

## COMMERCIAL LEASE

**PARTIES:**

“Landlord”

Carl H. Johnson Family Limited Partnership II

8965 SW Burnham Street, Tigard, OR 97223

(“Tenant”)

City of Tigard

Public Works Department

13125 SW Hall Blvd., Tigard, OR 97223

**DATE:** November 1, 2014

**RECITALS**

**A.** Landlord is the owner of the real property located at 8955-8973-8975 SW Burnham Street, Tigard, OR 97223 (the “Premises”).

**B.** Landlord desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from Landlord and occupy the Premises, on the terms and conditions set forth in this Commercial Lease (the “Lease”).

NOW THEREFORE, in consideration of the mutual covenants herein, the parties hereto agree as follows:

### AGREEMENT

**1. Property Leased.** Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, on the terms and conditions set forth in this Lease.

**2. Term.**

**2.1** The term of this Lease is for a period of one (1) year, with an option for a four (4) year lease extension. The term of this Lease shall commence on first day of January, 2015 (“Commencement Date”) and end at 11:59 p.m. on December 31, 2016 (“Expiration Date”), unless sooner terminated as provided in this Lease. If Tenant wishes to exercise its option to extend the lease, Tenant must notify Landlord at least sixty (60) days prior to the Expiration Date.

**3. Rent.**

**3.1** During the Lease term, Tenant shall pay Landlord monthly rent for the Premises in the amount of: Thirty-five hundred dollars (\$3,500.00).

**3.2** Rent shall be payable in monthly installments in advance on the first day of each and every calendar month during the term of this Lease. Rent payments shall be delinquent if not paid within five (5) days after notice of nonpayment from Landlord to Tenant.

**3.3** On the Commencement Date, Tenant shall deliver to Landlord the amount of Thirty-five hundred (\$3,500.00) as rent, to be applied to rent due for the first month of the Lease term. At the beginning of month thirty-seven (37), the rent will escalate to \$3,675.00 per month.

**4. Security.** On the Commencement Date, Tenant shall deliver to Landlord the amount of Three Thousand Five Hundred Dollars (\$3,500.00) as a security deposit for the full performance by Tenant of its obligations under this Lease (“Deposit”). If Tenant violates any provision of this Lease, Landlord may, but shall not be obligated to, apply all or any part of the Deposit to remedy such violation. If any portion of the Deposit is so applied, Tenant shall immediately deposit with Landlord cash in an amount sufficient to restore the Deposit to its original amount. Landlord may commingle the Deposit with Landlord’s funds and Tenant shall not be entitled to interest on the Deposit. Landlord and Tenant expressly acknowledge and agree that the Deposit is not an advance payment of rent nor a measure of Landlord’s damages in the event of any default by Tenant of its lease obligations hereunder. If Tenant fully performs every provision of the Lease, the Deposit shall be returned to Tenant within thirty (30) days after the expiration of the Lease term.

**5. Condition of Premises.** Landlord represents and warrants to Tenant that the Premises and all operating systems on the Premises are in good order, condition, and repair as of the Commencement Date. Notwithstanding any other term of this Lease, if such representation and warranty is inaccurate, Landlord, at its sole cost and expense, shall repair and replace, as necessary, any part of the Premises or its systems that was not in good order, condition, or repair on the Commencement Date. Tenant acknowledges that no tenant improvements, replacements, or upgrades for Tenant’s benefit are provided for under this Lease or shall be made to the Premises by Landlord, unless agreed to in writing by Landlord and Tenant.

**6. Use of Premises.**

**6.1** Tenant shall use the Premises during the term of this Lease for City of Tigarad Public Works Department operations and maintenance, and all activities incidental to such use and for no other purpose without Landlord’s prior written consent.

**6.2** In connection with the use of the Premises, Tenant shall:

**6.2.1** Comply with all applicable laws and regulations affecting the Premises and Tenant’s use of the Premises, and correct, at Tenant’s own expense, any failure of compliance created solely through Tenant’s fault or because of Tenant’s use; provided, however, Tenant shall not be required to make any structural changes to effect such compliance.

**6.2.2** Refrain from any activity that would make it impossible to insure the Premises against casualty or would substantially increase the insurance rates over the insurance rate as of the Commencement Date.

**6.2.3** Refrain from any use that would be reasonably offensive to owners or users of neighboring premises or that would create a nuisance.

**6.2.4** Refrain from loading the electrical system or floors of the Premises beyond the point considered safe by a competent engineer or architect selected by Landlord.

**6.2.5** Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the prior written consent of Landlord. The Tenant is requesting that Landlord provide permission to mount an external antenna on one of the buildings for Tenant use. The antenna system will meet all local and state codes regarding the location and height. The Tenant will remove the antenna, and make any repairs related to mounting of said antenna to the exterior structure at the end of the expiration of this agreement unless the agreement is extended or renewed.

**7. Utilities.** Tenant shall pay for all heat, light, water, power and all other services or utilities used at the Premises during the term of this Lease directly to the provider of such utilities.

## **8. Repairs and Improvements.**

**8.1** During the term of this Lease, Landlord shall (a) repair, maintain, and replace, as necessary, the structural portions of the Premises, including, without limitation, the walls, roof, and foundations of the Premises, and (b) replace, as necessary, the mechanical, plumbing, electrical, and heating, ventilation and air conditioning equipment serving the Premises, except that Landlord shall not be obligated to repair or replace any such items damaged by Tenant or its employees, agents, contractors, or invitees, which damage shall be repaired (including replacement, if necessary) by Landlord but at Tenant's sole cost and expense. Tenant shall pay any such costs and expenses promptly after Landlord invoices Tenant for such costs and expenses.

**8.2** During the term of the Lease, except as set forth in Section 8.1, Tenant shall maintain, repair, and keep the Premises in good order, condition, and repair, which shall include, without limitation, the obligation to maintain and repair as necessary, the heating, ventilation, and air conditioning system, interior wiring, plumbing, drain pipes to sewers or septic tank, gutters, and downspouts on the Premises, and all glass that may be broken or cracked in the windows and doors of the Premises with glass of as good or better quality as that now in use, all at Tenant's own cost and expense.

**8.3** Tenant shall not make any alterations, additions, or improvements to the Premises without the prior written consent of Landlord, which shall not be unreasonably withheld. All alterations, additions, or improvements made by Tenant shall comply with applicable laws in effect at the time they are made, the terms of this Lease, and plans and specifications approved by Landlord. Any alterations, additions, or improvements to or upon the Premises, whether installed by Landlord or Tenant, shall be and remain as part of the Premises at the expiration or earlier termination of this Lease; provided, however, that on the expiration of the Lease, or on the earlier termination of the Lease, and upon demand by Landlord, Tenant shall, at Tenant's sole cost and expense, remove any or all alterations, additions, or improvements made by or for the account of Tenant, that are designated by Landlord in its consent to the alterations, additions, or improvements to be removed, and repair and restore the Premises to their original condition, subject to ordinary wear and tear.

**8.4** Landlord reserves, and at any and all times shall have, the right to repair or maintain the Premises if Tenant fails to repair and maintain as provided in this Lease, and for that purpose, may erect scaffolding and any other necessary structures about and upon the Premises and Landlord and Landlord's representatives, contractors and workmen for that purpose may enter in or about the Premises with such materials as Landlord may deem necessary therefor, provided that entrance to the Premises shall not be blocked thereby, and further provided that the business of Tenant shall not be interfered with unreasonably. Tenant waives any claim to damages, including loss of business, resulting from Landlord's conduct, so long as such conduct complies with this section.

**9. Landlord's Right of Entry.** On twenty-four (24) hours' prior written notice and during normal business hours (except in an emergency), Landlord and Landlord's agents and representatives shall have the right to enter into or upon the Premises for the purpose of examining the condition of the Premises or for any other lawful purpose.

**10. Right of Assignment.** Tenant shall not assign or transfer this Lease, or any interest herein, or permit any other person or entity to occupy the Premises, without the prior written consent of Landlord, which shall not be unreasonably withheld. No assignment or sublease, or consent thereto by Landlord, shall relieve Tenant, either wholly or partially, from its obligations under this Lease.

**11. Liens.** Tenant will not permit any lien of any kind to be placed upon the Premises or any part thereof.

**12. Ice, Snow, Debris.** At all times during the term of this Lease, Tenant shall keep the sidewalks of the Premises free and clear of ice, snow, rubbish, debris and obstruction; Tenant will not permit rubbish, debris, ice or snow to accumulate on the roof of the buildings of the Premises, so as to stop up or obstruct gutters or downspouts or cause damage to the roof, and will indemnify, defend, and hold harmless Landlord against any injury whether to Landlord or to Landlord's property or to any other person or property caused by Tenant's failure in that regard.

**13. Indemnity.**

**13.1** Except if caused in whole or in part, by the gross negligence or willful misconduct of Landlord or its members, agents, or representatives, to the extent of the Oregon Tort Claims Act, Tenant shall defend (with counsel reasonably acceptable to Landlord), indemnify, and hold Landlord harmless from and against all liabilities, damages, claims, losses, judgments, charges, and expenses (including reasonable attorney fees and costs) arising from or in any way related to (a) the use of the Premises by Tenant or its agents, employees, and invitees, (b) the conduct of Tenant's business on the Premises, (c) any activity, work, or thing done or permitted by Tenant in or about the Premises, and/or (d) Tenant's failure to perform any covenant or obligation of Tenant under this Lease. Tenant's agreement to indemnify Landlord pursuant to this Section 13.1 is not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant under this Lease. The obligations of Tenant in this section shall survive the expiration or earlier termination of this Lease.

**13.2** Landlord shall defend (with counsel reasonably acceptable to Tenant) indemnify, and hold Tenant harmless from and against all liabilities, damages, claims, losses,

judgments, charges, and expenses (including reasonable attorney fees and costs) arising from or in any way related to (a) Landlord's failure to perform any covenant or obligation of Landlord under this Lease, and/or (b) any act or omission of Landlord or its members, managers, employees, agents, or representatives. Landlord's agreement to indemnify Tenant pursuant to this Section 13.2 is not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Landlord under this Lease. The obligations of Landlord in this section shall survive the expiration or earlier termination of this Lease.

**14. Insurance.** Tenant shall, during the term of the Lease, procure at its expense and keep in force the following insurance:

**14.1** Commercial general liability insurance naming Landlord as an additional insured against any and all claims for bodily injury and property damage occurring in, or about the Premises arising out of Tenant's use and occupancy of the Premises. Such insurance shall have a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, with a Two Million Dollars (\$2,000,000.00) aggregate limit. Such liability insurance shall be primary and not contributing to any insurance available to Landlord and Landlord's insurance shall be in excess thereto.

**14.2** Personal property insurance insuring all equipment, trade fixtures, inventory, fixtures, and personal property located on or in the Premises for perils covered by the causes of loss special form (special peril).

**14.3** Business interruption and extra expense insurance in such amounts to reimburse Tenant for direct or indirect loss attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises as result of such perils.

**14.4** Workers' compensation insurance in accordance with statutory law.

**14.5** The policies required to be maintained by Tenant shall be with (a) companies rated A-X or better by A.M. Best, or (b) may be insured through an insurance pool such as City County Insurance Services, either of which shall be reasonably acceptable to and approved by the Landlord. Insurers shall be licensed to do business in Oregon and domiciled in the USA. Any deductible amounts under any insurance policies required hereunder shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00). Certificates of insurance shall be delivered to Landlord on or before the Commencement Date and annually thereafter. Tenant shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms hereof in a blanket policy, provided such blanket policy expressly affords coverage to the Premises and to Landlord as required by this Lease.

**14.6** If Tenant does not purchase the insurance required by this Lease or keep the same in full force and effect during the Lease term, Landlord may, but shall not be obligated to, purchase the necessary insurance and pay the premiums. Tenant shall repay to Landlord, as additional rent, the amount so paid promptly upon demand. In addition, Landlord may recover from Tenant and Tenant agrees to pay, as additional rent, any and all reasonable expenses (including attorneys' fees) and damages that Landlord may sustain by reason of the failure of Tenant to obtain and maintain such insurance.

## **15. Fire and Extended Coverage Insurance.**

**15.1** Landlord shall obtain insurance in an amount equal to the full replacement value of the buildings and improvements on the Premises, which insurance shall insure Landlord against fire, windstorm, and other risks protected by extended coverage of the usual kind for industrial property as may be determined by Landlord.

**15.2** The insurance policy required under this section shall name Landlord and Tenant as the insureds, as their interests appear, and any mortgagee may be included as an additional insured. All of the insurance provided for shall be in the standard form written from time to time by insurance companies satisfactory to Landlord.

**16. Waiver of Subrogation Rights.** Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property, to the extent that such loss or damage is insured by an insurance policy required by the terms of this Lease to be in effect at the time of such loss or damage. Each party shall obtain any special endorsements, if required by its insurer, whereby the insurer waives its rights of subrogation against the other party. The provisions of this section shall not apply in those instances in which waiver of subrogation would cause either party's insurance coverage to be voided or otherwise made uncollectible.

**17. Fixtures.** All partitions, plumbing, electrical wiring, additions to or improvements upon the Premises, whether installed by Landlord or Tenant, shall be and become a part of the Premises as soon as installed and are the property of Landlord unless otherwise provided in writing, including in this Lease.

**18. Taxes.** Tenant shall pay when due all real property taxes and general and special assessments assessed against the Premises during the term of this Lease and all personal property taxes assessed against Tenant's personal property during the term of this Lease.

## **19. Subordination.**

**19.1** Subject to Landlord's compliance with Section 19.2, this Lease is and shall at all times be and remain subject and subordinate to the lien of any present or future deed of trust, mortgage, or other security instrument (a "Mortgage") (and to any and all advances made thereunder) upon the Premises (the mortgagee under any Mortgage is referred to herein as "Landlord's Mortgagee"). Subject to Landlord's compliance with Section 19.2, Tenant shall execute and return to Landlord any and all documentation required by Landlord to evidence the subordination of this Lease to any Mortgage or Primary Lease.

**19.2** As a condition of the subordination of this Lease, Landlord will obtain from Landlord's Mortgagee, a written nondisturbance agreement to the effect that (a) in the event of a foreclosure or other action taken under the Mortgage by the holder thereof, this Lease and the rights of Tenant hereunder shall not be disturbed but shall continue in full force and effect so long as Tenant shall not be in default hereunder, and (b) if Landlord's Mortgagee shall be in possession of the Premises, that so long as Tenant observes and performs all of the obligations of Tenant to be performed pursuant to this Lease, Landlord's Mortgagee will perform all obligations of Landlord required to be performed under this Lease.

**19.3** In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any Mortgage made by Landlord covering the Premises, Tenant shall attorn to the purchaser at any such foreclosure, or to the grantee of a deed in lieu of foreclosure, and recognize such purchaser or grantee as the landlord under this Lease. Tenant hereby agrees that no mortgagee or its successor shall be (a) bound by any payment of rent for more than one (1) month in advance, (b) liable for any breach, act, or omission of any prior landlord, or (c) subject to any claim of offset or defenses that Tenant may have against any prior landlord.

**20. Damage by Casualty, Fire and Duty to Repair.** If the Premises are damaged by fire or other casualty, Landlord shall forthwith repair the same unless this Lease is terminated as permitted herein. Within thirty (30) days of the date of such damage, Landlord shall notify Tenant if the Premises is damaged in excess of twenty-five percent (25%) of its precasualty value, as reasonably determined by Landlord (damage in excess of such amount being referred to as "Major Damage" and damage equal to or less than such amount being referred to as "Minor Damage"). If Minor Damage occurs, then Landlord shall repair such damage and rebuild that portion of the Premises damaged. If Major Damage occurs, Landlord may elect to terminate the Lease or to repair the damage and rebuild the Premises. If Landlord gives its written notice to Tenant within sixty (60) days of the date of damage electing to rebuild, or in the event of Minor Damage, this Lease shall remain in full force and effect provided the repairs are completed within one hundred eighty (180) days of the date of damage, except the rent shall be reasonably abated during the period of repair based on that portion of the Premises not reasonably useable by Tenant. If, in the event of Major Damage, Landlord does not timely elect by written notice to Tenant to rebuild, then this Lease shall automatically terminate as of the sixtieth (60<sup>th</sup>) day after the date of the damage, the rent shall be reduced by a proportionate amount based upon the extent to which Tenant's use of the Premises is impaired, and Tenant shall pay such reduced rent up to the date of termination. Landlord agrees to refund to Tenant any rent previously paid for any period of time subsequent to such date of termination. Landlord shall not be required to repair any damage by fire or other cause to the property of Tenant. If the Lease is terminated under the terms of this Section 20, Section 26 of this Lease shall be null and void and of no force or effect.

## **21. Eminent Domain.**

**21.1** If a portion of the Premises is condemned and Section 21.2 does not apply, the Lease shall continue on the following terms:

**21.1.1** Landlord shall be entitled to all of the proceeds of condemnation and Tenant shall have no claim against Landlord as a result of the condemnation. Notwithstanding the foregoing, Tenant shall have the right to claim and recover from the condemning authority separate compensation for any loss that Tenant may incur for Tenant's moving expenses, business interruption, or taking of Tenant's personal property (but specifically excluding any leasehold interest in the Premises) under the then applicable eminent domain laws, provided that Tenant shall not make any claim that will detract from or diminish any award for which Landlord may make a claim.

**21.1.2** Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a

condition as comparable as reasonably practicable to that existing at the time of the condemnation.

**21.1.3** After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Landlord to restore the balance of the Premises in anticipation of taking, rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking. If the parties are unable to agree on the amount of the reduction of rent, the amount shall be determined by arbitration in the manner provided in Section 27.

**21.2** If a condemning authority takes all of the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for the use that Tenant was making of the Premises prior to the taking, the Lease shall terminate as of the date the title vests in the condemning authority. Such termination shall have the same effect as a termination by Landlord under Section 21.1. If a condemning authority takes all or a portion of the Premises, Section 26 of this Lease shall be null and void and of no force or effect.

**21.3** Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 21 as a taking by condemnation.

## **22. Hazardous Material.**

**22.1** Except in strict compliance with all applicable federal, state and local laws, regulations, codes, and ordinances, Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about, or disposed of on the Premises by Tenant or its agents, employees, contractors, or invitees. Tenant shall indemnify, defend and hold Landlord harmless from any and all actions, costs, claims, damages, expenses (including, without limitation, attorneys fees, court costs and amounts paid in settlement of any claims or actions), liabilities, or losses arising from a breach of Tenant's obligation set forth in this section by Tenant or its agents, employees, contractors, or invitees.

**22.2** Landlord shall indemnify, defend and hold Tenant harmless from any and all actions, costs, claims, damages, expenses (including, without limitation, attorneys fees, court costs and amounts paid in settlement of any claims or actions), liabilities, or losses arising from the presence of Hazardous Material in or about the Premises which was not released, generated, produced, brought upon, used, stored, treated, disposed of, or caused by Tenant or its agents, employees, contractors, or invitees.

**22.3** As used herein, the term "Hazardous Material" means any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local governmental authority, the State of Oregon, or the United States Government, due to its potential harm to the health, safety, or welfare of humans or the environment. The provisions of this section shall survive expiration or termination of this Lease.

**22.4** Tenant's and Landlord's indemnification obligations under this Section 22 shall survive the termination or earlier expiration of this Lease.

**23. Delivering Up Premises on Termination.** At the expiration of the term of the Lease, or upon any earlier termination of the Lease, Tenant will quit and deliver up the Premises, broom-clean, to Landlord or those having Landlord's estate in the Premises, peaceably, and in good order and condition, reasonable use and wear thereof excepted.

**24. Default and Remedies.** If (a) Tenant fails to pay rent beyond any applicable notice and cure period, or (b) Tenant fails to perform or observe any of the covenants and agreements contained herein and such default shall continue for thirty (30) days or more after written notice of such failure is given to Tenant by Landlord (or in the case of a default that cannot with due diligence be cured within such time period, if Tenant fails to commence within such time period, and thereafter fails to diligently complete, all steps necessary to remedy the default), or (c) Tenant is declared bankrupt or insolvent according to law, or if any assignment of Tenant's property is made for the benefit of creditors, or (d) on the expiration or earlier termination of this Lease, Tenant fails to surrender possession of the Premises if required to do so by the terms of the Lease, then and in any of these events, Tenant shall be in default under the Lease and Landlord, immediately or at any time thereafter, without demand or notice, may exercise any one or more of the remedies set forth below, or any other remedy available under applicable laws or contained in this Lease:

**24.1** Terminate the Lease at the option of Landlord by Landlord giving written notice of termination to Tenant. If this Lease is terminated, Tenant's liability to Landlord for damages shall survive such termination, and Landlord may re-enter and take possession of the Premises, and remove any persons or property by legal action.

**24.2** Landlord or Landlord's agents may immediately or at any time thereafter re-enter the Premises, or any part thereof, either by summary eviction proceedings or by any suitable action or proceeding at law, and repossess the same, and may remove any person therefrom, to the end that Landlord may have, hold and enjoy the Premises.

**24.3** Relet the whole or any part of the Premises from time to time, either in the name of Landlord or otherwise, to such tenants, for such terms ending before, on or after the expiration date of the Lease term, at such rentals and upon such other conditions (including concessions, tenant improvements, and free rent periods) as Landlord may determine to be appropriate. Landlord at its option may make such physical changes to the Premises as Landlord considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting Tenant's liability.

**24.4** Whether or not Landlord retakes possession or relets the Premises, Landlord shall have the right to recover unpaid rent and all damages caused by the default, as well as all costs and expenses incurred in the connection with the enforcement of this Lease, including reasonable attorney fees and court costs. Damages shall include, without limitation: (a) all rentals lost; (b) all legal expenses and other related costs incurred by Landlord following Tenant's default; (c) all costs incurred by Landlord in restoring the Premises to good order and condition or in preparing the Premises for reletting; and (d) all costs incurred by Landlord in reletting the Premises, including, without limitation, any brokerage commissions.

**24.5** To the extent permitted under applicable law, Landlord may sue periodically for damages as they accrue without barring a later action for further damages. Landlord may in one action recover accrued damages plus damages attributable to the remaining Lease term equal to the difference between the rent reserved in this Lease for the balance of the Lease term after the time of award, and the fair rental value of the Premises for the same discounted to the time of award at the rate of nine percent (9%) per annum. If Landlord has relet the Premises for the period which otherwise would have constituted the unexpired portion of the Lease term or any part, the amount of rent reserved upon such reletting shall be deemed, *prima facie*, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

**24.6** Seize and dispose of Tenant's property in any manner permitted by law.

The remedies provided for in this Lease are cumulative and are not intended to be exclusive of any other remedies to which Landlord may lawfully be entitled at any time.

**25. Holding Over.** If Tenant for any reason holds over after the expiration or earlier termination of this Lease without the written consent of Landlord, such holding over shall not be deemed to operate as a renewal or extension of this Lease, but shall only create a tenancy from month to month which may be terminated on thirty (30) days' written notice by Tenant or Landlord to the other party. Rent during any period of such hold over shall be equal to one hundred fifty percent (150%) of the rent owed monthly under this Lease immediately prior to the expiration or termination of the Lease. If Tenant holds over after expiration or earlier termination of this Lease with Landlord's written consent, Tenant shall continue to pay rent as provided in this Lease.

**26. Arbitration.** Any controversy that arises between Landlord and Tenant regarding the rights, duties, or liabilities of either party hereunder shall be settled by binding arbitration. Such arbitration shall be before one disinterested arbitrator if one can be agreed upon by Landlord and Tenant, otherwise before three disinterested arbitrators, one named by Landlord, one named by Tenant, and one named by the two thus chosen. The arbitrator or arbitrators shall determine the controversy in accordance with the procedures of the Arbitration Service of Portland. The decision of the arbitrator or arbitrators shall be binding on the parties.

**27. Attorney Fees and Court Costs.** In case suit, action or arbitration is instituted to enforce compliance with any of the terms of this Lease, or to collect the rent due hereunder, the prevailing party shall be entitled to such sums as the trial court or arbitrator may adjudge reasonable as attorney's fees in such suit, action, or arbitration and in the event any appeal is taken from any arbitration, judgment, or decree in such suit, action, or arbitration, the losing party agrees to pay such further sum as the court shall adjudge reasonable as the prevailing party's costs and expenses, including reasonable attorney's fees, that shall arise from enforcing any provisions or covenants of this Lease even though no suit or action is instituted.

**28. Waiver.** Any waiver by either party of any breach of any covenant herein contained to be performed by the other party shall not be deemed as a continuing waiver, and shall not operate to bar or prevent such party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

**29. Notices.** Any notice required by the terms of this Lease to be given by one party hereto to the other or desired so to be given, shall be sufficient if in writing and personally delivered or mailed by certified or registered mail with postage prepaid, addressed to the party at the address set forth on the first page of this Lease. Any such notice shall be deemed conclusively to have been delivered to the addressee thereof on delivery, if personally delivered, or forty-eight (48) hours after the deposit thereof in the United States mail, if delivered by mail.

**30. Successors and Assigns.** All rights, remedies and liabilities herein given to or imposed upon either party hereto shall inure to the benefit of and bind the successors and, so far as this Lease is assignable by the terms hereof, to the assigns of such party.

**31. Estoppel Certificate.** Landlord and Tenant agree from time to time promptly to execute, acknowledge, and deliver to the other party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), whether any party is in default or breach of this Lease or, with the giving of notice of lapse of time, or both, would be in default or breach of this Lease, and the date to which the basic rent and other charges have been paid in advance, if any.

**32. Interpretation.** In construing this Lease, it is understood that Landlord or Tenant may be more than one person; that 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 corporations and to individuals.

**33. Applicable Law and Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of Oregon and in the event of any litigation arising out of this Lease, the parties hereto stipulate and agree that the venue of any such action shall be in Washington County, Oregon.

**34. Entire Agreement.** This Lease contains the entire agreement between the parties with respect to the lease and cannot be changed or amended except by a written instrument subsequently executed by the parties hereto.

**35. Further Assurances.** Each party agrees to execute and deliver such other documents and to do and perform such other acts and things as the other party may reasonably request to carry out the intent and accomplish the purposes of this Lease.

**36. Right of First Refusal (RFR).** The Landlord agrees to convey a contractual right of first refusal to the Tenant regarding the sale of property that includes 8955-8965-8973-8975 SW Burnham Street, Tigard, OR. This RFR will expire at 11:59 pm, December 31, 2020. Transfer of property to a holding company, a trust, or family members is exempt from the RFR, however, new owners under this exemption will remain subject to the right until the expiration date. The Landlord will provide a "notice of sale" to the Tenant as a condition of the RFR. The Landlord will provide any third party purchase agreement terms. Tenant will have thirty (30) days to accept or reject the terms, with failure to respond as a rejection. The Tenant must close the transaction within sixty (60) days of the notice of sale, or else the RFR is extinguished on declined or failed exercise.

**37. Time of Essence.** Time is of the essence with respect to all dates and time periods set forth or referred to in this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease effective the date set forth above.

**LANDLORD**

**TENANT:**

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

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

DRAFT