

LEASE

This Lease is made and entered into this 29th day of October, 2007, by and between the City of Portland, a municipal corporation of the State of Oregon (City), and Wayne and Rebecca Van Raden (Lessee).

RECITALS:

WHEREAS, this Lease is part of a settlement in the case of City v. Van Raden, et al., MCCC Case No. 0101-00985 (the Settlement), which involved condemnation of certain property owned by Lessee adjacent to the property that is the subject of this Lease;

WHEREAS, the Lease area is dedicated right-of-way, improved with a City overpass; and

WHEREAS, City Council has determined the space beneath the overpass (the Premises) will not be needed for public use within the period of this Lease and the permitted uses will not unreasonably interfere with the public use and utility use of the right-of-way area;

WHEREAS, Lessee has occupied the Premises continuously subsequent to the transfer of possession to City pursuant to the litigation above described.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

AGREED:

1. Lease. The City does hereby lease, demise and let unto Lessee, its successor and assigns, the Premises as depicted in Exhibit "A," attached hereto and incorporated herein by reference, with the Premises more particularly described as:

R/W #5668-2-1 (Lease under Lower Albina Overpass)

A parcel of land lying in that tract of real property in the southwest quarter of Section 27, T1N, R1E, W.M., Multnomah County, Oregon, and being more particularly described in a Deed to Wayne B. Van Raden and Rebecca A. Van Raden recorded as Book 2020, Page 916, Multnomah County Book of records; said parcel being more particularly described as follows:

Commencing at the westerly corner of the tract of land described in

said Deed; thence along the northwesterly line of said tract, N 39°01'19" E, 39.173 meters (128.52 feet) to the Point of Beginning; thence continuing along said line, N 39°01'19" E, 34.243 meters (112.35 feet); thence leaving said line, S 89°49'05" E, 43.129 meters (141.50 feet); thence N 87°40'25" E, 3.076 meters (10.09 feet) to the westerly line of O.W.R & N. Co. railroad right-of-way; thence along said right-of-way, along a 183.267 meter (601.27 feet) radius curve to the right, through a central angle of 9°33'04" an arc distance of 30.550 meters (100.23 feet), subtended by a chord of S 10°52'24" E, 30.515 meters (100.12 feet); thence leaving said line, N 84°07'57" W, 9.757 meters (32.01 feet); thence N 87°51'56" W, 63.857 meters (209.51 feet) to the Point of Beginning.

The area of land to which this description applies contains 1697 square meters (18,266 square feet), more or less.

2. Authority. This Lease is executed pursuant to the authority granted by Ordinance No. 176194, adopted by the City Council of the City of Portland, Oregon, on the 16th day of January, 2002, and in accordance with ORS 271.430 and other applicable provisions of law.
3. Term. The term of this Lease shall be twenty (20) years, commencing on July 1, 2002, and shall terminate on June 30, 2022, unless sooner terminated under the provisions hereof. Nothing in this Lease shall be construed to give the Lessee an interest, equitable or otherwise, in Premises, other than the right of possession as provided herein.
4. Option to Renew. Lessee shall have the option to renew this Lease for two successive terms of five (5) years each, provided that, as of the date of the commencement of each successive term, there shall be no default under the terms of this Lease and the Premises are being used for the same or substantially similar purposes as during the initial term of this Lease. Each renewal option shall be deemed automatically exercised, subject to Lessee providing City written notice of its intent to renew this Lease not less than one (1) year nor more than five (5) years prior to the last day of the expiring term.
5. Rent. This Lease is issued as partial consideration for certain property rights acquired from Lessee and, consistent with the intent of the Settlement, is being provided at no charge to Lessee. City reserves the right to charge additional rent in the event that uses,

other than those permitted herein, are authorized by City Council.

6. Place of Payments. Payments shall be made to the City of Portland at:

City of Portland
Office of Transportation
Right-of-Way Acquisition
1120 SW Fifth Avenue, Room 800
Portland, Oregon 97204

Or at such other place that City may designate in writing.

7. Net Lease. It is the intention and purpose of the City and Lessee 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 Lease 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, security 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," City is not, by virtue of this section, a partner or joint venturer with Lessee in connection with the business carried on under this Lease, and shall have no obligation with respect to Lessee's debts or other liabilities.
8. Permitted Uses. 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 parking, general equipment storage and deliveries for Lessee's vehicles and deliveries and those of its customers, suppliers and guests, all directly associated with Lessee's adjacent business. 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, which consent shall not be withheld where the withholding of such consent would be deemed unreasonable;

- 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 City;
 - E. Sell or consume or permit the sale or consumption of alcohol or illegal drugs of any kind on the Premises;
 - F. Store, use or sell products containing or composed of polystyrene (Styrofoam), unless City exempts such products from this requirement. Exemptions shall be based upon a showing that there are no acceptable alternatives and that enforcement of this condition would cause Lessee undue hardship;
 - G. Store fuel, gasoline, petroleum products, explosives or other highly flammable materials on the Premises. However, fuel in vehicle and truck fuel tanks is not prohibited under this provision;
 - H. Commit waste of the Premises; or
 - I. Damage survey monuments, witness corners and other location markers.
9. Overhead Structure. City owns and operates an overhead highway structure immediately above the Premises. Lessee agrees to protect the overhead structure and supporting piers from damage. Lessee shall, in its use of airspace under the structure, allow sufficient vertical and horizontal clearance for the operation, maintenance, ventilation, and safety of the highway system, and shall not engage in any activity on the Premises that could compromise or impair the safety, utilities or functionality of the overhead structure.
10. Nuisance, Waste, Hazardous Substances and Environmental Warranties.
- A. Lessee shall refrain from any use which is improper, immoral, unlawful, objectionable or 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.

11. Acceptance of Premises.

- A. Lessee has examined the Premises and accepts them in "as is" condition. City or its officers, agents or employees have made no representations or warranties as to the condition of the Premises. 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.

12. Late Charge. In addition to all of the remedies provided by this Lease, if any 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 ten percent (10%) of the amount of the delinquent charge for the month in which the 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. 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.

13. Fire Prevention. Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and shall install fire extinguishers throughout the Premises in accordance with rules and regulations as set forth by the Fire Marshal.
14. Lessee's Improvements. In the event that City authorizes improvements to the Premises, as provided for herein, 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. All work shall be completed in a good workmanlike manner.
15. City Inspection, Maintenance and Repair. City and City's agents and employees shall, upon notice to Lessee, 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 the overhead structure, inspecting Lessee operations, maintaining and repairing the overhead structure and doing such other things as may become reasonably necessary or advisable, without any interference or claim for damages by Lessee. 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. Any entry to 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.
16. Lessee Maintenance and Repair. Lessee shall at all times maintain the Premises in a neat condition, free of trash and debris, in good and substantial condition, order and repair. If Lessee's use of the Premises causes an immediate hazard or damage to the overhead structure, Lessee must immediately notify City of said hazard or damage and, subject to the City's approval to do so, make immediate repairs at no cost to City. If such repairs are not made in a responsive manner as determined by the City Engineer, then the City, upon such notice to Lessee as is practical under the circumstances, may cause such repairs to be made and bill Lessee for such cost. Failure to make payment within 90 days of billing shall constitute default in accordance with Section 24. The amount of such cost, if not paid to the City, shall become a lien on the interest of Lessee, or any

successors or assigns of Lessee's interest in adjacent property.

17. 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, execute 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 improvements, if any, and Lessee shall upon request of City, execute and deliver agreements of subordination consistent with this section.
18. 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 shall not be liable for interference with light and air.
19. Condemnation.
 - A. If all the Premises and the Improvements are taken or condemned, by right of eminent domain or by purchase in lieu of condemnation, or if such portion of the Premises or the Improvements shall be so taken or condemned that the portion remaining is not sufficient and suitable, in Lessee's sole judgment to permit the restoration of the Improvements following such taking or condemnation, then this Lease and the Term, at Lessee's option, shall cease and terminate as of the date on which the condemning authority takes possession (any taking or condemnation of the land described in this section being called a "Total Taking"), and any obligation from Lessee to Lessor.
 - B. If this Lease expires and terminates as a result of a Total Taking, the rights and interests of the parties shall be determined as follows.

(i) The total award or awards for the Total Taking shall be apportioned and paid in the following order of priority:

1. Lessor Shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award which is defined and referred to as the "Land Award," and Lessee shall not be entitled to receive any part of the Land Award. The term *Land Award* shall mean the portion of the award in condemnation or change of grade proceedings that represents the fair market value of the Premises, considered as vacant, unimproved but encumbered by this Lease, the consequential damage to any part of the Premises that may not be taken, the diminution of the assemblage or plottage value of the Premises not so taken and all other elements and factors of damage to the Premises; but in all events such damage or valuation shall take into consideration that the Premises is encumbered by this Lease:

2. Lessee shall have the right to and shall be entitled to receive directly from the condemning authority that portion of the award referred to as the "Leasehold Award." The term *Leasehold Award* shall mean that portion of the award in condemnation proceedings that represents the fair market value of Lessee's interest in the Improvements and the fair market value of Lessee's leasehold estate as so taken and, provided this Lease is not terminated as a result of such condemnation or taking, the consequential damages to any part of the Improvements.

3. It is the intent of the parties that the Land Award and Leasehold Award will equal the total amount of the awards respecting a total taking.

(ii) If the court or such other lawful authority as may be authorized to fix and determine, separately and apart, the Land Award and the Leasehold Award, such awards shall be determined and fixed by written agreement mutually entered into by Lessor and Lessee. If an agreement is not reached within 20 days after the judgment or decree is entered in the proceedings, the controversy shall be resolved in the same court as the condemnation action is brought, in such proceedings as may be appropriate for adjudication the controversy: and

C. If, during the Term, there is a taking or condemnation of the Premises or the Improvements that is not a total taking and not a temporary taking of the kind described below, or if there is a change in the grade of the streets or avenues on which the Premises abuts, this Lease shall not cease or terminate but shall remain in full force and effect with respect to the portion of the Premises and of the Improvements not taken or condemned (any taking or condemnation or change of

grade of any kind described. in this section being referred to as a "Partial Taking"), and in such event

(i) The total award or awards for the taking shall be apportioned, and paid in the following order of priority: Lessor shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award that equals the Land Award. and Lessee shall not be entitled to receive any part of the award.

- D. In the event of a taking of all or part of the Premises, or the Improvements for temporary use, this Lease shall continue without change, as between the Lessor and Lessee, and Lessee shall be entitled to the entire award made for such use: provided that Lessee shall be entitled to file and prosecute any claim against the condemnor for damages and to recover the same, for any negligent use, waste, or injury to the Premises of the improvements throughout the balance of the then-current Term. The amount of damages so recovered shall belong to Lessee.
- E. In the event of any dispute between Lessee and Lessor regarding any issue of fact arising out of a taking mentioned in this section, such dispute shall be resolved by the same court in which the condemnation action is brought, in such proceedings as may be appropriate for adjudicating the dispute.

20. 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 judgments, arising out of or connected with (i) the use, occupancy, management, or control of the Premises, (ii) any failure of Lessee to comply with the terms of this Lease or any violation of law or ordinance, and (iii) the acts or omissions of Lessee, its agents, officers, directors, employees, or invitees; provided, however, that Lessee shall not be liable for claims caused by the sole negligence of City, its officers, agents or employees. Lessee shall, at its own cost and expense, defend any and all suits which may be brought against Lessee or City, their 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 City or Lessee, their officers, agents and employees in any such action or actions in which they may be party defendants.

- B. City, its officers, agents and employees shall not be liable for any injury to the goods, stock, merchandise or any other property of Lessee or to any person in or upon the Premises including, but not limited to, damage by fire, explosion, falling objects, steam, gas, electricity, water or rain, or from the pipes, appliances or plumbing works, if any, 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 City, its officers, agents, and employees.
- C. Lessee shall give City prompt written notice in case of casualty or accidents 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 negligence, and Lessee waives all claims in respect thereof against City.
- D. City or its officers, agents and employees, shall not be liable for any latent defect in the Premises. In addition to the indemnity provided above, Lessee agrees to indemnify, defend and hold harmless City, or its officers, agents and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, Lessee's handling, storage, discharge, transportation, or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials or contaminants, as those terms are defined by federal, state or local law or regulation, as amended from time to time. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency.

21. Liability Insurance.

- A. Insurance Requirements. Lessee shall maintain comprehensive general liability and property damage insurance including automobile liability insurance and a fire legal liability endorsement, 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 including without limitation, 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 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 insureds 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 Auditor. 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 of the use of automobiles or other motor vehicles by the Lessee.

- B. Certificates of Insurance. Lessee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required by subsection (A). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Lease by City.

22. Assignment and Subletting.

- A. This Lease shall not be assigned or sublet without the written approval of City, which approval shall not be withheld where the withholding of such approval would be deemed unreasonable. In the event that said assignment or subletting is approved, said approval will be subject to successors, assigns and subletees agreeing to be responsible for compliance with the terms and conditions of this

Lease.

- B. Upon consent to assignment or subletting, Lessee will compensate City for the administrative cost of processing the assignment or sublet at the City's current cost recovery for such services.
- C. Upon assignment or subletting, City is entitled to rent compensation from assignee or sublessee for the remainder of the lease term hereunder at the current fair market rent of the Premises starting upon the date of the City's approval of the requested assignment or sublet.

23. 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 over the Premises, to post notices of non-responsibility, to repair the Premises or the public right-of-way over 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.

24. Default by Lessee. The following shall be events of default:

- A. Failure of Lessee to pay any 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 fulfill any obligation of this Lease other than payment of charges, within twenty (20) days after written notice by City specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the twenty (20) day period this provision shall be complied with, if Lessee begins correction of the default within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to correct the default as soon as practical;
- C. The abandonment of the Premises by Lessee or the failure of Lessee of thirty (30) days or more to occupy the Premises for one or more of the designated purposes of this Lease unless such failure is excused under other provisions of this Lease;
- D. 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 and such receiver or trustee is not removed within thirty (30) days after the date of appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against Lessee or any sub-lessee or assignee thereunder.

25. 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 notice to Lessee. Following such notice, 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, City may re-let the Premises for a term longer or shorter than the term of this Lease and upon any reasonable terms, including the granting of rent concessions to the new lessee. City may alter, refurbish, or change the character or use of the Premises in connection with such re-letting. No such re-letting by City following Lessee's default shall be construed as an acceptance or a surrender of the Premises. Lessee shall have no claim to the rent or other charges received on re-letting.
- C. Following re-entry, City shall have the right to recover from Lessee the following charges:
1. All unpaid charges for the period prior to re-entry, plus late charges as provided by this Lease;
 2. 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 and 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;
 3. 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 term 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 expires to institute action. City may obtain a decree of specific performance requiring Lessee to pay damages as they accrue.
- 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 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 amount 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.

26. Trade Fixtures, Default, Remedies. Without limiting the remedies elsewhere provided by this Lease, City's remedies shall include the removal of Lessee's trade fixtures (as defined under Oregon law), equipment, furnishings and furniture from the Premises and storage of the same for the account of Lessee. In such event, the damages recoverable by City from Lessee shall be expanded to include the cost of removal of the foregoing items, repair and restoration of the Premises, transportation to storage, and storage charges, with interest on all such expenses from the date of expenditure by City until repaid as provided herein together with the other items of damages set forth herein. Upon payment of all damages, City shall release the trade fixtures, equipment furnishings and furniture to Lessee. Provided, however, and without limiting the default provisions of this Lease, City shall not remove the foregoing items from the Premises to storage until a period of sixty (60) days of default. From and after the sixty (60) day period, Lessee waives all rights or claims against City as to the failure or difficulty of mitigation of damages by reason of removal of the foregoing items from the Premises, and Lessee may not then assert that the Premises cannot be leased to a third party because of the removal of the items.

27. Default by City, Remedies. City shall not be in default unless City fails to perform obligations required of City within a reasonable time after receiving written notice from Lessee specifying where and how City has failed to perform its obligations. However, if the nature of City's obligation 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. In no event shall Lessee have the right to terminate this Lease as a result of City's default and Lessee's remedies shall be limited to damages and/or an injunction.

28. Force Majeure/Inability to Perform.

- A. City shall not be deemed in default for the nonperformance 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 cause beyond the reasonable control of City, providing such cause is not due to the willful act or neglect of City.
- B. Lessee shall not be deemed in default for the nonperformance 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 cause beyond the reasonable control of Lessee, providing such cause is not due to the willful act or neglect of Lessee.

29. General Provisions.

- A. Cumulative Rights and Remedies. No right or remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other rights and remedies at law or in equity.
- B. Attorney Fees. In the event that suit, action or appeal is instituted by City or Lessee to enforce compliance with any of the terms, covenants and conditions of this Lease on the part of the other to be kept and performed, the prevailing party shall recover in addition to the costs and disbursements provided by statute, such sums as the court may judge reasonable as attorney's fees.
- C. Time of the Essence. Time is of the essence in this Lease.
- D. Non-Waiver. Acceptance by City of benefits under this Lease shall not constitute a waiver of any default. Any waiver by City of the strict performance of any of the provisions 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, shall not prejudice City's right to strict performance of the same provision in the future or of any other provision of this Lease, and shall not be effective

unless as an express waiver of a specific breach in writing.

- E. Amendments. This Lease shall not be amended or modified except by agreement in writing signed by the parties.
- F. 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 lessor 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 instrument may require.
- G. Exhibits. Exhibit A, which is referred to in this Lease, is attached hereto and by this reference incorporated herein.
- H. Authority of Lessee. If Lessee is a corporation, each individual executing this Lease on behalf of that corporation represents and warrants that individual is duly authorized to execute and deliver this Lease on behalf of the corporation, in accordance with the bylaws of the corporation, and that this Lease is binding on the corporation.
- I. 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 Commissioner-in-Charge, except for lease extensions as provided by Section 4 hereof.
- J. Quiet Enjoyment. 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.
- K. Recordation. Neither City or Lessee shall record this Lease, but a short form memorandum hereof will be recorded by City, with copy of said memorandum provided to the County tax assessor.
- L. Section Headings. 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.

- M. 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, arrangements, brochures, advertising, agreements 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 or the Premises except for the settlement agreement in the case of City v. Van Raden, MCCC Case No. 0101-00985. There are no representations between City and Lessee or between any real estate broker and Lessee other than those contained in this Lease and all reliance with respect to any representations is solely upon representations contained in this Lease.
- N. Joint Obligation. If there be more than one Lessee, the obligations imposed hereunder shall be joint and several.
- O. 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 its term.
- P. Non-Waiver of Governmental Rights. Subject to the terms and conditions of this Lease, by making this Lease the City is specifically not obligating itself or any other agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on the blocks or the street property including, but not limited to, re-zonings, variances, environmental clearances or any other governmental agency approvals or permits which are or may be required. The 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, inspect, or order the Premises vacated, for the public health, safety or welfare. This Section grants to the City no greater or lesser rights than City has by virtue of its municipality status.
- Q. Security. City shall have no obligation to provide security service or to adopt security measures regarding the Premises. Lessee may install a security system on the Premises with City's prior written consent, which shall not be unreasonably withheld. Lessee shall provide City with an access code or key to any security system at the time of installation and City shall not have any liability

for accidentally setting off Lessee's security system.

- R. Partial Invalidity. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and other provisions shall remain in full force and effect.
 - S. 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, which shall impose any duty upon City or Lessee with respect to the use, occupation or alteration of the Premises.
 - T. Choice of Law. 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.
 - U. Contract Interpretation. To the extent consistent with the context, words in the singular shall include the plural, words in the masculine gender shall include the feminine gender and the neuter, and vice versa. 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 or alleged authorship of any provision of this Lease.
30. Termination. Lessee may terminate this Lease upon 60-days written notice to City.
31. Surrender Upon Termination.
- A. Upon expiration of the Lease term or earlier termination because of default, Lessee shall surrender the Premises to City in as good as condition as the Premises were delivered to the Lessee at the commencement of this Lease. Alterations constructed by Lessee pursuant to City's permission shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purposes for which the Premises were let need not be restored, but all repair for which Lessee is responsible shall be completed prior to such surrender.

- B. With the exception of Lessee's equipment, materials and movable trade fixtures, all other fixtures placed upon the Premises during the term shall, at City's option, become the property of City. City may elect to require Lessee to remove all fixtures which would otherwise remain the property of City, and to repair any damage resulting from the removal. Should Lessee fail to effect the removals or make repairs, City may do so and charge the cost to Lessee together with late charges as provided by this Lease from the date of the expenditure.
- C. Lessee shall remove all equipment, materials, furnishings, furniture and trade fixtures that remain the property of Lessee. Failure to do so shall be an abandonment of the property and Lessee shall have no further rights therein except as provided below. City may elect to proceed as follows with respect to such abandoned property:
1. Retain or dispose of the property as City sees fit, or
 2. Following twenty (20) days' written notice to Lessee, remove the property and place it in public storage for Lessee's account, in which case Lessee shall be liable for the cost of removal, transportation and storage, plus interest as provided herein from the date of all expenditures.
- D. 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.
- E. Lessee's failure to remove property as required by subsection B of this section shall constitute a failure to vacate to which subsection C 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.
- F. 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.
32. 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, and all terms of this Lease shall be

applicable to the 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 any provision of this Lease, including rent, upon thirty (30) days' written notice to Lessee. In the event of hold over beyond June 30 of any year, Lessee shall be responsible for payment of real property taxes for the entire year without proration. In the event of said holding over, Lessee will pay City 150% of market value rent for comparable space elsewhere in the area.

33. Notices. Any notices required or permitted by law or this Lease to be given to either party shall be sufficiently given if sent by United States certified mail, return receipt requested, 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
Right-of-Way Acquisition
1120 SW Fifth Avenue, Room 800
Portland, Oregon 97204

TO LESSEE: Wayne and Rebecca Van Raden
15090 SW 150th
Beaverton, Oregon 97007

CITY OF PORTLAND

By: _____
Sam Adams
Commissioner of Public Utilities

By: _____
Gary Blackmer
Auditor

STATE OF OREGON)
) ss.
County of Multnomah)

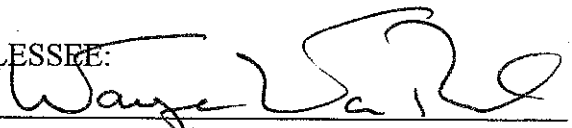
Personally appeared before me Sam Adams, who being duly sworn, did say that he is the Commissioner of Public Utilities of the City of Portland, a municipal corporation, and that said instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be its voluntary act and deed.

Notary Public for Oregon
My Commission Expires:

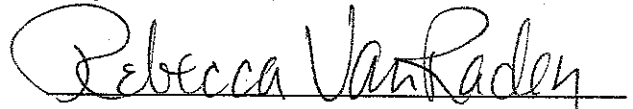
STATE OF OREGON)
) ss.
County of Multnomah)

Personally appeared before me Gary Blackmer, who being duly sworn, did say that he is the Auditor of the City of Portland, a municipal corporation, and that said instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be its voluntary act and deed.

Notary Public for Oregon
My Commission Expires:

LESSEE: 

Wayne Van Raden



Rebecca Van Raden

STATE OF OREGON)
) ss.
County of Multnomah)

SUBSCRIBED AND SWORN TO before me this 26th day of November,
2007, by Wayne Van Raden.



Elizabeth J. Abel
Notary Public for Oregon
My commission expires: 02-01-08

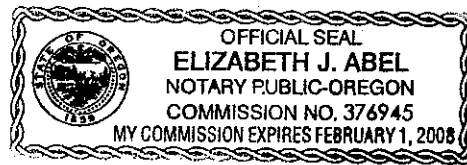
STATE OF OREGON)
) ss.
County of Multnomah)

SUBSCRIBED AND SWORN TO before me this 26th day of November,
2007, by Rebecca Van Raden.

Elizabeth J. Abel
Notary Public for Oregon
My commission expires: 02-01-08

Approved as to form:

[Signature]
City Attorney



Approved:

City Engineer

EXHIBIT A

