

THE CITY OF TENINO LAND LEASE

By and between

**The City of Tenino,
a Washington municipal corporation**

&

**DIG Tenino LLC,
a Washington limited liability company**

For

**Lot 2 South Building Area
Lot 2 Plat of Tenino Agriculture and Innovation Park**

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CITY OF TENINO LAND LEASE

THIS CITY OF TENINO LAND LEASE (the "Lease") is made and entered into this _____ day of _____, 2023 (the "Effective Date"), by and between the CITY OF TENINO, a Washington municipal corporation ("Lessor"), and DIG Tenino LLC, a Washington limited liability company ("Lessee"). Lessor and Lessee may each be referred to herein as a "Party", or collectively as the "Parties".

1. **LEASE SUMMARY.**

1.1 PREMISES. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, upon and subject to the terms and conditions of this Lease, that certain real property located on the southern section of "LOT 2 (Lot 2 South Building)" on the attached PLAT OF TENINO AGRICULTURE AND INNOVATION PARK (the "Agricultural Park"), as shown on **Exhibit A** and further described in **Exhibit A-1** (the "Premises"), both attached hereto and hereby incorporated by reference, consisting of approximately ~~FOURTEEN THOUSAND SEVEN HUNDRED NINETY-TWO~~ (14,792) square feet, and located at 16402 Old Hwy. 99 SE Tenino, WA 98589, subject to the encumbrances, rights, and reservations as shown therein or provided in this Lease, and as presently existing or hereafter arising pursuant to governmental authority.

The Parties acknowledge and agree that Lessor is responsible for applying for, processing, obtaining, and recording such approvals as may be necessary for the division of the Premises from the larger property owned by Lessor of which the Premises are a part of the approved Final Plat land subdivision recorded by Lessor, and Lessor shall bear all costs and expenses thereof. Lessee shall be given the opportunity to review and approve all applications and submissions regarding the Premises made by Lessor in connection therewith prior to submission, with Lessee's approval not to be unreasonably withheld. If the division of the Premises from the larger property owned by Lessor requires environmental review pursuant to the State Environmental Policy Act ("SEPA"), then the Lessor retains the right to modify or condition the Lease on completion of SEPA review pursuant to Section 1.12 of this Lease. In such an event, the Parties retain the right to terminate the Lease consistent with the Early Termination Provision in Section 1.2.1 of this Lease.

1.2 TERM. The initial term shall be THIRTY (30) years, commencing on the Effective Date, and ending THIRTY (30) years thereafter (the "Term"). Lessee shall also have the option to extend as outlined below.

1.2.1 Early Termination. Either Party may terminate this Lease, without further obligation, on or before the completion of the SEPA review pursuant to the condition precedent in the Permitting and Environmental Review Provision in Section 1.12 of this Lease. Either Party may exercise the early termination right provided in this paragraph within thirty (30) calendar days following completion of the SEPA review process. For the purposes of this paragraph, the date of completion of the SEPA review process means the later date of: (i) the day following the expiration of any appeal period following a threshold determination of Determination of Non-significance ("DNS") or a Mitigated Determination of Non-significance ("MDNS") if no appeals are filed; (ii) a final decision following an appeal and expiration of or exhaustion of any subsequent appeal rights; or (iii) in the case of a threshold Determination of Significance ("DS"), the completion of the Environmental Impact Statement ("EIS") process and any appeals thereof. To terminate this Lease early under this paragraph, the Party intending to terminate shall provide written notice to the other Party according to Notice provision in Section 39 of the Lease.

1.3 OPTION TO EXTEND TERM. Lessee shall have TWO (2) options to extend the Term (each an "Option to Extend") for an additional period of FIFTEEN (15) years each. Such extension shall

Commented [A1]: What is the square Feet figure? Legal description describes lot 2.2 but gives a sq ft calc for lot 2.1 at 30,010. If Lot 2.2 is the balance, according to the total sq ft of 44,802 listed on the site plan, lot 2.2 would be 14,792. Is that correct?

Commented [A2R1]: Yes, 14,792 is the correct number.

be upon the terms, covenants, and conditions contained herein. The extension term shall commence on the expiration of the immediately preceding term. Such Option to Extend may be exercised only by written notice to Lessor no later than ONE HUNDRED EIGHTY (180) days prior to the expiration of the then current term. Lessee shall not be entitled to extend this Lease if Lessee is in default of the performance of its obligations hereunder at the date notice of extension is due or at the date the extension term is to commence. In addition, Lessee shall not be entitled to renew this Lease if Lessee is a corporation, limited liability company, or other entity whose stated duration will expire prior to the end of the renewal term. For the purposes of this Lease, "Term" shall include any extension exercised pursuant to an Option to Extend.

1.4 MINIMUM GROUND RENT. Initial rent ("Minimum Ground Rent") shall be calculated on an annual basis in an amount equal to FIFTY TENTHS CENTS (\$0.50) per square foot of leasable land area of the Premises, but payable on a quarterly basis in FOUR (4) equal installments. **Exhibit F**, attached hereto and hereby incorporated by reference, contains a breakdown of the Minimum Ground Rent calculation. In addition to Minimum Ground Rent, Lessee shall also pay the associated Washington State Leasehold Tax as part of Rent.

1.5 RENT COMMENCEMENT DATE. Rent shall commence at the earliest to occur of: (a) the date Lessee receives a temporary Certificate of Occupancy issued by the City of Tenino; or (b) NINE (9) months from the Effective Date.

1.5.1 Leasehold Excise Tax. Starting on the Effective Date, Lessee shall pay Lessor the applicable Washington State Leasehold Tax on a quarterly basis.

1.6 SECURITY DEPOSIT. No security deposit shall be required under this Lease.

1.7 USE OF PREMISES. Lessee may use the Premises for the development, construction, and use of a private office building, and other associated activities approved by Lessor in writing.

1.8 INSURANCE
Bodily Injury/Death: Combined Single Limit \$1,000,000 each occurrence.
Property Damage per Occurrence: \$500,000.

Lessee shall submit certificates evidencing compliance with **Paragraph 14**, and at Lessor's request shall provide Lessor with the actual policies or copies thereof. Lessee shall furnish Lessor with evidence of renewal of such policies not less than THIRTY (30) days prior to their expiration. 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.

1.9 ASSIGNMENT. Lessee shall have the right to assign this Lease: (i) to its lender (the "Bank") for financing purposes; (ii) to an affiliated entity of Lessee; or (iii) with Lessor's written consent which shall not be unreasonably withheld.

1.10 LESSOR IMPROVEMENTS. Lessor with provide pad ready improvements to support Lessee's Office Building (as defined below), as outlined in **Exhibit C**, attached hereto and hereby incorporated by reference.

1.11 LESSEE IMPROVEMENTS. Lessee shall construct a private office building (the "Office Building") on the Premises in accordance with Lessee's approved building layout, site concept, and associated timeline (collectively, "Lessee's Building Plans"), as approved by Lessor.

Thereafter, Lessee shall enter into a net-free cost office sublease with the Thurston Economic Development Council & Center for Business & Innovation ("CB&I") for office and training purposes in the Office Building (the "CB&I Suite") for an initial term not to exceed 5 (five) years from the Effective Date, or until CB&I ceases to provide economic development services to Lessor, whichever is earlier. If agreed to by the Lessor and Lessee, this net-free cost office sublease to CB&I may be extended beyond the initial 5 (five) year term, which will be factored positively to reflect the value of the space rented into the periodic adjustment of Rent pursuant to Section 5.2 of this Lease. All costs associated with procuring and installing any furnishings, fixtures, and equipment shall be at the expense of CB&I. The final floor plan, buildout, occupancy and associated terms shall be finalized between the Parties and CB&I within NINETY (90) days of this Lease being signed.

The Parties acknowledge and agree that: (i) Lessee shall have the right to occupy or lease a portion of the Office Building to itself or an affiliated entity; and (ii) Lessee shall have the right to enter into separate leases, licenses, and related agreements with third parties to lease other portions of the Office Building provided such separate lessees' activities are limited to office use.

1.12 Permitting and Environmental Review. Lessee shall not commence any development on the Premises prior to obtaining all necessary governmental approvals and permits, including without limitation, completion of SEPA review. In the event the SEPA review process has not occurred as of the execution of this Lease; and as a result, the Lessor, acting in its capacity as either the Lead Agency or an agency with jurisdiction under SEPA, retains the right to modify or amend the Lease and otherwise condition the Lessee's development activities on the Premises following the completion of the SEPA review. Without limiting the foregoing, Lessor has the right to require Lessee to modify the development, construction, and operation plans for any development on the Property contemplated or arising out of this Lease if required by SEPA; and where required by SEPA, Lessor may amend this Lease to require compliance with any mitigation conditions, limitation, or other requirements imposed from the SEPA review process. For example, and not by way of limitation, Lessor may amend this Lease to adopt additional mitigation requirements, heightened insurance requirements, or modify development specification in response to SEPA review. Compliance with the SEPA process required in this paragraph is an express condition precedent of the Lease, the failure of which shall result in termination of this Lease. Following the completion of SEPA review, either Party may terminate the Lease pursuant to the Early Termination provision in Section 1.2.1 of this Lease.

1.13 COMMISSIONS AND FEES. Each Party represents and warrants to the other that it has not been represented by, or introduced to the other by, any broker or agent. In the absence of any agreement between the Parties to the contrary, each Party hereby agrees to indemnify and hold the other harmless from and against any and all fees, commissions, costs, expenses (including attorney fees), obligations, and causes of action arising against or incurred by the other Party by reason of any claim for a real estate commission or a fee or finder's fee by reason of any contract, agreement or arrangement with, or services rendered at the request of, the indemnifying Party.

1.14 MANAGEMENT OF OFFICE BUILDING. During the Term of this Lease, Lessee shall

be responsible for managing the Office Building, maintaining common areas on the Premises, and ensuring all activities conducted on the Premises are completed in a first-class, professional manner (collectively, the "Management Activities"). Lessee shall have the option to carry out the Management Activities itself, via an associated entity, or by contracting with a third-party property manager.

1.15 CONFLICTING PROVISIONS. To the extent any of the provisions of the foregoing **Section 1**, Lease Summary, conflict with any other provisions of this Lease, the provisions of **Section 1**, Lease Summary, shall govern.

[See following pages]

THE PARTIES HEREBY FURHTER AGREE AS FOLLOWS:

2. **PREMISES.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises described in **Paragraph 1.1.**

3. **TERM.** This Lease shall be for the Term specified in **Paragraph 1.2.**

4. **RENT.** It is the intention of the Parties hereto that the rent specified in this Lease shall be net to Lessor in each year during the Term of the Lease. Accordingly, all costs, expenses and obligations of every kind relating to the Premises (except as otherwise, specifically provided in the Lease) which may arise or become due during the Term of the Lease shall be paid by Lessee and Lessor shall be indemnified by Lessee against such costs, expenses and obligations. All such costs, expenses, and obligations and payments coming due hereunder shall be deemed as “additional rent”.

Lessee agrees to pay as rent for the use and occupancy of the Premises during the Term of this Lease, the Minimum Ground Rent specified in **Paragraph 1.4**, along with any applicable Washington State leasehold excise tax, payable to Lessor on or before the first day of each quarter. Minimum Ground Rent shall be payable at such place as Lessor may designate.

If the Lessee does not pay Minimum Ground Rent by the TENTH (10th) day of a quarter, then in addition to the overdue rent, Lessee shall pay interest on the rent payment then due at a rate equal to FIVE PERCENT (5%) per annum. Such interest commences on the date the rent is due and continues until such rent is paid. The imposition of such interest does not prevent Lessor from exercising any other rights and remedies under this Lease.

5. **MINIMUM GROUND RENT ADJUSTMENTS.** As set forth in this section, the Minimum Ground Rent shall be adjusted annually ~~based upon the change in the Consumer Price Index (the “CPI”) for All Urban Consumers, Region West—Size Class B/C by increasing Minimum Ground Rent by TWO AND ONE HALF PERCENT (2.5%)~~ (the “Annual Adjustment”), and shall be periodically adjusted based upon ~~agreement or appraisal~~ the below procedure (the “Periodic Adjustment”).

5.1 **Annual Adjustment.** Minimum Ground Rent for the Premises shall be subject to annual adjustment on the one year anniversary of the Effective Date and each year thereafter as follows: The Minimum Ground Rent rates shall be adjusted on each yearly anniversary date by increasing Minimum Ground Rent by TWO AND ONE HALF PERCENT (2.5%) from the previous year. using the CPI for all All Urban Consumers, Region West—Size Class B/C published by the Department of Labor Statistics over the prior year. The percentage change in the index over the previous twelve (12) months shall be multiplied by the Minimum Ground Rent rate at the beginning of each Lease year and the result added to that prior year’s Minimum Ground Rent rate to arrive at the adjusted Minimum Ground Rent rate, which will then apply to the succeeding lease year, except in no event shall the Minimum Ground Rent rate be less than the original Minimum Ground Rent rate stated in Paragraph 1.4 of this Lease.

5.2 **Periodic Adjustment.** In addition to an Annual Adjustment, the Minimum Ground Rent shall be subject to a periodic adjustment as provided for in this paragraph effective on the sixth year following the Effective Date, and every five years thereafter. The periodic adjustment shall adjust Minimum Base Rent to market rate as determined by a licensed commercial real estate broker, selected by Lessor after consultation with Lessee, that prepares a broker’s opinion of value to determine fair market rate rent for the purposes of the periodic adjustment of the Minimum Ground Rent rate. In the event the broker’s opinion of value is not completed by the date of the periodic adjustment as provided in this Section 5.2, the adjusted Minimum Ground Rent Rate shall be retroactive to the applicable periodic adjustment date. The parties shall equally share the cost of obtaining the broker’s opinion of value.

Commented [A3]: I pulled this verbiage direct from the below sections 5.3.2 and 5.3.3.

~~according to an appraisal conducted in accordance with paragraph 5.3 of this Lease. In lieu of an appraisal, the Parties may agree to a periodic adjustment of the Minimum Ground Rent rate at lease ninety (90) calendar days prior to the date of the periodic adjustment. Regardless of the way the new Minimum Ground Rent rate is determined, the periodically adjusted Minimum Ground Rent rate shall not be less than the rate stated in Paragraph 1.4 of this Lease.~~

~~5.3 Appraisal. When the Minimum Ground Rent rate is to be determined by appraisal, the process in this section shall govern. Within sixty (60) calendar days prior to the date of the periodic adjustment as provided in paragraph 5.2 of this Lease, Lessor and Lessee shall mutually agree upon a disinterested MAI certified and licensed appraiser to conduct an appraisal to determine market rate rent for the purposes of the periodic adjustment of the Minimum Ground Rent rate. The parties shall share equally in the costs of obtaining the appraisal.~~

~~5.3.1 If the Lessor and Lessee cannot mutually agree upon an appraiser, then each party shall select an MAI certified and licensed appraiser to perform its own appraisal of the fair market rental values of the Premises and the average of the two appraisals shall set the new Minimum Ground Rent rate. Each party shall bear the costs of its own appraisal.~~

~~5.3.2 In lieu of an appraisal prepared by a licensed appraiser, the Parties can agree to have a licensed commercial real estate broker prepare a broker's opinion of value to determine fair market rate rent for the purposes of the periodic adjustment of the Minimum Ground Rent rate.~~

~~5.3.3 In the event the appraisal or broker's opinion of value is not completed by the date of the periodic adjustment as provided in paragraph 5.2 of this Lease, the adjusted Minimum Ground Rent Rate shall be retroactive to the applicable periodic adjustment date.~~

6. **ACCEPTANCE OF PREMISES.** Lessee has examined the Premises, and the adjoining premises of which the Premises are a part, and accepts them in their present condition. Notwithstanding, Lessor represents and warrants to Lessee that the Premises are free and clear of any liens, charges, encumbrances, or rights of others. In the event said representation is false, Lessee shall have the option to terminate this Lease and be under no further obligation to develop the Premises.

7. **POSSESSION.** If Lessor shall be unable for any reason to deliver possession of the Premises or any portion thereof by the Effective Date, Lessee shall not be liable for any Minimum Ground Rent, until such time as Lessor can deliver possession. In the event of delay, the Term shall be extended by the amount of such delay. In the event Lessee shall take possession of any portion of the Premises prior to the Premises being fully and properly delivered, Lessee shall pay Minimum Ground Rent reduced pro rata for the portion of the Premises not available for possession by Lessee.

In the event Lessor shall be unable or unwilling to deliver possession of the Premises by the Effective Date, Lessee shall have the option to terminate this Lease by giving at least THIRTY (30) days' written notice of such termination, and this Lease shall terminate unless Lessor shall deliver possession of the Premises prior to the effective date of termination specified in such notice.

If Lessee shall, with Lessor's consent, take possession of all or any part of the Premises prior to the Effective Date for development planning and purposes, all of the terms and conditions of this Lease shall immediately become applicable, with the exception that Lessee shall not be obligated to pay any rental for the period prior to the Effective Date unless otherwise mutually agreed in writing.

8. **USE OF PREMISES.** Lessee shall use the Premises only for those purposes stated in Paragraph 1.7 and shall not use them for any other purpose without the prior written consent of Lessor,

which consent may be withheld in the Lessor's sole discretion. The Premises shall be used only for lawful purposes; and only in accordance with all applicable building, fire, and zoning codes. Lessee shall use and operate the Premises in a first-class manner during the Term of this Lease. Except as provided in **Exhibit B**, attached hereto and hereby incorporated by reference, no signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on or within the Office Building or Premises, including the windows and doors thereof, without the approval of Lessor. At the termination or sooner expiration of this Lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Lessee shall be removed by Lessee at its own expense, and Lessee shall repair any damage or injury to the Premises and correct any unsightly condition caused by such removal.

9. **REQUIREMENTS AS TO IMPROVEMENTS.** The specific requirements as to the planning, construction and completion of the Office Building, and any related improvements to be undertaken by Lessee on the Premises, are described in **Exhibit D**, attached hereto and hereby incorporated by reference.

10. **RIGHTS-OF-WAY.** Lessor agrees to grant right-of-way easements across the Premises and surrounding areas reasonably available therefor, on reasonable terms and conditions, for the installation and maintenance of necessary and adequate services to the Premises.

11. **RESERVATION OF RIGHTS.** Lessor reserves to itself from the Premises rights of way upon, over, across, onto or beneath the Premises for access ways, driveways, and other roads, pole and wire lines, gas, water and sewage pipes and mains, conduits, and other utilities, and industrial or business area facilities of all kinds now existing or to be constructed and maintained by it, either in addition to or in the substitution for those now existing from any point or points and in any direction and also reasonable rights of entry upon the Premises for the construction, repair, inspection and maintenance of them in efficient use and condition, providing such action by Lessor shall not materially interfere with or interrupt Lessee's operation and shall be at the expense of Lessor. Lessor is hereby granted such continuous and perpetual easement or easements that Lessor believes are necessary within the Premises for such purposes, which easement or easements may be further granted by Lessor to third parties.

12. **QUIET ENJOYMENT.** So long as Lessee is not in default under this Lease past any applicable notice and cure period, and except for Lessor's actions in the case of an emergency for the purposes of protecting public health or safety, Lessee shall lawfully, peacefully and quietly hold, occupy and enjoy the Premises without disturbance, interruption or hindrance by Lessor, or any person or entity claiming by or through Lessor.

13. **UTILITIES AND SERVICES.** Lessee shall be liable for and shall pay throughout the Term all charges for all utility services furnished to the Premises, including but not limited to, light, heat, gas, janitorial services, garbage disposal, security, electricity, water, stormwater, and sewerage.

14. **INDEMNIFICATION/LIABILITY INSURANCE.** Lessor, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Lessee or by others (including, but not limited to all persons directly or indirectly employed by Lessee, and any agents, contractors, subcontractors, suppliers, customers, licensees, or invitees of Lessee) as a result of any condition (including existing or future defects in the Premises), or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Premises and the areas adjacent thereto; provided, however, that the foregoing provisions shall not be construed to make Lessee responsible for loss, damage, liability or expense to the extent resulting from the negligence or wrongful conduct of Lessor or its employees, agents, contractors, subcontractors, suppliers, or officers. Lessee hereby covenants and agrees to indemnify, defend (with attorneys reasonably satisfactory to Lessor), protect and hold Lessor

harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Lessor: (i) arising from or in connection with the loss of life, personal injury and/or damage to property occasioned by any negligent or other wrongful act or omission of Lessee or its employees, agents, contractors, subcontractors, suppliers, customers, licensees, or invitees; or (ii) arising from or out of any occurrence in or upon the Premises, unless caused by any negligent or other wrongful act or omission of Lessor or its agents, contractors, servants or employees. If a court of competent jurisdiction determines that any activity covered by the indemnities under this section of this Lease is subject to RCW 4.24.115, then, in the event of liability for damages arising out of a bodily injury to persons or damage to property caused by or resulting from the concurrent negligence or willful act or omission of Lessee and Lessor, its officers, officials, employees, agents, contractors, or volunteers, the Lessee's and Lessor's liability hereunder shall be only to the extent of each such Party's negligence or willful act or omission. **It is further specifically and expressly agreed that Lessee hereby waives any immunity it may have under industrial insurance, RCW Title 51, solely for the purposes of this indemnification and only to the extent necessary to render the Parties' indemnity obligations enforceable. This waiver was mutually negotiated by the Parties.** The provisions of this section shall survive the expiration or termination of this Lease.

Lessor agrees to indemnify, defend (with attorneys reasonably satisfactory to Lessee), protect and hold Lessee harmless from claims, damages, costs, expenses, and liabilities that are for personal injury, death, or property damage occurring on or about the Premises, which (i) occurred prior to the Effective Date; or (ii) were caused by the negligence or wrongful conduct of Lessor, its principals, agents, contractors, or employees. This indemnification and hold harmless shall include reasonable attorney fees and court costs incurred by Lessee with respect to such claims.

Lessee shall, at its own expense, provide and maintain insurance as described in **Paragraph 1.8** or its equivalent with a reputable insurance company or companies reasonably satisfactory to Lessor. Lessor shall be named as an additional insured on such policies, and shall provide that such insurance may not be cancelled without the insurance company first having given Lessor THIRTY (30) days' advance written notice of such intent to cancel. Lessee shall submit certificates evidencing compliance with this paragraph by the Effective Date, and at Lessor's request shall provide Lessor with the actual policies or copies thereof. Lessee shall furnish Lessor with evidence of renewal of such policies not less than THIRTY (30) days prior to their expiration.

15. WAIVER OF SUBROGATION. Lessor and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective insurance contracts, including any extended coverage endorsements thereto, provided, that this paragraph shall be inapplicable to the extent it would have the effect of invalidating any insurance coverage of Lessor or Lessee. Each Party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

16. TAXES. Lessee shall be liable for, and shall pay, throughout the Term, all license fees and taxes covering or relating to the Premises and its use, including, without limitation: (i) all real estate taxes assessed and levied against the Premises; (ii) all amounts due and payable for general or special assessments against the Premises during the Term, including any assessments for LIDs or ULIDs; and (c) all personal property taxes upon Lessee's fixtures, furnishings, equipment and stock in trade, Lessee's leasehold interest under this Lease or upon any other personal property situated in or upon the Premises. If any governmental authority at any time levies a tax on rentals payable under this Lease, such tax shall be paid by Lessee; provided, however, that Lessee shall not be liable for the payment of any tax imposed generally on Lessor's gross or net income without regard to the source of such income.

17. ~~**MAINTENANCE AND REPAIRS RESERVED.** Lessee shall keep the Premises and improvements thereon in a neat, clean, safe, sanitary, and good condition, reasonable wear and tear excepted.~~

~~Lessee shall replace any and all improvements which become worn out, obsolescent, deteriorated, unsafe or unusable and shall replace such improvements with new fixtures and improvements of at least as good a quality as originally installed by Lessor or Lessee. If Lessee fails to properly maintain or repair the Premises or any improvements thereon, Lessor shall be entitled, but shall not be obligated, to enter the Premises after notice to Lessee and the expiration of any applicable cure period, and perform such work as may be necessary to restore the Premises and improvements to the conditions set forth herein. The cost of such repairs shall be billed to Lessee by Lessor and shall be payable upon receipt and subject to the same penalties for late payment as if such payment was Minimum Ground Rent. Lessee has inspected the Premises and accepts the Premises "AS IS".~~

18. **ALTERATIONS AND IMPROVEMENTS -- SIGNAGE.**

Alterations and Improvements. Lessee shall conduct any improvements in accordance with the restrictions described in **Exhibit D**. In the event any of Lessee improvements shall involve a substantial deviation from **Exhibit D**, or as otherwise agreed by the Parties in writing, Lessee shall first obtain written approval. Lessor's response to Lessee's requests for approval shall be prompt, and such approval shall not be unreasonably withheld. Upon installation, Lessee shall furnish Lessor with a copy of the "as-built" drawings including utility installations and site plans detailing the nature of the additions, alterations or improvements.

Signage. Lessor shall pay for and install monument signage, as shown on **Exhibit B**, attached hereto and hereby incorporated by reference. ~~Lessee shall be responsible for maintenance of the monument signage at its expense.~~

19. **DISPOSITION OF IMPROVEMENTS.** Unless otherwise agreed by the Parties in writing, upon completion of the Term, title to the improvements on the Premises shall automatically pass to Lessor, free of any right, title, or interest of Lessee therein, or its successors or assigns, without the necessity of executing any further instrument and without any allowance, compensation, or payment by Lessor. Lessee hereby grants and conveys to Lessor all of its right, title and interest in and to such improvements, to be effective for all purposes only upon the expiration or termination of this Lease. At Lessor's request, Lessee further agrees to execute, acknowledge and deliver to Lessor a proper recordable instrument quit claiming and releasing any right, title and interest of Lessee in and to the Premises and in and to all improvements located thereon. The foregoing shall not apply to Lessee's movable trade fixtures, furniture, machinery, equipment and personal property that can be removed without damage to the Premises. Lessee shall also deliver to Lessor all documents in its possession relating to the operation, maintenance and management of the Premises and remaining improvements.

19.1 **REMOVAL OF PERSONAL PROPERTY AND TENANT IMPROVEMENTS AT END OF LEASE.** Prior to the conclusion of the Lease, at Lessor's option, Lessee shall remove the following from the Premises: all of Lessee's equipment, personal property, and Tenant Improvements specific to Lessee's office space which are not designated as fixtures. The Parties acknowledge and agree that Lessee shall be under no obligation to demolish or remove the Office Building, any utility systems, or other improvements constructed on the Premises prior to the conclusion of Lease.

19.1.1 **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

Commented [A4]: Is this necessary since DIG owns the building?

Commented [A5R4]: No, good catch. Deleting.

Commented [A6]: Who maintains the sign and pays for the maintenance?

Commented [A7R6]: Right now, we're having Lessee maintain at its expense unless there are objections.

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.

(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.

20. INSPECTION. Lessor reserves the right to inspect the Premises at any and all reasonable times throughout the Term of this Lease, provided that it shall not interfere unduly with Lessee's operations. The right of inspection reserved to the Lessor hereunder shall impose no obligation on Lessor to make inspections to ascertain the condition of the Premises, and shall impose no liability upon Lessor for failure to make such inspections. Lessor shall have the right to place and maintain "For Rent" signs in conspicuous places on the Premises for a reasonable period of time prior to the expiration or sooner termination of this Lease. Except when necessary for reasons of public safety or law enforcement, Lessor shall provide at least SEVENTY-TWO (72) hours written notice of its intent to inspect.

Notwithstanding the foregoing, the rights of Lessor to enter into any portion of the Premises leased by a tenant in the Office Building shall be subject to reasonable restrictions contained in the applicable lease and to any provisions of applicable law.

21. RESTORATION. At all times during the Term of this Lease, Lessee shall maintain in effect upon the Premises and Lessee's improvements thereon, fire and extended coverage property insurance for physical loss and damage excluding earthquake insurance and flood insurance, written by companies authorized to do business in the State of Washington and approved by Lessor's insurance carrier. Such policy or policies shall: (i) be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of the Premises and improvements thereon, which amount shall be adjusted not less frequently than annually; (ii) contain an endorsement waiving any and all rights of subrogation against Lessor; and (iii) provide that notice of cancellation of the policy or any endorsement shall be given to Lessor at least THIRTY (30) days prior to cancellation. Lessor shall be named as additional insured and loss payees on all such policies. Lessee shall provide Lessor with certificates of insurance evidencing such coverage, and at Lessor's request shall provide copies of the actual policies. Lessee shall provide evidence of renewal at least THIRTY (30) days prior to the expiration of such policy or policies.

If any building or improvement erected by Lessee on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the Term of this Lease, Lessee shall, at its own cost and expense, either: (i) repair or restore the same according to the original plans thereof; or (ii) repair or restore the same according to such modified plans as shall be previously approved in writing by Lessor. Such work of repair or restoration shall be commenced within NINETY (90) days after the damage or loss occurs and shall be completed with due diligence but no later than ONE (1) year after such work is commenced. All insurance proceeds collected for such damage or destruction shall be applied to the cost

of such repairs or restoration. If (i) there are not insurance proceeds; or (ii) the same shall be insufficient for said purpose, Lessee shall make up the deficiency out of its own funds. Should Lessee fail or refuse to make the repair or restoration as hereinabove provided, said failure or refusal shall constitute a default as discussed in **Section 22**, and all insurance proceeds so collected shall be forthwith paid over to and be retained by Lessor on its own account, and Lessor may, but shall not be required to, terminate this Lease.

Notwithstanding anything to the contrary contained in the preceding section, if any building erected on the Premises shall be damaged by fire or other casualty, and if the cost of repairing or restoring the same shall exceed the insurance payable for such damage, and if such damage shall occur during the Term so that the remaining Term of this Lease is of insufficient length to allow Lessee to finance such cost in a commercially reasonable manner, Lessee shall have the option, to be exercised within THIRTY (30) days after such event, to repair or restore said building, or to terminate this Lease by written notice to Lessor.

22. DEFAULTS. Time is of the essence of this Lease, and in the event of the failure of Lessee to pay the Minimum Ground Rent or other additional rent at the time and in the manner herein specified, or to keep any of Lessee's covenants or agreements herein ("Event of Default"), Lessor may elect to terminate this Lease and reenter and take possession of the Premises with or without process of law, provided, however, that Lessee shall be given FIFTEEN (15) days' notice in writing if the default is for the nonpayment Minimum Ground Rent or other additional rent, or THIRTY (30) days' notice in writing for any other default, stating the nature of the default in order to permit such default to be remedied by Lessee within the applicable time period. In the event Lessee is unable to cure any non-monetary default within THIRTY (30) days following notice of the Event of Default, the time to cure shall be extended so long as Lessee engages in best efforts to remedy such default as quickly as possible. If Lessor issues a notice of default for the nonpayment of Minimum Ground Rent or other additional rent, in order to cure such default, Lessee must pay the overdue rent, together with interest as set forth in **Section 4**. If during any consecutive twelve-month period, Lessor has issued three notices of default for nonpayment, Lessor shall not be required to accept cure of any subsequent default for nonpayment, and may terminate this Lease or exercise any other rights or remedies available.

In the event Lessor lawfully retakes possession of the Premises prior to expiration of the Term, Lessor shall remove any movable trade fixtures, furniture, machinery, equipment and personal property of Lessee and hold it or place the same in a public garage or warehouse, all at the expense and risk of Lessee. Lessee shall reimburse Lessor for any expense incurred by Lessor in connection with such removal and storage. Lessor shall have the right to sell such stored property, without notice to Lessee, after it has been stored for a period of THIRTY (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from Lessee to Lessor, and the balance, if any, shall be paid to Lessee.

Notwithstanding any such reentry, the liability of Lessee for the full Minimum Ground Rent shall not be extinguished for the remaining Term of the Lease, and Lessee shall make good to the Lessor any deficiency arising from a reletting of the Premises at a lesser rental than that chargeable to Lessee. At Lessor's option, Lessee shall pay such deficiency each month, or accelerate all future payments to present value to be paid at once. All remedies of Lessor hereunder are cumulative and not alternative.

22.1 CROSS-DEFAULT. As part of a separate agreement, Lessee is leasing the remainder of Lot 2 identified on the plat map attached to this Lease as Exhibit "A" (the "Building Lease"). Lessee and Lessor also intend to enter an Operations Agreement concerning Lot 2 (the "Operations Agreement"). A default in this Lease shall be deemed a default under the Building Lease and Operations Agreement. A default in the Building Lease or the Operations Agreement shall be a default under this Lease.

23. **ADVANCES BY LESSOR FOR LESSEE.** If Lessee shall fail to do anything required under this Lease, except to pay Minimum Ground Rent and additional rent, Lessor may, at its sole option, do such act or thing on behalf of Lessee, and upon notification to Lessee of the cost thereof, Lessee shall promptly pay Lessor the amount of that cost. However, if Lessor shall pay any monies on Lessee's behalf, Lessee shall repay such monies, together with interest thereon commencing on the date Lessor paid such monies and calculated at the rate of TWELVE PERCENT (12%) per annum.

24. **HOLDING OVER.** If Lessee shall, without the consent of Lessor, hold over after the expiration or sooner termination of this Lease, the resulting tenancy shall, unless otherwise mutually agreed in writing, be on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay to Lessor TWO (2) times the then-current rental under the terms of the Lease, unless a different rate shall be agreed upon, and Lessee shall be bound by all of the additional provisions of this Lease.

25. **ASSIGNMENT OR SUBLEASE.** Except as provided below, Lessee shall not assign or transfer this Lease without the advance written consent of Lessor, which may not be unreasonably withheld. Notwithstanding, Lessor acknowledges and agrees that it shall consent to: (i) the assignment of this Lease in order for Lessee to obtain financing from its Bank; and (ii) the assignment of this Lease to an affiliated entity of Lessee.

Any lease which Lessee enters into with a tenant leasing space in the Office Building shall include the following provision:

"City Ground Lease. Lessee understands, acknowledges, and agrees that Lessor's right to the real property on which the Premises are located are subject to a Ground Lease between Lessor and the City of Tenino, a copy of which is attached as Exhibit ___hereto. Lessee understands, acknowledges, and agrees that it shall be bound by all provisions in the Ground Lease to which Lessor is subject, including but not limited to provisions related to protection of environmental provisions, and any limitation on use of the property and Premises. Lessee acknowledges that it has had an opportunity to review the Ground Lease in its entirety and takes no exceptions to any provisions therein."

25.1 **Assignment or Sublease Fees.** In the event this Lease is assigned or subleased to a third party, Lessee shall be responsible for the following:

(a) **Transfer Fee.** An administrative handling and transfer fee ("Transfer Fee") of Three Hundred Dollars (\$300.00) shall be payable by Lessee to Lessor if Lessee requests the Lessor's consent to a proposed assignment (including an assignment to a creditor for security purposes) or sublease. Such Transfer Fee shall be submitted to the Lessor at the same time that Lessee requests the Lessor's consent to the proposed sublease or assignment.

(b) **Attorneys' Fees.** In addition to the Transfer Fee, Lessee shall pay Lessor's reasonable and customary attorneys' fees incurred relating to the Lessee's request for Lessor's consent to a proposed assignment or in the event Lessee seeks to modify the Lease during the term of the Lease or any renewals thereof. Lessee's failure to remit this amount within sixty (60) days of the mailing of the notice of such charges shall constitute a default under this Lease. Notwithstanding anything to the contrary herein, the Lessee shall not be obligated to reimburse the Lessor in any case where an assignment or sublease is not accomplished due to total, and reasonable, refusal on the part of Lessor to grant its consent to the request.

25.2 **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.

25.3 Proceed Against Lessee. Notwithstanding any assignment or sublease, any indulgences, waivers, or extensions of time granted by Lessor to any assignee or sublessee, or the 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.

25.4 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.

26. COMPLIANCE WITH LAWS. Lessee agrees to comply with all applicable federal, state and local laws, rules, regulations, ordinances, permits, orders, and decrees, including, without limitation, those relating to environmental matters, and the Americans with Disabilities Act, as currently in effect or as may be hereafter amended or issued. Lessee shall defend, indemnify, and hold harmless Lessor from and against all claims, costs, fees, fines, penalties, liabilities, losses, and damages incurred by Lessor by reason of any charge, claim, litigation, or enforcement action related to any actual or claimed violation by Lessee of any of the laws, rules, regulations, ordinances, permits, orders and/or decrees referenced in this section. Compliance includes, without limitation, Lessee's acceptance of any lease modifications, and modifications to development, construction and operational plans related to the use or development of the Property that may be imposed following the completion of the SEPA review process as provided for in Section 1.12 of the Lease. Lessee shall defend, indemnify, and hold harmless the Lessor from and against all claims, costs, fees, fines, penalties, liabilities, losses, and damages incurred by the Lessor by reason of any charge, claim, litigation, or enforcement action related to any actual or claimed violation by Lessee of any of the laws, rules, regulations, ordinances, permits, orders and/or decrees referenced in this section. Costs and fees shall include, but not be limited to, all direct and indirect costs and professional fees, including engineering, consultant, and reasonable attorneys' fees. Any fees for federal, state or local inspections and/or certificates required for use and occupancy of the Premises shall be paid by Lessee.

27. HAZARDOUS SUBSTANCES. Except for any action or omission taken by Lessor, or any of its agents, Lessee certifies, represents, warrants, covenants and agrees that:

(i) As used in this **Section 27**, "Hazardous Substances" means any chemical, substance, material, waste, vapor, or similar matter defined, classified, listed or designated as harmful, hazardous, extremely hazardous, dangerous, toxic, radioactive, or pollution, or as a contaminant or pollutant, or other similar term, by, and/or which are subject to regulation under, any federal, state or local environmental statute, rule, regulation, or ordinance presently in effect or that may be promulgated in the future, and as they may be amended from time to time.

(ii) As used in this **Section 27**, "Other Property" means any real or personal property other than the Premises (including, without limitation, surface or ground water) which becomes contaminated with Hazardous Substances as a result of operations or other activities on, or the contamination of, the Premises.

(iii) Lessee shall apply for and obtain all necessary federal, state, and local permits and

Commented [A8]: Why was this changed from Lessee to Lessor?

Commented [A9R8]: Updated to Lessee. No harm intended - signals got crossed when referencing the MOU.

approvals for Lessee's use of the Premises. Lessee shall not commence any activity on the Premises until all permits and approvals required for such activity have been issued, and shall conduct all activities on the Premises in compliance with such permits and approvals.

(iv) Lessee agrees and warrants for itself and its employees, agents, representatives, contractors, subcontractors, licensees, invitees, sublessees, and assigns (collectively "Lessee's Representatives"), that Lessee and Lessee's Representatives will comply with all applicable federal, state, and local laws, rules, regulations, ordinances, permits, orders, and decrees relating to the generation, recycling, treatment, use, sale, storage, handling, transportation, disposal, release, and cleanup of any Hazardous Substances (collectively "Environmental Laws"). In addition, Lessee and Lessee's Representatives will not, without Lessor's prior written consent, keep on or around the Premises any Hazardous Substances.

(v) With respect to any Hazardous Substance, Lessee shall:

a. Comply promptly, timely and completely with all applicable requirements for reporting, keeping and submitting manifests and obtaining and keeping current identification numbers.

b. Make available for Lessor's review during normal business hours, true and correct copies of all reports, manifests and identification numbers retained by Lessee or submitted to appropriate governmental authorities, and all documents and communications received from any government agencies, and provide copies to Lessor of all documents requested by Lessor at no cost to the Lessor within FIVE (5) business days of request.

c. Within FIVE (5) business days of a written report from Lessor, submit a written report to Lessor regarding Lessee's use, storage, treatment, transportation, generation, disposal or sale of Hazardous Substances and provide evidence satisfactory to Lessor of Lessee's compliance with applicable Environmental Laws.

d. Allow Lessor or Lessor's agents or representatives to come on the Premises at all reasonable times to check Lessee's compliance with all applicable Environmental Laws.

e. Comply with all applicable Environmental Laws, and all requirements and standards established by federal, state, or local governmental agencies responsible for or specifically charged with the regulation of Hazardous Substances.

(vi) Lessee has not and will not release or waive the liability of any party who may be potentially responsible for the presence or removal of Hazardous Substances on or from the Premises.

(vii) Lessee agrees to immediately notify Lessor if Lessee becomes aware of: (a) any release of any Hazardous Substances or any other environmental issue or liability with respect to the Premises or any Other Property; or (b) any lien, action or notice resulting from violation of any Environmental Laws. At its own cost, Lessee will take all actions which are necessary to notify relevant and appropriate authorities of any such release and to remediate any Hazardous Substances affecting the Premises, including removal, containment or any other remedial action, whether or not required by governmental authorities.

(viii) If Lessee is in non-compliance with any Environmental Laws or is in non-compliance with this **Section 27**, it shall promptly take such action as is necessary to mitigate and correct the non-compliance. If Lessee fails to act in a prudent and prompt manner, Lessor shall have the right, but not the obligation, to enter the Premises and act in place of Lessee (with Lessee hereby appointing the

Lessor as its agent for such purposes), and to take such action as Lessor deems necessary to address or mitigate the non-compliance. All costs and expenses incurred by Lessor in connection with any such action shall be payable by the Lessee and shall become immediately due and payable as additional rent upon presentation of an invoice therefor. Without limiting the foregoing, in the event of Lessee's non-compliance with any requirements in subsections (v)(a) – (e) above, any and all costs incurred by Lessor with respect thereto, including but not limited to costs of inspections, monitoring, and attorney fees, shall become immediately due and payable as additional rent upon presentation of an invoice therefor.

(ix) Lessee shall be fully and completely liable to Lessor for, and shall defend, indemnify, and hold Lessor harmless from and against any and all actual or alleged claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including costs and professional fees, including engineering, consultant, and attorneys' fees and disbursements), which accrue to or are incurred by Lessee or Lessor which arise or are alleged to arise directly or indirectly from or out of, or are in any way connected with: (a) the inaccuracy of the representations and warranties contained herein; (b) the breach of any covenant contained herein; (c) any operations or activities (including, without limitation, use, disposal, transportation, storage, generation or sale of Hazardous Substances) on or about the Premises during Lessee's possession or control of the Premises which directly or indirectly result in the Premises or any Other Property becoming contaminated with Hazardous Substances or otherwise violating any applicable Environmental Laws; and (d) the cleanup of Hazardous Substances at or from the Premises or any Other Property to a level sufficiently protective of human health and the environment in compliance with all applicable Environmental Laws. Lessee acknowledges that it will be solely responsible for all costs and expenses relating to investigation (including preliminary investigation) and cleanup of Hazardous Substances from the Premises or from any Other Property. Lessee specifically agrees that the bond provided pursuant to this Lease shall extend to the indemnity agreed to in this subparagraph.

(x) Lessee's obligations under this **Section 27** are unconditional and shall not be limited by any other limitations of liability provided for in this Lease. The representations, warranties and covenants of Lessee set forth in this **Section 27**: (a) are separate and distinct obligations from Lessee's other obligations under the Lease; and (b) shall survive and continue in effect after any termination or expiration of this Lease for any reason.

(xi) Upon expiration or sooner termination of this Lease, Lessee shall have removed from the Premises any Hazardous Substances, contaminated soils or other contaminated or hazardous materials or substances deposited thereon by Lessee in a manner that complies with all applicable Environmental Laws. Any failure to complete such removal by the expiration or sooner termination of this Lease shall be deemed a holding over by Lessee subject to the provision of **Paragraph 24**. At Lessor's request, within 30 days thereafter, Lessee shall deliver to Lessor a certificate from the Thurston County Health Department certifying that the Premises comply with all applicable requirements of the Health Department concerning levels of Hazardous Substances. At such time, Lessee shall also reconfirm its representations and warranties contained herein and shall represent and warrant that upon termination of the Lease all Hazardous Substances have been removed from the Premises and have been properly and lawfully disposed of, and the Premises have been cleaned up to a level that meets all applicable Environmental Laws.

28. LESSOR'S WARRANTIES. Lessor hereby represents, warrants and covenants that:

(i) Title to the Premises is vested in Lessor, and the Premises are free and clear of any liens, charges, encumbrances, or rights of others.

(ii) Lessor has the authority to enter into this Lease subject to the approval of the

Tenino City Council.

29. INSPECTIONS AND NOTICE OF CHANGE. Lessee agrees that inspections may be required by Lessor at the Lessee's expense to assure compliance with **Paragraph 27**. Such inspections shall be made once every FIVE (5) years or at any time Lessor has good cause to believe a problem may exist. Lessee shall notify Lessor of any Hazardous Materials or Substances upon discovery.

29.1 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.

30. EMINENT DOMAIN. If the Premises shall be taken or condemned for any public or temporary purpose, or for any reason whatsoever, to such an extent as to render the Premises untenable in Lessee's reasonable judgment, the Parties shall have the option to terminate this Lease effective as of the date of taking or condemnation, which shall be the earlier of: (i) the date of the final condemnation judgment; or (ii) the date possession is taken by the condemning authority. If the taking or condemnation does not render the Premises untenable, this Lease shall continue in effect, and Lessor shall, if the condemnation award is sufficient therefor, promptly restore the portion not taken to the extent possible to the condition existing prior to the taking. If, as a result of such restoration, the area of the Premises is reduced, the rental shall be reduced proportionately. All proceeds from any taking or condemnation shall be paid to Lessor and Lessee waives all claim against such proceeds; provided, however, that Lessee shall be entitled to any award separately designated for Lessee's relocation expenses or for damage or taking of Lessee's trade fixtures or other personal property. A voluntary sale or conveyance in lieu of but under the threat of condemnation shall be considered a taking or condemnation for public purpose, and shall include Lessor's use of the Premises for any purpose for public use. If Lessor so requires the use of the Premises, then this Lease may be terminated by Lessor by written notice delivered or mailed to Lessee not less than SIX (6) months or more before the termination date specified in the notice, and damages to Lessee, if any resulting therefrom shall be determined by agreement between the Parties hereto, or in the absence of agreement, shall be subject to the negotiation, mediation, and arbitration procedures discussed in **Section 37**. Damages or other compensation shall be determined in accordance with RCW 53.08.010 and Title 8 as appropriate.

31. INSOLVENCY. If Lessee shall: solicit acceptances of a plan of reorganization to be filed in any subsequent case under the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as hereafter amended or any successor statute thereto (the "Bankruptcy Code"); negotiate with one or more creditors for any workout, including, but not limited to, an extension agreement, composition agreement, standoff, standby, or standstill agreement whereby the creditors agree to forebear in any fashion from their rights to collect a debt of Lessee; cease to pay Lessee's debts as they come due; admit in writing the inability to pay its debts as they come due; become a party to any liquidation or dissolution action or proceeding; have appointed (voluntarily or involuntarily), a trustee, custodian, receiver, conservator, or liquidator for Lessee or for a significant portion of Lessee's assets; have entered against it any order by a district court or bankruptcy court of the United States or any of its territories that dismisses a voluntary petition under the Bankruptcy Code because the bankruptcy petition was filed in bad faith; have entered against it an order, judgment, or decree; have any of its assets levied against by writ of execution, attachment (including pre-judgment attachment), garnishment, recording of a judgment or any similar process whereby a creditor seeks to obtain a legal right to dispose of particular assets of Lessee to satisfy to any extent a debt of the

Lessee to the creditor; file a voluntary petition under the Bankruptcy Code or have filed against it an involuntary petition under the Bankruptcy Code creating any automatic stay or other injunctive force protecting the assets of Lessee from the immediate collection actions of a creditor (where such involuntary petition is not subsequently dismissed within SIXTY (60) days in response to pleadings filed by the Lessee by entry of an order of any district court or bankruptcy court of the United States or any of its territories); have appointed voluntarily or involuntarily, a trustee, custodian, or examiner with special powers by any district court or bankruptcy court in the United States or any of its territories; admit in an answer filed in response to an involuntary petition filed under the Bankruptcy Code that Lessee is insolvent because Lessee's assets are exceeded by Lessee's debts or that Lessee is unable to pay Lessee's debts as they come due; then, in the event any of the foregoing shall occur, Lessor may, at its option, terminate this Lease.

32. LESSOR COOPERATION. Lessor shall use commercial reasonable efforts to facilitate the full and successful construction of the Office Building, including without limitation Lessor's executing as owner of the Premises documents related to the granting of entitlements, easements, zoning changes, or similar matters affecting the Premises, all of which must be reasonably satisfactory in form and content to Lessor, and must comply with the operation and use covenants herein.

33. ATTORNEY'S FEES AND COSTS. Should a dispute arise between the Parties as to the effect of any provision hereof and said dispute is referred to an attorney, whether for enforcement in court or for decision under arbitration, the losing Party shall pay the prevailing Party's reasonable attorney's fees; costs of court or arbitration, including such fees and costs of any appeal.

34. MANAGEMENT OF OFFICE BUILDING. During the Term of this Lease, Lessee shall be responsible for managing the Office Building, maintaining common areas on the Premises, and ensuring all activities conducted on the Premises are completed in a first-class, professional manner (collectively, the "Management Activities"). Lessee shall have the option to carry out the Management Activities itself, via an associated entity, or by contracting with a third-party property manager.

35. 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.

36. MEDIATION AND ARBITRATION. In the event a dispute arises between the Parties stemming from this Lease or the Premises (a "Dispute"), the Parties shall attempt to resolve the Dispute by engaging directly with one another in good faith for a period of at least THIRTY (30) days. If the Parties are unable to resolve the Dispute through direct negotiations, the Dispute will be referred to mediation with the Judicial Arbitration and Mediation Service ("JAMS") at its office nearest to the Premises. If the Parties are unable to agree on a mediator, JAMS shall select one for the Parties. The cost of mediation services shall be shared equally (on a 50/50 basis) between Lessor and Lessee, but each Party shall be responsible for its own attorneys' fees and costs. The above negotiation and mediation procedure shall be required prior to a Party initiating arbitration or litigation.

In the event a Dispute arises which requires arbitration, such Dispute shall be determined by arbitration as provided in this paragraph. Lessor and Lessee shall each appoint a person as arbitrator who shall have had at least TEN (10) years of experience in Thurston County in the subject matter of the Dispute.

The appointment shall be in writing and given by each Party to the other, and the arbitrators so appointed shall consider the subject matter of the Dispute, and if agreement can be reached between them, their opinion shall be the opinion of the arbitration. In the event of their failure to agree upon the matter so submitted, they shall appoint a third arbitrator. In the case of the failure of such arbitrators to agree upon the third arbitrator, the same shall be appointed by the American Arbitration Association from its qualified panel of arbitrators, with similar qualifications. If Lessor or Lessee shall fail to so appoint an arbitrator for a period of TEN (10) days after written notice from the other Party to make such appointment, then such Party will have defaulted its right to make such appointment, and the arbitrator appointed by the non-defaulting Party shall determine and resolve the Dispute. In the event the three arbitrators are appointed, after being duly sworn to perform their duties with impartiality and fidelity, they shall proceed to determine the question submitted. The decision of the arbitrators shall be rendered within THIRTY (30) days after their appointment, and such decision shall be in writing, with copies thereof delivered to each of the Parties. The award of the arbitrators shall be final, binding, and conclusive on the Parties. The fees of the arbitrators and the expenses incident to the proceedings shall be borne equally between Lessor and Lessee. The arbitrators shall award to the prevailing Party the fees of that Party's counsel, expert witnesses, or other witnesses called by the prevailing Party.

37. **JOINT AND SEVERAL LIABILITY.** Each and every Party who signs this Lease, other than in a representative capacity, shall be jointly and severally liable hereunder.

38. **INVALIDITY OF PARTICULAR PROVISIONS.** If any term or provision of this Lease or the application thereof to either Party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision related to such Party or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

39. **NOTICES.** All default and other substantial notices required under the provisions of this Lease may be personally delivered or mailed. If mailed, they shall be sent by certified mail, return receipt requested, to the following addresses, or to such other address as either Party may designate from time to time:

If to Lessor:

City of Tenino
Attn: Clerk/Treasurer
PO Box 4019
Tenino, WA 98589

If to Lessee:

DIG Tenino LLC
Attn: Perry Shea
14307 Barbo Drive SW
Tenino, WA 98589

With a copy to:

LAW OFFICE OF RICHARD L. HUGHES
PLLC
Attn: Rick Hughes, City Attorney
1824 Black Lake Blvd NW Ste. 101 D
Olympia, WA 98512

With a copy to:

Dickson Fröhlich Phillips Burgess, PLLC
Attn: Rob Dickson & Andrew Hata
1200 East D Street
Tacoma, WA 98421

40. **WAIVER.** The acceptance of rent by the Lessor for any period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the Lessor shall so intend and shall so advise Lessee in writing. No waiver by Lessor of any default hereunder by Lessee shall be construed to be or act as a waiver of any subsequent default by Lessee. After any default shall have been cured by Lessee, it shall not thereafter be used by Lessor as grounds for the commencement of any action under the provisions of **Section 22**.

41. **BINDING EFFECT; CHOICE OF LAW.** Subject to **Paragraph 1.9** and **Section 25**, this Lease is binding upon the Parties hereto, their heirs, personal representatives, successors in interest and assigns. This Lease shall be governed by the laws of the State of Washington. Venue in the event of any dispute shall be Thurston County, Washington.

42. **RECORDING.** Without the prior written consent of the Lessor, this Lease shall not be placed of record.

43. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the Parties respecting the matters herein set forth and supersedes all prior agreements between the Parties hereto respecting such matters.

44. **FORCE MAJEURE.** If either Party's performance of an obligation under this Lease is delayed or prevented in whole or in part by (i) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, civil disorder, strike, or other labor difficulty; (ii) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (iii) any other cause not reasonably within the Party's control, whether or not the cause is specifically mentioned in this Lease, the Party will be excused, discharged, and released of performance to the extent that such performance or obligation is so limited or prevented by the occurrence without liability of any kind.

The Parties recognize and agree that as of the date of this Lease there has been, and continues to be, a worldwide pandemic directly or indirectly related to COVID-19, and variants thereto, resulting in a variety of government orders, supply chain disruptions, disease and other related circumstances, and events or effects that may affect land development, including without limitation, permitting and construction, none of which shall be considered a Force Majeure event or condition for the purposes of this Lease and the performance of the Parties' obligations herein, except that such government orders related to COVID-19, and variants thereto, that are imposed after the effective date that directly and solely cause the failure or delay in the performance of obligations under this Lease shall be considered a Force Majeure event for the period of time that performance is delayed due to such reasons.

45. **ATTORNMENT.** 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.

46. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Effective Date.

“LESSOR”

City of Tenino,
a Washington municipal corporation

“LESSEE”

DIG Tenino LLC,
a Washington limited liability company

Wayne Fournier, Mayor

Perry Shea, Manager

ATTEST:

John C. Millard, Clerk/Treasurer

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____ 2023, 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 as, or providing satisfactory evidence that he is the Mayor of the City of Tenino, a Washington municipal corporation, and that he executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said party for the purposes therein mentioned and on oath stated that he is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State of
Washington, residing at

My commission expires _____

Print Name: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____ 2023, 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 as, or providing satisfactory evidence that he is the Manager of the DIG Tenino, LLC a Washington limited liability company, and that he executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said party for the purposes therein mentioned and on oath stated that he is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State of
Washington, residing at

My commission expires _____

Print Name: _____

**EXHIBIT A
PLAT MAP**

[See following page]

PLAT OF TENINO AGRICULTURE AND INNOVATION PARK

A PORTION OF THE 0817/4 NE1/4, NE1/4, NE1/4, SE1/4, SE1/4
OF SECTION 26, TOWNSHIP 16 NORTH, RANGE 2 WEST, W.M.

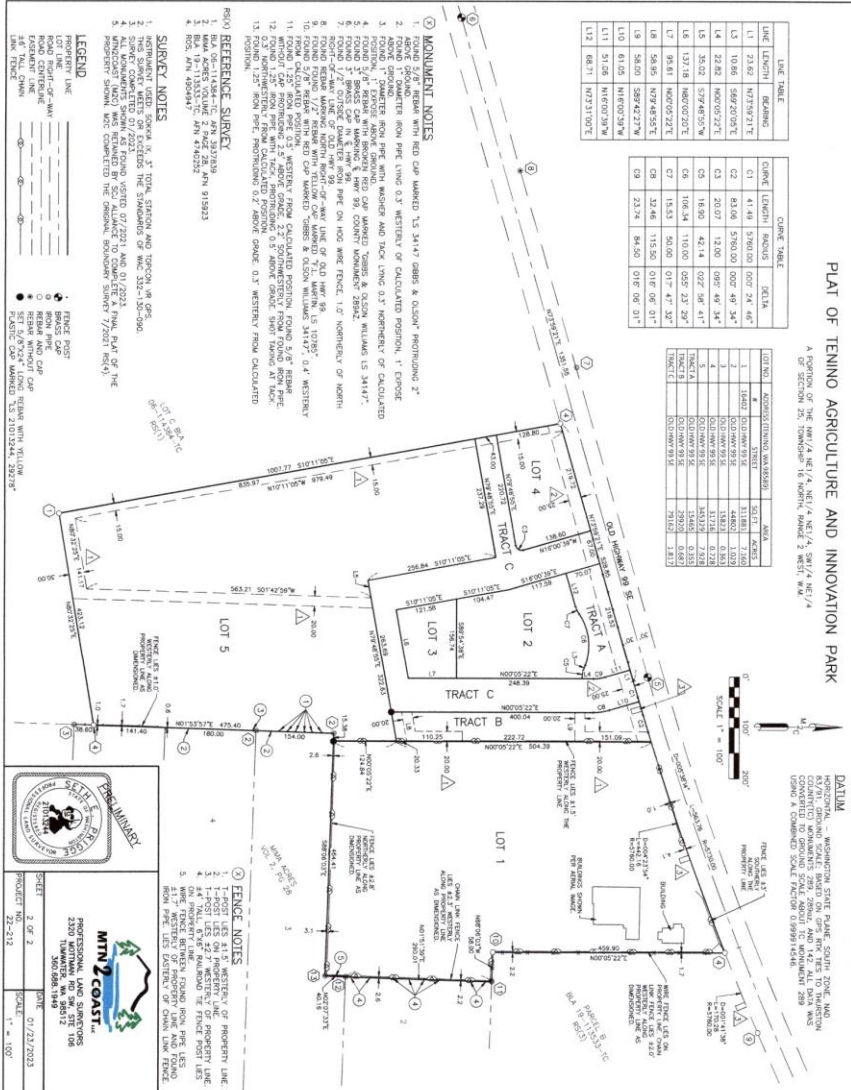
DATUM

NATIONAL - WASHINGTON STATE PARK, SOUTH ZONE, NAD
GEOCENTRIC ADJUSTMENTS BASED ON THE REFERENCE ELLIPSOID
CONVERTED TO GEODESIC SCALE ABOUT THE MONUMENT 288
USING A SCALING SCALE FACTOR OF 0.9999999999999999

LINE NUMBER	BEARING	CHORD LENGTH	ANGLS	DELTA
L1	23.62	N73°29'31"E	007' 24' 44"	
L2	19.86	S69°20'09"E	007' 49' 34"	
L3	22.82	N00°00'32"E	007' 49' 34"	
L4	38.02	S79°48'52"W	022' 58' 41"	
L5	137.18	N60°00'32"E	017' 47' 32"	
L6	98.81	N00°00'32"E	017' 47' 32"	
L7	58.95	N79°48'52"E	017' 47' 32"	
L8	58.95	S69°20'09"E	017' 47' 32"	
L9	51.08	N73°29'31"E	017' 47' 32"	
L10	68.31	N23°10'07"E	017' 47' 32"	
L11	51.08	N73°29'31"E	017' 47' 32"	
L12	68.31	N23°10'07"E	017' 47' 32"	

CHORD NUMBER	CHORD LENGTH	ANGLS	DELTA
C1	41.48	S70°01'03"	007' 24' 44"
C2	83.08	S70°01'03"	007' 49' 34"
C3	20.07	12.00	007' 49' 34"
C4	18.90	42.14	022' 58' 41"
C5	108.34	110.00	007' 23' 29"
C6	15.53	50.00	017' 47' 32"
C7	32.46	115.50	017' 47' 32"
C8	23.74	84.50	017' 47' 32"
C9	23.74	84.50	017' 47' 32"

LOT NO.	ACROSS (TOWNSHIP 16 NORTH)	SOUTH	WEST	EAST
1	168.00	101.00	151.00	151.00
2	168.00	101.00	151.00	151.00
3	168.00	101.00	151.00	151.00
4	168.00	101.00	151.00	151.00
5	168.00	101.00	151.00	151.00
6	168.00	101.00	151.00	151.00
7	168.00	101.00	151.00	151.00
8	168.00	101.00	151.00	151.00
9	168.00	101.00	151.00	151.00
10	168.00	101.00	151.00	151.00
11	168.00	101.00	151.00	151.00
12	168.00	101.00	151.00	151.00
13	168.00	101.00	151.00	151.00
14	168.00	101.00	151.00	151.00
15	168.00	101.00	151.00	151.00
16	168.00	101.00	151.00	151.00
17	168.00	101.00	151.00	151.00
18	168.00	101.00	151.00	151.00
19	168.00	101.00	151.00	151.00
20	168.00	101.00	151.00	151.00
21	168.00	101.00	151.00	151.00
22	168.00	101.00	151.00	151.00
23	168.00	101.00	151.00	151.00
24	168.00	101.00	151.00	151.00
25	168.00	101.00	151.00	151.00
26	168.00	101.00	151.00	151.00
27	168.00	101.00	151.00	151.00
28	168.00	101.00	151.00	151.00
29	168.00	101.00	151.00	151.00
30	168.00	101.00	151.00	151.00
31	168.00	101.00	151.00	151.00
32	168.00	101.00	151.00	151.00
33	168.00	101.00	151.00	151.00
34	168.00	101.00	151.00	151.00
35	168.00	101.00	151.00	151.00
36	168.00	101.00	151.00	151.00
37	168.00	101.00	151.00	151.00
38	168.00	101.00	151.00	151.00
39	168.00	101.00	151.00	151.00
40	168.00	101.00	151.00	151.00
41	168.00	101.00	151.00	151.00
42	168.00	101.00	151.00	151.00
43	168.00	101.00	151.00	151.00
44	168.00	101.00	151.00	151.00
45	168.00	101.00	151.00	151.00
46	168.00	101.00	151.00	151.00
47	168.00	101.00	151.00	151.00
48	168.00	101.00	151.00	151.00
49	168.00	101.00	151.00	151.00
50	168.00	101.00	151.00	151.00
51	168.00	101.00	151.00	151.00
52	168.00	101.00	151.00	151.00
53	168.00	101.00	151.00	151.00
54	168.00	101.00	151.00	151.00
55	168.00	101.00	151.00	151.00
56	168.00	101.00	151.00	151.00
57	168.00	101.00	151.00	151.00
58	168.00	101.00	151.00	151.00
59	168.00	101.00	151.00	151.00
60	168.00	101.00	151.00	151.00
61	168.00	101.00	151.00	151.00
62	168.00	101.00	151.00	151.00
63	168.00	101.00	151.00	151.00
64	168.00	101.00	151.00	151.00
65	168.00	101.00	151.00	151.00
66	168.00	101.00	151.00	151.00
67	168.00	101.00	151.00	151.00
68	168.00	101.00	151.00	151.00
69	168.00	101.00	151.00	151.00
70	168.00	101.00	151.00	151.00
71	168.00	101.00	151.00	151.00
72	168.00	101.00	151.00	151.00
73	168.00	101.00	151.00	151.00
74	168.00	101.00	151.00	151.00
75	168.00	101.00	151.00	151.00
76	168.00	101.00	151.00	151.00
77	168.00	101.00	151.00	151.00
78	168.00	101.00	151.00	151.00
79	168.00	101.00	151.00	151.00
80	168.00	101.00	151.00	151.00
81	168.00	101.00	151.00	151.00
82	168.00	101.00	151.00	151.00
83	168.00	101.00	151.00	151.00
84	168.00	101.00	151.00	151.00
85	168.00	101.00	151.00	151.00
86	168.00	101.00	151.00	151.00
87	168.00	101.00	151.00	151.00
88	168.00	101.00	151.00	151.00
89	168.00	101.00	151.00	151.00
90	168.00	101.00	151.00	151.00
91	168.00	101.00	151.00	151.00
92	168.00	101.00	151.00	151.00
93	168.00	101.00	151.00	151.00
94	168.00	101.00	151.00	151.00
95	168.00	101.00	151.00	151.00
96	168.00	101.00	151.00	151.00
97	168.00	101.00	151.00	151.00
98	168.00	101.00	151.00	151.00
99	168.00	101.00	151.00	151.00
100	168.00	101.00	151.00	151.00



MONUMENT NOTES

1. FOUND 5/8" IRON WITH RED CAP MARKED N3 34°47' 08"W & COLOR PROTRUDING 2"
2. FOUND 1" CONCRETE FROM PIPE WITH WASHER AND TACK LONG 0.3' NORTHERLY OF CALCULATED POSITION, 1" PROTRUSION
3. FOUND 1" CONCRETE FROM PIPE WITH WASHER AND TACK LONG 0.3' NORTHERLY OF CALCULATED POSITION, 1" PROTRUSION
4. FOUND 5/8" IRON WITH BRASS WITH RED CAP MARKED CORNER & OLSON WILLIAMS US 34147"
5. FOUND 5/8" IRON WITH BRASS WITH RED CAP MARKED CORNER & OLSON WILLIAMS US 34147"
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12. FOUND 1/2" IRON PIPE WITH HOE, PROTRUDING 0.5' ABOVE GRADE (SPOUT TANK) AT TACK
13. FOUND 1/2" IRON PIPE, PROTRUDING 0.7' ABOVE GRADE 0.3' WESTERLY FROM CALCULATED POSITION.

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**EXHIBIT A-1
LEGAL DESCRIPTION OF PREMISES**

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

LOT 2.2 (SOUTH 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 SOUTHERLY 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 A-2
SITE PLAN**

[See following page]

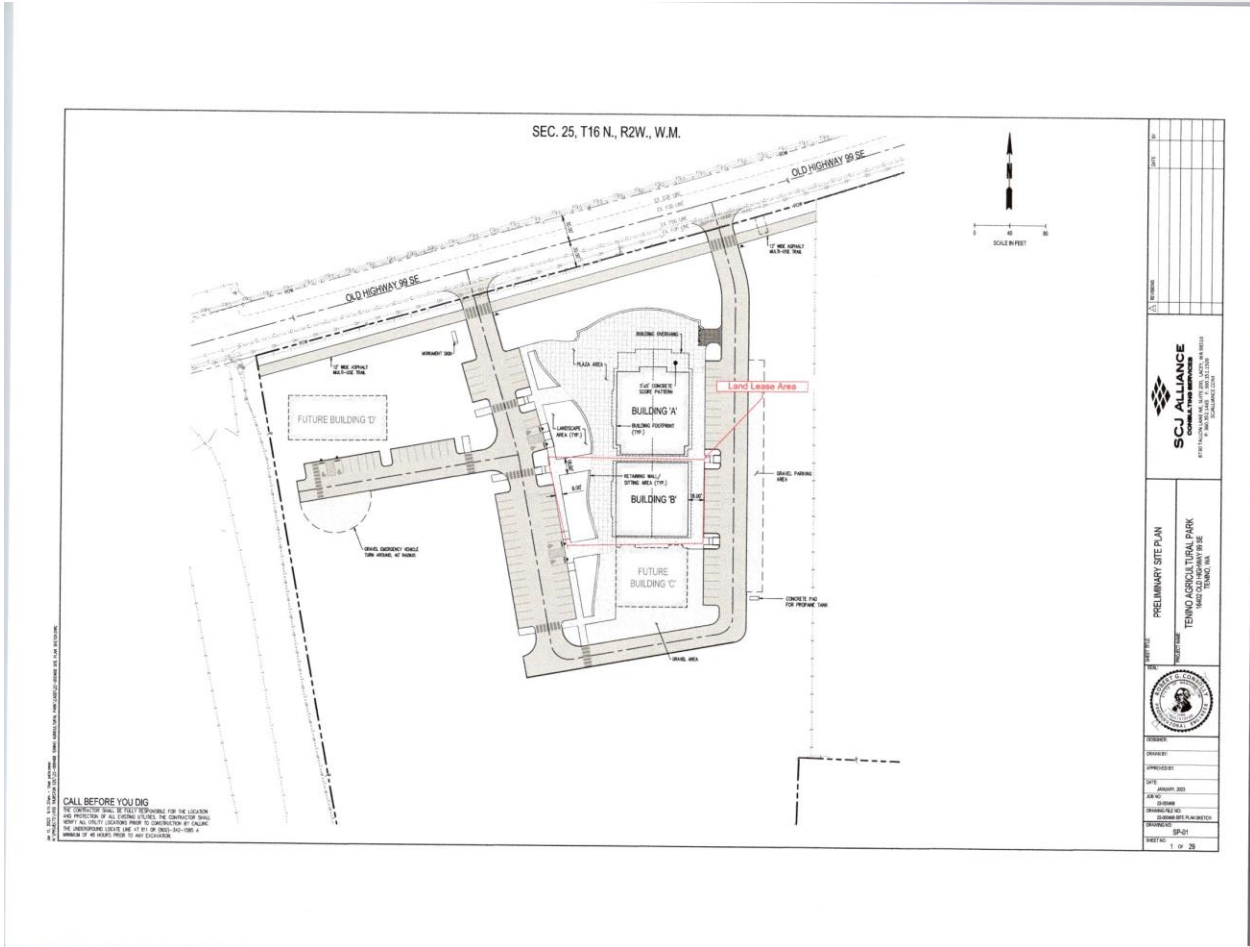


EXHIBIT B
SIGNAGE, MARKETING, AND BRANDING



**EXHIBIT C
LESSOR'S REQUIREMENTS AS TO IMPROVEMENTS
AND READYING OF SITE PAD**

The Parties acknowledge and agree that Lessor plans to deliver a pad ready site for Lessee to construct an office building on the Premises and undertake associated improvements on the Premises. Lessee consents to such improvements, subject to the following terms and conditions:

(i) Unless otherwise agreed in writing, Lessor shall be solely responsible for all aspects of planning and delivering the pad ready site on the Premises, including without limitation:

a. Delivering a buildable pad to accommodate a minimum 6,303 square foot building referenced as "Lot 2 South Building" per Exhibit A-2, attached hereto and hereby incorporated by reference, and as referred to as the "Office Building" in the Lease. The Office Building pad will be cleared, graded, and compacted in accordance with the soils and geotechnical report and structural soil density requirements.

b. The Office Building, to be built by Lessee, and site development, to be built by Lessor, will be defined as having the following improvements and features:

i. Water service lines extended to within 5 feet of the Office Building, with a minimum of two service connections to the Office Building.

ii. Sewer force main extended to within 5 feet of the Office Building, with a minimum of two service connections to the Office Building.

iii. All surface paved access roads, parking lots, service drive aisles, and associated improvements serving the site and the Office Building.

iv. All site storm water facilities.

v. Parking lot lighting, pedestrian level lighting for hardscape areas and lighted bollards as necessary to illuminate sidewalk pathways to the Office Building and parking lots.

vi. Sidewalks and ADA compliant ramps around the perimeter of the Office Building.

vii. Landscaping and hardscape per approved civil engineering plans.

viii. Paced multi-use path along Old 99 frontage.

c. Providing necessary sewer STEP system improvements to support the Office Building including septic tanks, grinder pumps, electrical controls, and associated equipment consistent with STEP design criteria and standards applied for all new sewer connections. STEP sewer improvements will be considered part of the required Office Building improvements.

(ii) Lessor will complete and deliver the final site pad improvements as outlined in this Exhibit C by _____, 2023.

EXHIBIT D
LESSEE’S REQUIREMENTS AS TO IMPROVEMENTS

The Parties acknowledge and agree that Lessee plans to construct an office building on the Premises, and undertake associated improvements on the Premises to develop an aesthetically pleasing, first-class office building. Lessor consents to such improvements, subject to the following terms and conditions:

(i) Unless otherwise agreed in writing, Lessee shall be solely responsible for all aspects of constructing the Office Building and developing the Premises, including without limitation:

- a. Undertaking all planning, permitting and construction activities.
- b. Ensuring all necessary utility services are provided for.
- c. Entering into tenant leases with CB&I and other parties.
- d. Performing any needed repairs or maintenance which arises during the Term.

e. Acting as the property manager of the Agricultural Park and “Lot 2 North Building”, as shown in Exhibit A-2, and also known as the “Community Building”.

(ii) Lessee shall receive no public funds from the City of Tenino in connection with the Land Lease for Lot 2 South Area.

(iii) All work shall be conducted in compliance with all federal, state, and local laws, rules and regulations.

(iv) No development or other improvements may occur on the Premises until and unless Lessee demonstrates compliance with the Permitting and Environmental Review requirements in section 1.12 of the Lease.

(v) Lessee shall use commercially reasonable efforts to ensure no person or property is damaged on the Premises during the Term of this Lease.

**EXHIBIT E
LESSOR'S CONSENT AND AGREEMENT
(For Financing Purposes)**

Description of Ground Lease.

“Lessor”	The City of Tenino, a Washington municipal corporation
“Lessee”:	DIG Tenino LLC, a Washington limited liability company
“Lease”:	Land Lease dated _____
“Leasehold”:	Lessee’s interest in the Lease and all Leasehold Improvements
“Lender(s)”:	_____ _____ _____ _____

NOW, THEREFORE, Lessor represents, warrants, covenants and agrees as follows:

1. **Consents.** Lessor hereby consents to the assignment of Lessee’s interest in the Leasehold to Lender for security purposes under the Lender’s Deed of Trust upon closing of the loan. Herein the term “Deed of Trust” shall mean the Lender’s Deed of Trust as may be applicable and the “Lender” shall mean, as its/their interests appear in the Deed of Trust.
2. **Status of Lease.** A true and correct copy of the Lease, together with all amendments, supplements, and modifications thereto, is attached as Schedule A to this Agreement. The Lease is presently in full force and effect, is valid and enforceable according to its terms and has not been modified or amended in any way except as shown on the copy of the Lease attached hereto.
3. **Non-Default.** Lessee is not in default: (a) in the payment of rent or any other amounts due and payable by Lessee to Lessor under the Lease; or (b) to the knowledge of Lessor, in the observance or performance of any other covenant or condition to be observed or performed by Lessee under the Lease. To the knowledge of Lessor, no event has occurred which now does or hereafter will authorize Lessor to terminate the Lease.
4. **Right to Foreclose Deed of Trust.** Lender recognizes that any Deed of Trust taken by Lender affects and applies only to Lessee’s interest in the Leasehold and that Lessor will not permit any security interest to be taken in any of its land. In the event of default by Lessee under the terms of the Deed of Trust, Lender may enforce or foreclose the Deed of Trust including the acceptance of a Deed in Lieu of Foreclosure. Landlord agrees that in connection with any such foreclosure, Lender may:

a. Acquire Lessee's interest in the Leasehold either by Deed in Lieu of Foreclosure or actual foreclosure without further consent of Lessor, subject to the requirements of paragraph 6.4 below.

b. Rent the Premises as office space pending foreclosure of the Leasehold by Lender without further consent of Lessor.

c. Assign and sell the Leasehold in whole or in part to any person or entity, subject to the requirements set forth in paragraph 6.5 below.

5. **Surrender of the Premises.** No surrender of the Premises or any other act of Lessee shall be deemed to terminate the Lease and Lessor will not terminate voluntarily by agreement with Lessee unless Lender has been previously notified in writing and has consented to the termination in writing. The Lease shall not be amended or modified unless Lender has been previously notified in writing and has consented to such amendment or modification in writing.

6. **Notice of Default and Lender's Rights.**

6.1. **Notice of Default.** If Lessee defaults under the Lease or if any event occurs which would give Lessor the right to terminate, modify, amend or shorten the term of the Lease, Lessor shall take no steps to exercise any right it may have under the Lease without first giving Lender written notice of such default. A copy of each and every Notice of Default served or sent by Lessor or its agent to or upon Lessee pursuant to the Lease shall be sent contemporaneously to Lender in accordance with paragraph 13 below. Such Notice of Default shall specify the event or events of default then outstanding and the time period at the end of which the indicated action would become effective.

6.2. **Termination for Monetary Default.** If the Notice of Default given by Lessor to Lender relates to a monetary default and Lessee has not cured such monetary default within 15 days as provided in the Lease and Lessee's failure to cure results in Lessor desiring to terminate the Lease, Lessor may terminate the Lease if such monetary default is not cured by either Lessee or Lender within twenty (20) days of Lender's receipt of Notice, and kept current thereafter.

6.3. **Termination for Non-Monetary Default.** If the notice given by Lessor to Lender relates to a non-monetary default and Lessee has not cured such non-monetary default within the 30- day period specified in the Lease, Lessor shall take no action to terminate the Lease if:

a. Within 20 days after Lessor's notice to Lender to Lessee's failure to cure (or failure to diligently pursue a cure) Lender notifies Lessor of its intent to realize upon its security interest and commences realization within 60 days thereafter, and diligently pursues realization; and

b. Lender notifies Lessor that it will assume the Lease when Lender is legally entitled to the ownership and/or possession of Lessee's interests in the Leasehold; and

c. Lender pays Lessor at time of notification all back rent or other monies or performances due that may be in default up to the date Lender notifies Lessor of Lender's intent and further pays all rent that accrues during the period after Lender so notifies Lessor and completes such other performances that may be required or come due under the Lease.

Lessor shall not terminate the Lease because of Lessee's breach of any term(s) of the Lease relating to the solvency of Lessee or the institution of any bankruptcy, insolvency, receivership or related action by or against Lessee as long as Lender cures any default under the Lease by Lessee as provided in this Agreement.

6.3.1. If the non-monetary default is of a nature which requires immediate abatement as a result of which Lender would not normally pursue realization on the collateral, and Lessee has not taken steps to immediately cure the default, then Lender must take immediate steps to cure such default within ten (10) days of receipt of notice or else the Lessor may terminate the Lease.

6.3.2. Upon termination of the Lease as provided herein, Lender will release its Deed of Trust within fifteen (15) days thereafter.

6.4. **Assumption of the Lease.** If Lender acquires the interest of Lessee at any time or takes possession of the collateral, then Lender shall formally assume the Lease within twenty (20) days thereafter. Failure to so assume the Lease shall give Lessor the right to immediately terminate the Lease.

6.5. **Right to Assign.** Lender shall not have the right to assign its interest in the Leasehold nor in the case of a foreclosure under the Deed of Trust shall the Trustee under the Deed of Trust transfer the Leasehold to any person or entity (other than Lender) without first obtaining the written consent of Lessor for such assignment or transfer, which consent will not be unreasonably withheld or delayed provided that Lender has disclosed to Lessor: (a) the identity of the proposed purchaser, assignee or transferee; (b) shown that the purchaser's, assignee's or transferee's credit standing would reasonably be acceptable to a commercially prudent lender; and (c) provided evidence to Lessor that the use of the property by such purchaser, assignee or transferee shall be consistent with the terms of the Lease or Lessee's prior use of the Leasehold. Upon the purchaser's, assignee's or transferee's assumption and agreement to perform and to be bound by all of the terms of the Lease, Lender shall be relieved of further liability under the Lease, however, if Lender finances the purchaser, assignee or transferee, Lender shall again be subject to all the obligations set forth in this Agreement.

7. **Disposition of Insurance and Condemnation Proceeds.** Lessor shall be named as an additional insured under any of Lessee's casualty policies on the Premises to the extent of the interests limited in this paragraph 7. Should the Premises suffer any loss which is covered by casualty insurance, and the insurance proceeds are used to restore any improvements made by Lessee, Lessor agrees that Lessee and Lender shall have the right to such proceeds so long as none of Lessor's property, utilities or other services therein are damaged or such damages are repaired. In the event the Premises are substantially damaged and Lessee's improvements have been repaired, Lessor shall only participate in the insurance proceeds to the extent necessary to repair and restore Lessor's ground and any of Lessor's or Lessee's improvements (excluding buildings and personal property) on or in the ground to the same condition the land was in at the commencement of the Lease, or in the same condition at the time of the casualty. Under the Lease, Lessor has the option of requiring Lessee to demolish the improvements at the end of the Lease term, or to have Lessee convey title to Lessor Lessee's interests in the Leasehold Improvements. In the event Premises and the Leasehold are so severely damaged that Lessee's and Lenders' decision is not to repair or restore the Premises, Lessor shall participate in the insurance proceeds to the extent necessary to remove the remainder of the damaged improvements and to restore the Premises and any utilities or other such improvements (excluding rebuilding the improvements or restoring other personal property of Lessee) to the same condition the land was in at the commencement of the Lease, or in the same condition at the time of the casualty. Other than as described herein, Lessor shall have no claim to insurance proceeds or condemnation proceeds that are attributable to Lessee's interest in the Leasehold, nor shall Lender have any interest in Lessor's condemnation proceeds, if any.

8. **Right to Participate in Litigation.** Lender shall have the right to participate in any litigation, arbitration or dispute directly affecting the Premises or the interests of Lessee or Lender therein, including without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. Lessor, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly

notify Lender of the same.

9. **Incorporation of Mortgage Protection Provisions.** To the extent not inconsistent with this Agreement, all provisions of the Lease which by their terms are for the benefit of any leasehold mortgagee, are hereby incorporated herein for the benefit of Lender. Without limited the foregoing, Lender shall be a beneficiary of the warranty and indemnity provided in the Lease.

10. **Right to Remove Collateral.** In the event Lender exercises its rights under its collateral and realizes upon the collateral, Lessor agrees that Lender is entitled to remove Lessee’s furniture, movable trade fixtures and equipment installed by Lessee from the Premises at any reasonable time and that the collateral shall remain personal property even though the trade fixtures may be affixed to or placed upon the Premises. “Trade fixtures” means the movable personal property of Lessee which is free standing or attached to floors, walls or ceiling, but does not include installed light fixtures, floor coverings, doors, windows, heating, plumbing or electrical systems or components thereof, including any roof-mounted HVAC equipment and/or units thereof, or permanent walls or partitions installed by Lessee. In the event Lender so realizes on its collateral, Lessor waives any right, title, claim, lien or interest in the above trade fixtures by reason of such fixtures being attached to or located on the Premises. Lender shall use reasonable care in removing the trade fixtures from the Premises and shall repair any damage that may result from such removal which shall be completed in accordance with the terms of the Lease.

11. **Interpretation of Agreement.** This Agreement sets forth the complete understanding of Lender with respect to this transaction; may be amended only in writing signed by the party against whom it is sought to be enforced; and, without limiting the generality of the foregoing shall not be deemed modified by any course of dealing. No provision in the Assignment of Lessee’s Interest in Lease, Security Agreement and Deed of Trust shall vary, modify or expand the covenants herein contained. In the event of any conflict between the terms of this Agreement and the Lease, this Agreement shall control.

12. **Disputes.** In the event of litigation or arbitration between the parties to enforce or interpret this Agreement, the arbitrator, Board of Arbitration or Judge, as may be appropriate, may award the prevailing party in such arbitration or litigation a reasonable attorney’s fee not to exceed 20 percent of the amount in controversy, plus costs and costs of collection.

13. **Notices.** All notices, copies of notices, consents or other communications given under this Agreement must be in writing and shall be effective when received. Such communications shall be given in person to an officer of Lender or to Lessor or shall be delivered to one of such persons by registered or certified U.S. mail or by public or private courier or wire service or facsimile transmission addressed to the parties at their respective addresses set forth below, unless by such notice a different person or address shall have been designated in writing:

If to Lender:

Attn: _____

With a copy to:

Attn: _____

If to Lessor:

City of Tenino
Attn: Clerk/Treasurer
PO Box 4019
Tenino, WA 98589

With a copy to:

Attn: _____

If to Lessee:

DIG Tenino LLC
Attn: Perry Shea
14307 Barbo Drive SW
Tenino, WA 98589

With a copy to:

Dickson Frohlich Phillips Burgess, PLLC
Attn: Rob Dickson & Andrew Hata
1200 East D Street
Tacoma, WA 98421

[Signature page follows]

IN WITNESS WHEREOF, Lessor has executed these presents this ____ day of _____,
202__.

“Lessor”

City of Tenino,
a Washington municipal corporation

By: _____

Name: _____

Its: _____

Exhibit To Lessor's Consent and Agreement

Insert copy of Lease

EXHIBIT F
MINIMUM GROUND RENT CALCULATION
 (Not including any applicable leasehold tax.)

PROPERTY VALUE METRICS		
Land Value (Per Square Foot)	\$	7.15
Land Value		
Total Value	\$	4,020,248
Acres		12.908
Square Feet		562,272
Value Break Down		
Rate of Return on Value		7.00%
Value Per Acre	\$	311,454
Lease Per Acre (Annual)	\$	21,802
Lease Per Acre (Monthly)	\$	1,817
Lease Per Sq. Ft. (Annual)	\$	0.50
Lease Per Sq. Ft. (Monthly)	\$	0.04

LOT 2 SOUTH BUILDING LAND LEASE		
Acres		0.34
Total Lot Sq. Ft.		14,791
Annual Lease	\$	7,403
Monthly Lease	\$	617
Leashold Tax	\$	951
DIG Tenino LLC Annual Lease	\$	8,353