



CITY OF VICTOR

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City Council Staff Report

REPORT DATE: March 7, 2024

MEETING DATE: March 13, 2024

SUBJECT	Resolution R-573, Approving an Option Agreement for Ground Lease between the City of Victor and Snavelly Property Company
ITEM TYPE	<input type="checkbox"/> Public Hearing <input type="checkbox"/> Work Session <input checked="" type="checkbox"/> Action Item
PRESENTER	Herb Heimerl, City Attorney

APPLICABLE VICTOR VALUES

- | | | |
|--|--|---|
| <input type="checkbox"/> Culturally Historic | <input type="checkbox"/> Sustainable | <input type="checkbox"/> Connected to Nature |
| <input type="checkbox"/> Small Town Feel | <input type="checkbox"/> Family Friendly | <input checked="" type="checkbox"/> Administrative Need |

PURPOSE & PROCESS

The purpose of this item is for the Council to consider approving an Option Agreement for a ground lease between the City and the Snavelly Property Company. The option agreement is necessary to facilitate continued investment in the project while final details are negotiated and resolved. The attorneys for both parties anticipate that the ground lease and developer's agreement will be ready for the Council's consideration at the city council meeting on April 23, 2024. The form of ground lease is attached to the option agreement and is being approved in form subject only to the terms of the development agreement being finalized.

BACKGROUND/ALTERNATIVES

The primary purpose of lease option agreement is to allow the parties the opportunity to thoroughly assess the feasibility and viability of a potential project, in this case, the Sherman Park Workforce Housing Development, before either party commits to a long-term lease. As such, the option agreement attached herein offers a pathway for both parties to evaluate the project's feasibility, fostering a collaborative and mutually beneficial relationship between the public and private sectors.

The parties previously entered a lease option agreement on April 24, 2023, now expired. That option contained a substantively similar lease agreement as an exhibit so this is really just an extension of that approval. Consequently, the Option Agreement attached hereto reaffirms the parties' relationship and commitments as they pertain to the Sherman Park Workforce Housing Development.

ATTACHMENTS

- Option Agreement for Ground Lease Between the City of Victor and the Snavelly Company
- Resolution R-573

FISCAL IMPACT

Entering this agreement has no direct fiscal impact on the City.

STAFF IMPACT

N/A

LEGAL REVIEW

Approved

RECOMMENDATION

Legal counsel recommends that the Council approve Resolution R-573, a resolution approving a Lease Option Agreement for a ground lease between the City of Victor and the Snavelly Property Company.

SUGGESTED MOTION

I move to approve Resolution R-573, a resolution of the City of Victor, Idaho, approving an Option Agreement for Ground Lease between the City of Victor and the Snavelly Company LLC, for property located at 380 South Agate Avenue on the northwest corner of the intersection of South Agate Avenue and South Baseline Road, and further described in the ground lease; and authorizing the mayor and city clerk to execute and attest said option agreement for ground lease; and providing an effective date.

[Roll Call Vote]

RESOLUTION R-573

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VICTOR, IDAHO, APPROVING AN OPTION AGREEMENT FOR GROUND LEASE BETWEEN THE CITY OF VICTOR AND SNAVELY PROPERTY COMPANY LLC, AN OHIO LIMITED LIABILITY COMPANY, FOR PROPERTY GENERALLY LOCATED AT 380 S AGATE AVENUE ON THE NORTHWEST CORNER OF THE INTERSECTION OF S AGATE AVENUE AND S BASELINE ROAD, AS FURTHER DESCRIBED IN THE GROUND LEASE; AUTHORIZING THE MAYOR AND CITY CLERK TO RESPECTIVELY EXECUTE AND ATTEST SAID OPTION AGREEMENT FOR GROUND LEASE; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF VICTOR, IDAHO:

Section 1. That the Option for Ground Lease, between the City of Victor and Snavely Property Company LLC, attached hereto and incorporated herein by reference, be, and the same is hereby approved as to both form and content and the premises optioned for lease therein are not needed for City purposes and the uses specified in said lease are in the best interests of the City.

Section 2. That the Mayor and City Clerk be, and they hereby are, authorized to respectively execute and attest said Option for Ground Lease for and on behalf of the City of Victor.

Section 3. That this Resolution shall be in full force and effect immediately upon its adoption and approval.

PASSED by the Victor City Council and APPROVED by the Mayor this _____ day of _____, 2024.

ATTEST:

Will Frohlich, Mayor

Michelle Smith, City Clerk

GROUND LEASE OPTION AGREEMENT

THIS GROUND LEASE OPTION AGREEMENT (“Agreement”) is made and entered into this 13th day of March, 2024 (“Effective Date”), by and between City of Victor, Idaho, a municipal corporation (“Grantor”) and Snavely Property Company LLC, an Ohio limited liability company (“Grantee”). Grantor and Grantee may be referred to herein as the “parties” or a “party,” as the case may be.

WITNESSETH:

A. WHEREAS, Grantor owns fee simple interest in that certain unimproved real property located in the City of Victor, Teton County, Idaho, as more particularly described in Exhibit A (the “Property”) attached hereto and incorporated herein.

B. WHEREAS, Grantor is willing to give, and Grantee is willing to accept, an option to lease the Property on a long-term basis in order to realize development of rental housing that includes workforce housing on the Property as more particularly described in that certain Ground Lease, attached hereto and incorporated herein as Exhibit B (the “Ground Lease”).

NOW, THEREFORE, in consideration of the foregoing, and the covenants, promises, conditions, premises, and the mutual obligations of the parties set forth herein, Grantor and Grantee hereby covenant and agree as follows:

Section 1: Option to Lease

(a) Grant of Option. Grantor, for itself and its successors and assigns, hereby grants to Grantee (and its permitted successors and/or assigns) the option (“Option”) to lease the Property from Grantor pursuant to a ninety-nine (99) year ground lease in substantial conformance with the Ground Lease, which Ground Lease will be negotiated in good faith by the parties in accordance with and consistent with the substance and intent of the parties as evidenced by the terms and conditions set forth in this Agreement, the Ground Lease, the Design Development Plan incorporated into the Ground Lease, and a rezone development agreement which will be negotiated in good faith by the parties and executed and recorded prior to the execution of the Lease (the “DA”) and together with all improvements, easements, and rights-of-way thereon, and rights and appurtenances pertaining thereto, if any, and any and all validly existing restrictions, reservations, covenants, conditions, rights-of-way, easements, and other encumbrances, if any, and municipal or other governmental zoning laws, regulations and ordinances, if any. The successful negotiation of the DA is a condition precedent to the Grantor’s obligation to enter into the Lease.

(b) Term of Option. The Option shall exist for a period of time commencing on the Effective Date and terminating at 5:00 p.m., Mountain Standard Time, on March 31, 2025 (the “Option Period”).

(c) Exercise of Option. Grantee may exercise the Option by giving written notice thereof (the “Option Notice”) to Grantor at any time within the Option Period.

(d) Termination. This Agreement and the Option hereunder will terminate upon the occurrence of one or more of the following: (i) Grantee fails to deliver the Option Notice on or before the expiration of the Option Period; (ii) Grantee fails to obtain funding through the Idaho Workforce Housing Fund (“IWHF”) in 2024; (iii) the Grantee fails to obtain the requisite land use permit from the Grantor or the Grantee fails to successfully negotiate the DA on or before the expiration of the Option Period; or (iv) execution of the Ground Lease. Upon termination of this Agreement pursuant to this section, neither party shall have any further rights or obligations hereunder.

Section 2: Lease Terms

If Grantee exercises its Option, then Grantor and Grantee shall enter into the Ground Lease for a lease term of ninety-nine (99) years. The Lease shall be a triple net lease upon such rent, terms and conditions as are mutually satisfactory to the parties.

Section 3: Closing

- (a) The closing (“Closing”) of the Ground Lease of the Property by Grantor to Grantee shall occur on a date mutually satisfactory to the parties.
- (b) At the Closing, all of the following shall occur, all of which shall be deemed concurrent conditions:
- (1) Grantor shall deliver or cause to be delivered to Grantee the Ground Lease executed by Grantor; and
 - (2) Grantee shall pay all escrow, recording and other costs, if any.
- (c) Upon completion of the Closing, Grantor shall deliver to Grantee actual possession of the Property subject to the permitted encumbrances, if any, with all parts of the Property in substantially the same condition as of the Effective Date (except for those changes in condition caused by or with the permission of the Grantee).

Section 4: Authority

Grantor has all requisite power and authority to lease the Property to Grantee. Grantee has all requisite power and authority to lease the Property from Grantor. The parties have all requisite power and authority to enter into this Agreement.

Section 5: Notices

Any notice required or permitted hereunder shall be in writing and sent (i) by registered or certified mail, postage prepaid, return receipt requested, (ii) by commercial delivery service paid for by the sender, (iii) by hand delivery, (iv) by telecopy, or (v) by electronic mail, addressed to such party at the address herein below specified. The date of receipt of such registered mail or certified mail or the date of actual receipt of such writing by commercial delivery service, hand delivery or telecopy, being deemed the date of such Notice. If delivered by electronic mail, transmission shall be to the electronic mail address herein below specified, with a “hard” copy of such notice sent by (i), (ii) or (iii) above as soon as practicable after delivery of such electronic copy; any notice sent by electronic mail will be deemed to be delivered on the date such notice was sent, if such notice was sent during the business hours of the recipient, or if such notice was sent other than during the business hours of the recipient, on the next business day following the date such notice was sent. Any address for notice may be changed by written notice as so given.

To Grantor: City of Victor
Attn: City Administrator
PO Box 122
Victor Idaho, 83455

To Grantee: Snavelly Property Company LLC
7139 Pine St., Suite 110
Chagrin Falls, OH 44022
Attn: Peter L. Snavelly Jr.

Baker Hostetler LLP
127 Public Square, Suite 2000
Cleveland, OH 44114
Attn: Christopher Luken

Section 6: Entire Agreement

This Agreement contains the entire agreement between Grantor and Grantee with respect to the Option, and no oral statements or prior written matter pertaining to the Option not specifically incorporated herein shall be of any force and effect. No variation, modification or changes hereof shall be binding on either party hereto unless set forth in a document executed by such parties or a duly authorized agent, officer or representative thereof.

Section 7: Assigns

This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors and assigns. Neither party may assign its rights hereunder without the written consent of the other party, provided that Grantee may assign this Agreement and its rights hereunder to a newly formed special purpose entity controlled by or under common control with Grantee. This Agreement will not be recorded.

Section 8: Time of the Essence

Time is of the essence as to each and every provision of this Agreement.

Section 9: Governing Law; Counterparts

This Agreement shall be governed by and construed in accordance with the Laws of the State of Idaho. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

Section 10: Severability

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision has never been contained herein.

Section 11: Independent Consideration

Contemporaneously with the execution of this Agreement, Grantee hereby delivers to Grantor a check in the amount of Five and No/100 Dollars (\$5.00) ("Independent Consideration"), which amount the parties bargained for and agreed to as consideration for Grantor's execution, delivery and performance of this Agreement. This Independent Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement.

[signature page to follow]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the Effective Date.

GRANTOR:

CITY OF VICTOR, IDAHO
a body politic and corporate

By: _____

ATTEST:

By: _____

GRANTEE:

SNAVELY PROPERTY COMPANY LLC,
an Ohio limited liability company

By: _____
Peter L. Snavely, Jr.
President

Exhibit A

Property Description

A Parcel of land located within the Southeast Quarter (SE1/4) of Section 11, Township 3 North, Range 45 East, Boise Meridian, lying entirely within the City of Victor, Teton County, Idaho, being a portion of that Grant Deed filed as instrument number 268983, also known as Sherman Park parcel number RPB3N45E117200, said Parcel being more particularly described by metes and bounds as follows:

COMMENCING at the Section corner common to Sections 11, 12, 13, and 14, Township 3 North, Range 45 East, Boise Meridian, Teton County, Idaho;

THENCE N 00°04'00" E, 130.69 feet, along the section line common to said Sections 11 and 12 to the point of intersection of said Section Line and the Northerly Right-of-Way line of South Agate Street, also known as the Old Jackson Highway;

THENCE N 46°05'00" W, 83.39 feet, along the Northerly Right-of-Way line of South Agate Street to the point of intersection of the Westerly Right-of-Way line of Baseline Road and the Northerly Right-of-Way line of South Agate Street, the POINT OF BEGINNING;

THENCE continuing N 46°05'00" W, 580.00 feet, along the Northerly Right-of-Way line of South Agate Street to a point;

THENCE N 43°55'00" E, 197.65 feet, along the North line of the Business Development Site illustrated on that Record Of Survey filed as instrument number 185930 to a point;

THENCE N 89°56'00" E, 280.07 feet, along the North line of said Business Development Site to a point on the Westerly Right-of-Way line of Baseline Road;

THENCE S 00°04'00" E, 545.00 feet, along said Right-of-Way line to the POINT OF BEGINNING;

SUBJECT TO all easements of sight and/or record;

Said Parcel encompasses 3.07 acres, more or less.

All in accordance with that Record of Survey titled "City of Victor-Business Development Site" recorded as instrument number 185930.

Exhibit B

Form of Ground Lease

[See attached document.]

GROUND LEASE

THIS GROUND LEASE (“**Lease**”) dated as of the ____ day of _____, 2024 (the “**Agreement Date**”), in made between the City of Victor, Idaho, a municipal corporation (“**Landlord**”) and Snavely Property Company LLC, an Ohio limited liability company, or its assigns (“**Tenant**”).

A. WHEREAS Landlord owns a that certain real property consisting of an approximately three (3) acres legally described on Exhibit A attached hereto and incorporated herein (the “**Premises**”).

B. WHEREAS, Landlord has the power and authority to enter into this Lease pursuant to Idaho Code Sections 50-301, 40-1407, and 40-1409 and Landlord has adopted all necessary resolutions to enter into this Lease.

C. WHEREAS, the Parties agree this Lease, which provides needed workforce housing for the City of Victor, in in the best interests of the City.

D. WHEREAS Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord on the terms and conditions set forth in this Lease.

NOW, THEREFORE, for and in consideration of the mutual faithful and timely performance of the covenants, conditions and agreements set forth below, Landlord hereby agrees to lease to Tenant and Tenant hereby agrees to lease from Landlord the Premises on the following terms, covenants and conditions:

1. Leased Premises and Financing Contingency. Upon and subject to the terms, covenants and conditions set forth herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises. The parties hereby acknowledge that the fair market value of the Premises as of the date hereof is \$2,200,000. The parties acknowledge and agree that this Lease is a binding agreement enforceable against the parties as of the Agreement Date, however, except for the payment of Initial Rent (defined below), all of Tenant’s other obligations under this Lease are expressly contingent upon Tenant obtaining construction financing for the Improvements (defined below) in such amount, and on such terms and conditions, as are satisfactory to Tenant in its sole discretion (“**Construction Financing**”) on or before March 31, 2025 (the “**Financing Contingency**”). Tenant may terminate this Lease at any time if Tenant determines it is unable to obtain Construction Financing and proceed with the Improvements. Landlord may terminate this Lease by written notice to Tenant at any time after March 31, 2024 if Tenant has not closed on its Construction Financing or otherwise waived the Financing Contingency in writing; provided, however, Tenant shall have sixty (60) days following Landlord’s termination notice to either close on its Construction Financing or waive the Financing Contingency in writing, in which case this Lease will not terminate but will continue in full force and effect. The date on which Tenant either closes on its Construction Financing or waives the Financing Contingency in writing shall be the “**Effective Date**” of this Lease. Tenant shall notify Landlord promptly upon closing its Construction Financing.

2. Lease Term. The term of this Lease shall be for a period of ninety-nine (99) years commencing as of the Effective Date (“**Commencement Date**”) and expiring, unless sooner

terminated, ninety-nine (99) years from the Commencement Date (“**Lease Term**”), unless extended or sooner terminated as provided herein. The word “Lease Term,” as used in this Lease shall mean the initial term and any extensions thereof. Notwithstanding anything set forth in this Lease to the contrary, Landlord shall not accept a voluntary surrender of the Lease at any time during which the Premises is encumbered by a Leasehold Mortgage (as hereinafter defined).

3. Rent. Tenant shall pay to Landlord One Hundred and 00/100 Dollars (\$100.00) within five (5) business days following the Agreement Date (“**Initial Rent**”). Thereafter, commencing on the Effective Date, Tenant shall pay to Landlord at the Premises, or such other place as Landlord may hereafter designate in writing, fixed annual rents of One Hundred and 00/100 Dollars (\$100.00) per year (“**Annual Rent**”), without any setoff or deduction whatever and without prior demand. The Rent payable by Tenant under this Lease shall be net to Landlord. Except as otherwise provided in this Lease or another written contract between Landlord and Tenant, all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises, which may arise or become due during the term of this Lease (the “**Expenses**”), shall be paid by the Tenant.

4. Construction and Alteration.

(a) Acceptance of Premises. Tenant accepts the Premises in its AS IS present condition with any and all latent and or patent defects and will not call on Landlord for any repairs, improvements or alterations thereto.

(b) Construction of Improvements. Subject to the satisfaction of the following conditions, Tenant shall, at its sole expense, construct improvements on the Premises consisting of a residential development consisting of 90 apartment units, plus or minus 10 units, of which not less than sixty-one percent (61%) of will be Income Restricted Units (as defined in the Design Development Plan described in Section 5(b)) (the “**Improvements**”):

(i) Tenant has submitted or will submit to Landlord for approval comprehensive plans and specifications for the construction of the Improvements (the “**Construction Plans**”). Construction of the Improvements will not commence until after Tenant receives the approval of the Construction Plans and any other development or land use permits required by Landlord pursuant to Landlord’s City Code. Landlord has agreed to waive permit fees in connection with the construction of the Improvements in an approximate amount equal to \$375,000. This Lease is subject to and conditioned upon the Tenant obtaining all applicable approvals for the Improvements and successfully negotiating and executing a development agreement with the Landlord on or before December 31, 2024.

(ii) Subject to Tenant's right to contest set forth in Section 5(d) hereof, Tenant shall, at Tenant's own cost and expense, procure every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Premises or required in connection with any building or improvements hereafter erected on the Premises.

(iii) In the event (a) Tenant makes any substantial modification to the Construction Plans or (b) Tenant makes any substantial modification to the Improvements at any time after construction of the Improvements, Tenant shall submit modified plans to Landlord for Landlord's approval, which shall not be unreasonably withheld or delayed, in accordance with the

procedures and approval standards set forth in subsection (i) above. For the purposes of this Lease, the term “**substantial modification**” shall mean any expansion of the building envelope or any work involving estimated costs of \$50,000 or more; however, provided that if the substantial modification involves upgrades to materials, finishes, personal property or community space, the Landlord’s approval shall not be required.

(c) Workmanship. All construction, remodeling and alterations shall be made in a good and workmanlike manner and in substantial compliance with all building laws and ordinances applicable thereto.

(d) Title; Covenant Against Liens.

(i) The fee title of Landlord is and always shall be paramount to the leasehold title of the Tenant and nothing contained in this Lease shall empower the Tenant to do any act which can, shall, or may encumber the fee title of the Landlord. Except for any liens arising in connection with a Leasehold Mortgage (as defined in Section 13(b) hereof) or non-monetary encumbrances approved by the Landlord, Tenant covenants and agrees not to suffer or permit any lien, encumbrance or charge of mechanics, materialmen, easement, mortgage or otherwise (“**Lien**”) to be placed upon or against the Premises (or any part thereof) or the Tenant’s Leasehold interest in the Premises, without, in each instance, the prior written consent of Landlord, which consent may be withheld in Landlord’s sole discretion and may be subject to such conditions as Landlord may require.

(ii) Should any Lien be filed or threatened against the Premises, or Landlord’s or Tenant’s respective interest therein, Tenant shall, within forty-five (45) days after written notice from Landlord (or such earlier period as is required to avoid any foreclosure or enforcement of such Lien): (i) fully discharge any such Lien or claim of Lien, or (ii) contest such Lien or claim of Lien and in connection with such contest, insure or bond over such Lien by title endorsement or bond in an amount equal to 115% percent of the amount of the claimed Lien. In the event Tenant shall fail to perform either item (i) or item (ii) above within the prescribed time period, Landlord may, upon five (5) business days written notice to Tenant, at Landlord’s option and without limitation of any of its other rights and remedies, pay the same or any part thereof, and the amount of such payment shall constitute additional Rent and shall be paid to Landlord within ten (10) business days after demand with interest thereon at 12% per annum from the date incurred until the date paid in full. No Liens of any character whatsoever created or suffered by Tenant, including without limitation the lien of any Leasehold Mortgage, shall in any way, or to any extent, attach to Landlord’s fee interest in the Premises.

(e) Ownership of Alterations and Improvements. The Improvements, and all alterations and additions thereto, placed upon the Premises by Tenant or any subtenant or other occupant (including but not limited to doors, partitions, tile and wood floorings, lighting fixtures and the like), as well as any fixtures attached to any building before the expiration or earlier termination of this Lease included in the Premises and used in connection with the operation and maintenance thereof (excepting in each case property removable by subtenants under their respective subleases) are and shall be the property of Tenant and Tenant shall be the absolute owner of the Improvements, and all alterations and additions thereto, during the Lease Term. The Improvements, and all alterations and additions thereto, in existence at the Premises at the expiration or termination of this Lease shall revert to and become the property of Landlord. At all

times during the Lease Term, including without limitation for tax purposes, legal and beneficial title to the Improvements shall be owned by Tenant and during the Lease Term, Tenant alone shall be entitled to all of the tax attributes of ownership of the Improvements, including, without limitation, the right to claim depreciation or cost recovery deductions, amortization and any tax credits pursuant to the Code. Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises.

5. Use of Premises.

(a) Intended Use. Following construction of the Improvements, the Premises shall be used as a workforce multifamily apartment community and such other mixed uses as may be permitted under applicable law.

(b) Affordable Rental Units. Following construction of the Improvements, the Improvements shall be managed and leased in accordance with that certain Design Development Plan attached hereto and made a part hereof as Exhibit B (the “**Design Development Plan**”).

(c) Prohibited Activities. Notwithstanding anything to the contrary herein, the Tenant shall not use or suffer or permit any use of the Premises or any part thereof for any sale of pornographic materials, adult bookstore, adult movie theater, boarding house, tattoo parlor, massage parlor (other than in connection with other day spa services or operated through a recognized franchisor or operator), any business that derives the majority of its net profits from the sale of liquor (other than a properly licensed restaurant or state run liquor store), funeral parlor, disco or night club, a dry cleaning facility (other than for pick up or drop off), or cinema.

(d) Compliance with Law. Tenant shall, at the Tenant's own cost and expense, timely comply with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America or of the State, county and city governments, or of any other municipal, governmental or lawful authority whatsoever, affecting the Premises or appurtenances or any part thereof, and of all their departments, bureaus or officials (collectively, “**Requirements of Law**”), whether such requirements may relate to: (i) structural or other alterations, changes, additions, improvements; or (ii) repairs, inside or outside, extraordinary or ordinary; or (iii) the manner in which the Premises may be used or occupied; or (iv) to any other matter affecting the Premises. If Tenant is required by the Requirements of Law to make any alterations, changes, additions, improvements or repairs or to change the manner in which the Premises may be used or occupied, Landlord hereby consents to such change to the extent required by the Requirements of Law.

(e) No Violations. Tenant shall upon the discovery of any material violation of a requirement of law which might subject Landlord to liability or forfeiture of any interest, take all necessary steps, legal and equitable, to compel the discontinuance thereof and to oust and remove any subtenants, occupants or other persons guilty of such use. Subject to Section 12 herein, Tenant shall indemnify and save harmless Landlord from and against any and all liabilities and penalties incurred by reason of any violation of this section. Tenant shall pay all costs and expenses, including reasonable attorneys fees, that may in any manner arise out of the failure of Tenant to comply with the provisions of this Section 5. As used in this section, the word “**Premises**” shall also include the streets, sidewalks, alleys and curbs adjacent thereto, and all vaults, passageways, rights of way and appurtenances of the Premises.

(f) Contest of Requirements. Tenant may contest in good faith, by appropriate proceedings conducted promptly at its own expense, in its name, or in Landlord's name, the validity or enforcement of any requirement of law and may defer compliance therewith provided that (i) such non-compliance shall not constitute a crime or misdemeanor on the part of the Landlord, (ii) Tenant shall diligently prosecute such contest to final determination by the court, department or governmental authority or body having final jurisdiction, and (iii) if so required by Landlord and if the amount in dispute is in excess of or could be subject to a fine of \$50,000 Tenant shall furnish to Landlord a security or bond reasonably satisfactory to Landlord, in an amount equal to the cost of such compliance or potential fine as estimated by Landlord, and, subject to Section 12 herein, indemnifying Landlord against the cost thereof and all liability in connection therewith. Landlord agrees to cooperate reasonably with Tenant, and to execute all documents and pleadings required for the purpose of such contest, provided Tenant shall discharge any expense or liability of the Landlord in connection therewith.

(g) If Tenant shall fail to perform any of its obligations under this Lease, Landlord may, at its option, after the expiration of any grace or cure period available to Tenant with respect to such failure, or with such notice as is reasonable in case of an emergency, perform any of such obligations. Any reasonable costs and expenses incurred by Landlord, including reasonable attorneys' fees in the performance of Tenant's obligations under this Lease shall be paid by Tenant to Landlord on demand. Landlord's exercise of its rights under this section shall not constitute a waiver of any other rights or remedies Landlord may have because of Tenant's default.

6. Taxes, Assessments and Utilities.

(a) Payment by Tenant. Tenant shall pay all real estate taxes, special improvement and other assessments (ordinary and extraordinary), water rents and charges, and all other taxes, duties, charges, fees and payments imposed by any governmental or public authority, which shall be imposed, assessed or levied upon, or arise in connection with the use, occupancy or possession of the Premises or any part thereof during the Lease Term (collectively "**Governmental Impositions**"). In each case, upon written request of Landlord, Tenant shall deliver to Landlord prior to the last day upon which the same may be paid without penalty or interest, a receipt showing the payments thereof. The term "Governmental Impositions" shall not be deemed to include transfer, gift, inheritance, income, estate, intangible personal property, corporation, franchise or succession taxes or other similar taxes. It is specifically understood that Tenant shall pay all real estate and/or personal property taxes as to the value of the Improvements and all alterations and additions thereto, placed upon the Premises by Tenant, as well as any fixtures attached to any building, and all alterations and additions thereto, but not for the land, only because Landlord is the owner of the land and as an Idaho municipal corporation, Landlord is exempt from payment of real estate taxes as provided for in Idaho Code Section 63-602a. In the event that a modification to the legal relationship between the parties hereto and or the estate or interest in the Premises and or Improvements is needed in order to satisfy the State of Idaho or Teton County such that the Improvements are included on the tax roll of the Landlord, then the Tenant agrees to effectuate the same.

(b) Utilities. Tenant shall promptly pay before the imposition of late charges or penalties, all charges for gas, electricity, water, sewer, garbage, telephone and other services furnished to the Premises or the occupants thereof during the Lease Term. The parties agree that

no default shall be declared under the Lease if such utilities specific to individual residential units incur any late charges or penalties.

(c) Assessments. Tenant's obligation to pay assessments shall apply only to assessments which shall accrue and become payable during the Lease Term. Tenant may take the benefit of any statute or ordinance permitting assessments to be paid in installments over a period of time, and in that event, Tenant shall be obligated to pay only such installments as shall become payable during the Lease Term.

(d) Charges Before Construction. Tenant shall have no obligation to pay taxes, charges, for insurance, utilities, maintenance for similar items, or any other costs of expenses with respect to the Premises, until the date upon which Tenant commences construction of the Improvements.

(e) First and Last Year. Governmental Impositions for the tax year in which the term shall commence and for the tax year in which the term shall expire shall be apportioned according to the number of days during which each party shall be in possession during such tax years, whether or not the same may be liens at the beginning or end of the term. This provision shall not limit Landlord's right to receive prorated amounts in the event of earlier termination of this Lease by reason of Tenant's default.

(f) Contest of Taxes. Tenant may contest, in good faith, any Governmental Imposition by appropriate proceedings conducted promptly at Tenant's expense, in Tenant's name, or (whenever necessary) in Landlord's name. Landlord agrees to cooperate reasonably with Tenant and to execute any documents or pleadings reasonably required for such purpose, but Landlord shall not be obligated to incur any expense or liability in connection therewith. Tenant may defer payment of the contested Governmental Imposition pending such contest, if such deferment shall not subject Landlord's interest in the Premises to forfeiture. Tenant shall deposit with Landlord, if Landlord so requests, funds which shall be at least equal in value to the payment so deferred plus estimated penalties and interest thereon and Landlord shall deposit such funds in an interest-bearing account. When all contested Governmental Impositions shall have been paid or cancelled, funds so deposited to secure the same and interest earned thereon which was not applied by Landlord to the payment thereof, shall be repaid to Tenant. In lieu of any such deposit, Tenant may, at its election, furnish a bond in a form, in an amount, and with a surety reasonably satisfactory to Landlord or furnish security reasonably satisfactory to Landlord. All refunds of taxes and assessments shall be the property of Tenant to the extent they may be based on payments made by Tenant, any balance being Landlord's property.

(g) Additional Rent. All amounts due or required to be paid by Tenant under this Lease will be considered to be additional Annual Rent.

7. Insurance.

(a) Fire, Casualty and Extended Coverage Insurance. Immediately following the Effective Date and during the remainder of the Lease Term, Tenant shall, at its own expense, maintain in full force, fire, casualty and extended coverage insurance for the Premises, and Improvements, and all alterations and additions thereto, and all related furniture, equipment and facilities, in an amount not less than one hundred percent (100%) of the then full insurable value

of the Improvements, and all alterations and additions thereto, and all related furniture, equipment and facilities. The term “**full insurable value**” shall mean 100% of the actual replacement cost, excluding excavation and foundation costs. Such policy or policies shall insure against such insurable hazards as are commonly insured against in the case of Premises similarly situated, taking into account the height and type of the Improvements and other buildings and structures on the Premises (including any replacements or substitutions), and their construction, location, use and occupancy. This policy shall name the Landlord and Tenant as coinsureds. Full insurable value shall be reasonably determined by an independent 3rd party appraisal of the Improvements provided by the Tenant upon request.

(b) Comprehensive Liability Insurance. Immediately following the Effective Date and during the remainder of the Lease Term, Tenant shall, at its own expense, maintain in full force, comprehensive liability insurance, including public liability and property damage of the Tenant, written by a responsible insurance company licensed to do business in Idaho, and insuring Tenant and Landlord (and such other persons, firms, or corporations designated by Landlord) as additional named insureds against liability for claims of damage, loss and damage for bodily injury, property damage, personal injury, death, civil rights violations, and errors and omissions occurring in or about the Premises, and the Improvements, and all alterations and additions thereto. Such policy shall provide insurance against property damage in an amount not less than \$1,000,000.00 and bodily injury with limits of not less \$1,000,000.00 per person and \$3,000,000.00 total for each occurrence; provided, however, the minimum limits of insurance as set forth herein shall be automatically increased at any time the liability limits of Landlord are increased pursuant to the Idaho Tort Claims Act, as amended (Idaho Code Sections 6-901 et seq.) The insurance shall be primary insurance such that the insurer shall be liable for the full amount of the loss without the right of contribution from any other insurance coverage held by Landlord.

(c) Waiver of Subrogation Rights. No party shall have the right or claim against the Landlord or Landlord's insurer for any losses, damages or injury, including losses, damages or injury to property or persons, including death, and for any business interruption, occurring on the Premises, and the Improvements, and all alterations and additions thereto, by way of subrogation or assignment. The Tenant hereby waives and relinquishes any such right. The Tenant shall request Tenant's insurance carrier to endorse all applicable policies waiving the carrier's right of recovery under subrogation or otherwise in favor of the Landlord and provide a certificate of insurance verifying this waiver.

(d) Form and Delivery of Policies. All insurance required by this Section shall be in a form and with companies satisfactory to Landlord and shall provide that it shall not be subject to cancellation or change except after at least thirty (30) days' prior written notice to Landlord. The policy or policies, or duly executed certificates for them, shall be deposited with Landlord within fifteen (15) days after the Effective Date and, upon renewal of such policies, not less than thirty (30) days prior to the expiration of the term of such coverage.

(e) Landlord's Right to Obtain Insurance. If Tenant fails to maintain coverage required by this Section 7, Landlord, in addition to other available remedies, may at its election (but shall not be obligated to), after ten (10) business days' written notice to Tenant, procure such coverage as may be necessary to comply with this Section 7, with the cost payable to Landlord on demand, with interest accruing at the rate described in Section 20(o). Notwithstanding anything to the contrary herein, the Landlord shall not be required to maintain any insurance on the Premises.

8. Repairs. Tenant, at its own expense, shall keep the entire Premises and the Improvements (including without limitation, the roof, walls, foundations and appurtenances, water sewer and gas connections, pipes and mains, elevators, heating, cooling, lighting and electrical distribution systems and all other fixtures, machinery and equipment forming part of the Premises and the Improvements) in constant good order, condition and repair (both inside and outside), whether the necessity of such repairs may arise from wear, tear, casualty or any other cause, suffering no waste or injury. To that end, Tenant shall timely make or cause to be made all needed repairs, replacements (including replacements to fixtures, furnishings and equipment) and renewals, ordinary and extraordinary, structural or otherwise. Tenant shall, at its own expense, use commercial reasonable and best efforts to keep parking areas, sidewalks and curbs on the Premises, and the sidewalks and curbs adjoining the Premises, free of snow and ice and in a good state of repair.

9. End of Term.

(a) Surrender by Tenant. On the last day of the Lease Term or on the earlier termination of this Lease, Tenant shall peaceably and quietly leave, surrender and deliver up to Landlord the Premises, broom-clean, together with the Improvements, and all alterations and additions thereto, which may have been made upon the Premises (except for personal property removable by Tenant and subtenants) in the condition in which Tenant is required to maintain the same pursuant to Section 8, ordinary wear and tear excepted. Unless otherwise agreed to in writing by Landlord, all residential leases and subleases on the Premises shall expire or be terminated upon surrender of the Premises by Tenant.

(b) Removal of Personal Property. Tenant shall, by the date referred to in subsection 9(a) above, remove from the Premises all personal property and trade fixtures belonging to Tenant, repairing all damage caused in such removal and restoring the Premises to their condition prior to the installation of any such property, ordinary wear and tear excepted. All Tenant's property not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or any other person and without obligation to account therefor, but subtenants, in the event of the termination of this Lease may for thirty (30) days thereafter remove their property in accordance with the terms of their subleases. Subleases, at the option of the Landlord, may be extended beyond the 30-day period.

10. Damage or Destruction.

(a) Restoration by Tenant. In case of damage to or destruction of the Premises or any part thereof, or the Improvements, and all alterations and additions thereto, by any cause whatsoever, Tenant shall give Landlord prompt notice of such occurrence. In such event, any and all insurance proceeds shall be paid directly to the holder of any Leasehold Mortgage (a "**Leasehold Mortgage**") holding the lien which is senior, in terms of lien priority (determined by taking all subordination agreements into account), to the liens held by the other Leasehold Mortgagees to be applied in accordance with the provisions of the loan documents related to such first priority Leasehold Mortgage. Any lender with a then-outstanding loan, if any, shall have the right to participate in all adjustments, settlements, negotiations or actions with the insurance company regarding the amount and allocation of any such insurance proceeds. In the event that there are no outstanding loans, all insurance proceeds received under policies of insurance set forth

in Section 7 shall be made available to Tenant so that Tenant may repair or rebuild the Improvements so as to make them at least as valuable as immediately before such occurrence and any insurance proceeds that remain after such repair and restoration is completed shall be paid by Tenant to Landlord.

(b) Termination Remedy. If the work of repairing, replacing or rebuilding the Improvements shall not have been commenced within 180 days from the date of receipt of insurance proceeds, damages or destruction or if such work shall not after commencement be diligently carried out, Landlord shall, subject to the provisions set forth in Section 13(c)(iii) of this Lease, have the right to terminate this Lease and the term hereof by giving to Tenant notice of such intention. If upon the expiration of the date fixed in such notice, such work shall not have been commenced and the other conditions hereof complied with, or if after commencement such work shall not have been diligently prosecuted, this Lease and the Lease Term shall at the option of the Landlord wholly cease and expire. If Landlord fails to exercise its option to cancel this Lease as provided in subsections (a) and (b) of this Section 10 within six months after the receipt of insurance proceeds, Tenant shall have the right to terminate this Lease by giving Landlord written notice to such effect. In the event of any termination provided for in this Section 10, the insurance proceeds received and recoverable under all policies of insurance shall be paid over to and be retained by Tenant and Landlord, or to any mortgagee (including any Affiliate of Tenant) to whom the same may be payable, as their interests may appear. For this purpose, any proceeds not payable to any mortgagee shall be apportioned between Tenant and Landlord based upon the relative values of Tenant's right to use the Improvements over the remaining lease term, and Landlord's right to the Improvements upon termination of this Lease.

11. Condemnation.

(a) Total Taking. If the entire Premises or Improvements and all alterations and additions thereto, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by purchase by public authority in lieu thereof, then in that event, this Lease and the Lease Term shall cease and expire as of the date upon which title shall vest in the condemning authority and all rents, taxes, insurance premiums and other charges shall be prorated and paid to the date of such termination. Each party shall be free to prove by judicial proceedings and to obtain and retain the rights of mortgagees in the condemnation proceedings. It is specifically agreed that Tenant's interest consists of the Improvements, and all alterations and additions thereto, fixtures and personal property on the Premises, its leasehold interest in the Premises and its business operations on the Premises; Landlord's interest consists of its reversionary interest in the Premises and its right to receive income from the Premises as provided in Section 3 above. Net awards and payments received on account of a total taking of the Premises and/or Improvements shall be allocated and paid in the following order of priority:

(i) First, to any lenders with then-outstanding loans secured by the Premises and/or Improvements, in the order of their respective lien priority, in accordance with the terms of the applicable loan documents, in an amount equal to the unpaid principal balance secured by each such respective loan, to the extent there are sufficient funds to make such payments;

(ii) The remaining balance, if any, shall be divided between the Landlord and the Tenant in accordance with the value their respective interests.

(b) Partial Taking. If less than the entire Premises or the Improvements, and all alterations and additions thereto, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by purchase by public authority in lieu thereof, and as a result, it is impractical for Tenant to conduct its business, then, subject to the provisions set forth in Section 13(c)(iv) of this Lease, Tenant shall have the option to terminate this Lease upon written notice to Landlord. If this Lease shall not be so terminated, this Lease shall remain unaffected and all net awards and payments received by Tenant on account of such partial taking shall be paid directly to the Leasehold Mortgagee holding the lien which is First, in terms of lien priority (determined by taking all subordination agreements into account), to the liens held by the other Leasehold Mortgagees to be applied in accordance with the provisions of the loan documents related to such first priority Leasehold Mortgage. In the event that there are no outstanding loans, then except that within a reasonable time after such taking Tenant shall restore that part of the Premises and the Improvements not so taken to a complete architectural unit as approved by Landlord, which approval shall not be unreasonably withheld or delayed. Subject to the rights of mortgagees in the condemnation proceedings, all condemnation awards on account of Landlord shall be paid to Landlord and all awards on account to Tenant's interest shall be paid to Tenant to be applied by Tenant to the cost of restoring the Improvements to a complete architectural unit as set forth above, as if the damages were caused by fire and such award consisted of insurance proceeds. The division of the award for partial taking between Landlord and Tenant (subject to the rights of mortgagees, if any) shall take into account (i) the value of Landlord's interest in the Premises affected by such taking and under this Lease, and (ii) the value of Tenant's interest therein under this Lease at the rent reserved and subject to all the terms and provisions of this Lease.

(c) Temporary Taking. If less than a fee title to all or any portion of the Premises or the Improvements, and all alterations and additions thereto, shall be so taken for temporary use or occupancy, the foregoing provisions of this section shall be inapplicable to such taking. This Lease shall continue in full force and effect without reduction or abatement of rent and Tenant shall be entitled to make claim for, recover and retain so long as it shall not be in default hereunder any awards in the form of rent recoverable in respect to such taking, except that if such taking shall be for a period extending beyond the expiration of the Lease Term, Landlord shall be entitled to receive such portion of the award as shall be attributable to the portion of such period occurring after such expiration.

(d) Lender Protections. Notwithstanding anything contained in this Lease to the contrary, any and all condemnation proceeds shall be paid first to the Leasehold Mortgagee, if any, whose loan is first in priority of lien for application in accordance with the provisions of the loan documents related to such loan and, to the extent such proceeds are not permitted under such loan documents to be used by Tenant to rebuild and/or restore the Improvements on the Premises, applied to the repayment of such loan, with any remaining balance distributed to other lenders in the order of priority of lien of their respective loans to the extent of such loans, and then allocated pursuant the applicable provisions of this Section 11. Moreover, each lender, if any, shall have the right to participate in each proceeding or negotiation with respect to a taking or condemnation or intended taking or condemnation and to make full proof of its claims. No agreements or settlement with or sale or transfer to the condemning authority shall be made without the prior written consent of each lender.

12. Indemnity. Tenant agrees to indemnify, defend, save, hold and keep Landlord harmless from any loss, cost, expense or liability whatsoever, including reasonable attorneys' fees

for, or in connection with the defense or investigation of, any and all claims for damages suffered or sustained by any person or person or for injury to or death of any person or persons arising or asserted to have arisen at or incident to the Premises or the performance by Tenant of its obligations hereunder, including without limitation the construction, erection, maintenance, operation, use or occupancy of the Improvements throughout the Lease Term, except that Tenant shall not be obligated to indemnify or hold Landlord harmless for any loss, expense or liability caused by Landlord's willful misconduct or gross negligence or any such misconduct or gross negligence by any affiliate, agent or employee acting by, through or under the direction of Landlord or any environmental conditions existing before the Effective Date or any contamination migrating from adjacent land owned or occupied by Landlord (unless Tenant exacerbated the condition).

13. Transfers.

(a) Assignment and Subletting.

(i) Tenant may sell, assign, sublet or transfer this Lease, in whole or in part, to (a) any Affiliate of Tenant (an Affiliate of Tenant shall mean any organization or corporation directly affiliated with Tenant or the organizations that control Tenant) or any limited partnership or limited liability company in which an Affiliate or Tenant is a general partner, manager or managing member, as applicable, or (b) to any other party that agrees in writing to assume Tenant's obligations hereunder.

Any other transfer, assignment, sale or sublease shall require Landlord's consent, not to be unreasonably withheld, conditioned or delayed.

(ii) Any purchaser of the leasehold estate through foreclosure or deed in lieu of foreclosure, and any third party acquiring the leasehold estate through such purchaser shall be subject to the terms of this Section 13.

(iii) Notwithstanding anything to the contrary set forth herein, any transfer of any interest in Tenant shall be permitted and shall not require the Landlord's consent.

(iv) Notwithstanding anything to the contrary set forth herein, Tenant shall be allowed to lease or sublease individual residential units in the Premises. Landlord hereby approves and consents to such individual lease agreements.

(b) Mortgages.

(i) On the Leasehold Interest. Tenant may at any time and from time-to-time mortgage its interest in the leasehold estate created hereby with a mortgage or deed of trust ("**Leasehold Mortgage**"); so long as the term of any such mortgage or deed of trust shall not extend beyond the expiration of the Lease Term. It is specifically understood that any mortgage, deed of trust and/or security interest cannot encumber the Landlord's fee interest in the land of the Premises.

(A) Landlord agrees at any time and from time to time, when requested by Tenant, to enter into reasonable agreements for the benefit of lenders as may be necessary to enable Tenant to obtain financing for the Improvements, provided that such

agreements do not in any manner adversely affect Landlord's interest in the Premises or place the Landlord in a position of liability with the Lender.

(B) Tenant may at any time and from time to time encumber the Premises with a land use agreement, deed restriction, or regulatory agreement or any combination thereof, required in connection with tax credits and other financing, and Landlord agrees to execute, acknowledge and deliver any such agreements. Such agreements shall terminate at the end of the Lease Term.

(C) The execution of a Leasehold Mortgage shall be permitted. The mortgagee of such a Leasehold Mortgage shall be considered a permitted assignee under this Lease. Neither the foreclosure of a Leasehold Mortgage, nor any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, nor any conveyance of the leasehold estate created hereby from the Tenant to a Leasehold Mortgagee, or its designee or any purchaser at a foreclosure or recipient of an assignment of the leasehold interest hereunder (collectively, a "**Lender Party**"), through or in lieu of any such foreclosure, shall require the consent of the Landlord or constitute a breach of any provision of this Lease. In the event any Lender Party becomes the Tenant under this Lease by such means or pursuant to any new lease obtained under Section 13(c)(i), Landlord shall recognize the Lender Party as the Tenant hereunder or under such new lease and the Lender Party shall be personally liable under this Lease or such new lease only for the period of time that the Lender Party remains the Tenant thereunder, provided that the Lender Party attorns to the Landlord and agrees to be subject to the restrictions of this Lease. Furthermore, the parties specifically agree that the Improvements, and all alterations and additions thereto, shall be the property of Tenant until the expiration or earlier termination of the Lease Term, and that the Improvements, and all alterations and additions thereto, may be subject to a security interest created by mortgage, deed of trust or otherwise.

(D) Any such mortgage or deed of trust shall grant to the Landlord the right to cure any default by Tenant.

(ii) Landlord's Interest. Landlord shall have the right to freely mortgage its fee interest in the land of the Premises; provided that Landlord gives notice of its intent to make such an encumbrance to Tenant and any Leasehold Mortgagee and provided any such mortgage shall in no way impair the rights of the Tenant under this Section 13, and provided that any such mortgage shall be expressly subject and subordinate to this Lease and the prior lien of any Leasehold Mortgage. Landlord shall not transfer or otherwise dispose of the property without Tenant's consent, which consent shall not be unreasonably withheld. Landlord agrees to enter into, and to cause any fee lender to enter into, a subordination, nondisturbance and attornment agreement if requested by any Leasehold Mortgagee.

(iii) Payment of Mortgages. Tenant covenants to and agrees with Landlord that all sums which fall due under any note secured by any mortgage on Tenant's interest in the Premises will be paid as and when due, and that Tenant, as borrower, will comply with all its obligations under the mortgage and the related loan documents. Tenant, on a monthly basis, shall, upon written request of Landlord, provide Landlord evidence, in form and substance reasonably satisfactory to Landlord, that such payments have been made.

(iv) Estoppel Certificate. Landlord agrees at any time and from time to time when requested by Tenant, or the holder of any mortgage or deed of trust, to execute, acknowledge and deliver to Tenant or the holder of such instrument within 45 days after receipt of such written request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); that to Landlord's knowledge there are no defaults hereunder by Tenant, if such is the fact and otherwise specifying such defaults in detail; and the dates to which the rent and other charges have been paid. It is intended that any such statement delivered pursuant to this section may be relied upon by the holder of any such mortgage, deed of trust, or other instrument of security or any prospective purchaser of Tenant's leasehold estate. Landlord agrees to use its best efforts to provide such statement in a shorter period of time than requested by Tenant or any other interest holder.

(v) Liens and Encumbrances. The parties hereto understand and agree that any Liens are subordinate to the Lease and that the Lease is superior and prior in time to the Liens.

(c) Leasehold Mortgagee's Protection Clause.

(i) Each party agrees to send any Leasehold Mortgagee or holder of a leasehold deed of trust, by registered or certified mail, return receipt requested, a copy of any notice of default under this Lease served upon the other party simultaneously with such notice and upon prior written notice of any modification, amendment or termination of this Lease, provided that prior to such notice such party has been notified, in writing, of the address of such mortgagees or holders of deeds of trust. Each party further agrees that if the other party shall have failed to cure such default within the time provided for in this Lease, then the Leasehold Mortgagee or holders of deeds of trust shall have an additional thirty (30) days within which to (a) cure such default or if such default cannot be cured within that time, then in such additional time as may be necessary if within such thirty (30) days any Leasehold Mortgagee or holder of a deed of trust has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure) in which event this Lease shall not be terminated while such remedies are being so diligently pursued, or (b) if this Lease is terminated due to a default by Tenant hereunder, give Landlord written notice of its intention to enter into a lease with Landlord as described below. If this Lease is terminated due to a default by Tenant hereunder, or if this Lease otherwise terminates, whether by operation of law or otherwise, Landlord shall give prompt written notice of such termination to each Leasehold Mortgagee. Provided Landlord receives notice not later than the 60th day after Landlord gives notice to each lender that the Lease has terminated and Landlord receives timely notice of the intention of a mortgagee or holder of a deed of trust to enter into a lease with Landlord, Landlord shall enter into a lease on the same terms and conditions as this Lease with any such mortgagee or holder of a deed of trust or any partner thereof covering the Premises, if such mortgagee or holder of a deed of trust so desires, on the condition that the mortgagee or holder of a deed of trust pay to the Landlord the monetary obligations of Tenant due hereunder up to and including the date such lease commences and that such mortgagee or holder of a deed of trust agrees to use the Premises for the purposes set forth in Section 5 hereof. If more than one (1) Leasehold Mortgagee timely gives Landlord a written request for such a new lease, then Landlord shall enter into such new lease with the Leasehold Mortgagee holding, immediately prior to such termination, the lien which is senior, in terms of lien priority (determined by taking all

subordination agreements into account), to the liens held by the other requesting Leasehold Mortgagees. Nothing in this Section 13(c)(i) shall be construed to obligate any Leasehold Mortgagee to remedy any default of the Tenant, and any failure of any Leasehold Mortgagee to complete any such cure after commencing the same shall not give rise to any liability of any Leasehold Mortgagee (or its designee) to the Landlord or the Tenant. Notwithstanding any language to the contrary contained in this Lease, Wells Fargo Bank, National Association and Bonneville Mortgage Company, a Utah corporation, its successors and/or assigns are each a Leasehold Mortgagee under this Lease and each is afforded all rights and protections afforded a Leasehold Mortgagee hereunder.

(ii) Landlord shall accord to persons who are limited partners or members of Tenant the same rights granted to mortgagees and holders of deeds of trust under this Section 13(c), and any performance by such limited partner(s) or member(s) of Tenant shall be considered performance by the Tenant hereunder.

(iii) Notwithstanding anything to the contrary set forth herein, in no event shall any election by Tenant to terminate this Lease in connection with any casualty, condemnation or similar event have any force or effect unless each Leasehold Mortgagee with a recorded leasehold deed of trust consents to such termination, in writing, in its sole and absolute discretion.

14. Inspection. Tenant shall permit Landlord or Landlord's agents to enter the Premises or the Improvements, and all alterations and additions thereto, at all reasonable times upon five (5) days written notice to Tenant for the purpose: (i) of inspecting the same; (ii) of performing obligations of Tenant hereunder which Tenant may neglect or refuse to perform after having given reasonable notice to Tenant; and (iii) for the purpose of showing the Premises to persons wishing to purchase Landlord's interest therein. If, at reasonable times, admission to the Premises for such purposes cannot be obtained, or if at any time an entry shall be deemed necessary for the protection of the Premises, Landlord, or Landlord's agents or representative may enter the Premises by force or otherwise, without rendering Landlord, or Landlord's agents or representatives, liable to any claim or cause of action for damages by reason thereof, except for damages resulting from Landlord's negligence or willful misconduct or the negligence or misconduct of Landlord's agents or representatives. The provisions contained in this section shall not increase Landlord's obligations under this Lease, and the right and authority hereby reserved does not impose upon Landlord any responsibility for the repair, care or supervision of the Premises, or any building, equipment or appurtenance thereto. Nothing in this provision shall permit the Landlord's unauthorized access to the Improvements without Tenant consent.

15. No Abatement. Except as otherwise specifically provided herein, there shall be no abatement or reduction of any rent payable by Tenant for any reason, including, but without limiting the generality of the foregoing: (a) by reason of any damage or destruction of the Premises whether caused by an insured or uninsured peril, condemnation or other matters like or unlike the foregoing, or during any period of restoration, or (b) by reason of diminution of the amount of usable space caused by legally required changes in the construction, equipment, operation or use of the Premises.

16. Quiet Enjoyment. Landlord covenants that, if and so long as Tenant pays the rent and other charges reserved by this Lease and performs all the obligations of Tenant hereunder, Tenant shall quietly enjoy the Premises.

17. Events of Default: Remedies.

(a) If any one or more of the following events (“**Events of Default**”) shall occur, and after Notice by Landlord has been given as provided below, said Notice providing Tenant ninety (90) days to cure, Landlord shall have, at its election, the remedies stated in paragraphs 17 (b), (c), (d), (e) and (f); or

(i) If Tenant shall fail to pay any rent or other sum payable hereunder by Tenant to Landlord or if Tenant fails to pay any other monies required to be paid hereunder within ten (10) days after written notice from Landlord that the same shall have become due and payable; or

(ii) [intentionally omitted]; or

(iii) If Tenant materially breaches the Design Development Plan, an agreement to be negotiated by and entered into by and between Tenant and the Teton County Joint Housing Authority, and such breach shall continue for more than sixty (60) days after Notice thereof from Landlord, provided that such 60-day period shall be extended for up to one year so long as Tenant is diligently proceeding to cure such failure and is making reasonable progress toward that end; or

(iv) If Tenant shall fail to perform or comply with any other term hereof and such failure shall continue for more than sixty (60) days after Notice thereof from Landlord, provided that such 60-day period shall be extended for up to one year so long as Tenant is diligently proceeding to cure such failure and is making reasonable progress toward that end; or

(v) If any execution or attachment shall be issued whereby any of the Premises shall be taken or attempted to be taken by someone claiming through or under the Tenant, and the same shall not be vacated or bonded within ninety (90) days after the issuance thereof; or

(vi) If Tenant shall become unable to pay its debts as they fall due, or shall make a general assignment for the benefit of creditors, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief, under any present or future statute, law or regulation or shall file an answer admitting or shall fail to deny the material allegations of a petition against it for any such relief; or

(vii) If any proceeding against Tenant of the type referred to in subsection 17(a)(v) above, seeking any such relief shall not have been dismissed within ninety (90) days after the commencement thereof; or

(viii) If a trustee, receiver or liquidator of Tenant or of any substantial part of its properties or assets shall be appointed with the consent or acquiescence of Tenant, or if any such appointment if not so consented to or acquiesced in, shall remain unvacated or unstayed for an aggregate of ninety (90) days (whether or not consecutive), then and in any such event Landlord

at any time thereafter, while such Event of Default shall continue, may give a written termination notice to Tenant, and upon the date specified in such notice (subject to the provision of this section relating to the survival of Tenant's obligations) the term of this Lease shall expire and terminate by limitation and all rights of Tenant under this Lease shall cease. Tenant shall pay, as additional rent, all reasonable costs and expenses incurred by or on behalf of Landlord, including, without limitation, reasonable attorneys' fees and expenses, occasioned by any default or Event of Default by Tenant under this Lease; or

(ix) In the event that the Premises fail to be used for the uses permitted pursuant to Section 5 of this Lease.

(b) Repossession. If any of the Events of Default shall have occurred, Landlord shall give Notice thereof to Tenant and any Leasehold Mortgagee(s), its affiliates, successors and/or assigns. If the event of Default is not cured within thirty (30) days of such Notice, Landlord, whether or not the Lease Term shall have been terminated, may, to the extent permitted by applicable law, enter upon and repossess the Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Tenant and all other persons and any and all property therefrom. Landlord shall be under no liability for or by reason of any such entry, repossession or removal.

(c) Reletting. At any time or from time to time after the repossession of the Premises or any part thereof, whether the term of this Lease shall have been terminated, Landlord may (but shall be under no obligation to) relet the Premises or any part thereof for the account of Tenant, in the name of Tenant or Landlord or otherwise, without notice to Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Lease Term) and on such conditions (which may include concessions or free rent) and for such uses as Landlord, in its reasonable judgment, may determine, and may collect and receive the rents therefor.

(d) Termination of Lease Not To Relieve Tenant of Obligations. No expiration or termination of the Lease Term pursuant to the terms of this Lease or by operation of law or otherwise (except as expressly provided herein), and no repossession of the Premises or any part thereof pursuant to this Lease or otherwise, shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination or repossession.

(e) Current Damages. In the event of any such expiration, termination or repossession, Tenant will pay to Landlord the rent and all other sums required to be paid by Tenant upon to the time of such expiration, termination or repossession, and thereafter Tenant, until the end of what would have been the term of this Lease in the absence of such expiration, termination or repossession, shall pay to Landlord, as liquidated and agreed damages for Tenant's default, (i) the rent and all other sums which would be payable under this Lease by Tenant in the absence of such expiration, termination or repossession less (ii) the net proceeds, if any, of any reletting effected for the account of Tenant pursuant to subsection 17(c), after deducting from such proceeds all of Landlord's reasonable expenses in connection with such reletting, including, without limitation, all reasonable repossession costs, reasonable brokerage commissions, reasonable legal expenses, reasonable attorneys' fees, reasonable employees' expenses, reasonable alteration costs, and reasonable expenses of preparation for such reletting.

(f) Right to Receivership. In addition to all other remedies of Landlord hereunder set forth, in the event of the nonpayment by Tenant of the rent reserved herein or of any other sum payable hereunder within the periods of time described herein, or in the event Tenant shall default in the performance of any of its other covenants, agreements or obligations herein contained and the Tenant shall fail to cure any such default in the manner and within the periods of time specified in this section, Landlord shall be entitled to a receiver for the Premises and the Improvements, fixtures and equipment thereon and appurtenances thereto and of the rents, issues and profits thereof as a matter of right, and such receiver may be appointed by any court of competent jurisdiction upon written notice to Tenant, and all rents, issues and profits, income and revenues from the Premises and the Improvements shall be applied by such receiver to the payment of the rent, together with taxes and insurance premiums and expenses of receivership. Upon the curing of all Tenant's defaults, the Premises shall be returned to Tenant and the receivership shall terminate.

(g) Right to Cure. Notwithstanding anything contained in this Lease to the contrary, any Leasehold Mortgagee each shall have the right to cure any Event of Default, and Landlord shall not terminate this Lease for Tenant's default unless and until Landlord has given the Leasehold Mortgagee Notice of such Event of Default and thirty (30) days in addition to any applicable cure period given to Tenant above in which to cure it. If any Event of Default cannot reasonably be cured within thirty (30) days, then the Leasehold Mortgagee shall have such additional time as it shall reasonably require, so long as the Leasehold Mortgagee is proceeding with reasonable diligence and so long as such additional time to cure does not exceed a maximum of an additional 120 days beyond the initial 30-day cure period. Notwithstanding anything to the contrary contained herein, for any Event of Default that cannot be cured without possession of the Premises, Landlord shall allow such additional time as the Leasehold Mortgagee shall reasonably require to prosecute and complete a foreclosure or equivalent proceeding and obtain such possession, including time to obtain relief from a bankruptcy stay in Tenant's bankruptcy.

18. Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant that:

(a) Landlord owns fee simple title to the Premises, free and clear of all liens, charges, encumbrances, and to Landlord's knowledge, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except for those matters affecting title which are of record. To Landlord's knowledge, the Premises are in compliance with all easements, restrictions, and other matters affecting title as of the date hereof. As of the Commencement Date, Landlord has good and marketable title to the Premises. Landlord has, at Tenant's sole cost and expense, provided Tenant with a policy of title insurance covering the Premises, receipt of which is hereby acknowledged.

(b) Landlord has full right, power and authority to make, execute, deliver and perform its obligations under this Lease. Landlord has obtained and received all required and necessary consents and approvals to enter into this Lease with Tenant. The entry by Landlord into this Lease with Tenant and the performance of all the terms, provisions and conditions contained herein does not and will not violate or cause a breach of or default under any agreement or obligation to which Landlord is a party or by which it is bound.

(c) There are no tenants, Tenants or other occupants of the Premises having any right or claim to possession or use of the Premises or a claimed preference for occupancy in the Premises.

(d) There are no unpaid special assessments of which Landlord has received notice, or of which Landlord is otherwise aware, for sewer, sidewalk, water, paving, gas electrical or utility improvements or other capital expenditure, matured or unmatured, affecting the Premises.

(e) Landlord is not obligated under any contract, lease or agreement, oral or written, with respect to ownership, use, operation, management, maintenance, lease, sale or financing of the Premises except as previously disclosed to Tenant.

(f) No representation, statement or warranty by Landlord contained in this Lease or in any exhibit attached hereto contains any untrue statement or omits a material fact necessary to make the statement of fact therein recited not misleading.

(g) There is no action, suit, litigation or proceeding pending or, to Landlord's knowledge, threatened against Landlord and/or the Premises which could prevent or impair Landlord's entry into this Lease and/or performance of its or any of Tenant's obligations hereunder or materially and adversely impact Tenant's rights hereunder.

(h) The person signing this Lease on behalf of Landlord is duly and validly authorized to do so.

(i) There are no pending condemnation proceedings relating to any portion of the Premises, and Landlord has received no notices of the institution or the proposed institution of condemnation proceedings relating to any portion of the Premises or of any other proceedings against or any taking of all or any part of the Premises.

(j) There are no special assessments assessed or due with respect to pending or completed public improvements.

(k) There is no pending or, to Landlord's knowledge, threatened litigation, governmental proceedings, notice of action required to be taken, judgment or cause of action against or related to the Premises and the project, or any portion thereof, or against the Landlord or Landlord's agents with respect to the Premises or any portion thereof.

19. Tenant's Representations and Warranties. Tenant hereby warrants and represents to Landlord that:

(a) Tenant is lawfully organized as a limited liability company under the laws of the State of [_____] and the United States.

(b) Tenant has the full right, power and authority to make, execute, deliver and perform this Lease.

(c) Tenant's execution and delivery of this Lease has been authorized by all requisite action on the part of the Tenant, and the execution and delivery of this Lease by Tenant

and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Tenant is a party or by which it is bound.

(d) There is no action, suit, litigation or proceeding pending or, to Tenant's knowledge, threatened against Tenant that could prevent or impair Tenant's entry into this Lease and/or performance of its obligations thereunder.

(e) The person signing this Lease on behalf of Tenant is duly and validly authorized to do so.

(f) If Tenant becomes liable under any statute, regulation, ordinance or other provision of federal, state, or local law pertaining to the protection of the environment or otherwise pertaining to public health or employee health and safety, including, without limitation, protection from hazardous waste, lead-base paint, asbestos, methane gas, urea formaldehyde insulation, oil, toxic substance, underground storage tanks, polychlorinated biphenyls (PCBs), and radon, the Tenant is required to discharge such costs, expenses, damages, or liabilities in whole or in part from any source. The foregoing indemnification shall survive the dissolution of the Tenant and any transfer of the Premises.

20. Miscellaneous Provisions.

(a) Attorneys' Fees. In the event of any dispute with regard to the interpretation or enforcement of this Lease, the prevailing party shall be entitled to recover his/her/its reasonable costs and attorneys' fees incurred therein, whether or not a lawsuit is actually filed, and on any appeals, and in any bankruptcy proceeding.

(b) Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

(c) Short Form. The parties hereto shall execute and record a short form or memorandum of this Lease to evidence Tenant's interest in the Premises which may be recorded in the applicable recording office.

(d) Business Days. If any amount payable hereunder becomes due on a Saturday, Sunday or a banking holiday, then such amount shall be due and payable on the next business day following such Saturday, Sunday or banking holiday.

(e) Headings. The headings contained in this Lease are for the convenience of reference only and shall not be considered in the construction or interpretation of any provision hereof.

(f) Notices. Except as provided for in All notices, demands and communications hereunder shall be in writing, shall be given at least sixty (60) days prior to the event covered by the notice, and shall be served or given either in person or by certified or registered mail, addressed as follows:

If to Landlord: _____

If to Tenant:
Snavelly Property Company LLC
7139 Pine St., Suite 110
Chagrin Falls, OH 44022
Attn: Peter L. Snavelly Jr.

Baker Hostetler LLP
127 Public Square, Suite 2000
Cleveland, OH 44114
Attn: Christopher Luken

If to Leasehold Mortgagees:
To Be Determined

Any notice given hereunder by mail shall be deemed delivered when received. At the request of the party giving a Notice, the party receiving the Notice shall use its best efforts to reply within less than the sixty (60) days (or other period) otherwise given, and such period may be shortened (but in no event to less than fifteen (15) days) if required by the terms of any mortgage loan or other financing arrangement binding upon the Tenant.

Notwithstanding the foregoing, a notice party may, in its discretion, agree to accept notices and other communications to it under this Lease by electronic communications (including email and internet or intranet websites) pursuant to procedures approved by said recipient party. In furtherance of the foregoing, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the "receipt" by the intended recipient, at its e-mail address as described in clause (i), of notification that such notice or communication is available and identifying the website address, provided, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day.

(g) Consents. In any instance where Landlord's consent is required hereunder, if Landlord shall fail to notify Tenant of Landlord's approval or disapproval of the matter within thirty (30) days after notice to Landlord by Tenant, it shall be concluded that Landlord has consented to such matter.

(h) Entire Agreement. This Lease, together with the exhibits attached hereto, contains the entire agreement between the parties with respect to the matters contained herein, and shall not be modified, altered or amended in any manner except (a) by an instrument in writing

executed by the parties or their respective successors in interest and (b) with the prior written consent of any Leasehold Mortgagee.

(i) Binding Effect. Except as otherwise provided herein, the terms, covenants and conditions in this Lease and in any exhibits attached hereto shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors and assigns.

(j) No Partnership or Joint Venture. The relationship created hereby between the parties is one of Landlord and Tenant. Nothing contained in this Lease shall create or be construed to create a partnership or joint venture between Landlord and Tenant.

(k) Tenant's Obligations Conditional. Tenant's obligations hereunder are conditioned upon Tenant receiving an environmental review of the Premises. [The Tenant has received such an environmental review, which is acceptable to Tenant and satisfies the conditions set forth herein].

(l) Governmental Notices. Landlord and Tenant agree to promptly send copies of all notices received from governmental authorities to any Leasehold Mortgagee.

(m) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Idaho.

(n) Acts of God. In any case where either party is required to perform any work hereunder, delays caused by war, strike, riot, acts of God, pandemics, shortages of material or labor, governmental regulation, or other causes beyond such party's reasonable control shall not be counted in determining the time during which such work shall be completed. In any case where work shall be paid for out of insurance proceeds or condemnation awards, due allowance shall be made, both to the party required to perform such work and to the party required to make such payment, for delays in the collection of such proceeds and awards.

(o) Interest Upon Arrears or Upon Default. Every installment of rent accruing under this Lease and all other sums becoming due or payable to Landlord under this Lease or on account of any default by Tenant in performance or observance of any of the covenants of this Lease, shall, if it is not paid within ten (10) business days after written notice from Landlord that the same is due and payable, bear interest from said date until the same shall be paid at one percent per year above the prime rate for commercial loans then being made by the largest bank in Idaho as ascertained by the Idaho Department of Finance. However, in no event shall such amount bear interest at a rate higher than the maximum rate of interest allowed by law. All sums so advanced or paid by Landlord under the provisions of this Lease shall become due and payable with the installment of rent next becoming due after the date of such advance or payment.

(p) Additional Documents. The parties hereto agree that they will, at any time hereafter, upon reasonable request of the other, execute and deliver such bills of sale, deeds, releases, and waivers, and other instruments, papers or documents as the other party may reasonably require for the purpose of giving full effect to the provisions of this Agreement.

(q) Amendments. Notwithstanding anything to the contrary set forth in this Lease, this Lease may not be amended, modified, changed, cancelled, waived or terminated

without the prior written consent of Tenant and all Permitted Leasehold Mortgagees, which consent shall not be unreasonably withheld, delayed or conditioned.

(r) Limited Third-Party Rights. Notwithstanding anything to the contrary set forth elsewhere in this Lease, each Permitted Leasehold Mortgagee shall be deemed a third-party beneficiary of the provisions of this Lease that reference the Permitted Leasehold Mortgagees, and each Permitted Leasehold Mortgagee shall have rights to enforce such terms (as applicable). The foregoing rights of each Permitted Leasehold Mortgagee to be a third-party beneficiary under this Lease shall be the only rights (express or implied) of each Permitted Leasehold Mortgagee, to be a third-party beneficiary under this Lease.

(s) No Merger. There shall be no merger of this Lease or any interest in this Lease nor of the leasehold estate created hereby, with the fee estate in the Premises, by reason of the fact that this Lease or such interest therein, or such leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Premises, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the leasehold estate created hereby may be conveyed or mortgaged in a Leasehold Mortgage to a Leasehold Mortgagee who shall hold the fee estate in the Premises or any interest of the Landlord under this Lease.

(t) Counterparts. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease the day and year first above written.

LANDLORD:

City of Victor, Idaho
a municipal corporation

By: _____
Name: _____
Title: _____

TENANT:

SNAVELY PROPERTY COMPANY LLC, an
Ohio limited liability company

By: _____
Name: Peter L. Snavely, Jr.
Title: President

Exhibit A

Property Description

A Parcel of land located within the Southeast Quarter (SE1/4) of Section 11, Township 3 North, Range 45 East, Boise Meridian, lying entirely within the City of Victor, Teton County, Idaho, being a portion of that Grant Deed filed as instrument number 268983, also known as Sherman Park parcel number RPB3N45E117200, said Parcel being more particularly described by metes and bounds as follows:

COMMENCING at the Section corner common to Sections 11, 12, 13, and 14, Township 3 North, Range 45 East, Boise Meridian, Teton County, Idaho;

THENCE N 00°04'00" E, 130.69 feet, along the section line common to said Sections 11 and 12 to the point of intersection of said Section Line and the Northerly Right-of-Way line of South Agate Street, also known as the Old Jackson Highway;

THENCE N 46°05'00" W, 83.39 feet, along the Northerly Right-of-Way line of South Agate Street to the point of intersection of the Westerly Right-of-Way line of Baseline Road and the Northerly Right-of-Way line of South Agate Street, the POINT OF BEGINNING;

THENCE continuing N 46°05'00" W, 580.00 feet, along the Northerly Right-of-Way line of South Agate Street to a point;

THENCE N 43°55'00" E, 197.65 feet, along the North line of the Business Development Site illustrated on that Record Of Survey filed as instrument number 185930 to a point;

THENCE N 89°56'00" E, 280.07 feet, along the North line of said Business Development Site to a point on the Westerly Right-of-Way line of Baseline Road;

THENCE S 00°04'00" E, 545.00 feet, along said Right-of-Way line to the POINT OF BEGINNING;

SUBJECT TO all easements of sight and/or record;

Said Parcel encompasses 3.07 acres, more or less.

All in accordance with that Record of Survey titled "City of Victor-Business Development Site" recorded as instrument number 185930.

Exhibit B

Design Development Plan

[to be inserted upon lease execution]