

## **RESOLUTION NO. 2165**

### **A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN THE FOURTH AMENDED CONSTRUCTION AND OPERATING AGREEMENT WITH JACK GLASS**

#### **THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. Jack Glass has been operating a snack, tackle and supply shop in a building that he remodeled for the City at Glenn Otto Park. According to the initial operating agreement, Mr. Glass is authorized to use the building "for retail sales of snack foods and fishing tackle and supplies and for no other purpose."
2. Mr. Glass requested and was granted permission to use the address of Jack's Snack and Tackle for a second business, Hook-up Guide Service, on May 10, 2005.
3. Mr. Glass requested and was granted permission to allow Mr. Rob Brown to operate the business while Mr. Glass remained the named Operator under the agreement and responsible for complying with all the provisions of the agreement.
4. Mr. Glass has requested the third and final five (5) year extension under Section 2 of the current agreement, with a lease rate of \$300 per month.

#### **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:**

Section 1. The Fourth Amended Construction and Operating Agreement, in substantial conformity with Exhibit A of the Staff Report, is hereby approved.

Section 2. The City Manager is authorized to sign the Fourth Amended Construction and Operating Agreement.

Section 3. This Resolution shall take effect upon adoption.

**YEAS: 7**  
**NAYS: 0**  
**ABSTAINED: 0**

Mayor Jim Kight  
Mayor Jim Kight  
June 28, 2012  
Date

Sarah Skroch  
Sarah Skroch, Deputy City Recorder  
Adopted: June 26, 2012

## FOURTH AMENDED CONSTRUCTION AND OPERATING AGREEMENT

THIS FOURTH AMENDED CONSTRUCTION AND OPERATING AGREEMENT ("Agreement") is made and entered into effective June 26, 2012, by and between the CITY OF TROUTDALE, OREGON ("City"), and JACK GLASS ("Operator").

### RECITALS

A. City is the owner of certain real property consisting of approximately .53 acres located at 1208 E. Columbia River Highway, in Troutdale, Oregon, and more particularly described as Glen Otto Community Park ("Park") on the map marked Exhibit A1 attached hereto and by reference incorporated herein.

B. A vacant building ("Building"), formerly used as a service station, was located in the Park as shown on the map attached as Exhibit A2. The Building was vacant for several years and needed some repairs to make it operable. A valuable use of the Building is providing commercial services to those people who enjoy and recreate at the Park.

C. Operator desired to operate the Building as a retail snack food and fishing tackle shop, and the City believes the public interest has been served and furthered by providing for such operations.

D. Operator and City entered into a Construction and Operations Agreement on July 1, 1997 (the "Initial Agreement"). The Initial Agreement was for a five (5) year term, with the option to extend the term for three (3) additional five (5) year terms. In June, 2002, Operator and City agreed to extend the Initial Agreement for an additional five (5) year term.

E. In July, 2004, Operator asked the City Council for permission to allow Rob Brown to operate the snack, tackle and supply business. The Initial Agreement, as extended, requires the Operator to operate the business and prohibits an assignment of the agreement without the Council's consent.

F. The City Council amended the Initial Agreement to allow Operator to contract with Rob Brown to operate the snack, tackle and supply business, provided that Operator supervised Rob Brown and remained responsible to the City for complying with all the provisions in the Initial Agreement. The Initial Agreement was not assigned, rather section 8 was amended for the limited purpose of allowing another person to operate the business, subject to Operator's control and supervision. Operator hereby ratifies and confirms that Operator remains responsible to the City for complying with all the provisions in this Agreement, including, but not limited to, being personally responsible for payment of the annual property taxes.

G. In April, 2005, Operator asked the City Council for permission to operate a second business, Hook-up Guide Service, from the City owned facility at 1208 E. Columbia

River Highway. The Initial Agreement allowed for only the operation of retail sales of snack foods and fishing tackle and supplies, (and for no other purpose).

- H. The City Council amended the First Amended Agreement to allow Operator to operate a second business, Hook-up Guide Service, from the City owned facility at 1208 E. Columbia River Highway.
- I. The first five (5) year extension, as outlined in the Initial Agreement, began on July 1, 2002 and ends on June 30, 2007. In May of 2007, Operator asked the City Council for a second five (5) year extension and requested that the compensation paid to the City by the Operator remain at \$100 per month. The second five (5) year term began on July 1, 2007 and ends on June 30, 2012, and continued the compensation paid to the City by the Operator at \$100 per month.
- J. The City Council is willing to extend the agreement for the third five (5) year term and to amend the Initial Agreement provided that the compensation rate is set at \$300 per month for the period of July 1, 2012 through June 30, 2017.

NOW, THEREFORE, based on the foregoing Recitals and the mutual covenants hereinafter set forth, the parties agree as follows:

## AGREEMENT

1. **Appointment.** City hereby appoints Operator to operate the Building and the surrounding area (collectively referred to as the "Premises), which area is delineated on Exhibit A2.

Operator hereby accepts such appointment upon the terms and conditions set forth in this Agreement.

2. **Term**

(a) The term of this Agreement commenced on the 1st day of July, 1997, and ended on the 30th day of June, 2002. Operator was granted the first five (5) year extension which began on July 1, 2002 and ended on June 30, 2007. Operator extended this Agreement for a second term of five (5) years beginning on July 1, 2007 and ending on June 30, 2012. Operator hereby elects to extend this Agreement for a term of five (5) years (for a total of 5 additional years). Operator's option shall be conditioned upon (i) written notice to extend being given to City not sooner than six (6) months prior to the expiration of the existing term, nor later than three (3) months prior to the expiration of the existing term, (ii) Operator not being in

default of this Agreement as of the date of the giving of the written notice to extend, (iii) Operator not being in default under this Agreement as of the commencement date of the new term, and (iv) approval of the extension by the Troutdale City Council. This Agreement is contingent upon full and complete payment by the Operator of all delinquent and outstanding property taxes, fees, and penalties prior commencement of the new term.

(b) By accepting this appointment, Operator accepts the Premises "as is, where is" with all defects, patent and latent and without representation or warranty of any kind.

3. **Compensation.** Operator shall pay compensation to the City as follows:

(a) For the first five-year period, One Dollar (\$1.00) per year, with the first payment due on July 1, 1997.

(b) If this Agreement is extended, compensation shall be paid by the Operator to the City as follows:

(i) During the first five-year extension (July 1, 2002 to June 30, 2007), \$100 per month;

(ii) During the second five-year extension (July 1, 2007 to June 30, 2012), \$100 per month; and

(iii) During the third five-year extension (July 1, 2012 to June 30, 2017), \$300 per month.

(c) For each extension period, payments are due on the first day of the first month of an extension period and on the first day of each subsequent month thereafter.

4. **Taxes.**

(a) Operator shall be responsible for and pay the entire annual amount in full no later than November 15<sup>th</sup> of each year of all taxes assessed during the term of this Agreement and any extension thereof against any personal property of any kind owned by or placed upon or about the Premises by Operator. Operator shall pay all real property taxes and assessments levied, assessed or imposed during the term of this Agreement upon the Premises.

(b) Both parties recognize that the Premises are not tax exempt under ORS 307.110.

5. **Utility Charges.** Operator agrees to contract for services directly with the providers of, and to pay promptly all gas, electric light, power, sewer and water rates and charges, storm drainage charges, garbage collection charges that may become payable during the term of this Agreement, or any extension thereof, for gas, electricity, sewer and water, storm drainage and garbage services used on the Premises. City makes no warranties or representations as to the quantity, quality, availability, amount or duration of any of the utility services referred to

in this paragraph. Operator shall arrange for regular and prompt pick up of trash and garbage.

6. **Insurance.** Operator shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, during the entire term of this Agreement, the insurance described in this paragraph (or its then-available equivalent), which insurance shall be subject to City's review and approval (which approval shall not be unreasonably withheld) and shall name City as an additional insured. Policy limits shall be reviewed annually and may be adjusted by City, if prudent, considering the levels of inflation, risk of loss, premium expenses, and other relevant factors; provided, however, that the amount of property damage insurance that Operator shall maintain with respect to the Premises shall never be less than the full replacement cost of the Building as required below. Operator shall procure and maintain the following:

(a) General comprehensive liability insurance covering all claims with respect to injuries or damages to persons or property sustained in, on or about the Premises and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, which shall contain a "breach of warranty" and a cross-liability clause naming City as an additional insured, with limits of liability (which limits shall be adjusted as provided above) no less than the following: personal injury and property damage liability—\$2,000,000 each occurrence and aggregate. The Operator will provide Commercial General Liability policy on the ISO (GC 00 01 10 01) form as the Primary CGL policy. Further shall provide an Additional Insured endorsement on ISO CG 20 10 (11 85) form listing as additional insured the "City of Troutdale and its officers, agents, and employees."

(b) During remodeling of any buildings and during any subsequent restoration, alterations or changes in the Premises that may be made by Operator at a cost in excess of \$2,500 per job, contingent liability and builder's risk insurance upon the entire work upon the Premises to the current one hundred percent (100%) replacement value thereof against "all risks" or physical loss or damage to the property insured, including earthquake and other earth movement and flood.

(c) Physical damage insurance covering all real and personal property located on or in, or constituting a part of the Premises, in an amount equal to at least one hundred percent (100%) of the new replacement cost of all such property (or such lesser amount as City may approve in writing). Such insurance shall (i) be provided on as broad a form property coverage as may be customary for like properties in the vicinity of the Premises from time to time during the term of this Agreement, and (ii) cover explosion of steam and pressure boilers and similar apparatus located in the Premises, subject in each case to deductibles no greater than those customary in the locality of the Premises for similar properties, as approved by City.

(d) Workers' compensation and employers' liability insurance in respect of any work by employees of Operator on or about the Premises.

Operator shall provide to City certificates of insurance and copies of policies obtained by Operator hereunder promptly upon the request of City. Further, all policies of insurance shall:

(1) be written as primary policies not contributing with and not in

excess of coverage that City may carry;

(2) contain an endorsement providing that such insurance may not be materially changed or amended with respect to City, except after twenty (20) days' prior written notice from insurance company to City, and may not be canceled with respect to City, except after thirty (30) days' prior written notice from insurance company to City;

(3) expressly provide that City shall not be required to give notice of accidents or claims and that City shall have no liability for premiums; and

(4) be written by insurance companies having a best rating of "A+ IX" or equivalent, which insurance companies shall otherwise be reasonably acceptable to City.

If Operator at any time during the term of this Agreement fails to procure or maintain insurance required hereunder or to pay the premiums therefore, City shall have the right to procure the same and to pay any and all premiums thereon, and any amounts paid by City in connection with the acquisition of insurance shall be immediately due and payable, and Operator shall pay to City upon demand the full amount so paid and expended by City, together with interest thereon at the rate of ten percent (10%) per annum from the date of such expenditure by City until repayment thereof by Operator.

7. **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 or 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 City or Operator or by any of their respective agents servants and employees.

8. **Use of Premises.** The Premises shall be operated by Operator for: retail sales of snack foods and fishing tackle and supplies (Jack's Snack and Tackle); fishing guide service (Hook-up Guide Service), (and for no other purpose) in accordance with the preliminary plans, a copy of which is marked Exhibit B, attached hereto and by reference incorporated herein. Provided, however, Operator may contract with Rob Brown to provide the retail sales of snack foods and fishing and tackle supplies. Operator shall oversee operators on the Premises and shall remain responsible for complying with all the terms in this Agreement. In connection with the use of the Premises, Operator shall:

(a) Conform to all applicable laws and regulations affecting the Premises and the use thereof, and correct at Operator's own expense any failure of compliance created through Operator's fault or by reason of Operator's use.

(b) Refrain from any activity that would be reasonably offensive to City or to owners or users of adjoining property, or which would tend to create a nuisance or damage the reputation of the Premises. Without limiting the generality of the foregoing, Operator shall not permit any objectionable noise or odor to escape or be emitted from the Premises.

(c) Continuously use the Premises except to the extent the use is interrupted or prevented by causes beyond Operator's reasonable control.

(d) Not commit or suffer any strip or waste to the Premises or the improvements thereon or any parts thereof.

(e) Permit public access to all unimproved portions of the Premises during the hours that other municipal parks are open to the public.

(f) Cooperate with the City in the use of the unimproved portions of the Premises for civic, public or municipal events. In the event of such use, the City shall be responsible for restoring the condition of the unimproved portion of the Premises to its condition prior to such use.

(g) Provide periodic reports to the City Manager or designee regarding the use of the Premises, and, upon receipt, provide financial records that will enable the City to determine:

(i) the costs of the improvements ("actual costs") that Operator has not been reimbursed for as measured by subtracting the actual costs from Operator net revenue (which is operations gross revenue minus expenses and a reasonable rate of return), and

(ii) Operators realized and projected annual rate of return.

(h) Not sell any alcoholic beverages from or on the premises.

## 9. **Construction of Improvements.**

(a) Operator has remodeled the Building in accordance with plans and specifications approved by City. The remodeling was made by and at the sole cost and expense of the Operator.

(b) No other structural improvements or alterations shall be made without the consent of the City.

(c) All building permits, and other permits; licenses permissions consents and approvals required to be obtained from governmental agencies or third parties in connection with any subsequent improvements, repairs, replacement or Alterations to the Premises, shall be acquired as required by applicable law, ordinances regulations by and at the sole cost and expense of Operator. In fulfilling the obligations described in this subsection, City agrees to cooperate with Operator, subject to Paragraph 27 of this Agreement.

(d) All Building remodeling, improvements and alterations shall comply with all applicable laws, statutes, ordinances and regulations, including without limitation the Americans with Disabilities Act of 1990 and regulations thereunder.

(e) Except as provided in Paragraph 25, all improvements made by Operator, including, without limitation, all additions, alterations, and improvements to Building and Premises shall be the property of the City.

(f) Operator shall provide designated parking for use of his patrons in accordance with applicable code and regulation requirements.

(g) Operator shall be responsible for constructing a new park entry, at his sole cost and expense, to serve the premises. City shall be responsible for closing, at its sole cost and expense, the existing park entry and for performing any related modifications or improvements to the Park frontage along Historic Columbia River Highway which frontage is not part of the Premises.

10. **Repairs and Maintenance.** Repairs and maintenance of the Building shall be the responsibility of Operator, and Operator shall, at his expense, make all repairs reasonably required by the City to maintain the Building and Premises in good condition and repair.

11. **Liens.** Operator shall keep the Premises free from all liens, including construction mechanics and materialman's liens, arising from any act or omission of Operator or anyone claiming the right of use under Operator. City may enter upon Premises to post a notice of non-responsibility as provided in ORS 87.030.

12. **Ice, Snow and Debris.** Operator shall keep the walks and driveways in the Premises free and clear of ice, snow, rubbish, debris and obstructions. Operator shall save and protect City from any injury whether to City or City's property or to any other person or property caused by Operator's failure to perform Operator's obligations under this paragraph. Operator's obligations under paragraph shall be performed at Operator's sole cost and expense.

13. **Indemnity of City.** Operator shall indemnify and save City harmless from any and all liability, damage, expense, reasonable attorney fees, causes of action, suits, claims or judgments, arising from injury to the person or damage to property arising out of or connected with (a) the construction, remodeling, improvement, use, occupancy, management or control of the Premises, excepting only the negligence of City, its agents, employees and independent contractors, and (b) the breach of any covenants herein by Operator or his employees. Operator shall, at its own cost and expense, defend any and all suits that may be brought against City either alone or in connection with others upon any such above-mentioned causes or claims, and shall satisfy, pay and discharge any and all judgments that may be recovered against City in any such action or actions in which City may be party defendant.

14. **Environmental Liability.** Subject to the provisions of the Oregon Constitution and the Oregon Tort Claims Act, City shall indemnify and save Operator harmless from any and all liability, damage, expense, reasonable attorney fees, causes of action, suits, claims or judgments, arising from the release of any Hazardous Substances (as hereinafter defined) onto, beneath or from the Premises, provided that any such release occurred prior to the time Operator accepts appointment under this Agreement. Operator shall indemnify and save City harmless from any and all liability, damage, expense, reasonable attorney fees, causes of action, suits, claims or judgments arising from the release of any Hazardous Substances onto, beneath or from the Premises caused or permitted by Operator or his employees, agent and independent contractors. For purposes of this Agreement, "Hazardous Substances" shall include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," "pollutants," "contaminants" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund

Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et. seq.; the Toxic Substance Control Act, 15 U.S. C. § 2601, et. seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et. seq.; the Clean Water Act, 42 U.S.C. § 1251 et. seq.; the Oregon Superfund Law, ORS Chapter 465, the Oregon Hazardous Waste Management Act. ORS Chapter 466.005 et seq., the Oregon Underground Storage Tank Act, ORS 468.909 et seq., the Oregon Spill Response Act, ORS 466.605 et seq., or the Oregon Hazardous Waste Rules, Chapter 430.

15. **Eminent Domain.** If all of the Premises is condemned, then this Agreement shall terminate and City shall be entitled to all condemnation proceeds, except to the extent that the condemnation award covers personal property of Operator as described in Paragraph Agreement. If a portion of the Premises is condemned and in Operator's judgment the balance of the Premises can be restored for its intended use, then this Agreement shall continue. All condemnation proceeds shall be paid to City and made available to Operator for the purpose of such restoration. If, in Operator's reasonable judgment, the Premises cannot be adequately restored, then this Agreement shall terminate and City shall be entitled to all condemnation proceeds. Operator reserves all rights it may have against the governmental entity in any condemnation action, including, but not limited to, damages for Operator-owned improvements.

16. **Damage or Destruction.** Any damage or destruction of the Premises shall be handled in the following manner.

(a) All insurance proceeds shall be paid to City and applied to restoration of the Building and/or Premises to a reasonably similar condition as Building and/or Premises existed prior to the damage or destruction. If such funds are not adequate, Operator may elect to (a) terminate this Agreement, or (b) proceed with restoration of the Building and/or Premises, in which case, Operator shall deposit with City prior to the commencement of any construction work a sufficient sum (or secured assurances satisfactory to City that a sufficient sum will be available to Operator when needed) so that, taken together with the insurance funds available for construction purposes, City will hold (or be assured of holding when needed) in cash a sum equal to or exceeding the estimated cost of all labor, materials and other construction costs, direct and indirect (including, but not limited to, overhead charges, contractors' fees, architects' fees, payroll and social security charges, and taxes) so as to fully complete the repairing, restoration, and remodeling of such Premises or improvements as aforesaid. Operator shall give notice of his election under this subsection to City within ten (10) days after learning of the inadequacy of the insurance proceeds. The balance of the insurance proceeds; if any, after completion of the improvements, shall be retained by City.

17. **Default.** The following shall be events of default:

(a) Failure of Operator to pay any payment to City when due, or failure of Operator to pay any other amount or charge required hereunder within ten (10) days after it is due. City agrees to provide Operator with ten (10) days' written notice and opportunity to cure any make a required payment before Operator is in default under this Agreement; provided, that City shall only be required to provide one such notice during any single calendar year. After one such notice has been given during any single calendar year, failure of the Operator to make any payment or pay any other amount or charge shall constitute a default.

(b) If Operator is adjudged bankrupt or insolvent, or makes an assignment 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 a trustee is appointed to take charge of any of the assets of Operator or its assigns in or about the Premises and such receiver or trustee is not removed within thirty (30) days after the date of appointment, or in the event of judicial sale of the personal property of Operator, unless such property or reasonable replacement thereof is installed on the Premises.

(c) The failure of the Operator to operate the Premises for the designated purposes of this Agreement unless such failure is excused under the provisions of this Agreement.

(d) Except as otherwise specified in this paragraph, the failure of Operator to comply with any term or condition or fulfill any obligation of this Agreement (other than the failure to make any payment or pay any other charges) within ten (10) days after written notice by City specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the ten (10) day period, this subparagraph shall be complied with if Operator begins correcting the claimed 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, but in all events within ninety (90) days following the giving of such notice.

(e) Failure of the Operator to pay all real property taxes and assessments levied, assessed or imposed for the entire annual amount in full no later than November 15<sup>th</sup> of each year.18.

**Remedies on Default.** In the event of a default, City may, at City's option, terminate this Agreement and/or exercise any rights and remedies available at law or in equity for breach of contract.

19. **Performance By City and Operator.** Neither party shall be deemed in default for nonperformance or for any interruption or delay in performance of any of the terms, covenants, and conditions of this Agreement if the same shall be due to any labor dispute, strike, lock-out civil commotion or like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, or through act of God or causes beyond the reasonable control of either party, provided such cause is not the willful act or neglect of the party.

20. **City's Right to Cure Default.** If Operator shall fail to perform any of the covenants or obligations to be performed by Operator, City, in addition to all other remedies provided herein, shall have the option to cure such default after ten (10) days' written notice to Operator. All of City's expenditures incurred to correct the default shall be reimbursed by Operator upon demand with interest at the rate often percent (10%) per annum from the date of expenditure by City. to cure defaults is for the full protection of City and the existence of this right shall not release Operator from the obligation to perform all of the covenants herein required to be performed by Operator, or deprive City of any other right that City may have by reason of such default by Operator.

21. **Return at Expiration.** Upon expiration of the term of this Agreement or earlier termination on account of default, Operator shall deliver all keys to City and return the Premises in a first-class condition and broom clean. Depreciation and wear from ordinary use

for the purpose for which the Premises were left need not be restored, but all repair for which Operator is responsible shall be completed to the latest practical date prior to such surrender. Operator's obligations under this paragraph shall be subject to the provisions of Paragraph 16 relating to damage or destruction.

22. **Assignment and Delegation.** Operator shall not be entitled to assign this Agreement or delegate all or any part of its obligations without the written consent of City, which consent may be given at the sole discretion of City. In July, 2004, Operator asked and the City Council granted permission to allow Rob Brown to operate the snack, tackle and supply business, however, this in no way relieves the Operator of his any obligations under this Agreement.

23. **Food Concessions.** City gives Operator sole rights to food concessions within the Park, except where City grants food concession rights for special events. The terms and conditions for food concession by Operator within the Park area, but outside of the Premises, shall be established by separate agreement between the parties. As used in this paragraph, "special events" includes, but is not limited to, the Ice Cream Social, the Troutdale Trot, the Troutdale Summerfest, and Harvest Fair.

24. **Trade Fixtures.** The trade fixtures installed by Operator shall remain the property of the Operator.

25. **General Provisions.**

(a) **Recordation.** This Agreement shall not be recorded

(b) **Waiver.** If either City or Operator waives the performance of any term, covenant or condition contained in this Agreement, such waiver shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement. Furthermore, acceptance of any payment by City shall not constitute a waiver of any preceding breach by Operator of any term, covenant or condition of this Agreement, regardless of City's knowledge of such preceding breach at the time of City's acceptance of such payment. Failure by City or Operator to enforce any of the terms, covenants or conditions of this Agreement for any length of time shall not be deemed a waiver or decrease the right of City or Operator to insist thereafter upon the strict performance by the party violating any of the terms, covenants or conditions of this Agreement. Waiver by City or Operator of any term, covenant or condition contained in this Agreement may only be made by an original written document signed by the waiving party.

(c) **Time.** Time is of the essence of this Agreement.

(d) **Severability.** If any term or provision of this Agreement, the deletion of would not adversely affect the receipt of any material benefit by either party hereunder, shall be held to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(e) **Notices.** All notices, consents and demands that may or are required to be given by either party to the other party pursuant to the terms of this Agreement shall be in writing and shall be deemed given when actually received or 48 hours after having been deposited in United States certified or registered mail, postage prepaid, and addressed to City or Operator at the address specified below or such other place as City or Operator may, from time to time, designate in a notice to the other or, in the case of Operator, delivered to Operator at the Premises. The addresses of the parties are as follows:

OWNER: City of Troutdale  
219 E. Historic Columbia River Hwy  
Troutdale, OR 97060  
Attn: City Manager

OPERATOR: Jack V. Glass  
1409 Historic Columbia River Highway  
Troutdale, OR 97060

(f) **Successors and Assigns.** Subject to the provisions of Paragraph 23 above, the terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the successors, executors, administrators and assigns of the parties.

(g) **Costs of Suit.** If City or Operator shall bring any action for any relief against the other, declaratory or otherwise, in connection with this Agreement, the losing party shall pay the prevailing party a reasonable sum of attorney fees in such suit or appeal there from and such attorney fees shall be deemed to have accrued on the commencement of such action and shall be paid, whether or not such action is prosecuted to judgment. Should City, without fault on City's part, be made a party to any litigation instituted by Operator or by any third party against Operator, or by or against any person holding under or using the Premises by license of Operator, or for the foreclosure of an lien for labor or material furnished to or for Operator or any such other person, or otherwise arising out of or resulting from any act or transaction of Operator or of any such other person, Operator covenants to save and hold City harmless from any judgment rendered against City or the Premises, or any part thereof, and all costs and expenses, including reasonable attorney fees, incurred by City in or in connection with such litigation. Notwithstanding the above, should any third-party litigation be filed over the authority of the City to enter into this Agreement, each party shall bear its own legal expense and costs in that litigation.

(h) **Governing Law.** This Agreement shall be governed by the laws of the State of Oregon.

26. **City Approval.** Operator acknowledges that City has certain responsibilities as a City to review, approve and enforce land use applications, Premises permit applications, design review applications, and a myriad of other duties in connection with the development of property. Notwithstanding any other term or provision of this Agreement, City shall not be contractually obligated under this Agreement to grant any approvals, consents or authorizations in its nonproprietary capacity in connection with the review of Operator's land use applications, Premises permit applications, design review applications and any other types of applications. It

is expressly understood that City does not intend and does not have the power to contractually modify its authority to review, approve and enforce such applications and decision.


IN WITNESS WHEREOF, City and Operator have executed this Agreement in duplicate on the date first above written.


CITY

OPERATOR

CITY OF TROUTDALE, OREGON

JACK GLASS

By: 



Name: Craig R. Ward

Jack Glass

Title: City Manager

Operator

Date: 6/26/12

Date: 6-26-12