

**EXHIBIT A****AIR RIGHTS LEASE****RW # 7091**

THIS LEASE (referred to herein as "Lease" or "Air Rights") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ("the Effective Date") by and between the **City of Portland**, a municipal corporation of the State of Oregon, ("City"), and **409 Project LLC**, a limited liability company ("Lessee").

**WITNESSETH**

WHEREAS, the City has received a proposal for leasing Air Rights Space over a portion of SW 13th Avenue, Portland, Oregon, abutting owner's property as shown on the attached Exhibit B, for construction, use, and maintenance of a 9-story mixed use building encroaching into City controlled right-of-way ("Lessee's Encroachment");

WHEREAS, the City Council has determined that use of the area for the building structure will not interfere with any public use of the street area during the term of the Lease;

WHEREAS, the Bureau of Transportation has reviewed the proposed encroachment into the public right-of-way, and, as provided for in written recommendations provided to City Council on November 6, 2009, recommends waiver of certain encroachment policies and approval of the right-of-way encroachment, subject to specific stipulations provided for in the final City Engineer's Report dated November 18, 2009;

WHEREAS, City Council reviewed and concurred with the Bureau of Transportation recommendations at a City Council meeting held on December 2, 2009; and

WHEREAS, the City Council is of the opinion that leasing of said area to Lessee for Lessee's Encroachment will give the best return to the City for use of such area.

NOWHEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

**AGREED**

In consideration of the leasing of the premises described below ("the Premises") and of the mutual agreements contained herein, each party expressly covenants and agrees as follows:

1. **Premises:**

- a) City agrees to lease Lessee, the Premises described as Air Rights Space over a portion of City controlled right-of-way known as SW 13th Avenue, abutting Tax Lot 600, in the north one-half of Block J, in the duly recorded Plat of "City of Portland", situated in Section 33, T1N, R1E, W.M., containing a footprint area approximately 306 square feet, if measured on the ground. The encroachment will not be less than 17'-6" feet above the

sidewalk grade and will extend upwards the height of the proposed building structure encroachment along Lessee's easterly property line, with the Premises more particularly described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof.

- b) Within ninety (90) days after the date of the issuance of the Temporary Certificate of Occupancy (TCO) for the structure, Lessee shall cause the architect or engineer of the structure to prepare and deliver "as-built" drawings to the City in order to determine the actual square footage of the area above the surface that encroaches into City right-of-way and the actual City of Portland datum elevations of the air space. The "as-built" survey is to be prepaid by a qualified professional.
2. **Authority:** The Air Rights Lease is entered into in accordance with general authorities provided for in ORS 271.430, and specific authority provided by City Council in Ordinance No. \_\_\_\_\_, passed by City Council \_\_\_\_\_, 20\_\_\_\_. Pursuant with ORS 271.430, the abutting owners have been notified and have been given an opportunity to be heard with respect to this right-of-way area above the street and it has been determined that the use of the space will not unreasonably interfere with public use and utility use of the city streets and sidewalks, as provided by law. It is understood that this Lease shall not affect any prior dedications or grants of the street property for street and sidewalk purposes.
  3. **Encroachment Authorization:** It is intended that this Lease satisfy the requirement that "any person desiring to make a public improvement, do work in, or use the street area must first obtain a permit from the City Engineer," as provided for in City Code, 17.24.010.
  4. **Term:**
    - a) The term of this lease shall be thirty (30) years ("Initial Term"), commencing on \_\_\_\_\_, and terminating at midnight on December 31st, 20\_\_\_\_, unless sooner terminated under the provisions hereof or extended pursuant to Section 9 below.
    - b) Notwithstanding anything to the contrary herein, this Lease shall terminate one (1) year after the improvements built or caused to be built by Lessee or an Owner on the Project Property and the Land are substantially destroyed, provided that prior to expiration of said one (1) year period Lessee has not given notice to the City of its intention to rebuild, or cause to be rebuilt, the improvements. If Lessee gives the City its notice within the one (1) year period of its intent to rebuild or cause to be rebuilt, then this Lease shall not terminate and thereafter Lessee shall commence, within one hundred and eighty (180) days from the date of such notice, good faith efforts to rebuild the improvements (such commencement will be deemed to have occurred by Lessee initiating the permitting, design, demolition, site work or other actions preliminary to reconstruction) and shall diligently pursue the same unto completion. If Lessee fails to commence to rebuild within the one hundred and eighty day period or fails to diligently pursue the same, City may notify Lessee that it is in default of such obligations as provided for under Section 16 of this Lease.
  5. **Rent:**
    - a) The "Initial Rent" for the Air Rights space is \$3,856.00 per year, based upon estimated lease footprint area of 306 square feet, when measured on the ground. Twelve (12)

- months from the date the TCO is issued is the Rent Commencement Date. In the event that the final constructed square footage of the Air Rights space, as determined under Section 1b is more or less than 306 square feet, Initial Rent will be adjusted accordingly.
- b) If, during the Initial Term of this Lease or any renewal term, the period in which annual rent is due is less than a calendar year, the amount due shall be prorated based upon a calendar year containing 360 days and shall be paid upon receiving invoice from the City.
  - c) Lessee shall pay to the City, in advance on or before the tenth (10th) day of January of each calendar year during the term of this Lease, annual rent ("Annual Rent") in an amount \$3,856.00, made payable to the City of Portland, Accounting Division, 1120 SW Fifth Avenue, Suite 1250, Portland, Oregon 97204, or such other place as the City may designate. The obligation to pay Rent shall commence upon the Effective Date of this lease.
  - d) All Rent to be paid by Lessee to City shall be in lawful money of the United States of America and shall be paid without deduction or offset at such place or places as may be designated from time to time by City. While City intends to invoice Lessee annually for rents due, delayed invoicing does not relieve Lessee of its obligation to pay rent on time.
  - e) No payment by Lessee or receipt by City of a lesser amount than any installment or payment of rent or other charges or fees shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or payment of rent or other charges or fees shall be deemed an accord and satisfaction. City may accept such check or payment without prejudice to City's right to recover the balance of such installment or payment of rent or other charges or fees, or pursue any other remedies available to City. Payments received shall be credited to the oldest outstanding amount due.
  - f) The Rent provided for herein contemplates the use of the Air Rights space for use solely as a City approved Lessee's Encroachment. In the event the City Council shall approve use of the Air Rights space for purposes other than those currently approved, the Rent shall be renegotiated to a reasonable rate in accordance with the then current rental rates for comparable facilities and uses in the City of Portland, Oregon.
  - g) All amounts not paid by the Lessee when due 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 to reflect City's then current interest rate charged on overdue accounts.
6. **Rent Adjustment:** Commencing at the beginning of the sixth (6th) full calendar year following the Rent Commencement Date and thereafter on the last day of each succeeding five (5) year period throughout the remainder of the Initial Term and any renewal term (hereinafter "Rent Adjustment Date"), rent shall be adjusted to equal the rent at the beginning of the previous period for which rents were fixed, increased by the lesser of (i) any percentage increase in the most recently available Consumer Price Index (CPI) as of such Rent Adjustment Date over the CPI as of the beginning of the previous period for which rents were fixed, or (ii) five percent (5%) per year. For example, if the CPI as of the date of this Lease were 300.2 and the CPI as of the fifth anniversary of the rent commencement date were 321.2, annual rent for the succeeding five-year period would be determined by multiplying the Initial Rent by 1.07. For purposes of this Section 6, the term "CPI" means the Consumer Price Index for All Urban Consumers (1982-84

equal to 100), Portland, Oregon for All Items, or a comparable Index published by the United States Bureau of Labor Statistics if such Consumer Price Index be discontinued.

7. **Net Lease:** It is the intention and purpose of the respective parties hereto that this Lease shall be a "net lease" to City, all cost or expense of whatever character or kind, general and special, ordinary and extraordinary, foreseen and unforeseen and of every kind and nature whatsoever that may be necessary in or about the operation of the Premises and Lessee's authorized use thereof during the entire Term, or its extension(s), to be paid by Lessee including but not limited to taxes, utilities, insurance, and/or property assessments, if applicable. All provisions of this Lease relating to expenses are to be construed in light of such intention and purpose to construe this Lease as a "net lease".
8. **Late Fee:** In addition to all of the remedies provided by this lease, if any rent or other charge required by this lease is not received by City within ten (10) days after it is due, City may impose a late charge equal to the greater of One Hundred dollars (\$100.00) or five percent (5%) of the amount of the delinquent rent or other charge for the month in which the rent or other charge is delinquent. Lessee shall pay any late charges immediately upon billing by City. The imposition by City and/or the payment by Lessee of any late charges shall not waive or cure Lessee's default hereunder. Failure to impose a late charge on one occasion does not affect a waiver of City's right to impose a late charge on subsequent delinquent payments.
9. **Renewal:**
  - a) Lessee shall have the option to renew this Air Rights Lease for two successive terms of thirty (30) years each commencing on the expiration of the original term. Said renewals will require written request by Lessee, as provided for below, which will not be unreasonably denied by City. If a renewal request by Lessee is denied, City shall explain in writing the reasons for said denial.
  - b) In order to seek renewal, Lessee shall be in full compliance with the terms and conditions of the lease at the time the option is exercised. Should Lessee elect to renew the term of this lease, it shall give to City its written notice of such election not later than six (6) months prior to the expiration of the original term. Within thirty (30) days of receipt of Lessee's written notice of election to renew lease, City shall contact Lessee and arrange a suitable time and place to negotiate negotiable changes in the terms and conditions of the lease for the renewal term.
  - c) Any negotiated changes in the terms and conditions of this lease shall be in writing and, unless otherwise agreed, shall become effective on the first day of the renewal term. In the event City and Lessee cannot agree on other negotiable changes, if any, in the terms and conditions of this lease, within sixty (60) days of City's receipt of Lessee's written notice of election to renew lease, this option to renew shall expire and the lease shall terminate as required by the original lease or any amendments.
10. **Permitted Use:** Lessee accepts full responsibility for its use of the Premises from and after the Effective Date during the term hereof. The use of the Premises shall be exclusively for construction, operation and maintenance of Lessee's Encroachment. No other uses by Lessee are allowed. Said uses will be made in full compliance with applicable laws, regulations,

ordinances, and orders that a public authority of competent jurisdiction shall put into effect or may hereafter put into effect, including those of a building or zoning authority and those relating to pollution and sanitation control.

**Lessee shall not:**

- a) Use the Premises for any other use, without the prior written consent of City;
- b) Permit any unlawful activity; occupation, business, or trade to be conducted on the Premises;
- c) Construct or permit to be constructed any improvements on the Premises without prior written approval of the City;
- d) Allow any lien to be filed against the Premises by anyone supplying labor or materials for any improvements or by or for the benefit of Lessee;
- e) Sell or consume or permit the sell or consumption of alcohol or illegal drugs of any kind on the Premises;
- f) Store fuel, gasoline, petroleum produces, explosives or other highly flammable materials on the Premises;
- g) Commit waste of the Premises; or
- h) Damage survey monuments, witness corners and other location markers.

**11. Nuisance, Waste, Hazardous Substances:**

- a) Lessee shall refrain from any use which is improper, immoral, unlawful, and objectionable or that which is offensive or annoying or interferes or obstructs the rights of City or other Lessees or owners, users, or occupants of the Premises, or nearby properties. Lessee shall not create or permit to be created any condition which would: constitute a fire hazard; permit any objectionable noise or odor to be emitted or escape from the Premises; injure the reputation of the Premises; permit the Premises to be used for lodging or sleeping purposes; in any manner result in defacement or injury of the Premises; or be dangerous to persons or property. Lessee shall not install any power machinery on the Premises except under the supervision and with the prior written consent of City. Lessee shall comply at Lessee's sole cost and expense with all orders, notices, regulations or requirements of any governmental authority respecting the use of the Premises.
- b) The term "Hazardous Substances", as used in this lease, shall have the meaning set out at ORS 465.200(16)(2003 Ed) or as it may be amended, including asbestos.
- c) Lessee shall, at Lessee's own expense, comply with all laws regulating the use, generation, release, manufacture, refining, production, handling, processing, storage, transportation, or disposal of Hazardous Substances. Lessee shall not cause or permit to occur any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions at, on, under or about the Premises, or arising from Lessee's use or occupancy of the Premises, including, but not limited to, soil and groundwater conditions.
- d) Lessee shall not cause or permit to occur, the use, generation, release, manufacture, refining, production, handling, processing, storage, or disposal of any Hazardous Substance on, under or about the Premises, or the transportation to or from the Premises of any Hazardous Substance without City's prior written approval.

- e) Lessee shall, at Lessee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities.
  - f) Regardless of fault, should City or any other governmental authority demand 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 Lessee's use or occupancy of the Premises, then Lessee shall, at Lessee's own expense, prepare and implement the required plans and provide all financial assurances in accordance with applicable requirements. Lessee's obligations under this provision shall not prevent Lessee from denying responsibility for the release of Hazardous Substances.
  - g) Lessee 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 City. If Lessee fails to fulfill any duty imposed under this section within a reasonable time, City may do so; and in such case, Lessee shall cooperate with City in order to prepare all documents City deems necessary or appropriate to determine the compliance therewith; and Lessee shall execute all documents promptly upon City's request. No such action by City and no attempt made by City to mitigate damages under any applicable law shall constitute a waiver of any of Lessee's obligations under this section.
  - h) Lessee's obligations and liabilities under this section shall survive the expiration or termination of this lease.
12. **Fire Prevention:** - Lessee shall exercise due diligence and care and caution to prevent and control fire on the Premises.
13. **Acceptance of Premises:**
- a) Lessee 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 City or its officers, agents or employees. City shall have no liability to Lessee for any damage or injury caused by the condition of the Premises.
  - b) Lessee accepts the Premises subject to any and all valid interests of record, including, but not limited to existing permits, licenses, leases, easements, franchise agreements, railroad facilities, pipelines, telephone, telegraph, communication, power and signal lines or any other similar facilities, together with any future installations thereof. Without implying a warranty of any nature, the Portland Bureau of Transportation is not aware of any valid interests of record that would prevent the leasing of the Premises to the Lessee.
14. **Alterations and Additions:** - Lessee shall not make or allow to be made any alterations, additions or improvements to or of the Lessee's Premises or any part thereof without first obtaining the written consent of City. If City consents, any alterations, additions or improvements to the Premises by Lessee shall be made by Lessee at its sole cost and expense. Upon termination of this lease, Lessee shall upon written demand by City, at Lessee's sole cost and expense, immediately, and with all due diligence, remove any alterations, additions or improvements made by Lessee, designated by City to be removed. Lessee shall immediately and with all due diligence, at its sole cost and expense, repair any damage to the Encroachment Area caused by such removal

**15. Lessee Improvements:**

- a) All work performed by Lessee on 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, and Lessee shall secure all necessary permits for the work. To the extent required by law, Lessee shall apply for permits and submit permit plans to the City of Portland, Office of Planning and Development Review, or other appropriate City bureau or government agency, within ten (10) days of obtaining City's written consent to Lessee's plans and specifications. All plans for construction, alteration, or changes shall be signed and sealed by an architect or engineer licensed by the State of Oregon.
- b) City's written approval of the plans, specifications, and working drawings for Lessee's alterations, construction or changes shall create no responsibility or liability on the part of City for their completeness, design sufficiency, or compliance with all laws, rules and regulations of governmental agencies or authorities.
- c) Prior to the commencement of any work by Lessee, Lessee shall first submit the following to City and obtain City's written consent to all of the following, which consent shall not be unreasonably withheld: Lessee's plans and specifications; Lessee's estimated costs; and the names of Lessee's general contractor and major subcontractors.
- d) Lessee shall keep the Premises free from all liens in connection with any work. All work performed by Lessee shall be carried forward expeditiously, shall not interfere with City's work or the work to be performed by or for other Lessees, and shall be completed within a reasonable time. All work shall be completed in a good workmanlike manner. City or City's employees or agents shall have the right at all reasonable times to inspect the quality and progress of the work.

**16. Maintenance and Repair:**

- a) Lessee shall at all times maintain the Premises and all improvements of any kind, which may be erected, installed or made thereon in a neat condition, free of trash and debris, in good and substantial condition, order and repair.
- b) Lessee agrees to restore, to the satisfaction of City, any portion of the right-of-way outside the Air Rights Space which may be disturbed as a result of construction or maintenance of the Lessee's Encroachment. If an immediate hazard in the right-of-way, including in the Air Rights Space, exists, due to the construction or existence of the Lessee's Encroachment, Lessee must make immediate repairs, and, if such repairs are not made in a responsive manner, as reasonably determined by the City, City may cause such repairs to be made and bill Lessee for such costs. Failure to make payment within ninety (90) days of billing shall constitute a breach of this lease for which Lessee may be declared in default.

**17. Licenses and Permits: - This lease shall not exempt Lessee from acquiring all licenses and permits required by any existing ordinance or law for the completion or maintenance of the Lessee's Encroachment.****18. Signs and Attachments: - Lessee shall not, without City's prior written consent, place any marks, signs, advertisement, notice, marquee, awning, decoration, antenna, aerial, or any other device or attachment in, on or to the roof, front, windows, doors or exterior walls of the**

Lessee's Encroachment. Any sign or attachment placed upon the Lessee's Encroachment by Lessee with City's consent shall be removed at Lessee's expense upon termination of this lease, and all damage caused by the removal shall be repaired at Lessee's expense. Lessee shall properly maintain any signage it installs pursuant to this section. The cost of such installation, operation and maintenance shall be borne by Lessee.

19. **Liens:** - Lessee shall keep the Premises free from all liens, including mechanics liens, arising from any act or omission of Lessee or those claiming under Lessee. Lessee shall pay as due all claims for work done, for services rendered or material furnished to the Premises at its request. If Lessee fails to pay any claims or to discharge any lien, City may do so and collect all costs of discharge, including its reasonable attorney's fees. Such action by City shall not constitute a waiver of any right or remedy City may have on account of Lessee's default. Lessee may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as City's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of filing, provide City with an executed copy of a discharge of the lien, or deposit with City cash or a sufficient corporate surety bond or other security satisfactory to City 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 foreclosure sale or sale under the lien. This lease shall be subject and subordinate to such liens and encumbrances as are on or as City may hereafter impose on the land and building, and Lessee shall upon request of City, execute and deliver agreements of subordination consistent with this section.
20. **Surface and Subsurface Areas:** This lease grants no rights whatsoever to the surface or subsurface areas of the right-of-way.
21. **Eminent Domain:**
  - a) Either party receiving any notice of an intended taking affecting the Premises or any portion thereof, any service of legal process relating to condemnation or any other notification in connection with any taking, condemnation or purchase, sale or transfer in lieu of condemnation, shall promptly give the other party notice. For purposes of this lease, taking or condemnation includes a sale to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power.
  - b) If all or a portion of the Premises, or the building in which it is located, is taken by a corporation or governmental authority having right of eminent domain, by exercise of that right or by purchase, whether the taking be a direct physical taking or an indirect taking compensable by way of severance damages or the like, City shall be entitled to all of the proceeds of the taking and Lessee shall have no claim against City as a result of the taking except for a return of prepaid rent. If the Premises remaining after the taking, if any, are sufficient for practical operation of Lessee's business, City 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 and Lessee shall pay as rent therefore the amounts reserved hereunder reduced commensurately with the reduction in value of the Premises on account of the taking. Rent shall be abated to the extent that the Premises are untenable during such period of alteration and repair. If the Premises remaining are not



sufficient for practical operation of Lessee's business, this lease shall terminate as of the date possession of the Premises is taken.

**22. Indemnification:**

- a) Lessee shall indemnify and hold harmless City, its officers, agents and employees from any and all liability, damage, expenses, attorney's fees, causes of actions, suits, claims or judgements, arising out of or connected with: (1) the use, occupancy, management, or control of the Premises; (2) any failure of Lessee to comply with the terms of this lease or any violation of law or ordinance; and (3) the acts or omission of Lessee, its agents, officers, directors, employees, or invitees; provided, however that Lessee shall not be liable for claims caused by the sole gross negligence of City, its officers, agents or employees. Lessee shall, at its own cost and expense, defend any and all claims, demands, actions or suits which may be brought against Lessee, or City or its' 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 judgements; including attorney fees and costs, that may be recovered against Lessee, or City or its' officers, agents, and employees, in any such action or actions in which they may be party defendants.
- b) Lessee shall give City prompt written notice in case of casualty or accident on the Premises. Lessee, as a material part of the consideration to City, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises from any cause other than City's sole gross negligence, and Lessee waives all claims in respect thereof against City.
- c) Lessee shall release and hold harmless City and its officers, agents, and employees from and shall assume all risks of damage to the Lessee's Encroachment constructed or maintained by Lessee or to any personal property located in said structure resulting directly or indirectly from the failure of water lines or sewers or any other utilities occurring, during or resulting from any reconstruction or maintenance of said utilities.
- d) City and its officers, agents, and employees shall not be liable for any latent defect in the Premises and Lessee specifically agrees to indemnify, defend and hold harmless City, and its' officers, agents and employees, from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, the use, generation, release, manufacture, refining, handling, processing, storage, transportation, or disposal of Hazardous Substances as defined in by ORS 465.200(16)(2003 Ed ) or as it may be amended including asbestos. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulatory or administrative agency.

**23. Liability Insurance:**

- a) Lessee shall maintain commercial general liability and property damage insurance, including automobile liability, that protects Lessee and City and its officers, agents, and employees as additional insureds from any and all risks, claims, demands, actions, and suits for damage to property, personal injury, including death, arising directly or indirectly from Lessee's activities or any condition of the Premises, whether or not related to an occurrence caused or contributed to by City's negligence. The insurance shall protect Lessee against the claims of City on account of the obligations assumed by Lessee under this lease and shall protect City and Lessee against claims of third persons. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to

each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damages; or a single limit policy of not less than \$1,000,000 for each occurrence, and \$1,000,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability 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 City 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 the City. If the insurance is cancelled or terminated prior to termination of the lease, Lessee shall provide a new policy with the same terms. Lessee agrees to maintain continuous, uninterrupted coverage for the duration of the lease. The insurance shall include coverage for any damages or injuries arising out the use of automobiles or other motor vehicles by the Lessee.

- b) Lessee shall maintain on file with the City, 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 shall be cause for immediate termination of this lease by City.

**24. Assignment and Subletting:**

- a) Lessee shall not assign or mortgage this lease or any interest herein and except in the conduct of Lessee's normal course of business of leasing commercial office and retail space, shall not sublet the Premises or any part thereof, or any right or privilege pertinent thereto, and shall not sell or otherwise transfer any ownership interest in any corporate Lessee, or permit any other person (the agents, employees and invitees of Lessee excepted) to occupy or use the Premises or any portion thereof, without first obtaining the written consent of City, which City will not unreasonably withhold. Consent by City to one assignment, subletting, transfer, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, transfer, occupation or use by another person.
- b) Except as to full assignments or transfers, City consent to an assignment, sublet, transfer, occupation or use shall not release the original named Lessee from liability for the continued performance of the terms and provisions on the part of Lessee to be kept and performed, unless City specifically and in writing releases the original named Lessee from liability.
- c) Any assignment, subletting (except as otherwise defined by Section 24a herein), transferring, occupation or use without the prior written consent of City shall be void and shall, and at the option of City, terminate this lease. This lease shall not, nor shall interest herein, be assignable, as to the interest of Lessee, by operation of law, without the prior written consent of City.

- d) City shall not unreasonably withhold its consent to any assignment, subletting, transfer, occupation or use provided the rent paid by the assignee or sub Lessee is not less than the rent required by this lease and the proposed Lessee is compatible with City's normal standards for the Premises. If Lessee proposes a subletting, assignment, transfer, occupation or use, City shall have the option of terminating this lease and dealing directly with the proposed sub Lessee or assignee, or any third party.
  - e) If an assignment, subletting, transfer, occupation or use is permitted, the net value of any rent received by Lessee as a result of such transaction shall be paid to City promptly following its receipt by Lessee. Lessee shall pay any costs incurred by City in connection with a request for assignment, subletting, transfer, occupation or use including reasonable attorneys' fees.
25. **Assignability:** - The covenants and conditions herein contained, subject to the sections as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties.
26. **Sale by City:** - In the event of any sale of the Premises by City, City shall be and is hereby 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, at such sale or any subsequent sale of the Premises, shall be deemed, without any further agreement between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of City under this lease.
27. **Entry by City:**
- a) City reserves, and shall at any and all times have, upon notice to Lessee, the right to enter the Premises to inspect the same or the public right-of-way under the Premises, to post notices of non-responsibility, to repair the Premises or the public right-of-way under the Premises that City may deem necessary or desirable, without abatement of rent and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, providing that the entrance to the Premises shall not be unreasonably blocked thereby, and further providing that the business of Lessee shall not be interfered with unreasonably.
  - b) City reserves the right, upon written notice, and at Lessee's sole cost and expense, to reenter the Premises for the specific purpose of rectifying the condition and restoring the Premises to the condition, use and appearance intended by the parties at the time this lease was executed.
  - c) Lessee hereby waives any claims for damages or for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby pursuant to this section.
  - d) Any entry to the Premises obtained by City by any means 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 Lessee from the Premises or any portion thereof.

28. **Default by Lessee:** - The following shall be events of default:

- a) Failure of Lessee to pay any rent or other charge required by this lease within ten (10) days after it is due;
- b) Failure of Lessee to comply with any term or condition or to fulfill any obligation of this lease other than payment of rent or other charges, within ten (10) days after written notice by City specifying the nature of the default with reasonable particularity. However, if the default is of such a nature that it cannot be completely remedied within the ten (10) day period, Lessee shall not be in default if Lessee begins correction of the default within the ten (10) day period and thereafter proceeds with reasonable diligence and in good faith to correct the default as soon as practical and to completion.
- c) The bankruptcy or insolvency of Lessee or if a receiver or trustee is appointed to take charge of any of the assets of Lessee, sub-Lessees or assignees in or on the Premises or in the event of judicial sale of the personal property in or on the Premises upon judgement against Lessee or any sub-Lessee or assignee thereunder unless otherwise directed by order of a bankruptcy court.

29. **Remedies On Default by Lessee:**

- a) In the event of a default, City may elect to terminate Lessee's right to possession of the Premises by thirty (30) day written notice to Lessee. In the event that the default is not remedied and a notice of termination is issued, City may 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. City shall have a security interest in Lessee's property on the Premises at the time of re-entry to secure all sums owed or to become owing City under this lease. Perfection of such security interest shall be taking possession of the property or otherwise as provided by law.
- b) Following re-entry by City because of Lessee's default and subsequent termination, City may re-let the Premises. City may alter, refurbish or change the character or use of the Premises in connection with any re-letting. Re-letting by City following Lessee's default shall not be construed as an acceptance or a surrender of the Premises. If rent received upon re-letting exceeds the rent received under this lease, Lessee shall have no claim to the excess.
- c) Following re-entry, City shall have the right to recover from Lessee the following charges:
  - i) All unpaid rent or other charges for the period prior to re-entry, plus late charges as provided by this lease.
  - ii) All costs incurred by City by reason of Lessee's default, including, but not limited to the cost of recovering the Premises, of re-letting or attempting to re-let the Premises, including without limitation, the cost of clean up and repair and preparation for a new Lessee, the cost of correcting any defaults or restoring any unauthorized alterations, the amounts of any real estate commissions or advertising expenses and the unamortized cost of any improvements installed at City's expense to meet Lessee's special requirements.
  - iii) Reasonable attorney's fees incurred in connection with the default, whether or not any litigation has commenced.
- d) City 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 City to wait until the lease terminates to institute action. City may obtain a decree of specific performance requiring Lessee to pay damages as they accrue. Alternately, City may elect in any one action to recover accrued damages plus damages attributable to the remaining term of the lease.

- e) In the event that Lessee remains in possession following default and City does not elect to re-enter, this lease shall remain in effect and City may enforce all of its rights and remedies hereunder and City may recover all unpaid rent or other charges, plus late charges, and shall have the right to cure any non-monetary default and recover the cost of such cure from Lessee. In addition, City shall be entitled to recover attorney's fees reasonably incurred in connection with the default, whether or not litigation has commenced. City may institute actions to recover such amounts as they accrue and no one action for accrued damages shall bar a later action for damages subsequently accruing.
  - f) The foregoing remedies 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. Lessee's liability to City for default shall survive termination of this lease.
30. **Default by City, Remedies:** - City shall not be in default unless City fails to perform obligations required of City within a reasonable time. However, City shall perform its obligations within thirty (30) days after receiving written notice from Lessee specifying where and how City has failed to perform its obligations. However, if the nature of City's obligations is such that more than thirty (30) days are required for performance then City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.
31. **Rights of Owners and Permitted Mortgagees:**
- a) If an Event of Lessee's Default described in Section 28 occurs, the City shall provide Lessee with notice as set forth in Section 28, and that if such notice is given by the City to Lessee, the following provisions shall apply:
  - b) Except as expressly provided otherwise herein, there shall be no cancellation, termination, surrender, acceptance of surrender, amendment, or modification of this Lease without written notice to Permitted Mortgagees, nor shall any merger result from the acquisition by, or devolution upon, any one entity of the interests of Lessee in this Lease.
  - c) In the event of any default by Lessee under this Lease each Owner and Permitted Mortgagee shall have the same period as Lessee has, plus thirty (30) days, after service of notice on it of such default, to remedy or cause to be remedied or commence to remedy and complete the remedy of the default complained of and City shall accept such performance by or at the instigation of any Interested Parties as if the same had been done by Lessee. Each notice of default given by City will state the amounts of whatever Rent are then claimed to be in default.
  - d) If City elects to terminate this Lease by reason of any default of Lessee, each Owner and each Permitted Mortgagee, in addition to the rights granted under the preceding Section, shall also have the right to postpone and extend the specified date for the termination of

this Lease as fixed by City in its notice of termination, for a period of six (6) months, provided that such Owner or Permitted Mortgagee shall cure or cause to be cured any then-existing defaults in payment of Rent and meanwhile pay the Rent, and provided further that the Owner or Permitted Mortgagee shall forthwith take steps to acquire Lessee's interest in this Lease and shall prosecute the same to completion with all due diligence. If, at the end of the six-month period, the Owner or Permitted Mortgagee is actively engaged in steps to acquire Lessee's interest, the time of the Owner or Permitted Mortgagee to comply with the provisions of this Section shall be extended for such period as is reasonably necessary to complete such steps with reasonable diligence and continuity.

- e) Nothing contained in this Lease requires the Owner or Permitted Mortgagee or the Entity to cure any default that occurs as a result of the status of Lessee, such as Lessee's bankruptcy or insolvency, or to discharge any lien, charge, or encumbrance against Lessee's interest in this Lease junior in priority to the lien of the Permitted Mortgage.
- f) Any Owner or Permitted Mortgagee (collectively sometimes referred to herein as "Interested Parties") may notify the City of Interested Parties' election to proceed with due diligence to foreclose the Permitted Mortgage or otherwise to proceed promptly to acquire possession of the Air Space; and
  - i) During the period that such Permitted Mortgagee or Interested Parties or entity formed by the Interested Parties (any of which are referred to herein as "Entity", as applicable) shall be in possession of the Air Space and/or during the pendency of any such foreclosure or other proceedings and until the interest of Lessee in this Lease shall terminate, as the case may be, the Entity will pay or cause to be paid to the City all sums from time to time becoming due under this Lease for Rent pertaining to such time period; and
  - ii) If delivery of possession of the Air Space shall be made to such Entity, or successor to or purchaser of such interest (hereinafter "Acquirer"), whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Acquirer shall, promptly following such delivery of possession, perform or cause such successor to or purchaser of such interest to perform, as the case may be, all the covenants and agreements herein contained on Lessee's part to be performed to the extent that Lessee has failed to perform the same to the date of delivery of possession, as aforesaid, except such covenants and agreements which cannot with the exercise of due diligence be performed by such Acquirer; then the City shall postpone any termination of this Lease and postpone any other action as a consequence of such default for such additional period or periods of time as may be necessary for such Acquirer, with the exercise of due diligence, to acquire Lessee's interest in this Lease, as aforesaid, and to perform or cause to be performed all of the said covenants and agreements herein contained, as aforesaid. Upon such acquisition of Lessee's interest in this Lease and such performance by such Acquirer pursuant to any foreclosure proceeding or other proceeding to acquire the Lease, the City's right to declare this Lease terminated or to take any other action based upon the occurrence of any uncured default or the existence of any uncured default which cannot with the exercise of due diligence be remedied by such Acquirer, shall be, and be deemed to be, waived. In the Event of Lessee's Default under this Lease or under the loan instruments with a Permitted Mortgagee or other agreements with Owners, the Entity

may, so long as such party takes the steps specified in Section 31a), b), and c), exercise such rights as the Entity may have against Lessee, including the right to take possession of the Air Space and exercise Lessee's rights under this Lease, foreclose or otherwise acquire Lessee's interest in this Lease as permitted by law, and reassign, sell, and/or sublet Lessee's interest in this Lease, subject to the terms and provisions of this Section 31 and the limitation in Section 24 that any transfer of this Lease must be in conjunction with and to the transferee in connection with the transfer of the fee interest in said Blocks. Nothing herein contained shall be deemed to require the Acquirer to continue with any foreclosure or other proceedings or, in the event such Acquirer shall otherwise acquire possession of the Air Space, to continue such possession, if the default in respect of which the City has given notice is remedied. If prior to any sale pursuant to any proceeding brought to foreclose a mortgage, or if prior to the date on which Lessee's interest in this Air Rights Lease is otherwise extinguishable, the Event of Lessee's Default in respect of which the City gives notice is remedied and possession of the Air Space is restored to Lessee, the obligation of the Acquirer pursuant to the instrument referred to in this subparagraph shall be null and void and this Lease shall continue in full force and effect.

- g) In addition to the agreement of the City to forbear as set forth in Section 31d hereof, and notwithstanding that Interested Parties may not have acted during such period of forbearance, if, by reason of the occurrence or continuance of an uncured Event of Lessee's Default, this Air Rights Lease is terminated, the City shall immediately notify Lessee (as set forth in Section 28) of such termination. On written request of the Acquirer made at any time within thirty (30) days after the Interested Parties have received a copy of the City's written notice of termination of this Air Rights Lease, the City shall enter into a new lease of the Air Space with such Acquirer within twenty (20) days after receipt of such request. The new lease shall be effective as of the date of such termination of this Lease for the remainder of the term of this Lease, at the same Rent and upon the same terms, covenants, conditions and agreements as are herein contained; provided that such Acquirer shall (i) contemporaneously with the delivery of such request pay to the City all the installments of Rent which Lessee was obligated but failed to pay through the date of such termination; (ii) pay to the City at the time of the execution and delivery of said new lease any and all sums for Rents which would have been due hereunder from the date of termination of this (had this Air Rights Lease not been terminated) to and including the date of the execution and delivery of said new lease, together with all expenses, including reasonable attorneys' fees incurred by the City in connection with the termination of the Lease and with the execution and delivery of such new lease, less the net amount of all sums received by the City from any sub-lessees in occupancy or licensees of any part or parts of the Air Rights Space up to the date of commencement of such new lease; and (iii) on or prior to the execution and delivery of said new lease, agree in writing that promptly following the delivery of such new lease, the Acquirer shall, with due diligence and within a reasonable time, perform or cause to be performed all of the other covenants and agreements herein contained on Lessee's part to be performed to the extent that Lessee shall have failed to perform the same to the date of delivery of such new lease, except such covenants and agreements which cannot with the exercise of due diligence be performed by such Acquirer. In that event, the performance of these covenants by the Acquirer shall be postponed and extended by the time period that the Acquirer is unable

to perform. Such new lease shall have the same relative priority in time and in right as this Lease and shall have the benefit of, and shall vest in such Acquirer all of the right, title, interest, powers and privileges of the Lessee hereunder in and to the Air Space, including specifically assignment of the Lessee's interest in and to all then existing subleases, automatic vesting of the Lessee's right, title and interest in and to the improvements and appurtenances in the Air Space, as well as furnishings, appliances, equipment, fixtures and machinery therein, until expiration of the term as the same may be extended.

- h) If at any time there shall be more than one Permitted Mortgage constituting a lien on the entire property, and more than one such Permitted Mortgagee shall request in writing a new lease of the Air Space pursuant to Section 31d), the Permitted Mortgagee most senior in lien as shown in the deed records of Multnomah County, to all other Permitted Mortgagees who have requested a new lease, pursuant to the list of Permitted Mortgagees provided pursuant to Section 31d), shall be vested with the rights (and thereby subject to the requirements) under this Section 31 to the exclusion of any junior Permitted Mortgagee; provided, however, that such senior Permitted Mortgagee shall take such action as may be necessary to maintain and preserve the liens of all junior Permitted Mortgagees in their respective order of priority.

32. **City's Inability to Perform:** - City 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, earthquakes or through act of God or other cause beyond the reasonable control of the City. In the event that City's inability to perform results in the need to suspend or terminate the Lease, Lessee's sole remedy shall be the refund of prepaid rents, if any.

33. **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. City has no liability for interference with light and air.

34. **General Provisions:**

- a) **Administrative Fees** - The City reserves the right to require reasonable administrative fees for written consents, estoppel certificates, assignments, and other administrative actions that may be required under this lease.
- b) **Ambiguity** - Both parties have had the opportunity to provide input into the drafting of this Lease and have had the opportunity to review it with counsel, whether or not that opportunity has been exercised. Therefore, the parties agree that it shall not be construed for or against either party in order to resolve any ambiguity.
- c) **Amendments** - This lease shall not be amended or modified except by agreement in writing signed by the parties.
- d) **Americans With Disabilities Compliance:**



- i) Lessee shall comply, at Lessee's sole expense, with all applicable sections of the Americans With Disabilities Act of 1990 (ADA), as it may be amended, including any duty the ADA may impose on City or Lessee as a result of Lessee's use, occupation, or alteration of the Premises.
  - ii) Within ten (10) days after receipt, City and Lessee shall advise the other party in writing, and provide the other party with copies (as applicable) of any notices alleging violation of the ADA relating to any portion of the building or Premises; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the building or Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the building or Premises.
  - iii) In the event of any assignment or sublet of the Premises, Lessee and Lessee's assignee or sub Lessee 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 Lessee or Lessee's assignee or sub Lessee as a result of their use, occupation or alteration of the Premises. City reserves the right to withhold consent to a proposed assignment or sublet if the assignment or sublease fails to contain sections required by this lease to ensure ADA compliance at Lessee or Lessee's assignee's or sub Lessee's expense. City further reserves the right to withhold consent to a proposed assignment or sublet if the proposed use, occupation or alteration by the assignee or sub Lessee shall require alterations to the Premises to comply with the ADA which are inconsistent with City's management interests.
- e) **Authority of Lessee** - If Lessee 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.
  - f) **Choice of Law and Forum** - This Lease shall be interpreted, construed, and enforced in accordance with, and governed by, the laws of the State of Oregon without regard to any conflict of laws provisions that would require the application of the law of any other jurisdiction. Any litigation arising under this lease shall occur in the Multnomah County Circuit Court or the United States District Court for the District of Oregon.
  - g) **Complete Agreement** - There are no oral agreements between City and Lessee 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 City and Lessee or displayed by City or its agents to Lessee with respect to the subject matter of this lease, the Premises or the building. There are no representations between City and Lessee or between any real estate broker and Lessee, other than those contained in the lease, and all reliance with respect to any representations is solely upon representations contained in this lease.

- h) **Consent of City** - Whenever consent, approval or direction by City is required under the terms contained herein, all such consent, approval or direction shall be in writing from the City Engineer, Office of Transportation.
- i) **Construction** - In construing this Lease, if the context so requires, the singular pronoun shall be taken to mean and include the plural, and the masculine shall include the feminine and the neuter. All provisions of this Lease have been negotiated at arms length, and this Lease shall not be construed for or against any Party by reason of the authorship of any provision of this Lease.
- j) **Cumulative Rights and Remedies** - 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.
- k) **Exhibits** - Exhibits, which are referred to in this lease, are attached hereto and by this reference incorporated herein.
- l) **Grammatical Changes** - Wheresoever the word City or Lessee is used herein, it relates also to the City or Lessee jointly and severally, if there may be more than one Lessee or City herein, and to their respective heirs, personal representatives, successors in interests and assigns; and the pronouns used herein shall be construed as the context and the sense and general purport of this lease may require.
- m) **Joint Obligation** - If there be more than one Lessee, the obligations imposed hereunder shall be joint and several.
- n) **No Partnership** - Neither anything contained in this lease nor any acts of the parties shall be deemed or construed by the parties, or either of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any other association between the parties of this lease, other than the obligations between City and Lessee as described herein.
- o) **Non-Waiver** - Acceptance by City of any rental or other benefits under this lease shall not constitute a waiver of any default. Any waiver by City of the strict performance of any of the sections 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 City's right to strict performance of the same section in the future or of any other section of this lease.
- p) **Observance of Law** - Lessee, at Lessee's expense, 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, including, but not limited to those applicable to the construction, use and maintenance of Lessee's Encroachment. Furthermore, Lessee is responsible for obtaining all other necessary authorizations required, including rights of access, if necessary. By granting this Lease the City is not obligating itself or any of its agencies with respect to

any discretionary action relating to development or use of the Premises, including, but not limited to, re-zonings, variances, environmental clearances or any other governmental agency approvals or permits which are or may be required. Lessee shall correct at Lessee's own expense any failure of compliance created by the fault or use of Lessee or its agents, employees or invitees.

- q) **Partial Invalidity** - Any section of this lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other section of the lease and other sections shall remain in full force and effect.
  - r) **Quiet Possession** - Upon Lessee paying the rent reserved hereunder and observing and performing all of the covenants, conditions, and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof, subject to all sections of this lease.
  - s) **Recordation** - Neither City or Lessee shall record this lease, but a short form memorandum hereof may be recorded at the request of City.
  - t) **Section Headings and Capitalization** - The section headings to the sections of this lease are not part of the lease and shall have no effect upon the construction or interpretation of any part of it. Capitalization of certain words is provided to assist the reader. Capitalization of words or lack thereof shall have no effect upon the construction or interpretation of this lease.
  - u) **Time is of the Essence** - Time is of the essence in this lease.
  - v) **Third Parties** - City and Lessee are the only parties to this lease and as such 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.
35. **Termination**: In the event that the Lease is terminated for any reason by the City, City's liability to Lessee shall be limited to the refund of prepaid rents, if any and in the event termination is beyond June 30th of any year, Lessee will be responsible for payment of real property taxes for the entire year without proration.
36. **Surrender Upon Termination**:
- a) Upon termination of this lease, whether by expiration or earlier termination because of default, Lessee shall surrender and deliver up possession of the Air Rights Space and the improvements constructed therein to the City within thirty (30) days, in a safe and well-maintained condition and free and clear of any liens and encumbrances, or, at the option of City, remove the Lessee's Encroachment and return the Premises to the physical condition as of the date of this lease. If Lessee does not comply with the provisions of this paragraph, Lessee agrees to reimburse City for costs incurred to repair or remove the Lessee's Encroachment.

- b) Should Lessee fail to vacate the Premises when required, City may elect to take legal action to eject Lessee from the Premises and to collect any damages caused by Lessee's wrongful holding over.
  - c) Lessee's failure to remove property as required by subsection a) of this section shall constitute a failure to vacate to which subsection d) of this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another Lessee or with occupancy by City for any purpose including preparation for a new Lessee.
  - d) Lessee shall be responsible for all consequential damages to City as a result of Lessee's failure to surrender the Premises in accordance with the lease, and this clause shall survive the termination of the lease.
37. **No-Waiver of Government Rights:** - Subject to the terms and conditions of this lease, by making this lease, City is specifically not obligating itself or any of its agencies with respect to any discretionary action relating to development or operation of the improvement constructed or to be constructed within the public right-of-way, including, but not limited to, rezonings, variances, environmental clearances, or any other governmental agency approvals or permits which are or may be required. City specifically reserves all of its rights to exercise its police power for the benefit of the public, including, but not limited to, its right to enter and inspect or order the Air Rights Space vacated for the public health, safety or welfare. This Paragraph grants to City no greater or lesser rights than City has by virtue of its municipality status.
38. **Holding Over:** If Lessee remains in possession of the Premises or any part thereof after the expiration of the term hereof without the express written consent of City, such occupancy shall be a tenancy from month-to-month with rent in the amount of the last monthly rent, plus all other charges payable hereunder, and upon all terms hereof, applicable to month-to-month tenancy. The hold over tenancy may be terminated at will at any time by City. City shall have the right to adjust the rent payments, charges, or use fees upon thirty (30) days written notice to Lessee. In the event of hold over beyond June 30th of any year, Lessee shall be responsible for payment of real property taxes for the entire year without proration.
39. **Guaranty:** - Lessee's obligations hereunder shall be guaranteed in a form substantially the same as Exhibit C, with said guarantee to extinguish upon City approval of the transfer of the lease to another party.
40. **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 City: **CITY OF PORTLAND**  
 Bureau of Transportation  
 Right of Way Acquisition  
 1120 SW 5<sup>th</sup> Avenue, Suite 800  
 Portland, Oregon 97204

To Lessee: **409 Project LLC**  
 c/o Skylab Architecture  
 Attn: Jeff Kovel  
 1221 SW Alder Street  
 Portland, OR 97205

IN WITNESS WHEREOF, **409 Project LLC**, a limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its member, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

409 Project LLC, a limited liability company

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

STATE OF OREGON

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as a member of 409 Project LLC, a limited liability company.

\_\_\_\_\_  
 Notary Public for State of OREGON  
 My Commission expires \_\_\_\_\_

**CITY OF PORTLAND**

By: \_\_\_\_\_  
 Mayor Sam Adams

By: \_\_\_\_\_  
 LaVonne Griffin-Valade  
 Auditor

STATE OF OREGON           )  
                                   )ss.  
 County of Multnomah       )

Personally appeared Sam Adams, who being duly sworn, did say that he is the Mayor-In-Charge for the City of Portland, a municipal corporation, and that said instrument was signed in behalf of said corporation by authority of its City Council and acknowledged said instrument to be its voluntary act and deed.

Before me \_\_\_\_\_  
 Notary Public for Oregon  
 My Commission expires \_\_\_\_\_

STATE OF OREGON           )  
                                   )ss  
 County of Multnomah       )

Personally appeared LaVonne Griffin-Valade, who being duly sworn, did say that she is the Auditor of the City of Portland, a municipal corporation, and that said instrument was signed in behalf of said corporation by authority of its City Council and acknowledged said instrument to be its voluntary act and deed.

Before me \_\_\_\_\_  
 Notary Public for Oregon  
 My Commission expires \_\_\_\_\_

Approved as to form:

  
 \_\_\_\_\_  
 City Attorney

Approved:

\_\_\_\_\_  
 City Engineer or designee

S:\Leases\7091\Lease

**EXHIBIT A**  
**LEGAL DESCRIPTION**  
FOR 13<sup>th</sup> AVENUE LEASE AREA  
1300 W. BURNSIDE,  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
15 SEPTEMBER 2009

A LEASE AREA OVER RIGHT-OF-WAY, BEING A PORTION OF SOUTHWEST 13<sup>TH</sup> AVENUE LYING SOUTH OF WEST BURNSIDE STREET, LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHEAST CORNER OF THAT CERTAIN PROPERTY DESCRIBED IN THAT STATUTORY WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2000-031396, MULTNOMAH COUNTY DEED RECORDS, SAID CORNER BEING THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF SW STARK STREET (60 FEET WIDE) AND THE WESTERLY RIGHT-OF-WAY LINE OF S.W. 13<sup>TH</sup> AVENUE (80 FEET WIDE); THENCE ALONG THE NORTHERLY EXTENSION OF SAID WESTERLY RIGHT-OF-WAY LINE OF S.W. 13<sup>TH</sup> AVENUE NORTH 20°50'20" EAST, 7.28 FEET; THENCE LEAVING SAID NORTHERLY EXTENSION OF THE WESTERLY RIGHT-OF-WAY LINE, NORTH 36°18'45" WEST, 5.19 FEET; THENCE NORTH 88°30'25" EAST, 4.77 FEET; THENCE SOUTH 13°14'38" WEST, 29.89 FEET; THENCE SOUTH 28°25'58" WEST, 15.13 FEET; THENCE SOUTH 13°14'40" WEST, 15.13 FEET; THENCE SOUTH 28°26'01" WEST, 15.13 FEET; THENCE SOUTH 13°14'39" WEST, 15.13 FEET; THENCE SOUTH 28°26'01" WEST, 22.61 FEET; THENCE NORTH 69°09'40" WEST, 1.01 FEET TO SAID WESTERLY RIGHT-OF-WAY LINE OF S.W. 13<sup>TH</sup> AVENUE; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE NORTH 20°50'20" EAST, 100.13 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 306 SQUARE FEET, MORE OR LESS.

THE LEASE AREA IS SHOWN ON THE ATTACHED EXHIBIT "B" AND BY THIS REFERENCE MADE A PART THEREOF.

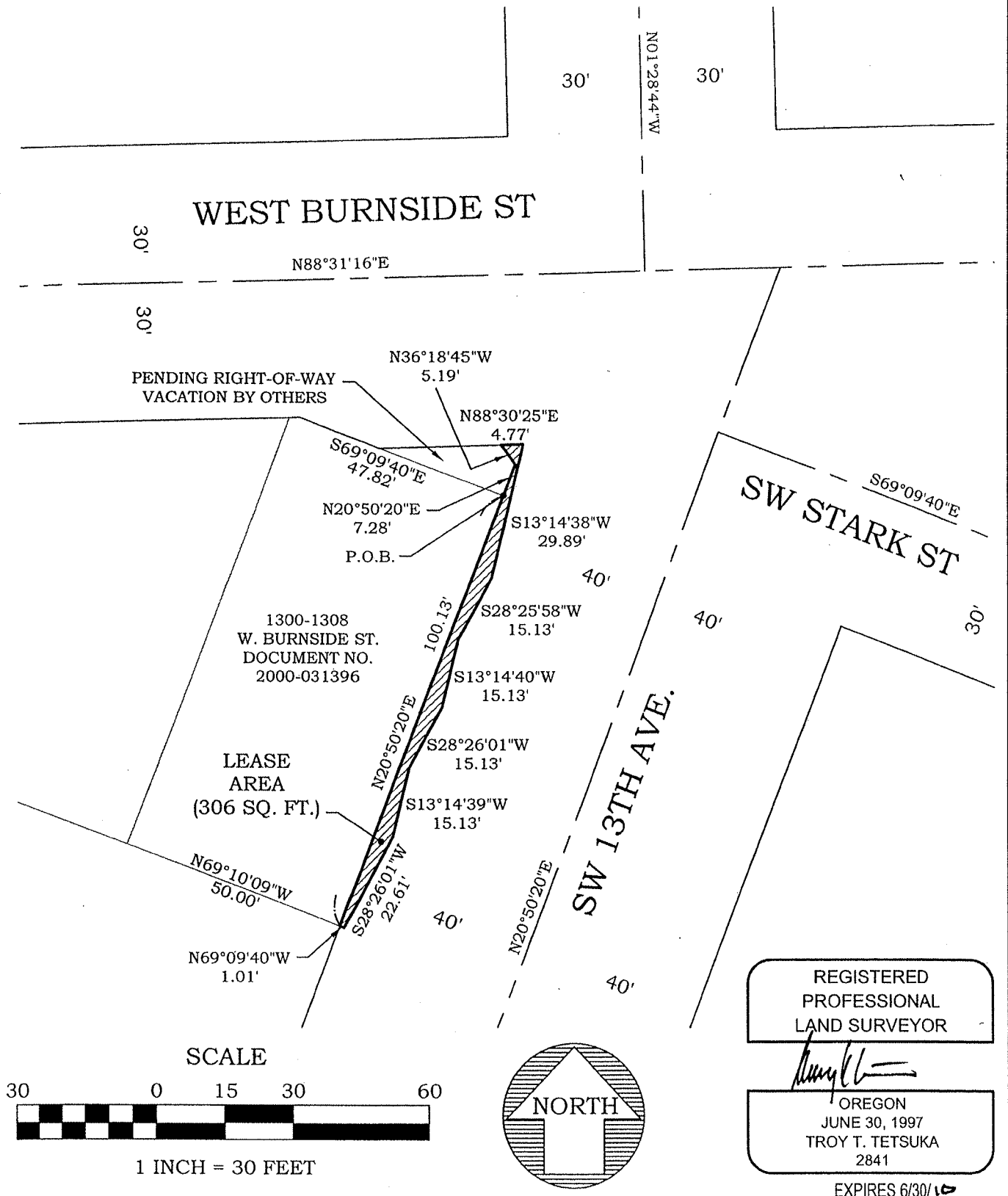
THE BASIS OF BEARINGS IS THE SOUTHERLY RIGHT-OF-WAY LINE OF S.W. STARK STREET, SAID LINE BEARS SOUTH 69°09'40" EAST.



RENEWAL DATE 6-30-10

END OF DESCRIPTION.

## EXHIBIT "B"



PLAT TO ACCOMPANY LEGAL DESCRIPTION

**kpff**

Consulting Engineers  
111 S.W. Fifth Avenue  
Suite 2500  
Portland, Oregon 97204  
503-227-3251

## EXHIBIT B

TOWER BUILDING LEASE AREA

SE 1/4, OF SECTION 33, T.1 N., R. 1 E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON

DATE: 09/15/2009  
SCALE: 1" = 30'  
CONTOUR INTERVAL: N/A  
PROJECT NO. 307179.02  
SHEET: 1 OF 1



## EXHIBIT C

## GUARANTEE

In consideration of the agreement of the City of Portland, a municipal corporation, City, to enter into the lease dated \_\_\_\_\_ ("the Lease") with **409 Project LLC**, Lessee, the undersigned JOFF KOVEL, ("Guarantor") hereby unconditionally guarantees the punctual payment of all rent, as defined in the lease, and other payment required to be paid by Lessee, and the strict performance of all other obligations of Lessee under the lease. If Guarantor consists of more than one person or entity, all liability of Guarantor hereunder shall be joint and several. Guarantor further agrees as follows:

1. Guarantor shall be directly liable to City for any amount due from Lessee under the lease, without requiring that City first proceed against Lessee. Guarantor agrees that City may deal with Lessee in any manner in connection with the lease without the knowledge or consent of Guarantor and without affecting Guarantor's liability under this guaranty. Without limiting the generality of the foregoing, Guarantor agrees that any extension of time, assignment of the lease, amendment, or modification to the lease, or compromise of the amount of any obligation or liability under the lease made with or without the knowledge or consent of Guarantor shall not affect Guarantor's liability under this guaranty.
2. This guaranty shall apply to the term of the lease, any extension or renewal thereof, and to any holdover term following the term of the lease or any extension or renewal thereof.
3. Guarantor hereby waives presentment, protest, notice of default, demand for payment, and all other suretyship defenses whatsoever with respect to any payment guaranteed under this guaranty, and agrees to pay unconditionally upon demand all amounts owed under the lease.
4. This lease shall be conclusively presumed to have been created and contracted in reliance upon the guaranty.
5. If City retains an attorney to enforce this guaranty or to bring any action or any appeal in connection with this guaranty, the lease, or the collection of any payment under this guaranty, or the Lease, City shall be entitled to recover its attorney's fees, costs, and disbursements in connection therewith, as determined by the court before which such action or appeal is heard, in addition to any other relief to which City may be entitled. Each reference in this guaranty to City shall be deemed to include its successors and assigns, to whose benefit the provisions of this guaranty shall also inure. Each reference in this guaranty to Guarantor shall be deemed to include the successors and assigns of Guarantor, all of whom shall be bound by the provisions of this guaranty.

  
\_\_\_\_\_, GUARANTOR

By:

Name/Title

JOFF KOVEL  
man. member

Date:

11.17.09