

## SUBLEASE

THIS SUBLEASE ("Sublease"), effective August 26 2015 ("Effective Date"), is between PDX LOGISTICS CENTER I LLC, a Delaware limited liability company ("Landlord") and KeHE Distributors, LLC, a Delaware limited liability company ("Tenant").

### SECTION 1: BASIC TERMS AND SPECIAL PROVISIONS

**1.1 Basic Terms.** This Section sets forth certain basic terms of this Sublease for reference purposes. This Section is to be read in conjunction with the other provisions of this Sublease.

Premises		Term	
Project Name	PDX Logistics Center I, LLC	Term (months)	125 months
Street Address	9555 NE Alderwood	Sublease Commencement Date	November 1, 2015
City	Portland	Rent Commencement	November 1, 2015
County	Multnomah	Sublease Expiration	March 31, 2026
State	Oregon	Renewal Options: Number	Three (3)
Zip Code	97218	Length of each (months)	Five (5) year

<b>Rentable Area (RSF)</b>	<i>Total Premises RSF (Agreed)</i>	383,040	
	<i>Office Portion of Premises (Minimum RSF)</i>	7,500	[Subject to measurement per Section 2.1]
<b>Common Expenses</b>	<i>Tenant's share</i>	100% of Building 78% of Project	
<b>Parking Allocation</b>	Tenant shall be permitted to park in the parking area constructed for the Building shown on <u>Exhibit A</u> . See also Section 6.4.		
<b>Permitted Uses</b>	See also Section 6.1.1.		
<b>Guarantors</b>	NONE		

<b>Rent</b>				
<i>Start Month</i>	<i>End Month</i>	<i>Monthly Base Rent per square foot of Premises RSF</i>	<i>Monthly Base Rent for Premises prior to Office Surcharge</i>	<i>Monthly Base Rent Surcharge per square foot of Office RSF*</i>
Month 1 [November, 2015]	Month 5	ABATED**	ABATED**	ABATED**
Month 6	Month 12	\$0.3950	\$151,300.80	\$0.8200
Month 13	Month 24	\$0.3950	\$151,300.80	\$0.8200
Month 25	Month 36	\$0.4049	\$155,083.32	\$0.8405
Month 37	Month 48	\$0.4150	\$158,960.40	\$0.8615
Month 49	Month 60	\$0.4254	\$162,934.41	\$0.8831
Month 61	Month 72	\$0.4360	\$167,007.77	\$0.9051
Month 73	Month 84	\$0.4469	\$171,182.97	\$0.9278
Month 85	Month 96	\$0.4581	\$175,462.54	\$0.9509
Month 97	Month 108	\$0.4695	\$179,849.11	\$0.9747
Month 109	Month 120	\$0.4813	\$184,345.33	\$0.9991
Month 121	Month 125	\$0.4933	\$188,953.97	\$1.0241

\* "Office RSF" is defined in Section 2.1.

\*\* Operating Cost Reimbursements not abated.

<b>Prepaid Rent</b>	\$157,450.82	Not including Common Expenses Reimbursement
<b>Security Deposit</b>	\$1,000,000.00, subject to reduction as provided in Rider 2	Letter of Credit. See <u>Rider 2</u>

#### **Insurance; Parties to be named as Additional Insured**

*Landlord:* PDX Logistics Center I, LLC  
*Port:* The Port of Portland, a Port District of the State of Oregon  
*Property Manager:* Colliers International  
*PCCP:* PCCP, LLC  
*Capstone:* Capstone Partners LLC

<b>Brokers</b>	<i>Company</i>	<i>Agents</i>
<i>For Tenant</i>	Colliers International - Chicago	Frederick Regnery
<i>For Landlord</i>	Colliers International - Portland	Paul F. Breuer Jerry Matson

#### **Addresses for Notices & Rent**

##### **Landlord's Notice Address:**

*Name* PDX Logistics I LLC  
*Address* c/o Capstone Partners LLC  
 Attention: Chris Nelson  
 1015 NW 11<sup>th</sup> Avenue, Suite 243  
 Portland, OR 97209

Phone (503) 226-1972  
Fax (503) 226-1973

**With a copy to:**

Name PCCP, LLC  
Address Attention: Legal Notices  
10100 Santa Monica Boulevard, Suite 1000  
Los Angeles, CA 90067  
Phone (310) 414-7864

**Property Manager's Address:**

Name Colliers International  
Attention: Lisa, Johnston, Senior Manager  
Address 851 SW Sixth Ave, Suite 1200  
Portland, OR 97204  
Phone (503) 499-0080  
Fax (503) 227-2447

**Rent Payments:**

Name PDX Logistics I LLC  
Address Property Manager's Address listed above

**Tenant's  
Notice**

**Address:**

Name KeHE Distributors, LLC  
Address Attention: Gene Carter, EVP  
1245 E. Diehl Road, Suite 200  
Naperville, IL 60563

Phone \_\_\_\_\_  
Fax \_\_\_\_\_

**With a copy to:**

KeHE Distributors, LLC  
Attention: General Counsel  
1245 E. Diehl Road, Suite 200  
Naperville, IL 60563  
Phone: 630-343-0020  
Fax: 904-680-6382

**Exhibits.** The following exhibits and riders are incorporated by reference in this Sublease.

EXHIBIT A	Premises
EXHIBIT B	Legal Description
EXHIBIT C	Work Letter
EXHIBIT D	Sublease Memorandum
EXHIBIT E	Rules and Regulations
EXHIBIT F	Environmental Questionnaire
EXHIBIT G	ERISA Certificate
EXHIBIT H	Drawing of HVAC Units
Rider 1	Common Expenses
Rider 2	Sublease Security
Rider 3	Ground Lease Requirements
Rider 4	Additional Environmental Provisions

Rider 5	Port Non-Disturbance Provisions
Rider 6	Additional Sublease Provisions

## SECTION 2: PREMISES

**2.1 Premises.** The "Premises" shall be the area shown on the site plan/floor plan attached hereto as **Exhibit A** which the parties agree is equal to 383,040 rentable square feet, located within the building located at the address set forth in Section 1 ("Building"). A portion of the Premises will consist of "Office Space", meaning any space partitioned off from the balance of the Premises, and adapted for office use, including without limitation break rooms, bathrooms, closets, conference rooms, reception areas, and open plan or enclosed offices. As set forth in Section 1, the Office Space bears a Base Rent Surcharge. The exact amount of the Office Space will not be known until the Tenant's Work is complete. At such time, Landlord's architect shall measure the Office Space from the outside face of exterior walls and from the warehouse side of any interior partitions. The area resulting from such measurement shall be the "Office RSF" for purposes of calculating the Office Base Rent Surcharge. Notwithstanding the actual measured Office RSF, it shall in no event be less than 7,500 RSF nor more than 9,000 RSF for purposes of calculating the Office Base Rent Surcharge.

The Building is located on or is being constructed on the real property legally described in **Exhibit B** attached hereto ("Land"). The Land together with the Building and all other existing and future improvements located or to be located thereon, as the same may be expanded or contracted from time to time, are collectively referred to herein as the "Project".

**2.2 Sublease of Premises.** Landlord subleases the Premises to Tenant upon the terms and conditions set forth in this Sublease; provided that Landlord reserves the right to install, maintain, use, repair, relocate and replace stacks, pipes, ducts, conduits, wire and utilities leading through the Premises in locations which do not unreasonably interfere with Tenant's use thereof. Tenant shall have access twenty-four (24) hours per day, subject to closures for emergencies, repairs (to the extent required or allowed under this Sublease or the Ground Lease), and matters outside Landlord's control.

**2.3 Ground Lease.** Tenant acknowledges that this Sublease is entered into by Landlord under a *Ground Lease* dated August 1, 2013, between the Port of Portland, a port district of the State of Oregon ("Port"), as lessor and Landlord as lessee, as amended by a First Amendment to Ground Lease dated August 30, 2013, as it may be further amended from time to time ("Ground Lease") (Port Agreement No. 2013-120) and is subject and subordinate to the Ground Lease as further provided on Rider 3. Landlord represents and warrants to Tenant that the Ground Lease has not been terminated and that Landlord has right, authority and ability to enter into this Sublease and perform all obligations provided herein under the terms of the Ground Lease. Landlord agrees not to amend the Ground Lease in a manner that unreasonably interferes with Tenant's access to the Premises or materially increases Common Expenses excluding common area assessments under the Ground Lease.

**2.4 Common Areas and Reservation of Rights.** References to "Common Areas" shall mean all areas of the Project not intended to be leased to tenants for their exclusive use. The Common Areas shall be under Landlord's exclusive control and Landlord shall make available from time to time such public portions of the Common Areas as Landlord deems appropriate, and Tenant shall have the nonexclusive right to use those Common Areas for ingress and egress, subject to the Rules and Regulations (as defined in Section 6.7) and the Development Standards (defined in Section 6.7). As part of Common Expenses (as defined on Rider 1), Landlord is responsible for operating and maintaining the Common Areas and Landlord may change the size, location, nature and use of any Common Areas and the improvements therein, and permit use of the Common Areas by others in such manner as Landlord may from time to time determine, so long as the same does not unreasonably interfere with the operation of Tenant's business at the Premises. Without limiting the generality of the foregoing, Landlord reserves the exclusive right as it reasonably deems necessary, or as required under the Ground Lease, to install, maintain, operate, and remove lighting systems and other equipment, improvements, and signs; change the number, size, or locations of walks, curbcuts, driveways, vehicle ways and parking areas now or later forming a part of the

Project; make alterations or additions to the Project; close temporarily all or any portion of the Common Areas to make repairs or changes or to avoid public dedication; grant easements to which the Land or the Project will be subject; replat, subdivide, or make other changes to the Land or Project and to alter, locate or relocate roads, entrances, driveways and utilities through, over and under the Project, so long as the same does not unreasonably interfere with the operation of Tenant's business at the Premises. Tenant acknowledges that the Port shall have full rights and authority with respect to its Common Areas as set forth in the Development Standards and the Ground Lease, subject to the limitations therein, which rights shall survive termination of the Ground Lease, and that neither the Port nor Landlord shall be liable to Tenant for damages or otherwise, nor shall there be an abatement of rents, nor shall the same constitute an eviction of tenant arising as a result of the Port, or any of its agents, employees or representatives, or Landlord's or Landlord Parties' exercise of their respective rights over the Common Areas, except to the extent unreasonably interferes with Tenant's use of the Premises. In the exercise of Landlord's rights under this Section, Landlord agrees to use commercially reasonable efforts to minimize interference with the operations of Tenant and not to block all driveways constructed into the Project at any one time without Tenant's approval and use its commercially reasonable efforts to cause the Port to do the same in the manner permitted under the Ground Lease.

**2.5 Landlord's Work/Acceptance of Condition.** Landlord shall deliver possession of the Premises upon mutual execution of this Sublease. Landlord warrants that the Premises have been completed in compliance with the Shell & Core Plans (as defined in **Exhibit C**), other than changes which do not affect quality or function, provided Landlord shall repair any minor "punch list items" within thirty (30) days after Tenant takes possession of the Premises. Landlord represents and warrants that on the Commencement Date the Premises will be in compliance with the Ground Lease, the Rules and Regulations set forth in Section 6.7, all existing federal, state and local laws, including but not limited to the Americans with Disabilities Act ("ADA"). Landlord further warrants that on the Commencement Date, and for a period of one (1) year thereafter, the mechanical, electrical, and plumbing systems installed by Landlord will be in functioning in good and operating condition Except as expressly set forth in this Sublease, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty as to the condition of the Premises or the suitability of the Premises for Tenant's intended use. Tenant's acceptance of the Premises does not relieve Landlord from obligations to repair any latent defects in Landlord's Work, at Landlord's cost, subject to Tenant's duty, upon Tenant's actual knowledge of such defects, to promptly notify Landlord of any such defects and subject to any damage caused by Tenant's misuse or failure to properly maintain the subject item, for which Tenant shall be responsible, and shall not be construed to alter or limit Landlord's maintenance, repair and replacement obligations or any representations as to the condition of the Premises as expressly provided in this Sublease.

**2.6 Tenant's Work/Tenant Improvements.** Tenant's Work (as defined in **Exhibit C**) shall mean any and all work done in the Premises (other than Landlord's Work, (as defined in **Exhibit C**) by or on behalf of Tenant to prepare the Premises for initial occupancy and use by Tenant. Tenant's Work shall be subject to the approval of Landlord and the provisions of Section 6.10. Tenant shall cause its contractors to coordinate Tenant's Work with Landlord's contractors, if any, performing work on Tenant improvements or elsewhere in the Building, so as to avoid any delay in the construction of Landlord's Work or Tenant improvements. Tenant shall obtain from all contractors and subcontractors providing material and labor in the construction of Tenant's Work all commercially reasonable warranties (including manufacturers' warranties) for materials or labor as are available from such contractors or subcontractors and shall ensure that such warranties run to the benefit of Landlord, and its successors and assigns under this Sublease, and may be enforced by Landlord, but only to the extent that Landlord is herein obligated to maintain, repair or replace same.

**2.7 Early Entry.** Tenant shall be permitted entry into the Premises upon execution of this Sublease for the limited purpose of installing materials handling, storage, shelving, racking, bins, sorting, conveyor, packaging and delivery equipment, installing its telecommunications systems and other fixtures and furnishings (collectively, "Tenant's Trade Fixtures") and completing other items of Tenant's Work (as defined in **Exhibit C**). Such entry shall be: (a) at Tenant's risk; (b) subject to all the terms of this Sublease, except the obligation to pay Base Rent (as defined in Section 4.1) and Tenant's share of Common Expenses

(as defined on Rider 1); and (c) subject to Tenant delivering evidence of insurance as required under the Sublease in effect from the date of Tenant's first entry.

**2.8 [intentionally omitted]**

**SECTION 3: TERM**

This Sublease is binding upon the parties as of the Effective Date. The term of this Sublease ("Term") shall commence on the Commencement Date set forth in Section 1. The Term shall be for the number of months set forth in Section 1. When the Commencement Date has occurred, Landlord will prepare and Tenant will sign a Sublease Memorandum in the form shown in **Exhibit D** attached hereto which includes an acknowledgement of the Commencement Date, the date(s) that Tenant's payments of Base Rent (as defined in Section 4.1) and Tenant's share of Common Expenses (as defined on Rider 1) commence, and related information. The information inserted on the Sublease Memorandum shall be final and controlling and shall prevail over any inconsistent provision in this Sublease. Neither party shall record the Memorandum.

**SECTION 4: RENT**

**4.1 Payment of Rent.** Commencing on the Commencement Date (subject to rent abatement schedule set forth in Section 1 above) and continuing thereafter on or before the first (1<sup>st</sup>) day of each month during the Term, Tenant shall pay Landlord "Base Rent", in advance, without deduction, offset or demand, except as otherwise provided herein, in lawful money of the United States. "Base Rent" means the sum of:

(i) the agreed Premises RSF of 383,040, multiplied by the Premises Base Rent per square foot set forth in Section 1, plus

(ii) the Office RSF determined in accordance with Section 2.1, multiplied by the Office Base Rent Surcharge per square foot set forth in Section 1.

Base Rent shall be paid to the address of the Project Manager or as otherwise specified by Landlord. All amounts payable by Tenant under this Sublease other than Base Rent are "Additional Rent". Tenant shall pay Landlord Additional Rent without deduction, offset or demand, except as otherwise provided herein concurrently with the monthly payment of Base Rent, unless a different time for such payment is specified in this Sublease. "Rent" shall mean Base Rent and Additional Rent. Rent for any partial month shall be prorated. Landlord shall have all of the same remedies under this Sublease for Tenant's failure to pay Base Rent and Additional Rent.

**4.2 Common Expenses.** The provisions of this Sublease applicable to Common Expenses are set forth on Rider 1.

**4.3 Utilities.** Commencing on the date the Premises are delivered to Tenant, Tenant shall pay, directly to the appropriate supplier, the cost of any services which are separately metered or separately furnished to the Premises, including natural gas, electrical power, water and sewer, telecommunications and telephone.

**4.4 Sublease Security.** The Sublease Security applicable to this Sublease are set forth on Rider 2 to this Sublease.

**4.5 Late Charge.** If Tenant fails to make any payment of Base Rent, Additional Rent, or other amount within five (5) days of when such amount is due under this Sublease, and the same happens more than once during any calendar year, a late charge is immediately due and payable by Tenant equal to five

percent (5%) of the amount of such payment ("Late Charge"). Landlord and Tenant agree that this charge compensates Landlord for the administrative costs caused by the late payment. Assessment or payment of the Late Charge contemplated in this Section shall not excuse or cure any Event of Default or breach by Tenant under this Sublease or impair any other right or remedy provided under this Sublease or under law.

**4.6 Default Rate.** Any Rent, including, but not limited to, any amount paid by Landlord on Tenant's behalf, which is not paid within ten (10) days of the date when such Rent is due shall bear interest at a rate ("Default Rate") equal to the lesser of: (a) six percentage points over the published prime or reference rate then in effect at a national banking institution designated by Landlord ("Prime Rate"); or (b) the maximum rate of interest per annum permitted by applicable law. Imposition of interest under this Section shall not constitute a waiver of any Event of Default or of any other remedies available to Landlord for Tenant's failure to timely pay Rent. Tenant shall remain in Default and be obligated to pay all Rent due, including interest at the Default Rate, even if Landlord has accepted a partial or late payment of Rent.

## **SECTION 5: REPAIR**

**5.1 Tenant's Obligations.** Except as provided in Section 5.2, Tenant shall, at its sole cost, keep and maintain all portions of the Premises in good order, condition and repair (subject to reasonable wear and tear), including the surface of the floor slab, interior and exterior doors, skylights, and windows and storefront, including roll-up doors and dock doors, all dock equipment, dock levelers, floors, floor coverings, interior painting, ceilings, insulation, plumbing in the Premises (but not leading to the Building), electrical in the Premises (but not leading to the Building), all utility lines to their common connections or to the point that they run under the floor slab, lighting and all fixtures and equipment in the Premises, as well as all office improvements in the Premises. Tenant shall also maintain, repair and replace all equipment installed by Tenant (or by Landlord on Tenant's behalf) including without limitation equipment within Tenant's freezer and cooler areas. Tenant's repair and maintenance responsibility as to the items described in the foregoing two sentences shall include replacement of equipment and components which can no longer be brought into good operating condition with repairs. If any part of the Project is damaged by Tenant or Tenant's Affiliates (as defined in Section 7.4.1), Tenant shall pay the cost of repairing or replacing the damage on demand, irrespective of whether or not the damaged element is within those elements to be maintained by Landlord pursuant to Section 5.2. Tenant shall receive the benefit of any applicable warranties in existing systems or equipment in effect at the time of Lease Commencement subject to the terms and conditions of any such warranties. Notwithstanding the above, if the four (4) warehouse heating units shown on **Exhibit H** installed as a part of Landlord's Work shall require replacement, Landlord shall cause the replacement of same and the cost shall be amortized over the useful life of the heating units or overhead sprinkler systems and the monthly amortized portion shall be due and payable by Tenant as Additional Rent at the same time and in the same manner as Base Rent.

In addition, Tenant shall be responsible, at its sole cost and expense, for the maintenance and repair of any heat, ventilation and air conditioning ("HVAC"), space heaters or other utilities or energy-intensive equipment serving the Premises. Replacement of the same shall be amortized as provided in the preceding paragraph. Tenant agrees that it will maintain and repair any HVAC units, and major components thereof, in good operating condition and in compliance with all applicable warranties in order to preserve same. Tenant shall, at its sole cost and expense, enter into a regularly scheduled preventative maintenance/service contract with a maintenance contractor reasonably approved by Landlord or the seller of any such HVAC units, providing for at least quarterly service, and upon Landlord's reasonable request, Tenant will provide Landlord with reasonable evidence of such maintenance and repair. Upon Landlord's request, at reasonable times and upon prior notice to Tenant (except in the event of an emergency, where no notice is required) Landlord shall have the right to inspect, on not less than a quarterly basis, the HVAC units and major components provided Landlord shall use commercially reasonable efforts to minimize Landlord's interference with Tenant's business.

**5.2 Landlord's Obligations.**

Subject to Section 5.1, Section 10 and Section 11, Landlord, at Landlord's cost, shall repair, restore, replace and maintain in good order and condition and repair (subject to reasonable wear and tear), all utility lines up to the Premises, floor slab (except the surface or damage caused by Tenant exceeding floor loads or penetrations of slab or from the installation and operation of Tenant installed freezer and cooler improvements) and the structural components of the Premises constructed by Landlord, specifically including the footings, foundation, sub grade, exterior walls (excluding windows and plate glass), structural steel columns, girders, interior load bearing walls, and roof structure and roof membrane (except as otherwise provided in this Lease), as well as any latent defects in that portion of the Building constructed by Landlord (including latent defects in the sprinkler system constructed by landlord). The cost of the foregoing items shall not be included in Common Expenses except as otherwise provided on Rider 1. Landlord shall maintain the entire sprinkler system, and shall charge Tenant only the Permitted Sprinkler Expense (defined in Rider 1.3.1). Landlord shall make such repairs as become necessary after obtaining actual knowledge of the need for such repairs. Where Tenant has actual knowledge of the need of any repairs, Tenant shall provide prompt notice to Landlord of the need of any repairs for which Landlord is responsible. Landlord shall have no liability for interference with Tenant's use of the Premise which might result from Landlord's repair and maintenance efforts and no such efforts shall be construed as a constructive eviction or entitle Tenant to damages or abatement of rent due to such interference, unless the same is caused by the negligence and willful misconduct of Landlord, its agents contractors, and/or employees.

## **SECTION 6: OCCUPANCY PROVISIONS**

### **6.1 Use of Premises.**

**6.1.1 Permitted Uses; Conduct of Business.** The Premises are to be used only for warehouse and distribution consistent with the provision of the Ground lease and office uses incidental thereto ("Permitted Uses"), and for no other business or purpose without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed so long as the additional uses are in compliance with, and approved by the Port in accordance with, the terms of the Ground Lease, Development Standards (as defined in Section 6.7) and all other applicable restrictions. Tenant shall, at its own cost and expense, obtain and maintain any and all licenses, permits, and approvals necessary or appropriate for its use, occupation and operation of the Premises for the Permitted Uses.

**6.1.2 No Waste or Nuisance.** No act shall be done in or about the Premises that is unlawful or that will increase the existing rates or types of insurance on any or all of the Project. Tenant shall not commit or allow to be committed or exist: (a) any waste or damage upon the Project; (b) any public or private nuisance; or (c) any act or condition which violates the Ground Lease, unreasonably interferes in any way with the business of Landlord or any other tenant in the Project or with the rights or privileges of any contractors, agents, invitees or any other persons lawfully in and upon Project. Tenant shall not conduct or permit any auctions or sheriff's sales at the Premises.

**6.1.3 Disruption of Others.** Tenant shall not, without the prior written consent of Landlord, use any apparatus, machinery, device or equipment in or about the Premises which will cause any substantial noise, odor or vibration to be heard, felt or smelled outside the Premises or which would violate the Development Standards (as defined in Section 6.7) or Rules and Regulations (as defined in Section 6.7).

**6.1.4 Prohibited Uses.** Tenant is strictly prohibited from (a) using all or any portion of the Premises for any Prohibited Uses (as defined on Rider 4), (b) unreasonably cause substantial noise, vibration, fumes, debris, electronic interference, or other nuisance to emanate from the Premises to property that is adjacent to the Project; or (c) create any condition that is a safety hazard to the Portland International Airport ("Airport"); (d) unreasonably interfere in any way with the operation of the Airport, (e) provide any facilities, services, commodities or supplies, now or hereafter made available at or through the Airport, other than Permitted Uses; (f) operate any automobile or vehicle rental business; (g) operate any airline flight kitchen or other facilities providing meal services to aircraft crews or passengers or the public (non aircraft); (h) offer lodging facilities, or facilities for storage or distribution of merchandise for sale or consumption

aboard aircraft; (i) use any portion of the Premises or Project for parking for passengers or customers of the Airport (parking related to Lessee's or Lessee's subtenants' operations is permitted on the Property), or charge any fee to any person traveling by plane to or from the Airport for parking of any vehicle at the Premises or Project; or (j) use any portion of the Premises or Project for the installation or operation of any antennae, satellite dish or other system for third party transmission, reception or relay of voice or data communications that is not directly related to the operations of Tenant. Landlord has no reason to believe that Tenant's use of the Premises for warehouse and distribution of food products will necessarily result in a violation of any of the foregoing prohibited uses; provided that Tenant does not use the Premises for food production.

**6.2 Compliance with Laws.** Tenant shall obtain and pay for all permits related to its business and/or its specific use of the Premises, for example, racking permits. Throughout the Term, Tenant shall comply at its expense with all applicable statutes, laws, including without limitation Environmental Laws (as defined in Section 9.1.5), and with all orders, ordinances, rules, regulations, permit terms, codes, regulations, ordinances and guidance documents of any Governmental Agency (as defined below), and with any direction made pursuant to law of any public officer including without limitation the *Americans With Disabilities Act of 1990* (collectively, "Governmental Requirements") now or hereafter in effect, as the same may be amended or recodified from time to time, with respect to the Premises or the use thereof, including any obligation to make alterations in the Premises required as a condition of Tenant's occupancy but excluding any requirements to make structural alterations not arising from the specific nature of Tenant's use (as opposed to warehouse and distribution use generally). Tenant shall notify Landlord in writing if Tenant receives any notice of violation with respect to a Environmental Laws, or with respect to any other Governmental Requirement that could result, directly or indirectly, in any liability on the part of Landlord. Landlord shall, throughout the Term, as a Common Expense, make any structural alterations not arising from the specific nature of Tenant's or other tenants' uses (as opposed to warehouse and distribution use generally). "Governmental Agency" shall mean the United States of America, the state of Oregon, any county, city, district, municipality, regional or other governmental subdivision, court or agency or quasi-governmental agency and any board, agency or authority associated with any such governmental entity, including the fire department having jurisdiction.

**6.3 Security.** Landlord has no duty or obligation to provide any security services in, on or around the Project, and Tenant recognizes that security services, if any, provided by Landlord will be for the sole benefit of Landlord and the protection of Landlord's property.

**6.4 Parking.** Appurtenant to the Sublease of the Premises, Tenant shall have the privilege during the Term to use, on an exclusive basis, the parking spaces identified as exclusive parking spaces shown on Exhibit A attached hereto and certain other parking spaces within the Project on a non-exclusive basis in common with other tenants of Landlord in the areas identified on Exhibit A. Tenant's parking privileges shall be subject to the Rules and Regulations (as defined in Section 6.7) relating to parking adopted by Landlord from time to time. Landlord shall have the right to grant designated, reserved parking stalls to other tenants in the Building or in the Project. In no event shall the number of parking stalls used by Tenant and Tenant's Agents exceed the number of stalls allocated to Tenant. Landlord shall have no obligation whatsoever to monitor, secure or police the use of the parking or other Common Areas. Landlord represents and warrants that Tenant shall have the use and access of the parking spaces identified on Exhibit A, which will consist of approximately seventy four (74) trailer spaces and one hundred twenty five (125) car parking for Tenant's use.

**6.5 Garbage.** Landlord shall provide a specific location in the Project for Tenant's garbage dumpster(s). Tenant, at Tenant's cost, shall be responsible for arranging for such dumpster(s) to be emptied on a regular basis and shall keep the area around its dumpster(s) clean and free of any debris. Tenant shall not permit waste boxes, cartons, barrels, pallets or other similar items to be piled or stored outside of its Premises. If Tenant fails to maintain the dumpsters and surrounding area in a condition satisfactory to Landlord, Landlord may take over the arrangements for the dumpsters and Tenant shall pay the cost related to such work within thirty (30) days after receipt of Landlord's invoice.

**6.6 Signs.** Tenant shall have exclusive rights to place signs on the exterior of the Building; provided all signs and placement thereof are subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed and subject to the Port's written approval as provided under the Ground Lease. All costs in connection with the installation and maintenance of Tenant's signs shall be borne by Tenant. Any signs permitted to be placed on the Premises or the Project by Tenant shall comply with the Development Standards (as defined in Section 6.7) and local sign ordinances, and shall be maintained by Tenant in good condition at all times. Upon expiration or earlier termination of this Sublease, Tenant shall be responsible, at its cost, for the removal of any such signs and the repair, painting and/or repair of the structure to which the sign(s) is/are attached including reasonable efforts to repair any discoloration caused by such installation or removal. If Tenant fails to perform such work, Landlord may cause the same to be performed, and the cost thereof shall be Additional Rent due and payable within thirty (30) days after receipt of Landlord's invoice.

**6.7 Rules and Regulations.** Tenant shall comply with the "Rules and Regulations" reasonably established by Landlord from time to time for the Project. The current Rules and Regulations are attached hereto as **Exhibit E**. Tenant shall also comply with the terms and conditions of any of the following to the extent they are applicable to the Project and any subsequent changes thereto or replacements thereof: the Chapter 33.508 of the City of Portland's Code and Charter, *Cascade Station/Portland International Center (CS/PIC) Plan District* (found at the following website: <http://www.portlandonline.com/auditor/index.cfm?c=28197&a=53362>), the *Portland International Center Development Requirements and Standards for District B of the Cascade Station/Portland International Center Plan District* (found at the following website: [http://www.portofportland.com/PDFPOP/Prp\\_Pic\\_DevStandards.pdf](http://www.portofportland.com/PDFPOP/Prp_Pic_DevStandards.pdf)), the City of Portland's *Columbia South Shore Well Field Wellhead Protection Area Reference Manual* (found at the following website: <http://www.portlandonline.com/auditor/index.cfm?&a=319605&c=28123>), the *Portland International Airport Wildlife Hazard Management Plan* (found at the following website: [http://www.portofportland.com/PDFPOP/Env\\_WildfireHzdMgtPrgm\\_PDX\\_2009.pdf](http://www.portofportland.com/PDFPOP/Env_WildfireHzdMgtPrgm_PDX_2009.pdf)), Port ordinances and regulations, and FAA regulations (collectively, "**Development Standards**"), together with all renewals, modifications, replacements and extensions thereof. Tenant shall also comply with any other covenants, conditions, restrictions, easements, rights-of-way or other matters of record recorded against the Project as provided in the Ground Lease and any design guidelines referenced therein and including an easement for vehicular ingress and egress across the Common Area of the Project for the benefit of an adjacent development recorded or to be recorded against the Project ("**Restrictions**"); and (c) any transportation management plan adopted for the Project, so long as the same does not unreasonably interfere with the operation of Tenant's business at the Premises.

**6.8 Access to Roof.** Tenant shall not permit any employee, contractor or guest onto the roof of the Building, unless: (a) Tenant obtains Landlord's prior written consent; and (b) the person or persons are accompanied by Landlord's facilities engineer or other person designated by Landlord. Tenant shall reimburse Landlord for the cost of repairing any and all damage to the roof caused by Tenant, Tenant's Affiliates (as defined in Section 7.4.1), or their respective employees, contractors or guests. Tenant is not permitted to install any equipment (including wiring) on the roof of the Premises without Landlord's prior written consent, which consent may be conditioned upon Tenant compliance with Landlord's conditions regarding same and reimbursement for the cost of repairing any leaks or other damage to the roof arising in connection with Tenant's activities.

**6.9 Building Penetrations.** Tenant shall not make any penetrations in the Building (roof, walls, foundations, etc.) without Landlord's prior written consent, which consent shall not be unreasonably withheld conditioned or delayed. If Tenant is permitted to penetrate the Building, the consent shall be subject to Landlord's conditions, including: (a) Landlord's approval of plans and specifications for the penetration and the contractor to perform it, and any approval required by the Port under the Ground Lease; (b) arrangements to insure that the penetration will not adversely affect any warranty; (c) Tenant's agreement to reimburse Landlord for costs incurred in connection with any later problems which develop with the penetrated area; (d) Tenant's agreement to remove the equipment before the end of the Sublease and completely seal the penetration to Landlord's satisfaction and in compliance with any applicable warranty; and (e) compliance with the

Development Standards. In addition, depending on the seriousness of the penetration, Landlord may require Tenant to post a commercially reasonable deposit to guarantee Tenant's performance. If Tenant penetrates the Building without Landlord's written consent or violates the terms of the consent, Tenant shall, within thirty (30) days after receipt of a written invoice therefore, pay Landlord's cost to repair or restore the Building in such a way as to reinstate the applicable warranty or warranties.

## **6.10 Tenant Alterations.**

**6.10.1 Approval Process.** Tenant shall not make any alterations, additions or improvements in or to the Premises (individually and collectively, "Tenant Alterations"), without first obtaining the consent of Landlord and the Port if required under the Ground Lease. Landlord's consent shall not be unreasonably withheld, conditioned, or delayed so long as Tenant's Alterations do not affect the structure, exterior appearance or building systems or pose a risk of damage to the Premises or Project or conflict with the Port Rules (as defined in Section 6.10.2), Ground Lease, or Development Standards. Tenant shall deliver to Landlord full and complete plans and specifications for any proposed Tenant Alterations. All Tenant Alterations shall be performed at Tenant's expense. With respect to any Tenant Alterations (subsequent to Tenant's Work) affecting the roof, overhead sprinkler systems (including risers), main electrical services, warehouse heating units, Building structure, or other portions of the Building originally constructed by Landlord, Tenant agrees to use only those contractors specified by Landlord. Without limiting the generality of the foregoing, in connection with Landlord's approval of Tenant Alterations with a cost in excess of FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00), Tenant shall provide Landlord with: (a) proof of contractor's liability insurance and builder's risk insurance, in the amount of at least TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00) naming Landlord and the Port as additional insureds under such policy; (b) a payment and performance bond, each covering the total cost of such work, providing for full performance of the construction of such work and payment of all labor and materials, each in forms and by companies reasonably acceptable to Landlord; and (c) all-risk builder's risk insurance with respect only to the (initial) Tenant's Work equal to one hundred percent (100%) of the value of such work, if such perils are not otherwise covered by Tenant's property insurance required under Section 7.1.1, naming Landlord and the Port as additional insureds and evidenced by a certificate of insurance. If Tenant makes any Tenant Alterations without the required consent(s), or without satisfaction of any conditions to such consent(s) Landlord shall have the right, in addition to any remedy Landlord may have under this Sublease, at law or in equity, to require Tenant to remove some or all of Tenant Alterations, or, at Landlord's election, Landlord may remove such Tenant Alterations and restore the Premises at Tenant's expense. Tenant's contractors, workers and suppliers shall not interfere with workers or contractors of Landlord or other tenants of Landlord.

**6.10.2 Additional Requirements.** All Tenant Alterations shall be: (a) performed by contractors approved in advance in writing by Landlord; (b) completed in accordance with the plans and specifications approved by Landlord; (c) completed in accordance with the Ground Lease, and with all Governmental Requirements and the Development Standards or applicable Port ordinances and rules and regulations applicable to the Portland International Center development adopted in writing by the Port from time to time (collectively, "Port Rules"); (d) carried out promptly in a good and workmanlike manner; (e) free of defects in materials and workmanship; and (f) performed lien-free. In connection with any Tenant Alterations, Tenant shall deliver to Landlord copies of lien waivers from all general contractors and from all subcontractors and suppliers. Tenant shall not commence any Tenant Alterations until Tenant obtains and delivers to Landlord copies of all necessary governmental permits allowing commencement and performance of such Tenant Alterations. Upon expiration or earlier termination of this Sublease, Tenant shall be required to remove all Tenant Alterations and restore the Premises to its prior condition provided Landlord has given Tenant notice that it will require such removal prior to Tenant commencing any such Tenant Alterations. For purposes of clarification any work performed prior to the Commencement Date either deemed to be Landlord's Work or Tenant's Work shall not be considered Tenant Alterations and shall not be required to be removed upon expiration or termination of the Sublease. Tenant shall not be required to remove the main administrative office improvements performed by Tenant as a part of the initial Tenant's Work. Tenant shall be required to remove its freezer/cooler equipment and related improvements and understands and acknowledges that Tenant's Letter of Credit (as defined in Rider 2) must remain in place

until such time as that work is completed to the reasonable satisfaction of the Landlord. Any Tenant Alterations that are required to be but not removed as required, Landlord, at its election, may, but shall not be required to, remove such Tenant Alterations and restore the Premises at Tenant's expense or such Tenant Alterations shall become Landlord's property and shall be surrendered to Landlord upon termination of the Sublease.

**6.11 Surrender of Possession.** Upon the expiration or earlier termination of the Sublease, Tenant shall remove all of Tenant's personal property including any trade fixtures, furniture, equipment and other personal property used in connection with the operation of Tenant's business on the Premises that Tenant places or installs in the Premises at its expense prior to or during the Term hereof (collectively, "Tenant's Personal Property"), comply with all requirements under Section 9, as applicable, and surrender the Premises to Landlord, broom clean and in good condition and repair (subject to Tenant's obligations to remove certain improvements pursuant to Section 6.10), except for casualty damage or ordinary wear and tear which Tenant was not otherwise obligated to remedy under this Sublease, including with all electrical, plumbing and other mechanical systems in good operating condition and free from any occupancy by person or entity. Tenant, at its cost, shall remove Tenant's trade fixtures, racking or equipment and restore the Premises to good condition. Notwithstanding the foregoing, Tenant shall not remove any fixtures or equipment considered a part of the real property without Landlord's prior written consent. Such items shall include: any wiring or power panels; lighting or lighting fixtures; HVAC equipment; dock equipment; fencing or security gates; or other similar building operating equipment. Telecommunications and data cabling shall not be considered part of the real estate and Tenant shall be permitted to remove it prior to the end of the Term and Landlord may require that it be removed. If Tenant fails to remove any of its personal property from the Premises within fifteen (15) days after notice from the Landlord following expiration or earlier termination of this Sublease, the property shall be deemed abandoned and Landlord may dispose of it as Landlord sees fit or Landlord may elect to store the property for any length of time at Tenant's expense (payable on demand) without liability for loss of or damage to such property and thereafter sell or otherwise dispose of it.

**6.12 Access.** Tenant shall have access to the Building seven (7) days per week, twenty-four (24) hours per day, fifty-two (52) weeks a year subject to Section 2.16. Landlord and Landlord's Affiliates shall have the right to enter into the Premises at any time on at least one (1) Business Days' notice (except that no notice shall be required in the case of an emergency) to (a) inspect the Premises, the Building, and Tenant's operations on and use of the Premises and Building; (b) make repairs or any other act that Landlord is required to perform; (c) show the Premises to prospective tenants (in the final 9 months of the Term or any renewal Term provided Tenant has not exercised any options to extend), buyers, transferees, or lenders, (c) access meters and shut-off valves or perform repairs and maintenance, alterations or improvements, (d) perform Environmental Audits (as further provided on Rider 4) (whether pursuant to the Ground Lease or otherwise); (e) evaluate Tenant's compliance with Environmental Laws or the environmental provisions of this Sublease; and (f) facilitate compliance with Environmental Laws. In making such inspections, repairs, alterations, or additions, Landlord will use commercially reasonable efforts not to interfere with the operation of Tenant's business on the Premises.

**6.13 No Liens.** Tenant shall have no express or implied authority to place, and shall not suffer or permit, any lien or encumbrance upon, or bind, Landlord's or Tenant's interest in the Premises including by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Tenant or anyone occupying or holding an interest of Tenant in all or any part of Tenant improvements or Tenant Alterations through or under Tenant, or to burden Rent for any claim in favor of any person dealing with Tenant, including those who furnish materials or perform labor for any construction or repairs. Tenant will cause to be paid when due all amounts owed for any labor performed or services, materials or supplies furnished in connection with any work performed on the Premises by or for Tenant. Landlord may require Tenant to post a notice of Landlord's non-responsibility with respect to the work. Tenant shall provide Landlord immediate notice of any claim of lien. If any lien is filed against the Property which Tenant wishes to protest, then Tenant shall promptly deposit cash with Landlord, or procure a bond acceptable to Landlord and the Port, in an amount sufficient to cover the cost of removing the lien from the Property or file a bond or deposit money and cause the Property to be freed of the lien pursuant to ORS

87.076 et. seq. Notwithstanding any notice and cure periods, failure to remove the lien or furnish the cash or bond acceptable to Landlord or to cause the Property to be freed of the lien pursuant to ORS 87.076 et. seq. within thirty (30) days of receipt of notice of the lien shall constitute an Event of Default (as defined in Section 12.1.1), and Landlord shall have the right, but not the obligation, to pay the lien off with no further notice to Tenant and Tenant shall reimburse Landlord for any amounts so paid to remove any such lien within thirty (30) days after receipt of Landlord's invoice.

**6.14 Personal Property Taxes.** Tenant shall be liable for all taxes levied or assessed against Tenant's Personal Property. Upon request, Tenant shall provide proof to Landlord that Tenant has timely paid all such taxes. If any such taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property or if the assessed value of Landlord's property is increased by inclusion of such personal property, furniture or fixtures and Landlord elects to pay the taxes based on such increase, Tenant shall reimburse Landlord for the amounts so paid by Landlord, within thirty (30) days after demand by Landlord along with proof of payment.

**6.15 Interruption of Utilities.** Landlord shall in no case be liable or in any way be responsible for damages arising from the interruption of utilities including without limitation electric power, natural gas, telecommunications, sewer, water, or garbage collection service, servicing the Premises from any cause, unless the interruption was caused by the negligence or willful misconduct of Landlord or its agents or employees. To the extent that an interruption is caused by the negligence or willful misconduct of Landlord, Landlord's responsibility and Tenant's remedy shall be limited to an abatement in Base Rent for the period beginning with the third (3<sup>rd</sup>) day after the date on which Tenant delivers written notice to Landlord of such interruption and of the fact that Tenant is being deprived of reasonable use of the Premises and ending on the date such interruption no longer causes Tenant to be deprived of all reasonable use of the Premises. To the extent that an interruption is caused by the gross negligence or willful misconduct of Landlord and continues for a continuous period of time greater than 120 days after the date on which Tenant delivers written notice to Landlord of such interruption, then Tenant may terminate this Sublease, by written notice given within 150 days after delivery of such notice.

**6.16 Quiet Enjoyment.** Landlord covenants that Tenant, upon timely paying all amounts payable under this Sublease and performing all covenants and conditions required of Tenant under this Sublease, shall and may peacefully have, hold and enjoy the Premises, and its rights of ingress and egress through the Common Areas without interference by those claiming under Landlord subject to the provisions of this Sublease and the Ground Lease.

## **SECTION 7: INSURANCE AND INDEMNIFICATION**

### **7.1 Tenant Insurance.**

**7.1.1 Types of Coverage.** Tenant shall, throughout the Term, at its own expense, keep and maintain in full force and effect the following policies, each of which shall be endorsed as needed to provide that the insurance afforded by these policies is primary and that all insurance carried by Landlord is secondary and shall not contribute with Tenant's liability insurance: (a) a policy of commercial general liability insurance with respect to the Premises, including fire legal liability, a contractual liability endorsement covering Tenant's indemnification obligations under this Sublease, with limits of not less than TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00) each occurrence, TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00) general aggregate which policy shall be on an occurrence basis; (b) a policy of special form property insurance (previously known as extended coverage or all risk) covering Tenant's furniture, fixtures, equipment, machinery, inventory, improvements and other personal property in or about the Premises for full replacement cost; (c) workers' compensation insurance for all of Tenant's employees in accordance with the requirements of Oregon law. Tenant shall also maintain employer's

liability coverage in an amount of not less than FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$500,000.00) per accident and FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$500,000.00) per employee for disease; (d) Tenant shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (i) business interruption, such as business income, extra expense, or similar coverage; (ii) personal property; and/or (iii) automobile physical damage and/or theft. In no event shall Landlord or the Port be liable for any business interruption or any other related or consequential loss sustained by Lessee, damage to, or loss of, Lessee's property; or damage to, or loss of, an automobile, whether or not such loss is insured; (e) a policy of comprehensive automobile liability insurance, including loading and unloading, and covering owned, non-owned and hired vehicles (autos and trucks) with limits of no less than ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) per occurrence.

**7.1.2 Coverage Details.** All insurance policies required under Section 7 shall be with companies with an A.M. best rating of "A-" or better and each policy shall provide that it is not subject to cancellation, non-renewal or reduction in coverage except after thirty (30) days' written notice to Landlord (in the case of Tenant's policies). Tenant shall deliver to Landlord and, at Landlord's request, to Lender (as defined in Section 12.6), prior to the Commencement Date or such earlier date as Tenant is permitted access to the Premises, and from time to time thereafter, certificates evidencing the existence and amounts of all Tenant-carried policies. Landlord shall deliver to Tenant at Tenant's request from time to time, certificates evidencing the existence and amounts of the policies required to be carried by Landlord hereunder. Each Tenant liability insurance policy shall name Landlord, the Project Manager, the Port, PCCP, Capstone Partners LLC ("Capstone") and, at Landlord's written request, Lender as additional insureds. Landlord's liability insurance shall name Tenant as an additional insured with regard to matters occurring in the Common Areas and not caused by Tenant or Tenant's Affiliates (as defined in Section 7.4.1).

**7.1.3 Failure to Carry.** If Tenant fails to acquire or maintain any insurance or provide any certificate required by Section 7.1 and does not cure such failure within five (5) Business Days (as defined in Section 14.10) after written notice from Landlord, then, in addition to all other remedies for such Default (as defined in Section 12.1.1), Landlord may, but shall not be required to, obtain such insurance or certificates that Landlord believes is prudent to cover the risks to Landlord and the costs associated with obtaining such insurance or certificates shall be payable by Tenant to Landlord on demand.

**7.2 Landlord's Insurance.** Landlord shall, throughout the Term, keep and maintain in full force and effect: (a) a policy of special form property insurance (formerly referred to as extended coverage or all risk) covering the Project including the Building and improvements therein, and Landlord's personal property, if any, located thereon for full replacement value of such property; and (b) a policy of commercial general liability insurance with respect to the Project with limits and coverages as required under the Ground Lease and which policy shall be on an occurrence basis. Landlord may, but shall not be required to, maintain other types of insurance as Landlord deems appropriate, including but not limited to, property insurance coverage for earthquakes and floods in such amounts as Landlord deems appropriate. Such policies may be blanket policies which cover other properties owned by Landlord; provided that only the premiums associated with the Project may be included in Common Expenses. Tenant's liability insurance coverage shall be primary and not contributory with Landlord's coverage with regard to matters that are not caused by Landlord. Landlord's liability insurance coverage shall be primary and not contributory with Tenant's coverage with regard to matters occurring in the Common Areas that are not caused by Tenant.

**7.3 Waiver of Subrogation.** Notwithstanding anything in this Sublease to the contrary, Landlord and Tenant hereby each waive and release the other from any and all Claims (as defined in Section 7.4.1) regardless of cause or origin, including negligence or misconduct by Landlord, Landlord's Affiliates (as defined in Section 7.4.1), Tenant, or Tenant's Affiliates (as defined in Section 7.4.1), respectively, but only to the extent of: (a) the insurance proceeds paid to such releasor under its policies of insurance or, if it fails to maintain the required policies; and (b) the insurance proceeds that would have been paid to such releasor if it had maintained the policies required by this Sublease (including the policies listed in Section 7.1.1 with respect to Tenant). Each party to this Sublease shall promptly give to its insurance company written notice of the mutual waivers contained in this Section, and shall cause its insurance policies to be properly

endorsed, if necessary, to prevent the invalidation of any insurance coverages by reason of the mutual waivers contained in this Section.

#### **7.4 Indemnification.**

**7.4.1 Tenant's Indemnity.** Tenant shall indemnify, defend (using counsel reasonably acceptable to Landlord) and hold harmless Landlord, Landlord's Affiliates (as defined below), PCCP, Capstone, the Port and the Project Manager from and against, and reimburse such persons and entities for, any and all Claims (as defined below) made against such persons and entities, arising in whole or in part out of: (a) the possession, use or occupancy of the Premises or the business conducted in or about the Premises, whether or not due to Tenant's or Tenant's Affiliates' (as defined below) own act or omission; (b) negligence of Tenant or Tenant's Affiliates, including without limitation arising out of Tenant's Work (as defined in **Exhibit C**) or Tenant's Alterations, whether or not due to Tenant's own act or omission; (c) any condition created in or on the Premises by any party (other than Landlord or the Port), including without limitation any accident, injury or damage occurring in or on the Premises after the Effective Date; (d) the presence of any Hazardous Substance (as defined in Section 9.1.6) caused by Tenant or Tenant's Affiliates or Hazardous Substance Release (as defined in Section 9.1.7) at the Premises caused by Tenant or Tenant's Affiliates, or violation of Environmental Laws (as defined in Section 9.1.5) or of the environmental provisions of this Sublease by Tenant or Tenant's Affiliates; or (e) any breach or Default (as defined in Section 12.1.1) by Tenant or by any Tenant's Affiliates; provided Tenant's obligations under this section shall not apply to the extent caused by the negligence or willful misconduct of Landlord, Landlord's Affiliates, PCCP, Capstone, and/or the Project Manager. "Landlord's Affiliates" are all agents, employees, directors, officers, contractors and owners of Landlord. "Tenant's Affiliates" are all agents, employees, owners, directors, officers, contractors and invitees of Tenant. "Claims" is an individual and collective reference to any and all claims, demands, damages, injuries, losses, liens, liabilities, penalties, Environmental Cost (as defined in Section 9.1.4), fines, lawsuits, actions, and other proceedings and expenses (including without limitation reasonable fees of attorneys, consultants and experts and expenses incurred in connection with the proceeding, whether at trial or on appeal). For purposes of this Section, Port shall mean the Port and its commissioners, directors, agents and employees. The obligations of this Section shall be subject to Section 7.3

**7.4.2 Landlord's Indemnity.** Landlord shall indemnify, defend (using counsel reasonably acceptable to Tenant) and hold harmless Tenant and Tenant's Affiliates from and against, and reimburse such persons and entities for, any and all Claims made against such persons and entities, arising in whole or in part out of any act, omission or negligence of Landlord or Landlord's Affiliates, the presence of any Hazardous Substance (as defined in Section 9.1.6) caused by Landlord, or Landlord's Affiliates or Hazardous Substance Release (as defined in Section 9.1.7) at the Premises caused by Landlord or Landlord's Affiliates, or violation of Environmental Laws (as defined in Section 9.1.5) or of the environmental provisions of this Sublease by Landlord or Landlord's Affiliates; provided Landlord's obligations under this Section shall not apply to the extent caused by the negligence or willful misconduct of Tenant and/or Tenant's Affiliates. The obligations of this Section shall be subject to Section 7.3. Notwithstanding anything in this Sublease to the contrary, the Tenant understands and acknowledges that the Port shall only be liable for its own willful misconduct or gross negligence and then only to the extent of actual and not consequential damages.

**7.5 Tenant's Risk.** Notwithstanding any other provision of this Sublease, and to the fullest extent permitted by law, Tenant hereby agrees that neither Landlord nor the Port shall be liable for damage or loss to Tenant's Personal Property, vehicles, or its business or any loss of income therefrom and including any consequential damages, whether such injury or loss results from conditions arising upon the Premises or the Project, or from other sources or places including any interruption of services and utilities or any casualty or condemnation, regardless of whether or not such loss is insured.

### **SECTION 8: ASSIGNMENT AND SUBLETTING**

## **8.1 Assignment and Subletting by Tenant.**

**8.1.1 Transfers.** Tenant shall not have the right to assign, transfer, mortgage or encumber (each, a "Transfer" and the recipient, a "Transferee") this Sublease in whole or in part, nor sublet the whole or any part of the Premises, nor allow the occupancy of any part of the Premises by another, without first obtaining the prior written consent of Landlord (which shall not be unreasonably withheld, conditioned or delayed so long as the Port grants its approval to the Transfer and provided that Tenant is not in Default (as defined in Section 12.1.1)). Landlord agrees to provide reasonable cooperation in seeking the Port's approval of any Transfer. Notwithstanding any permitted Transfer, except in the case of an assignment to which Landlord has consented, Tenant shall at all times remain primarily and fully responsible for the payment of Rent and for compliance with all of its other obligations as Tenant under this Sublease. Acceptance of Rent from any Transferee, shall not be deemed to constitute approval of any such Transfer. Upon the occurrence of an Event of Default (as defined in Section 12.1.1), if the Premises or any part of the Premises are then subject to a Transfer, Landlord may, at its option, collect directly from such Transferee all rent becoming due to Tenant under such transfer document and apply such rent against any amounts due to Landlord from Tenant under this Sublease. No such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations under this Sublease. Landlord's right of direct collection shall be in addition to and not in limitation of any other rights and remedies provided for in this Sublease or at law. Any Transfer of any ownership interest in Tenant, or any merger, reorganization or event, however constituted which: (a) results in fifty percent (50%) or more of such interests going into different ownership; or (b) is a subterfuge denying Landlord the benefits of Section 8.1, shall be deemed to be a Transfer within the meaning and provisions of Section 8 and shall be subject to the provisions of Section 8.

**8.1.2 Procedure.** If Tenant desires to Transfer an interest in this Sublease, Tenant shall give written notice of such desire to Landlord and the Port and shall provide Landlord and the Port with all information and documentation required under the Ground Lease for approval of such a Transfer and shall provide Landlord with: (a) the nature of the proposed Transferee's business to be carried on in the Property; (b) the terms and conditions of the proposed Transfer; (c) in the case of a sublease, the amount of rent to be paid by the Transferee; (d) such financial information as Landlord may reasonably request concerning the proposed Transferee, including recent financial statements certified as accurate and complete by the chief financial officer of the Transferee; (e) evidence reasonably satisfactory to Landlord that the Transferee's use will be in compliance with this Sublease; (f) a copy of the proposed Transfer document or letter of intent therefore; (g) a completed environmental questionnaire in the form provided by or approved by Landlord; and (h) any other particulars of the proposed Transfer or Transferee that Landlord may reasonably request. Tenant shall pay to Landlord, within thirty (30) days after receipt of Landlord's invoice therefore: (i) all costs and expenses incurred by Landlord pursuant to the Ground Lease to process such assignment or sublease, including, without limitation, any review fees, consultant fees and Environmental Audit (as defined in Section 9.1.3) costs required under the Ground Lease in connection therewith; and (ii) the balance of Landlord's out of pocket costs, together (i) and (ii) not to exceed ONE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$1,500.00). Receipt of such amounts shall not obligate Landlord to approve the proposed Transfer.

**8.1.3 Review.** In determining whether to grant or withhold prior consent to a proposed Transfer, Landlord may consider and weigh factors it reasonably considers relevant, including without limitation: (a) whether the proposed Transferee has, in Landlord's good faith and commercially reasonable judgment, sufficient financial worth to insure its full and timely performance of all obligations under this Sublease; (b) whether the use will be in compliance with Governmental Requirements and the Ground Lease; (c) the improvements required by the proposed Transferee; and (d) whether the proposed Transferee will introduce one or more Hazardous Substances (as defined in Section 9.1.6) to the Premises or will increase the risk of loss or damage to the Project or the risk of liability to Landlord.

**8.1.4 Timing.** Within fifteen (15) days after receipt of all required information to be supplied by Tenant pursuant to this Section, Landlord shall notify Tenant whether it approves the Transfer. Within fifteen business days after receipt of all required information to be supplied by Tenant pursuant to this Section,

Landlord shall notify Tenant whether the Port has approved the Transfer or if the Port has requested additional time to review. If Tenant does not wish to provide the additional information and Landlord reasonably concludes that it is necessary for its decision or if the Port requires additional information and has the right to require it under the Ground Lease, Landlord may decline approval of the Transfer. If Landlord and the Port approve of a Transfer, Tenant and the proposed Transferee shall execute and deliver to Landlord a Transfer agreement in form and content reasonably satisfactory to Landlord and the Port. Landlord will work with the Port to facilitate the prompt processing of all requests for Transfers.

**8.2 Landlord Share of Revenue Surplus.** If Landlord consents to a sublease, Tenant shall pay to Landlord, as and when received by Tenant, fifty percent (50%) of any monetary consideration received by Tenant for the sublease to the extent that consideration exceeds the sum of (i) Tenant's obligations under this Sublease for Base Rent and Additional Rent for the same portion of the Term, plus (ii) Tenant's actual TI and Leasing Cost. "TI and Leasing Cost" shall mean Tenant's unreimbursed out of pocket cost lease commissions and legal expense to complete the sublease plus unreimbursed out of pocket leasing commission and legal fees associated with the sublease. ("Bonus Rent"); provided, however, the sharing of Bonus Rent with the Landlord shall not apply to subleases by Tenant of less than 50% of the Premises for a term not to exceed twenty-four (24) months ("Short-Term Sublease"). The Bonus Rent shall apply to a Short-Term Sublease for any period beyond the initial twenty-four (24) month term.

**8.3 Recapture.** If Tenant proposes a sublease of the Premises other than a Short-Term Sublease, or an assignment to a third party unrelated to a change in control or sale of substantially all of Tenant's assets, Landlord shall have the right to recapture all or the applicable portion of the Premises proposed to be Transferred by giving written notice of Landlord's intention to exercise such right within fifteen (15) days after delivery of Tenant's request that Landlord consent to the proposed Transfer ("Recapture"). The Recapture shall be effective on the earlier of: (a) the proposed effective date of the Transfer; or (b) the last day of a calendar month which is at least sixty (60) days after delivery of Tenant's written request for Landlord's consent. On the effective date of the Recapture, this Sublease shall be terminated as to the Premises or the portion of the Premises subject to the Recapture. Tenant shall surrender that portion of the Premises recaptured by Landlord in accordance with the terms and conditions of this Sublease. Notwithstanding any contrary provision of this Sublease, Tenant shall be allowed to withdraw its request to Transfer this Sublease if Landlord so elects to recapture the Premises or part thereof proposed to be Transferred, in which case Landlord shall have no right to recapture the Premises or part thereof with regard to such transaction. In the event Landlord so elects to recapture a portion of the Premises: (1) Landlord shall be responsible for all costs and expenses of demising the portion of the Premises so recaptured, and (2) the portion of the Premises so recaptured by Landlord may thereafter only be leased and/or occupied by a user whose use of such space Landlord's recapture rights shall not apply to any sublease of the Premises entered into within the first five (5) years following the Commencement Date.

**8.4 Transfers to Affiliates.** Tenant shall have the right, upon notice to Landlord, but without the requirement of obtaining Landlord's consent, to assign this Sublease or sublease all or a portion of the Premises to an Affiliate of Tenant (as defined below), provided, that (i) the Tenant is not in default, (ii) the provisions of this subsection shall be applicable only during such time as the Person (defined below) to whom this Lease has been assigned or sublet remains an Affiliate of Tenant; and (iii) as a condition of any such assignment or sublease, Tenant and any guarantor or any assignee, sublessee or transferee shall not be released from primary liability to Landlord under this Sublease by virtue of any actions taken pursuant to this subsection 8.4 or otherwise and shall remain continually and directly liable to Landlord for the full and complete, prompt payment and performance Tenant's obligations under this Sublease. As used herein, "Affiliate" shall mean any corporation, limited liability company, partnership or person (collectively, for the limited purpose of this subsection 8.4, referred to as "Person") that directly or indirectly controls or is directly or indirectly controlled by Tenant and any Person that is controlled by the same Person that controls Tenant. The terms "controls" and "controlled by" shall mean the ownership of and the right to vote in excess of fifty percent (50%) of the voting interest in the controlled Person or the right to elect a majority of the board of directors or managers of, or otherwise control management of, the controlled Person. Tenant's notice to Landlord shall include information and documentation showing that each of the above

conditions, to the extent applicable, has been satisfied. If requested by Landlord, Tenant and Tenant's successor shall sign a commercially reasonable form of assignment and assumption agreement.

## **SECTION 9: ENVIRONMENTAL MANAGEMENT AND COMPLIANCE**

**9.1 Hazardous Substances.** Tenant shall be permitted to store, handle, or use limited quantities of certain Hazardous Substances (defined on Rider 4) in the following incidental and limited manner, the storage and use of which shall be in compliance with any Environmental Laws (defined on Rider 4), the provisions of this Sublease, and all provisions of the Ground Lease, and shall be in limited, reasonable and customary quantities (each such use a "Permitted Use of Hazardous Substances"). Permitted Use of Hazardous Substances shall include and be limited to the following: (a) Hazardous Substances contained in office, janitorial and landscape supplies and cleaning fluids of types and quantities ordinarily used for maintenance of the Premises; (b) petroleum products and lubricants fully contained in equipment, machinery and vehicles located on the Project as allowed under this Sublease; (c) the temporary use of Hazardous Substances contained in equipment, machinery and materials used in the construction and installation of any interior Building improvements, excluding any stockpiling of Hazardous Substances in connection with such construction; and (d) Hazardous Substances used or stored in association with Tenant's warehouse or light manufacturing use which are fully contained and pre-packaged, provided that: (i) such Permitted Use of Hazardous Substances is not one of the Prohibited Uses (as defined on Rider 4); (ii) the Permitted Use of Hazardous Substances is not a Conditional Hazardous Substance Use; and (iii) Tenant complies with all applicable Environmental Laws regarding the storage and handling of such Hazardous Substances and with the terms of this Sublease and the Ground Lease.

**9.2 Questionnaire.** Tenant warrants and represents to Landlord that to the best of its knowledge and belief Tenant has fully and accurately completed the environmental questionnaire attached hereto as **Exhibit F** ("Environmental Questionnaire"). If any information provided to Landlord by Tenant in the Environmental Questionnaire, or otherwise relating to information concerning Hazardous Substances is false, incomplete, or misleading in any material respect, it shall be deemed an Event of Default (as defined in Section 12.1.1). Tenant agrees that Landlord may be irreparably harmed by Tenant's breach of this Section, and that a specific performance action may appropriately be brought by Landlord; provided that Landlord's election to bring or not bring any such specific performance action shall in no way limit, waive, impair or hinder Landlord's other remedies against Tenant.

**9.3 Representation by Landlord.** As of the date of this Sublease, Landlord represents and warrants to Tenant that there are no Hazardous Substances in the Premises in violation of Environmental Laws.

**9.4 Additional Environmental Provisions.** Additional environmental and use provisions applicable to Tenant's use of the Premises are set forth on Rider 4.

## **SECTION 10: DAMAGE OR DESTRUCTION**

**10.1 Notice of Damage/Repair.** Tenant shall notify Landlord in writing immediately upon Tenant's actual knowledge of any damage to the Premises, Building or Project by fire, earthquake, or other casualty. Subject to Section 10.2, if the damage can be repaired in accordance with the then-existing Governmental Requirements, the Ground Lease, and the Development Standards within six (6) months after Landlord is notified by Tenant of such damage, this Sublease shall remain in effect and Landlord shall repair the damage to the Building, Project or Premises, including Tenant improvements originally paid for by Landlord as soon as is reasonably practicable, provided Landlord shall not be required to repair or restore any Tenant's Work (as defined in **Exhibit C**), Tenant Alterations or any of Tenant's fixtures, equipment (including data cabling), or any other personal property of Tenant all of which shall be repaired by Tenant at its cost. Base Rent and Tenant's share of Common Expenses due under this Sublease shall abate on a per diem basis for any period during which the Premises are rendered untenable as a result of the casualty; provided however, that if only a portion of the Premises is untenable, and Tenant's business operations are not materially affected, then any such abatement shall be prorated (based upon the

untenantable area of the Premises from time to time as compared to the rentable area of the entire Premises). Notwithstanding the foregoing, there will be no abatement of Base Rent or Tenant's share of Common Expenses under this Section if the damage arose out of the gross negligence or intentional misconduct of Tenant. Tenant agrees to look to the provider of Tenant's insurance for coverage for any business interruption and other losses or damages incurred by Tenant during any reconstruction period.

**10.2 Decision.** If Landlord reasonably estimates that the repairs will not be substantially completed within six (6) months after the date Landlord receives written notice from Tenant of the damage, then Landlord may elect either to (1) repair the damage to the Project, Building, or Premises and Tenant improvements, paid for by Landlord, as soon as reasonably practicable, in which case this Sublease shall remain in full force and effect, or (2) either party may terminate this Sublease effective as of thirty (30) days after the date of the notice of termination. Each party shall notify the other party of its election to terminate the lease within sixty (60) days after Landlord's determination that the repairs will not be substantially completed within six (6) months after the date Landlord receives notice of the damage. Notwithstanding anything contained in this Sublease to the contrary, if there is damage to the Premises, Building or Project and the holder of any indebtedness secured by a mortgage or deed of trust covering any such property requires that the insurance proceeds be applied to such indebtedness; or if such insurance proceeds are otherwise inadequate to complete the repair of the damages to the Premises, the Building or Project or all of the foregoing, then Landlord shall have the right to terminate this Sublease by delivering written notice of termination to Tenant within thirty (30) days after Landlord is notified of such requirement or receives confirmation that insurance proceeds are inadequate to complete the repair.

**10.3 End of Term.** Notwithstanding the foregoing, if the Premises or the Building or Project is wholly or partially damaged or destroyed by casualty within the final twelve (12) months of the Term, either party may, at its option, elect to terminate this Sublease upon written notice to the other within thirty (30) days following such damage or destruction. Prior to termination, Tenant must satisfy all obligations arising upon termination or expiration of this Sublease, including without limitation the surrender obligations in Section 6.11 (other than those that would relate to repair of the casualty damage) and Tenant's environmental remediation obligations, if any. Notwithstanding anything to the contrary in this Section, Tenant shall have no right to terminate this Sublease under this Section if the damage was caused by the gross negligence or intentional misconduct of Tenant or Tenant's Affiliates.

## **SECTION 11: CONDEMNATION**

If all of the Premises or such portions as may be required for Tenant's reasonable use of the Premises are taken by eminent domain or by conveyance in lieu thereof, this Sublease shall automatically terminate as of the date the physical taking occurs, and Base Rent, Additional Rent and other amounts payable under this Sublease shall be paid to that date. If a portion of the Project or Building is condemned or taken (whether or not the Premises be affected), Landlord may, by notice to Tenant, terminate this Sublease as of the date of the taking of possession for such purpose and Base Rent, Additional Rent, and other amounts payable under this Sublease shall be paid to that date. If this Sublease is not terminated as a result of the taking, and if the taking results in a reduction in the square footage of the Premises, Base Rent shall be equitably reduced based on the proportion by which the floor area of the Premises is reduced, such reduction in Base Rent to be effective as of the date the physical taking occurs. Additional Rent and all other amounts payable under this Sublease shall be redetermined based on the reduction in square footage. Landlord reserves all rights to damages or awards for any taking by eminent domain relating to all or any portion of the Premises, Building, or Project and the unexpired Term. Tenant assigns to Landlord any right Tenant may have to such damages or award and Tenant shall make no claim against Landlord for damages for termination of its leasehold interest or interference with Tenant's business. Tenant shall have the right, however, to claim and recover from the condemning authority compensation for any loss to which Tenant may be entitled for Tenant's moving expenses or other relocation costs; provided that such expenses or costs may be claimed only if they are awarded separately in the eminent domain proceedings and not as a part of the damages recoverable by Landlord. Tenant acknowledges that nothing in this Sublease shall in any way limit the Port in the exercise of its powers of condemnation and eminent domain under the Ground Lease.

## SECTION 12: DEFAULT AND REMEDIES

### 12.1 Events of Default.

**12.1.1 Events of Default.** The occurrence of any one or more of the following events shall constitute a material default of this Sublease by Tenant ("Default" or "Event of Default"): (a) abandonment of the Premises without thirty (30) days prior written notice and continued payment of Rent; (b) failure by Tenant to make any payment of Base Rent or Additional Rent within five (5) days of when due; (c) failure by Tenant to maintain the insurance required under Section 7.1 where such failure shall continue for a period of five (5) days after written notice from Landlord; (d) failure by Tenant to provide an estoppel certificate or subordination agreement within the time periods specified in Section 13.1 and Section 13.4, where such failure shall continue for a period of five (5) business days after written notice from Landlord; (e) failure by Tenant to observe or perform any other covenant or condition of this Sublease, not specifically addressed in Section 12.1, where such failure shall continue for a period of thirty (30) days after written notice from Landlord, provided that if the nature of the Default is such that more than thirty (30) days are reasonably required for the cure, Tenant shall not be in Default so long as Tenant commences the cure within the thirty (30) day period and diligently prosecutes the cure to completion; (f) the making by Tenant of any general assignment or general arrangement for the benefit of creditors; (g) the filing by or against Tenant of a petition in bankruptcy, including reorganization or arrangement, unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days; (h) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets or of Tenant's interest in this Sublease and failure to secure discharge of the trustee or receiver and restore possession of such assets or interest to Tenant within sixty (60) days; (i) any execution, levy, attachment or other process of law against any property of Tenant or Tenant's interest in this Sublease, unless the same is dismissed within sixty (60) days; (k) adjudication that Tenant is bankrupt; (l) the making by Tenant of a transfer in fraud of creditors; or (m) the dissolution of Tenant; (n) furnishing of any information by or on behalf of Tenant to Landlord in connection with the entry of this Sublease, including information in the Environmental Questionnaire, which is determined to have been materially false, misleading or incomplete when made; (o) the failure of Tenant to surrender possession of the Premises at the expiration or earlier termination of this Sublease; (p) a breach by Tenant of its obligations under Section 9; or (q) a failure of Tenant to deliver the Letter of Credit within the time period specified on Rider 2.

#### 12.1.2 Intentionally omitted.

#### 12.1.3 Intentionally omitted.

**12.2 Remedies.** If any Event of Default occurs, Landlord may at any time after such occurrence, with or without notice or demand except as stated in this Section, in addition to and without limiting Landlord in the exercise of any right or remedy under this Sublease or at law or in equity which Landlord may have by reason of such Event of Default, exercise the rights and remedies, either singularly or in combination, as are specified or described in Section 12.

**12.2.1 Termination.** Landlord may terminate this Sublease and all rights of Tenant under this Sublease by giving Tenant written notice that this Sublease is terminated. If Landlord so terminates this Sublease, then Landlord may recover damages from Tenant the sum of: (a) the unpaid Rent which has been earned at the time of termination; (b) interest at the Default Rate (as defined in Section 12.5) on the unpaid Rent which has been earned at the time of termination; (c) the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss, if any, as could have been reasonably avoided, based on reasonable rental value of the Premises during such time period (subject to the reasonable market vacancy period during which time the reasonable rental value shall not be deducted), with interest on such excess at the Default Rate; (d) the amount by which the aggregate of the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss, if any, as could be reasonably avoided, based on reasonable rental value of the Premises during such time period (subject to the reasonable market vacancy period during which time the

reasonable rental value shall not be deducted), with such difference being discounted to present value at the discount rate of the Federal Reserve Bank on the date of termination; (e) any other amount necessary to compensate Landlord for the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Sublease or which, in the ordinary course of things, would be likely to result from such failure, including, leasing commissions, Tenant improvement costs, cleaning, repair costs, legal expenses, and advertising costs; and (f) any free rent or other concessions made to Tenant during the Term.

**12.2.2 Re-entry.** Landlord shall also have the right, with or without terminating this Sublease or accepting surrender, to re-enter the Premises, or any part thereof, and may re-possess the Premises and remove all persons and property from the Premises as permitted by law without being liable for indictment, prosecution or damages therefore unless caused by the negligence or willful misconduct of Landlord, its employees, agents, or contractors. Landlord may cause property so removed from the Premises to be stored in a public warehouse or elsewhere at the expense of and for the account of Tenant.

**12.2.3 Sublease Not Terminated.** If Landlord re-enters the Premises as provided in Section 12.2.2 or takes possession of the Premises pursuant to legal proceedings or through any notice procedure provided by law, then, if Landlord does not elect to terminate this Sublease, Landlord may, from time to time, without terminating this Sublease, either: (a) recover Rent payable under this Sublease as it becomes due; or (b) relet the Premises or any part of the Premises from time to time either in the name of Landlord or Tenant for such term, at such rent and pursuant to such other provisions as Landlord, in its sole discretion, may deem advisable, all with the right to make repairs to and make the Premises ready to be relet at Tenant's cost, and recover any deficiency and all other damages from Tenant resulting from such Default as provided in Section 12.

**12.2.4 No Election.** None of the following remedial actions, singly or in combination, shall be construed as an election by Landlord to terminate this Sublease or an acceptance of surrender unless Landlord has in fact given Tenant written notice of the same: (a) an act by Landlord to maintain or preserve the Premises; (b) any efforts by Landlord to relet the Premises; (c) any repairs or alterations made by Landlord to the Premises; (d) re-entry, repossession or reletting of the Premises by Landlord pursuant to this Section; or (e) the appointment of a receiver, upon the initiative of Landlord, to protect Landlord's interest under this Sublease. If Landlord takes any of the foregoing remedial action without terminating this Sublease, Landlord may nevertheless at any time after taking any such remedial action terminate this Sublease by written notice to Tenant. Landlord may sue periodically to recover damages and no action for damages shall bar a later action for damages subsequently accruing.

**12.2.5 Application of Rent.** If Landlord relets the Premises, Landlord shall apply the revenue from such reletting as follows: (a) first, to the payment of any indebtedness of Tenant to Landlord other than Base Rent, Additional Rent or any other amounts payable by Tenant under this Sublease; (b) second, to the payment of any reasonable and actual cost of reletting (including finders' fees and leasing commissions); (c) third, to the payment of the cost of any maintenance and repairs to the Premises except to the extent that such costs are paid for by a replacement tenant, and (d) fourth, to the payment of Rent due under this Sublease. Landlord shall hold and apply the residue, if any, to payment of future Rent as the same becomes due, and shall deliver the eventual balance, if any, to Tenant. Should revenue from reletting during any month, after application pursuant to the foregoing provisions, be less than the amount of Rent due, including Landlord's expenditures for the Premises during such month, Tenant shall be obligated to pay such deficiency to Landlord as and when such deficiency arises.

**12.2.6 Remedies Cumulative.** Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided in this Sublease or at law or in equity (all such remedies being cumulative). The exercise or beginning of the exercise by Landlord of any such rights or remedies will not preclude the simultaneous or later exercise by Landlord of any other such rights or remedies nor shall pursuit of any remedy provided in this Sublease constitute a forfeiture or waiver of any Rent payable under this Sublease or of any damages accruing to Landlord by reason of the violation of any of the covenants or

conditions contained in this Sublease. Notwithstanding anything to the contrary herein, Landlord shall have the duty to mitigate its damages.

**12.3 Right to Perform.** If Tenant shall fail to pay any amount of money to a third party required to be paid by Tenant under this Sublease or shall fail to perform any other act on its part to be performed under this Sublease, and such failure shall continue for beyond the applicable cure period, Landlord may, but shall not be obligated to, and without waiving or releasing Tenant from any obligations of Tenant, make such payment or perform such other act on Tenant's part to be made or performed as provided in this Sublease and all costs incurred shall be due within ten (10) days of written demand from Landlord. Landlord shall not be liable to Tenant for any claim for damages resulting from such action by Landlord, except to the extent caused by the negligence or willful misconduct of Landlord (but in no event for consequential damages).

**12.4 Landlord's Default.** Landlord shall not be in default under this Sublease unless Landlord fails to perform obligations required of Landlord within thirty (30) days after written notice is delivered by Tenant to Landlord and to the holder of any mortgages or deeds of trust (collectively, "Lender") covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying the obligation which Landlord has failed to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord or Lender commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. All obligations of Landlord hereunder shall be construed as covenants, not conditions. In the event of any default, breach or violation of Tenant's rights under this Sublease by Landlord, Tenant's exclusive remedies shall be either an action for specific performance or an action for actual damages.

**12.5 Tenant's Remedies.** Notwithstanding Section 12.4, in the event the failure of Landlord to cure is causing imminent threat of harm to Tenant's property or bodily harm to persons in the Premises, or to the extent that such failure renders a material portion of the cooler or freezer portion of the Premises unusable by Tenant, Tenant, at its election, and upon two (2) business days' written notice to Landlord, may take reasonable action to cure the default. If Tenant elects to cure the default, then Landlord shall reimburse Tenant for the reasonable out-of-pocket costs thereof within thirty (30) days after written demand by Tenant (accompanied by supporting documentation reasonably acceptable to Landlord). If Landlord fails to reimburse Tenant for the reasonable costs, fees and expenses incurred by Tenant in taking such curative actions within thirty (30) days of demand therefor, accompanied by supporting evidence of the expenses incurred by Tenant where applicable, Tenant may bring an action for damages against Landlord to recover such costs, fees and expenses, together with interest thereon at the rate provided for in Section 4.6 of the Lease, and reasonable attorney's fees incurred by Tenant in bringing such action for damages. Tenant may further offset any Rent or other amounts owed to Landlord for costs incurred by Tenant to cure such default up to a maximum of \$25,000.

**12.6 Limitation on Recourse.** Any monetary judgment with respect to the entry and performance of this Sublease by or on behalf of Landlord, however it may arise, shall be asserted and enforced only against Landlord's estate and equity interest in the Premises. Neither Landlord nor any of Landlord's Affiliates shall have any personal liability in the event of any Claim against any of them arising out of or in connection with this Sublease, the relationship of Landlord and Tenant or Tenant's use of the Premises. Any and all personal liability, if any, is expressly waived and released by Tenant and by all persons claiming by, through or under Tenant. If Landlord transfers its interest in this Project, Landlord and Landlord's Affiliates shall, upon consummation of such transfer, be released automatically from any liability relating to obligations or covenants under this Sublease to be performed or observed after the date of such transfer, and in such event, Tenant agrees to look solely to Landlord's successor-in-interest with respect to such liability which may accrue thereafter; provided that: (a) such successor-in-interest agrees in writing to assume the obligations or covenants of Landlord under this Sublease to be performed or observed after the date of such transfer; and (b) as to the Security Deposit, if any, Landlord shall not be released from liability therefore

unless Landlord has delivered (by direct transfer or credit against the purchase price) the Security Deposit to its successor-in-interest. [Subject to further discussion in relation to Ground Lease]

### **SECTION 13: SUBORDINATION AND ATTORNMENT**

**13.1 Subordination.** Tenant subordinates this Sublease and all rights of Tenant under this Sublease to the Restrictions and any mortgage, deed of trust, ground lease (including the Ground Lease), or similar instrument which may from time to time be placed upon the Premises by Landlord (each, "Mortgage") and all renewals, modifications, replacements and extensions thereof, and each such Mortgage shall be superior to and prior to this Sublease; provided that the holder or beneficiary of such Mortgage agrees to assume and perform all of Landlord's obligation under this Sublease arising after the date of attornment by the Tenant, and to not to disturb Tenant's rights to occupy the Premises and the Common Areas pursuant to the terms of this Sublease so long as Tenant is not in Default beyond any applicable notice and cure period. Notwithstanding the foregoing, the holder or beneficiary of such Mortgage shall have the right to subordinate or cause to be subordinated any such Mortgage to this Sublease. Within thirty (30) days after receipt of written request from Landlord or the holder of such Mortgage, Tenant shall execute, acknowledge and deliver in recordable form any instrument or subordination agreement that the holder of the Mortgage may reasonably request, but only if any such subordination agreement provides that so long as Tenant is not in Default beyond any applicable cure period, Tenant shall have the continued enjoyment of the Premises free from any disturbance or interruption by any holder of a Mortgage or any purchaser at a foreclosure or private sale of the Project. Tenant further covenants and agrees that if the holder of such Mortgage acquires the Premises as a purchaser at any foreclosure sale or otherwise, Tenant shall recognize and attorn to such party as landlord under this Sublease, and shall make all payments required hereunder to such new landlord and, upon the request of such purchaser or other successor, execute, deliver and acknowledge documents confirming such attornment. Tenant waives the provisions of any law or regulation, now or hereafter in effect, which may give or purport to give Tenant any right to terminate or otherwise adversely affect this Sublease or the obligations of Tenant hereunder in the event that any such foreclosure or termination or other proceeding is prosecuted or completed.

#### **13.2 Intentionally omitted.**

**13.3 Estoppel Certificate.** From time to time upon the written request of Landlord or the Port, Tenant shall, within twenty (20) days after receipt of the request, execute and deliver to Landlord and the Port an estoppel certificate certifying: (a) that the Sublease attached to the certificate is a full and correct copy of the Sublease; (b) the commencement and the expiration date of the Term; (c) the amount of Base Rent and the date to which it has been paid and the then estimated monthly payment of Tenant's share of Common Expenses and the date to which they have been made; (d) that this Sublease is in full force and effect and has not been assigned or amended in any way (or specifying the date and terms of each agreement so affecting this Sublease) and that no part of the Premises has been sublet (or to the extent such is not the case, a copy of any sublease); (e) that to Tenant's knowledge Landlord is not in default under this Sublease (or if such is not the case, the extent and nature of such default) and that no event, omission or condition has occurred which, with the giving of notice or the passage of time, would result in a breach of this Sublease by Landlord; (f) to Tenant's knowledge on the date of such certification, there are no existing defenses, offsets or claims which Tenant has against Landlord (or if such is not the case, the extent and nature of such defenses, offsets or claims); and (g) the amount of the Security Deposit held by Landlord; and (h) any other information reasonably requested as to the status of this Sublease. If Tenant fails to provide the requested estoppel within twenty (20) days after receipt of the written request, Tenant shall be deemed to have given a certificate as provided above, without modification except for obvious, scrivener error, and shall be conclusively deemed to have admitted the accuracy of any information supplied by Landlord to a prospective purchaser or mortgagee. The estoppel certificate shall run to the benefit of all those Landlord or the Port specifies as addressees and it is intended that any such statement shall be binding upon Tenant and may be relied upon by the addressees.

**13.4 Notice to Lender.** Tenant shall give written notice of any failure of Landlord to perform any of its obligations under this Sublease to Landlord and to any mortgagee or beneficiary under any deed of trust encumbering the Project whose name and address has been furnished to Tenant in writing.

**13.5 Financial Certificate.** Upon the written request of Landlord, but in no event more than once in any calendar year unless required by Landlord's lender or prospective lender, or a buyer under contract to purchase the Building or Project, or (ii) there is an uncured failure to monetary default, or (iii) the Tenant requests approval of a sublease (other than a Short-Term Sublease) or assignment of lease, Tenant shall deliver to or cause to be delivered to Landlord or its designee then current financial statements containing generally the same information as is contained in the financial statements delivered to Landlord in connection with this Sublease, audited (if available) or certified as accurate by a certified public accountant and prepared in conformance with generally accepted accounting principles for Tenant or any entity which owns a controlling interest in Tenant, any successor entity to Tenant by merger or operation of law. Landlord agrees to keep the financial information provided by Tenant confidential, subject to review by potential purchasers and lenders, who shall be instructed to maintain such confidentiality.

**13.6 Landlord Lien Waiver.** Landlord hereby waives any lien rights which it may otherwise have concerning Tenant's Property and the inventory stored within the Premises, along with any other equipment or supplies utilized by Tenant in its business operations. Landlord and its mortgagee and/or mortgagees shall execute and deliver to Tenant, upon request documents in a form reasonably acceptable to Landlord ("Landlord Lien Waiver") which waive any lien of Landlord and Mortgagee, if any, as to Tenant's Property leased or financed by Tenant, and inventory, which waiver shall be effective only during the term of such encumbrance by Tenant. Tenant shall reimburse Landlord for Landlord's out of pocket costs incurred in reviewing the Landlord Lien Waiver within thirty (30) days of written demand or as a condition of executing and delivering the Landlord Lien Waiver, at the option of the Landlord.

#### **SECTION 14: MISCELLANEOUS PROVISIONS**

**14.1 Attorney's Fees and Expenses.** If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Sublease or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant and other expert fees and all other fees, costs and expense actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Sublease requires Tenant to defend Landlord, it is agreed that such defense shall be by legal counsel reasonably acceptable to Landlord.

**14.2 Authority; Conduct of Business.** The parties represent and warrant to each other that: (a) this Sublease constitutes a legal, valid and binding obligation of the parties; and (b) the individual(s) executing this Sublease on behalf of the respective parties has full power and authority to execute this Sublease on such party's behalf. If Tenant is a partnership, company, corporation or other business organization, it shall, within ten (10) Business Days (as defined in Section 14.10) after written demand by Landlord, deliver to Landlord satisfactory evidence of the due authorization of this Sublease and the authority of the person executing this Sublease on Tenant's behalf. At all times during the Term, Tenant shall be registered and in good standing to do business in Oregon.

**14.3 Brokers.** Except as specified in Section 1, if any, Tenant and Landlord represent and warrant to each other, that they have not engaged any other broker, finder or other person entitled to any commission or fee in respect of the negotiation, execution or delivery of this Sublease. The parties agree to indemnify, defend and hold one another harmless from and against any claims, damages, expenses and liabilities arising from a breach of this representation and warranty. If any new leases, modifications to this Sublease or other agreements are made between Landlord and Tenant, Landlord shall not have any obligation to pay any brokerage or finders fees to persons engaged by Tenant unless expressly agreed to in writing by Landlord.

**14.4 Choice of Law.** This Sublease shall be construed and governed by the laws of the state in which the Land is located. Tenant consents to Landlord's choice of venue for any legal proceeding brought by Landlord or Tenant to enforce the terms of this Sublease so long as such venue is in state or federal court within Oregon.

**14.5 Intentionally Omitted.**

**14.6 ERISA Contingency.** This Sublease is contingent upon Tenant executing the ERISA Certificate set forth in **Exhibit G** attached hereto and taking any other actions requested by Landlord to verify that this Sublease is not a prohibited transaction under the Employee Retirement Security Act of 1974 ("ERISA"). Landlord will rely on the statements by Tenant contained in **Exhibit G** in agreeing to enter into this Sublease. As a result, if Landlord later learns that any of the statements by Tenant on **Exhibit G** were not correct when made or are no longer correct, then: (a) notwithstanding the provisions of Section 12, it shall be deemed an incurable Default and Landlord may immediately terminate this Sublease by notice to Tenant and Landlord shall be entitled to collect the damages described in Section 12; and (b) Tenant shall indemnify, defend and hold Landlord harmless from any and all damages, costs, or liabilities incurred by Landlord in connection with the false statements.

**14.7 Force Majeure.** In the event that either party shall be delayed, hindered in or prevented from the performance of any act or obligation required under this Sublease by reason of acts of God, strikes, lockouts, labor troubles or disputes, inability to procure or shortage of materials or labor, failure of power or utilities, delay in transportation, fire, vandalism, accident, flood, severe weather, other casualty, Governmental Requirements (including mandated changes in the Plans and Specifications or Tenant improvements resulting from changes in pertinent Governmental Requirements or interpretations thereof), Restrictions, riot, insurrection, civil commotion, sabotage, explosion, war, natural or local emergency, acts or omissions of others, including the other party, or other reasons beyond the reasonable control of the parties, then performance of such act or obligation shall be excused for the period of the delay and the period for the performance of any such act or obligation shall be extended for the period equivalent to the period of such delay. This provision shall not operate to excuse or delay the payment of Rent by Tenant under this Sublease.

**14.8 Holdover.** If Tenant holds over after the expiration or earlier termination of the Term Tenant shall remain bound by all terms, covenants, and agreements under this Sublease, except that Tenant's holdover shall be a month-to-month tenancy, and Base Rent shall increase on the expiration or termination of this Sublease to an amount equal to one hundred twenty-five percent (125%) of Base Rent in effect immediately prior to the expiration or termination of this Sublease for the initial three (3) months of holdover and one hundred fifty percent (150%) for each month of holdover thereafter until terminated by either party. At any time, either party may terminate such tenancy from month-to-month upon thirty (30) days written notice delivered to the other party. In addition to the foregoing, if Tenant holds over and remains in possession of the Leased Premises after receiving notice of termination of the month-to-month tenancy, or after notice from Landlord that Landlord has a replacement Tenant for the Premises or any portion thereof without the written consent of Landlord, then Base Rent will increase to an amount equal to two hundred percent (200%) of Base Rent in effect immediately prior to the expiration or termination of this Sublease, and Tenant shall indemnify and hold harmless Landlord from and against any and all claims, judgments, liabilities, losses, costs, and expenses arising from, or in connection with, such possession, including without limitation consequential damages such as loss of rent or loss of a replacement Tenant.

**14.9 Incorporation of Prior Agreement; Amendments.** This Sublease contains all of the agreements of the parties to this Sublease with respect to any matter covered or mentioned in this Sublease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Sublease may be amended or added to except by an agreement in writing signed by the parties to this Sublease or their respective successors in interest.

**14.10 Interpretation.** Whenever a provision of this Sublease uses the term: (a) include or including shall be read to be followed by the phrase without limitation; (b) covenant shall include any covenant, agreement, term or provision; (c) at law shall mean as specified in any applicable statute, ordinance or regulation having the force of law or as determined at law or in equity, or both; (d) day shall mean a calendar day; and (e) "Business Day" shall mean every calendar day except Saturdays, Sundays, holidays observed by the Federal government and the week between December 25 and January 1. This Sublease shall be given a fair and reasonable interpretation of the words contained in it without any weight being given to whether a provision was drafted by one party or its counsel.

**14.11 No Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of an amount less than Rent due and payable under this Sublease shall be deemed to be other than a payment on account of Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, nor preclude Landlord's right to recover the balance of any amount payable or Landlord's right to pursue any other remedy provided in this Sublease or at law.

**14.12 Notices.** Any notice, request, approval, consent or written communication required or permitted to be delivered under this Sublease shall be: (a) in writing; (b) transmitted by personal delivery, facsimile (with a confirmation copy mailed no later than the day after transmission) or express or courier service; and (c) deemed to be delivered on the earlier of the date received (or when delivery is refused) or if given by facsimile, when dispatched. Such writings shall be addressed to Landlord or Tenant, as the case may be, at the respective designated addresses set forth in Section 1, or at such other address(es) as the parties may, after the execution date of this Sublease, specify by written notice delivered in accordance with this Section, with copies to the persons at the addresses, if any, designated opposite each party's signature. Any notices required to be given to the Port under this Sublease, whether before or after any assumption of this Sublease by the Port under Section 13.2 shall be given in accordance with Section 17.29 of the Ground Lease.

**14.13 No Waiver of Remedies.** The waiver by Landlord of any covenant or condition contained in this Sublease shall not be deemed to be a waiver of any subsequent breach of the same or any other such covenant or condition nor shall any custom or practice which may develop between the parties in the administration of this Sublease be construed to waive or lessen the rights of Landlord to insist on the strict performance by Tenant of all of the covenants and conditions of this Sublease. No act or thing done by Landlord or Landlord's Affiliates during the Term shall be deemed an acceptance or a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless made in writing and signed by Landlord. The mention in this Sublease of any particular remedy shall not preclude Landlord from any other remedy it might have, either under this Sublease or at law, nor shall the waiver of or redress for any violation of any covenant or condition in this Sublease or in any of the Rules or Regulations Tenant is required by this Sublease to comply with, prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of Rent with knowledge of a breach of any covenant or condition in this Sublease shall not be deemed a waiver of such breach. The failure of Landlord to enforce any of the current or later adopted Rules and Regulations, against Tenant or any other tenant in the Building, shall not be deemed a waiver. Any waiver by Landlord must be in writing and signed by Landlord to be effective.

**14.14 Offer to Sublease.** The submission of this Sublease in a draft form to Tenant or its broker or other agent does not constitute an offer to Tenant to lease the Premises. This Sublease shall have no force or effect until it is: (a) approved by the Port as provided in the Ground Lease; (b) executed and delivered by Tenant to Landlord; and (c) executed and delivered by Landlord to Tenant.

**14.15 Severability; Captions.** If any clause or provision of this Sublease is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of this Sublease shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid or unenforceable, there be added as a part of this Sublease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Headings or captions in this Sublease are added as a matter of convenience only and in no way define, limit or otherwise affect the construction or interpretation of this Sublease.

**14.16 Successors; Joint and Several Liability.** Subject to the provisions of Section 8 and Section 12.7, all of the covenants and conditions contained in this Sublease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns. In the event that more than one person, partnership, company, corporation or other entity is included in the term Tenant, then each such person, partnership, company, corporation or other entity shall be jointly and severally liable for all obligations of Tenant under this Sublease.

**14.17 Survival of Obligations.** Notwithstanding anything contained in this Sublease to the contrary or the expiration or earlier termination of this Sublease, any and all obligations of either party accruing prior to the expiration or termination of this Sublease shall survive the expiration or earlier termination of this Sublease, and either party shall promptly perform all such obligations whether or not this Sublease has expired or terminated. Such obligations shall include any and all indemnity obligations set forth in this Sublease.

**14.18 Tenant Certification.** Tenant certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named as a terrorist, specially designated national and blocked person, or other banned or blocked person, group, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control. Tenant is not entering this Sublease, directly or indirectly on behalf of, or instigating or facilitating this Sublease, directly or indirectly on behalf of, any such person, group, entity or nation.

**14.19 Time of Essence.** Time is of the essence with respect to the performance of every covenant and condition of this Sublease.

**14.20 Intentionally Deleted.**

**14.21 Waiver of Jury Trial.** Landlord and Tenant irrevocably waive their respective rights to trial by jury in any action, proceeding or counterclaim brought by either against the other (whether in contract or tort) on any matter arising out of or relating in any way to this Sublease, the relationship of Landlord and Tenant, or Tenant's use and occupancy of the Premises.

[signature page attached]


[signature page to KeHE Sublease]

IN WITNESS WHEREOF, this Sublease has been executed the day and year first set forth above.

**LANDLORD**

PDX LOGISTICS CENTER I LLC, a Delaware limited liability company

By: Capstone Partners LLC, an Oregon limited liability company, its Manager

By: 

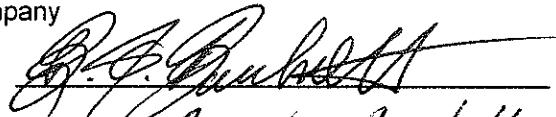
Print Name: Chris Nelson

As Its: Authorized Agent

Date: 8/26/15

**TENANT**

KeHE Distributors, LLC, a Delaware limited liability company

By: 

Print Name: Brandon Bernhart

As Its: President

Date: 8/25/2015

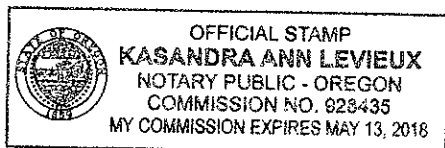
### LANDLORD ACKNOWLEDGEMENT

STATE OF OREGON )

COUNTY OF MULTNOMAH )

On August 20<sup>th</sup>, 2015, before me, a Notary Public for the State of Oregon, personally appeared Christopher J. Nelson, to me known to be the Authorized Agent of Capstone Partners LLC, an Oregon limited liability company, the Manager of PDX LOGISTICS CENTER I LLC, a Delaware limited liability company that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first as written above.



[Signature]  
NOTARY PUBLIC for the State of Oregon  
My commission expires on 05-13-2016

### TENANT ACKNOWLEDGEMENT

STATE OF ILLINOS )

COUNTY OF DUPAGE )

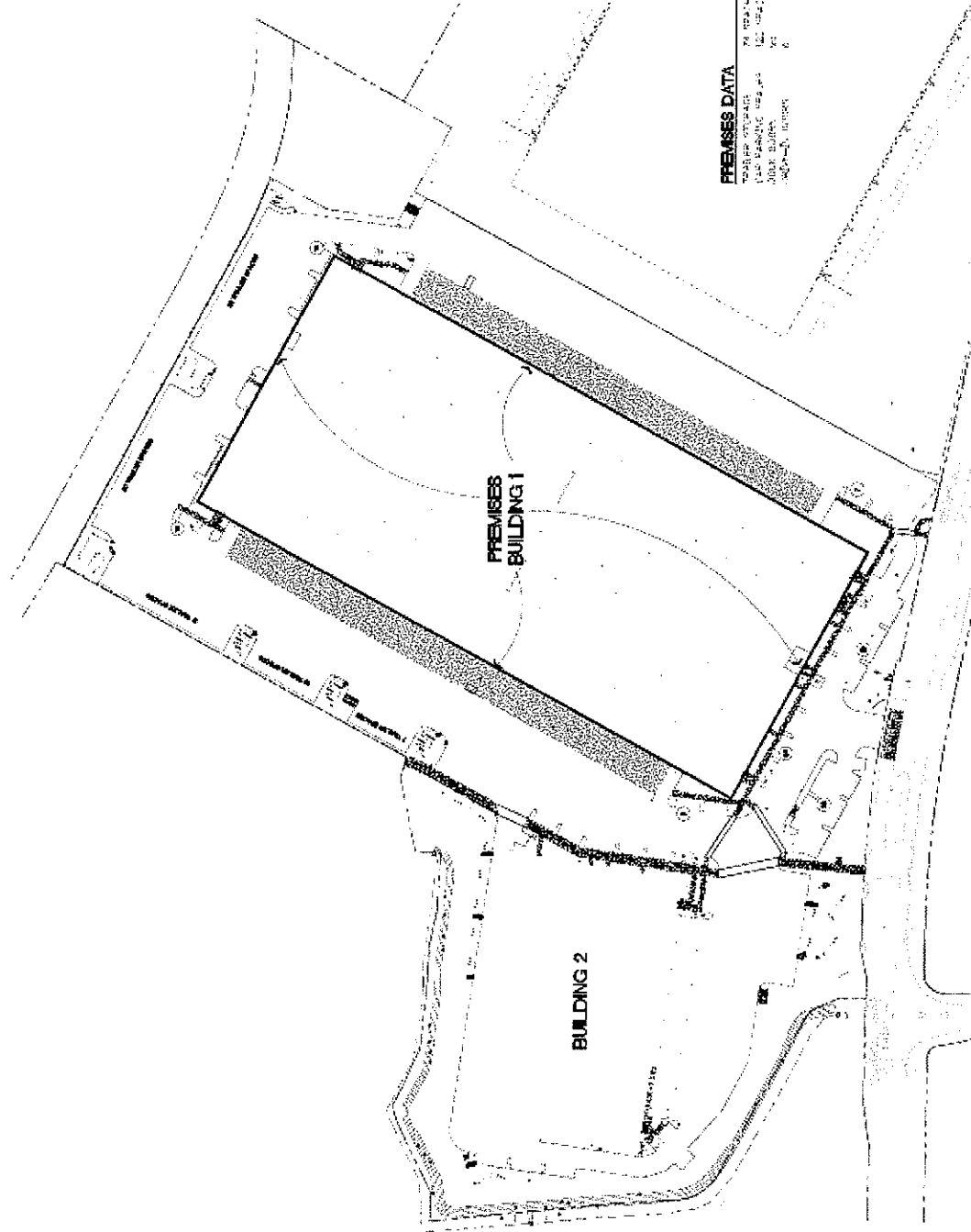
On August 25, 2015, before me, a Notary Public for the State of ILLINOIS, personally appeared BRANDON BARNHOLT, the PRESIDENT & CEO of KEHE DISTRIBUTORS, the DE LLC that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said LLC for the uses and purposes therein mentioned, and on oath stated that s/he/they was/were authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first as written above.

[Signature]  
NOTARY PUBLIC for the State of Oregon ILLINOIS  
My commission expires on 2-4-2017



# **EXHIBIT A** Premises



## **PREMISES DATA**

TRAILER STORAGE	74,000 SQ. FT.
TRAILER PARKING	100,000 SQ. FT.
TRAILER STORAGE	100,000 SQ. FT.
TRAILER PARKING	100,000 SQ. FT.
TRAILER STORAGE	100,000 SQ. FT.
TRAILER PARKING	100,000 SQ. FT.

Exhibit B

Legal Description of Land

A TRACT OF LAND SITUATED IN THE NORTHEAST ONE-QUARTER OF SECTION 16, TOWNSHIP 1 NORTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 4-1/4 INCH DIAMETER BRASS DISK IN CONCRETE AT THE SOUTHERLY SOUTHEAST CORNER OF THE HENRY HOLTGRIEVE D.L.C. No. 55; THENCE SOUTH 55°57'24" EAST, 2,122.11 FEET TO A POINT ON THE EAST TOP OF BANK OF THE SLOUGH, SAID POINT BEING ON THE NORTH RIGHT OF WAY LINE OF N.E. ALDERWOOD ROAD AND THE TRUE POINT OF BEGINNING; THENCE, ALONG THE SAID TOP OF BANK THE FOLLOWING COURSES: NORTH 00°07'16" WEST, 39.23 FEET; THENCE NORTH 22°30'48" WEST, 33.41 FEET TO A POINT OF CURVATURE; THENCE 26.75 FEET ALONG THE ARC OF A 40.00-FOOT RADIUS CURVE TO THE LEFT, CONCAVE TO THE WEST, THROUGH A CENTRAL ANGLE OF 38°18'38" (THE LONG CHORD BEARS NORTH 41°40'07" WEST, 26.25 FEET) TO A POINT OF TANGENCY; THENCE NORTH 60°49'26" WEST, 265.12 FEET TO A POINT OF CURVATURE; THENCE 74.59 FEET ALONG THE ARC OF A 75.00-FOOT RADIUS CURVE TO THE RIGHT, CONCAVE TO THE NORTHEAST, THROUGH A CENTRAL ANGLE OF 56°59'10" (THE LONG CHORD BEARS NORTH 32°19'51" WEST, 71.56 FEET) TO A POINT OF TANGENCY; THENCE NORTH 03°50'16" WEST, 119.78 FEET; THENCE NORTH 05°31'27" WEST, 251.84 FEET; THENCE SOUTH 88°47'38" EAST, 43.62 FEET; THENCE NORTH 64°44'31" EAST, 115.25 FEET; THENCE NORTH 73°46'24" EAST, 25.94 FEET; THENCE SOUTH 60°38'19" EAST, 31.40 FEET; THENCE SOUTH 66°08'02" EAST, 64.03 FEET; THENCE SOUTH 84°14'28" EAST, 104.23 FEET; THENCE SOUTH 87°53'43" EAST, 47.84 FEET; THENCE SOUTH 77°29'13" EAST, 50.62 FEET; THENCE SOUTH 86°03'09" EAST, 88.70 FEET; THENCE NORTH 05°19'06" EAST, 37.09 FEET; THENCE, DEPARTING SAID TOP OF BANK, NORTH 78°25'39" EAST, 112.03 FEET; THENCE SOUTH 74°57'02" EAST, 31.42 FEET; THENCE NORTH 29°01'43" EAST, 586.94 FEET; THENCE SOUTH 81°10'52" EAST 543.55 FEET TO A POINT OF CURVATURE; THENCE 110.85 FEET ALONG THE ARC OF A 700.00 FOOT RADIUS CURVE TO THE LEFT, CONCAVE TO THE NORTH, THROUGH A CENTRAL ANGLE OF 09°04'24" (THE LONG CHORD BEARS SOUTH 65°43'04" EAST 110.73 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 28°59'18" WEST 97.80 FEET; THENCE SOUTH 08°05'29" WEST, 107.97 FEET; THENCE SOUTH 60°50'00" EAST, 47.31 FEET; THENCE SOUTH 29°03'18" WEST, 896.39 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID NE ALDERWOOD ROAD; THENCE, ALONG SAID NORTH RIGHT OF WAY LINE, NORTH 77°26'36" WEST, 270.74 FEET; THENCE NORTH 12°33'25" EAST, 5.00 FEET; THENCE NORTH 77°26'36" WEST, 20.15 FEET TO A POINT OF CURVATURE; THENCE 390.83 FEET ALONG THE ARC OF A 1972.00-FOOT RADIUS CURVE TO THE LEFT, CONCAVE TO THE SOUTH, THROUGH A CENTRAL ANGLE OF 11°21'20" (THE LONG CHORD BEARS NORTH 83°07'16" WEST, 390.20 FEET; THENCE NORTH 88°47'56" WEST, 23.92 FEET; THENCE SOUTH 78°13'53" WEST, 40.78 FEET; THENCE NORTH 88°47'56" WEST, 30.59 FEET TO THE TRUE POINT OF BEGINNING.

## EXHIBIT C

### WORK LETTER AND CONSTRUCTION AGREEMENT

I. Construction of Landlord's Work:

A. Landlord has completed construction of the "Shell & Core" improvements as stated in the description of Landlord's Work attached hereto as Exhibit C-1 ("Landlord's Work").

B. Landlord shall obtain from all contractors and subcontractors providing material and labor in the construction of Landlord's Work all commercially reasonable warranties (including manufacturers' warranties) for materials or labor of not less than one (1) year from the date of Substantial Completion. Landlord agrees to enforce all such warranties upon written request by Tenant. Landlord represents and warrants for a period of one (1) year from the date of Substantial Completion that all building systems, the HVAC, and all dock equipment shall be in good working order subject to normal wear and tear, and Tenant's improper use, damage, or failure to maintain as required under this Sublease. Tenant shall notify Landlord in writing of a need for repair covered by this warranty on or before the expiration date of the warranty period. The Landlord's obligation under this warranty is limited to the duty of repair of the warranted item.

C. Landlord represents and warrants that on the date of delivery of the Premises to the Tenant, that the Landlord's Work will be in compliance with all existing laws, including but not limited to the Americans with Disabilities Act ("ADA").

II. Tenant's Work: Except as provided under Description of Landlord's Work, all work in or about the Premises ("Tenant's Work") to make the Premises ready for the Tenant's use shall be provided by or for Tenant, at Tenant's expense (subject to the Allowances [defined below]) and shall be done pursuant to the plans and specifications described on Exhibit C-2 attached hereto; provided that the Tenant shall revise the such plans to move the office from the north end of the Premises to the south end of the Premises, and shall delete the additional parking area previously designed on the north end of the Premises. Tenant also plans to expand the cooler and freezer in the Premises as shown on Exhibit C-3. Such revisions and the revised plans and specifications shall be subject to Landlord review and approval in accordance with Section 6.10 of the Lease, and upon such approval shall constitute the "Approved Plans". The relocated office space shall not contain less than 7,500 RSF or more than 9,000 RSF measured as provided in Section 2.1 of the Lease.

A. Commencement of Tenant's Work. Tenant shall proceed with diligence to complete construction in accordance with the Approved Plans. Tenant and its contractor shall be responsible to protect Landlord's finished work during Tenant's construction activities.

B. Permits, Inspection. Tenant shall obtain, at Tenant's expense (subject to the Allowances), the necessary permits and approvals in connection with Tenant's obligation to construct prior to beginning the portion of the work for which such permits and approvals are required. Landlord and Landlord's agents shall have access to the Premises at all times during normal construction hours to ascertain Tenant's compliance with the approved plans and specifications.

C. Performance of Tenant's Work. Tenant shall construct Tenant's Work using a licensed general contractor reasonably acceptable to Landlord, in accordance with the Approved Plans. ESI Constructors is hereby approved. Except as otherwise provided in the Sublease, Tenant will not permit any structure or encroachments to be erected in any parking or common area. Tenant's Work shall conform to all applicable governmental regulations and it shall be Tenant's sole responsibility to obtain permits required by appropriate governmental agencies having jurisdiction thereof.

All risk of loss prior to completion of Tenant's Work shall be borne by Tenant and any damages shall be promptly repaired by Tenant. Tenant or Tenant's contractor will provide, at Tenant's expense, builder's risk coverage in the amount of Tenant's construction contract and change orders, and will furnish Landlord with a certificate of such insurance naming Landlord and Landlord's mortgagee as additional loss payees thereunder, prior to commencement by Tenant of Tenant's Work.

From the commencement until the completion of Tenant's Work, Tenant or Tenant's contractor shall obtain and maintain, at Tenant's expense, \$2,000,000 umbrella public liability and the worker's compensation insurance required by the state of Oregon to fully protect Landlord and Tenant from and against any liability for death or injury to person and from damages to property caused by or arising from the performance of Tenant's Work. Landlord shall be named additional insured on all liability policies. No contractor or subcontractor or other person or entity performing Tenant's Work shall be permitted in the Premises until such persons or entities provide Landlord with satisfactory evidence of insurance coverage (as required under the Sublease).

Tenant shall cause its contractor to reasonably remove all debris and trash during and after construction. If debris and trash are not removed by Tenant or its contractor within three (3) days after written notice by Landlord to Tenant of such failure, Landlord shall move it from the site at Tenant's expense.

Tenant and Tenant's contractor shall comply with all applicable laws; codes, rules and regulations governing the performance of Tenant's Work, including all applicable safety regulations.

Tenant shall not allow any mechanic's liens to be placed on Landlord's property by any consultant, contractor, subcontractor, supplier, or any other vendor providing services or material related to Tenant's Work. Any liens placed in violation of this clause shall be promptly removed at Tenant's sole cost and expense.

Landlord shall not allow any mechanic's liens to be placed on Tenant's assets by any consultant, contractor, subcontractor, supplier or any other vendor providing services or material related to Landlord's Work. Any liens placed in violation of this clause shall be promptly removed at Landlord's sole cost and expense. Landlord shall be entitled to post a notice of non-responsibility for the Tenant's Work.

Tenant shall obtain from all contractors and subcontractors providing material and labor in the construction of Tenant's Work all commercially reasonable warranties (including manufacturers' warranties) for materials or labor as are available from such contractors or subcontractors and shall ensure that such warranties run to the benefit of Landlord, and its successors and assigns under this Sublease, and may be enforced by Landlord, but only to the extent that Landlord is herein obligated to maintain, repair or replace same.

### III. Allowances.

A. Base Allowance. Landlord shall establish an allowance (the "Base Allowance") of \$2,000,000, which amount is the maximum amount, if any, to be expended by Landlord for the Tenant's Work. Tenant shall have the right to use the Base Allowance for the direct out of pocket costs of the improvements described in the Approved Plans including the freezer/cooler equipment. The costs which may be paid from the Base Allowance may include, but are not be limited to: architectural, engineering, and design fees, labor and building materials, building permit fees, construction management fees, utilities consumed on site during the construction period and any other costs incurred as a direct cost of performing Tenant's Work. In no event, however, shall the Base Allowance be used to pay for costs of Tenant's furniture, trade fixtures, personal property or equipment, except as expressly provided above, which shall be paid for by Tenant at its sole cost and expense.

B. Additional Allowance. At Tenant's request, Landlord shall provide Tenant with an additional allowance of up to \$2,000,000 (the "Additional Allowance"), which may be used for the same

costs as described above for the Base Allowance, to the extent the actual cost of the Tenant's work exceeds the Base Allowance. Following final completion of the Tenant's Work, Landlord shall deliver to Tenant a detailed reconciliation of the Additional Allowance, reflecting all costs previously disbursed by Landlord from the Additional Allowance, and substantiation of any accrued but unpaid costs yet to be paid from the Additional Allowance, as well as any remaining unused portion of the Additional Allowance, (the "Remaining Additional Allowance"), if any. Interest shall accrue on the amount of the Additional Allowance funded by Landlord, at a simple interest rate of 7.0% per annum, from the date any such portion of the Additional Allowance is advanced by Landlord. Repayment of the Additional Allowance funded by Landlord and all accrued, unpaid interest thereon shall commence on the first day of the month following substantial completion of the Tenant Improvements ("Repayment Date"). Landlord shall capitalize all accrued, unpaid interest outstanding as of the Repayment Date and prior to the 10<sup>th</sup> day of the month following the Repayment Date, shall send a detailed invoice to Tenant reflecting the dates of Landlord advances from the Additional Allowance and the interest accruals thereto. Landlord shall calculate the installment necessary to repay the Additional Allowance funded by Landlord, accrued, unpaid interest and future interest accruals based upon a mortgage amortization schedule with equal monthly installments based upon a 7.0% annualized percentage interest amortized over the remaining Sublease Term. The monthly installments shall be payable by Tenant at the same time and in the same manner as Base Rent and shall be deemed "Additional Rent" under the Sublease. The Additional Allowance and accrued interest can be prepaid by Tenant at any time. In the event the Sublease is terminated prior to the repayment of the Additional Allowance, the then unpaid balance and accrued interest shall become immediately due and payable as of the date of termination of the Sublease or earlier as otherwise provided in the Sublease.

C. Conditions and Procedures for Advance of Allowances. Collectively, the Base Allowance and the Additional Allowance are referred to herein as the "Allowances." Landlord shall advance the Allowances on a monthly basis, *pari passu* with Tenant's contribution based on the proportion of the total cost of the Work to be paid with the Allowances ( $\$4,000,000/\text{total cost of Work} = \text{Landlord's percentage share of each draw request}$ ), subject to the conditions set forth below. Tenant shall be solely responsible for any cost of the Tenant's Work in excess of the Allowances. Lender's requirements for the first advance consist of the following, which must be fulfilled by Tenant, to Lender's sole satisfaction, prior to submitting the first application for payment:

(i) Tenant shall have delivered to Lender (cc Landlord) copies of all contracts for the performance of Tenant's Work;

(ii) Tenant shall have delivered to Lender (cc Landlord) a cost breakdown for each trade performing Tenant's Work with an estimated commencement and Completion date;

(iii) Tenant shall have delivered to Lender (cc Landlord), the final approved Plans and Specifications, together with a certificate from an architect acceptable to Lender that such plans and specification comply with all laws, codes and ordinances affecting the Project and the Premises.

Each monthly application for payment from Tenant shall include (i) a computation of Tenant's construction costs for the prior month, (ii) the remaining balance of the Allowances prior to and after payment of the amount requested; (iii) the calculation of each parties pro rata share of the current draw request, (iv) invoices or canceled checks verifying that the amounts for which payment is requested is in fact due or have been paid on expenses directly related to the completion of the Tenant's Work in the Premises, (v) conditional or final lien waivers (as appropriate) from all contractors or subcontractors providing labor or materials in excess of \$10,000, and (vi) such other documentation as Lender may reasonably request. In no event may Tenant submit an application for payment for materials or equipment which is on order, in transit or in off-site storage. The timing for submission of applications for payment and for actual advance of funds shall be reasonably determined by Lender. Lender may advance funds directly to Tenant or to Tenant's contractors, by joint check, or by such other means as Lender may determine.

D. Deliveries on Final Completion. Upon final completion of Tenant's work, Tenant shall deliver to Landlord, final and unconditional lien releases from each contractor and subcontractor, and an affidavit and indemnity from each contractor contracting directly with Tenant indicating that Tenant's Work (or that portion thereof performed by such contractor) has been completed, that no further amounts are due, and indemnifying Tenant, Landlord and Lender from and against any lien claim filed with respect the work covered by such contractor's contract.

E. Offsets and Remainders. Tenant owes Landlord the sum of \$99,893 arising from Tenant specific costs, design, and permit fees, incurred by Landlord prior to execution of this Sublease. Landlord shall have the right to offset such amount from the Allowances. In addition, Landlord may offset against the Allowances any other amounts due to Landlord from Tenant under the Sublease, including without limitation, costs incurred by Landlord in connection with the Tenant's Work such as permitting and engineering fees. Landlord shall not have to reimburse Tenant or otherwise fund the Allowances while Tenant is in default under this Sublease. If the Tenant's Work is less than the Base Allowance, Landlord shall retain such excess portion of the Base Allowance as its sole and separate property and Tenant shall have no rights or claims to it whatsoever; provided Landlord shall provide Tenant with a credit towards Base Rent (not against the Additional Allowance) of any unused portion of the Base Allowance.

IV. [Intentionally deleted.]

V. **Miscellaneous.**

A. Tenant shall designate one (1) construction representative authorized to act for Tenant upon whom Landlord can rely, and who shall consult with Landlord and Landlord's contractors, employees and agents in connection with the construction of Landlord's Work and Tenant's Work.

EXHIBIT C-1

Landlord's Work – Shell & Core

[see attached]



Landlord's Work - Base Building Specifications  
**Exhibit C-1**

<b>Building Areas:</b>	Building One = 383,040 SF
<b>Clear Heights:</b>	Building One = 32' at first speed aisle loading bay
<b>Floor Structure:</b>	Building One has a 6.5" concrete slab on grade with #4 rebar at 24" on center each way on 6" aggregate base.
<b>Building Frame:</b>	Concrete tilt up exterior load bearing wall panels. Roof structure is open web steel girder and joists supported by structural steel columns. Roof diaphragm is OSB sheathing on 2" by 6" sub-purlins connected to open web joists.
<b>Roofing/Enclosure:</b>	Single Ply roof membrane roofing over R-20 rigid insulation OSB sheathing, 4' x 8' skylights at 1 s.f. per 133 building SF. Sheet metal flashing utilized for parapet downspouts, gutters and for miscellaneous curbs and flashing.
<b>Dock Areas:</b>	Ninety five (95) 9' x 10' insulated overhead dock doors with single 'window panel' at each dock position. Six (6) 12' x 14' grade insulated overhead doors with adjacent man door and glass transom to be located at each dock ramp area. Dock high and ramp area to be separated by concrete retaining walls. Dock aprons will be 6" thick reinforced concrete with #4 at 24" on center each way over 4" aggregate base, extending 50' from edge of each building.
<b>Site Paving:</b>	Heavy asphalt paving sections utilized as called out by the soils engineer in front of the dock aprons, at all trailer storage areas, truck drive aisles and project entrances and exits; 4" asphalt over 6" crushed rock base over 12" cement treated base. Standard asphalt paving sections at car parking areas adjacent to office entrances; 3" asphalt over 6" crushed rock base over 12" cement treated base. All asphalt paved areas have base aggregate and a cement treated sub-base.
<b>Landscaping and Irrigation:</b>	Site area landscaped to City of Portland and Portland

	International Center Development Guideline standards. All landscape areas have an automated irrigation system.
<b>Parking:</b>	One hundred twenty five (125) car parking spaces including five (5) accessible parking stalls as required by code.
<b>Painting:</b>	Buildings painted using a 3-color scheme.  Concrete walls include one coat of primer and two coats of textured elastomeric coating. Exposed iron and steel shop primed and include two finish coats of acrylic latex semi-gloss exterior enamel. Exposed galvanized iron and steel with one coat of galvanized metal primer and two coats of alkyd semi-gloss exterior enamel.
<b>Plumbing:</b>	The buildings include a 6" diameter, under slab sanitary sewer line with an overhead insulated 2" water line. Lines located approximately 20' – 40' from the front of the building.
<b>HVAC:</b>	Four (4) 1,180 MBTU Cambridge units and four (4) 6,000 CFM relief hoods
<b>Fire Protection/ Sprinkler System:</b>	Building One has an ESFR sprinkler system. Its shared electrical pump will be located in Building One that will maintain water pressure for the ESFR sprinkler system in both buildings (ie, Building One and Building Two).
<b>Electric Power:</b>	Two (2) 1,600 amp 480/277 volt, 3 phase, 4 wire service provided in separate electrical rooms at Building One. Transformers and panels for 120/208 volt house power also included. Site lighting consists of 400 watt wall pack and pole lighting as required meeting City of Portland code.
<b>Storefront Systems:</b>	10'-0" tall aluminium framed storefront system with clear anodized finish and 1" insulated glazing unit with clear glass (Solorban 60, Low-E)

## EXHIBIT C-2

### Approved Plans for Tenant's Work

[see attached]

## Exhibit C-2

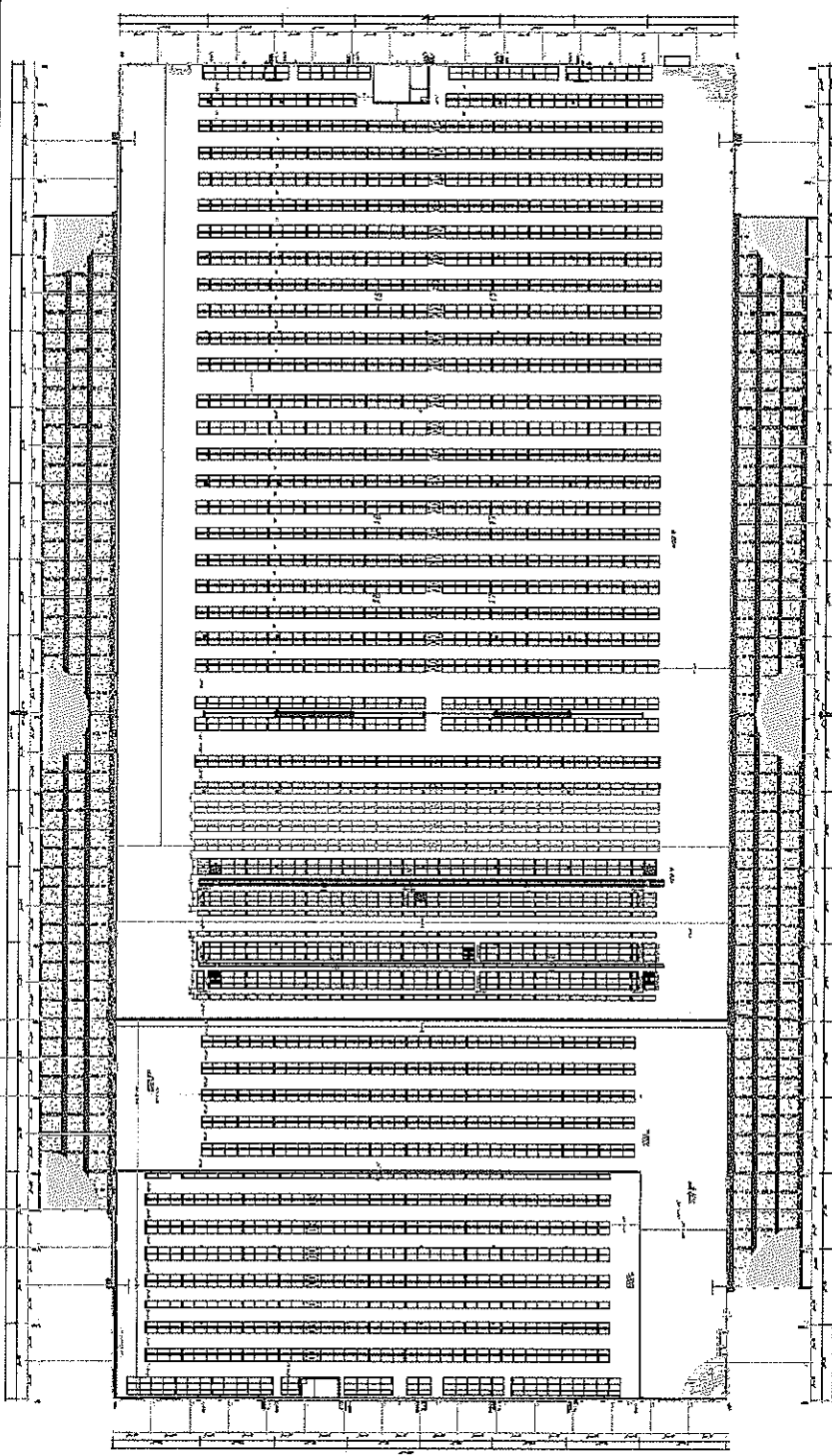
### KeHE – Permit/Bid Set – October 6, 2014

T1.0	Title Sheet
T1.1	Code Analysis
C2.1	Site and Grading Plan
C8.1	Details
L2.1	Landscape Plan
L8.1	Landscape Details
L9.1	Landscape Specifications
L9.2	Landscape Specifications
A1.0	Existing Conditions Plan
A1.1	Slab Plan
A2.0	Overall Floor Plan
A2.1	Enlarged Office Plans
A2.2	Office Finish Plans
A2.3	Freezer/Cooler Plans
A2.4	Freezer/Cooler Roof Plans
A2.5	Cool Dock Plan
A3.1	Sections
A3.2	Partial Elevations
A5.1	Enlarged Toilet Room Plan and Elevations
A6.1	Enlarged Office Reflected Ceiling Plans
A7.1	Stair Details
A7.2	Stair Details
A8.1	Details
A8.2	Details
A8.3	Details
A8.4	Details
A9.1	Schedules
A9.2	General Notes and Specifications
A9.3	General Notes and Specifications
S1.0	General Notes
S1.1	Typical Details
S2.4	Roof Framing Plans
S8.1	Details
E2.0	LED Lighting Plan
E2.1	LED Lighting Enlarged Offices (Reference Only)

EXHIBIT C-3

Approved Plans for Tenant's Work  
Cooler/Freezer

[see attached]

	<b>OPTION #8</b> <b>05-22-15</b>		<b>KOPPCO</b> MATERIAL HANDLING EQUIPMENT	FIRST APPROVAL APPROVED <input type="checkbox"/> APPROVED AS NOTED <input type="checkbox"/> BY _____ DATE: _____	<b>KEHE</b> DISTRIBUTORS
	319 REDDEN PL. PORTLAND, OR 97208 (503) 281-1111 www.kehe.com	10000 NE 10TH AVE. VANESSA, OR 97146 (503) 281-1111 www.kehe.com			

## EXHIBIT D

### Sublease Memorandum

#### FORM OF SUBLEASE MEMORANDUM

**PDX LOGISTICS CENTER I LLC** a limited liability company organized under the laws of the State of Delaware ("Landlord"), and **[[NAME OF COMPANY]]**, a \_\_\_\_\_ ("Tenant"), executed that Sublease on \_\_\_\_\_, \_\_\_\_\_ ("Sublease") regarding the property legally described and depicted on **Exhibit A** attached hereto.

The Sublease contemplates that this document shall be delivered and executed as set forth in Section 3. This Sublease Memorandum shall become part of the Sublease.

Landlord and Tenant agree as follows:

1. The Commencement Date of the Sublease is \_\_\_\_\_, \_\_\_\_\_.
2. Tenant's obligation to pay Base Rent commenced on \_\_\_\_\_, \_\_\_\_\_.
3. Tenant's obligation to pay Tenant's Share of Common Expenses commenced on \_\_\_\_\_, \_\_\_\_\_.
4. The expiration date of the Sublease is \_\_\_\_\_, \_\_\_\_\_.
5. The Premises consist of approximately \_\_\_\_\_ (\_\_\_\_\_) rentable square feet, known as space \_\_\_\_\_, and includes \_\_\_\_\_ parking stalls.

#### LANDLORD

**PDX LOGISTICS CENTER I LLC**, a  
Delaware limited liability company

By: Capstone Partners LLC, an Oregon  
limited liability company, its Manager

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

Printed Name: \_\_\_\_\_

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

#### TENANT

**[[NAME OF COMPANY]]**

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

Printed Name: \_\_\_\_\_

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

## EXHIBIT E

### Rules and Regulations

The following rules and regulations shall apply to the Premises and Project, and all tenants, their employees and agents, or any others permitted to occupy or enter the Premises or any part thereof. Tenant will at all times abide by said rules and regulations as follows:

1. The sidewalks, entries, passages, corridors and stairways of the Premises shall not be obstructed by Tenant or its agents or employees, or used for any purpose other than ingress or egress to and from the Premises. Further, tenant shall not misuse or in any manner damage the landscape or other Common Areas. No furniture, equipment, or picnic tables or chairs may be placed on such areas.
2. No safe or article, the weight of which may, in the opinion of Landlord, constitute a hazard or damage to the Premises or its equipment, shall be moved into the Premises without prior written consent of Landlord. If such consent is granted, such article may be moved into the Building and located within the Premises only in the manner designated by the Landlord.
3. Except as expressly permitted by this Sublease, Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything therein which would in any way increase the rate of fire insurance on the Building or on property kept therein, or constitute a nuisance or waste, or obstruct or interfere with the rights of other tenants, or in any way injure or annoy them, or conflict with the laws relating to fire, or with any regulations of the fire department or with any Department of Health of the County in which the Project is located. If the handling and warehousing of any particular merchandise by Tenant in the Premises results in an increase in the rate of fire insurance on the Building, Tenant shall pay the increase in such rate resulting from the handling and warehousing of the particular merchandise by Tenant in the Premises. Likewise, if the handling and warehousing of any particular merchandise by any other tenant or occupant of the Building results in an increase in the rate of fire insurance on the Building, then such other tenant or occupant of the Building shall pay the increase in such rate resulting from the handling and warehousing of the particular merchandise by such other tenant or occupant of the Building and no such increase shall be included in Common Expenses.
4. No animals (other than trained guide dogs) shall be allowed in the Building. No person shall disturb the occupants of this or adjoining buildings or Premises by the use of any radio, sound equipment or musical instrument or by making of loud or improper noises.
5. There shall be no obstruction of sidewalks, entrances, common roadways or drives, or truck loading areas of the Project. Further, no unlicensed vehicles may be parked in any common parking or drives, or truck loading areas of the Project and no vehicles or bicycles may be stored in the common area except where designated or by permission of Landlord.
6. Tenant and Tenant's officers, agents, servants, and employees shall park their vehicles and/or semi-trucks in areas approved for such parking and shall not block, impede, or otherwise disrupt other tenants in the building from accessing and using their space; nor shall Tenant or Tenant's officers, agents, servants, and employees block or impede areas of ingress or egress within the Project.
7. Tenant shall not allow anything to be placed on the outside of the Premises, other than permitted signs, and then only to the extent expressly provided in the Sublease, nor shall anything be thrown out of the windows or doors. Landlord shall have the right to remove all non-permitted signs, or any furniture, equipment or supplies located in any Common Areas without notice to Tenant and at the expense of Tenant.
8. Tenant shall not place any additional lock(s) on any exterior door in the Building. Tenant is responsible thereafter to provide its employees with keys at Tenant's expense. Tenant shall not alter any

existing lock(s) without the prior knowledge of the Landlord. At the termination of the Sublease, Tenant shall promptly return to Landlord all keys to offices, warehouse space and/or vaults.

9. No awning shall be placed over the windows, except with the prior written consent of Landlord.

10. Except with the prior written consent of Landlord and approval of the Port as provided under the Ground Lease, Tenant shall not conduct any retail sales in or from the Premises, or any business other than that specifically provided for in the Sublease.

11. Landlord reserves the right to prohibit personal goods and services vendors from access to the Project and Premises except upon such reasonable terms and conditions, including but not limited to the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Project, the preservation of good order thereon, and the relief of any financial or other burden on Landlord occasioned by the presence of such vendors or the sale by them of personal goods or services to a tenant or its employees. If reasonably necessary for the accomplishment of these purposes, Landlord may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time on the Project. The term "personal goods or services vendors" means persons who periodically enter the Project for the purpose of selling goods or services to a tenant, other than goods or services, which are used by a tenant only for the purpose of conducting its business on the Premises. "Personal goods or services" include, but are not limited to, drinking water and other beverages, and food. Tenant may request the approval of specific vendors and Landlord will not unreasonably withhold its approval.

12. The sashes, sash doors, windows, glass lights, and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be covered or obstructed. The toilet rooms, water and wash closets and other water apparatus shall not be used for any purpose other than that for which they were constructed, and any damage resulting to the same from misuse by Tenant, its agents, employees or invitees shall be paid for by Tenant. No person shall waste water by tying back or wedging the faucets or by any other means.

13. In order to maintain the outward professional appearance of the Project, all window coverings to be installed at the Premises shall be subject to Landlord's prior approval (which shall not be unreasonably withheld). If Landlord, by a notice in writing to tenant, shall object to any curtain, blind, shade or screen attached to, or hung in, or used in connection with, any window or door of the Premises, such use of such curtain, blind, shade or screen shall be forthwith discontinued by tenant.

14. No cooking shall be done or permitted by tenant on the Premises other than: (a) in a cafeteria operated in compliance with law and applicable covenants affecting the Premises; (b) the use of a microwave oven for food or Underwriter's Laboratory approved equipment for brewing coffee, tea, and similar beverages, provided that the use is in compliance with law; or (c) the periodic use of barbecue grills in an appropriate part of the Common Areas for occasional employee cookouts; provided that the use is in compliance with law. In no case shall any part of the Premises be used for lodging.

15. Tenant shall not lay linoleum or other similar floor covering so that the same be affixed to the floor of the Premises in any manner except by a paste, or other material which may easily be removed with water, the use of cement or other similar adhesive materials being expressly prohibited. The methods of affixing any such linoleum or other similar floor covering to the floor, as well as the method of affixing carpets or rugs to the Premises, shall be subject to approval by Landlord.

16. Tenant shall not permit, nor be permitted, repairs to vehicles on the Premises, including but not limited to mechanical repairs, oil changes, window replacement. Vehicles that are disabled or in need of repairs shall be removed from the Premises and all repairs must be completed off the Premises. Additionally, Landlord prohibits the act of washing and cleaning vehicles on the Premises.

17. Tenant shall ensure that all windows and doors of the Premises are closed and securely locked before leaving the Premises each day at the close of business.

18. Smoking is prohibited in all areas of the Premises, and smoking will be permitted only in those outdoor areas of the Project specified as smoking areas by Landlord from time to time.

Landlord may amend, modify, delete or add new and additional rules and regulations regarding the use and care of the Premises and the Project; provided that the same are commercially reasonable and are applied non-discriminatorily against all the tenants in the Project. Tenant shall comply with all such rules and regulations upon notice thereof to them from Landlord. Any breach by Tenant of any rules and regulations herein set forth or any amendments, modifications or additions thereto, shall constitute a Default by Tenant under the Sublease and Landlord shall have all rights and remedies set forth therein if the Default is not cured within the applicable cure period.

**EXHIBIT F****EXHIBIT F**

## Environmental Questionnaire

**PRE-LEASING ENVIRONMENTAL EXPOSURE QUESTIONNAIRE**

Proposed Sublease Commencement Date	
Asset Manager	
Property Address	
Proposed Tenant (full legal name of proposed tenant and any dba)	
Current Address	12601 SE Hwy 212, Clackamas OR 97015
Description of Proposed Use of Property	Food Distribution

PLEASE ANSWER THE FOLLOWING QUESTIONS ACCURATELY AND FULLY, ATTACHING ADDITIONAL PAGES IF NECESSARY. YOUR RESPONSES TO THIS QUESTIONNAIRE, INCLUDING ANY AND ALL ATTACHMENTS, SHALL BE INCORPORATED AS REPRESENTATIONS AND WARRANTIES IN THE SUBLEASE WHEN EXECUTED, AND INCORRECT, MISLEADING OR MATERIALLY INCOMPLETE RESPONSES SHALL BE DEEMED A BREACH OF SAID SUBLEASE. THE TERM "YOU" OR "YOUR" SHALL REFER TO THE PROPOSED TENANT, ITS OFFICERS, PARTNERS, CONTRACTORS, SUBCONTRACTORS, CONSULTANTS, LICENSEES, AGENTS, SUBTENANTS, OR EMPLOYEES.

Please indicate on the chart below the exact name and quantities of all Hazardous Substances (as that term is defined in the Sublease), including petroleum products and all chemicals, you propose to make, use place or store on the Premises.

Categories of Chemicals	(1) Make	(2) Use	(3) Place	(4) Store	Name of Chemical
Solvents, Degreasers		2		4	See attached List
Paint Thinners/Removers		2		4	See attached List
Paint		2		4	See attached List
Oil (New)		2		4	See attached List
Gasoline		2		4	See attached List
Antifreeze					
Other Automotive Fluids		2		4	See attached List
Diesel Fuel		2		4	See attached List
Heavy (Toxic) Metal Containing Compounds					
Liquid Plastics/Activators					
Flammable Gases		2		4	See attached List
Toxic Gases					
Acids		2		4	See attached List
Bases (soda, ash, lye, etc.)					
Other Flammable Materials		2		4	See attached List
Other Corrosive Materials		2		4	See attached List

Other Toxic Materials					
Liquid Hazardous Waste					
Solid Hazardous Waste					

		YES	NO
Attach copies of all Material Safety Data Sheets ("MSDS") for all Hazardous Substances (including all chemicals and petroleum products) you intend to make, use, store or handle on the property.		Yes	
If required for your operations, please provide Landlord a copy of your Hazardous Material Management Plan and/or your Spill Prevention, Control and Countermeasures Plan.		Yes	
Do your proposed operations require H-occupancy storage or other special construction?			No
If yes, please explain:			
Do you propose to use any of the following structures on the property? If yes, described the contents of each.			No
<u>Feature</u>	<u>Contents</u>		
Underground Tank			NO
Above-ground Tank			NO
Mobile Tank			NO
Clarifier			NO
Chemical Piping			NO
Other			
Please describe plans of secondary containment and leak monitoring.			No
Please describe what solid wastes will be produced, how they will be managed and/or stored, and how they will be disposed.			No
Will any hazardous wastes or liquid wastes be generated by on site operations or brought on to the property? If yes, complete the following:			No
Identify each such hazardous waste or liquid waste.		See List	
Describe onsite storage, including secondary containment, and/or treatment.		Yes	

Chemical Storage Cabinet		
Describe your plans for disposal of hazardous wastes of liquid waste including off-site disposal.	Recycle	
Will operations result in any wastewater discharges to the sanitary sewer and/or the storm drainage system?		No
Will operations result in any wastewater discharges to locations other than the sanitary sewer and/or storm drainage system? If yes, describe each wastewater stream and plans for handling wastewater discharges:		No
Will permits from any governmental agency be required for wastewater discharge? If yes, describe:		No
Will activities on the property require warnings to be given to workers or visitors on the Leased Premises or the surrounding community? If yes, please describe how you will provide such communications or warnings.		No
Will operations result in any air emissions (including dust)? If yes, describe:		No
Will permits from any government agency be required for air emissions?		No
Will operations result in air emissions which include hazardous or toxic air pollutants?		No
If yes, will any public notice or disclosure be required?		
Will operations be subject to Risk Management & Preview Planning requirements or other risk reduction requirements?		No
Will your operations involve any on-site vehicle or equipment maintenance, repair or cleaning, including but not limited to oil changes, oil filter changes, brake pad replacement, battery charges, radiator flushing, radiator fluid replacement, and equipment, and equipment wash down cleaning? If yes, describe all such maintenance:  MHE maintenance including Oil, Fluids, Battery Chargers	Yes	

Will these on-site vehicles or equipment use batteries? If yes, describe battery storage method:  Batteries are housed in Equipment (Fork lifts, Pallet Jacks)	Yes	
Will your operations include a machine shop? If yes, describe:		No
Will your operations include any metal fabrication? If yes, describe:  Some welding	Yes	
Will your operations include the use of solvents? If yes, describe:  Small QTY's in maintaining and cleaning MHE	Yes	
Has your present facility or operation ever been the subject of an environmental investigation, an environmental enforcement action, environmental permit violation, or permit revocation proceeding? If yes, describe:		No
Have you ever been identified as a potentially responsible party for any environmental cleanup, compliance or abatement proceeding? If yes, describe:		No
Have you ever received a notice of violation or notice to comply from any environmental regulatory agency within the past five year? If yes, describe:		No
Have you had any complaints from neighbors relating to noise, odor, air emissions, or dust at your present facility? If yes, describe:		No
Have you had any complaints relating to hazardous materials handling, storage, treatment or disposal from neighbors at your present facility? If yes, describe:		No
Will the proposed use of the property require the filing of any environment reports or other documents to any agencies?		No
Has an Environmental Audit been conducted at your present facility? If yes, attach a copy of any report prepared in connection with any such audit.		No

Please provide the Landlord your Emergency Response Plan and any contingency or emergency plans for the property in case of an accidental release of hazardous materials.	OK	
List any permits required for proposed Hazardous Substance use? If yes, attach a copy.		No
Are there any noise or air discharge ramifications to this proposed use?		No
Identify the name, title and qualifications/experience of persons responsible for your environmental, health and safety program:  Name: Linda Powell  Title: Director of Risk Management  Qualifications/experience:		
Name and telephone number of person to contact for additional information:  Name: Bryan Singleton  Title: RVP of Operations, West  Telephone Number: 503-650-5535		
Please provide any additional information/comments concerning your environmental compliance program and environmental compliance history:		
The undersigned hereby certifies that the information above is correct and complete.  By: _____  Printed Name: _____  Title: _____  Date: _____  _____ Proposed Tenant  By: _____  Printed Name: _____  Title: _____  Date: _____		

<b>MSDS Page #</b>	<b>Product used</b>	<b>MSDS Page #</b>	<b>Product used</b>
6-1	Amazing Goop	6-39	Propane
6-2	Silicone Brake fluid	6-40	Klean Strip Acetone
6-3	Brake fluid Dot 3	6-41	Klean Strip Paint thinner
6-4	F/G Silicone spray	6-42	ISO 32 Hyd oil
6-5	LPS F/G chain lube	6-43	H 46 Hyd oil
6-6	H/D silicone spray	6-44	Mobil Rarus 427
6-7	PVC cement blue	6-45	Valv 10w30
6-8	Smoke gray paint	6-46	MM 80 part A
6-9	Gasket Eliminator	6-47	MM 80 Part B
6-10	Gasket Eliminator 518	6-48	S/G Hand Cleaner
6-11	N/D super purple	6-49	Eye wash water additive
6-12	N/D Brake cleaner	6-61	Thread cutting oil
6-13	Remover Graffiti	6-62	SYN power 75-90
6-14	Remover Adhesive	6-63	Gear lube
6-15	Remover Chisel Gasket	6-64	Acetylene
6-16	Paint Striping Blue	6-65	Argon
6-17	Paint Striping White	6-66	Liquid Argon
6-18	Paint Striping Red	6-67	Oxygen
6-19	Anti Seize Lubricant	6-68	Liquid Oxygen
6-20	Blue Silicone	6-69	
6-21	Clear Lacquer Aerosol	6-70	Fixture Emer Light

<b>MSDS Page #</b>	<b>Product used</b>	<b>MSDS Page #</b>	<b>Product used</b>
6-22	DK Gray Aerosol	6-71	
6-23	Beige Aerosol	6-72	Super lube grease
6-24	Safety Yellow Enamel	6-73	Super lube Aerosol
6-25	Int Orange Enamel	6-74	Battery Fluid Acid
6-26	Wire Welding	6-75	Gloss Black Enamel
6-27	Welding Electrode	6-76	Satin White Aerosol
6-28	Rod Welding 7018	6-77	Hunter Green Enamel
6-29	Nozzle gel	6-78	Striping paint Yellow
6-30	Clear Inverted Marking	6-79	F/G Silicone grease
6-31	Green Gray Enamel	6-80	Aviation Hyd oil
6-32	Gloss White Ind Enamel	6-81	Valspar Graffiti remover
6-33	Safe Yellow Enamel	6-82	Grease Red / Redi
6-34	Duracell Battery	6-83	Blue Ind Enamel
6-35	Pro wash plus	6-84	Gloss White Aerosol
6-36	Water Aqua pure	6-85	Safety Yellow Aerosol
6-37	HE208 Wet roof patch	6-86	Safety Red Aerosol
6-38	Regular Unleaded Gas		

## EXHIBIT G

### ERISA Certificate

Dated: August \_\_, 2015

PCCP, LLC  
Attn: Legal Notices  
10100 Santa Monica Boulevard, Suite 1000  
Los Angeles, CA 90067

PDX Logistics Center I LLC, an Oregon limited liability company ("Landlord"), which is owned in whole or in part by PCCP, LLC ("Fund"), is leasing the Property defined below. As a subtenant in the Property, we understand that the Fund consists of plan assets subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and that it is necessary for Landlord, and PCCP, LLC ("PCCP") as investment manager of the Fund, to determine that the leasing of the property will not result in a "prohibited transaction" within the meaning of ERISA. This certification provides important information that allows Landlord and PCCP to make that determination.

Having independently reviewed the following certifications for accuracy, the undersigned makes the certifications set forth below.

For purposes of the certifications set forth herein the following terms have the meanings set forth below:

"Affiliate" means with respect to any person: (a) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person; (b) any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, ten percent or more partner, or highly compensated employee within the meaning of section 4975(e)(2)(H) of the Code (but only if the employer of such employee is the plan sponsor of any Constituent Plan); (c) any director of the person, or any employee of the person who is a highly compensated employee within the meaning of section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management or disposition of plan assets involved in the transaction; and (d) with respect to an employer any of whose employees are covered by any Constituent Plan, a named fiduciary (within the meaning of Section 402(a)(2) of ERISA) of the assets of such Constituent Plan involved in the transaction, if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

"Code" means the Internal Revenue Code of 1986, as amended, or any successor statute.

"Control" means the power to exercise a controlling influence over the management policies of a person other than an individual.

"ERISA" means the *Employee Retirement Income Security Act of 1974*, as amended.

"Fund" means the *Pacific Coast Capital Partners Trust Real Estate Equity Fund*.

"Interest" means with respect to the ownership of an entity: (a) the combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of a corporation; (b) the capital interest or the profits interest of a partnership; or (c) the beneficial interest of a trust or unincorporated enterprise. A person is considered to own an interest held in any capacity if the person has or shares the authority to exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or to dispose of or to direct the disposition of such interest.

"Party in Interest" means: (a) a fiduciary, counsel or employee of the Plan; (b) a service provider to the Plan; (c) an employer or employee organization whose employees or members are covered by the Plan, or the owner, directly or indirectly, of fifty percent or more of such employer or employee organization; (d) a corporation, partnership, estate or trust fifty percent or more owned or held, directly or indirectly, by persons described in (a), (b) and (c); (e) a relative (spouse, ancestor, lineal descendent or spouse of a lineal descendent) of any individual described in (a), (b) and (c); (f) an employee, officer or director (or individual having powers or responsibilities similar to those of officers or directors), or a ten percent or more shareholder, directly or indirectly, of the Plan or of any person described in (b), (c) or (d); (g) a ten percent or more (directly or indirectly, in capital or profits) partner or joint venturer of a person described in (b), (c) or (d), all within the meaning of Section 3(14) of ERISA.

"Plan" means any employee welfare, benefit, pension, profit sharing or retirement plan, fund or program, or individual retirement account, subject to Title I of ERISA or section 4975 of the Code the assets of which are included in the Fund (list attached).

"Property" means that certain real property together with the improvements, structures, fixtures, equipment and other personal property used in connection therewith or stored thereon commonly known as PDX Logistics Center I LLC located at 1015 N.W. 11<sup>th</sup> Ave. Suite 243.

"Related Party" means: (a) a person which as of the last day of the most recent calendar quarter owns a ten percent or more Interest in PCCP; (b) a person controlling or controlled by a person which as of the last day of the most recent calendar quarter either: (i) owns a twenty percent or more Interest in PCCP, or (ii) owns a greater than ten percent, but less than twenty percent, Interest in PCCP and exercises control over management or policies of PCCP by reason of its ownership Interest in PCCP.

"Tenant" means KeHE Distributors, LLC, a Delaware limited liability company

"Transaction" means any transaction involving the assets of the Plan with respect to the Property, including the Tenant subleasing a portion of the Property. The subleasing of a portion of the Property shall be deemed to be a Transaction hereunder for the entire period of the sublease, plus any extensions or renewals thereof.

"PCCP" means PCCP, LLC, which is the investment manager for the Fund.

In connection with the Transaction, following diligent inquiry, the undersigned hereby represents warrants and certifies to you as follows:

1. Neither Tenant nor any Affiliate with respect to Tenant has, or had at the time of the Transaction, the authority to appoint or terminate PCCP as a manager of any of the assets of any Plan, or to negotiate the terms of any management agreement with PCCP (including renewals or modifications thereof) on behalf of any Plan.
2. Tenant is not a Related Party with respect to PCCP.
3. Tenant is not a Party in Interest with respect to any Plan.

To the best knowledge of the undersigned, following diligent inquiry, the foregoing certifications are true and correct as of the date hereof. The undersigned hereby acknowledges that you will be relying on the foregoing certifications in determining the application of the prohibited transaction rules under ERISA, the availability of ERISA Prohibited Transaction Class Exemption 84-14 (Qualified Professional Asset Manager) and other provisions of relevant law with respect to the Transaction, and in making certain determinations under the Code with respect to unrelated business taxable income.

In witness whereof the undersigned has caused this certificate to be executed under seal in its name and

behalf by its duly authorized general partner, officer or attorney-in-fact.

KeHE Distributors, LLC, a Delaware limited liability company

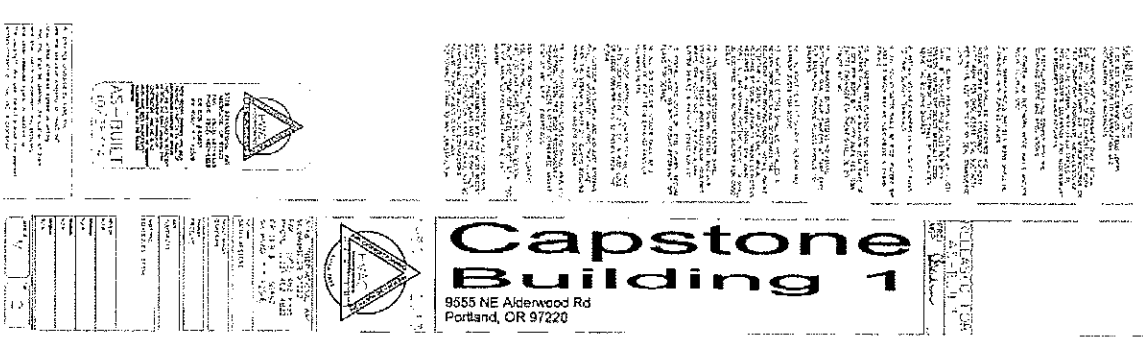
By: 

Printed Name: Brandon Bacchelt

**EXHIBIT H**

Landlord's Rooftop Heating Units

[see attached]

[illegible]

## Rider 1

### Common Expenses

**R1.1 Common Expenses Reimbursements.** Tenant agrees to pay Additional Rent computed and payable in accordance with this Rider. As the context requires, the term "Common Expenses Reimbursements" shall include the Common Expenses Reimbursements Estimate payments.

**R1.2 Common Expenses Reimbursements Estimate Payments.** Commencing on the Commencement Date, Tenant shall pay to Landlord as Additional Rent one-twelfth ( $1/12$ ) of the amount of Tenant's estimated Tenant's share of Common Expenses (as defined below). Upon request, Landlord shall provide Tenant with documentation supporting Landlord's estimates. This amount shall be paid in advance on or before the first (1<sup>st</sup>) day of each calendar month of the Term. Landlord shall furnish Tenant a written statement of Tenant's estimated Tenant's share of Common Expenses in advance of the commencement of each calendar year. Tenant's share of Common Expenses shall be prorated for any partial year in the Term. Landlord may revise its estimate from time to time during any year with subsequent payments based upon the revised estimate. Within one hundred twenty (120) days after the close of each year or as soon thereafter as is practical, Landlord will provide a reconciliation statement showing Tenant's share of Common Expenses for such year, the payments made during the year and any balance due or credit owing. Tenant shall pay any balance owing within thirty (30) days after receipt of the statement, and any credit due Tenant shall be credited to Tenant's next monthly estimated payment or, if the Sublease has terminated or expired, the amount of such credit due shall be refunded to Tenant, provided that Tenant is not in Default (as defined in Section 12.1.1) under this Sublease. To the extent that particular expenses relate to one tenant or a group of tenants or to the extent otherwise equitable, Landlord may specially allocate those expenses and Tenant's share of Common Expenses shall be correspondingly adjusted.

### **R1.3 Definitions.**

**"Common Expenses"** means the Building Expenses and the Project Common Expenses, as defined below.

**"Building Expenses"** means all out-of-pocket costs incurred by Landlord in connection with the Building or Premises including utilities serving the Building and the designated parking area for the Building; refuse collection, telecommunication services; supplies; cleaning, painting, window washing; landscaping and landscaping maintenance (including irrigating, trimming, mowing, fertilizing, seeding and replacing plants), snow removal and other services; maintenance and repair of Project roadways security services, building systems maintenance and repair including sprinkler and MEPT systems; management fees (not to exceed 2% of Tenant's gross rent, less any payments for Additional Allowance) compensation (including employment taxes and fringe benefits) of all persons and business organizations who perform duties in connection with any service, repair, maintenance, replacement or improvement or other work directly to the Building; license, permit and inspection fees; assessments and special assessments due to deed restrictions, declarations or owners associations or other means of allocating costs of a larger tract of which the Land is a part, including without limitation, the common area assessments payable under the Ground Lease; rental of any machinery or equipment; audit fees and accounting services related to the Building; the cost of repairs or replacements; charges under maintenance and service contracts; costs incurred by Landlord for compliance with any and all Governmental Requirements (as defined in Section 6.2) and Restrictions (as defined in Section 6.7) to the extent they are due to a change in Governmental Requirements and Restrictions after the Commencement Date; exterior painting; parking area resurfacing, resealing and restriping parking areas and driveway; business taxes and license fees; Permitted Membrane Expense, Permitted Sprinkler Expense as defined below; any other expense or charge which in accordance with generally accepted accounting principles would be considered an expense of maintaining, operating, or repairing the Building; and the amortization of costs of capital improvements in accordance with the next

sentence. Capital improvement costs shall be costs installed or constructed by Landlord other than in the initial construction of the Building that are considered capital repairs, replacements, improvements, and equipment under generally accepted accounting principles ("GAAP") and shall be included in Building Expenses, amortized with interest return at the Prime Rate (as defined in Section 4.6) plus two (2) percentage points, over the estimated useful life of the capital improvement as reasonably determined by Landlord. The capital improvements referred to in the previous section shall be limited to: (a) the replacement of existing equipment or other existing components of the Premises for which Landlord is responsible pursuant to this Sublease or reasonably necessary for Landlord to honor its obligations under this Sublease, including parking area removal and replacement of paving surfaces and specifically excluding those items which are Landlord's sole responsibility in Section 5.2; (b) items installed by Landlord to the Premises for the purpose of reducing Operating Costs, but only to the extent of the cost savings reasonably expected to be achieved; and (c) items which must be incurred by Landlord in order to comply with governmentally mandated requirements first imposed upon the Premises following the Commencement Date. Building Expenses shall be shared by all tenants of a single Building in accordance with their proportionate share.

**"Permitted Membrane Expense"** means the expense of regularly scheduled maintenance, including repair work that is within the scope of work typically to be expected in the course of such maintenance, but not other repairs or replacement; provided that starting with the 21th year following the Lease Commencement Date, Landlord may include all costs related to the roof membrane (in the year expended), and may include replacement of the membrane, amortized over the useful life, with interest as provided in the definition of Building Expenses. Landlord may not include in Permitted Membrane Expense the expense of fixing "latent defects", which Landlord shall repair at its sole expense.

**"Permitted Sprinkler Expense"** means (i) the cost of regularly scheduled maintenance for that portion of the sprinkler system installed by Landlord, including repair work that is within the scope of work typically to be expected in the course of such maintenance, but not other repairs or replacement, and (ii) all costs related to that portion of the sprinkler system installed by Tenant and (iii) all costs caused by Tenant's negligence or breach of Lease (subject to the waiver of subrogation provision (7.3) of the lease). Landlord may not include in Permitted Sprinkler Expense the expense of fixing "latent defects" in that portion of the sprinkler system installed by Landlord, which Landlord shall repair at its sole expense.

**"Project Common Expenses"** means all out-of-pocket costs incurred by Landlord in connection with the Common Areas of the Project including Landlord's insurance, utilities serving the Common Areas, assessments and special assessments due to deed restrictions, declarations or owners associations or other means of allocating costs of a larger tract of which the Land is a part, including without limitation, the common area assessments payable under the Ground Lease; landscaping and landscaping maintenance (including irrigating, trimming, mowing, fertilizing, seeding and replacing plants); sanitary sewers, storm sewers, impervious surface charges, snow removal and other services; maintenance and repair of Project roadways, security services, if any; and Real Property Taxes (as defined on Rider 1). The Project Common Expenses shall be shared by all tenants of the Project in accordance with their proportionate share of the Project.

**R1.3.2 Common Expenses Exclusions.** Common Expenses shall not include: (a) debt service or ground rent; (b) all costs associated with leasing including but not limited Tenant improvements, leasing commissions, space planning, renewals, marketing costs, and attorneys' fees; (c) costs of any excess utilities and other services and work rendered to individual tenants; (d) depreciation, amortization or interests; (e) costs to the extent covered by insurance proceeds paid to Landlord; (f) Landlord's general corporate overhead and administrative expense, including any salaries or wages paid to executives or officers of Landlord or the property manager above the regional manager; (g) costs arising from the negligence or fault of other tenants or Landlord; (h) "in-house" accounting or legal fees except that the

license fee for the accounting software may be included in Common Expenses; (i) any other expenses, which in accordance with GAAP, would not normally be treated as expenses (j) capital improvements except as provided in section R1.3.1; (k) costs incurred in connection with the sale, financing, mortgaging or other change in ownership of the Building or Project; (l) any costs associated with the Ground Lease, or other ground lease or underlying lease, except for reimbursements of ground landlord's expenses of Common Area Assessment as defined in Section 1.4.3 of the Ground Lease.; (j) costs to repair or replace the roof structure, foundation or exterior walls of the Building; (k) costs covered by warranties or insurance of otherwise reimbursed by third parties; including without limitation costs covered by Landlord's roof warranty; (l) costs or repair or replacement of the roof membrane, except for repairs that are typically to be expected in the scope of regularly scheduled maintenance.

**R1.3.3 Real Property Taxes.** "Real Property Taxes" means all current and future ad valorem real or personal property taxes, governmental charges and assessments (including local or other improvement district assessments) levied or assessed by any Governmental Agency (as defined in Section 6.2) against all or any part of the Land, Building, or other improvements comprising the Project, or any improvements, fixtures and equipment, or other property, real or personal, used in the operation of the Project; any taxes in addition to or in lieu of, in whole or in part, such taxes; any other governmental charge, general or special, of any kind and nature whatsoever, such as payments for transit or environmental facilities, any fee for services and road maintenance, school systems or other services provided or formerly provided to property owners and residents within the general area of the Land. Real Property Taxes shall not include any franchise tax, federal, local or state income tax, estate tax, inheritance tax, succession tax, transfer tax, or other similar tax, and shall not include any late payment penalties if Tenant has paid all Rent when due.

#### **R1.4 [intentionally omitted]**

**R1.5 Tenant's Audit Right.** Tenant shall, provided that Tenant is not in Default for the payment of Rent, have the right to audit the current year's statement showing Tenant's share of Common Expenses for such year issued by or on behalf of Landlord and Landlord's books and records from which the statement was derived by written notice given to Landlord within ninety (90) days after receipt of that statement, and upon first furnishing Landlord at least twenty (20) days prior written notice. Such audit shall be conducted no more than one (1) time each year in the offices of the Project Manager during normal business hours at the cost of Tenant. Tenant shall keep all of the information disclosed in the course of such audit confidential, to the extent permitted by Oregon law, and shall require all of its consultants to agree in writing directed to Landlord to keep all such information confidential. Tenant agrees that such audits shall not be permitted to be conducted on a contingency fee basis. If following such audit it is determined that there was an error in the determination of Common Expenses, or in calculating Tenant's share thereof, the parties agree to be reasonable and work in good faith to determine the appropriate adjustment to the amount charged to Tenant. If the parties cannot otherwise resolve such exceptions within thirty (30) days after Tenant submits its report of exceptions to Landlord, and the amount in dispute is an overbilling of five percent (5%) or more, Tenant shall have the right to refer the matter to an independent certified public accounting firm which neither Landlord nor Tenant has retained for any substantial services within the last three (3) years reasonably selected by Tenant from the ten (10) largest such firms in the Portland, Oregon metropolitan area, whose certification as to the proper amount shall be final and conclusive as between Landlord and Tenant, and Tenant shall pay the cost of such certification unless such certification actually determines that Tenant was over billed by more than five percent (5%) in which case Landlord shall pay the reasonable cost of such determination. If a credit is due Tenant, Landlord shall, provided that Tenant is not in Default, apply any credit to Tenant's next monthly estimated payment or, if this Sublease has terminated or expired, the amount of such credit due shall be refunded to Tenant. Any undercharge shall be paid by Tenant within thirty (30) days of invoice. The cost of such audit shall be paid by Tenant, unless Tenant shall be entitled to a refund in excess of five percent (5%) of the amount calculated by Landlord as Tenant's annual Share of Common Expenses, in which case Landlord shall reimburse Tenant for its out of pocket costs incurred in such audit not to exceed \$2,000.

**R1.6 Controllable Expenses.** Common Expenses consisting of Controllable Expenses (as defined below) for any calendar year, commencing with the second calendar year after the Commencement Date, shall

not increase by more than five percent (5%) ("Cap Percentage") from one calendar year to the next calendar year. For the purpose of this R1.6, "Controllable Expenses" shall mean all Common Expenses, except for the following items: (i) all utilities and other costs related to provision of heat (including oil, steam and/or gas), electricity, air conditioning, and water (including sewer charges) and other utilities to the Common Areas or not separately metered to the tenants; (ii) all premiums for fire, casualty, rental income, liability and other such insurance as may be maintained from time to time by Landlord for the Project; (iii) costs relating to snow removal; (iv) assessments and special assessments due to deed restrictions, declarations or owners associations or other means of allocating costs of a larger tract of which the Land is a part, including without limitation, the common area assessments payable under the Ground Lease; and (iv) Real Property Taxes.

## Rider 2

### Sublease Security

**R2.1** [intentionally omitted]

**R2.2 Letter of Credit.**

**R2.2.1** As a condition to this Sublease, Landlord requires that Tenant deliver in favor of Landlord a letter of credit in the amount of ONE MILLION Dollars (\$1,000,000) in a form acceptable by Landlord within five (5) days after the execution of this Sublease. The term "Letter of Credit" shall mean and refer to a letter of credit initially delivered pursuant to this Rider and all substitutions, replacements and renewals of it, and which must be consistent with and shall satisfy all the requirements of this Rider.

**R2.2.2** If the letter of credit is not delivered to and accepted by Landlord within five (5) days after the execution of this Sublease, Landlord may as its sole remedy void the Sublease for failure of a condition subsequent.

**R2.2.3** Landlord may draw on the Letter of Credit, in whole or in part at Landlord's election, without advance notice to Tenant, at any time or from time to time (a) on or after the occurrence of any Default, (b) if Tenant, or anyone in possession of the Leased Premises through Tenant, holds over after the expiration or earlier termination of this Sublease, (c) if Landlord is given notice by the issuer of the Letter of Credit that it is terminating the Letter of Credit, (d) if a confirming bank gives notice to Landlord that it will cease to act in that capacity, (e) if the Letter of Credit expires on a specified date by its terms and is not renewed or replaced at least thirty (30) days in advance of its expiration date, (f) to the extent permitted by law, in the event any bankruptcy, insolvency, reorganization or any other debtor creditor proceeding is instituted by or against Tenant or (g) as otherwise specified in the letter of credit (each of the foregoing (a) through (g) being a "Draw Event"). **If Landlord draws on the Letter of Credit, Landlord shall notify Tenant of such draw within 5 business days thereafter, and shall specify in such notice the Draw Event(s) that prompted such draw. Such notice is given purely as an accommodation to Tenant, shall not estop Landlord from alleging additional Draw Events, nor shall the content of, or failure to provide any such notice result in any liability on the part of Landlord.**

**R2.2.4** Landlord may apply any sum drawn on the Letter of Credit to amounts owing to Landlord under this Sublease in such order and priority as Landlord elects in its absolute discretion. If any of the proceeds drawn on the Letter of Credit are not applied immediately to sums owing to Landlord under this Sublease, Landlord may retain any such excess proceeds as a cash Security Deposit for application to future sums owing to Landlord under this Sublease, in such order and priority as Landlord elects in its absolute discretion. Such deposit may be commingled with Landlord's other funds, shall not be considered to be held in trust by Landlord for the benefit of Tenant, and is not an advance payment of Rent or a measure of Landlord's damages in case of Default (as defined in Section 12.1.1). If Landlord has drawn on the Letter of Credit for any reason other than non-renewal of the Letter of Credit, Tenant shall, within fifteen (15) days after Landlord's demand, restore the amount of the Letter of Credit drawn so that the Letter of Credit is restored to the original amount of the Letter of Credit. If Tenant does not restore the Letter of Credit to its original amount within the required time period, such non-restoration shall be considered an Event of Default.

**R2.2.5** Landlord's draw and application of all or any portion of the proceeds of the Letter of Credit shall not impair any other rights or remedies provided under this Sublease or under applicable law and shall not be construed as a payment of liquidated damages. If Tenant shall have fully complied with all of the covenants and conditions of this Sublease, the Letter of Credit shall be returned to Tenant or, if Landlord has drawn on the Letter of Credit, the remaining proceeds of the Letter of Credit which are in excess of sums due Landlord shall be repaid to Tenant, without interest, within thirty (30) Business Days after the expiration or termination of the Sublease Term and delivery of possession of the Leased Premises to Landlord in accordance with this Sublease.

**R2.2.6** The Letter of Credit shall conform to the following criteria:

(a) The letter of credit shall be irrevocable, unconditional, evergreen stand-by sight draft;

(b) The letter of credit shall be in the amount specified in Section 1.1 of the Sublease;

(c) The letter of credit shall be issued in favor of:

PDX Logistics Center I LLC;

(d) The letter of credit shall be effective immediately on its issuance;

(e) If the letter of credit is in the amount of \$150,000.00 or more, then the letter of credit must either (i) be issued by a national bank which is a member of the New York Clearing House and which has a banking office dedicated to the administration and payment of letters of credit in a location approved by Landlord or (ii) if issued by any bank which is not described in clause (i), be confirmed by a bank described in clause (i). The issuing bank must have been assigned by Standard & Poors Investor Services a Counterparty Credit Rating of BBB+ or better. If clause (ii) is applicable, the confirming bank must be assigned by Standard & Poors Investor Services a Counterparty Credit Rating of BBB+, or better. The identity of the issuing bank and of any confirming bank shall be reasonably satisfactory to Landlord. If, at any time during the Lease Term, the issuing bank's long term credit rating is reduced below the credit rating threshold above, or if the financial condition of the issuing bank changes in any other materially adverse way, then Landlord shall have the right to require that Tenant obtain from a different issuer a substitute Letter of Credit that complies in all respects with the requirements of this Rider 2, and Tenant's failure to obtain such substitute Letter of Credit within ten (10) days following Landlord's written demand therefor (with no other notice or cure or grace period being applicable thereto, notwithstanding anything in this Sublease to the contrary) shall entitle Landlord, or Landlord's then managing agent, to immediately draw upon the then existing Letter of Credit in whole or in part, without notice to Tenant. Tenant shall be responsible for the payment of any and all costs incurred with the review of any replacement Letter of Credit (including, without limitation, Landlord's reasonable attorneys' fees), which replacement is required pursuant to this Section or is otherwise requested by Tenant;

(f) The letter of credit shall have an expiration date no earlier than the first anniversary of the date of its issuance and shall provide for its automatic renewal from year to year unless terminated by the issuing bank by notice to Landlord given not less than sixty (60) days prior to its expiration date. Notice to Landlord shall be in writing, made by (i) United States Postal Service, certified mail, return receipt requested; or (ii) reputable express or courier service. Notice to Landlord shall be addressed to Landlord at its address in paragraph 3 above and to the following parties:

PCCP, LLC  
10100 Santa Monica Boulevard, Suite 1000  
Los Angeles, CA 90067  
Attention: Legal Notices

and to:

MANAGER

(g) The final expiration date of the letter of credit and all renewals of it shall be no earlier than sixty (60) days following the end of the Sublease Term.

(h) The letter of credit may be drawn at the designated banking office of either the issuer of the letter of credit described in clause (i) of subparagraph (e), or, if clause (ii) of subparagraph (d) is applicable, the confirming bank described in clause (ii) of such subparagraph (d). The letter of credit shall allow for draws to be made at sight on a draft drawn by the beneficiary of the letter of credit. The draft shall be reasonably approved as to form by Landlord. The letter of credit must allow for one draw in the whole amount or multiple partial draws. Landlord shall not be required to deliver any certificate, affidavit or other writing to the issuer expressing the basis for the draw as a condition to any draw, except for a certification that a "Draw Event" and that the draw letter has been duly authorized and executed.

(i) The letter of credit shall be transferable and any applicable transfer fees shall be paid for by Landlord. In the event of an assignment by Tenant of its interest in this Sublease (and irrespective of whether Landlord's consent is required for such assignment), the acceptance of any replacement or substitute letter of credit by Landlord from the assignee shall be subject to Landlord's prior written approval, in Landlord's reasonable discretion, and the attorney's fees incurred by Landlord in connection with such determination shall be payable by Tenant to Landlord within ten (10) days of demand. Any such substitute Letter of Credit shall conform with all of the requirements of this Rider 2. Tenant shall pay all expenses, points and/or fees incurred by Tenant in obtaining and maintaining the Letter of Credit.

(j) The letter of credit shall be governed by (i) the International Standby Practices (ISP 98 published by the International Chamber of Commerce) and (ii) the United Nations Convention on Independent Guarantees and Standby Letters of Credit. Alternatively, if approved by the lender and if required by either the issuing bank or the confirming bank the Uniform Customs and Practices for Documentary Credits published by the International Chamber of Commerce may be substituted for the Practices referred to in clause (i) to the extent such Customs and Practices are not inconsistent with the criteria in this Rider.

(k) Issuer shall waive all waiting periods whether under Uniform Commercial Code Section 5-112 or otherwise.

(l) The letter of credit shall otherwise be in such form and shall be subject to such requirements as Landlord may reasonably require.

**R2.2.7** Notwithstanding anything in this Rider 2 to the contrary, provided that Tenant is not then in default under this Sublease as of the date of the potential reduction below, and has tendered to Landlord a replacement letter of credit or certificate of amendment to the existing letter of credit conforming in all respects to the requirements of this Rider 2, the Letter of Credit amount shall be reduced as follows, but in no event shall the Letter of Credit ever be in an amount less than \$250,000:

Date of Reduction	New Letter of Credit Amount
First Day of the 13 <sup>th</sup> month of the Lease Term	\$750,000
First Day of 25 <sup>th</sup> month of the Sublease Term	\$500,000
First Day of 61 <sup>st</sup> month of the Sublease Term	\$250,000

### Rider 3

#### Ground Lease Requirements

The following provisions in this Rider 3 shall apply to this Sublease and may not be modified, waived or deleted:

**R3.1 Ground Lease.** Tenant acknowledges that this Sublease is subject to the Ground Lease and Tenant subordinates this Sublease and all rights of Tenant under this Sublease to all terms, conditions and covenants of the Ground Lease. This Sublease may not be amended or modified in any way which shall conflict with any provision of the Ground Lease.

In addition, Tenant covenants and agrees not to permit or suffer any act with respect to its use or occupancy of the Premises or Project which could constitute a default of the Ground Lease or the Development Standards or which could render Landlord liable for any Claims under the Ground Lease. (The term "Claims" is defined in Section 7.4.1 of this Sublease.) Tenant acknowledges, as of the Effective Date, that Landlord has provided to Tenant a copy of the Ground Lease and all Exhibits and all existing amendments thereto. Landlord shall provide Tenant with copies of any future amendments to the Ground Lease, provided that failure to provide such copies shall not constitute a Default under this Sublease by Landlord. Tenant acknowledges and agrees that nothing contained in this Sublease gives the Tenant any rights or remedies against the Port, and that all of the Tenant's rights and remedies under this Sublease shall be solely against Landlord, except in the event the Ground Lease terminates due to Landlord's default as provided on and subject to the provisions of Rider 5 below. Tenant further understands and agrees that obligations of the Port under the Ground Lease are to Landlord not to Tenant, and that the Port shall have no liability to Tenant and Tenant shall have no right of action against the Port for any violation or alleged violation of the Ground Lease by the Port.

**R3.2** Tenant further acknowledges and agrees that:

**R3.2.1** In no event shall Rent be prepaid by Tenant more than thirty (30) days in advance of its due date as set forth in this Sublease (except Tenant may pay, in advance, the first and last months' rent due under this Sublease).

**R3.2.2** Nothing contained in this Sublease shall give Tenant any rights or remedies against the Port, and all of Tenant's rights and remedies shall be solely against Landlord, except, in the event this Sublease is assumed by the Port, and then, subject to the limitations on Rider 5.

**R3.3 Additional Port Rights of Entry.**

In addition to the Port's other rights of entry pursuant to this Sublease, including without limitation on Rider 4, the Port and its agents, employees, contractors, and representatives shall have the right, but not the obligation, from time to time, to enter the Premises and Project upon at least one (1) business day's prior notice (except that no notice shall be required in the case of an emergency) for the purposes of: (a) confirming the performance of all obligations under the Ground Lease; (b) showing the Project to prospective purchasers or transferees; and (c) doing any other act which the Port may be obligated or have the right to perform under the Ground Lease (including without limitation the exercise of those rights reserved under Section 6.4 of the Ground Lease). Tenant also acknowledges that the Port shall have full rights and authority with respect to its "Common Areas" (as defined in the Ground Lease) as set forth in the Development Standards and the Ground Lease. Neither Landlord nor the Port shall be liable in damages or otherwise, nor shall there be an abatement of Rent, nor shall the same constitute a constructive eviction of Tenant, arising as a result of the exercise of the Port's rights under the Ground Lease by the Port or any of its agents, employees, contractors, or representatives. All rights of the Port as provided in this paragraph R3.3 shall survive the termination of the Ground Lease and shall be incorporated herein upon any assumption of this Sublease by the Port, as further provided on Rider 5.

During the Term (as defined in Section 3) and hold-over period, if applicable, Tenant covenants and agrees to assume and perform all obligations of Landlord under the Ground Lease which pertain to Tenant's use and occupancy of the Premises and acknowledges that the Port shall have the right to enforce the same. In addition, Tenant covenants and agrees not to permit or suffer any act which could constitute a default of the Ground Lease or a Default (as defined in Section 12.1.1) of the Development Standards (as defined in Section 6.7) or Port Rules (as defined in Section 6.10.2) or which could render Landlord liable for any claims under the Ground Lease. Tenant acknowledges, as of the Effective Date, that Landlord has provided to Tenant a true and complete copy of the Ground Lease with all amendments. In no event will the Term extend beyond the term of the Ground Lease. Landlord shall provide Tenant with copies of any future amendments to the Ground Lease, provided that failure to provide such copies shall not constitute a default under this Sublease by Landlord. Tenant acknowledges and agrees that nothing contained in this Sublease gives Tenant any rights or remedies against the Port, and that all of Tenant's rights and remedies under this Sublease shall be solely against Landlord. The Port shall have no obligations under this Sublease except in the event the Ground Lease terminates due to Landlord's default and Tenant is allowed to remain on the Premises as a tenant of the Port as provided in Section 13.2.

## Rider 4

### Additional Environmental Provisions

The following provisions in this Rider 4 shall apply to the Sublease, and may not be modified, waiver or otherwise deleted.

**R4.1 Definitions.** The following terms shall have the following meanings.

**R4.1.1 AST Facility.** "AST Facility" shall mean and include mobile storage tanks, fueling trucks, and aboveground storage tanks, aboveground piping, dispensers, related underground and aboveground structures and equipment, including without limitation spill containment features and oil water separators, and the surrounding area used in connection with the operation, activity or purpose for which the entire system is designed, including without limitation the fueling of motor vehicles and the containment of Hazardous Substances (as defined in Section 9.1.6) or other materials.

**R4.1.2 Best Management Practices.** "Best Management Practices" shall mean those environmental or operational standards which are either: (a) applicable to a particular business or industry group as a matter of common and accepted practices; (b) adopted or articulated by any of the following: trade associations or professional associations for the particular business or industry group; the business or industry group's own standard operating procedures; or (c) practices specifically defined or identified for a particular business operation or industry group by regulatory agency guidelines.

**R4.1.3 Environmental Audit.** "Environmental Audit" means an environmental site assessment or compliance audit conducted of the Premises or Project, as applicable, consistent with CERCLA Section 9601(35)(B), 42 USC, 40 CFR 312, ORS 465.255(6), and any other applicable or relevant and appropriate assessment or auditing standard, including ASTM Standard E2107-00 Standard Practice for Environmental Regulatory Compliance Audits, or its successor, as the same may be amended or recodified from time to time.

**R4.1.4 Environmental Cost.** "Environmental Cost" shall include, but is not limited to, costs and damages arising from or relating to: (a) any actual or claimed violation of or noncompliance with any applicable Environmental Laws (as defined below); (b) claims for damages, response costs, any audit costs, fines, fees or other relief relating to matters addressed in any applicable Environmental Laws; (c) injunctive relief relating to matters addressed in any applicable Environmental Laws; (d) Hazardous Substance Releases (as defined below); and (e) violations of any environmental provisions of this Sublease or the Ground Lease. Environmental Cost shall also include but not be limited to: (i) costs of preliminary assessment, evaluation, testing, analysis, remedial investigation, feasibility study, removal, remedial action, disposal, monitoring and maintenance, natural resources injury assessment, restoration and compensation; (ii) the cost of decommissioning and removing any underground or aboveground storage tank(s); (iii) Port, Oregon Department of Environmental Quality, United States Environmental Protection Agency and Natural Resource Trustees oversight costs; (iv) fees of attorneys, engineers, consultants, experts, Port and other governmental employees and costs, whether or not taxable as costs, incurred at, before or after trial, on appeal or petition for review, or in any bankruptcy or administrative proceedings; (v) lost revenue; and (vi) diminution of value, loss, or restriction on use of property, including diminution of value resulting from the residual risk associated with a risk based cleanup.

**R4.1.5 Environmental Laws.** "Environmental Laws" shall include any and all Governmental Requirements, including without limitation any and all federal, State of Oregon, regional and local laws, regulations, rules, permit terms, codes, ordinances and guidance documents now or hereafter in effect, as the same may be amended or recodified from time to time, and applicable decisional law, which govern materials, substances, regulated wastes, emissions, pollutants, water, storm water, ground water, well field and wellhead protection, cultural resources protection, animals or plants, noise, or products and relate to the protection of health, natural resources, safety or the environment.

**R4.1.6 Hazardous Substance.** "Hazardous Substance" shall include any and all substances defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any applicable Environmental Laws, which either by itself or in combination with other material expected to be on the Premises, is either: (a) potentially injurious to the public health, safety or welfare, the environment or the Premises; or (b) a basis for potential liability of Landlord, Landlord's Affiliates or the Port to any Governmental Agency or third party under any applicable statutory, regulatory or common law theory. Hazardous Substances shall also include solid waste, asbestos, PCB, fuels, petroleum, petroleum derived products or urea formaldehyde or any chemical, material, element, compound, solution, mixture, substance or other matter of any kind whatsoever whether or not defined, classified, listed, designated or regulated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any similar term in or under any Environmental Laws.

**R4.1.7 Hazardous Substance Release.** "Hazardous Substance Release" shall include the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking or placing of any Hazardous Substance into the air or into or on any land or waters. However, Hazardous Substance Release excludes a release specifically authorized by a then-current and valid permit or authorization issued under applicable Environmental Laws or a de minimis release of Hazardous Substances on an impervious surface that does not and will not likely, either individually or cumulatively with other releases of Hazardous Substances, come in contact with surface water contained in a river water body, or with groundwater, that is appropriately responded to under Environmental Laws, and that is promptly reported to Landlord.

**R4.2 Hazardous Substances Use on Premises.** Tenant shall not cause, permit, use, store, handle, manage, generate, treat, locate manufacture, refine, blend, dispose of, recycle, process, or release from, on, in, under or about the Premises or the Project any Hazardous Substances, except for Permitted Uses of Hazardous Substances, in compliance with this Sublease, the Ground Lease and Environmental Laws. Tenant shall maintain Material Safety Data Sheets ("MSDS Materials") for each Hazardous Substance used by Tenant or by Tenant's Affiliates, to the extent required under any applicable Environmental Laws or by the Ground Lease. In order to ensure that the MSDS Materials are available to Landlord and the Port in the event of a Hazardous Substance Release or other emergency, the MSDS Materials shall be kept current at all times and a copy of the MSDS Materials shall be kept in a place known to and easily accessible to Landlord and the Port. Tenant shall dispose of all Hazardous Substances according to applicable Environmental Laws. Except as allowed by current valid governmental discharge permits, Tenant shall not dispose of any Hazardous Substance, regardless of the quantity or concentration, into any storm and/or sanitary sewer drains, ground water, surface water or plumbing facilities within the Project, to the ground, into surface water or groundwater, into the air or on other property of the Port or adjacent properties, or otherwise within or on the Project or adjacent properties. Whenever appropriate, Tenant shall strive to minimize the use of Hazardous Substances and shall identify and use non-hazardous alternatives in Tenant's operations. If Tenant knows or has reasonable cause to believe that any Hazardous Substance Release or violation of any environmental provisions of this Sublease or of Environmental Laws has taken place or is alleged to have occurred or that any Hazardous Substance has come to be located on or beneath the Project, Tenant must promptly give written notice of that condition to Landlord and the Port.

**R4.3 Prohibited Uses.** Tenant is prohibited from using the Premises for any of the following uses ("Prohibited Uses"): (a) a UST Facility; (b) a facility for transporting, collecting, treating, storing, transferring, managing or disposing of Hazardous Substances requiring a hazardous waste permit under RCRA (as defined in the Ground Lease); (c) a facility for handling, management, transfer, recycling, disposal or landfilling of refuse, solid waste, or petroleum-contaminated or other contaminated media; (d) a facility for processing of fats or oils; (e) a facility for processing of meat, fish, or poultry; (f) any slaughterhouse, soap factory, glue factory, tallow chandlery, or tannery for the tanning, dressing, preparing, or keeping of hides, skins, or leather; (g) a facility for animal storage or processing; (h) a facility for wood treating; (i) a facility for hazardous gas or hazardous liquid chemical handling, management, storage, distribution, manufacturing, or processing, except handling or storage incidental to a Permitted Use of Hazardous Substance or otherwise permitted under Section 7.3 of the Ground Lease; (j) a facility for metal plating or casting; (k) a facility for rubber products processing; (l) a facility for handling, managing, generating, storing,

disposing, manufacturing, or processing of medical or biological waste or biohazards; (m) a facility for central or bulk mixing of asphalt, mortar, lime, plaster, or concrete; (n) a facility for handling, managing, storing, blending, manufacturing or processing of petroleum products, including but not limited to, tar, asphalt and used oils, except handling or storage incidental to a Permitted Use of Hazardous Substance and otherwise permitted under Section 7.3 of the Ground Lease; (o) a facility constituting a large quantity generator of hazardous waste under RCRA; (p) any use that involves radioactive materials, except as contained in test and measurement equipment; (q) any use that involves use or storage of explosives; (r) any use or facility prohibited by any regulatory authority in a wellfield or wellhead protection zone; and (s) facility for storing, handling, managing, processing, recycling, cleaning, sorting, baling, selling, or disposing of salvage or used parts or used materials of any kind, including, but not limited to, automobiles, automobile parts, waste paper, rags, metal, plastic, wood, used tires, glass, or other scrap products.

**R4.5 General Environmental Obligations of Tenant.** Tenant is prohibited from using the Premises for any of the Prohibited Uses. Tenant shall manage and conduct all of its activities on or relating to the Premises: (a) in compliance with all applicable Environmental Laws and the environmental provisions of this Sublease and the Ground Lease; (b) in reasonable cooperation with Landlord and the Port (but at no significant additional cost to Tenant) in Landlord's and the Port's efforts to comply with Environmental Laws; and (c) in compliance with Best Management Practices applicable to Tenant's use of the Premises. Tenant shall manage and, as appropriate, secure the Premises and Tenant's occupation or use of the Premises so as to prevent any violation of Environmental Laws by any party. Tenant shall promptly undertake all actions necessary or appropriate to ensure that any Hazardous Substance Release for which Tenant is responsible under this Sublease is permanently remediated and shall comply with all provisions of Section 7.13 of the Ground Lease and to ensure that any breach by Tenant of Section 9 or violation by Tenant of any Environmental Laws is corrected, subject to the right of Landlord to elect to cure or remediate the same at Tenant's expense pursuant to R4.10 below, and shall pay any Environmental Cost resulting from such Hazardous Substance Release, breach or violation. Any investigation or remediation on or about the Premises, Land or Project by Tenant shall be conducted only by a consultant approved in writing by Landlord and pursuant to a work letter approved in writing by Landlord and the Port. Hazardous Substances shall be removed from the Premises, Building, Land or Project only with Landlord's and the Port's prior approval and only in accordance with Environmental Laws and the provisions of this Sublease.

**R4.6 Underground, Aboveground and Mobile Storage Tanks.** Tenant shall not install or operate any underground storage tanks or other facilities in, or about the Premises or Project, including any UST Facility as defined in the Ground Lease. In addition, Tenant shall not install or operate any AST Facility without obtaining Landlord's prior written consent and, in accordance with the terms of the Ground Lease, the Port's written consent. If consent is granted, the following minimum conditions will apply: (a) the proposed tanks can contain, transport and dispense only propane and other commonly used fuels solely to operate fork lifts, equipment, machinery and vehicles on the Project; (b) Tenant must insure that the tanks would not be in violation of: (i) any applicable Environmental Laws; (ii) any other Governmental Requirements; (iii) the Development Standards; (iv) the terms of this Sublease or the Ground Lease; (c) the tanks must be reasonable and appropriate to the nature and size of Tenant's operation on the Premises; and (d) Landlord may require Tenant to enter into Landlord's then current aboveground storage tank agreement or mobile storage tank agreement (as applicable) in form approved by the Port as provided in the Ground Lease.

**R4.7 Storm Water Management.** The provisions of Section 7.6 of the Ground Lease are incorporated by reference herein with references to Lessee meaning Tenant. Tenant shall submit to Landlord and obtain Landlord's approval of the matters described in Section 7.6 of the Ground Lease, in addition to submitting those materials to the Port and obtaining the Port's approval.

**R4.8 Industrial Wash Water.** The provisions of Section 7.6 of the Ground Lease are incorporated by reference herein with references to Lessee meaning Tenant.

**R4.9 Environmental Audits.** Without limiting the provisions of Section 6.12, the Port and Landlord shall have the right, but not the obligation, to enter upon the Premises upon reasonable advance notice to Tenant of not less than two (2) Business Days (as defined in Section 14.10) (except that no notice to Tenant shall

be required if Landlord or the Port reasonably believes that there exists a condition constituting an imminent and substantial endangerment) to conduct Environmental Audits. Tenant agrees to cooperate fully with Landlord and the Port in performing the Environmental Audits, and recognizes and agrees that such Environmental Audits may require Tenant to temporarily move product, equipment or furniture or otherwise disrupt Tenant's operations and Tenant waives any claim for damages arising from such entry except in the case of Landlord's or the Port's willful misconduct and gross negligence (and in no event, consequential damages). Subject to the provisions contained in the previous sentence, in performing such Environmental Audits, Landlord and the Port shall make commercially reasonable efforts not to disturb or interfere with the quiet enjoyment of Tenant in the Premises. If the Environmental Audit identifies: (a) a Hazardous Substance Release for which Tenant is responsible under this Sublease; or (b) discloses an imminent threat of a Hazardous Substance Release for which Tenant would be liable under this Sublease, then Tenant will be required to reimburse Landlord as applicable, for the cost of the Environmental Audit. Tenant shall provide to Landlord and the Port copies of any Environmental Audits performed for Tenant.

**R4.10 Landlord's Environmental Cure Right.** If Tenant or Tenant's Affiliates breaches the provisions of this Rider 4 or causes any violation of Section 7 of the Ground Lease, Landlord shall have the right (but not the obligation) to enter upon the Premises and cure any non-compliance by Tenant with the terms of Section 9 or any Governmental Requirements applicable to Hazardous Substances or any release, discharge, spill, improper use, storage, handling or disposal of Hazardous Substances on, under, from, or about the Project, regardless of the quantity of such release, discharge, spill, improper use, storage, handling or disposal of Hazardous Substances, the full cost of which shall be deemed to be Rent and shall be due and payable by Tenant to Landlord within thirty (30) days following written demand. If Landlord elects to enter upon the Premises and cure any such non-compliance or release, discharge, spill, improper use, storage, handling or disposal of Hazardous Substances, Tenant shall not be entitled to participate in Landlord's activities on the Premises.

## Rider 5

### Port Non-Disturbance Provisions

The provisions of this Rider shall apply and Tenant shall be subject to all provisions herein in the event the Ground Lease is terminated due to an uncured Event of Default, and no Identified Lender has cured the Default and assumed the Ground Lease. All capitalized terms used in this Rider which are not defined in this Sublease shall have the meanings ascribed to them in the Ground Lease.

**R5.1 General Provision Regarding Non-Disturbance.** Pursuant to Section 9.6 of the Ground Lease, if the Ground Lease is terminated due to an uncured event of default under the Ground Lease by Landlord, and no permitted Identified Lender (as described in Section 13.2 of the Ground Lease) wishes to cure the default and assume the Ground Lease, then, if Tenant is not in Default, and if Tenant attorns to the Port as described below, the Port shall allow Tenant to remain on the Premises as a tenant of the Port, and the Port shall not unreasonably disturb the rights of Tenant under this Sublease subject to the provisions of Section 9.6 of the Ground Lease, and provided that Tenant and this Sublease, and any material amendments thereto, have been approved or deemed approved by the Port pursuant to Section 9.4 of the Ground Lease.

**R.5.2 Non-Responsibility of Port.** Tenant acknowledges and agrees that the Port shall not be responsible to Tenant for: (a) any pre-paid Rent unless paid over to the Port upon termination of the Ground Lease and consisting solely of any first and last month's Base Rent prepaid as allowed in Section 9.6 of the Ground Lease and clearly designated in writing as such by Landlord; (b) return of all or any part of Tenant's Security Deposit unless it has been paid over to the Port upon termination of the Ground Lease and is designated in writing by Landlord as a refundable security deposit under this Sublease, and then only to the extent that Tenant is entitled to a full or partial refund of such security deposit under this Sublease; (c) incomplete Tenant improvement obligations (including without limitation any Tenant improvements), Tenant improvement obligations promised but never started, or promised future Tenant improvement obligations or expenses; (d) any provisions of this Sublease that create any obligation on the part of Landlord under this Sublease to make representations or warranties or indemnify Tenant; or (e) any other obligations or expenses under this Sublease that the Port has identified in the Port's Notice of Sublease Review (as defined in Section 9.4.4 of the Ground Lease) that are not in compliance with the Review Criteria (as defined in Section 9.4.3 of the Ground Lease).

However, with respect to matters identified in clause (c) , (A) the Port shall be responsible for such matters if and to the extent the Port has received Rent under this Sublease which, after the deduction of all obligations and expenses previously incurred by the Port under this Sublease, is sufficient to pay such obligations or expenses, or (B) in the event the Port does not accept responsibility for such matters, Tenant shall have the right to terminate this Sublease without penalty, subject to completion of all termination obligations as provided in this Sublease.

**R5.3 Attornment.** If Tenant wishes to remain after termination of the Ground Lease, Tenant shall attorn to the Port as landlord under this Sublease for the balance of the Term and must pay the Security Deposit, unless it has already been paid by Landlord to the Port, pursuant to all requirements of Section 9.6 of the Ground Lease and must thereafter make all Rent payments directly to the Port at the address provided in Section 3.3 of the Ground Lease. The non-disturbance and attornment provisions of Section 9.6 of the Ground Lease shall be self-operative with no further instrument required to effectuate the attornment except that at the Port's or Tenant's request, the Port and Tenant shall execute instruments reasonably satisfactory to them confirming the non-disturbance and attornment provisions of such Section.

**R.5.4 Additional (Ground Lease) Provisions Applicable to Tenant and this Sublease.** In addition to the provisions above, Tenant acknowledges and agrees that the following shall apply upon assumption of the Sublease by the Port:

**R5.4.1 Compliance with Ground Lease Provisions.** Additionally, if Tenant is permitted to remain on the Premises as provided in this Section: (i) Tenant shall not be relieved from compliance with the terms of the Ground Lease as referenced in this Sublease; (ii) the Port's approval and other rights under the Ground Lease as referenced in this Sublease shall not be diminished; (iii) the Ground Lease shall not be considered to be terminated for purposes of Tenant compliance and the Port's rights described above, even if the Ground Lease is terminated as to the Ground Lessee; and (iv) all such terms of the Ground Lease shall be merged into this Sublease with references to Lessee meaning Tenant.

**R.5.4.2 Exculpation.** No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against any Port Commissioner, Director, or employee on account of any agreement contained in this Sublease, whether express or implied. Liability with respect to the entry and performance of this Sublease, however it may arise, with respect to Tenant, shall be asserted and enforced only against the Port and not against any other property or persons designated in the previous sentence. Any and all personal liability, if any, beyond that which may be asserted under this paragraph, is expressly waived and released by Tenant.

**R.5.4.3 Limitation of Liability.** With respect to any liability of the Port under this Sublease, the Port shall only be liable for its willful misconduct or gross negligence and to the extent of actual damages, and not consequential damages (including without limitation lost rents and lost profits).

**R.5.4.4 Tenant Indemnity.** Upon attornment to the Port, Section 7.4.1(b) of the Lease shall be revised to read as follows: "any act, omission or negligence of Tenant or Tenant's Affiliates, including without limitation arising out of Tenant's Work (as defined in **Exhibit C**) or Tenant's Alterations, whether or not due to Tenant's own act or omission".

**R.5.5 Deleted Provisions.** Upon assumption, Section 8.1.2 subsection (ii) of this Sublease will be deemed deleted and shall no longer have force or effect. Only the Sublease Review Fee under the Ground Lease shall apply to review of assignments and subleases of this Sublease.

Rider 6

ADDITIONAL SUBLEASE PROVISIONS

**R6.1 SNDA** Landlord agrees that concurrent with execution of this Sublease, Landlord's current mortgagee ("Lender") shall execute and deliver to Tenant a subordination and nondisturbance agreement ("SNDA") substantially in the form attached hereto as Exhibit 6.2 to this Rider.

**R6.2 Option To Renew.** While this Sublease is in full force and effect, provided that Tenant is not in Default, Landlord grants to Tenant three (3) consecutive option(s) to extend the term of the Lease for a period of five (5) years each (each an "Option Term"), commencing upon the termination of the original Lease Term or the Option Term, as applicable. Such extension or renewal of the term shall be on the same terms, covenants or conditions as provided for in the original or immediately preceding term except that the monthly Base Rent during the extended term shall be at the fair market rental then in effect on equivalent properties Class A warehouse buildings, of equivalent size, and improvements in equivalent areas determined in the manner set forth below ("Fair Market Rent").

If Tenant intends to exercise its right to extend the term of the Lease, Tenant shall notify Landlord in writing not later than nine (9) months before nor sooner than twelve (12) months prior to the commencement date of the applicable option term of such intent ("Tenant's Exercise Notice"). Tenant shall provide Tenant's estimation of the Fair Market Rent with Tenant's Exercise Notice. Landlord shall give Tenant notice of Landlord's estimation of the Fair Market Rent within 30 days of receipt of Tenant's Exercise Notice. If there is a disagreement on the Fair Market Rent, which is not resolved by the parties acting in their respective sole discretion, then Tenant shall have the right to rescind Tenant's Exercise Notice by providing written notice of same to Landlord no later than nine (9) months prior to the expiration of the then existing term. In the event Tenant fails to provide such rescission notice by the date set forth in the preceding sentence and the parties have not agreed upon Fair Market Rent, then Tenant shall be deemed to have waived its right to the Option to Renew.

However, in no event shall the rental in any Option Term be below the rental in the primary term or the immediately preceding renewal term of the Lease. This option to renew is personal to the named Tenant; in the event the demised Premises is sublet or assigned this renewal option will be null and void and of no further effect.

Rider 6.2

Form of SNDA

Recorded at the Request of and After Recording Return to:

Regan Frick  
KeyBank Real Estate Capital  
1301 Fifth Avenue, 25<sup>th</sup> Floor  
Mail Code WA-31-13-2583  
Seattle, WA 98101

---

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

Grantor #1 (Landlord):

Grantor #2 (Tenant):

Grantee (Lender): KEYBANK NATIONAL ASSOCIATION

Abbreviated Legal Description:

Official Legal Description on Exhibit A

Assessor's Tax Parcel ID #

Reference No. N/A

{00117487}05/12/14

1

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the       day of 2       by and between:

KEYBANK NATIONAL ASSOCIATION,  
a national banking association,  
("Lender"),

and

---

having an address at

---

("Tenant").

RECITALS:

A. \_\_\_\_\_ ("Borrower") is the holder of a leasehold estate in certain real property owned by the Port of Portland, a Port district of the State of Oregon ("Port"), pursuant to a Ground Lease between Port and Borrower ("Ground Lease")

B. Tenant is the holder of a leasehold estate in a portion of those certain premises located in the County of Multnomah, State of Oregon, and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property") under and pursuant to the provisions of a certain lease dated \_\_\_\_\_ between Borrower as landlord, and Tenant, as tenant (the "Lease"); and

C. Borrower is, or is about to become, the owner in fee simple of the Property and the landlord under the Lease ("Landlord"); and

D. Lender has made a loan or is about to make a loan to \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ ("Borrower"), evidenced or to be evidenced by a promissory note made by Borrower to the order of Lender (the "Note") and secured or to be secured by a Deed of Trust (the "Security Instrument") granted by Borrower to or for the benefit of Lender and encumbering Borrower's leasehold estate in the Ground Lease; and

E. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

#### AGREEMENT:

For good and valuable consideration, Tenant and Lender agree as follows:

1. SUBORDINATION. The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants and provisions of the Security Instrument and to the lien thereof, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease. To the extent of any conflict between the provisions of this Agreement and the provisions of the Ground Lease, the Ground Lease shall control.

2. NON-DISTURBANCE. If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note or the Security Instrument shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed beyond any applicable notice or grace period.

3. ATTORNMENT. If Lender or any other subsequent purchaser of the Property shall become the Lessee under the Lease or a new lease with the Port by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred as "Purchaser"), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, whereupon, subject to the observance and performance by Tenant of all the terms, covenants and conditions of the Lease on the part of Tenant to be observed and performed, Purchaser shall recognize the leasehold estate of Tenant

under all of the terms, covenants and conditions of the Lease for the remaining balance of the term with the same force and effect as if Purchaser were the lessor under the Lease subject to the terms of Section 4 of this Agreement; provided, however, that Purchaser shall not be:

- (a) liable for the failure of any prior landlord (any such prior landlord, including Landlord and any successor landlord, being hereinafter referred to as a "Prior Landlord") to perform any of its obligations under the Lease which have accrued prior to the date on which Purchaser shall become the Lessee under the Lease, provided that the foregoing shall not limit Purchaser's obligations under the Lease to correct any conditions that (i) existed as of the date Purchaser shall become the owner of the Property and (ii) violate Purchaser's obligations as landlord under the Lease; provided further, however, that Purchaser shall have received written notice of such omissions, conditions or violations and has had a reasonable opportunity to cure the same, all pursuant to the terms and conditions of the Lease;
- (b) subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Property;
- (c) liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser;
- (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser;
- (e) bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Landlord's interest; or
- (f) responsible for the making of repairs in or to the Property in the case of damage or destruction to the Property or any part thereof due to fire or other casualty or by reason of condemnation unless Purchaser is obligated under the Lease to make such repairs.

In the event that any liability of Purchaser does arise pursuant to this Agreement, such liability shall be limited and restricted to Purchaser's interest in Tenant's leasehold estate, and shall in no event exceed such interest.

4. NOTICE TO TENANT. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments. Such notice shall be given and such payments allowed only if Lender has assumed the Ground Lease or entered into a new lease with the Port and otherwise complied with all related requirements under the Ground Lease.

5. NOTICE TO LENDER AND RIGHT TO CURE. Tenant agrees to notify Lender by certified mail, return receipt requested, with postage prepaid, of any default on the part of Landlord under the Lease which would entitle Tenant to cancel or terminate the Lease or to abate or reduce the rent payable thereunder, and Tenant further agrees that, notwithstanding any provisions of the Lease, no cancellation or termination of the Lease and no abatement or reduction of the rent payable thereunder shall be effective unless Lender has received notice of the same and has failed within thirty (30) days after both Lender's receipt of said notice and the time when Lender shall have become entitled under the Security Instrument (as hereinafter defined) to remedy the same, to commence to cure the default which gave rise to the cancellation or termination of the Lease or abatement or reduction of the rent payable thereunder and thereafter diligently prosecutes such cure to completion, provided that in the event Lender

cannot commence such cure without possession of the Property, no cancellation or termination of the Lease and no abatement or reduction of the rent payable thereunder shall be effective if Lender commences judicial or non-judicial proceedings to obtain possession within such period and thereafter diligently prosecutes such efforts and cure to completion. In addition, if such default is not susceptible of cure by Lender and Lender obtains possession of the Property, such default shall be waived. Notwithstanding the foregoing, Lender shall have no obligation to cure any default by Landlord except as provided in Section 3 in the event Lender shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument.

6. NOTICES. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

If to Tenant:

Attention:

If to Lender: KeyBank National Association  
1675 Broadway, Suite 400  
Denver, CO 80202

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 6, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

7. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

8. GOVERNING LAW. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State of Oregon and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Oregon.

9. MISCELLANEOUS. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which

{00117487}05/12/14

4

counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Written.

IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above

LENDER:

KEYBANK NATIONAL ASSOCIATION, a national  
banking association

By:  
Name:  
Its:

TENANT:

By:  
Name:  
Its:

The undersigned hereby joins in the execution of this Agreement in order to evidence its acceptance of, and  
agreement to, the provisions of Section 4 hereof.

BORROWER:

By:  
Name:  
Title:

(The balance of this page intentionally is blank.)

[Insert appropriate Notary / Acknowledgment]

{00117487}05/12/14

[Intentionally blank]