



CITY OF
Vancouver
WASHINGTON

Waterfront Gateway Ground Lease Review

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Real Estate Project Manager
Economic Prosperity and Housing
March 21, 2024



Agenda

- Review objectives
- Plaza design update
- Affordable housing building update
- Review key terms of ground lease
- Next steps
- Questions & Discussion





Objectives

- Provide project updates
- Review terms of ground lease between City of Vancouver and Lincoln
- Make recommendation to City Council on form ground lease



Plaza Design Update

- Open house February 1, 2024
- 359 online survey responses
- Key themes;
 - Venue for markets, live music, multi-cultural events
 - Feature art by local artists reflective of Vancouver's history
 - Retail space for local businesses
 - Destination and connection point
 - Multi-modal accessibility
- Updated design late spring



Affordable Housing Update

- NAYA non-profit partner - provide resident services catered to residents' needs
- Awarded \$7.5M in funding to date
- Estimated close on property transfer and construction start in Q1 2025



Ground Lease Terms

- 50-year lease term with two 15-year options (up to 80 years)
- Lease payments based on appraised value of parcels and 6% CAP rate
- Payments adjusted annually according to Seattle/Tacoma/Bellevue CPI, capped at 5.5% with 2.5% floor
- Rent abated for 2 years during construction
- Discounted lease payments for Years 3-7 to assist project cash flow
- Rent reset every 20 years, not to exceed 10% of preceding year
- Buildings and improvements revert to City ownership after 80 years
- Right of first refusal to purchase property
- DDA development and construction requirements carried forward



Next Steps



- City Council action on ground lease April 8th
- PSA review and approval Q4 2024
- Plaza design update late spring 2024
- Refined building designs Q3 2024
- Target construction start date Q3 2025





Requested Action

Recommend proposed form of ground lease in its substantive form to City Council for approval.



Questions & Discussion



GROUND LEASE

This **GROUND LEASE** (“**Lease**”) is made by and between the **CITY OF VANCOUVER**, a Washington municipal corporation, hereinafter referred to as “**Lessor**”, and _____ **LLC**, a [Delaware] limited liability company, hereinafter referred to as “**Lessee**”. Capitalized terms have the meanings set forth in the Glossary of Terms attached hereto as Exhibit “C” or as defined elsewhere in this Lease.

WITNESSETH:

NOW, THEREFORE, in consideration of the terms, covenants and conditions set forth in this Lease, Lessor and Lessee mutually agree as follows:

1. BASIC LEASE PROVISIONS: This Section 1 sets forth the basic lease provisions of this Lease, except as they may be modified in the body of the Lease.

1.1. EXECUTION DATE: _____, 202__ (“**Execution Date**”)
EFFECTIVE DATE: _____, 202__ (“**Effective Date**”).

1.2. PREMISES DESCRIPTION: The area depicted on Exhibit “A”, a legal description of which is set forth on Exhibit “B” attached, consisting of a site area of approximately _____ square feet, more or less, commonly known as Parcel _____ (the “**Premises**”).

As used herein, the “**Project**” shall mean the Premises as improved by the Improvements to be constructed upon Premises by Lessee in accordance with the terms of this Lease and that certain Land Disposition and Development Agreement (Waterfront Gateway Development), by and between Lessor and LPC West LP, a Delaware limited partnership, dated October 9, 2023 (the “**DDA**”). Lessee shall obtain a Certificate of Occupancy (as defined in Exhibit “C”) with respect to the Initial Improvements (as defined in Exhibit “C”) by no later than the earlier of: (1) July 1, 2029; or (b) three (3) years after the Commencement of Construction (the “**Project Deadline**”), which Project Deadline shall be extended one (1) day for each day of Force Majeure Delay or Lessor Delay. For purposes of this Section 1.2, Force Majeure Delay shall include delays by Lessor or other governmental entities in issuing Permits necessary to construct the Initial Improvements (“**Permit Delays**”), provided, that, Lessee timely applies for such Permits and thereafter diligently pursues obtaining such Permits.

1.3. TERM: Initial Term:
Fifty (50) years beginning on the [Effective Date] (the “**Term Commencement Date**”) and ending on the last day of the calendar month in which the fiftieth (50th) anniversary of the Term Commencement Date occurs (the “**Initial Term**”).

Option Terms:
The Lessee is granted the option to extend this Lease for two (2) consecutive fifteen-year (15) terms. The Option Term(s) must be exercised in accordance with the provisions of Section 4.2 of this Lease.

1.4. RENT: “**Rent**” shall mean Base Monthly Rent payable under this Lease, along with all Leasehold Excise Tax applicable thereto.

Base Monthly Rent: The “**Base Monthly Rent**” is as follows:

[**Note:** After creation of the Legal Lots, rent will be determined for each Parcel in accordance with Section 4.1.3 of the DDA and inserted into each GL.]

Years of Initial Term	Base Annual Rent	Base Monthly Rent
1	\$	\$
2	\$	\$
3	\$	\$
4	\$	\$
5	\$	\$
6	\$	\$
7	\$	\$
8	\$	\$
9	\$	\$
10	\$	\$
11	\$	\$
12	\$	\$
13	\$	\$
14	\$	\$
15	\$	\$
16	\$	\$
17	\$	\$
18	\$	\$
19	\$	\$
20	\$	\$

Commencing on the Term Commencement Date, Base Monthly Rent shall be abated for a period of two (2) years and discounted for a period of four (4) additional years beginning on the Term Commencement Date in accordance with following schedule:

Year	Rent Discount
1	100%
2	100%
3	50%
4	50%
5	25%
6	25%

Commencing on the first anniversary of the Term Commencement Date and continuing annually thereafter, including during the Rent Abatement Period, Base Monthly Rent shall be adjusted based on the change in the Consumer Price Index (Seattle-Tacoma-Bellevue, WA) from the prior twelve (12) months, with a floor of two and one-half percent (2.5%) and a cap of five and one-half percent (5.5%).

Commencing on the initial twentieth (20th) anniversary of the Term Commencement Date and on each subsequent twentieth

(20th) anniversary of the Term Commencement Date thereafter during the Initial Term and any Option Term (each, an “**Adjustment Date**”), the then current Base Monthly Rent shall be adjusted to the lesser of (i) Fair Market Rent as set forth in this Section 5.6; and (ii) an amount equal to ten percent (10%) more than Base Monthly Rent in effect immediately prior to the Adjustment Date.

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|-------|---------------------------------------|---|
| 1.5. | CURRENT LEASEHOLD
EXCISE TAX RATE: | [Twelve and 84/100 percent (12.84%)] [SUBJECT TO
ADJUSTMENT BASED ON RATE IN EFFECT ON THE
EXECUTION DATE] . |
| 1.6. | ADDITIONAL
CHARGES: | None. |
| 1.7. | SECURITY AMOUNT: | None. |
| 1.8. | GUARANTY: | None. |
| 1.9. | PERMITTED USE: | Construction and operation of [Note: to be completed based on use for specific GL Parcel: general office, retail and associated parking facilities -or- retail, residential units, and associated parking facilities.] |
| 1.10. | PROPERTY INSURANCE: | <u>Lessee Provided Insurance:</u> |

Builder’s Risk Insurance:

During the Construction Period, Lessee or its general contractor shall purchase Builder’s Risk Insurance, affording “all-risk” coverage on the Project for the Full Replacement Cost. Such Builder’s Risk Insurance shall also (i) provide Flood coverage if the Premises is located within the 100-year flood plain, (ii) provide Contractor’s Pollution Liability or Pollution Legal Liability coverage with limits of One Million and 00/100 Dollars (\$1,000,000.00) per claim and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate, and (iii) name Lessor as an additional insured.

Property/Casualty Insurance:

Following the Construction Period, Lessee shall obtain Property/Casualty Insurance at Full Replacement Cost and the following coverages:

- 1) Business Interruption Insurance – Coverage to include payment of Rent to Lessor for a period of at least six (6) months.
- 2) Flood Insurance - If the Premises is located within the 100-year flood plain during the Term.

Lessor provided insurance:

Lessor shall carry the insurance required to be maintained by Lessor pursuant to Section 16.6.

1.11. LIABILITY INSURANCE: Lessee shall obtain Commercial General Liability Insurance including owned and non-owned automobile liability in coverage amounts of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence/Two Million and 00/100 Dollars (\$2,000,000.00) aggregate (“**Minimum Coverage Amount**”); and further subject to adjustment in accordance with the provisions of Section 16.

1.12. WORKERS
 COMPENSATION: Lessee shall obtain worker’s compensation in accordance with applicable laws and Employers Liability insurance with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00).

1.13. ADDRESSES FOR
 NOTICE PURPOSES: Notices to Lessor shall be sent to:

City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995
Attn: Patrick Quinton
Email: patrick.quinton@cityofvancouver.us

With a copy to:
City of Vancouver
PO Box 1995Vancouver, WA 98668-1995
Attn: City Attorney’s Office
Email: attorneyemails@cityofvancouver.us

With a copy to:
Pacifica Law Group LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101
Attn: Gerry Johnson
Email: gerry.johnson@pacificallawgroup.com

Notices to Lessee shall be sent to:

_____ LLC
c/o LPC West LP.
1201 Third Avenue, Floor 22
Seattle, WA 98101
Attn: Patrick Gilligan
Email: pgilligan@lpc.com

With a copy to:
Lincoln Property Company
8111 Douglas Avenue, Suite 600
Dallas, Texas 75225
Attn: Gregory S. Courtwright
Email: gcourtwright@lpc.com

With a copy to:
Radler White Parks & Alexander LLP
111 SW Columbia Street, Suite 700
Attn: Dina Alexander

Email: dalexander@radlerwhite.com

1.14. BROKERS:

Lessor's Broker: Not Applicable.

Lessee's Broker: Not Applicable.

Lessor shall lease the Premises (as defined below in Section 2) to Lessee, and Lessee shall lease the Premises from Lessor, in accordance with the provisions of this Lease. All exhibits attached hereto are made a part of this Lease and incorporated herein.

2. LEASED PREMISES. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, subject to and with the benefit of the terms and conditions of this Lease, including the attached exhibits, the real property located in the City of Vancouver, Clark County, Washington, which Premises are described in Section 1.2 and as represented by the area outlined on the attached Exhibit "A" and legally described and depicted in Exhibit "B" (the "**Premises**"). Lessor shall provide the Premises with access to all adjoining streets and with all utilities and services required by Lessor and Subtenants in connection with the Permitted Use. Except as otherwise set forth in this Lease or the DDA, Lessee hereby accepts said Premises as of the Term Commencement Date in "As-Is" condition, as more particularly set forth in Section 9.2 hereof.

3. [RESERVED]

4. LEASE TERM

4.1. Term. In accordance with the terms and conditions of this Lease, Lessee shall have and hold the Premises for the Initial Term set forth in Section 1.3, unless this Lease shall be sooner terminated as provided in this Lease. For purposes of this Lease, the word "**Term**" shall have the meaning defined in Exhibit "C". When the Term Commencement Date and the expiration date of the Initial Term have been ascertained, upon the written request of either party, Lessor and Lessee shall execute a confirmation of such dates.

4.2. Extension Options. Provided Lessee is not in Default, Lessee shall have the right (each an "**Option**") to extend the Initial Term of the Lease for two (2) consecutive periods of fifteen (15) additional years each (each, an "**Option Term**"). Lessee may exercise each Option by providing Lessor with written notice of such exercise no later than nine (9) months prior to the expiration of the then-existing Term in effect, provided, at the time Lessee exercises such Option, Lessee is not in Default of this Lease. Following Lessee's timely and valid exercise of an Option, Lessee shall prepare and Lessor shall execute and deliver to Lessee an amendment to this Lease confirming the Term as extended by the Option Term. There shall be no further options to extend or renew the Term beyond the two Option Terms. If Lessee elects not to exercise the first Option or the second Option as provided herein, the option privilege shall be extinguished and the Term shall end upon the expiration of the Initial Term or the first Option Term, as the case may be.

4.3. Terms of Extension Options. If the Initial Term is extended as aforesaid, all of the same terms, provisions and conditions set forth in this Lease shall apply, provided, that, the Rent payable during each Option Term shall be established as set forth in Section 5.6.

5. RENT; ADDITIONAL RENT:

5.1. Payment of Rent. Commencing on the Term Commencement Date, Lessee agrees to pay to Lessor as rent during the Initial Term the Base Monthly Rent set forth in Section 1.4, subject to adjustment as set forth in Section 1.4, in addition to all applicable Leasehold Excise Taxes (the Base Monthly Rent and applicable Leasehold Excise Taxes are collectively referred to herein as the "**Rent**"). Rent shall be due to Lessor on an annual basis on or before January 10th of each year during the Term, provided that prorated Rent for the first partial year of the Term shall be due within three (3) Business Days of the Term Commencement Date. The current Leasehold Excise Tax Rate is set forth in Section 1.5. Lessor shall remit all Leasehold Excise Taxes paid by Lessee to the Washington Department of Revenue (or any succeeding entity responsible for the collection of the Leasehold Excise Tax) prior to the date that such Leasehold Excise Taxes are due.

5.2. Rent Abatement Period. During the first two (2) years of the Initial Term, Lessee shall pay a reduced Base Monthly Rent as provided in the schedule set forth in Section 1.4 hereof (such period of reduced rent payment, the “**Rent Abatement Period**”). In the event a Lessor Delay (as defined in Exhibit “C”) occurs during the Rent Abatement Period, the Rent Abatement Period shall be extended one Day for each Day of Lessor Delay.

5.3. Payment of Additional Charges. All Additional Charges, including those described in Section 5.11, shall be paid within thirty (30) Days from the date of billing. All payments shall be payable at Lessor’s office in Vancouver, Washington without counterclaim, setoff, deduction, or defense, except as specifically set forth in this Lease.

5.4. Late Charges. If any payment of Rent or Additional Charges due to Lessor is not received within five (5) Days of the date when due, Lessee shall pay to Lessor a late charge in the amount of five percent (5%) of the payment then due and in arrears and, if such amount is not paid within thirty (30) Days following the date when due, such amount shall also accrue interest on said payment in the amount of twelve percent (12%) per year (the “**Interest Rate**”). Interest shall be calculated on outstanding payments from the date first due until received by Lessor. Notwithstanding the foregoing, Lessor shall waive such late fee and interest the first time in a calendar year that Lessee is late in its payment of Rent or Additional Charges, so long as Lessee pays such past due Rent or Additional Charges within ten (10) Days following written notice that such payment is past due. Lessee shall be responsible for any attorney fees or related charges incurred by Lessor for collection of Rent or Additional Charges. A charge of Seventy-Five and 00/100 Dollars (\$75.00) shall be levied for any check received which is returned for insufficient funds

5.5. Proration. Any Rent payment for any fractional year during the Term hereof shall be prorated based on the number of Days elapsed in such year.

5.6. CPI Increases in Base Monthly Rent. Commencing on the first anniversary of the Term Commencement Date and continuing annually thereafter, including during the Rent Abatement Period, Base Monthly Rent shall be adjusted based on the change in the Consumer Price Index (Seattle-Tacoma-Bellevue, WA) from the immediately preceding twelve (12) months, with a floor of two and one-half percent (2.5%) and a cap of five and one-half percent (5.5%).

5.7. Base Monthly Rent Adjustment. The Base Monthly Rent for each twenty (20) year period commencing on an Adjustment Date shall be equal to the lesser of: (a) the “Fair Market Rent” for the Premises, which shall be determined as set forth in this Section 5.7, or (b) an amount equal to ten percent (10%) more than Base Monthly Rent in effect immediately prior to the Adjustment Date.

5.7.1. “**Fair Market Rent**” shall be the then-current fair market value (“**FMV**”) of the Premises (as determined pursuant to this Section) multiplied by (b) six percent (6%), but in no event shall the determination of the FMV cause the Base Monthly Rent to be an amount less than the Base Monthly Rent in effect immediately prior to the applicable Adjustment Date.

5.7.2. Calculation of FMV. The FMV of the Premises shall be determined by: (a) excluding the value of all then-existing Improvements located on the Premises (including those Improvements constructed by Lessee and Subtenants); (b) assuming that the Premises are unencumbered by this Lease or by any subleases; and (c) assuming that the use of the Premises is for a project (i) in good condition and repair, (ii) in a general condition that is commensurate with buildings in Vancouver, Washington that are similar in type and of a similar age, (iii) and with the same product type, density, net rentable square footage, location, and the same uses as the then-existing Improvements located on the Premises.

5.7.3. Lessor Appraisal. Not more than one hundred eighty (180) days and not less than one hundred fifty (150) days before each Adjustment Date, Lessor shall provide Lessee with an appraisal of the FMV of the Premises that was performed based on appraisal instructions that comply with the requirements of Sections 5.7.1 and 5.7.2, which appraisal sets forth Lessor’s proposal for the FMV of the Premises. Lessor and Lessee shall thereafter negotiate in good faith to determine the FMV of the Premises by mutual agreement. If Lessor and Lessee are unable to determine the FMV of the Premises by mutual agreement within one hundred twenty (120) days before the applicable Adjustment Date will occur, by the date that is ninety (90) days before the applicable Adjustment Date, Lessee shall provide Lessor with an appraisal of the FMV of the Premises that is performed based on appraisal

instructions that comply with the requirements of Sections 5.7.1 and 5.7.2. If Lessor and Lessee are thereafter unable to determine the FMV of the Premises by mutual agreement within sixty (60) days before the Adjustment Date will occur, the FMV of the Premises will be determined as follows:

5.7.4. ***Selection of Third Appraiser.*** Within ten (10) Business Days after either party delivers notice to the other party requiring a third appraiser, which notice shall be sent to each party's appraiser, the appraisers for each of the Lessor and Lessee shall appoint a third appraiser who shall (a) be competent and impartial, and (b) shall not have worked for either Lessor or Lessee during the immediately previous ten (10) year period to determine the FMV of the Premises. If the two appraisers are unable to timely agree upon the third appraiser, the third appraiser shall be selected by the presiding judge of the Clark County Superior Court.

5.7.5. ***Determination of FMV.*** The FMV shall be fixed by the three (3) appraisers in accordance with the following procedures and Section 5.7.1 above. Within five (5) Business Days following appointment of the third appraiser, each party-appointed appraiser shall provide a complete copy of its appraisal to the third appraiser. If either of the party-appointed appraisers fails to submit its appraisal within such five (5) Business Day period, the other party-appointed appraiser's FMV determination shall be deemed to be the FMV. If both party-appointed appraisers submit their proposed FMV determinations, the role of the neutral appraiser shall be to select whichever of the two proposed determinations of FMV most closely approximates the neutral appraiser's own determination of FMV. The neutral appraiser shall have no right to propose a middle ground or any modification of either of the two proposed determinations of FMV. The determination of FMV that the neutral appraiser chooses as that most closely approximating the neutral appraiser's determination of the FMV shall constitute the decision of the appraisers and shall be final and binding upon the parties. The appraisers shall have no power to modify the provisions of this Lease.

5.7.6. ***Timing.*** The neutral appraiser's decision shall be made not later than thirty (30) Days after the submission by the appraisers of their appraisals. The parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the neutral appraiser may for good cause allow reasonable extensions or delays, which shall not affect the validity of the decision. Absent fraud, collusion or willful misconduct by the neutral appraiser, the neutral appraiser's decision shall be final, and judgment may be entered in any court having jurisdiction thereof.

5.7.7. ***Appraisers.*** All appraisers must be MAI certified real estate appraiser and have at least ten (10) years full-time experience and experience with ground leases and familiarity with the FMV for parcels of land in downtown cores similar to the Premises in Vancouver, Washington.

5.7.8. ***Fees.*** Each party shall pay the fees and expenses of its respective appraiser and both parties shall share the fees and expenses of the neutral appraiser equally.

5.8. ***Taxes.***

5.8.1. In addition to the Leasehold Excise Tax, Lessee shall pay as additional Rent all real and personal property taxes, assessments (including assessments for public improvements), rates, charges, license and permit fees, municipal liens, levies, excises or imposts, sales, use and occupancy taxes, business and occupation taxes, leasehold excise taxes on subleases or otherwise, gross receipts and similar taxes (i.e. taxes based upon gross income that fail to take into account deductions with respect to depreciation, interest, taxes or ordinary and necessary business expenses relating to the Premises), any tax or charge assessed against the fair market value of the Premises, and any taxes levied or assessed in addition to or in lieu of, in whole or in part, such taxes, assessments or other charges of every name, nature and kind whatsoever, including without limitation all governmental charges of every name, nature or kind that may be levied, assessed, charged or imposed or may be or become a lien or charge (i) upon the Premises or any part thereof; (ii) upon the rent or income of Lessee; (iii) upon the use or occupancy of the Premises; or (iv) upon any of the Improvements that are or are hereafter placed, built or newly constructed upon the Premises. Each of the foregoing taxes, assessments and other charges which are the responsibility of Lessee are herein referred to as a "***Tax***", and all of the foregoing taxes, assessments and other charges which are the responsibility of Lessee are herein referred to collectively as "***Taxes***". If at any time during the Term, under any Applicable Laws, any new Tax is levied or assessed against Lessor directly, in substitution in whole or in part for Taxes then in effect, Lessee covenants and agrees to pay and discharge such Tax.

5.8.2. If, under any Applicable Law, any Tax is payable or may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Tax), Lessee may pay the same together with any accrued interest on the unpaid balance of such Tax in installments as the same respectively become due but before any fine, penalty or cost may be added thereto for the nonpayment of any such installment and interest. Any Tax relating to a fiscal period of the taxing authority, a part of which period is included within the Term and a part of which is included in a period of time after the termination of the Term, or prior to the Commencement Date, shall be proportionally adjusted as between Lessor and Lessee as of the termination of the Term of this Lease, or as of the Commencement Date, as applicable, so that Lessor shall pay that proportion of such Tax which relates to that part of such fiscal period after the termination of the Term, or prior to the Commencement Date, as applicable, and Lessee shall pay the remainder thereof. With respect to any Tax for public improvements or benefits which by law is payable, or at the option of the taxpayer may be paid, in installments, Lessor shall pay the installments thereof which may be paid (without penalty, interest or other charge or cost) prior to the Commencement Date or after the end of the Term and Lessee shall pay all installments which are due or payable during the Term.

5.8.3. Nothing in this Lease shall require Lessee to pay franchise, estate, inheritance, succession, transfer or income tax of Lessor except that Lessee shall pay any such tax which is, in whole or in part, in substitution for any other Tax which Lessee is obligated to pay under Section 5.8.1.

5.8.4. Lessor shall send to Lessee, within fifteen (15) days of Lessor's receipt thereof, copies of any notices of Taxes payable by Lessee and received by Lessor from any governmental entity. Nothing contained in this Lease shall obligate Lessee to pay any fines or penalties with respect to Taxes where such fines or penalties are payable due to Lessor's failure to provide timely notice of such Taxes to Lessee or due to the negligence or willful misconduct of Lessor.

5.8.5. Lessee shall promptly notify Lessor of its intent to contest any Tax. Lessee may contest the amount or validity of any Tax by appropriate legal proceedings but no such contest shall in any way relieve, defer, modify or extend Lessee's obligation to pay any and all Taxes at the time and in the manner provided in this Section 5.8, except to the extent (if any) that the pendency of the contest proceedings operate to stay all rights, procedures and proceedings that could in any way adversely affect any right, title or interest of Lessor in or to the Premises and the Improvements thereon.

5.9. Operating Costs. Lessee shall pay or fund when due as Additional Rent all insurance premiums and operating expenses, permit and license fees, utilities and services, construction costs, maintenance, repair, replacement, rebuilding, restoration, management, marketing and leasing services, operations and other costs of any type whatsoever accruing at any time during the Term in connection with the ownership, marketing, leasing, operation, management, maintenance, repair, replacement, restoration, use, occupancy or enjoyment of the Premises (collectively, "Operating Costs").

5.10. Future Assessment District. Lessor shall the right to include the Premises in any new improvement or special assessment district proposed to be created by a governmental authority (a "Proposed District"). If the Proposed District is ultimately formed and affects the Premises, such assessments shall be included in Taxes for all purposes of this Lease, provided Lessee may pay any resulting assessments over the maximum period allowed by law, and shall be liable only for any installments that become due during the Term.

5.11. Net Lease. This is intended to be a net lease, meaning that Lessee shall pay all expenses of every type relating to the Premises after the Term Commencement Date, and all Rent and Additional Charges shall be received by Lessor without setoff, offset, abatement, or deduction of any kind, except as expressly set forth in the Lease. Under no circumstances or conditions, whether now existing or hereafter arising or whether beyond the present contemplation of the parties, shall Lessor be expected or required to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability under the Lease, except as expressly set forth in the Lease.

6. ADDITIONAL CHARGES: Lessee shall timely make all payments owing by Lessee under this Lease other than Rent ("Additional Charges"), including, but not limited to, any charges, costs, and expenses that Lessor pays or agrees to pay under this Lease, together with all interest and other charges that may accrue thereon, if and to the extent same are Lessee's responsibility under this Lease and Lessee fails to timely pay same, and all other

damages, costs, expenses, and sums that Lessor may suffer or incur, or that may become due, by reason of any Default.

7. [RESERVED]

8. [RESERVED]

9. POSSESSION

9.1. Delivery. Lessor shall be deemed to have delivered the Premises to Lessee on the Term Commencement Date, and as of the Term Commencement Date, Lessee shall have all rights to possess and occupy the Premises.

9.2. Waiver of Warranties; Condition of the Premises. Lessee acknowledges that, except for the explicit warranties and representations in this Lease or in the DDA, Lessor has not made any representations or warranties of any kind concerning the Premises or the condition of the Premises. Except for the explicit representations and warranties in this Lease or in the DDA, Lessor specifically disclaims all warranties or representations of any kind or character, express, implied, statutory or otherwise (including warranties of merchantability and warranties of fitness for use or acceptability for the purpose intended by Lessee) with respect to the Premises or the condition of the Premises. Except as otherwise provided in this Lease (including, without limitation, Lessor's indemnification, obligations and responsibilities with respect to Hazardous Substances set forth in Section 12 hereof), Lessor leases the Premises to Lessee "AS IS" and "WHERE IS" and "WITH ALL FAULTS." Lessee acknowledges that, except as otherwise provided in this Lease or in the DDA: (i) Lessor has made no warranty, representation or guarantee, expressed, implied or statutory, written or oral, pertaining to the Premises' compliance with any laws, ordinances, rules or regulations, federal, state or local; and (ii) Lessor has made no warranty, representation or guarantee, expressed, implied or statutory, written or oral, as to any government limitation or restriction, or absence thereof, pertaining to the Premises, or as to the presence or absence of any latent defect, subsurface soil condition, environmental condition, hazardous substance, toxic waste or any other matter pertaining to the physical condition (title, mapping, construction, or otherwise) of the Premises, including, but not limited to, the condition of the soil, subsoil, groundwater or surface water, and including the structural condition of improvements in, on or to the Premises, or as to the presence, use, discharge, spill, storage, generation, migration, handling, recycling, processing, treatment, disposal, release or threat of release of any hazardous materials at the Premises or any other area allegedly or actually affected by conditions existing at any time on, under, in, or around the Premises. LESSEE ACKNOWLEDGES THAT THE DISCLAIMERS SET FORTH IN THIS SECTION ARE AN INTEGRAL PART OF THIS LEASE AND THAT LESSOR WOULD NOT HAVE AGREED TO LEASE THE PROPERTY ON THE TERMS PROVIDED IN THIS LEASE WITHOUT THE DISCLAIMERS SET FORTH IN THIS SECTION.

10. USE OF PREMISES:

10.1. Lessee shall occupy and use the Premises for the Permitted Use set forth in Section 1.9 and shall not use the Premises for any other purpose without the prior written consent of Lessor. Lessee shall not use or authorize the use of any portion of the Premises for (i) for the storage, distribution or handling of chlorinated solvents, or (ii) for the storage, distribution or handling of any other Hazardous Substances, except Hazardous Substances (A) typically used in the operation of the Permitted Use in compliance with Environmental Laws, or (B) identified in the completed Tenant Environmental Questionnaire provided to Lessor from time to time in the form attached hereto as Exhibit "D" (collectively, the "**Prohibited Uses**").

10.2. Without limiting the foregoing or any other provision of this Lease, Lessee shall not do any act, or allow any subtenant or other user of the Premises to do any act, and in no event shall the Premises be used for (a) any purpose that in any manner causes, creates, or results in a nuisance or waste, other than the construction work expressly contemplated in this Lease or the DDA, or (b) any purpose that would or could invalidate or be in conflict with the provisions of any fire or other property insurance policy covering the Premises.

10.3. Lessee shall include in its subleases language requiring subtenants to comply with all Applicable Laws.

11. GENERAL COMPLIANCE WITH ALL LAWS: Lessee agrees to comply with all federal, state and municipal laws, ordinances and regulations applicable to Lessee and the Premises, and Lessor shall have the right to review all related documents in the possession or control of or reasonably available to Lessee. Lessor agrees to comply with all federal, state, and municipal laws, ordinances and regulations applicable to Lessor, and Lessee shall have the right to review all related documents in the possession or control of or reasonably available to Lessor. If Lessor requires copies of any such documents, Lessee will be reimbursed for any associated reasonable costs. Each party's right to review the other party's documents does not imply acceptance of any responsibility for accuracy, completeness, or legal compliance. Lessee shall pay any fees for any federal, state or municipal inspections and/or certificates required for use and occupancy of the Premises. Further, Lessee shall pay all licenses, fees, and taxes covering the business conducted on the Premises, together with all taxes and assessments on the property of Lessee on the Premises.

12. PRESENCE AND USE OF HAZARDOUS SUBSTANCES:

12.1. Use, Storage, and Disposal. Notwithstanding any other provision of this Lease, Lessee shall not use, transport, store, treat, generate, sell or dispose of any Hazardous Substances brought to the Premises during the Term on or in any manner that affects the Premises or surrounding properties except in accordance with Environmental Laws. "Affects the Premises or surrounding properties" shall include, but not be limited to, allowing any Hazardous Substances brought to the Premises during the Term to migrate off the Premises, or the Release of any Hazardous Substances brought to the Premises during the Term into adjacent surface waters, soils, sediments, ground waters or air, except in accordance with Environmental Laws.

12.2. Presence of Hazardous Substances. Lessor has notified Lessee that Hazardous Substances, specifically contaminated soils may be present in in and around the Premises from operations and activities occurring prior to the date the Lessor tenders possession of the Premises to Lessee ("**Contaminated Media**") and may be encountered during ground disturbing activities, such as excavation, construction, repair and maintenance at the Premises. Investigations have been conducted of the Hazardous Substances present on the Premises, and the results of such investigations are summarized, among other documents, in the [REDACTED], 202 [REDACTED] [Contaminated Media Management Plan, prepared for the Lessor by Maul Foster & Alongi] (the "**CMMP**"). The CMMP affects the Premises together with certain adjacent real property ("**Adjacent Real Property**"). The summarized investigations are referred to collectively as the "**Baseline Assessment**". Lessor has provided Lessee with a complete copy of the CMMP (included as Exhibit "E"). The parties acknowledge and agree that the Baseline Assessment establishes a presumption of the Contaminated Media condition of the Premises existing on and prior to the Effective Date. Prior to commencing its construction activities, Lessee, at Lessee's sole cost, may conduct (but shall not be required to conduct) a further environmental review (including, without limitation, a Phase II Environmental Report) by an independent reputable professional environmental consultant, which review may include boring and soil and groundwater samples, provided, that, Lessee repairs any damage to the Premises caused thereby. Lessor hereby consents to such further environmental review. As long as Lessee provides Lessor with a complete copy of the report detailing such further environmental review prior to commencing its construction activities, such further environmental review shall be included in combination with the Baseline Assessment ("**Supplemental Baseline Assessment**") as establishing the presumption of the Contaminated Media condition of the Premises existing as of the date of such report.

12.3. Category 1, 2, 3 and 4 Soils; Incremental Costs. The CMMP will provide that (a) Category 1 soils will be disposed of by Lessee at its cost and expense, and (b) Category 2 and 3 soils will be placed by Lessee, at its cost and expense, on a site designated by Lessor in writing on or before the Effective Date, which site shall be within a ten (10) mile radius of the Premises. Lessor and Lessee will share incremental costs associated with the removal or remediation of Category 4 soils from the Premises with Lessor paying ninety percent (90%) and Lessee paying ten percent (10%) of all such incremental costs; provided that Lessor's liability for such incremental costs associated with the Premises and the other real property that Lessee or an entity affiliated with LPC West, Inc. leases or purchases from Lessor pursuant to the DDA shall not exceed two million four hundred thousand dollars (\$2,400,000.00) in the aggregate. At such time as Lessor has expended \$2,400,000 in the aggregate whether for the Premises and/or other real property that Lessee or an entity affiliated with LPC West, Inc. leases or purchases from Lessor pursuant to the DDA, Lessor shall have no further obligation to share in the incremental costs associated with the removal or remediation of Category 4 soils as provided above. On or before the Effective Date, Lessor, at no cost to Lessee, shall have obtained any and all permits and other approvals necessary for the site to which Lessee will deliver the Category

2 and 3 soils to, and for Lessor to receive the Category 2 and 3 soils at, the designated site, including the receipt, offloading, stacking, storage, distribution, management and maintenance of the soils at, on and about the designated site. Lessee's compliance with the CMMP and delivery of the Category 2 and 3 soils to the designated site shall immediately and automatically result in a transfer of ownership and responsibility for such soils to Lessor, and Lessee shall have no further responsibility or liability for such soils whatsoever. If Lessor believes that Lessee has failed to comply with the CMMP for purposes of this Section 11, then within thirty (30) days of Lessee's delivery of the Category 2 and 3 soils to the designated site, Lessor shall so notify Lessee in a writing that sets forth in detail the alleged noncompliance. Failure of Lessor to timely provide such notice shall be deemed Lessor's waiver of any and all allegations that Lessee failed to comply with the CMMP with respect to the Category 2 and 3 soils delivered to the designated site.

12.4. *Reimbursement of Incremental Costs.* Lessor will reimburse Lessee for its share of incremental costs within thirty (30) days of receipt from Lessee of documentation reasonably required by Lessor of the incremental costs actually incurred in accordance with the CMMP. Lessee shall not submit for reimbursement of incremental costs more frequently than monthly.

12.5. *Definitions.* As used in this Section 12, "incremental costs" means all costs that would not otherwise be incurred but for the existence of Category 4 soils, in, on, under and about the Premises, including: (a) soil off-haul and disposal; (b) environmental testing of materials (including soil and groundwater) removed from the Premises if and as required by Environmental Law or a disposal facility; (c) environmentally required materials and equipment such as demarcation fabric; (d) dust and track-out control; (e) management of soil piles; and (f) any specialty clothing needed for workers performing soil removal or other remediation work. In other words, "incremental costs" are costs and expenses in excess of costs that would be incurred by Lessee as a result of the existence of Category 1 soils in, on, under and about the Premises, including in each cost category described in subsections (a) through (f) of this Section 12.5. As used in this Section 12.5, "Category 1", "Category 2", "Category 3" and "Category 4" soils shall have the meaning given to such terms by the Washington State Department of Ecology

12.6. *Amendments to CMMP.* No amendment or modification to the CMMP shall be binding on Lessee unless approved by Lessee in writing.

12.7. *Compliance with CMMP.* Lessor shall comply with the CMMP applicable to its activities affecting the Premises. Without limiting the generality of the foregoing, Lessor shall respond to Lessee within ten (10) Business Days following receipt of any written notice required to be provided by the CMMP, and thereafter continue to diligently pursue any further actions required of Lessor. If Lessor requires more than ten (10) Business Days to carry out actions required of it under the CMMP in response to a written notice by Lessee, Lessor shall notify Lessee of its plan and a reasonable timeline for proceeding within ten (10) Business Days following receipt of Lessee's notice, and Lessor shall promptly commence and diligently pursue such plan in accordance with such timeline. Lessor shall keep Lessee informed of its progress in pursuit of such plan. If there is any inconsistency between the cost allocation between Lessor and Lessee in this Section 12 and in the CMMP, the CMMP shall prevail.

12.8. *Compliance with Environmental Laws.* Lessor shall comply with all Environmental Laws in conducting Lessor's activities on or affecting the Premises. Lessee, at its sole cost and expense, shall comply with (i) all Environmental Laws applicable to Lessee's construction activities and operations, including, but not limited to, all permits applicable to the Premises and issued to Lessee, and (ii) the terms of any applicable permit covering stormwater or other discharges from the Premises. If and to the extent certain evidence and documentation of completion of remedial actions and compliance with Environmental Laws (such as a "No Further Action" certification) is requested by Lessee's lenders, investors, prospective tenants or subtenants, or prospective assignees of this Lease, Lessee shall have the right but not the duty to obtain such documentation at its sole cost, limited in geographic scope to the Premises. The Parties further agree that Lessee shall consult with Lessor prior to initiating contact with the Washington Department of Ecology or other regulatory agency to initiate the process for obtaining such documentation. Lessee shall not deviate from the agreed approach without further consultation with Lessor. Lessee shall provide to Lessor copies of all communications with the Washington Department of Ecology or other regulatory agency.

12.9. *Notifications.* Upon Lessee's discovery of the Release of Hazardous Substances not previously identified in the Baseline Assessment and any Supplemental Baseline Assessment that is on, beneath, or that may

affect the Premises or the surrounding properties, Lessee shall promptly notify Lessor and provide Lessor with a copy of any notifications given to any governmental entity, individual, or other entity relating thereto. Lessee shall promptly provide Lessor with copies of any inspection report, complaint, order, fine, request, notice or other correspondence from any person or entity regarding (1) the presence or Release of Hazardous Substances that is on, beneath, or that may affect the Premises or the surrounding properties; or (2) Lessee's compliance with Environmental Laws.

12.10. Environmental Assessment. Lessee shall, upon written request from Lessor made at any time during the Term of this Lease or within sixty (60) Days thereafter, based on a reasonable belief there has been a Release or material exacerbation of Hazardous Substances caused by Lessee or by Lessee's employees, sublessees, contractors or agents, excluding the Release or exacerbation of Hazardous Substances occurring as a result of activities conducted in accordance with Environmental Law, this Lease or the CMMP, or violation by Lessee of Environmental Laws, provide Lessor with an environmental assessment prepared by a qualified professional mutually agreed upon by Lessor and Lessee, which assent shall not be unreasonably withheld, conditioned or delayed. If Lessee refuses to assent within seventy-two (72) hours of an emergency or within ten (10) Days of a non-emergency, Lessor shall unilaterally select the qualified professional to perform said assessment. The environmental assessment shall, at a minimum, (1) certify that a diligent investigation of the Premises has been conducted, including a specific description of the work performed, and (2) either (a) certify that diligent investigation of the Premises has revealed no evidence of a such a Release of Hazardous Substances or violation of Environmental Laws, or (b) if a Release or violation of Environmental Laws is detected, identify and describe: (i) the types and levels of Hazardous Substances detected; (ii) the physical boundaries of the Release, including property other than the Premises; (iii) the actual and potential risks to the environment from such Release or violation; and (iv) the procedures and actions necessary to remedy the Release or violation in compliance with Environmental Laws. If such environmental assessment discloses there has been a Release or material exacerbation of Hazardous Substances caused by Lessee or by Lessee's employees, sublessees, contractors, or agents, or a violation of Environmental Laws caused by Lessee or by Lessee's employees, sublessees, contractors, or agents, or a Default by Lessee of its obligations under this Lease, Lessee shall pay the expense of obtaining the environmental assessment and of performing all remediation. If such environmental assessment discloses a material exacerbation or Release of Hazardous Substances by Lessor or by Lessor's employees, sublessees, contractors, or agents, or a violation by Lessor or by Lessor's employees, sublessees, contractors, or agents of Environmental Laws, or a Default by Lessor of its obligations under this Lease, Lessor shall pay the expense of obtaining the environmental assessment. If such environmental assessment discloses that there has been no material exacerbation or Release of Hazardous Substances or a violation of Environmental Laws, or a Default by Lessor of its obligations under this Lease, Lessor shall pay the expense of obtaining the environmental assessment.

12.11. Hold Harmless and Indemnity. Lessee shall defend (with attorneys approved in advance and in writing by Lessor), indemnify and hold Lessor and its agents harmless from any third-party loss, claim, fine or penalty arising from the Release or exacerbation of Hazardous Substances caused by Lessee or by Lessee's employees, sublessees, contractors, invitees (but only when a loss, claim, fine or penalty is related to such invitees' presence on the Premises) or agents or any violation of Environmental Laws affecting the Premises or the surrounding properties to the extent caused by Lessee or by Lessee's employees, sublessees, contractors, invitees (but only when a violation of Environmental Laws is related to such invitees' presence on the Premises) or agents. Notwithstanding the foregoing, Lessee's obligations to defend, indemnify, and hold harmless Lessor and its agents shall not apply to the extent (a) the Release or exacerbation of Hazardous Substances or the violation of Environmental Laws is caused by Lessor, its agents, contractors or employees, or (b) occurring as a result of activities conducted in accordance with Environmental Law, this Lease or the CMMP, including any subsequent revision and amendments made thereto in accordance with this Lease. Such obligation shall include, but shall not be limited to, environmental response and remedial costs, other cleanup costs, environmental consultants' fees, attorneys' fees, fines and penalties, laboratory testing fees, claims by third parties and governmental authorities for death, personal injuries, property damage, business disruption, lost profits, natural resource damages and any other costs and Lessor's expenses as provided in this Lease. Lessee's obligations pursuant to this subsection shall survive expiration or other termination of this Lease.

12.12. Assignments and Subleases. Lessor may withhold its consent to any assignment, sublease, or other transfer (where Lessor's consent is required under this Lease) if the proposed transferee's use of the Premises may involve the use, transportation, storage, treatment, generation, sale or disposal of Hazardous Substances not in compliance with Environmental Laws, including the proposed transferee's historical use, transportation, storage, treatment, generation, sale or disposal of Hazardous Substances not in compliance with Environmental Laws.

12.13. *Lessor's Remedies.* Subject to the Lessor's obligations under this Lease, without prejudice to any other right or remedy available to Lessor at law, in equity, or under this Lease, Lessor, in the event of a Release of Hazardous Substances by Lessee or by Lessee's employees, sublessees, contractors or agents (excluding the Release of Hazardous Substances occurring as a result of activities conducted in accordance with Environmental Laws, this Lease or the CMMP), a violation by Lessee of Environmental Laws, or a Default by Lessee of the provisions of this Section 12, after notice and opportunity to cure as provided in Section 24, shall be entitled to the following rights and remedies, at Lessor's option:

12.13.1. To recover any and all damages associated with such Release, violation or Default, including, but not limited to, cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by Lessor, and any and all damages and claims asserted by other parties and Lessor's attorneys' fees and costs.

12.13.2. To be indemnified as provided in subsection 12.11.

12.13.3. Lessor may enter upon the Premises and cure any such violation and either (i) charge to Lessee as Additional Charges an amount sufficient to recover the cost of such cure, together with interest thereon at the Interest Rate, or (ii) increase Rent by such amount as will permit Lessor to fully recover the cost of such cure, together with interest thereon at the Interest Rate, during such portion of the unexpired Term of this Lease as Lessor may deem proper, provided Lessor provides documentation of the costs incurred to cure such violation or Default. Such election by Lessor shall be without prejudice to any other right or remedy provided to Lessor at law, in equity, or in this Lease, excluding termination of the Lease.

12.14. *Vacation of the Premises.* Prior to vacation of the Premises upon expiration or earlier termination of this Lease, in addition to all other requirements under this Lease, Lessee will have a Phase I environmental site assessment (the "**Phase I**"), and, if recommended in the Phase I in response to Recognized Environmental Conditions (as that term is defined in the then-current ASTM 1527 standard) ("**RECs**") except for those RECs arising from or related to environmental conditions identified in the Baseline Assessment, including investigations referenced therein, or Supplemental Baseline Assessment, or RECs arising from work done in compliance with the CMMP by Lessee, a Phase II environmental site assessment (the "**Phase II**"), conducted on the Premises by an independent, reputable professional environmental consultant mutually agreed upon by Lessor and Lessee to assess the presence of Hazardous Substances on the Premises as of the termination of this Lease (the "**Exit Assessment**") and to compare the condition of the Premises at that time with the Baseline Assessment and the Supplemental Baseline Assessment established in accordance with Section 12.2. The scope of work for the Exit Assessment shall be reviewed and approved by Lessor prior to its initiation, and it shall be intended to address whether Lessee or Lessee's employees, sublessees, contractors, or agents have caused Hazardous Substances to have been Released on the Premises in violation of Environmental Laws at the time of such Release, and if so, Lessee shall be obligated to remediate any such Release as required to return the Premises to the condition established in accordance with Section 12.2.

12.15. *Cooperation.* In the event of a Release or exacerbation of Hazardous Substances caused by acts or omissions of Lessee or by Lessee's employees, sublessees, contractors or agents, excluding the Release or exacerbation of Hazardous Substances occurring as a result of activities conducted in accordance with Environmental Law, this Lease or the CMMP, Lessee shall cooperate with Lessor in any investigation or remediation of the Premises that are required by the Washington Department of Ecology or other regulatory agency. Lessee agrees it shall not demand or, unless required by the Washington Department of Ecology or other regulatory agency, agree to a remedy that will interfere with Lessor's use of the Premises, and Lessor agrees it shall not demand or, unless required by the Washington Department of Ecology or other regulatory agency, agree to a remedy that will interfere with the Lessee's Permitted Use of the Premises. Lessor reserves the right to take over any investigation and remediation of the Premises required by the Washington Department of Ecology or other regulatory agency, after notice and opportunity to cure as provided in Section 24 except in the event of an emergency, if it determines, in its reasonable discretion, that Lessee is not complying with its obligations under the Lease, applicable Environmental Laws, and the applicable cleanup plan. Any undertaking by Lessor to investigate or remediate the Premises shall not relieve Lessee of its obligations under this Lease or applicable Environmental Laws. In the event of a Release or exacerbation of Hazardous Substances not caused by Lessee or by Lessee's employees, sublessees, contractors or agents that affects the Premises, Lessee shall provide access to the Premises for investigation and remediation subject to the access requirements provided in Section 13.1.

12.16. *Cultural and Archaeological Resources.* Lessor has notified Lessee that cultural and archaeological resources may be present at the Premises and may be encountered during ground disturbing activities. If Lessee encounters any such resources on the Premises, Lessee shall report the discovery to Lessor and shall be responsible for submittals required for obtaining any cultural and archaeological approvals necessary for Lessee's activities on the Premises as required by local, state, and federal laws, ordinances, and regulations. To ensure that ground disturbing activities are properly managed for cultural and archaeological resources, Lessee shall ensure that such activities comply with applicable local, state and federal laws, ordinances, and regulations. Lessee shall be responsible to implement, and Lessor shall bear the cost of, the monitoring plan for Lessee's activities, including construction, as well as all costs and expenses associated with the creation of submittals required for obtaining approvals necessary for Lessee's activities on the Premises and Lessee's handling, removal, and otherwise dealing with such resources in compliance with all applicable laws (collectively, "**Archaeological Compliance Costs**"). Lessor shall not otherwise be responsible for any of Lessee's development, finance, or Project costs arising from the discovery or presence of cultural and archaeological resources, including, but not limited to, Project delays or design/redesign, but the Project Deadline shall be delayed on a day-for-day basis, commencing on the date of Lessee's discovery of such resources and continuing as reasonably necessary for Lessee to handle, remove, and otherwise deal with such resources in compliance with all applicable laws. Such period of delay shall be determined by Lessee in its reasonable discretion, provided that it is working diligently and in good faith to resolve all issues related to such resources and to continue with construction and development of the Project. Lessor and Lessee shall work cooperatively with the archaeologists, appropriate local, state and federal agencies and applicable tribes to comply with all lawful obligations associated with the discovery and protection of such materials. Further, the parties shall work cooperatively so that Lessee may resume the construction or other ground disturbing work as expeditiously as possible following the discovery. Within thirty (30) days of receipt from Lessee of invoices or other reasonable evidence of the Archaeological Compliance Costs actually incurred by Lessee, Lessor shall fully reimburse Lessee for such Archaeological Compliance Costs.

13. RESERVATIONS BY LESSOR:

13.1. *Access Rights.* Lessor reserves the right to: (a) enter upon and inspect the Premises Common Areas (as defined in Exhibit "C") at any and all reasonable times during the Term of this Lease; (b) to enter upon the Premises Common Areas to post and keep posted thereon notices of non-responsibility for any construction, alteration or repair that Lessor is obligated or entitled to undertake pursuant to the terms of this Lease; and (c) during the last six (6) months of the Term (or any applicable Extension Term) to show the Premises Common Areas to prospective tenants or purchasers. In addition, Lessor shall be entitled to enter upon and inspect the interior spaces within the Improvements on the Premises, subject to compliance with the following term and conditions:

13.1.1. Lessor shall request access to a space within the Improvements which is occupied by a Subtenant (as defined in Section 20.7) only if Lessor has a reasonable need to access such space (such as to conduct a required environmental audit), if Lessor has a reasonable basis to believe a violation of this Lease or applicable law is occurring within such Subtenant's Sublease Space (as defined in Section 20.7), or to conduct a joint walk-through of the Premises in accordance with Section 30 (Surrender of Premises).

13.1.2. Except in the event of an emergency, Lessor shall provide Lessee, and if applicable, the affected Subtenant, with at least forty-eight (48) hours prior written notice of Lessor's need to access the interior spaces of the Improvements and the reason therefor. An emergency shall include, but shall not be limited to, the existence of a condition that poses a threat to human health or the environment.

13.1.3. Lessor shall comply with the terms and conditions of Subleases in place governing access to such Sublease Spaces, including, without limitation, compliance with such Subtenants' security procedures and providing additional advance notice of such access to such Subtenants, if required. Representatives of Lessee and Subtenant shall be entitled to accompany Lessor during any access by Lessor to interior spaces of the Improvements.

13.1.4. Any access to the Premises or spaces within the Improvements by Lessor shall be conducted in such a manner as to avoid (or if not possible, minimize) interference with Lessee's operations or the operations of Lessee's Subtenants.

13.1.5. Lessor, at Lessor's sole cost and expense, shall repair any damage done to the Premises to restore the Premises to the condition that existed immediately prior to the exercise by Lessor of its rights under this Section 12.1.

The right of inspection shall not impose any obligation on Lessor to do so, nor shall Lessor incur any liability for not making inspections.

13.2. Waiver of Claims. Except to the extent of Lessor's negligence, willful misconduct, breach of any term or condition of this Section 13, or breach of any covenant of quiet enjoyment with respect to any residential lease in the exercise of its rights under this Section 13, Lessee hereby waives and releases any claims against Lessor or any Lessor Parties for damages for any injury or inconvenience to or interference with Lessee's business at the Premises, any loss of occupancy or quiet enjoyment or the Premises or any other loss, damage, liability or cost occasioned by Lessor's exercise of the rights reserved to Lessor under, or granted to Lessor pursuant to this Section 13.

14. MAINTENANCE AND REPAIR:

14.1. Lessee Maintenance Obligations. Lessee, at its sole cost and expense, shall take or cause to be taken good care of the Premises and the Improvements during the Term of this Lease, it being understood that Lessor shall not be required to make any repairs to the Premises or the Improvements during the Term hereof. Lessee's responsibility shall include maintenance and repair of the electrical system, lighting, plumbing, drain pipes to sewers, parking areas and trade fixtures and appurtenances located on the Premises. Subject to Lessee's rights under Section 18 (Damage and Destruction), Lessee's repairs shall include all repairs and replacements thereto, interior and exterior, structural and non-structural, , and Lessee shall maintain and keep the Premises in good order and repair. Without limiting the generality of the foregoing sentences, Lessee agrees to maintain, repair and keep in good condition the Improvements, all sidewalks, vaults, sidewalk hoists and curbs on the Premises and all water, sewer, and gas connections, pipes, and mains which service the Premises. Lessee's obligation to maintain all water, sewer, and gas connections, pipes, and mains shall apply to, but not be limited to, water lines and faucets within the Premises, sanitary sewer and drain lines on the Premises extending to the sewer/septic connections, and all plumbing fixtures. Throughout the Term, Lessee shall cause its property manager to keep records of all repairs, maintenance, warranties and certifications performed or obtained by Lessee with respect to the building systems and structural components of the Improvements which are customarily maintained by operators of projects similar in size, type, quality, use and location as the Project, consistent with good management practices (collectively, the "**Maintenance Records**"). At the end or other termination of this Lease, Lessee shall deliver to Lessor the Premises and all Improvements thereon in accordance with Section 29 (Surrender of Premises), along with copies of Maintenance Records for a period of no less than five (5) years prior to the applicable expiration or earlier termination date.

14.2. Sidewalks. Lessee shall keep the sidewalks abutting the Premises and all entrances free and clear of snow, ice, debris and obstructions of every kind, at its sole cost and expense, provided, that, the foregoing shall not prevent Lessee from maintaining sidewalk tables, chairs, benches, planter boxes, signage, or similar items thereon, so long as such items are permitted under applicable laws, codes, permits and approvals and do not block pedestrian pathways.

14.3. Lessor Right to Perform Lessee Maintenance. If Lessor is required to make any repairs to the Premises by reason of Lessee's negligent acts or omission to act or failure to perform its obligations under this Lease, after notice and opportunity to cure as provided in Section 24.2, then Lessor, upon completing such repairs, may charge Lessee for the costs thereof as an Additional Charge next owing from Lessee, which cost shall become due within thirty (30) Days of Lessee's receipt of invoices or other reasonably evidence of the costs actually incurred by Lessor to complete such repairs.

14.4. Casualty. In the event of damage or destruction to the Premises caused by a fire or other casualty, the provisions of this Section 14 shall not apply and the obligations of the parties shall be controlled by Section 18 (Damage or Destruction) of this Lease.

15. PROJECT CONSTRUCTION AND IMPROVEMENTS:

15.1. *Lessor Cooperation.* The parties acknowledge and agree that Lessee shall be constructing the Project in accordance with Section 1.9 and undertaking other Permitted Uses as defined therein.

15.2. *Construction of Project.*

15.2.1. The Initial Improvements are subject to, and shall be constructed in conformance with the design guidelines attached to the Lease as Exhibit F and in substantial compliance with, the plans and specifications that are the basis for the issuance of Permits for the Project, and any future exterior Improvements that require Lessor's consent hereunder are subject to, and shall be constructed in substantial compliance with, the plans, specifications and elevations approved in writing by Lessor as set forth in Section 15.5 and shall be completed with all reasonable dispatch. Lessee warrants that any construction, remodeling, replacement, alteration, addition, erection or installation in, on or to the Premises, whether done with or without Lessor's consent, shall be done in a good and workmanlike manner with new materials; will be performed in compliance with local, state and federal building, fire and other codes and construction guidelines, including, but not limited to, the American's with Disabilities Act, and all other applicable covenants, terms and conditions hereof. Lessee shall provide to Lessor copies of certificates and permits issued by local, state and federal building, fire and other code and construction agencies.

15.2.2. Lessee shall commence construction of the Improvements no later than ninety (90) days after the Effective Date. As used in this Lease, "**commence construction**" or "**commencement of construction**" and related phrases mean the date upon which the general contractor for the Project has commenced mobilization at the Premises. Subject to delay by Force Majeure, Lessee's failure to timely commence construction of the Improvements shall constitute a Default. Lessee shall use commercially reasonable efforts to prosecute to completion the construction of Improvements by the Project Deadline, with "**completion of construction**" and related phrases meaning the date the Cit of Vancouver issues a Certificate of Occupancy for the relevant Improvements. Subject to Force Majeure, Lessee failure to timely complete the Improvements shall constitute a Default.

15.2.3. From commencement of construction of the Improvements until such time as Lessee has achieved completion of construction of the Improvements, Lessee shall provide Lessor with monthly progress reports regarding the status of the construction.

15.2.4. Lessee shall permit Lessor, through its officers, agents, or employees, to enter onto the Premises at reasonable times during business hours after reasonable advance written notice and acceptance by Lessee (a) to inspect the construction work to determine that the same is in conformity with the requirements of this Lease and the DDA, and (b) following completion of construction, to inspect the ongoing operation and management of the Improvements to determine that the same is in conformance with the requirements of this Lease. Notwithstanding the foregoing, Lessor shall not interfere with Lessee's use of the Premises or operations of the Improvements or interfere with any Subtenant's occupancy of the Premises or Improvements. The scheduling of all Lessor inspections shall take into account the timing and availability of a representative of Lessee to attend such inspections and access to Subtenants' premises pursuant to subtenants' rights under their applicable subleases or otherwise. Lessor's inspections shall not involve any activities that penetrate into the Improvements or any portion thereof. Lessor shall immediately repair any damage to the Premises or Improvements caused by Lessor's entry onto and inspections of the Premises or Improvements. Lessor hereby agrees to indemnify, defend, and hold Lessee, its managers, members, partners, officers, directors, employees, and agents free and harmless from and against any and all costs, losses, liabilities, damages and expenses, of any kind or nature whatsoever (including reasonable attorneys' fees and costs actually incurred), arising out of damage to persons or property caused by, arising out of, or resulting from the entry and/or the conduct of inspections at the Premises or Improvements by Lessor, its officers, contractors, agents or employees. The foregoing obligations and indemnification shall survive the expiration or earlier termination of this Agreement.

15.2.5. Lessee acknowledges that Lessor is under no obligation to supervise, inspect, or inform Lessee of the progress of construction or operations, and Lessee shall not rely upon Lessor therefor. Any inspection by Lessor during the construction is entirely for its purposes in determining whether Lessee is in compliance with this Lease and the DDA and is not for the purpose of determining or informing Lessee of the quality or suitability of construction. Lessee shall rely entirely upon its own supervision and inspection (or that provided by third parties) in

determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

15.3. Permits. It is further understood and agreed that construction of the Project will not occur until after permits for such construction have been issued. Notwithstanding the foregoing, it is acknowledged that issuance of all Permits necessary for construction of the entire Project shall not be required to commence construction, so long as the necessary permits have been issued for the work to be performed (such as grading permits or demolition permits) and such work is allowed to be performed under all laws.

Lessee shall be solely responsible for obtaining, at its sole cost and expense, the approval of the City (and any other governmental agencies with jurisdiction over the Premises) for any building, electrical and plumbing permits, environmental impact analysis and mitigations imposed thereby, or other governmental action necessary to permit the development, construction and operation of the Improvements and any alterations thereto in accordance with this Lease. Other than for the initial Improvements to be constructed on the Premises, Lessee shall (a) apply for and prosecute any required governmental review processes for any discretionary approvals, comprehensive plan amendment, rezoning, variance or use permit only with the written approval of Lessor, such approval not to be unreasonably withheld, delayed or conditioned, and (b) not submit any environmental impact statement, addendum, checklist or other State Environmental Policy Act document to any public agency without Lessor's prior written approval, which Lessor may withhold in its sole discretion. Lessee shall be solely responsible for compliance with all permits and conditions related to the Improvements.

15.4. Construction Coordination.

15.4.1. Access; Interference. Lessee shall comply in all material respects with all applicable City of Vancouver permitting and construction requirements related to street closures, construction disturbances, and the maintenance of access to neighboring facilities and businesses, including City Hall, the Vancouver Convention Center, and Esther Short Park.

15.4.2. Construction Traffic. The parties shall agree to a route for the construction truck traffic to utilize during construction, including keeping trucks off 6th Street through the eastern section of downtown Vancouver to the extent that reasonable ingress to and egress from the construction site remains without the use of 6th Street.

15.4.3. Construction Worker Parking. Lessee shall provide a construction worker parking plan to Lessor for review and approval (such approval not to be unreasonably withheld, conditioned, or delayed) prior to commencement of construction. If Lessee's parking plan provides adequate parking for construction workers so that workers are not utilizing on-street parking close to the construction site, then Lessor shall approve such parking plan. Lessor shall assist Lessee with efforts to locate overflow parking options during construction.

15.4.4. Construction Adjacent to BNSF Railway Berm. Lessee is responsible for obtaining any needed consents, approvals, or permissions from BNSF Railway to utilize areas adjacent to the railroad berm. A copy of such BNSF Railway consents, approvals, or permissions, if any, shall be provided in writing to Lessor prior to commencement of construction of the Project.

15.4.5. Construction of City Hall Public Plaza. If the contractor hired by Lessor through the public bidding process for the construction of the public plaza adjacent to City Hall is different from the contractor hired by Lessee for construction of the Improvements, then the parties shall work collaboratively and cooperatively to ensure alignment between the construction schedules of Lessee's general contractor and Lessor's contractor in an attempt to avoid construction conflicts and inefficiencies. If and as necessary, as determined by Lessee in its reasonable discretion, the parties and/or their general contractor's shall develop a written scheduling, sequencing and logistics plan to avoid construction conflicts and inefficiencies.

15.5. Lessor Review of Plans. Lessee, prior to constructing future exterior Improvements upon the Premises, shall submit to Lessor the plans and specifications for such Improvements and obtain Lessor's prior written approval, provided, that, Lessor's approval shall be limited solely to Lessor's determination that Lessee's proposed Improvements comply with the Design Guidelines (or can be made to comply through an amendment to the Design

Guidelines, such amendment being first subject to Lessor's approval, which shall not be unreasonably withheld) and shall not be unreasonably withheld, delayed or conditioned. Once a set of plans has been so approved, deemed approved or resolved, Lessee shall have the right to continue the design and construction of such Improvements in substantial conformance therewith. Lessee shall submit to Lessor the plans and specifications for such Improvements and all required local, state and federal permits or authorizations.. Notwithstanding the foregoing or anything to the contrary herein, Lessor's approval or consent shall not be required for Improvements that are not visible from the exterior of the Improvements.

15.6. [Reserved.]

15.7. Signage Requirements. Any sign, decoration, awning or canopy, or advertising matter to be installed by Lessee shall comply with all regulatory requirements of the State of Washington, Clark County, Lessor (in its regulatory capacity), and or any other governmental agency with jurisdiction over the Project.).

15.8. Ownership of Improvements. All Improvements made by Lessee shall remain the property of the Lessee until the expiration or earlier termination of this Lease, at which time they shall remain on the Premises and become the property of Lessor. If and to the extent Lessee owns any fixtures ("**Fixtures**") which are located at the Premises and used in the operation and management of the Premises for the Permitted Use, Lessee agrees such Fixtures will become the property of Lessor upon surrender or earlier termination of this Lease. However, it is acknowledged that Lessor shall not have any rights with respect to any Fixtures owned by Subtenants of Lessee at the Premises.

15.9. Certificate of Completion. Within five (5) Business Days of Lessee notifying Lessor of the issuance of a certificate of occupancy for the residential portions of the Project (or a temporary certificate of occupancy or other legal permits or sign-offs that will allow Lessee to legally lease residential spaces to tenants) and a temporary certificate of occupancy with respect to the base, shell and core for any office or retail portions of the Project (or other legal permits or sign-offs that will allow the office and retail spaces to be legally occupied upon completion of interior spaces of the Improvements) (such certificates, permits or sign-offs collectively, the "**Certificate of Occupancy**"), Lessor shall provide to Lessee a written instrument certifying the completion of construction of the Improvements (the "**Certificate of Completion**"). The Certificate of Completion shall be conclusive evidence that Lessee has fulfilled its obligations under this Lease and the DDA with respect to construction of the Improvements. The issuance of such Certificate of Completion shall be in addition to any approvals required to be obtained from the City of Vancouver in its regulatory capacity, and such issuance shall not constitute approval by or otherwise the bind City of Vancouver in its regulatory capacity. Following Lessor's delivery to Lessee of the Certificate of Completion, the parties shall execute and record a certificate of completion of the Project in the official records of Clark County, and such recorded certificate shall be conclusively determinative that Lessee has completed construction of the Project.

15.10. Public Benefits.

15.10.1. Sustainability. In constructing the Initial Improvements, Lessee agrees to meet the sustainability objectives outlined in Exhibit G attached hereto.

15.10.2. [Delete if not applicable to the specific GL Parcel: Public art program. Lessor and Lessee have identified one or more locations on the Premises for the installation of public art during the Initial Term. Lessee shall solicit artwork through the City's Public Art Program, which is subject to review by the City's Culture, Arts and Heritage Commission. Public art shall be installed and maintained in accordance with the City's Public Art Program.

15.10.3. Workforce and business development strategy. Lessee shall actively engage a diverse and local workforce to construct the Initial Improvements required by this Lease by implementing the workforce and business development strategy set forth on Exhibit H attached hereto.

15.10.4. [To be included in GL for Parcel 1: Makers Alley. Lessor and Lessee agree that uses on the eastern edge of the ground floor of the Initial Improvements to be built on the Premises ("**Makers Alley**") will have features that are anticipated to procure and support small businesses, which are important to the character of the Initial Improvements to be developed on the Premises. Lessee agrees to develop and manage Makers Alley in

accordance with the terms and conditions of the Small Business Marketing and Outreach Plan attached to this Lease as Exhibit I.

15.10.5. ***[To be revised for the applicable GL Parcel: Covenants, Conditions & Restrictions.*** Lessee acknowledges that it is executing this Lease and taking it lease hold interest in the Premises subject to covenants, conditions and restrictions (“**CC&Rs**”), which include reciprocal easements benefitting and burdening the Premises, public access easements to privately owned amenities on the Premises, restricted uses, and maintenance provisions.

15.10.6. ***Tree Canopy.*** As part of construction of the Initial Improvements, Lessee shall plant trees in accordance with the tree plan attached to this Lease as Exhibit J.

15.10.7. ***Signage.*** The Initial Improvements will include signage in conformance with the Design Guidelines and Vancouver City Code.

15.11. ***City’s Regulatory Discretion.*** Lessee acknowledges that execution of this Lease by Lessor does not constitute approval by Lessor in its regulatory capacity (as distinguished from its proprietary capacity as the owner of the Property and as a party to this Lease) of any required or additional entitlements or approvals and in no way limits the discretion of Lessor in the regulatory permit approval process. This Lease does not vest any land use or development standards for the benefit of Lessee. Lessor, in its proprietary capacity, shall assist Lessee throughout any and all entitlement, approval and permitting processes but does not represent or warrant that its assistance will guarantee any regulatory approval. In the event of any conflict between Lessor, acting in its regulatory capacity, and Lessor, acting in its proprietary capacity under the Lease, then Lessor’s decisions in its regulatory capacity shall govern and control

15.12. ***General Construction Requirements***

15.12.1. ***Costs; Good and Workmanlike Manner.*** All construction and other work in connection with the Improvements and any alterations thereto shall be done at no cost to Lessor and in a good and workmanlike manner with new or like-new materials. Throughout the construction of the Improvements and through completion of construction of the same, Lessee shall provide Lessor with written progress reports as to the progress of construction, which reports shall be on a monthly basis.

15.12.2. ***Compliance.*** Lessee shall include language in the contract with its general contractor requiring the general contractor to construct the Improvements in accordance with (a) all Applicable Laws, and (b) plans and specifications that are in accordance with the provisions of this Section 15 and all other applicable provisions of this Lease. If Lessor has actual knowledge that its general contractor is failing to comply with the foregoing obligations, Lessee shall use commercially reasonable efforts to enforce the same against the general contractor.

15.12.3. ***Safety.*** Lessee shall include language in the contract with its general contractor for construction of the Improvements and for all alterations thereto requiring such general contractor to implement a safety plan during construction.

15.12.4. ***As-Builts.*** As Lessor’s written request therefor, which request shall include Lessor’s agreement to pay for the same, Lessee shall prepare and maintain (or require the general contractor or architect to prepare and maintain) upon completion of construction, record drawings (“as-builts”) showing clearly all changes, revisions and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions and other significant features of the Improvements and any alterations thereto. Lessee, at Lessor’s expense, shall also make a copy of the as-built drawings and deliver electronic copies of the same to Lessor within sixty (60) days after completion of construction of the Improvements or alterations thereto.

15.13. ***Maintenance, Repairs and Operation.*** During the Term, Lessee, without any cost or expense to Lessor, shall keep and maintain the Premises and all Improvements and appurtenant facilities, including without limitation the structural components, roof, fixtures, and building systems of the Improvements, grounds, groundwater,

stormwater facilities, detention ponds, wetlands, soil, sidewalks, open space, parking and landscaped areas, in first class condition and repair and in compliance with all Applicable Laws. Lessee shall promptly make all repairs, replacements and alterations (whether structural or nonstructural, foreseen or unforeseen, or ordinary or extraordinary) necessary to maintain the Premises and the Improvements in good condition and repair, in a general condition that is commensurate with buildings in Vancouver, Washington that are similar in type and of a similar age, in compliance with all Applicable Laws, and as necessary to avoid any structural damage or injury to the Premises, the Improvements, or any persons in or around the Premises. Lessee's property manager ("**Property Manager**") shall have at least five (5) years of experience managing similar properties.

15.14 *Sustainability*. Lessor maintains high standards for environmental stewardship in operating and maintaining all of its facilities. Accordingly, Lessee agrees to operate and maintain the Premises with good faith, reasonable efforts to (a) use Energy Star appliances or their equivalent and employ sound practices to conserve energy, (b) encourage and facilitate the ability of tenants to car pool, commute via public transportation, and/or use other alternative methods of transportation, and (c) maintain and operate the Premises, and/or require that any third party property manager(s) maintain and operate the Premises, in compliance with those sustainability standards and requirements required to maintain all of the installed equipment, systems and assets in accordance with the manufacturer's recommendations and industry standards.

15.15 *No Obligation of Lessor to Repair*. Other than the repair of damage caused by Lessor, its agents, contractors or employees, Lessor shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Premises or the Improvements. Lessee hereby expressly waives any right to terminate this Lease and any right to make repairs at Lessor's expense under any Applicable Laws, except for the repair of damage caused by Lessor, its agent, contractors or employees.

16. INSURANCE:

16.1. *Property Damage*.

16.1.1. *Builders Risk*. Until final completion of construction of the Improvements, the construction is at the risk of Lessee. Lessee shall purchase and maintain Builders Risk insurance upon the work at the site to the full insurable value until completion of construction of the Improvements. Said insurance will insure against the perils customarily insured against in such Builders Risk policies, including flood (if the Project is located within the 100-year flood plain) for physical loss and damage. The insurance shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property.

16.1.2. *Property Insurance*. Following completion of construction, Lessee shall, at all times, maintain Cause of Loss – Special Form property insurance upon any buildings and facilities, including any permanent additions and improvements thereto, of which the Premises form a part, in an amount equal to the full replacement cost thereof or with lesser limits as agreed by both Lessor and Lessee. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an ordinance and law endorsement, debris removal coverage, business interruption coverage, extra expense coverage and a waiver of subrogation endorsement. Any and all payments from said policies or certificates of insurance, indemnity bonds and similar securities shall be made payable to and deposited with Lessee or as required by its mortgagee(s). Further, and to the extent commercially available, all such policies shall contain a provision whereby the same cannot be canceled or modified unless Lessor is given at least thirty (30) Days prior written notice of such cancellation or modification. Lessee shall be responsible for the insurance premium and any deductible.

16.2. *Liability*. Lessee shall maintain, with financially sound and reputable insurers (*see Section 16.5.1* below), commercial general liability insurance written on an "occurrence" policy form with coverage at least as broad as ISO CGL form CG 0001, including contractual liability, against claims for bodily injury, property damage, and personal injury occurring on or about the Premises or in any way relating to or arising out of Lessee's use or occupancy of the Premises with minimum limits as provided in *Section 1.11*, which amount shall be consistent with commercially reasonable insurance standards but in no event shall be less than the Minimum Coverage Amount set forth in *Section 1.11*. Lessor shall be named as an additional insured with coverage at least as broad as form ISO CG 2026 – Designated Person or Organization, without modification, affording coverage regardless of the additional insureds' sole or concurrent negligence. Such insurance shall be endorsed to provide that the insurance shall be primary to and

not contributory to any similar insurance carried by Lessor and shall contain a severability of interest or cross liability clause.

16.3. **Business Interruption Insurance.** Lessee shall maintain business interruption insurance through the Term. Coverage will include payment to the Lessor of the amount of annual Rent then payable to Lessor for a period of at least six (6) months.

16.4. **Pollution Legal Liability.** During the Construction Period, Lessee shall maintain or cause its general contractor to maintain pollution legal liability or contractor's pollution liability coverage with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per claim and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate. Coverage shall include both new Releases of Hazardous Substances and exacerbation of existing environmental contamination. Lessor acknowledges that certain classes of risks may not qualify for Pollution Legal Liability or Contractor's Pollution Liability coverage. Lessor retains the right to require pollution legal liability coverage to be maintained in an amount and on terms to be mutually agreed upon by Lessor and Lessee if and to the extent there is a material change in the types or amounts of Contaminated Media which will be handled at the Premises as set forth in the CMMP.

16.5. **Miscellaneous.**

16.5.1. **Insurance Carrier Requirements.** Lessee's insurance carrier(s), for all insurance referenced in this Lease, shall be a reputable insurance company licensed to do business in the State of Washington. Lessee's insurance carrier(s) shall have a minimum A-VIII rating as determined by the then current edition of Best's Insurance Reports published by A.M. Best Co.

16.5.2. **Certificates of Insurance.** To establish that Lessee's insurance obligations have been met, Lessee shall provide Lessor with certificates of insurance prior to or at the Term Commencement Date and renewals thereof prior to expiration of existing policies. Certificates of insurance shall have a copy of additional insured endorsement in favor of Lessor attached and, to the extent commercially available, provide that the policies are not subject to cancellation or material change without at least thirty (30) Days advance written notice to Lessor.

16.5.3. **Umbrella or Blanket Coverage.** Lessee shall be entitled to provide insurance coverage which it is obligated to carry pursuant to the terms of the Lease under a blanket or umbrella insurance policy.

16.5.4. **Workers Comp and Employers Liability.** At all times that Lessee directly retains employees, Lessee shall provide workers' compensation coverage, pursuant to statutory requirements. Lessee further agrees to maintain Employers Liability Act ("ELA") or Stop Gap coverage as required by law of at least the Minimum Coverage Amount set forth in Section 1.12.

16.5.5. **Automobile Liability.** At all times that Lessee owns at least one automobile, Lessee shall provide Automobile Liability insurance with coverage at least as broad as Business Automobile Liability ISO form CA 0001, covering all owned, non-owned and hired automobiles brought on the premises, with coverage of at least the Minimum Coverage Amount set forth in Section 1.11.

16.5.6. **Waiver of Subrogation.** Notwithstanding anything in this Lease to the contrary, neither party, nor its Related Parties, nor, in case of Lessee, its sublessees, shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party, for any loss or damage to any building, structure or other property (whether real or personal) arising from any cause that (i) would be insured against under the terms of any property insurance required to be carried hereunder (or, with respect to Lessor, which a reasonably prudent owner of real property similar in size, type, use, location, and quality as the Premises would carry), or (ii) is insured against under the terms of any property insurance actually carried, regardless of whether the same is required hereunder, even though such loss or damage might have been occasioned by the negligence of such party or its Related Parties. Each party shall notify their respective insurance companies of this waiver of any rights of subrogation that such companies may have against Lessor or Lessee, as the case may be and shall obtain any necessary endorsement to avoid such waiver's invalidating the policy in whole or in part. Further, neither party nor the Related Parties shall be liable for: (1) any such damage caused by other lessees or persons in, upon or about the Premises, or caused by

operations in construction of any private, public or quasi-public work; or (2) consequential damages, including lost profits, of either party or any person claiming through or under Lessee or Lessor as applicable.

16.5.7. ***Failure to Maintain.*** Lessor shall have the right to force place any insurance required to be maintained by Lessee hereunder if Lessee fails to obtain same within thirty (30) Days of receipt of written notice of such failure, and the costs of such force placed insurance shall be an Additional Charge.

16.6. ***Lessor Insurance.*** Lessor shall maintain in effect at all times insurance coverage consistent with the coverage customarily carried by ground lessors of property comparable in size, type, quality and location as the Premises, including but not limited to (1) commercial general liability insurance with limits of no less than Ten Million and 00/100 Dollars (\$10,000,000) per occurrence and annual aggregate, which may be comprised of both primary and excess layers, and (2) pollution liability insurance with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per claim and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate. Such insurance carriers shall have an A.M. Best rating of not less than "A-" and Financial Size Category Rating of not less than "VIII" according to the latest edition of Best's Key Rating Guide. **[To be attached:** Notwithstanding the foregoing, Lessor self-insures consistent with the parameters set forth in Schedule 16.6. So long as Lessor complies with Schedule 16.6, Lessor shall be deemed to comply with this section.

16.7. ***Coverage Amounts During Option Term(s).*** If the parties execute an amendment to the Lease or Lessee exercises either of its Option(s) to extend the Term of the Lease, the insurance coverage amounts set forth in Sections 1.10, 1.11 and, if applicable, 1.12, and Section 16 shall be reviewed and adjusted, as agreed to by the parties, to provide appropriate insurance coverages consistent with commercially reasonable insurance standards at that time. Notwithstanding the foregoing, it is acknowledged that Lessee shall not be obligated to carry pollution legal liability coverage after expiration of the Construction Period, except to the extent required by the last sentence of Section 16.4.

17. RELEASE AND INDEMNIFICATION COVENANTS:

17.1. ***Indemnification by Lessee.*** Subject to Section 16.5.6 (Waiver of Subrogation), Lessee releases Lessor and all officials and employees of Lessor from, and covenants and agrees that neither Lessor nor any Related Party of Lessor shall be liable for, and agrees to defend, indemnify and hold Lessor and its Related Parties (hereinafter the "**Lessor Indemnitee**" or "**Lessor Indemnitees**") harmless against, any and all claims, actions, proceedings, damages, liabilities, costs, and expenses incurred (including, without limitation, all attorneys' fees and expenses arising in connection with each such claim, action or proceeding) from or in connection with: (i) the conduct, operation and management of the Premises or of any business therein, or any work or thing whatsoever done, or any condition created, therein or thereon; (ii) any act, omission, or negligence of Lessee or any of its sublessees or licensees or its or their partners, directors, officers, agents, employees, invitees (but only when a claim, action or proceeding is related to such invitees' presence on the Premises) or contractors; (iii) any incident, injury or damage whatsoever occurring in, at or upon the Premises; and/or (iv) any third party claim arising out of a breach or Default by Lessee in the full and prompt payment and performance of Lessee's obligations under this Lease. Notwithstanding the foregoing or anything to the contrary herein, Lessee shall not be obligated to indemnify Lessor for any loss, damage, injury or death to the extent attributable to the sole negligence or intentional misconduct of Lessor or Lessor Indemnitees; and if and to the extent that this Lease is subject to RCW Section 4.24.115, it is agreed that where liability for damages arising out of bodily injury to persons or damage to property is caused by or results from the concurrent negligence of (a) the Lessor Indemnitee or Lessor Indemnitee's agents or employees, and (b) the Lessee or its Related Parties, Lessee's obligations of indemnity under this Section 17 shall be effective only to the extent of the Lessee's negligence. Further, it is acknowledged that liability for any loss, claim, fine or penalty arising from the Release of Hazardous Substances or any violation of Environmental Laws shall be governed by the terms of Section 12 (Presence and Use of Hazardous Substances) of this Lease and not by this Section 17; and liability for property damage arising from a fire or other casualty shall be governed by Section 18 of this Lease and not by this Section 17.

17.2. ***Indemnification Procedures.*** If any action shall be brought against any Lessor Indemnitee in respect of which indemnity may be sought against Lessee, such Lessor Indemnitee shall promptly notify Lessee in writing and Lessee shall assume the defense thereof, including the employment of counsel and the payment of all expenses incident to such defense. Such Lessor Indemnitee shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Lessor Indemnitee unless the employment of such counsel has been authorized by Lessee or counsel for Lessee shall have

advised Lessor in writing that there exists actual or potential conflicts of interest which make representation by the same counsel inappropriate. Lessee shall not be liable for any settlement of any such action without its consent but, if any such action is settled with the consent of Lessee or if there be final judgment for the plaintiff of any such action, Lessee agrees to indemnify and hold harmless Lessor Indemnitees from and against any loss or liability by reason of such settlement or judgment.

17.3. Waiver of Immunity Under Industrial Insurance Act. Lessee specifically and expressly waives any immunity that may be granted Lessee under the Washington State Industrial Insurance Act, Title 51 RCW, or its successor. Further, the indemnification obligation under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts or other employee benefits acts.

17.4. Indemnification by Lessor. Lessor shall indemnify and hold harmless Lessee and its Related Parties ("Lessee Indemnitee" or "Lessee Indemnitees") from and against any and all third party claims for bodily injury and/or property damage arising from or in connection with (i) any material breach by Lessor of this Lease, and (ii) any act, omission, or negligence of Lessor or any of its agents, employees, or contractors; together with all costs, expenses and liabilities incurred or in connection with each such claim or action or proceeding brought thereon, including, without limitation, all attorneys' fees and expenses at trial and upon appeal, except that (1) Lessor's indemnity shall not apply to bodily injury, death and/or property damage attributable to the sole negligence or intentional misconduct of Lessee or Lessee Indemnitees; (2) if and to the extent that this Lease is subject to RCW Section 4.24.115, it is agreed that where liability for damages arising out of bodily injury to persons or damage to property is caused by or results from the concurrent negligence of (a) a Lessee Indemnitee or Lessee Indemnitees, and (b) the Lessor or the Lessor's agents, employees or contractors, Lessor's obligations of indemnity under this section shall be effective only to the extent of the Lessor's negligence; (3) liability for any loss, claim, fine or penalty arising from the Release of Hazardous Substances or any violation of Environmental Laws shall be governed by the terms of Section 12 (Presence and Use of Hazardous Substances) of this Lease and not by this Section 17; and (4) liability for property damage arising from a fire or other casualty shall be governed by Section 18 of this Lease and not by this Section 17.

17.5. Lessee's Assumption of Risk and Waiver. As a material part of the consideration to Lessor for entering into this Lease, Lessee agrees that neither Lessor nor any Lessor Party shall be liable to Lessee for, and Lessee expressly assumes the risk of and waives, releases and discharges Lessor and all Lessor Parties from any and all claims, damages, liabilities, costs and expenses of any kind or nature relating in any manner, directly or indirectly, in whole or in part, to the Premises or this Lease, whether resulting from any act or omission of Lessor or from any other cause whatsoever, including without limitation: (a) the performance of any public or quasi-public works on or near the Premises; (b) any loss or theft of, or damage to, any Improvements or personal property; (c) any act or omission of any person accessing the Premises pursuant to an easement or right of entry reserved under this Lease or implied by Applicable Law and (d) any past, present or future aspect, feature, characteristic, circumstance or condition arising out of or in connection with the Premises. Notwithstanding the foregoing, the assumption of risk and waiver and release contained in this Section 17.5 shall not apply to the extent of the negligence or willful misconduct of Lessor, its agents, employees or contractors or to the breach of this Lease in any material respect by Lessor, its agents, employees or contractors.

17.6. Survival. The indemnification provisions of this Section 17 shall survive the expiration or earlier termination of this Lease, and are independent of, and will not limit or be limited by, any insurance obligations in this Lease (whether or not complied with).

18. DAMAGE OR DESTRUCTION:

18.1. Restoration Obligations. In the event the Improvements located on the Premises or any portion thereof shall be damaged or destroyed by fire or any other insured casualty or action of the elements, or any other insured peril whatsoever ("Casualty"), at any time during the Term, then and in such event, unless Lessee elects to terminate this Lease in accordance with Section 17.3, Lessee will repair and restore the Improvements located on the Premises in substantially the same location and condition before damage occurred (subject to compliance with current codes and regulations).

18.2. Insurance Proceeds. Unless Lessee elects to terminate the Lease in accordance with the terms of Section 17.3, the proceeds of any insurance policies on the Improvements (the “**Proceeds**”) actually received by Lessee from any insurance policies on the Improvements (following payment of any such Proceeds to a Permitted Leasehold Mortgagee) shall be first devoted to the repair and restoration of the damaged or destroyed Premises and the expenditure of such sum by Lessee for the restoration thereof shall be considered in full compliance with the covenant to repair and restore. Notwithstanding the foregoing, if a Permitted Leasehold Mortgagee (as defined in Section 21.2) is entitled to all or a portion of any Proceeds, Lessee shall only be deemed to have received the amount of Proceeds remaining after any such portion has been provided to the Permitted Leasehold Mortgagee.

18.3. Lessee Termination Right. Lessee shall be entitled to terminate this Lease if (i) the Improvements located on the Premises are damaged or destroyed to an extent exceeding fifty percent (50%) of the then fair market value of such Improvements, (ii) the Improvements located on the Premises are damaged or destroyed during the last two (2) years of the Term, or (iii) the Proceeds actually received by Lessee and available for the repair of the Improvements (following the application of Proceeds by any Permitted Leasehold Mortgagee to pay down the applicable loan) are not sufficient to complete such repair and restoration. If Lessee does not elect to terminate this Lease, Lessee shall repair and restore the Premises in the same location and condition as before damage occurred (subject to adjustment to comply with current codes and regulations). If Lessee elects to terminate this Lease, Lessee shall give Lessor written notice of such termination within one hundred twenty (120) Days of the date of damage. If Lessee is not in Default under this Lease, any prepaid or unearned rent shall be returned to Lessee. If Lessee elects to terminate this Lease under this section, Lessee, at Lessee’s cost, shall leave the Premises in a condition free of debris and other safety hazards. Further, if Lessee has Proceeds remaining following payment of any Proceeds to a Permitted Leasehold Mortgagee, Lessee, at Lessee’s cost to the extent of such Proceeds, shall remove the above-ground Improvements and return a cleaned, level Premises back to Lessor.

18.4. Reduction of Rent. If a Casualty gives rise to a right of termination by Lessee but Lessee instead elects to repair and restore the Improvements located on the Premises or any portion thereof, Lessee shall be entitled to a pro rata reduction of Rent equal to that portion of the building or property that is unusable as a result of the damage and/or destruction and that is being restored, as determined by Lessee and approved by Lessor, which approval Lessor will not unreasonably withhold, condition or delay, commencing on the date of the applicable damage or destruction and continuing until substantial completion of the repair and restoration; provided that rent shall not be abated for a period of time exceeding twenty-four (24) months.

19. SUBORDINATION AND ATTORNMEN^T:

19.1. Transfer of Lessor Interest. Subject to Section 44 (Right of first Refusal to Purchase Premises), Lessor shall have the absolute right to sell, transfer, convey, assign, and encumber its interest in this Lease and its estate in the Premises (called “**Lessor’s Interest**”), or any part thereof (including, but not limited to, Lessor’s reversion), and to delegate all or any portion of its obligations hereunder, from time to time as it sees fit, without obtaining any approval from Lessee. In the event of a sale, transfer, conveyance or other termination of Lessor’s interest in the Premises, and provided the purchaser or assignee assumes all of Lessor’s obligations under this Lease in writing, Lessor shall be and is entirely freed and relieved of all liability of Lessor thereafter accruing.

19.2. Attornment. In the event that Lessor sells or assigns its interest or estate absolutely, Lessee shall be bound to the purchaser or assignee who assumes all of Lessor’s obligations under this Lease in writing, and the purchaser or assignee shall be bound to Lessee, under all of the covenants, terms and conditions of this Lease for the balance of the Term with the same force and effect as if such purchaser or assignee was the Lessor under the Lease, and Lessee hereby attorns to such purchaser or assignee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument on the part of either of the parties hereto immediately upon such purchaser’s or assignee’s succeeding to the interest or estate of Lessor. If Lessor should grant, mortgage or assign its interest in the Premises for security purposes (a “**Mortgage**”) and such Mortgage is either: (1) foreclosed for any reason and Lessor’s interest or estate is sold as upon execution in the manner provided by law or (2) Lessor’s interest or estate is sold at public or private sale by the holder of the Mortgage (“**Mortgagee**”), Lessee shall be bound to the purchaser at such sale under all of the covenants, terms and conditions of this Lease for the balance of such term hereof remaining with the same force and effect as if such purchaser was the Lessor under the Lease, with the purchaser also being similarly bound. Specifically, on receipt of a notice from Mortgagee that Rents should be paid to Mortgagee, Lessee shall pay all Rents to Mortgagee or its designee directly. If the Mortgagee succeeds to the interest of Lessor

under the Lease, Mortgagee shall not be: (i) liable for any act or omission of Lessor or any prior landlord; (ii) liable for the return of any Security Amount unless such security has been delivered to Mortgagee by Lessor or is in an escrow fund available to Mortgagee; (iii) subject to any offsets or defenses that Lessee might have against any prior landlord (including Lessor); (iv) bound by any rent or additional rent that Lessee might have paid for more than the current month to any prior landlord (including Lessor) unless such rent or additional rent has been delivered to Mortgagee by Lessor or is in an escrow fund available to Lessor; (v) bound by any amendment, modification, or termination of the Lease made without Mortgagee's consent (provided Lessee was given notice of such Mortgage and such Mortgagee's address at least thirty (30) Days prior to entering into same and provided further that Mortgagee's consent shall not be required for an amendment which documents the exercise of a right granted to Lessee hereunder, such as extension and expansion options); (vi) personally liable under the Lease, Mortgagee's liability hereunder being limited to its interest in the Premises; or (vii) bound by any notice of termination given by Lessor to Lessee without Mortgagee's prior written consent thereto (provided Lessee was given notice of such Mortgage and such Mortgagee's address at least thirty (30) Days prior to giving same). If during the pendency of foreclosure proceedings or otherwise, there is appointed by the court a receiver for the property of which the Premises are a part, Lessee hereby attorns to the receiver as its landlord during the pendency of such foreclosure proceeding, such attornment to be effective and self-operative without the execution of any further instrument on the part of either party.

19.3. Mortgagee Opportunity to Cure. If requested by any Mortgagee, or any ground lessor, Lessee will agree to give such Mortgagee or ground lessor, a reasonable opportunity to cure any Default by Lessor under this lease.

19.4. Subordination. It is expressly understood and agreed that any Mortgage on the fee interest of the Premises shall attach solely to the Lessor's Interest and shall be expressly subject and subordinate to this Lease (as it may be amended from time to time) and Lessee's rights hereunder.

20. ASSIGNMENT OR SUBLEASE:

20.1. Assignments Requiring Consent. Except as set forth in Sections 20.6 (Subleases) and 20.7 (Permitted Transfers), Lessee shall not assign this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. With respect to any assignment which requires Lessor's consent pursuant to this Section 20, Lessee shall notify the Lessor in writing of any planned assignment of this Lease and the Lessor shall have up to thirty (30) Days following receipt of such notice of assignment to provide or withhold consent.

20.2. Conditions to Approval. Lessee agrees that it shall be conclusively presumed to be reasonable for Lessor to consider the following requirements in determining whether or not to consent to a proposed Transfer:

- (a) No Event of Default shall have occurred and remain uncured under this Lease;
- (b) Lessee shall have complied with all provisions of this Article 20;
- (c) The use of the Premises by the transferee shall comply with the provisions of this Lease and shall not materially increase the risk of a claim under any Environmental Law as a result of any activity to be conducted by the transferee at the Premises;
- (d) The proposed transferee shall be a knowledgeable developer, investor or land owner that (i) has (or has a manager or operator that has), together with its Affiliates, not less than **[Insert applicable criteria based on product type (office of residential): 1,000,000 square feet of commercial office space [or- 500 units of residential apartments]** in its portfolio of real estate assets];
- (e) The proposed transferee shall not have filed a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of any government or any subdivision within five (5) years prior to the date of the proposed Transfer;
- (f) No civil or administrative judgments involving fraud or dishonesty, or criminal convictions of any kind, have been entered against the proposed transferee or its officers or managers within the five (5) years prior to the date of the proposed Transfer;

(g) The proposed transferee shall not have been a party to litigation adverse to Lessor, or the subject of any default proceedings instituted by Lessor as landlord of property leased by the proposed transferee; and

(h) The proposed transferee shall be (i) capable financially of performing Lessee's obligations under this Lease and all other obligations relating to the Premises, as reasonably determined by Lessor, or (ii) a Qualified Transferee. For purposes of this Lease, a "**Qualified Transferee**" shall mean any entity that has, together with its Affiliates, a tangible net worth of at least Twenty Million Dollars (\$20,000,000.00) or total real estate holdings of at least Two Hundred Fifty Million Dollars (\$250,000,000.00). Lessee shall provide Lessor with evidence reasonably acceptable to Lessor that any proposed entity qualifies as a Qualified Transferee.

20.3. No Waiver. The granting of consent to any assignment shall not constitute a waiver of Lessor's discretion to approve or disapprove any future request for permission to assign this Lease in accordance with the requirements of Section 20. Acceptance of Rent or other performance by Lessor following an assignment, whether or not Lessor has knowledge of such assignment, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same.

20.4. Continuing Lessee Liability; Financial Information. Lessee shall be relieved of liability under this Lease accruing after the date of any assignment made in accordance with this Section 20. In connection with an assignment of this Lease that requires Lessor's consent hereunder (or for purposes of confirming the net worth or established access to capital pursuant to clause (iv) of Section 20.7), Lessee shall provide Lessor with reasonable current financial information for such assignee, which may include financial statements certified, reviewed or compiled by a certified public accountant, if available, or, in the absence thereof, a current (most recently available) balance sheet and current (most recently available) income statement certified by an officer of the assignee, reasonable evidence showing the assignee's established access to capital, or other current financial information, as may be appropriate. Lessor acknowledges that any financial information provided under this Section 20.4 with regard to a non-public company is Confidential Information (as defined in Section 39) and is to be used and disclosed only to Lessor, Lessor's attorneys and Lessor's accountants for Lessor's internal purposes. In addition, if requested by the applicable assignee to further protect the confidentiality of its financial information, Lessor agrees that Lessee (or the applicable assignee) may provide such financial information to Lessor at a designated location in Vancouver, Washington where Lessor's employees and agents will be permitted to review such financial information but shall not be entitled to make or receive copies thereof.

20.5. Transfer Fee. A handling and transfer fee ("**Transfer Fee**") equal to Lessor's reasonable and customary attorneys' fees, not to exceed Three Thousand and 00/100 Dollars (\$3,000.00), shall be payable by Lessee to Lessor if Lessee requests that Lessor consent to a proposed assignment of this Lease. Such Transfer Fee shall be payable within sixty (60) Days of the Lessee's receipt of an invoice therefor.

20.6. Right to Sublease.

20.6.1. Subleases. So long as Lessee complies with the terms of this Section 20.6, Lessee shall be entitled to sublease space within the Improvements to be constructed by Lessee on the Premises (each a "**Subleased Space**") to third parties (each, a "**Subtenant**") without Lessor's prior consent or approval. Each commercial sublease ("**Sublease**") shall include the provisions set forth on Exhibit K; such provisions shall not be applicable to and are not required for any residential Sublease.

20.6.2. Lessor Rights and Obligations. Further, in the event Lessee fails or refuses to pay Rent or Additional Charges when due or is otherwise in Default as defined in Section 24.2 (Default or Breach) of this Lease, Lessor shall be entitled to direct any sublessee of Lessee to pay all rental and other payments under the sublease directly to Lessor by written notice to such sublessee and without liability to the original Lessee, provided, that, (i) such amounts received will be applied to amounts owed by Lessee hereunder, with any surplus paid to Lessee, and (ii) Lessor shall only exercise such right if any Permitted Leasehold Mortgagee has not elected to exercise its remedies under Section 21 (Leasehold Mortgages) within the time periods provided therein. If any Subtenant of Lessee provides written notice to Lessor that it has entered into a Sublease for Sublease Space at the Premises and provides a notice address for Subtenant and a copy of the Sublease (which the Subtenant may redact to remove economic terms to

prevent them becoming public records), then Lessor agrees to provide such Subtenant with notice of a default by Lessee hereunder. In the event Lessor elects to terminate the Lease due to a Default by Lessee, any Sublease shall automatically become a direct lease between Lessor and the Subtenant, subject to all terms and conditions of such Sublease and the terms of this Lease as properly applicable to such Subtenant, without further action by any party. Notwithstanding anything herein to the contrary herein, with respect to any Sublease covering residential uses, Lessor shall not be required to assume a Sublease that results in Lessor directly leasing to any such residential Subtenant, or receiving any rents or other amounts from such residential Subtenants, and Lessor may direct residential Subtenants to pay any such amounts to a receiver or other entity designated by Lessor. Following a default by Lessee entitling Lessor to assume residential Subleases or entitling Lessor to receive payments under any residential Subleases, Lessee shall reasonably cooperate with Lessor so as to allow Lessor to exercise its rights with respect to such residential Subtenants in compliance with laws.

20.7. Permitted Transfers.

20.7.1. Notwithstanding anything in this Lease to the contrary, Lessee shall have the right to assign this Lease without Lessor approval, but with written notice to Lessor, (i) prior to the issuance of a Certificate of Occupancy for the Initial Improvements and thereafter to one or more Affiliates of Lessee (for purposes of this Lease, an “**Affiliate**” shall mean any entity which is controlled by, under common control with, or controlling Lessee) or to any joint venture entity of which Lessee or an Affiliate of Lessee is a part, (ii) at any time, to a lender or creditor, including a Permitted Leasehold Mortgagee, for security or collateral purposes. In connection with any assignment (except for an assignment pursuant to clause (ii) in the preceding sentence), the assignee shall assume the obligations of Lessee under the Lease accruing on and after the date of the assignment.

20.7.2. Further, notwithstanding anything in this Lease to the contrary, Lessee shall have the right to assign this Lease without Lessor approval, but with written notice to Lessor, following the issuance of a Certificate of Occupancy for the Initial Improvements: (a) to one or more Affiliates; (b) in connection with a sale of all or substantially all of Lessee’s assets provided that the buyer is a Qualified Transferee and has the relevant experience (as defined in Section 20.7.5); (c) in connection with a public offering of Lessee or an Affiliate of Lessee; or (d) in connection with any merger, corporate reorganization or other corporate restructuring of Lessee or an affiliate of Lessee. In connection with any assignment relating to the foregoing, the assignee shall assume the obligations of Lessee and Lessee shall be released from any and all obligations under the Lease accruing on and after the date of the assignment.

20.7.3. Subject to Lessor’s approval, which shall not be unreasonably withheld, conditioned or delayed, Lessee may assign this Lease to a master sublessee or to an owners’ association, which transfer shall apply if and to the extent Lessee is successful in dividing Lessee’s leasehold interest under the Lease into two or more commercial condominium units (each a “**Unit**”) subject to the terms of this Lease and pursuant to applicable laws, rules and regulations. Subject to the following, Lessor will reasonably cooperate with Lessee’s efforts to divide Lessee’s leasehold interest under the Lease into Units, subject to Lessee’s compliance as follows:

- Any declaration, covenants, conditions and restrictions, or similar document prepared to govern the operation, maintenance and administration of the Units shall be approved by Lessor in writing prior to recordation, which approval shall not be unreasonably withheld, conditioned or delayed (and Lessor will respond to Lessee’s request for such approval within ten (10) Business Days).
- Any owners’ association/master sublessee entity will coordinate the different Unit owners in a commercially reasonable manner so that there shall at all times be a single lessee under the Lease without any additional administrative burden to Lessor, unless otherwise approved by Lessor in writing.
- If and to the extent Lessee transfers a Unit interest, such transferee must have the relevant experience to operate the improvements constructed and operated upon the Unit so transferred. Prior to the effective date of any transfer of a Unit, Lessee shall provide to Lessor written notice and reasonable evidence confirming that the proposed operator of the Unit at issue has the relevant experience and

such transfer is in compliance with the terms of this Lease, including the terms and conditions of this Section 20.7.

- This Lease shall at all times remain in full force and effect and shall be and remain binding upon each Unit as a superior right, and each Unit shall be subject to, and shall be operated in accordance with the terms and conditions of this Lease.

20.7.4. Lessee shall not file or record a residential condominium declaration against the Building or Land or sell or enter into an agreement to sell any apartment unit or any other portion of the Buildings as individual residential condominium units or permit any part of the Premises to be converted to or operated as a cooperative whereby the tenants or occupants thereof participate in the management or control of the Premises.

20.7.5. As referenced herein, “**relevant experience**” shall mean that the buyer, owner, developer or operator of a particular product type (i.e., retail, multifamily, office, as applicable) shall have the following experience: (a) with respect to a commercial or retail project, the buyer, owner, developer, operator or their respective Affiliates shall have owned, developed or operated at least five (5) commercial or retail projects measuring no less than ten thousand (10,000) square feet each; (b) with respect to a multifamily or mixed use multifamily project, the buyer, owner, developer, operator or their respective Affiliates shall have owned or operated at least five (5) multifamily or multifamily mixed use projects with at least fifty (50) units each; and (c) with respect to any office or mixed used office project, the buyer, owner, developer, operator or their respective Affiliates shall have owned or operated at least five (5) office or mixed use office projects measuring no less than fifty thousand (50,000) square feet; and (d) with respect to any garage with more than twenty-five (25) parking spaces, the buyer, owner, operator or their respective Affiliates shall have owned or operated at least five (5) garages (which may include retail portions) measuring no less than thirty thousand (30,000) square feet.

21. LEASEHOLD MORTGAGES:

21.1. Right to Mortgage Lease. Lessee shall have the right, in addition to any other rights granted and without any requirement to obtain Lessor’s consent, to mortgage or grant a security interest in Lessee’s interest in this Lease, the Premises and the Improvements, and in any Subleases, under one or more leasehold mortgages or pursuant to a sale-leaseback financing arrangement to one or more Lending Institutions (as defined in Section 21.2) and/or under one or more purchase-money leasehold mortgages to a Lending Institution, and to assign this Lease and any Subleases to a Lending Institution as collateral security for such leasehold mortgages or pursuant to the sale-leaseback financing arrangement, on the condition that all rights acquired under such leasehold mortgages or pursuant to the sale-leaseback financing arrangement shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Lessor, none of which covenants, conditions, restrictions, rights, or interests is or shall be waived by Lessor by reason of the right given to mortgage or grant a security interest in Lessee’s interest in this Lease and the Premises and the Improvements, except as expressly provided otherwise. Lessor agrees to modify this Lease, or execute a Lessor estoppel certificate, as may be reasonably required by any Permitted Leasehold Mortgagee (defined below); provided, in no event shall same require Lessor to subordinate its interest in this Lease or its fee title ownership of the Premises to any Permitted Leasehold Mortgage or materially adversely affect the benefit of Lessor’s economic bargain under this Lease; provided further, that additional or extended notice provisions with regard to the Leasehold Mortgagee shall not be considered to materially adversely affect the benefit of Lessor’s economic bargain under this Lease.

21.2. Permitted Leasehold Mortgage; Lending Institution. Any debt financing arrangement made pursuant to this Section 21, including a mortgage or sale-leaseback financing transaction, is referred to as a “**Permitted Leasehold Mortgage**”, and the holder of or secured party under a Permitted Leasehold Mortgage is referred to as a “**Permitted Leasehold Mortgagee**”. The Permitted Leasehold Mortgage that is prior in lien or interest among those in effect is referred to as the “**First Leasehold Mortgage**”, and the holder of or secured party under the First Leasehold Mortgage is referred to as the “**First Leasehold Mortgagee**”. For the purposes of any rights created under this section, any so-called wraparound lender that is a Lending Institution shall be considered a First Leasehold Mortgagee. If a First Leasehold Mortgage and a Permitted Leasehold Mortgage that is second in priority in lien or interest among those in effect are both held by the same Permitted Leasehold Mortgagee, the two Permitted Leasehold Mortgages are collectively referred to as the “**First Leasehold Mortgage**”. A “**Permitted Leasehold Mortgage**” includes, without limitation, mortgages and trust deeds as well as financing statements, security agreements, sale-leaseback

instrumentation, and other documentation that the lender may require. The words “**Lending Institution**”, as used in this Lease, means (1) a bank (state, federal or foreign), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (state or federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), real estate investment fund, federal or state agency regularly making or guaranteeing mortgage loans, investment bank, subsidiary of a Fortune 500 company (such as General Electric Capital Corporation), real estate mortgage investment conduit, or securitization trust; (2) any issuer of collateralized mortgage obligations or any similar investment entity (provided that either (a) at least some interests in such issuer or other entity or loans held by them are publicly traded or (b) such entity was or is sponsored by an entity that otherwise constitutes a Lending Institution or has a trustee that is, or is an Affiliate of, any entity that otherwise constitutes a Lending Institution), or any Person acting for the benefit of or on behalf of such an issuer; (3) any Person actively engaged in commercial real estate financing and having total assets (on the date when its Leasehold Mortgage is executed and delivered, or on the date of such Leasehold Mortgagee’s acquisition of its Leasehold Mortgage by assignment, but excluding the value of any Leasehold Mortgage encumbering this Lease) of at least One Hundred Million and 00/100 Dollars (\$100,000,000.00); (4) any Person that is a wholly owned subsidiary of or is a combination of any one or more of the foregoing Persons; or (5) any of the foregoing when acting as trustee, agent, or administrative agent for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Lending Institutions. The fact that a particular Person (or any Affiliate of such Person) is a partner, member, or other investor of the then Lessee shall not preclude such Person from being a Lending Institution and a Leasehold Mortgagee provided that: (x) such entity has, in fact, made or acquired a *bona fide* loan to Lessee secured by a Leasehold Mortgage or is a Mezzanine Lender; (y) such entity otherwise qualifies as Lending Institution and a Leasehold Mortgagee (as applicable); and (z) at the time such entity becomes a Leasehold Mortgagee, no Event of Default exists under this Lease, unless simultaneously cured.

21.3. ***Mortgagee Protections.*** So long as a Permitted Leasehold Mortgagee has Permitted Leasehold Mortgage of record and such Permitted Leasehold Mortgage remains unsatisfied of record or until written notice of satisfaction is given by the holder to Lessor, the following provisions shall apply (in respect of such Permitted Leasehold Mortgage), notwithstanding anything else to the contrary set forth herein:

21.3.1. ***Termination of Lease.*** Except as expressly provided otherwise below, a Leasehold Mortgagee shall not be bound by any cancellation, termination, surrender, acceptance of surrender, amendment, or modification of this Lease without in each case the prior consent in writing of the Permitted Leasehold Mortgagee. Nor shall any merger result from the acquisition by, or devolution upon, any one entity of the fee and the leasehold estates in the Premises.

21.3.2. ***Notice of Default.*** Lessor shall, upon serving Lessee with any notice, whether of Default or any other matter, simultaneously serve a copy of such notice on the Permitted Leasehold Mortgagee, and no such notice to Lessee shall be deemed given unless a copy is so served on the Permitted Leasehold Mortgagee in the manner provided in this Lease for giving notices.

21.3.3. ***Right to Cure.*** In the event of any Default by Lessee under this Lease, each Permitted Leasehold Mortgagee has the same period as Lessee has, plus thirty (30) Days, after service of notice on it of such Default, to remedy or cause to be remedied or commence to remedy and complete the remedy of the Default complained of for such default, and Lessor shall accept such performance by or at the instigation of such Permitted Leasehold Mortgagee as if the same had been done by Lessee. Each notice of non-monetary Default given by Lessor will state the nature of such Default and what, if any, Rent or Additional Charges are then claimed to be in default.

21.3.4. ***Delay in Termination.*** Intentionally Omitted.

21.3.5. ***Additional Insured.*** Lessor agrees that the name of the Permitted Leasehold Mortgagee may be added to the “**Loss Payable Endorsement**” of any and all insurance policies required to be carried by Lessee or Lessor.

21.3.6. ***Other Covenants Benefitting Permitted Leasehold Mortgagees.***

21.3.6.1. Nothing contained in this Lease requires the Permitted Leasehold Mortgagee or its nominee to cure any Default that occurs as a result of the status of Lessee, such as Lessee's bankruptcy or insolvency, or to discharge any lien, charge, or encumbrance against Lessee's interest in this Lease junior in priority to the lien of the Permitted Leasehold Mortgage.

21.3.6.2. The First Leasehold Mortgagee shall be given notice of any arbitration or other proceeding or dispute by or between the parties and shall have the right to intervene and be made a party to any such arbitration or other proceeding. In any event, each Permitted Leasehold Mortgagee shall receive notice of, and a copy of, any award or decision made in the arbitration or other proceeding.

21.3.6.3. Any award or payment in condemnation or eminent domain in respect of the Improvements shall be paid to the First Leasehold Mortgagee for the benefit of the parties and applied in the manner specified in this Lease.

21.3.6.4. No fire or casualty loss claims shall be settled and no agreement will be made in respect of any award or payment in condemnation or eminent domain without in each case the prior written consent of the First Leasehold Mortgagee.

21.3.6.5. Except as otherwise provided in this Section 21, no liability for the payment of Rent or Additional Charges or the performance of any of Lessee's covenants and agreements shall attach to or be imposed on the Permitted Leasehold Mortgagee (other than any obligations assumed by the Permitted Leasehold Mortgagee), all such liability (other than any obligations assumed by the Permitted Leasehold Mortgagee) being expressly waived by Lessor.

21.3.6.6. Lessor, within ten (10) Days after request in writing by Lessee or any Permitted Leasehold Mortgagee, shall furnish a written statement, duly acknowledged, that this Lease is in full force and effect and unamended, or if there are any amendments, such statement will specify the amendments, and that there are no Defaults by Lessee that are known to Lessor, or if there are any known Defaults, such statement shall specify the Defaults Lessor claims exist.

21.3.6.7. No payment made to Lessor by any Permitted Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and the Permitted Leasehold Mortgagee having made any payment to Lessor pursuant to Lessor's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment or portion, provided it shall have made demand not later than one year after the date of its payment.

21.3.6.8. Lessor, on request, shall execute, acknowledge, and deliver to each Permitted Leasehold Mortgagee an agreement prepared at the sole cost and expense of Lessee, in form satisfactory to the Permitted Leasehold Mortgagee and Lessor, among Lessor, Lessee, and the Permitted Leasehold Mortgagee, agreeing to all the provisions of this Section 21.

21.3.6.9. Lessor shall at no time be required to subordinate its fee simple interest in the Premises to the lien of any leasehold mortgage, nor to mortgage its fee simple interest in the Premises as collateral or additional security for any leasehold mortgage. Lessor shall attorn to any Permitted Leasehold Mortgagee or any other person who becomes Lessee by, through, or under a Permitted Leasehold Mortgage.

21.3.6.10. Any right of Lessor to terminate this Lease by reason of a Default (other than a Default in the payment of Rent or Additional Charges under Section 25.3 or the failure to maintain insurance as required by Sections 15.1 through 15.5.5) shall be postponed so long as a Permitted Leasehold Mortgagee is actively engaged in steps to acquire the Lessee's ground lease estate either by foreclosure or deed-in-lieu of foreclosure. After any such foreclosure or deed-in-lieu of foreclosure by a Permitted Leasehold Mortgagee or an affiliate of a Permitted Leasehold Mortgagee, any right of Lessor to terminate this Lease by reason of a Default (other than a Default in the payment of Rent or Additional Charges under Section 25.3 or the failure to maintain insurance as required by Sections 15.1 through 15.5.5) shall be postponed so long as such foreclosure purchaser or deed-in-lieu transferee (the "**Foreclosure Purchaser**") remains actively engaged in steps to market or sell the Lessee's interest in this Lease to a

prospective transferee meeting the requirements set forth in Section 20 of the Lease (the "**First Transferee**"); provided, however, (a) the postponement of the right of Lessor to terminate this Lease pursuant to this Section 21.3.6.10 shall expire upon the date that a First Transferee becomes the Lessee under this Lease (provided that such First Transferee and its successors and assigns shall continue to be afforded the cure rights provided in this Lease and, in any case, a reasonable opportunity to cure any existing Defaults after such First Transferee becomes the Lessee under this Lease) and (b) for the avoidance of doubt, any third party purchaser of the Lessee's interest in this Lease (i.e., a purchaser which is not a Permitted Leasehold Mortgagee or an affiliate of a Permitted Leasehold Mortgagee) shall be deemed to be a First Transferee rather than a Foreclosure Purchaser for purposes of this Section 21.3.

21.3.6.11. The acquisition of the Lessee's interest in this Lease by any person pursuant to the remedial provisions under a Permitted Leasehold Mortgage (or a deed-in-lieu thereof) shall be deemed to be a Permitted Transfer under this Lease.

21.3.6.12. A Permitted Leasehold Mortgagee or its nominee shall be entitled to a new lease as described in Section 21.3.7 in any circumstance where this Lease is terminated (and to the extent Lessor or any party acting with respect to Lessor seeks to reject this Lease in a bankruptcy or insolvency proceeding, Lessee shall be deemed to have elected to retain the Lease and the Permitted Leasehold Mortgagee shall be entitled to seek, on Lessee's behalf, the retention of the Lease.) Pursuant to Section 21.3.7.4 below, Lessor shall not be deemed to warrant possession of the Premises or the Improvements to Lessee with respect to any residual claims by the original Lessee under this Lease but shall otherwise provide the identical warranties of possession provided in the original Lease.

21.3.6.13. Any of Lessor, Lessee, or a Permitted Leasehold Mortgagee may record or file a Memorandum of any estoppel certificate or other agreement required by such Permitted Leasehold Mortgagee of public record, and such recordation or filing shall not be deemed to be a default or Default under this Lease.

21.3.7. **New Lease.** Lessor agrees that in the event of termination of this Lease by reason of any Default by Lessee, Lessor will enter into a new lease of the Premises with the Permitted Leasehold Mortgagee or its nominee, for the remainder of the Term, effective on the date of such termination, at the Rent and Additional Charges and on the terms, provisions, covenants, and agreements contained in this Lease and subject only to the same conditions of title as this Lease is subject to on the date this Lease is executed, and to the rights, if any, of any parties then in possession of any part of the Premises, provided that Permitted Leasehold Mortgagee will get the benefit of all of the terms set forth in this Section 21.3 and the following:

21.3.7.1. The Permitted Leasehold Mortgagee or its nominee shall make written request on Lessor for such new lease within thirty (30) Days after the date of termination indicated in the notice of termination given to Permitted Leasehold Mortgagee and such written request shall be accompanied by payment to Lessor of Rent and Additional Charges then due to Lessor under this Lease.

21.3.7.2. The Permitted Leasehold Mortgagee or its nominee shall pay to Lessor, at the time the new lease is executed and delivered, any and all Rent and Additional Charges that would be due at the time of the execution and delivery of the new lease pursuant to this Lease but for such termination, and in addition any expenses, including reasonable attorneys' fees, to which Lessor shall have been subjected by reason of such Default.

21.3.7.3. The Permitted Leasehold Mortgagee or its nominee shall ensure that any security and guaranty(ies) are in full force and effect, and shall perform and observe all covenants contained in this Lease on Lessee's part to be performed and further shall remedy any other conditions that Lessee under the terminated Lease was obligated to perform, other than an obligation on the part of Lessee to construct or build; and upon execution and delivery of such new lease, any security that may have been assigned and transferred previously by Lessee to Lessor, as security under this Lease, shall then be held by Lessor as security for the performance of all the obligations of Lessee under the new lease.

21.3.7.4. Such new lease shall be expressly made subject to the rights, if any, of Lessee under the terminated Lease.

21.3.7.5. Lessee under such new lease shall have the same right, title, and interest in and to the Improvements on the Premises as Lessee had under the terminated Lease.

22. LESSEE'S CERTIFICATE; LESSOR'S CERTIFICATE: Lessee shall at any time and from time to time without charge, and within twenty (20) Days after written request therefor by Lessor, complete, execute, and deliver to Lessor a written statement concerning the terms of this Lease, whether it is in full force and effect, if there are any Defaults hereunder, and such other information as may be required by Lessor, but only as typically provided in an estoppel certificate. Lessor shall at any time and from time to time without charge, and within twenty (20) Days after written request therefor by Lessee, complete, execute, and deliver to Lessee a written statement concerning the terms of this Lease, whether it is in full force and effect, if there are any Defaults hereunder, and such other information as may be required by Lessee, but only as typically provided in an estoppel certificate.

23. LESSOR'S LIEN AND SECURITY INTEREST: Lessor hereby reserves its statutory lien right in all Improvements on the Premises for Rent. Lessor hereby waives its statutory lien right in all furniture, fixtures, equipment or other personal property located on the Premises.

24. LIENS: Except as allowed pursuant to Section 21, Lessee shall keep the Premises and Lessee's leasehold interest therein free and clear of, and shall indemnify, defend and hold harmless Lessor against, all monetary liens, charges, mortgages, and encumbrances (collectively, "Liens") which may result from any act or neglect of Lessee, including, but not limited to, liens for utility charges and mechanics and materialman liens, and all expenses in connection therewith, including attorneys' fees; it being expressly agreed that Lessee or any transferee, assignee, delegate or sublessee shall have no power or authority to create any such Lien, except with the prior written approval of Lessor. Nothing herein shall prevent Lessee from contesting or litigating any Lien not believed by Lessee to be valid, providing that (i) such contest will not expose Lessor to civil or criminal liability, fine or penalty, (ii) such contest will not subject the Premises to sale, forfeiture, foreclosure or interference, and (iii) Lessee provides to Lessor security, reasonably satisfactory to Lessor against any loss or injury by reason of such contest, such as a lien release bond, and prosecutes the contest with due diligence.

24.1 Lessor's Interests. In no event shall Lessor's fee interest in the Premises or reversionary interest in the Improvements (collectively, "**Lessor's Interest**"), be subject or subordinate to any Lien.

24.2 Lessor's Right to Cause Release of Liens. If Lessee does not cause any Lien encumbering Lessor's Interest that Lessee does not contest in accordance with this Section to be released of record by payment or posting of a proper bond or insured over within thirty (30) days following the imposition of such Lien, Lessor shall have the right, but not the obligation, to cause the Lien to be released by any means Lessor may deem appropriate, and the amount paid by Lessor, together with Lessor's reasonable administrative fees, plus interest at the twelve percent (12%) per annum from the date of payment by Lessor, shall be additional Rent, immediately due and payable by Lessee to Lessor upon demand.

25. DEFAULT OR BREACH: Time is of the essence of this Lease. Each of the following events shall constitute a default of this Lease ("Default"):

25.1. Bankruptcy. If Lessee, or any successor or assignee of Lessee while in possession, shall file a petition in bankruptcy or insolvency or for reorganization under any Bankruptcy Act, or shall voluntarily take advantage of any such Act by answer or otherwise, or shall make an assignment for the benefit of creditors.

25.2. Insolvency Proceedings. If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against Lessee, or if a receiver or trustee shall be appointed for all or substantially all of the property of Lessee, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within one hundred twenty (120) Days after the institution or appointment, which period may be reasonably extended provided full Rent and Additional Charges are being paid to Lessor.

25.3. Late Rent. If Lessee shall fail to pay to Lessor Rent or Additional Charges within ten (10) Days after Lessor sends notice that same is past due.

25.4. Prohibited Transfer. If this Lease or the interest of Lessee under this Lease shall be assigned, sublet or otherwise transferred to or shall pass to or devolve on any other person or party, voluntarily or involuntarily, except in the manner expressly permitted in this Lease, and such transaction is not unwound or approved in writing by Lessor within thirty (30) Days after written notice from Lessor.

25.5. Non-Monetary Default. If Lessee shall fail to perform or comply with any other term or condition of this Lease, and if the non-performance shall continue for a period of thirty (30) Days after notice of non-performance given by Lessor to Lessee or, if the performance cannot be reasonably accomplished within the thirty (30) Day period, Lessee shall not in good faith have commenced performance or cure within the thirty (30) Day period and shall not diligently proceed to completion of performance. Lessee shall be deemed to be diligently proceeding to completion of performance and such performance shall be deemed to be within a reasonable time thereafter if the Lessee is undertaking steps with reasonable diligence and continuity in order to remedy such non-monetary default. Without limitation to the foregoing, if the non-monetary default at issue relates to the passage of any Project deadline, the requirement of undertaking steps "with reasonable diligence and continuity" shall be deemed to be satisfied so long as the Lessee is actively engaged in the planning, permitting, bidding, contracting or construction processes related to the objective of completing the Project.

26. EFFECT OF DEFAULT: In the event of any Default by Lessee under this Lease, Lessor shall have the following rights and remedies:

26.1. Injunction. In the event of any Default by Lessee or any person claiming under, by, or through Lessee, or any threatened or attempted Default by such person, Lessor shall be entitled to an injunction against such person enjoining such Default. Nothing herein contained precludes Lessor from pursuing any other remedies available hereunder or at law or equity to Lessor for such breach, including eviction and the recovery of damages.

26.2. Termination. Lessor shall have the right to terminate this Lease, as well as all right, title and interest of Lessee under this Lease, by giving to Lessee not less than ninety (90) Days' prior written notice of the termination effective on a date specified in the notice. No act of Lessor or its agents shall be deemed a termination of this Lease and no agreement of Lessor to terminate this Lease shall be valid, effective, or enforceable unless in writing and signed by Lessor or its agent. On the termination date specified in the notice, unless the Default is cured by Lessee before such date, this Lease, and the right, title and interest of Lessee under this Lease, shall terminate in the same manner and with the same force and effect, except as to Lessee's liability, as if such termination date was the end of the Term originally set forth in this Lease. On termination, Lessor may recover from Lessee all damages proximately resulting from the breach, including the cost of recovering the Premises and expenses if any to repair damage in order to lease the Premises.

26.3. Performance. Lessor may elect, but shall not be obligated, to make any payment required of Lessee in this Lease or to comply with any agreement, term, or condition required by this Lease to be performed by Lessee. Lessor shall have the right to enter the Premises for the purpose of curing any such Default and to remain until the Default has been cured. In either case, Lessor may charge to Lessee as Additional Charges the amount of such payment or the cost of such compliance or cure, together with interest thereon at the Interest Rate from the date of such payment. Any such cure by Lessor shall not be deemed to waive or release the Default of Lessee or the right of Lessor to take any action as may be otherwise permissible under this Lease in the case of any Default.

26.4. Appointment of Receiver. Lessor may (i) collect, or appoint a designee to collect, rent from Lessee and its sublessees as permitted under, and in accordance with, Section 20.6.2, and (ii) seek to procure pursuant to applicable law a receiver to take possession of the Premises subject to the rights of Lessee's Subtenants. Proceedings for the appointment of a designee by Lessor pursuant to clause (i) above, or the appointment of a receiver pursuant to clause (ii) above, including the actions taken by any such receiver pursuant to applicable law, shall not terminate and forfeit this Lease, unless Lessor has given written notice of termination to Lessee as provided in this Lease.

26.5. Damages. Lessor shall be entitled to recover damages from Lessee for any Default by Lessee, without prejudice to any of Lessor's other rights or remedies hereunder or at law or equity, including Lessor's right to terminate this Lease. If this Lease is terminated for any reason, Lessee's liability to Lessor for damages shall survive such termination. In the event of termination as a result of any Default by Lessee, Lessor shall be entitled to recover

immediately without waiting until the due date of any future Rent and/or Additional Charges or until the date fixed for expiration of the Term, the following amounts as damages determined as of the date of termination:

26.5.1. **Past Due Amounts.** Any Rent, Additional Charges and late charges due under the Lease as of the date of termination, together with interest thereon at the Interest Rate from the date each sum became due through the date of termination;

26.5.2. **Present Value of Future Obligations.** Any excess of the value of all of Lessee's obligations under this Lease, including the obligation to pay Rent and Additional Charges, from the date of termination until the end of the Term remaining immediately prior to such Termination, over the reasonable rental value of the Premises for the same period figured as of the date of termination, plus the loss of reasonable rental value of the Premises as of the end of the Term resulting from Lessee's Default, the net result to be discounted to the date of termination at the rate of six percent (6%) per annum;

26.5.3. **Reentry and Reletting Costs.** The reasonable costs of re-entry and re-letting including, without limitation, the cost of any clean-up, refurbishing, removal of Lessee's property and fixtures, and any other expense occasioned by Lessee's failure to quit the Premises upon termination or to leave them in the required condition, and any remodeling costs, broker commissions and advertising costs, together with interest thereon at the Interest Rate from the date such costs are incurred by Lessor until paid; and

26.5.4. **Other Damages Permissible.** Any other damages recoverable at law, in equity or under this Lease, including, but not limited to, any doubling of damages permitted under RCW 59.12.170; provided, however, in no event shall Lessee be responsible for lost profits (except for present value of future rent pursuant to Section 26.5.2), or for consequential, special or punitive damages.

The foregoing damages shall bear interest at the Interest Rate from the termination date until paid.

26.6. **Lessor's Rights Cumulative.** Lessor's rights and remedies shall be cumulative and may be exercised and enforced concurrently. Any right or remedy conferred upon Lessor under this Lease shall not be deemed to be exclusive of any other right or remedy it may have. In the event of a Default in the payment of Additional Charges, Lessor shall have all the rights and remedies provided at law, in equity or in this Lease for a Default in the payment of Rent.

26.7. **Default by Lessor.** Before Lessee may declare a default by Lessor, Lessee shall give Lessor written notice of the specific failure of Lessor's obligations hereunder and thirty (30) Days from the receipt of such written notice in which to cure the alleged failure; provided however, that if such failure cannot reasonably be cured within such thirty (30) Day period, then Lessor shall promptly undertake and diligently pursue such curative performance to completion, all within a reasonable time. If Lessor fails to cure any such default within the time period or to diligently pursue such cure to completion, Lessee shall have all the rights and remedies provided at law, in equity or in this Lease, which rights shall be cumulative and may be exercised and enforced concurrently. Any right or remedy conferred upon Lessee under this Lease shall not be deemed to be exclusive of any other right or remedy it may have. Without limiting the generality of the foregoing, if Lessor fails to perform (or commence to perform and diligently pursue) any obligation of Lessor under this Lease within thirty (30) Days following Lessee's written notice to Lessor thereof, then Lessee may proceed to take the required action upon delivery to Lessor of an additional five (5) Days' notice specifying that Lessee is taking such required action (provided, however, that such additional notice shall not be required in the event of an emergency). If such action is not taken by Lessor within said five (5) Day period, then Lessee shall be entitled to take such action and to offset against Rent next coming due under this Lease, all costs and expenses incurred by Lessee in connection with such action.

27. CONDEMNATION OR TERMINATION BY COURT ORDER:

27.1. **Condemnation.** If all or any part of the Premises are condemned by any public body, Lessor may, at its option, terminate this Lease as of the date of such taking, provided, however, such termination shall not be effective if Lessee believes that it can continue to operate the Improvements, in which case Rent shall be reduced to account for any part so taken. If the Lease is terminated and if Lessee is not in Default under any of the provisions of

this Lease on said date, any Rent prepaid by Lessee shall be promptly refunded to Lessee. Upon such termination, the entire estate and interest of Lessee in the Premises shall cease and Lessee shall have no further rights or obligations hereunder.

27.2. Performance Prevented by Condemnation. If any court having jurisdiction in the condemnation matter shall render a decision which has become final and which will prevent the performance by Lessor or Lessee of any of its respective obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in Default under any of the provisions of this Lease on the effective date of such termination, any Rent or Additional Charges prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of termination, be promptly refunded to Lessee.

27.3. Condemnation Proceeds. In every case of taking or sale of the Premises, or any part thereof, the parties shall share in the compensation as their interests may appear. For avoidance of doubt, Lessor shall receive the value of the land treated as unimproved and unencumbered by this Lease, and Lessee shall receive the value of the leasehold estate created by this Lease and the value of the Project.

27.4. No Condemnation by City. During the entirety of the Term, Lessor shall not condemn all or any part of the Premises.

28. HOLDING OVER: If Lessee for any reason shall hold over after the expiration of this Lease, without written consent by Lessor, such holding over shall not be deemed to operate as a renewal or extension of this Lease, but shall only create a tenancy terminable at will at any time by Lessor. In this event the Rent owing from Lessee to Lessor shall equal one hundred fifty percent (150%) of the Rent during the last month prior to the holdover period, unless otherwise agreed. If Lessee, with written consent of Lessor, holds over after the expiration or sooner termination of this Lease, the resulting tenancy shall be on a month-to-month basis, upon agreed upon Rent terms. Lessee shall continue to be bound by all other pertinent provisions of this Lease.

29. SURRENDER OF PREMISES: Upon expiration or earlier termination of this Lease, Lessee shall promptly surrender possession of the Premises, and shall deliver all keys that it may have to any and all parts of the Premises. The Premises, along with all Improvements made pursuant to this Lease, shall be surrendered to Lessor in good condition, reasonable wear and tear excepted, and in the state of repair and maintenance required by the terms of Section 14.1 (Lessee Maintenance Obligations) of this Lease, ordinary wear and tear and casualty excepted (“**Surrender Condition**”), provided, however, (i) that in the event of a casualty, Lessee will surrender the Premises and Improvements in the condition required under Section 18 (Damage or Destruction) of the Lease, and (ii) Surrender Condition shall not mean or include upgrades or any capital repairs or replacements to systems or structure of the Improvements, unless and to the extent the need for such capital repairs or replacements arises directly due to Lessee’s failure to maintain the Improvements as required under Section 14.1. Prior to the turnover of the Premises to Lessor upon expiration or earlier termination of the Lease, representatives of Lessor and Lessee (which representatives may include contractors, vendors or other building experts), shall upon the written request of either, and subject to the terms of Section 13.1 (Access Rights), jointly conduct a walk-through of the Premises. In addition, Lessee, promptly following Lessor’s written request therefor, shall deliver to Lessor copies of Maintenance Records for a period of no less than five (5) years prior to the applicable expiration or earlier termination date as required under Section 14.1. Concurrently with surrender of the Premises, Lessee shall surrender to Lessor any Fixtures owned by Lessee which is located at the Premises and is used in the operation and management of the Premises for the Permitted Use, in its then-current “AS-IS” condition. Notwithstanding the foregoing, it is expressly understood and agreed that any Fixtures owned by Subtenants shall be governed by the terms of the applicable Subleases.

30. JOINT AND SEVERAL LIABILITY:

30.1. Joint and Several Liability. Each and every party who signs this Lease, other than in the representative capacity, as Lessee, shall be jointly and severally liable hereunder.

30.2. Meaning of Lessee. It is understood and agreed that for convenience the word “**Lessee**” and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Lease, regardless of the

number, gender or fact of incorporation of the party who is, or of the parties who are, the actual Lessee or Lessees under this Lease. In construing this Lease, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to entities and individuals.

31. OWNERSHIP OF LAND, IMPROVEMENTS AND ALTERATIONS. The Land shall continue to be owned by Lessor. All Improvements shall be owned by and the property of Lessee during, and only during, the Term and no longer. Lessee may from time to time replace the Improvements and any Alterations, provided that the replacements for such items are of equivalent or better value and quality than the Improvements at the time the replacement or Alterations are made, and such items are free from any liens and encumbrances except for equipment leases and any other financings expressly permitted hereunder. Upon any termination of this Lease, whether by reason of the expiration of the Term hereof, or pursuant to any provision hereof, or by reason of any other cause whatsoever, all of Lessee's right, title and interest in the Improvements and any alterations thereto shall cease and terminate, and title to the Improvements shall immediately vest in Lessor. No further deed or other instrument shall be necessary to confirm the vesting in Lessor of title to the Improvements. However upon any termination of this Lease, Lessee, upon written request of Lessor, shall execute, acknowledge and deliver to Lessor a quitclaim deed confirming that all of Lessee's rights, title and interest in the Improvements has expired and that title thereto has vested in Lessor. Notwithstanding the foregoing, the ownership and disposition of all personal property, trade fixtures and improvements installed by any subtenants of the Premises shall be as provided in their subleases.

32. CAPTIONS AND PARTICULAR PROVISIONS:

32.1. The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.

32.2. If any term or provision of this Lease or the applications thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

32.3. In construing or interpreting this Agreement, (a) singular pronouns and nouns shall be taken to mean and include the plural, and the plural shall be taken to mean and include the singular, and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require, (b) "shall" means mandatory and imperative, and (c) "including" means including without limitation.

33. NON-DISCRIMINATION: Lessee agrees that in the performance of this Lease that it will not discriminate by segregation or otherwise against any person or persons because of sex, race, creed, age, color or national origin.

34. NOTICES: Any and all notices which either Party desires or may be required to make or deliver to the other pursuant to this Lease shall be in writing and may be delivered, with all applicable delivery and postage charges prepaid, by: (a) personal delivery or messenger; (b) nationally recognized overnight courier service (such as FedEx); (c) certified mail or registered United States mail, return receipt requested; or (d) e-mail, if simultaneously sent by another means allowed hereunder, and sent to the applicable address set forth in Section 1.13 or to such other address as either party hereto may hereafter from time to time designate in writing. Notices shall be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof as evidenced by the records of the delivery or courier service or by the signed return receipt, as applicable. Notwithstanding the foregoing, notices sent by email shall be deemed given on the date received if and only if delivered prior to 6:00 p.m. Pacific Time and if simultaneously sent by another means allowed hereunder. Notices may be given by counsel to a party on behalf of such party. Lessee shall also provide information to Lessor regarding Lessee's billing address if it is different from the notice listed above.

35. ATTORNEYS' FEES AND COURT COSTS: If either of the parties hereto shall bring any action or proceeding against the other to enforce compliance with any of the terms of this Lease, the prevailing party in such action or proceeding shall be entitled to recover from the party prevailed against all reasonable attorneys' fees, together with all costs and expenses incurred in connection with such actions, including the reasonable cost of searching the

records to determine the condition of title at the time suit is commenced. The “prevailing party” shall be determined by the ultimate arbiter of the dispute in accordance with Washington law.

36. HEIRS AND ASSIGNS: All rights, remedies and liabilities herein given to or imposed upon either of the parties hereto shall inure to the benefit of and bind the heirs, executors, administrators, successors and, so far as this Lease is assignable by the terms hereof, to the assigns of such parties. Nothing herein shall or is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights, remedies, obligations, or liabilities.

37. WAIVER: Neither party shall be deemed to have waived any rights under this Lease unless the waiver is given in writing and signed by that party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of the right or any other right. A waiver by either party of a provision of this Lease shall not prejudice or constitute a waiver of that party’s right otherwise to demand strict compliance with that provision or any other provision of this Lease. No prior waiver by either party shall constitute a waiver of any of that party’s rights or of any of the other party’s obligations as to any future transactions.

38. ENTIRE AGREEMENT: This Lease contains the entire agreement between the parties and supersedes all prior agreements. Each party represents that no promises, representations or commitments have been made by the other as a basis for this agreement which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Lease executed with all necessary legal formalities by City Council. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted.

39. CONFIDENTIALITY: To the extent permitted by applicable law, including without limitation Chapter 42.56 RCW and any subsequent revision and amendments thereto, the parties agree to keep confidential the terms and conditions of this Lease and any financial information, reports, studies or other documentation relating to Lessee, the Premises or the Project (collectively, “**Confidential Information**”) for a period of five (5) years following the expiration or other termination of this Lease. Notwithstanding the foregoing, Lessee shall have the right to make disclosures of Confidential Information to Lessee’s members, existing and potential capital partners and lenders, and Lessee’s and their respective employees, partners, members, permitted assignees, Affiliates and independent contractors, including but not limited to consultants, financial planners, outside counsel, and experts who (i) have a need to know such Confidential Information as necessary to evaluate the Project and perform their responsibilities under or in connection with this Lease or the development or financing of the Project, (ii) are made aware that Confidential Information must be kept confidential according to (and may not be distributed or used in accordance with) this Lease, and (iii) have an enforceable legal or fiduciary obligation to keep such Confidential Information confidential. Lessee shall be entitled to make disclosures of Confidential Information if and to the extent required under applicable law or pursuant to a court order. The parties acknowledge that Lessor is a municipal corporation subject to the Washington State Public Records Act and that Lessor may be obligated to disclose certain information that is the subject of a public records request. Notwithstanding the foregoing, if Lessor receives a request to disclose Confidential Information under the State of Washington’s Public Records Act, Lessor agrees, for a period of five (5) years following the expiration or other termination of this Lease, to give Lessee reasonable advance written notice so that Lessee may contest the disclosure or seek a protective order.

40. BROKERS: Lessor represents and warrants to Lessee, and Lessee represents and warrants to Lessor, that no broker or finder has been engaged by it, respectively, in connection with any of the transaction contemplated by this Lease, or to its knowledge is in any way connected with any of such transaction. In the event of any claim for consulting, brokers’ or finders’ fees or commissions in connection with the negotiation, execution or consummation of this Lease, then Lessee shall indemnify, hold harmless and defend Lessor from and against such claims if they shall be based upon any act, statement, or representation or agreement by Lessee, and Lessor shall indemnify, hold harmless, and defend Lessee from and against such claims if such claims shall be based upon any act, statement, representation or agreement made by Lessor.

41. COUNTERPARTS: This Lease may be signed in counterparts. All signatures taken together shall amount to the concurrence of all parties. In that regard, a photostatic or PDF copy of any signature or execution through a document signing program (such as DocuSign), shall have the same effect as the original.

42. NO OPTION BY SUBMISSION OF LEASE DRAFT: The submission of this Lease for examination does not constitute a reservation of or option for the Premises. This Lease shall become effective as a Lease only upon execution and delivery by both Lessor and Lessee.

43. APPLICABLE LAW AND VENUE: This Lease shall be governed by and construed in accordance with the laws of the State of Washington, and in the event of any litigation arising out of or relating to this Lease, the parties hereto stipulate and agree that the venue of any such action shall be laid in Clark County, Washington.

44. RIGHT OF FIRST REFUSAL TO PURCHASE PREMISES:

44.1. *Grant of Right of First Refusal.* Subject to Lessor's compliance with the surplus property rules and procedures set forth in Vancouver City Code and except to the extent prohibited by law, Lessor does hereby grant unto Lessee a right of first refusal (the "**First Refusal Right**") to purchase all or part of Lessor's right, title and interest in and to the Premises, subject to and upon the terms and conditions set forth below.

44.1.1. During the Term of this Lease, in the event that the City of Vancouver decides to sell in part or all of its interest in the Premises and Lessor receives a bona fide written offer from a nonpublic third party to purchase the Premises, or any portion thereof, which Lessor desires to accept ("**Offer**"), Lessee may elect to purchase the Premises or the applicable portion thereof, at the price and on the terms and conditions (except for the time within which to close the transaction, if such time is shorter than that set forth below) as are contained in the Offer ("**Right of Purchase**"). Lessor shall give notice to Lessee, including delivery to Lessee of a true and exact copy of the Offer, and allow Lessee thirty (30) Days subsequent to Lessee's receipt of such notice within which Lessee may elect to purchase the Premises, or the applicable portion thereof, from Lessor; and in the event Lessee so elects to purchase the Premises, or the applicable portion thereof, by giving notice of such election to Lessor within such thirty (30) Day period, Lessor, upon approval by City Council if required pursuant to applicable law, shall sell the Premises, or the applicable portion thereof, to Lessee at the price and on the same terms and conditions as are contained in the Offer, except that Lessee shall not be required to close the transaction prior to ninety (90) Days following the expiration of the above 30-Day period. Notwithstanding anything to the contrary contained herein, the Right of Purchase shall not apply to a transfer of the Premises by Lessor to a governmental entity or a quasi-governmental entity (including without limitation, a housing authority, a public development authority or coalition of governmental entities such as PSERN or ARCH (collectively, a "**Governmental Entity**")). In the event that Lessor elects to transfer the Premises to an entity other than a Governmental Entity, and such entity lacks substantial real estate operational or ownership experience, as reasonably determined by Lessee, Lessee shall have a right to purchase the Premises; provided that Lessee shall notify Lessor within ten (10) Business Days following Lessee's receipt of Lessor's transfer notice of Lessee's election to potentially acquire the Premises. The parties shall then determine the FMV of the Premises (in accordance with Sections 5.7.2-5.7.8); provided that the timing set forth in Section 5.7.3 shall be modified as follows: (a) Lessor shall have thirty (30) days following Lessor's receipt of Lessee's notice of election to potentially acquire the Premises to provide Lessee with an appraisal of the Premises; (b) if Lessee does not agree with the FMV set forth in Lessor's appraisal, Lessee shall have an additional thirty (30) days in which to provide Lessor with an appraisal which complies with the requirements set forth in Section 5.7.3.; (c) thereafter, Lessor and Lessee shall have an additional thirty (30) days period in which to mutually agree on the FMV of the Premises; and (d) in the event Lessor and Lessee are unable to agree on the FMV within such 90-day period, the FMV shall be determined as set forth 5.7.4-5.7.8. Within five (5) Business Days of the determination of the FMV of the Premises in accordance with Sections 5.7.2-5.7.8, Lessee shall notify Lessor in writing whether Lessee elects to acquire the Premises. Lessee's failure to timely respond shall be deemed Lessee's election not to acquire the Premises. If Lessee timely elects to acquire the Premises, then (a) Lessee shall deposit 5% of the purchase price as earnest money within three (3) Business Days of Lessee's election to acquire the Premises, and (b) closing shall occur within ninety (90) days following Lessee's written election to acquire the Premises.

44.1.2. Should Lessee, by written notice to Lessor, elect not to exercise the right to purchase, or should Lessee fail to notify Lessor of its election to purchase within the 30-Day period, then, in either of such events, Lessor shall be free to consummate the sale of the Premises, or the applicable portion thereof, to the third party submitting the Offer, provided that the sale is closed and on the same material terms and conditions as are contained in the Offer, without any substantive modification thereto, except that the closing thereof may occur on or before the thirtieth (30th) Day subsequent to the closing deadline set forth in the written offer, but provided that the closing must occur within twelve (12) months following the date of the Offer. Should any such sale be consummated, this First

Refusal Right shall thereafter be of no further force and effect with respect to the Premises, or applicable portion thereof, subject to the sale. Should any such sale not be consummated within twelve (12) months following the date Lessor delivers to Lessee an Offer in accordance with the terms of this Section 44, Lessor shall, in the event Lessor subsequently receives any modified or new bona fide written offer from any third party to purchase the Premises, or any portion thereof, again follow the provisions of this Section requiring notice to Lessee and opportunity for Lessee to purchase the Premises.

44.1.3. Notwithstanding anything in this Section to the contrary, under no circumstances shall a “bona fide written offer from a third party” be deemed to include nor shall the First Refusal Right be triggered by any of the following, whether involving the Premises or a co-ownership interest in the Premises: (a) any gift or devise; (b) transfers to any entity controlling, controlled by or under common control with Lessor; (c) transfers which are deemed or considered transfers by operation of law; or (d) involuntary transfers, such as transfers in foreclosure or in condemnation.

44.2. Exercise of First Refusal Right. To exercise the First Refusal Right, Lessee must not be in Default under this Lease. Further, Lessee must deliver written notice of its election to exercise the First Refusal Right to Lessor as provided in this section. Time is of the essence of this First Refusal Right. Upon such notice being given, this First Refusal Right shall become a contract of purchase and sale subject to the terms contained in this section and the Parties shall enter into such purchase agreement and/or supplemental escrow instructions as may be reasonably necessary to effect the purchase (provided there shall be no proration of taxes and other items that pursuant to this Lease, Lessee is obligated to pay as the lessee hereunder). In the event the First Refusal Right has expired and terminated, any attempt to exercise the First Refusal Right shall be ineffective.

44.3. Assignability. The rights arising under this First Refusal Right may be assigned by Lessee only to the party or parties acquiring the Lessee’s ground leasehold estate in the Premises or any portion thereof permitted under the terms of this Lease, and provided that (i) the assignee at the time of such assignment agrees in writing to be bound by all terms and conditions of the First Refusal Right which are applicable to Lessee, and that (ii) such rights may be assigned to and exercised by only one assignee at any one time with respect to a designated portion of the Premises or Improvements. Notwithstanding the above, Lessee may also assign its rights under this First Refusal Right to its Lender with respect to the Lessee’s ground leasehold estate in the Premises.

44.4. Broker and Broker’s Commission. Lessor and Lessee warrant and represent to the other that such Party has not employed any broker or agent in connection with this First Refusal Right. Lessee and Lessor covenant and agree, each to the other, to indemnify the other against any loss, liability, costs, demands, damages, actions, causes of action, or suits based upon or arising out of the alleged employment or use by the indemnifying party of any real estate broker or agent.

45. REPRESENTATIONS AND WARRANTIES:

45.1. By Lessor. Lessor represents and warrants to Lessee as follows:

45.1.1. **Validity.** This Lease has been duly executed and delivered by Lessor and constitutes a valid, binding and enforceable obligation of Lessor. Lessor has the right, power and authority to enter into this Lease in accordance with the terms and satisfaction of the conditions of this Lease, to engage in the transaction contemplated in this Lease and to perform and observe the terms and provisions hereof.

45.1.2. **No Breach.** The execution and delivery of this Lease by Lessor and the performance by Lessor of its obligations under this Lease will not result in a breach of, or default under, any contract, agreement, commitment or other document or instrument to which Lessor is a party or by which Lessor or the Premises is bound, or a violation of any law, ordinance, regulation or rule of any governmental authority or any judgment, order or decree of any court or governmental authority that is binding on Lessor or the Premises.

45.1.3. **No Action.** There is no action, suit, proceeding, inquiry or investigation (including any eminent domain proceedings) pending, or to the actual knowledge of Lessor, threatened by or before any court or governmental authority against or affecting the Lessor or the Premises, except litigation in the ordinary course of

business that, either individually or in the aggregate, will not have a material adverse effect upon Lessor or the Premises or the ability of Lessor to execute this Lease. Lessee expressly acknowledges that it is aware of the fact that the Washington Department of Transportation, in conjunction with a pending project to replace the Interstate Bridge, was considering a condemnation process at or near the Premises.

45.1.4. **Ownership.** The Lessor is the owner of the Premises and no other person has any ownership interest in the Premises or any right to acquire an ownership interest in the Premises.

45.1.5. **Possessory Interest.** Other than the Lessor, no other party has a possessory interest or right of occupancy in the Premises.

45.1.6. **OFAC.** Lessor is currently in compliance with and shall at all times during the term of this Lease remain in compliance with the regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental actions relating thereto.

45.1.7. **No Mortgage.** The Premises are not encumbered by a Mortgage.

45.2. **By Lessee.** Lessee represents and warrants to Lessor as follows:

45.2.1. **Validity.** This Lease has been duly executed and delivered by Lessee and constitutes a valid, binding and enforceable obligation of Lessee.

45.2.2. **No Breach.** The execution and delivery of this Lease by Lessee and the performance by Lessee of its obligations under this Lease will not result in a breach of or a default under any contract, agreement, commitment, or other document or instrument to which Lessee is a party or by which Lessee is bound, or a violation of any law, ordinance, regulation, or rule of any governmental authority or any judgment, order, or decree of any court or governmental authority that is binding on Lessee.

45.2.3. **No Action.** There is no action, suit, proceeding, inquiry, or investigation pending or, to the actual knowledge of Lessee, threatened by or before any court or governmental authority against or affecting Lessee, except litigation in the ordinary course of business that, either individually or in the aggregate, will not have a material adverse effect upon Lessee or the ability of Lessee to effect the execution of the ground lease.

45.2.4. **OFAC.** Lessee is currently in compliance with and shall at all times during the term of this Lease remain in compliance with the regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental actions relating thereto.

46. FORCE MAJEURE: Any prevention, delay, or stoppage due to (i) insurrection; (ii) strikes; (iii) lock-outs; (iv) riots; (v) floods; (vi) earthquakes; (vii) fires; (viii) unusually severe weather; (ix) casualties; (x) acts of god; (xi) acts of the public enemy; (xii) acts of the other Party; (xiii) epidemics or pandemics; (xiv) quarantine restrictions; (xv) freight embargoes; (xvi) litigation (including suits filed by third parties concerning or arising out of this Agreement); (xvii) inability to secure or the rationing of necessary services, labor, materials, tools, or sources of energy; (xviii) condemnation; (s) acts or failure to act of any public or governmental agency or entity (other than City as a party to this Agreement); (xix) the discovery of cultural and archaeological resources at the Premises; or (xx) any other causes beyond the reasonable and foreseeable control or without the fault of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage (“**Force Majeure Delay**”), except the obligations imposed with regard to Rent and Additional Charges to be paid by Lessee pursuant to this Lease.

47. MEMORANDUM OF LEASE: The parties shall record a memorandum of this Lease in the official records in the form attached hereto as Exhibit L upon the Term Commencement Date.

48. QUIET ENJOYMENT: So long as Lessee pays all Rent and performs all of its other obligations under this Lease in a timely manner, Lessee shall peaceably and quietly have, hold and enjoy the Premises, including access to the Premises from the nearest public right of way, without hindrance, ejection or molestation by Lessor or any person lawfully claiming through or under Lessor.

49. COMPLETION GUARANTY. As a material part of the consideration to Lessor for entering into this Lease, Lessee agrees that, with respect to the initial construction of the Improvements on the Premises, and prior to commencement of construction of the Improvements, Lessee shall cause the party provided such guaranty to Lessee's construction lender to provide a construction completion guaranty in favor of Lessor, the form of which will mirror the form and substance of the completion guaranty provided to Lessee's construction lender.

50. NO RECOURSE TO LESSOR. In no event shall any officer, directors, member, manager, shareholder, commissioner, partners, owner or employee of either Lessor or Lessee have any personal liability to Lessee under this Lease. This exculpation of personal liability shall be absolute and without any exception whatsoever.

*(Remainder of page intentionally left blank;
signatures on following page.)*

IN WITNESS WHEREOF, the parties hereto have signed this Lease as of the Effective Date.

LESSOR:

CITY OF VANCOUVER, a Washington municipal
corporation

LESSEE:

_____**LLC**,
a **Delaware** limited liability company

By: _____
Eric Holmes
City Manager

By: _____
Patrick Gilligan
Authorized Signatory

Approved as to form:

By: _____
_____, City Attorney

(Notary Acknowledgements are located on the following pages.)

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that _____ are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the CITY MANAGER for the CITY OF VANCOUVER to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Printed Name: _____
My Appointment Expires: _____

State of Oregon)
County of Multnomah)

On _____, 202__, before me, _____, a Notary Public, personally appeared Patrick Gilligan, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Oregon that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT “A”
DEPICTION OF PREMISES

EXHIBIT “B”

PREMISES LEGAL DESCRIPTION

[to be attached for applicable Parcel when Lease is finalized]

EXHIBIT “C”
GLOSSARY OF TERMS

“**Additional Charges**” is defined in Section 6.

“**Adjacent Real Property**” is defined in Section 12.2.

“**Adjustment Date**” is defined in Section 1.4

“**Affiliate**” is defined in Section 20.7.1.

“**Archaeological Compliance Costs**” is defined in Section 12.16.

“**Baseline Assessment**” is defined in Section 12.2.

“**Base Monthly Rent**” is defined in Section 1.4.

“**Business Days**” means any day other than a Saturday, Sunday or legal holiday observed by the state of Washington.

“**Casualty**” is defined in Section 18.1.

“**CC&Rs**” is defined in Section 15.10.5.

“**Certificate of Completion**” is defined in Section 15.9.

“**Certificate of Occupancy**” is defined in Section 15.9.

“**City Council**” means the City of Vancouver’s elected, governing body vested with the authority of the council-managed form of government for a Washington first class city.

“**CMMP**” is defined in Section 12.2.

“**Commence Construction**” and “**Commencement of Construction**” are defined in Section 15.2.2.

“**Completion of Construction**” is defined in Section 15.2.2.

“**Confidential Information**” is defined in Section 39.

“**Construction Period**” shall mean the time period commencing on Commencement of Construction of the Initial Improvements at the Premises and continuing through the date Lessee has obtained a Certificate of Occupancy with respect thereto.

“**Contaminated Media**” is defined in Section 12.2.

“**Days**” shall mean calendar days unless otherwise noted. As used herein, the term “**Business Day**” shall mean a day that is not a Saturday, Sunday or legal holidays (as recognized by banks in the State of Washington). In the event that the date for the performance of any covenant or obligation under this Lease shall fall on a Saturday, Sunday or legal holiday, the date for performance thereof shall be extended to the next Business Day.

“**DDA**” is defined in Section 1.2 of this Lease.

“**Default**” is defined in Section 25 of this Lease.

“**Environmental Laws**” shall mean any federal, state, or local environmental health, safety, or similar laws, statutes, rules, regulations, or ordinances presently in effect or which may be promulgated in the future, as such laws, statutes, rules, regulations, and/or ordinances may be supplemented or amended from time to time, including, but not limited to, laws regarding the proper and lawful use, transportation, storage, treatment, generation, sale, and disposal of Hazardous Substances on or in any manner that affects the Premises or the surrounding properties.

“**Exit Assessment**” is defined in Section 12.14.

“**Fair Market Rent**” is defined in Section 5.7.1.

“**First Leasehold Mortgage**” and “**First Leasehold Mortgagee**” are defined in Section 21.2.

“**First Refusal Right**” is defined in Section 44.1.

“**First Transferee**” is defined in Section 21.3.6.10.

“**Fixtures**” is defined in Section 15.8.

“**Force Majeure Delay**” is defined in Section 46 of this Lease.

“**Foreclosure Purchaser**” is defined in Section 21.3.6.10.

“**Governmental Entity**” is defined in Section 44.1.1.

“**Hazardous Substances**” shall mean any hazardous, toxic, dangerous, or extremely hazardous substance, material, or waste, including marine pollutants, marine toxics, petroleum, and air toxics, which is or becomes regulated by the United State Government, the State of Washington, or any local governmental authority. The term includes, without limitation, any substance containing contaminants regulated as specified above or under Environmental Laws.

“**Improvements**” shall mean all changes, additions, improvements, or repairs to, all alterations, reconstructions, renewals, betterments, replacements, or removals of and all substitutions or replacements for any of the Premises, both interior and exterior, structural and non-structural, and ordinary and extraordinary. Improvements shall include, but are not limited to, the erection or removal of buildings, facilities or other improvements upon the Premises or the permanent surfacing of any outside areas. Notwithstanding the foregoing, it is expressly understood that “**Improvements**” shall not include maintenance and repairs to existing Improvements, landscaping, or replacements of existing Improvements using substantially the same materials and finishes.

“**Initial Improvements**” shall mean the base shell and core of buildings and related exterior improvements that Lessee will initially construct on the Premises by the Project Deadline (subject to any Force Majeure Delays). It is understood that “**Initial Improvements**” do not include interior improvements or finishes within office, retail or residential spaces.

“**Initial Term**” is defined in Section 1.3.

“**Interest Rate**” is defined in Section 5.4.

“**Lending Institution**” is defined in Section 21.2.

“**Lease**” shall mean this Ground Lease Agreement, as amended and supplemented from time to time as permitted hereby.

“**Leasehold Excise Tax**” shall mean any tax on the leasehold interest created by this Lease or on the Base Monthly Rent reserved under this Lease, including, without limitation, any leasehold excise taxes due and owing on taxable rent under RCW Chapter 82.29A, and any subsequent revision and amendments thereto. “**Taxable rent**” is defined

by statute under RCW 82.29A.020(2), and shall include contract rent which is the amount of consideration due as payment for a leasehold interest, including the total of cash payments made to Lessor, or to any other party for the benefit of Lessor according to the requirements of this Lease or agreement, including, but not limited to, any payments paid by a sublessee; expenditures for the protection of Lessor's interest when required by the terms of this Lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of Lessor.

"Leasehold Excise Tax Rate" means the applicable rate of Leasehold Excise Tax, currently the rate set forth in Section 1.5.

"Lessee" is defined in the preamble of this Lease.

"Lessee Indemnatee" and **"Lessee Indemnitees"** is defined in Section 17.4.

"Lessor" is defined in the preamble of this Lease.

"Lessor Delay" shall mean any actual delay in Lessee's exercise of rights or performance of obligations under this Lease, including any failure of Lessee to meet deadlines set forth in this Lease or to achieve operation of the Premises for the Permitted Uses hereunder to the extent arising out of or resulting from (i) the failure of Lessor to approve or disapprove any plans or other matters which Lessor is required to approve under this Lease in accordance with the time periods referenced herein (or in the UDSG if applicable) as such time periods may be extended pursuant to the operative provision or document, or (ii) interference by Lessor, its agents, employees or contractors. Notwithstanding the foregoing, with respect only to a Lessor Delay arising out of interference by Lessor, its agents, employees or contractors as referenced in item (ii) above, it shall not be a Lessor Delay hereunder unless Lessee first notifies Lessor in writing of the event which constitutes such delay and Lessor fails to cure the actions, inactions or circumstances described in such notice within five (5) Days after delivery thereof. In such event, the Lessor Delay shall be deemed to have occurred commencing as of the date such notice is delivered to Lessor and ending as of the date such delay ends.

"Lessor Indemnatee" and **"Lessor Indemnitees"** are defined in Section 17.1.

"Lessor's Interest" is defined in Section 19.1 and Section 24.1.

"Loss Payable Endorsement" is defined in Section 21.3.5.

"Maintenance Records" is defined in Section 14.1.

"Makers Alley" is defined in Section 15.10.4.

"Minimum Coverage Amount" is defined in Section 1.11.

"Mortgage" is defined in Section 19.2.

"Mortgagee" is defined in Section 19.2.

"OFAC" is defined in Section 45.1.6 and Section 45.2.4.

"Offer" is defined in Section 44.1.1.

"Operating Costs" is defined in Section 5.9.

"Option" and **"Option Term"** are defined in Section 4.2.

"Permit Delays" is defined in Section 1.2.

“Permits” means governmental permits and any other third party consents or approvals necessary for Lessee’s use of the Premises and construction of the Project, including, without limitation, building permits, signage permits, and any conditional use permits.

“Permitted Leasehold Mortgage” and **“Permitted Leasehold Mortgagee”** are defined in Section 21.2.

“Permitted Use” is defined in Section 1.9 of this Lease.

“Person” shall mean any individual (natural person), partnership, corporation, trust, unincorporated association, syndicate, joint venture, or other organization or any government or any department or agency thereof or any other entity.

“Phase I” and **“Phase II”** are defined in Section 12.14.

“Premises” is defined in Section 2 and as shown and legally described on Exhibits “A” and “B”.

“Premises Common Areas” shall mean those portions of, and facilities within, the Premises, which are made open and accessible to the public by Lessee from time to time for the non-exclusive use of Lessee and its Subtenants and their respective agents, employees, customers, invitees, and licensees thereto.

“Proceeds” is defined in Section 18.2.

“Prohibited Uses” is defined in Section 10.1.

“Project Deadline” is defined in Section 1.2.

“Property Manager” is defined in Section 15.13.

“Qualified Transferee” is defined in Section 20.2(h).

“RCW” shall mean the Revised Code of Washington, as amended, supplemented, or otherwise modified from time to time.

“RECs” is defined in Section 12.14.

“Related Parties” shall mean, with respect to Lessor, its council members, officers, agents, representatives, and employees and, with respect to Lessee, its officers, directors, employees, shareholders, agents, and representatives.

“Release” shall be defined as provided in 42 U.S.C. § 9601 and RCW 70A.305.020, or successor legislation. In the event a conflict exists between the two definitions; the broader definition shall apply.

“Relevant Experience” is defined in Section 20.7.4.

“Rent” is defined in Section 1.4 and Section 5.1.

“Rent Abatement Period” is defined in Section 5.2.

“Right of Purchase” is defined in Section 44.1.1.

“Sublease” is defined in Section 20.6.1.

“Subleased Space” is defined in Section 20.6.1.

“Subtenant” is defined in Section 20.6.1.

“Supplemental Baseline Assessment” is defined in Section 12.2.

“Surrender Condition” is defined in Section 29.

“Tax” and **“Taxes”** are defined in Section 5.8.1.

“Term” shall mean the Initial Term together with any Option Term accruing pursuant to Section 4.2, as provided herein, unless the context otherwise requires.

“Term Commencement Date” is defined in Section 1.3.

“Transfer Fee” is defined in Section 20.5.

“Unit” is defined in Section 20.7.2.

EXHIBIT "D"

FORM OF TENANT ENVIRONMENTAL QUESTIONNAIRE

Tenant Environmental Questionnaire

SECTION 1 – Tenant Information

Business Name: _____
Contact: _____
Telephone: _____
E-mail: _____

SECTION 2 – Site Information

Site Location/Address: _____
Acreage/Sq Footage Required/Incl.: _____

SECTION 3 – Hazardous Materials Management

List all chemicals managed at this facility* (including: petroleum products, hazardous materials, batteries, antifreeze, oil filters, etc.). Attach additional sheet/list if necessary.
Include maximum amounts on site at any given time for each chemical managed. This list will establish a baseline under the Lease:

Product Trade Name	Manufacturer	SDS Date	Max. Amount On Site

*All Safety Data Sheets (SDS) required at this facility under OSHA's Hazard Communication Standard (29 CFR 1910.1200) must be provided at the time of assessment.

SECTION 4 – Hazardous/Dangerous Waste

EPA RCRA ID Number (if applicable): _____
Hazardous Waste Generator Status (large, medium, small or conditionally exempt): _____
Current Status: _____ Anticipated Future Status: _____
List recurring and potential hazardous waste streams from this facility other than sanitary sewer waste streams: _____

SECTION 5 – Pollution Prevention

Will vehicles/equipment be fueled on-site? (list location, type and amount of fuel used): _____

Will vehicles/equipment have maintenance activities performed on-site? (list location and type of vehicle maintenance activities): _____

Describe any pollution control equipment or waste minimization processes you are currently involved in or plan to initiate on site: _____

SECTION 6 – Environmental Documents

Name all known and/or potential environmental permits required to operate the facility, if any (e.g., NPDES, SWCAA, etc.): _____

SECTION 7 – Miscellaneous Environmental

List and explain any previous environmental violations issued to any other facilities Lessee operates: _____

This questionnaire completed by: _____

Position of person completing this questionnaire: _____

Date questionnaire was completed: _____

EXHIBIT “E”

2024 CONTAMINATED MEDIA MANAGEMENT PLAN

[to be attached]

EXHIBIT “F”

INTENTIONALLY DELETED

EXHIBIT “K”

FORM OF MEMORANDUM OF LEASE

Return Address:

_____ LLC
c/o LPC West, Inc.
1201 Third Avenue, Floor 22
Seattle, WA 98101
Attention: Patrick Gilligan

Document Title(s) (or transactions contained therein): Memorandum of Ground Lease
Reference Number(s) of Documents assigned or released: N/A Additional reference #'s on page _____ of document
Grantor(s): City of Vancouver, a Washington municipal corporation
Grantee(s): _____ LLC, a [Delaware] limited liability company
Legal description (Abbreviated): ☒ Full legal description is on <u>Exhibit A</u> attached to document.
Assessor's Property Tax Parcel/Account Number(s):

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "**Memorandum**") is made and entered into as of _____, 202__ (the "**Effective Date**") by and between **CITY OF VANCOUVER**, a Washington municipal corporation ("**Lessor**"), and _____ LLC, a [Delaware] limited liability company ("**Lessee**").

RECITALS

A. Lessor and Lessee entered into that certain Ground Lease dated _____, 202__ (as amended from time to time, the "**Lease**"). Lessor has leased to Lessee and Lessee has leased from Lessor certain [unimproved] real property located in the City of Vancouver, Clark County, Washington, as more particularly described on Exhibit A attached hereto (the "**Premises**"). All capitalized terms not defined hereunder shall have the meaning set forth in the Lease.

B. The parties desire to place their interests in the Lease as a matter of record.

NOW, THEREFORE, Lessor and Lessee confirm and agree as follows:

1. Term. Pursuant to the terms of the Lease, the Lease has an Initial Term of fifty (50) years, commencing as of the _____, 202__, which date is the Term Commencement Date under the Lease and expiring on _____, ____ which is the expiration date of the Initial Term under the Lease.

2. Extension Options. Subject to and in accordance with the terms of the Lease, Lessee has two (2) options to extend the Initial Term of the Lease for a period of fifteen (15) years each.

3. Right of First Refusal. Lessee has a limited right of first refusal to purchase the Premises, as more fully provided in the Lease.

4. Miscellaneous. This Memorandum has been prepared to provide notice that the Premises is subject to the terms and conditions of the Lease, which terms are hereby incorporated into this Memorandum by this reference. In no event shall the terms of this Memorandum be deemed to modify, amend, limit, or otherwise affect the terms and conditions of the Lease. In the event of any inconsistency between the terms of this Memorandum and the terms of the Lease, the terms of the Lease shall control.

5. Counterparts. This Memorandum may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same document.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Lessor and Lessee have signed this Memorandum as of the day and year first above written.

LESSOR:

CITY OF VANCOUVER, a Washington municipal corporation

LESSEE:

_____ **LLC**,
a **Delaware** limited liability company

By: _____

City Manager

Approved as to form:

By: _____

_____, City Attorney

By: _____

Patrick Gilligan
Authorized Signatory

[ACKNOWLEDGEMENTS ON FOLLOWING PAGES]

LESSOR ACKNOWLEDGMENT

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 she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the CITY MANAGER of the CITY OF VANCOUVER to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Printed Name: _____
My Appointment Expires: _____

[LESSEE ACKNOWLEDGEMENT ON NEXT PAGE]

LESSEE ACKNOWLEDGEMENT

State of Oregon)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Oregon that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

DESCRIPTION OF THE PREMISES

EXHIBIT "L"

REQUIRED SUBLEASE PROVISIONS

All Subleases to be entered into by Lessee with respect to commercial and retail space within the Improvements shall:

- (a) be in the form of a written instrument;
- (b) permit use of the Subleased Space only for uses permitted under this Lease;
- (c) prohibit use of the Subleased Space for any Prohibited Uses (as defined in Section 10);
- (d) include an acknowledgment that the Sublease is subject and subordinate to the terms and conditions of this Lease, subject, however, to Lessor's agreement to recognize the Sublease in accordance with Section 20.6.2;
- (e) confirm each Subtenant's agreement to allow access by Lessor to Sublease Spaces for the purposes permitted under the Lease, including Sections 12.10 (Environmental Assessments) and 13.1 (Access Rights);
- (f) require the Subtenant to provide sufficient information regarding chemicals that will be managed in the portion of the Improvements to be subleased, prior to execution of the Sublease to allow Lessee to maintain a current and complete Tenant Environmental Questionnaire, consistent with Lessee's obligations to provide updated Tenant Environmental Questionnaires to Lessor under this Lease; and
- (g) notifies the Subtenant that Lessor is entitled to receive payments of Sublease rent directly from Subtenant in the event of a Default by Lessee under this Lease and, in the event Subtenant receives written notice from Lessor requesting such direct payment, directs the Subtenant to pay such Sublease rent as directed by Lessor, without any liability to Lessee or any obligation to confirm the validity of Lessor's request.
- (h) include the following provision, subject to reasonable revision:

"If by reason of a default on the part of [Lessee] as lessee in the performance of the terms of the provisions of the underlying ground lease [define, as needed, in Sublease], the underlying ground lease and the leasehold estate of [Lessee] as lessee thereunder are terminated by summary proceedings or otherwise in accordance with the terms of the underlying ground lease, the [Subtenant] will attorn to [Lessor] and recognize [Lessor] as lessor; provided, however, [Lessor] agrees that so long as the [Subtenant] is not in default of this Sublease, [Lessor] will provide quiet enjoyment to Subtenant and be bound by all the terms and conditions of this Sublease (but in no event shall [Lessor] be liable for actions taken by [Lessee] prior to [Lessor] coming into possession of the Premises)."

SCHEDULE 16.6

Self Insurance Parameters

Lessor self-insures as follows:

Self-insured retention of up to \$1,000,000 for bodily injury and/or property damage to third parties for accidents stemming from Lessor's operations.

Excess liability coverage beyond the 1,000,000 self-insured retention totaling \$20,000,000.

Auto insurance of up to \$10,000,000 for City owned equipment and \$250,000 for leased or rented equipment.

Self-insured retention of up to \$2,000,000 for Workers' Compensation with excess Workers' Compensation coverage beyond the \$2,000,000 in an amount determined by Lessor.

GROUND LEASE

Between

CITY OF VANCOUVER
a Washington municipal corporation

as Lessor

And

a [Delaware] limited liability company

as Lessee

Execution Date: _____
Effective Date: _____

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[EXHIBIT and SCHEDULE list on following page.]

EXHIBIT A:	PREMISES DEPICTION
EXHIBIT B:	PREMISES LEGAL DESCRIPTION
EXHIBIT C:	GLOSSARY OF TERMS
EXHIBIT D:	FORM OF TENANT ENVIRONMENTAL QUESTIONNAIRE
EXHIBIT E:	2024 CONTAMINATED MEDIA MANAGEMENT PLAN
EXHIBIT F:	WATERFRONT DEVELOPMENT URBAN DESIGN STANDARDS AND GUIDELINES
EXHIBIT G:	SUSTAINABILITY OBJECTIVES
EXHIBIT H:	BUSINESS AND WORKFORCE DEVELOPMENT STRATEGY
EXHIBIT I:	SMALL BUSINESS MARKETING AND OUTREACH PLAN
EXHIBIT J:	TREE CANOPY PLAN
EXHIBIT K:	REQUIRED SUBLEASE PROVISIONS
EXHIBIT L:	FORM OF MEMORANDUM OF LEASE

SCHEDULE 16.6: LESSOR SELF-INSURANCE PARAMETERS



MEMORANDUM

DATE: March 21, 2024

TO: City Center Redevelopment Authority Board of Directors

FROM: Amy Zoltie, Real Estate Project Manager
Economic Prosperity & Housing

RE: Waterfront Gateway Form of Ground Lease & Project Update

CC: Patrick Quinton, Executive Director, CCRA

The purpose of this memorandum is to provide an update on the Waterfront Gateway development and outline the key terms of the proposed form of ground lease that will be presented to you for your review and approval at the City Center Redevelopment Authority (CCRA) Board meeting on March 21, 2024.

Ground Lease

As stated in the Land Disposition and Development Agreement between the City of Vancouver and LPC West dated October 9, 2023 (DDA), each building will sit on its own parcel and all parcels except for the affordable housing parcel will be ground leased. The affordable housing parcel will be conveyed to Lincoln (formerly LPC West) for \$1. The purchase and sale agreement will be brought to the CCRA and City Council for approval separately in Q4 2024. The parties have agreed to a form of ground lease which will be personalized for each transaction based on parcel size, the building use type and development requirements associated with each parcel.

The substantive terms of the ground lease outlined in the DDA have not changed. The key terms are as follows.

- 50-year term with two 15 year extensions with the buildings and improvements reverting to the City at the end of the lease term.
- Rent is calculated by multiplying the appraised value of the property (using the value set forth in the February 28, 2023 appraisal prepared for the City by Colliers

International) by the square footage of each parcel and then multiplying the allocated value of each parcel by 6% cap rate.

- Rent is adjusted annually using Consumer Price Index (CPI) for the Seattle-Tacoma-Bellevue MSA and the CPI is capped at 5.5% with a floor of 2.5%. The rent will be adjusted at the closing dates.
- The rent will reset every 20 years by virtue of an appraisal and multiplying the allocated value of each parcel by 6% cap rate but shall not exceed 10% of the rent from the preceding year.
- Rent will be abated during first 2 years of the lease term during construction and is discounted during years 3-7.
- Lincoln cannot assign the ground lease without the City's consent and without meeting certain conditions of approval (see Section 20.2). However, prior to the issuance of a certificate of occupancy, Lincoln is entitled to assign the lease without the City's consent to (i) an affiliate or (ii) a lender or creditor for security or collateral purposes. Following the issuance of a certificate of occupancy, Lincoln can assign without the City's approval to an affiliate, in connection with a public offering, a merger or a sale to a transferee approved by the City.
- Subleasing space within the buildings is permitted without the City's prior consent.
- Lincoln has a right of first refusal to purchase the property from the City if it chooses to sell to a nonpublic third party. However, this right does not apply to a transfer to a governmental or quasi-governmental entity or a nonprofit entity with substantial real estate operational or ownership experience.
- The public benefits and development and construction requirements in the DDA are carried forward in the ground lease.

The City's environmental consultant prepared a Contaminated Media Management Plan, known in the DDA as the Soil Remediation Plan (the CMMP), which provides recommendations for handling and disposing the mild contamination across the site during construction. The CMMP is under final review and is not included in the attached ground lease. A finalized copy will be inserted in the executed ground leases and can be circulated to the Board but does not require the CCRA's or City Council's approval.

Public Plaza Update

The City and Lincoln hosted an open house and online survey on February 1, 2024, to gather feedback on the conceptual plaza design and what activities and features the community would like to see in the space. 359 online survey responses were received echoing similar comments around creating a flexible space to gather and host pop-up markets, live music, festivals, and events; feature unique art by local artists reflective of Vancouver's history and an accessible space that's easy to navigate multi-modally. The design team is exploring ways to incorporate this feedback into the next design iteration and will present a refined design to the CCRA Board late spring.

Affordable Housing Building Update

In partnership with Lincoln, Colas Development Group, the development arm of Colas Construction, is leading the development of the affordable housing building along with the Native American Youth and Family Center (NAYA). NAYA will provide a resident services program, offering services that cater to the specific needs of the residents and the Native American community.

Additionally, the project has secured funding amounting to almost \$7,500,000 from several sources including the Washington State Housing Trust Fund and Connecting Housing to Infrastructure Program (CHIP). The project team recently applied to the Washington State 4% Low Income Housing Tax Credit (LITHC) program for additional capital. Provided the LITHC funding is awarded, and design and permitting progress on schedule, construction is targeted to commence in Q1 2025.

Next steps

- The ground lease is on City Council's consent agenda on April 8th.
- Purchase and sale agreement approval and conveyance of affordable housing parcel in Q4 2024.
- Lincoln and the City continue to advance the design of the public plaza. A design update will be presented to CCRA late spring.
- Lincoln will continue to advance project planning and design. Refined building designs will be shared in Q3 2024, and estimate construction commencing in Q3 2025.

Requested Action

Recommend that City Council approve the proposed form of ground lease in its substantive form.

Attachments

Form of Ground Lease

CCRA 2024 Workplan
Revised March 21, 2024

Meeting Date	Actual/Proposed Agenda Items	Comments
January 17, 2024	• IBR update	Briefing by City staff in advance of issuance of Environmental Impact Statement (EIS) in 2024
	• Development Redevelopment Study RFP – review and approval	Staff present draft RFP for approval
February 15, 2024 (workshop)	• CCRA Business Planning Workshop	Workshop to plan for future operations of CCRA
March 21, 2024	• WFG ground lease – review and approval	CCRA review and recommendation to City Council
April 18, 2024	• Green Building Policy update	City will seek the input of CCRA members throughout this process. This item will be one of two updates to full board.
	• Business Planning follow up	Report back from workshop and discussion of next steps
May 16, 2024	• City Hall Plaza Design review & approval	Public process for designing Waterfront Gateway plaza will be complete and design will be ready for CCRA review and recommendation to Council
	• Downtown Redevelopment Study consultant and scope approval	Results of RFP process will be complete and ready for CCRA approval
June 20, 2024	• Development market conditions presentation	Presentation and discussion about state of market for commercial development
	• Tax Increment Financing update	Staff will present update on analysis of potential TI areas and next steps
July 18, 2024	• Comp Plan update	Presentation from consultant team and City staff on status of Comp Plan process
	• Economic Development Plan update	Presentation from consultant team and City staff on draft economic development plan

August 15, 2024	• Parking Plan update	Consultant team would present initial findings and seek feedback from Board
	• IBR update	Combination of IBR team and City staff would provide update to Board and answer any questions.
	• IBR Urban Design Study update	Consultant team would present initial findings and seek feedback from Board.
September 19, 2024	• Downtown Redevelopment Study update	Consultant team would present initial findings and seek feedback from Board
	• Business Planning	Presentation of draft business plan and discussion of next steps in CCRA long term planning
October 17, 2024	• Green Building Policy review and recommendation	Final policy will presented for CCRA review and recommendation to Council
	• MFTE Annual Report	Staff report on activity since changes to MFTE program
November 21, 2024	• Parking Plan – Final presentation and approval	Final policy will presented for CCRA review and recommendation to Council
	• IBR Urban Design Study update	Consultant team may be ready to present final findings and seek feedback from Board.
December 19, 2024	No meeting	