

TIME**	ITEM	ENC.*	ACTION	PRESENTER
5:45pm	I. Call to Order			Abernethy
	II. Native Lands Acknowledgement	2a.1*		Abernethy
	III. Roll Call			Kovitz
	A. Board Members & Guests			
	B. Introduction			Chaung
	IV. Agenda Changes			Abernethy
	V. Public Comment			Abernethy
	VI. Board Committee Appointments	6a.1*	X	Abernethy
	VII. Consent Agenda***			Abernethy
	1. Regular Meeting Minutes (7.13.22)	7a.1*	X	Chesley <sup>A</sup>
	VIII. Information Items			
	1. Financial Statements	8a.1*		Syrell <sup>A</sup>
	2. New Hire Reports	8b.1*		Boehme <sup>A</sup>
	3. Community Education Marketing Update			Kovitz/Goetsch <sup>P</sup>
	4. Center for Business, Industry, and Prof Dev			Betschart <sup>P</sup>
	IX. New Business			
	1. Neighborly Ventures Phase 2	9a.1*	X	McCaffrey/Taylor
	X. Board of Directors' Operations			Abernethy
	1. Board Member Activities			
	XI. President's Report			Chesley
	1. President's Climate Commitment			
	XII. Dates			
	1. Friday, October 7 – Board Retreat @8:30 – 5:00			
	2. Tuesday, October 11 – Real Estate Committee Meeting @3:30 – 5:30			
	3. Wednesday, October 12 – Redmond – Board of Directors' Meeting @5:45			
	4. Wednesday, October 19 - Anthony's at the Old Mill @5:30			
	5. Wednesday, November 9 – Board of Directors' Meeting @5:45			
	XIII. Adjourn to Executive Session			Abernethy
	ORS 192.660 section 2, subsection d, Labor Negotiations			

\* Material to be distributed via e-mail & USPS (as necessary)

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XIV. Adjourn to Open Session

XV. Open Session

XVI. Adjourn

Abernethy

Abernethy

Abernethy

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**Purpose:** To acknowledge someone is to say, "I see you. You are significant." The purpose of a land acknowledgement is to recognize and pay respect to the original inhabitants of a specific region. It is an opportunity to express gratitude and appreciation to those whose territory you exist in.

### **COCC Land Acknowledgement**

(Condensed Version)

COCC would like to acknowledge that the beautiful land our campuses reside on, are the original homelands of the **Wasq'ú** (Wasco), and the **Wana Lama** (Warm Springs) people. They ceded this land to the US government in the Treaty of 1855. The **Numu** (Paiute) people were forcibly moved to the Warm Springs Indian Reservation starting in 1879. It is also important to note that the Klamath Trail ran north through this region to the great Celilo Falls trading grounds and the Klamath Tribes claim it as their own. Descendants of these original people are thriving members of our communities today. We acknowledge and thank the original stewards of this land.

## **COCC BOARD OF DIRECTORS - ASSIGNMENTS**

### **Board Committee Appointments: 2022-23**

#### **GP 6: COMMITTEE STRUCTURE**

*Revised: December 9, 2015*

*The COCC Board of Directors will have six standing committees and one ad hoc committee with members appointed at the annual July meeting.*

#### **Standing Committees (6)**

##### ➤ **Board Self-Evaluation**

*(GP 6: consisting of three members of the Board who will review the process of evaluation, gather any necessary information, and facilitate the evaluation discussion)*

2022-23 Abernethy (Chair), Krenowicz, Tatom

2021-22 Abernethy (Chair), Krenowicz, Tatom

2020-21 Abernethy (Chair), Krenowicz, Tatom

2019-20 Abernethy (Chair), Craska Cooper, Krenowicz

2018-19 Skatvold (Chair), Abernethy, Craska-Cooper

##### ➤ **President's Evaluation**

*(GP 6 & BPR 3: The President Evaluation Committee, comprised of three members, including the chair of the Board, shall annually prepare a draft Presidential evaluation for consideration by the full Board. In preparing its draft, the Committee shall consult with all Board members, the President and such other individuals, as the Committee deems relevant)*

2022-23 Craska Cooper (Chair), Unger, Abernethy,

2021-22 Unger (Chair), Abernethy, Craska Cooper

2020-21 Skatvold (Chair), Unger, Abernethy

2019-20 Skatvold (Chair), Craska Cooper, Abernethy

2018-19 Mundy (Chair), Craska Cooper, Abernethy

##### ➤ **COCC Memorial Education. (Keyes Trust)** – 2 year term

*(GP 6: consisting of one Board member and the President who will comply with the instructions of the Keyes Trust)*

2021-23 Abernethy

2019-21 Abernethy

2017-19 Abernethy

##### ➤ **Audit and Finance** (GP 6: 3 Board Members, 2 Budget Committee Members –

2022-23 Krenowicz (Chair), Clinton, Unger, TBD, TBD

2021-22 Krenowicz (Chair), Clinton, Unger, TBD, TBD

2020-21 Krenowicz (Chair), Clinton, Unger, TBD, TBD

2017-20 Krenowicz (Chair), Abernethy, Skatvold, Kearney, Ertner

##### ➤ **Real Estate Committee** (GP 6: consisting of three members of the Board. The President (or designee) and other staff may serve as ex-officio members)

2022-23 Krenowicz (Chair), Clinton, Craska Cooper

2021-22 Krenowicz (Chair), Clinton, Craska Cooper  
2020-21 Krenowicz (Chair), Clinton, Craska Cooper  
2019-20 Abernethy (Chair), Clinton, Unger  
2018-19 Abernethy (Chair), Mundy, Unger

- **Student Success** (GP 6: consisting of three members of the Board who help to monitor all elements of Student Success initiatives at the college)

2022-23 Skatvold (Chair), Clinton, Tatom  
2021-22 Skatvold (Chair), Clinton, Tatom  
2020-21 Skatvold (Chair), Clinton, Tatom  
2019-20 Skatvold (Chair), Clinton, Tatom  
2018-19 Ricks (Chair), Krenowicz, Skatvold

**All other Board committees will be established on a designated or ad hoc basis, with a specific charge, and timeline for completion.**

### **Consultative Committee**

- **Sub Committee on Policy Review** (Board of Directors' appointment)

2022-23 Tatom (Chair), Craska Cooper, Skatvold  
2021-22 Tatom (Chair), Craska Cooper, Skatvold  
2020-21 Tatom (Chair), Craska Cooper, Skatvold  
2019-20 Krenowicz (Chair), Tatom, Craska Cooper  
2018-19 Abernethy (Chair), Craska Cooper, Skatvold

### **Internal Liaisons (2)**

- **College Affairs**

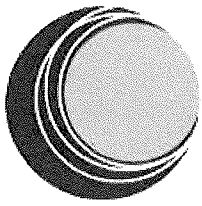
*G-6-2 College Affairs Committee (CAC) - CHARGE: The purpose of the College Affairs Committee is to function as a forum for College-wide issues and to manage the consensus-building process for key issues and functions of the College. The committee acts as a sounding board for the COCC president, helping both to stay abreast of current campus issues and to get input from a cross-section of the campus. All members of the Committee (except the Board member) are voting members and recommendations of the Committee are recommendations to the President. Membership includes one COCC Board Member, appointed by the COCC Board of Directors. Term – two years – Meetings are set and notification is given by the committee chair*

2022-23 Unger  
2021-22 Unger  
2020-21 Unger  
2019-20 Tatom  
2018-19 Unger

- **COCC Foundation** – *(Board of Directors' appointment)*
  - 2022-23 Krenowicz
  - 2021-22 Craska Cooper
  - 2020-21 Craska Cooper
  - 2019-20 Clinton
  - 2018-19 Skatvold
  - 2017-18 Skatvold

### **External Liaisons (3)**

- **Oregon Community College Association** – *OCCA (Board of Directors appointment)*
  - 2022-23 Unger
  - 2021-22 Unger
  - 2020-21 Unger
  - 2019-20 Unger
  - 2018-19 Unger
  - 2017-18 Ricks
- **OSU-Cascades Advisory Board** – *(Board of Directors' recommendation and then Official Appointment made by OSU President)*
- **2022-23 Skatvold**
- **2021-22 Skatvold**
  - 2020-21 Unger
  - 2019-20 Unger
  - 2018-19 Unger
  - 2017-18 Unger
- **ACCT Voting Delegate** *(Association of Community Colleges & Trustees) (board member who attends the conference)*
- 2022-23 Craska Cooper
  - 2021-22 Unger
  - 2020-21 Skatvold
  - 2019-20 Craska Cooper
  - 2018-19 Mundy and Krenowicz
  - 2017-18 Krenowicz



**CENTRAL OREGON**  
community college

7a.1

CENTRAL OREGON  
COMMUNITY COLLEGE  
Board of Directors' Meeting – AGENDA  
Wednesday, July 13, 2022 – 5:45 PM  
Zoom / Facebook Live

TIME**	ITEM	ENC.*	ACTION	PRESENTER
5:45pm	I. Call to Order			Unger
	II. Native Lands Acknowledgement Alan Unger read the COCC Native Lands Acknowledgement.	2a.1*		Unger
	III. Roll Call <u>Board Members &amp; Guests</u> Alan Unger (Chair), Bruce Abernethy, Erica Skatvold, Oliver Tatom, Jim Clinton, Laura Craska Cooper, Joe Krenowicz, Laurie Chesley (COCC President), Alicia Moore, Betsy Julian, Laura Boehme, Zak Boone, Cathleen Knutson, Jenn Kovitz, Paul Taylor, Annemarie Hamlin, and Erin Foote Morgan.			Kovitz
	IV. Agenda Changes None.			Unger
	V. Public Comment No public comment at this time.			Kovitz
	VI. Election of Officers for 2022-23 Alan Unger moved for Bruce Abernethy to be next year's Board Chair and Joe Krenowicz to be Vice Chair. <ul style="list-style-type: none"> <li>• 1<sup>st</sup> – Laura Craska Cooper</li> <li>• 2<sup>nd</sup> – Jim Clinton</li> <li>• Motion approved unanimously.</li> </ul>			Unger
	VII. Board Committee Appointments New Chair Abernethy announced that these appointments would be made at the next Board meeting, after consultation with Board members.			Abernethy

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## VIII. Consent Agenda\*\*\*

Abernethy  
Chesley<sup>A</sup>

1. Regular Meeting Minutes (7.13.22)  
Motion to approve Consent Agenda
  - 1<sup>st</sup> Laura Craska Cooper
  - 2<sup>nd</sup> Jim Clinton
  - Motion Approved Unanimously

## IX. Information Items

1. Financial Statement 9a.1\* Knutson<sup>A</sup>
2. New Hire Reports 9c.1\* Boehme<sup>A</sup>
3. Real Estate Committee Update Krenowicz  
Joe Krenowicz provided an update on the Real Estate Committee Meeting of July 12.
4. Grants Update Boone/Tevlin  
Sean Tevlin provided an update on the College's grant activities from the past year
5. Major Transfer Maps / Common Course Numbering Moore/Hayes  
Tyler Hayes provided an update on the state legislature's initiatives regarding Major Transfer Maps and Common Course Numbering.
6. Diversity in Hiring Boehme/Barry  
Seana Barry shared data related to the College's efforts to diversify its faculty and staff. This data will serve as a baseline for the College, and it will be reviewed annually and shared with the Board.

## X. New Business

Abernethy

1. Neighborly Ventures Add'l ROW 10a.1\* X Krenowicz/Taylor  
The City of Bend /Neighborly Ventures requested the College dedicate additional frontage on Shevlin Park Road.  
Motion to approve Additional Right of Way
  - 1<sup>st</sup> Oliver Tatom
  - 2<sup>nd</sup> Alan Unger
  - Motion approved unanimously.
2. President's Contract Craska Cooper  
Laura Craska Cooper summarized the renewal and substantive changes to the President's Contract. The new contract replaces the original with a three-year rolling term; includes an annual base salary of \$232,780 (which includes a

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three percent increase over last year); additional compensation of an annual \$25,000 contribution to a 401(k) or 403(b) retirement plan (an increase of \$10,000 annually); and payment of health insurance costs through age 65, if the President retires while age 64. The contract also includes a fixed annual vacation benefit of 20 days, as well as an additional five consulting days. Non-substantive changes to contract language are still being considered, and the Board authorizes the Board Chair and legal counsel to finalize the contract as they and the President's counsel deem necessary and appropriate.

Motion to approve President's Evaluation – Resolution is appended to these Minutes.

- 1<sup>st</sup> Laura Craska Cooper
- 2<sup>nd</sup> Joe Krenowicz
- Motion Approved Unanimously.

3. Applied Baccalaureate 10b.1\* Julian

The Board approved the College moving forward with the exploration and potential offering of Applied Baccalaureate degrees. Any such specific degree would need Board approval.

Motion to approve Applied Baccalaureate

- 1<sup>st</sup> Erica Skatvold
- 2<sup>nd</sup> Alan Unger
- Motion Approved Unanimously.

## XI. Board of Directors' Operations

Abernethy

### August Board Meeting

Abernethy

Motion to not hold August Board meeting

- 1<sup>st</sup> – Joe Krenowicz
- 2<sup>nd</sup> – Jim Clinton
- Motion approved Unanimously.

### Board Member Activities

Alan Unger      Calls with Bruce and the President. Worked on President's Evaluation team. Attended Car-mencement. Attended OSU-Cascades celebration for Becky Johnson.

Jim Clinton      Attended three VPI forums. Spoke with Broadside reporter, Ellie Ocel.

Oliver Tatom      Nothing to report this month.

Bruce Abernethy      Calls with Alan and the President. Worked on President's Evaluation and

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and Contract teams.  
 Joe Krenowicz      Attended Real Estate Committee meeting.  
 Laura Craska Cooper      Worked on President's Evaluation and Contract teams. Attended Real Estate  
    Committee meeting.  
 Erica Skatvold      Attended Car-mencement.

**XII. President's Report**

**Chesley**

The President acknowledged the Faculty Member of the Year, Karl Baldessari; Administrative Employees of the Year, Brittany Nichols and Malissa Hice; Classified Employee of the Year, Roger Thorsvold; and this year's Diversity Champion Award winner, Charlotte Gilbride. She also thanked retiring Vice President of Instruction, Dr. Betsy Julian, for her six years of service to the College, and welcomed Dr. Annemarie Hamlin to her new role as Vice President of Academic Affairs.

**XIII. Dates**

1. Wednesday, August 10 – Board of Directors' Meeting @5:45
2. Wednesday, September 14 – Board of Directors' Meeting @5:45

**XIV. Adjourn to Executive Session**

**Abernethy**

ORS 192.660 section 2, subsection d, Labor Negotiations

**XV. Adjourn to Open Session**

**Abernethy**

**XVI. Open Session**

**Abernethy**

**XVII. Adjourn**

**Abernethy**

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Sept 14, 2022

Central Oregon Community College  
Monthly Budget Status  
Highlights of July 2022 Financial Statements

**Cash and Investments**

The College's operating cash balances currently total \$33.2 million. The average yield for the Local Government Investment Pool increased to 1.25 percent from last report of 0.75 percent.

**General Fund Revenues**

Tuition and fee revenues represent fall term enrollment as of the end of July. The budgeted transfers-in have been posted for the year.

**General Fund Expenses**

The expenses include the required budgeted inter-fund transfers-out for the fiscal year.

**Budget Compliance**

All general fund appropriation categories are within budget.

Central Oregon Community College  
**Monthly Budget Status**  
 July 2022

14-Sep-22

<u>General Fund</u>	<u>Adopted Budget</u>	<u>Year to Date Activity</u>	<u>Variance Favorable (Unfavorable)</u>	<u>Percent of Budget Current Year</u>	<u>Percent of Budget Prior Year</u>
<b>Revenues</b>					
District Property Taxes:					
Current Taxes	\$ 20,718,000	\$ -	\$ (20,718,000)	0.0%	0.0%
Prior Taxes	464,000	90,056	(373,944)	19.4%	36.2%
Tuition and fees	15,570,000	3,529,434	(12,040,566)	22.7%	21.4%
State Aid	9,388,000		(9,388,000)	0.0%	0.0%
Program and Fee Income	41,200		(41,200)	0.0%	0.0%
Interest & Misc. Income	206,000	6,031	(199,969)	2.9%	2.9%
Transfers-In	4,860,000	2,360,000	(2,500,000)	48.6%	100.0%
<b>Total Revenues</b>	<b>\$ 51,247,200</b>	<b>\$ 5,985,521</b>	<b>\$ (45,261,679)</b>		
<b>Expenses by Function</b>					
Instruction	\$ 23,184,227	\$ 443,334	\$ 22,740,893	1.9%	1.9%
Academic Support	4,725,247	433,347	4,291,900	9.2%	6.8%
Student Services	6,091,460	282,869	5,808,591	4.6%	4.8%
College Support	5,754,800	313,307	5,441,493	5.4%	10.3%
Plant Operations and Maintenance	4,849,080	96,117	4,752,963	2.0%	9.3%
Information Technology	5,255,781	567,019	4,688,762	10.8%	11.1%
Financial Aid	112,897	1,221	111,676	1.1%	2.1%
Contingency	800,000		800,000	0.0%	0.0%
Transfers-Out	2,331,800	2,291,800	40,000	98.3%	100.0%
<b>Total Expenses</b>	<b>\$ 53,105,292</b>	<b>\$ 4,429,014</b>	<b>\$ 48,676,278</b>		
<b>Revenues Over/(Under) Expenses</b>	<b>\$ (1,858,092)</b>	<b>\$ 1,556,507</b>	<b>\$ 3,414,599</b>		

Central Oregon Community College  
**Monthly Budget Status**  
 July 2022

14-Sep-22

	Adopted Budget	Year to Date Activity	Variance Favorable (Unfavorable)	Percent of Budget Current Year	Percent of Budget Prior Year
<b>Non General Funds</b>					
<b>Debt Service Fund</b>					
Revenues	\$ 5,351,906	\$ 1,173,306	\$ (4,178,600)	21.9%	21.4%
Expenses	5,543,685		5,543,685	0.0%	0.0%
<b>Revenues Over/(Under) Expenses</b>	<b>\$ (191,779)</b>	<b>\$ 1,173,306</b>	<b>\$ 1,365,085</b>		
<b>Grants and Contracts Fund</b>					
Revenues	\$ 7,295,000	\$ 30,030	\$ (7,264,970)	0.4%	1.4%
Expenses	7,739,100	267,472	7,471,628	3.5%	20.5%
<b>Revenues Over/(Under) Expenses</b>	<b>\$ (444,100)</b>	<b>\$ (237,442)</b>	<b>\$ 206,658</b>		
<b>Capital Projects Fund</b>					
Revenues	\$ 3,748,505	\$ 812,178	\$ (2,936,327)	21.7%	4.0%
Expenses	8,090,948	8,999	8,081,949	0.1%	2.7%
<b>Revenues Over/(Under) Expenses</b>	<b>\$ (4,342,443)</b>	<b>\$ 803,179</b>	<b>\$ 5,145,622</b>		
<b>Enterprise Fund</b>					
Revenues	\$ 4,810,756	\$ 348,194	\$ (4,462,562)	7.2%	5.5%
Expenses	5,340,671	1,880,695	3,459,976	35.2%	27.2%
<b>Revenues Over/(Under) Expenses</b>	<b>\$ (529,915)</b>	<b>\$ (1,532,501)</b>	<b>\$ (1,002,586)</b>		
<b>Auxiliary Fund</b>					
Revenues	\$ 7,406,628	\$ 3,261,530	\$ (4,145,098)	44.0%	38.5%
Expenses	11,460,318	2,000,990	9,459,328	17.5%	10.4%
<b>Revenues Over/(Under) Expenses</b>	<b>\$ (4,053,690)</b>	<b>\$ 1,260,540</b>	<b>\$ 5,314,230</b>		
<b>Reserve Fund</b>					
Revenues	\$ 11,674	\$ -	\$ (11,674)	0.0%	0.0%
Expenses	455,000	423,072	31,928	93.0%	93.9%
<b>Revenues Over/(Under) Expenses</b>	<b>\$ (443,326)</b>	<b>\$ (423,072)</b>	<b>\$ 20,254</b>		
<b>Financial Aid Fund</b>					
Revenues	\$ 15,059,071	\$ 150,000	\$ (14,909,071)	1.0%	0.7%
Expenses	15,323,065	495,670	14,827,395	3.2%	6.4%
<b>Revenues Over/(Under) Expenses</b>	<b>\$ (263,994)</b>	<b>\$ (345,670)</b>	<b>\$ (81,676)</b>		
<b>Internal Service Fund</b>					
Revenues	\$ 127,500	\$ 1	\$ (127,499)	0.0%	0.0%
Expenses	119,983	14,280	105,703	11.9%	4.6%
<b>Revenues Over/(Under) Expenses</b>	<b>\$ 7,517</b>	<b>\$ (14,279)</b>	<b>\$ (21,796)</b>		
<b>Trust and Agency Fund</b>					
Revenues	\$ 9,332	\$ 396	\$ (8,936)	4.2%	2.1%
Expenses	18,500		18,500	0.0%	0.0%
<b>Revenues Over/(Under) Expenses</b>	<b>\$ (9,168)</b>	<b>\$ 396</b>	<b>\$ 9,564</b>		

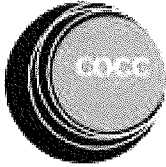
14-Sep-22

Central Oregon Community College

**Cash and Investments Report**

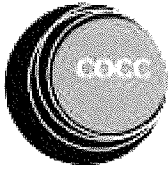
As of July 31, 2022

College Portfolio	Operating Funds	Trust/Other Funds
<b>Cash in State Investment Pool</b>		
4089 - General operating fund	\$ 31,816,233	
3624 - Robert Clark Trust		\$ 374,157
July Average Yield 1.25%		
<b>Cash in USNB</b>	\$ 1,357,855	
<b>Cash on Hand</b>	\$ 4,600	
<b>Total Cash</b>	<u>\$ 33,178,688</u>	<u>\$ 374,157</u>



**Central Oregon Community College**  
**Board of Directors**  
**New Hires Report**  
 Date of Hire: July 1-31, 2022

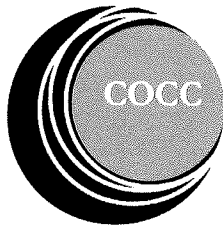
<b>Name</b>	<b>Hire Date</b>	<b>Job Description</b>	<b>Department</b>
<b>Classified Full-Time</b>			
Abercrombie, Erica	7/5/2022	Enrollment/Welcome Associate	Admissions
Hoxie, Shawn Scott	7/1/2022	Campus Custodian Lead	Custodial Services
Violissi, Anthony	7/5/2022	Enrollment Specialist	Admissions
Winchester, Kyleigh Ann	7/18/2022	Enrollment Technical Spec	Admissions
<b>Part-Time Instructors</b>			
Bachman, Amy	7/1/2022	Faculty Advisor	Automotive
Donovan, Keri J	7/1/2022	PT Faculty Summer Bend	Writing/Literature
Donovan, Keri J	7/1/2022	PT Faculty Summer Online	Writing/Literature
Freihoefer, Theresa	7/1/2022	PT Faculty Summer Online	Business Administration
Hammer, Patricia J	7/1/2022	PT Faculty Summer Bend	Mathematics
<b>Temporary Hourly</b>			
Bain, Jessie William Russell	7/14/2022	Library Assist. -Tech. Servcs	Library
Batchelor, Lily	7/25/2022	Cert. Flight Instructor I	Aviation Program
Batchelor, Lily	7/25/2022	CFI Training	Aviation Program
Ivy, Ryan D	7/18/2022	Ceramics Lab Assistant	Art
Kluver, Jacob	7/11/2022	Cert. Flight Instructor I	Aviation Program
Kluver, Jacob	7/11/2022	CFI Training	Aviation Program
Kristensen, Anna Emilie	7/1/2022	Class. Asst. III Culinary Camp	Regional Svcs. & R.C. Operations
Mermel, Itzel	7/11/2022	Classroom Assist. III Comm. Ed	Regional Svcs. & R.C. Operations
Schmidt, Carolyn Lynn	7/1/2022	HR Temporary Office Assistant	Human Resources
Stinson, Jeremy T	7/25/2022	Fire Science Instruct. Assist.	Fire Science
Wackerman, Daniel Edw ard	7/11/2022	Aviation Tutor II	Tutoring and Testing



**Central Oregon Community College**  
**Board of Directors**  
 New Hires Report  
 Date of Hire: August 1-31, 2022

Name	Hire Date	Job Description	Department
<b>Temporary Hourly</b>			
Donnell, Scott E	8/8/2022	Temporary Web Designer	Marketing and Public Relations
Levinson, Parker	8/22/2022	CFI Training	Aviation Program
Levinson, Parker	8/22/2022	Certified Flight Instructor II	Aviation Program
Marlitt, Hannah	8/22/2022	Bookstore Cashier I	Bookstore
Moore, David Harold	8/3/2022	Certified Flight Instructor III	Aviation Program
Reynolds, Charlie Tran	8/3/2022	Cert. Flight Instructor I	Aviation Program
Reynolds, Charlie Tran	8/3/2022	CFI Training	Aviation Program
Robertson, Sawyer	8/15/2022	Fitness Attendant	Bookstore
Robertson, Sawyer	8/15/2022	Bookstore Chasier I	Bookstore
Rodgame, Robert	8/1/2022	Certified Flight Instructor I	Aviation Program
Rodgame, Robert	8/1/2022	CFI Training	Aviation Program
Tennant, Andrew James	8/22/2022	Certified Flight Instructor I	Aviation Program
Tennant, Andrew James	8/22/2022	CFI Training	Aviation Program
Tintle, Maxwell F	8/15/2022	CFI Training	Aviation Program
Tintle, Maxwell F	8/15/2022	Certified Flight Instructor I	Aviation Program
Wheeler, Anna Marjorie	8/15/2022	Bookstore Cashier I	Bookstore





## Central Oregon Community College Board of Directors: Information Item

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<b>Subject</b>	Hiring of <b>John Moore</b> as <b>Web Designer</b>
<b>Student Success</b>	SS-2: Enhance and promote the resources and tools available to help students efficiently complete their academic goal.
<b>Institutional Efficiency</b>	IE-4: Improve information sharing practices and communication sources.
<b>Prepared By</b>	<b>Laura Boehme, Chief Information/Human Resources Officer</b>

### A. Background

The **Web Designer** position is a replacement position.

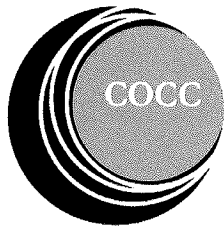
### B. Timing

The **Web Designer** position is a 1.0 FTE, 12-month employment contract each fiscal year. For the 2022-23 fiscal year, the initial employment contract period will be from August 1, 2022 to June 30, 2023. As with all other full-time Administrator employees, a new contract will be prepared for the next academic year that begins on July 1.

### C. Budget Impact

This position is in the 2022-23 budget and conforms to the current approved Administrator salary schedule.

John Moore earned a bachelor's degree in English from Western Colorado University. John currently owns and operates John Moore Digital Inc (DBA Alpenglow Agency), a web design and web development freelance practice. Prior to this, John worked as a Digital Director for Fish Marketing.



## Central Oregon Community College Board of Directors: Information Item

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<b>Subject</b>	Hiring of <b>Jessica Giglio</b> as <b>Interim Instructional Dean</b>
<b>Student Success</b>	SS-1: Enhance development of course and program offerings and delivery methods to help students efficiently complete their academic goal.
<b>Institutional Efficiency</b>	IE-1: Improve practices and systems related to providing a supportive and productive workplace.
<b>Prepared By</b>	<b>Laura Boehme, Chief Information/Human Resources Officer</b>

### A. Background

The **Interim Instructional Dean** position is a replacement position for the 2022-23 academic year.

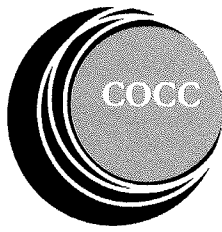
### B. Timing

The **Interim Instructional Dean** position is a 1.0 FTE, 12-month employment contract each fiscal year. For the 2022-23 fiscal year, the initial employment contract period will be from August 1, 2022 to June 30, 2023.

### C. Budget Impact

This position is in the 2022-23 budget and conforms to the current approved Administrator salary schedule.

Jessica Giglio earned a bachelor's degree in Mathematics from Lake Forest College and a master's degree in Mathematics from Oregon State University. Jessica is currently a tenured track faculty member at COCC and recently the department chair for the Mathematics department. Prior to COCC, Jessica taught Mathematics at Central Washington University and Clatsop Community College.



## Central Oregon Community College Board of Directors: Information Item

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<b>Subject</b>	Hiring of <b>Ken Harmon as Information Security Specialist</b>
<b>Institutional Efficiency</b>	IE-1: Improve practices and structure related to providing a healthy and productive workplace. IE-2: Develop effective and efficient policies and procedures that are applied uniformly across the College.
<b>Prepared By</b>	<b>Laura Boehme, Chief Information/Human Resources Officer</b>

### A. Background

The **Information Security Specialist** position is a replacement position.

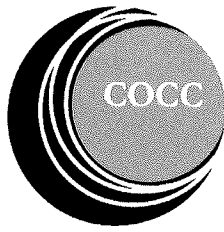
### B. Timing

The **Information Security Specialist** position is a 1.0 FTE, 12-month employment contract each fiscal year. For the 2022-23 fiscal year, the initial employment contract period will be from August 1, 2022 to June 30, 2023. As with all other full-time Administrator employees, a new contract will be prepared for the next academic year that begins on July 1.

### C. Budget Impact

This position is in the 2022-23 budget and conforms to the current approved Administrator salary schedule.

Ken Harmon earned an associate's degree in Business Administration from COCC and served in multiple roles in the Information Technology Services at COCC, most recently as Engineering Systems Administrator. Ken is returning to COCC after a two-year absence.



## Central Oregon Community College Board of Directors: Information Item

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<b>Subject</b>	Hiring of <b>Wendi Worthington</b> as <b>Career Connected Learning Systems Navigator</b>
<b>Student Success</b>	SS-2: Enhance and promote the resources and tools available to help students efficiently complete their academic goal.
<b>Community Enrichment</b>	CE-1: Build and strengthen partnerships with educational stakeholders, including PreK-12 and higher education.
<b>Prepared By</b>	<b>Laura Boehme, Chief Information/Human Resources Officer</b>

### A. Background

The **Career Connected Learning Systems Navigator** position is a new, grant-funded position.

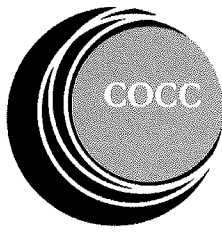
### B. Timing

The **Career Connected Learning Systems Navigator** position is a 1.0 FTE, 12-month employment contract each fiscal year. For the 2022-23 fiscal year, the initial employment contract period will be from September 1, 2022 to June 30, 2023. As with all other full-time Administrator employees, a new contract will be prepared for the next academic year that begins on July 1.

### C. Budget Impact

This position is in the 2022-23 budget and conforms to the current approved Administrator salary schedule.

Wendi Worthington earned a bachelor's degree in Anthropology from Williams College, a bachelor's degree in Nursing from the University of Washington, and a master's degree in Counseling and School Counseling from Oregon State University. Wendi recently served as the Health Careers Outreach/Recruitment Coordinator at COCC. In addition, Wendi teaches human development courses at COCC.



## Central Oregon Community College Board of Directors: Information Item

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<b>Subject</b>	Hiring of <b>Joshua Clawson</b> as <b>Director of Campus Services</b>
<b>Institutional Efficiency</b>	IE-1: Improve practices and systems related to providing a supportive and productive workplace. IE-2: Develop effective and efficient policies and procedures that are applied uniformly across the College.
<b>Prepared By</b>	<b>Laura Boehme, Chief Information/Human Resources Officer</b>

### A. Background

The **Director of Campus Services** position is a replacement position.

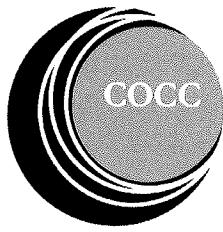
### B. Timing

The **Director of Campus Services** position is a 1.0 FTE, 12-month employment contract each fiscal year. For the 2022-23 fiscal year, the initial employment contract period will be from October 3, 2022 to June 30, 2023. As with all other full-time Administrator employees, a new contract will be prepared for the next academic year that begins on July 1.

### C. Budget Impact

This position is in the 2022-23 budget and conforms to the current approved Administrator salary schedule.

Joshua Clawson earned an Associates of Applied Science in Industrial Technology from COCC. Joshua is currently the Facilities Project Coordinator for Deschutes County. Prior to this role, Joshua served as an Electronics Technician, Electrician, and Supervising Electrician for various companies.



## Central Oregon Community College Board of Directors: Information Item

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<b>Subject</b>	Hiring of <b>Keri Podell as Program Manager</b>
<b>Community Enrichment</b>	CE-2: Build and strengthen partnerships and advance positive regional economic development with business and industry by assisting with educational and training needs of the workforce.
<b>Prepared By</b>	<b>Laura Boehme, Chief Information/Human Resources Officer</b>

### A. Background

The **Program Manager** position in the Center for Business, Industry and Professional Development is a replacement position.

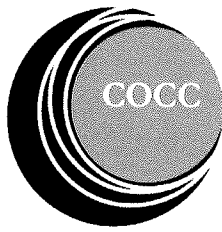
### B. Timing

The **Program Manager** position is a 1.0 FTE, 12-month employment contract each fiscal year. For the 2022-23 fiscal year, the initial employment contract period will be from September 26, 2022 to June 30, 2023. As with all other full-time Administrator employees, a new contract will be prepared for the next academic year that begins on July 1.

### C. Budget Impact

This position is in the 2022-23 budget and conforms to the current approved Administrator salary schedule.

Keri Podell earned an associate's degree from Central Oregon Community College, a bachelor's degree in Business Management from Linfield University, and a master's degree in Communications & Leadership Studies from Gonzaga University. Keri currently works as an academic advisor and as a part-time instructor in Human Development at COCC. Prior to this, Keri was the Emergency Service Director at NeighborImpact.



## Central Oregon Community College Board of Directors: Information Item

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<b>Subject</b>	<b>Hiring of Jesse Seiden as Academic Advisor</b>
<b>Student Success</b>	SS-2: Enhance and promote the resources and tools available to help students efficiently complete their academic goal. SS-3: Enhance and promote the resources and support services available to help students overcome non-academic challenges.
<b>Prepared By</b>	<b>Laura Boehme, Chief Information/Human Resources Officer</b>

### A. Background

The **Academic Advisor** position is a replacement position.

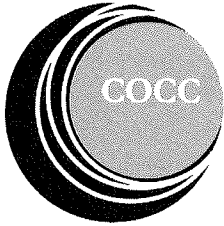
### B. Timing

The **Academic Advisor** position is a 1.0 FTE, 12-month employment contract each fiscal year. For the 2022-23 fiscal year, the initial employment contract period will be from September 1, 2022 to June 30, 2023. As with all other full-time Administrator employees, a new contract will be prepared for the next academic year that begins on July 1.

### C. Budget Impact

This position is in the 2022-23 budget and conforms to the current approved Administrator salary schedule.

Jesse Seiden earned a bachelor's degree in Sociology from the University of Oregon and a master's degree in Sociology from Southern Illinois University Edwardsville. Jesse most recently served as an Academic Advisor at Laramie County Community College. In conjunction with this role, Jesse served as an adjunct instructor. Prior to this position Jesses served as a Student Services Specialist.



**Central Oregon Community College  
Board of Directors: Resolution**

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<b>Subject</b>	<b>Neighborly Development, LLC Ground Lease and Surplus Declaration</b>
<b>Strategic Plan Connection</b>	Institutional Efficiency
<b>Prepared By</b>	Laurie Chesley, Paul Taylor

**A. Background**

Through the College's Development Agreement with William Smith Properties Inc. (WSPI), 12-acre and 3-acre parcels, at the southwest and southeast corners of Mt. Washington Drive and Shevlin Park Road were identified for potential development. Subsequently, the College entered into a Ground Lease Agreement (the "Phase 1 Lease") with Neighborly Ventures, Inc. for the development of approximately 186 multi-family housing units on the larger parcel.

WSPI has worked with Neighborly Development, LLC (an affiliate of Neighborly Ventures, Inc.) to negotiate terms for the construction of approximately 69 market-rate apartment units on an approximately 2.81-acre parcel located at the southeast corner of Shevlin Park Road and Mt. Washington Drive (Outcrop Subdivision, Development Tract B). A ground lease agreement (the "Phase 2 Lease") is proposed to allow a 305-day due diligence period for neighborly Development, LLC to further explore the development of the identified parcel, as more fully described in the attached Phase 2 Lease. Structurally, the Phase 2 Lease is virtually identical to the Phase 1 Lease. The only substantive differences are those necessary to reflect the different business terms for the Phase 2 Lease (e.g., the rental amount based on the smaller parcel area), together with provisions to address lender-related considerations (based on Neighborly's experiences in obtaining financing for the Phase 1 project).

**B. Options/Analysis**

Approve the proposed resolution below.

Decline approval of the proposed resolution below.

**C. Timing**

NA

**D. Budget Impact**

The goal of the Development Agreement with WSPI is to generate alternative income sources from College-owned real property that is not needed for academic purposes. The initial value of the land to be leased is \$1,393,900, resulting an initial annual lease rate of \$111,512.04 (\$9,292.67 per month).

**E. Proposed Resolution**

Be it resolved that the Central Oregon Community College Board of Directors (i) finds that the real property described in the attached Neighborly Development, LLC ground lease agreement is not needed for public use and that the public interest may be furthered by ground leasing the property



to Neighborly Development, LLC; and (ii) approves the Neighborly Development, LLC ground lease agreement and authorizes the President to execute and deliver the ground lease agreement, together with such other instruments and documents as are necessary to effect the transactions contemplated by the ground lease agreement, all in such form and substance, and with such clarifications and other non-substantive modifications, as the President and the College's legal counsel deem necessary and appropriate.

# Neighboring Ventures – RH Land



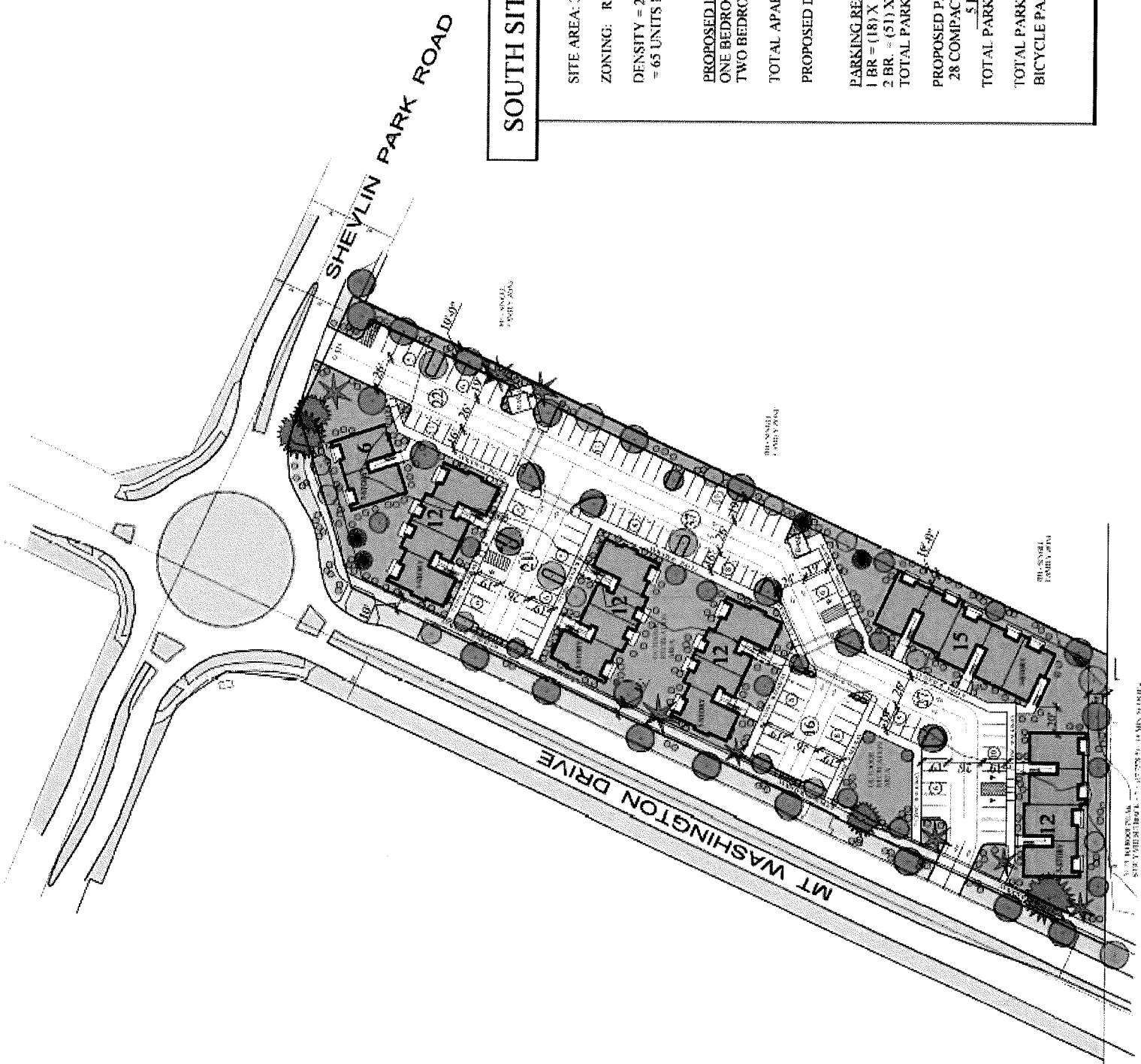
**neighboring**  
ventures

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## Summary of Proposal

- **Site:** 2.81 Net Acres zoned RH at southeast corner of Mt Washington roundabout (3.02 acres before dedication of right-of-way)
- **Program:** Approx. 69 residential units (18 1BR / 51 2BR); no age restriction
- **Lease Term:** 70 years (30-yr initial term with four 10-yr options)
- **Lease Amount:** \$111,512/year initial payment; increases every 5 years based on the percentage change in the Real Market Value of land as determined by the Deschutes County Assessor.
- **Due Diligence Period:** 305 days
- **Rent Commencement:** Approximately Fall of 2024 (based on opening)





**SOUTH SITE DATA:**

SITE AREA: 3.02 ACRES: 131,494 SQUARE FEET  
 ZONING: RH (HIGH DENSITY RESIDENTIAL)  
 DENSITY = 21.7 UNITS / AC. MIN., 43 UNITS / AC. MAX.  
 = 65 UNITS MIN.; 129 UNITS MAX.

PROPOSED LIVING UNITS:  
 ONE BEDROOM UNITS= (18) UNITS  
 TWO BEDROOM UNITS= (51) UNITS

TOTAL APARTMENT UNITS = 69 UNITS

PROPOSED DENSITY = 22.85 UNITS / ACRE.

PARKING REQUIRED:  
 1 BR = (18) X 1.0 STALLS / UNIT = 18 STALLS REQ'D.  
 2 BR = (51) X 1.5 STALLS / UNIT = 77 STALLS REQ'D.  
 TOTAL PARKING REQ'D. 95 STALLS MIN.

PROPOSED PARKING: 90 STANDARD STALLS  
 28 COMPACT STALLS  
 5 HANDICAP STALLS

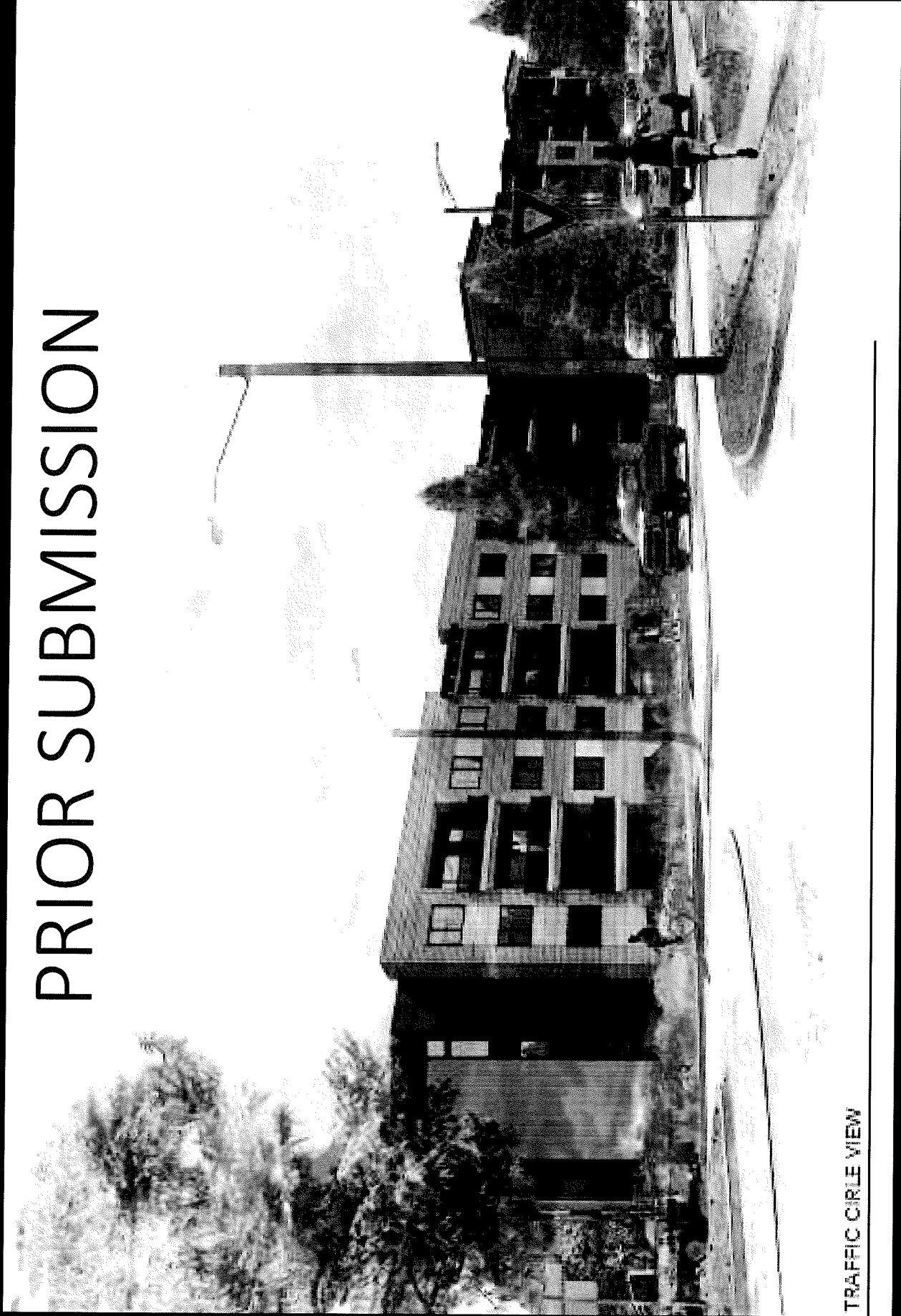
TOTAL PARKING : 123 TOTAL STALLS PROVIDED

TOTAL PARKING RATIO= 1.78 STALLS / UNIT  
 BICYCLE PARKING (69) SPACES MINIMUM REQUIRED

5-17-10 10:00 AM  
 SHEVLIN PARK RD. - 15' MIN. SETBACK



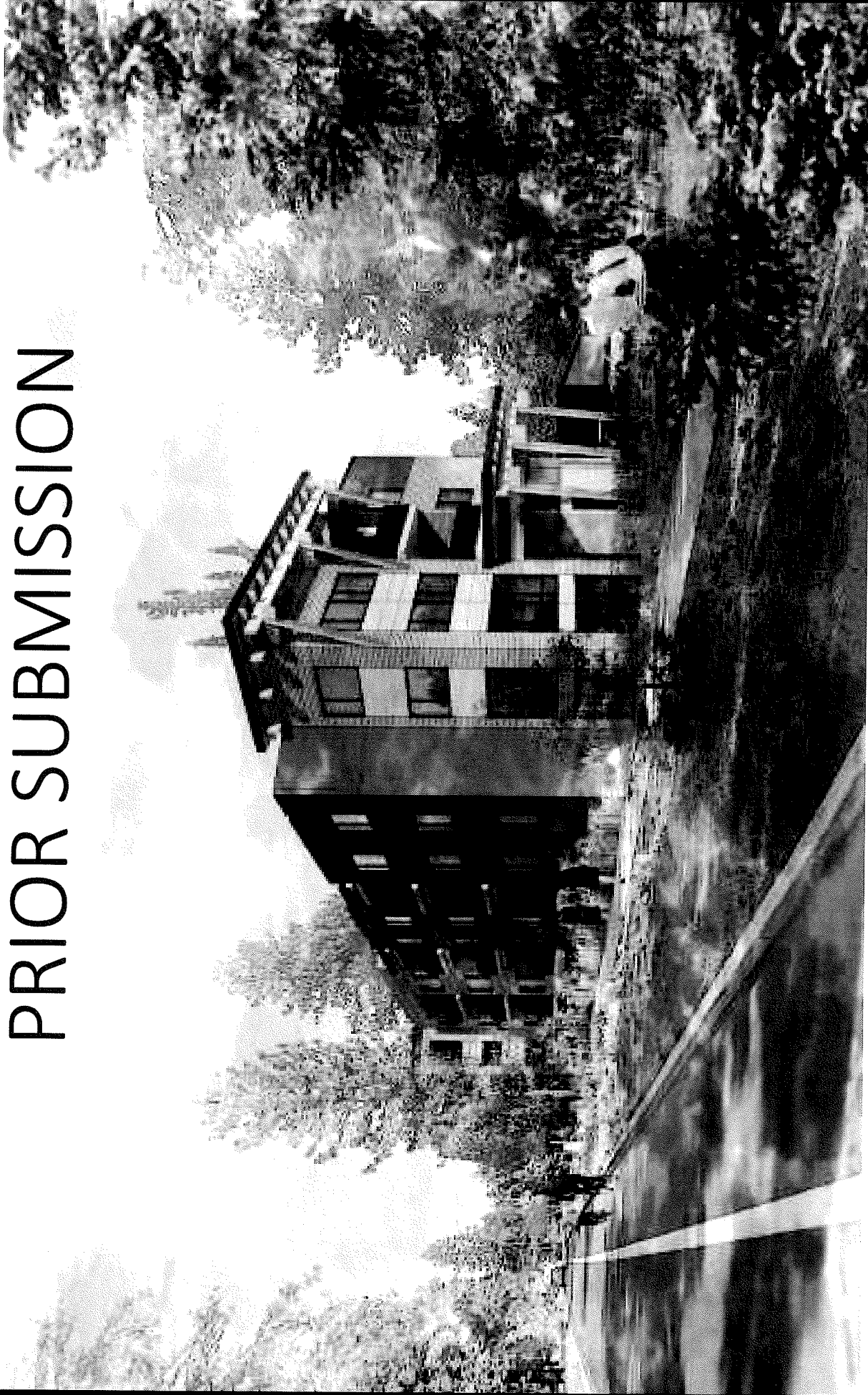
# PRIOR SUBMISSION



TRAFFIC CIRCLE VIEW



# PRIOR SUBMISSION



9a.1

**GROUND LEASE AGREEMENT**

THIS GROUND LEASE AGREEMENT (this "**Agreement**") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2022 (the "**Effective Date**"), by and between **Central Oregon Community College District**, an Oregon community college district, hereinafter called "**Landlord**," and **Neighborhood Development, LLC**, an Oregon limited liability company, together with its successors or assigns, hereinafter called "**Tenant**."

**WITNESSETH:**

WHEREAS, Landlord desires to lease certain Premises (defined below) to Tenant, and Tenant desires to lease from Landlord (each a "**Party**" or collectively, the "**Parties**") said Premises; and

WHEREAS, Landlord intends that **William Smith Properties Inc.**, hereinafter called "**Landlord's Agent**," shall serve as property manager and shall undertake all the duties and obligations of Landlord under this Agreement; and

WHEREAS, Tenant desires to construct approximately 69 market rate apartment units on the Premises together with other related amenities and all Improvements (as defined in Section 13.1) subject to the terms and conditions of this Agreement (herein, collectively, the "**Facility**"); and

WHEREAS, the initial value of the Premises is \$1,393,900;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, terms, agreements, privileges and obligations hereinafter contained, it is hereby agreed by and between the Parties hereto as follows:

**Article I:  
(Initial Terms of Lease)**

**SECTION 1. LEASED PREMISES**

Landlord agrees to and hereby does lease to Tenant, for Tenant's exclusive use, Development Tract B in the Outcrop subdivision, City of Bend, Deschutes County, Oregon, commonly known as Tax Lot 171125CDO2200, approximately 2.81 acres in size, as legally described on **Exhibit A** and depicted on **Exhibit B**, which are both attached hereto and incorporated herein, together with any and all rights, privileges, easements, and appurtenances (collectively, the "**Premises**").

**SECTION 2. TERM**

2.1. Term. This Agreement shall be deemed binding on both Parties as of the Effective Date stated above and inure to the benefit of Landlord, Tenant, and their respective successors and assigns. Upon waiver of the Conditions to Lease described in Section 4 below, Tenant's leasehold interest shall vest and Tenant shall be entitled to exclusive possession of the Premises. The initial term of this Agreement shall commence upon the Rent Commencement Date (defined in Section 3.2 and also sometimes referred to as the "**Commencement Date**"), and shall be for an initial term of thirty (30) years from the Rent Commencement Date (the "**Initial Term**").



## 2.2. Right of First Offer.

2.2.1. During the Term (as defined in Section 2.3 below) Landlord grants to Tenant, and Tenant hereby accepts from Landlord, a right of first offer to purchase the Premises and any portion of Landlord's property in which the Premises is located subject to the terms and conditions contained in this Agreement (collectively the "**ROFO**").

2.2.2. So long as Tenant is not then in default under this Agreement, Tenant shall have the ROFO upon the terms and conditions set forth in Section 2.2 and 2.3, respectively.

2.2.3. Except as provided below, Landlord shall not list the Premises (or any portion of Landlord's property that includes the Premises) with a broker or otherwise market the Premises (or any portion of Landlord's property that includes the Premises) for sale, accept any unsolicited offer, or sell all or a portion of the Premises (or any portion of Landlord's property that includes the Premises) without first making an offer ("**Landlord's Offer**") to Tenant for a price and on terms and conditions acceptable to Landlord and allowing Tenant 30 days from the date Tenant receives Landlord's Offer to respond. If Tenant accepts Landlord's Offer in writing, then the Parties will be bound by the contract formed by such offer and acceptance. If Tenant fails to accept Landlord's Offer in writing within such 30-day period, then Landlord may market and sell the Premises (or any portion of Landlord's property that includes the Premises) to any person for such price and pursuant to terms substantially similar to those set forth in Landlord's Offer without further notice to Tenant for a period of 365 days following the date of Landlord's Offer. If Tenant makes a counteroffer within 30 days of receipt of Landlord's Offer ("**Tenant's Counteroffer**"), Landlord will have the option of accepting or rejecting Tenant's Counteroffer at any time during the 90 days after it is delivered to Landlord. Tenant may not withdraw Tenant's Counteroffer during such 90-day period. If Landlord does not accept Tenant's Counteroffer, then for a period of 365 days following the date of Tenant's Counteroffer, Landlord may market and sell the Premises (or any portion of Landlord's property that includes the Premises) to a third party at a price (net of any broker commissions or other similar fees) and such other terms as are no more favorable to the purchaser than those set forth in Landlord's Offer. Notwithstanding anything to the contrary in this Section 2.2, Landlord shall have the right to structure Landlord's Offer to include the Premises as a separate legal lot or include the Premises in a larger portion of Landlord's property.

2.2.4. If Landlord does not sell the Premises (or any portion of Landlord's property that includes the Premises) to a third party within either of the 365-day periods set forth in Section 2.2.3 then Tenant's ROFO will be reinstated upon the expiration of the applicable 365-day period. As used in this Section 2.2 the term "sell" means actually conveying Landlord's interest in the Premises (or any portion of Landlord's property that includes the Premises) to a third party, any agreement between Landlord and a third party for a future conveyance of Landlord's interest in the Premises (or any portion of Landlord's property that includes the Premises), or any transaction that is the substantial equivalent of such a conveyance or agreement for such a conveyance. Upon the sale of the Premises (or any portion of Landlord's property that includes the Premises) to a party other than Tenant pursuant to this Section 2.2, Tenant's ROFO shall expire and Tenant shall have no further right to purchase the Premises (or any portion of Landlord's property that includes the Premises) under this Section 2.2.

2.3. Renewal. If Tenant is not in default under this Agreement, Tenant has the option to extend the Initial Term for four (4) additional periods of 10 years (the "**Extended Terms**") by providing written notice thereof to Landlord no less than 180 days before the expiration of the Initial Term or then-current Extended Term, as applicable (the Initial Term, if and as extended by the Extended Terms, is

referred to in this Agreement as the "**Term**"). Upon exercise of this option to extend, the term of this Agreement will be extended through the expiration date of the Extended Term, on the same terms and conditions as contained in this Agreement, except for Rent (which will be determined in accordance with Section 3.1 below) and except that Tenant will no longer have the corresponding extension option(s).

### SECTION 3. RENTAL

3.1. Partial Rent. Until the Partial Rent Commencement Date, the lease fee for the Premises subject to this Agreement shall be \$0.00 per month. Beginning on the first day of the second month following the issuance of a certificate of occupancy for any completed residential unit in the Facility (the "**Partial Rent Commencement Date**"), the lease fee for the Premises shall be the proportionate share of the Rent, as that term is defined in Section 3.2 below, based on the number of units leased and obligated to pay rent (e.g., excluding any units subject to an executed lease but the obligation to pay rent for the month is waived as an inducement to execute a new lease, not to exceed one month of waived rent per unit) compared to the total number of residential units approved in the Facility by the City of Bend (the "**Partial Rent**"). The initial payment of Partial Rent shall be paid on the Partial Rent Commencement Date. Thereafter, each monthly payment of Partial Rent is due in advance on the 1st day of the month, becoming delinquent if not paid within the time period provided in Section 19.1. The Partial Rent shall be calculated each month to reflect the proportion of units leased and obligated to pay rent as of the first day of the preceding month.

For example, if the certificate of occupancy for the first completed residential unit in the Facility is issued on March 15, the Partial Rent Commencement Date shall be May 1, and the amount of Partial Rent due and owing shall be the percentage of units leased and obligated to pay rent as of April 1. Further, if the initial rental rate is \$9,292.67 for this Agreement, but only 11 of the approved units in the Facility (i.e., 10.19 percent) are leased and paying rent on April 1, the initial Partial Rent amount shall be \$946.92 for the first month.

If Tenant does not pay the Partial Rent by the 10th day of the month, a late fee of five percent (5%) of the monthly amount, shall be assessed and be paid as part of the Partial Rent. Delinquent payments shall bear interest at the rate of ten percent (10%) per annum and shall be due and payable without demand. The Partial Rent payment shall be payable without any right of offset.

3.2. Rent. Beginning on the earlier of (a) 75 percent occupancy of all multifamily units approved in the Facility by the City of Bend or (b) 18 months following issuance of a certificate of occupancy for the first residential unit in the Facility (the "**Rent Commencement Date**"), the lease fee for the Premises shall be eight percent (8%) of the agreed upon fair market value of the Land (defined below) per year, which the Parties agree shall be valued initially at \$1,393,900.00. This results in the initial amount of a monthly payment of \$9,292.67 (the "**Rent**"), subject to the adjustments set forth in this Section 3; provided, however, in no event shall the Rent Commencement Date be deemed to have occurred more than four (4) years after the Effective Date of this Agreement, except as may be permitted under Section 22.10 below. The initial payment of Rent shall be paid on the first day of the month following the Rent Commencement Date. Thereafter, each monthly payment of Rent is due in advance on the 1st day of the month, becoming delinquent if unpaid by the 15th day of the month. If not paid by the 15th day of the month, a late fee of five percent (5%) of the monthly amount, shall be assessed and be paid as part of the Rent. Delinquent payments shall bear interest at the rate of ten percent (10%) per annum and shall be due and payable without demand. The Rent payment shall be payable without any right of offset.

3.3. Rent Adjustment – General Rule. The Rent shall be adjusted on January 1 after the first five (5) full years of the Term and on January 1 every five (5) years thereafter during the Term (the “**Adjustment Period**”). During each Adjustment Period, the Rent shall be adjusted up or down based on the percentage change in the real market value of the portion of the Premises constituting the land (excluding all Improvements and structures constructed by Tenant) (herein the “**Land**”) within the Premises over the prior five (5) years of the Term, as identified by the Deschutes County Assessor’s Office. The real market value of the Land shall be based on the value of the Land on November 1 of each year immediately preceding the Adjustment Period (the “**Adjustment Date**”) and shall not be subject to any reevaluation pursuant to any valuation appeal, challenge or other adjustment except as provided in Section 3.4 below. By way of illustration and not limitation, if the Rent Commencement Date is April 15, 2024, if the real market value of the Land on November 1, 2023 is \$2,000,000, and if the real market value of the Land on November 1, 2029 is \$2,300,000, the resulting percentage increase would be 15%, and the Parties would adjust Rent positively on January 1, 2030 by 15%.

3.4. Rent Adjustment – Appraisal. If (a) the Deschutes County Assessor’s Office ceases to provide the services described in Section 3.3 above, in whole or in part, or (b) if either Party believes that the market value estimations of the Land provided by the Deschutes County Assessor’s Office is inaccurate or incomplete as of the Adjustment Date and delivers notice to the other Party, on or before thirty (30) days following the Adjustment Date, of such concerns or objections (herein the “**Valuation Objection**”), the Rent adjustment shall be subject to an appraiser’s determination of the Fair Market Value of the Land. The Parties agree to instruct any appraiser to value the Land exclusive of any lien or encumbrance created by or suffered by Tenant, including, but not necessarily limited to, the covenants, conditions and restrictions created by this Agreement. Rent shall remain due and owing on January 1; provided, however, the portion of the adjusted Rent shall be increased or decreased within thirty (30) days of delivery of the appraisal to the Parties, and shall be retroactive to the beginning of the Adjustment Period.

3.5. Appraisal Procedures. For purposes of this Section 3.5, whenever a value for any portion of the Premises must be established, and the Parties are unable to agree within thirty (30) days as to the fair market value of the Land, the value shall be established by the following procedure. The Parties shall attempt to agree upon an appraiser whose decision as to the value shall be binding; if the Parties are unable to agree within ten (10) days upon an appraiser, each shall engage an appraiser within three (3) business days. If the appraised fair market value of the Land is equal or less than ten (10) percent of each other, the Parties agree the fair market value of the Land shall be deemed the average value of the two appraisals. If the appraised fair market value of the Land is greater than ten (10) percent of each other, the appraisers selected by the Parties shall appoint a third appraiser. If the two so selected are unable to agree within seven (7) days on a third appraiser, the third appraiser shall be appointed by the presiding judge of the Circuit Court in Deschutes County, Oregon, upon application of either Party; a decision as to the value by a majority of the appraisers shall be binding upon both Parties; provided, however, if a majority of the appraisers are unable to agree on a value, then the average of the appraisals of the two closest appraisers shall be binding on both Parties. All appraisal decisions shall be rendered within forty-five (45) days after the appointment of the necessary appraiser(s). Expenses of the appraisals by an appraiser agreed to by the Parties or appointed by the Parties respective appraisers or the Presiding Judge shall be paid one-half (1/2) by Landlord and one-half (1/2) by Tenant. Appraisals by an appraiser exclusively engaged by a Party shall be borne solely by such Party. All appraisers appointed pursuant to this Section 3.5 shall be MAI appraisers or equivalent.

3.6. Additional Rent. All amounts other than Rent required to be paid by Tenant to Landlord under the terms of this Agreement shall be deemed additional Rent including but not limited to delinquency charges, late fees, and taxes and assessments.

**Article II:  
(Due Diligence Terms, Conditions and Representations)**

**SECTION 4. CONDITIONS PRECEDENT TO OBLIGATION TO LEASE**

4.1. Tenant's Due Diligence. Tenant's obligation to lease the Premises under this Agreement is conditioned upon Tenant's approval, in Tenant's sole and absolute discretion, of the results of its due diligence ("**Tenant's Due Diligence**"), including without limitation (collectively the "**Conditions to Lease**"): (1) Tenant's inspection of the Premises pursuant to Section 6, below, including, but not limited to, environmental and geotechnical assessments; (2) Tenant's confirmation of market conditions suitable for Tenant's intended use on the Premises; (3) Tenant's review of Landlord's Documents pursuant to Section 7, below; (4) Tenant's approval of the status of title pursuant to Section 8 below; (5) Tenant's confirmation of costs required to pay for onsite and offsite infrastructure and improvements necessary for the development of the Premises, including, but not limited to, public utilities, franchise utilities, and transportation system improvements; (6) Tenant obtaining financing with terms acceptable to Tenant; (7) Tenant obtaining all requisite governmental approvals, including the lapse of any applicable appeal periods, for the development and construction of the Premises for Tenant's intended use (as described in Section 10.1), including without limitation site plan review and design review from the City of Bend and any land division approvals if the Premises is not a separate legal unit of land; and (8) Tenant obtaining an adequate survey of the Premises.

4.2. Landlord agrees to cooperate with Tenant and its agents, at no cost to Landlord, in connection with Tenant's application for land use and other governmental approvals necessary to construct the Improvements and to provide all signatures required in a timely manner as requested, provided such applications and government approvals are otherwise consistent with the terms of this Agreement.

4.3. If Tenant does not deem the Conditions to Lease satisfied, then Tenant shall provide written notice to Landlord of such fact, this Agreement shall be deemed terminated, and the Parties shall have no further obligations pursuant to this Agreement (except for those obligations which expressly survive termination by the terms of this Agreement). Tenant's right to terminate this Agreement for failure to satisfy Tenant's Conditions to Lease shall be made in Tenant's sole and absolute discretion and may be made at any time prior to the end of the Due Diligence Period, as that term is defined below. This means if Tenant determines that a Condition to Lease cannot or may not be satisfied, then Tenant may immediately send Landlord notice of termination pursuant to this Section 4.3.

4.4. Any condition to Tenant's obligation to lease the Premises may only be waived by Tenant in writing delivered to Landlord in a manner consistent with the form attached hereto as **Exhibit C** and incorporated herein.

**SECTION 5. DUE DILIGENCE PERIOD**

Tenant shall have a period of **305** days after the Effective Date to complete Tenant's Due Diligence (the "**Due Diligence Period**").

## SECTION 6. PROPERTY INSPECTION

Provided this Agreement is in effect and has not been terminated, during the Due Diligence Period, Tenant and its agents shall have the right, at Tenant's sole expense and risk, to enter the Premises without prior notice to Landlord to conduct inspections, tests, and surveys concerning hazardous materials, substances, pest infestation, soil and geological assessments, historical artifact analysis, physical inspections of the existing improvements, wetlands inventory and analysis, matters affecting the suitability of the Premises for Tenant's intended use and/or otherwise reasonably related to the lease of the Premises, including but not limited to, an ASTM Phase I environmental report. Following any physical testing performed during Tenant's inspection, Tenant shall promptly restore the Premises to its original condition. Tenant shall indemnify, hold harmless, and defend Landlord from all liens, claims, costs, and expenses, including reasonable attorneys' fees and experts' fees, and damage to persons or property arising from or relating to Tenant's, and/or its agents, employees, assigns or anyone acting on behalf of Tenant, inspection of the Premises.

## SECTION 7. LANDLORD'S DOCUMENTS

Within 5 days after the Effective Date, Landlord's Agent shall deliver to Tenant, at Tenant's address shown below, legible and complete copies of the following documents and other items relating to the ownership, operation, and maintenance of the Premises: all documents, agreements, appraisals, plans, surveys, reports, studies, permits, and applications relating to the Premises, all to the extent those are currently in Landlord's possession or control. To the best of Landlord's knowledge, (1) it has delivered Landlord's Agent all of the documents and other items described in this Section 7 to the extent those are currently in Landlord's possession or control, and (2) there are no other such documents or items in the possession of others that are readily obtainable by Landlord.

## SECTION 8. TITLE INSURANCE

Within 10 days after the Effective Date, Landlord, at Landlord's cost and expense, shall deliver to Tenant a preliminary title report from AmeriTitle in Bend, Oregon (the "**Preliminary Commitment**"), together with complete and legible copies of all documents giving rise to and shown therein as exceptions to title (the "**Underlying Documents**"), showing the status of Landlord's title to the Premises. Tenant shall have not more than 20 days after receipt of a copy of the Preliminary Commitment, along with the copies of the Underlying Documents (the "**Title Inspection Period**"), within which to give notice in writing to Landlord of any objection to such title or to any liens or encumbrances affecting the Premises. Tenant shall be deemed to have timely and adequately objected to and Landlord shall be deemed to have agreed to remove all financial and judicial encumbrances (the "**Liens**"), including but not limited to, all mortgages, trust deeds, assignment of rents, fixture filings, judicial liens, judicial proceedings, tax liens, contractors' liens, local improvement district assessments, city or special district assessments and liens, and real property taxes to be prorated as of the Effective Date. If Landlord does not remove, at Landlord's cost and expense, on or before 30 days following Tenant's written objection, all Liens and those exceptions to which Tenant has objected to herein, then Tenant may either i) terminate this Agreement and neither Party will have any further obligations hereunder; or ii) waive the objections to title and proceed hereunder. Any such waiver of title objections shall be made in writing. The Parties further agree that, in its written objection, Tenant may identify certain exceptions to the Preliminary Commitment that are exceptions of record that are not currently satisfactory, but that Tenant reserves the right to amend, modify, or object to pursuant to Tenant's Due Diligence in Section 4 of this Agreement (the "**Cautionary Objections**"). Not later than 45 days prior to the expiration of the Due Diligence Period, Tenant shall give

written notice to Landlord identifying those Cautionary Objections, if any, to which Tenant objects. If Tenant does not provide such notice, Tenant shall be deemed to have waived the Cautionary Objections. If Landlord does not remove, at Landlord's cost and expense, on or before **30** days following Tenant's notice, all objected to Cautionary Objections, then Tenant may either i) terminate this Agreement and neither Party will have any further obligations hereunder; or ii) waive the Cautionary Objections and proceed hereunder. Any such waiver of title objections shall be made in writing. Notwithstanding the provisions of this Section 8, except for Liens, Landlord's failure to remove an objected-to exception shall not be a default by Landlord under this Agreement. All remaining exceptions set forth in the Preliminary Commitment either agreed to or waived by Tenant shall be "**Permitted Exceptions.**" The title insurance policy to be delivered by Landlord to Tenant at end of the Due Diligence Period at Landlord's sole expense shall contain no exceptions other than the Permitted Exceptions and the usual preprinted exceptions in an owner's standard form title insurance policy together with OTIRO End. 213-06 (Leasehold Owner's Endorsement).

## SECTION 9. CONDITION OF PROPERTY

9.1. Hazardous Waste. To the best of Landlord's knowledge: (a) the Premises has never been used to generate, manufacture, transport, store or dispose of any hazardous substance; (b) no leak, spill or discharge of a hazardous substance has occurred on, in or under the Premises or the ground waters thereof other than in the course of normal farming operations, and that the soil, ground water and soil vapor on, in or under the Premises is free of hazardous substances; (c) there are no potentially hazardous environmental conditions on the Premises; and (d) the Premises has not been identified by any governmental agency as the site upon which or potentially upon which hazardous substances may have been located or deposited.

9.2. Representations. To the best of Landlord's knowledge there are no pending or threatened notices of violation of any laws, statutes, codes, rules, or regulations (collectively, "**Laws**") or deed restrictions applicable to the Premises and Landlord is not aware of any such violations or any concealed material defects in the Premises. Landlord has received no written notice from any governmental agency or any violation of any statute, law, ordinance, or deed restriction, rule, or regulation with respect to the Premises. There is no litigation, claim or arbitration, pending or threatened, regarding the Premises or its operation. No attachments, liens, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of Landlord's knowledge, threatened against Landlord or the Premises, nor are any such proceedings contemplated by Landlord. To the best of Landlord's knowledge, there are no encroachments or any persons adversely possessing any portion of the Premises or any rights of way thereover, and no licenses to use the Premises have been granted by Landlord. No agent of Landlord or any agent of Tenant has made any representations, warranties or promises regarding the Premises. Following the Effective Date, Landlord shall not alter the Premises, including but not limited to the addition or removal of soils or improvements, without the written consent of Tenant, unless otherwise specified by the terms and conditions of this Agreement.

9.3. Brokers. Neither Landlord nor Tenant are represented by any brokers in this Agreement.

9.4. AS-IS. TENANT SHALL INSPECT THE ABOVE-DESCRIBED REAL PROPERTY AND PREMISES TO BE LEASED FROM LANDLORD TO TENANT, AND SHALL ACCEPT THE SAME IN THE CONDITION THE SAME ARE NOW IN. THERE ARE NO VERBAL OR IMPLIED PROMISES, AGREEMENTS, STIPULATIONS,

REPRESENTATIONS OR WARRANTIES OF ANY CHARACTER WHATSOEVER, EXCEPT THOSE SET FORTH IN WRITING IN THIS AGREEMENT.

**Article III:  
(Lease Covenants, Rights and Remedies)**

SECTION 10. OBLIGATIONS OF TENANT

Tenant shall have the following obligations:

10.1. Use of the Premises. The Premises shall be used for the construction, maintenance and occupancy of market rate multifamily apartments, together with accessory uses incidental and subordinate to the principal use and related improvements, and for no other purpose without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant agrees to use the Premises in conformance with all present and future applicable laws and regulations of any public authority including, without limitation, the Oregon Residential Landlord and Tenant Act, and any recorded covenants affecting the Premises and use of the Premises or the Improvements; provided, however, nothing in this Section 10.1 shall limit Tenant's rights to quiet enjoyment provided in Section 18 below. Nothing herein prohibits Tenant from leasing to occupants of individual apartment units located within the Improvements on the Premises, and Landlord consent shall not be required prior to Tenant entering into any lease (or modification or extension) of individual apartment units located within the Improvements on the Premises and the common areas contained thereon, or any lease, modification or extension of any residential lease relating to individual apartment units located within the Improvements on the Premises.

10.2. Site and Design. All Improvements including, but not limited to, buildings, sidewalks and parking areas shall be constructed to conform to all applicable rules and regulations of City of Bend and the State of Oregon. Prior to submission of any land use applications necessary to construct the Improvements or any construction of any building, all building plans and site plans must be approved in writing by Landlord, which shall not be unreasonably withheld.

10.3. Repairs and Maintenance. Tenant shall keep and maintain the Premises and all Improvements of any kind located on the Premises (including the pavement, curbs, and sidewalks) in good and substantial repair and condition, including the exterior condition thereof (including but not limited to the roof, foundation and exterior walls and windows), and all landscaping and shall make all necessary repairs and alterations thereto. Tenant shall provide proper containers for trash and garbage and shall keep the Premises free and clear of rubbish, debris and litter at all times. Tenant further agrees to keep the roadways and sidewalks regularly plowed and open to all permitted users.

10.4. Liens. Tenant agrees to pay, when due, all sums of money that may become due for or purporting to be for any labor, services, materials, supplies, utilities, furnishings, machinery or equipment which have been furnished, or ordered with Tenant's consent to be furnished, to or for Tenant in, upon or about the Premises. Tenant will not suffer or permit any construction liens to attach to or be filed against any part the Premises or the Improvements by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Tenant or any person occupying or holding an interest in any part of the Premises or the Improvements. Notwithstanding the foregoing, Tenant may contest, diligently conducted in good faith, without cost or expense to Landlord, the validity any liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest; provided, however, if such lien remains

undischarged and unsatisfied for 30 days or more, Tenant shall furnish Landlord with security, reasonably acceptable to Landlord, against any loss or injury by reason of the lien. Notwithstanding the foregoing, the obligations in this Section 10.4 shall not apply to any lien on the Premises existing on the Effective Date or otherwise created by or suffered by Landlord.

10.5. Taxes, Assessments. Following the expiration of the Due Diligence Period, Tenant agrees to timely pay any taxes imposed on the real property including the Premises and any improved areas (e.g., parking, landscaping) associated with the Premises subject to this Agreement and the Improvements thereon or on Tenant's personal property located on the Premises, assessments (including Local Improvement District assessments), water, sewer or other utility charges on the Premises as they become due provided Tenant may in good faith contest any such liability filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest. Real property taxes, assessments and personal property taxes for the tax year in which the Due Diligence Period expires or is waived shall be prorated as of the end of the Due Diligence Period.

10.6. Liability Insurance. Tenant shall maintain in full force and effect during the Term of this Agreement an occurrence form commercial general liability policy or policies insuring against liability for personal injury, bodily injury, death and damaged property occurring on or in any way related to the Premises for occasion or by reason of the use, occupancy, management or control of the Premises by Tenant or Tenant's sublessees. Such insurance shall include all coverages included in a standard commercial general liability policy including but not limited to broad form property damage, independent contractors, products and completed operations and broad form contractual liability. The amount of the coverage shall not be less than \$1 million per occurrence. Such insurance shall name Landlord as an additional insured with a certificate providing thirty (30) days' notice to Landlord prior to cancellation. Tenant shall furnish to Landlord a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Agreement.

10.7. Property Insurance. Tenant will, at all times that this Agreement remains in effect and at Tenant's sole expense, maintain property insurance against all risks of loss to the Improvements or the Facility, at the full replacement cost thereof. Tenant will also, at Tenant's sole expense, maintain insurance covering loss or damage to Tenant's equipment and other personal property on the Premises. Tenant (on behalf of Tenant and Tenant's insurers, heirs, successors, and assigns) releases Landlord and Landlord's directors, officers, employees, independent contractors, and agents from liability for any damage to or loss of the Improvements or Tenant's personal property on the Premises that are caused by or result from risks or perils insured against under any property insurance policies required by this Agreement to be carried by Tenant, or that would have been covered by such policies if Tenant fails to maintain the property insurance required by this Section 10.7. Tenant will notify the companies issuing its property insurance policies of the release set forth in this Section 10.7 and will have its property insurance policies endorsed, if necessary, to evidence a waiver of subrogation by the insurance carrier. This provision applies regardless of whether or not Tenant has received a waiver of subrogation endorsement from its insurer.

No fire or casualty loss claims shall be settled without the prior written consent of Lender (as defined in Section 23), and Lender shall be entitled to participate in any adjustment of losses and such settlement. All insurance proceeds to which Tenant is entitled under the property insurance coverage provided herein shall be paid over to Lender. Notwithstanding the foregoing, insurance proceeds may be retained by Tenant and applied to pay over and reduce the amount of the indebtedness owing to Lender or to restore the Improvements; provided, however, that in the event of a full casualty, Tenant may be entitled to the portion of any casualty or insurance proceeds which represents the unimproved value of



the leasehold estate as the Tenant's interest. Landlord shall provide prompt written notice to Lender in the event that either Landlord or Tenant intends to terminate this Agreement as a result of the occurrence of a fire, casualty, loss, or other property insurance claim. Notwithstanding the foregoing, or any other provision of this Agreement to the contrary, Lender shall have the right, for a period of sixty (60) days following receipt of Landlord's notice, to elect to continue this Agreement by written notice delivered to Landlord within said sixty (60) day period.

10.8. Primary Coverage. The required insurance policies under this Section 10 shall provide that the coverage is primary and will not require any contribution from any insurance or self-insurance carried by Landlord.

10.9. Additional Company Rating. Policies of insurance must be written by companies having AM best rating of A- or better equivalent.

10.10. Periodic Review. Landlord shall have the right to periodically review the types, limits and terms of insurance coverage. In the event Landlord determines that such type, limits and/or terms are inconsistent with the terms of this Agreement, Landlord shall give Tenant a minimum of thirty days (30) calendar days of such determination and Tenant shall modify its coverage to comply with the terms of this Agreement. Tenant shall also provide support by proof of such compliance by giving Landlord an updated certificate of insurance within fifteen (15) calendar days.

10.11. Indemnity. To the extent such claims are not barred by any state or federal law in whole or in part, Tenant fully agrees to indemnify, hold harmless and defend Landlord and Landlord's directors, officers, employees, independent contractors, and agents from, against, for or with respect to all claims and actions and all expenses and fees, (including but not limited to attorney, accountant, paralegal, expert and escrow fees), fines and costs and penalties collectively "costs" which may be imposed upon or claimed against Landlord and which in whole or in part directly or indirectly arise from or are in any way connected with (a) any act, omission or negligence of Tenant or Tenant's sublessees; (b) any use, occupancy, management or control of the Premises or the Facility by Tenant or Tenant's sublessees; (c) any condition created in or about the Premises by any party other than Landlord, including any accident, injury or damage occurring on or about the Premises after execution of this Agreement; and (d) any default, violation or nonperformance of any of Tenant's obligations under this Agreement. For purposes of this section, Tenant shall include Tenant, Tenant's partners, officers, directors, employees, invitees, customers, agents and contractors.

10.12. Survival of Indemnities. Indemnity provisions set forth herein shall survive the expiration or earlier termination of this Agreement and shall be fully enforced thereafter.

10.13. Hazardous Substances. Tenant shall not use or occupy, or permit or suffer all or any part of the Premises or the Facility to be used or occupied, for any purpose or in any way in violation of any Legal Requirement of any state or federal law or regulation respecting Hazardous Substances. The term "Hazardous Substance" means any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by the United States Environmental Protection Agency (40 CFR pt 302). Tenant acknowledges and agrees that the term "Legal Requirements" includes but is not limited to all environmental protection laws such as the Comprehensive Environmental Response, Compensation and Liability Act (42 USC §9601 et seq.), the Federal Water Pollution Control Act (33 USC §1251 et seq.), and the Clean Air Act (42 USC

§7401 et seq.). Any dispute between Landlord and Tenant arising under the provisions of this Section 10.13 shall be submitted to arbitration as provided in Section 22.8 below.

#### SECTION 11. RIGHTS OF LANDLORD

Landlord shall have the right during the Term to pay any taxes, assessments, liens, water, sewer or other charges on the Premises, the Improvements and Facility, and Landlord's reversionary interest therein remaining unpaid after the same have become due and payable; and the amount so paid shall be so much additional Rent due from Tenant at the next Rent due date after such payment with interest thereon at the rate of 10% per annum from the date of payment thereof by Landlord, until the repayment thereof to Landlord by Tenant.

If Landlord, at its option, shall advance or pay any such taxes, insurance, assessments, water, sewer or other charges, or pay, cancel and clear off any tax sales, liens or charges and claims on and against the Premises, the Improvements and Facility, or Landlord's reversionary interest therein, it shall not be obligatory on Landlord to inquire into the validity of such taxes, assessments, water, sewer, or other charge, or any such tax sale. Provided, however, that if Tenant shall be actively prosecuting its administrative or legal remedies in protest of any tax, assessment, water, sewer, or other charges, Landlord shall not have the right to pay or advance sums referable thereto until such remedies shall have been exhausted.

#### SECTION 12. RIGHT TO ENTER AND INSPECT

Landlord and its authorized employees, agents, contractors, subcontractors and other representatives shall have the right at all reasonable times during the Term of this Agreement, with at least 48 hours' notice, to enter upon the Premises to inspect and ascertain the conditions of the same or for any other purpose whatsoever; provided, however, if Landlord wishes to inspect any occupied units, written notice of entry must be given to the sublessees at least 48 hours prior to entry. A form of such written notice of entry is attached hereto as **Exhibit D** and incorporated herein, as such notice may be modified from time to time to comply with the Oregon Residential Landlord and Tenant Act. Notwithstanding the foregoing, no notice shall be required in the case of an emergency where an imminent threat to the Premises, Facility, Improvements, or neighboring property exists and entry into the Premises is the only way to address the emergency.

#### SECTION 13. IMPROVEMENTS, ALTERATIONS

13.1. Improvements. "**Improvements**" shall mean all improvements on the Premises to be constructed under Section 10.1 of this Agreement, and includes any permitted replacements, reconstruction or restorations thereof during the Term of this Agreement.

13.2. Construction, Modification, and Demolition of Improvements. Following the expiration of the Due Diligence Period, Tenant has the right, at any time and from time to time during the Term, at its cost and expense, to construct, reconstruct, demolish, remove, move, replace, remodel, or rebuild on any part or all of the Premises such buildings, structures, parking areas, driveways, walks, and other Improvements of any nature (including excavation, earthmoving, paving, installation of utilities, and all other necessary development activities) pertaining thereto as Tenant, in Tenant's sole discretion, considers appropriate. Tenant shall submit all construction plans to Landlord for its review and approval, which shall not be unreasonably withheld.

13.3. Compliance with Laws. Tenant shall construct the Improvements in accordance with the applicable laws of all governmental authorities having jurisdiction over the Premises. Upon request of Landlord, Tenant shall furnish Landlord with copies of all certificates and approvals resulting in any work or installation done by Tenant that may be required by any governmental authority or by all applicable underwriters and insurers or by any lender in connection with the construction of the Improvements, which copies Tenant shall certify as true, correct and complete. Tenant shall furnish Landlord with a set of "as built" drawings and specifications for all construction and subsequent Improvements which accurately reflect the nature and extent of the Improvements.

13.4. Encumbrance of Estate. Landlord shall not be required to subordinate or subject its fee or leasehold interest in the Premises to the lien of any person or entity providing financing to Tenant in connection with the design or construction of the Improvements or the maintenance and operation thereof. All such financing shall be the sole responsibility of Tenant; provided, however, Landlord agrees to enter into a Leasehold Mortgage Protection provision as provided in Section 16 below.

13.5. Cooperation. Each Party hereby covenants and agrees to cooperate and assist the other Party from and after the Effective Date of this Agreement and throughout the Term of this Agreement in obtaining all approvals and permits that are necessary or desirable in order to develop and construct the Improvements and any other permitted alterations, including, without limitation, joining in applications, filings and submittals for use, building, grading, and construction permits; provided, however, that the Party that is not performing such construction shall not be obligated to incur any expenses or liabilities in cooperating with the other Party's permitted construction activities.

13.6. Permitted Alterations. Tenant shall make no alterations and additions to the Improvements other than those to which Landlord shall have given prior written approval, which shall not be unreasonably withheld.

13.7. Submittals. Before Tenant shall commence any alterations, Tenant shall submit to Landlord a schematic design package for such alteration for review and approval pursuant to the construction requirements. Tenant shall also provide to Landlord, prior to commencement of any alterations, and at Tenant's sole cost, all permits and authorizations of all municipal departments and governmental agencies as may have jurisdiction over the alteration.

13.8. Ownership of Improvements. Except as hereinafter provided, Tenant shall be the owner of all Improvements, and all furnishings, fixtures and personal property of Tenant located thereon. Tenant shall retain all rights to depreciation deductions and tax credits arising from its ownership of said property. Upon expiration or earlier termination of this Agreement, all such Improvements and property shall, except as provided in Section 21.7, automatically vest in, revert to, and become the property of Landlord without compensation to, or requirement of consent or other act of, Tenant, and without the necessity of deed, bill of sale, conveyance or other act or agreement of Tenant, and without any payment of any kind or nature by Landlord to Tenant or to any other person, including any Lender who has a lien against all or any portion of Tenant's Interest. Tenant shall thereafter have no further rights thereto or interest therein.

13.9. Easements and Dedications. Tenant and Landlord each recognize that in order to provide for the development of the Premises, it may be necessary, desirable, or required that street, water, sewer, drainage, gas, power line, and other easements and dedications and similar rights be granted or dedicated over or within portions of the Premises. Landlord agrees that it will, upon request

of Tenant, join with Tenant in executing and delivering such documents, from time to time, and throughout the Term of this Agreement as may be appropriate, reasonably necessary, or required by any governmental agency or public utility company for the purpose of granting such easements and dedications.

#### SECTION 14. EMINENT DOMAIN

14.1. Partial Taking. If a portion of the Premises is condemned and Section 14.2 does not apply, this Agreement shall continue on the following terms:

14.1.1. Tenant shall be entitled to all of the proceeds of condemnation relating to the Improvements and Landlord shall have no claim against Tenant as a result of the condemnation. Landlord shall be entitled to all of the proceeds of condemnation relating to the Premises and Tenant shall have no claim against Landlord as a result of the condemnation.

14.1.2. Tenant 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 a condition as comparable as reasonably practicable to that existing at the time of the condemnation. The Parties acknowledge that Lender is entitled to receipt of payments under this Section to which Tenant is entitled, in accordance with the terms of the applicable loan documents between Lender and Tenant, and the terms of such loan may require that such proceeds be applied first toward reduction of the outstanding balance of the indebtedness owed from Tenant to Lender in lieu of application of proceeds towards the repair or replacement of the Improvements.

14.1.3. After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Tenant to restore the balance of the Premises in anticipation of taking, the Rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking. If the Parties are unable to agree on the amount of the reduction of Rent, the amount shall be determined by arbitration in the manner provided in Section 22.8.

14.1.4. If a portion of Landlord's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Sections 14.1.1 and 14.1.3 apply, and the Rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

14.2. Total Taking. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for the use that Tenant was then making of the Premises, this Agreement shall terminate as of the date the title vests in the condemning authorities (the "**Date of Taking**"). Landlord shall be entitled to all proceeds from the value of the land. Tenant shall be entitled to all proceeds from the value of the Improvements, less the present value, determined as of the Date of Taking, of any right of Landlord under this Agreement to receive the taken Improvements at the end of the Term, together with any remaining Extended Term, assuming the Improvements had not been taken and had been maintained and repaired as required by this Agreement. Tenant shall have no claim against Landlord as a result of the condemnation. If Landlord is the condemning authority, Tenant shall be entitled to all proceeds from the value of the Improvements on the Date of Taking without any deduction based on Landlord's reversionary interest in the Improvements as set forth in this Section 14.2.

14.3. Sale in Lieu of Condemnation. Sale of all or 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 purposes of this Section 14 as a taking by condemnation.

14.4. Lender Consent. Any payment to which Tenant is entitled under the provisions in this Section 14 may be made to Lender. No Tenant claims or awards of condemnation or eminent domain shall be settled without the prior written consent of Lender, and Lender shall be entitled to participate in any adjustment of losses and such settlement. Lender shall have no control over adjustment of losses and settlement of condemnation claims attributable to the value of Landlord's fee estate in the Premises or remainder interest in the Improvements. Notwithstanding the foregoing, proceeds may be retained by Tenant and applied to pay over and reduce the amount of the indebtedness owing to Lender or to restore the Premises. Notwithstanding any provision of this Agreement to the contrary, in the event of a Partial Taking, this Agreement shall not be terminated, unless Lender consents to such termination in writing.

## SECTION 15. ASSIGNMENT

15.1. Tenant Assignment. Subject to Section 15.2, this Agreement may be freely assigned or subleased by Tenant without the need for Landlord's consent to any party who purchases the Improvements; provided, however, Tenant shall demonstrate, prior to completing any sale of the Improvements, that such purchaser is reasonably qualified to fulfill the responsibilities of Tenant under this Agreement. Tenant shall provide Landlord with reasonable documentation regarding such purchaser's qualifications, which documentation may include evidence of the purchaser's net worth or multi-family property operating experience. Any assignee or sublessee shall assume, in written instrument acceptable to Landlord, all of the obligations of Tenant hereunder. Assignment of this Agreement to any party other than a party purchasing all of the Improvements located on the Premises shall require the prior written approval of Landlord, which consent shall be at Landlord's sole discretion; however, no consent of Landlord shall be required for an assignment of this Agreement to Mountain West Investment Corporation, an Oregon corporation (herein "*MWIC*"), or a limited liability company or limited partnership of which Tenant or MWIC is the manager or managing partner.

15.2. Estoppel Certificate. Within fifteen (15) days after written request from a Party to this Agreement, the other Party must execute, acknowledge, and deliver to the requesting Party an estoppel certifying: (1) that this Agreement is unmodified and in full force and effect (or, if there has been a modification, that this Agreement is in full force and effect, as modified, and stating the date and nature of each modification); (2) the date to which Rent and other sums payable under this Agreement have been paid; (3) that no notice has been received by the other Party of any default that has not been cured, except as to any default specified in the certificate; and (4) any other matters as may be reasonably requested by the other Party, its lender, assignee, or purchaser (or proposed lender, assignee, or purchaser). Any such estoppel certificate may be relied on by the purchaser, lender, or assignee for estoppel purposes only and no Party executing the estoppel certificate will be liable for damages or other losses as a result of inaccuracy in the information contained in the certificate.

15.3. Property Management. Landlord's Agent shall function as Landlord's property manager under this Agreement, including, without limitation, the collection of Rent. Landlord shall notify Tenant of any change to Landlord's property manager or the appointment of a new property manager in writing, together with an explanation of such property manager's duties, rights and obligations under this Agreement.

15.4. Landlord Assignment. Landlord agrees not to sell or transfer the Premises or otherwise assign Landlord's rights under this Agreement (excluding Landlord's appointment of a property manager pursuant to Section 15.3) to any third party on or before the Rent Commencement Date without Tenant's prior written consent, which shall not be unreasonably withheld.

## SECTION 16. LEASEHOLD MORTGAGE PROTECTION

It is recognized that Tenant may, from time to time, encumber the Improvements or its leasehold interest under this Agreement for financing purposes. This Agreement, therefore, is subject to the following provisions:

16.1. Tenant shall furnish Landlord an executed counterpart of any leasehold mortgage or other encumbrance of the Improvements or Tenant's leasehold interest under this Agreement.

16.2. Any notice, demand, other document of any kind whatever served by Landlord upon Tenant including, but not limited to notice of default under this Agreement, shall also be served on the lender, but Landlord shall not be required to serve an assignee of the Lender unless and until a copy of the assignment is served upon Landlord. Without limiting the foregoing, Landlord shall specifically provide notice to Lender of Tenant's failure to exercise any options to renew or extend the term of this Agreement or Tenant's failure to exercise its Right of First Offer provided herein. Lender shall have the right, for a period of 30 days following receipt of Landlord's notice, to exercise any renewal, extension, or purchase rights in lieu of Tenant. If Lender does not timely exercise Tenant's rights to renew or extend the term of this Agreement or exercise Tenant's Right of First Offer, such rights shall terminate.

16.3. Whenever ownership of the mortgage passes into the hands of more than one Party, all such owners must furnish Landlord a written designation of the Party to be served on behalf of all such owners.

16.4. The lender shall have the right to cure Tenant's defaults and perform all of Tenant's covenants under this Agreement.

16.5. As to any default or breach of covenant that can be cured by lender without taking possession of the Premises, the lender shall have sixty (60) days to cure such default or breach after Landlord has given the lender notice of intention to terminate this Agreement or dispossess Tenant.

16.6. As to any default or breach that can only be cured by taking possession, Landlord may require the lender to furnish a reasonable guarantee of its performance under this Agreement of all Tenant's obligations, including the cure of all defaults and breaches, and that lender will proceed with reasonable diligence to take possession of the Premises and either foreclose the mortgage or acquire Tenant's leasehold interest by assignment in lieu of foreclosure.

16.7. Any acquisition of Tenant's leasehold interest by the lender may be taken in the name of a nominee.

16.8. Landlord will not terminate this Agreement as long as lender performs promptly all of its covenants in the guarantee.

16.9. In case of termination of this Agreement for default or breach of covenant by Tenant, the lender may serve notice on Landlord of its desire to enter into a new lease for the balance of the Term

at the same rentals and with the same covenants contained in this Agreement, said notice to be served on Landlord thirty (30) days prior to termination by Landlord, which notice shall be accompanied by a payment of all arrears of Rent and a reasonable sum to compensate Landlord for expenses, including reasonable attorney fees, and establishing the new relationship and a guarantee satisfactory to Landlord that lender will cure all Tenant's defaults and breaches. The new lease will commence as of the termination of the old one, but shall be prior and superior to all rights, liens and encumbrances that would have been extinguished by foreclosure to lender if the lender so demands. A statement of this obligation shall be included in all subleases.

In addition to the above, Landlord will join in executing any and all instruments, including an estoppel certificate in a form substantially consistent with Exhibit E, which is attached hereto and incorporated by this reference herein, which legal counsel for any lender on the security of Tenant's leasehold estate may reasonably require in order to accomplish the same, provided that nothing herein shall be construed as obligating Landlord to incur any personal liability for repayment of any such loan, nor as subordination of Landlord's rights and reversionary interest in and to the Premises to any such encumbrance.

16.10. Notwithstanding any provision of this Agreement which restricts or limits the assignment of Tenant's interest in and to this Agreement and the Premises, Tenant's interest and rights in and to this Agreement and the Premises may be assigned or transferred without the prior consent of Landlord in the following instances: (1) assignment or transfer to Lender, or Lender's successors, assigns, nominees, designees, and third-party purchasers, after a foreclosure or other exercise by Lender of its rights and remedies under the terms of Lender's loan documents with Tenant or applicable law, or (2) delivery of a deed or other conveyance of Tenant's interest in lieu of any of the foregoing, as a result of which Lender, or its successor, assign, designee, nominee or third-party purchaser, becomes the owner of the leasehold estate. In such instance, Landlord agrees to recognize Lender, or Lender's successor, assign, designee, nominee, or purchaser, as the legal owner and holder of Tenant's interest in and to this Agreement and the leasehold estate created thereunder. Notwithstanding the foregoing, the provisions of this Section 16.10 shall not apply to subsequent transfers by any third-party purchaser or other assignee or transferee that acquires the leasehold interest and Improvements as the operator of the Facility. Any foreclosure by Lender of its lien, mortgage or interest in this Agreement shall not require the consent of Landlord. Lender shall deliver Landlord written notice of any assignment or transfer under this Section 16.10 within 30 days of such assignment or transfer.

16.11. If Tenant files bankruptcy, and this Agreement is thereafter lawfully canceled or rejected, Landlord shall execute a new lease, under the same terms and conditions as this Agreement, to the Lender or its nominee; provided, however, all defaults under this Agreement except the bankruptcy or insolvency of Tenant must be cured by the Lender or its nominee within the applicable cure periods set forth in this Agreement.

16.12. Notwithstanding anything in this Agreement to the contrary, Landlord shall take no action to dispossess the Tenant, cancel or terminate this Agreement, or accept Tenant's surrender of the Premises without, in each case, first giving to Lender at least sixty (60) days' written notice of Landlord's election to take such actions (and expiration of any applicable Tenant cure period provided in this Agreement), and a reasonable time thereafter within which to either (a) obtain possession of the Premises (including possession by a receiver) or (b) institute, prosecute, and complete foreclosure proceedings or otherwise acquire Tenant's interest under this Agreement with diligence. Upon obtaining possession or acquiring Tenant's interest under this Agreement, Lender shall be required promptly to cure all defaults

then reasonably curable by Lender. Lender may elect to return possession of the Premises to Tenant or discontinue any foreclosure proceedings then in progress at any time. No provision of this Agreement or this Agreement shall be interpreted as an obligation on the part of Lender to commence or continue any action to obtain possession of the Premises or acquire Tenant's interest under this Agreement. The provisions of this Agreement allowing the foregoing without Lender's consent shall be superseded by this provision. There shall be no amendment to or modification of any material term(s) of this Agreement without first obtaining the written consent of Lender.

16.13. Lender shall not have any personal liability under this Agreement unless and until it has obtained record title to the leasehold estate. If Lender obtains record title to the leasehold estate, then the liability of Lender and its assigns (excluding any third-party purchaser or other assignee or transferee that acquires the leasehold interest and Improvements as the operator of the Facility) to the Landlord shall be limited to the value of their respective interests in the leasehold estate.

## SECTION 17. LIENS

17.1. Payment of Liens. Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional Rent. Any amount so added shall bear interest at the rate of ten percent (10%) per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

17.2. Withholding Payment of Liens. Tenant may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other security satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

## SECTION 18. QUIET ENJOYMENT

Landlord warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances except the Permitted Exceptions. Subject to the Permitted Exceptions, Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the Term.

## SECTION 19. EVENTS OF DEFAULT

19.1. Default in Rent. Failure by Tenant to pay Rent or any other amount required to be paid by Tenant to Landlord under this Agreement within 10 days after written notice of such nonpayment is given to Tenant; provided, however, that Landlord is not required to give Tenant more than one such notice in any consecutive 36-month period. After giving the first such notice to Tenant during a consecutive 36-month period, Tenant will be deemed in default under this Agreement for failure to pay Rent or any other amount within 10 days after the same becomes due, without notice or opportunity to cure.



19.2. Default in Other Covenants. Failure of a Party to comply with any term or condition or fulfill any obligation of this Agreement within thirty (30) days after written notice by non-defaulting Party specifying the nature of the default with reasonable particularity shall constitute a default. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this Section 13.2 shall be deemed complied with if the defaulting Party commences correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Provided, however, if there is an immediate danger proposed by the nature of the breach by the defaulting Party, the notice required of the non-defaulting Party may be shortened to address the urgency of the breach and the need for immediate correction.

## SECTION 20. REMEDIES ON DEFAULT AND DAMAGES

In the event of default, and following all necessary notice and cure periods, the non-defaulting Party at its option may terminate this Agreement by notice in writing by certified mail to the defaulting Party. The notice may be given before or within thirty (30) days after the running of the grace period, if any, for the default and may be included in a notice of failure of compliance. If the property is abandoned by Tenant, in connection with a default, termination shall be automatic and without notice.

20.1. Damages – Tenant Default. Subject to Landlord's obligation to mitigate its damages in accordance with Oregon law, in the event of termination or default by Tenant, Landlord shall be entitled to recover immediately, without waiting until the due date of any future Rent or until the date fixed for expiration of the Term, and in addition to all other remedies available to Landlord at law or equity, the following amounts as damages:

20.1.1. The reasonable costs of reentry and reletting (excluding brokerage commissions and advertising costs) including without limitation the cost of any clean up, refurbishing, removal of Tenant's property and fixtures, or any other expense occasioned by Tenant's failure to quit the Premises upon termination and to leave them in the required condition, including any repair and restoration costs, attorneys' fees, and court costs.

20.1.2. The loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been secured.

20.2. Damages and Specific Performance – Landlord Default. In the event of default by Landlord, Tenant shall be entitled to all remedies available at law or equity, including, but not limited to, the right to specifically enforce any covenant in this Agreement.

20.3. Right to Sue More than Once. Either Party may sue periodically to enforce this Agreement or recover damages during the period corresponding to the remainder of the Term, and no action for specific performance or damages will bar a later action for damages subsequently accruing for other breaches of this Agreement.

20.4. Remedies Cumulative. The foregoing remedies will be in addition to and will not exclude any other remedy available to the non-defaulting Party under applicable law and may be exercised concurrently or successively in such order or combination as non-defaulting Party in its sole discretion may elect.

20.5. Reentry after Termination.

20.5.1. Tenant shall vacate the Premises immediately, remove any personal property of Tenant and any other property required by Landlord under the provisions of Section 15, perform any clean up alterations or other work required at the end of the Term, and deliver all keys to Landlord.

20.5.2. Landlord may reenter, take possession of the Premises, and remove any persons and property by legal action.

SECTION 21. TERMINATION

21.1. In the event Tenant terminates this Agreement pursuant to Section 4 above or the Term of this Agreement, including all renewals thereof, Tenant agrees to the following upon such termination of this Agreement:

21.2. If requested by Landlord, Tenant shall, without charge to Landlord, promptly execute, acknowledge and deliver to Landlord a bargain and sale deed and bill of sale which (a) conveys all of Tenant's right, title and interest in and to the Premises and Improvements; (b) assigns, without representation or warranty and to the extent assignable by the terms of such contracts, all contracts designated by Landlord, relating to the operation, management or maintenance of the Premises or any part thereof; and (c) conveys, without representation or warranty and to the extent assignable by the terms of such contracts, all plans, records, registers, permits, and all other papers and documents which may be necessary or appropriate for the proper operation and management of the Premises and Facility, and shall deliver all of the foregoing to Landlord.

21.3. Removal of Realty Fixtures Not Permitted. Except as provided in Section 21.7, Tenant is not required or permitted to demolish the Improvements. Except as provided in Section 21.7, Tenant shall not have the right to remove fixtures, and such fixtures shall automatically become the property of Landlord without payment of any kind to Tenant.

21.4. Surrender of Lien-Free Title. Unless otherwise provided herein, upon the expiration or earlier termination of this Agreement, Tenant shall deliver possession of the Premises, and every part thereof, to Landlord, cure all material defaults and shall grant and convey all right, title, and interest in the Improvements, and every part thereof, in good and broom-clean condition subject to ordinary wear and tear, free and clear of all liens and encumbrances created or suffered by Tenant, excepting (i) those created by Landlord, and (ii) those liens and encumbrances approved in writing by Landlord with the express agreement of Landlord that such may survive the expiration or earlier termination of this Agreement. This obligation includes the obligation to discharge all liens and encumbrances which may exist upon early termination of this Agreement.

21.5. Surrender of Fixtures. Tenant's obligation under this Section 21.5 includes the obligation to deliver lien-free possession and title to all fixtures attached to the Improvements.

21.6. Failure to Surrender. If Tenant fails to surrender the Premises, or any part thereof, as required hereunder, at the expiration or sooner termination of this Agreement, Tenant shall indemnify, defend and hold the Landlord and Landlord's directors, officers, employees, independent contractors, and agents harmless from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant, founded on or resulting from Tenant's failure to surrender, and any direct damages which the indemnified Parties may incur.

21.7. Tenant's Right to Remove Personal Property. At the expiration or earlier termination of this Agreement, provided Tenant is not then in default under this Agreement, Tenant may remove any or all of Tenant's personal property from the Premises and Improvements, so long as (a) such personal property and trade fixtures can be removed without material damage to the Improvements, and (b) such personal property and trade fixtures are removed within thirty (30) days following such expiration or earlier termination of this Agreement, and (c) all resultant injuries to the Premises and Improvements are promptly and substantially remedied and Tenant takes reasonable steps necessary to preserve the appearance of the Premises and Improvements. Upon request of Landlord, Tenant shall remove all of Tenant's personal property from the Premises and Improvements upon expiration or earlier termination of this Agreement. Any personal property and trade fixtures remaining on the Premises after said thirty (30) day period shall automatically vest and become the sole property of Landlord without any payment by Landlord and without any further action or agreement required in connection therewith, including the necessity of a bill of sale, deed, conveyance or other act or agreement of Tenant, and without payment of any kind or nature by Landlord to Tenant or to any other person.

21.8. Nonrecourse Obligation. Tenant agrees that regarding any claim against Landlord, including any claim of default by Landlord under this Agreement or in any claim or cause of action arising under this Agreement or arising out of the landlord-tenant relationship created by this Agreement, the sole and exclusive remedy of Tenant will be against the interests of Landlord in the Premises and its reversionary interest in the Improvements and Landlord will have no other liability hereunder. Tenant will not enforce any judgment against Landlord except against the interest of Landlord in the Premises and its reversionary interest in the Improvements. In no event will any director, officer, member, agent, or employee of Landlord have any personal liability to Tenant. Tenant agrees that this provision will apply to all liabilities, claims, and causes of action whatsoever, including those based on any provision of this Agreement, any implied covenant, or any statute or common law principle. Notwithstanding any other provision of this Agreement, in no event whatsoever will Landlord be responsible for any consequential or incidental damages or for any action that Landlord believes in good faith is necessary to comply with legal requirements with respect to the Premises or Improvements.

## SECTION 22. GENERAL PROVISIONS

22.1. Non-Waiver. Waiver by either Party or strict performance of any provision of this Agreement shall not be a waiver of or prejudice the Parties' right to require strict performance of the same provision of the future or of any other provision. Acceptance of either Party of performance following a default will not be deemed a waiver of such default. No waiver by either Party of a default will constitute a waiver of any other default.

22.2. Right to Cure Other Parties' Defaults. If either Party fails to perform any obligation under this Agreement, the non-defaulting Party will have the option to cure the other Party's default after 30 days' written notice to the defaulting Party, or immediately in the event of an emergency. All of the expenditures to correct the other Party's default including a 10% markup to cover overhead and time of the curing Party will be reimbursed by the defaulting Party on demand from the date of expenditure and will be considered additional Rent in the case of Tenant. Such action will not waive any other remedies available to the non-defaulting Party because of the default. Tenant will have the right to deduct the costs from the next due payments of Rent under this Agreement unless Landlord disputes liability to Tenant, in which event Tenant, at its option, may submit the matter to binding arbitration. In the event of such a dispute, Tenant will not deduct the costs unless and until the dispute has been resolved either by a

settlement agreement or by a final award in arbitration or a final judgment by a court of competent jurisdiction.

22.3. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall both be sent by email and be mailed by certified mail, return receipt requested, postage prepaid, addressed to the Parties as follows:

LANDLORD:

Central Oregon Community College  
Attn: Laurie Chesley, Ph.D., President  
2600 NW College Way  
Bend, OR 97701  
Email: lchesley@cooc.edu  
With a copy to: taylor@bljlawyers.com

TENANT:

Neighborly Development, LLC  
Attn: Brian Moore  
2925 River Road South, Suite 100  
Salem, OR 97302  
Email: BrianM@theneighborlyway.com  
With a copy to: asorem@sglaw.com

LANDLORD'S AGENT

William Smith Properties, Inc.  
Attn: Peter McCaffrey  
15 SW Colorado Ave., Suite 1  
Bend, OR 97702  
Email: peter@wspi.net

Any notice or other communication shall be deemed to be given at the expiration of the three (3) day after the date of deposit in the United States mail. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other Party as provided herein.

22.4. Invalidity. The invalidity of any provision of this Agreement will not affect the other provisions, unless the purpose of the Parties in making this Agreement would be thereby frustrated.

22.5. Warranties/Guarantees. Landlord makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that Landlord will not be responsible for any loss, damage, or costs which may be incurred by Tenant by reason of any such physical condition.

22.6. Interpretation. This Agreement shall be deemed to have been made in, and performance thereof shall be construed in accordance with the laws of the State of Oregon.

22.7. Costs and Attorney Fees. In the event suit or action is brought, or an arbitration proceeding is initiated, to enforce or interpret any of the provisions of this Agreement, or that arise out of or relate to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in connection therewith. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator(s) (with respect to attorneys' fees incurred prior to and during the arbitration proceedings) and by the court or courts,

including any appellate court, in which such matter is tried, heard, or decided, including a court that hears a request to compel or enjoin arbitration or to stay litigation or that hears any exceptions or objections to, or requests to modify, correct or vacate, an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such court proceedings).

22.8. Mediation and Arbitration. Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this Agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc. or its successor in accordance with the filing rules of the organization selected, and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The Parties acknowledge that mediation usually helps parties to settle their dispute. Therefore, any Party may propose mediation whenever appropriate through the organizations named above or any other mediation process or mediator as the Parties may agree upon.

22.9. Recording. Tenant may elect that a copy of this Agreement or a memorandum of it, executed and acknowledged by both Parties, be recorded in the public records of Deschutes County, Oregon. Tenant will pay the recording costs. Subject to the rights of any lender under Section 16, upon expiration or earlier termination of this Agreement, Tenant shall execute and acknowledge any document reasonably requested by Landlord, in recordable form, to remove this Agreement or any memorandum of it as an encumbrance on the Premises, Improvements, or Facility. In addition, if the real property underlying the Premises is ever made into a separate legal lot, Tenant shall execute and acknowledge any document reasonably requested by Landlord, in recordable form, to remove this Agreement or any memorandum of it as an encumbrance on the remainder of Landlord's real property.

22.10. Force Majeure. If either Party's performance of an obligation under this Agreement (excluding a monetary obligation) is delayed or prevented in whole or in part by (a) any Legal Requirement (and not attributable to an act or omission of the Party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the Party's control, whether or not the cause is specifically mentioned in this Agreement, the Party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind. Without limitation of the foregoing, the Parties further agree if any law or order delays or frustrates the performance of any act or service necessary for the development or construction of the Facility, the time periods provided in this Agreement shall be extended for the same number of days as provided in the law or order delaying or frustrating such action or service.

22.11. Counterparts. This Agreement may be executed, including by electronic signature, in any number of counterparts, each of which will constitute an original, but all of which will constitute one agreement.

## SECTION 23. DEFINITION OF LENDER

As used herein, "lender" or "Lender," shall refer to any and all persons or entities which hold a lien or security interest in and to Tenant's leasehold estate in the Premises, and/or the Improvements, personal property and fixtures of Tenant on the Premises, under either a deed of trust, leasehold mortgage or similar instrument. Lender shall include, without limitation, Washington Federal Bank,

National Association and its successors and assigns (excluding any third-party purchaser or other assignee or transferee that acquires the leasehold interest and Improvements as the operator of the Facility).

**SECTION 24. NO MERGER**

There shall be no merger of this Agreement, or of the leasehold estate created by this Agreement, with the fee estate in the Premises by reason of the fact that this Agreement, the leasehold estate created by this Agreement, or any interest in this Agreement or in any such leasehold estate, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in the Premises or any interest in such fee estate, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons having an interest in this Agreement, or in the leasehold estate created by this Agreement (including, without limitation, all beneficiaries under any Deed of Trust granted by Tenant including, without limitation, Lender), shall join in a written instrument effecting such merger and shall duly record the same.

**SECTION 25. MORTGAGES ON FEE ESTATE**

Landlord's fee title to the Premises and interest in this Agreement will not be subordinated to Lender's loan or security interest in Tenant's leasehold estate in the Premises; provided, however, neither this Agreement nor any Deed of Trust granted by Tenant shall be subordinate to any existing or future mortgages or deeds of trust on the Premises, or Landlord's interest in the Premises, without a fully executed subordination and non-disturbance agreement, including an agreement that such fee lender not disturb the Tenant's or the Lender's interest in the Lease, in form and content acceptable to Lender in its reasonable discretion. No lien on Tenant's leasehold estate shall affect or reduce Tenant's obligations to Landlord under the Lease.

**LANDLORD:**  
**CENTRAL OREGON COMMUNITY COLLEGE DISTRICT**

**TENANT:**  
**NEIGHBORLY DEVELOPMENT, LLC.**

By: \_\_\_\_\_  
Laurie Chesley, Ph.D., President

By: \_\_\_\_\_  
Brian Moore, Chief Executive Officer,  
Neighborly Ventures, Inc, Member

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PREMISES**

The leasehold estate created by that certain Ground Lease Agreement dated \_\_\_\_\_, 2022, as amended, between CENTRAL OREGON COMMUNITY COLLEGE, an Oregon community college district, as lessor, and NEIGHBORLY DEVELOPMENT, LLC, an Oregon limited liability company, as lessee, a memorandum of which was recorded on \_\_\_\_\_, 2022, as Instrument No. 2022-\_\_\_\_\_, Deschutes County Official Records, in the real property described below, together with all rights and privileges of lessee under any option to purchase said real property or any right of first refusal granted to the lessee under lease or otherwise, and all right, title and interest which lessee now has or may hereafter acquire in and to said real property and in and to the buildings and improvements located thereon as of the date of the lease or at any time thereafter erected:

Development Tract B of Outcrop, a subdivision located in City of Bend, Deschutes County, Oregon recorded in the Deschutes County Official Records on December 8, 2020 as Instrument No. 2020-66400.

{To be incorporated by the Parties by an addendum following Tenant's survey prior to the end of the  
Due Diligence Period.}





**EXHIBIT C**  
**DUE DILIGENCE WAIVER AND AMENDMENT AGREEMENT**

Date \_\_\_\_\_

Tenant: Neighborly Development, LLC., an Oregon limited liability company  
Address: 2925 River Rd S, Suite 100, Salem, OR 97302

Re: Due Diligence Waiver Letter Regarding that Certain Ground Lease Agreement dated \_\_\_\_\_, 2022 (the "**Agreement**"), by and between Central Oregon Community College District, an Oregon community college district ("**Landlord**"), and Neighborly Development, LLC, an Oregon limited liability corporation ("**Tenant**").

Dear \_\_\_\_\_:

In accordance with the terms and conditions of the Agreement, Tenant hereby accepts possession of the premises and agrees Tenant deems all Conditions to Lease either satisfied or waived pursuant to Section 4.4 of the Agreement as of \_\_\_\_\_. Tenant's exclusive possession of the Premises shall be deemed effective as of \_\_\_\_\_.

Please acknowledge your acceptance of possession and agreement to the terms set forth above by signing this letter in the space provided and returning an executed copy of the same to my attention.

Sincerely,

**NEIGHBORLY DEVELOPMENT, LLC.**

\_\_\_\_\_

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

Its: \_\_\_\_\_

Agreed and Accepted to by:

**CENTRAL OREGON COMMUNITY COLLEGE DISTRICT:**

\_\_\_\_\_

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

Its: \_\_\_\_\_

**EXHIBIT D**  
**FORM OF WRITTEN NOTICE OF ENTRY**

DATE: \_\_\_\_\_

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

Dear Resident,

Please be advised that on \_\_\_\_\_, between the hours of 8:30 am and 5:00 pm, management and/or personnel representing William Smith Properties Inc. will be entering your unit for an inspection for the purpose of \_\_\_\_\_. If you are unable to be present at the time of entry, we will use our key to enter.

We appreciate your cooperation.

Sincerely,

William Smith Properties Inc.

**EXHIBIT E**  
**ESTOPPEL CERTIFICATE**