

LEASE

CITY OF PORTLAND – MERCY ENTERPRISE CORPORATION dba MERCY CORPS
NORTHWEST

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This Lease is entered into on the 30th day of June, 2009 by and between the CITY OF PORTLAND, a municipal corporation of the State of Oregon, by and through its Office of Management and Finance (OMF) – Facilities Services, hereinafter "Landlord", and Mercy Enterprise Corporation, a domestic non profit corporation, doing business as MERCY CORPS NORTHWEST, an Oregon corporation, hereinafter "Tenant".

In consideration of the mutual covenants and upon the terms and condition set forth in this Commercial Lease, Landlord leases to Tenant and Tenant leases from Landlord the described property (the "Premises"). Tenant claims no prior interest in the Premises and acknowledges Landlord's ownership interest and right to lease the Premises to Tenant.

1. Premises

- a) The Premises runs parallel to SE Sherrett St and is legally described as: Section 24, 1S 1E; TL 5100; 0.63 Acres, Portland, Oregon, comprising of approximately 32,000 square feet, and as identified in Exhibit A - Location of the Premises, attached hereto. The Multnomah County tax account number is R330415. The property is bare land located on the north side of Sherrett between 34th & 36th Streets.
- b) Parking is not provided by Landlord as a part of this Lease.

2. Term

This Lease shall commence upon final signature ("Commencement Date") and terminate on December 31, 2012, ("Expiration Date"), unless sooner terminated under the provisions of this Lease.

3. Use Restrictions

- a) No Harm Clause: Tenant agrees that Landlord shall be held harmless from any claims, suits that arise from the direct and indirect use of the Landlord's property by the Tenant and their assigns. It is further understood that the Tenant shall defend the Landlord and shall be held responsible for all such claims and suit.
- b) Number of Participants: Participation in Tenants' New American Agriculture Project on the Premises shall be limited to no more than three families without the review and approval of the Landlord.
- c) Access and Parking: Access is limited to entry from Sherrett Street, with parking parallel to the sidewalk on the north side of the Sherrett Street, west of the parcel. The Premises shall not be used for permanent or temporary parking, siting of motor homes/modular buildings/mobile homes, or property storage. Guests are permitted with participant's presence only. Livestock, pets, fires, cooking and alcohol are not permitted on the Premises.
- d) Supervision: A supervisor from Mercy Corps Northwest will check on the land during the growing season at least once a week, and be available by phone during the business week.

4. Option to Renew

Tenant is given two (2) option(s) to renew this Lease ("Renewal Option"), with each Renewal Option to be for a period of one (1) years ("Renewal Term"). Each Renewal Term shall be on the same terms and conditions set forth in the Lease, except for the number of Renewal Options. Each Renewal Term shall commence on the first day after expiration of the initial term or the current Renewal Term. If Tenant elects to exercise the Renewal Option, Tenant shall give Landlord written notice of such election not later than three (3) months prior to the expiration of the current term. Tenant's right to exercise the Renewal Option is revoked and any allowable Renewal Option is void if: a) during the term of the Lease or any Renewal Term, Tenant defaulted in its performance of any terms and conditions of the Lease; b) Tenant is in default when it gives written notice of exercise of Renewal Option; or c) Tenant has been late in paying Rent two (2) or more times during the term of the Lease or any Renewal Term. If this Lease has been assigned or any portion of the Premises have been sublet, the Renewal Option shall be null and void, and neither Tenant nor any assignee or subtenant has the right to exercise the Renewal Option during the term of such assignment or sublease. In the event that a) Tenant fails to execute lease renewal documents within ten (10) calendar days of Tenant's receipt, or b) if Tenant becomes in default in the performance of any obligations under the terms and provision of the Lease on any day after executing Lease Renewal documents and up to the Expiration Date of the current term, then Tenant's purported exercise of its Renewal Option shall be of no force or effect, any Lease Renewal document shall be null and void, and Tenant's right to the Premises shall terminate in accordance with the Lease.

5. Annual Rent

- a) Tenant shall pay Landlord, in advance, annual rent at the rate of one dollar (\$1.00) per year for the property as follows:

For the period of commencement through December 31, 2011: \$3.00 (three dollars)

- b) Annual rent shall be paid in advance, in it's entirety, for the term of this lease, upon the execution of this lease. The obligation to pay rent shall commence upon the commencement of the term of this lease. All other fees, charges, taxes, or monies required to be paid to Landlord arising from the Lease (collectively "Additional Rent") shall be payable as they become due, or as demanded by Landlord or as otherwise required by the Lease. Annual Rent and Additional Rent may be referenced hereinafter collectively as "Rent", unless specificity is required. No billing statement shall be provided by Landlord.
- c) Rent shall be paid in lawful money of the United States of America, without deduction or offset, prior notice or demand, and made payable to the "City of Portland" and delivered to: the Office of Management & Finance – Facilities Services, 1120 SW Fifth Avenue, Room 1204, Portland, Oregon 97204-1985, or such other place Landlord may designate from time to time. Payment by Tenant or receipt by Landlord of a lesser amount than Rent due shall be deemed payment on the account. No endorsement or statement on any check or payment shall be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of Rent due, or pursue any other remedies available to Landlord. Payments received shall be credited to the oldest outstanding amount due.
- d) All Rent not paid by Tenant when due or demanded shall bear interest at the rate of one percent (1%) per month. The interest rate of one percent (1%) on overdue accounts is subject to periodic adjustment in writing to reflect Landlord's then current interest rate charged on overdue accounts.

- e) In the event that any check, draft or other instrument of payment given by Tenant is dishonored for any reason, Tenant agrees to pay Landlord the sum of \$25 in addition to any late fee, and Landlord may, at its option, require Tenant to paid all future Rent by cashier's or certified checks, or other methods.

6. Property Taxes

- a) Tenant shall be responsible for and pay before delinquent all taxes or fees assessed during the term of this Lease against any leasehold or personal property of any kind owned by or placed upon or about the Premises by Tenant.
- b) Tenant shall pay real property taxes assessed and levied on the Premises within thirty days (30) calendar days after Landlord bills Tenant. If the Premises comprise only a portion of the real property assessed, Tenant shall pay a pro-rated portion of the taxes billed. However, the amount of real property taxes to be paid by Tenant shall be reduced for each month during any real property tax year not within the term of this Lease. As used herein, the term "real property taxes" shall not include business license fees, excise taxes, sales taxes, corporation taxes, income taxes, or any tax on personal property which may be imposed or assessed by any city, county, state, or federal government or any special district or agency, and those taxes remain the responsibility of Tenant.

7. Utilities

- a) Tenant shall furnish and pay for any and all utilities to the Property.
- b) Landlord is not by virtue of this section a partner or joint venturer with the Tenant in connection with the business carried on under this Lease, and shall have no obligation with respect to the Tenant's debts or other liabilities.

8. Late Fee

In addition to other remedies, if any Rent is not received by Landlord within ten (10) days after it is due or demanded, Landlord may impose a late fee equal to five percent (5%) of the amount of the delinquent Rent for the month in which the Rent is delinquent or a minimum of \$50.00, whichever is greater. Tenant shall pay any late fee immediately upon request by Landlord. The imposition by Landlord and/or the payment by Tenant of any late fee shall not waive or cure Tenant's default. Failure to impose a late fee on one occasion does not effect a waiver of Landlord's right to impose a late fee on subsequent delinquencies.

9. Uses of Premises

- a) The Premises shall be used, managed, and occupied by Tenant, in accordance with the provisions of this Lease, for the following exclusive purpose(s) and no other(s): gardening and food production in accordance with Tenant's New American Agriculture Project (NAAP). Only organic practices are allowed. No synthetic inputs such as fertilizers or pesticides are allowed. Tenant shall not plant any trees or shrubs on the Premises without the prior written consent and sole discretion of Landlord. No other use may be made of the Premises without the prior written consent of Landlord. At Tenant's own expense, Tenant shall comply with all orders, notices, regulations or requirements of any governmental authority respecting the use of the Premises.
- b) Hours of operation will be daytime use only, (sunup to sundown) seven days per week.

10. Styrofoam

No products containing or composed of polystyrene foam (Styrofoam) shall be sold or used by Tenant, unless such products are exempted from this requirement by Landlord. Exemptions shall be based upon a showing that there are no acceptable alternatives and that enforcement of this condition would cause Tenant undue hardship.

11. Hazardous Substances

- a) The term "Hazardous Substances", as used in this Lease, shall mean any hazardous, toxic, infectious, or radioactive substance, waste or material as defined or listed by any Environmental Law except for immaterial quantities of substances customarily and prudently used in the cleaning and maintenance of the Premises in accordance with any applicable law. The term "Environmental Law" shall mean any federal, state, or local statute, regulation, rule, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment.
- b) Tenant shall, at Tenant's own expense, comply with all Environmental Laws. Tenant shall not cause or permit to occur: i) any violation of Environmental Laws, in, above, under, from or affecting the Premises, or arising from Tenant's use or occupancy of the Premises, including, but not limited to, soil, groundwater, indoor air or outdoor air quality conditions; or ii) the use, generation, release, manufacture, refining, production, handling, processing, storage or disposal of any Hazardous Substance in, above, under, from or affecting the Premises, or the transportation to or from the Premises of any Hazardous Substance without Landlord's prior written approval.
- c) Tenant shall immediately notify landlord in writing of: i) any material spill, discharge or release of any Hazardous Substance whether or not the release is in quantities that would legally require reporting to a regulatory agency and any spill, discharge or release that must be reported to a regulatory agency; and, ii) any inquiry, investigation, enforcement action, notice of potential violation or other action that is instituted or threatened against Tenant that relates to the spill, release or discharge of Hazardous Substances in, above, under, from or affecting the Premises.
- d) Tenant shall, at Tenant's own expense, make all submissions to, provide all information required by, and comply with all requirements of all regulatory authorities. Should any regulatory authority or any third party require that a clean up plan be prepared and that a clean up be undertaken because of any release of Hazardous Substances that occurs as a result of Tenant's use or occupancy of the Premises, Tenant shall, at Tenant's own expense, prepare and implement the required plans and provide all financial assurances in accordance with applicable requirements.
- e) Tenant shall promptly provide all information regarding the use, generation, storage, transportation, release, manufacture, refining, production, handling, processing, or disposal of Hazardous Substances that is requested by Landlord.
- f) If Tenant fails to fulfill any duty imposed under this Section within a reasonable time, Landlord may do so; and in such case, Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to determine the compliance therewith; and Tenant shall execute all documents promptly upon Landlord's request. No such action by Landlord and no attempt made by Landlord to mitigate damages under any applicable law shall constitute a waiver of any of Tenant's obligations under this Section.

- g) On the expiration or termination of the Lease, Tenant shall, at Tenant's own expense, remove all Hazardous Substances from the Premises. Tenant's obligations and liabilities under this Section shall survive the expiration or termination of this Lease.

12. Fire Prevention

Tenant shall not use the Premises in any manner that causes the fire insurance rate, if any, on the property in which the Premises are located to be increased or that would prevent Landlord from taking advantage of any ruling of the Insurance Services Offices of Oregon, or its successors, which could allow Landlord to obtain reduced premium rates for long term fire insurance policies. Tenant shall prevent and control fire on the Premises and comply with any rules and regulations set forth by the Fire Marshal. Tenant shall promptly pay for any fire inspection or re-inspection fee assessed to the Premises and make all corrections as ordered by the Fire Marshal. Tenant shall exercise due diligence and care and caution to prevent and control fire on the property. No paints, oils and other flammable materials shall be stored on the property.

13. Signs and Attachments

Tenant shall not place signage or attachment in or on the Premises to advertise the nature of Tenant's business, without Landlord's consent. Landlord may refuse consent to any proposed signage or attachment that is in Landlord's sole opinion inconsistent with or inappropriate to the Premises. If Landlord approves a sign or attachment, Tenant is required to comply with applicable laws regulating signs, including the Sign Code under Portland City Code Title 32. Tenant is solely responsible for costs for installation, maintenance, removal and repair of damage related to an authorized Tenant signage. Authorized signage shall be kept in good and safe condition by Tenant. Tenant shall seek Landlord consent prior to altering or substituting any authorized signage.

14. Acceptance of Premises

Tenant has examined the Premises and accepts them in "as is" condition. No representations or warranties as to the condition of the Premises have been made by Landlord or its officers, agents or employees. Tenant is responsible for determining whether Tenant's proposed use of Premises conforms to applicable zoning or building codes. Landlord shall have no liability to Tenant for any damage or injury caused by the condition of the Premises or for any latent defect in the Premises. Tenant accepts the Premises subject to any and all existing permits, licenses, leases, easements, railroad facilities, pipelines, telephone, telegraph, communication, power and signal lines or any other similar facilities, together with any future installations thereof.

15. Square Footage

Tenant's signature to this Lease verifies the approximate square footage of the Premises. The Annual Rent and any other charges assessable under this Lease shall not be adjusted by reason of any claimed variation in square footage by either party.

16. Alterations and Additions

Tenant shall not make or allow to be made any alterations, additions or improvements to or of the Premises or any part thereof.

17. Tenant Improvements

- a) All work performed by Tenant to the Premises shall be done in strict compliance with all

applicable building, fire, sanitary and safety codes, and other applicable laws, statutes, regulations, and ordinances. Prior to the commencement of any work, Tenant shall submit to Landlord's Property Manager and obtain Landlord's written consent to all of the following: Tenant's plans, specifications and work drawings detailing the alteration, construction or changes to the Premises proposed by Tenant; Tenant's estimated costs; and, the names of Tenant's general contractors and major subcontractors, along with copies of contractors/subcontractors' certificates of insurance and bonding. As required by law, Tenant shall apply for permits and submit permit plans to the City of Portland's Bureau of Development Services or other appropriate City bureaus, or government agency with permitting responsibility, within ten (10) days of obtaining Landlord's written consent to Tenant's plans and specifications. All Tenant Improvement plans for construction or alteration or changes to the Premises shall be signed and sealed by an architect or engineer licensed by the State of Oregon. Tenant shall provide Landlord with proof of valid permits prior to commencement of any work and proof of inspection approval after work completion. The City of Portland's Bureau of Development Services or other appropriate City bureaus shall be considered separate regulating or permitting bodies; the City's Office of Management and Finance shall be deemed Landlord.

- b) Landlord's written consent and approval of proposed or constructed Tenant Improvement shall create no responsibility or liability on the part of Landlord for design completeness, sufficiency, or compliance with all laws, rules and regulations of governmental agencies or authorities, and shall not be construed as Landlord's warranty or approval of the adequacy, competence, experience, bonding or licensure of any contractors/subcontractors or the quality of the work that may be performed by these persons. Tenant remains liable to Landlord for non-compliance and defects in any work performed by Tenant's contractors/subcontractors.
- c) All work performed by Tenant shall be carried forward expeditiously, shall not interfere with Landlord's work or the work to be performed by or for other tenants, and shall be completed within a reasonable time. All work shall be completed in a good workmanlike manner. Landlord or Landlord's employees or agents shall have the right at all reasonable times to inspect the quality and progress of the work. Tenant shall provide Landlord all construction drawings (inclusive of architectural, structural, mechanical, and electrical drawings) on computer disks in format readable by AutoCAD 2008 (or the appropriate version utilized by the City), at completion of Tenant's construction.
- d) Upon the expiration or termination of the Lease, Tenant shall remove from the Premises and property all of Tenant's personal property and any alterations or improvements installed by or on behalf of Tenant, unless Tenant has obtained written consent from Landlord to leave such alteration or improvement in place as Landlord's property. Such improvements may include, without limitation, any cabling, conduit or other equipment installed for telecommunications services. Tenant shall promptly repair any damage to Landlord's property caused by such removal, and restore the area to the condition the area was in prior to installation of the property in question. If Tenant fails to remove its property, alterations or improvements, Landlord may at its discretion keep or use some or all of the property as Landlord's own without any compensation due to Tenant, or elect to remove, store and sell some or all of the property in accordance with applicable law, and at Tenant's expense.

18. Alteration and Repair

In the event Landlord, during the term of this Lease, shall be required by the City of Portland, the order or decree of any court, or any other governmental authority, to repair, alter, remove, reconstruct, or improve any part of the Premises or property, then the repairing, alteration, removal,

reconstruction or improvement may be made by and at the expense of Landlord without any interference or claim for damages by Tenant, but Tenant shall be entitled to an abatement or adjustment of rent in proportion to the interference with Tenant's occupation of the Premises. Whether or not ordered to do so by a governmental authority, Landlord and Landlord's agents and employees shall have the right from time to time during the term of this Lease to enter into and upon the Premises for the purpose of inspecting and maintaining the Premises and making such alterations and repairs and doing such other things to the property or its equipment as may become necessary or advisable, without any interference from or claim for damages by Tenant. Notwithstanding any provisions herein, Landlord shall not be required to make any repair which it deems to be uneconomic. In the event Landlord determines that a repair shall not be made, it shall notify Tenant whose sole remedy for failure to make such repair shall be its right to terminate this Lease on thirty (30) days written notice to Landlord.

19. Maintenance and Repair

- a) Tenant shall at all times maintain the Premises and all improvements of any kind, which may be erected, installed or made thereon by Landlord or Tenant in a neat condition, free of trash and debris, in good and substantial condition, order and repair.
- b) Tenant will keep the property free of tall weeds by mowing and tilling. Crop residues must be tilled under at the end of the growing season. Equipment and supplies are to be stored in an orderly manner and shall be removed from the Premises at the termination of the Lease.
- c) Tenant waives the right to make repairs or maintain at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

20. Ice, Snow, Debris

If the Premises are located at street level, Tenant shall, at all times, keep the sidewalks in front of the Premises free and clear of ice, snow, rubbish, debris and obstruction.

21. Observance of Landlord's Rules and Regulations

Tenant agrees to comply with Landlord's rules and regulations respecting use of the property, if any, promulgated by Landlord from time to time and communicated to Tenant in writing. Tenant shall permit Landlord to make reasonable inspection of the Premises from time to time to determine whether Tenant is complying with Landlord's rules and regulations and the provisions of this Lease. Landlord reserves the right to change its policies, rules and regulations in its sole discretion without prior notice to Tenant.

22. Security Measures

Landlord may, but shall have no obligation to, provide security service or to adopt security measures regarding the Premises. Any security measures or services provided to the property or the Premises by Landlord may be modified at any time without prior notice to Tenant. Tenant shall cooperate with all security measures adopted by Landlord. Tenant may install a security system on the Premises with Landlord's prior written consent. Tenant shall provide Landlord with an access code or key to any security system at the time of installation. Landlord shall not have any liability for accidentally setting off Tenant's security system.

23. Liens

Tenant shall keep the Premises free from all liens, including mechanics liens, arising from any act or

omission of Tenant or those claiming under Tenant. Tenant shall pay as due all claims for work done, for services rendered or material furnished to the Premises at its request. If Tenant fails to pay any claims or to discharge any lien, Landlord may discharge the lien and collect all costs of discharge, including its reasonable attorney's fees, as Additional Rent. Assessment of Additional Rent by Landlord shall not constitute a waiver of any right or remedy Landlord may have on account of Tenant's default. Tenant may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after notice of filing, provide Landlord with an executed copy of a discharge of the lien, or deposit with Landlord cash or a sufficient corporate surety bond or other security satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney's fees or other charges that could accrue as a result of any action arising from the lien. This Lease shall be subject and subordinate to such liens and encumbrances as are on or as Landlord may hereafter impose on the land and property, and Tenant shall upon request of Landlord, execute and deliver agreements of subordination consistent with this Section.

24. Light and Air

This Lease does not grant any rights of access to light or air over any part of the real property in which the Premises are located. Landlord has no liability for interference with light and air.

25. Eminent Domain

A party receiving any notice from a condemning authority of a proposed taking or action related to condemnation affecting the Premises or any portion thereof shall promptly give the other party notice. If all or a portion of the Premises is taken by a condemning authority, by exercise of that right or by sale or purchase in lieu of condemnation, whether the taking be a direct physical taking or an indirect taking compensable by way of severance damages or the like, Landlord shall be entitled to all of the proceeds of the taking and Tenant shall have no claim against Landlord as a result of the taking except for a return of prepaid Base Rent. If the Premises remaining after the taking are sufficient for practical operation of Tenant's business, Landlord shall proceed as soon as reasonably possible to make necessary repairs to cause the Premises to be comparable to that existing prior to the taking. Tenant's Base Rent shall be reduced to the extent of the reduction in the rental value of the Premises on account of the portion physically taken. Base Rent shall be abated to the extent that the Premises are untenable during such period of alteration and repair. If the portion of the Premises remaining is not sufficient for practical operation of Tenant's business, this Lease shall terminate as of the date title vested in the condemning authority.

26. Indemnification

- a) Tenant shall indemnify and hold harmless Landlord and Landlord's officers, agents and employees from any and all liability, damage, expenses, attorney's fees, causes of actions, suits, claims or judgments, arising out of or connected with (i) the use, occupancy, management or control of the Premises, (ii) any failure of Tenant to comply with the terms of this Lease or any violation of law or ordinance and (iii) the acts or omission of Tenant, its agents, officers, directors, employees or invitees. However, Tenant shall not be liable for claims caused by the sole negligence of Landlord, its officers, agents or employees. Tenant shall, at Tenant's cost and expense, defend any and all claims, demands, actions or suits which may be brought against Tenant or Landlord or Landlord's officers, agents or employees, either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay and discharge any and all judgments, including attorney fees and costs, that may be recovered against Tenant or Landlord or Landlord's officers, agents, and employees, in any such action or actions in which they may be party defendants.

- b) Landlord and its officers, agents and employees shall not be liable for any injury to the goods, stock, merchandise or any other property of Tenant or to any person in or upon the Premises including, but not limited to, damage by fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or from the pipes, appliances or plumbing works therein or from the street or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the sole negligence of Landlord or its officers, agents, and employees.
- c) Tenant shall give Landlord prompt written notice of casualty or accident on the Premises. As a material part of the consideration to Landlord, Tenant assumes all risk of damage to property or injury to persons, in, upon or about the Premises from any cause other than Landlord's sole negligence, and Tenant waives all claims in respect thereof against Landlord.
- d) Tenant shall indemnify, defend and hold Landlord harmless from any claims, judgments, damages, penalties, fines, costs, liabilities or losses (including without limitation, diminution in value of the Premises) which arise during or after the lease term as a result of environmental contamination as a result of the acts or omissions of Tenant, its employees or agents. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any environmental cleanup, remedial, removal or restoration work in response to hazardous substances, hazardous materials, pollutants, toxics or regulated environmental contaminants of any kind as a direct or indirect result of Tenant's activities. Tenant shall promptly take all action at its sole expenses as are necessary to return the Premises to the condition existing prior to the release of contaminants. Except for immediate initial response actions necessary to protect human health and the environment from substantial imminent harm, Tenant shall obtain Landlord's approval of all such response action which approval shall not be unreasonably withheld. This environmental indemnity shall survive the expiration or earlier termination of the Lease.
- e) Tenant shall have control of the defense and settlement of any claims in this Section. However, Tenant and any attorney engaged by Tenant shall not defend the claim in the name of Landlord, nor purport to act as legal representative of Landlord, without first receiving from Landlord's attorney (City Attorney) the authority to act as legal counsel for Landlord, and shall not settle any claim on behalf of Landlord without the approval of Landlord's attorney. Notwithstanding Tenant's obligation to indemnify, defend and hold harmless Landlord, Landlord may at its election assume its own defense and settlement if Landlord determines that Tenant is prohibited from defending Landlord or is not adequately defending Landlord's interest, or determines that an important governmental principle is at issue and Landlord desires to assume its own defense.

27. Liability Insurance

- a) Tenant shall maintain commercial general liability and property damage insurance, and a fire legal liability endorsement, that protects Tenant and Landlord and Landlord's officers, agents and employees as additional insureds from any and all risks, claims, demands, actions, and suits for damage to property including without limitation cracking or breaking of glass or personal injury, including death, arising directly or indirectly from Tenant's activities or any condition of the Premises, whether or not related to an occurrence caused or contributed to by Landlord's negligence. The insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under this Lease and shall protect Landlord and Tenant against claims of third persons. The insurance shall provide coverage for not less than \$1,000,000 per each occurrence. Landlord reserves the right to require

additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on municipalities of the State of Oregon during the term of this Lease. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds Landlord and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage shall apply as to claims between insured on the policy. The insurance shall provide that the insurance shall not terminate or be cancelled without thirty (30) days written notice first being given to Landlord. If the insurance is cancelled or terminated prior to termination of the Lease, Tenant shall provide a new policy with the same terms. Tenant agrees to maintain continuous, uninterrupted coverage for the duration of the Lease. Landlord reserves the right to require that Tenant obtain business auto insurance coverage if during the term of this Lease Tenant owns or uses automobile(s) or motor vehicles in the course of his business or at the Premises. In such case, the automobile insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Tenant at Premises and in its business and shall be at the same coverage amount indicated above. Tenant shall also obtain insurance coverage for business interruption and loss of profit in an amount sufficient to meet Tenant's full Lease obligations.

- b) Tenant shall maintain on file with Landlord a certificate of insurance certifying the coverage required by this Section. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance and to maintain a current certificate of insurance on file with Landlord shall be cause for immediate termination of this Lease by Landlord.

28. Waiver of Subrogation

- a) Landlord and Tenant each agree to waive claims arising in any manner arising in favor of either Landlord or Tenant and against the other for loss or damage to their property located within or constituting a part or all of the property in which the Premises are located to the extent the loss or damage is covered by liability insurance the party is required to carry under this Lease. The waiver also applies to Tenant's directors, officers, employees, shareholders and agents and to Landlord's officers, agents and employees. The waiver does not apply to claims arising from the willful misconduct of Landlord or Tenant.
- b) Tenant acknowledges that Landlord is self-insured and that Landlord will not obtain any insurance policy under this Lease. If Tenant is unable, despite its best efforts, to find an insurance company that will issue a policy containing a waiver meeting the requirements of this Section at reasonable commercial rates, then it shall give Landlord written notice within thirty (30) days after the commencement date of this Lease. Upon the date of issuance of such notice, both parties shall be released from their obligation of waiver of subrogation.

29. Workers' Compensation Insurance

Tenant shall comply with the workers' compensation law, ORS Chapter 656, and as it may be amended from time to time. Unless Tenant demonstrates to the satisfaction of Landlord that Tenant is exempted from workers' compensation insurance requirements, Tenant shall maintain coverage for all subject workers and provide to Landlord proof of valid workers' compensation insurance covering the entirety of the Lease term.

30. Damage or Destruction

- a) If the Premises are damaged or destroyed by fire, or by fire and water or by other casualty to the extent of fifty percent (50%) or more of the value thereof prior to the casualty, then Landlord may elect either to reconstruct or not to reconstruct the Premises. If the election is not to reconstruct the Premises, then: i) this Lease shall terminate as of the date of casualty; ii) Landlord shall have the right to immediately take possession and occupy the Premises to the exclusion of Tenant; iii) Tenant agrees to promptly vacate the Premises no later than ten (10) days of Landlord's election not to reconstruct; and iv) Tenant shall be entitled to reimbursement of any prepaid Rent that may have been paid between the date of casualty and Landlord's election not to reconstruct. If Landlord elects not to terminate the Lease or if the damages resulting from the casualty does not amount to fifty percent (50%) of the value prior to the casualty, Landlord shall proceed with reasonable diligence to restore the Premises to substantially the same condition as prior to the casualty, subject to any delays caused by acts of God, labor strikes, materials shortage or other events beyond Landlord's control.
- b) If Landlord undertakes reconstruction or repair, Landlord shall have the right to take possession of and occupy, to the exclusion of Tenant, all of the Premises or any part thereof, for the purpose of the reconstruction or repair, and Tenant agrees to cooperate with Landlord in vacating from all or any part of the Premises reasonably require for repair purposes. For the period of time between the date of the casualty and until Landlord's repair work is substantially completed, Tenant is entitled to rent abatement in proportion to the portion of the Premises not useable by Tenant due to the casualty or required by Landlord for repair. Any Rent already paid shall be held as a credit against future Tenant obligations. Tenant shall not be entitled to rent abatement during Landlord's repairs if the damages were the result of the negligence or intentional conduct of Tenant or Tenant's employees, agents or invitees. If the Premises are slightly injured and the damage does not cause any material interference of Tenant's occupancy of the Premises, then there shall be no abatement of rent during Landlord's repair. Except for abatement of rent as may be provided in this Section, Tenant shall have no claim against Landlord for any injury suffered by Tenant, including but not limited to claims for interference with or loss of Tenant's business, profits, property or occupancy arising from a casualty or by reason of any repairs to the Premises or the property necessitated by the casualty.
- c) Notwithstanding anything to the contrary contained in this Section, Landlord has no obligation to: i) repair or replace any Tenant leasehold improvements or alterations, furniture, fixtures, equipment or personal property; ii) to reconstruct the Premises or the property if Landlord deems uneconomic; or iii) to repair, reconstruct or restore the Premises or property when the damage resulting from any casualty occurs during the last twenty-four (24) months of the term of this Lease or any extension thereof. Landlord shall be entitled to all proceeds of insurance.

31. Assignment and Subletting

- a) Tenant shall not assign, mortgage, sublet, pledge or transfer this Lease or any interest therein or in any way part with possession of all or any part of the Premises, or permit or license the use or occupancy by any other person without Landlord's prior consent. Any assignment, subletting, transferring, occupation or use by any other person without the prior written consent of Landlord shall be void and shall be a material default.
- b) In addition to any other reasonable conditions, Landlord may condition consent for assignment, sublet or transfer on the following: i) the rent paid by the assignee or subtenant

must not be less than the Rent required by this Lease; ii) the assignee or subtenant establishes financial capability and stability to the reasonable satisfaction of Landlord; iii) the assignee's or subtenant's uses are compatible with the permitted uses for the Premises. Consent to one assignment, subletting, transfer, occupation or use by Landlord: i) shall not be deemed to be a consent to any subsequent assignment, subletting, transfer, occupation or use by any other person(s); ii) shall not release the original named Tenant from liability for the continued performance of the terms and provisions, unless Landlord specifically and in writing releases the original named Tenant from liability; and, iii) shall not be a release of Tenant's guarantor, if any, under the terms of the Guaranty of this Lease and Landlord may request Tenant's guarantor to execute documents necessary to insure the continuation of its guaranty. If an assignment, subletting, transfer, occupation or use is permitted, all Rent due under the Lease received by Tenant as a result of such transaction shall be paid to Landlord promptly following its receipt by Tenant. Tenant shall pay any costs incurred by Landlord in connection with a request for assignment, subletting, transfer, occupation or use including reasonable attorneys' fees. Tenant shall pay costs within ten (10) days of billing by Landlord.

- c) This Lease shall not be assign by operation of law unless: i) Tenant, its receiver or trustee or proposed assignee provides Landlord with notice of proposed assignment at least sixty (60) days prior to effective date of such assignment by operation of law; ii) Tenant, its receiver or trustee or proposed assignee demonstrates to Landlord that the proposed assignee has the same or better capability and stability than Tenant; and iii) Tenant, its receiver or trustee or proposed assignee cures all Lease defaults, or provides adequate assurances of prompt cure if such is permitted by law, prior to effective date of such assignment by operation of law.
- d) If Tenant proposes a subletting, assignment, transfer, occupation or use, Landlord shall have the option of terminating this Lease and dealing directly with the proposed subtenant or assignee, or any third party.
- e) In the event of merger, acquisition or consolidation of Tenant with any parent, subsidiary, successor or affiliated corporation, limited liability company or partnership, the resulting corporate entity shall be deemed Tenant and not a third party requiring Landlord consent only if: Tenant and/or the resulting corporate entity notify Landlord of the change in corporate identity or status within five (5) business days; the resulting corporate entity agrees to assume of all Tenant liability and responsibilities under this Lease; the resulting corporate entity has the same or better financial capability and stability to assume Tenant liability and responsibilities; and the resulting corporate entity executes documents acknowledging the corporate change and assumption of responsibility as may be requested by Landlord. Change of Tenant's corporate status arising from administrative dissolution shall be deemed a transfer for the purposes of this Section.
- f) The covenants and conditions contained in this Lease apply to and bind the heirs, successors, executors, administrators and assigns of the parties.

32. Sale by Landlord

In the event of sale of the Premises by Landlord, Landlord shall be entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of the sale. The purchaser shall be deemed, without any further agreement between the parties and any such purchaser, to have assumed and to have agreed to carry out any and all of the covenants and obligations of Landlord under this Lease.

33. Entry by Landlord

- a) Landlord shall have the right to enter the Premises upon notice to Tenant: i) for the purpose of constructing, reconstructing, operating, inspecting, monitoring and maintaining the sewer system and appurtenances that lie under the premises ii) to inspect its conditions; iii) to submit the Premises to prospective purchasers or tenants; iv) to post notices of non-responsibility; v) during the ninety (90) days prior to Lease termination or upon default by Tenant, to post a sign notifying the public that Premises are available for leasing; and, vi) to repair, alterations or improvements to the Premises that Landlord may deem necessary or desirable, without abatement of rent.
- b) If Tenant fails to maintain the Premises in a clean and orderly fashion consistent with the use and appearance of the property, then upon written notice and at Tenant's expense, Landlord may enter the Premises to rectify the condition and to restore the Premises to the condition, use and appearance that existed at the time this Lease was executed.
- c) Any entry to the Premises obtained by Landlord shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof. Tenant hereby waives any claims for damages or for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby pursuant to this Section.

34. Default by Tenant

- a) Any one or more of the following shall be an "Event of Default":
 - i) Failure of Tenant to pay any Rent or monetary obligations required by this Lease within ten (10) days after it is due;
 - ii) Failure of Tenant to comply with any term or condition or to perform any obligations of this Lease, within ten (10) days after written notice by Landlord specifying the failure with reasonable particularity. If the failure is of such nature that it cannot be completely remedied within the ten (10) day period, then Tenant shall commence cure within the ten (10) day period, notify Landlord of Tenant's steps for cure and estimate time table for full correction of the failure, and proceed with reasonable diligence and in good faith to correct the failure as soon as practical and to completion. If Tenant fails to perform or comply with any obligation two (2) or more times in any twelve (12) month period, then notwithstanding that such default was cured by Tenant, any further similar failure to comply will be an Event of Default without the ability for cure.
 - iii) The abandonment of the Premises by Tenant for any duration, cessation of Tenant's business at Premises, or the failure of Tenant to occupy the Premises for fifteen (15) days or more unless such failure is excused under this Lease.
 - iv) An insolvency, receivership or bankruptcy proceeding is filed by or against Tenant or its guarantor to declare Tenant or its guarantor insolvent or bankrupt, or to seek a plan of reorganization or arrangement by Tenant or its guarantor with its creditors, unless such petition is withdrawn or dismissed within thirty (30) days after the date of its filing.
 - v) Appointment of receiver or trustee for the business or property of Tenant or its guarantor, unless such appointment is vacated within (10) days of its entry.

- vi) Tenant or its guarantor makes an assignment of Tenant's or the guarantor's property for the benefit of its creditors, or if in any other manner Tenant's or guarantor's interest in this Lease is passed to another person by operation of law.
 - vii) If Tenant or its guarantor admits in writing of Tenant's or the guarantor's inability to meet Tenant debts as they mature.
- b) Upon filing of a petition under the Federal Bankruptcy Code (Title 11 United States Code, as may be amended or supplemented):
- i) Tenant or Tenant's trustee shall perform promptly and fully each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the bankruptcy court or pursuant to the Bankruptcy Code. Acceptance of any performance does not constitute waiver or relinquishment of Landlord's rights under the Lease or the law.
 - ii) In the event Tenant or Tenant's trustee elects to reject this Lease or where this Lease is deemed rejected pursuant to the Bankruptcy Code, then Landlord shall immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee.
 - iii) In the event Tenant or Tenant's trustee elects to assume and/or to assign this Lease pursuant to the Bankruptcy Code, in addition to any other requirement imposed upon Tenant, Tenant shall: within ten (10) days from the date of assumption, cure of all Lease defaults and compensate Landlord for any actual pecuniary loss that may have resulted from Tenant's defaults, or provide adequate assurances of cure and compensation; and adequate assurances of future performance of all Tenant obligations under the Lease. Landlord and Tenant acknowledge such conditions are commercially reasonable.
 - iv) If Tenant or Tenant's trustee has assumed this Lease and elects to assign Tenant's interest under this Lease to any other person, such interest may be assigned only if the intended assignee has provided adequate assurance of future performance of all of Tenant's obligations under this Lease, and executes and delivers to Landlord an instrument by which the assignee assumes all obligations of the Lease from and after the date of assignment.
 - v) "Adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied: (1) the assignee and its guarantor document by current financial statements, certified by the chief financial officer(s), or similar financial documents showing a net worth and working capital in amounts at least equal to Tenant's and its guarantor's as of the time the Tenant became the lessee under the Lease so as to assure future performance by the assignee of all Lease obligations; (2) the assumption or assignment will not breach any use, confidentiality or exclusivity provisions in the Lease; and, (3) Landlord has obtained consents or waivers from any third parties that may be required under a lease, mortgage, financing arrangement or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.
 - vi) Landlord's acceptance of Rent or any other payment from any trustee, receiver, assignee, person or other entity will not be deemed to have waived nor waives the requirement of Landlord's consent, Landlord's right to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent, or Landlord's claim for any amount of Rent due from Tenant.

33. Entry by Landlord

- a) Landlord shall have the right to enter the Premises upon notice to Tenant: i) for the purpose of constructing, reconstructing, operating, inspecting, monitoring and maintaining the sewer system and appurtenances that lie under the premises ii) to inspect its conditions; iii) to submit the Premises to prospective purchasers or tenants; iv) to post notices of non-responsibility; v) during the ninety (90) days prior to Lease termination or upon default by Tenant, to post a sign notifying the public that Premises are available for leasing; and, vi) to repair, alterations or improvements to the Premises that Landlord may deem necessary or desirable, without abatement of rent.
- b) If Tenant fails to maintain the Premises in a clean and orderly fashion consistent with the use and appearance of the property, then upon written notice and at Tenant's expense, Landlord may enter the Premises to rectify the condition and to restore the Premises to the condition, use and appearance that existed at the time this Lease was executed.
- c) Any entry to the Premises obtained by Landlord shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof. Tenant hereby waives any claims for damages or for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby pursuant to this Section.

34. Default by Tenant

- a) Any one or more of the following shall be an "Event of Default":
 - i) Failure of Tenant to pay any Rent or monetary obligations required by this Lease within ten (10) days after it is due;
 - ii) Failure of Tenant to comply with any term or condition or to perform any obligations of this Lease, within ten (10) days after written notice by Landlord specifying the failure with reasonable particularity. If the failure is of such nature that it cannot be completely remedied within the ten (10) day period, then Tenant shall commence cure within the ten (10) day period, notify Landlord of Tenant's steps for cure and estimate time table for full correction of the failure, and proceed with reasonable diligence and in good faith to correct the failure as soon as practical and to completion. If Tenant fails to perform or comply with any obligation two (2) or more times in any twelve (12) month period, then notwithstanding that such default was cured by Tenant, any further similar failure to comply will be an Event of Default without the ability for cure.
 - iii) The abandonment of the Premises by Tenant for any duration, cessation of Tenant's business at Premises, or the failure of Tenant to occupy the Premises for fifteen (15) days or more unless such failure is excused under this Lease.
 - iv) An insolvency, receivership or bankruptcy proceeding is filed by or against Tenant or its guarantor to declare Tenant or its guarantor insolvent or bankrupt, or to seek a plan of reorganization or arrangement by Tenant or its guarantor with its creditors, unless such petition is withdrawn or dismissed within thirty (30) days after the date of its filing.
 - v) Appointment of receiver or trustee for the business or property of Tenant or its guarantor, unless such appointment is vacated within (10) days of its entry.

- vi) Tenant or its guarantor makes an assignment of Tenant's or the guarantor's property for the benefit of its creditors, or if in any other manner Tenant's or guarantor's interest in this Lease is passed to another person by operation of law.
 - vii) If Tenant or its guarantor admits in writing of Tenant's or the guarantor's inability to meet Tenant debts as they mature.
- b) Upon filing of a petition under the Federal Bankruptcy Code (Title 11 United States Code, as may be amended or supplemented):
- i) Tenant or Tenant's trustee shall perform promptly and fully each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the bankruptcy court or pursuant to the Bankruptcy Code. Acceptance of any performance does not constitute waiver or relinquishment of Landlord's rights under the Lease or the law.
 - ii) In the event Tenant or Tenant's trustee elects to reject this Lease or where this Lease is deemed rejected pursuant to the Bankruptcy Code, then Landlord shall immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee.
 - iii) In the event Tenant or Tenant's trustee elects to assume and/or to assign this Lease pursuant to the Bankruptcy Code, in addition to any other requirement imposed upon Tenant, Tenant shall: within ten (10) days from the date of assumption, cure of all Lease defaults and compensate Landlord for any actual pecuniary loss that may have resulted from Tenant's defaults, or provide adequate assurances of cure and compensation; and adequate assurances of future performance of all Tenant obligations under the Lease. Landlord and Tenant acknowledge such conditions are commercially reasonable.
 - iv) If Tenant or Tenant's trustee has assumed this Lease and elects to assign Tenant's interest under this Lease to any other person, such interest may be assigned only if the intended assignee has provided adequate assurance of future performance of all of Tenant's obligations under this Lease, and executes and delivers to Landlord an instrument by which the assignee assumes all obligations of the Lease from and after the date of assignment.
 - v) "Adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied: (1) the assignee and its guarantor document by current financial statements, certified by the chief financial officer(s), or similar financial documents showing a net worth and working capital in amounts at least equal to Tenant's and its guarantor's as of the time the Tenant became the lessee under the Lease so as to assure future performance by the assignee of all Lease obligations; (2) the assumption or assignment will not breach any use, confidentiality or exclusivity provisions in the Lease; and, (3) Landlord has obtained consents or waivers from any third parties that may be required under a lease, mortgage, financing arrangement or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.
 - vi) Landlord's acceptance of Rent or any other payment from any trustee, receiver, assignee, person or other entity will not be deemed to have waived nor waives the requirement of Landlord's consent, Landlord's right to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent, or Landlord's claim for any amount of Rent due from Tenant.

35. Remedies on Default by Tenant

- a) Upon occurrence of an Event of Default, Landlord may: i) elect to terminate the Lease and Tenant's right to possession to the Premises by notice to Tenant; ii) exercise its right to cure any non-monetary default and recover the cost of such cure from Tenant; iii) re-enter, take possession of the Premises and remove any persons or property by legal action or self-help, with the use of reasonable force and without liability for damages; or iv) exercise any legal or equitable right or remedy it may have. Landlord's remedies in this Section shall not be exclusive but shall be in addition to all other remedies and rights provided under applicable law, and no election to pursue one remedy shall preclude resort to another consistent remedy. Tenant's liability to Landlord for default shall survive termination of this Lease. If termination of this Lease is stayed by the order of the bankruptcy court, then Landlord shall have the right to terminate this Lease and Tenant shall vacate the Premises following the expiration of such stay or the failure of Tenant or its bankruptcy trustee to assume this Lease within the time prescribed for assumption or as may be allowed by an order of the court.
- b) Following re-entry by Landlord due to termination, Landlord may re-let the Premises. Landlord may alter, refurnish or change the character or use of the Premises in connection with any re-letting. Re-letting by Landlord following Tenant's default shall not be construed as an acceptance or a surrender of the Premises. If base rent received upon re-letting exceeds the Base Rent received under this Lease, Tenant shall have no claim to the excess. Landlord shall have a security interest in Tenant's property on the Premises at the time of re-entry to secure all sums owed or to become owing Landlord under this Lease. Perfection of such security interest shall be taking possession of the property or otherwise as provided by law.
- c) Landlord shall have the right to recover from Tenant the following charges: i) all unpaid Rent or other monetary obligations, plus interest and late charges as provided by this Lease; ii) any loss of Rent from default until new tenant is secured and paying Rent; iii) all costs incurred by Landlord by reason of Tenant's default, including, but not limited to, correcting or curing Tenant's default, recovering the Premises, re-letting or attempting to re-let the Premises, cleaning and repairing Premises, preparing Premises for a new tenant, restoring any unauthorized alterations, paying real estate commissions or advertising Premises, and paying unamortized cost of any improvements installed at Landlord's expense to meet Tenant's special requirements; and, iv) reasonable attorney's fees incurred in connection with the default, whether or not any litigation has commenced.
- d) Landlord may institute actions periodically to recover damages as they accrue throughout the Lease, and no action for accrued damages shall be a bar to a later action for damages subsequently accruing. Nothing in this Lease shall be deemed to require Landlord to wait until the Lease terminates to institute action. Landlord may obtain a decree of specific performance requiring Tenant to pay damages as they accrue. Alternately, Landlord may elect in any one action to recover accrued damages plus damages attributable to the remaining term of the Lease.
- e) In addition to any other remedies, Landlord shall have a lien pursuant to ORS 87.162 et seq for unpaid Rent against Tenant's property on the Premises, and may remove Tenant's property (trade fixtures as defined under Oregon law, equipment, furnishings, chattels and furniture) from the Premises and store and retain such property until all damages are paid, or until foreclosure of Landlord's lien. Tenant waives all rights or claims against Landlord as to the failure or difficulty of mitigation of damages by reason of removal of Tenant's property from the Premises, and Tenant may not assert that the Premises cannot be leased to a third party due to the removal of the items.

36. Surrender Upon Termination

- a) Upon expiration or termination of the Lease, Tenant shall surrender the Premises to Landlord in first class condition and clean of all debris. Tenant does not need to restore the Premises due to depreciation and wear from ordinary use for the purposes for which the Premises were let. Any repair that Tenant is required to make in the Lease shall be completed prior to surrender.
- b) Except for Tenant's movable trade fixtures, all fixtures placed upon the Premises shall become the property of Landlord. Landlord may elect to require Tenant to remove any fixtures which would otherwise remain the property of Landlord, and to repair any damage resulting from the removal. If Tenant fails to remove fixtures or make repairs, Landlord may do so and charge the cost to Tenant together with interest and late charges as provided by this Lease from the date of the expenditure.
- c) Tenant shall remove all equipment, materials, furnishings, furniture and trade fixtures that remain the property of Tenant. Failure to remove all Tenant's property shall constitute a failure to vacate and surrender Premises. Property not removed shall be deemed abandoned property and of inconsequential value, and Tenant shall have no further rights therein except as provide below. Landlord may elect to: i) retain or dispose of the abandoned property as Landlord sees fit; or ii) perfect and foreclose Landlord's lien for damages, including expenses for removal and storage of Tenant's property, under ORS 87.162 et seq. If Tenant fails to vacate and surrender the Premises, Landlord may take legal action to eject Tenant from the Premises. Tenant shall be responsible for all consequential damages to Landlord as a result of Tenant's failure to surrender and vacate the Premises in accordance with the Lease. This clause shall survive the termination of the Lease.

37. Holding Over

Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. If Tenant holds over, Landlord has all the rights and remedies available to a Landlord against a holdover tenant. Landlord may impose on a holdover tenant a term of month-to-month. Holdover tenant shall be obligated for Base Rent of one-hundred fifty percent (150%), of the Base Rent applicable immediately preceding the expiration or termination, plus all other Additional Rent payable under the Lease, and shall be subject to all obligations and conditions required of Tenant in this Lease. Landlord shall not be required to perform any work, furnish any materials or make any repairs within the Premises during the holdover period. The holdover tenancy may be terminated by Landlord at will at any time. Landlord shall have the right to further adjust Base Rent or Additional Rent upon ten (10) days written notice to the holdover tenant. In the event of holdover beyond June 30th of any year, the holdover tenant shall be responsible for payment of real property taxes for the entire year without proration. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

38. Default by Landlord, Remedies

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time. Landlord agrees to perform its obligations within thirty (30) days after receiving written notice from Tenant specifying where and how Landlord has failed to perform its obligations. If the nature of Landlord's obligations is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event shall Tenant have the right to terminate this Lease as a result of Landlord's default and Tenant's remedies shall be limited to damages and/or an injunction.

39. Landlord's Inability to Perform

Landlord shall not be deemed in default for the non-performance or for any interruption or delay in performance of any of the terms, covenants and conditions of this Lease if due to any labor dispute, strike, lockout, civil commotion or operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, or through act of God or other causes beyond the reasonable control of Landlord, providing such cause is not due to the willful act or neglect of Landlord.

40. General Provisions

- a) Every covenant in this Lease will be construed to be material, whether or not the covenant expressly provides. No right or remedy or election provided by this Lease shall be deemed exclusive but shall, whenever possible, be cumulative with all other rights and remedies available at law or in equity. Acceptance by Landlord of any Rent or other benefits under this Lease shall not constitute a waiver of any default. Any waiver by Landlord of the strict performance of any of the covenants of this Lease shall not be deemed to be a waiver of subsequent breaches of a different character, occurring either before or subsequent to such waiver, and shall not prejudice Landlord's right to strict performance of the same covenant in the future or of any other covenants of this Lease.
- b) Time is of the essence in this Lease.
- c) There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangement, brochures, advertising, agreement and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord or its agents to Tenant with respect to the subject matter of this Lease, the Premises or the property. There are no representations between Landlord and Tenant, or between any real estate broker and Tenant, other than those contained in the Lease, and all reliance with respect to any representations is solely upon representations contained in this Lease. This Lease shall not be amended or modified except by agreement in writing signed by the parties. This Lease shall not be recorded without written consent of Landlord.
- d) If Tenant is a corporation, each individual executing this Lease on behalf of that corporation shall be duly authorized to execute and deliver this Lease on behalf of the corporation, in accordance with the bylaws of the corporation, and the corporation warrants and represents that this Lease is binding on the corporation. Tenant shall provide any corporate authorization documents as may be requested by Landlord.
- e) Upon Tenant paying the Rent and completely observing and fully performing all of the covenants, conditions and provisions required of Tenant, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all terms and conditions of this Lease. This subsection is not applicable to a holdover tenant.
- f) If there be more than one Tenant, the obligations imposed hereunder shall be joint and several.
- g) Landlord and Tenant are the only parties to this Lease and are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, or indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of the Lease.

- h) Nothing in this Lease shall be construed to create the relationship of principal and agent, partnership, joint venturer or other association between Landlord and Tenant in connection with the business carried on by Tenant under this Lease, other than a non-residential landlord and tenant relationship. Landlord shall have no obligation with respect to Tenant's debts or other liabilities.
- i) If any portion of this Lease is ruled invalid, void or illegal by an order of the court, the remainder of the Lease shall remain in full force and effect.
- j) In addition to any specific covenant in the Lease and upon Tenant's sole expense, Tenant shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county, and municipal authorities, now in force or which may hereafter be in force during the term of this Lease. Tenant shall verify to Landlord annually that Tenant is in compliance with all tax reporting and payment requirements of the Internal Revenue Services, Oregon Department of Revenue, and local taxing authorities, including the City of Portland's Bureau of Revenues (as to Portland Business License Law and Multnomah County Business Income Tax Law).
- k) This Lease shall be governed by the laws of the State of Oregon. Any litigation arising under this Lease shall occur in the Multnomah County Circuit Court.
- l) This Lease will be construed with equal weight for the rights of both parties, the terms and conditions of this Lease having been determined by fair negotiation with due consideration of the rights and requirements of both parties, and any ambiguities shall not be construed for or against either party.
- m) Americans With Disabilities Compliance
 - i) Tenant shall comply, at Tenant's sole expense, with the Americans With Disabilities Act (ADA), including any duty the ADA may impose on Landlord or Tenant as a result of Tenant's use, occupation or alteration of the Premises.
 - ii) Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other party with copies (as applicable) of any notices alleging violation of or noncompliance with the ADA relating to the Premises or any portion of the property to which Tenant has a right to use due to this Lease, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to the Premises or any portion of the property to which Tenant has a right to use due to this Lease.
 - iii) In the event of any assignment or sublet of the Premises, Tenant and Tenant's assignee or subtenant shall agree to comply with the ADA, at their sole expense, and agree to be jointly liable under this Lease for any duty the ADA may impose upon Tenant or Tenant's assignee or subtenant as a result of their use, occupation or alteration of the Premises. Landlord reserves the right to withhold consent to a proposed assignment or sublet if the assignment or sublease fails to contain provisions required by this Lease to ensure ADA compliance at the expenses of Tenant, Tenant's assignee or subtenant. Landlord further reserves the right to withhold consent to a proposed assignment or sublet if the proposed use, occupation or alteration by the assignee or subtenant shall require alterations to the Premises to comply with the ADA which are inconsistent with Landlord's management interests.

41. Tenant's Statement

Upon request from Landlord, Tenant shall execute, acknowledge and deliver a written statement stating the date this Lease was executed, the Commencement Date, the expiration date, the date Tenant entered into occupancy of the Premises; the amount of Base Rent and the date to which Base Rent has been paid, and certifying that: i) the Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or specifying the date and terms of agreement so affecting this Lease); ii) the Lease represents the entire agreement between the parties as to the Premises; iii) that all conditions or obligations required to be performed by the Landlord have been satisfied; iv) that all required contributions by Landlord to Tenant on account of Tenant's improvements have been received; v) that there are no existing defenses or offsets which Tenant has against the enforcement of this Lease by Landlord; vi) that no Base Rent has been paid more than one month in advance; and, vii) that security deposit has or has not been deposited with Landlord as the case may be, and the amount if deposited. It is intended that Tenant's Statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest or a mortgagee of Landlord's interest or assignee of any mortgage upon Landlord's interest in the property in which the Premises are located, or by any entity reviewing the City for bond funding or other municipal financing.

42. Tenant's Representation

Notwithstanding the requirement for Tenant to observe and comply with all federal, state and local laws in general, Tenant represents to Landlord that, (i) neither Tenant nor any person or entity that directly owns a 10% or greater equity interest in Tenant nor any of Tenant's officer, director or managing member or agent is a person or entity (each, a "Prohibited Person") with whom U.S. persons or entities are restricted from doing business under 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) or under Executive Order 13224 (the "Executive Order"), signed on September 24, 2001, and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism" or other governmental action, (ii) that Tenant's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time) or the Money Laundering Control Act of 1986 (18 U.S.C. Sec. 1956 et seq and as amended), and (iii) that throughout the term of this Lease, Tenant shall comply with the Executive Order and with the Money Laundering Acts. Prior to execution of this Lease, and as may be requested by Landlord from time to time, Tenant shall identify and provide contact information of those persons who own a 10% or greater equity interest in Tenant, and of Tenant's officers, directors or managing members or agents, and citizenship status if other than U.S. citizens or entities. Tenant shall have a continuing duty to ensure that its equity owners, officers, directors or managing members or agents are not Prohibited Persons.

43. Notices

Any notices required or permitted by law or this Lease to be given to either party shall be effective upon mailing by United States certified mail, addressed as specified below, or to such other address as either party may specify to the other in writing from time to time during the term of this Lease.

To Landlord: CITY OF PORTLAND
Office of Management and Finance
Facilities Services Property Management
1120 SW Fifth Avenue, Room 1204
Portland, Oregon 97204

To Tenant: MERCY CORPS NORTHWEST
David Beller, Project Manager
New American Agriculture Project
2069 NE Hoyt
Portland, OR 97232
dbeller@mercycorpsnw.org
503-236-1580

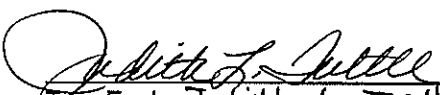
After September 2009:

MERCY CORPS NORTHWEST
David Beller, Project Manager
New American Agriculture Project
43 SW Naito Parkway
Portland, OR 97204
dbeller@mercycorpsnw.org
503-236-1580

Landlord and Tenant have executed this Lease in duplicate on the day and year written, and the corporate signature of Tenant being by authority of the Board of Directors of the executing corporation.

Mercy Enterprise Corporation, doing business as CITY OF PORTLAND, LANDLORD
MERCY CORPS NORTHWEST, TENANT


John Haines
Executive Director
Date 6/20/09


Tom Feely Judith L. Tuttle
Acting Senior Business Operations Manager
Office of Management and Finance
Date 7-14-09

Fed. Tax ID No. 93-1325010
Portland Business License No. _____

APPROVED AS TO FORM

APPROVED AS TO FORM


City Attorney
CITY ATTORNEY

\\BES Leases\MERCY CORPS NORTHWEST - 2009

SUBJECT TO INSURANCE APPROVAL

EXHIBIT A

**Location of The Premises
(attached)**

PortlandMaps

[New Search](#) | [Mapping](#) | [Advanced](#) | [Google Earth](#) | [Help](#) | [PortlandOnline](#)NO ADDRESS AVAILABLE - ARDENWALD-JOHNSON
CREEK - PORTLAND[Explorer](#) | [Property](#) | [Maps](#) | [Crime](#) | [Census](#) |
[Transportation](#)[Summary](#) | [Elevation](#) | [Garbage](#) | [Hazard](#) | [Natural Resources](#) | [Photo](#) | [Property](#) | [Water](#) | [Sewer](#) | [Tax Map](#) | [UGB](#) |
[Watershed](#) | [Zip Code](#) | [Zoning](#)

Aerial Photo

2008 / '07 / '06 / '05 / '04 / '03 / '02 / '01

6" / 2' / 4' / 10' / 20'

Streets: ☒ On Lots: ☒ On Dot: ☒

0 |—————| 50 FT

City of Portland, Corporate GIS

5/28/2009

THE GIS APPLICATIONS ACCESSED THROUGH THIS WEB SITE PROVIDE A VISUAL DISPLAY OF DATA FOR YOUR CONVENIENCE. EVERY REASONABLE EFFORT HAS BEEN MADE TO ASSURE THE ACCURACY OF THE MAPS AND ASSOCIATED DATA. THE CITY OF PORTLAND MAKES NO WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE CONTENT, SEQUENCE, ACCURACY, TIMELINESS OR COMPLETENESS OF ANY OF THE DATA PROVIDED HEREIN. THE USER OF THESE APPLICATIONS SHOULD NOT RELY ON THE DATA PROVIDED HEREIN FOR ANY REASON. THE CITY OF PORTLAND EXPLICITLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE CITY OF PORTLAND SHALL ASSUME NO LIABILITY FOR ANY ERRORS, OMISSIONS, OR INACCURACIES IN THE INFORMATION PROVIDED REGARDLESS OF HOW CAUSED. THE CITY OF PORTLAND SHALL ASSUME NO LIABILITY FOR ANY DECISIONS MADE OR ACTIONS TAKEN OR NOT TAKEN BY THE USER OF THE APPLICATIONS IN RELIANCE UPON ANY INFORMATION OR DATA FURNISHED HEREUNDER. FOR UPDATED INFORMATION ABOUT THE MAP DATA ON PORTLANDMAPS PLEASE REFER TO CITY'S METADATA. FOR QUESTIONS ABOUT ASSESSMENT INFORMATION PLEASE CONTACT THE COUNTY ASSESSORS OFFICE IN YOUR COUNTY.

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