees, or guests of any of the foregoing (collectively "Tenant Parties") or related to Tenant's tenancy under this Lease (or caused by any subtenant or related to any subtenancy under this Lease) in violation of either Applicable Law or this Lease, the reasonable cost of such Monitoring Activities shall be paid by Tenant. Landlord shall provide Tenant with written reports prepared in connection with such Monitoring Activities. In addition, within thirty (30) days of Landlord's written request, Tenant shall provide Landlord with a detailed written description of Tenant's and subtenants' generation, use, sale, transportation, storage, treatment, management, and disposal of Hazardous Materials on or which may otherwise affect the Property, and any Release of Hazardous Materials on or which may otherwise affect the Property, and copies of any correspondence or other communications between Tenant or any subtenant and any regulatory agency with respect thereto. Landlord's discretionary actions pursuant to this subsection shall not constitute a release, waiver, or modification of Tenant's obligations otherwise specified in this Lease, or of any of Landlord's rights under this Lease.

- 4.7.3 Notifications.** Tenant shall notify Landlord and any applicable governmental agency required to be notified under Applicable Law within 24 hours (or such shorter period if any Applicable Law requires notice in any shorter period) of Tenant becoming aware of any Release of Hazardous Materials that may affect the Property, and shall promptly provide Landlord with a copy of any notifications given to any governmental entity regarding any such Release. Tenant shall promptly provide Landlord with copies of any inspection report, order, fine, request, notice or other correspondence from any governmental entity regarding the Release of Hazardous Materials that may affect the Property. Tenant shall provide Landlord with a copy of all reports, manifest, material safety data sheets (MSDs), and identification numbers regarding Hazardous Materials at the same time they are submitted to the appropriate governmental authorities.
- 4.7.4 Remediation; Tenant's Indemnity.** Tenant shall have the obligation to cure any environmental contamination of the Property or any other property caused by Tenant or Tenant Parties during the term of this Lease or related to Tenant's tenancy under this Lease (or caused by any subtenant or related to any subtenancy under this Lease). Except as provided under Section 1.2.1 of this Lease, Tenant shall also have the obligation to cure any environmental contamination of the Property or any other property existing on the Effective Date of this Lease to the extent such environmental contamination is caused, contributed to, exacerbated, exposed, or Released by Tenant or Tenant Parties during the term of this Lease or related to Tenant's tenancy under this Lease (or caused by any subtenant or related to any subtenancy under this Lease). In addition, Tenant shall defend (with attorneys reasonably approved in writing by Landlord), indemnify and hold harmless Landlord from and against any and all losses, claims, damages, fines, or penalties of whatsoever nature, asserted against the Landlord or the Property arising from any Release of Hazardous Material in violation of this Lease or applicable environmental laws affecting the Property or any other property to the extent caused by Tenant or Tenant Parties or related to Tenant's tenancy or use or occupancy of the Property, or caused by any subtenant or related to any subtenancy or any subtenant's use or occupancy of the Property. Such obligation shall include, but shall not be limited to, reasonable environmental response and remedial costs, other reasonable cleanup costs, reasonable environmental consultants' fees, reasonable attorneys' fees, fines and penalties, reasonable laboratory testing fees, and claims by third parties and governmental authorities, and including, without limitation, claims for death, bodily injuries, property damage, business disruption, lost profits, natural resource damages, and any other reasonable costs, and Landlord's reasonable expenses as provided in this Lease. Tenant's obligations under this subsection shall survive expiration or other termination of this Lease.
- 4.7.5 Remediation; Landlord's Indemnity.** Landlord shall have the obligation to cure any environmental contamination of the Property caused by Landlord, its commissioners,

officers, agents, employees, representatives, contractors, subcontractors, successors, assigns or invitees (collectively, "Landlord Parties") during the term of this Lease. In addition, Landlord shall defend (with attorneys reasonably approved in writing by Tenant), indemnify and hold harmless Tenant from and against any and all losses, claims, damages, fines, or penalties of whatsoever nature, asserted against the Tenant or the Property arising from any Release of Hazardous Material in violation of this Lease or applicable environmental laws affecting the Property or any other property to the extent caused by Landlord or Landlord Parties. Such obligation shall include, but shall not be limited to, reasonable environmental response and remedial costs, other reasonable cleanup costs, reasonable environmental consultants' fees, reasonable attorneys' fees, fines and penalties, reasonable laboratory testing fees, and claims by third parties and governmental authorities, and including, without limitation, claims for death, bodily injuries, property damage, business disruption, lost profits, natural resource damages, and any other reasonable costs, and Tenant's reasonable expenses as provided in this Lease. Landlord's obligations under this subsection shall survive expiration or other termination of this Lease.

**4.7.6 Stormwater.** Tenant will comply with all Applicable Law regarding stormwater management and permits, and shall apply for and hold as permittee all applicable stormwater permits, except as set forth in Section 4.9 of this Lease. It shall be Tenant's sole responsibility to determine which requirements and permit(s) are applicable. Tenant shall implement and perform all best management practices ("BMPs") necessary to meet the requirements of the Applicable Law regarding stormwater, and shall also comply with all Port policies. Tenant shall keep onsite a spill kit capable of handling minor spills and/or leaks from parked vehicles or other sources of potential pollution. If any regulatory authority (including but not limited to the Washington State Department of Ecology) or citizen cites or alleges that Landlord or Tenant has violated any Applicable Law regarding stormwater, Tenant will fully defend and indemnify Landlord for any damages, penalties, or other assessments made against Landlord for such cited or alleged violations caused by Tenant or Tenant Parties or related to Tenant's tenancy or use or occupancy of the Property, or caused by any subtenant or related to any subtenancy or any subtenant's use or occupancy of the Property; and Tenant will pay Landlord's reasonable attorneys' fees in connection with such claims, notices, citations, and/or enforcement actions. If any regulatory authority (including but not limited to the Washington State Department of Ecology) or citizen cites or alleges that Landlord or Tenant has violated any Applicable Law regarding stormwater, Landlord will fully defend and indemnify Tenant for any damages, penalties, or other assessments made against Tenant for such cited or alleged violations caused by Landlord or Landlord Parties; and Landlord will pay Tenant's reasonable attorneys' fees in connection with such claims, notices, citations, and/or enforcement actions.

**4.8 Utilities.** Tenant shall be liable for, and shall pay when due, all charges for all utility services furnished to the Property during the term of this Lease, including, but not limited to, light, heat, electricity, telephone, cable, natural gas, water, sewage, storm sewer, storm water, surface water, waste water, janitorial services, garbage and refuse disposal, and all other utilities and services supplied to the Property. Consistent with the Master Plan Documents, Tenant shall make arrangements for necessary utility services directly with utility service providers (including private providers and the City). Tenant shall pay for all utility services directly to the appropriate supplier to the extent possible, or to Landlord to the extent not payable directly to the supplier. Landlord and Tenant will share the costs of Landlord's share of operating and maintaining the stormwater outfall as set forth in Section 4.9 of this Lease. All utility services furnished to the Property shall be subject to Landlord's prior written approval, which shall not be unreasonably conditioned, delayed, or withheld. Landlord shall not be in default under this Lease nor be liable in damages or otherwise for any failure or interruption of any utility or other service furnished to the Property, the Project, or Tenant Improvements, and no such failure or interruption will entitle Tenant to terminate this Lease or to abate payment of Rent or any other charges due under this Lease.

- 4.9 Infrastructure Improvements and Street Dedications.** Landlord has no duty or obligation under this Lease to construct, install or modify any public infrastructure, including but not limited to any City or Washington State Department of Transportation (WSDOT) streets or other infrastructure, except for the stormwater outfall addressed in the Amended And Restated Site Infrastructure Development Agreement & Covenants Running With The Land, and Joint Stormwater Facilities And Outfall Easement Agreement between the Port and Ninebark Apartments LLC, recorded as Document Nos. 5981787 and 5981864 in the Clark County Records (the "Stormwater Outfall"). The Parties acknowledge that the Stormwater Outfall has been constructed. Landlord and Tenant will equally share the costs of Landlord's seventy-one percent (71%) share of operating, maintaining, repairing, and replacing the Stormwater Outfall, as provided in the above Development Agreement and Easement. Upon Tenant's connection to the Stormwater Outfall to serve the Project under this Lease, each Party shall contribute thirty-five and one-half percent (35.5%) for the operation and maintenance of the Stormwater Outfall described here. At all times prior to Tenant's connection to the Stormwater Outfall Landlord shall pay 71% of the operation and maintenance of the Stormwater Outfall. Tenant shall be responsible for all design, permitting, construction, operation, and maintenance, and all costs thereof, with respect to any and all onsite and offsite improvements required with respect to the development of the Property, except (i) as provided above with respect to the Stormwater Outfall, (ii) to the extent ownership of such improvement is transferred to the City or other public entity, and (iii) except as expressly provided otherwise in this Lease.
- 4.10 No Liens.** Tenant shall pay when due all claims for labor and material furnished on or about the Property or in connection with the Project or any Tenant Improvement. Tenant shall not suffer or permit any mechanic's or materialmen's or other lien to be filed against the Property, the Project, any Tenant Improvement, or the interest of either Landlord or Tenant in this Lease, whether 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 anyone occupying or holding any interest in the Property or any part thereof through or under Tenant. Tenant shall defend, indemnify, and hold harmless Landlord against all mechanic's, materialmen's, laborer's, and all other liens, and all costs, expenses and liabilities arising from and relating to Tenant's actions with respect to the Property that give rise to such lien or could give rise to such lien. Nothing contained in this Lease shall be construed as the consent or request of Landlord, express or implied, for the performance of any labor or services or for the furnishing of any materials or equipment to a Project (or any part thereof) or any Tenant Improvement. Notice is hereby given that Landlord will not be liable for any labor, services, materials or equipment furnished or to be furnished to Tenant, or anyone holding an interest in the property (or any part thereof) through or under Tenant. If any such lien is asserted, the Party against whom it is asserted, at its expense, shall promptly discharge such lien in a manner reasonably satisfactory to the other Party.
- 4.11 Inspections.** Landlord and its agents, representatives, and contractors may enter the Property twice a year to determine the Tenant's compliance with the terms of this Lease. In addition, Landlord and its agents, representatives, and contractors may enter the Property whenever required to perform any action Landlord is required to perform under this Lease or Applicable Law, or whenever necessary to prevent imminent damage to persons or property. Each entry shall be on not less than one (1) week prior notice, or notice required under Applicable Law, whichever is greater, or no notice in the event of an emergency, provided Landlord has provided as much notice as is reasonable given the circumstances. Landlord may also enter the Property for monitoring under Section 4.7.2 of this Lease, in accordance with the provisions of that Section. In connection with any entry by Landlord, or its agents, representatives, or contractors: (a) to the extent requested by Tenant or its subtenants, Landlord agrees to collect a duly executed non-disclosure agreement on Tenant's or its subtenants' then-current form prior to permitting any third party (person or entity) to enter the Property, (b) Tenant shall have the right to deny access to the Property or certain portions thereof to third parties if Tenant or its subtenant determines in its sole discretion that allowing such third party potential exposure to Tenant's or its subtenant's proprietary and confidential information within the Property or such portion of the Property would be detrimental to Tenant's or subtenant's business interests, and the same cannot reasonably be protected by means other than such denial of access, and (c) except in an emergency where necessary to prevent imminent damage to persons or property,

Landlord and any other party shall enter the Property only when accompanied by a representative of Tenant or its subtenants and only in compliance with Tenant's or its subtenants' reasonable security programs, confidentiality requirements and such other reasonable rules and regulations as Tenant or its subtenants may require. Landlord shall exercise its entry rights in a manner that will not unreasonably interfere with or unreasonably interrupt Tenant's or its subtenants' ordinary business activities at the Property.

## 5 INSURANCE; INDEMNITY

**5.1 Tenant's Insurance.** Tenant shall, at its sole cost and expense, obtain and keep in force at all times during the Lease Term, unless otherwise specified in this Lease, the following types and amounts of insurance:

**5.1.1 Commercial General Liability Insurance.** A policy of commercial general liability insurance (sometimes known as broad form comprehensive general liability insurance) insuring Tenant against liability for bodily injury, death, property damage (including loss of use of property), personal injury, and contractual liability, arising out of the operation, use or occupancy of the Property, Ancillary Development Areas, the Project, and Tenant Improvements. The amount of such insurance shall be Two Million and no/100 Dollars (\$2,000,000.00) per occurrence with an annual aggregate limit, including through umbrella coverage, of not less than Five Million and no/100 Dollars (\$5,000,000.00). Tenant shall also require each contractor performing work on the Property to carry the same insurance while performing such work and to name Tenant and Landlord as additional insureds on such insurance.

**5.1.2 Property Insurance.** Upon completion of an improvement, "all risk" property insurance against loss of or damage to the improvement in the full amount of its replacement cost. Such policy shall provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage and any other perils which Tenant deems reasonably necessary.

**5.1.3 Workers' Compensation Insurance.** Workers' compensation insurance having limits not less than those required by applicable state and federal law.

**5.1.4 Employer's Liability Insurance.** Employer's Liability Insurance having limits not less than One Million Dollars (\$1,000,000) each accident.

**5.1.5 Business Auto Insurance.** Business auto liability coverage insuring all owned, rented, or leased vehicles having limits not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence.

**5.1.6 Builder's Risk Insurance.** Builder's risk insurance during the course of any alteration, construction, or reconstruction, covering the total cost of work performed, equipment, supplies and materials furnished, on a replacement cost, agreed value basis ("Builder's Risk Insurance"); provided, however, that Tenant may satisfy this requirement for Builder's Risk Insurance by causing its general contractor(s) to carry such policy consistent with the requirements of this Lease.

### 5.2 General Insurance Provisions.

**5.2.1 Certificates of Insurance; Policies; No Cancellation.** Tenant shall deliver to Landlord certificates of insurance, executed by a duly authorized representative of each insurer, evidencing the existence of all insurance required to be maintained by Tenant. Landlord shall be provided at least thirty (30) days prior written notice prior to cancellation, non-renewal, or material change in any policy. At Landlord's request, Tenant shall deliver complete policies of insurance and all endorsements thereto as requested by Landlord. Insurance must be maintained without any lapse in coverage during the Lease Term.

Failure of Landlord to demand such certificates or policies or identify any deficiency or noncompliance with coverage requirements, shall not be construed as a waiver of Tenant's obligation to maintain the insurance required by this Lease. All policies shall be issued by companies authorized to do business in the State of Washington, with an A.M. Best Rating of A- VII or better (or equivalent).

**5.2.2 Additional Insureds; No Forfeiture.** Landlord shall be named as additional insured in a manner reasonably acceptable to Landlord on all of the policies required to be maintained or maintained by Tenant, and on all policies required to be maintained or maintained by subtenants, except workers' compensation, and said policies shall provide for severability of interest, and shall include an endorsement to the effect that the insurance as to any one insured or additional insured shall not be invalidated by any act or neglect of any other insured or additional insured.

**5.2.3 Primary Coverage.** All insurance to be maintained by Tenant shall be primary, without right of contribution from insurance of Landlord.

**5.2.4 No Limitation on Liability.** The limits of insurance maintained by Tenant pursuant to this Section 5 shall not limit Tenant's liability under this Lease.

**5.2.5 Cancellation or Lapse.** Cancellation or lapse of any insurance policies required by this Lease constitutes a default under this Lease. In such event, in addition to any other legal remedies, Landlord, after written notice to Tenant, may obtain such insurance and pay such premiums and may elect (if not reimbursed by Tenant within a reasonable period of time) to assert a claim for payment from Tenant, together with costs and attorneys' fees in the assertion of such claim.

**5.2.6 Periodic Increases.** At any time on or after the first day of the eleventh (11) Lease Year, Landlord, in its reasonable discretion, may increase or decrease the amounts and types of insurance coverage required herein, at any time and from time to time during the Term of this Lease but no more often than once every ten (10) years and with any increase not to exceed customary coverages and limits required by landlords of similarly situated projects, based on the value of the Property, Project, and Tenant Improvements, use of the Property, risks, and other relevant factors, by giving at least one (1) year prior notice to Tenant.

**5.3 Waiver of Subrogation.** If either Landlord or Tenant experience any injury, loss or damage to themselves or their respective real or personal property, and if that injury, loss or damage was then insured against under any or all of their respective insurance policies, or any or all of their contractors' or subcontractors' respective insurance policies, including any extended coverage endorsements thereto, then the appropriate insurance company(ies), and not Landlord or Tenant, shall be solely liable to compensate the party(ies) who experienced the injury, loss or damage and this shall be so regardless of whether Landlord or Tenant was responsible for such injury, loss, or damage. To this end, Landlord and Tenant hereby waive any and all rights each may have against the other, and shall cause their contractors and subcontractors to also waive any rights they may have against Landlord or Tenant, as a result of any injury, loss, or damage which is then insured against by Landlord or Tenant or any contractor or subcontractor. This waiver is effective only to the extent permitted by law, and only to the extent that the insurance company(ies) actually pay(s) for such injury, loss, or damage. In addition, Landlord and Tenant agree to (i) cause their and their contractors' and subcontractors' respective insurance companies to waive any right of subrogation, and (ii) provide proof to the other party within thirty (30) days after the execution of this Lease, or at the time otherwise required by this Lease, that such waivers have been successfully obtained from the respective insurance companies (if such proof is not provided within this thirty (30) day period, the other party shall have the right to declare this subsection to be ineffective). This subsection shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Landlord or Tenant.

## 5.4 Release and Indemnity.

**5.4.1 Release.** Tenant is and will be in exclusive control of the Property, the Project, and the Tenant Improvements, and Landlord will not in any event whatsoever be liable for any injury or damage to any property or person happening on, in, or about the Property, the Project, or the Tenant Improvements, or any injury or damage to the Property, the Project, the Tenant Improvements, or to any property of Tenant or to any other person, caused by any fire, breakage, leakage, defect, or bad condition on any part of the Property, the Project, or the Tenant Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Property, the Project, or the Tenant 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 Project or Tenant Improvements, or from any kind of injury or damage that may arise from any other cause whatsoever on the Property, or in or on the Project or the Tenant Improvements, including defects in construction of the Project or the Tenant Improvements, latent or otherwise; and Tenant hereby releases Landlord from and against any and all liabilities resulting from any such injuries and damages. Notwithstanding anything in this Section to the contrary, Landlord acknowledges that it remains responsible for liability to third parties to the extent that the liability arises from Landlord's negligence or willful misconduct.

**5.4.2 Indemnification by Tenant.** To the extent permitted by law, Tenant shall indemnify, defend, and hold Landlord, its commissioners, officers, agents, employees, representatives, contractors, subcontractors, licensees, invitees, successors, and assigns (collectively, "Landlord Indemnitees") harmless from and against all claims, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) arising out of or relating to Tenant's activity (or any subtenant's activity) conducted on or with respect to the Property, including any act or omission of Tenant or Tenant Indemnitees or any act or omission of any subtenant of Tenant. Landlord shall not be entitled to such indemnification as described in this subsection to the extent and in proportion that such claim, liability, loss, damage, cost or expense is caused by the negligence, bad faith, reckless or willful misconduct of Landlord or Landlord Indemnitees. The furnishing of insurance required hereunder shall not be deemed to limit Tenant's obligations under this subsection. Notwithstanding anything in this Lease to the contrary, if a court of competent jurisdiction determines that any activity covered by the indemnities under this section of this Lease is subject to RCW 4.24.115, then, in the event of liability for damages or any other loss, fines, costs, and expenses caused by or resulting from the concurrent negligence or other act or omission of Landlord or Landlord Indemnitees on the one hand, and Tenant or Tenant Indemnitees on the other hand, Tenant's liability hereunder shall be only to the extent of Tenant or Tenant Indemnitees' negligence or other act or omission. It is further specifically and expressly agreed that Tenant hereby waives any immunity it may have under industrial insurance, RCW Title 51, solely for the purposes of the indemnification obligations under this subsection, and only to the extent necessary to render the parties' indemnity obligations enforceable. This waiver was mutually negotiated by the parties. Landlord and Tenant's obligations under this subsection shall survive the expiration or other termination of this Lease.

**5.4.3 Indemnification by Landlord.** To the extent permitted by law, Landlord shall indemnify, defend, and hold Tenant and its members, agents, employees, representatives, contractors, subcontractors, licensees, invitees, successors, and assigns (collectively, "Tenant Indemnitees") harmless from and against all claims, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) arising out of or relating to Landlord's activity conducted on or with respect to the Property, including any act or omission of Landlord or Landlord Indemnitees. Tenant shall not be entitled to such indemnification as described in this subsection to the extent and in proportion that such claim, liability, loss, damage, cost or expense is caused by the



negligence, bad faith, reckless or willful misconduct of Tenant or Tenant Indemnitees or any act or omission of any subtenant of Tenant. The furnishing of insurance required hereunder shall not be deemed to limit Landlord's obligations under this subsection. Notwithstanding anything in this Lease to the contrary, if a court of competent jurisdiction determines that any activity covered by the indemnities under this section of this Lease is subject to RCW 4.24.115, then, in the event of liability for damages or any other loss, fines, costs, and expenses caused by or resulting from the concurrent negligence or other act or omission of Landlord and or Landlord Indemnitees on the one hand, and Tenant or Tenant Indemnitees on the other hand, Landlord's liability hereunder shall be only to the extent of Landlord or Landlord Indemnitees' negligence or other act or omission. It is further specifically and expressly agreed that Landlord hereby waives any immunity it may have under industrial insurance, RCW Title 51, solely for the purposes of the indemnification obligations under this subsection, and only to the extent necessary to render the parties' indemnity obligations enforceable. This waiver was mutually negotiated by the parties. Landlord and Tenant's obligations under this subsection shall survive the expiration or other termination of this Lease.

**5.4.4 Indemnity Procedure.** If a claim under the foregoing indemnity is made against the indemnitee which the indemnitee believes to be covered by an indemnitor's indemnification obligations hereunder, the indemnitee shall promptly notify the indemnitor of the claim and, in such notice shall offer to the indemnitor the opportunity to assume the defense of the claim within 10 business days after receipt of the notice (with counsel reasonably acceptable to the indemnitee). If the indemnitor timely elects to assume the defense of the claim, the indemnitor shall have the right to settle the claim on any reasonable terms, provided that the indemnitee (i) shall be kept informed by the indemnitor of developments in the matter, (ii) may retain its own counsel at its own cost and expense, and (iii) may consult with the indemnitor to provide the indemnitee's perspective and suggestions regarding the defense, and provided that the settlement or other resolution of such claims shall be subject to the approval of the indemnitee, which shall not be unreasonably withheld, conditioned, or delayed. If the indemnitor fails timely to elect to assume the defense of the claim or fails to defend the claim with diligence, then the indemnitee shall have the right to take over the defense of the claim and to settle the claim on any reasonable terms. Any such settlement shall be valid as against the indemnitor. If any such claim arises out of the negligence of both Landlord and Tenant, responsibility for such claim shall be allocated between Landlord and Tenant based on their respective degrees of negligence. Obligations under this subsection shall survive the expiration or other termination of this Lease.

## 6 DAMAGE OR DESTRUCTION

**6.1 Casualty.** If Tenant becomes aware of any material damage or destruction to all or any material portion of the Property or Project or Tenant Improvements, whether ordinary or extraordinary, foreseen or unforeseen (each, a "Casualty"), Tenant shall promptly notify Landlord of such fact.

**6.2 Effect of Casualty.** In the event of a Casualty, Landlord shall have no duty to repair or restore any part of the Property or Project or Tenant Improvements. If the Project is totally or partially destroyed at any time during the course of construction by Tenant prior to Substantial Completion, Tenant shall reconstruct or repair the damage and continue to pursue the Project to completion consistent with the terms of this Lease, to the extent of available insurance, together with any additional funds that Tenant elects to use for such purpose. Such reconstruction or repair shall commence as expeditiously as possible following such destruction, with delays resulting therefrom being treated as a Force Majeure event. If, due to the lack or insufficiency of available insurance or other funds, Tenant is unable to continue to develop the Project, then in all events Tenant shall at its cost promptly remove the damaged portion of the Project, secure the Property, clear the debris and generally make the Property as safe and attractive as practical given the circumstances. If a Casualty occurs prior to Substantial Completion of the Project and Tenant does not commence the repair,

completion, or new construction within twelve (12) months of such Casualty occurring (or within such additional time as is reasonably requested by Tenant and mutually agreed to by the Parties), then Landlord shall have the right (but not the obligation) to terminate this Lease and lease the Property to a third party; and the parties acknowledge that this right is granted to address Landlord's concern that the Property not remain undeveloped for an unreasonable length of time. If a Casualty occurs after Substantial Completion of the Project, then (i) no Rent, Property Taxes, or other charges shall abate, (ii) except as expressly stated in this Section, this Lease shall not terminate or be impaired, and (iii) except as expressly stated in this Section, Tenant shall commence the restoration of the Property and the repair or new construction of the Project and Tenant Improvements within twelve (12) months after a Casualty and thereafter diligently and promptly complete the restoration, repair, or new construction of the Property, the Project, and all Tenant Improvements. If (a) a Casualty occurs during the last five (5) years of the Lease Term and such Casualty renders more than thirty five percent (35%) of the Property and Project and Tenant Improvements unusable or (b) a Casualty occurs during the last ten (10) years of the Lease Term and Tenant reasonably determines that the Project and Tenant Improvements are not economically viable, then Tenant shall have the option of terminating this Lease upon written notice to Landlord, provided that such notice shall be given no later than ninety (90) days after the date of such Casualty, and provided further that such termination shall be effective as of Tenant's completion of its obligation to remove the Project and Tenant Improvements at Tenant's expense or leave them in place to become the property of Landlord, in whole or in part, at Landlord's option in its sole and absolute discretion and at no cost to Landlord, and to secure the Property, clear the debris and generally make the Property as safe and attractive as practical given the circumstances.

- 6.3 Adjustment of Claims; Use of Property Insurance Proceeds.** Tenant shall have the sole right to negotiate and settle any and all claims with Tenant's insurers pertaining to any Casualty. All insurance proceeds from Tenant's insurance payable as a result of any Casualty shall belong to and be payable to Tenant, subject to the rights of any Leasehold Mortgagee. If insurance proceeds are insufficient for Tenant to restore or replace the damaged portion of the Project or any Tenant Improvements, Tenant must pay the difference, but only to the extent Tenant elects to restore or replace such damage, or takes other permitted action under Section 6.2 of this Lease.

## 7 CONDEMNATION

- 7.1 General.** If a portion of the Property is taken under the power of eminent domain or sold under the threat of that power (collectively, "Taking"), the parties' rights and obligations shall be governed by the common law of the State of Washington, the applicable Washington statutes, any applicable federal law, and this Lease. To the extent allowed by law, in the event of conflict between the statute, common law, and this Lease, this Lease shall prevail.
- 7.2 Total Taking.** In the event of a Taking of the fee title to the entire Property and the Project and Tenant Improvements thereon (a "Total Taking"), this Lease shall automatically terminate as of the earlier of the date actual physical possession is taken by the condemnor or title actually passes to the condemnor (the "Vesting Date") and the Rent shall be apportioned to the date of termination.
- 7.3 Substantial Taking.** In the event of a Taking of less than all of the Property, the Project, or Tenant Improvements thereon (other than a Temporary Taking, as defined below), and in Tenant's reasonable judgment the remaining portion of the Property, Project, and Tenant Improvements are insufficient for Tenant to make improvements and have a suitable and economically viable project (a "Substantial Taking"), and Tenant gives written notice to Landlord within sixty (60) days of Tenant's receipt of notice of the Taking of Tenant's decision and election to terminate the Lease (otherwise Tenant's right to terminate the Lease under this Section shall be waived), this Lease shall automatically terminate as of the Vesting Date and the Rent under this Lease shall be apportioned to the date of termination.
- 7.4 Partial Taking.** In the event of a Taking of the Property, the Project, or Tenant Improvements thereon that is neither a Total Taking nor a Substantial Taking (a "Partial Taking"), this Lease shall automatically terminate as of the Vesting Date with respect to that portion of the Property subject

to the Taking, and this Lease shall remain in full force and effect with respect to the portion of the Property not subject to the Taking, except that the Rent shall be reduced in proportion to the reduction in the net square footage of the Property by reason of such Taking, unless otherwise agreed in writing by the Parties.

- 7.5 Allocation of Award.** Except as otherwise agreed in writing by the Parties, in the event of a Taking, the total compensation paid for the Taking (the “Award”) in the condemnation proceeding shall be apportioned and paid as follows: All proceeds from any taking or condemnation (i) related to the Project or Tenant’s personal property and equipment or (ii) related to Tenant’s leasehold interest in the portion of the Land subject to the Taking and any improvements constructed or installed by Tenant thereon shall belong to and be paid to Tenant. All proceeds from any taking or condemnation related to Landlord’s reversionary interest in the portion of the Land subject to the Taking and any improvements thereon not constructed or installed by Tenant shall belong to and be paid to Landlord. Landlord and Tenant agree that the condemning authority or the court with jurisdiction over the condemnation shall use the Award allocation stipulated by Landlord and Tenant in this Section 7.5. However, if the amount to be allocated to each party has not been determined by the court in the condemnation proceeding and Landlord and Tenant cannot agree upon the amount to be allocated between Landlord and Tenant within a reasonable time by good faith negotiations, then such amount shall be determined by arbitration pursuant to Section 12 using the Award allocation stipulated by Landlord and Tenant in this Section 7.5.
- 7.6 Temporary Taking.** In the event of a Taking of all or any portion of the Property or Project or Tenant Improvements for a temporary use, the foregoing provisions in this **Section 7** shall be inapplicable thereto, and this Lease shall continue in full force and effect. The Award payable in connection with any such temporary Taking for any period prior to the expiration or termination of the Lease Term (as may be extended by Tenant pursuant to the renewal provisions of this Lease) shall be paid to Tenant, and the Award payable in connection with any such temporary Taking for any period beyond the Lease Term (as may be extended by Tenant pursuant to the renewal provisions of this Lease) shall be paid to Landlord. Tenant will also have the right to file and prosecute any claim against the condemner for damages, and to recover the same, for any negligent use, waste, or injury to the Property, the Project, or Tenant Improvements during the Lease Term. The amount of damages so recovered will belong to Tenant.
- 7.7 Settlement.** Landlord shall not, without consent of Tenant or the senior Leasehold Mortgagee, which consents shall not be unreasonably withheld, conditioned, or delayed, (i) make any settlement with the condemning authority, or (ii) convey any portion of the Property to such authority in lieu of condemnation, or (iii) consent to any Taking.
- 7.8 Tenant’s Claim.** In addition to distributions pursuant to Section 7.5 above, Tenant shall be responsible for making Tenant’s own claim to the condemning authority for any other claim Tenant may have for Tenant’s loss of business, or on account of any cost or loss Tenant may sustain in the removal of Tenant’s personal property (including, without limitation trade fixtures, equipment and furnishings) which Tenant is authorized to remove under this Lease.
- 7.9 Notice.** A party receiving any notice of a Taking or the threat of a Taking shall give written notice to the other of the receipt, contents and date of notice received within five (5) business days of receipt.

## **8 ASSIGNMENT AND SUBLETTING**

- 8.1 Sublease.** Landlord acknowledges that Tenant does not intend to occupy the Property and Tenant intends to sublease all or portions of the Project and Tenant Improvements constructed on the Property. Tenant shall have the absolute right, without Landlord’s prior consent, to sublease any portion of the Property, the Project, or Tenant Improvements under the terms and conditions of a sublease negotiated and entered into solely by Tenant and its subtenant, provided that each subtenant’s use is in accordance with the Project Memorandum signed by Landlord and Tenant and

attached as Exhibit B hereto. Upon any sublease of the Property or any part thereof, Tenant shall include the following provision in the sublease:

Port Ground Lease. Sublessee understands, acknowledges, and agrees that Sublessor's right to the real property on which the Premises is located is pursuant to a Ground Lease between Sublessor and the Port of Camas-Washougal, a copy of which is attached as Exhibit \_\_ hereto. Sublessee understands, acknowledges, and agrees that it shall be bound by all provisions in the Ground Lease to which Sublessor is subject, including but not limited to environmental provisions, and any limitation on use of the property. Sublessee acknowledges that it has had an opportunity to review the Ground Lease in its entirety and takes no exceptions to any provisions therein.

Tenant may redact any financial or proprietary terms contained in the Lease that is attached to the sublease as an exhibit. In addition, Tenant shall require subtenant to obtain and keep in force at all times during the term of the Sublease insurance in the types and amounts not less than those required by the Ground Lease, and shall require that such insurance name the Port of Camas-Washougal as an additional insured to the same extent as required by the Ground Lease.

**8.2 Assignment.** Tenant shall not assign or otherwise transfer any interest in this Lease, the Property, the Project, or any Tenant Improvement, or any of its rights or obligations under this Lease without the prior written consent of Landlord, exercised in Landlord's sole and absolute discretion, except as otherwise expressly provided in this Section 8.2. If Tenant or any successor in interest of Tenant is a corporation, limited liability company, partnership, or other form of entity, a sale or other transfer of any interest in Tenant that individually or together with other transfers results in the transfer of a controlling ownership interest in such entity or managerial control of such entity shall be considered an assignment hereunder. In connection with any assignment (other than the granting of a security interest to a Leasehold Mortgagee), the assignee shall enter into an assumption agreement pursuant to which it assumes all of the duties and obligations of Tenant under this Lease with respect to the portion of the interest being assigned. Upon any assignment or other transfer, Tenant will remain responsible for the performance of all terms and conditions of this Lease unless Landlord agrees to release Tenant upon such assignment or other transfer, in Landlord's sole and absolute discretion. Tenant shall pay Landlord's reasonable, out-of-pocket attorneys' fees and costs incurred in connection with any assignment by Tenant.

**8.2.1 Assignments Not Requiring Landlord Consent.** Landlord's prior written consent shall not be required in the case of (i) a sublease pursuant to Section 8.1 of this Lease, or (ii) an assignment to a Leasehold Mortgagee for security purposes pursuant to Section 10 of this Lease, or (iii) an assignment to a Tenant Affiliate. For purposes of Section 8 of this Lease, a "Tenant Affiliate" is any entity (a) that is wholly owned by Tenant, or (b) over which Roy Kim (or such person replacing Roy Kim under Section 8.2.3) has managerial control.

**8.2.2 Assignments After Project Completed.** After the Project is complete and a Certificate of Occupancy is granted for all parts of the Project, Tenant may assign its interest in this Lease to any third party subject to Landlord's prior written consent, which consent will not be unreasonably withheld; and in general, Landlord will not withhold consent if Tenant demonstrates that the proposed assignee has a successful track record managing similar projects, and has sufficient financial capacity to successfully manage the Project, and has sufficient experience and skill to successfully manage the Project.

**8.2.3 Special Rule Regarding Managerial Control During Term of Master Leasing Agreement.** At the Effective Date of this Lease, Roy Kim has managerial control of

Tenant. If during the term of the Master Leasing Agreement Roy Kim is unable or unwilling to maintain or in fact does not maintain such control, within thirty (30) days of such occurrence, Tenant shall propose to Landlord an individual with sufficient skill and experience to have such control for purposes of this Lease, who shall be the same person as has managerial control of Developer under the Master Leasing Agreement unless otherwise agreed by Landlord. Landlord shall provide its consent to the newly identified individual within fourteen (14) days, which consent shall not be unreasonably withheld. If Landlord reasonably withholds consent, Tenant may propose a different individual under the same terms. If Landlord does not consent to a new individual to have control under this Lease within ninety days of notice of Roy Kim's inability, unwillingness, or lack of such control, the Parties shall follow the mediation and arbitration provisions under Section 12 of this Lease to obtain a determination of whether either individual proposed by Tenant has sufficient skill and experience to have control for purposes of this Lease.

**8.2.4 Additional Provisions for Certain Assignments.** In addition to the foregoing, any assignment (other than the granting of a security interest to a Leasehold Mortgagee) shall be subject to the following conditions: No proposed assignee nor any principal or affiliate thereof (a) is a party who has materially defaulted beyond applicable notice and cure periods under any agreement with or for the benefit of the Port of Camas-Washougal or with whom the Port of Camas-Washougal has had any legal dispute in the past 10 years that has not been resolved to the Landlord's reasonable satisfaction, or (b) is a Prohibited Party (as defined below).

**8.2.5 Additional Provision Applicable to All Assignments.** Notwithstanding anything to the contrary, no Leasehold Mortgagee or other party shall be permitted to acquire Tenant's interests under this Lease, whether in connection with an assignment, or the exercise by Leasehold Mortgagee of its rights and remedies under any Leasehold Mortgage, or otherwise, in the event such party or any person or entity that directly or indirectly owns or controls such party is (a) identified on the OFAC List (as hereinafter defined), or (b) a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, rule, regulation or Executive Order of the President of the United States, (in either such case, a "Prohibited Party"). The term "OFAC List" shall mean the list of specially designated nationals and blocked persons and blocked countries subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any law, rule, regulation or Executive Order of the President of the United States, including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States.

**8.3 Other Transfers; Notice of all Transfers.** Except as expressly permitted in this Section 8, Tenant shall not assign or otherwise transfer any interest in this Lease or the Property without the prior written consent of Landlord, in its sole and absolute discretion. Tenant shall give Landlord thirty (30) days prior written notice of any assignment or other transfer of any interest in this Lease or the Property, or any transfer of any interest in Tenant that individually or together with other transfers results in the transfer of a controlling ownership interest in or managerial control of Tenant (unless Section 8.2.3 of this Lease applies), regardless whether or not Landlord consent is required with respect to such assignment or transfer.

**DEFAULTS; REMEDIES**

**9.1 Tenant Default.** The occurrence of any one or more of the following events shall be deemed a “Default” by Tenant under this Lease:

**9.1.1 Default in Rent or Other Monetary Obligation.** A non-Force Majeure Default in the payment of any Rent or any other monetary obligation for a period of thirty (30) days following receipt of written notice from Landlord that such payment is past due, provided, however, that if such default cannot with due diligence be cured within thirty (30) days after receipt by Tenant of such written notice, then the time within which to remedy that default shall be extended for such period as may be reasonably necessary to complete the cure with due diligence, provided that Tenant submits a written explanation to Landlord within thirty (30) days after receipt of notice of default of the reasons why the default cannot with due diligence be cured within thirty (30) days after receipt of such notice, and the actions to be taken and the time reasonably required to cure the default, Tenant promptly commences and continuously and diligently prosecutes the cure to completion, and such period shall not exceed a total of one hundred eighty (180) days without Landlord’s written consent which shall not be unreasonably withheld; or

**9.1.2 Default in Other Covenants.** A non-Force Majeure Default in the performance of any other covenant or agreement on the part of Tenant to be performed hereunder (other than the payment of Rent or other monetary obligation), or violation of any provision of this Lease, if such default continues for a period of sixty (60) days following receipt of written notice from Landlord, provided, however, that if such default or failure cannot with due diligence be cured within sixty (60) days after receipt by Tenant of such written notice, then the time within which to remedy that default or failure shall be extended for such period as may be reasonably necessary to complete the cure with due diligence, provided that Tenant provides a written explanation within sixty (60) days after receipt of notice of default of the reasons why the default cannot with due diligence be cured within sixty (60) days after receipt of such notice, and the actions to be taken and the time reasonably required to cure the default, Tenant promptly commences and continuously and diligently prosecutes the cure to completion, and such period shall not exceed a total of one hundred eighty (180) days without Landlord’s written consent which shall not be unreasonably withheld; or

**9.1.3 Bankruptcy.** Tenant’s (i) willful making of a general assignment for the benefit of creditors, (ii) filing of a voluntary petition in bankruptcy or under any bankruptcy or insolvency law, or being adjudicated a bankrupt or insolvent by any court, which is not dismissed or stayed within sixty (60) days after such filing, (iii) filing of a petition for reorganization or an arrangement under the Federal Bankruptcy Code or any state insolvency act, which is not dismissed or stayed within sixty (60) days after such filing, or (iv) suffering of the appointment of a receiver or trustee for all or a substantial portion of its property in any proceeding other than a bankruptcy proceeding, which is not vacated or stayed within sixty (60) days thereafter.

**9.2 Landlord’s Remedies.** Upon the occurrence of an event of Default that is not cured within the applicable cure period, subject to the provisions of Sections 9.2.6, 9.2.7 and 10 below, 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.

- 9.2.1 Termination.** Landlord may terminate this Lease and Tenant's right to possession of the Property upon thirty (30) days written notice, without affecting Landlord's right to recover damages.
- 9.2.2 Re-Entry.** Landlord may re-enter the Property either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Property, to the end that Landlord may have, hold, and enjoy the Property. RE-ENTRY OR TAKING POSSESSION OF THE PROPERTY 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.
- 9.2.3 Reletting.** Following such termination or re-entry, Landlord may relet the whole or any part of the Property from time to time, either in the name of Landlord or otherwise, to such tenants, for such terms ending before, on, or after the expiration date of the Lease Term, at such rentals and on such other conditions as Landlord may determine to be appropriate.
- 9.2.4 Damages.** If the Landlord terminates this Lease and Tenant's rights of possession to the Property, or re-enters the Property and repossesses the same, Landlord has the right to recover: (i) the amount of the unpaid Base Rent which had been earned at the time of termination or re-entry; (ii) the net present value of the amount by which the unpaid Base Rent that would have been earned after termination for the balance of the term exceeds the amount of such loss that Tenant proves could be reasonably avoided; and (iii) any reasonable costs of recovering possession of the Property, and expenses of reletting, including necessary repair of the Property.
- 9.2.5 Special Remedy – Rescission Option.** If Tenant fails to commence construction of the Project by the Construction Start Date as set forth in the Project Schedule, then Landlord shall have the right and option to cancel this Lease (the "Rescission Option"), provided that Landlord's Rescission Option under this Section shall terminate if Tenant commences construction within ninety (90) days of Landlord's written notice to Tenant exercising the Rescission Option. If Landlord's Rescission Option is timely exercised, the Lease shall be canceled effective on the date stated in Landlord's notice to Tenant exercising the Rescission Option. Any rent prepaid by Tenant for periods after the effective date of the cancellation shall be refunded to Tenant.
- 9.2.6 Cure and Limitation on Damages.** After the expiration of any applicable notice and cure periods, Landlord shall have the right (but not the obligation) to cure any default by Tenant under this Lease, and, if Landlord chooses to do so, recover on demand all reasonable costs and expenses incurred by Landlord in curing any such default, including, without limitation, reasonable attorneys' fees and interest on the costs and expenses so incurred at the rate of 12% per year as additional rent; provided, however, that Landlord's right to cure shall be limited to defaults creating circumstances reasonably believed by Landlord to present an emergency, or presenting risks to safety, human health, or the environment, or presenting risks to Landlord's property interests.
- 9.2.7 Limitations on Landlord's Remedies.** Notwithstanding anything to the contrary in this Lease, Landlord shall not exercise any remedy that would dispossess any subtenant of the Property or Tenant, without the prior written consent of the Tenant, provided that such subtenant is not in default beyond any applicable notice and cure periods of its sublease, and is in compliance with all requirements of this Lease applicable to such subtenant or cures such non-compliance within any applicable cure period, and provided further that in

such event Landlord may collect rent directly from such subtenant without liability or obligation to Tenant or any other party.

- 9.3 Landlord's Default.** Landlord shall be in default of this Lease if Landlord fails to perform any obligation to be performed by Landlord under this Lease, if such default continues for a period of sixty (60) days following receipt of written notice from Tenant, provided, however, that if such default or failure cannot with due diligence be cured within sixty (60) days after receipt by Landlord of such written notice, then the time within which to remedy that default or failure shall be extended for such period as may be reasonably necessary to complete the cure with due diligence, provided that Landlord provides a written explanation within sixty (60) days after receipt of notice of default of the reasons why the default cannot with due diligence be cured within sixty (60) days after receipt of such notice, and the actions to be taken and the time reasonably required to cure the default; and Landlord promptly commences and continuously and diligently prosecutes the cure to completion, and such period shall not exceed a total of one hundred eighty (180) days without Tenant's written consent which shall not be unreasonably withheld. In the event of breach or default of this Lease by Landlord, Tenant shall have all rights available to it hereunder or at law or in equity. In addition, if Landlord shall fail to cure any such default in a timely manner, then and in any such event, Tenant shall have the right (but not the obligation) to cure such default on behalf of Landlord and any reasonable costs and expenses actually and reasonably incurred and paid by Tenant in connection therewith shall be reimbursed by Landlord to Tenant not later than thirty (30) days after written demand therefor is made by Tenant of Landlord. If Landlord fails to reimburse Tenant within such 30-day period of time, for any amounts that Landlord must reimburse Tenant in accordance with the terms of this Section and such failure to reimburse does not involve a good faith contest by Landlord of the amount or validity of the reimbursement obligation, Tenant may offset the unreimbursed amount owed by Landlord against Base Rent or any other sums due Landlord pursuant to this Lease. Any request for reimbursement made by Tenant of Landlord in accordance with this Section shall be accompanied by copies of invoices and other evidence showing Tenant to have actually incurred and paid the costs and expenses for which reimbursement is sought.
- 9.4 Remedies Cumulative.** Except as otherwise expressly stated in this Lease, each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant 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 shall 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.
- 9.5 No Waiver.** No failure by Landlord or Tenant to insist on the strict performance of any provision of this Lease or to exercise any right or remedy consequent upon a Default hereunder shall constitute a waiver of any such Default or of any then existing or subsequent Default of the same type. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect.

## 10 FINANCING

- 10.1 Tenant's Financing.** Landlord agrees and acknowledges that Tenant shall have the right and power, but not the obligation, to finance construction, alteration or removal of the Project or Tenant Improvements and otherwise obtain interim, take-out or permanent financing, or a variety of possible financing alternatives (including, without limitation, bond financing) for the purpose of repaying any construction financing, holding and operating the Project or Tenant Improvements and for other purposes related to the Property (collectively, the "Financing"). Any such Financing may be evidenced by one or more promissory notes and may be secured by one or more mortgages, deeds of trust or other security instruments (the "Leasehold Mortgage"), subject to all of the terms and conditions set forth in this Section 10. Landlord agrees to cooperate in good faith and to use



reasonable efforts to cooperate with and accommodate Tenant's Financing, subject to all of the terms and conditions set forth in this Section 10.

**10.2 Leasehold Mortgages.** Tenant may, upon request to Landlord and Landlord's approval which shall not be unreasonably withheld, conditioned, or delayed beyond sixty (60) days from such request, encumber Tenant's interest in the leasehold estate hereby created and Tenant's interest in the Project or Tenant Improvements, by a Leasehold Mortgage to a Lender to the extent such Lender is providing Financing permitted under Section 10.1 of this Lease, upon condition that all rights acquired under such Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and all rights and interests of Landlord. In no event shall Landlord's fee interest in the Property or Landlord's interest as Landlord in the Lease be subordinate to or encumbered by any Leasehold Mortgage. Any and all Leasehold Mortgages shall not extend beyond the Term of this Lease (including any exercised Extension Period provided in this Lease, which may be exercised by Tenant at any time prior to the Extension Exercise Notice deadline), and shall in all events be terminated and released no later than the earlier of (i) the expiration of this Lease Term (including any exercised Extension Period provided in this Lease, which may be exercised by Tenant at any time prior to the Extension Exercise Notice deadline), or (ii) any earlier termination of this Lease, subject to the rights of a Leasehold Mortgagee (as defined below) under Section 10 of this Lease. The execution and delivery of any Leasehold Mortgage shall not be deemed to constitute a transfer or assignment of this Lease nor shall the holder of any Leasehold Mortgage ("Leasehold Mortgagee"), as such, be deemed a transferee or assignee of this Lease so as to require such Leasehold Mortgagee to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. Landlord and Tenant agree to the following:

**10.2.1 Notice.** If Tenant or any Leasehold Mortgagee shall have delivered to Landlord prior written notice of the address of any Leasehold Mortgagee, Landlord shall mail to such Leasehold Mortgagee a copy of any notice from Landlord to Tenant under this Lease at the time of giving such notice to Tenant, and shall give to such Leasehold Mortgagee notice of any rejection of this Lease by Tenant's trustee in bankruptcy or by Tenant as debtor in possession. Landlord shall notify any Leasehold Mortgagee of Landlord's intent to terminate in the event of any Default (i) at least thirty (30) days in advance of the proposed effective date of such termination if the nature of the Default is the failure to pay a sum of money, or (ii) at least sixty (60) days in advance of the proposed effective date of such termination if such event of Default is not the failure to pay a sum of money.

**10.2.2 Right to Cure.** In the event of any Default by Tenant under the provisions of this Lease, any Leasehold Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the date that Landlord has served notice of such default upon Leasehold Mortgagee. Landlord shall accept such performance on the part of such Leasehold Mortgagee as though the same had been done or performed by Tenant, and for such purpose Landlord and Tenant hereby authorize such Leasehold Mortgagee to enter upon the Property and to exercise any of its rights and powers under this Lease and, subject to the provisions of this Lease, under the Leasehold Mortgage. In addition, in those instances which reasonably require any Leasehold Mortgagee to be in possession of the Property to cure any default by Tenant, the time therein allowed any Leasehold Mortgagee to cure any default by Tenant shall be deemed extended to include the reasonable period of time required by any Leasehold Mortgagee to obtain such possession with due diligence and in accordance with this Lease and within the time set forth elsewhere in this Lease or in this Section 10, whichever is later, and in those instances in which any Leasehold Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the time herein allowed any Leasehold Mortgagee to prosecute such foreclosure or other proceeding shall be extended for the

period of such prohibition, provided that, in either such instance, (i) such Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligation of Tenant under this Lease which is not cured within the applicable cure period hereunder, and shall continue to make payments of Base Rent and any other monetary payments to Landlord in accordance with the terms and within the time frames set forth in this Lease, and (ii) such Leasehold Mortgagee shall provide Landlord a written explanation within sixty (60) days after receipt of notice of default of the reasons why the default cannot with due diligence be cured within sixty (60) days after receipt of such notice, and the actions to be taken and the time reasonably required to cure the default, and thereafter promptly commence and continuously and diligently prosecute the cure to completion.

**10.2.3 No Termination During Foreclosure or Cure.** In the event of any non-monetary default by Tenant hereunder, Landlord shall not terminate or take any action to effect a termination of this Lease or reenter, take possession of or relet the Property or similarly enforce performance of this Lease as permitted by Section 9, so long as (i) prior to the expiration of the applicable grace period specified in Section 9, a Leasehold Mortgagee gives Landlord written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Tenant by foreclosure or otherwise with the intent to cure such default, and immediately commences and then proceeds with all due diligence and in good faith to do so, whether by performance on behalf of Tenant of its obligations under this Lease, or by entry on the Property by foreclosure or otherwise with the intent to cure such default; and (ii) during the period the Leasehold Mortgagee is proceeding to cure such non-monetary default there occurs no default in the payment of Rent or other monetary obligations due and payable by Tenant under this Lease.

**10.2.4 New Lease.** In the event Tenant's interest under this Lease is terminated by Landlord for any reason including, without limitation, Tenant's default or rejection of this Lease by a trustee in bankruptcy or a debtor in possession (and provided an unsatisfied Leasehold Mortgage stands of record) or in the event Tenant's interest under this Lease shall be sold, assigned or transferred pursuant to the exercise of any remedy of any Leasehold Mortgagee, or pursuant to judicial or other proceedings, Landlord shall immediately execute and deliver a new lease of the Property to such Leasehold Mortgagee or its nominee, purchaser, assignee or transferee, upon written request by such Leasehold Mortgagee or such nominee, purchaser, assignee or transferee given within 60 days after such sale, assignment or transfer for the remainder of the Lease Term with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as were contained herein and with priority equal to that hereof; provided that such Leasehold Mortgagee or such nominee, purchaser, assignee or transferee promptly cures any existing defaults susceptible to cure by such person. If more than one Leasehold Mortgagee requests a new lease within the 60-day period described above, the requesting Leasehold Mortgagee holding the most senior Leasehold Mortgage shall prevail, and such Leasehold Mortgagee shall cure any existing defaults susceptible to cure by such senior Leasehold Mortgagee. If a new lease is entered into as provided in this Section 10.2.4, the ownership of the Improvements to the extent owned by Tenant shall be deemed to have been transferred directly to such successor of Tenant's interest in this Lease. The Leasehold Mortgagee or such nominee, purchaser, assignee, or transferee obtaining the new lease shall pay Landlord's reasonable attorneys' fees and costs incurred in connection with such new lease.

**10.2.5 No Conflict.** In the event of a default under a Leasehold Mortgage, such Leasehold Mortgagee may exercise with respect to the Property any right, power or remedy under the Leasehold Mortgage which is not in conflict with the provisions of this Lease.

**10.2.6 Transfer After Foreclosure.** This Lease may be assigned, without the consent of Landlord, to any Leasehold Mortgagee or an affiliate, assignee, third-party nominee or

designee, pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Lease to such Leasehold Mortgagee (or its affiliate, assignee, third-party nominee or designee) in lieu thereof, and may be thereafter assigned by such Leasehold Mortgagee (or its affiliate, assignee, third-party nominee or designee) subject to the provisions of Section 8 hereof, and any Leasehold Mortgagee shall be liable to perform the obligations herein imposed on Tenant only for and during the period it is in possession or ownership or control of the leasehold estate created hereby. The Leasehold Mortgagee or its affiliate, assignee, third-party nominee or designee, or further assignee, shall pay Landlord's reasonable attorneys' fees and costs incurred in connection with any assignment by such Leasehold Mortgagee or its affiliate, assignee, or third-party nominee or designee.

- 10.2.7 No Surrender or Modification Binding.** Notwithstanding anything to the contrary herein, no cancellation, surrender (other than surrender at the end of the Lease Term or on termination by Landlord pursuant to this Lease), or modification of this Lease shall be valid or effective without the prior written consent of any Leasehold Mortgagee. It shall be the responsibility of Tenant to obtain any required consent of a Leasehold Mortgagee.
- 10.2.8 Assignment of Sublease.** Landlord consents to a provision in any Leasehold Mortgages or otherwise for an assignment of rents from subleases of the Property to the Leasehold Mortgagee, effective upon any default under such Leasehold Mortgage, and to any customary "lock box" payment arrangement that may be applicable, subject to Landlord's senior right to collect rents (not to exceed an amount equal to any delinquent Base Rent, Property Taxes, and other charges due under this Lease) from subleases of the Property following a Tenant Default.
- 10.2.9 Multiple Leasehold Mortgages.** If at any time there shall be more than one Leasehold Mortgage, the holder of the Leasehold Mortgage prior in lien shall be vested with the rights under Section 10 hereof (other than the provisions for receipt of notices as provided herein, and other than as provided in Section 10.2.4) to the exclusion of the holder of any junior Leasehold Mortgage.
- 10.2.10 Consent of Landlord Not Required.** The foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in any Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Tenant to any Leasehold Mortgagee or its affiliate through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not breach any provision of or constitute a Default under this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize any Leasehold Mortgagee or such affiliate, or any purchaser at such foreclosure sale, as Tenant hereunder, subject to sworn statement from any such party that such party satisfies the provisions of Sections 8.2.2, 8.2.4, and 8.2.5. The Leasehold Mortgagee or its affiliate or any purchaser at such foreclosure sale shall pay Landlord's reasonable attorneys' fees and costs incurred in connection with any assignment by such Leasehold Mortgagee or its affiliate.
- 10.2.11 Cooperation.** Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any reasonable provision which may be requested by any proposed Leasehold Mortgagee, or may otherwise be reasonably necessary, to implement the provisions of this Section 10; provided, however, that any such amendment shall not in any way affect the term hereby demised nor the Rent due hereunder nor affect adversely in any other material respect any rights of Landlord under this Lease. In particular, Landlord and/or its lender shall be required to execute any reasonable non-disturbance agreement requested by any Leasehold Mortgagee to ensure that the Leasehold Mortgagee's interest in the leasehold estate shall not be disturbed by the Landlord and/or any of Landlord's lenders on the Land (if any) in the event of a foreclosure action.

**10.3 Landlord Financing.** Landlord represents and warrants that the Property is not, as of the Effective Date, encumbered by any mortgage, deed of trust or other lien securing indebtedness of Landlord (any such, a “Mortgage”) having priority over the leasehold interest of Tenant hereunder. With respect to each Mortgage hereinafter entered into during the Lease Term, Landlord agrees, upon request of Tenant, to request that the holder of such Mortgage enter into a subordination, nondisturbance and attornment agreement in form reasonably acceptable to Tenant (“SNDA”) with Tenant, and which shall specifically provide that notwithstanding any such subordination of this Lease, no foreclosure of any Mortgage shall terminate or otherwise affect this Lease. In the event the holder of a future Mortgage refuses to enter into an SNDA, then this Lease shall not be subordinated to such Mortgage unless and until such time as the holder of such Mortgage enters into an SNDA. As used in this Section, whenever the context allows, the words “holder of a Mortgage” (or words of similar import) also include a purchaser of the Property at a foreclosure sale.

**11 NO MERGER OF TITLE.** There shall be no merger of the leasehold estate created by this Lease with the fee estate in the Land by reason of the fact that the same person may own or hold (a) the leasehold estate created by this Lease or any interest in such leasehold estate, and (b) any interest in such fee estate; and no such merger shall occur unless and until all persons having any interest in (i) the leasehold estate created by this Lease, and (ii) the fee estate in the Land, shall join in a written instrument effecting such merger and shall duly record the same.

## **12 DISPUTE RESOLUTION**

**12.1 General.** In the event of any dispute, a Party shall notify the other Party of the dispute with as much detail as possible. The Parties shall use good faith efforts to resolve the dispute within thirty (30) days after receipt of a dispute notice. If the Parties are unable to resolve the dispute, or agree upon the appropriate corrective action to be taken, within such thirty (30) days, then either Party may pursue any course of action available to them. Pending resolution of the dispute, both Parties shall continue without delay to carry out all of their respective responsibilities under this Lease. Except as specifically provided herein, any dispute, claim or controversy arising out of or relating to this Lease or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of any agreement to arbitrate, shall first be subject to mediation, and if necessary and subject to the arbitration provisions of this Lease, be determined by arbitration in Washougal, Washington before one arbitrator. The arbitration shall be administered by JAMS, or other appropriate arbitration service mutually agreed to by the Parties, pursuant to its Comprehensive Arbitration Rules and Procedures, Streamlined Arbitrations Rules and Procedures, or other appropriate procedures mutually agreed to by the Parties. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the Parties from seeking provisional remedies in aid of arbitration from the Clark County Superior Court.

**12.2 Mediation.** Either party may commence mediation by providing to JAMS (or other arbitration service mutually agreed to by the Parties) and the other Party, a written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties will cooperate with JAMS (or other arbitration service mutually agreed to by the Parties) and with one another in selecting a mediator from the JAMS (or other arbitration service mutually agreed to by the Parties) panel of neutrals with experience in development projects of the magnitude contemplated in this Lease and in scheduling the mediation proceedings. The Parties agree that they will participate in the mediation in good faith and that they will share equally in its costs. At any time following the initial mediation session or at any time following forty-five (45) days from the date of filing the written request for mediation, whichever occurs first (“Earliest Initiation Date”), either Party may initiate arbitration with respect to those matters submitted to mediation expressly included in the list of matters subject to arbitration under this Lease or otherwise agreed to by the Parties, by filing a written demand for arbitration. The mediation may continue after the commencement of arbitration if the Parties so desire. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until fifteen (15) days after the Earliest Initiation Date. The Parties will take such action, if any, required to effectuate such tolling.

**12.3 Arbitration Issues.** Tenant and Landlord expressly agree to resolve the following disputes through expedited arbitration in accordance with the rules of JAMS (or other arbitration service mutually agreed to by the parties) governing expedited arbitration then in effect, except as such rules may be expressly modified by procedures set forth in this Section 12 or as otherwise agreed to by the Parties. This arbitration procedure is expressly limited to the determination of the appropriate method to cure a default under Section 2.2(i) if the parties cannot otherwise reach agreement, the allocation of an Award per Section 7.5, or whether a determination was reasonable under Section 12.6, and no other matter shall be subject to arbitration unless the parties agree in writing.

**12.4 Initiation of Arbitration; Selection of Arbitrator(s).** Landlord or Tenant shall initiate arbitration hereunder by written notice to the other party within 90 days following such party's receipt of the decision or determination giving rise to the dispute, and any party's failure to so initiate arbitration within said 90-day period shall constitute such party's irrevocable acceptance of such decision or determination. The date arbitration is initiated by either party hereunder by the giving of such notice is herein referred to as the "Arbitration Initiation Date." Within ten (10) days after the Arbitration Initiation Date, Tenant and Landlord shall attempt to agree upon a single arbitrator to resolve the dispute (the "Arbitrator"). The Arbitrator shall have professional qualifications and experience related to the issue(s) to be arbitrated and experience in development projects of the magnitude contemplated in this Lease, and shall be selected from a panel provided by the Seattle, Tacoma, Vancouver, or Portland office of JAMS (or other arbitration service mutually agreed to by the Parties). If the parties cannot agree upon a single arbitrator to act as the Arbitrator within ten (10) days after the Arbitration Initiation Date, then the arbitration hereunder shall be conducted by a panel of three (3) arbitrators (the "Arbitration Panel"), who shall be selected by having each party, within three (3) business days thereafter, appoint an arbitrator having the qualifications and experience specified above. If either party fails to appoint such an arbitrator, the single arbitrator appointed by the other party shall constitute the Arbitrator hereunder. If both parties appoint arbitrators, then within ten (10) days following such appointments, the two (2) arbitrators so selected shall agree upon a third arbitrator also having the qualifications and experience specified above. If within such time period the two arbitrators shall not agree upon a third arbitrator, Tenant or Landlord shall apply to the Seattle, Tacoma, Vancouver, or Portland office of JAMS (or other arbitration service mutually agreed to by the Parties) for the selection of a third arbitrator having the qualifications and experience specified above. The date on which the Arbitrator or the final member of the Arbitration Panel is selected or appointed is herein referred to as the "Selection Date."

**12.5 Arbitration Procedure.**

**12.5.1** The Arbitrator or the Arbitration Panel, as the case may be (sometimes referred to herein, collectively, as the "Arbitrators"), shall set the matter for hearing within thirty (30) days after the Selection Date, and shall resolve all matters that are the subject of the arbitration, and report a statement of decision upon them, if possible, within forty-five (45) days following the Selection Date. The parties shall have the right to conduct discovery in connection with the arbitration proceeding, subject to approval of the Arbitrators. The Arbitrators shall issue a single written decision at the close of the arbitration proceeding which shall dispose of all of the issues that are the subject of the arbitration, and an order or judgment upon that decision may be obtained by either Landlord or Tenant in a court of competent jurisdiction.

**12.5.2** The issues to be resolved by the Arbitrators shall be limited solely to the factual matters described in Section 12.3 above, and the Arbitrators shall have no power or authority to do any of the following, which will, if necessary, be separately determined by a court of competent jurisdiction: (a) reform this Lease; (b) award equitable relief, including injunction or specific performance; or (c) award damages, including punitive, exemplary, consequential, special, indirect, or incidental damages.

**12.5.3** Unless otherwise agreed by Tenant and Landlord, the decision of the Arbitrators shall be rendered not later than fifteen (15) days following the completion of the arbitration hearing.

The cost of the arbitration shall be borne equally by the parties pending the Arbitrators' decision. Unless otherwise allocated by the Arbitrators, the prevailing party shall be entitled to recover from the losing party all Legal Costs incurred by the prevailing party in connection with the arbitration, as more particularly described in Section 15 below.

**12.5.4** Judgment may be had on the decision and award of the Arbitrators so rendered in any court of competent jurisdiction, and to the extent that the laws of the State of Washington impose requirements different than those of JAMS (or other arbitration service mutually agreed to by the Parties) in order for the decision of the Arbitrators to be enforceable in the courts of the State of Washington, such requirements shall be complied with in the arbitration.

**12.6 Exclusive Remedy For Reasonableness Determinations.** Notwithstanding anything in this Lease or otherwise to the contrary, if a Party is entitled to reasonably withhold its consent, the sole and exclusive remedy where such consent was unreasonably withheld or is the basis of an allegation of default, is to bring a declaratory judgment action in Clark County Superior Court or arbitration to determine that the consent should have been provided under a reasonableness determination. Such action shall be determined by a judge alone or arbitrator and such determination shall be binding on all arbitrators or courts of competent jurisdiction. Award of damages or other remedies are permitted, and the prevailing party shall be awarded its attorneys' fees in the action as adjudged by the judge or arbitrator.

**13 GUARANTY.** All obligations of Tenant under this Lease are unconditionally guaranteed by RKM Development, Inc., an Oregon corporation.

**14 NOTICES.** All notices required or permitted under this Lease shall be in writing and shall be delivered to the Parties at the following addresses:

To Landlord:

Attn: Chief Executive Officer  
Port of Camas-Washougal  
24 South 'A' Street  
Washougal, WA 98671

To Landlord's Counsel:

Attn: Carolyn A. Lake  
Goodstein Law Group PLLC  
501 South "G" Street  
Tacoma, WA 98405

To Tenant:

Attn: Roy Kim  
RKM Development, Inc.  
15160 NW Laidlaw Road, Suite 108  
Portland, OR 97229  
Email: roy@centralbethany.com

To Tenant's Counsel

Attn: Jennifer Bragar  
Tomasi Salyer Martin  
121 SW Morrison Street, Suite 1850  
Portland, OR 97204  
Email: jbragar@tomasilegal.com

All notices shall be either (i) sent by certified mail, return receipt requested, postage and fees prepaid, in which case notice shall be effective upon receipt or refusal of the addressee to accept delivery thereof; (ii) sent by a nationally recognized overnight courier, in which case notice shall be effective when actually delivered or refusal of the addressee to accept delivery thereof pursuant to the records of such courier; or (iii) sent by email transmission to the Party and its counsel, provided that an original of said transmission shall be sent to the addressee by some other method permitted under this Section on the same day as such transmission, in which case notice shall be effective upon confirmation of receipt of the email by written communication or email other than an automated response, or receipt or refusal of the addressee to accept delivery thereof by such other method, whichever occurs first; or (iv) personally delivered, in which case notice shall be effective when actually delivered. The above addresses may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

15 MISCELLANEOUS PROVISIONS.

- 15.1 **Severability.** A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.
- 15.2 **Interpretation.** The captions of the Sections of this Lease are solely for convenience of reference, to assist the parties in reading this Lease and do not in any way govern the intent or construction of this Lease. Any reference to a Section shall be deemed to include a reference to all subsections thereof. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular, and the masculine, feminine and neuter genders shall each include the other. Each Party was represented by counsel and this Lease was negotiated and drafted at arms' length so that any rule of construction to the effect that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Lease. The provisions of this Lease shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Lease.
- 15.3 **Successors and Assigns.** Without limiting the provisions of Section 8 of this Lease, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors and assigns, and wherever a reference in this Lease is made to either of the parties hereto such reference shall be deemed to include, wherever applicable, also a reference to the heirs, administrators, executors, successors and assigns of such party, as if in every case so expressed.
- 15.4 **Governing Law; Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of Washington, without regard to principles regarding choice of law. All actions and proceedings related to this Lease, including but not limited to arbitrations, lawsuits, bankruptcy proceedings, and appeals, shall be filed and held in Clark County, Washington, Clark County Superior Court in Clark County, Washington, or in Federal Bankruptcy Court for the Western District of Washington in Tacoma, Washington, as appropriate, and the Parties agree to the jurisdiction of Clark County Superior Court and Federal Bankruptcy Court for the Western District of Washington in Tacoma, Washington.
- 15.5 **Entire Agreement.** This Lease constitutes the entire integrated agreement between the parties relative to the subject matter hereof, and shall supersede any prior agreement or understanding, if any, whether written or oral of the Parties, and may be amended only by written instrument signed by both Landlord and Tenant.
- 15.6 **No Oral Modification; Waiver.** This Lease may be changed, waived or discharged only by an instrument in writing signed by the party against which enforcement of such change, waiver or discharge is sought. No waiver by any Party of any provision of this Lease or any breach thereof shall be of any force or effect unless in writing by the Party granting the waiver; and no such waiver shall be construed to be a continuing waiver. The waiver by one Party of the performance of any covenant, condition, or promise shall not invalidate this Lease nor shall it be considered a waiver by such Party of any other covenant, condition, or promise hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act, except to the extent the waiver affects a subsequent time for performing another act which shall also be waived by the waiver of the first act in the sequence, to the same extent or period of time as the first act. The waiver by either or both Parties of the time for performing any act shall not constitute waiver of the time for performing an identical act to be performed at a later time.
- 15.7 **Counterparts.** This instrument may be executed in two or more counterparts, each of which when so executed shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

- 15.8 No Partnership; No Fiduciary Duties.** Nothing contained in this Lease shall be deemed or construed to create the relationship of principal or agent or of partnership or of joint venture or of any association between Landlord and Tenant by which one party is or may be responsible for the acts or omissions of the other, and neither the method of computation of Rent nor any other provisions contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord/tenant. Nothing contained in this Lease shall be deemed or construed to create any fiduciary duties between Landlord and Tenant, and neither Landlord nor Tenant shall have any fiduciary duties to the other.
- 15.9 Recitals and Exhibits.** The Recitals and all Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.
- 15.10 No Offer.** This Lease shall not be enforceable as a contract between Landlord and Tenant until it has been duly executed and delivered by both Landlord and Tenant.
- 15.11 Recordation of Memorandum of Lease.** Landlord and Tenant each hereby agree to execute a memorandum of Lease in the form attached hereto as **Exhibit D** (the “**Memorandum of Lease**”) which shall, at Tenant’s option, be recorded in the Office of the Recorder of Clark County, Washington. Any transfer taxes or conveyance fees or recording fees payable upon recordation of the Memorandum of Lease will be payable by the Tenant.
- 15.12 Attorneys’ Fees.** Should either party hereto institute any action or proceeding in court or other dispute resolution mechanism against the other party, by reason of or alleging the failure of the other party to comply with any or all of its obligations hereunder, whether for declaratory or other relief, and including but not limited to proceedings under the U.S. Bankruptcy Code, then the party that prevails in such action or proceeding shall be entitled, in addition to any other recovery or relief, to its reasonable attorneys’ fees and expenses related thereto (whether at the dispute resolution, administrative, trial or appellate levels) (“**Legal Costs**”). Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys’ fees and costs incurred in enforcing, perfecting and executing such judgment. A party shall be deemed to have prevailed in any such action or proceeding (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. This section shall survive the expiration or any earlier termination of this Lease, and shall survive any acquisition of the Property by Tenant.
- 15.13 Estoppel Certificates.** Each party agrees at any time and from time to time, upon not less than fifteen (15) business days’ prior notice by the other party to execute, acknowledge and deliver to the requesting party a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications that this Lease is in full force and effect as modified and stating the modifications), (b) the dates to which the Rent has been paid, (c) whether or not, to the actual knowledge of the signer of such statement, either party is then in default or may be in default with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease, and, if in default, specifying each such default, and (d) any other information regarding this Lease reasonably requested by the requesting party; it being intended that any such statement delivered pursuant to this Section may be relied upon by the receiving party, the receiving party’s lender or any prospective purchaser of the interest of such party; provided, however that in no event shall either party to this Lease be required, in connection with a request for an estoppel certificate, to accept or agree to any modification of any term or provision of this Lease, or of any of such party’s rights hereunder.
- 15.14 Holding Over.** Tenant shall vacate the Land upon the expiration or termination of this Lease. If Tenant does not vacate the Land upon the expiration or earlier termination of the Lease and remains in possession thereof, either itself or through a subtenant, Tenant’s occupancy of the Land shall be



a "month-to-month" tenancy on the same terms (other than the Term, and other than Rent as provided below) as this Lease. If the holdover is with the written consent of Landlord, then the Rent shall be a continuation of the Rent under this Lease. If the holdover is without the written consent of Landlord, then the Rent shall be 200% of a continuation of the Rent under this Lease.

- 15.15 Force Majeure.** Neither Landlord nor Tenant shall be liable for a failure or delay in the performance of any of its obligations under this Lease, and the period of time for performance shall be extended by the number of days that such performance is actually delayed, due to acts of war, acts of terrorism, insurrection, strikes, lockouts, unavailability of personnel, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, pandemics, quarantine restrictions, or governmental restrictions associated with any of the foregoing, but excluding strikes or lockouts or unavailability of Developer's own employees. Such events are called "Force Majeure". For any Force Majeure event that will cause commencement of construction or Substantial Completion of the Project to be delayed more than sixty (60) days from the dates in the Project Schedule, Developer will inform the Port about the cause and nature of such delay and the progress in achieving such Substantial Completion. The provisions of this section shall not apply to nor operate to excuse a Party from the payment of any amount due to the other Party under this Lease, unless any federal, state, or local law excuses or delays payment of such amount. Any timeline in this Lease shall be extended one (1) day for each one (1) day that a Party is unable to perform due to a Force Majeure.
- 15.16 No Third Party Beneficiaries.** This Lease has no third party beneficiaries. Except as expressly provided in this Lease, nothing in this Lease is intended to confer any rights or remedies under or by reason of this Lease on any person other than the Parties to this Lease and their respective successors and assigns, if any, nor shall any provision give any third party any right of action or subrogation against any Party to this Lease.
- 15.17 Calculation of Time; Time of the Essence.** All periods of time referred to herein, except those that reference business days, shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington. Those periods that reference business days shall not include Saturdays, Sundays, or legal holidays in the State of Washington, and if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next business day. Time is of the essence in all matters under this Lease.
- 15.18 Tenant Authorized to Do Business in the State of Washington.** At all times during the term of this Lease, Tenant shall be authorized to do business in the State of Washington, and shall keep current all such documentation and licenses as are required under Washington State law in order to legally transact business in the State of Washington.
- 15.19 Brokers.** Each party represents and warrants to the other that it has not dealt with any broker, finder or other person with respect to this Lease. In the event of any claim for broker's or finder's fees or commissions in connection with the negotiation, execution or consummation of this Lease or the transactions contemplated hereby, Landlord and Tenant hereby agree to indemnify, protect, defend and hold harmless the other party and its partners, members, managers, affiliates, advisors and their respective officers, employees and representatives from and against any and all losses, liabilities, claims, damages and costs (including court costs and reasonable attorneys' fees) incurred by any of them based upon any statement, representation or agreement made by or alleged to have been made by such party for broker's or finder's fees or commissions.
- 15.20 Conflict with Master Leasing Agreement.** This Lease is entered into pursuant to the Master Leasing Agreement. In the event of any conflict between any provisions of the Master Leasing Agreement and this Lease, the provisions of this Lease shall control.

- 15.21 Non-Waiver of Government Rights.** Subject to the provisions of this Lease, Landlord is not obligating itself or any other agency with respect to any discretionary action relating to the Property or the development, operation, and maintenance of the Project or Tenant Improvements on the Property, including but not limited to any governmental approvals which are or may be required with respect thereto, or any governmental action which may be taken with respect thereto.
- 15.22 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.

**SIGNATURES ARE ON FOLLOWING PAGES**

**SIGNATURE PAGE**  
**Ground Lease**

**LANDLORD:**

**PORT OF CAMAS-WASHOUGAL, WASHINGTON**

a Washington \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of Washington     )  
                                  ) ss  
County of Clark         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the PORT OF CAMAS-WASHOUGAL to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary: \_\_\_\_\_  
Notary Public in and for the State of Washington  
My commission expires on \_\_\_\_\_





**EXHIBIT A**

**LEGAL DESCRIPTION AND DIAGRAM OF PROPERTY**

**ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED \_\_\_\_\_, 2022 BETWEEN  
PORT OF CAMAS-WASHOUGAL, WASHINGTON  
and**

---

See attached legal description and diagram of the Property

**Legal Description and Diagram of Property to be inserted**



**EXHIBIT B**

**PROJECT MEMORANDUM REGARDING THE PROPERTY  
ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED \_\_\_\_\_, 2022 BETWEEN  
PORT OF CAMAS-WASHOUGAL, WASHINGTON  
and**

\_\_\_\_\_

**Project Memorandum to be inserted**



**EXHIBIT C**

**CPI INCREASE**

**ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED \_\_\_\_\_, 2022 BETWEEN  
PORT OF CAMAS-WASHOUGAL, WASHINGTON  
and  
\_\_\_\_\_**

**CPI Increase example to be inserted**

**EXHIBIT D**

**MEMORANDUM OF LEASE**

**ATTACHED TO AND A PART OF THE LEASE AGREEMENT  
DATED \_\_\_\_\_, 2022, BETWEEN  
PORT OF CAMAS-WASHOUGAL, WASHINGTON  
and  
\_\_\_\_\_**

**WHEN RECORDED RETURN TO:**

**MEMORANDUM OF LEASE**

This Memorandum of Lease (“**Memorandum**”), is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the PORT OF CAMAS-WASHOUGAL, a Washington port district (“**Landlord**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Tenant**”).

**RECITALS**

A. Landlord and Tenant entered into an unrecorded Ground Lease dated \_\_\_\_\_ (the “**Lease**”), whereby Landlord leased to Tenant certain land described and shown in **Exhibit A** attached hereto and made a part hereof (the “**Property**”).

B. This Memorandum is being executed and recorded to provide constructive notice of the Lease to third parties and shall not be construed to limit, amend or modify the provisions of the Lease in any respect.

**MEMORANDUM**

1. **LANDLORD.** The name of Landlord is the PORT OF CAMAS-WASHOUGAL, a Washington port district, having its address at 24 South “A” Street, Washougal WA 98671.

2. **TENANT.** The name of Tenant is \_\_\_\_\_, a \_\_\_\_\_ having an address at \_\_\_\_\_.

3. **LEGAL DESCRIPTION.** The Property subject to the Lease is described and shown in **Exhibit A** attached hereto and incorporated herein by this reference.

4. **INITIAL TERM.** The initial term of the Lease is a period commencing on the Effective Date (as that term is defined in the Lease) and expiring, if not canceled, extended (including the Extension Options set forth in the Lease), or terminated pursuant to the provisions of the Lease, Fifty (50) years after the Effective Date.

6. **EXTENSION TERMS.** Tenant has the right and option to extend the term of the Lease for three (3) extension terms of ten (10) years each, subject to the terms and conditions for such extensions set forth in the Lease.

7. **OTHER TERMS.** In addition to the terms referenced herein, the Lease contains numerous other terms, covenants and conditions, and notice is hereby given that reference should be made to the Lease directly with respect to the details of all terms, covenants and conditions of the Lease.

8. **SUCCESSORS AND ASSIGNS.** This Memorandum shall inure to the benefit of and be binding upon, the parties hereto and their respective heirs, administrators, executors, successors and assigns.

9. **CONFLICT.** In the event of a conflict between the provisions of this instrument and the Lease, the provisions of the Lease shall control.