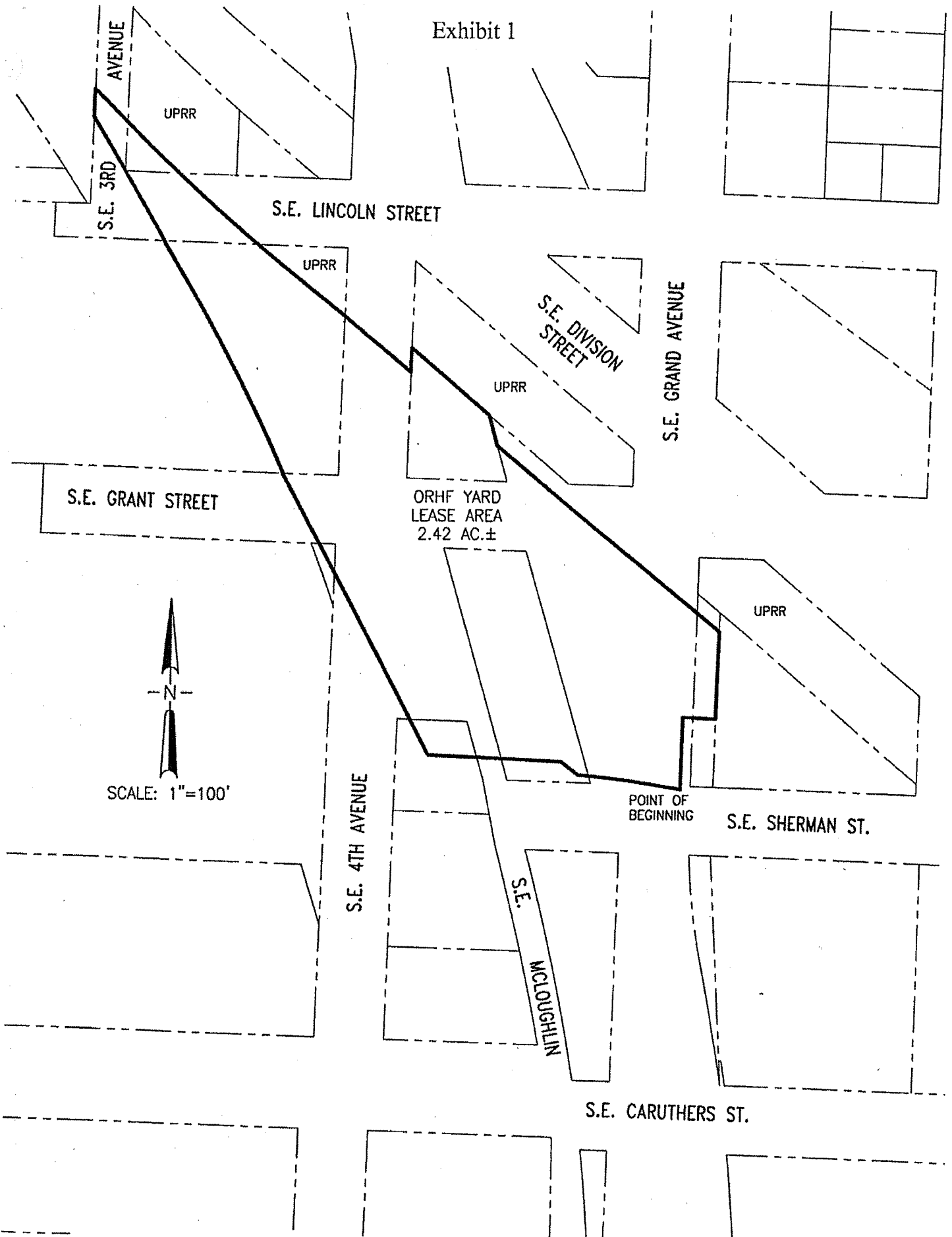


Exhibit 1



CITY OF PORTLAND  
SURFACE LEASE  
WITH OREGON RAIL HERITAGE FOUNDATION  
7212-1

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**SURFACE LEASE  
RWA File No. 7212-1**

This Surface Lease ("Lease") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011 ("Effective Date") by and between the CITY OF PORTLAND, a municipal corporation of the State of Oregon ("City") and OREGON RAIL HERITAGE FOUNDATION, an Oregon non-profit corporation ("ORHF").

**WITNESSETH**

WHEREAS, City has received a proposal from ORHF for leasing a portion of City's property ("Premises"), which includes City controlled, unimproved dedicated public rights-of-way ("City Right-of-Way") as described in Section 1 below for the uses described in Section 7 below.

WHEREAS, the City Council has determined that use of the Premises area for uses by ORHF ("ORHF's Uses"), as defined herein, will not materially interfere with any public use of the City Right-of-Way during the term of this Lease;

WHEREAS, the City Council is of the opinion that such lease arrangement will give the best return to City for use of the Premises.

NOWHEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

**AGREED**

In consideration of the leasing of the Premises and of the mutual agreements contained herein, each party expressly covenants and agrees as follows:

1. **Premises** - City agrees to lease to ORHF the Premises containing approximately 2.42 acres, as more particularly described in Exhibits A1, and A2 and depicted on Exhibit A3 attached hereto. City shall have no liability to ORHF for any damage or injury caused by the condition of the Premises.
2. **Authority** - This Lease is entered into in accordance with general authorities provided under ORS 271.310 and 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 the prior dedication or grant of the street property for street and sidewalk purposes.
3. **Term** - The initial term of this Lease shall be sixty (60) years, commencing on \_\_\_\_\_, 2011 ("Commencement Date"), and terminating at 11:59 pm on \_\_\_\_\_, 2071 ("Initial Term"), unless sooner terminated under the provisions hereof or extended pursuant to Section 8 below.

**4. Rent:**

- a) ORHF shall pay to City, One and no/100 Dollars (\$1.00) for each year for the Initial Term (60 years) of this Lease, to be paid in full, upon execution of this Lease. The payment in the amount of \$60.00 shall be made payable to City of Portland, Accounting Division, 1120 SW Fifth Avenue, Suite 1250, Portland, Oregon 97204, or such other place as City may designate.
  - b) Should ORHF exercise its option to renew as provided for in Section 7 below, ORHF shall pay to City, in advance on or before the tenth (10th) day of January of each calendar year during the first Renewal Term and each Renewal Term thereafter, "Annual Rent" made payable as provided for above.
  - c) All Rent to be paid by ORHF 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. It is the City's sole discretion to invoice ORHF or provide any billing statements for rents due. The absence of an invoice or statement by City, does not relieve ORHF of its obligation to pay rent on time.
  - d) No payment by ORHF 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.
  - e) The Rent provided for herein contemplates the use of the Premises solely for City-approved use. In the event the City Council shall approve use of the Premises 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.
5. **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 ORHF's authorized use thereof during the entire Term, or its extension(s), to be paid by ORHF 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."
6. **Permitted Use** - ORHF accepts full responsibility for its use of the Premises from and after the Commencement Date during the Term. The use of the Premises shall be exclusively for (i) maintenance, restoration, public access to, and storage of heavy rail locomotives, rolling stock, and equipment, including, without implied limitation, City's historic locomotives

(collectively, "Rail Equipment"), (ii) a related visitor-oriented cultural interpretive center ("Cultural Interpretive Center"), including, without implied limitation, retail sales and services and visitor amenities, and (iii) limited sale and consumption of alcohol at ORHF's events in accordance OLCC rules and regulations (collectively, "ORHF's Uses"). City acknowledges that visitors and group tours are expressly permitted as an approved use of the Premises. No other uses are allowed without prior written consent of the City. Such consent shall not be unreasonably delayed or withheld. All approved 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.

ORHF shall not:

- a) Use the Premises for any other use, including but not limited to activities involving the transport or handling of commercial freight, without the prior written consent of City;
- b) Permit any activity, occupation, business, or trade that is unlawful to be conducted on the Premises;
- c) Construct or permit to be constructed any improvements on the Premises requiring a building permit without prior written approval of City;
- d) Allow any lien to be filed against the Premises by anyone supplying labor or materials for any improvements by or for the benefit of ORHF;
- e) Sell or consume, or permit the sale or consumption of, illegal drugs of any kind on the Premises;
- f) Store fuel, gasoline, petroleum products, explosives or other highly flammable materials on the Premises except in full compliance with applicable laws;
- g) Commit waste of the Premises; or
- h) Damage survey monuments, witness corners and other location markers.

**7. Option to Renew:**

- a) ORHF is hereby granted three (3) options of ten (10) years each for a total of thirty (30) years, to renew this Lease commencing on the expiration of the original Term or any renewal term. Said renewals will require written request by ORHF, as provided for below, which will not be unreasonably denied by City. If a renewal request by ORHF is denied, then City shall explain in writing the reasons for said denial.
- b) In order to seek renewal, ORHF shall be in full compliance with the terms and conditions of this Lease at the time an option is exercised. Should ORHF exercise its option to renew the 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 or renewal term, as appropriate. Within thirty (30) days of receipt of ORHF's written notice of election to

renew this Lease, City shall contact ORHF and arrange a suitable time and place to negotiate negotiable changes in the terms and conditions of this Lease, including Rent 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 ORHF 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 ORHF's written notice of election to renew this Lease, this option to renew shall expire and this Lease shall terminate as required by the original Lease or any amendments.

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

- a) ORHF 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 owners, users, or occupants of nearby properties. City acknowledges that ORHF's Uses include maintenance, restoration, use, and storage of the Rail Equipment that may generate odors and intermittent loud noise. Except as provided in this Lease, ORHF 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 in violation of applicable law; 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. ORHF shall comply, at ORHF'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) (2009 Ed) or as it may be amended, including asbestos.
- c) ORHF shall, at ORHF's own expense, comply with all laws regulating the use, generation, release, manufacture, refining, production, handling, processing, storage, transportation, or disposal of Hazardous Substances. ORHF 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 ORHF's use or occupancy of the Premises, including, but not limited to, soil and groundwater conditions.
- d) ORHF shall not cause or permit to occur, the release or disposal of any Hazardous Substance on, under or about the Premises.
- e) ORHF, without City's prior written approval, shall not cause or permit to occur, the manufacture, refining, production, handling, processing or storage of any Hazardous Substance on, under or about the Premises, or the transportation to or from the Premises of any Hazardous Substance that is not related to what is needed to maintain and operate the rail equipment.
- f) ORHF shall, at ORHF's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities.

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- g) 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 ORHF's use or occupancy of the Premises, then ORHF shall, at ORHF's own expense, prepare and implement the required plans and provide all financial assurances in accordance with applicable requirements. ORHF's obligations under this provision shall not prevent ORHF from denying responsibility for the release of Hazardous Substances.
  - h) ORHF 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 ORHF fails to fulfill any duty imposed under this section within a reasonable time, City may do so; and in such case, ORHF shall cooperate with City in order to prepare all documents City deems necessary or appropriate to determine the compliance therewith; and ORHF 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 ORHF's obligations under this section.
  - i) ORHF's obligations and liabilities under this section shall survive the expiration or termination of this Lease.
9. **Fire Prevention** - ORHF shall exercise due diligence and care and caution to prevent and control fire on the Premises.
10. **Acceptance of Premises:**
- a) ORHF 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 ORHF for any damage or injury caused by the condition of the Premises.
  - b) ORHF 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.
11. **Square Footage** - ORHF's signature to this Lease verifies the approximate square footage of the Premises as of the Effective Date. Neither party shall adjust the rent or any other charges provided by this Lease by reason of any claimed variation in square footage.
12. **ORHF Improvements:**
- a) ORHF shall not make or allow to be made any alterations, additions or improvements to the Premises that would require a building permit, or any part thereof, without first obtaining the written consent of City, which will not be unreasonably delayed or withheld. The City hereby approves the building and track improvements generally described in **Exhibits B1 and B2 respectively**, subject to ORHF receiving the

necessary permits for the improvements from the Portland Bureau of Development Services.

- b) All work performed by ORHF shall be carried forward expeditiously, shall not interfere with City's work, and shall be completed within a reasonable time. All work shall be completed in a good workmanlike manner.
- c) The expense for any improvements made to the Premises shall be the responsibility of ORHF and shall be owned and maintained thereafter by ORHF.
- d) In the event of Eminent Domain, improvements are subject to Section 18b.
- e) In the event the Lease is terminated for any reason, improvements are subject to Section 31, Surrender Upon Termination.

**13. Maintenance and Repair:**

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

**14. Licenses and Permits** - This Lease shall not exempt ORHF from acquiring all reviews, approvals, licenses and permits required by any existing ordinance or law for any improvements on or maintenance of the Premises.

**15. Signs and Attachments** - ORHF shall not, without City's prior written consent, place any ORHF 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 Premises that does not conform with City-regulated sign and attachment codes. The City's written consent shall not be unreasonably delayed or withheld. All non-ORHF marks, signs, advertisement, notice, marquee, awning, decoration, antenna, aerial, or any other device or attachments are prohibited without the City's written consent. Any sign or attachment placed upon the Premises by ORHF with City's consent shall be removed at ORHF's expense upon termination of this Lease, and all damage caused by the removal shall be repaired at ORHF's expense. ORHF shall properly maintain any signage it installs pursuant to this section. The cost of such installation, operation and maintenance said signage shall be borne by ORHF.



16. **Liens** - ORHF shall keep the Premises free from all liens, including mechanics liens, arising from any act or omission of ORHF or those claiming under ORHF. ORHF shall pay as due all claims for work done, for services rendered or material furnished to the Premises at ORHF's request. If ORHF 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 ORHF's default. ORHF 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, ORHF shall, within ten (10) business 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 ORHF shall, upon request of City, execute and deliver agreements of subordination consistent with this section.
17. **Subsurface Areas.** Except as provided in **Exhibit C**, this Lease grants no rights whatsoever to the subsurface areas of the Premises.
18. **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 any building thereon, 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, then (i) ORHF shall be entitled to all of the proceeds of the taking of (1) the improvements ORHF made to the Premises and (2) the value of this Lease, and (ii) City shall be entitled to all of the proceeds of the taking of the remaining real property interests; provided ORHF shall have no claim against City as a result of the taking. If the Premises remaining after the taking, if any, are sufficient for practical operation of ORHF's business, ORHF 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. If the Premises remaining are not sufficient for practical operation of ORHF's business, this Lease shall terminate as of the date possession of the Premises is taken.
19. **Indemnification:**
- a) ORHF shall indemnify and hold harmless City and 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: (1) the use, occupancy, management, or control of the Premises; (2) any failure of ORHF to comply with the terms of this Lease or any law or ordinance; and (3) the acts or omission of ORHF, its agents, officers, directors, employees, or invitees; provided, however that ORHF shall not be liable for claims caused by the sole negligence of City, its officers, agents or employees. ORHF shall, at its own cost and expense, defend any and all claims, demands, actions or suits which may be brought against ORHF, City and/or City's officers, agents or employees, either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments, including attorney fees and costs, that may be recovered against ORHF, City or City's officers, agents, and employees, in any such action or actions in which they may be party defendants.

- b) ORHF shall give City prompt written notice in case of casualty or accident on the Premises. ORHF, 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 ORHF waives all claims in respect thereof against City.
- c) ORHF shall release and hold harmless City and its officers, agents, and employees from and shall assume all risks of damage to the Premises constructed or maintained by ORHF 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. ORHF 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, ORHF's Uses, generation, release, manufacture, refining, handling, processing, storage, transportation, or disposal of Hazardous Substances as defined in by ORS 465.200(16) (2009 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.

## 20. Liability Insurance:

- a) ORHF shall maintain commercial general liability and property damage insurance, including automobile liability, that protects ORHF, City and City's 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 ORHF'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 ORHF against the claims of City on account of the obligations assumed by ORHF under this Lease and shall protect City and ORHF 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. 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 City. If the insurance is cancelled or terminated prior to termination of this Lease, ORHF shall provide a new policy with the same terms. ORHF agrees to maintain continuous, uninterrupted coverage for the duration of this Lease. The insurance shall include coverage for any damages or injuries arising out the use of automobiles or other motor vehicles by ORHF.

- b) ORHF shall maintain on file with 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.

**21. Assignment and Subletting:**

- a) ORHF shall not assign or mortgage this Lease or any interest herein and 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 tenant, or permit any other person (the agents, employees and invitees of ORHF excepted) to occupy or use the Premises or any portion thereof, without first obtaining the written consent of City. 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 ORHF from liability for the continued performance of the terms and provisions on the part of ORHF to be kept and performed, unless City specifically and in writing releases ORHF from liability.
- c) Any assignment, subletting, 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 ORHF, 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 to a "non-profit" organization as defined by the Internal Revenue

Code, Section 501(c)(3), provided the rent paid by the assignee or subtenant is not less than the rent required by this Lease and the proposed tenant is compatible with City's normal standards for the Premises. If ORHF proposes a subletting, assignment, transfer, occupation or use to a "for profit" company, organization, or other entity, City shall terminate this Lease and enter into a new lease with renegotiated terms and conditions with the proposed subtenant 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 ORHF as a result of such transaction shall be paid to City promptly following its receipt by ORHF. ORHF shall pay any costs incurred by City in connection with a request for assignment, subletting, transfer, occupation or use.
22. **Assignability** - The covenants and conditions herein contained, subject to the sections as to assignment, apply to and bind the successors and assigns of the parties.
23. **Sale by City** - In the event of any sale of the Premises by City, City shall give ORHF ninety (90) days notice prior to the scheduled closing date. 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.
24. **Entry by City:**
- a) City reserves, and shall at any and all times have, upon reasonable prior notice to ORHF, the right to enter the Premises (i) to inspect the same or the public rights-of-way under, on and above the Premises, to post notices of non-responsibility, to repair the Premises or the public rights-of-way under, on and above 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, and (ii) to allow City, Tri-County Metropolitan Transportation District of Oregon ("TriMet"), the Oregon Department of Transportation ("ODOT"), their employees and/or contractors, access to repair and maintain the SE Martin Luther King Jr. Viaduct ("MLK Viaduct") and the Portland Streetcar Viaduct ("Streetcar Viaduct"), as defined herein, providing that the entrance to the Premises shall not be unreasonably blocked thereby, and further providing that the business of ORHF shall not be interfered with unreasonably.
  - b) City reserves the right, upon written notice, and at ORHF'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.

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- c) ORHF hereby waives any claims for damages or for any injury or inconvenience to or interference with ORHF'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 ORHF from the Premises or any portion thereof.
- e) City reserves the right, upon written notice to ORHF, to enter the Premises for access, maintenance, monitoring, operation, inspection, repair, replacement, construction, reconstruction of utilities and public improvements. In the case of emergencies, notice shall not be required.

**25. Default by ORHF** - The following shall be events of default:

- a) Failure of ORHF to pay any rent or other charge required by this Lease within ten (10) days after it is due.
- b) Failure of ORHF 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) business 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 10-day period, ORHF shall not be in default if ORHF begins correction of the default within the 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 ORHF or if a receiver or trustee is appointed to take charge of any of the assets of ORHF, subtenants or assignees in or on the Premises, and the same is not dismissed within 60 days, or in the event of judicial sale of the personal property in or on the Premises upon judgment against ORHF or any subtenant or assignee thereunder, unless otherwise directed by order of a bankruptcy court. In the event that any provision of this subsection is contrary to any applicable law, this provision shall be of no force or effect.

**26. Remedies On Default by ORHF:**

- a) ORHF shall not be in default unless ORHF fails to perform ORHF's obligations required within ninety (90) days after receiving written notice from City specifying where and how ORHF has failed to perform its obligations. However, if the nature of ORHF's obligations is such that more than ninety (90) days are required for performance then ORHF shall not be in default if ORHF commences performance within such ninety (90) day period and thereafter diligently prosecutes the same to completion. In the event of a default, City may elect to terminate ORHF's right to possession of the Premises by ninety (90) day written notice to ORHF. If ORHF

defaults on the performance of any of the covenants or conditions of this Lease and the default is not remedied within ninety (90) days after written notice of such default has been received by ORHF, or within any additional period City allows in writing for good cause, ORHF will be subject to legal or any other administrative action deemed appropriate by City. 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 ORHF'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 ORHF's default and a subsequent termination of this Lease, 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 ORHF'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, ORHF shall have no claim to the excess.
- c) Following re-entry, City shall have the right to recover from ORHF 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 ORHF'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 tenant, 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 ORHF'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 this 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 this Lease terminates to institute action. City may obtain a decree of specific performance requiring ORHF 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 this Lease.
- e) In the event that ORHF 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 ORHF. 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. ORHF's liability to City for default shall survive termination of this Lease.

27. **Default by City; Remedies** - City shall not be in default unless City fails to perform obligations required of City within a reasonable time. City shall perform its obligations within ninety (90) days after receiving written notice from ORHF specifying where and how City has failed to perform its obligations. However, if the nature of City's obligations is such that more than ninety (90) days are required for performance then City shall not be in default if City commences performance within such ninety (90) day period and thereafter diligently prosecutes the same to completion.

28. **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 City. In the event that City's inability to perform results in the need to suspend or terminate this Lease, ORHF's sole remedy shall be the refund of prepaid rents, if any.

29. **General Provisions:**

- a) **Administrative Fees** - 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) **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.
- c) **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.
- d) **Time is of the Essence** - Time is of the essence in this Lease.
- e) **Non-Waiver** - Acceptance by City of any rent 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.

- f) **Amendments** - This Lease shall not be amended or modified except by agreement in writing signed by the parties.
- g) **Grammatical Changes** - Wheresoever the word City or ORHF is used herein, it relates also to City or ORHF jointly and severally, if there may be more than one ORHF or City herein, and to their respective successors and assigns; and the pronouns used herein shall be construed as the context and the sense and general purport of this Lease may require.
- h) **Exhibits** - Exhibits, which are referred to in this Lease, are attached hereto and by this reference incorporated herein.
- i) **Authority of ORHF** - Each individual executing this Lease on behalf of ORHF is 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.
- j) **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, Portland Bureau of Transportation.
- k) **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 arm's length, and this Lease shall not be construed for or against any party by reason of the authorship of any provision of this Lease.
- l) **Quiet Possession** - Upon ORHF paying the rent reserved hereunder and observing and performing all of the covenants, conditions, and provisions on ORHF's part to be observed and performed hereunder, ORHF shall have quiet possession of the Premises for the entire Term, subject to all sections of this Lease.
- m) **Recordation** - City shall record a Memorandum of Lease with the Multnomah County Deed Records Office.
- n) **Section Headings and Capitalization** - The section headings to the sections of this Lease are not part of this 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.
- o) **Complete Agreement** - There are no oral agreements between City and ORHF 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 ORHF or displayed by City or its agents to ORHF with respect to the subject matter of this Lease, the Premises or any building located on the Premises. There are no representations between City and ORHF or between any real estate broker and ORHF, other than those contained in this Lease, and all reliance with respect to any representations is solely upon representations contained in this Lease.

- p) **Joint Obligation** - If during the Term there is more than one tenant occupying the Premises, then the obligations imposed hereunder shall be joint and several.
- q) **Third Parties** - City and ORHF 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 this Lease.
- r) **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 this Lease and other sections shall remain in full force and effect.
- s) **Observance of Law** - ORHF, at ORHF'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, including, but not limited to those applicable to the construction, use and maintenance of Premises. Furthermore, ORHF is responsible for obtaining all other necessary authorizations required, including rights of access, if necessary. By granting this Lease, 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. ORHF shall correct at ORHF's own expense any failure of compliance created by the fault or use of ORHF or its agents, employees or invitees.
- t) **Americans With Disabilities Compliance:**
- i) ORHF shall comply, at ORHF'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 ORHF as a result of ORHF's use, occupation, or alteration of the Premises.
- ii) Within ten (10) days after receipt, City and ORHF 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, ORHF and ORHF's assignee or subtenant shall agree to comply with the ADA, at their sole expense, and agree to be jointly liable under this Lease for any duty the ADA may impose upon ORHF or ORHF's assignee or subtenant 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 ORHF or ORHF's assignee's or subtenant'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 subtenant shall require alterations to the Premises to comply with the ADA which are inconsistent with City's management interests.
  - u) **Choice of Law and Forum** - This Lease shall be governed by the laws of the State of Oregon. Any litigation arising under this Lease shall occur in the Multnomah County Circuit Court.
- 30. **Termination** - In the event that this Lease is terminated for any reason by City or ORHF, the Surface Parking Lease, attached as **Exhibit D** will automatically terminate and City's liability to ORHF shall be limited to the refund of prepaid rents, if any. In the event termination is after June 30th of any year, ORHF will be responsible for payment of the prorated portion of real property taxes for this Lease as well as the Surface Parking Lease.
- 31. **Surrender Upon Termination:**
  - a) Upon termination of this Lease, whether by expiration of the Term or by ORHF's default, ORHF shall surrender and deliver up possession to City of the Premises and the improvements constructed thereon in a safe and well-maintained condition and free and clear of any liens and encumbrances, or, as mutually agreed upon between City and ORHF, remove the improvements made by ORHF and return the Premises to the physical condition as of the Effective Date. If ORHF does not comply with the provisions of this paragraph, then ORHF agrees to reimburse City for costs incurred to repair or remove the improvements made by ORHF to the Premises.
  - b) Should ORHF fail to vacate the Premises when required, City may elect to take legal action to eject ORHF from the Premises and to collect any damages caused by ORHF's wrongful holding over.
  - c) ORHF's failure to remove property as required by subsection 31 (a) of this Lease shall constitute a failure to vacate if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by City for any purpose, including preparation for a new tenant.
- 32. **Rights of Owners and Permitted Mortgagees:**

- 577481
- a) If an event of ORHF's default described in Section 26 occurs, City shall provide ORHF with notice as set forth in Section 26, and that if such notice is given by City to ORHF, 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 ORHF in this Lease.
  - c) In the event of any default by ORHF under this Lease, each owner and permitted mortgagee (collectively sometimes referred to herein as "**Interested Parties**") shall have the same period as ORHF 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 ORHF. 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 ORHF, each Interested Party, 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 Interested Party shall cure or cause to be cured any then-existing defaults in payment of Rent and meanwhile pay the Rent, and provided further that Interested Party shall forthwith take steps to acquire ORHF'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, Interested Party is actively engaged in steps to acquire ORHF's interest, the time of the Interested Party 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 Interested Parties or any entity or entity formed by the Interested Parties (any of which are referred to herein as "**Entity**", as applicable) to cure any default that occurs as a result of the status of ORHF, such as ORHF's bankruptcy or insolvency, or to discharge any lien, charge, or encumbrance against ORHF's interest in this Lease junior in priority to the lien of the permitted mortgage.
  - f) Interested Parties may notify City of its election to proceed with due diligence to foreclose the permitted mortgage or otherwise to proceed promptly to acquire possession of the Premises; and
  - i) During the period that such permitted mortgagee or Interested Parties or Entity shall be in possession of the Premises and/or during the pendency of any such foreclosure or other proceedings and until the interest of ORHF in this Lease shall terminate, as

the case may be, such Entity will pay or cause to be paid to 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 Premises shall be made to such Entity, or successor to or purchaser of such interest ("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 ORHF's part to be performed to the extent that ORHF 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 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 ORHF'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 ORHF's interest in this Lease and such performance by such Acquirer pursuant to any foreclosure proceeding or other proceeding to acquire this Lease, 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 ORHF'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 Entity takes the steps specified in Section 34(a), (b), and (c), exercise such rights as the Entity may have against ORHF, including the right to take possession of the Premises and exercise ORHF's rights under this Lease, foreclose or otherwise acquire ORHF's interest in this Lease as permitted by law, and reassign, sell, and/or sublet ORHF's interest in this Lease, subject to the terms and provisions of this Section 34 and the limitation in Section 22 that any transfer of this Lease must be in conjunction with and to the transferee in connection with the transfer of the fee interest. 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 Premises, to continue such possession, if the default in respect of which 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 ORHF's interest in this Lease is otherwise extinguishable, the event of ORHF's default in respect of which City gives notice is remedied and possession of the Premises is restored to ORHF, 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 City to forbear as set forth in Section 34(d) 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 ORHF's default, this Lease is terminated, City shall immediately notify ORHF (as set forth in Section 26) 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 City's written notice of termination of this Lease, City shall enter into a new lease of the Premises 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, 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 City all the installments of Rent which ORHF was obligated but failed to pay through the date of such termination; (ii) pay to 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 Lease (had this 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 City in connection with the termination of this Lease and with the execution and delivery of such new lease, less the net amount of all sums received by City from any sub-lessees in occupancy or licensees of any part or parts of the Premises 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 ORHF's part to be performed to the extent that ORHF 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 ORHF hereunder in and to the Premises, including specifically assignment of ORHF's interest in and to all then existing subleases, automatic vesting of ORHF's right, title and interest in and to the improvements and appurtenances in the Premises, 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 Premises pursuant to Section 34 (g), 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 Section 34 (g), shall be vested with the rights (and thereby subject to the requirements) under this Section 34 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.

33. **Holding Over** - If ORHF remains in possession of the Premises or any part thereof after the expiration of the Term 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 ORHF. In the event of hold over beyond June 30th of any year, ORHF shall be responsible for payment of real property taxes for the entire year without proration.

- 34. **No Partnership** - Nothing 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 ORHF as described herein.
- 35. **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, re-zonings, 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 Premises 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.
- 36. **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.

To City:

**CITY OF PORTLAND**  
 Bureau of Transportation  
 Right of Way Acquisition  
 1120 SW Fifth Avenue, Room 800  
 Portland, Oregon 97204

To ORHF:

**OREGON RAIL HERITAGE FOUNDATION**  
 PO Box 42443  
 Portland, OR 97242

IN WITNESS WHEREOF, Oregon Rail Heritage Foundation, an Oregon non-profit corporation, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its member, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OREGON RAIL HERITAGE FOUNDATION, AN OREGON  
 NON-PROFIT CORPORATION

By: \_\_\_\_\_  
 Name and Title:

STATE OF OREGON

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

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of Oregon Rail Heritage Foundation, a non-profit corporation.

\_\_\_\_\_  
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 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.

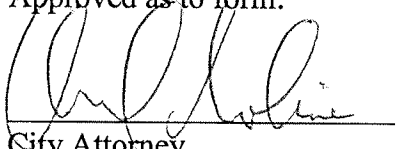
Before me \_\_\_\_\_  
Notary Public for OREGON  
My Commission expires \_\_\_\_\_

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  
Leases\7212-1 ORHF Final 7-20-11

Approved:

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



## EXHIBIT A1

Portland-Milwaukie LRT Project  
 Jack Carlson, Otak, Inc., 7/8/2011  
 Amended:

Lease Area-ORHF Yard

A tract of land in the southwest one-quarter of Section 2, and the southeast one-quarter of Section 3, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon, to wit:

Beginning at a point which bears North, a distance of 621.34 feet, and East, a distance of 239.30 feet from the southeast corner of said Section 3; thence northwesterly along the arc of a 782.67 foot radius nontangent curve to the left (the radius point of which bears S.11°20'28"W.) through a central angle of 06°33'04", a distance of 89.49 feet (chord bears N.81°56'04"W., a distance of 89.44 feet); thence N.52°20'11"W., a distance of 18.84 feet; thence N.87°19'59"W., a distance of 118.70 feet; thence N.27°51'09"W., a distance of 276.48 feet to the south line of Block 47, STEPHENS' ADDITION TO EAST PORTLAND; thence S.88°12'24"E. along said south line, a distance of 0.65 feet to the westerly line of that property described as Parcel 2 in that Quitclaim Deed to the Tri-County Metropolitan Transportation District of Oregon, recorded as Document No. 2010-154971 on December 8, 2010, Multnomah County Official Records; thence tracing said westerly line, to wit: northwesterly along the arc of a 1,412.69 foot radius nontangent curve to the left (the radius point of which bears S.66°31'34"W.) through a central angle of 06°30'47", a distance of 160.59 feet (chord bears N.26°43'50"W., a distance of 160.50 feet) to the point of curve left of a 1,617.28 foot radius curve; thence along the arc of said curve left through a central angle of 01°03'00", a distance of 29.64 feet (chord bears N.30°30'43"W., a distance of 29.64 feet) to the point of curve left of a 1,890.08 foot radius curve; thence along the arc of said curve left through a central angle of 00°54'00", a distance of 29.69 feet (chord bears N.31°29'13"W., a distance of 29.69 feet) to the point of curve left of a 2,272.01 foot radius curve; thence along the arc of said curve left through a central angle of 00°09'24", a distance of 6.21 feet (chord bears N.32°00'55"W., a distance of 6.21 feet); thence leaving said westerly line, N.27°51'09"W., a distance of 13.99 feet; thence N.30°54'19"W., a distance of 117.08 feet to the west line of S.E. 3rd Avenue; thence N.01°47'36"E. along said west line, a distance of 24.79 feet; thence leaving said west line, and running southeasterly along the arc of a 2,013.00 foot nontangent curve to the left (the radius point of which bears N.45°34'15"E.) through a central angle of 01°10'16", a distance of 41.15 feet (chord bears S.45°00'53"E., a distance of 41.15 feet) to the west line of Block 46, STEPHENS' ADDITION TO EAST PORTLAND and the most northerly corner of that property described as Parcel 1 in that Quitclaim Deed to the Tri-County Metropolitan Transportation District of Oregon, recorded as Document No. 2010-154971 on

December 8, 2010, Multnomah County Official Records; thence southeasterly along the easterly line of said Document No. 2010-154971 Parcel 1 property, along the arc of a 2,013.00 foot radius curve to the left, through a central angle of  $01^{\circ}51'22''$ , a distance of 65.21 feet (chord bears  $S.46^{\circ}31'42''E.$ , a distance of 65.21 feet) to the southeast corner of said Document No. 2010-154971 Parcel 1 property, and the south line of said Block 46; thence leaving said easterly line, and running southeasterly along the arc of a 2,013.00 foot radius curve to the left, through a central angle of  $02^{\circ}41'26''$ , a distance of 94.53 feet (chord bears  $S.48^{\circ}48'06''E.$ , a distance of 94.52 feet ) to the north line of Block 47, STEPHENS' ADDITION TO EAST PORTLAND and the northeast corner of said Document No. 2010-154971 Parcel 2 property; thence southeasterly along the northeasterly line of said Document No. 2010-154971 Parcel 2 property, on the arc of a 2,013.00 foot radius curve to the left, through a central angle of  $00^{\circ}45'47''$ , a distance of 26.81 feet (chord bears  $S.50^{\circ}31'42''E.$ , a distance of 26.81 feet); thence continuing along said northeasterly line,  $S.50^{\circ}54'36''E.$ , a distance of 71.71 feet to the east line of said Block 47; thence leaving said northeasterly line,  $S.50^{\circ}07'11''E.$ , a distance of 76.23 feet to the west line of Block 54, STEPHENS' ADDITION TO EAST PORTLAND; thence  $N.01^{\circ}47'36''E.$  along said west line, a distance of 21.12 feet to the southwesterly line of the Southern Pacific Railroad right of way; thence  $S.49^{\circ}49'43''E.$  along said southwesterly line, a distance of 91.64 feet to the northeasterly corner of that property described as Parcel 7 in that Warranty Deed to the State of Oregon, by and through its State Highway Commission, recorded on February 27, 1937 in Deed Book 379, Page 426, Multnomah County Deed Records; thence  $S.14^{\circ}57'38''E.$  along the easterly line of said Parcel 7 property, a distance of 26.61 feet; thence leaving said easterly line,  $S.50^{\circ}24'16''E.$ , a distance of 253.59 feet to the east line of that property described in that Warranty Deed to the State of Oregon, by and through its State Highway Commission, recorded on October 16, 1961 in Deed Book 2085, Page 647, Multnomah County Deed Records; thence  $S.01^{\circ}47'26''W.$  along said east line, a distance of 75.91 feet; thence leaving said east line,  $N.88^{\circ}12'00''W.$ , a distance of 28.67 feet; thence  $S.01^{\circ}48'00''W.$ , a distance of 62.90 feet to the Point of Beginning.

The tract of land to which this description applies contains 2.42 acres, more or less.

Bearings are based on the Oregon Coordinate System of 1983, north zone.

777481

184777

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*John A. Carlson*

OREGON  
JULY 15, 1983  
JOHN A. CARLSON  
2044

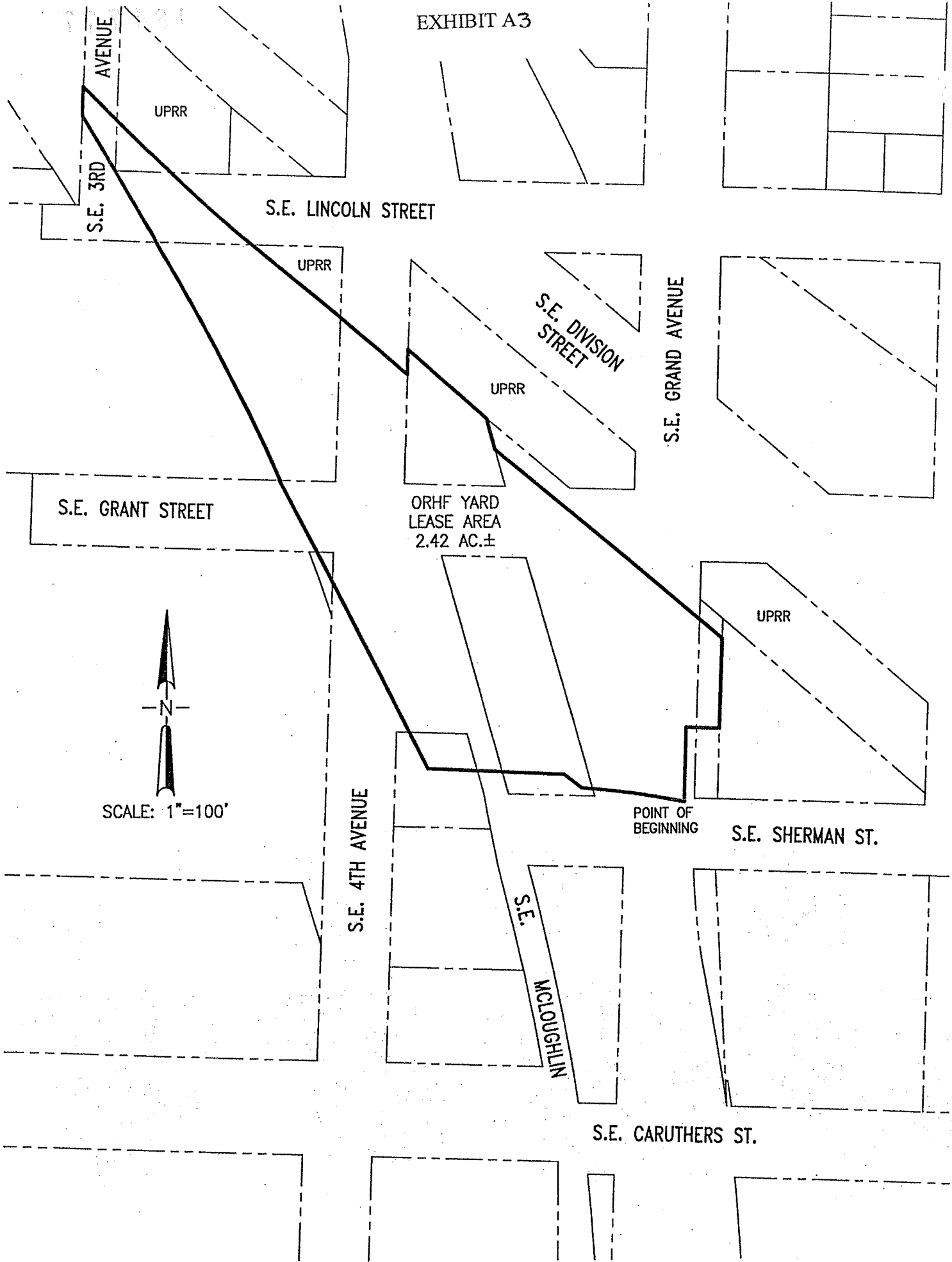
RENEWS 12/31/11

**EXHIBIT A2****Additional  
Legal Description of Premises**

ORHF acknowledges that the description of the Premises does not include the following:

1. That portion of the Premises occupied by the overhead SE Martin Luther King Jr. Viaduct ("**MLK Viaduct**") including the supporting columns and piers of the MLK Viaduct;
2. The airspace above the MLK Viaduct;
3. ORHF shall not be permitted to construct site improvements under the MLK Viaduct, and as a result the description of the Premises does not include the airspace (i) under the MLK Viaduct and (ii) extending (1) downward a distance of eight (8) feet from the underside of the MLK Viaduct, and (2) outward a distance of twenty (20) feet from the edge of the underside of the MLK Viaduct.
4. That portion of the Premises occupied by the overhead Portland Streetcar Viaduct ("**Streetcar Viaduct**") including the supporting columns and piers of the Streetcar Viaduct;
5. The airspace above the Streetcar Viaduct;
6. The airspace under the Streetcar Viaduct extending (i) downward a distance of eight (8) feet from the underside of the Streetcar Viaduct, and (ii) outward a distance of twenty (20) feet from the underside of the Streetcar Viaduct.

EXHIBIT A3



S.E. GRANT STREET

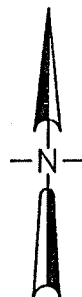
S.E. LINCOLN STREET

S.E. 3RD AVENUE

S.E. GRAND AVENUE

S.E. DIVISION STREET

ORHF YARD LEASE AREA  
2.42 AC.±



SCALE: 1"=100'

S.E. 4TH AVENUE

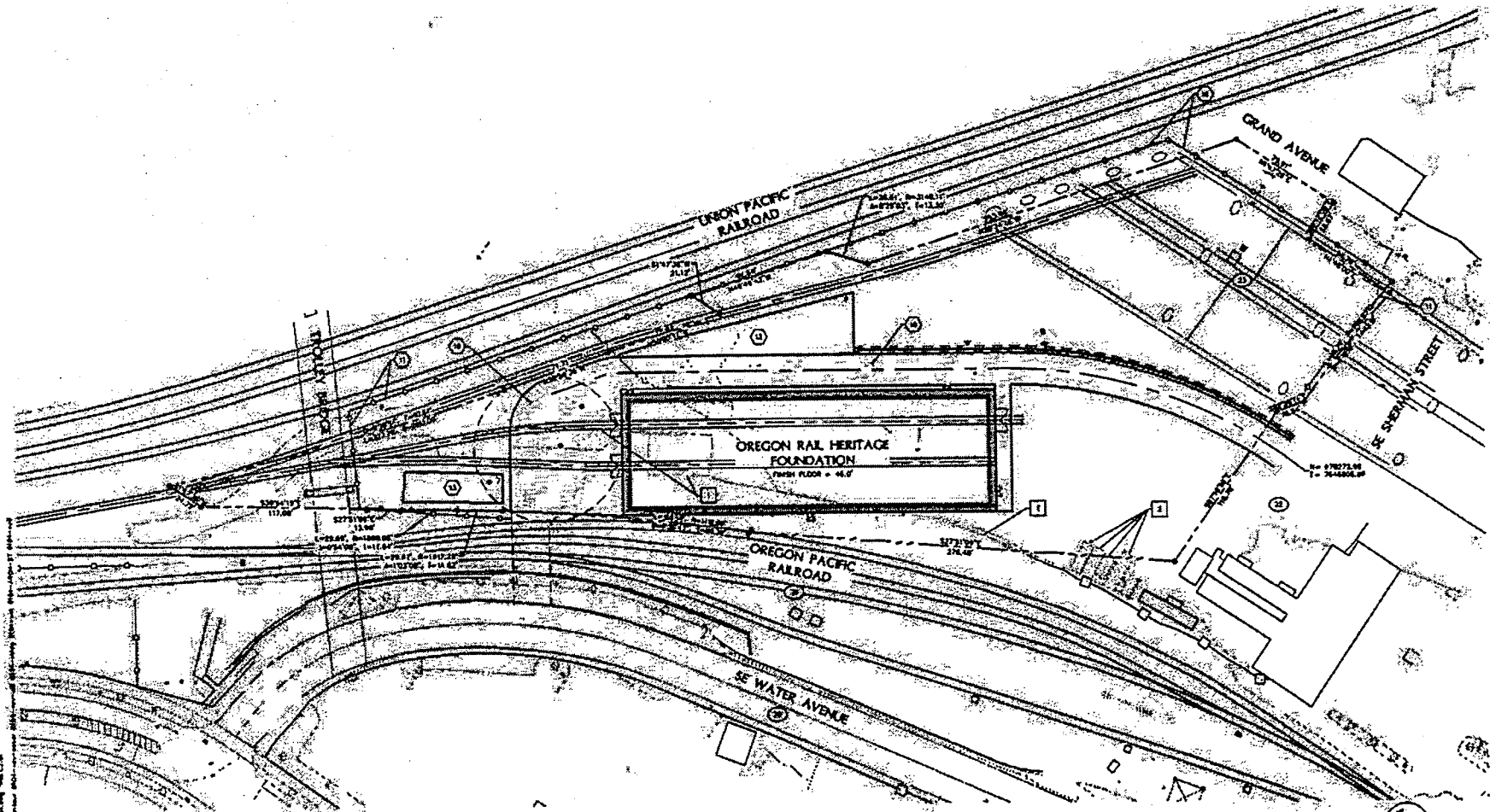
S.E. M'CLOUGHLIN

POINT OF BEGINNING

S.E. SHERMAN ST.

S.E. CARUTHERS ST.





**DEMOLITION NOTES**

- 1 REMOVE EXISTING RETAINING WALL AND GRAVED RAMP
- 2 REMOVE EXISTING ON-SITE SHEDS AND BUILDINGS
- 3 REMOVE EXISTING FENCE

**CONSTRUCTION NOTES**

- 4 ASPHALT CONCRETE PAVEMENT
- 5 CONSTRUCT PERIMETER FENCE, SEE ARCHITECTURAL PLANS
- 6 FLOW-TROUGH STORMWATER PLANTED, SEE SHEET C.01
- 7 INFILTRATION PLANTED, SEE SHEET C.01

**LEGEND**

STANDARD ASPHALT CONCRETE PAVEMENT PER DC148, 1'-9" X 2' CURB

**SHEET NOTES**

- 8 WATER MAINLINE TO BE RECONSTRUCTED BY OTHERS WITH NEW ALIGNMENT
- 9 OREGON PACIFIC RAILROAD TO BE RECONSTRUCTED BY OTHERS
- 10 FUTURE MAY GREEN LINE STATION
- 11 GOOF BAR ON EXISTING CONC. SLAB/BE UNDERST PROJECT TO BE COMPLETE PRIOR TO CONSTRUCTION



Consulting Engineers  
 2000 SW 4th Avenue  
 Suite 200  
 Portland, Oregon 97204  
 Phone: 503-227-8800  
 Fax: 503-227-8801

**PRELIMINARY  
 NOT FOR  
 CONSTRUCTION**

**Hennebery Eddy  
 Architects**  
 Inc.  
 1000 NE Oregon Street  
 Suite 200  
 Portland, Oregon 97232  
 Phone: 503-227-8800  
 Fax: 503-227-8801

ARCHITECTURAL FLOOR PLAN  
 ORIGIN: P&L FACILITY  
 Project No.

Scale: 1" = 30'-0"

DATE: 05/14/2011

SCALE: 1" = 30'-0"

**C2.01**

SITE PLAN

**EXHIBIT C**  
**ORHF – PBOT LEASE**  
(Subsurface Areas)

While the ORHF – PBOT Lease is primarily a surface lease, certain subsurface areas will be occupied by ORHF as a necessary part of the installation of the ORHF facility covered by the Lease. Specifically, all building foundations, utility services, including but not limited power, light, water, sewer, fiber optics, and telephone will need to be below the surface as required by State and Local construction and zoning codes. Additionally, any additional building foundations or structural requirements that must penetrate the ground level will be allowed as subsurface improvements under this Lease. One of the installations on this leased property will consist of a turntable necessary to turn locomotives. That turntable is a round pit dug sufficiently below the surface to allow the turntable height to be parallel with that of the adjacent rail height to allow full 360 degree turning of locomotives. The turntable structure and building structures allowed under this lease by ORHF will by necessity have certain underground utilities that are hereby allowed as part of this Lease Agreement. The structures contemplated by this Lease Agreement include not only buildings, but turntable, signage, railroad track structures and associated installations necessary for this railroad, shop and restoration facility.



CITY OF PORTLAND  
SURFACE LEASE  
FOR PARKING  
WITH OREGON RAIL HERITAGE FOUNDATION  
7212-2

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**SURFACE LEASE  
FOR PARKING  
RWA File No. 7212-2**

This Surface Lease ("**Lease**") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ ("**Effective Date**") by and between the CITY OF PORTLAND, a municipal corporation of the State of Oregon ("**City**") and **OREGON RAIL HERITAGE FOUNDATION**, an Oregon nonprofit corporation ("**ORHF**").

**WITNESSETH**

WHEREAS, City has received a proposal from ORHF for leasing a portion of City's property ("**Premises**"), which includes City controlled, unimproved dedicated public rights-of-way ("**City Right-of-Way**") as described in Section 1 below, for the uses described in Section 7 below.

WHEREAS, the City Council has determined that use of the Premises area for uses by ORHF ("**ORHF's Uses**"), as defined herein, will not materially interfere with any public use of the City Right-of-Way during the term of this Lease;

WHEREAS, the City Council is of the opinion that such lease arrangement will give the best return to City for use of the Premises.

NOWHEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

**AGREED**

In consideration of the leasing of the Premises and of the mutual agreements contained herein, each party expressly covenants and agrees as follows:

1. **Premises** - City agrees to lease to ORHF the Premises containing approximately 34,000 square feet or 0.78 acres, more or less, as more particularly described in **Exhibits A1 and A2 and depicted on Exhibit A3** attached hereto. City shall have no liability to ORHF for any damage or injury caused by the condition of the Premises.
2. **Authority** - This Lease is entered into in accordance with general authorities provided under 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 the prior dedication or grant of the street property for street and sidewalk purposes.

3. **Term** - The term of this Lease shall be sixty (60) years, commencing on \_\_\_\_\_, 2011 ("Commencement Date"), and terminating at 11:59pm on \_\_\_\_\_, 2071 ("Initial Term"), unless sooner terminated under the provisions hereof or extended pursuant to Section 8 below.

4. **Rent:**

- a) ORHF shall pay to the City "Annual Rent" for the Surface Parking Lease in the amount of \$2,500 per year, based upon estimated lease area of approximately 34,000 square feet, to be adjusted over time pursuant to Subsection f) herein. "Initial Rent" to be paid upon execution of this Lease, made payable to City of Portland, Accounting Division, 1120 SW Fifth Avenue, Suite 1250, Portland, Oregon 97204, or such other place as City may designate.
- b) Except for Subsection a) above, ORHF 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 Surface Lease, Annual Rent in an amount equal to the Initial Rent then in effect as provided in Subsection a) hereof.
- c) All Rent to be paid by ORHF 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 ORHF annually for rents due, delayed invoicing does not relieve ORHF of its obligation to pay rent on time.
- d) No payment by ORHF 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.
- e) The Rent provided for herein contemplates the use of the Premises solely for a City-approved use. In the event the City Council shall approve use of the Premises 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.
- f) Commencing at the beginning of the sixth (6<sup>th</sup>) full calendar year following the Effective 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 existing Annual Rent increased by the greater 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 Effective date of this Lease, or (ii) five percent (5%) of the rent paid during the previous five year period. However, in no event shall adjusted rent equal less than Initial Rent. 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 322.8, annual rent for the succeeding five-year period would be determined by multiplying the Initial Rent by 1.075. For purposes of this Subsection, unless otherwise agreed, 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.

- g) All amounts not paid by ORHF 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.
5. **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 ORHF's authorized use thereof during the entire Term, or its extension(s), to be paid by ORHF 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.
6. **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. ORHF shall pay any late charges immediately upon billing by City. The imposition by City and/or the payment by ORHF of any late charges shall not waive or cure ORHF's default hereunder. Failure to impose a late charge on one occasion does not effect a waiver of City's right to impose a late charge on subsequent delinquent payments.
7. **Permitted Use** - ORHF accepts full responsibility for its use of the Premises from and after the Commencement Date during the Term. The use of the Premises shall be exclusively for parking for ingress and egress of visitors to the cultural interpretive center ("**Cultural Interpretive Center**") adjacent to the Premises (collectively, "**ORHF's Uses**"). No other uses are allowed, and 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.

ORHF shall not:

- a) Use the Premises for any other use, without the prior written consent of City;
- b) Permit any activity, occupation, business, or trade that is unlawful to be conducted on the Premises;

- c) Construct or permit to be constructed any improvements on the Premises requiring a building permit without prior written approval of City;
- d) Allow any lien to be filed against the Premises by anyone supplying labor or materials for any improvements by or for the benefit of ORHF;
- e) Sell or consume, or permit the sale or consumption of, illegal drugs of any kind on the Premises;
- f) Store fuel, gasoline, petroleum produces, explosives or other highly flammable materials on the Premises except in full compliance with applicable laws;
- g) Commit waste of the Premises; or
- h) Damage survey monuments, witness corners and other location markers.

**8. Option to Renew:**

- a) ORHF is hereby granted three (3) options of ten (10) years each for a total of twenty (20) years, to renew this Lease commencing on the expiration of the original Term or any renewal term. Said renewals will require written request by ORHF, as provided for below, which will not be unreasonably denied by City. If a renewal request by ORHF is denied, then City shall explain in writing the reasons for said denial.
- b) In order to seek renewal, ORHF shall be in full compliance with the terms and conditions of this Lease at the time an option is exercised. Should ORHF exercise its option to renew the 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 or renewal term, as appropriate. Within thirty (30) days of receipt of ORHF's written notice of election to renew this Lease, City shall contact ORHF and arrange a suitable time and place to negotiate negotiable changes in the terms and conditions of this Lease, including Rent 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 ORHF 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 ORHF's written notice of election to renew this Lease, this option to renew shall expire and this Lease shall terminate as required by the original Lease or any amendments.

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

- a) ORHF 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 owners, users, or occupants of nearby properties. Except as provided for in this Lease, ORHF 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 in violation of applicable law; 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. ORHF shall not install any power machinery on the Premises except with the prior written consent of City. ORHF shall comply, at ORHF'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) (2009 Ed) or as it may be amended, including asbestos.
  - c) ORHF shall, at ORHF's own expense, comply with all laws regulating the use, generation, release, manufacture, refining, production, handling, processing, storage, transportation, or disposal of Hazardous Substances. ORHF 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 ORHF's use or occupancy of the Premises, including, but not limited to, soil and groundwater conditions.
  - d) ORHF 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) ORHF shall, at ORHF'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 ORHF's use or occupancy of the Premises, then ORHF shall, at ORHF's own expense, prepare and implement the required plans and provide all financial assurances in accordance with applicable requirements. ORHF's obligations under this provision shall not prevent ORHF from denying responsibility for the release of Hazardous Substances.
  - g) ORHF 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 ORHF fails to fulfill any duty imposed under this section within a reasonable time, City may do so; and in such case, ORHF shall cooperate with City in order to prepare all documents City deems necessary or appropriate to determine the compliance therewith; and ORHF 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 ORHF's obligations under this section.
  - h) ORHF's obligations and liabilities under this section shall survive the expiration or termination of this Lease.
10. **Fire Prevention** - ORHF shall exercise due diligence and care and caution to prevent and control fire on the Premises.

**11. Acceptance of Premises:**

- a) ORHF 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 ORHF for any damage or injury caused by the condition of the Premises.
- b) ORHF 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 ORHF.

12. **Square Footage** - ORHF's signature to this Lease verifies the approximate square footage of the Premises as of the Effective Date. Neither party shall adjust the rent or any other charges provided by this Lease by reason of any claimed variation in square footage.

**13. ORHF Improvements:**

- a) ORHF shall not make or allow to be made any alterations, additions or improvements to the Premises that would require a building permit, or any part thereof, without first obtaining the written consent of City, which will not be unreasonably withheld.
- b) All work performed by ORHF shall be carried forward expeditiously, shall not interfere with City's work, and shall be completed within a reasonable time. All work shall be completed in a good workmanlike manner.
- c) The expense for any improvements made to the Premises shall be the responsibility of ORHF and shall be owned and maintained thereafter by ORHF.
- d) In the event of Eminent Domain, improvements are subject to Section 18b.
- e) In the event the Lease is terminated for any reason, improvements are subject to Section 31, Surrender Upon Termination.

**14. Maintenance and Repair:**

- a) ORHF shall at all times maintain the Premises and all improvements of any kind that may be erected, installed or made thereon, in a neat condition, free of trash and debris, and in good and substantial condition, order and repair.
- b) ORHF agrees to restore, to the satisfaction of City, any portion of the right-of-way outside the Premises which may be disturbed as a result of construction or maintenance of the Premises. If an immediate hazard in the right-of-way outside the Premises exists due to the construction or existence of ORHF's Uses, then ORHF must make immediate

repairs. If such repairs are not made in a responsive manner, as reasonably determined by City, City may cause such repairs to be made and bill ORHF for such costs. Failure to make payment within ninety (90) days of billing shall constitute a breach of this Lease for which ORHF may be declared in default.

15. **Licenses and Permits** - This Lease shall not exempt ORHF from acquiring all reviews, approvals, licenses and permits required by any existing ordinance or law for any improvements on or maintenance of the Premises.
16. **Signs and Attachments** - ORHF 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 Premises. Any sign or attachment placed upon the Premises by ORHF with City's consent shall be removed at ORHF's expense upon termination of this Lease, and all damage caused by the removal shall be repaired at ORHF's expense. ORHF shall properly maintain any signage it installs pursuant to this section. The cost of such installation, operation and maintenance said signage shall be borne by ORHF.
17. **Liens** - ORHF shall keep the Premises free from all liens, including mechanics liens, arising from any act or omission of ORHF or those claiming under ORHF. ORHF shall pay as due all claims for work done, for services rendered or material furnished to the Premises at ORHF's request. If ORHF 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 ORHF's default. ORHF 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, ORHF shall, within ten (10) business 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 ORHF shall, upon request of City, execute and deliver agreements of subordination consistent with this section.
18. **Subsurface Areas.** This Lease grants no rights whatsoever to the subsurface areas of the Premises.
19. **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 any building thereon, 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, then (i) ORHF shall be entitled to all of the proceeds of the taking of (1) the improvements ORHF made to the Premises, and (2) the value of this Lease, and (ii) City shall be entitled to all of the proceeds of the taking of the remaining real property interests; provided ORHF shall have no claim against City as a result of the taking. If the Premises remaining after the taking, if any, are sufficient for practical operation of ORHF's business, ORHF 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. If the Premises remaining are not sufficient for practical operation of ORHF's business, this Lease shall terminate as of the date possession of the Premises is taken.

## 20. Indemnification:

- a) ORHF shall indemnify and hold harmless City and 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: (1) the use, occupancy, management, or control of the Premises; (2) any failure of ORHF to comply with the terms of this Lease or any law or ordinance; and (3) the acts or omission of ORHF, its agents, officers, directors, employees, or invitees; provided, however that ORHF shall not be liable for claims caused by the sole negligence of City, its officers, agents or employees. ORHF shall, at its own cost and expense, defend any and all claims, demands, actions or suits which may be brought against ORHF, City and/or City's officers, agents or employees, either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments, including attorney fees and costs, that may be recovered against ORHF, City or City's officers, agents, and employees, in any such action or actions in which they may be party defendants.
- b) ORHF shall give City prompt written notice in case of casualty or accident on the Premises. ORHF, 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 ORHF waives all claims in respect thereof against City.
- c) ORHF shall release and hold harmless City and its officers, agents, and employees from and shall assume all risks of damage to the Premises constructed or maintained by ORHF 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. ORHF 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, ORHF's Uses, generation, release, manufacture, refining, handling, processing, storage, transportation,

or disposal of Hazardous Substances as defined in by ORS 465.200(16) (2009 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.

## 21. Liability Insurance:

- a) ORHF shall maintain commercial general liability and property damage insurance, including automobile liability, that protects ORHF, City and City's 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 ORHF'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 ORHF against the claims of City on account of the obligations assumed by ORHF under this Lease and shall protect City and ORHF 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. 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 City. If the insurance is cancelled or terminated prior to termination of this Lease, ORHF shall provide a new policy with the same terms. ORHF agrees to maintain continuous, uninterrupted coverage for the duration of this Lease. The insurance shall include coverage for any damages or injuries arising out the use of automobiles or other motor vehicles by ORHF.
- b) ORHF shall maintain on file with 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.

## 22. Assignment and Subletting:

- a) ORHF shall not assign or mortgage this Lease or any interest herein and 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 tenant, or permit any other person (the agents, employees and invitees of ORHF excepted) to occupy or use

the Premises or any portion thereof, without first obtaining the written consent of City, which City will not unreasonably withheld. 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 ORHF from liability for the continued performance of the terms and provisions on the part of ORHF to be kept and performed, unless City specifically and in writing releases ORHF from liability.
- c) Any assignment, subletting, 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 ORHF, 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 to a "non-profit" organization as defined by the Internal Revenue Code, Section 501(c)(3), provided the Rent paid by the assignee or subtenant is not less than the Rent required by this Lease and the proposed tenant is compatible with City's normal standards for the Premises. If ORHF proposes a subletting, assignment, transfer, occupation or use to a "for-profit" company, organization, or other entity, City shall terminate this Lease and enter into a new Lease with renegotiated terms and conditions with the proposed subtenant 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 ORHF as a result of such transaction shall be paid to City promptly following its receipt by ORHF. ORHF shall pay any costs incurred by City in connection with a request for assignment, subletting, transfer, occupation or use, including reasonable attorneys' fees.

23. **Assignability** - The covenants and conditions herein contained, subject to the sections as to assignment, apply to and bind the successors and assigns of the parties.

24. **Sale by City** - In the event of any sale of the Premises by City, City shall give ORHF ninety (90) days notice prior to the scheduled closing date. 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.

25. **Entry by Agencies:**

- a) City reserves, and shall at any and all times have, upon reasonable prior notice to ORHF, the right to enter the Premises (i) to inspect the same or the public rights-of-way under the Premises, to post notices of non-responsibility, to repair the Premises or the public

rights-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, and (ii) to allow City, Tri-County Metropolitan District of Oregon ("TriMet"), the Oregon Department of Transportation ("ODOT") and/or their employees and/or contractors, access to repair and maintain the SE Martin Luther King Jr. Viaduct ("MLK Viaduct") and the Portland Streetcar Viaduct ("Streetcar Viaduct"), as defined herein, providing that the entrance to the Premises shall not be unreasonably blocked thereby, and further providing that the business of ORHF shall not be interfered with unreasonably.

- b) City reserves the right, upon written notice, and at ORHF'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) ORHF hereby waives any claims for damages or for any injury or inconvenience to or interference with ORHF'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 ORHF from the Premises or any portion thereof.
- e) City reserves the right, upon written notice to ORHF, to enter the Premises for access, maintenance, monitoring, operation, inspection, repair, replacement, construction, reconstruction of utilities and public improvements. In the case of emergencies, notice shall not be required.
- f) Right is hereby reserved for TriMet to use the eastern most area of the Premises between SE Caruthers Street and SE Sherman Street for vehicular access to TriMet's substation for maintenance, or other substation activities.

**26. Default by ORHF** - The following shall be events of default:

- a) Failure of ORHF to pay any rent or other charge required by this Lease within ten (10) days after it is due.
- b) Failure of ORHF 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) business 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 10-day period, ORHF shall not be in default if ORHF begins correction of the default within the 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 ORHF or if a receiver or trustee is appointed to take charge of any of the assets of ORHF, subtenants or assignees in or on the Premises, and

the same is not dismissed within 60 days, or in the event of judicial sale of the personal property in or on the Premises upon judgment against ORHF or any subtenant or assignee thereunder, unless otherwise directed by order of a bankruptcy court. In the event that any provision of this subsection is contrary to any applicable law, this provision shall be of no force or effect.

**27. Remedies On Default by ORHF:**

- a) In the event of a default, City may elect to terminate ORHF's right to possession of the Premises by thirty (30) day written notice to ORHF. If ORHF defaults on the performance of any of the covenants or conditions of this Lease and the default is not remedied within 30 days after written notice of such default has been received by ORHF, or within any additional period City allows in writing for good cause, ORHF will be subject to legal or any other administrative action deemed appropriate by City. 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 ORHF'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 ORHF's default and a subsequent termination of this Lease, 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 ORHF'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, ORHF shall have no claim to the excess.
- c) Following re-entry, City shall have the right to recover from ORHF 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 ORHF'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 tenant, 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 ORHF'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 this 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 this Lease terminates to institute action. City may obtain a decree of specific performance requiring ORHF 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 this Lease.

- e) In the event that ORHF 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 ORHF. 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. ORHF's liability to City for default shall survive termination of this Lease.
28. **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 ORHF 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 30-day period and thereafter diligently prosecutes the same to completion.
29. **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 City. In the event that City's inability to perform results in the need to suspend or terminate this Lease, ORHF's sole remedy shall be the refund of prepaid rents, if any.
30. **General Provisions:**
- a) **Administrative Fees** - 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) **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.

- c) **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.
- d) **Time is of the Essence** - Time is of the essence in this Lease.
- e) **Non-Waiver** - Acceptance by City of any rent 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.
- f) **Amendments** - This Lease shall not be amended or modified except by agreement in writing signed by the parties.
- g) **Grammatical Changes** - Wheresoever the word City or ORHF is used herein, it relates also to City or ORHF jointly and severally, if there may be more than one ORHF or City herein, and to their respective successors and assigns; and the pronouns used herein shall be construed as the context and the sense and general purport of this Lease may require.
- h) **Exhibits** - Exhibits, which are referred to in this Lease, are attached hereto and by this reference incorporated herein.
- i) **Authority of ORHF** - Each individual executing this Lease on behalf of ORHF is 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.
- j) **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, Portland Bureau of Transportation.
- k) **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 arm's length, and this Lease shall not be construed for or against any party by reason of the authorship of any provision of this Lease.
- l) **Quiet Possession** - Upon ORHF paying the rent reserved hereunder and observing and performing all of the covenants, conditions, and provisions on ORHF's part to be observed and performed hereunder, ORHF shall have quiet possession of the Premises for the entire Term, subject to all sections of this Lease.
- m) **Recordation** - City shall record a Memorandum of Lease with the Multnomah County Deed Records Office.

- n) **Section Headings and Capitalization** - The section headings to the sections of this Lease are not part of this 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.
- o) **Complete Agreement** - There are no oral agreements between City and ORHF 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 ORHF or displayed by City or its agents to ORHF with respect to the subject matter of this Lease, the Premises or any building located on the Premises. There are no representations between City and ORHF or between any real estate broker and ORHF, other than those contained in this Lease, and all reliance with respect to any representations is solely upon representations contained in this Lease.
- p) **Joint Obligation** - If during the Term there is more than one tenant occupying the Premises, then the obligations imposed hereunder shall be joint and several.
- q) **Third Parties** - City and ORHF 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 this Lease.
- r) **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 this Lease and other sections shall remain in full force and effect.
- s) **Observance of Law** - ORHF, at ORHF'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, including, but not limited to those applicable to the construction, use and maintenance of Premises. Furthermore, ORHF is responsible for obtaining all other necessary authorizations required, including rights of access, if necessary. By granting this Lease, 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. ORHF shall correct at ORHF's own expense any failure of compliance created by the fault or use of ORHF or its agents, employees or invitees.
- t) **Americans With Disabilities Compliance:**
- i) ORHF shall comply, at ORHF'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 ORHF as a result of ORHF's use, occupation, or alteration of the Premises.



ii) Within ten (10) days after receipt, City and ORHF 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, ORHF and ORHF's assignee or subtenant shall agree to comply with the ADA, at their sole expense, and agree to be jointly liable under this Lease for any duty the ADA may impose upon ORHF or ORHF's assignee or subtenant 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 ORHF or ORHF's assignee's or subtenant'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 subtenant shall require alterations to the Premises to comply with the ADA which are inconsistent with City's management interests.

u) **Choice of Law and Forum** - This Lease shall be governed by the laws of the State of Oregon. Any litigation arising under this Lease shall occur in the Multnomah County Circuit Court.

31. **Termination** - In the event that the Surface Lease with ORHF attached as **Exhibit B** is terminated for any reason, this Surface Parking Lease will automatically terminate. In the event that this Lease is terminated for any reason by City, City's liability to ORHF shall be limited to the refund of prepaid rents, if any. In the event termination is after June 30th of any year, ORHF will be responsible for payment of real property taxes for the entire year without proration.

32. **Surrender Upon Termination:**

a) Upon termination of this Lease, whether by expiration of the Term or by ORHF's default, ORHF shall surrender and deliver up possession to City of the Premises and the improvements constructed thereon in a safe and well-maintained condition and free and clear of any liens and encumbrances, or, at the option of City, remove the improvements made by ORHF and return the Premises to the physical condition as of the Effective Date. If ORHF does not comply with the provisions of this paragraph, then ORHF agrees to reimburse City for costs incurred to repair or remove the improvements made by ORHF to the Premises.

b) Should ORHF fail to vacate the Premises when required, City may elect to take legal action to eject ORHF from the Premises and to collect any damages caused by ORHF's wrongful holding over.

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- c) ORHF's failure to remove property as required by subsection 32 (a) of this Lease shall constitute a failure to vacate if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by City for any purpose, including preparation for a new tenant.

**33. Rights of Owners and Permitted Mortgagees:**

- a) If an event of ORHF's default described in Section 26 occurs, City shall provide ORHF with notice as set forth in Section 26, and that if such notice is given by City to ORHF, 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 ORHF in this Lease.
  - c) In the event of any default by ORHF under this Lease, each owner and permitted mortgagee (collectively sometimes referred to herein as "Interested Parties") shall have the same period as ORHF 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 ORHF. 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 ORHF, each Interested Party, 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 Interested Party shall cure or cause to be cured any then-existing defaults in payment of Rent and meanwhile pay the Rent, and provided further that Interested Party shall forthwith take steps to acquire ORHF'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, Interested Party is actively engaged in steps to acquire ORHF's interest, the time of the Interested Party 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.

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- e) Nothing contained in this Lease requires Interested Parties or any entity or entity formed by the Interested Parties (any of which are referred to herein as "Entity", as applicable) to cure any default that occurs as a result of the status of ORHF, such as ORHF's bankruptcy or insolvency, or to discharge any lien, charge, or encumbrance against ORHF's interest in this Lease junior in priority to the lien of the permitted mortgage.
  - f) Interested Parties may notify City of its election to proceed with due diligence to foreclose the permitted mortgage or otherwise to proceed promptly to acquire possession of the Premises; and
    - i) During the period that such permitted mortgagee or Interested Parties or Entity shall be in possession of the Premises and/or during the pendency of any such foreclosure or other proceedings and until the interest of ORHF in this Lease shall terminate, as the case may be, such Entity will pay or cause to be paid to 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 Premises shall be made to such Entity, or successor to or purchaser of such interest ("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 ORHF's part to be performed to the extent that ORHF 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 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 ORHF'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 ORHF's interest in this Lease and such performance by such Acquirer pursuant to any foreclosure proceeding or other proceeding to acquire this Lease, 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 ORHF'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 Entity takes the steps specified in Section 34(a), (b), and (c), exercise such rights as the Entity may have against ORHF, including the right to take possession of the Premises and exercise ORHF's rights under this Lease, foreclose or otherwise acquire ORHF's interest in this Lease as permitted by law, and reassign, sell, and/or sublet ORHF's interest in this Lease, subject to the terms and provisions of this Section 34 and the limitation in Section 22 that any transfer of this Lease must be in conjunction with and to the transferee in connection with the transfer of the fee interest. 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 Premises, to continue such possession, if the default in respect of which 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 ORHF's interest in this Lease is

otherwise extinguishable, the event of ORHF's default in respect of which City gives notice is remedied and possession of the Premises is restored to ORHF, 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 City to forbear as set forth in Section 33(d) 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 ORHF's default, this Lease is terminated, City shall immediately notify ORHF (as set forth in Section 26) 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 City's written notice of termination of this Lease, City shall enter into a new lease of the Premises 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, 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 City all the installments of Rent which ORHF was obligated but failed to pay through the date of such termination; (ii) pay to 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 Lease (had this 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 City in connection with the termination of this Lease and with the execution and delivery of such new lease, less the net amount of all sums received by City from any sub-lessees in occupancy or licensees of any part or parts of the Premises 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 ORHF's part to be performed to the extent that ORHF 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 ORHF hereunder in and to the Premises, including specifically assignment of ORHF's interest in and to all then existing subleases, automatic vesting of ORHF's right, title and interest in and to the improvements and appurtenances in the Premises, 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 Premises pursuant to Section 33 (g), 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 Section 33 (g), shall be vested with the rights (and thereby subject to the requirements) under this Section 33 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.
35. **Holding Over** - If ORHF remains in possession of the Premises or any part thereof after the expiration of the Term 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 ORHF. In the event of hold over beyond June 30th of any year, ORHF shall be responsible for payment of real property taxes for the entire year without proration.
36. **No Partnership** - Nothing 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 ORHF as described herein.
36. **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, re-zonings, 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 Premises 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.
37. **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.

To City:  
**CITY OF PORTLAND**  
 Bureau of Transportation  
 Right of Way Acquisition  
 1120 SW Fifth Avenue, Room 800  
 Portland, Oregon 97204

To ORHF:  
**OREGON RAIL HERITAGE FOUNDATION**  
 PO Box 42443  
 Portland, Oregon 97242

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IN WITNESS WHEREOF, Oregon Rail Heritage Foundation, an Oregon non-profit corporation, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its member, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Name and Title:

STATE OF OREGON

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

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of Oregon Rail Heritage Foundation, an Oregon non-profit corporation.

\_\_\_\_\_  
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 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 \_\_\_\_\_

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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:

Approved:

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

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

Lease\7212-2-ORHF-Parking PBOT 7-8-11

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EXHIBIT A1

Portland-Milwaukie LRT Project  
Jack Carlson, Otak, Inc., 7/8/2011  
Amended: 7/13/2011

Lease Area-ORHF Parking Lot

A tract of land in the southwest one-quarter of Section 2, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon, to wit:

Beginning at a point on the north line of Block 52, STEPHENS' ADDITION TO EAST PORTLAND, which point bears S.88°12'34"E., a distance of 160.14 feet from the northwest corner of said Block 52; thence S.88°12'34"E. along the north line and north line extended of said Block 52, a distance of 90.02 feet; thence S.00°28'05"W., a distance of 200.05 feet to the south line extended of said Block 52; thence N.88°12'34"W. along the south line extended and south line of said Block 52, a distance of 90.02 feet; thence N.00°28'05"E., a distance of 200.05 feet to the Point of Beginning.

The tract of land to which this description applies contains 0.41 acres, more or less.

Bearings are based on the Oregon Coordinate System of 1983, north zone.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*John A. Carlson*

OREGON  
JULY 15, 1983  
JOHN A. CARLSON  
2044

RENEWS 12/31/11



**EXHIBIT A2****Legal Description of Premises**

ORHF acknowledges that the description of the Premises does not include the following:

1. That portion of the Premises occupied by the overhead ODOT viaduct ("**ODOT Structure**") including the supporting columns and piers of the ODOT Structure;
2. The airspace above the ODOT Structure;
3. ORHF shall not be permitted to construct site improvements under the ODOT Structure, and as a result the description of the Premises does not include the airspace (i) under the ODOT Structure and (ii) extending (1) downward a distance of eight (8) feet from the underside of the ODOT Structure, and (2) outward a distance of twenty (20) feet from the edge of the underside of the ODOT Structure.

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EXHIBIT A3

S.E. 3RD AVENUE

S.E. LINCOLN STREET

S.E. DIVISION STREET

S.E. GRAND AVENUE

S.E. GRANT STREET



SCALE: 1"=100'

S.E. 4TH AVENUE

POINT OF BEGINNING

S.E. SHERMAN ST.

S.E.

MCCLOUGHLIN

ORHF  
PARKING  
LEASE AREA  
0.41 AC.±

S.E. CARUTHERS ST.

**PORTLAND ORHF (Oregon Rail Heritage Foundation) DEVELOPMENT PROJECT****MEMORANDUM OF UNDERSTANDING****Transfer of Review and Permit and Inspection Authority**

In order to effectively permit construction of those portions of the Portland ORHF Project (Project) within the City of Portland limits, the Bureau of Development Services (BDS) and the Portland Bureau of Transportation (PBOT) enter into this agreement defining a project-specific permitting process.

Under Title 17, PBOT acting for the City Engineer, is responsible for reviewing, permitting, and inspecting development in the public right-of-way. Under Titles 24, 33 and the Oregon Structural Specialty Code, BDS is responsible for reviewing, permitting, and inspecting development on private property. However, it has been the practice of BDS and PBOT to develop a unique and specialized process for permitting of individual unique projects where private development is proposed to be constructed within the right of way within Portland. It has proven to be most effective for each bureau to transfer certain permit authorities when it establishes the requirements for required structural and fire/life safety requirements, reduces duplicative plan review and inspections, reduces the potential for confusion and provides a more streamlined permitting process.

The attached Exhibit 3A shows the specific lease location proposed for development.

The philosophy governing the transfer of authority is to assign permit responsibilities based on the type of facility, proposed for Lease Area 2. This memorandum documents verbal agreements that have been reached between BDS and PBOT staff.

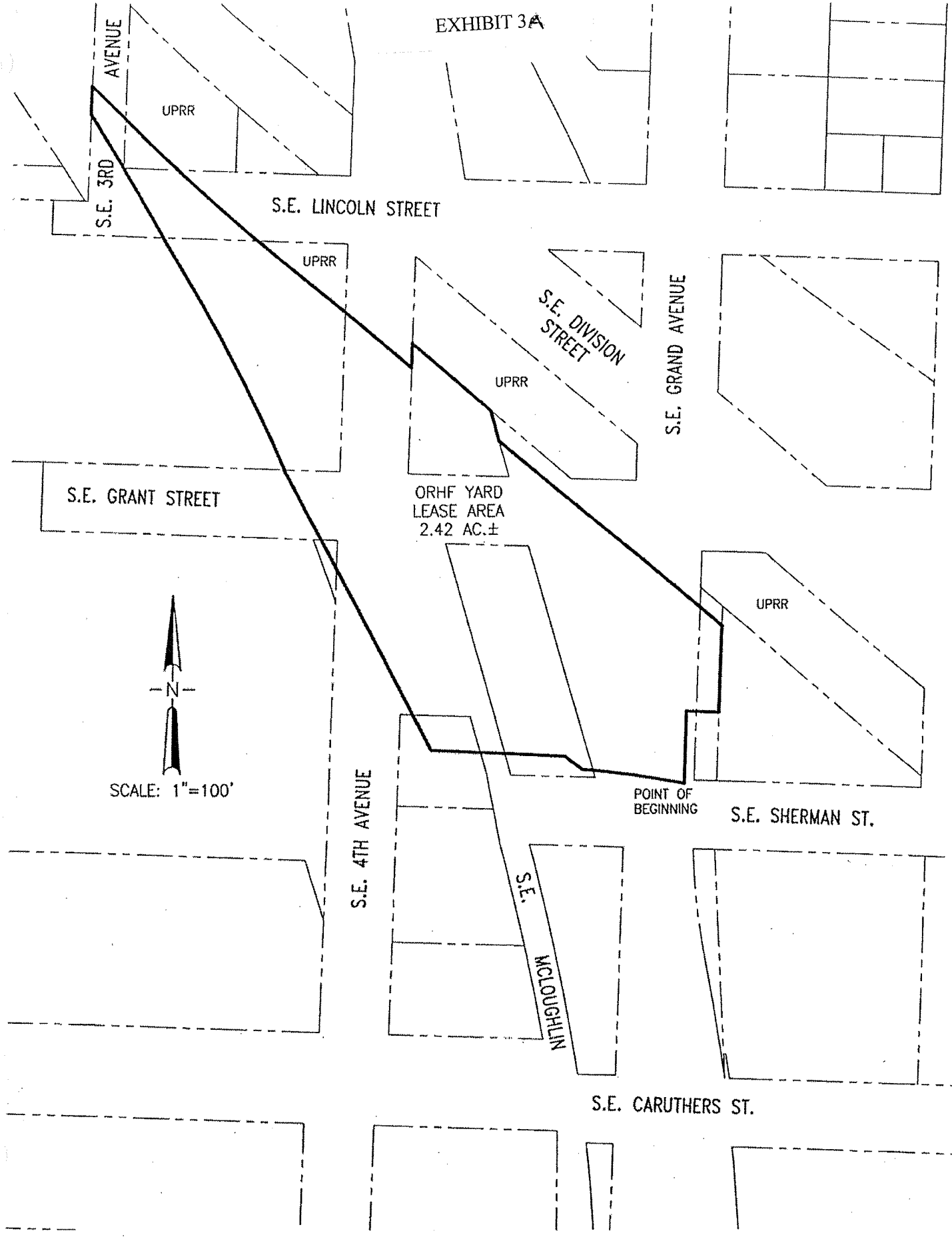
The attached Exhibit 3B outlines specific permit authority for each bureau for this Project.

This agreement is valid for the Portland ORHF Project only and is effective immediately upon its full execution.

Paul Scarlett, Director  
Bureau of Development Services  
Date:

Christine Leon, Principal Engineer  
Bureau of Transportation  
Date:

EXHIBIT 3A



S.E. GRANT STREET

S.E. LINCOLN STREET

S.E. 3RD AVENUE

S.E. GRAND AVENUE

S.E. DIVISION STREET

SCALE: 1"=100'

ORHF YARD LEASE AREA  
2.42 AC.±

S.E. 4TH AVENUE

S.E. SHERMAN ST.

S.E. MCLOUGHLIN

S.E. CARUTHERS ST.

POINT OF BEGINNING

N

**EXHIBIT 3B****PORTLAND-ORHF PROJECT****Permit Authority****Bureau of Development Services (BDS)**

BDS responsibilities will include permitting, review, and inspection for the following Project elements, within Lease Area 2 as defined in Exhibit 3A, unless noted otherwise:

- New buildings intended to be occupied/habitable including Restoration facility, Interpretive Center, Support Building
- Retaining walls at turntable
- Plumbing, electrical and mechanical trade permits for the proposed facilities.
- Demolition, alteration and addition to existing development and buildings.
- New vehicular service/Fire access and special paving areas.
- Excavation, fill and grading interior to Leased Area 2.
- Provide project review opportunity for compliance with regulations and requirements of BES (Sanitary, Storm, Pollution Prevention), Fire, Water (Supply & Water Quality Backflow), PBOT (Development Review), and Parks Bureau.

**Portland Bureau of Transportation (PBOT)**

PBOT responsibilities will include permitting, review and inspection for the following Project elements, unless noted otherwise:

- Grading, retaining walls and associated flatwork within r-o-w as vehicle routes cross track ways.
- Curb cut, driveway apron, vehicle access across any rail line.
- Signals, street lights, signs, and similar pole supported systems.
- Review and Permitting of any improvements proposed in existing improved r-o-w – connection to existing water, sewer, and other utilities.
- Rail Permits, as applicable, including facilitating with ODOT Rail
- Encroachments in the functional street ROW Permits, as applicable