



## **CITY COUNCIL PUBLIC HEARING**

**Wednesday, August 15, 2018**

265 Strand Street, St. Helens, OR 97051

[www.ci.st-helens.or.us](http://www.ci.st-helens.or.us)

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### **Welcome!**

All persons planning to address the Council, please sign-in at the back of the room. When invited to provide comment regarding items not on tonight's agenda, please raise your hand to be recognized, walk to the podium in the front of the room to the right, and state your name only. You are not required to give your address when speaking to the City Council. If you wish to address a specific item on the agenda, you should make your request known to the Mayor as soon as possible before the item comes up. The Council has the authority to grant or deny your request. Agenda times and order of items are estimated and are subject to change without notice.

1. **Open Public Hearing - 5:15 p.m.**
2. **Topic**
  - 2.A. Lease of City-Owned Property Located at 245 N. 7th Street  
[Ground Lease between the City of St. Helens and 7th Street Container Lof...pdf](#)
3. **Close Public Hearing**

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**The St. Helens City Council Chambers are handicapped accessible. If you wish to participate or attend the meeting and need special accommodation, please contact City Hall at 503-397-6272 in advance of the meeting.**

**Be a part of the vision...get involved with your City...volunteer for a City of St. Helens Board or Commission!  
For more information or for an application, stop by City Hall or call 503-366-8217.**

**GROUND LEASE**

BETWEEN:

the CITY OF ST. HELENS, Oregon,  
an Oregon municipal corporation

AND:

7TH STREET CONTAINER LOFTS LLC,  
an Oregon limited liability company

DATED:

\_\_\_\_\_, 2018

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**After Recording Mail To:**

Randall B. Bateman, Esq.  
Bateman Seidel  
888 SW Fifth Avenue, Suite 1250  
Portland, Oregon 97204

**Tax Statements to:**

7th Street Container Lofts LLC  
13014 Clackamas River Drive  
PO Box 387  
Oregon City, OR 97045

**GROUND LEASE**

DATED: As of [\_\_\_\_\_] (“Effective Date”)

**BETWEEN:**

CITY OF ST. HELENS, (“Landlord”)  
Oregon, an Oregon  
municipal corporation

**AND**

7TH STREET (“Tenant”)  
CONTAINER LOFTS LLC,  
an Oregon limited liability  
company

THIS GROUND LEASE (“Lease”) is dated as of the Effective Date and is between Landlord and Tenant.

**RECITALS:**

A. Landlord owns certain real property commonly known as 245 N. 7<sup>th</sup> Street, situated in the City of St. Helens, county of Columbia and state of Oregon, legally described in Exhibit A attached hereto, which includes the primary parcel (“Primary Parcel”) and the adjacent parking lot parcel (“Parking Lot”) (the Primary Parcel and the Parking Lot are hereinafter referred to collectively as the “Premises”). After Tenant improves the Parking Lot, it will contain spaces for eighteen (18) cars including two (2) handicapped parking spaces. At that time, six (6) of the eighteen (18) parking spaces will be removed from the Premises and retained for use by Landlord and the term “Premises” shall thereafter mean the Primary Parcel and the balance of the Parking Lot exclusive of those six (6) parking spaces retained by Landlord. One handicapped parking space that is part of the twelve (12) parking spaces will be part of the

Premises and the other handicapped parking space will be one of the six (6) spaces on the real property retained by Landlord and open for public use (the “**City Parking Lot**”). The twelve (12) parking spaces that will be part of the Premises are the nine (9) parking spaces on the south side of the Parking Lot and the three (3) parking spaces at the northwest corner of the Parking Lot (the “**Project Parking Lot**”). The Project Parking Lot and City Parking Lot are shown on the Overall Site Plan prepared by YBA Architects and attached as Exhibit B (the “**Site Plan**”).

B. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Premises for an initial period of fifty (50) years, together with two (2) options to renew, each option to renew being fifty (50) years in length. At the end of the final renewal term, Landlord will either extend the term, consistent with the pattern established during the initial one hundred and fifty (150) years, or if the Premises can be legally partitioned and sold, will sell the Premises to the Condominium Association (as hereinafter defined) for ten dollars (\$10) with the Condominium Association paying all transfer and closing costs.

C. Tenant will construct, develop and operate an eight- (8-) unit, multi-family, for-sale, ground lease condominium complex built out of shipping containers, as set forth on Site Plan (the “**7th Street Container Lofts**” or “**Project**”) including the right of the occupants of the 7th Street Container Lofts to park in the Project Parking Lot.

D. Tenant will also construct certain common area improvements serving the occupants of the 7th Street Container Lofts which will ultimately be owned by the unit owners jointly as tenants-in-common and maintained by the homeowners’ association for the Condominiums (“**Condominium Association**”).

E. Upon construction of the 7th Street Container Lofts, Landlord and Tenant intend to submit the Premises to a condominium regime (the “**Condominiums**”) under the Oregon Condominium Act. The Condominiums will be comprised of eight residential units (each a “**Unit**” and, collectively, the “**Units**”), which Units will include ownership of the interior of the container, rights to use common areas and common area improvements, and rights to use the allocated parking spaces within the Project Parking Lot. Subject to Landlord’s prior approval of the documents, Landlord shall consent to and, as required, join in the plat and declaration for the Condominiums and any other necessary documentation.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements of Landlord and Tenant set forth in this Lease, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

## ARTICLE 1 THIS LEASE

**1.1 Leased Premises.** Subject to the terms and conditions hereof, Landlord hereby leases to Tenant the Premises, as will be automatically adjusted upon Tenant’s completion of the improvements to the Parking Lot, as provided in Recital A.

## **1.2     Term.**

**1.2.1**     The term of this Lease shall commence as of the Effective Date, and unless sooner terminated pursuant to the provisions of this Lease, shall continue in full force and effect until the date that is fifty (50) calendar years from the Effective Date (the "**Initial Term**"), and, except as otherwise indicated in this Lease, will continue for two (2) fifty- (50-) year renewal terms (each an "**Option Term**") with no increase in the amount of rent due to Landlord under Section 1.4 below. The Initial Term and any Option Term exercised by Tenant are referred to collectively herein as the "**Term**".

**1.2.2**     Each Option Term shall be deemed to be exercised by Tenant automatically unless Tenant, or the Condominium Association as successor to Tenant under this Lease, and with the prior written approval of all Unit Owners and Leasehold Mortgagees, gives notice of the non-exercise of the Option Term to Landlord by the then-effective last day of the Term. If Tenant gives such notice of non-exercise, this Lease will terminate and be of no further force and effect, except to the extent that a provision of this Lease provides that it is to survive termination of this Lease.

**1.2.3**     At the end of the last Option Term, Landlord, in its sole and absolute discretion, will either (a) extend the Term, consistent with the pattern established during the initial one hundred and fifty (150) year Term, or (b) if the Premises can be legally partitioned, will sell the Premises to the Condominium Association for ten dollars (\$10) with the Condominium Association paying all transfer and closing costs. If Landlord does not take either action in subsections (a) or (b) before the end of the last Option Term, this Lease will automatically renew for an additional fifty- (50-) year Option Term.

## **1.3     Use.**

**1.3.1**     Tenant shall use the Premises solely for the development, construction and operation of the 7th Street Container Lofts (which may be operated under such other names as Tenant may select). The Units will each be sold by Tenant to home buyers ("**Unit Owners**"). Units may not be rented or leased, either by Tenant or by Unit Owners as the landlord, provided, however, that Units may be rented or leased only for a maximum term of one (1) year or thereafter successive terms of no longer than one (1) year each: (a) if short-term rental is required by law or in order to accommodate short-term family transitions (such as following the death of a Unit Owner and the closing of such Unit Owner's probate estate); or (b) for Units not sold to a Unit Owner within twelve (12) months of Substantial Completion of the Project which may be leased after such 12-month period. "**Substantial Completion**" means the issuance of a temporary certificate of occupancy from Landlord or an equivalent level of completion of the construction of the Project if no temporary certificate of occupancy is sought or issued before the final certificate of occupancy.

**1.3.2**     After the 7th Street Container Lofts have been constructed and have remained as residential Condominiums for at least thirty (30) years from Substantial Completion, then Tenant, with the written consent of all Unit Owners and all Leasehold Mortgagees, may request Landlord's written approval of a change in use under this Lease if



the Premises are no longer reasonably suitable for Condominiums due to changes in the surrounding properties and community, and Landlord agrees not to unreasonably withhold such written approval.

#### **1.4     Rent.**

**1.4.1**     Tenant covenants to pay to Landlord, at City of St. Helens, P.O. Box 278, St. Helens, Oregon 97051, or at such other address or bank account as Landlord shall specify from time to time in a written notice to Tenant, rent on a triple net basis in the amount of Eight Thousand One Hundred Sixty and no/100 Dollars (\$8,160.00) per year (the “**Rent**”), payable in advance or in twelve (12) equal monthly installments payable on or before the first business day of each calendar month. Rent does not include property tax for the Premises, which will be paid separately by Tenant. The Parties acknowledge that upon formation of the Condominium, each Unit and its appurtenant interest in the common elements of the Condominium will be individually assessed for real property tax purposes.

**1.4.2**     No Rent will be due from Tenant during the construction of the Project. As each Unit is sold to a Unit Owner, the Rent allocated to that Unit (one eighth (1/8<sup>th</sup>) of the Rent is allocated to each Unit, resulting in rent of eighty-five dollars (\$85) per month per Unit (the “**Unit Rent**”), shall commence and be due and payable from Tenant to Landlord simultaneously with the closing of the sale to the Unit Owner, prorated for any partial initial month of Unit Owner’s ownership. Notwithstanding the forgoing sentence, Unit Rent will commence on the date that is twelve (12) months after Substantial Completion for any Units not sold within such 12-month period.

**1.4.3**     Before the initial sale of a Unit, Unit Rent which has commenced but has not been paid to Landlord shall be collected and paid to Landlord in connection with a sale of the Unit.

**1.4.4**     After the initial sale of a Unit, any unpaid Unit Rents will be an assessment lien held by the Condominium Association against the Unit and collected and paid to Landlord when the Unit is sold, as provided in Section 7.12. The interest of a Unit Owner in its Unit shall not be extinguished by Landlord until after at least ninety (90) days written notice to such Unit Owner of (a) the failure of Tenant (or the Condominium Association as assignee of Tenant) to perform any obligations of Tenant under this Lease, including failure to pay Landlord the Rent required for the entire Project; and (b) the Unit Owner’s right to “cure” the Tenant’s default by paying the Unit Owner’s Unit Rent directly to Landlord or to commence action to cure any other default attributable solely the Unit Owner’s Unit under the Lease and cure such default within a reasonable time thereafter which shall in all events be no less than ninety (90) days and the failure of the Unit Owner and any of its lenders to so “cure” within such ninety (90) days. Provided, however, that if a Unit Owner cannot reasonably cure any default (other than payment of its Unit Rent to Landlord) attributable solely the Unit Owner’s Unit, there shall be no continuing default of the Lease as to a Unit Owner and its lienholder, but such Unit Owner, at Landlord’s request, shall attorn directly to Landlord. Insolvency of Tenant shall not impair the rights of a Unit Owner, provided that such Unit Owners continues to pay Landlord its Unit Rent directly. This provision is intended to comply with the provisions of ORS 100.445 and all

Unit Owners and their secured lenders shall have the benefit of this Section 1.4.4 and the provisions of ORS 100.445.

**1.5     Tenant Taking Premises “As-Is-Where-Is”.** Tenant acknowledges (a) Tenant entered into this Lease with the intention of making and relying upon its own investigation of the physical, structural and environmental condition of the Premises and (b) that except as contained in Article 8, Landlord is not making and has not at any time made any representation or warranty of any kind or nature, either oral or written, directly or indirectly, expressed, implied, statutory or otherwise, with respect to the Premises. Based on Tenant’s familiarity with the Premises, Tenant’s due diligence relating to the Premises and Tenant’s experience and knowledge as to the market in which the Premises are situated and as to the investment in and operation of real estate in the nature of the Premises and commercial real estate in general, Tenant will take the Premises on the Effective Date and on an ongoing basis during the Term in its “**AS IS, WHERE IS AND WITH ALL FAULTS**” condition, with existing streets and street improvements, and except as contained in Article 8, without any representation or warranty whatsoever. Tenant fully assumes the risk that adverse latent or patent physical, structural or environmental conditions may not have been revealed by Tenant’s investigations.

## ARTICLE 2 7<sup>TH</sup> STREET CONTAINER LOFTS

### **2.1     Construction and Management.**

**2.1.1**             Tenant shall achieve Substantial Completion of the Project on or before June 30, 2020, subject to *Force Majeure Delays*. “*Force Majeure Delays*” means if Tenant (or contractor working on Tenant’s behalf) is delayed or hindered at any time in the progress of achieving Substantial Completion by causes which could not have been reasonably anticipated by Tenant and which are beyond the reasonable control Tenant (or Tenant’s contractor acting on its behalf), including but not limited to severe adverse weather conditions, fires, strikes, pickets, material shortages, boycotts, national or regional lockouts or other national or regional labor disputes, acts of God, action or inaction or delay beyond customary response periods (e.g., issuance of permits or certificates of completion/occupancy) by any governmental or quasi-governmental entity, or civil disobedience. In no event shall Tenant’s financial condition or inability to pay any costs for which it is responsible hereunder constitute a *Force Majeure Delay*. To invoke a *Force Majeure Delay* excuse, Tenant must provide notice to Landlord within ten (10) days of learning of the *Force Majeure Delay*, detailing such *Force Majeure Delay* event and its anticipated duration (and no *Force Majeure Delay* period will be deemed to have commenced until such notice is given). Tenant shall thereafter take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as possible and shall provide written notice to Landlord when the *Force Majeure Delay* is no longer hindering Tenant in the progress of achieving Substantial Completion.

**2.1.2**             Subject to the terms of this Lease, Tenant shall have the right to demolish any existing improvements and develop and construct such improvements on the Premises as Tenant shall determine necessary for the proper and efficient operation of Tenant's permitted use of the Premises as set forth in Section 1.3.

**2.1.3** Tenant, and upon assignment of this Lease by Tenant to the Condominium Association then the Condominium Association, will manage the construction, sale and move-in process and will either self-manage or establish or hire a management company to ensure Rent and tax payments are made, and insurance coverages required by this Lease are maintained, with minimal effect on or effort by Landlord's staff. All communication with Landlord will be via Tenant, and upon assignment of this Lease by Tenant to the Condominium Association then the Condominium Association, or its management company rather than individual Unit Owners.

**2.1.4** Tenant, and upon assignment of this Lease by Tenant to the Condominium Association then the Condominium Association, will be responsible for all construction and maintenance costs related to the Project other than the costs of construction of the City Parking Lot. The full Parking Lot improvements (that is, both the City Parking Lot and the Project Parking Lot) will be completed by Tenant during initial construction of the Project by Tenant. The costs of construction of the City Parking Lot will initially be paid for by Tenant, provided that Tenant may submit to Landlord a detailed invoice of the actual, out-of-pocket costs of the City Parking Lot construction and, after Landlord's reasonable review and approval of such costs, Tenant shall be entitled to a Rent credit and a credit against any Permit Costs (as hereinafter defined) in the approved amount. The Rent credit and Permit Costs credit will be applied by Landlord against Rent first coming due under this Lease and Permit Costs until the credit is exhausted.

**2.1.5** Tenant, and upon assignment of this Lease by Tenant to the Condominium Association then the Condominium Association, will be responsible for all ordinary maintenance and repair of the full Parking Lot, including the City Parking Lot, during the Term, including, without limitation, sweeping, landscaping, replacement, striping, and painting. Landlord will not reimburse Tenant or the Condominium Association for any such maintenance and repair costs for the Parking Lot. Landlord shall be responsible for (i) any damage beyond ordinary wear and tear to the City Parking Lot caused by City or persons using the City Parking Lot and (ii) removal of trash and debris resulting from use of the adjacent City park by persons apparently using the adjacent City park and parking in the City Parking Lot, provided that Tenant first provides written notice to Landlord thereof within a reasonable time after discovering such damage or trash.

**2.2 Permits and Licenses.** Tenant will provide complete, final plans and specifications for the construction of the Project (the "**Plans**") for Landlord's review and written approval prior to commencement of construction of the Project. Such review will be conducted in Landlord's proprietary capacity, and Tenant acknowledges that such approval will not affect the review of Landlord's regulatory bodies in carrying out their responsibilities and that Landlord is specifically not obligating itself or any other agency with respect to any discretionary or regulatory action relating to the Project. All building permits and other permits, licenses, permissions, consents, and approvals required to be obtained from governmental agencies or third parties in connection with construction on the Premises and any subsequent improvements, repairs, replacements, or renewals to the 7<sup>th</sup> Street Container Lofts shall be acquired as required by applicable laws, ordinances, or regulations by and at the sole cost and expense of Tenant, except for the items of financial assistance provided by Landlord as detailed in Exhibit C attached hereto. Tenant shall cause all work on the Premises during the Term to be performed in

a good and workmanlike manner and in accordance with all applicable laws and all directions and regulations of all governmental agencies and representatives of such agencies having jurisdiction.

**2.3 Ownership of 7th Street Container Lofts.** Landlord acknowledges and agrees that the 7th Street Container Lofts, including all additions, alterations and improvements thereto or replacements thereof and all appurtenant rights thereto, fixtures, machinery and equipment installed on the Premises shall be owned solely by Tenant and, later, the Unit Owners.

**2.3.1** During the Term and for the tax year during which the Term begins, Tenant and the Unit Owners shall be entitled to all tax attributes of ownership of the 7th Street Container Lofts. From and after the establishment of the Condominium regime, as contemplated by Section 2.4, Tenant and the Unit Owners, as the owners of the Project, shall be entitled to any and all tax attributes of ownership of the Condominiums, including, without limitation, the right to claim depreciation or cost recovery deductions, and the right to amortize all capital costs and to claim any and all other federal or state tax benefits attributable to the Project.

**2.4 Condominium Regime.** Upon Substantial Completion of the 7th Street Container Lofts, Tenant shall submit the Project to the leasehold condominium form of ownership in accordance with the Oregon Condominium Act. Tenant will be responsible for preparing all condominium documents (collectively, the “**Condominium Documents**”) including, but not necessarily limited to, the plat, condominium declaration, articles of incorporation and bylaws for the Condominium Association, and a recordable assignment of this Lease to the Condominium Association. Tenant will pay all expenses necessary to establish and maintain the Project as a condominium, including, without limitation, legal fees for preparation of the Condominium Documents, surveying costs, costs to obtain Oregon Real Estate Agency approval of the final Condominium Documents and the approval of the Columbia County Surveyor’s Office of the Condominium plat, and all recording fees for recording the assignment of this Lease, the Condominium plat, Condominium declaration and bylaws, and filing fees for formation of the Condominium Association as an Oregon non-profit corporation.

**2.4.1** Landlord agrees to join in any required Condominium Documents to properly create the Condominium if Landlord being joined as owner of the Premises is legally required to permit the Condominiums to be formed.

**2.4.2** Prior to Tenant submitting the Condominium Documents to the Oregon Real Estate Agency for approval, Tenant shall (a) file the articles of incorporation of the Condominium Association with the Oregon Corporation Division and (b) obtain Landlord’s written approval of the Condominium Documents to be submitted, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord must raise any objections within fifteen (15) business days following Landlord’s receipt of a complete and final set of Condominium Documents. If Landlord does not approve or raise any objections to the Condominium Documents within such 15-business-day period, Landlord will be deemed, without further action, to have approved the Condominium Documents as submitted.

**2.4.3** Promptly upon receiving approval from the Oregon Real Estate Agency and Columbia County Surveyor's Office, Tenant shall record the assignment of this Lease to the Condominium Association and the approved Condominium declaration, bylaws and plat with the county recorder's office. The sale of individual Units shall not constitute an assignment of this Lease.

### ARTICLE 3 LIENS

**3.1 Liens Against Landlord's Fee Interest.** Except as otherwise provided herein, Tenant has no right, authority or power to bind Landlord, Landlord's estate or other assets or any interest of Landlord in the Premises for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Premises or Project or any change, alteration or addition thereto. Landlord acknowledges Tenant's development of the Premises may require the recording of utility easements and other customary easements necessary and incidental to the development, construction and operation of the 7th Street Container Lofts, all in forms reasonably approved in writing by Landlord. Landlord hereby agrees to the recording of such easements on the Premises, at the sole expense of Tenant, as are required for the development and operation of the 7th Street Container Lofts and shall provide such written consents as are necessary for recording of such easements. All such easements shall bind both Landlord's and Tenant's leasehold interests in the Premises.

**3.2 Liens Against Tenant's Leasehold Interest.** Landlord acknowledges that the Unit Owners will be obtaining financing for their ownership of the Units and appurtenant interest in the common elements of the Condominium from a variety of private and governmental funding sources and that such financing shall require Unit Owners to provide security interests in their Condominium estates in the Premises. Unit Owners may encumber their Condominium estates in the Premises for the purposes of such financing, and Landlord hereby expressly agrees and consents to Unit Owners entering into such financing arrangements and the resulting encumbrances of Unit Owners' Condominium estates in the Premises, provided that such financing arrangements and resulting encumbrances shall be subject to the terms of this Lease and shall not affect Landlord's rights or increase Landlord's duties or obligations under this Lease.

**3.3 Mechanics' Liens.** Tenant agrees it will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against Landlord's fee simple interest in the Premises for work or materials furnished to Tenant, the Condominium Association as successor to Tenant, or any Unit Owner in connection with any construction, improvements, maintenance, or repair thereof made by Tenant, the Condominium Association as successor to Tenant, or any Unit Owner or any of their agents upon the Premises or the City Parking Lot (after completion of construction and modification of the Premises to exclude the City Parking Lot). Tenant shall cause any such claim or lien to be fully discharged within sixty (60) days after the date of filing thereof; provided, however, that if Tenant, in good faith, disputes the validity or amount of any such claim of lien and if Tenant gives to Landlord such security as Landlord may reasonably require to ensure payment thereof and prevent any sale, foreclosure, or forfeiture of the Premises or any portion thereof by reason of such nonpayment, Tenant shall not be deemed

to be in breach of this Section 3.3, as long as Tenant is diligently pursuing a resolution of such dispute. Upon entry of final judgment resolving the dispute and if litigation or arbitration results therefrom, Tenant shall discharge said lien within thirty (30) days or the day before a foreclosure sale whichever is earlier.

**3.4 Encumbrances by Landlord.** Landlord shall not encumber the fee interest in the Land nor assign or encumber Landlord's interest in this Lease unless the assignment or encumbrance is required or imposed by law or, by its express terms, is subject and subordinate to this Lease and the rights and interests of Tenant, the Condominium Association, the Unit Owners and Leasehold Mortgagees.

## ARTICLE 4 TAXES; UTILITIES

**4.1 Payment of Taxes.** Tenant and the Unit Owners shall pay before they become delinquent all real property taxes assessed or levied against the Premises and the 7th Street Container Lofts. Tenant and the Unit Owners shall also pay all personal property taxes assessed or levied against the equipment, machinery, fixtures, furniture and furnishings thereon and any and all other charges, fees or costs imposed by any governmental or quasi-governmental entity or utility. Tenant and the Unit Owners shall have the right in good faith, in a proper procedural manner and at their sole cost, to contest and resist any taxes or assessments or other dispositions levied against or imposed upon the Premises or Project. Each Unit Owner shall defend and indemnify Landlord from any and all taxes incurred during the term of this Lease against his or her Unit.

**4.2 Utilities.** The Condominium Association and/or each Unit Owner, as provided in the Condominium Documents, shall arrange for and pay before they become delinquent all charges for utility services furnished to the Premises and the City Parking Lot including, but not limited to, electricity, gas, water, sewer, telephone and trash collection charges, except to the extent of Landlord's obligations under Section 2.1.5 or any utilities provided exclusively for the City Parking Lot. Landlord shall have no responsibility for the payment of these utility costs. The Condominium Association and/or each Unit Owner shall defend and indemnify Landlord from all such charges incurred during the Term. Each Unit Owner shall only be responsible for utility services serving his or her Unit and the Condominium Association will be responsible for utility services serving the common areas and the City Parking Lot as set forth above.

## ARTICLE 5 INSURANCE

**5.1 Tenant's Insurance.** During the Term, Tenant shall keep and maintain in force, or cause to be kept and maintained in force by the Condominium Association, at no cost or expense to Landlord, the following insurance, all of which shall be provided by companies and/or agencies licensed to do business in the state of Oregon:

**5.1.1 Premises Insurance.** "All risk" insurance covering all risks of physical loss or damage to the Project, with liability limits of not less than one hundred percent (100%) of the "full replacement cost" thereof. Such policies shall be broad form

and shall include, but shall not be limited to, coverage for fire, extended coverage, vandalism, malicious mischief and storm.

**5.1.2 Commercial Liability Insurance.** General commercial liability and automobile liability insurance, covering loss or damage resulting from accidents or occurrences on or about or in connection with the 7th Street Container Lofts or any work, matters or things under, or in connection with, or related to this Lease, with personal injury, death and property damage combined single limit liability of not less than two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate for all claims, on an occurrence basis, which limit shall be increased as necessary to maintain a similar level of coverage provided on the Effective Date. Coverage under any such policy shall be broad form and shall include, but shall not be limited to, operations, contractual, owner's and contractor's protective, products and completed operations, and the use of all owned, non-owned and hired vehicles. Contractual liability coverage must be provided in an amount sufficient to insure Tenant's indemnification obligations under this Lease. General commercial liability insurance shall name Landlord as an additional insured.

**5.1.3 Worker's Compensation.** Adequate workers' compensation insurance coverage for all persons employed on the Premises with a waiver of subrogation endorsement in favor of Landlord. Workers' compensation insurance must be in accordance with the requirements of applicable federal, state, and local law, including ORS 656.017, and should have a limit liability of not less than one million dollars (\$1,000,000).

**5.1.4 Other Insurance.** To the extent available in Oregon, Tenant shall maintain such other insurance of such kinds, and in such amounts, as reasonably may be required from time to time by Landlord in writing during the Term, if such additional insurance is generally consistent, in the reasonable exercise of Landlord's discretion, with the insurance required by real estate owners in the state of Oregon.

**5.2 General Requirements.** All policies described in Section 5.1 shall include Landlord and Tenant, as loss payees and insured or additional insured, as applicable, as their respective interests may appear. All policies described in Section 5.1 shall contain: (a) the agreement of the insurer to give Landlord and each Leasehold Mortgagee, as applicable, at least ten (10) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material adverse change in said policies; (b) an agreement that such policies (other than Worker's Compensation) are primary and non-contributing with any insurance that may be carried by Tenant or Landlord; (c) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (d) a waiver by the insurer of all rights of subrogation against Landlord and its authorized parties in connection with any loss or damage thereby insured against; and (e) terms providing that any loss covered by such insurance shall be adjusted with Landlord and Tenant, but shall, to the extent required by the loan documents of any Leasehold Mortgage, be payable to the holder of any Leasehold Mortgage, who shall agree to receive and disburse all proceeds of such insurance, subject to the duty of Tenant to repair or restore the 7th Street Container Lofts. All policies under described in Section 5.1 must contain such endorsements and deductibles as reasonably may be

requested by Landlord and the exclusions must be limited to those approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed.

**5.3 Evidence of Insurance.** Certificates of insurance for all insurance required to be maintained by Tenant under this ARTICLE 5 shall be furnished by Tenant to Landlord at any time during the Term upon request.

**5.4 Increases in Insurance.** Landlord may from time to time, but not more frequently than once every twenty-five (25) years, require that the amount of insurance to be maintained by Tenant be increased so that the amount adequately protects Landlord's interest based on amounts of coverage required of comparable tenants in comparable ground leases in Oregon.

## ARTICLE 6 MAINTENANCE AND ALTERATIONS

**6.1 Maintenance of Leased Premises.** During the Term, at Tenant's sole cost and expense, Tenant shall, or Tenant shall cause the Condominium Association and Unit Owners to, keep and maintain the Premises, the 7th Street Container Lofts, the City Parking Lot as set forth in Section 2.1.5, and all appurtenances thereunto belonging, in good and safe order, condition and repair. Tenant shall, or Tenant shall cause the Condominium Association and Unit Owners to, be responsible for any repairs and replacements, whether structural or nonstructural, ordinary or extraordinary, necessary to maintain the Premises, the City Parking Lot as provided in Section 2.1.5, and the 7th Street Container Lofts thereon. At Tenant's or the Condominium Association's sole cost and expense, Tenant shall, or Tenant shall cause the Condominium Association and Unit Owners to, keep and maintain the Premises and the City Parking Lot as provided in Section 2.1.5, in compliance with all applicable laws, rules, regulations and ordinances of all federal, state, county, municipal and other public authorities having or claiming jurisdiction. Additionally, Tenant shall, or Tenant shall cause the Condominium Association and Unit Owners to, protect against and refrain from creating or allowing the creation of a recognized hazardous environmental condition on the Premises or the City Parking Lot. On a continuous basis during the Term, Tenant, at Tenant's or the Condominium Association's sole cost and expense, shall take all actions necessary to eliminate, remove, remediate or otherwise clean up any recognized hazardous environmental condition not existing at the Premises or City Parking Lot as of the Effective Date and not hereafter caused by City or third parties the City allows to use the City Parking Lot.

**6.2 Alterations to Leased Premises.** Subject to the permitted uses of the Premises set forth in Section 1.3, Tenant, the Condominium Association and the Unit Owners may make any additions, alterations or changes in or to the 7th Street Container Lofts in compliance with all applicable laws, rules, regulations and ordinances of all federal, state, county, municipal and other public authorities having or claiming jurisdiction.



ARTICLE 7  
PERMITTED MORTGAGES

**7.1 Leasehold Mortgage Provisions.** As noted in Section 3.2 above, Tenant anticipates that the purchase of Units by Unit Owners may be financed with debt. For purposes of this Lease, a “**Leasehold Mortgage**” is any mortgage, deed of trust, security agreement or collateral assignment in favor of a public or private lender, any assignees or successor thereof that are Institutional Lenders and any other mortgages, deeds of trust, security agreements or collateral assignments encumbering a Unit Owner’s condominium estate in the Premises and Unit. A “**Leasehold Mortgagee**” is a holder of a Leasehold Mortgage. For purposes hereof, an “**Institutional Lender**” shall mean an entity that is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution that ordinarily engages in the business of making, holding or servicing residential real estate loans including any affiliate thereof. Any Leasehold Mortgagee or designee thereof that acquires title to the Condominium estate or any part thereof, any person that acquires title to the Condominium estate through any judicial or nonjudicial foreclosure sale, deed or assignment in lieu thereof, or any sale or transfer made under any order of any court to satisfy, wholly or in part, obligations secured by any Leasehold Mortgage, and the successors and assigns of any such Leasehold Mortgagee, is referred to as a “**Transferee.**” Each Leasehold Mortgagee and Transferee is an intended beneficiary of the terms of this Lease.

**7.2 Leasehold Mortgages and Transfers Authorized.** Landlord acknowledges that a Unit Owner’s purchase of a Unit may require the Unit Owner to provide a security interest in its interest in the 7th Street Container Lofts. Foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the Condominium estate hereunder, or any part thereof, and a Unit Owner’s interest in the 7th Street Container Lofts and other rights hereunder, or any part thereof, to any Leasehold Mortgagee or other person through, or in lieu of, foreclosure, trustee’s sale or other proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and, upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other direct or indirect Transferee in connection therewith as the Unit Owner hereunder to the extent of the interest so transferred.

**7.3 Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Landlord shall give each Leasehold Mortgagee at the last addresses of such Leasehold Mortgagee provided in a written notice to Landlord pursuant to the terms of Section 18.11, a duplicate copy of, and simultaneously with, all notices of default or other notices that Landlord may give to or serve in writing upon Tenant, the Condominium Association, or a Unit Owner (each a “**Tenant Party**” and collectively, the “**Tenant Parties**”) pursuant to the terms of this Lease; provided, however, that the failure of Landlord to send a copy of such notice to a Leasehold Mortgagee and the Tenant Parties shall not subject Landlord to any liability hereunder. The addresses of the Leasehold Mortgagee originally designated in the written notice to Landlord may be changed upon written notice delivered to Landlord in accordance with Section 18.11.

**7.4     Right of Leasehold Mortgagee to Cure.** Any Leasehold Mortgagee, at its option at any time within sixty (60) days or such longer period as may be applicable as provided below, following the expiration of the right of any Tenant Party to cure any default under this Lease (the “**Mortgagee Cure Period**”), may pay any amount or do any act or thing required of the Tenant Party by the terms of this Lease. Payments made and acts performed by such Leasehold Mortgagee within the Mortgagee Cure Period, shall be effective to prevent a termination of the rights of the Tenant Parties hereunder if such payments and acts conform to the terms of the notice from Landlord described in Section 7.3 or if, together with any performance by the Tenant Parties or any other person with any cure rights, they are sufficient, except as to timing, to exercise the right to cure that so expired.

**7.4.1**     If a non-monetary default by a Tenant Party is of such nature that it cannot practicably be cured without possession of the Premises, then the usual 60-day Mortgagee Cure Period shall be extended for as long as a Leasehold Mortgagee shall be proceeding with reasonable diligence to foreclose on the Tenant Parties’ interests or otherwise obtain possession of the Premises for itself or a receiver and is diligently pursuing cure of the default.

**7.4.2**     Prior to the expiration of the Mortgagee Cure Period, Landlord shall not cause any purported termination of this Lease nor take any action to deny the Tenant Parties possession, occupancy, or quiet enjoyment of the Premises or any part thereof.

**7.4.3**     Without limiting the rights of Leasehold Mortgagees, as stated above, and whether or not there shall be any notice of default hereunder, each Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the Rent due hereunder, with all due interest and late charges, to procure any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of the Tenant Parties hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. Any Leasehold Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by the Tenant Parties.

**7.5     Right to New Lease.** If this Lease terminates for any reason, including the rejection of this Lease in a bankruptcy proceeding, then Landlord shall give written notice of such fact to each Leasehold Mortgagee, and, if one or more Leasehold Mortgagees gives written notice to Landlord (with the most senior Leasehold Mortgagee or its affiliated designee providing such notice) within thirty (30) days following delivery of such notice of termination by Landlord, Landlord agrees to enter into a new ground lease for the Premises or a new lease as to a Unit (a “**New Lease**”) for the remainder of the Term (including any Option Terms) effective as of the date of such termination, at the Rent and upon the other terms, conditions, covenants and agreements contained in this Lease and with equal priority thereto, on the conditions set forth in this Article 7. Notwithstanding anything to the contrary contained herein, no termination of this Lease shall become effective until, and the lien of each Leasehold Mortgage on the Premises

shall remain effective until, either a New Lease has been executed pursuant to this Article 7 or no Leasehold Mortgagee has timely demanded a New Lease during the 30-day period as set forth above. Upon entering into a New Lease, such Leasehold Mortgagee or its affiliated designee shall cure any monetary default by Tenant hereunder except Excluded Defaults.

**7.5.1** The tenant under the New Lease shall have the same right, title and interest in and to the 7th Street Container Lofts and all obligations as the Tenant Parties had under this terminated Lease (other than with respect to Excluded Defaults), and Landlord and the new tenant shall execute and deliver any deed or other instrument and take such other action as may be reasonably necessary to confirm or assure such right, title, interest or obligations.

**7.5.2** Nothing in this Article or this Lease shall be construed to imply that this Lease may be terminated because of rejection in any bankruptcy proceeding of the Tenant Parties.

**7.5.3** If a Leasehold Mortgagee shall elect to demand a New Lease under this Article 7 and only if such Leasehold Mortgagee is not recognized as a proper plaintiff, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove from the Premises the original Tenant, the Condominium Association, the Unit Owners or those subtenants actually occupying the Premises, or any part thereof, as designated by the Leasehold Mortgagee, subject to the rights of non-defaulting Unit Owners' in occupancy of other Units at the Premises. Leasehold Mortgagees shall cooperate with Landlord in connection with any such actions.

Nothing herein contained shall require any Leasehold Mortgagee to accept a New Lease.

**7.6 Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be liable to Landlord unless it expressly assumes such liability in writing. If any Leasehold Mortgagee or other Transferee becomes the tenant under this Lease or under any New Lease obtained pursuant to this Article, then, except for its Unit's share of assessments assessed against all Units by the Condominium Association for bad debts, the Leasehold Mortgagee or other Transferee shall not be liable for the obligations of the Tenant Parties under this Lease that do not accrue during the period of time that the Leasehold Mortgagee or such other Transferee, as the case may be, remains the actual tenant under this Lease or New Lease, holding title to the leasehold or condominium estate thereunder. In no event shall any Leasehold Mortgagee or other Transferee be (a) liable for the erection, completion or restoration of any improvements; (b) liable for any condition of the 7th Street Container Lofts that existed prior to the date of its acquisition of a Tenant Party's interest in the 7th Street Container Lofts, or for any damage, loss, or injury caused by such preexisting condition, or for the correction thereof or the compliance with any law related thereto; (c) bound by any amendment of this Lease made after the date of the Leasehold Mortgagee and without the prior written consent of the Leasehold Mortgagee; or (d) liable for any act or omission of any prior tenant of any portion of the 7th Street Container Lofts (including the Tenant Parties). Any liability of any Leasehold Mortgagee or other Transferee shall be limited to its interests in the leasehold and the Premises and shall be enforceable solely against those interests.

**7.7 Estoppel Certificates; Nondisturbance Agreements.** Landlord and Tenant agree that at any time and from time to time upon not less than ten (10) business days' prior written notice by the other party or upon request from any Leasehold Mortgagee or a permitted assignee, Landlord or the Tenant Parties will execute, acknowledge and deliver to the other party or to such Leasehold Mortgagee, a statement in writing certifying that (a) this Lease is unmodified and in full force and effect if such be the case or, if not, the extent to which this Lease has been modified; (b) the date through which the Rent has been paid; and (c) that, to the actual knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Lease or such statement. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant or any Leasehold Mortgagee, as the case may be, in this Lease or by any prospective Leasehold Mortgagee or assignee of any Leasehold Mortgage. Each Unit Owner shall only be required to issue such a statement as to that Unit Owner's Unit and Condominium estate.

**7.8 Actions not Effective Without Leasehold Mortgagee Consent.** No cancellation, surrender, modification or amendment of this Lease, and no waiver of any of the Tenant Parties' rights thereunder, shall be effective as to any Leasehold Mortgagee for a Leasehold Mortgage existing before such cancellation, surrender, modification, amendment, or waiver thereof unless consented to in writing by each such Leasehold Mortgagee. No subordination of a Tenant Party's interest in the leasehold or the Premises, or the rents or income therefrom, to any encumbrance or assignment granted by Landlord and no joinder by the Tenant Party in any such encumbrance or assignment, shall be valid without the express written consent of each such Leasehold Mortgagee. No consent or waiver of any Leasehold Mortgagee shall be effective for purposes of this Lease unless it is made in writing.

**7.9 No Merger.** Any acquisition of the fee interest in the Premises by Tenant or the Condominium Association (or any fee interest in the 7th Street Container Lofts by Landlord), or other event by which the leasehold estate hereunder or any part thereof and the fee interest in the 7th Street Container Lofts shall come into common ownership, shall not cause a merger of the leasehold interest hereunder or the fee interest in the 7th Street Container Lofts with the fee interest in the Premises, without the express written consent of each Leasehold Mortgagee. Any merger of fee and leasehold estates that may occur, whether voluntary or involuntary, in whole or in part, shall not result in termination of this Lease or extinguishment of any Leasehold Mortgage, in whole or in part, without the express written consent of each Leasehold Mortgagee.

**7.10 Bankruptcy of Landlord.** If this Lease is rejected by Landlord or Landlord's trustee in bankruptcy following the bankruptcy of Landlord under the United States Bankruptcy Code (Title 9 U.S.C.), as now or hereafter in effect, the Tenant Parties shall not have the right to treat this Lease as terminated except with the prior written consent of all Leasehold Mortgagees, and the right to treat this Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of the Tenant Parties, as applicable, and each Leasehold Mortgagee shall be required as a condition to treating this Lease as terminated in connection with any such bankruptcy proceeding.

**7.11 Registration of Leasehold Mortgagees.** Each Tenant Party shall provide written notice to Landlord of the name and address of each of their respective Leasehold Mortgagees under this Lease.

**7.12 Nondisturbance of Unit Owners.** The Tenant, and upon assignment of this Lease by Tenant to the Condominium Association then the Condominium Association, will be responsible for performing this Lease including paying the Rent and property taxes, providing the insurance and performing the repairs. The Condominium Association will assess the Unit Owners for their share of those costs and use those assessment proceeds to fulfill the obligations under this Lease to Landlord. Landlord agrees to pursue its remedies for a breach of or default under this Lease only against Tenant, and upon assignment of this Lease by Tenant to the Condominium Association then only against the Condominium Association, and not to pursue remedies against the Unit Owners. Landlord agrees not to seek to recover possession of the Premises from the Unit Owners. Any recovery of possession from Tenant or the Condominium Association shall be subject to the condominium estates of the Unit Owners and their respective Leasehold Mortgagees. Landlord agrees not to disturb the possession of the Unit Owner and their Leasehold Mortgagees during the full Term notwithstanding a recovery of possession of the Premises from Tenant or the Condominium Association. A Unit Owner shall have no obligations to Landlord as to any Unit owned by another Unit Owner and shall have no payment obligations to Landlord as all such payment obligations will be the responsibility Tenant and the Condominium Association. Each Unit Owner shall have the right to pay its Unit Rent directly to Landlord if not paid by the Condominium Association. No party shall disturb a Unit Owner's condominium estates other than as may be allowed under the declaration and CC&Rs for the Condominiums.

## ARTICLE 8 REPRESENTATIONS AND WARRANTIES

**8.1 Representations and Warranties of Landlord.** As an inducement to Tenant to enter into and proceed under this Lease, Landlord warrants and represents to Tenant, as follows, which warranties, representations and covenants are true and correct as of the Effective Date, to the actual knowledge of Landlord:

**8.1.1** The execution and delivery of this Lease and the performance of all of Landlord's obligations under this Lease have been or will be duly authorized by all necessary agency or other action, and the consummation of any such transactions with or on behalf of Landlord will not constitute a breach or violation of, or a default under, the charter, bylaws or other governing documents of Landlord or any agreement by which Landlord is bound, nor constitute a violation of any law, administrative regulation or court decree;

**8.1.2** Landlord has received no written notice and has no knowledge, nor has Landlord been otherwise advised, of any pending or threatened taking relating to all or any part of the Premises;

**8.1.3** Landlord has no right or option to acquire any of Tenant's right, title or interest in or to the Premises or the 7th Street Container Lofts, or any real or

personal property located thereon, except upon expiration or earlier termination of this Lease;

**8.1.4** Any matter required by this Lease to have been approved by Landlord on or before the Effective Date has been approved;

**8.1.5** Except as disclosed to Tenant in writing prior to the Effective Date, the Premises have not been used for any activities that, directly or indirectly, involve the use, if any, generation, treatment, storage, transportation or disposal of any petroleum product or any toxic or hazardous chemical, material, substance, pollutant or waste in violation of applicable law. Landlord has not received any notice, written or oral, of (i) any violation of any applicable federal, state, county or local statute, law, rule or regulation of any governmental authority relating to environmental, health or safety matters on or about the Premises; (ii) any allegation that, if true, would contradict any statement contained in this Lease; or (iii) the existence of any writ, injunction, decree, order, judgment, lawsuit, claim, proceeding or investigation, pending or threatened, relating to the use, maintenance or operation of the Premises (nor is Landlord aware of a basis for any such notice under (i), (ii) or (iii) above); and

**8.1.6** Landlord holds fee title to the Premises.

**8.1.7** The “actual knowledge of Landlord” means the actual knowledge on the Effective Date, without any duty of inquiry, of John Walsh.

**8.2** **Representations, Warranties and Covenants of Tenant.** As an inducement to Landlord to enter into and to proceed under this Lease, Tenant warrants and represents to Landlord, as follows, which warranties, representations and covenants are true and correct as of the Effective Date, to the best knowledge of Tenant:

**8.2.1** Tenant is duly organized or registered, as applicable, and validly existing and in good standing in the jurisdiction of its formation, and is duly registered to do business in every jurisdiction where such registration is necessary;

**8.2.2** Tenant has taken all requisite limited liability company or other action to approve the execution, delivery, and performance of this Lease;

**8.2.3** Tenant has the right, power and authority to enter into this Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Lease; and

**8.2.4** The entry by Tenant into this Lease and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any or Tenant’s organizational documents, or any other agreements to which Tenant is a party or by which it is bound.

## ARTICLE 9 EMINENT DOMAIN

**9.1 Total Condemnation.** If the whole of the Premises and the 7th Street Container Lofts, (or such portion of the Premises as renders it infeasible, in Tenant's sole discretion, but with the consent of all Leasehold Mortgagees, for Tenant to continue to operate and maintain the 7th Street Container Lofts), shall be appropriated or condemned under power of eminent domain during the Term, Tenant reserves unto itself the right to prosecute its claim for an award for damages for the termination of this Lease caused by such appropriation or taking, together with damages based on the value of Tenant's 7th Street Container Lofts on the Premises and damages Tenant may sustain caused by such appropriation and taking of, or the injury to, Tenant's leasehold interest. Landlord shall be entitled to prosecute its claim for the fee interest in the Premises, subject to this Lease and damages Landlord may sustain caused by such appropriation and taking of, or the injury to, Landlord's fee interest. In such event, this Lease shall terminate when Tenant can no longer use the Premises in the manner herein intended, or when possession thereof shall be required by the appropriating or condemning authority, whichever shall first occur; but such termination of this Lease shall not preclude nor restrict Tenant's right to an award as herein before provided.

**9.2 Partial Condemnation.** If a part of the Premises shall be taken or condemned under circumstances in which Tenant desires to continue this Lease, this Lease shall continue in full force and effect and shall terminate only as to that part of the Premises so taken. In that event, Tenant shall, at its own cost and expense, make all repairs to the 7th Street Container Lofts on the Premises affected by such taking or condemnation to the extent necessary to restore the same to a complete architectural unit (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase). Compensation available or paid to Landlord or Tenant upon such a partial taking or condemnation shall be paid to Tenant to the extent that such compensation is attributable the taking of Tenant's leasehold interest, including the improvements thereon, and the remainder shall be paid to Landlord.

**9.3 Temporary Taking.** If there shall be a temporary taking with respect to all or any part of the Premises or of Tenant's interest in this Lease, then the Term shall not be reduced and Tenant shall continue to pay in full all rents, and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Tenant shall not be required to perform such obligations that Tenant is prevented from performing by reason of such temporary taking.

**9.4 Joinder.** If a Leasehold Mortgage exists, the Leasehold Mortgagees, to the extent permitted by law, shall be made parties to any taking proceeding and all rights of Tenant shall be subject to the terms of the Leasehold Mortgages.

## ARTICLE 10 DAMAGE OR DESTRUCTION

**10.1 Damage or Destruction to Leased Premises.** Tenant shall give prompt written notice to Landlord after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Premises, the 7th Street Container Lofts or any portion thereof

(hereinafter sometimes referred to as a "**Casualty**"). Subject to Section 10.2, if during the Term the 7th Street Container Lofts shall be damaged or destroyed by Casualty, Tenant shall, subject to the terms of the Leasehold Mortgages, promptly and with all due diligence, apply for and collect all applicable insurance proceeds recoverable with respect to such casualty and fully repair or restore the Project.

**10.2 Right to Terminate.** If Tenant shall determine, subject to the rights of the Leasehold Mortgagees, by notice to Landlord given within thirty (30) days after receipt by Tenant of any such insurance proceeds, that it is not economically practical to restore the 7th Street Container Lofts and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice and retain all insurance proceeds.

**10.3 Damage or Destruction near the end of the Term.** If, during the last ten (10) years of the then-effective Term, the 7th Street Container Lofts shall be damaged by Casualty, then Tenant, with the consent of all Leasehold Mortgagees, shall have the following options to exercise within one hundred twenty (120) days after such casualty:

**10.3.1** To repair or restore the 7th Street Container Lofts as provided in Section 10.1; or

**10.3.2** To terminate this Lease by notice to Landlord, which termination shall be deemed to be effective as of a date not less than thirty (30) days after the date such notice is received by Landlord, and to retain all insurance proceeds.

**10.4 Distribution of Insurance Proceeds.** If this Lease is terminated pursuant to this Article 10, the insurance proceeds received as the result of such Casualty shall be distributed as follows: (a) if any Leasehold Mortgages are in place, first to the Leasehold Mortgagee to the extent of any indebtedness then owed to such Leasehold Mortgagees; and (b) then to Tenant or Condominium Association.

## ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES

**11.1 Default by Tenant.** Each of the following is a material default and breach of this Lease by Tenant (a "**Tenant Default**"):

**11.1.1** Failure to make any required Rent or any other payment as and when due, if the failure continues for a period of thirty (30) business days after written notice from Landlord to Tenant and all Leasehold Mortgagees. After two (2) such notices have been given during any calendar year, the thirty- (30-) business day period shall be reduced to ten (10) business days during the balance of such calendar year and shall then resume to thirty (30) business days for the following calendar year.

**11.1.2** Failure to comply with any of the covenants or provisions of this Lease, other than those described in Section 11.1.1, if the failure continues for a period of sixty (60) business days after written notice from Landlord to Tenant and all Leasehold



Mortgagees. If the nature of Tenant's default reasonably requires more than sixty (60) business days for its cure, Tenant will not be in default if it commences to cure within the sixty- (60-) business day period and thereafter diligently pursues its completion.

**11.1.3** Failure to achieve Substantial Completion of the Project on or before the deadline provided in Section 2.1.1.

**11.2 Remedies Upon Default by Tenant.** Upon any Tenant Default, Landlord may, subject in all respects to the provisions of this Lease with respect to Landlord's rights to cure defaults by Tenant, with respect to the rights of any Leasehold Mortgagees and subject further to the provisions of Section 7.12 and 11.5, do any or all of the following:

**11.2.1** Upon ninety (90) day's written notice to Tenant, terminate Tenant's right to possession of the Premises, and this Lease shall terminate, except as provided in Section 7.12, as to Tenant but not as to the Unit Owners who shall then become direct tenants of Landlord. Landlord may re-enter and take possession of and remove, at Tenant's cost and expense, all persons or property, other than the Unit Owners or their property, and Tenant shall immediately surrender possession of the Premises to Landlord subject to the interests of the Unit Owners.

**11.2.2** Maintain Tenant's right to possession, and this Lease shall continue in force whether or not Tenant has abandoned the Premises. Landlord shall be entitled to enforce all of its rights and remedies under this Lease including the right to recover Rent as it becomes due.

**11.2.3** Pursue any other remedy available to Landlord under law or equity.

These remedies are not exclusive.

Notwithstanding the foregoing or any other provision herein, if:

(i) Landlord exercises its remedies pursuant to Section 11.2.1 through 11.2.3 and terminates this Agreement, Tenant, the Condominium Association, or any Leasehold Mortgagee, within ninety (90) days following such termination, may reinstitute this Lease for the balance of the Term by paying to Landlord an amount equal to the actual damages incurred by Landlord as a result of such Tenant Default and payment of any actual costs or expenses incurred by Landlord, including reasonable attorney fees and disbursements, as a result of such Tenant Default or reinstatement of this Agreement and

(ii) The only basis upon which Landlord may terminate this Lease and recover possession of the Premises due to a default by the Tenant or the Condominium Association under this Lease is nonpayment of Rent and not based on any other defaults under this Lease by Tenant or the Condominium Association so as to comply with the United States Federal Housing Administration (FHA) underwriting requirements. This section shall not preclude Landlord's recovery of damages for a default arising from other than the payment of Rent.

**11.3 Reserved.**

**11.4 Default by Landlord.** Landlord shall be in default of this Lease if Landlord fails to perform any material provision of this Lease it is obligated to perform, or if any of Landlord's representations or warranties were untrue in any material respect as of the Effective Date, and if the failure to perform is not cured within sixty (60) business days after written notice of the default has been given to Landlord. If the default cannot reasonably be cured within sixty (60) business days, Landlord shall not be in default of this Lease if Landlord commences to cure the default within such 60-business day period and thereafter diligently pursues its completion. This right to such 60-business-day cure period shall not apply to a Landlord default which results in the disturbance of Tenant's or any Unit Owner's quiet possession and enjoyment of the Premises; in that circumstance Landlord shall have only a reasonable time to cure based on the nature of the default.

**11.5 Remedies Upon Default by Landlord.** Tenant may upon Landlord's default after written notice and opportunity to cure under Section 11.4 pursue any remedy available to Tenant under law or equity, subject to the limitations set forth elsewhere in this Lease.

## ARTICLE 12 QUIET ENJOYMENT AND POSSESSION, INSPECTIONS

Landlord covenants and warrants that Tenant, upon payment of all sums herein provided and upon performance and observance of all covenants herein contained, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Premises during the Term subject only to the provisions of this Lease and all applicable laws, ordinances and regulations.

## ARTICLE 13 VACATION OF LEASED PREMISES

Tenant covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained herein, Tenant, subject to Sections 7.3 and 18.3, will peaceably and quietly yield and surrender possession of the Premises to Landlord. An action of forcible detainer shall lie if Tenant holds over after a demand for possession is made by Landlord.

## ARTICLE 14 AMENDMENTS FOR FHA AND OTHER GOVERNMENT REQUIREMENTS

Tenant may request an amendment to this Lease to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission, or agency of the United States or the state of Oregon, or any other state in which the Units are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the state of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee, or provide financing in connection with sale of the Units. Any such amendment shall be provided to Landlord for approval and signature, such approval and signature not to be unreasonably

withheld, conditioned, or delayed, and then signed by Tenant and recorded (or a memorandum thereof will be recorded).

## ARTICLE 15 TRANSFERS

Except as otherwise provided in this Article 15 and subject to all statutory and regulatory requirements applicable to this leasehold, Tenant shall have no right to transfer any legal or beneficial interest in Tenant's estate hereunder or to assign this Lease without Landlord's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Landlord hereby consents to: (a) a transfer by Tenant or any Unit Owner to any Leasehold Mortgagee in compliance with Article 7, and to an assignment or other transfer by any Leasehold Mortgagee to a third-party purchaser following a foreclosure sale or acceptance by the Leasehold Mortgagee or its designee of a deed-in-lieu of foreclosure; (b) any transfer between Tenant and Unit Owners in connection with the sale of a Unit; and (d) full assignment of this Lease to the Condominium Association following the establishment of the Condominiums, provided that the Condominium Association agrees to be bound by all terms of this Lease, at which time the original Tenant shall be deemed released from all future liability under this Lease accruing after the effective date of the assignment to the Condominium Association. Upon the granting of any written consent by Landlord with respect to a transfer by Tenant, this Lease shall be binding upon the assignee, Leasehold Mortgagees and other transferees.

## ARTICLE 16 GENERAL INDEMNIFICATIONS

**16.1 By Landlord.** Subject to the Oregon Tort Claims Act, the Oregon Constitution, and all other applicable law, Landlord agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Tenant) Tenant, its officers, commissioners, directors, affiliates, agents and employees and all Unit Owners from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney fees and expenses) (collectively "**Claims**"), arising directly or indirectly out of Landlord's default of Landlord's obligations under this Lease, except to the extent caused by the gross negligence, bad faith, or intentional misconduct of a Tenant Party.

These indemnities shall survive the termination of this Lease.

**16.2 By Tenant.** Notwithstanding any other provision of this Lease, Tenant hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Landlord) Landlord, its officers, commissioners, directors, affiliates, agents and employees from and against any and all Claims arising directly or indirectly out of the acts or omissions of any Tenant Party on or related to the Premises, the City Parking Lot, or this Lease or the construction or operation of the 7th Street Container Lofts, except to the extent caused by Landlord's gross negligence, bad faith or intentional misconduct. In addition, if any contractor or subcontractor which performed any construction work for Tenant or Tenant's affiliates on the 7th Street Container Lofts shall assert any Claim against Landlord on account of any damage alleged to

have been caused by Unit Owners, Tenant or Tenant's affiliates, their members, partners, officers, directors, affiliates (other than Landlord), agents or employees, or their construction contractors, Tenant shall defend at its own expense any suit based upon such Claim; and if any judgment or Claim against Landlord shall be allowed, Tenant shall pay or cause to be paid or satisfied such judgment or Claim and pay all costs and expenses, including without limitation any of Landlord's attorney's fees for review of the suit, judgement or Claim, in connection therewith. This indemnification obligation shall be the responsibility of Tenant until this Lease is assigned to the Condominium Association and shall thereafter be the sole responsibility of the Condominium Association and not the Unit Owners.

These indemnities shall survive the termination of this Lease.

## ARTICLE 17 RIGHT OF FIRST REFUSAL

If Landlord desires to sell the Premises during the Term and receives from a prospective purchaser a *bona fide* offer to purchase, Landlord shall first offer the Premises for sale to Tenant, as follows:

**17.1 Offer.** Landlord shall give written notice to Tenant stating the name of the prospective purchaser and the price of the proposed sale, together with a true copy of the offer from the prospective purchaser (the "**Offer**").

**17.2 Exercise of ROFR.** Within thirty (30) days after the giving of notice of the proposed sale, Tenant may elect to purchase the Premises at the same price and on the same terms and conditions as contained in the Offer or upon terms and conditions no less favorable to Landlord than those contained in the Offer. However, the price shall be adjusted to equal the net return to Landlord under the proposed sale after adjustment for the difference, if any, in real estate commissions and costs of closing payable in the event of the proposed sale as opposed to sale to Tenant. If the Offer requires the payment of consideration other than cash (e.g., exchange of property or services), Tenant may nevertheless exercise its right to purchase and substitute cash equal to the fair market value of such noncash consideration. The election to purchase by Tenant shall be exercised by written notice to Landlord given within the foregoing thirty- (30-) day period.

**17.3 Closing.** If Tenant elects to purchase the Premises, the sale shall be closed on the date specified by Tenant in the notice of election, which shall be not less than ninety (90) days after the giving of notice, or, at Tenant's election, on the date, if any, specified as the closing date in the Offer.

**17.4 Expiration of Offer.** If Tenant fails to timely exercise its right to purchase the Premises pursuant to this Article 17 and for any reason Landlord does not sell or convey the Premises to the named prospective purchaser on the terms contained in the Offer within one hundred eighty (180) days after the giving of Landlord's notice pursuant to Section 17.1, then (a) Landlord shall resubmit the Offer, as well as any other offer, to Tenant before selling the Premises and such Offer shall be subject to Tenant's right of first refusal pursuant to this ARTICLE 17. If Tenant fails to timely exercise its right to purchase the Premises and Landlord

timely sells the Premises to the named prospective purchaser on the terms contained in the Offer, the purchaser shall take the Premises subject to all the terms of this Lease including Tenant's right of first refusal with respect to subsequent sales.

**17.5 ROFR Held by Condominium Association.** This right of first refusal shall be held by Tenant until this Lease is assigned to the Condominium Association and shall thereafter be held by the Condominium Association and not by the Unit Owners.

## ARTICLE 18 MISCELLANEOUS PROVISIONS

**18.1 Entire Agreement, Modifications.** This Lease supersedes all prior discussions and agreements between the parties with respect to the Premises. This Lease contains the sole and entire understanding between the parties with respect to the Premises, and all promises, inducements, offers, solicitations, agreements, representations and warranties heretofore made between the parties, if any, are merged into this Lease. This Lease shall not be modified or amended in any respect, except by written instrument specifically referencing such a modification or amendment which is executed by or on behalf of the parties in the same manner as this Lease is executed and to which each Leasehold Mortgagee has consented in writing.

**18.2 Governing Law and Choice of Venue.** This Lease, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the substantive laws of the state of Oregon. Any legal action to enforce the terms of this Lease shall be brought in Columbia County, Oregon. The prevailing or non-defaulting party in such action shall be entitled to its attorney fees and costs at the trial court and upon appeal.

**18.3 Binding Effect.** This Lease shall inure to the benefit of and be binding upon the parties hereto, their heirs, successors, administrators, executors and permitted assigns.

**18.4 Severability.** If any provision or portion of this Lease is held by any court of competent jurisdiction to be invalid or unenforceable, such holding shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof, except to the extent the rights and obligations of the parties have been materially altered by such unenforceability.

**18.5 Further Assurances.** From and after the Effective Date, Landlord and Tenant, at the request of the other party, shall make, execute and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things that either party may reasonably require to effectuate the provisions and the intention of this Lease.

**18.6 Captions.** All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely to facilitating convenient reference to this Lease, shall not supplement, limit or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to articles, sections, subsections, paragraphs and subparagraphs by number refer to the text of such items as so numbered in this Lease.

**18.7 Gender, Number, Parts of Speech and Time Periods.** Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise. If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Wherever used in this Lease, “**business day**”, whether capitalized or not, means any day other than a Saturday, Sunday, or any other day on which national banks in Portland, Oregon, are not open for business. If a period of time is specified from a given day, or from the day of an act or event, it shall be calculated exclusive of that day. Wherever this Lease refers to a number of days, such number shall refer to calendar days unless business days are specified. If any period of time specified in this Lease ends on a day other than a business day, such period shall be extended to the next following business day.

**18.8 Exhibits.** Each exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and other-wise mentioned.

**18.9 References.** All references to section or subsections shall be deemed to refer to the appropriate section or subsection of this Lease. Unless otherwise specified in this Lease, the terms "herein", "hereof", "hereinafter", "hereunder" and other terms of like or similar import, shall be deemed to refer to this Lease as a whole, and not to any particular section or subsection hereof. A reference to “includes” or “including” shall mean “includes without limitation” or “including without limitation,” as applicable. The word “shall” means mandatory and imperative.

**18.10 Rights Cumulative.** Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

**18.11 Notices.** All, notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be sent, with all applicable postage and delivery charges prepaid, (a) by certified mail, return receipt requested; (b) by Federal Express, or another recognized, reputable overnight courier service; (c) by hand delivery by a recognized, reputable courier; or (d) by electronic mail if simultaneously sent by another means allowed hereunder, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt or refusal of delivery. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other party any notices, requests, demands or other communications required or permitted to be given hereunder by such party.

To Landlord:

City of St. Helens  
Attn: City Administrator  
P.O. Box 278

St. Helens, OR 97051  
Email: jwalsh@ci.st-helens.or.us

With a copy to:

Radler White Parks & Alexander  
Attn: Dina Alexander  
111 SW Columbia Street, Suite 1100  
Portland, Oregon 97201  
Email: dalexander@radlerwhite.com

To Tenant:

7th Street Container Lofts LLC  
13014 Clackamas River Drive  
P.O. Box 387  
Oregon City, OR 97045  
Email: ccoffman@coffmanteam.com

With a Copy to:

Randall B. Bateman, Esq.  
Bateman Seidel  
888 SW Fifth Avenue, Suite 1250  
Portland, Oregon 97204  
Email: rbateman@batemanseidel.com

**18.12 Counterparts.** This Lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement. Delivery of a copy or counterpart to this Lease bearing an original signature by PDF transmission or by electronic mail shall have the same effect as physical delivery of the paper document bearing the original signature.

**18.13 Time of Essence.** Time is and shall be of the essence in this Lease.

**18.14 Recording of Lease.** Within ten (10) business days of the Effective Date, Tenant shall record this Lease or a memorandum of this Lease in a form approved in writing by Landlord at Tenant's sole expense.

**18.15 No Third-Party Beneficiaries.** Except to the extent expressly provided in this Lease, this Lease is not intended to confer upon any person other than the parties to this Lease, and their successor and assigns, any rights or remedies under this Lease.

**18.16 Landlord Acting in Proprietary Capacity.** The parties recognize that Landlord must retain its regulatory powers and that Landlord's regulatory bodies, in carrying out their responsibilities, should do so independently without influence by other Landlord officials or employees. This Lease does not restrict the Landlord's staff from performing their usual regulatory review, comment, and advisory functions. Nothing in this Lease shall be construed to limit or affect Landlord's exercise of its police powers. By entering into this Lease, Landlord is specifically not obligating itself or any other agency with respect to any discretionary or regulatory action relating to development or operation of the Project, including, but not limited to, rezoning, variances, environmental clearances, regulatory plan reviews, code compliance, or

any other governmental agency approvals or regulatory actions which are or may be required or authorized. When reasonably feasible to do so, Landlord will work in good faith to facilitate the cooperation of, and coordination among, Landlord's staff. This 18.16 shall survive the termination of this Lease.

*(Signatures on following pages.)*



IN WITNESS WHEREOF, this Lease is made and entered into in multiple original counterparts with the intent it be effective as of the Effective Date notwithstanding the date of execution and delivery.

**"LANDLORD"**

**CITY OF ST. HELENS**, an Oregon municipal corporation

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

Name: Rick Scholl

Title: Mayor

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

Name: John Walsh

Title: City Administrator

STATE OF OREGON           )  
  ) ss.  
County of Columbia        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Rick Scholl as the Mayor of the City of St. Helens, an Oregon municipal corporation, on behalf of such municipal corporation.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:\_\_\_\_\_  
Commission No.:\_\_\_\_\_

STATE OF OREGON           )  
  ) ss.  
County of Columbia        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by John Walsh as the City Administrator of the City of St. Helens, an Oregon municipal corporation, on behalf of such municipal corporation.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:\_\_\_\_\_  
Commission No.:\_\_\_\_\_

**"TENANT"**

**7TH STREET CONTAINER LOFTS, LLC,**  
an Oregon limited liability company

By: NORWAY CONSTRUCTION LLC,  
an Oregon limited liability company d/b/a  
Relevant Building Company  
Its: Managing Member

By: \_\_\_\_\_  
Carl T. Coffman, its Sole Member

STATE OF OREGON )  
 ) ss.  
County of Clackamas )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Carl T. Coffman, as the Sole Member of Norway Construction LLC, an Oregon limited liability company, d/b/a Relevant Building Company, as the Managing Member of 7<sup>th</sup> Street Container Lofts LLC, an Oregon limited liability company, on behalf of such limited liability company.

Notary Public for Oregon  
My commission expires: \_\_\_\_\_  
Commission No.: \_\_\_\_\_

## **EXHIBIT A TO GROUND LEASE**

### **Premises Legal Description**

Lots 16, 17, 18 and 19, Block 62, CITY OF ST. HELENS, in the City of St. Helens, Columbia County, Oregon.

**EXHIBIT B TO GROUND LEASE**

**Project Overall Site Plan**

**[PLEASE PROVIDE]**

## EXHIBIT C TO GROUND LEASE

### **Financial Assistance**

1. Landlord will waive or credit building permit fees, including, but not limited to, electrical permit fees, plumbing permit fees, mechanical permit fees, inspection fees, specialty inspection fees, parks system development charges, transportation system development charges and water system development charges (collectively, “**Permit Costs**”) in excess of forty thousand dollars (\$40,000) to be paid to Landlord or any other governmental agency with jurisdiction over the Project. Tenant will pay all Permit Costs up to forty thousand dollars (\$40,000). Landlord will provide a credit against Permit Costs to be paid to Landlord for amounts actually paid by Tenant for Permit Costs charged by other agencies (to the extent the Permits Costs paid to the other agencies plus the Permit Costs paid to Landlord exceed \$40,000).
2. As provided in Section 2.1.4, Landlord will provide Tenant either a Rent credit or a credit against Permit Costs to reimburse Tenant for the actual, out-of-pocket costs of the City Parking Lot construction. Such costs are currently estimated at \$35,000.
3. Landlord will pay for all Landlord staff time to coordinate the Project in Landlord’s proprietary capacity.