

IMPROVED COMMERCIAL PROPERTY LEASE

This **IMPROVED COMMERCIAL PROPERTY LEASE** (“Lease”) is made and entered into this ____ day of _____, 2023 (the “Effective Date”), by and between **THE CITY OF TENINO**, a Washington municipal corporation (hereinafter referred to as “Lessor”), and **DIG TENINO, LLC**, a Washington limited liability company (hereinafter referred to as “Lessee”).

ARTICLE I **Summary of Lease Terms and Definitions**

Lessor: The City of Tenino
Lessor’s Address: PO Box 4019
Tenino, WA 98589

Lessee: DIG Tenino, LLC
Lessee’s Address: Prior to Lease Commencement:
Attn: Perry Shea, Manager
14307 Barbo Drive SW
Tenino, WA 98589

After Lease Commencement:
At the Premises
Attn: Perry Shea, Manager

Premises: A new 7,233 SF commercial building located on the Northern Section of Lot 2 in the Plat of Tenino Agriculture and Innovation Park, as shown on **Exhibit A** and further described in **Exhibit A-1** attached to this Lease, plus any City-constructed Improvements thereon, which are shown on the SWW Agricultural & Innovation Center North Shell Permit Set (the “Building Plans”) attached as **Exhibit B**.

Authorized Use: See Section 4.1 of this Lease.

Exhibits: **Exhibit A and A1** – Legal Description of Premises
Exhibit B – Building Plans
Exhibit C – Tenant Improvements

Commencement Date: Thirty (30) calendar days following the Lessor obtaining the Final Certificate of Occupancy, or sooner as agreed to in writing by the Parties (the “Commencement Date”).

Term: Starting on the Commencement Date and continuing for thirty (30) years thereafter (the “Initial Term”), plus two options to extend for an additional fifteen (15) years per extension. The “Termination Date” is the end of the Initial Term or any extension thereof, or the earlier termination of this Lease according to the terms.

Base Rent: For the first five (5) years of the Term, Base Rent paid to Lessor will be the larger amount of either (i) thirty percent (30%) of all net

rent, use fees, or license fees collected by Lessee from its subtenants or licensees ("Percentage Split Rent"); or (ii) three thousand dollars (\$3,000.00) per month ("Minimum Rent").

Base Rent shall be subject to the annual and periodic adjustments provided for in this Lease.

* Lessee is responsible for Rent plus any applicable Washington State Leasehold Excise Tax.

Initial Amount of Rental

Bond or Blocked Account: Equal to Two Months Base Rent

Name and Address of
Surety or Bank:

ARTICLE II

Premises, Term, and Renewals

2.1 **PREMISES.** Lessor, in consideration of the rents hereinafter reserved and of the covenants and conditions herein set forth to be performed by Lessee, does hereby lease to Lessee the Premises.

2.2 **TERM.** The term of this Lease shall be for thirty (30) years beginning Thirty (30) calendar days following the Lessor obtaining the Final Certificate of Occupancy, or sooner as agreed to in writing by the Parties (the "Commencement Date").

2.3 **RENEWAL.** Subject to the terms and conditions herein, Lessee shall have the right to renew this Lease for TWO (2) consecutive FIFTEEN (15) year periods by giving written notice of such intention to Lessor at least one-hundred eighty (180) days prior to the expiration of the current term of this Lease or any renewal thereof. Lessee shall not be entitled to renew this Lease unless the Lease is in good standing at the time of renewal and Lessee is not in default under the terms of this Lease, or any other lease or agreement with the Lessor. The terms and conditions of any renewal shall be the same as set forth in this Lease, except that Rent shall be recalculated as provided herein.

ARTICLE III

Compensation and Rental Adjustment

3.1 **RENT.** The term "Rent" as used herein includes Base Rent, applicable Washington State leasehold excise tax, and other fees and charges assessed by this Lease. Except as expressly provided elsewhere herein, Rent and all other sums payable by Lessee pursuant to this Lease shall be paid without the requirement that Lessor provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense, or abatement.

3.1.1 **Rent Installment Payments.** Rent shall be paid in quarterly installments. Base Rent shall be paid for the preceding quarter. The portion of Rent representing Leasehold Excise Tax will be calculated based on the higher amount of what Lessee is paying to the Lessor in that quarterly installment or the amount of Leasehold Excise Tax required to be paid by the Washington State Department of Revenue. The quarters shall be as follows: Q1 -

January through March; Q2 – April through June; Q3 – July through September; and Q4 – October through December. Lessee shall pay Rent to Lessor by the 20th calendar day following the start of the quarter. Upon 120 calendar days' notice from Lessor to Lessee, Lessor may require Rent be paid in monthly installments, in which case Rent shall be paid in the same manner as described above, except that Rent shall be due no later than the 5th calendar day of the month.

3.1.2 Late Charges. A late charge of one percent (1%) per month will be assessed against past due Rent from the date such Rent became due. Additionally, if Rent is not received by the due date as provided in Section 3.1.1, Lessee shall pay Lessor an additional fee of One Hundred Dollars (\$100) or five percent (5%) of the delinquent Rent payment, whichever is greater, to defray costs of collecting and handling such late payment. All accrued interest and late charges shall be paid together with the late Rent payment. Late charges as provided in this Section are considered Rent, and failure to pay such late charges, even where other Rent charges are made current, can be a basis for default under the Lease.

3.1.3 Accounting for Percentage Split Rent. With each quarterly Base Rent payment, Lessee shall provide Lessor with a ledger accounting for all net rent, use fees, or license fees collected by Lessee from its subtenants or licensees during the preceding quarter. Lessee shall sign this ledger certifying its completeness and accuracy.

3.2. BASE RENT ADJUSTMENTS. As set forth in this Section, the Base Rent shall be adjusted annually (the "Annual Adjustment") and shall be periodically adjusted based upon the below procedure (the "Periodic Adjustment").

3.2.1 Annual Adjustment. Minimum Rent for the Premises shall be subject to annual adjustment on January 1st of each year after the first full year of tenancy as follows: Minimum Rent shall be increased by Two and One-Half Percent (2.5%) from the previous year. Percentage Split Rent shall not be adjusted annually.

3.2.2 Periodic Adjustment. In addition to the Annual Adjustments, Base Rent shall be subject to a periodic adjustment as provided for in this Section effective on January 1st of the sixth year following the Commencement Date, and every five years thereafter (the "Adjustment Date"). The Lessor and Lessee shall renegotiate the amount of Base Rent payable to Lessor, and to agree on the amount of Base Rent at least ninety (90) calendar days prior to the Adjustment Date (hereinafter such ninety (90) calendar-day period shall be referred to as the "Renegotiation Deadline"). If the Lessor and Lessee cannot agree on an adjustment of Base Rent before the Renegotiation Deadline, then Base Rent shall be the larger amount of either: (i) the Percentage Split Rent; (ii) Minimum Rent then due based on the annual adjustments in Section 3.2.1; or (iii) the Minimum Rent due at the Commencement Date adjusted to the Consumer Price Index ("CPI") for All Urban Consumers, Region West – Size Class B/C published by the Department of Labor Bureau of Labor Statistics.

3.3 ABATED RENT. If this Lease provides for a postponement of any monthly rental payments, a period of free Rent, or other Rent concession, such postponed rent or free rent is called the "Abated Rent." Lessee shall be credited with having paid all the Abated Rent on the expiration of the term of this Lease only if Lessee has fully, faithfully, and punctually performed all of Lessee's obligations hereunder, including the payment of all Rent (other than the Abated Rent) and all other monetary obligations, and the surrender of the Premises in the condition required by this Lease. Lessee acknowledges that its right to receive credit for the Abated Rent is absolutely conditioned upon Lessee's full, faithful, and punctual performance of its obligations

under this Lease. If Lessee defaults and does not cure within any applicable grace period, the Abated Rent shall immediately become due and payable in full, and this Lease shall be enforced as if there were no such Rent abatement or other Rent concession. In such case, Abated Rent shall be calculated based on the full initial rent payable under this Lease, plus interest thereon, at the rate of Twelve Percent (12%) per annum from date each monthly Rental payment was postponed.

3.4 **CAPITAL RESERVE ACCOUNT.** Lessor will create a “Capital Reserve Account” used to provide capital improvements and upgrade/replacements of significant building infrastructure. Such items may include upgrade and replacements of HVAC system components, electrical panels, exterior improvements to structural members, walls and other primary functional elements required to keep the building operational and compliant with building codes. The Lessor shall retain 5% of the total Rent paid each quarter by Lessee in a Capital Reserve Account until such account reaches \$100,000. Upon termination of this Lease any funds in the Capital Reserve Account shall be released to the Lessor.

ARTICLE IV
Use of Premises, Condition of Property,
Improvements, Removal of Property, Maintenance, and Utilities

4.1 **LESSEE’S USE OF THE PREMISES.** Lessee shall be allowed to operate and conduct the following activities on the Premises: office building for businesses and community organizations, commercial kitchen for catering and/or restaurant, event center for social events, training and conference center for civic and business organizations as well as ancillary uses contemplated and identified in the projects Master Development Plan. These uses must support agriculture and agriculture innovation, including business and community organization use to support agriculture and economic development consistent with the general theme of an agricultural innovation park (the “Authorized Use”).

4.1.1 **Default – Unauthorized Use.** Lessee shall be in default under this Lease if it (i) ceases conducting the Authorized Use for any period exceeding thirty (30) days; or (ii) conducts any other business or activity on the Premises other than those contemplated within the Authorized Use without first obtaining a validly executed lease modification. In conducting the Authorized Use, Lessee shall properly and fairly serve the public, providing reasonable hours of operation and suitable service.

4.1.2 **No Flammable or Dangerous Materials.** Notwithstanding the foregoing described use, the Premises shall not be used to store, distribute, or otherwise handle flammable or dangerous materials, except only such uses which are necessary to conduct the Authorized Use. At the request of Lessor, Lessee shall provide a list of all flammable or dangerous materials stored or used on the Premises.

4.2 **LESSEE INSPECTION – CONDITION OF PROPERTY.** Prior to taking possession of the Premises, Lessee will have an opportunity to fully and carefully inspect the Premises. Upon taking Possession, Lessee shall be deemed to have accepted the Premises, including all existing improvements thereon, “as is” without further maintenance liability on the part of the Lessor, except as specifically noted in this Lease. Lessee is not relying on any representations of Lessor as to condition, suitability, zoning restrictions, or usability, except Lessor’s right to grant a lease of the Premises.

4.2.1 **Existing Improvements.** The Premises contain the following improvements: See **Exhibit B** (the “Existing Improvements”) which are owned by the Lessor.

4.3 **CONSTRUCTION OF TENANT IMPROVEMENTS.** The Lessee and Lessor shall abide by the following terms with regard to making tenant improvements on the Premises (“Tenant Improvements”):

4.3.1 **Tenant Improvements.** Subject to obtaining Lessor’s prior written approval, Lessee may make and install, at its own expense, such Tenant Improvements as are normal and customary in connection with the Authorized Use set forth herein. Lessee shall develop the Premises consistent with regulatory requirements, including, but not limited to zoning, permitting, and Lessor requirements provided in this Lease. Lessee’s contractor, if any, shall be subject to Lessor’s approval, not unreasonably withheld. Lessee shall submit plans to, and obtain written approval from, Lessor before commencing any Tenant Improvements. Lessor shall have a reasonable period to review such plans prior to issuing a decision. Lessor may charge Lessee a reasonable fee for staff, consultant, or attorney time required to review the plans. All Tenant Improvements which are to be designated fixtures shall be so designated by Lessor upon Lessor’s approval of the plans for such improvements. All improvements by Lessee shall conform to the requirements of the Americans With Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.* (the “ADA”). Tenant shall be responsible for all permits related to its improvements. Specific Tenant Improvements required by Lessee to be installed in the building include those items listed in **Exhibit C** – (the “Tenant Improvements”). All other improvements required to complete the building, both exterior and interior, will be the responsibility of the Lessor.

4.3.2 **Reserved.**

4.3.3 **Unauthorized Improvements.** Any Tenant Improvements made on the Premises without Lessor’s prior written consent, or which are not in conformance with the plans submitted to and approved by the Lessor (“Unauthorized Improvements”), shall immediately become the property of Lessor, unless Lessor elects otherwise. Regardless of the ownership of Unauthorized Improvements, Lessor may, at its option, require Lessee to sever, remove, and dispose of them and return the Premises to its prior condition at Lessee’s sole cost and expense; charge Lessee rent for the use of them; or both.

4.4 **REMOVAL OF PERSONAL PROPERTY AND TENANT IMPROVEMENTS AT END OF LEASE.** Prior to the conclusion of the Lease, Lessee shall remove the following from the Premises:

- a. All equipment paid by Tenant or Lessee;
- b. All personal property; and
- c. All Tenant Improvements paid by Tenant or Lessee that are not designated fixtures.

4.4.1 **Lessor’s Remedies.** If any of the foregoing items are not removed from the Premises by the conclusion of the Lease or when Lessor has the right of re-entry, then Lessor may, at its sole option, elect any or all the following remedies:

a. To remove any or all the items and to dispose of them without liability to Lessee. Lessor shall not be required to mitigate its damages, to dispose of the items in a commercially reasonable manner, or to make any effort whatsoever to obtain payment for such items. Lessee agrees to pay Lessor's costs and damages associated with Lessee's failure to remove such items, including, but not limited to, the following: storage, demolition, removal, transportation, and lost rent (collectively "Disposal Costs"); provided, however, that any net proceeds recovered by Lessor in excess of its Disposal Costs will be deducted from Lessee's financial obligation set forth herein. Lessee's financial obligations herein shall survive the termination of this Lease;

b. To have the title to any or all such items revert to Lessor; and/or

c. To commence suit against Lessee for damages or for specific performance.

The foregoing remedies are cumulative and in addition to any other remedies provided by law, and Lessor shall not be required to elect its remedies.

4.5 MAINTENANCE OF PREMISES. Maintenance and repair of the Premises, and all improvements thereon, is the sole responsibility of Lessee. Without limiting the generality of the foregoing, Lessee shall maintain the Premises in good condition including, without limitation, repairing all walls, floors, ceilings, interior doors, and interior and exterior windows and fixtures, as well as damage caused to any portion of the Premises or Lessor's property by Lessee, its employees, agents, licensees, invitees, subtenants, or anyone on the Premises or Lessor's property as a result of Lessee's activities.

4.5.1 Lessor's Maintenance Obligations. Lessor shall maintain in good condition the structural parts of any building on the Premises, which shall include the foundation, bearing and exterior walls, and the subflooring and roof ("Lessor's Maintenance Obligation"). The cost of all remaining maintenance to the building shall be the responsibility of Lessee ("Lessee's Maintenance Obligation"). Should Lessor incur expenses that would otherwise be included in Lessee's Maintenance Obligation, such expenses shall be paid by Lessee as additional Rent. Notwithstanding the foregoing, the cost of any maintenance and repairs occasioned by the negligent or willful act or omission of Lessee, its employees, agents, licensees, or invitees shall be the sole responsibility of Lessee and shall be paid within fifteen (15) days after invoice.

4.6 UTILITIES AND SERVICES. Lessee will arrange and pay for all utility connections and services, and the distribution of such utilities within the Premises. At the end of this Lease, Lessee shall arrange for such utility services to be terminated and for the final bill to be sent to Lessee. Lessee shall be liable for all utility charges that accrue if it fails to so terminate services.

4.7 OFF-STREET PARKING. Lessee agrees to provide space for the parking of vehicles in the number necessary to comply with applicable laws, regulations, and otherwise to accommodate its normal business requirements on the Premises included within this Lease. Lessee is not relying on any public streets, right-of-way, or other properties not included in this Lease for the parking of said vehicles.

ARTICLE V

Insurance and Financial Security

5.1 CASUALTY LOSS OF LESSEE. The parties hereto agree that the Lessor and its elected officials, employees, insurance carrier, and casualty policy shall not be responsible to the Lessee for any property loss or damage done to the Lessee's property, whether real, personal, or mixed, occasioned by reason of any fire, storm, or other casualty whatsoever. It shall be the Lessee's sole responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Lessor, Lessee, third party, or act of nature. Lessee hereby releases and discharges the Lessor and its elected officials, employees, insurance carrier, and casualty policy from any claims for loss or damage to Lessee's property.

5.2 INSURANCE. Lessee shall procure and maintain a comprehensive general liability policy covering all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises or Lessor's property) arising on the Premises or Lessor's property as a result of, or arising out of, Lessee's operations under this Lease. The limits of liability shall be not less than Two Million Dollars (\$2,000,000.00) for each occurrence and in the aggregate unless the Lessee requests, and Lessor approves in writing, a lesser liability limit. If the Lessee maintains higher insurance limits than the minimums required herein, the Lessor shall be insured for the full available limits of Commercial General and/or Excess or Umbrella liability maintained by the Lessee, irrespective of whether such limits maintained by the Lessee are greater than those required by this Lease or whether any certificate of insurance furnished to the Lessor evidences the lower limits of liability set forth above. Lessor may impose changes in the limits of liability (i) on any Adjustment Date; (ii) as a condition of approval of assignment or sublease of this Lease; (iii) upon any breach of the environmental liability provision herein; (iv) upon a material change in the condition of any improvements; or (v) upon a change in the Authorized Use. If the liability limits are changed, Lessee shall obtain new or modified insurance coverage within thirty (30) days after changes in the limits of liability are required by Lessor. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to Lessor.

5.2.1 Policy Provisions. The foregoing insurance policy shall name Lessor as an additional named insured by way of a policy endorsement. Lessee shall provide certificates of insurance and, if requested, copies of any policy to Lessor. Receipt of such certificate or policy by Lessor does not constitute approval by Lessor of the terms of such policy. Furthermore, the policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended, or canceled with respect to Lessor except upon forty-five (45) days' prior written notice from the insurance company to Lessor; (iii) contain an express waiver of any right of subrogation by the insurance company against Lessor and Lessor's elected officials, employees, or agents; (iv) expressly provide that the defense and indemnification of the Lessor as an "additional insured" will not be affected by any act or omission by Lessee which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another; and (vii) provide for coverage for damage to the Lessor's property caused by the Lessee.

5.2.2 Failure to Obtain and Maintain Insurance. If Lessee fails to procure and maintain the insurance described above, Lessor shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums. Lessee shall pay to Lessor, upon demand, the full amount paid by Lessor.

5.2.3 Prudent Business Insurance. The Lessee believes and states that the insurance obligation herein does not exceed that which the Lessee would otherwise normally place upon itself and obtain in order to operate its business in a prudent manner.

5.3 FINANCIAL SECURITY. Lessee agrees that it will secure the performance of the rental portion of this Lease by procuring and maintaining, during the term of this Lease, a corporate surety bond, or by providing other financial security satisfactory to Lessor (herein referred to as the "Bond"), in an amount not less than three months of Base Rent, plus state leasehold excise tax. The Bond shall be in a form and issued by a surety company acceptable to Lessor, and shall comply with the requirements of Washington law. Lessee shall obtain such Bond and forward evidence thereof to Lessor within fourteen (14) days of execution of this Lease, but in no event later than the Commencement Date of this Lease; failure to comply with this requirement shall be grounds for termination of this Lease without notice by Lessor. Such Bond shall be kept always in effect during the term of this Lease; failure to comply with this requirement shall render Lessee in default. The Bond shall be increased annually to reflect any adjustments in annual Rent. Upon any default by Lessee in its obligations under this Lease, Lessor may collect on the Bond to offset the liability of Lessee to Lessor. Collection on the Bond shall not relieve Lessee of liability, shall not limit any of Lessor's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

ARTICLE VI

Environmental Liability

6.1 ENVIRONMENTAL INDEMNIFICATION. Lessee shall defend (with legal counsel suitable to Lessor), indemnify, and hold Lessor harmless from any and all claims, demands, judgments, orders, or damages resulting from Hazardous Substances on the Premises or Lessor's property caused—in whole or in part—by the activity of the Lessee, its agents, subtenants, or any other person or entity (i) on the Premises as a result of, arising out of, or relating to Lessee's operations under this Lease, or any previous lease or agreement; or (ii) on the Lessor's property as a result of, arising out of, or relating to Lessee's operations under this Lease, or any previous lease or agreement. It is the intent of the parties that Lessee shall be responsible for, and shall defend and hold Lessor harmless from, any Hazardous Substances that have or may occur on the Premises or Lessor's property as a result of, arising out of, or relating to Lessee's operations since Lessee first occupied the Premises or other portion of the Lessor's property through this Lease, or any previous lease or agreement with Lessor. The term "Hazardous Substances" as used herein shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.; the Clean Air Act, 42 U.S.C. Sec. 7401 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxics Control Act, Chapter 70A.305 RCW, all as amended and subject to all regulations promulgated thereunder.

6.1.1 Unconditional Environmental Obligations. Lessee's defense and indemnity obligations under this Article are unconditional, shall not be discharged or satisfied by Lessor's re-entry of the Premises or exercise of any other remedy for Lessee's default under this Lease, shall continue in effect after any assignment or sublease of this Lease, and shall continue in effect after the expiration or earlier termination of this Lease.

6.1.2 Environmental Investigations. Although Lessee shall not be liable for any Hazardous Substances on the Premises that were not caused—in whole or in part—by the

activity of the Lessee, its agents, subtenants, or any other person or entity on the Premises as a result of, arising out of, or relating to Lessee's operations under this Lease, or any previous lease or agreement, Lessee shall be responsible for the costs of any environmental investigations or remediation arising from the development or use of the Premises by Lessee, and Lessee hereby releases the Lessor from any contribution claim for those costs. By way of example only, if the Lessee excavates soil on the Premises which contains Hazardous Substances, then the Lessee will be responsible for the cost associated with disposing of those soils regardless of when or how the Hazardous Substances were released into those soils.

6.2 CURRENT CONDITIONS AND DUTY OF LESSEE. Lessor makes no representation about the condition of the Premises. Hazardous Substances may exist in, on, under, or above the Premises. Lessee should, but is not required to, conduct environmental assessments or investigations of the Premises prior to or during this Lease to determine the existence, scope, and location of any Hazardous Substances. If there are any Hazardous Substances in, on, under, or above the Premises as of the Commencement Date, Lessee shall exercise the utmost care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions.

6.2.1 Prior Notice of Environmental Investigation. Prior to conducting any environmental investigation of the subsurface of the Premises, the Lessee shall provide prior written notice to the Lessor. Lessee shall provide the Lessor with the results of all such investigations.

6.3 NOTIFICATION AND REPORTING. Lessee shall immediately notify Lessor if Lessee becomes aware of any of the following:

- a. A release or threatened release of Hazardous Substances in, on, under, or above the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises;
- b. Any problem or liability related to or derived from the presence of any Hazardous Substance in, on, under, or above the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises;
- c. Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises; or
- d. Any lien or action with respect to any of the foregoing.

6.3.1 Copies of All Environmental Reports. Lessee shall, at Lessor's request, provide Lessor with copies of any and all reports, studies, or audits which pertain to environmental issues or concerns with the Premises, and which are or were prepared by or for Lessee and submitted to any federal, state, or local authorities pursuant to any federal, state, or local permit, license, or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

ARTICLE VII

Miscellaneous Provisions

7.1 **LESSEE WILL OBTAIN PERMITS.** Lessee agrees to obtain and comply with all necessary permits for any Tenant Improvements and to conduct the Authorized Use. If Lessee fails to obtain and comply with such permits, then Lessee accepts full responsibility for any and all costs incurred by Lessor, including actual attorneys' fees. In this way, Lessee agrees to be solely responsible for all damages, costs, and expenses incurred as a result of Lessee's failure to fully comply with any necessary permit process and requirements.

7.2 **LIENS.** Lessee agrees to keep the Premises described herein free and clear of all liens and charges whatsoever. Lessee shall not allow any mechanics and materialmen's liens, or any other liens, be placed upon the leased Premises. If such a lien is placed or recorded, Lessee shall cause it to be discharged of record, at its own expense, within ten (10) days of Lessor's demand. Failure to comply with Lessor's demand within ten (10) days shall be a default under the terms of this Lease.

7.3 **INDEMNIFICATION AND HOLD HARMLESS.** The Lessee agrees that it will defend (with legal counsel acceptable to Lessor), indemnify, and hold harmless the Lessor, its elected officials, employees, and agents from any and all demands, claims, judgments, or liability for loss or damage arising as a result of accidents, injuries, or other occurrences on the Premises or on Lessor's property (i) occasioned by either the negligent or willful conduct of the Lessee or its agents; or (ii) made by any person or entity holding under the Lessee, or any person or entity on the Premises or on the Lessor's property as a result of Lessee's activity, regardless of who the injured party may be. This indemnification and hold harmless shall not apply to the extent the damages was caused by the gross negligence or willful misconduct of the Lessor.

7.4. **LIMITED WAIVER OF IMMUNITY UNDER WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, AND OTHER SIMILAR INDUSTRIAL INSURANCE SCHEMES.** For purposes of the foregoing indemnification provision, and only to the extent of claims against Lessee by Lessor under such indemnification provision, Lessee specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, or any other similar workers' compensation schemes. The indemnification obligation under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the parties hereto.

7.5 **LAWS AND REGULATIONS.** Lessee agrees to conform to and abide by all applicable rules, codes, laws, and regulations in connection with its use of the Premises, the construction of improvements, and the operation of Lessee's business thereon; and not to permit said Premises to be used in violation of any applicable rule, code, law, regulation, or other authority.

7.5.1 **Environmental Laws and Regulations.** Lessee's obligations herein shall include, but in no way be limited to, the obligation to comply with all State and Federal environmental laws and regulations. Lessee shall defend (with legal counsel acceptable to Lessor), indemnify, and hold harmless the Lessor from any fine, penalty, or damage imposed by any lawful authority, which may arise as a result of the Lessee's failure to comply with the obligations of this Article.

7.6 **WASTE AND REFUSE.** Lessee agrees not to allow conditions of waste and refuse to exist on the Premises, and to keep the Premises in a neat, clean, and orderly condition.

7.7 TAXES AND ASSESSMENTS. Lessee agrees to pay all taxes assessed against the leasehold interest and a pro rata share of any assessments made against the Premises for installation of public utility systems, based upon a reasonable overall sharing program among all properties within the assessment area.

7.8 SIGNS. No signs shall be installed without the prior written permission of Lessor. In the event that an unauthorized sign has been installed, and after twenty-four (24) hours' notification to remove the sign by the Lessor, Lessee shall pay the Lessor a penalty of One Hundred Dollars (\$100) per day for each day the sign remains in place after such notification. The penalty shall automatically resume, without notice, if the sign is reinstalled after having been removed. The penalty accrued shall be paid with the next month's Base Rent. In addition, the Lessor reserves the right to provide notice of, and treat an unauthorized sign as, a non-monetary default of this Lease.

7.9 EQUAL OPPORTUNITY. Lessee agrees that in the conduct of activities on the Premises, it will be an equal opportunity employer in accordance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 et seq., and shall comply with all requirements of the ADA.

7.10 LITIGATION. In the event Lessor shall be made a party to any litigation commenced by or against Lessee (other than actions commenced by Lessee or Lessor concerning the interpretation or enforcement of any of the terms and conditions of this Lease), then Lessee agrees to pay all costs, expert witness fees, and attorneys' fees, including all customary charges incurred by Lessor in connection with such litigation. However, if Lessor is made a party defendant and Lessee undertakes the defense of the action on behalf of Lessor, then no obligation for costs and attorneys' fees will be chargeable against Lessee by Lessor for costs arising out of such undertaking.

7.11 ASSIGNMENT OF LEASE. Lessee shall not assign, rent, or sublease any portions of this Lease, or any extension thereof, without the prior written consent of Lessor, and no rights hereunder in or to said Premises shall pass by operation of law or other judicial process, or through insolvency proceedings. Otherwise, the rights and obligations hereof shall extend to and be binding upon their respective successors, representatives, and assigns, as the case may be. Lessee shall furnish Lessor with copies of all such subassignment, sublease, or rental documents. For the purposes of this Lease, any change of ownership including sale, liquidation, or other disposition of some or all of the corporate stock or limited liability company units will be considered an assignment. Should the Lessor consent to an assignment made by the Lessee for the purposes of obtaining a loan or other consideration from a third party, then the Lessor's consent shall be made in accordance with the consent to assignment document used by Lessor for these specific assignments. A copy of this consent form shall be provided by Lessor upon request of Lessee.

7.11.1 Remedy If Lessor Denies Assignment. If Lessor refuses to consent to an assignment, Lessee's sole remedy shall be the right to bring a declaratory judgment action to determine whether Lessor was entitled to refuse such assignment under the terms of this Lease.

7.11.2 No Waiver of Future Consents. No consent by Lessor to any assignment or sublease shall be a waiver of the requirement to obtain such consent with respect to any other or later assignment or sublease. Acceptance of Rent or other performance by Lessor following an assignment or sublease, whether or not Lessor has knowledge of such assignment or

sublease, shall not constitute consent to the same nor as a waiver of the requirement to obtain consent to the same.

7.11.3 Lessee's Liability on Assignment or Sublease. If this Lease is assigned, the underlying beneficial interest of Lessee is transferred, or if the Premises or any part thereof is sublet to or occupied by anybody other than Lessee, Lessor may collect Rent from the assignee, subtenant, or occupant, and apply the net amount collected to the Rent herein reserved; but no such assignment, subletting, occupancy, or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant, or occupant as tenant, or as a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. No assignment or subletting shall affect the continuing primary liability of Lessee (which, following assignment, shall be joint and several with the assignee), and Lessee shall not be released from performing any of the terms, covenants, and conditions of this Lease.

7.11.4 Proceed Against Lessee. Notwithstanding any assignment or sublease; any indulgences, waivers, or extensions of time granted by Lessor to any assignee or sublessee; or failure of Lessor to take action against any assignee or sublease, Lessee hereby agrees that Lessor may, at its option, proceed against Lessee without having taken action against or joined such assignee or sublessee, except that Lessee shall have the benefit of any indulgences, waivers, and extensions of time granted to any such assignee or sublessee.

7.11.5 Assignee/Sublessee Insurance. In the event the Lessor approves an assignment or sublease hereunder, such assignee or sublessee shall provide Lessor with insurance certificates and/or endorsements evidencing such assignee or sublessee's compliance with the insurance provisions set forth herein, including, but not limited to, the endorsement of Lessor as an additional insured under such policy or policies.

7.12 DEFAULT, CROSS DEFAULT, AND REMEDIES.

7.12.1 Monetary Defaults. Failure to pay Rent or any other monetary obligations by the fifteenth (15th) day of each month shall constitute a default under the terms of this Lease. If Lessee is in default in the payment of Rent or other monetary obligations then, at Lessor's sole option, and upon thirty (30) days' written notice, this Lease may be terminated, and Lessor may enter upon and take possession of the Premises. Without limiting the generality of the foregoing, Lessee expressly authorizes Lessor to obtain a prejudgment writ of restitution in the event of default by Lessee. This remedy is in addition to, and is not exclusive of, any other remedies provided either by this Lease or by law.

7.12.2 Non-monetary Defaults. If Lessee shall fail to perform any term or condition of this Lease, other than the payment of Rent or other monetary obligations, then Lessor, upon providing Lessee thirty (30) days' written notice of such default, may terminate this Lease and enter upon and take possession of the Premises. This remedy is in addition to, and is not exclusive of, any other remedies provided either by this Lease or by law.

7.12.3 Other Defaults. The following shall also constitute a default under the terms of this Lease:

- (i) a default by Lessee under any other agreement or lease with the Lessor;
- (ii) insolvency of Lessee;
- (iii) an assignment by Lessee for the benefit of creditors;

- (iv) the filing by Lessee of a voluntary petition in bankruptcy;
- (v) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee;
- (vi) the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing;
- (vii) attachment of or the levying of execution on the leasehold interest; and
- (viii) failure of Lessee to secure a discharge of the attachment or release of the levy of execution within ten (10) days.

7.12.4 Multiple Defaults in a Year. If within any one (1)-year period, Lessor serves upon the Lessee three (3) notices requiring Lessee either to (i) comply with the terms of this Lease or to vacate the Premises; or (ii) pay Rent or vacate (collectively referred to herein as "Default Notices"), then Lessee shall, upon a subsequent violation of any term of this Lease by the Lessee (including failure to pay Rent), be deemed to be in unlawful detainer, and Lessor may, in addition to any other remedies it may have, immediately terminate the Lease and/or commence an unlawful detainer action without further notice to Lessee.

7.12.5 Cross-Default. A default under this Lease shall constitute a default under any other lease or agreement which Lessee has with Lessor (hereinafter such other agreements shall be referred to as "Collateral Agreements"). Likewise, any material breach or default under a Collateral Agreement shall be deemed a material breach or default under the terms of this Lease. If a Collateral Agreement is terminated for a material breach or default of Lessee, then Lessor shall, without limiting any other remedies it may have, be entitled to terminate this Lease upon five (5) days' written notice to Lessee.

7.12.6 Other Remedies. In addition to the foregoing remedies specified in this Article, Lessor may exercise any remedies or rights under the laws of the State of Washington including, but not limited to, recovering damages for past due rent, future rent, costs to re-let the Premises, and costs to restore the Premises to its prior condition (reasonable wear and tear expected). Under no circumstances shall Lessor be held liable in damages or otherwise by reason of any lawful re-entry or eviction. Lessor shall not, by any re-entry or other act, be deemed to have accepted any surrender by Lessee of the Premises, or to have otherwise terminated this Lease or to have relieved Lessee of any obligation hereunder. Lessor shall be under no obligation to observe or perform any covenant of this Lease after the date of any material default by Lessee unless and until Lessee cures such default. A fee of Five Hundred Dollars (\$500.00) shall be assessed to Lessee for each Default Notice issued to Lessee to defray the costs associated with preparing, issuing, and serving such notice. This fee shall be payable on the first (1st) day of the month following the issuance of the Default Notice.

7.13 TERMINATION. This Lease shall terminate for default if Lessee fails to cure any default within the time provided for herein. Upon termination of this Lease or any extension thereof, whether by expiration of the stated term or sooner termination thereon, as herein provided, Lessee shall surrender to Lessor the Premises peaceably and quietly. Lessee shall restore the Premises to the condition existing at the time of initiation of this Lease, except for (i) normal wear and tear; and (ii) any improvements which Lessor permits to remain on the Premises.

7.14 NON-WAIVER. Neither the acceptance of Rent nor any other act or omission of Lessor after a default by Lessee or termination shall operate as a waiver of any past or future default by Lessee, or be construed to deprive Lessor of its right to terminate this Lease or to prevent Lessor from promptly exercising any other right or remedy it has under this Lease. Any waiver by Lessor shall be in writing and signed by Lessor in order to be binding on Lessor.

7.15 **NOTICES.** Any notice, demand, request, consent, approval, or communication that either party desires, or is required to give to the other party, shall be in writing and addressed to the other party at the addresses set forth in Article I above, or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first (1st) attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

7.16 **AGENT FOR SERVICE.** Lessee agrees that if Lessee is in unlawful detainer, pursuant to Chapter 59.12 RCW, and Lessor is unable to serve Lessee with the unlawful detainer pleadings after one (1) service attempt, then Lessor shall be deemed to have complied with the service requirements of Chapter 59.12 RCW if it mails such pleadings via certified mail to the address set forth in the "Notice" section of this Lease and posts such pleadings in a conspicuous location on the Premises. Service shall be deemed complete on the third (3rd) day following the day of posting or day of mailing, whichever is later.

7.17 **SECURITY.** Lessee specifically acknowledges that Lessor has no duty to provide security for any portion of the Premises or Lessor's Property. Lessee assumes sole responsibility and liability for the security of itself, its employees, customers, and invitees, and their respective property in or about the Premises or Property. Lessee agrees that to the extent Lessor elects to provide any security, Lessor is not warranting the effectiveness of any such security personnel, services, procedures, or equipment, and that Lessee is not relying and shall not hereafter rely on such security personnel, services, procedures, or equipment. Lessor shall not be responsible or liable in any manner for failure of any such security personnel, services, procedures, or equipment to prevent or control, or to apprehend anyone suspected of personal injury or property damage in, on, or around the Premises or Property.

7.18 **QUIET ENJOYMENT.** Lessor acknowledges that it has ownership of the Premises and that it has the legal authority to lease the Premises to Lessee. Lessor covenants that Lessee shall have quiet enjoyment of the Premises during the term of this Lease so long as Lessee complies with this Lease and subject to Lessor's right of entry onto the Premises as set forth herein.

7.18.1 **Easements.** The Lessor reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses applied for will not unduly interfere with the Lessee's Authorized Use or with the approved plan of development for the Premises.

7.19 **LESSOR MAY ENTER PREMISES.** It is agreed that the duly authorized officers or agents of Lessor may enter to view said Premises at any time, and if the business or normal function of Lessor should at any time require that it enter upon the Premises to perform any work or make any improvements, it may do so, but not in such manner as to materially interfere with Lessee's Authorized Use.

7.20 **TIME.** It is mutually agreed and understood that time is of the essence of this Lease, and that a waiver of any default of Lessee shall not be construed as a waiver of any other default.

7.21 **INTERPRETATION.** This Lease has been submitted to the scrutiny of the parties hereto and their counsel, if desired. In any dispute between the parties, the language of this Lease shall, in all cases, be construed as a whole according to its fair meaning and not for or against

either the Lessor or the Lessee. If any provision is found to be ambiguous, the language shall not be construed against either the Lessor or Lessee solely on the basis of which party drafted the provision. If any word, clause, sentence, or combination thereof, for any reason, is declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such finding shall in no way affect the remaining provisions of this Lease.

7.22 HOLDING OVER. If the Lessee remains in possession of said Premises after the date of expiration of this Lease without Lessor's prior written consent, such holding over shall constitute and be construed as tenancy at sufferance only, at a monthly rent equal to one hundred fifty percent (150%) of the Base Rent owed during the final month of the Term of this Lease, and otherwise upon the terms and conditions in this Lease. If Lessee holds over with Lessor's prior written consent, then, until such time as a new written Lease is executed by the parties hereto, Lessee shall continue to make payments to Lessor on a month-to-month basis as provided for in this Lease. Such authorized holdover tenancy may be terminated by either party at the end of any such monthly period by sending written notice not less than five (5) days before the end of such period. Such authorized holdover tenancy shall be subject to all terms and conditions contained herein.

7.23 SURVIVAL. All obligations of the Lessee, as provided for in the Lease, shall not cease upon the termination of this Lease and shall continue as obligations until fully performed. All clauses of this Lease which require performance beyond the termination date shall survive the termination date of this Lease.

7.24 GOVERNING LAW. This Lease, and the rights of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, jurisdiction and venue shall lie exclusively in Thurston County, Washington, and not in any federal court.

7.25 ATTORNEYS' FEES – LEASE ENFORCEMENT. The prevailing party in any action to enforce any term or condition of this Lease shall be entitled to an award of their reasonable costs and attorneys' fees.

7.26 ESTOPPEL CERTIFICATES. At Lessee's request, Lessor agrees to execute and deliver to Lessee or its lender(s) a customary estoppel certificate in a form acceptable to the Lessor which shall set forth the following information: (i) the terms and conditions of this Lease; (ii) the status of the Rent payments under the Lease; and (iii) Lessor's knowledge of any breaches or anticipated breaches of the Lease. Lessor shall have no obligation to execute an estoppel certificate which requests any information other than as set forth above. Lessee agrees to reimburse the Lessor for all staff time incurred and attorneys' fees paid by Lessor for the review and opinion of such attorney acting on the request for such estoppel certificate and in negotiating acceptable language in the estoppel certificate. A failure to reimburse Lessor within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease.

7.27 ATTORNMEN**T.** In the event the Premises are sold, Lessee shall attorn to the purchaser upon the sale; provided that the purchaser expressly agrees in writing that, so long as Lessee is not in default under the Lease, Lessee's possession and occupancy of the Premises will not be disturbed and that such purchaser will perform all obligations of Lessor under the Lease.

7.28 **COUNTERPARTS AND ELECTRONIC TRANSMISSION.** This Agreement may be signed in counterparts. Electronic transmission of any signed original document, and retransmission of any signed electronic transmission, shall be the same as delivery of an original document.

7.29 **ENTIRE AGREEMENT.** This Lease contains all of the understandings between the parties. Each party represents that no promises, representations, or commitments have been made by the other as a basis for this Lease which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Lease and executed with all necessary legal formalities by the City of Tenino City Council.

7.30 **VALIDATION. IN WITNESS WHEREOF,** Lessor has caused this instrument to be signed by its _____ by authority of the Mayor of the City of Tenino, and this instrument has been signed and executed by Lessee, the day and year first above written.

THIS LEASE CONTAINS INDEMNIFICATIONS FROM THE LESSEE TO THE LESSOR, RELEASES BY THE LESSEE AND A LIMITED WAIVER OF IMMUNITY UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, OR ANY OTHER SIMILAR WORKERS' COMPENSATION SCHEMES, WHICH WERE SPECIFICALLY NEGOTIATED.

[Signatures on following page]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the Effective Date.

LESSEE:

DIG TENINO, LLC

By: Perry Shea
Its: Manager

LESSOR:

CITY OF TENINO

By: Wayne Fournier
Its: Mayor

ATTEST:

By: Jen Scharber
Its: Clerk/Treasurer

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, **WAYNE FOURNIER**, to me known to be the Mayor of the City of Tenino and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this ____ day of _____, 2023.

Print Name: _____
NOTARY PUBLIC in and for the
State of Washington, residing at _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, **PERRY SHEA**, to me known to be the **MANAGER of DIG TENINO, LLC** and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this ____ day of _____, 2023.

Print Name: _____
NOTARY PUBLIC in and for the
State of Washington, residing at _____
My commission expires: _____

EXHIBIT A
Depiction of Premises

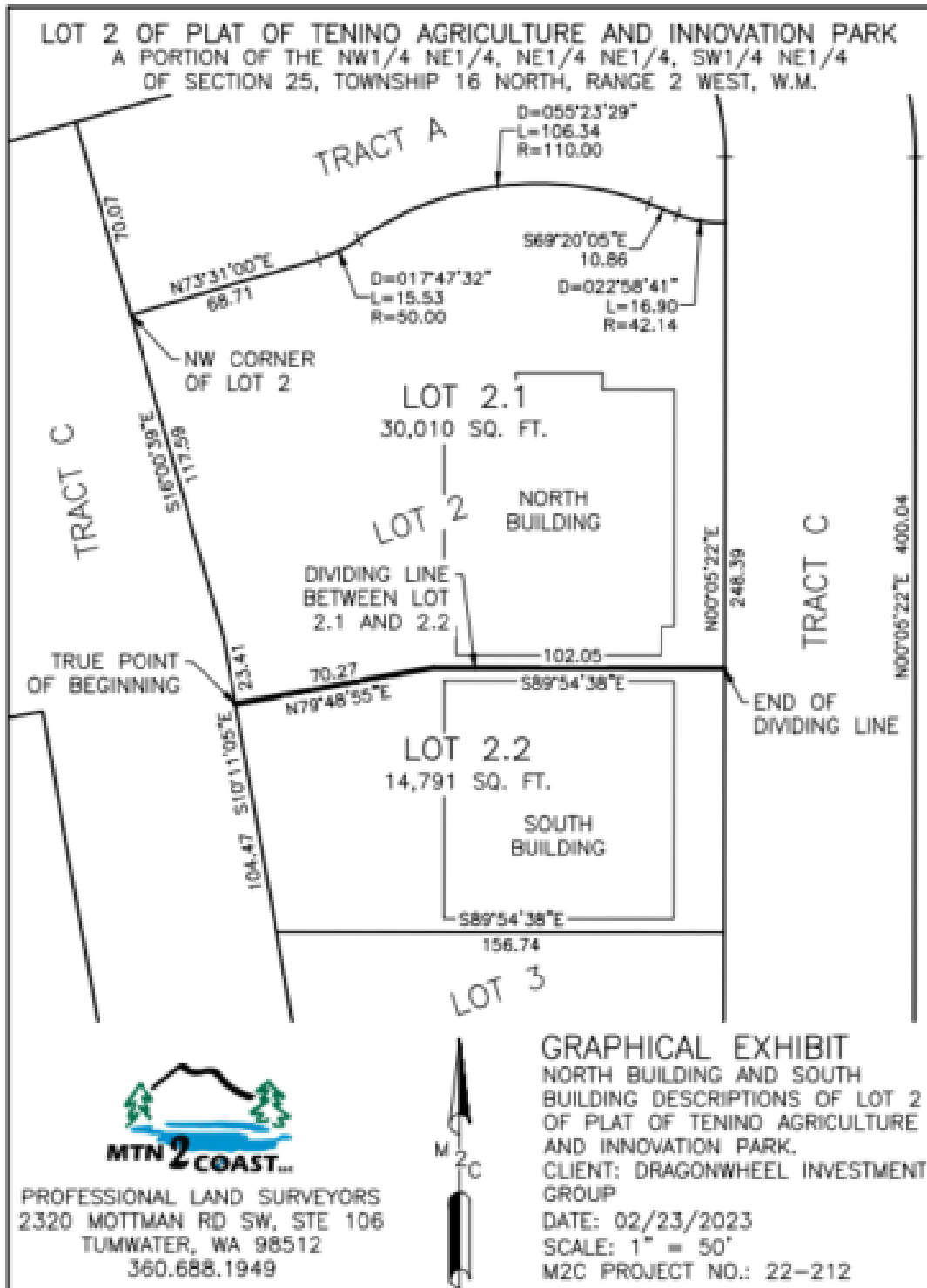


EXHIBIT A-1
Legal Description of Premises

**LEGAL DESCRIPTION FOR LEASING PURPOSES OF THE NORTH BUILDING ON LOT 2
OF PLAT OF TENINO AGRICULTURE AND INNOVATION PARK**

LOT 2.1 (NORTH BUILDING)

THAT PORTION OF LOT 2 OF PLAT OF TENINO AGRICULTURE AND INNOVATION PARK, LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER, THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 16 NORTH, RANGE 2 WEST, W.M., LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2;
THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 2, SOUTH 16°00'39" EAST, 117.59 FEET;
THENCE CONTINUING SOUTH ALONG SAID WEST LINE, SOUTH 10°11'05" EAST, 23.41 FEET TO THE TRUE POINT OF BEGINNING OF SAID LINE;
THENCE NORTH 79°48' 55" EAST, 70.27 FEET;
THENCE SOUTH 89°54'38" EAST, 102.05 FEET TO THE EAST LINE OF SAID LOT 2 AND THE TERMINUS OF SAID LINE;

LOT 2.1 CONTAINING 30,010 SQUARE FEET, MORE OR LESS;

SITUATE IN THE CITY OF TENINO, COUNTY OF THURSTON, STATE OF WASHINGTON.

EXHIBIT B
Building Plans



 <p>ARTISANS GROUP ARCHITECTURE + PLANNING</p> <p>ARTISANS GROUP ARCHITECTURE + PLANNING 1000 N. GARDEN AVENUE, SUITE 100 DENVER, CO 80202 TEL: 303.733.1111 WWW.ARTISANSGROUP.COM</p>	
<p>SSW Agricultural & Innovation Center - North TI</p> <p>PROJECT NUMBER: 110116.0010</p> <p>DATE: 07.23.2023</p> <p>SCALE: 1/8" = 1'-0"</p> <p>PROJECT NUMBER: 110116.0010</p>	
<p>DESIGNED BY: ACUB</p> <p>DRAWN BY: JH</p> <p>DATE: 07.23.2023</p> <p>SCALE: 1/8" = 1'-0"</p> <p>PROJECT NUMBER: 110116.0010</p>	
<p>REVISION:</p>	
<p>DATE: 07.23.2023</p>	
<p>SCALE: 1/8" = 1'-0"</p>	
<p>PROJECT NUMBER: 110116.0010</p>	
<p>FLOOR PLAN - CLIENT COPY</p>	
<p>A0</p>	

EXHIBIT C
Tenant Improvements

1. Plumbing fixtures & finishes
2. Electrical trim, finishes, lighting fixtures
3. HVAC truck line from primary building units in mezzanine
4. All kitchen appliances
5. All cabinetry, built-in units, and furnishings