

ORDINANCE NO. 1383

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LEASE AGREEMENT WITH ZIMMER VENTURES, LLC, FOR THE RENTAL OF PROPERTY FOR CANBY AREA TRANSIT OFFICES AND PARKING; AND DECLARING AN EMERGENCY.

WHEREAS, Canby Area Transit has been desiring and planning to move their office space to a location closer to their fleet facility, reducing dead-head costs, and that also allows for greater potential parking options for their fleet; and

WHEREAS, the City of Canby desires to secure a cost effective lease with parking options and potential future parking expansion;

WHEREAS, Zimmer Ventures, LLC has office space available across the street from the Fred Meyer transit hub, is willing to upgrade the structure significantly at no upfront cost to the City, and is willing to lease said space to the City at a reasonable rental for a five year term; and

WHEREAS, the Canby City Charter requires an ordinance be approved for any contract exceeding \$50,000; now therefore

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, the attached Lease Agreement with Zimmer Ventures, LLC. A copy of the Lease Agreement is attached hereto as Exhibit "A."

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, that the lease be completed as soon as possible in order to immediately effectuate many necessary agreed upon structural changes at the site and ensure minimal disruptions of necessary transit services to users of the service and CAT employees alike, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment.

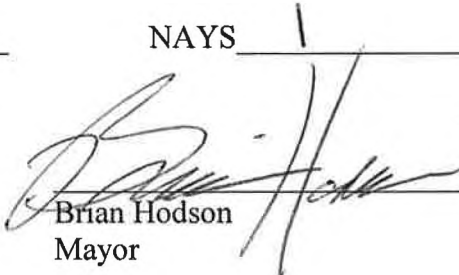
SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, July 17, 2013, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, August 7, 2013, commencing at the hour of 7:30 PM at the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.


Kimberly Scheafer, MMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 7th day of August 2013, by the following vote:


YEAS 3

NAYS 1



Brian Hodson
Mayor

ATTEST:



Kimberly Scheafer, MMC
City Recorder

LEASE AGREEMENT

THIS LEASE is entered into this 14th day of AUGUST, 2013, between **ZIMMER VENTURES, LLC** ("Landlord"), and **CITY OF CANBY, an Oregon municipal corporation, acting on behalf of CANBY AREA TRANSIT** ("Tenant"). Landlord owns a building and other improvements on that certain property known as 195 S. Hazel Dell Way, Canby, Clackamas County, Oregon known as **THE SEQUOIA COMMERCE CENTER** (the "Property"). Landlord hereby leases to Tenant and Tenant hereby leases from Landlord certain space on the Property consisting of 1728 rentable square feet, as outlined on the attached Exhibit A (the "Premises") on the terms and conditions set forth in this Lease. The Property, as it may be expanded or otherwise reconfigured from time to time is sometimes referred to herein as "**Suite C of Lot 1 of the Zimmer Commerce Center**".

1. TERM. The term of this Lease (the "Term") shall be for a period of Sixty (60) months, commencing on August 1, 2013, or Tenant's first day open for business to the public ("The Anticipated Commencement Date"), whichever shall first occur. The Term shall expire Sixty (60) months after the Commencement Date. Promptly following the Commencement Date, Landlord shall prepare, and the parties shall execute, an addendum to this Lease confirming the Commencement Date and Expiration Date of the Term.

2. RENT. Beginning on the Commencement Date and continuing during the entire Term, Tenant shall pay to Landlord as rent the "Base Rent" as defined in this section.

(a) Base Rent. The minimum monthly rent during the Term ("Base Rent") shall be:

- | | | |
|-------|----------------------|--|
| (i) | Months 1 through 12 | \$2880 per month. |
| (ii) | Months 13 through 24 | \$2966 per month (previous 12 months base rent plus \$86). |
| (iii) | Months 25 through 36 | \$3055 per month (previous 12 months base rent plus \$89). |
| (iv) | Months 37 through 48 | \$3147 per month (previous 12 months base rent plus \$92). |
| (v) | Months 49 through 60 | \$3241 per month (previous 12 months base rent plus \$94). |

(b) Adjustments in Base Rent: The Base Rents referenced in paragraph "2 (a)(i)" (Months 1 through 12) above are based on an assumption that Landlord's costs, as outlined in paragraph 7-A(a) (LANDLORD IMPROVEMENTS AND ALTERATIONS) shall total \$130,000. To the degree that Landlord's cost are more than or less than

\$130,000, the monthly Base Rent shall be adjusted up or down respectively based on the following: The numerical amount by which the rent increases or decreases shall be amortized over a 60 month period at six percent (6%) per annum and that amount shall be added to (or deducted from) the Base Rent as illustrated in the following example. If, for example, the total "landlord improvements and alternations" shall be \$132,000 instead of \$130,000, the increase of \$2,000, when amortized at 6% per month over the five year period shall add \$38.67 per month to the Base Rent for months 1 through 12 so that the adjusted Base Rent would be \$2,918.67 per month. Future increases would then be increased accordingly as well at the rate of 3% per annum. Thus, instead of \$86 being the amount of increase for months 13 through 24, the new Base Rent increase would be \$87.56 with a similar percent increase in the following years.

(c) No Partnership Created. Landlord is not by virtue of this Section 2 a partner or joint venture with Tenant in connection with the business carried on under this Lease, and shall have no obligation with respect to Tenant's debts or other liabilities.

(d) Additional Rent. All references to "Rent" or "Rental" in this Lease shall mean Base Rent, and all other payments required of Tenant under this Lease unless otherwise expressly specified. All payments of Rent shall be made to Landlord without offset, abatement, or deduction.

3. SECURITY DEPOSIT (FIRST AND LAST MONTHS RENT). Upon execution of this Lease, Tenant shall pay to Landlord the sum of \$6121 which is equal to the first month's Base Rent of \$2880 and the last month's Base Rent of \$3241, as security for the full and faithful performance by Tenant of all of the covenants and terms of this Lease required to be performed by Tenant. Such security deposit shall be returned to Tenant after the expiration of this Lease, provided Tenant has fully and faithfully carried out all of Tenant's obligation hereunder, including the payment of all amounts due to Landlord hereunder and the surrender of the Premises to Landlord in the condition required in this Lease. However, Landlord, at its option, may apply such sum on account of the payment of the last month's Base Rent or other unpaid obligation of Tenant's. Such sum may be commingled with other funds of Landlord and shall not bear interest. In the event of a sale of the property on which the Premises are located, subject to this Lease, Landlord shall have the right to transfer the lease consideration to the purchaser to be held under the terms of this Lease, and Landlord shall thereupon be released from all liability for the return of the lease consideration. Tenant agrees to look solely to the new landlord for the return of the lease consideration.

4. TAXES; INSURANCE; AND OPERATING EXPENSES.

(a) Tenant's Taxes. Tenant shall be responsible for and shall pay before delinquent all taxes assessed during the Term against any leasehold or personal property of any kind owned by or placed upon or about the Premises by Tenant.

(b) Tenant's Share of Property Taxes. In addition to Base Rent, Tenant shall pay during each calendar year or part thereof during the Term, Tenant's Proportionate Share (as provided in Section 4(h)) of the total real property taxes and assessments levied, assessed or imposed during the Term upon the Property or the

use, occupancy or operations of the Property ("Taxes") for each such calendar year. PROVIDED, HOWEVER, IN THE EVENT THE PROPERTY TAXES ARE REDUCED BECAUSE OF TENANT'S NOT-FOR-PROFIT STATUS, TENANT WILL BE ENTITLED TO ALL CREDITS APPLICABLE TO SUITE C OF LOT 1 OF THE ZIMMER COMMERCE CENTER. **It is the assumption of both parties that Tenant will not have to pay these taxes.** Otherwise, in the interim, commencing with the payment due August 1, 2013, Tenant shall pay to Landlord an amount each month, which is equal to one-twelfth of Landlord's reasonable estimate of Tenant's share of the Taxes. Landlord shall notify Tenant of the estimated monthly amount to be paid, and of any changes in the estimated amount, and Tenant shall pay Landlord such estimated amount at the same time as and together with Tenant's Base Rent. When the actual Taxes are determined each year, Landlord shall furnish to Tenant a statement showing in reasonable detail the computation of Tenant's share of the Taxes, and the charge or credit to Tenant for any difference between the actual amount and the estimated amounts previously paid by Tenant. Any deficiency shall be reimbursed by Tenant within ten (10) days after Landlord gives Tenant notice thereof and any credit shall be applied to Tenant's next succeeding payment of Rent or other charges under the Lease. No interest or earnings shall be payable by Landlord to Tenant on any amount paid hereunder, and Landlord may commingle such payment with other funds of Landlord. Should there be in effect during the Term any law, statute, or ordinance which levies, assesses, or imposes any tax (other than federal or state income tax) upon rents, Tenant shall pay such taxes as may be attributable to the Rents under this Lease or shall reimburse Landlord for any such taxes paid by Landlord within ten (10) days after Landlord bills Tenant for the same.

(c) Insurance. During the Term, Landlord shall maintain in full force a policy or policies of fire insurance with standard extended coverage endorsements covering the building or buildings and other improvements (exclusive of Tenant's trade fixtures, tenant improvements and other property) situated on the Property. During the Term, Landlord shall maintain in full force a comprehensive liability insurance policy insuring Landlord against liability for bodily injury and property damage occurring in, on or about the Property. Landlord shall use its reasonable efforts to secure said insurance at competitive rates. Tenant shall pay Tenant's Proportionate Share of such insurance pursuant to the terms of Section 4(h) of this Lease, as part of Operating Expenses.

(d) Increases in Premiums. This Lease is entered into on the basis that Tenant's occupancy will not affect the Property's classification for insurance rating purposes. If Tenant's initial intended use of the Premises results in higher insurance premiums for any buildings situated on the Property, Tenant shall pay for the increased costs of the premiums for insuring any such buildings against loss by fire with standard extended coverage endorsements during the Term. If the insurance premiums on any such buildings are increased during the Term as a result of the installation of equipment on the Premises by Tenant, by reason of Tenant maintaining certain goods or materials on the Premises or as a result of other use or occupancy of the Premises by Tenant, Tenant shall pay the additional cost of the insurance for any such buildings (whether or not Landlord has consented to the activity resulting in the increased insurance premiums). Tenant shall refrain from any activity in its use of the Premises which would make it impossible to insure the Premises or the buildings situated on the Property

against casualty or which would increase the insurance rate of any such buildings or prevent Landlord from taking advantage of the ruling of the Insurance Rating Bureau of the state in which the Premises are situated or its successors allowing Landlord to obtain reduced premium rates for long term fire insurance policies, unless Tenant pays the additional cost of the insurance. All of Tenant's electrical equipment shall be U-L approved. If Tenant installs any electrical equipment that overloads the lines in the Premises or in any such buildings, Tenant shall at its own expense make whatever changes are necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction. Any insurance premiums to be paid by Tenant by reason of its initial intended use of the Premises or any increase in fire insurance premiums attributable to Tenant's use or occupancy of the Premises during the Term shall be paid by Tenant to Landlord within thirty days after Landlord bills Tenant for the same.

(e) Indemnity; Tenant's Insurance. Tenant shall indemnify and save harmless Landlord from any and all liability, damage, expenses, attorney's fees, causes of actions, suits, claims or judgments, arising out of or connected with (i) the use, occupancy, management, or control of the Premises, (ii) any failure of Tenant to comply with the terms of this Lease, and (iii) the acts or omissions of Tenant, its agents, officers, directors, employees, or invitees; provided, however, that Tenant shall not be liable for claims caused by the negligence of Landlord. Tenant shall, at its own cost and expense, defend any and all suits which may be brought against Landlord 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 that may be recovered against Landlord in any such action or actions in which Landlord may be a party defendant. Neither Landlord nor any partner, director, officer, agent, or employee of Landlord shall be liable to Tenant or any person claiming through Tenant for any loss, injury, or damage whatsoever, including without limitation any loss, injury, or damage caused by other tenants or persons in or about the Business, except to the extent any such loss, injury, or damage is caused by or results from the negligent or willful act or omission of Landlord or its agents or employees. Except in cases of Landlord negligence, Landlord shall not be liable for consequential damages, including lost profits, of Tenant or any person claiming through Tenant, regardless of the cause of any loss, injury, or damage. Tenant shall at its own expense during the Term carry in full force and effect a comprehensive public liability insurance policy, with an insurance carrier satisfactory to Landlord, naming Landlord as an additional insured, with combined limits of not less than \$2,000,000 in bodily injury liability, and property damage liability, insuring against any and all liability of Tenant with respect to the Premises and under this Lease, or arising out of the maintenance, use or occupancy of the Premises. Such policy shall provide that the insurance shall not be cancelable or modified without at least ten (10) days' prior written notice to Landlord, and shall be deemed primary and noncontributing with other insurance available to Landlord. Tenant shall maintain, at Tenant's expense, insurance covering Tenant's personal property, furnishings, fixtures, and equipment; Landlord is not responsible therefore. On or before the Commencement Date, Tenant shall furnish Landlord with a certificate or other acceptable evidence that such insurance is in effect. Tenant shall also provide and maintain insurance to comply with Worker's Compensation and Employer's Liability Laws.

(f) Routine Operating Expenses. From and after the Commencement Date, Tenant shall pay to Landlord during each calendar year or part thereof during the Term, in addition to Base Rent and additional rent (" Additional Rent") Tenant's Proportionate Share of Routine Operating Expenses. Tenant shall pay to Landlord an amount each month, which is equal to one-twelfth of Landlord's reasonable estimate of Tenant's share of the Routine Operating Expenses. Landlord shall notify Tenant of the estimated monthly amount to be paid, and of any changes in the estimated amount, and Tenant shall pay Landlord such estimated amount at the same time as and together with Tenant's Base Rent. When the actual Routine Operating Expenses are determined each year, Landlord shall furnish to Tenant a statement showing in reasonable detail the computation of Tenant's share of the Routine Operating Expenses, and the charge or credit to Tenant for any difference between the actual amount and the estimated amounts previously paid by Tenant. Any deficiency shall be reimbursed by Tenant within ten (10) days after Landlord gives Tenant notice thereof and any credit shall be applied to Tenant's next succeeding payment of Rent or other charges under the Lease. No interest or earnings shall be payable by Landlord to Tenant on any amount paid hereunder, and Landlord may commingle such payment with other funds of Landlord. The term "Routine Operating Expenses" means all reasonable and routine expenses paid or incurred by Landlord or on Landlord's behalf and determined by Landlord to be necessary or appropriate for the efficient operation, maintenance, and repair of the Business, for those areas of the Business not reserved for exclusive use by a specific tenant, such as the driveways, parking areas, landscape areas, curbs, sidewalks, plazas, and refuse collection areas. Routine Operating Expenses shall include, but not be limited to, the following (to the extent not chargeable to a specific tenant):

(i) Salaries, wages, and benefits (including without limitation medical and other insurance, pension payments, payroll taxes, and worker's compensation insurance) for employees of Landlord, if any, engaged in the on-site repair, operation, maintenance, management, engineering, or security of the Business;

(ii) All expenses incurred for gas, electricity, heat, ventilation, air-conditioning, water, and other services or utilities furnished to the Business, together with any taxes thereon;

(iii) All repair, replacement, service, and general maintenance costs relating to the Business, including without limitation heating, ventilating, and air conditioning systems, sidewalks, landscaping, surface parking, service areas, refuse collection areas, mechanical rooms, roofs, and building exteriors, whether the work in question is done by Landlord or its agents, or by an independent contractor;

(iv) The cost of all insurance charges, including without limitation casualty, comprehensive liability, fire with extended coverage endorsement, boiler and machinery, rent loss, earthquake, flood, and such other policies of insurance as Landlord deems reasonable to obtain with respect to the Business;

(v) The cost or rental of all supplies, including without limitation cleaning supplies, light bulbs, tubes and ballasts, materials, and equipment, and all taxes thereon;

(vi) The cost of all charges for cleaning, sweeping, janitorial, and security services;

(vii) The cost of reasonable alterations and improvements to ZIMMER COMMERCIAL CENTER as required by any governmental authority or insurance underwriter or similar board or body;

(viii) Actual management fees paid to a third party with respect to the Business or, if no managing agent is employed by Landlord, a management fee not in excess of the then-prevailing management fees charged for comparable businesses in the Portland, Oregon metropolitan area;

(ix) Legal, accounting, and other professional fees incurred in connection with general, routine operations, maintenance, and management of the Business as it applies to Routine Operating Expenses;

(x) Any parking charges, utilities surcharges, or other costs levied, assessed, or imposed by or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by, any governmental authority in connection with the use or occupancy of the Business or the parking facilities serving the Business;

(xi) All other expenses properly allocable to the operation, repair, and maintenance of the Business in accordance with generally accepted accounting principles.

(g) Net Lease. This Lease shall be an absolutely net lease and Rent shall be paid to Landlord absolutely net of all costs and expenses. The provisions for payment of Tenant's Proportionate Share of Taxes and Operating Expenses are intended to pass on to Tenant and to reimburse Landlord for all costs and expenses of the nature described in this Lease.

(h) Tenant's Proportionate Share. As of the date of this Lease, Tenant's Proportionate Share of Taxes, insurance, and Operating Expenses is twenty-five percent (25%). Tenant's Proportionate Share may be adjusted from time to time if the number of rentable square feet in the Business is remeasured or changes, so long as such adjustment is equitable.

5. PLACE OF PAYMENT. Tenant shall pay the Rent and other amounts required to be paid by Tenant hereunder to Landlord at the address for Landlord set forth on the last page of this Lease, or at such other place as Landlord may from time to time designate in writing.

6. USE OF PREMISES. The Premises shall be used for retail office space to support CANBY AREA TRANSIT (CAT) and for no other purpose without Landlord's written consent, which consent shall not be unreasonably withheld. In connection with the use of Premises or as a tenant or owner of any other parcel in the ZIMMER COMMERCE CENTER, Tenant shall:

(a) Conform to and comply with all applicable laws and regulations of any public authority affecting the Premises, the condition of the Premises, and the use of the Premises and correct promptly, at Tenant's own expense, any failure of compliance.

(b) Refrain from any activity which would be reasonably offensive to Landlord, to other tenants in any buildings situated on the Property, or to owners or users of the adjoining premises, or which would tend to create a nuisance or damage the reputation of the Premises or of any such buildings. Without limiting the generality of the foregoing, Tenant shall not permit any objectionable noise or odor to escape or be emitted from the Premises nor permit the use of flashing (strobe) lights;

(c) Refrain from loading the floors beyond the point considered safe by a competent engineer or architect selected by Landlord and refrain from using water, sewer, and plumbing systems in any harmful way. Tenant shall use hair interceptors, grease traps or other drain protection devices as needed to avoid such harmful use;

(d) Tenant, at its sole cost and expense, may install a sign on the fascia of the building at a location and of a style which meets the approval of the landlord (consent shall not be unreasonably withheld) and is in accordance with all appropriate government regulations. Tenant may also have signage at the existing pylon reserved for ZIMMER COMMERCE CENTER tenants. Tenant shall have use of the top lens panel on each side of the pylon for its exclusive use. Notwithstanding Landlord's consent to any signs, Tenant shall remove all such signs upon termination of the Lease and repair any damage to the Premises caused thereby, at Tenant's own cost and expense;

(e) Comply with any reasonable rules respecting the use of the Premises promulgated by Landlord from time to time and communicated to Tenant in writing. Of the twenty-eight (28) parking spaces allocated for Lot 1 of ZIMMER COMMERCE CENTER, Tenants normal use shall not exceed seven (7) of these spaces. It is understood by the parties that until occupied by future tenants, the remaining additional 14 spaces, for a total of 21 spaces, will be available for use by Tenant.

(f) Not permit any cash, credit card, or coin-operated vending, novelty or gaming machines or equipment on the Premises without the prior written consent of Landlord; and not to permit the use of any part of the Premises for a second-hand store, nor for an auction, distress or fire sale, or bankruptcy or going-out-of-business sale or the like;

(g) Not commit or suffer any strip or waste of the Premises including without limitation the improvements thereon or any part thereof; and Tenant shall keep the Premises in a neat, clean, sanitary, and orderly condition;

(h) Not display or sell merchandise outside the exterior walls of the Premises; and

(i) Shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use

or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 6. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

(j) Be subject to Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements, Clackamas County Recorder's Fee No. 2007-081170, as amended in Clackamas County Recorder's Fee No. 2009-026540.

7. IMPROVEMENTS AND ALTERATIONS.

a. LANDLORD IMPROVEMENTS AND ALTERATIONS.

(i) Landlord shall be responsible for making alterations requested by Tenant in conformance with the attached Exhibit B (ceiling plan and floor plan). Construction notes have been enlarged for the convenience of Landlord and Tenant. Except for the alterations requested by the Tenant in the attached Exhibit B, Landlord shall not be required to make any further improvements or alterations to the premises.

(ii) Provided, however, Tenant shall obtain and pay for all developmental, design and architectural permits, fees and costs.

b. TENANT IMPROVEMENTS AND ALTERATIONS.

(i) When Tenant takes possession of the Premises, Tenant shall be deemed to have accepted the Premises and the Building in their current condition. Landlord makes no representations regarding the fitness of the Premises or the Building for any particular purpose.

(ii) Tenant shall make no improvements or alterations to the premises of any kind without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

(iii) All work by Tenant shall be done in strict compliance with all applicable building, fire, sanitary and safety codes and other applicable laws, statutes, regulations and ordinances and Tenant shall secure all necessary permits for the same.

Tenant shall keep the premises free from all liens in connection with any such work. Landlord or Landlord's agents shall have the right at all reasonable times to inspect the quality and progress of such work.

(iv) All improvements, alterations and other work performed on the Premises by the Tenant shall be the property of Landlord when installed, except for Tenant's trade fixtures, and items marked on the Exhibit C to be removed at the conclusion of the Lease. All such improvements, alterations or other work to be performed by Tenant shall be at the Tenant's sole cost and expense.

8. REPAIRS AND MAINTENANCE.

(a) Landlord's Responsibilities. The following shall be the responsibility of Landlord, and Landlord shall maintain all of the following in good condition and repair:

(i) Structural repairs and maintenance and repairs necessitated by structural disrepair or defects;

(ii) Repair and maintenance of the exterior walls, roof, gutters, downspouts and the foundation of the building in which the Premises are located. This shall not include maintenance of the operating condition of doors and windows or replacement of glass, nor maintenance of the store front; and

(iii) Repair of interior walls, ceilings, doors, windows, floors and floor coverings when such repairs are made necessary because of failure of Landlord to keep the structure in repair as above provided in this Section 8(a).

(b) Tenant's Responsibilities. The following shall be the responsibility of Tenant, and Tenant shall maintain all of the following in good condition and repair:

(i) The interior of the Premises including any interior decorating;

(ii) Any repairs necessitated by the negligence of Tenant, its agents, employees and invitees and their use of the Premises;

(iii) Maintenance and repair of the heating, ventilating, and air conditioning systems, plumbing system, electrical system, and sprinkler systems, if any. However, Landlord reserves the right to contract with a service company for the maintenance and repair of the foregoing systems, or any of them; and Tenant's share of such expenses shall be paid by Tenant to Landlord monthly;

(iv) Maintenance and repair of the interior walls and floor coverings (both hard surfaces and carpeting);

(v) Any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in this Lease; and

(vi) All other repairs or maintenance to the Premises which Landlord is not expressly required to make under Section 8(a) above, which includes, without

limiting the generality of the foregoing, the replacement of all glass which may be broken or cracked during the Term with glass of as good or better quality than that in use at the commencement of the Term, wiring, plumbing, drainpipes, sewers, and septic tanks including without limitation, repairs outside of the Premises if the need for the repair arises from Tenant's use of the Premises. All of Tenant's work shall be in full compliance with then-current building code and other governmental requirements.

(c) Inspections. Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Landlord to make repairs as outlined above in any area in Tenant's possession and control shall not mature until a reasonable time after Landlord has received from Tenant written notice of the necessity of repairs, except in the event emergency repairs may be required and in such event Tenant shall attempt to give Landlord appropriate notice considering the circumstances.

(d) Landlord's Work. All repairs, replacements, alterations or other work performed on or around the Premises by Landlord shall be done in such a way as to interfere as little as reasonably possible with the use of the Premises by Tenant. Tenant shall have no right to an abatement of Rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's performance of repairs and maintenance pursuant to this Section 8.

9. LIENS. Tenant shall keep the Premises free from all liens, including mechanic's liens, arising from any act or omission of Tenant or those claiming under Tenant. Landlord shall have the right to post and maintain on the Premises or the building in which the Premises are situated such notices of non-responsibility as are provided for under the lien laws of the state in which the Premises are located.

10. UTILITIES. Tenant shall pay promptly for all water and sewer facilities, gas and electrical services, including heat and light, garbage collection, and all other facilities and utility services used by Tenant or provided to the Premises during the Term. If the heating and air-conditioning systems are not on separate meters, Tenant shall pay its proportionate share of such charges based upon the actual use of the heat and air conditioning by Tenant and by the other tenants of the building in which the Premises are situated within ten (10) days after billings therefore. Tenant shall arrange for regular and prompt pickup of trash and garbage and shall store such trash and garbage in only those areas designated by Landlord. However, if Landlord elects to arrange for garbage collection on a cooperative basis for Tenant and other tenants, Tenant shall pay its proportionate share of the garbage collection charges, within ten (10) days after billings therefore. Landlord shall not be liable for any interruption of utility services to the Premises.

11. ICE, SNOW, AND DEBRIS. Tenant shall keep the walks in front of the Premises free and clear of ice, snow, rubbish, debris, and obstructions. Tenant shall save and protect Landlord from any injury whether to Landlord or Landlord's property or to any other person or property caused by Tenant's failure to perform Tenant's obligations under this Section 11. Tenant's obligations under this Section 11 shall be performed at Tenant's cost and expense.

12. WAIVER OF SUBROGATION. Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, including sprinkler leakage insurance, if any. All claims or rights of recovery for any and all such loss or damage, however caused, are hereby waived. Without limiting the generality of the foregoing, said absence of liability shall exist whether or not such loss or damage is caused by the negligence of either Landlord or Tenant or by any of their respective agents, servants or employees.

13. INJURY TO TENANT'S PROPERTY. Landlord shall not be liable for any injury to any property of Tenant or to any person in or upon the Premises resulting from fire or collapse of the building in which the Premises are located or any portion thereof or any other cause, including but not limited to damage by water, gas or steam, or by reason of any electrical apparatus in or about the Premises. Landlord shall not be responsible for securing the Premises or providing security to the Building.

14. DAMAGE OR DESTRUCTION.

(a) Partial Destruction. If the Premises shall be partially damaged by fire or other cause, and Section 14(b) below does not apply, the damages to the Premises shall be repaired by Landlord, and all Base Rent until such repair shall be made shall be apportioned according to the part of the Premises which is useable by Tenant, except when such damage occurs because of the fault of Tenant. The repairs shall be accomplished with all reasonable dispatch. Landlord shall bear the cost of such repairs unless the damage occurred from a risk which would not be covered by a standard fire insurance policy with an endorsement for extended coverage, including sprinkler leakage, and the damage was the result of the fault of Tenant, in which event Tenant shall bear the expense of the repairs. However, if the holder of any indebtedness secured by the Property requires that the insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease.

(b) Substantial Damage. If the buildings situated on the Property or the building in which the Premises are located or the Premises, or any of them, are 50% or more destroyed during the Term by any cause, Landlord may elect to terminate the Lease as of the date of damage or destruction by notice given to Tenant in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. In the absence of an election to terminate, Landlord shall proceed to restore the Premises, if damaged, to substantially the same form as prior to the damage or destruction, so as to provide Tenant useable space equivalent in quantity and character to that before the damage or destruction. Work shall be commenced as soon as reasonably possible, and thereafter proceed without interruption, except for work stoppages on account of matters beyond the reasonable control of Landlord. From the date of damage until the Premises are restored or repaired, Base Rent shall be abated or apportioned according to the part of the Premises useable by Tenant, unless the damage occurred because of the fault of Tenant. Landlord shall bear the cost of such repairs unless the damage occurred from a risk which would not be covered by a standard fire insurance policy with an

endorsement for extended coverage, including sprinkler leakage, and the damage was the result of the fault of Tenant, in which event Tenant shall bear the expense of the repairs.

(c) Restoration. If the Premises are to be restored by Landlord as above provided in this Section 14, Tenant, at its expense, shall be responsible for the repair and restoration of all items which were initially installed at the expense of Tenant (whether the work was done by Landlord or Tenant) or for which an allowance was given by Landlord to Tenant, together with Tenant's stock in trade, trade fixtures, furnishings, and equipment; and Tenant shall commence the installation of the same promptly upon delivery to it of possession of the Premises and Tenant shall diligently prosecute such installation to completion.

15. EMINENT DOMAIN.

(a) Partial Taking. If a portion of the Premises is condemned and neither Section 15(b) nor Section 15(c) apply, the Lease shall continue in effect. Landlord shall be entitled to all the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of condemnation. Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to the condition as comparative as reasonably practicable to that existing at the time of condemnation. Base Rent shall be abated to the extent that the Premises are untenable during the period of alteration and repair. After the date on which title vests in the condemning authority, Base Rent shall be reduced commensurately with the reduction in value of the Premises as an economic unit on account of the partial taking. However, if the holder of any indebtedness secured by the Property requires that the condemnation proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease.

(b) Substantial Taking of the Property. If a condemning authority takes any substantial part of the Property or any substantial part of the building in which the Premises are located, the Lease shall, at the option of Landlord, terminate as of the date title vests in the condemning authority. In such event all rights and obligations of the parties shall cease as of the date of termination. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(c) Substantial Taking of Premises. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for Tenant's use, the Lease shall terminate as of the date title vest in the condemning authority. In such event all rights and obligations of the parties shall cease as of the date of termination. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(d) Definition. Sale of all or any part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purpose of this Lease as a taking by condemnation.

16. BANKRUPTCY. Subject to Section 17, this Lease shall not be assigned or transferred voluntarily or involuntarily by operation of law. It may, at the option of Landlord, be terminated, if Tenant be adjudged bankrupt or insolvent, or makes an assignment for the benefit of creditors, or files or is a party to the filing of a petition in bankruptcy, or commits an act of bankruptcy, or in case a receiver or trustee is appointed to take charge of any of the assets of Tenant or sub lessees or assignees in or on the Premises, and such receiver or trustee is not removed within 30 days after the date of his appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against Tenant or any sub lessees or assignee hereunder, unless such property or reasonable replacement therefore be installed on the Premises. To the extent permitted by law, this Lease or any sublease hereunder shall not be considered as an asset of a debtor-in-possession, or an asset in bankruptcy, insolvency, receivership, or other judicial proceedings.

17. DEFAULT. The following shall be events of default:

(a) Failure of Tenant to pay any Base Rent, or Additional Rent when due or failure of Tenant to pay any other charge required under this Lease when due.

(b) Failure of Tenant to execute the documents described in Section 21 or 22 within the time required under such Sections; failure of Tenant to provide or maintain the insurance required of Tenant pursuant to Section 4(e); or failure of Tenant to comply with any governmental law, order, rule, regulation, ordinance or directive applicable to the Premises within 24 hours within written demand by Landlord.

(c) Failure of Tenant to comply with any term or condition or fulfill any obligation of this Lease (other than the failures described in Sections 17(a) or 17(b)), within ten (10) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such nature that it cannot be completely remedied within the ten (10) day period, this provision shall be complied with if Tenant begins correction of the default within the ten (10) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Landlord shall not be obligated to give written notice for the same type of default more than twice; at Landlord's option a failure to perform an obligation after the second notice shall be an automatic Event of Default, without notice or an opportunity to cure.

(d) The abandonment of the Premises by Tenant or the failure of Tenant for fifteen (15) days or more to operate the business described in Section 6 of this Lease in the Premises unless such failure is excused under other provisions of this Lease.

(e) The bankruptcy or the occurrence of other acts specified in Section 16 of this Lease which give Landlord the option to terminate.

18. REMEDIES ON DEFAULT. In the event of a default, Landlord may, at Landlord's option, exercise anyone or more of the rights and remedies available to a

landlord in the state in which the Premises are located to redress such default, consecutively or concurrently, including the following:

(a) Landlord may elect to terminate Tenant's right to possession of the Premises or any portion thereof by written notice to Tenant. Following such notice, Landlord may re-enter, take possession of the Premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. To the extent permitted by law, Landlord shall have the right to retain the personal property belonging to Tenant which is on the Premises at the time of re-entry, or the right to such other security interest therein as the law may permit, to secure all sums due or which become due to Landlord under this Lease. Perfection of such security interest shall occur by taking possession of such personal property or otherwise as provided by law.

(b) Following re-entry by Landlord, Landlord may relet the Premises for a term longer or shorter than the Term and upon any reasonable terms, including the granting of rent concessions to the new tenant. Landlord may alter, refurbish or otherwise change the character or use of the Premises in connection with such reletting. Landlord shall not be required to relet for any use or purpose which Landlord may reasonably consider injurious to its property or to any tenant which Landlord may reasonably consider objectionable. No such reletting by Landlord following a default by Tenant shall be construed as an acceptance of the surrender of the Premises. If rent received upon such reletting exceeds the Rent received under this Lease, Tenant shall have no claim to the excess.

(c) Following re-entry Landlord shall have the right to recover from Tenant the following damages:

(i) All unpaid or other charges for the period prior to re-entry, plus interest at a rate equal to six percent (6%) per annum.

(ii) An amount equal to the Rent lost during any period during which the Premises are not relet, if Landlord uses reasonable efforts to relet the Premises. If Landlord lists the Premises with a real estate broker experienced in leasing commercial property in the metropolitan area in which the Premises are located, such listing shall constitute the taking of reasonable efforts to relet the Premises.

(iii) All costs incurred in reletting or attempting to relet the Premises, including but without limitation, the cost of cleanup and repair in preparation for a new tenant, the cost of correcting any defaults or restoring any unauthorized alterations and the amount of any real estate commissions or advertising expenses.

(iv) Reasonable attorney's fees incurred in connection with the default, whether or not any litigation is commenced.

(d) Landlord may sue periodically to recover damages as they accrue throughout the Term and no action for accrued damages shall be a bar to a later action for damages subsequently accruing. To avoid a multiplicity of actions, Landlord may obtain a decree of specific performance requiring Tenant to pay the damages stated in

Section 18(c) above as they accrue. Alternatively, Landlord may elect in anyone action to recover accrued damages plus damages attributable to the remaining Term equal to the difference between the Rent under this Lease and the reasonable rental value of the Premises for the remainder of the Term, discounted to the time of the judgment at the rate of six percent (6%) per annum.

(e) In the event that Tenant remains in possession following default and Landlord does not elect to re- enter, Landlord may recover all back Rent and other charges, and shall have the right to cure any nonmonetary default and recover the cost of such cure from Tenant, plus interest from the date of expenditure at the Interest Rate. In addition, Landlord shall be entitled to recover attorney's fees reasonably incurred in connection with the default, whether or not litigation is commenced. Landlord may sue 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 remedy.

19. SURRENDER AT EXPIRATION

(a) Condition of Premises. Upon expiration of the Term or earlier termination Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Except as provided in section 7 (see Exhibit C), improvements and alterations constructed by Tenant shall not be removed or restored to the original condition unless the terms of Landlord's consent provides otherwise or unless Landlord requests Tenant to remove such improvements or alterations, in which event Tenant shall remove the same and restore the Premises. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this Section 19 shall be subject to the provisions of Section 14 relating to damages or destruction.

(b) Fixtures.

(i) Except as set forth in Exhibit C, all fixtures placed upon the Premises during the Term, other than Tenant's trade fixtures, shall, at Landlord option, become the property of Landlord. Movable furniture, decorations, floor covering other than hard surface bonded or adhesively fixed flooring, curtains, drapes, blinds, furnishing and trade fixtures shall remain the property of Tenant if placed on the Premises by Tenant; provided, however, if Landlord granted Tenant an allowance for improvements, installation, floor coverings, curtains, drapes, blinds or other items, such items shall at Landlord's option become the property of Landlord notwithstanding the installation thereof by Tenant.

(ii) If Landlord so elects, Tenant shall remove any or all fixtures which would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the Interest Rate. Tenant shall

remove all furnishings, furniture and trade fixtures which remain the property of Tenant. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease. Landlord may effect a removal and place the property in public or private storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, with interest on all such expenses from the date of expenditure at the Interest Rate.

(iii) The time for removal of any property or fixtures which Tenant is required to remove from the Premises upon termination shall be as follows:

(1) On or before the date the Lease terminates because of expiration of the Term or because of a default under Section 17.

(2) Within 30 days after notice from Landlord requiring such removal where the property to be removed is a fixture which Tenant is not required to remove except after such notice by Landlord, and such date would fall after the date on which Tenant would be required to remove other property.

(c) Holdover.

(i) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month-to-month, subject to all of the provisions of this Lease except the provision for the Term, and except the Base Rent provided herein shall double during the period of the month-to-month tenancy. Failure of Tenant to remove fixtures, furniture, furnishings or trade fixtures which Tenant is required to remove under this Lease shall constitute a failure to vacate to which this Section 19(c) shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(ii) If a month-to-month tenancy results from a holdover by Tenant under this Section 19(c), the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than ten (10) days prior to the termination date which shall be specified in the notice. Tenant waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

20. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this Lease or sublet all or any part of the Premises without the written consent of Landlord, which consent will not be unreasonably withheld. Without limiting the generality of the foregoing, it shall not be unreasonable for Landlord to withhold its consent if the proposed assignee or sublessee does not have the net worth of Tenant and/or does not have an established record of high-quality operations. Tenant shall remain primarily liable, after any assignment or sublease, for the payment of all Rent and other charges under this Lease and for the performance of all of Tenant's obligations under this Lease, notwithstanding such assignment or subletting by Tenant.

21. SUBORDINATION. Tenant's interest hereunder shall be subject and subordinate to all mortgages, trust deeds, and other financing and security instruments placed on the Premises by Landlord from time to time ("Mortgages") except that no

assignment or transfer of Landlord's rights hereunder to a lending institution as collateral security in connection with a Mortgage shall affect Tenant's right to possession, use and occupancy of the Premises so long as Tenant shall not be in default under any of the terms and conditions of this Lease. The provisions of this Section 21 shall be self-operating. Nevertheless, Tenant agrees to execute and acknowledge an instrument in recordable form which expressly subordinates Tenant's interest hereunder to the interests of the holder of any Mortgage within ten (10) days after request by Landlord. As an accommodation to Landlord and at its request, Tenant shall furnish Landlord current and past balance sheets and operating statements certified as accurate and up to date by Tenant and in the form requested by the holder of any Mortgage to which Landlord applies for financing concerning the Property or any prospective purchaser of the Business.

22. ESTOPPEL CERTIFICATE. Tenant shall from time to time, upon not less than ten (10) days prior notice, submit to Landlord, or to any person designated by Landlord, a statement in writing, in the form submitted to Tenant by Landlord, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), that to the knowledge of Tenant no uncured default exists hereunder (or if such uncured default does exist, specifying the same), the dates to which the Rent and other sums and charges payable hereunder have been paid, that Tenant has no claims against Landlord and no defenses or offsets to rental except for the continuing obligations under this Lease (or if Tenant has any such claims, defenses or offsets, specifying the same), and any other information concerning this Lease as Landlord reasonably requests.

23. PERFORMANCE BY LANDLORD. Landlord shall not be deemed in default for the nonperformance or for any interruption or delay in performance of any of the terms, covenants and conditions of this Lease if the same shall be due to any labor dispute, strike, lockout, civil commotion or like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, through acts of God, or other cause beyond the reasonable control of Landlord, providing such cause is not due to the willful act or neglect of Landlord. Tenant shall look only to Landlord's estate and property in the Property (or the proceeds thereof) for the satisfaction of any judgment against Landlord resulting from a default by Landlord hereunder, and no other property or assets of Landlord or its partners or principals, disclosed or undisclosed, shall be subject to levy, execution, or other enforcement procedure for the satisfaction of any such judgment.

24. LANDLORD'S RIGHT TO CURE DEFAULT. If Tenant shall fail to perform any of the covenants or obligations to be performed by Tenant, Landlord, in addition to all other remedies provided herein, shall have the option (but not the obligation) to cure such default after thirty days' written notice to Tenant. All of Landlord's expenditures incurred to correct the default shall be reimbursed by Tenant upon demand with interest from the date of expenditure at the Interest Rate. Landlord's right to cure defaults is for the sole protection of Landlord and the existence of this right shall not release Tenant from the obligation to perform all of the covenants herein

provided to be performed by Tenant, or deprive Landlord of any other right which Landlord may have by reason of such default by Tenant.

25. INSPECTION; CHANGES. Landlord, Landlord's agents and representatives, shall have the right to enter upon the Premises at reasonable times for the purpose of inspecting the same, for the purpose of making repairs or improvements to the Premises or the building in which the Premises are located, for showing the Premises during the final ninety days of the Term, or for any other lawful purpose.

26. FOR SALE AND FOR RENT SIGNS. During the period of ninety days prior to the date for the termination of this Lease, Landlord may post on the Premises or in the windows thereof signs of moderate size notifying the public that the Premises are "for sale" or "for rent" or "for lease".

27. ATTORNEY'S FEES. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Lease or with respect to any dispute relating to this Lease, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

28. NOTICES. Any notice required or permitted under this Lease shall be in writing and shall be deemed given when actually delivered or when deposited in the United States mail as certified or registered mail, addressed to the addresses set forth on the last page of this Lease or to such other addresses as may be specified from time to time by either of the parties in the manner above provided for the giving of notice.

29. BROKERS. Landlord and Tenant acknowledge and agree that TERRY N. TOLLS (T.N. TOLLS COMPANY) and ALLEN C. PATTERSON (CAPACITY COMMERCIAL GROUP) are the agents of both Landlord and Tenant (disclose limited agency) and that no other broker shall be entitled to a commission with this transaction. Upon execution of a Lease, Landlord shall pay a commission totaling six percent (6%) of the gross lease consideration to T.N. TOLLS COMPANY and to CAPACITY COMMERCIAL GROUP (split 50/50 between brokerage firms).

30. LATE CHARGES. Tenant acknowledges that late payment by Tenant to Landlord of any Base Rent due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs may include, without limitation, processing and accounting charges and late charges which may be imposed on Landlord under the terms of any Mortgage. Accordingly, if any Rent is not received by Landlord within ten (10) days after it is due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of the

overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs incurred by Landlord by reason of the late payment by Tenant. Acceptance of any late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to the overdue amount in question, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

31. RULES AND REGULATIONS. Tenant and its employees and agents shall faithfully observe and comply with the rules and regulations for the Business attached as Exhibit D and such changes to such rules and regulations as Landlord may from time to time promulgate (the "Rules and Regulations"). Landlord shall not be liable to Tenant for any violation of the Rules and Regulations by any other person, including any other tenant.

32. MISCELLANEOUS PROVISIONS.

(a) This Lease does not grant any rights of access to light or air over any part of the Property.

(b) Time is of the essence of this Lease.

(c) The acceptance by Landlord of any Rent or other benefits under this Lease shall not constitute a waiver of any default. Any waiver by Landlord of the strict performance of any of the provisions of this Lease shall not be deemed to be a waiver of subsequent breaches of the same character or of a different character, occurring either before or subsequent to such waiver, and shall not prejudice Landlord's right to require strict performance of the same provision in the future or of any other provision of this Lease.

(d) This Lease contains the entire agreement of the parties. This Lease shall not be amended or modified except by agreement in writing, signed by the parties hereto.

(e) Subject to the limitations on the assignment or transfer of Tenant's interest in this Lease, this Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns.

(f) No remedy herein conferred upon or reserved to Landlord or Tenant shall be exclusive of any other remedy herein provided or provided by law, but each remedy shall be cumulative.

(g) In interpreting or construing this Lease, it is understood that Tenant may be more than one person, that if the context so requires, the singular pronoun shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed, and implied to make the provisions hereof apply equally to corporations, partnerships, and individuals.

(h) Section headings are for convenience and shall not affect any of the provisions of this Lease.

(i) If any provision of this Lease or the application thereof to any person or circumstance is, at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(j) All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

(k) Each person executing this Lease on behalf of Tenant hereby covenants and warrants that Tenant is duly incorporated and validly existing under the laws of its state of incorporation; Tenant has full corporate right and authority to enter into this Lease and to perform all of the Tenant's obligations under this Lease; and each person signing this Lease on behalf of the corporation is duly and validly authorized to do so.

33. ARBITRATION

a. Disputes to Be Arbitrated. If any dispute arises between the parties [as to a matter which this lease says should be arbitrated, or as to any other question involving apportionment or valuation], either party may request arbitration and appoint as an arbitrator an independent real estate appraiser having knowledge of valuation of rental properties comparable to the premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within 10 days of the choosing of the prior arbitrator, then either party may apply to the presiding judge of the judicial district where the premises are located to appoint the required arbitrator.

b. Procedure for Arbitration. The arbitrator shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in the county where the leased premises are located. Costs of the arbitration shall be shared equally by the parties, but each party shall pay its own attorney fees incurred in connection with the arbitration.

34. EXHIBITS AND ADDITIONAL PROVISIONS.


Exhibit A (Premises Outline);
Exhibit B (Transit Office Ceiling and Floor Plan);
Exhibit C (Improvements to Be Removed Upon Lease Termination);
Exhibit D (Rules and Regulations);
Exhibit E (Renewal Options); and

Exhibit F (Covenants, Conditions and Restrictions)

are attached hereto and by this reference incorporated herein.


IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first set forth above.

Landlord:
ZIMMER VENTURES, LLC



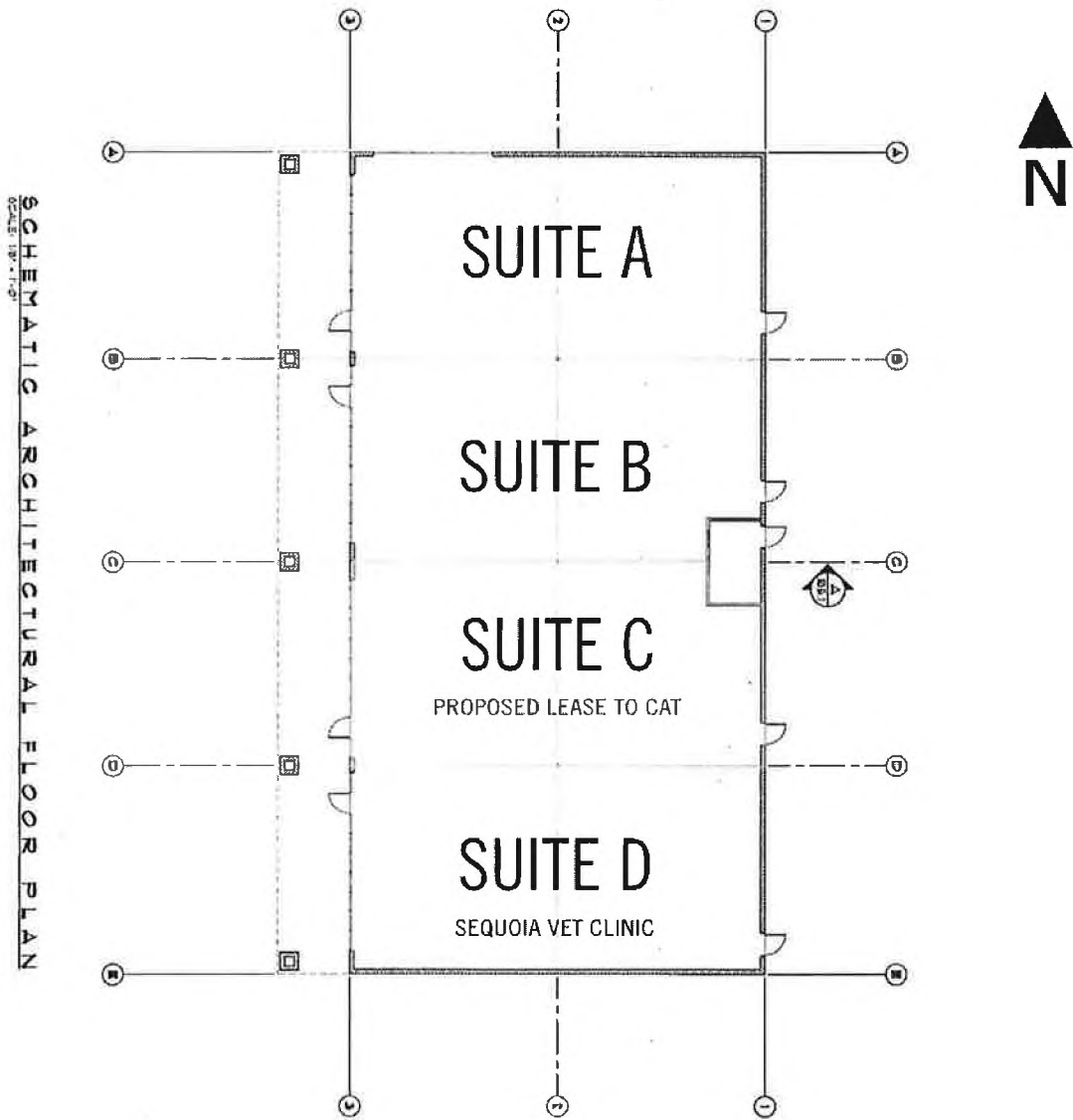
By: Robert Zimmer
Title: Owner/Manager

Tenant:
CITY OF CANBY, an Oregon municipal Corporation, acting on behalf of CANBY AREA TRANSIT (CAT)



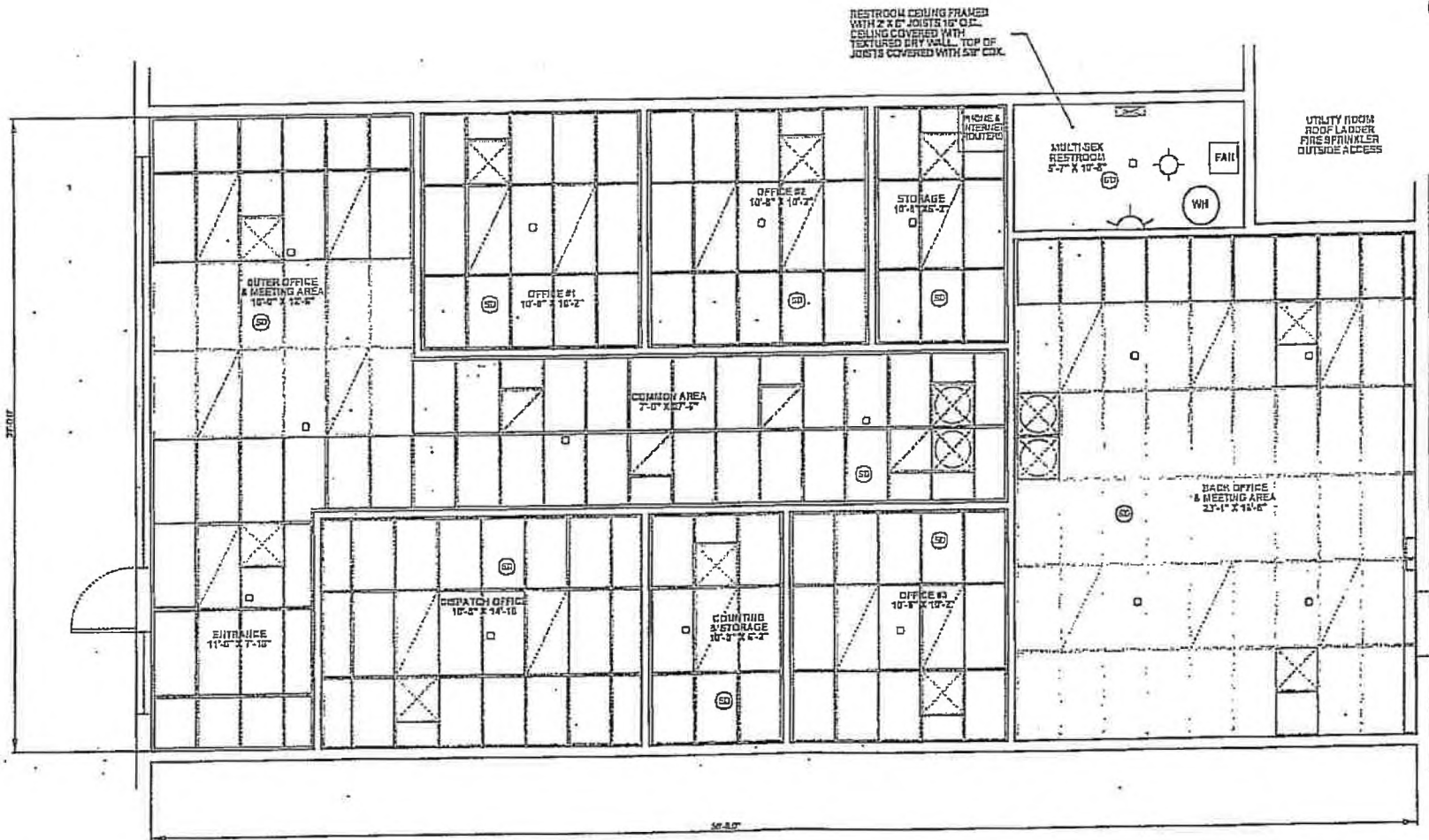
By: Greg Ellis
Title: City Administrator
Address: 182 N. Holly, Canby, OR 97013

EXHIBIT A



195 S. HAZEL DELL WAY, CANBY OREGON

B3.1	A NEW SITE DEVELOPMENT FOR WILCO CANBY	CANBY, OR			T 503.585.0022 F 503.585.3131 388 State St Canby, Oregon Suite 840 Salem, OR 97301
	SE HAZEL DELL WAY				



TRANSIT OFFICE CEILING PLAN

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	10/15/10
2	ISSUED FOR CONSTRUCTION	10/15/10
3	ISSUED FOR RECORD	10/15/10
4	ISSUED FOR RECORD	10/15/10
5	ISSUED FOR RECORD	10/15/10
6	ISSUED FOR RECORD	10/15/10
7	ISSUED FOR RECORD	10/15/10
8	ISSUED FOR RECORD	10/15/10
9	ISSUED FOR RECORD	10/15/10
10	ISSUED FOR RECORD	10/15/10

NOTES:

General:

This floor and ceiling plan details tenant improvements to 1650 interior square feet of new existing retail space located at 195 S Hazel Dell Way, Canby Oregon. Space is to be used as offices for Canby Area Transit which will occupy one quarter of the building space. South quarter of building is currently occupied. Tenant wall is from floor to roof across width of building and is open, not dry walled, on north side.

Fire Sprinklers:

Add 16 sprinkler drops below 8' suspended ceiling, approx 5' to 6' from existing 10' O.C. system (see sheet two, Ceiling Plan, for locations).

Plumbing:

Cut concrete floor for sewer line 17'-6".
Install plumbing and fixtures for toilet, two sinks and small electric water heater.
Existing water supply valve in ceiling.

Wall Construction:

Finish utility room framing to roof, approx 4'.
Frame north tenant wall floor to roof (south tenant wall existing and open).
51' x 16' wall to be 6" thick metal frame, 4" studs 16" O.C. both sides, alternating.
Frame interior walls, 163' x 8'.
Frame restroom ceiling, 5'-7" x 10'-8".
9 - 3' Doors, solid core, paint grade.
6 - 4' x 4' Fixed Interior Windows.
2 - 4' x 4' Sliding Interior Windows.
Tenant walls to be one hour fire walls, two layers 5/8" drywall, offset joints, fill all penetrations.
Future tenant side of north tenant wall to be left open.
Interior walls and restroom ceiling to be 5/8" drywall, taped filled and textured.
Insulate north tenant wall, utility room walls and restroom ceiling.
Cover restroom ceiling joists with 5/8" CDX.

Suspended Ceiling:

Install 1590 square feet. 2'x 4' Panels with insulation, 8' height (Ceiling Plan on page 2).
10 - Supply Vents 2' x 2'.
2 - Return Vents 2' x 4'.
21 - Lights 2' x 4'.
4 - Lights 2' x 2'

HVAC:

Roof Unit for 1650 square feet, natural gas heat, electric cooling.
Approximately 60' run to gas meter.
Existing roof pedestal and reinforcement.
Insulated ducting to suspended ceiling vents, 10 supply, 2 return. One 5" x 13" vent in restroom ceiling.

Electrical:

Install main breaker at service, 200 Amp.
Wire to existing panel through existing conduit.
Panel 80' from service.
Approximately 14 circuits required.
Suspended ceiling lights 21- 2' x 4', 4- 2' x 2'.
Restroom lights, 1 over head and 1 sconce.
Restroom exhaust fan.
HVAC circuit, small roof unit.
Water Heater circuit, small water heater in ceiling.
48 outlets, 8 single switches, 4 two way switches.
13 dual phone and Internet outlets.
Locate and mount existing fire alarm pull.
Reinstall salvaged smoke detection system.

Finish:

Restroom formica counter top cabinet, 4', storage below.
Lunch room formica top cabinet, 9', storage below.
Front counter formica top below sliding windows, 21" x 8'-10".
Paint grade all door and window trim.
Install vinyl base board.
Paint all walls and trim.
Install 3' x 3' mirror in restroom.

Floors:

Install 1090 sq ft Commercial Carpet.
Install 560 sq ft vinyl composition tile.

EXHIBIT C

IMPROVEMENTS TO BE REMOVED UPON LEASE TERMINATION

- 1) All moveable office related items such as: tables, desks, photocopy machines, etc.
- 2) Moveable additions such as laundry - washer & dryer, refrigerators, freezer.
- 3) Any easily removable cabinetry, display cases, and file/storage cabinets, pull down tables.
- 4) Hang down or wall mount lighting and any useable sinks, not including lavatory items.

EXHIBIT D
RULES AND REGULATIONS

1. The sidewalks, halls, passages, exits, entrances, parking areas, and shopping malls of the Business shall not be obstructed by Tenant or used by it for any purpose other than access to the Premises. Tenant and Tenant's contractors or agents shall have access to the roof to maintain the HVAC system.
2. No awning, canopy, or other projection of any kind shall be installed over or around the windows or entrances of the Premises and only such window coverings as are approved by Landlord shall be used in the Premises.
3. The Premises shall not be used for commercial lodging, sleeping or cooking. Microwaves and appliances for the preparation of coffee, tea and other similar items are approved for the use of Tenant and its employees.
4. All janitorial work for the Premises shall be paid for by Tenant. Any person or persons employed by Tenant to do janitorial work shall be subject to these Rules and Regulations while in the Business and outside the Premises.
5. Landlord will furnish Tenant with two keys to the Premises, free of charge. Tenant, upon the termination of its tenancy, shall deliver to Landlord all keys to doors in the Premises.
6. Tenant shall not use or keep on the Premises or the Business any kerosene, gasoline, or other flammable or combustible fluid or material.
7. In case of invasion, mob, riot, public excitement, or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right to prevent access to the Business by such action as Landlord may deem appropriate, including closing entrances to the Business.
8. The doors of the Premises shall be closed and securely locked at such time as Tenant's employees leave the Premises.
9. The toilet rooms, toilets, urinals, wash bowls, and other apparatus in the Premises and the Business shall not be used for any purpose other than that for which they are intended, no foreign substance of any kind shall be deposited therein, and any damage resulting from Tenant's misuse shall be paid for by Tenant.
10. Except with the prior written consent of Landlord, the Premises shall not be used for manufacturing of any kind, or for any business or other activity other than that specifically permitted under Tenant's Lease.
11. Tenant shall not install any radio, television, or similar antenna or aerial, nor any loudspeaker or other device, on the roof, exterior walls, or grounds of the Business.

12. Tenant shall not use in the Premises or the Business any handtruck not equipped with rubber tires and side guards, nor any other material-handling equipment not approved in writing by Landlord. No other vehicles of any kind shall be brought by Tenant into the Premises.
13. Tenant shall store its trash and garbage within the Premises until daily removal to such location in the Business as may be designated from time to time by Landlord. No material shall be placed in the Business trash boxes or receptacles if such material may not be disposed of by Canby Disposal, Inc.
14. All loading and unloading of merchandise, supplies, materials, garbage, and refuse and delivery or removal of the same to or from the Premises shall be made only through such entryways and at such times as Landlord may designate from time to time. Tenant shall not obstruct any loading areas used by other tenants in the Business and at no time shall Tenant park vehicles in a loading area except for loading and unloading.
15. Canvassing, soliciting, peddling, and distributing of handbills or other written material in the Business is prohibited and Tenant shall cooperate to prevent the same.
16. Tenant shall not permit the use or the operation of any coin operated machines on the Premises, including without limitation vending machines, video games, pinball machines, or pay telephones, without the prior written consent of Landlord.
17. Landlord may direct the use of pest extermination and scavenger contractors at such intervals as Landlord may determine at its own expense.
18. Tenant shall, immediately upon request from Landlord (which request need not be in writing), reduce its lighting in the Premises for temporary periods designated by Landlord, when required in Landlord's judgment to prevent overloads of the mechanical or electrical systems of the Business.
19. Employees of Landlord shall not perform any work for or on behalf of Tenant or do anything outside of their regular duties unless under special instructions from Landlord.
20. Tenant's employees shall park only in those areas of the Business designated in writing by Landlord from time to time for such purpose. Any vehicle improperly parked by an employee of Tenant may be towed or otherwise removed by Landlord at Tenant's expense and Tenant shall indemnify Landlord from any liability in connection with such removal. Landlord agrees that it shall not apply this section among tenants in a manner that is unreasonably discriminatory to Tenant.
21. Landlord may waive anyone or more of these Rules and Regulations in favor of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of these Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all

tenants of the Business, provided Landlord agrees not to waive such provisions among tenants in a manner that unreasonably discriminates against Tenant.

22. The word "Tenant" as used in these Rules and Regulations shall mean and include Tenant's assigns, agents, clerks, employees, licensees, invitees, and visitors. The word "Landlord" as used in these Rules and Regulations shall mean and include Landlord's assigns, agents, clerks, employees, licensees, invitees, visitors; and property manager.
23. These Rules and Regulations are in addition to, and shall not be construed in any way to modify, alter, or amend, in whole or part, the terms, covenants, agreements, and conditions of Tenant's Lease. In the event of a conflict between these Rules and Regulations and Tenant's Lease, the Lease shall govern.
24. Landlord reserves the right to amend these Rules and Regulations and to make such other reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care, and cleanliness of the Business and for the preservation of good order therein.

EXHIBIT E
RENEWAL OPTION

If the lease is not in default at the time each option is exercised or at the time the renewal term is to commence, Tenant shall have the option to renew this lease for two (2) successive terms of twenty-four (24) months each, as follows:

1. The option may be exercised by written notice to Landlord given not less than sixty (60) days prior to the last day of the expiring term. The giving of such notice shall be sufficient to make the lease binding for the renewal term without further act of the parties. Landlord and tenant shall then be bound to take the steps required in connection with the determination of rent as specified below.

2. The terms and conditions of the lease for each renewal term shall be identical with the original term except for rent and except that Tenant will no longer have any option to renew this lease that has been exercised. Rent for a renewal term shall be the greater of (a) the rental during the preceding original or renewal term or (b) a reasonable rental for the ensuing term.

3. If the parties do not agree on the rent within thirty (30) days after notice of election to renew, the rent shall be determined by a qualified, independent real property appraiser familiar with commercial rental values in the area. The appraiser shall be chosen by Tenant from a list of not fewer than three (3) such individuals submitted by Landlord. If Tenant does not make the choice within five (5) days after submission of the list, Landlord may do so. If Landlord does not submit such a list within ten (10) days after written request from Tenant to do so, Tenant may name as an appraiser any individuals with such qualifications. Within thirty (30) days after his appointment, the appraiser shall return his decision, which shall be final and binding upon both parties. The cost of the appraisal shall be borne equally by both parties.

EXHIBIT F
CONDITIONS, COVENANTS AND RESTRICTIONS

Conditions, Covenants and Restrictions - Clackamas County Recorder's No. 2007-081170

First Amendment to Conditions, Covenants and Restrictions – Clackamas County Recorder's No. 2009-026540

10m 20ms 01-11-08 18:34p

RECORDING REQUESTED BY:)
AND WHEN RECORDED MAIL TO:)
William P. Hutchison)
Foster Pepper Tooze LLP)
Suite 1800)
601 SW 2nd Avenue)
Portland, OR. 97204)

Space Above This Line Is For Recorder's Use Only

**DECLARATION AND ESTABLISHMENT
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASEMENTS**

This instrument filed for record by Fidelity National Title as an accommodation only. It has not been examined as to its execution or as to its effect upon the title.

Clackamas County Official Records Sherry Hall, County Clerk	2007-081170
	\$226.00
01146227200700811700340345	09/20/2007 02:42:36 PM
D-00 Cnt=3 SIn=6 KARLYNWUN	
\$170.00 \$10.00 \$16.00 \$10.00 \$20.00	

**DECLARATION AND ESTABLISHMENT
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASEMENTS**

This DECLARATION AND ESTABLISHMENT OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is made as of the 7 day of September, 2007 by Zimmer Ventures, LLC, an Oregon limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of certain real property located in the City of Canby, Clackamas County, Oregon, more particularly described on Exhibit "A" attached hereto, upon which Declarant may elect to develop an integrated retail and/or commercial project (the "Project"), subject to the limitations set forth in this Declaration.

B. Declarant contemplates developing a substantial portion of the Project as for industrial and commercial space (the "Commercial Space") and a portion of the Project as retail space (the "Retail Space") depicted on Exhibit B, attached hereto, as part of an integrated project for the mutual benefit of all real property in the Project. In connection therewith, Declarant does hereby fix and establish the Restrictions (as hereinafter defined), upon and subject to which all of the Project, or any part thereof, shall be improved, held, leased, sold and/or conveyed. It is the intent of this Declaration that each and all of the easements, covenants, conditions and restrictions set forth in this Declaration are for the mutual benefit of the Parcels (as hereinafter defined) and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration shall run with the land of each of the Parcels and every portion of each thereof, and shall apply to and bind the respective successors in interest to each of the Parcels and every portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration are imposed on each portion of and interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests in the Parcels and constitute covenants running with the land pursuant to applicable law.

C. In conjunction with the establishment of this Declaration and the Restrictions contained herein, Declarant is entering into a lease with Wilco Farmers, an Oregon cooperative corporation, its successors and assigns ("Wilco") for a portion of the Project, including an approximately 35,000 square foot commercial building containing approximately 20,000 square feet of retail space and 15,000 square feet of warehouse space, an enclosed yard, a greenhouse, and related improvements ("Wilco Parcel"), depicted on Exhibit B, attached hereto. Declarant acknowledges that, but for the Wilco Lease, the Project would not be constructed. In consideration for Wilco entering into the Wilco Lease, and as a material inducement therefore, Declarant hereby grants to Wilco various rights pursuant to this Declaration, such rights to be held and exercised by Wilco in Wilco's reasonable discretion until later of: (i) the expiration of the term of the Wilco Lease, including any option periods set forth therein, and any other

extensions of the term granted pursuant to the Wilco Lease; or (ii) the date upon which Wilco no longer occupies any portion of the Project.

ARTICLE 1

DEFINITIONS

1.1 "Assessment Lien" shall mean that lien created by reason of the delinquency described in and upon recordation of the Notice of Assessment Lien (as hereinafter defined).

1.2 "Building" shall mean any enclosed structure designated for the exclusive use of an occupant or limited occupant(s), as the case may be, placed, constructed or located on a Parcel, which for the purpose of this Declaration shall include any appurtenant supports, service areas and other outward extensions.

1.3 "Building Area" shall mean the limited areas of the Project within which Buildings may be constructed, placed or located, to the extent Declarant elects to develop the Project. Building Areas shall be designated by the Declarant. Buildings may not be constructed in the Wilco Parking Area, defined in Section 3.3 below.

1.4 "Commercial Common Area Maintenance Expenses" shall mean and include all Common Area Maintenance Expenses that are applicable to the Commercial Space.

1.5 "Commercial Taxes" shall mean all Taxes that are applicable to the Commercial Space.

1.6 "Common Area" shall mean all the areas within the exterior boundaries of the Project (to the extent developed) which are made available for the general use, convenience and benefit of all Permittees (as hereinafter defined). Without limitation, Common Areas shall include the following areas within the exterior boundaries of the Parcels: (i) all parking areas and parking decks, if any; (ii) all roadways and driveways; (iii) all sidewalks and walkways; and (iv) all landscaped and planted areas.

1.7 "Common Area Maintenance Expenses" shall mean and include all reasonable costs and expenses of every nature and kind as may be actually paid or incurred by Declarant in operating, managing, equipping, lighting, repairing, decorating, and maintaining the Common Area and in providing such security and other protection for the Project as Declarant deems necessary. The Common Area Maintenance Expenses shall include, but shall not be limited to, general maintenance and repairs, resurfacing, repaving, striping, snow removal, de-icing and cleaning the Common Area; maintenance and repair of landscaping and irrigation systems; maintenance, replacement and repair of Project signs, directional signs, lighting systems and vertical transportation systems (if any); maintenance and repair of fire protection systems located in the Common Area; storm drainage and sanitary sewer systems, trash disposal or other utility systems; the cost of water service, electricity and other utility costs incurred in connection with the Common Area; third party vendor costs and/or the wages and related payroll costs of personnel employed by Declarant to implement services furnished by Declarant; premiums for

commercial general liability insurance and property damage insurance, if any, maintained by Declarant in connection with the Common Area; fees for required licenses and permits; such management fee as Declarant determines appropriate; supplies; reasonable depreciation on maintenance and operating machinery and equipment (if owned by Declarant) and rental paid for such machinery and equipment (if rented), provided that no Owner has previously been assessed for the costs and expenses of acquiring such machinery and equipment and only to the extent such machinery and equipment is actually used on the Common Area, such depreciation and rentals to be allocated based upon the actual use of such equipment and machinery in the Project; the costs and expenses incurred by Declarant in enforcing this Declaration and in preparing, recording and foreclosing assessment liens as to the extent not recovered by an Owner as provided in Article 7 below; and the cost of maintaining the monument sign designed, approved and constructed by Wilco with 50% of the cost reimbursed by Declarant ("Monument Sign").

1.8 "Default Rate" shall mean that annual rate of interest equal to the interest rate per annum published by the Wall Street Journal as the prime rate (or in the event the Wall Street Journal no longer publishes a prime rate, then the prime rate or reference rate announced by the then largest chartered bank in Oregon in terms of deposits) from time to time plus two percentage (2%) points per annum, but in no event more than any maximum rate of interest permitted by law.

1.9 "First Year" shall mean the first full calendar year following the Partial Year.

1.10 "Floor Area" shall mean the actual number of square feet of space contained on each floor within each separately demised space within a Building, including any mezzanine or basement space (provided that such mezzanine or basement space is taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements), as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculations: space attributable to any multi-deck, platform or structural levels used for the storage of merchandise which is located vertically above ground floor; any space used for Building utilities or mechanical equipment; and any enclosed yards or greenhouses on the Wilco Parcel. Within thirty (30) days of a request, a Parcel Owner (as hereinafter defined) shall certify to another requesting Parcel Owner the amount of Floor Area applicable to each Building on its Parcel (as hereinafter defined). If any Parcel Owner causes an as-built survey to be prepared with respect to any portion of the Project, upon request, such Parcel Owner shall furnish a copy of the survey to the other Parcel Owners for informational purposes only.

1.11 "Governmental Restrictions" shall mean any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorization of any governmental entity, agency or political subdivision, whether now in force or which may hereafter be in force.

1.12 "Mortgage" shall mean an indenture of mortgage or deed of trust on a Parcel, or a "Sale and Leaseback" (meaning a transaction whereby an Owner conveys its fee or a leasehold estate in such Parcel and such conveyance is followed immediately by a leaseback or

sub-leaseback of the entire interest so conveyed or the improvements thereupon to such Owner, or to a party wholly controlled by such Owner).

1.13 "Mortgagee" shall mean any mortgagee under a Mortgage, or any trustee or beneficiary under a deed of trust constituting a lien on all or any portion of any of the Parcels or any leasehold interest in the Parcels, or on any ground lessor under any ground lease or master lessor under any master lease with respect to all or any portion of any of the Parcels. The interest held by any Mortgagee in any Parcel shall be subordinate to this Agreement.

1.14 "Notice of Assessment Lien" shall mean a notice recorded in the Official Records of Clackamas County, Oregon (the "Official Records"), and such other place as may be required by law, by any person to whom any assessment or other sum of money payable by any Owner (as hereinafter defined) pursuant to any provision of this Declaration stating that said assessment or sum has not been paid and that the applicable grace period for such payment (if any) has expired.

1.15 "Owner" shall mean each person who, at any given time, holds fee title to any Parcel or any portion thereof, subject to Section 1.17. Wilco shall have all rights afforded to an Owner pursuant only to Sections 3.3 and Article 4 of this Declaration.

1.16 "Parcel" or "Parcels" shall mean the parcel that comprises the Project and which is legally described on Exhibit A, and such further ground lease or subdivision of any such Parcel as approved by Declarant.

1.17 "Parcel Owner" shall mean the Owner, and its successors and assigns, in and to any Parcel. Wilco shall have all the rights afforded to a Parcel Owner pursuant only to Sections 3.3 and Article 4 of this Declaration.

1.18 "Partial Year" shall mean the initial fractional calendar year following the completion of the Common Area of the Project.

1.19 "Parties" shall mean the Parcel Owners.

1.20 "Permittees" shall mean the Owners of any and all portions of the Project and their respective heirs, successors, assigns, grantees, tenants and subtenants and all persons who now hold, or hereafter hold, portions of real property within the Project, or any leasehold estate, or building space thereon; and respective tenants or subtenants thereof; and the officers, directors, concessionaires, agents, employees, contractors, customers, visitors and licensees and invitees of any of them.

1.21 "Person" shall mean any natural person, partnership, trust, corporation, limited liability company or other legal entity.

1.22 "Prohibited Uses" shall mean any unlawful use and any use or operation which is clearly objectionable to the development or operation of the Project as a high quality retail and/or commercial project, as so operated, as determined by Declarant. Except as consented to in writing by Declarant and Wilco, which consent may be withheld by Declarant or Wilco in either party's sole discretion, the following shall be Prohibited Uses:

(i) Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in the Project; provided, that the foregoing shall not apply to: (a) the preparation of food, (b) a Permittee serving food at outdoor tables, or (c) a paging system within a building;

(ii) Any operation primarily used for any refining, smelting, or mining operation;

(iii) Any mobile home park, trailer court, labor camp, or junkyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance and shall not prohibit screened outside storage conforming to the zoning);

(iv) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located at the rear or side of any building or inside any building); provided, however, this prohibition shall not preclude the recycling of bottles or other containers as an incidental part of the operations of any Permittee;

(v) Any central laundry dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to on-site laundry or dry-cleaning service oriented to pickup and delivery by the ultimate consumer. Allowable operations which may include on-site dry-cleaning provided the operator complies with the following requirements:

(a) There shall be no dry-cleaning performed on-site except dry-cleaning for pickup on-site by the ultimate consumer.

(b) The operator shall at all times comply with all federal, state, and local laws related to hazardous materials;

(c) The operator shall at all times provide Declarant with an updated list of all dry-cleaning equipment, together with copies of manufacturers' warranties;

(d) Declarant shall at all time have the right to require the operator to upgrade its equipment or the installation thereof at Declarant's discretion;

(vi) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or repair operation, except if dealership of new and used farm tractors and implements, horse trailers and agriculture trailers. This prohibition shall not preclude an oil change business (such as Q-Lube) or a service station that includes automobile repair, provided that any servicing of vehicles shall be primarily performed indoors and there shall be no outdoor storage of any kind, including without limitation, parts, equipment, supplies, salvage, wrecks or vehicles, except outdoor storage allowed for new and used tractors, implements, horse trailers and agriculture trailers;

(vii) Any living quarters, apartments, hotel, motel, or lodging rooms;

(viii) Any mortuary; or

(ix) Any establishment selling or exhibiting pornographic materials (this shall not prohibit the showing of "R" rated movies).

Declarant hereby approves of Wilco's use of the Wilco Parcel as and for agricultural retailing and warehousing, and related uses, and represents, warrants and agrees that such use is not and shall never be a Prohibited Use.

1.23 "Restrictions" shall mean those easements, covenants, restrictions, liens and charges fixed and established upon the Project pursuant to this Declaration.

1.24 "Retail Common Area Maintenance Expenses" shall mean and include all Common Area Maintenance Expenses that are applicable to the Retail Space.

1.25 "Retail Taxes" shall mean all Taxes that are applicable to the Retail Space.

1.26 "Taxes" shall mean all taxes and assessments on the property within the Project.

ARTICLE 2

USE IN GENERAL

2.1 Lawful Use. If and when developed (meaning, for purposes of this Declaration, as an integrated retail and/or commercial project for the mutual benefit of all real property in the Project), the Project may be used for any lawful retail or commercial purpose not specifically prohibited herein. No portion of the Project shall be used for a Prohibited Use. Declarant shall have the authority to adopt such rules and regulations pertaining to the Project as Declarant determines appropriate from time to time in Declarant's business judgment subject to Wilco's consent and to the following limitations: (i) similarly situated Owners and Permittees shall be generally treated similarly; and (ii) no rule shall interfere with the activities carried on within the confines of the structures on any Parcel, except that the Declarant may restrict or prohibit activities that create the possibility of monetary costs for other Owners or Permittees, that endanger the health or safety of Permittees of other Parcels, that generate excessive noise, parking or traffic, that create unsightly conditions visible outside the confines of such structures, or that create a source of unreasonable annoyance to Permittees of other Parcels.

No portion of the Project and no other property owned by Declarant, or any affiliate of Declarant, located within ten (10) miles of the Project, other than the Wilco Parcel, shall be used for agricultural retail, agricultural warehousing, or related uses. Any of the foregoing to the contrary notwithstanding, the usual and customary uses of a professional, licensed veterinary clinic shall not be deemed to be "agricultural retail and warehousing, or related uses".

2.2 Zoning. This Declaration shall be subject to applicable zoning.

ARTICLE 3

CONSTRUCTION

3.1 Buildings Only in Building Area. If and when the Project is developed, no Building or structure of any kind shall be erected, placed or maintained on any portion of the Project except as provided herein.

3.2 Alteration Approval. In order to maintain the architectural and functional harmony of the Project (to the extent developed) no Building or structure within the Project shall be constructed, reconstructed, altered, added to or maintained in such a fashion as to alter, in any material respect, the architectural appearance, character or motif or functional purpose of such item, unless such alteration is first approved in writing by Declarant in its sole and absolute discretion. Such approval shall be given or withheld in writing within thirty (30) days after receipt of written request and receipt by Declarant of detailed plans and specifications therefor. Failure to respond in writing to a written request for such approval within thirty (30) days of its receipt shall constitute disapproval of such proposed construction, reconstruction or alteration. All alterations or improvements shall be constructed in strict accordance with the plans and specifications approved by Declarant. No material deviation shall be made from such plans and specifications without Declarant's prior written approval. Compliance with the design review process set forth in this Declaration is not a substitute for compliance with City and County building, zoning, and subdivision regulations, and each Owner shall be responsible for obtaining all approvals, licenses, and permits required by applicable law prior to commencing construction. Neither Declarant, nor any manager, employee, agent, or consultant of Declarant shall be: (i) liable to any Person, including any Owner, Permittee, or contractor for any loss, liability, claim, or expense which may arise by reason of the approval or disapproval of any Improvement; or (ii) responsible in any way for any defects in any plans or specifications submitted, revised, or approved pursuant to this Article or for any structural or other defect in any work done. Approval by the Declarant of any application shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar application thereafter submitted. Declarant's approval of any proposed alteration or improvement shall automatically be revoked one year after issuance unless construction of the alteration or improvement has been commenced.

3.3 Construction Conditions and Procedures. Wilco's prior written approval shall be a condition precedent to any development, redevelopment, repair, construction, alteration, expansion, diminution, or modification of, or other change to the Retail Space, except that initial development and construction of the Retail Space is hereby approved by Wilco substantially as depicted on Exhibit B. Wilco's approval pursuant to this Section 3.3 may be withheld, conditioned or delayed in Wilco's reasonable discretion. Wilco will be deemed to be acting in Wilco's reasonable discretion if Wilco withholds, conditions or delays approval of any such proposed work that could reasonably be expected to materially diminish or adversely impact Wilco's use of the Wilco Parcel or Wilco's designated parking area ("Wilco Parking Area") depicted on Exhibit B, attached hereto. To the extent the Project is developed:

a. All construction activities within the Project shall be performed in a good and workmanlike manner, using first class materials, and in compliance with all laws,

rules, regulations, orders, and ordinances of the city, county, state and federal governments, or any department or agency thereof, having jurisdiction over the Project.

b. All construction activities within the Parcels shall be performed in accordance with the following provisions:

(i) so as not to unreasonably interfere with any construction work being performed on the remainder of the Parcels, or any part thereof; and

(ii) so as not to unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Project or any part thereof or the business conducted by any other Owner or Permittees.

c. Construction activities and development within the Project shall not diminish or limit Permittee access to the Wilco Parcel or the Wilco Parking Area.

d. When an Owner, including the Declarant, is constructing, reconstructing, repairing, maintaining, remodeling, or enlarging any improvements on its Parcel, such Owner shall establish a staging and storage area on its Parcel prior to commencing such work. Notwithstanding anything to the contrary contained herein, such staging and storage areas shall not unreasonably interfere with access between the other areas of the Project, with the use of any other Parcel, or with the operation of any business on any other Parcel by the Permittees thereof (such Permittees to have free and unobstructed access to the loading docks, compactors, sidewalks and entrances and exits). If substantial work is to be performed, such Owner, at the request of any other Owner of a Parcel which would be materially and adversely affected by such staging or storage area, shall fence off such staging and storage area. Upon completion of such work, such staging and storage area shall be restored to a condition at least equal to that existing prior to commencement of such work.

e. Prior to constructing, reconstructing, remodeling or enlarging a building or changing the Common Areas on a Parcel, the Permittee of such Parcel shall give Declarant and Wilco at least thirty (30) days prior written notice of the proposed activities and the proposed location of any staging and storage area and proposed access points. Upon completion of such work, the constructing Person shall restore the affected Common Areas to a condition at least equal to that existing prior to commencement of such work. The construction of any building, including painting and all exterior finish, shall be pursued diligently and shall be completed within twelve (12) months after the beginning of construction so as to present a finished appearance when viewed from any angle. All landscaping on a Parcel shall be completed within one (1) month after the date of completion of the structures thereon.

f. Each Owner shall diligently complete all construction activities within its Parcel as quickly as possible, shall regularly clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris, and upon completion of all construction activities shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

g. Each Owner shall indemnify, defend and hold harmless each other Owner from and against any and all claims, losses, damages, liabilities, injuries, costs and expenses, including, without limitation, reasonable attorneys' fees, because of personal injury or death of persons or destruction of property arising from or as a result of construction by such Owner on its Parcel, except for claims caused by the negligence or willful act or omission of the indemnified Owner, its licensees, concessionaires, agents, servants, or employees.

ARTICLE 4

PROJECT EASEMENTS

4.1 Grant of Easements. Declarant hereby establishes and grants to, and each other person who becomes an Owner shall, immediately upon becoming an Owner and without further act, be deemed to have established and granted to all other Owners and all Permittees of the Project, and their guests, employees, invitees, permittees, licensees, patrons and customers, irrevocable, non-exclusive easements over, across, upon and beneath the Common Area held by such Owner for the purposes set forth in Section 4.2. Nothing in this Section or elsewhere in this Declaration shall be deemed to be or constitute a gift or dedication of any portion of the Project to the general public or for any public use or purpose whatsoever.

4.2 Permitted Common Area Uses. To the extent the Project is developed, except as otherwise provided herein, the Common Area shall be used for the following purposes:

a. The parking of passenger vehicles and the pedestrian and vehicular traffic of all Permittees.

b. The ingress and egress of any Permittees and the vehicles thereof to and from any portion of the Common Area and the public streets adjacent to the Common Area.

c. The installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers, storm drains, water and gas mains, electric power lines and conduits, telephone lines and conduits, data lines and conduits, television cables, vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls and related utility and service facilities serving any part of the Project, all of which (except hydrants and transformers and other installations as may be requested by the utility company) shall be even with or below the surface of the Common Area or within Common Area walls or as otherwise directed by Declarant. All Owners shall cooperate in the granting of appropriate and proper easements to each other or to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities set forth above. Each Owner shall have the right to enter upon any portion of the Common Area as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities referred to above; provided, however, such Owner does not unreasonably interfere with the use of the Common Area by Permittees and that no relocation or removal of any such facilities shall be made without the prior written consent of Declarant.

d. The maintenance, repair and replacement of any of the items referred to in Section 4.2(c) above.

e. The ingress and egress of delivery and service trucks and vehicles to and from the Building Areas or any portion thereof and the public streets adjacent to the Project, the delivery of goods, wares and merchandise, and the rendering of services to all persons or other entities who may lease portions of the Building Areas. Each tenant or other occupant of the Project shall use commercially reasonable efforts to have deliveries made within the areas designated for such purposes by Declarant. In the event it is necessary that deliveries be made other than in the areas designated by Declarant, such deliveries shall be made so as to cause the least amount of interference with the use of adjacent portions of the Common Area.

f. The temporary use (including erection of ladders, scaffolding and store front barricades) during periods of construction, remodeling or repair, and ingress and egress for vehicles transporting construction materials and equipment and use thereof by construction equipment, upon the condition, however, that all construction, remodeling or repair of buildings and building appurtenances is diligently performed and such ladders, scaffolding and barricades are promptly removed upon completion of such work.

g. [Intentionally omitted].

h. Easements over the Common Areas for natural drainage of storm water runoff from other portions of the Project. In addition, an easement is hereby reserved for Declarant to enter on, across, over, in, and under any portion of the Project (except for any Building Area) for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Project for the purpose of improving drainage from and across the Project; provided that the holders of such easement shall use all reasonable efforts to conduct any such work in a manner which minimizes any disturbance to the uses of the Project by Declarant, the Owners, and Permittees; shall undertake any such work expeditiously; and shall restore any areas affected by such work to a sightly and usable condition as soon as reasonably possible following the completion such work. No Person shall alter the natural drainage on or over any Parcel so as to increase materially the drainage of storm water onto adjacent portions of the Project without the consent of the Owner of the affected Parcel.

Declarant shall have the right, but not the obligation, to enter upon any Parcel, including any Building thereon, for emergency, security, or safety reasons (including the correction of any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by Declarant), to perform maintenance pursuant to this Declaration, and to determine whether such Parcel and Improvements and the activities thereon comply with this Declaration. Except in an emergency situation, entry to any structure shall occur only during reasonable hours and after reasonable advance notice to the Owner thereof.

4.3 Wilco Parking Area. Any of the foregoing to the contrary notwithstanding, Wilco shall be granted not less than one hundred twenty one (121) parking spaces, for the use of Wilco and it's Permittees, located in the Wilco Parking Area, at no

additional cost or expense to Wilco. No Person shall interfere with or diminish Wilco's rights to the Wilco Parking Area without Wilco's prior written consent.

4.4 Common Area Alteration. To the extent the Project is developed, no Owner or other person shall alter any parking areas or other improvements located upon the Common Area without the prior written consent of Declarant, and no Owner, including Declarant, may alter any parking areas or other improvements in any portion of the Common Area located in the Retail Space without the prior written consent of Wilco. Notwithstanding the foregoing: (i) an Owner (or Declarant) shall have the right to excavate or conduct construction activities upon the Common Area, if necessary, in connection with the installation, operation, maintenance, repair, replacement, relocation and removal of any utility or service facilities, subject, however, to the provisions of Section 4.2(c), so long as such excavation or construction activities shall be prosecuted diligently to completion; provided, that the consent of the Parcel Owner on whose Parcel such activity is to take place shall also be obtained, which consent shall not be unreasonably withheld, and the person causing such excavation or construction activities to be made shall forthwith, upon completion thereof, restore any portion of the Common Area affected thereby to the same condition as existed prior to the commencement of such installation or construction activities using the same type and quality of materials as previously used; and (ii) Declarant may make alterations in the Common Area as it shall deem appropriate or necessary. Any work performed in the Project pursuant to this subparagraph shall be performed so as to minimize the disruption of business operations conducted anywhere within the Project.

ARTICLE 5

OPERATION AND MAINTENANCE OF BUILDING AREA AND COMMON AREA

5.1 Taxes and Assessments. All Owners shall pay, prior to delinquency, all Taxes on the property within the Project owned or leased by them. If any such Owner shall fail to pay such Taxes prior to delinquency, any other Owner or the tenant of any other Owner may pay such Taxes and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within thirty (30) days, the curing Owner or tenant shall have a lien on the property within the Project of the defaulting Owner for the amount of such bill, which amount shall bear interest at a rate equal to the Default Rate until paid. Such lien may be foreclosed by such Owner or tenant as provided in Article 7 below.

Notwithstanding the foregoing:

a. Until such time as separate tax bills are obtained for each of the Parcels within the Project, each Owner of a Parcel located within the Project shall pay, as its proportionate share of Taxes allocable to the Buildings within the Project, that amount determined by multiplying the amount of such Taxes by a percentage based on the ratio that the Building Floor Area within such Owner's Parcel bears to the total Building Floor Area within the Project from time to time. Until such time as separate tax bills are obtained for each of the Parcels within the Project, each Owner of a Parcel located within the Project shall pay, as its

proportionate share of Taxes allocable to the real property within the Project, that amount determined by multiplying the amount of such Taxes by a percentage based on the ratio that the square footage of real property within such Owner's Parcel bears to the total square footage of real property within the Project from time to time.

b. With the consent of Declarant, which consent may be withheld in Declarant's sole and absolute discretion, an Owner (or the tenant or occupant of an Owner if such tenant or occupant has the right under its lease or occupancy agreement to contest Taxes) shall have the right, in good faith, to contest the amount of Taxes owing with respect to its property; provided, that such Owner (or tenant or occupant) shall take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed or enforced with respect to any property within the Project, including, immediately following the request of Declarant, recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien.

5.2 Assessments. Any assessment for public improvements levied against the entire Project, rather than against individual Parcels, unrelated to the construction of improvements at the Project, shall be paid by all Owners in accordance with the percentages determined pursuant to Section 5.1 above. Any systems development charges, hook-up fees, or other assessments related to the construction of improvements at the Project shall be paid by Person performing such improvements.

5.3 Building Maintenance. Each Owner shall maintain, or cause to be maintained, in a safe, clean, attractive and tenantable condition, all Buildings located upon its Parcel or Parcels. Each Owner of a Parcel shall keep the Buildings located on its Parcel in a high quality condition and state of repair, in compliance with all governmental laws, rules, regulations, orders and ordinances exercising jurisdiction therefor, and in compliance with the provisions of this Declaration. Each Permittee shall store all trash and garbage in adequate containers, locate such containers in the portions of the Project as is approved by Declarant, and arrange for regular removal of such trash or garbage. Each Owner shall maintain in good condition and repair all utility facilities, lines and systems located on such Parcel. To the extent any such facilities, lines or systems serve more than one Parcel, such maintenance obligations shall be equitably shared between each such Owner so long as the cause for the need of any maintenance was not due to a negligent act or omission by one Owner or its Permittee or their respective agents or employees (in which event such Owner shall be solely responsible for all costs of such maintenance). Any Person performing or causing to be performed maintenance or repair work agrees to promptly pay all costs and expenses associated with such maintenance or repairs to be diligently and promptly completed and to promptly clean the area and restore any affected portion of the Common Areas to a condition equal to or better than the condition which existed prior to the commencement of such work.

5.4 Common Area Maintenance. Except as otherwise provided herein, Declarant shall operate and maintain, or cause to be operated and maintained, the Common Area, including the repairs or services with respect to the Common Areas, all of the costs and expenses for which shall be included in Common Area Maintenance Expenses.

5.5 Common Area Liability Insurance. As part of the operation of the Common Area (to the extent developed), Declarant shall obtain and maintain commercial general liability insurance insuring all Owners and such other persons who now or hereafter own portions of the Project, as their respective interests may appear, against claims for personal injury, death or property damage occurring in, upon or about the Common Area. Such insurance shall be written with an insurer licensed to do business in the State of Oregon. The limits of liability of all such insurance shall be at least Two Million Dollars (\$2,000,000.00) combined single limit, and may be increased by Declarant in its discretion from time to time. Declarant shall cause to be issued certificates of insurance to each of the Owners and have such certificates provide that such insurance shall not be canceled or amended without ten (10) days prior written notice to each of the Owners.

5.6 Proportionate Share of Common Area Maintenance Expenses. To the extent the Project is developed, Declarant shall expend only the monies reasonably necessary for the operation of the Common Area and for the maintenance thereof in order to keep the Common Area in good repair and clean condition. Each Owner shall pay to Declarant its proportionate share (determined pursuant to Section 5.9 below) of Common Area Maintenance Expenses. For the Partial Year and during the First Year, until the month following the delivery of the Statement referred to in Section 5.7 below, each Owner shall pay to Declarant, on or before the first day of each calendar month, its proportionate share of an estimate of the Common Area Maintenance Expenses for the Partial Year; provided that such Common Area Maintenance Expenses applicable to Wilco for the Partial Year and during the First Year, until the month following the delivery of the Statement, shall be determined pursuant to a separate agreement between Wilco and Declarant.

5.7 Partial Year Expenses. On or before March 31 of the First Year, Declarant shall furnish each Owner with a statement (the "Statement") showing in reasonable detail the total Common Area Maintenance Expenses for the Partial Year. Commencing with the first day of the calendar month in the First Year immediately following the calendar month in which the Statement is furnished, as provided above, each Owner shall pay to Declarant on or before the first day of each calendar month an amount equal to such Owner's proportionate share of the quotient obtained by dividing the total Common Area Maintenance Expenses paid by Declarant for the Partial Year by the number of calendar months (including as a fraction any initial fractional calendar month) in such Partial Year. On or before March 31 of each calendar year thereafter, Declarant shall furnish each Owner with the Statement showing in reasonable detail the total actual Common Area Maintenance Expenses for the preceding calendar year. Commencing with the first day of the calendar month immediately following the calendar month in which the Statement is furnished, each Owner shall pay to Declarant on or before the first day of each calendar month an amount equal to such Owner's proportionate share of the quotient obtained by dividing the actual Common Area Maintenance Expenses paid by Declarant for the preceding calendar year by twelve (12). The failure of Declarant to furnish a Statement setting forth Common Area Maintenance Expenses within the time periods set forth above shall not constitute a default hereunder by Declarant or a waiver of Declarant's right to receive payment of an Owner's proportionate share thereof, except that Declarant shall be deemed to have waived its right to receive payment as to any Common Area Maintenance Expenses that are not set forth in a Statement delivered to the Owners within three (3) years after the date upon which they were incurred.

5.8 Full Year Expenses. Following the end of the Partial Year and each subsequent full calendar year of the term hereof and each Owner's receipt of a Statement of the total Common Area Maintenance Expenses for such year, the amounts due from each Owner as its proportionate share of the Common Area Maintenance Expenses for the Partial Year or full calendar year shall be adjusted between Declarant and each Owner. If any Owner's proportionate share of the total Common Area Maintenance Expenses for the Partial Year or full calendar year exceeds the amount prepaid by such Owner, such Owner shall pay to Declarant such excess within thirty (30) days following the Owner's receipt of Declarant's statement. If any Owner's proportionate share of the total Common Area Maintenance Expenses for the Partial Year or full calendar year is less than the amount prepaid by such Owner, the amount of excess prepayment by such Owner shall be credited against such Owner's future prepayment obligations regarding Common Area Maintenance Expenses, cumulative from month to month until such excess is exhausted.

5.9 Determination of Proportionate Share. Each Owner of a Parcel located within the Project shall pay, as its proportionate share of Common Area Maintenance Expenses, that amount determined by multiplying the amount of such Common Area Maintenance Expenses by a percentage based on the ratio that the Building Floor Area within such Owner's Parcel bears to the total Building Floor Area within the Project from time to time. Declarant may record supplements to this Declaration from time to time stating the actual Floor Areas and the percentages which are then applicable.

5.10 Audits. Each Owner shall have the right to audit Declarant's records to determine the accuracy of any payment of Taxes or and Statement, within one hundred eighty (180) days after a receiving notice of such Taxes or such Statement.

5.11 Owners' Duty to Maintain Common Area. If, following the development of any portion of the Project by Declarant, any period of time exists when no person is performing the duties of Declarant, each Owner shall have the obligation to maintain its Parcel(s) in a manner consistent with the provisions of this Declaration. If any such Owner shall fail to so maintain its own Parcel(s), then subject to Article 9, any other Owner or Permittee shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of thirty (30) days in which to cure such default, or, if the nature of the default is such that it cannot be reasonably cured within such 30 day period, the Owner shall commence to cure said default within such 30 day period and diligently pursue the curing of such default to completion. If the defaulting Owner does not cure such default within said 30 day period, or, if applicable, commence to cure such default within said 30 day period and diligently pursue the curing of such default to completion, then subject to Article 9, the Owner(s) and/or Permittee(s) giving the notice of default may do so and the curing Owner or Permittee may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within fifteen (15) days, then the curing Owner or Permittee shall have a lien on the Parcel of the defaulting Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

5.12 Agents. In performing the duties of Declarant hereunder, Declarant may utilize such agents and independent contractors (including management companies) as Declarant may designate.

5.13 Signs. Exterior identification signage shall be allowed within the Project so long as such signage complies with all applicable laws, codes and ordinances.

Declarant hereby approves of the construction and location of the Monument Sign.

ARTICLE 6

INSURANCE

6.1 Liability Insurance. Each Owner shall, during the term of this Declaration, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with good and solvent insurance companies authorized and registered to do business in the State of Oregon and having a rating by Best's Insurance Reports of not less than A-/VIII, on all property within the Project owned or leased by such Owner and all Buildings and other improvements owned or leased by such Owner, a policy or policies of bodily injury and property damage liability insurance with combined single limits of at least Two Million Dollars (\$2,000,000.00), in which all other Owners, Declarant, any Mortgagee of Declarant and any property manager of Declarant shall be named as additional insureds, insuring against any and all liability arising out of the maintenance, use and occupancy of the Building(s) and other improvements located on the property within the Project owned or leased by such Owner. Each Owner shall also maintain all-risk insurance coverage on all Buildings and improvements (including Common Areas) located upon that portion of the Project leased or owned by such Owner including loss or damage by fire and such other risks as are from time to time included in the all-risk coverage insurance policies customarily issued in Oregon in an amount not less than one hundred percent (100%) of the full replacement cost of such buildings and improvements. Such all-risk insurance policies shall be maintained with good and solvent insurance companies authorized to do business in and registered with the State of Oregon and having a rating by Best's Insurance Reports of not less than A-/VIII. Declarant shall be named as a loss payee on all such all-risk insurance policies.

6.2 Certificates. Each Owner shall, upon request thereof from Declarant or any other Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Article. To the extent that the same shall not invalidate any insurance coverage obtained by an Owner, each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the insurance required to be carried under this Article. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or any damage to, the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation), each Owner shall give to each insurance company which has issued to it policies of all-risk insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly

endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver. All such insurance maintained pursuant to this Article shall provide that such insurance shall not be canceled or amended without ten (10) days prior written notice to Declarant.

If any Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then subject to Article 9, any other Owner or Permittee shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days in which to cure such default. If the defaulting Owner does not cure such default within said 10 day period, then subject to Article 9, the Owner(s) and/or Permittee(s) giving the notice of default may do so and the curing Owner or Permittee may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within ten (10) days, then the curing Owner or Permittee shall have a lien on the Parcel of the defaulting Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

6.3 Indemnification. Each Owner ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Owner ("Indemnitee") from and against all claims, including any actions or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorneys' fees actually incurred and costs of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on the Parcel owned or leased by Indemnitor, except for claims caused by the negligence or willful act or omission of Indemnitee or its agents, servants, partners or employees.

ARTICLE 7

ASSESSMENT LIEN

7.1 Assessment Lien Procedure. In the event any assessment or other sum of money payable by any Owner pursuant to any provision of this Declaration to any person is not paid when due and after expiration of any applicable grace period set forth herein, then the person to whom such sums are owing shall have the right to record, in the Official Records, a Notice of Assessment Lien which shall set forth the then delinquent amount owed by such Owner (including default interest, if applicable) and a legal description of the property within the Project owned or leased by such defaulting Owner. Upon recordation of such Notice of Assessment Lien, the then delinquent amount owing by such Owner, together with interest thereon, shall constitute an Assessment Lien upon the property within the Project described in the Notice of Assessment Lien and the person recording such Notice of Assessment Lien shall provide written notice of such recordation to the defaulting Owner. In the event the amount secured by such Assessment Lien is not paid in full within thirty (30) days after the defaulting Owner's receipt of notice that a Notice of Assessment Lien has been recorded, the person to whom such amounts are owing may enforce payment of the assessment or other amount due, or enforce the Assessment Lien against the property and interest of the delinquent Owner, by taking either or both of the following actions, concurrently or separately (by exercising either of the remedies set forth below, such person shall not prejudice or waive its right to exercise the other remedy, or such additional remedies as may be available under its lease or under applicable law):

- a. Bringing an action at law against the Owner personally obligated to pay the assessment or other sum of money;
- b. Foreclosing the Assessment Lien against the property of the Owner in accordance with the then prevailing Oregon law relating to the foreclosure of Mortgages (including the right to recover any deficiency); or
- c. Pursuing any other remedy at law or in equity.

7.2 Obligation. Each assessment or amount due pursuant to any provision of this Declaration by an Owner, together with interest at the Default Rate, costs and attorneys' fees, shall be the obligation of such defaulting Owner, but such obligation of such Owner shall not be deemed to discharge or limit the charge on the land of any Assessment Lien encumbering the property of such Owner within the Project, regardless of a subsequent conveyance of that property. No Owner shall escape liability for payment of any amount due hereunder which fell due while the Owner by nonuse of the Common Area or by transfer or abandonment of such Owner's property. In the event any property within the Project as to which a Notice of Assessment Lien has been recorded pursuant to Section 7.1 above is sold, conveyed or otherwise transferred, in whole or in part, by the Owner thereof, such property shall remain subject and subordinate to the Assessment Lien created by reason of the delinquency described in the Notice of Assessment Lien.

7.3 Priority. The Assessment Lien provided for above shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon any portion of the Project; provided, however, that such Assessment Lien shall be subject and subordinate to:

- a. Liens for taxes and other public charges which by applicable law are expressly made superior;
- b. Any Mortgages recorded in the Official Records (and such other place as may be required or permitted by law) prior to the date of recordation of a Notice of Assessment Lien. All liens recorded subsequent to the recordation of a Notice of Assessment Lien shall be junior and subordinate to the Assessment Lien created by reason of the delinquency described in the recorded Notice of Assessment Lien; and
- c. The rights of any and all tenants occupying any portion of the Project under written leases.

7.4 Cure. Upon the curing of any default for which a Notice of Assessment Lien was recorded, the person recording such Notice of Assessment Lien shall record an appropriate release of any Notice of Assessment Lien upon payment by the defaulting Owner of a reasonable fee, to be determined by such person, to cover the costs of preparing and recording such release, together with the payment of such other costs, including, without limitation, legal fees and court costs, interest or fees, as such person shall have incurred.

ARTICLE 8

CASUALTY

8.1 Damage to Buildings. In the event any Building or appurtenant improvement on a Parcel is damaged or destroyed by any casualty, the Owner upon whose Parcel such Building and/or improvement is/was located shall promptly (i) repair and/or reconstruct such Building or improvement in accordance with the applicable provisions of this Declaration, or (ii) level such Building or improvement, remove the debris from the Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained, and covered with planted grass, one inch (1") of asphaltic concrete, a dust cap, decomposed granite or other appropriate ground cover approved by Declarant (in Declarant's sole discretion), until subsequently improved or constructed upon, provided that no such protective covering shall increase the drainage burden on any other Parcel.

8.2 Damage to Common Areas. Upon any damage or destruction to the Common Area on a Parcel during the term of this Declaration (i) from any cause insurable under an all-risk insurance policy of the type then customarily issued in the State of Oregon for similar property or (ii) if not so insurable, the cost of repair of which (including applicable governmental fees and exactions) does not exceed twenty percent (20%) of the then full replacement cost of all of the Common Area on such Parcel, the Owner upon whose Parcel such damage or destruction occurred shall, at its sole cost and expense, promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Area. If the cost of repair under clause (ii) above exceeds twenty percent (20%) of the then full replacement cost of all of the Common Area on the subject Parcel and the Owner of the affected Parcel elects (which such election shall be made, if at all, within thirty (30) days following such damage or destruction) not to restore, repair or rebuild the damaged or destroyed Common Area, and if the damaged or destroyed Common Area includes or affects any entrances to the Project, access drives or drive aisles within the Project, or common utilities or signs, then any other Owner shall have the right, by written notice to the Owner upon whose Parcel such damage or destruction occurred, to elect to effect restoration, repair or rebuilding of all or any part of such damaged or destroyed Common Area, in which event the electing Owner or Owners shall effect such restoration, repair or rebuilding in accordance with the applicable provisions of this Declaration, and the Owner of the Parcel upon which such damage and destruction occurred shall bear the first of the costs incurred to restore, repair and rebuild the affected Common Area to the extent not in excess of twenty percent (20%) of the then full replacement cost of all of the Common Area on the subject Parcel, and the electing Owner or Owners shall bear all such costs exceeding twenty percent (20%) of the then full replacement cost of such Common Area. If an affected Owner is not obligated to repair damaged or destroyed Common Area pursuant to clause (ii) above, and no other Owner elects to effect such repair within thirty (30) days after the date the affected Owner determines not to proceed with such repairs, then the affected Owner shall promptly remove any debris from its Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained, and covered with planted grass, one inch (1") of asphaltic concrete, a dust cap, decomposed granite or other appropriate ground cover approved by Declarant (in Declarant's sole discretion), until subsequently improved or constructed upon, provided that no such protective covering shall increase the drainage burden on any other Parcel. Unless the work of restoration, repair, rebuilding or improvement is carried out pursuant to the original plans and

specifications for the construction of the Common Area, the plans or specifications for such work shall be subject to the prior written approval of Declarant as otherwise required pursuant to this Declaration. Each affected Owner shall use all due diligence to complete such restoration and repair of the Common Area as expeditiously as possible so that the same may be available for use as part of the Project with as little delay and as little disruption as circumstances permit. Upon any damage or destruction to the Common Area not located in a Parcel during the term of this Declaration, the Declarant shall restore the Common Area to its condition before the damage or destruction, and the cost of such restoration shall be a Common Area Maintenance Expense.

ARTICLE 9 ENFORCEMENT OF COVENANTS.

9.1 Remedies. In the event of any breach of or other non-compliance with any provision of the Declaration (other than the provisions of Article 7, as to which the rights and remedies set forth therein shall apply), Declarant may: (i) bring an action to recover monetary damages; (ii) institute a proceeding in equity to obtain injunctive or other equitable relief; (iii) impose reasonable fines against such Owner in such amount as Declarant deems appropriate in response to the violation; (iv) enter the Parcel in question, remove, abate, modify, or replace the item which is the cause of such violation in a manner that results in conformance with the Declaration, and assess the cost thereof against the Owner of such Parcel; and/or (v) exercise any other right or remedy available to it at law, in equity, or under the Declaration.

9.2 Rights of Owners. Any action to enforce the Declaration may be instituted by Declarant. If, after written request from an aggrieved Owner or Permittee, Declarant fails to commence an action to enforce the Declaration within a reasonable period not to exceed ninety (90) days, then the aggrieved Owner or Permittee may bring such an action independently.

9.3 Limitation of Liability. Reasonable and good faith exercise of any rights of entry set forth in the Declaration shall not subject Declarant or its members, managers, agents, employees, or contractors to any liability for trespass, conversion, or other claim for damages. Neither Declarant, nor its members, managers, agents, employees, or contractors shall be liable to any Owner or other Person for failure at any time to enforce any of the Declaration.

9.4 Recovery of Costs and Fees. In the event any suit, action, or other proceeding is instituted to enforce any of the Declaration or in connection with any dispute arising thereunder, the prevailing party shall be entitled to recover its costs and expenses incurred in connection therewith, including such amount as the court may determine to be reasonable as attorneys' fees at trial and on any appeal or review.

9.5 Remedies Not Exclusive. An election to pursue any remedy provided for violation of the Declaration shall not prevent concurrent or subsequent exercise of other rights or remedies permitted thereunder. The remedies provided in this Declaration are not exclusive, but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under at law or in equity.

ARTICLE 10
GENERAL PROVISIONS

10.1 Successors and Assigns. Each easement, restriction and covenant contained herein shall be appurtenant to and for the benefit of all portions of the Project and shall be a burden thereon, for the benefit of all portions of the Project, and shall run with the land. This Declaration and the restrictions, easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon Declarant and the Owners and their successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in the Project, the transferee thereof shall automatically be deemed to have assumed and agreed to be bound by the covenants and agreements herein contained, and the transferor shall thereupon be released and discharged from any and all obligations under this Declaration accruing after the date of sale. No Owner shall bring any action for partition or division of the Common Areas. By accepting a deed to or entering into a recorded contract of sale for a Parcel, each Owner shall be deemed to have specifically waived such Owner's rights to institute or maintain any partition or other action designed to cause a division of the Common Areas.

10.2 Run With the Land. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon each and all of the parties (and upon all persons claiming under them) for a period of ninety-nine (99) years, and shall thereafter renew automatically for successive ten (10) year periods, unless Owners owning at least fifty-one percent (51%) of the land area within the Project otherwise elect in a writing recorded in the Official Records.

10.3 Modification. This Declaration may be modified in any respect whatsoever with the consent of Declarant and Wilco (which consent Wilco agrees will not unreasonably be withheld) without the necessity of obtaining the consent of any other Owner; provided, however if such a modification:

- a. directly and materially affects the access to, visibility of or parking on a Parcel; or
- b. would result in a material increase in Common Area Maintenance Expenses for a Parcel Owner;

then the Owner of any such affected Parcel must also consent to such modification. Such modification may only be accomplished by a written instrument duly executed and acknowledged by the requisite parties, and duly recorded in the Official Records and at such other place as may be necessary.

10.4 No Dedication to Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

10.5 No Cancellation. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any

manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

10.6 Survival. If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions hereof shall remain in full force and effect.

10.7 No Merger. The ownership of the entire Project by the same party shall not effect the termination of this Declaration.

10.8 Mortgagee Protection. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to the Project or any part thereof, but all of the foregoing provisions, restrictions and covenants shall be binding upon and effective against any Owner whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

10.9 Minimization of Damages. In all situations arising out of this Declaration, all Persons shall attempt to avoid and minimize the damages resulting from the conduct of any other Person. It is expressly agreed that no breach of this Declaration shall entitle any Person to cancel, rescind, or otherwise terminate this Declaration, or defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Project. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach.

10.10 No Third Party Beneficiary. Except as herein specifically provided, no rights, privileges or immunities set forth herein shall inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner, tenant or occupant of any portion of the Project, nor shall any customer, employee, guest, licensee or invitee of such Owner, tenant or occupant be deemed to be a third party beneficiary of any of the provisions contained herein. Notwithstanding the foregoing, tenants and other occupants of the Project, and their customers, guests and invitees, shall be permitted to use the Common Area of the Project as set forth herein.

10.11 Condemnation. In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of the Project, that portion of the award attributable to the value of the interest in the Parcel so taken shall be payable to the Owner of such Parcel and no claim thereon shall be made by any other Owner of any part of the Project; provided, however, that the other Owners may file collateral claims with the condemning authority over and above the value of the interest to be taken, provided no such collateral claim shall reduce the award to the Owner of the condemned Parcel. The Owner of any portion of the Common Areas on a Parcel so condemned shall promptly repair and restore the remaining portion of the Common Areas located on such Owner's Parcel (including reestablishing any common utility facilities) as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner.

10.12 Captions. The captions heading the various Articles and Sections of this Declaration are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

10.13 Consent. Unless otherwise set forth herein, any approval or consent required or requested of Declarant may be withheld in its sole and absolute discretion. Unless otherwise specified herein, any approval or consent required to be obtained hereunder by any Owner, other than Declarant, shall not be unreasonably withheld and shall be given or withheld within thirty (30) days after delivery of the request therefor. In the event an Owner whose approval or consent is sought pursuant to the immediately preceding sentence fails to respond within the applicable time period, such Owner shall be deemed to have approved of, or consented to, the matter in question.

10.14 Assignment. Except as otherwise expressly set forth herein, no Owner shall have the right to assign all or any portion of its rights, benefits, duties or obligations under this Declaration except in connection with a transfer or conveyance by such Owner of its interest in property within the Project (and any conveyance made by deed of trust, Mortgage or other security instrument as security for any obligation or indebtedness shall not be deemed to be a transfer or conveyance within the meaning of the foregoing). In the event, at any time, that an interest in the same portion of property within the Project shall be vested in more than one person, such persons shall designate one of them to act on behalf of all such persons in the performance of the provisions of this Declaration. Any such designation shall be in writing and duly executed and acknowledged by each such person, and a copy of such designation shall be given to all other Owners in accordance with the notice provisions of this Declaration. An original of such designation shall be recorded in the Official Records. A majority of such persons shall have the right, from time to time, to change the designation made by executing, acknowledging, delivering and recording a new notice of designation in the same manner set forth above.

10.15 Notices. Any notice, demand, request or other communication required or permitted to be given by an Owner, occupant or tenant of the Project to another Owner, occupant or tenant hereunder shall be in writing, signed by the party giving the notice, and shall be given by delivering the same in person, by a recognized overnight courier service which maintains delivery records (such as Federal Express), or by depositing the same in the United States mail, registered or certified, return receipt requested, first class postage, and postage prepaid. All notices shall be sent to the respective mailing addresses of the parties hereto at the following addresses, until such addresses are changed as hereinafter provided:

Declarant: Zimmer Ventures, LLC
3416 NE 62nd Ave
Portland, OR 97213
Attention: Robert F. Zimmer

Wilco: Wilco Farmers
200 Industrial Way

Mt. Angel, Oregon 97362
Attention: President

To any other Owner: At such address as such Owner shall designate in writing to Declarant, or at such Owner's address in the Project if such Owner shall fail to designate in writing another address to Declarant.

Declarant shall make all addresses furnished by any Owner pursuant to this Section 10.15 available to any Owner, occupant or tenant of the Project who shall so request such addresses. Any Owner may change its mailing address at any time by giving written notice of such change to Declarant in the manner provided herein at least ten (10) days prior to the date such change is effective. Personal service and service by recognized overnight courier service will be deemed to be complete upon receipt and service by mail will be deemed complete on deposit of said notice in the United States mail.

10.16 Estoppel Certificates. Each Owner shall deliver to any other Owner, without charge, within fifteen (15) days after request therefor, a written statement setting forth that, to the best of such Owner's knowledge, the requesting Owner is not in default in the performance of any of its obligations under this Declaration (or, if in default, setting forth the nature of such default), and that, to such Owner's actual knowledge and belief, there are no outstanding Assessment Liens against the requesting Owner's Parcel (or stating the amount of any such Assessment Lien(s)).

10.17 Subdivision. Declarant shall have the right to subdivide any Parcel. Upon such subdivision, each portion of such subdivided Parcel shall be a separate Parcel. No other Owner shall have the right to subdivide any Parcel.

10.18 Governing Law. Any matter arising between the Owners shall be governed by and determined in accordance with the laws of the State of Oregon, without regard to any conflicts of laws or choice of law provisions thereof.

10.19 Declarant. So long as Zimmer Ventures, LLC ("Zimmer") or any affiliate owns any Parcel within the Project, Zimmer shall be the "Declarant" for purposes of this Declaration, unless it otherwise elects. At such time that Zimmer no longer owns a Parcel within the Project or otherwise elects to no longer be Declarant hereunder, Owners owning a majority of the land area within the Project shall then elect another Owner to be Declarant hereunder.

10.20 Other Agreements. Nothing contained in this Declaration shall be construed as a limitation on Declarant's right to enter into any supplemental agreement with the grantee or lessee of any Parcel (or portion thereof) on terms and conditions more favorable to Declarant or otherwise different than those contained herein; provided, however, in all events, any such agreement shall be subordinate to this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

Zimmer Ventures, LLC, an Oregon limited liability company

By:

Title:

Robert H. Zimmer
MANAGER

WILCO:

Wilco Farmers, an Oregon cooperative corporation

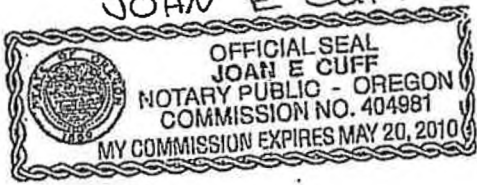
By:

Title:

David W. Huff
President & CEO

STATE OF OREGON)
County of Marion)ss.

On this day personally appeared before me Robert F. Zimmer to me known to be the individual described in and who executed the within and foregoing instrument, as the Manager of Zimmer Ventures, LLC, an Oregon limited liability company, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned on behalf of such limited liability company. Given under my hand and official seal this 7 day of Sept., 2007.



Joan E Cuff
Notary Public in and for the State of Oregon
Residing at Marion, OR
My Commission Expires: 5/20/10
404981
MAY 20, 2010

STATE OF OREGON)
County of Marion)ss.

On this day personally appeared before me Douglas N. Hoffman to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, as the President of Wilco Farmers, an Oregon cooperative corporation, and acknowledged that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned on behalf of such limited liability company. Given under my hand and official seal this 6th day of September, 2007.



Carolyn F Hogue
Notary Public in and for the State of Oregon
Residing at 245 N. Main St. Mt Angel, OR
My Commission Expires: 2/17/2011

EXHIBIT A
LEGAL DESCRIPTION OF PROJECT

Legal Description

Parcel I:

A tract of land in Section 34, Township 3 South, Range 1 East, of the Willamette Meridian, in the City of Canby, County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at the Northeast corner of a tract of land heretofore conveyed by Horace N. Cook to Stephen Raschl which is a basalt stone 11x6x6 inches marked X on top, set in the North boundary of said Philander Lee's DLC at a point which bears North 63°15' East 29.71 chains distant from the quarter section corner on line between Sections 33 and 34 of Township 3 South, Range 1 East, running thence North 63°15' East along the North boundary of said claim 371 and 75/100 feet to a basalt stone 12x8x5 inches marked X on top; thence South 2060 and 52/100 feet to a stake set in the North boundary of Oathes Land; thence West along the said boundary of Oathes Land 331 and 98/100 feet to the Southeast corner of Stephen Raschl's land, which is a basalt stone 10x6x6 inches marked X on top; thence North along the East boundary of Stephen Raschl's land 1898 and 16/100 feet to the point of beginning.

EXCEPTING THEREFROM that portion lying within and Westerly and Southerly of Sequoia Parkway.

ALSO EXCEPTING THEREFROM that portion lying Northerly of the Southerly boundary of Hazel Dell Way.

Parcel II:

A tract of land in Section 34, Township 3 South, Range 1 East, Willamette Meridian, in the City of Canby, County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at the Southeast corner of that tract of land conveyed to Roy F. Zimmer and Betty J. Zimmer recorded as Deed Number 93-24378, Clackamas County Deed Records; thence North 0°03'02" East a distance of 276.76 feet to the true point of beginning, said point being on the Westerly boundary of that tract of land conveyed to Ray L. Burden and Irene B. Burden recorded as Deed number 70-16025, Clackamas County Deed Records; thence North 0°03'02" East along the said Westerly boundary 1761.98 feet, more or less, to the Southerly right-of-way line of SE First Ave., being 20.00 feet Southeasterly of the centerline thereof when measured perpendicular thereto; thence North 63°56'06" East along said Southerly right-of-way line 50.08 feet; thence leaving said Southerly right-of-way line South 0°07'00" West a distance of 119.42 feet; thence South 22°49'34" East a distance of 91.38 feet; thence South 0°03'02" West a distance of 1680 feet; thence South 89°45'38" West, a distance of 80.84 feet, more or less, to the true point of beginning;

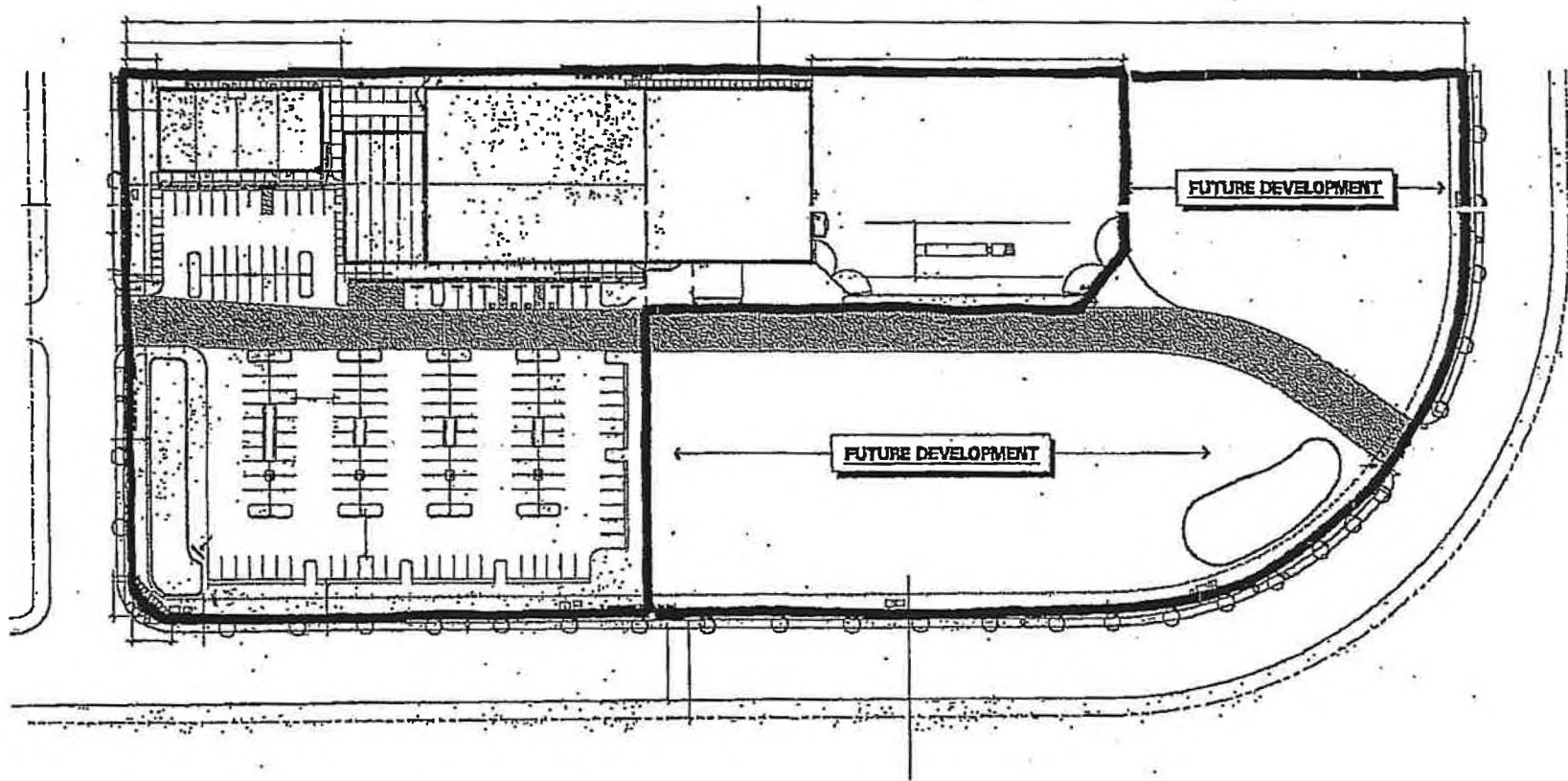
EXCEPTING THEREFROM that portion lying Northerly of the Southerly boundary of Hazel Dell Way.

ALSO EXCEPTING THEREFROM that portion lying Southerly of the Northerly boundary of Sequoia Parkway

EXHIBIT B

**DEPICTION OF RETAIL SPACE, COMMERCIAL SPACE,
WILCO PARKING AREA, AND WILCO PARCEL**

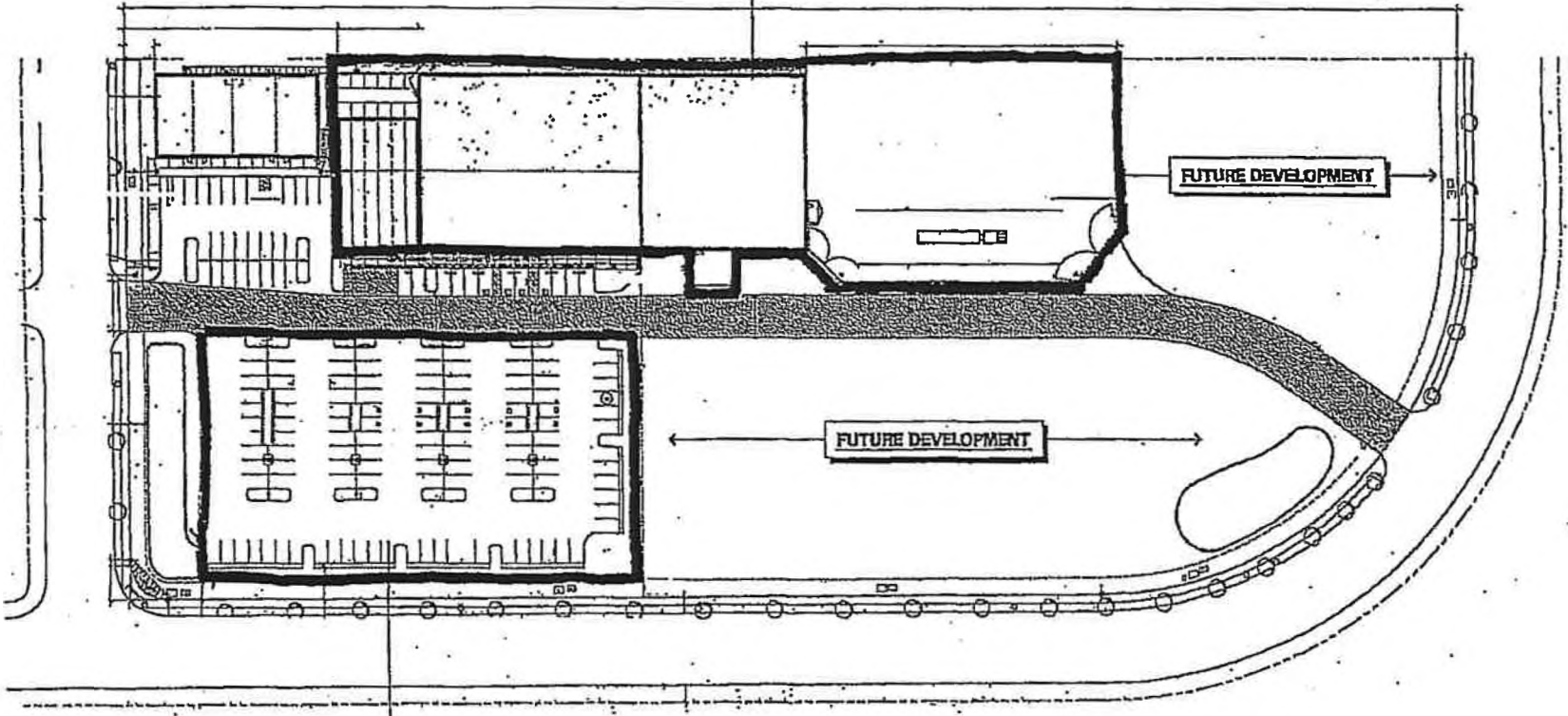
Commercial Space



Retail Space

30

Wilco Parcel



Wilco Parking Area

31

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20 MS
3 M

Clackamas County Official Records
Sherry Hall, County Clerk

2009-026540

**RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:**

Roger Reif
Reif, Reif & Thalhofer
273 N Grant St
Canby, OR 97013



\$76.00

01299788200900265400040042

04/20/2009 03:30:59 PM

PD-COV Cnt=3 Str=11 TINAJAR
\$20.00 \$10.00 \$16.00 \$10.00 \$20.00

)

Space Above This Line Is For Recorder's Use Only

**FIRST AMENDMENT
TO
DECLARATION AND ESTABLISHMENT
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASEMENTS**

**FIRST AMENDMENT
TO
DECLARATION AND ESTABLISHMENT
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASEMENTS**

This is the FIRST AMENDMENT ("First Amendment") TO THE DECLARATION AND ESTABLISHMENT OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") made this 19 day of November, 2008 by Zimmer Ventures, LLC, an Oregon limited liability company ("Declarant").

RECITALS

A. Declarant established a Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements by document dated September 7, 2007, recorded September 20, 2007, Clackamas County Recorder's Fee No. 2007-081170.

B. Declarant has subdivided the Property subject to the Declaration in accordance with the subdivision plat entitled Zimmer Commerce Center recorded on April 20, 2008 with recording number # 4269 ("Subdivision").

C. Declarant has completed construction of the Wilco improvements on the Wilco Parcel, located on Lots 2 and 5 of the Subdivision.

D. Declarant has completed construction of a retail building on Lot 1 of the Subdivision.

E. It is the intent of this First Amendment to clarify certain provisions of the Declaration.

NOW, THEREFORE:

1. CLARIFICATION OF RECITAL B OF DECLARATION. Commercial Space shall mean the portion of the property developed as Lots 3, 4 and 6 of the Subdivision. Retail Space shall mean the property developed on Lots 1, 2, and 5 of the Subdivision. This further clarification of "commercial space" and "retail space" clarifies the intent of Recital B of the Declaration, and corrects a mislabeled drawing in Exhibit B of the Declaration.

2. CLARIFICATION OF RECITAL C OF DECLARATION. The Wilco Parcel shall mean Lots 2 and 5 of the Subdivision referred to in Recital B above. This is a clarification to the definition of Recital C of the Declaration and corrects a mis-labeled drawing in Exhibit B of the Declaration.

3. CLARIFICATION OF DEFINITION OF "PARCEL" OR "PARCELS" OF SECTION 1.16. Parcel or parcels shall mean individually, or collectively, the six (6) lots numbered Lots 1 through 6 created by the Subdivision plat described in Recital B above. Lot 7 is shown on the Subdivision plat; however, it is owned by a third party and is not a "parcel" or "parcels" subject to the Declaration and First Amendment.

4. CLARIFICATION OF SECTION 3.3 OF THE DECLARATION. The Wilco Parking Area shall mean the parking on Lot 2 of the Subdivision.

5. DETERMINATION OF PROPORTIONATE SHARE AS PROVIDED IN SECTION 5.9 OF THE DECLARATION. The proportionate share attributable to Common Area Maintenance Expenses for each Parcel as of the date of this First Amendment is set forth in the following table. The building floor area for each Parcel is derived by multiplying the length by the width of the exterior dimensions of the building as shown on their respective floor plans as permitted. Provided, however, the calculation of the building floor area on Parcel 2 does not include the greenhouse which is an agreed provision of the Wilco Lease. Therefore, the determination of the proportionate share in Section 5.9 of the Declaration is:

<u>Parcel</u>	<u>Building Dimensions</u>	<u>Building Floor Area</u>	<u>Proportionate Share</u>
1	60'x120'	7,200 sq ft	17.06%
2	125'x 280'	35,000 sq ft	82.94%
3	None	0	0%
4	None	0	0%
5	None	0	0%
6	None	0	0%
Total		42,200 sq ft	100.00%

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

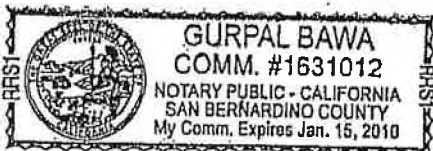
Zimmer Ventures, LLC, an Oregon limited liability company

By: Robert F. Zimmer

Title: Member

STATE OF CA)
)ss.
County of San-Bernardino)

On this day personally appeared before me Robert F. Zimmer to me known to be the individual described in and who executed the within and foregoing instrument, as a member and the manager of Zimmer Ventures, LLC, an Oregon limited liability company, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned on behalf of such limited liability company. Given under my hand and official seal this 19th day of Nov, 2008.



Gurpal Bawa
Notary Public in and for the State of CA
Residing at 675 CA-92313
My Commission Expires: Jan 15, 2010

WILCO:

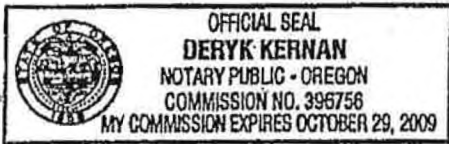
Wilco Farmers, an Oregon cooperative corporation

By: Doug N. Hoffman

Title: Pres. of CEC

STATE OF OREGON)
)ss.
County of Marion)

On this day personally appeared before me Douglas N. Hoffman to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, as the President and CEO of Wilco Farmers, an Oregon cooperative corporation, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned on behalf of such limited liability company. Given under my hand and official seal this 21 day of November, 2008.



Doug N. Hoffman
Notary Public in and for the State of Oregon
Residing at Mt. Angel, OR
My Commission Expires: 10-29-09

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