LIMITED LIABILITY COMPANY AGREEM	IENT OF
CRP/PDC SALEM TURNER ROAD VENTUR	E, L.L.C.
	Dated as of May <u>24</u> , 2022

TABLE OF CONTENTS

	Page
ARTICLE 1 DE	EFINITIONS1
Section 1.	
Section 1.	
	PRMATION
Section 2.	
Section 2.	7. Subsidiaries
Section 2.	8. No State Law Partnership
Section 2.	
Section 2.	10. Pre-Development Costs; Closing; Closing Conditions; Development Conditions; Construction Period Commencement Date
Section 2	11. Representations and Warranties Regarding the Project
	EMBERS; TRANSFERS OF INTERESTS
Section 3.	
Section 3.	
Section 3.	
	•
Section 3. Section 3.	e e e e e e e e e e e e e e e e e e e
Section 3.	
	6. Compliance with Anticorruption Laws
Section 4.	
Section 4.	
	<u> </u>
Section 4.	
Section 4.	1
Section 4.	, ,
Section 4.	6. Compensation of Members; Reimbursement of Expenses

TABLE OF CONTENTS

(continued)

		Page
Section 4.7.	Transactions with Sponsor-Related Parties; Development Consultant; Fees	33
Section 4.8.	Brokerage Indemnification and Commission	34
Section 4.9.	Competition; Right of First Opportunity	35
ARTICLE 5 ACC	COUNTING AND REPORTING	36
Section 5.1.	Fiscal Year, Accounts, Reports	36
Section 5.2.	Bank Accounts	39
Section 5.3.	Financial Accounting Matters Member	40
ARTICLE 6 CAP	PITAL CONTRIBUTIONS	40
Section 6.1.	Closing	40
Section 6.2.	Additional Capital Contributions	40
Section 6.3.	Failure to Make Capital Contributions	41
Section 6.4.	Return of Contributions	42
Section 6.5.	Balances	42
Section 6.6.	Cost Overruns	42
Section 6.7.	Capital Contributions After Promote Distributions	43
Section 6.8.	No Third Party	43
ARTICLE 7 FINA	ANCING; FORCED SALE	44
Section 7.1.	Construction Loan	44
Section 7.2.	Credit Support	44
Section 7.3.	Forced Sale	45
ARTICLE 8 DIST	TRIBUTIONS	48
Section 8.1.	Distributions in General	48
Section 8.2.	Distributions of Net Cash Flow and Capital Proceeds	48
Section 8.3.	Clawback	49
Section 8.4.	Distributions Following Removal Event	49
Section 8.5.	No Distributions in Violation of Act	50
ARTICLE 9 CAP	PITAL ACCOUNTS, ALLOCATIONS, AND TAX MATTERS	50
Section 9.1.	Capital Accounts	50
Section 9.2.	Adjustment of Gross Asset Value	50

TABLE OF CONTENTS

(continued)

			Page
	Section 9.3.	Profits, Losses and Distributive Shares of Tax Items	51
	Section 9.4.	Tax Returns	54
	Section 9.5.	Tax Elections	54
	Section 9.6.	Partnership Representative	55
	Section 9.7.	Allocations on Transfer of Membership Interests	56
ARTI	CLE 10 DISSC	DLUTION, LIQUIDATION, AND TERMINATION	56
	Section 10.1.	Dissolution, Liquidation, and Termination Generally	56
	Section 10.2.	Liquidation and Termination	56
	Section 10.3.	Deficit Capital Accounts	57
	Section 10.4.	Cancellation of Certificate	57
ARTI	CLE 11 MISCI	ELLANEOUS PROVISIONS	57
	Section 11.1.	Notices	57
	Section 11.2.	Governing Law; Exclusive Jurisdiction	58
	Section 11.3.	Entire Agreement; Amendments	58
	Section 11.4.	Waiver	58
	Section 11.5.	Severability	59
	Section 11.6.	Ownership of Project and Right of Partition	59
	Section 11.7.	Involvement of Members in Certain Proceedings	59
	Section 11.8.	Use of Names	59
	Section 11.9.	Confidentiality; Press Releases	59
	Section 11.10.	Interest	59
	Section 11.11.	Attorneys' Fees	60
	Section 11.12.	Counterparts	60
	Section 11.13.	Nonrecourse	60
	Section 11.14.	Legal Counsel	60
	Section 11.15.	Non-Confidentiality of Tax Treatment and Tax Structure	60
	Section 11.16.	Jury Trial Waiver	60
	Section 11.17.	No Third-Party Beneficiaries	61

EXHIBIT A	Ownership Structure of Sponsor
EXHIBIT B	Business Plan
EXHIBIT C	Pre-Development Costs Budget
EXHIBIT D	Developer Services
EXHIBIT E	Insurance Certificate

LIMITED LIABILITY COMPANY AGREEMENT OF CRP/PDC SALEM TURNER ROAD VENTURE, L.L.C.

This Limited Liability Company Agreement (this "<u>Agreement</u>") is entered into as of May <u>24</u>, 2022, between CRP Salem Turner Road Member, L.L.C., a Delaware limited liability company, and PHELAN-MJD2, LLC, a California limited liability company.

Preliminary Statement

- A. A certificate of formation for CRP/PDC Salem Turner Road Venture, L.L.C. (the "<u>Company</u>") was filed with the Secretary of State of the State of Delaware on March 3, 2022 (the "<u>Certificate</u>").
- B. The Company has been formed for the purposes of, directly or indirectly, acquiring certain real property located in Salem, OR, and developing, constructing, owning, operating, leasing, marketing, licensing, financing and selling such property as a Class "A" industrial project, comprised of an industrial buildings totaling +/- 194,175 sf (the "Project").
- C. The Members are executing this Agreement for the purposes of forming the Company pursuant to the provisions of the Act (as defined below).

Agreement

Accordingly, in consideration of the mutual promises and agreements herein made and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

- Section 1.1. <u>Definitions</u>. As used in this Agreement, the following terms shall have the following meanings:
- "<u>Act</u>" means the Delaware Limited Liability Company Act, 6 <u>Del. C</u>. §§ 18-101, <u>et. seq.</u>, as it may be amended from time to time, and any successor to such statute.
- "Adjusted Capital Account" means, with respect to a Member, such Member's Capital Account as of the end of each taxable year, as the same is specially computed to reflect the adjustments required or permitted to be taken into account in applying Regulations Section 1.704-1(b)(2)(ii)(d) (including adjustments for Company Minimum Gain and Member Nonrecourse Debt Minimum Gain) and taking into account any amounts such Member is obligated or deemed obligated to restore pursuant to any provision of this Agreement and the Regulations.
- "<u>Adjusted Capital Account Deficit</u>" means, for each Member, the deficit balance, if any, in that Member's Adjusted Capital Account.

"Affiliate" means, with respect to a Person, another Person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the Person in question. The term "control" as used in the preceding sentence means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person, and with respect to a Person that is a corporation, the right to exercise, directly or indirectly a majority of the outstanding voting rights attributable to the shares of the controlled corporation.

"Aggregate Clawback Amount" means, as of the date of any Capital Contribution or distribution or as of the date of liquidation and termination of Company, the amount, if any, by which (A) the cumulative aggregate amount of distributions of the Promote received by Sponsor (less the cumulative aggregate amount contributed to the Company by Sponsor pursuant to Section 8.3) through such date, exceeds (B) the cumulative aggregate amount of the Promote that should have been distributed to Sponsor as of such date, based on the calculation of the Internal Rate of Return achieved by and all distributions made to Carlyle as of such date.

"Agreement" has the meaning given to such term in the introductory paragraph of this Agreement.

"<u>Architect</u>" means Calvin J. Coatsworth Architects, PC, the architect for the development and construction of the Project approved by Carlyle.

"Bankruptcy" means, with respect to a Person, the occurrence of (i) an assignment by the Person for the benefit of creditors, (ii) the filing by the Person of a voluntary petition in bankruptcy, (iii) the entry of a judgment by any court that the Person is bankrupt or insolvent, or the entry against the Person of an order for relief in any bankruptcy or insolvency proceeding, (iv) the filing of a petition or answer by the Person seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (v) the filing by the Person of an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding for reorganization or of a similar nature, (vi) the consent or acquiescence of the Person to the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties or (vii) any other similar event that would cause a Person to cease to be a member of the Company under the Act.

"Budgets" means, collectively, the Pre-Development Costs Budget, the Development Budget and each Operating Budget, and "Budget" means each, individually.

"Business Day" means any day other than Saturday, Sunday or other day on which commercial banks are authorized or required to close in the State of New York under the laws of the State of New York, or in the District of Columbia under the laws of the District of Columbia, in the State of Oregon under the laws of the State of Oregon, or for national holidays.

"Business Plan" means the business plan for the Project, attached hereto as Exhibit B and as may be updated or amended in accordance with the terms of this Agreement. The Business Plan shall include, *inter alia*, (i) a detailed description of the Project, including the scope of work of the Project, (ii) the Plans for construction of the Project (which may not

constitute the entire scope of the work of the Project described in the Business Plan), (iii) the then current approved Budget(s), (iv) the Project Schedule, (v) pro forma financial projections for the Project, (vi) the Project team list and a description of Project team responsibilities and (vii) approved leasing guidelines for the Project, if applicable.

"Buying Member" has the meaning set forth in Section 7.3(b).

"Capital Account" has the meaning set forth in Section 9.1(a).

"Capital Contributions" means, with respect to each Member, the amount of cash and the initial Gross Asset Value of any property (net of liabilities assumed by the Company resulting from such contribution and liabilities to which the property is subject) contributed to the Company by such Member.

"Capital Proceeds" means funds of the Company arising from a Capital Transaction and any condemnation awards, title insurance proceeds and casualty loss insurance proceeds (other than business interruption or rental loss insurance proceeds) received, directly or indirectly, by the Company, less any cash that is applied to (i) the payment of transaction costs and expenses relating to such Capital Transaction, (ii) the repayment of debt of the Company or any Subsidiary, (iii) the repair, restoration or other improvement of assets of the Company or any Subsidiary that is required under any contractual obligation of the Company or such Subsidiary and (iv) the establishment of reasonable reserves as determined by Carlyle. "Capital Proceeds" shall also include any of the foregoing that are received by another Person, including any Subsidiary, in which the Company is a member or investor or in which the Company otherwise has an interest, to the extent received by the Company as dividends or distributions, after application of cash by such other Person as set forth in clauses (i)-(iv) above.

"<u>Capital Transaction</u>" means the sale, transfer, disposition, financing or refinancing of all or any portion of the Project or the interests owned, directly or indirectly, by the Company in any Subsidiary.

"<u>Carlyle</u>" means CRP Salem Turner Road Member, L.L.C., a Delaware limited liability company, and any other permitted assignee that succeeds to the interests of such Person, for so long as such Person is a Member.

"Certificate" has the meaning given to such term in paragraph A of the Preliminary Statement of this Agreement.

"Closing" means the acquisition of the Project by the Property Owner pursuant to the Purchase Agreement and the contribution by Carlyle and Sponsor of the Capital Contributions required in connection therewith.

- "Closing Conditions" has the meaning set forth in Section 2.10(c).
- "Closing Date" has the meaning given to such term in Section 2.10(b).
- "Code" means the Internal Revenue Code of 1986, as amended from time to time, and any corresponding provisions of succeeding law.
- "Company" has the meaning given to such term in paragraph A of the Preliminary Statement of this Agreement.
- "Company IRR" means the quarterly compounded discount rate, which shall be applied to all of the Members' Capital Contributions to and distributions from the Company, at which the net present value of all of the Members' Capital Contributions to and distributions from the Company equals zero, calculated from the actual date each such Capital Contribution was made or the actual date each such distribution was received, as the case may be. The Company IRR shall be calculated on the basis of the actual number of days elapsed over a 365- or 366-day year, as the case may be. When calculating Company IRR, such calculation shall not include any Overrun Contributions made by the Members in accordance with their Cost Overrun Funding Percentages or distributions in reimbursement thereof to the Members, provided, however, that any Overrun Contributions made by the Members in accordance with their Capital Sharing Ratios and any distributions in reimbursement thereof to the Members shall be included when calculating Company IRR.

"Company Minimum Gain" has the meaning given to the term "partnership minimum gain" in Regulations Section 1.704-2(b)(2) and determined as set forth in Regulations Section 1.704-2(d).

"Completion" means the completion of the development and construction of the Project in accordance with the Plans and the scope of the work described in the Business Plan, including (i) the issuance of a final certificate of occupancy or officially certified copies thereof for each portion of the Project from the applicable governmental authority, (ii) the delivery to the Company or the Property Owner of a certificate of the Architect and Contractor that the Project has been completed in accordance with the Plans, (iii) the issuance of a date-down endorsement to the title insurance policy issued to the Property Owner in form reasonably approved by Carlyle reflecting that there are no mechanics' or materialmen's liens affecting the Project, (iv) all conditions or requirements for completion of the Project required by the Lender and the Construction Contract have been satisfied, (v) the delivery to the Company of a certificate from Sponsor that all labor and materials furnished in connection with the development and construction of the Project have been fully paid and (vi) the delivery by Sponsor to the Company or the Property Owner of (A) a final sworn statement of the Contractor in the form required by the Construction Contract certifying to the Company or the Property Owner and the applicable title insurer, under oath, (1) the identity of all subcontractors and materialmen providing labor or materials for the Project and (2) that all such subcontractors and materialmen have been paid in full and (B) final waivers of lien from the general contractor and each such subcontractor and materialman (unless any such lien is being contested in good faith and is properly bonded/insured over in favor of the Property Owner); and with respect to any portion of the

Project outside the scope of work under the Construction Contract, final payment and completion of such portion consistent with the foregoing.

"Construction Contract" means the guaranteed maximum price contract by and between the Property Owner and the Contractor for the construction of the Project, as approved by Carlyle as a Development Condition in accordance with Section 2.10(f)(iv).

"Construction Loan" means the loan to be made to the Property Owner to finance, in part, the acquisition, development, construction and/or ownership of the Project, together with any renewal, extension, modification or conversion thereof, all as approved in accordance with this Agreement.

"Construction Period Commencement Date" shall mean the date that construction activities for the Project commence, following the Carlyle Member's election to proceed with the development and construction of the Project and the Development Conditions have been satisfied (or waived in writing, as applicable) and the Construction Loan has closed.

"Contractor" means, initially, the contractor selected in accordance with Section 2.10(f)(iv) hereof, retained to perform and complete the construction of the Project, or such replacement thereof selected by Carlyle.

"Cost Overruns" means, without regard to the cause or source of such increased or added cost: (a) for each line item in the Development Budget, the amount by which the actual costs incurred to complete or pay for the matters covered in such line item exceeds the amount allocated for such line item; (b) any cost required to complete the scope of work of the Project described in the Plans or the Business Plan that is not covered in any line item in the Development Budget; and (c) loan balancing costs with respect to those described in (a) and (b) above that the Lender of the Construction Loan requires to be paid or deposited as a condition to making additional construction loan advances. "Cost Overruns" include costs in excess of applicable line items in the Development Budget that may be incurred after Completion. For purposes of determining Cost Overruns, the Development Budget shall mean the Development Budget, as updated and approved by Carlyle prior to the Construction Period Commencement Date as a Development Condition in accordance with Section 2.10(f)(iii),

"Cost Overrun Funding Percentage" means (i) with respect to Sponsor, 50%, and (ii) with respect to Carlyle, 50%.

"Cost Savings" means realized, and not projected, savings, being the amount by which the sum of all costs actually paid for a line item in the Development Budget with respect to which all work has been completed and all materials have been purchased (in each case, to the extent applicable to such line item), is less than the amount allocated for such line item.

"Credit Support" has the meaning given to such term in Section 7.2(a).

"Credit Support Claim" has the meaning given to such term in Section 7.2(b).

"Default Amount" has the meaning given to such term in Section 6.3(a).

"<u>Default Capital Contribution</u>" has the meaning given to such term in <u>Section 6.3(a)</u>.

"Depreciation" means, for each taxable year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for the year or other period, except that, if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of the year or other period, Depreciation will be an amount that bears the same ratio to the beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for the year or other period bears to the beginning adjusted tax basis, provided, however, that, if the federal income tax depreciation, amortization or other cost recovery deduction for the year or other period is zero, Depreciation will be determined with reference to the beginning Gross Asset Value using any reasonable method selected by Carlyle.

"<u>Development Budget</u>" means the budget for the acquisition, development, construction and stabilization of the Project, attached to **Exhibit B**, setting forth all estimated expenditures and income anticipated in connection with the acquisition, development, construction and stabilization of the Project, as such budget may be updated or amended from time to time in accordance with this Agreement. The Development Budget includes, without limitation, costs for land, permits, architecture and engineering, hard and soft costs, legal, and interest and other carrying costs.

"Development Conditions" has the meaning given to such term in Section 2.10(f).

"<u>Development Consultant</u>" has the meaning ascribed to it in <u>Section 4.7(c)</u>.



"<u>Discretionary Changes</u>" means any elective modifications or changes to the Project that (i) are not required to complete the Project as contemplated by the scope of work of the Project described in the Plans or the Business Plan, (ii) are not the result of errors, omissions or deficiencies in the Plans or in the scope of work of the Project described in the Plans or the Business Plan and (iii) are not government-mandated revisions (including, without limitation, those required by building inspectors and code compliance officials).

"Emergency" means an event or condition requiring prompt action (i) for protection of the Project from imminent, material danger, damage or destruction or (ii) for the avoidance or mitigation of a significant imminent risk of personal injury or property damage to occupants, tenants or other Persons to whom the Company or any Subsidiary would be responsible for such injury or damage.

"Escrow" has the meaning given to such term in Section 7.3(b).

"Escrow Agent" has the meaning given to such term in Section 7.3(b).

"FCPA" has the meaning given to such term in Section 3.6(a).

"<u>Financing</u>" means the Construction Loan and any other loan with respect to the Project provided by one or more Lenders to the Company or any Subsidiary, together with any amendment, extension, restatement, modification, restructuring and refinancing thereof.

"<u>Financing Documents</u>" means, with respect to any Financing, the promissory note evidencing such Financing and any and all other documents evidencing or securing such Financing, including, without limitation, any Credit Support, as such documents may be amended, modified, supplemented or replaced in accordance with the terms of this Agreement.

"Force Majeure Delay" means any delay due to one or more of the following: extreme weather, fires or other casualty, earthquakes, explosions, wars, civil unrest, area-wide strikes, condemnation, acts of terrorism and any pandemic as declared by the U.S. Government and World Health Organization, to the extent any such delay attributable thereto should not have been reasonably anticipated as of the date of commencement of the Project; provided that, in each case, Sponsor shall have notified Carlyle of the event or condition giving rise to any such delay within five Business Days after Sponsor learns of the occurrence of the event or condition and that it will impact the Project Schedule and thereafter regularly (but in no event less often than weekly) keeps Carlyle apprised of the status of delays resulting from the event or condition.

"Forced Sale Notice" has the meaning given to such term in Section 7.3(a).

"Funding Member" has the meaning given to such term in Section 6.3(a).

"<u>GAAP</u>" means U.S. generally accepted accounting principles (as may be modified from time to time) for real estate properties similar in character to the Project and located in the United States of America, applied on a consistent basis.

"Government Official" means (i) any official, officer, employee, or representative of, or any Person acting in an official capacity for or on behalf of, any Governmental Entity, (ii) any political party or party official or candidate for political office or (iii) any company, business, enterprise, or other entity owned, in whole or in part, or controlled by any Person described in the foregoing clause (i) or (ii) of this definition.

"Governmental Entity" means (i) any national, federal, state, county, municipal, local, or foreign government or any entity exercising executive, legislative, judicial, regulatory, taxing, or administrative functions of or pertaining to government, (ii) any public international organization, (iii) any agency, division, bureau, department, or other political subdivision of any government, entity, or organization described in the foregoing clauses (i) or (ii) of this definition, or (iv) any company, business, enterprise, or other entity owned, in whole or in part, or controlled by any government, entity, organization, or other Person described in the foregoing clauses (i), (ii), or (iii) of this definition.

"Gross Asset Value" has the meaning given to such term in Section 9.2.

"Internal Rate of Return" or "IRR" means the annual rate of return ("Nominal Annual Rate") that is compounded quarterly to arrive at an "Effective Annual Rate" consistent with the following formula:

The Effective Annual Rate shall be applied to a designated Member's Capital Contributions to and distributions from the Company, at which the net present value of such Member's Capital Contributions to and distributions from the Company equals zero, calculated from the actual date such Capital Contribution was made or the actual date such distribution was received, as the case may be. A Member's Internal Rate of Return shall be calculated on the basis of the actual number of days elapsed over a 365- or 366-day year, as the case may be, as provided herein. Notwithstanding the foregoing to the contrary, when making any Internal Rate of Return calculation in this Agreement, such calculation shall not include Overrun Contributions made by the Members in accordance with their Cost Overrun Funding Percentages and shall not include any distributions made to return Overrun Contributions made by the Members in accordance with their Capital Sharing Ratios and any distributions made to return Overrun Contributions made by the Members in accordance with their Capital Sharing Ratios and any distributions made to return Overrun Contributions made by the Members in accordance with their Capital Sharing Ratios shall be included when making any Internal Rate of Return calculation in this Agreement.

"Joint Decisions" has the meaning for such term set forth in Section 4.1(c).

"Lease" means all leases, subleases, assignments, licenses, concessions and similar agreements granting interests to any other person or entity for the use and occupancy of any portion of the Project, including, without limitation, all amendments, modifications, renewals, extensions, cancellation agreements, surrender agreements and supplements and all guaranties or other credit support provided in connection therewith.

"<u>Lender</u>" means any lender providing the Construction Loan or other Financing to the Company or any Subsidiary.

"Material Business Agreements" means, individually and collectively, the Purchase Agreement, the Financing Documents, the Construction Contract, the contract with the Architect, the Property Management Agreement, any brokerage agreement and any other contract, agreement, understanding or obligation of the Company or any Subsidiary that is material to the development, construction, use, operation, leasing, marketing or sale of the Project or the breach of which would be reasonably likely to have a material adverse effect on the business, operation, development, construction, use, operation, leasing, marketing or sale of the Project or financial condition of the Company or the Project, except for any agreement that is consistent with the Business Plan and that (i) is for a term of not more than a year or is terminable on 30 days' notice or less without penalty or fee, and (ii) requires an annual expenditure by the Company not exceeding \$50,000.

"<u>Member</u>" means each of Carlyle, Sponsor and each other Person admitted as a Member in accordance with this Agreement, until such Person ceases to be a Member of the Company, and, all of the foregoing Persons, collectively, the "<u>Members</u>."

- "Member Loan" has the meaning ascribed to such term in Section 6.3(a).
- "Member Nonrecourse Debt" has the meaning assigned to "partner nonrecourse debt" in Regulations Sections 1.704-2(b)(4) and 1.752-2.
- "Member Nonrecourse Debt Minimum Gain" has the meaning assigned to "partner nonrecourse debt minimum gain" in Regulations Section 1.704-2(i)(2) and determined as set forth in Regulations Section 1.704-2(i)(3).
- "Member Nonrecourse Deductions" has the meaning assigned to "partner nonrecourse deductions" in Regulations Section 1.704-2(i)(2).
- "Membership Interest" means all of the rights and interests of whatsoever nature of a Member in the Company, including the right to participate in management to the extent provided herein, the right to receive distributions and to receive allocations of income, gain, loss, deduction and credit.
- "Minor Changes" means any changes to the Project that (i) do not reduce specifications or quality of materials or delay the Completion of the Project, (ii) do not affect the structure, major systems or exterior appearance of the Project, (iii) cost less than \$25,000 individually and \$100,000 in the aggregate, taking into account all such previous changes and (iv) are covered by applicable contingency amounts and Cost Savings pursuant to the current Carlyle-approved Development Budget.
- "<u>Net Cash Flow</u>" means, for any period, Net Operating Income less scheduled debt service on any Financings.
- "Net Operating Income" means, for any period, the amount by which Operating Revenues exceed Operating Expenses for such period.
 - "Non-Funding Member" has the meaning given to such term in Section 6.3(a).
 - "Non-Triggering Member" has the meaning given to such term in Section 7.3(a).
- "Nonrecourse Deductions" has the meaning assigned to such term in Regulations Sections 1.704-2(b)(1) and (c).
 - "OFAC" has the meaning given to such term in Section 3.5.
- "Operating Budget" means each annual operating budget for the Project, setting forth the estimated capital and operating expenses, leasing costs, debt service and revenue of the Company for a given calendar year and for each month and each calendar quarter of said calendar year.
- "<u>Operating Expenses</u>" means, for any period, the current cash obligations of the Company and/or any Subsidiary, as applicable, not paid from the Members' Capital Contributions, Financing proceeds or Capital Proceeds, for expenses of the Project paid in connection with its operation or maintenance, for capital expenditures, including any repair,

restoration or other improvement costs, and for reasonable reserves as determined by Carlyle. Operating Expenses shall not include debt service on Financings, or any non-cash expenses such as Depreciation or amortization or expenses funded from reserves (to the extent such reserves were funded through deposits that were treated as Operating Expenses).

"Operating Revenues" means, for any period (and without double-counting), the gross revenues of the Company and/or any Subsidiary arising from the ownership and operation of the Project during such period, including proceeds of any business interruption or rental loss insurance maintained by the Company from time to time and amounts released from Company reserves, but specifically excluding Capital Proceeds, Capital Contributions and proceeds of Financings.

"Overrun Contributions" has the meaning given to such term in Section 6.6(a).

"Partnership Audit Provisions" means Title XI, Section 1101 of the Bipartisan Budget Act of 2015, P.L. 114-74 (together with any subsequent amendments thereto, Regulations promulgated thereunder, and published administrative interpretations thereof, and any comparable provisions of state or local tax law).

"pdf" has the meaning given to such term in Section 11.1.

"<u>Person</u>" means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity.

"Plans" means the plans, drawings and specifications for the construction of the Project and up to and including the approval of the final bid set of construction plans, drawings and specifications, together with any modifications to such approved plans, drawings and specifications, as approved in accordance with this Agreement.

"Pre-Development Costs Budget" means the budget attached hereto as Exhibit C, setting forth any and all out-of-pocket costs, expenses and fees to be incurred before or after Closing with respect to the Project, including any and all fees and other out-of-pocket costs, incurred by Carlyle or Sponsor in conducting its due diligence review, investigation and predevelopment activities with respect to the Project (collectively, the "Pre-Development Costs").

"Preferred Return Rate" has the meaning given to such term in Section 6.3(a).

"**Proceeding**" has the meaning given to such term in Section 4.5(a).

"Profits" and "Losses" mean, for each taxable year or other period, an amount equal to the Company's taxable income or loss for the year or other period, determined in accordance with Section 703(a) of the Code (including all items of income, gain, loss or deduction required to be stated separately under Section 703(a)(1) of the Code), with the following adjustments:

(1) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses will be added to taxable income or loss:

- (2) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Section 705(a)(2)(B) expenditures under Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses, will be subtracted from taxable income or loss;
- (3) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the Gross Asset Value of the property, notwithstanding that the adjusted tax basis of the property differs from its Gross Asset Value;
- (4) In lieu of depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there will be taken into account Depreciation for the taxable year or other period;
- (5) Any items that are specially allocated under <u>Section 9.3(b)</u> or <u>9.3(c)</u> shall be excluded from the calculations of Profits or Losses; and
- (6) If the Gross Asset Value of any Company asset is adjusted under Section 9.2(b), (c) or (d), the adjustment will be taken into account as gain or loss from disposition of the asset for purposes of computing Profits or Losses.

"<u>Project</u>" has the meaning given to such term in paragraph B of the Preliminary Statement of this Agreement.

"Project Schedule" means the timeline for the development, construction and lease-up of the Project set forth in the Business Plan and updated or amended in accordance with the terms of this Agreement, identifying each of the significant milestones to be achieved and the dates therefor, the anticipated date of execution of the Construction Contract, the anticipated date of Completion and the anticipated date of stabilization, which milestones and dates shall be consistent with (and not less restrictive than) the requirements of the Construction Loan, as the same may be modified in accordance with the terms of this Agreement.

"**Promote**" has the meaning given to such term in Section 8.2.

"Property Management Agreement" means the property management agreement between the Company (or its Subsidiary) and the Property Manager, as approved by Carlyle, under which the Property Manager shall lease and manage the operation and maintenance of the Project.

"Property Manager" means, initially, the property manager approved by Carlyle, hired by the Company or the Property Owner to manage the Project on behalf of the Company or the Property Owner, or such replacement property management company selected from time to time by Carlyle.

"Property Owner" means a Subsidiary formed by the Company for the purpose of acquiring, owning, developing, operating, leasing, marketing, licensing, financing and selling the Project.

"Purchase Agreement" means that certain Commercial Association of Brokers
Oregon/SW Washington Purchase and Sale Agreement and Receipt For Earnest Money dated
August 27, 2021 as amended by that certain First Amendment to Purchase and Sale Agreement
and Receipt for Earnest Money, dated November 22, 2021, as amended by that certain Second
Amendment to Purchase and Sale Agreement and Receipt for Earnest Money, dated February 28,
2022with which has been entered into or assigned to
Sponsor or its Affiliate, as buyer.

"Regulations" means the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to sections of the Regulations shall include any corresponding provisions of succeeding, similar, substitute, temporary or final Regulations.

"Regulatory Allocations" has the meaning given to such term in Section 9.3(c).

"Removal Event" has the meaning given to such term in Section 4.4(a).

"<u>Representative</u>" shall mean, with respect to any Person, any of such Person, any of its subsidiaries, or any director, officer, agent, employee, representative, consultant, or any other Person acting for or on behalf of the foregoing (individually and collectively).

"Sales Price" has the meaning given to such term in Section 7.3(a).

"Security Breach" means an actual or reasonably suspected (i) misuse, compromise or unauthorized access, destruction, loss, alteration, acquisition or disclosure of confidential information (including, without limitation, information relating to or which can be used to identify, individuals) or (ii) compromise or unauthorized access to the email and other cyber systems of the Company (or any Subsidiary), any Sponsor-Related Party, the Property Manager, any leasing agent or other third parties involved with the Project, which may affect either (A) the security of such systems to which the Company or any Subsidiary, such Sponsor-Related Parties, or such third parties or employees of the foregoing have access or (B) the security of the email or telephone of any Person, employee or tenant (or representative thereof) involved with the Project.

"Selling Member" has the meaning given to such term in Section 7.3(b).

"Special Profits Interest Amount" has the meaning given to such term in Section 4.7(b).

"<u>Sponsor</u>" means PHELAN-MJD2, LLC, a California limited liability company, and any permitted assignee or successor thereto admitted as a substitute Member.

"<u>Sponsor Affiliate</u>" means any Affiliate of Sponsor, including, without limitation, Sponsor Credit Party, Sponsor Guarantor and any member of the Sponsor Control Group.

"Sponsor Affiliate Agreement" means any agreement between the Company or any of its Subsidiaries and a Sponsor Affiliate or Sponsor-Related Party.

"Sponsor Control Group" means Michael DeArmey and Jeff Phelan.

"<u>Sponsor Credit Party</u>" means Phelan Equity, LLC, which Sponsor Credit Party is jointly and severally liable with Sponsor for certain obligations as provided in this Agreement pursuant to the terms of the Joinder attached hereto.

"Sponsor Guarantor" has the meaning given to such term in Section 7.2(a), which Sponsor Guarantor provides Credit Support for the Construction Loan, as provided herein.

"Sponsor-Related Party" has the meaning given to such term in Section 4.7(a).

"Stabilization" shall mean that there are tenants in place and paying rent occupying, in the aggregate, not less than 90% of the rentable square footage of the Project, under Leases which meet the leasing parameters and tenant credit criteria set forth in the Business Plan or otherwise expressly approved by Carlyle.

"Subsidiary" means the Property Owner or other entity formed by the Company and wholly owned, directly or indirectly, by the Company.

"Tax Representative" has the meaning ascribed to such term in Section 9.6(a).

"<u>Transfer</u>" has the meaning given to such term in <u>Section 3.2(a)</u>.

"Triggering Member" has the meaning given to such term in Section 7.3(a).

Section 1.2. <u>Captions, References.</u> Pronouns, wherever used herein, and of whatever gender, shall include natural persons, corporations, entities and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and Section headings are for convenience of reference and shall not affect the construction or interpretation of this Agreement. Whenever the terms "hereof," "hereby," "herein" or words of similar import are used in this Agreement, they shall be construed as referring to this Agreement in its entirety rather than to a particular Section or provision, unless otherwise specifically indicated. Whenever the word "including" is used herein, it shall be construed to mean "including, without limitation." Any reference to a particular Article or Section shall be construed as referring to the indicated Article or Section of this Agreement unless otherwise specifically indicated.

ARTICLE 2

FORMATION

Section 2.1. <u>Formation of the Company</u>. The Company has been formed under the provisions of the Act.

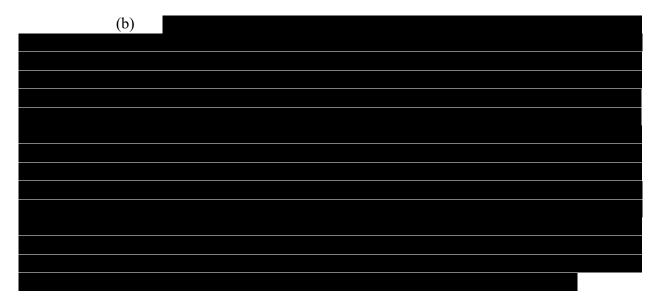
Section 2.2. <u>Name</u>. The Company shall conduct its activities under the name of CRP/PDC SALEM TURNER ROAD VENTURE, L.L.C., and all Company business must be conducted in that name or such other name as Carlyle and Sponsor shall jointly approve (or, after the occurrence of a Removal Event, as Carlyle shall approve).

- Section 2.3. <u>Registered Office</u>; <u>Registered Agent</u>; <u>Principal Office</u>. The registered office and the registered agent of the Company in the State of Delaware shall be The Corporation Trust Company, whose address is Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. The principal office and principal place of business of the Company shall be c/o The Carlyle Group, 1001 Pennsylvania Avenue, N.W., Washington, D.C. 20004, or at such other location as Carlyle shall determine.
- Section 2.4. <u>Foreign Qualification</u>. At the request of Carlyle, each Member shall execute, acknowledge, swear to and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue or terminate the Company or any of its Subsidiaries as a foreign limited liability company or limited partnership, as applicable, in all jurisdictions in which the Company or such Subsidiary may conduct business.
- Section 2.5. <u>Purpose and Scope</u>. The nature of the business and of the purpose to be conducted and promoted by the Company is to engage solely in the following activities:
- (a) to, directly or indirectly, through Subsidiaries (including, without limitation, the Property Owner), acquire, own, improve, develop, manage, operate, maintain, assign, sell, transfer, lease, finance, mortgage, pledge, hypothecate and otherwise deal with the Project or any portion thereof and to provide all services related thereto and to perform all other activities reasonably necessary or incidental to the furtherance of the foregoing;
- (b) to exercise all powers enumerated in the Act necessary, ancillary, incidental, appropriate or convenient to the conduct, promotion or attainment of the business or purpose otherwise set forth herein; and
 - (c) to engage in any other activity permitted under the Act.
- Section 2.6. <u>Term.</u> The Company shall commence on the effective date of the Certificate and shall have perpetual existence, unless sooner dissolved as herein provided.
- Section 2.7. <u>Subsidiaries</u>. The Company may form and operate one or more Subsidiaries, including, without limitation, the Property Owner, to hold title to the Project or otherwise to facilitate the conduct of the Company's business. The provisions of this Agreement shall apply to such Subsidiaries and, unless the context requires otherwise, the term "Company" shall include the Company and its Subsidiaries. Any action to be taken or decision to be made by a Subsidiary shall be construed as, or deemed to be, an action taken by the Company, and no action shall be taken nor decision made by or on behalf of a Subsidiary except as provided in this Agreement for actions by the Company.
- Section 2.8. <u>No State Law Partnership</u>. The Company shall not be a partnership or joint venture under any state or federal law, and no Member shall be a partner or joint venturer of any other Member for any purposes, other than under the Code and other applicable tax laws, and this Agreement may not be construed otherwise.

- Section 2.9. <u>Member Representations</u>. Each Member represents and warrants to the other, as of the date of this Agreement and as of the Closing Date, that:
- (a) This Agreement has been duly authorized, executed and delivered by such Member and shall constitute the legal, valid and binding obligations of such Member, enforceable against it in accordance with its terms.
- (b) Neither the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated hereby violate or conflict with, result in the breach or termination of, or constitute a default under, any provisions of any contract or agreement, organizational or charter document, any note or instrument evidencing or securing indebtedness, or judicial order, judgment, injunction, law, rule or regulation to which it is a party or is subject or to which its assets or property are subject.

Section 2.10. <u>Pre-Development Costs; Closing; Closing Conditions; Development</u> Conditions; Construction Period Commencement Date.

(a) Concurrently with the execution of this Agreement, Sponsor shall cause to be assigned to the Property Owner the Purchase Agreement and all earnest money or other deposits paid by Sponsor or any of its Affiliates under the Purchase Agreement, together with Sponsor's or its Affiliates' interest in any and all reports and due diligence items received or generated by Sponsor or any of its Affiliates, and drawings and specifications, licenses, permits, governmental approvals, applications, and other items received by Sponsor or any of its Affiliates relating to the Project. The Members shall jointly make all decisions under the Purchase Agreement, including, without limitation, the decision to go forward with the closing under the Purchase Agreement if a condition to the closing under the Purchase Agreement is not satisfied.



(c) The Closing shall be subject to the satisfaction or the waiver in writing by Carlyle of each of the following conditions (the "Closing Conditions"):

- (i) all conditions under the Purchase Agreement for the acquisition of the Project shall have been met and satisfied (or waived in writing by the Members, as applicable), and the closing under the Purchase Agreement shall occur simultaneously with the Closing hereunder
- (ii) the progress of development of the Project shall be substantially in accordance with the Project Schedule;
- (iii) Sponsor and Carlyle shall have agreed upon an updated Business Plan, which includes an updated Development Budget, an updated Project Schedule and updated pro forma financial projections for the Project that are current through the Closing Date;
- (iv) all government entitlements and approvals (including, without limitation, with respect to site plans) necessary to develop and construct the Project (other than building permits) are available for pick-up or have been obtained, and all conditions to issuance of said permits and approvals have been satisfied or are otherwise satisfactory to Carlyle;
- (v) the Property Owner shall have received an irrevocable commitment from a nationally recognized title insurance company acceptable to Carlyle, in form, amount and substance acceptable to Carlyle, to deliver to the Property Owner on the Closing Date an ALTA 2006 Form B (or other form required by state law) Owner's Policy of Title Insurance, with extended coverage (and showing no parties in possession), issued by such title company as of the date and time of the Closing, insuring marketable title to the Project in the Property Owner, subject only to permitted exceptions acceptable to Carlyle;
- (vi) all of the representations and warranties of Sponsor hereunder shall be true, correct and complete in all material respects on and as of the applicable Closing Date as if made on the applicable Closing Date;
- (vii) no order of any court or administrative agency shall be in effect that restrains or prohibits the Closing or any of the other transactions contemplated by this Agreement, and no suit, action, inquiry, investigation or proceeding shall have been instituted by any Person seeking to restrain or prohibit the proposed Project or change the terms of or obtain other relief in connection with this Agreement, and no material adverse change in the facts and circumstances affecting the proposed Project shall have occurred that is inconsistent with the Business Plan or Development Budget; and
 - (viii) Carlyle has obtained all internal approvals to proceed to Closing.
- (d) If the Closing does not occur as a result of the failure of a Closing Condition or as otherwise permitted herein, then Carlyle may dissolve the Company and the affairs of the Company shall be wound up pursuant to <u>Article 10</u>, provided that any liquidating distributions shall be made in proportion to the ratios in which they shared Pre-Development Costs, as provided in this <u>Section 2.10</u>. The Members shall share any post-dissolution recovery of Pre-Development

Costs from any third party in a manner consistent with these liquidation provisions. If either Member or any of their Affiliates participates in the acquisition or development of the Project within the 12 months following such dissolution, then such participating Member shall reimburse the non-participating Member for the non-participating Member's 50% share of such Pre-Development Costs that were not returned from liquidating distributions.

- (e) If Carlyle elects to dissolve the Company pursuant to (d) above, then Sponsor may elect to purchase from the Company the Purchase Contract and the items assigned to the Company pursuant to (a) above for an amount equal to the aggregate Capital Contributions of the Members.
- (f) If the Closing shall occur, the Members acknowledge and agree that commencement of construction of the Project is further subject to and contingent upon the satisfaction (or waiver in writing by Carlyle) of each and all of the following conditions prior thereto (the "Development Conditions"):
 - (i) the progress of development of the Project shall be substantially in accordance with the Project Schedule;
 - (ii) Sponsor has delivered to Carlyle, and Carlyle has approved, the Plans for 100% of the construction of the Project at the time the Construction Contract is executed and delivered;
 - (iii) Sponsor and Carlyle shall have agreed upon an updated Business Plan which shall not contain any material changes to the scope of the Project (i.e. a development plan for the Project that is materially consistent with the finishes (interior and exterior), furnishings, amenities, landscaping, plans, specifications, construction materials, brand, parking, access and each other material characteristic of the Project equal to or better than those set forth in or contemplated by the updated Business Plan approved as a Closing Condition, and with no reduction in the quality or scope), unless otherwise agreed to by the Members, which updated Business Plan includes (1) an updated Development Budget, which shall not exceed the updated Development Budget approved as a Closing Condition, (2) an updated Project Schedule and updated pro forma financial projections for the Project that are current through the Construction Period Commencement Date;
 - (iv) a Contractor has been selected that is acceptable to Carlyle, and the Construction Contract based on 100% construction drawings for the Project with the Contractor has been approved by Carlyle and executed by all parties thereto;
 - (v) the Lender has approved Sponsor Guarantor to provide the Credit Support under the Construction Loan, all of the terms and conditions of the Construction Loan have been fully agreed upon by the Members and by the Lender, and the Construction Loan closes contemporaneously with the Closing, with all conditions to funding the initial draw under the Construction Loan having been satisfied;

- (vi) all discretionary permits and approvals (including, without limitation, building permits) necessary to develop and construct the Project are available for pick-up or have been obtained, and all conditions to issuance of said permits and approvals have been satisfied or are otherwise satisfactory to Carlyle; and said permits and approvals are not subject to protest or appeal;
- (vii) all of the representations and warranties of Sponsor hereunder shall be true, correct and complete in all material respects on and as of the applicable Closing Date as if made on the applicable Closing Date;
- (viii) no order of any court or administrative agency shall be in effect that restrains or prohibits the Closing or any of the other transactions contemplated by this Agreement, and no suit, action, inquiry, investigation or proceeding shall have been instituted by any Person seeking to restrain or prohibit the proposed Project or change the terms of or obtain other relief in connection with this Agreement, and no material adverse change in the facts and circumstances affecting the proposed Project shall have occurred that is inconsistent with the Business Plan or Development Budget; and
 - (ix) Carlyle has obtained all internal approvals to proceed to Closing.



Section 2.11. <u>Representations and Warranties Regarding the Project.</u> Sponsor represents, warrants and covenants to Carlyle, as of the date hereof and as of the Closing Date, as follows:

(a) The copy of the Purchase Agreement provided to Carlyle is true, correct and complete in all material respects, including any and all amendments or supplements thereto. The Purchase Agreement constitutes the entire written agreement respecting the acquisition of the Project, and there are no other agreements, oral or written, express or implied or proposed, executed or agreed to with such seller or any of such seller's affiliates with respect to the acquisition of the Project, except as expressly described in the Purchase Agreement. To the extent applicable, neither Sponsor nor any Sponsor Affiliate is in default under or with respect to the

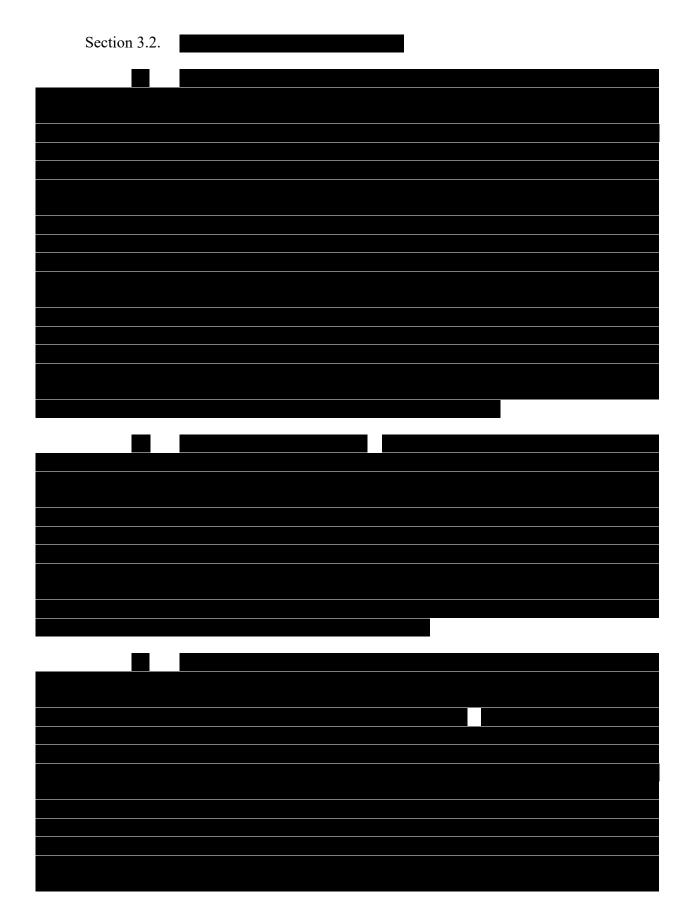
Purchase Agreement and, to the knowledge of Sponsor, no basis exists for any claim of default by the seller against Sponsor or any Sponsor Affiliate (or, to the extent applicable, the Company) under the Purchase Agreement;

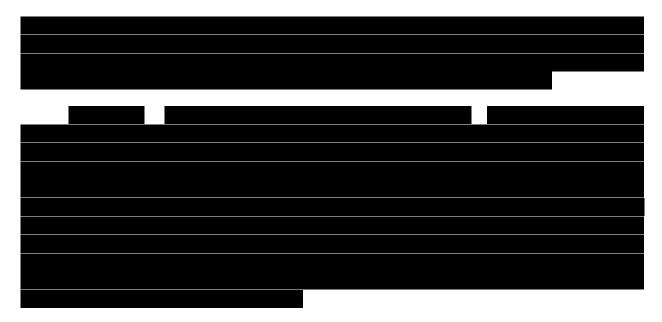
- (b) Neither Sponsor nor any Sponsor Affiliate has sold, transferred, conveyed, assigned or pledged, or committed or obligated itself in any manner whatsoever to sell, transfer, convey, assign or pledge, any of its right, title or interest under the Purchase Agreement to any party other than the Company;
- (c) To the knowledge of Sponsor, any and all information or documentation provided by Sponsor to Carlyle relating to the Project has been provided to Carlyle in true and complete form; and, to the knowledge of Sponsor, (i) there has been no material change, correction, restatement, modification, supplement or amendment of any of such information or documentation that has not been provided to Carlyle, and (ii) Sponsor is not in possession of any information or documentation that renders any of such information or documentation provided to Carlyle incorrect or misleading;
- (d) Upon the request of Carlyle, Sponsor shall give Carlyle and its representatives reasonable access to any and all information or documentation in its possession relating to the Project and shall make available to Carlyle and its representatives during normal business hours those of its officers, employees and representatives as Carlyle and its representatives shall reasonably request;
- (e) To the knowledge of Sponsor, no cause of action, suit or other proceeding is pending or threatened against the Project (except as described in the Purchase Agreement), the Company, Sponsor or any Sponsor Affiliate that may arise out of the ownership of the Project or materially affect (i) the use and operation of the Project as contemplated in the Business Plan or (ii) the value of the Project;
- (f) Except as approved under <u>Section 7.1</u>, there are no loan applications, commitments or other contracts, agreements or Financing documents to which Sponsor or any Sponsor Affiliate or, to the knowledge of Sponsor, to which the Company, any Subsidiary or Carlyle is or would be bound regarding the Project;
- (g) Sponsor has not granted any other party any continuing right of first refusal or similar right with respect to the Project; and
- (h) To the knowledge of Sponsor, Sponsor has disclosed in writing to Carlyle all agreements or commitments with respect to the Project to which Sponsor or any Sponsor Affiliate (or, to the extent applicable, the Company) is a party or bound.

ARTICLE 3

MEMBERS; TRANSFERS OF INTERESTS

Section 3.1. <u>Members</u>. Effective as of the date hereof, Carlyle and Sponsor have been admitted to the Company as Members.





Section 3.4. <u>Resignation</u>. A Member may not resign or withdraw from the Company without the consent of the Members.

Section 3.5. <u>Compliance with OFAC</u>. Each Member represents, warrants, covenants and agrees that neither the Member nor, to the Member's knowledge, any person having a direct or indirect beneficial interest in the Member (i) appears or will appear on the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control in the United States Department of the Treasury ("<u>OFAC</u>") or the Annex to United States Executive Order 132224-Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism or (ii) is or will be a party with whom a United States Person is prohibited from doing business under the laws of the United States. To the Member's knowledge, the monies used to fund the Member's investment in the Company are not and will not be invested for the benefit of, or related in any way to, the government of, or persons within, any country under a U.S. embargo enforced by OFAC. The monies used to fund the Member's investment in the Company are not and will not be derived from or related to any illegal activities, including, without limitation, money laundering activities, and the proceeds from the Member's investment in the Company shall not be used to finance any illegal activities.

Section 3.6. <u>Compliance with Anticorruption Laws</u>.

(a) Each Member hereby represents, warrants, covenants and agrees on behalf of itself and its Affiliates that neither it, nor its Affiliates, nor any of its or their respective members, officers, directors, employees, agents or representatives acting on its or their behalf has made or will make, directly or indirectly, any offer of payment or authorization or promise to pay any money or give any gift or anything else of value prohibited by applicable law, rule or regulation to any Government Official for the purpose of influencing an official act or decision of that person, inducing that person to omit to do any act in violation of his or her lawful duty, securing any improper advantage, or inducing that person to use his or her influence with a government, instrumentality or public international organization, to affect or influence any government act or decision, or in order to assist the Company or any of its Subsidiaries in obtaining or retaining

business, nor have any of them taken nor will any of them take any action that would cause that Company or any of its Subsidiaries to be in violation of the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), or any applicable law of similar effect.

- (b) Each Member hereby represents, warrants, covenants and agrees on behalf of itself and its Affiliates that neither it nor its Affiliates has conducted or initiated any internal investigation or made a voluntary, or directed or involuntary, disclosure to any Government Official or similar agency with respect to any alleged act or omission arising under or relating to any noncompliance with the FCPA or any applicable law of similar effect that could reasonably be expected to have an adverse effect on the Company or the other Member. Each Member hereby represents, warrants, covenants and agrees that neither it, nor, to its knowledge, any of its Affiliates, nor, to its knowledge, any of their respective officers, directors, employees, agents or representatives, has received any notice or citation for any actual or potential noncompliance with any of the foregoing provisions of this Section 3.6, and each Member will immediately notify the other Member of the receipt of any such notice or citation.
- (c) Each Member hereby represents and warrants that no officer, director or employee of such Member or any of its Affiliates directly involved in the business of the Company is a Government Official.
- (d) Sponsor shall use commercially reasonable efforts, in good faith and with due care, to obtain appropriate anticorruption covenants, representations and warranties from any material service provider engaged by Sponsor on behalf of the Company.
- (e) Sponsor agrees to cooperate with any compliance audit or investigation by Carlyle and provide all reasonable information and assistance requested upon an investigation or inquiry by a Governmental Entity directed to the Company or any beneficial owner of the Company.

ARTICLE 4

MANAGEMENT OF THE COMPANY

Section 4.1. Management.

(a) <u>Carlyle</u>.

- (i) The Members hereby designate Carlyle as the "manager" of the Company pursuant to Section 18-402 of the Act. Except as otherwise expressly provided herein, all management rights shall vest solely in Carlyle, and no Person other than Carlyle shall have the right to take part in the management of the Company or have the power to act for, or bind, the Company in any way unless delegated such power by Carlyle.
- (ii) Without limiting the authority reserved to Carlyle pursuant to <u>Section 4.1(a)(i)</u>, Carlyle shall have the sole and exclusive authority to make decisions and, at its election, to take actions regarding the following on behalf of the Company or any Subsidiary:

- (1) subject to <u>Section 7.3</u>, the direct or indirect sale, transfer or other disposition of all or any part of the Project, and the selection of brokers and the terms of their engagement under brokerage and listing agreements;
- (2) subject to <u>Sections 7.1</u> and <u>7.2</u>, any mortgage, financing, hypothecation or encumbrance of all or any part of the Project or interest therein, determination of the terms and conditions of all borrowings (including, without limitation, any Financing) and the identity of the Lender thereof, any amendment of any Financing Documents and the granting of any guarantees or indemnities by the Company;
- (3) regarding financial affairs, (A) pursuant to Section 4.2, the adoption of, or any amendment, modification, update or replacement of, the Business Plan or Budget, (B) subject to Articles 5 and 9, the determination of accounting policies, including selection of depreciation schedules and accounting methods, and making various decisions regarding treatment of transactions and allocations for federal and state income, franchise or other tax purposes and the making of any tax elections, (C) subject to Section 5.2, selection of banks for deposit of funds and the designation of Persons with signatory authority over withdrawal of such funds, and (D) the determination of or change to any capital, operating or other reserves;
- (4) determination of leasing guidelines (which shall include rates, concessions and similar items), the form and terms of Leases, minimum and maximum length of offered Lease terms, brokerage commissions and standards for evaluation of the credit standing of tenants;
- (5) regarding development and construction of the Project, approval of the following: (A) subject to Section 4.2, any changes to the Business Plan pertaining to the development and construction of the Project, including the Development Budget, the Project Schedule, the Plans and the Project team, and any and all variations, amendments or changes, including, without limitation, any Discretionary Changes, (B) subject to Section 4.2, the Architect, the Contractor, major subcontractors, geotechnical consultants, and replacements of the foregoing, and (C) all other material matters relating to the Completion of the Project;
- (6) all matters relating to the Project's compliance with environmental, health, life-safety, access and other applicable laws that are not in the ordinary course of business, including the selection of consultants and the adoption of and implementation of any environmental-related operation and maintenance program or any other program to remove or otherwise remediate hazardous materials.
- (7) the approval, amendment, extension or termination of material licenses, entitlements, permits and other material governmental approvals, easements, restrictive covenants, reciprocal operating

agreements, cross-easement agreements and similar material encumbrances;

- (8) any matters relating to (i) any damage to property, insurance settlements and restoration in regard thereto that would cost \$100,000 or more, or (ii) to any condemnation or eminent domain proceeding affecting the Project;
- (9) determining insurance coverages and the insurers; provided that, in all events, the insurance coverages and forms and amounts thereof shall comply with, and will not be less than that required to be maintained by the Company pursuant to, the terms of any Financing Documents;
- (10) the execution, modification or termination of any Material Business Agreement;

(11)

- (12) selection of attorneys, accountants, auditors, engineers, environmental consultants and other professionals or consultants, subject to Sponsor's rights to retain attorneys in connection with routine landlord/tenant and other ordinary course operational matters;
- (13) entering into, amending or terminating, enforcing or waiving any rights or taking any other material action under any Sponsor Affiliate Agreement;
- (14) the delivery of any written notice or communication to any Lender other than routine, administrative communications;
- (15) commencing, defending or settling any legal action, subject to Sponsor's rights to manage legal actions in the ordinary course, such as a residential tenant evictions;
 - (16) forming Subsidiaries of the Company;
 - (17) the selection and replacement of any Property Manager;
- (18) hiring, terminating or amending the terms of employment of any employee; and
- (19) the calling of additional Capital Contributions, subject to Sponsor's rights to call capital pursuant to Section 6.2, 6.6(a) and 7.2(b).

(iii)

(b) Sponsor.

- (i) Subject to the rights of Carlyle under <u>Section 4.1(a)</u>, Sponsor shall have the duty and authority to manage the development, leasing, and operation of the Project on a day-to-day basis in the ordinary course of business in accordance with the Business Plan and Budgets, this Agreement and such decisions or directives as may be provided by Carlyle pursuant to this Agreement, including the following duties:
- (1) manage and supervise the development and construction of the Project, including, without limitation, the performance of the developer services described in **Exhibit D**, subject to and in compliance with the Development Budget and the Construction Loan. Except for Minor Changes, which Sponsor is authorized to make without the consent of Carlyle, and the application of contingency and savings as provided herein, Sponsor shall not authorize any changes to the Plans or any expenditure or incur any obligation that is not provided for in the applicable line item of the Development Budget. Before submitting any draw request to the Lender of the Construction Loan, Sponsor shall submit each such draw request to Carlyle for its approval, which shall not be unreasonably withheld or delayed. Sponsor shall provide Carlyle with all information and documentation necessary to obtain advances under the Construction Loan and, subject to Carlyle's approval of the draw request, is authorized to execute and deliver such draw requests on behalf of the Company;
- (2) comply with, manage, oversee, administer and enforce, or cause to be enforced, all contracts entered into by the Company or any Subsidiary, including, without limitation, Material Business Agreements;
- (3) monitor and take proper and necessary action to cause the Project to comply with all licenses, permits and applicable laws regarding the ownership, use and operation of the Project;
- (4) prepare and maintain financial records as provided in more detail in this Agreement and accurate up-to-date records reflecting the status of taxes, assessments and other similar items that are or may become liens on the Project, insurance premiums, ground rents, mortgages and other expenses payable in respect thereof and any claims or potential claims relating to the Project;
- (5) conduct regular physical inspections of the Project and make recommendations to Carlyle with respect thereto, oversee any necessary action with respect to the occurrence of any property damage; make decisions regarding the restoration of any damage that would require less than \$100,000 to restore;
- (6) provide Carlyle as and when received with copies of all communications from the Lender pertaining to any Financing (other than routine,

administrative communications), and notifying Carlyle promptly with regard to any communication or notices received or given between the Company or any Subsidiary and any tenant, governmental agency, property association, neighboring property owners, parties to Material Business Agreements or any other Person relating to any material claim against, or default by, the Company or any Subsidiary;

- (7) maintain insurance with insurers and coverages as determined by Carlyle and cause the Project to be maintained and operated in accordance with applicable insurance requirements;
- (8) subject to Carlyle's reasonable approval, select attorneys in connection with routine landlord/tenant or other operational matters and commence, defend or settle legal actions in the ordinary cause, such as residential tenant evictions resulting from tenant default; and
- (9) subject to Section 4.1(a)(ii)(13), oversee the performance of the property manager, any development manager (if applicable) or any other service provider engaged by the Company or any Subsidiary whose services may include services to be performed by the Sponsor under this Agreement.
- (ii) Sponsor shall at all times discharge its duties with respect to the Company and the Project in good faith and in the best interests of the Company, in accordance with the Business Plan and in a manner that is consistent with the development, management and operations of prudent operators and developers of properties similar to the Project. Sponsor shall devote sufficient time, resources and personnel to perform its duties hereunder in a professional manner in accordance with good industry practice and the terms of this Agreement. Sponsor covenants that each member of the Sponsor Control Group shall devote a sufficient amount of his or her time and efforts to the Company and its Subsidiaries as is reasonably required for the development, construction, operation, leasing, financing and sale of the Project in accordance with the Business Plan.
- (iii) All matters pertaining to the employment, supervision, compensation, promotion and discharge of Sponsor's or its Affiliate's employees, if any, and others engaged by Sponsor to assist Sponsor in performing its duties hereunder are the responsibility of Sponsor, and Sponsor solely shall be liable to such employees, contractors and consultants for their compensation. In no event shall the Company or any of its Subsidiaries ever be liable for the compensation of such employees, contractors and consultants. Sponsor and its Affiliates shall fully comply with all applicable laws and regulations relating to workers' compensation, social security, income and withholding pay, unemployment insurance, hours of labor, wages, working conditions and other employer-employee related matters with respect to Sponsor's employees.
- (iv) Sponsor shall obtain and maintain at all times during the term of this Agreement, at its own expense, employee dishonesty insurance or a fidelity bond,

including third-party crime coverage and coverage for social engineering fraud and otherwise, in customary form with coverage of all officers, employees and agents of Sponsor or its Affiliates acting in any capacity with respect to the Project or handling funds, money, documents and papers relating to the Project, and naming the Company and/or Property Owner as loss payee. The minimum coverage under any such insurance or bond shall be \$1,000,000. Attached hereto as **Exhibit E** is a certificate of insurance evidencing such coverage as of the date hereof and providing that should such insurance or bond be canceled before its expiration date, the insurer will provide Carlyle with 30 days' prior written notice of cancellation or as otherwise provided in the certificate. Sponsor shall notify Carlyle of all draws or claims on such insurance or against such bond related to this Agreement.

- (v) Sponsor shall not delegate any of its duties, rights or powers under this Agreement without the prior written consent of Carlyle, other than pursuant to the Property Management Agreement or other agreements that are approved by Carlyle. No such delegation shall release or relieve Sponsor from any of its duties under this Agreement.
- In addition to its other duties under this Agreement, Sponsor shall implement and maintain a cybersecurity program reasonably acceptable to Carlyle, which complies with all laws. Such program shall be in writing and contain reasonable and appropriate administrative, operational, technical, physical and organizational measures that are designed to protect against Security Breaches. As part of such program, Sponsor shall, and shall cause its Affiliates to, verbally confirm any initial or modified account details and wiring instructions received from any payee or counterparty prior to sending any funds on behalf of the Company or any of its Subsidiaries to such account or pursuant to such instructions. Sponsor shall also regularly monitor and review its systems for any Security Breaches, and shall notify the Members without undue delay and in any event within 24 hours after Sponsor becomes aware of a Security Breach. Any such monitoring, to the extent related to the Project, shall be at the Company's expense. Further, Sponsor shall take prompt steps to remedy any Security Breaches and mitigate any harmful effects, and shall cooperate with and assist the Members in any subsequent provision of notices, investigation, litigation, or other proceeding resulting from a Security Breach and shall reasonably cooperate with Carlyle's annual or bi-annual review of such program and will consider in good faith modifications to such program that are reasonably requested by Carlyle.
- (c) <u>Joint Decisions</u>. The following actions shall require the express written approval of both Sponsor and Carlyle (the "<u>Joint Decisions</u>"), and no action shall be taken, sum expended or obligation incurred by any Member on behalf of the Company or any of its Subsidiaries regarding the matters described below without the express written approval of both Carlyle and Sponsor:
 - (i) any sale, transfer or exchange of all or any part of the Project or any Subsidiary of the Company (1) to any Carlyle Realty Affiliate or (2) for consideration other than cash;

- (iii) subject to <u>Sections 3.2(b)</u> and <u>3.3</u>, the admission of any additional or substitute Member;
- (iv) any business activity that is not within the purposes of the Company set forth in Section 2.5;
- (v) any merger or consolidation with any other Person other than a Subsidiary of the Company;
- (vi) causing the Company to make any in-kind distribution of Company assets;
- (vii) any action by the Company that would (1) trigger a Credit Support Claim by the applicable Lender against Sponsor Guarantor under a nonrecourse carveout guaranty or an environmental indemnity or (2) increase the maximum principal indebtedness guaranteed under any principal repayment guaranty; and
- (viii) so long as Sponsor Guarantor is then providing a completion guaranty, and such action is not being taken by Carlyle in connection with the enforcement of the Company's or any Subsidiary's rights under the Construction Contract, the approval of (1) any Discretionary Change that materially changes the timing of Completion pursuant to the Project Schedule, and (2) any Discretionary Change that materially increases the cost of Completion as contemplated in the Development Budget, but only to the extent that Carlyle has failed to fund its pro rata share of any additional Capital Contributions that are required to cover such material increase in cost.
- (d) <u>Confirmation of Authority</u>. Upon the request of a Member, the other Members shall confirm in writing the authorization of Carlyle or Sponsor, as the case may be, to take any action on behalf of and in the name of the Company that is authorized to be taken by such Member under the terms of this Agreement.
- Section 4.2. <u>Business Plan and Budgets</u>. The Company shall develop, own and operate the Project and otherwise act with regard to the Project and the business activities of the Company under and in compliance with the then applicable Business Plan and Budgets.
- (a) The Business Plan is attached hereto as **Exhibit B**. As a Closing Condition under Section 2.10(c)(ii) and as a Development Condition under Section 2.10(f)(iii), the Business Plan shall be updated with the approval of the Members. Any such update as a Development Condition shall include, *inter alia*, (i) replacement of the preliminary Plans with the Plans to the stage of completion described in Section 2.10(f)(ii), (ii) replacement of the preliminary Project Schedule with an updated Project Schedule, (iii) replacement of the Development Budget with an updated Development Budget and a pro forma operating statement for the Project, (iv) insertion

of the final, approved site plan for the Project and (v) such other modifications to the other elements of the preliminary Business Plan as are necessitated by and consistent with the amendments described in (i), (ii), (iii) and (iv) above and have been approved by the Members.

(b) Not later than (i) 90 days before the anticipated commencement of marketing and leasing activities for the Project and (ii) by November 1 of each calendar year thereafter, and at Carlyle's request from time to time, Sponsor shall prepare and submit to Carlyle for approval an updated Business Plan with respect to the following calendar year or other applicable period. The updated Business Plan shall include, without limitation, each of the items (each in reasonable detail and accuracy based on the most current information with regard thereto then available to the Sponsor) set forth in the Business Plan attached hereto and such other matters as Carlyle may reasonably determine. Carlyle shall consult with Sponsor prior to approving any updates or modifications to the Business Plan. If Carlyle and Sponsor are unable to agree on the updated Business Plan, then the decisions of Carlyle shall control.

(c) With respect to Operating Budgets:

- (i) The first proposed Operating Budget, covering a period through the end of the calendar year in which Completion is estimated to occur, shall be delivered by Sponsor to Carlyle with the updated Business Plan pursuant to Section 4.2(b)(i). For each calendar year thereafter, Sponsor shall deliver to Carlyle, by November 1 of the preceding calendar year, with the updated Business Plan pursuant to Section 4.2(b)(ii), a proposed Operating Budget for the Project for the ensuing calendar year. Carlyle shall consult with Sponsor prior to adopting or making any modifications to the proposed Operating Budget. If Carlyle and Sponsor are unable to agree on any Operating Budget, then the decisions of Carlyle shall control.
- (ii) Other than increased insurance costs, taxes, utility costs and debt service payments, Sponsor shall not authorize any expenditure or incur any obligation by or for the Company or any Subsidiary that is not provided for in the applicable line item of an Operating Budget in excess of \$10,000.00 in each instance, but not to exceed, in the aggregate, 3% of such line item per calendar year (Sponsor being authorized to make any expenditure or incur any obligation on behalf of the Company or any Subsidiary less than such threshold amounts). If repairs to the Project are necessary to avoid imminent danger of injury to the Project or to an individual in connection with an Emergency, Sponsor may authorize such expenditures as may be necessary to alleviate such situation even if such expenditures are not provided for, or exceed the amount provided for, in the applicable Operating Budget and shall promptly notify Carlyle of the event giving rise to such repairs and the actions taken with respect thereto.

Section 4.3. <u>Meetings of Members</u>. Sponsor agrees to hold weekly conference calls and regular monthly meetings with Carlyle and special meetings with Carlyle at reasonable times and upon reasonable notice from Carlyle to review and discuss the status of the development, construction and operation of the Project and such other matters as Carlyle may from time to time request to be included on the agenda of each such meeting or conference call. Such meetings shall

be held at the principal offices of Sponsor unless the parties otherwise agree, and shall include as participants such representatives of Sponsor as Carlyle may reasonably request. Carlyle may designate any one or more representatives to attend such meetings. Carlyle may participate in such meetings by telephone.

Section 4.4. Removal of Sponsor.

- (a) Each of the following events shall constitute a "**Removal Event**":
- (i) Sponsor or any Sponsor Affiliate associated with the Project breaches or defaults, or causes any breach or default, under this Agreement, and such breach or default is not cured within 10 days, if curable by the payment of money, or otherwise within 30 days after notice from Carlyle of any such breach or default;
- (ii) Sponsor fails to implement (or interferes with the implementation of) any decision that is permitted to be made solely by Carlyle or any Joint Decision that has been made by the Members;
- (iii) any Sponsor Affiliate breaches or defaults, or causes any breach or default, under any Sponsor Affiliate Agreement, and such breach or default is not cured within any applicable notice and cure periods under any such Sponsor Affiliate Agreement;
- (iv) if all of the members of the Sponsor Control Group are not actively involved in the business of the Company at all times as set forth in Section 4.1(b)(ii) hereof, unless they have been replaced with one or more replacement individuals who are actively involved in the business of the Company, as proposed by the Sponsor Control Group and approved in advance by Carlyle, in its reasonable discretion;
- (v) Sponsor or any Sponsor Affiliate associated with the Project (1) commits any act of gross negligence, willful or wanton misconduct, intentional misrepresentation, fraud or bad faith in connection with the Project, the Company or any Subsidiary, or (2) commits any crime or knowing violation of law with respect to the Project or is indicted or convicted of or pleads guilty or *nolo contendere* to any felony;
- (vi) (1) Sponsor or any Sponsor Affiliate associated with the Project or any of their employees misappropriates any funds of the Company and (2) if Sponsor fails to restore any funds so misappropriated and, with respect to any employee, to terminate the involvement and duties of such employee with respect to the Project within 10 days after Sponsor becomes aware of such misappropriation; provided, however, that, if any member of the Sponsor Control Group misappropriates any such funds, or authorizes such misappropriation, it will be grounds for a Removal Event without any cure period;

- (vii) a Bankruptcy occurs with respect to Sponsor, Sponsor Credit Party, Sponsor Guarantor, any member of Sponsor Control Group or any Contractor affiliated with Sponsor;
- (viii) Sponsor makes or suffers any Transfer in violation of <u>Section 3.2</u> of this Agreement;
- (ix) Sponsor fails to make any Capital Contribution pursuant to <u>Section 6.1</u> or Overrun Contributions pursuant to <u>Section 6.6</u> (the exercise of any right by Carlyle under <u>Section 6.3</u> shall not be deemed a cure of such Removal Event);
- (x) if any material default under any Financing exists that is due to the actions of Sponsor or any of its Affiliates, or if Sponsor Guarantor is in default under any guaranty or other Credit Support instrument to which it is a party, and in any case such actions are not otherwise approved by Carlyle (any cure of any such default by Carlyle shall not be deemed a cure of any such Removal Event for purposes hereof);
- (xi) any breach or violation by Sponsor or any Sponsor Affiliate of Section 3.6 or any applicable law, rule, regulation or order relating to anti-bribery or anti-corruption or other use of unlawful means to obtain business or improper advantage; and
- (xii) if the Project does not achieve substantial completion by December 31, 2023.
- (b) Upon the occurrence of any Removal Event, Carlyle shall have the absolute and sole right to take all or any one or more of the following actions, effective upon written notice to Sponsor: (i) terminate all of the management, consent, voting and approval rights of Sponsor, including, without limitation, its duties and obligations to manage the day-to-day affairs of the Company under Section 4.1(b) above, (ii) effect a change in distributions pursuant to Section 8.4, (iii) terminate by written notice any one or more of the Sponsor Affiliate Agreements without any penalty or premium with respect to such termination, (iv) terminate the right of Sponsor to vote on or approve Joint Decisions, (v) terminate the right of Sponsor or any Sponsor Affiliate to receive, and Sponsor and any Sponsor Affiliate thereupon shall forfeit, the unpaid portion of the Development Management Fee or any other then unearned fees under this Agreement or any Sponsor Affiliate Agreement and (vi) terminate the rights of Sponsor under Sections 6.2(b) and 7.3.
- (c) Sponsor hereby irrevocably appoints Carlyle as its attorney-in-fact to execute (without any additional consent or approval from Sponsor) any documentation necessary to effect Carlyle's rights under this <u>Section 4.4</u>.
- (d) After any termination of management rights pursuant to Section 4.4(b), Sponsor, as directed by Carlyle, shall either immediately deliver all books and records of the Company and the Project to the control of Carlyle or will hold such books and records for up to a 36-month period until Carlyle directs Sponsor to deliver such books and records, and Sponsor will

otherwise cooperate with Carlyle to effect an efficient and smooth transition of its duties with respect to the Project.

Section 4.5. <u>Indemnification; Exculpation; Duties</u>.

- To the fullest extent permitted by the Act, (i) the Company shall indemnify the Members for any loss, claim, damage, liability or expense (including reasonable attorneys' fees) incurred by such Member who was, is, or is threatened to be made, a party to any threatened, pending or completed action, suit or proceeding, any appeal thereof, or any inquiry or investigation preliminary thereto arising out of or in connection with such Member's act or omission (a "Proceeding"); and (ii) the Company shall pay or reimburse Carlyle or Sponsor for reasonable costs of defense incurred by such Member (1) in advance of the final disposition of a Proceeding to which such Member was, is, or is threatened to be made, a party, and (2) in connection with such Member's appearance as a witness or other participation in any Proceeding; provided, however, that such costs shall be advanced prior to a final disposition of any such Proceeding only upon receipt of an undertaking by or on behalf of such Member to repay such amount to the extent that it is ultimately determined that such Member is not entitled to be indemnified hereunder. Notwithstanding the foregoing, this indemnity shall not apply to any loss, claim, damage, liability or expense (including reasonable attorneys' fees) resulting from actions constituting gross negligence, willful or wanton misconduct, intentional misrepresentation, fraud, bad faith, any crime or knowing violation of law, actions taken outside the scope of authority provided under this Agreement or breach of this Agreement. The Company may purchase and maintain insurance to protect itself and any Member, officer, employee or agent of the Company or its Subsidiaries, whether or not the Company would have the power to indemnify such Person under this Section 4.5. Nothing herein shall be deemed to impair any right of any Member, officer, employee or agent of the Company or its Subsidiaries to benefit from any insurance coverage with respect to any matter. Any Member entitled to seek indemnification pursuant to this Section 4.5(a) shall first use reasonable efforts to exercise any applicable rights to indemnification from an alternative source, including, without limitation, insurance proceeds, from which such Member may be entitled to recover in respect of the matter giving rise to the claim for indemnification hereunder. This indemnification obligation shall be limited to the assets of the Company, and no Member shall be required to make a Capital Contribution in respect thereof. The provisions of this Section 4.5(a) shall not apply with respect to any Sponsor Affiliate Agreement; the Company's obligations, if any, to provide an indemnity with respect to any Sponsor Affiliate Agreement shall be governed by the provisions of such agreement.
- (b) Each Member agrees to indemnify, defend and hold harmless the Company and the other Members from any loss, claim, damage, liability or expense (including reasonable attorneys' fees) resulting from any or all of the actions of such Member or its Affiliates constituting gross negligence, willful or wanton misconduct, intentional misrepresentation fraud, bad faith, any crime or knowing violation of law, actions taken outside the scope of authority provided under this Agreement or breach of this Agreement.
- (c) Whenever in this Agreement a Member or any other Person is permitted or required to make a decision or otherwise to take or not to take an action in good faith or in its discretion or sole discretion or under another express standard as to any such decision or other

matter, such Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement, the Act or any other applicable law or in equity.

- (d) This Agreement is not intended to, and does not, create or impose any fiduciary duty on any of the Members hereto (whether in its capacity as member or manager of the Company or otherwise) or on their respective Affiliates. Further, the Members hereby waive any and all fiduciary duties that, absent such waiver, may exist at or be implied by law or in equity and, in doing so, recognize, acknowledge and agree that their duties and obligations to one another and to the Company are only (i) as expressly set forth in this Agreement and (ii) those required under the Act. To the extent that, at law or in equity, any Member has duties (including fiduciary duties) and liabilities relating to the Company or to another Member, the Members acting under this Agreement will not be liable to the Company or to any such other Member for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict, eliminate or expand the duties and liabilities relating thereto of any Member otherwise existing at law or in equity, are agreed by the Members to replace, to that extent, such other duties and liabilities of the Members relating thereto.
- Section 4.6. <u>Compensation of Members; Reimbursement of Expenses</u>. Except as otherwise expressly and specifically provided in this Agreement, no compensatory payment shall be made by the Company to any Member for the services to the Company of such Member or any member or employee of such Member. Each Member shall be reimbursed by the Company for all reasonable out-of-pocket expenses actually incurred by it directly in conjunction with the business and affairs of the Company (including legal and travel expenses) so long as such expenses are approved by Carlyle or are set forth in an approved Budget. Carlyle's expenses associated with audit, travel and the execution and implementation of the Business Plan and asset management of the Project will be reimbursed by the Company or the Property Owner up to \$25,000 per year.

Section 4.7. Transactions with Sponsor-Related Parties; Development Consultant; Fees.

- (a) Subject to this <u>Section 4.7</u>, when any service or activity to be performed on behalf of the Company or a Subsidiary is performed by a Sponsor-Related Party, the fee payable for such service or activity shall not exceed the fee that would be payable by the Company to an unaffiliated third party of comparable standing providing the same services. Fees payable to a Sponsor-Related Party that are expressly provided for in this Agreement or any agreement approved by Carlyle are deemed to satisfy this requirement. Upon the sale of the Project or portion thereof, any Property Management Agreement with a Sponsor-Related Party shall terminate automatically (or be modified to remove any such portion of the Project that is sold from such agreement) without the requirement of further action of Sponsor. For purposes hereof, a "<u>Sponsor-Related Party</u>" shall include Sponsor, any Sponsor Affiliate, any Person in which any member of the Sponsor Control Group, directly or indirectly, owns at least 5% of the interests therein and any Person as to which any member of the Sponsor Control Group exercises any significant managerial rights.
- (b) In consideration of its supervision of the development and construction of the Project and its performing the developer duties described in **Exhibit D**, Sponsor, or its designated Affiliate, shall receive from the Company the Development Management Fee with respect to the development and construction of the Project, payable ratably as Project costs are

incurred over the period from the Construction Period Commencement Date to the anticipated date of Completion; provided that, if the Financing Documents require a different payment schedule, such documents shall govern. Notwithstanding the foregoing sentence, after making cash Capital Contributions for its share of Pre-Closing Costs and the cost for land, Sponsor hereby irrevocably waives the first \$0.00 of the Development Management Fee that would otherwise be paid pursuant to this Section 4.7(b) (the "Special Profits Interest Amount") and such amount shall not be paid to Sponsor or its designated Affiliate. Instead, Sponsor shall be entitled to receive distributions in respect of the Special Profits Interest Amount to the extent provided in Section 8.2(f) (and subject to Section 8.3) which is intended to constitute a "profits interest" within the meaning of Revenue Procedure 93-27. Upon request from Carlyle or any Lender, Sponsor, or its designated Affiliate shall enter into all such amendments to this Agreement or other agreements reasonably required by such party in order to evidence the subordination of the Development Management Fee to debt service and other amounts due under the applicable Construction Loan or any other Financing. In addition, in consideration of its supervision of the development and construction of tenant improvement work required to be performed by the Company under any Lease or in connection with spec tenant improvements approved by Carlyle, Sponsor, or its designated Affiliate,

payable in equal monthly installments over the period from the commencement of the construction of the tenant improvements under each such Lease at the Project to the anticipated date of completion of such tenant improvement work; provided that, if the Financing Documents require a different payment schedule, such documents shall govern. Neither Sponsor nor any of its Affiliates shall be entitled to (i) any reimbursements for personnel or overhead (inclusive of the on-site project manager) or other costs or expenses, except to the extent specifically provided in this Agreement or included in an approved Budget, or (ii) except for the approved Development Management Fee and the approved Construction Management Fee, any other fees in connection with the Project.

The role of such

Development Consultant will include project team review, third-party contracts review, Project Schedule review, review of Plans, periodic site visits, periodic attendance at progress meetings and reporting to Carlyle regarding status of the Project Schedule and costs. Carlyle is in no way responsible for the quality, quantity, means, methods, techniques and/or safety programs relating to any construction or any other operations in connection with the Project. Neither the observations

to any construction or any other operations in connection with the Project. Neither the observations referred to herein, nor the failure to observe, create any obligation or liability on the part of Carlyle or in any way relieve Sponsor or any other person or entity of any liability or responsibility under this Agreement, under law or otherwise.

Section 4.8. <u>Brokerage Indemnification and Commission</u>. Each Member hereby represents to the other that it is not aware of any brokerage commission, finder's fee or similar fee payable by the Company or any Member in connection with the formation of the Company or the Company's acquisition and financing of the Project. To the fullest extent permitted by law, (a) Sponsor hereby agrees to indemnify, defend and hold harmless Carlyle from any loss, claim, damage or liability against the Company or Carlyle and Carlyle's Affiliates for any brokerage

commissions or finder's fees claimed by any broker or other party in connection with the formation of the Company or the acquisition of the Project, which arises from any action of Sponsor or any of its Affiliates, and (b) Carlyle hereby agrees to indemnify, defend and hold harmless Sponsor from any loss, claim, damage or liability against the Company, or Sponsor and its Affiliates for any brokerage commissions or finder's fees claimed by any broker or other party in connection with the formation of the Company or the acquisition of the Project, that arises from any action of Carlyle or any Carlyle Realty Affiliate.

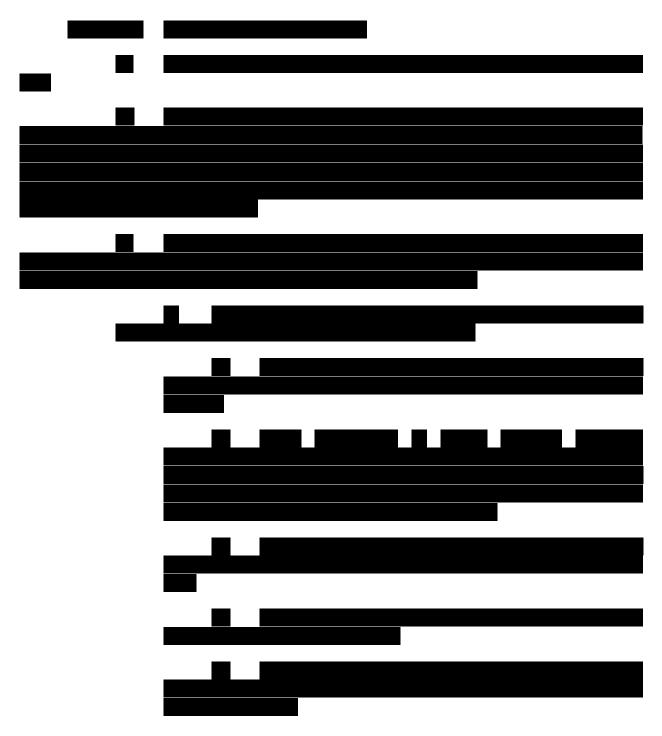
Section 4.9. Competition; Right of First Opportunity.

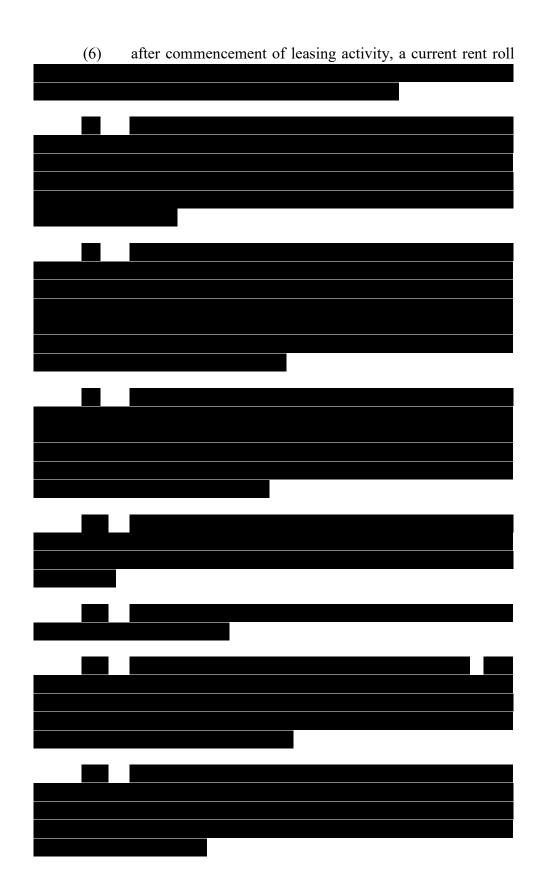
- (a) Subject to the provisions of this <u>Section 4.9</u> and the other express provisions of this Agreement, each Member and each Affiliate thereof may engage in and possess interests in other business ventures of any and every type and description, independently or with others, including ventures in competition with the Company, with no obligation to offer to the Company or any other Member the right to participate therein or to account therefor.
- If any Sponsor-Related Party intends to purchase or acquire or develop, directly or indirectly, any industrial site or project within a three-mile radius of the Project, then, in each case, such Sponsor-Related Party shall cause to be offered to Carlyle and its Affiliates the right to invest in such project with such Sponsor-Related Party, and shall not negotiate or enter into an agreement with any other party with respect to an investment in such transaction or consummate the transaction with respect to such investment, except as otherwise permitted below. Upon such offer, and commencing upon the date that Carlyle shall have received all materials reasonably requested by Carlyle in order to evaluate the investment, such Sponsor-Related Party and Carlyle or its Affiliates shall enter into negotiations in good faith on the terms of such investment (and the Members shall memorialize in writing to each other the date upon which such negotiations commenced). The provisions of this Section 4.9 shall not apply to (i) non-industrial sites or projects, (ii) sales of unimproved land by Sponsor or its Affiliates, or (iii) build-to-suit developments for a specific end user (whether a tenant or an owner user), If such Sponsor-Related Party and Carlyle or its Affiliates, in each party's sole discretion, do not reach agreement on the terms of such investment within 30 days after the commencement of such negotiations, then such Sponsor Related Party shall be entitled to negotiate with other parties with respect to an investment in such transaction. If Carlyle or its Affiliates declines to participate in any such investment, and such Sponsor-Related Party continues to acquire and develop such project, then such Sponsor-Related Party may not commence construction with respect to such project earlier than the Stabilization of the Project. Sponsor represents that all Sponsor-Related Parties shall comply with the provisions of this Section 4.9(b), and Sponsor agrees that it shall be a material default and breach under this Agreement if any Sponsor-Related Party violates the provisions of this Section 4.9(b). The rights of Carlyle under this Section shall terminate upon the first to occur of the dissolution of the Company and the date on which Sponsor ceases to be a Member of the Company.
- (c) Sponsor hereby acknowledges that the agreements set forth in this Section 4.9 constitute a material portion of the consideration for Carlyle to enter into this Agreement, and, as a result, in addition to all other rights and remedies available to Carlyle under this Agreement, Carlyle and the other Carlyle Realty Affiliates shall be entitled to pursue all rights and remedies available at law or in equity as a result of a breach of this Section 4.9, including, but

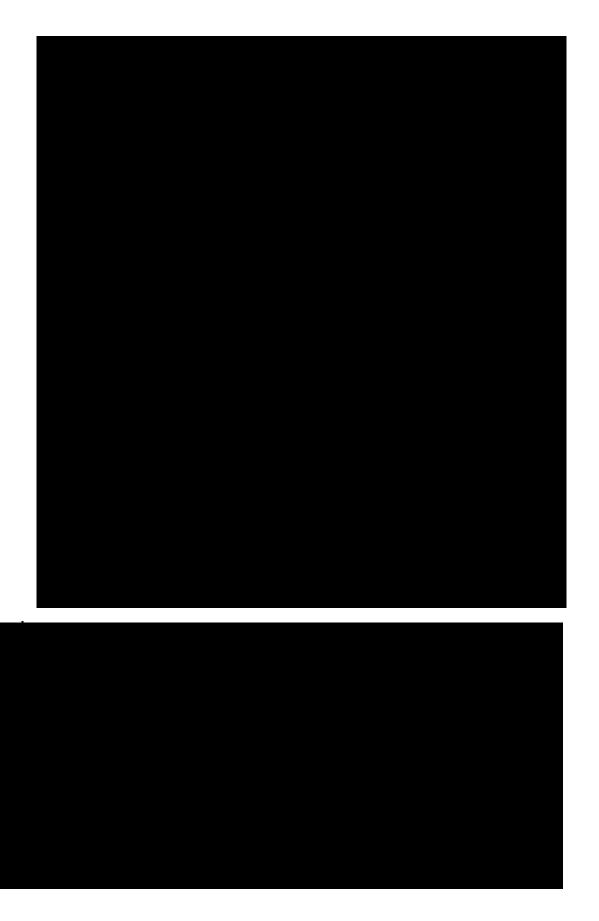
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not limited to, a suit for damages, an action for specific performance or temporary or permanent injunctive relief.

ARTICLE 5
ACCOUNTING AND REPORTING





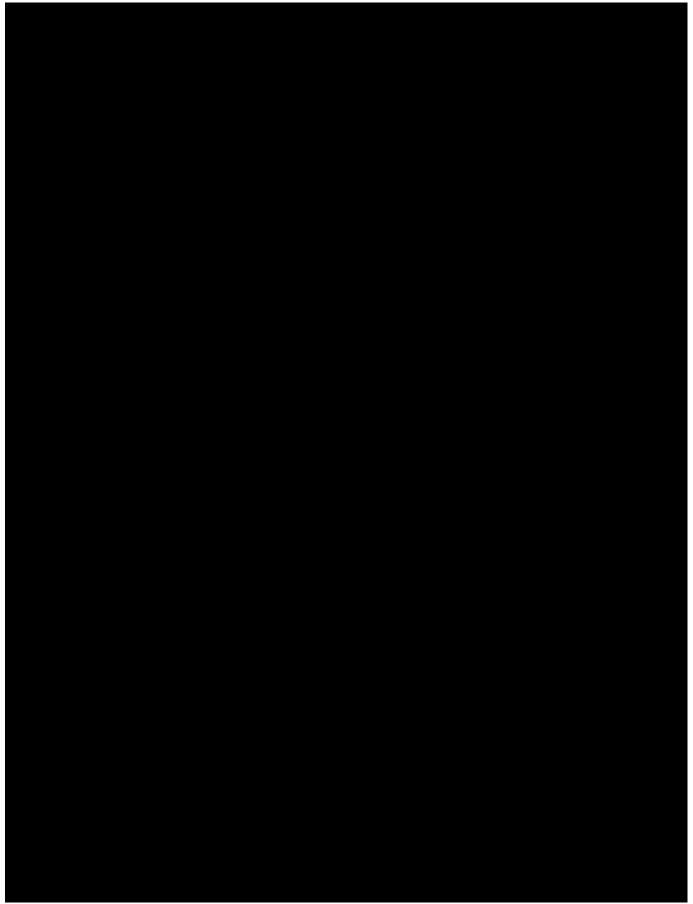






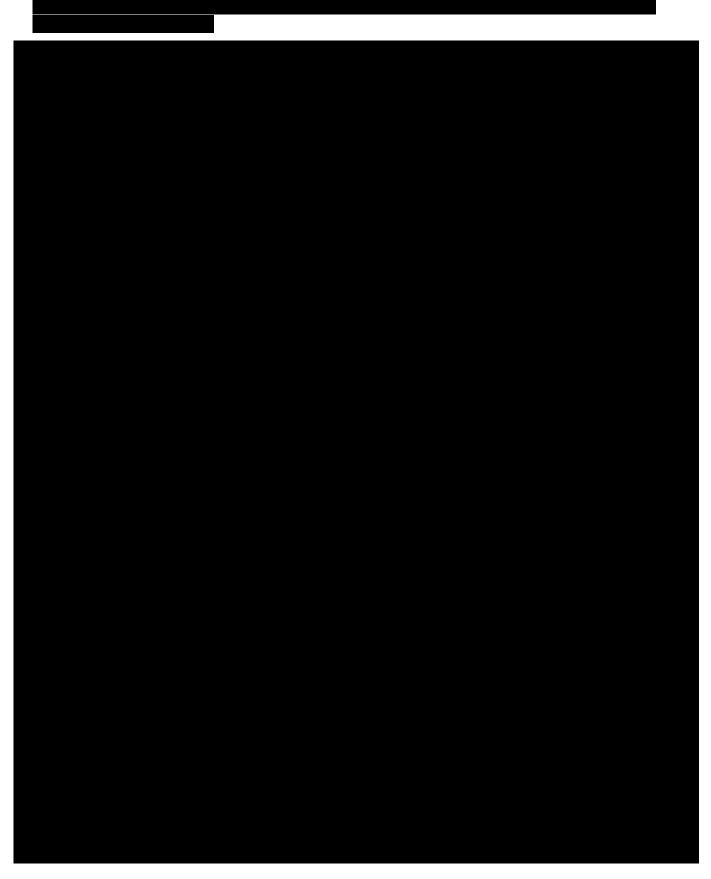


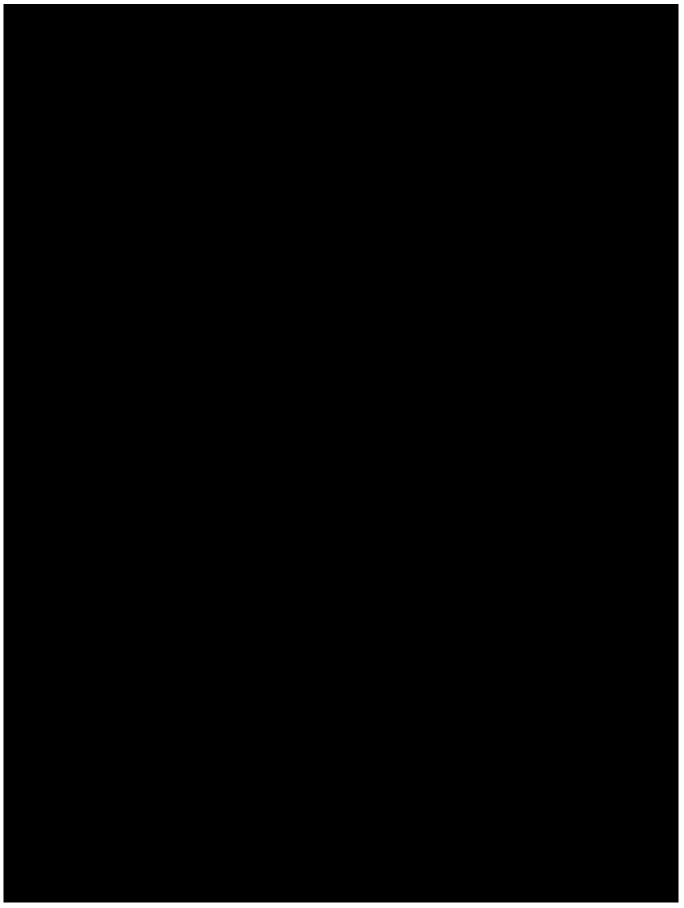


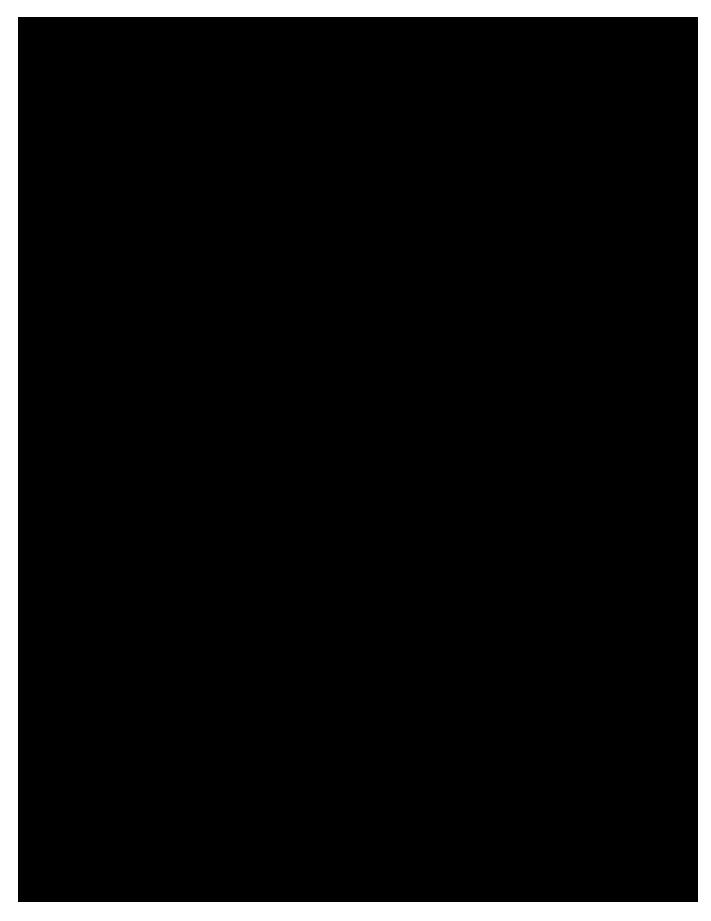


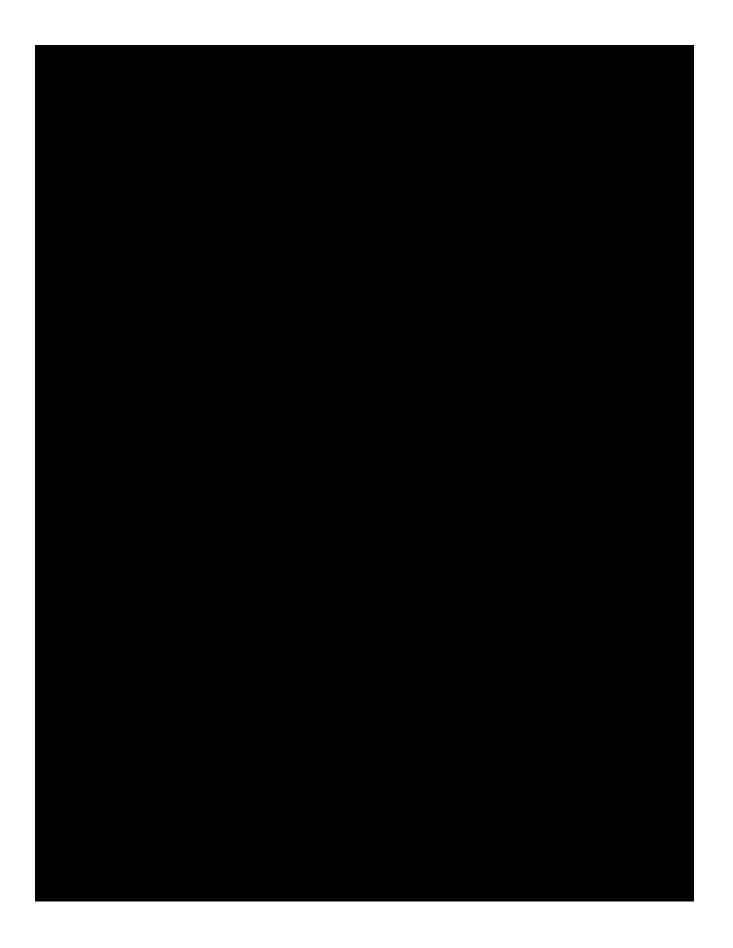




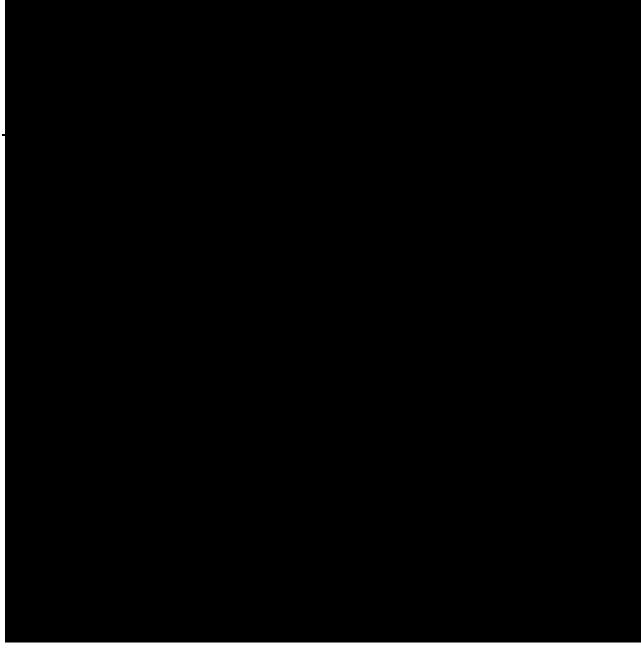


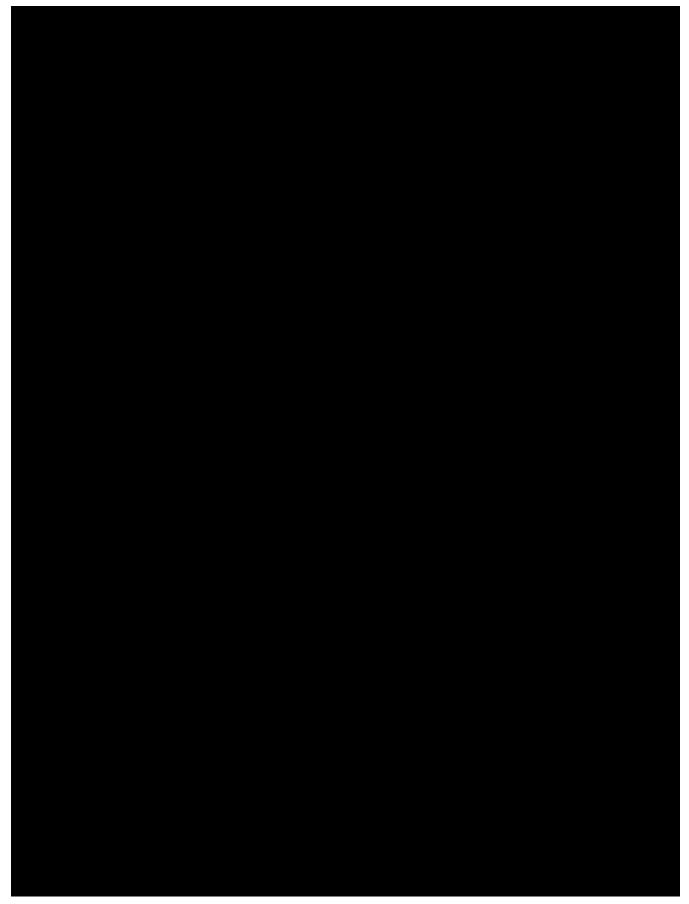


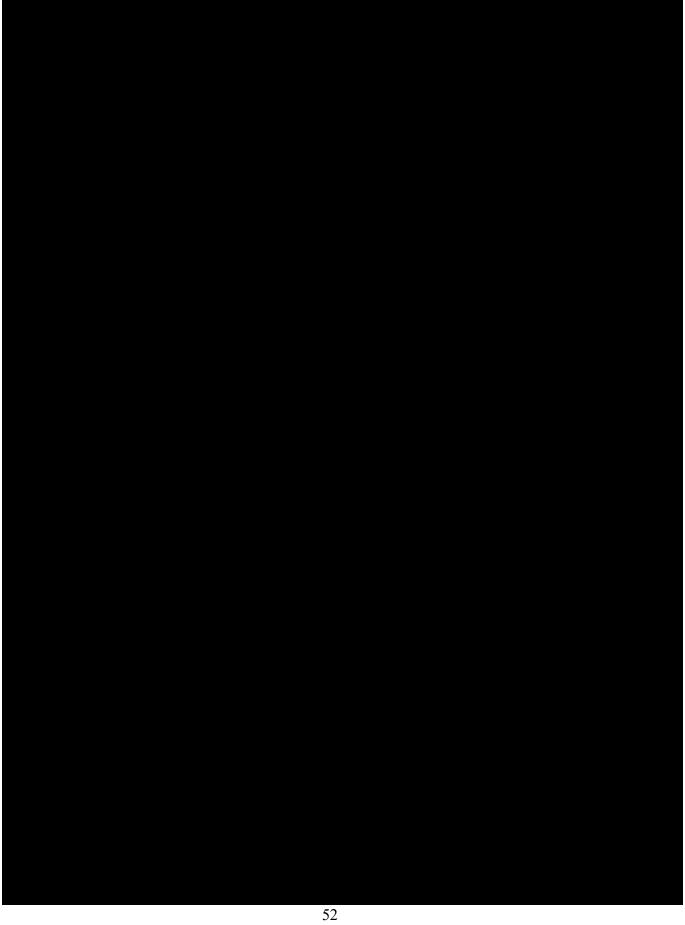






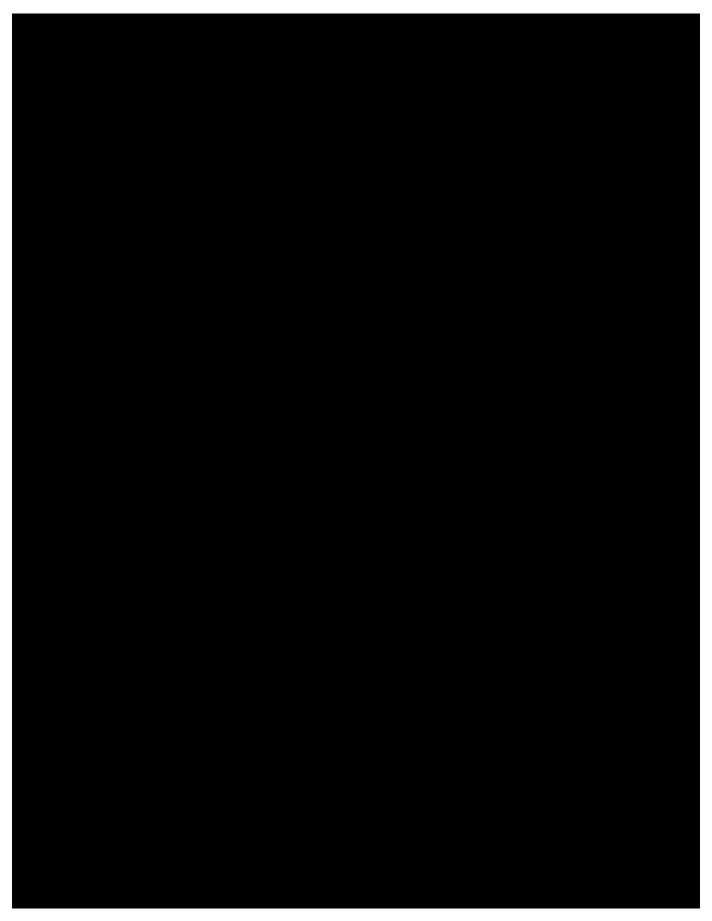














ARTICLE 10

DISSOLUTION, LIQUIDATION, AND TERMINATION

- Section 10.1. <u>Dissolution, Liquidation, and Termination Generally</u>. The Company shall be dissolved upon the first to occur of any of the following:
- (a) the sale or disposition, directly or indirectly, of all or substantially all of the assets of the Company and the receipt, in cash, of all consideration therefor;
 - (b) the agreement of the Members to dissolve the Company; or
- (c) the occurrence of any event which, as a matter of law, requires that the Company be dissolved.

Neither the Bankruptcy of any Member nor the happening of any other event described in Section 18.304 of the Act with respect to any Member shall cause such Member to cease to be a Member of the Company, and, upon the occurrence of such an event, the business of the Company shall continue without dissolution.

- Section 10.2. <u>Liquidation and Termination</u>. Upon dissolution of the Company, unless it is continued as provided above, Carlyle shall act as liquidator or may appoint one or more other Persons as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein. The costs of liquidation shall be a Company expense. Until final distributions are made, the Company shall continue to operate the Company properties with all of the power and authority of the Members hereunder. The steps to be accomplished by the liquidator are as follows:
- (a) as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a firm of certified public accountants acceptable to the Members of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution shall occur or the final liquidation shall be completed, as applicable;
- (b) the liquidator shall satisfy all of the debts and liabilities of the Company or otherwise make adequate provision therefor; and
- (c) all remaining assets of the Company shall be distributed to the Members as follows:
 - (i) the liquidator may sell any or all Company property and the sum of (1) any resulting gain or loss from each sale plus (2) the fair market value of such property that has not been sold shall be determined and Profit or Loss so realized or inherent in such property (that has not been reflected in the Capital Accounts previously) shall be allocated among the Members in accordance with <u>Section 9.3</u>; and
 - (ii) Company cash and other property shall be distributed to the Members as provided in <u>Article 8</u>, provided that if any such liquidation and termination occurs pursuant to <u>Section 2.10(d)</u> or <u>Section 2.10(g)</u>, such distributions shall be made in accordance with <u>Section 2.10(d)</u> or <u>Section 2.10(g)</u>, as applicable.
- Section 10.3. <u>Deficit Capital Accounts</u>. No Member shall be required to pay to the Company, to any other Member or to any third party any deficit balance that may exist from time to time in the Member's Capital Account.
- Section 10.4. <u>Cancellation of Certificate</u>. On completion of the winding up of the affairs of the Company as provided in <u>Section 10.2</u>, Carlyle (or such other Person as the Act may require or permit) shall file a certificate of cancellation with the Secretary of State of Delaware, cancel any other filings made pursuant to <u>Section 2.4</u>, and take such other actions as may be necessary to terminate the existence of the Company.

ARTICLE 11

MISCELLANEOUS PROVISIONS

Section 11.1. Notices. All notices provided for or permitted to be given pursuant to this Agreement must be in writing and shall be given or served by (a) depositing the same in the United States mail addressed to the party to be notified, postpaid and certified with return receipt requested, (b) depositing the same with Federal Express, UPS or another recognized overnight courier service that tracks deliveries, addressed to the party to be notified, with all charges paid and proof of receipt requested, (c) delivering such notice in person to such party, or (d) portable document format ("pdf") sent by email. All notices are to be sent to or made at the addresses set forth on the signature pages hereto and in the case of notices to Sponsor, with a copy to 450 Newport Center Drive, Suite 405, Newport Beach, CA 92660, Attn: Michael DeArmey, email: mdearmey@phelandevco.com, and in the case of notices to Carlyle, with a copy to Mayer Brown LLP, Attn: Scott Buser, e-mail: sbuser@mayerbrown.com. Notices given by mail in accordance with clause (a) above shall be deemed given and effective two Business Days following posting in the United States mails. Notices by overnight courier service in accordance with clause (b) shall be deemed given and effective on the first Business Day following the delivery thereof to Federal Express, UPS, or another recognized overnight courier service. Notices by pdf email shall be deemed given and effective upon transmission (provided that notice is also given by one of the other methods permitted above). Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other party. Each Member hereby agrees that notices may be given hereunder by the parties' respective counsel, and that if any communication is to be given hereunder by a Member's counsel, such counsel may communicate directly with all principals, as required to comply with the foregoing provisions.

Section 11.2. Governing Law; Exclusive Jurisdiction. This Agreement and the obligations of the Members hereunder shall be construed and enforced in accordance with the laws of the State of Delaware, excluding any conflicts of law rule or principle that might refer such construction to the laws of another state or country. Any dispute arising out of, related to or connected with this Agreement must be brought in the state or federal courts located in Wilmington, Delaware, and the Members agree to submit to the personal jurisdiction of such courts.

Section 11.3. Entire Agreement; Amendments. This Agreement, along with any exhibits, appendices, addendums, schedules, and amendments hereto, encompasses the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous negotiations, understandings and agreements between the parties, whether oral or written with respect thereto. Except as otherwise provided below, no amendments to this Agreement shall be binding upon any Member unless set forth in a document duly executed by such Member. Notwithstanding the foregoing, Carlyle shall have the right to execute any reasonably necessary amendments to this Agreement without the consent or execution by Sponsor if Sponsor is removed as Sponsor of the Company pursuant to the terms of this Agreement; provided that no such amendment shall have an adverse economic effect on Sponsor or decrease its rights or increase its obligations hereunder, subject, however, to the right of the Carlyle under Section 3.3 to admit a new member or members without the approval of Sponsor, so long as Sponsor is not disproportionately diluted as a result of such admission.

Section 11.4. <u>Waiver</u>. No consent or waiver, express or implied, by any Member of any breach or default by any other Member in the performance by the other Member of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Member of the same or any other obligation hereunder. Failure on the part of any Member to complain of any act or to declare any other Member in default, irrespective of how long such failure continues, shall not constitute a waiver of rights hereunder.

Section 11.5. <u>Severability</u>. If any provision of this Agreement or the application thereof to any Person or circumstances shall be invalid or unenforceable to any extent, then the remainder of this Agreement and the application of such provisions to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 11.6. Ownership of Project and Right of Partition. A Member's interest in the Company shall be personal property for all purposes. No Member shall have any right to partition the property owned by the Company.

Section 11.7. <u>Involvement of Members in Certain Proceedings</u>. Should any Member become involved in legal proceedings unrelated to the Company's business in which the Company is required to provide books, records, an accounting, or other information, then such Member shall indemnify the Company and the Property Owner from all expenses incurred in conjunction therewith.

Section 11.8. <u>Use of Names</u>. Sponsor hereby acknowledges and agrees that neither Sponsor nor any Affiliate thereof (other than the Company) shall be entitled to use the name "CRP," "Carlyle," or "Carlyle Realty" or "The Carlyle Group" in any way whatsoever, and Carlyle hereby acknowledges and agrees that neither Carlyle nor any Affiliate thereof (other than the Company) shall be entitled to use the name "Phelan" in any way whatsoever. Notwithstanding the foregoing, each Member shall be entitled to name the other Member herein in a factual manner to the extent reasonably required in any required reporting for the Company or such Member.

Section 11.9. Confidentiality; Press Releases.

(a) Each of the Members shall hold as confidential all information disclosed in connection with the transaction contemplated hereby and concerning the other Member, the Project, each Subsidiary, this Agreement and the transactions contemplated hereby and shall not release any such information to third parties without the prior written consent of the other Member, except (i) any information that was previously or is hereafter publicly disclosed (other than in violation of this Agreement or other confidentiality agreements to which such other Member is a party), (ii) to its members, advisers, underwriters, analysts, employees, affiliates, officers, directors, consultants, lenders, investors, potential lenders and investors, accountants, legal counsel, title companies or other advisors of any of the foregoing, provided that they are advised as to the confidential nature of such information and are instructed to maintain such confidentiality, (iii) to comply with any law, rule, or regulation, (iv) in any legal proceeding between the Members or their Affiliates in connection with this Agreement, and (v) as reasonably required in order to market the Project (or interests in any Subsidiary or the Company) or any portion thereof in accordance with this Agreement. The foregoing shall constitute a modification of any prior

confidentiality agreement that may have been entered into by the parties. The provisions of this subsection shall survive the termination of this Agreement.

- (b) No Member may issue any press release with respect to this Agreement and the transactions contemplated hereby without the prior written consent of the other Member.
- Section 11.10. <u>Interest</u>. No amount charged as interest on loans hereunder shall exceed the maximum rate from time to time allowed by applicable law.
- Section 11.11. Attorneys' Fees. If Carlyle, on the one hand, or Sponsor, on the other hand, brings any action or suit against any other party by reason of any breach of any of the covenants, agreements or provisions of this Agreement or any other claim based upon tort, statute or otherwise, then, in such event, the substantially prevailing party, as determined in such action or suit, shall be entitled to have and recover from the other party or parties all costs and expenses of such action or suit, including, without limitation, reasonable attorneys' fees and expenses resulting therefrom, it being understood and agreed that the determination of the substantially prevailing party shall be included in the matters that are the subject of such action or suit.
- Section 11.12. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when signed by each of the parties hereto and delivered by each of the parties hereto, in person or by facsimile or e-mail pdf, to the other parties hereto.
- Section 11.13. <u>Nonrecourse</u>. Notwithstanding anything to the contrary contained in this Agreement, except as provided in this Agreement, recourse for the payment or performance of the obligations of any Member under the terms of this Agreement shall be limited solely to the Members and no direct or indirect member, manager, shareholder, principal, officer, director, employee, or affiliate of a Member shall have any personal liability for the payment or performance of any obligations under this Agreement.
- Section 11.14. <u>Legal Counsel</u>. Each of the Members acknowledges that Carlyle has been represented by and will continue to be represented by Mayer Brown LLP with respect to the Company, that Sponsor has been represented by and will continue to be represented by in house counsel with respect to the Company, but reserves the right to engage the services of outside counsel, subject to waiver by Carlyle, in its sole discretion, of any conflict (if applicable) with respect to any such outside counsel, and will give written notice to all Members of any such engagement and that either firm also may be engaged now or hereafter by the Company and that such firm's representation of the Company in any capacity shall not preclude such firm from representing its respective Member client in any capacity adverse to any other Member or the Company.

Section 11.15. Non-Confidentiality of Tax Treatment and Tax Structure. Each Member (and each employee, agent, or representative of each Member) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated herein and all materials of any kind (including opinions or other tax analyses) that are provided to the Company or any Member relating to such tax treatment and tax structure except to the extent

maintaining such confidentiality is necessary to comply with any applicable federal or state securities laws.

Section 11.16. <u>Jury Trial Waiver</u>. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH MEMBER HEREBY IRREVOCABLY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING BROUGHT BY ANY OTHER MEMBER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 11.17. <u>No Third-Party Beneficiaries</u>. No provision of this Agreement (including, without limitation, any obligation of any Member to make Capital Contributions) shall be interpreted as bestowing any rights whatsoever upon any third party.

[Signature Page Follows]

Executed effective as of the date above written.

CARLYLE:

CRP SALEM TURNER ROAD MEMBER,

L.L.C., a Delaware limited liability company

Name: Edward Samek Title: Vice President

Address:

c/o The Carlyle Group 1001 Pennsylvania Avenue, N.W. Suite 220 South Washington, D.C. 20004

Attn: USRE Notices

Email: USRE.Notices@carlyle.com

with a copy to:

c/o The Carlyle Group 555 Mission St., Suite 3300 San Francisco, CA 94105

Attn: Rick Plackter

Email: Richard.Plackter@carlyle.com

SPONSOR:

PHELAN-MJD2, LLC, a California limited liability company

By: DeArmey Investments, LLC,

a California limited liability company

its Manager

By:

Title:

Name: Michael Maringer

Address:

c/o Phelan Development

450 Newport Center Drive, Suite 405,

Newport Beach, CA 92660

Attn: Michael DeArmey Email: mdearmey@phelandevco.com

Joinder

The undersigned, for good and valuable consideration, the receipt of which is hereby acknowledged, joins in the execution of this Agreement for purposes of agreeing to be bound by the obligations set forth in Sections 2.10(g), 6.6, 7.2(c), 8.3 and 9.6(b) of this Agreement applicable to Sponsor, which obligations (a) are hereby fully guaranteed by the undersigned and (b) shall be a primary guarantee of timely performance and not of collection. By the undersigned's signature below, the undersigned hereby: (i) absolutely, irrevocably and unconditionally guarantees the full and timely payment of such obligations of Sponsor under the circumstances described in Sections 2.10(g), 6.6, 7.2(c), 8.3 and 9.6(b); (ii) waives diligence, presentment, demand, protest, or notice of any kind whatsoever, any defense based on suretyship principles, any defense based on statute of limitations, as well as any requirement that Carlyle exhaust any right or take any action against Sponsor or any other Person; and (iii) consents to any supplement, amendment or other modification made to this Agreement in accordance with its terms without its consent or approval, other than any supplement, amendment or modification to Sections 2.10(g), 6.6, 7.2(c), 8.3 or 9.6(b) or any supplement, amendment or modification that would extend its personal liability beyond the scope of Sections 2.10(g), 6.6, 7.2(c), 8.3 or 9.6(b). The making of a Member Loan or a Default Capital Contribution to fund an Overrun Contribution shall not be deemed a cure of Sponsor's failure to make such Overrun Contribution or discharge the obligations of the undersigned with respect to such Overrun Contribution, and the undersigned shall additionally guaranty the payment of any and all interest or preferred return, as the case may be, that accrues with respect to such Member Loan or Default Capital Contribution.

SPONSOR CREDIT PARTY:

PHELAN EQUITY, LLC, a California limited

liability company

Name: ____ Title:

Address:

c/o Phelan Development 450 Newport Center Drive, Suite 405, Newport Beach, CA 92660

Attn: Jeffrey Phelan

Email: jphelan@phelandevco.com

EXHIBIT A

OWNERSHIP STRUCTURE OF SPONSOR

[See attached]

EXHIBIT B

BUSINESS PLAN

(see attached)

EXHIBIT B

Business Plan

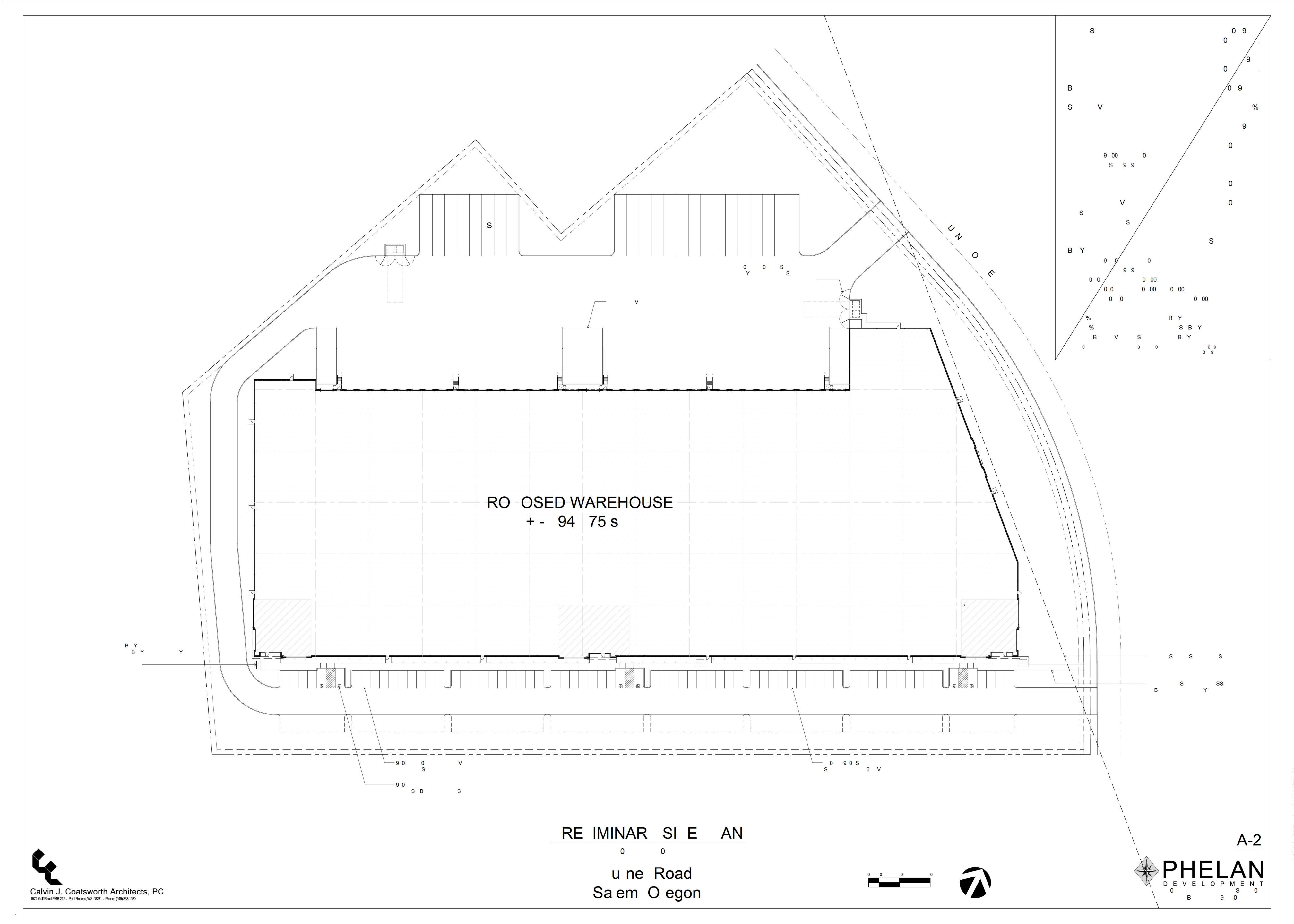
Speculative Development of a fully entitled 10-acre parcel located at Turner Road in Salem, OR. The property is located in the Salem Industrial sub-market. The project is expected to develop one building with an approximate square footage of 194,175 depending on final office configuration.

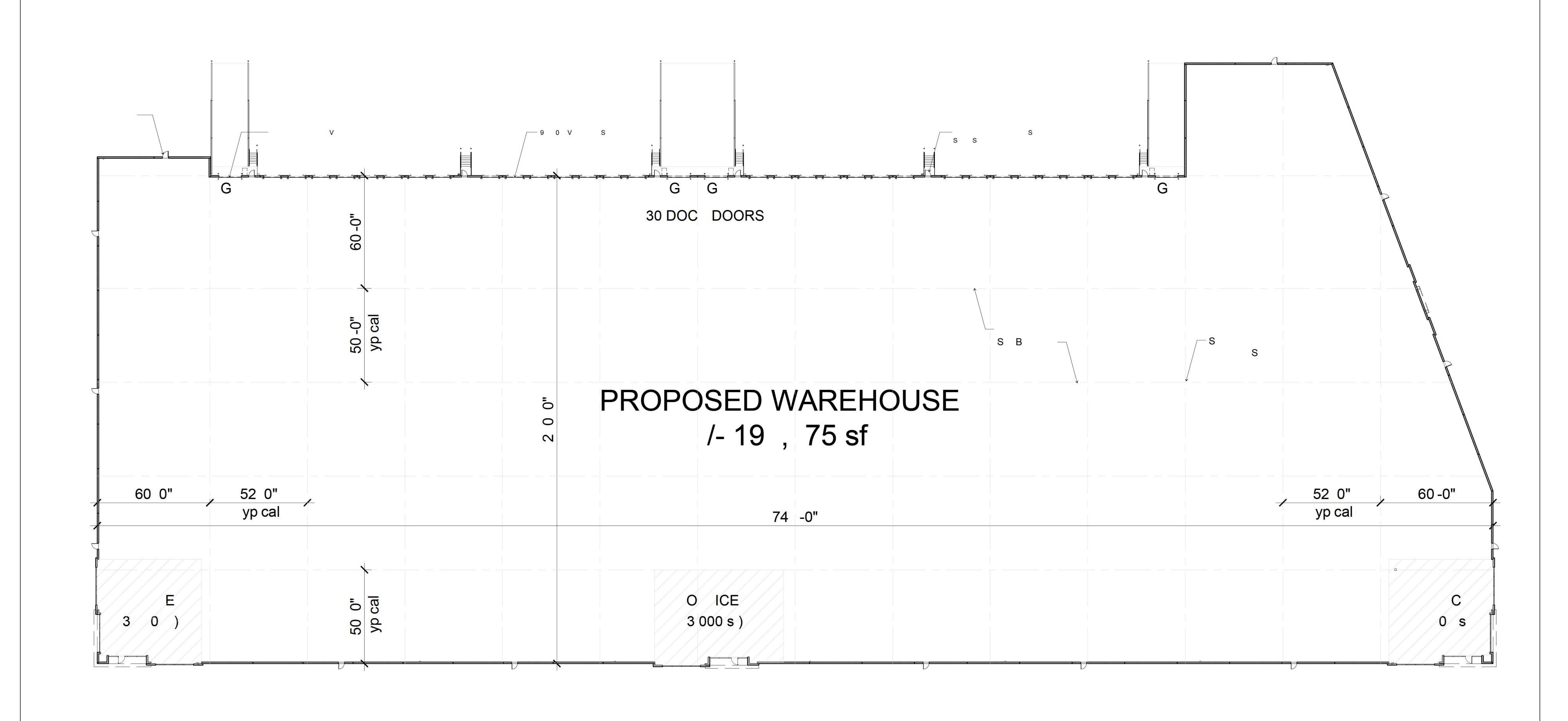
The project is zoned for the proposed use and will be fully entitled after the site/architectural review is completed, which is expected to be completed 7-1-22. We have been through the Site Review process which and are finishing up all entitlement conditions. We expect it to be complete by July 1. Construction is scheduled to start October 1, 2022. We estimate construction to take thirteen (13) months from grading start to completion. Please see attached preliminary schedule for project milestones.

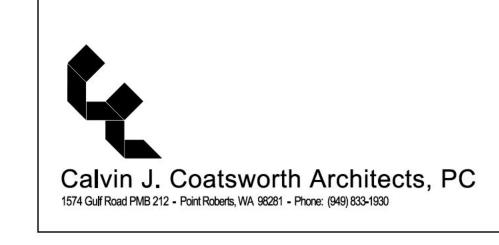
Building A – 194,175sf

The following items are incorporated into this business plan:

- 1. Preliminary Site plan
- 2. Project Pro Forma
- 3. Basis of Design-Building Specs
- 4. ALTA Survey
- 5. Final Map (recorded)



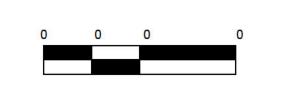


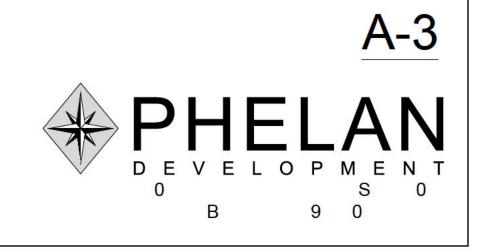


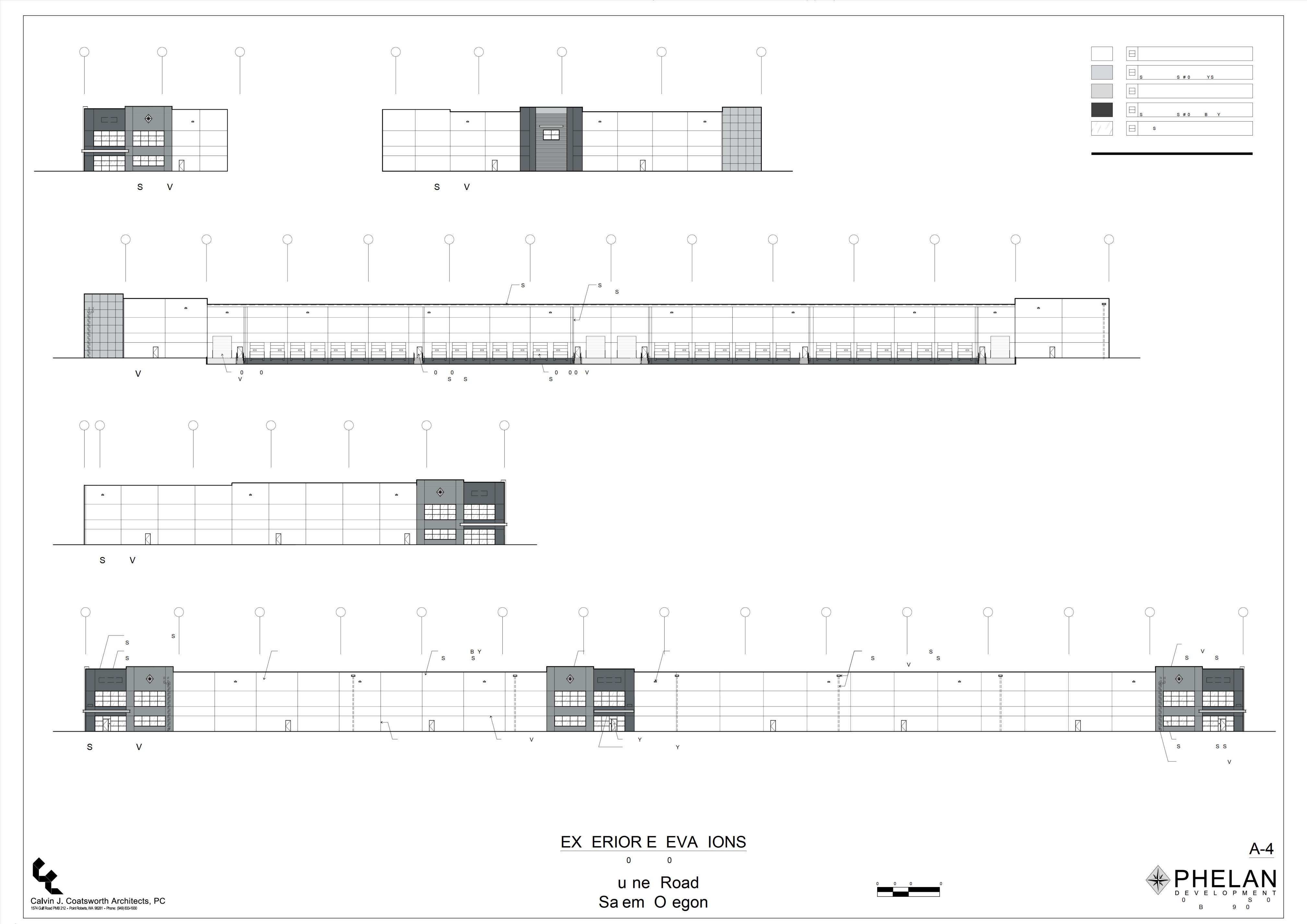
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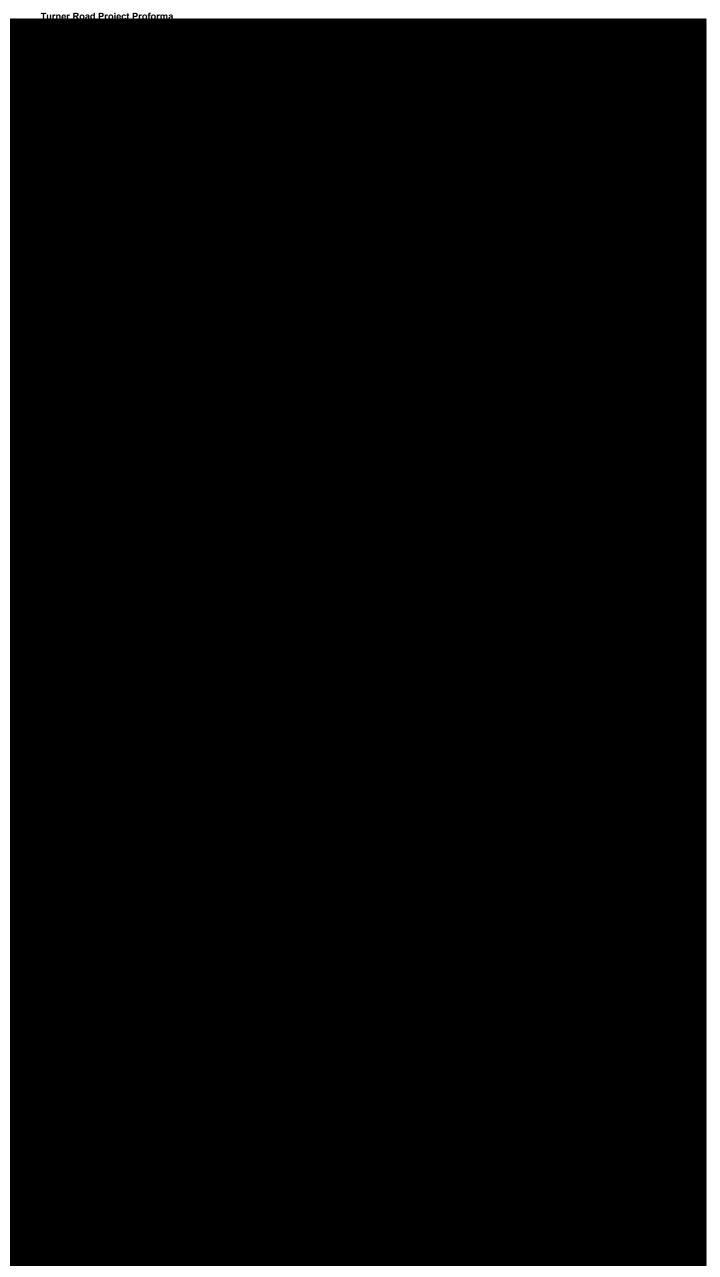
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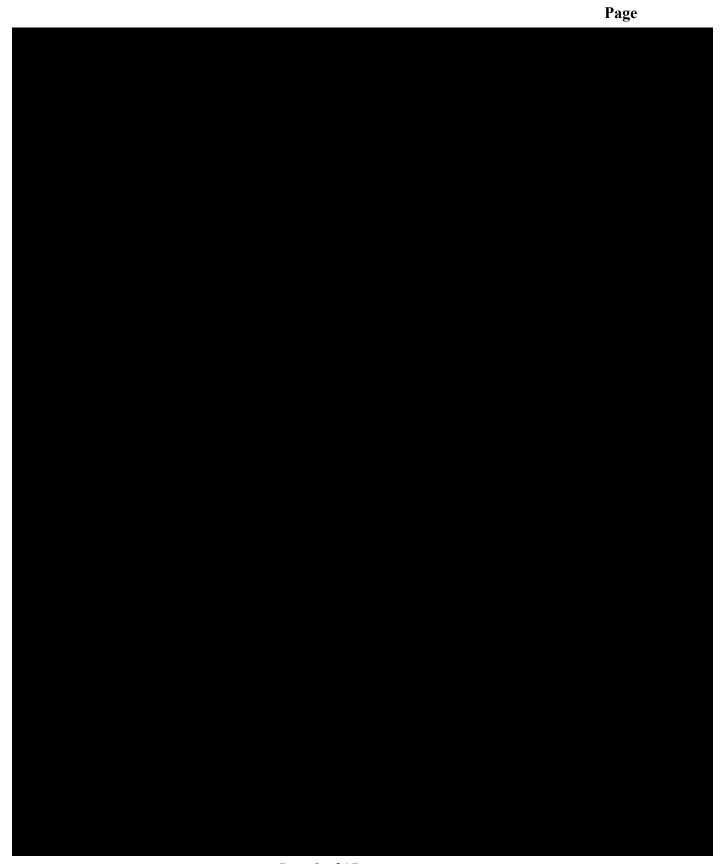
Basis of Design

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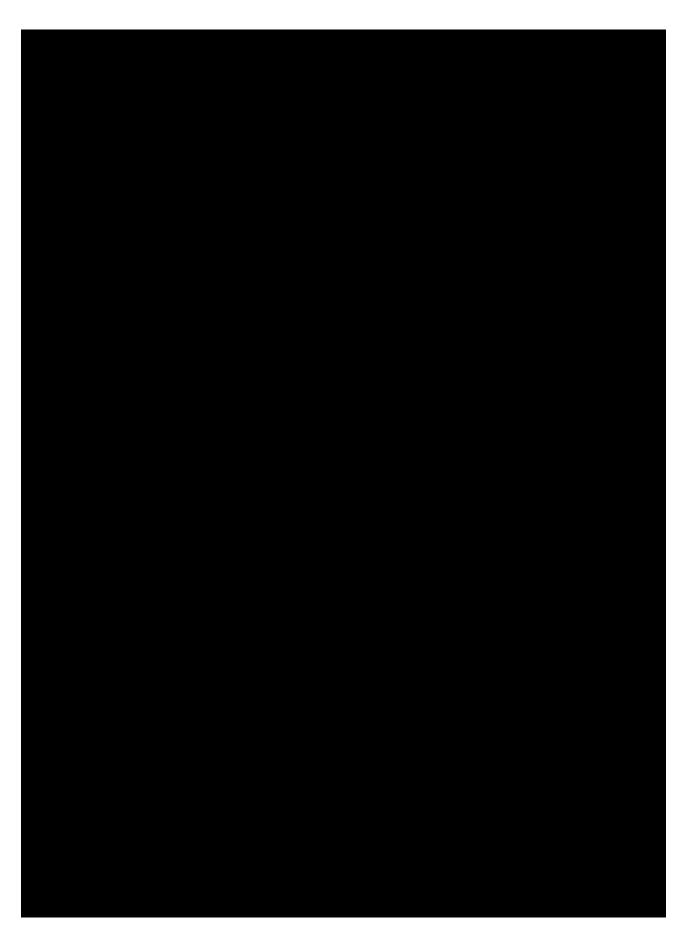
Turner Road Project, Salem, OR

May 20, 2022

TABLE OF CONTENTS





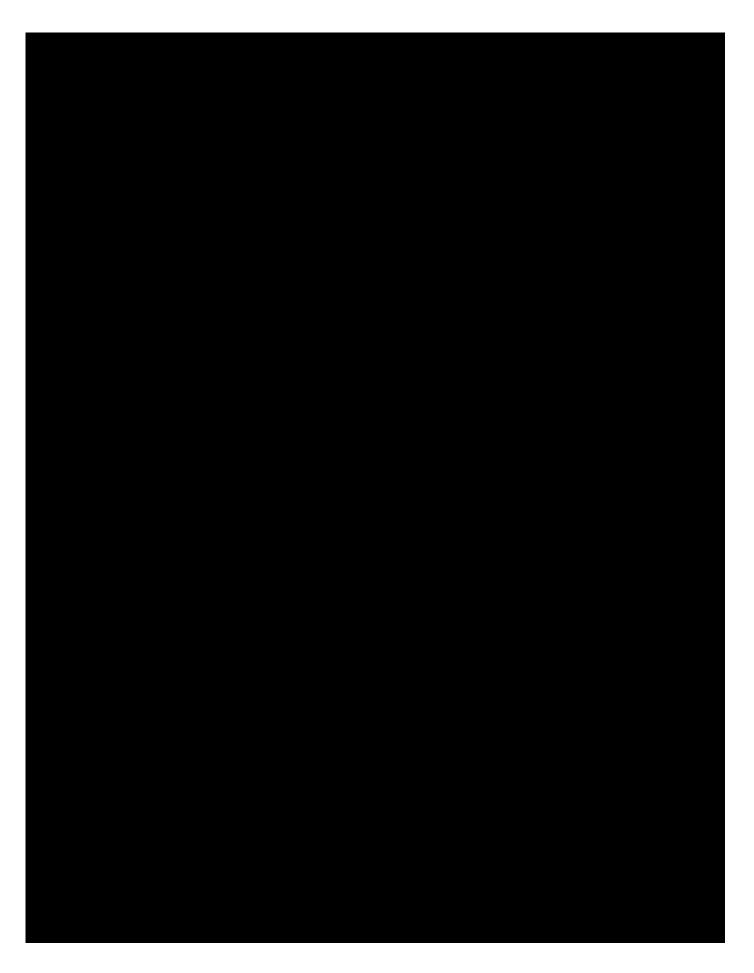


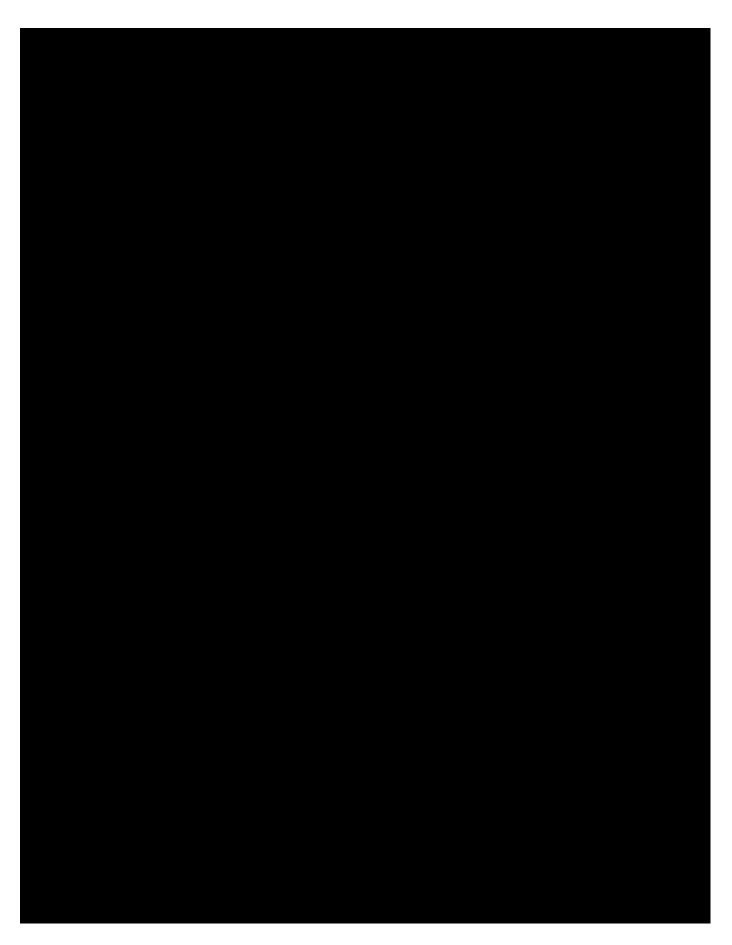


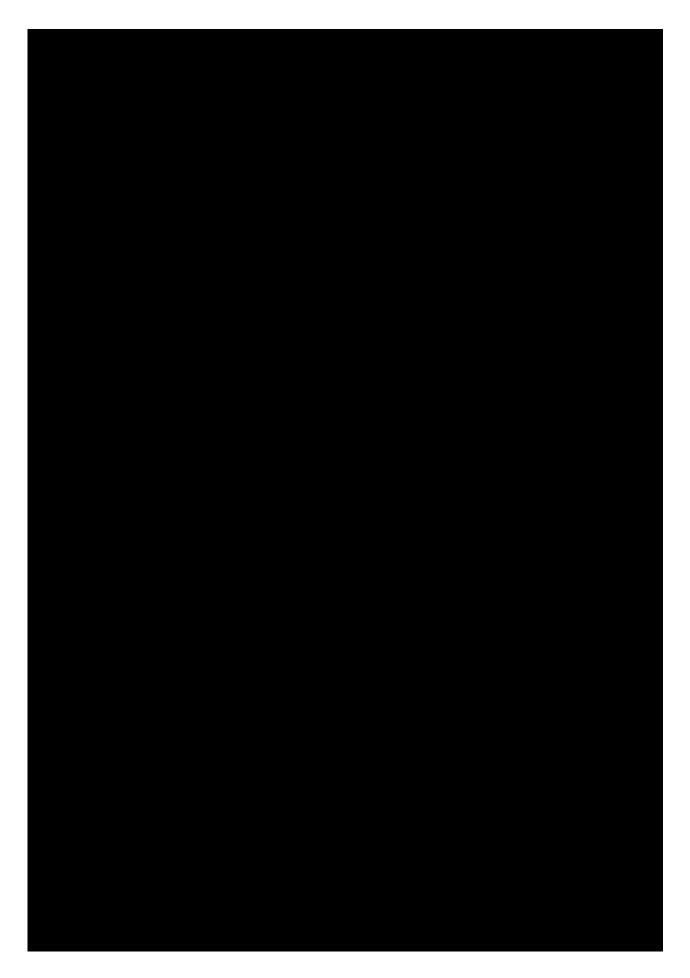


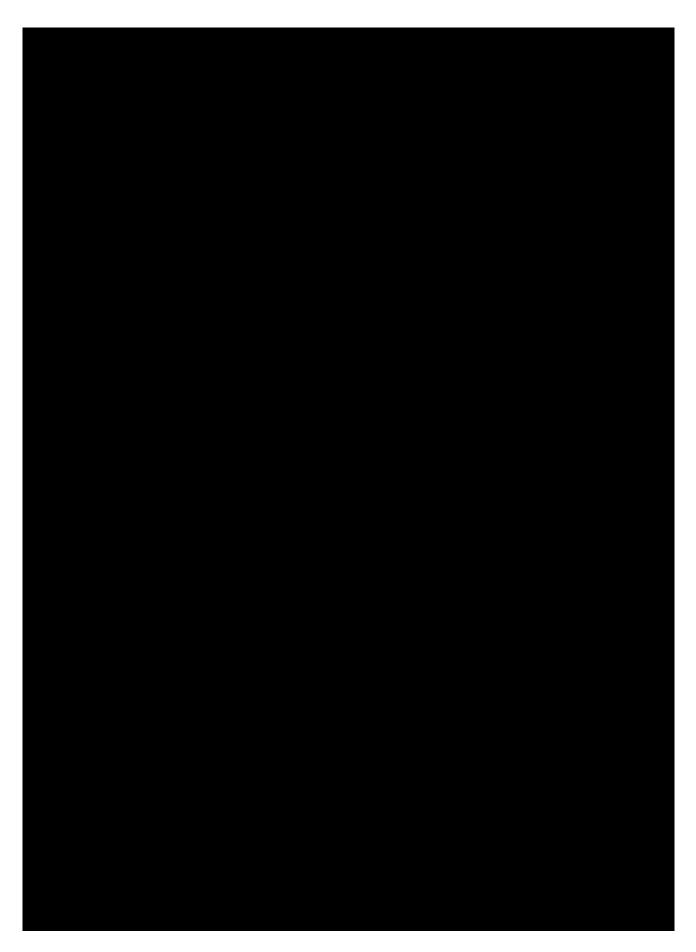


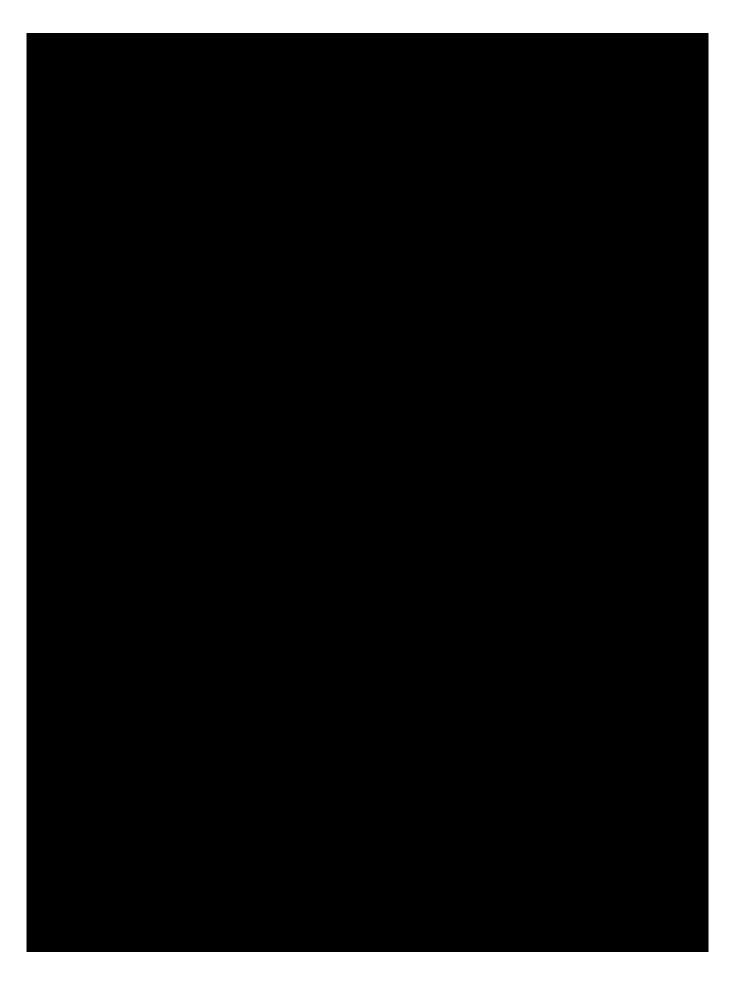


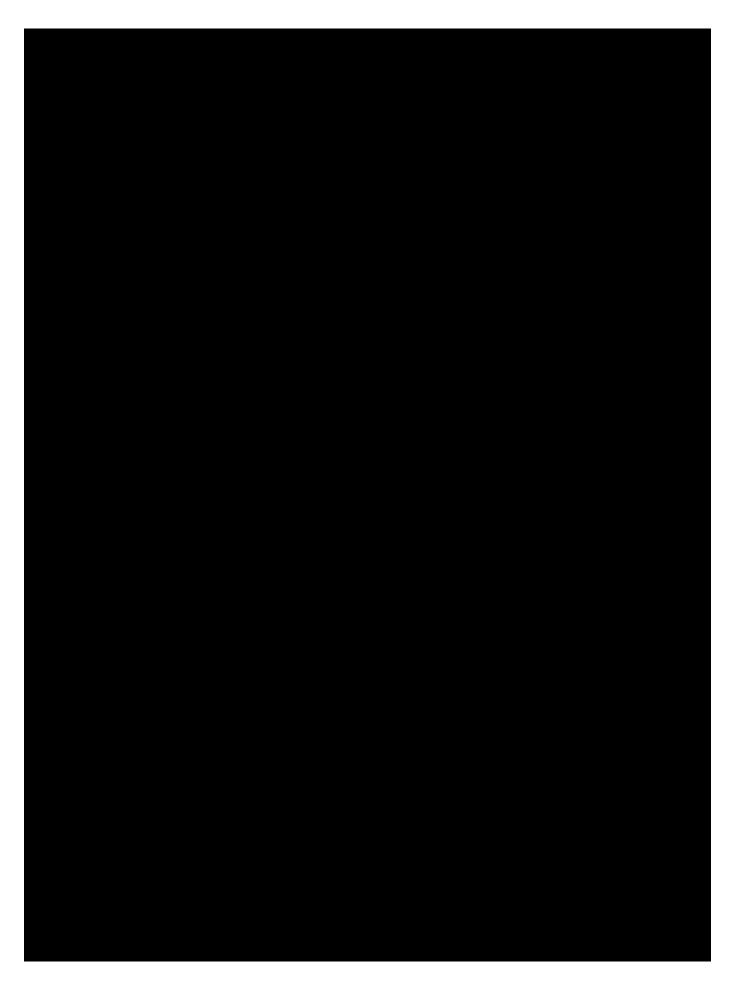


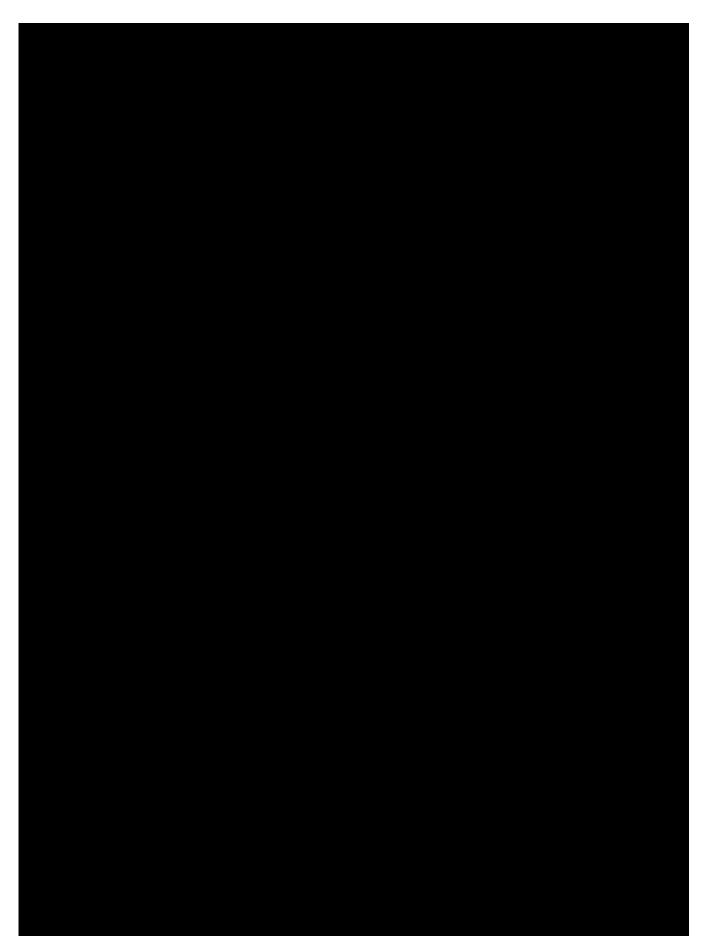












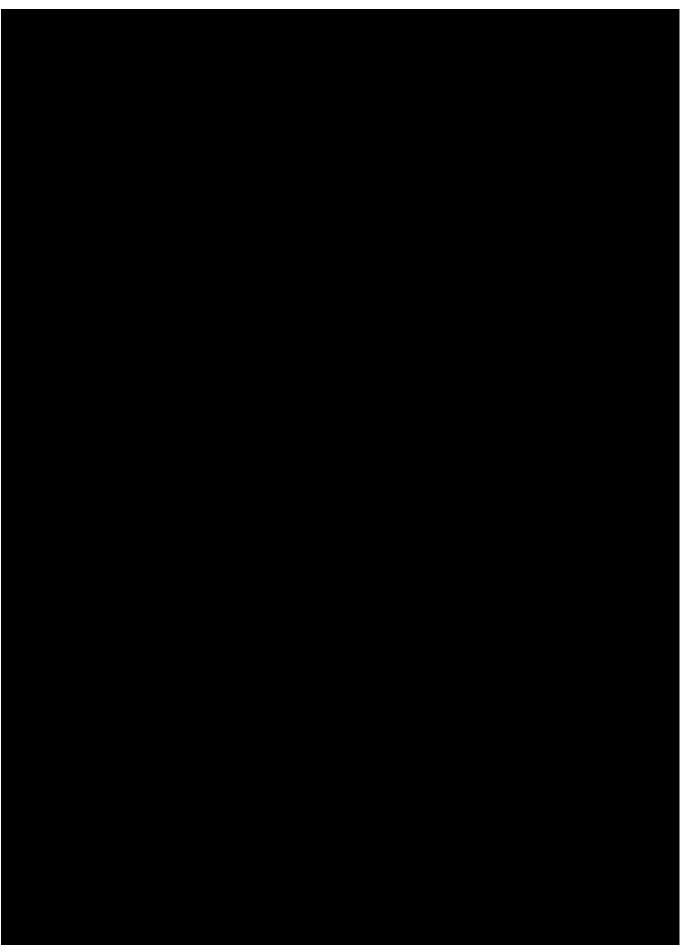


Exhibit A 03/01/22

SCHEDULE OF INSURANCE REQUIREMENTS

SECTION I: INSURANCE REQUIRED TO BE PROVIDED BY CONTRACTOR

The Contractor shall procure and maintain in effect during the term of this Agreement, and as otherwise provided, the insurance coverages described below:

1. Coverage and Limits

- a. Commercial General Liability insurance with limits of no less than: \$1,000,000 each occurrence; \$1,000,000 Personal and Advertising Injury; \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate for claims arising out of Bodily Injury, Property Damage, Premises and Operations, Products and Completed Operations, Independent Contractors, Personal and Advertising Injury and Contractual Liability. Such policy shall not include any XCU exclusions. The Aggregate Limits should apply based upon a per project and/or per location basis. The Commercial General Liability policy shall be written on ISO Form CG 00 01 10 01 or its equivalent. Such policy(ies) must be further endorsed to:
 - i. Include Owner and Development Manager (if applicable) as additional insureds. Include the parties listed in Section 5 below (individually, an "Owner Party" and collectively, the "Owner Parties") as additional insureds for both the ongoing and completed operations of the Contractor. General liability coverage shall be endorsed using ISO additional insured forms CG 2010 07 04 and CG 2037 07 04 or equivalent specifically listing the Owner Parties as additional insureds. Evidence of additional insured endorsements shall be provided to the owner with the certificate of insurance as required by Section 3 below.
 - ii. Stipulate that such insurance is primary and will not seek contribution from any other insurance carried by, or for the benefit of the additional insureds, including all applicable deductibles or retentions.
 - iii. Waive any and all right of subrogation against the Development Manager and all of the Owner Parties.
 - iv. Contain cross liability and severability of interest endorsements, or a separation of insureds provision acceptable to the Owner.
 - v. Provide products and completed operations coverage, extending for a period not less than the later to occur of (i) ten (10) years after final completion of the entire Work or (ii) the applicable statute of repose for the jurisdiction where the Work is located.

Additional insured status for the Owner Parties shall be provided during construction of the project and through the Completed Operations Period of a period not less than the later to occur of (i) ten (10) years after final completion of the entire Work or (ii) the applicable statute of repose for the jurisdiction where the Work is located.

- vi. Provide personal injury coverage including, but not limited to, false arrest, detention or imprisonment or malicious prosecution; libel, slander or defamation of character, invasion of privacy, wrongful eviction or wrongful entry, harassment of any kind and discrimination.
- vii. Provide contractual liability coverage, including indemnification liability;
- viii. Provide coverage for residential construction operations. General liability policies containing exclusions for residential construction, or an exclusion for residential apartment construction, are not acceptable to project owner. Evidence of residential construction coverage shall be included on the certificate of insurance provided to project owner as required by Section 3 below.
- b. Commercial Automobile Policy including liability insurance for claims involving Owned, Non-Owned and Hired vehicles with a limit of no less than \$1,000,000 each accident for Bodily Injury and Property Damage. Such policy must be further endorsed to:
 - i. Name the Development Manager, and Owner Parties as additional insureds.
 - ii. Stipulate that such insurance is primary and is not contributing with, any other insurance carried by, or for the benefit of the additional insureds.
 - iii. Waive any and all right of subrogation against the Development Manager, and all of the Owner Parties.
 - iv. Include, when required by the Motor Carrier Act of 1980, a MCS-90 endorsement applicable to liability arising out of the transportation of hazardous materials or waste.
- c. Statutory Workers' Compensation and Employer's Liability with limits of no less than \$1,000,000 each accident for bodily injury by accident; \$1,000,000 policy limit for bodily injury by disease; and \$1,000,000 each employee for bodily injury by disease. Such policy must be further endorsed to:
 - i. Waive any and all right of subrogation against the Development Manager, and all of the Owner Parties

- d. Umbrella Excess Liability with limits of no less than \$25,000,000 each occurrence and \$25,000,000 aggregate providing following form excess over the General Liability, Automobile Liability and Employer's Liability policies described above. This insurance shall by its following form excess provisions or endorsement:
 - i. Protect the Owner, Development Manager (if applicable), and Owner Parties as additional insureds for both ongoing and completed operations of Contractor.
 - ii. Stipulate that such insurance is primary and is not contributing with, any other insurance carried by, or for the benefit of the additional insureds.
 - iii. Waive any and all right of subrogation against all of the Development Manager, and Owner Parties.
 - iv. Provide products and completed operations liability coverage, extending for a period not less than the later to occur of (i) ten (10) years after final completion of the entire Work or (ii) the applicable statute of repose for the jurisdiction where the Work is located. Additional insured status for the Owner Parties shall be provided during construction of the project and through the Completed Operations Period of a period not less than the later to occur of (i) ten (10) years after final completion of the entire Work or (ii) the applicable statute of repose for the jurisdiction where the Work is located.
- e. Crime or Fidelity Bond in the amount of \$1,000,000, including Wire Transfer Fraud coverage shall be maintained which insures against losses resulting from dishonest or fraudulent acts committed by any employees or agents of the Contractor.
- f. Pollution Liability Insurance for any and all claims for damages due to pollution incidents arising out of construction operations of the project in the amount of not less than \$2,000,000 per occurrence/aggregate. This insurance shall be maintained during the course of construction of the project and completed operations coverage for a period not less than the later to occur of (i) six (6) years after final completion of the entire Work or (ii) the applicable statute of repose for the jurisdiction where the Work is located.
 - i. Name the Owner Parties as additional insureds for both the ongoing and completed operations of the Contractor.
 - ii. Stipulate that such insurance is primary and is not contributing with, any other insurance carried by, or for the benefit of the additional insureds.
 - iii. Waive any and all right of subrogation against all of the Development Manager, and Owner Parties.

- iv. Provide coverage for mold, fungi, and bacteria related claims arising out of the construction of the project.
- v. Coverage shall be written on an occurrence basis. If occurrence based coverage forms are not available to the Contractor and coverage is written on a claims made policy form, the policy retroactive date is to be on or before the first date of operations are performed by the Owner Parties. Claims made coverage will include a six (6) year extended reporting period after final completion of the work.
- vi. Contactor is required to notify the Owner Parties of any claim or claims that erode the available aggregate limit by fifty percent (50%) or more. Owner Parties reserve the ability to require contractor to purchase additional coverage limits to restore the available limit of insurance to the amounts required in section (e) above.
- g. Professional Liability insurance for any and all claims for bodily injury, property damage, and/or financial damages as a result of wrongful acts arising out of the performance or failure to perform professional services in the amount not less than \$2,000,000 each claim/aggregate. The definition of professional services must be appropriate to include all professional services performed by or on behalf of the Contractor for the Owner Parties. For conventional owner/contractor relationships where there are no design services contemplated in the Contractor's scope of work, professional liability insurance of the Contractor is not required.
 - i. If written on a claims made policy form, the policy retroactive date is to be on or before the first date of professional services provided by Contractor to the Owner Parties.
 - ii. Contractor is required to maintain professional liability, when required, and shall cause all subcontractors that are providing Design Services to maintain professional liability coverage for the duration of the project and maintain coverage (or purchase an extended reporting period if coverage is not renewed) for a period not less than the later to occur of (i) Six (6) years after final completion of the entire Work or (ii) the applicable statute of repose for the jurisdiction where the Work is located.
 - iii. Contactor is required to notify the Owner Parties of any claim or claims that erode the available aggregate limit by fifty percent (50%) or more. Owner Parties reserve the ability to require contractor to purchase additional coverage limits to restore the available limit of insurance to the amounts required in section (f) above.

2. General Insurance Requirements

- a. Each insurance policy required under this section must be written through a carrier authorized to conduct business in the jurisdiction in which the project is located and such carrier must maintain an A.M. Best rating of no less than A-, VIII.
- b. The Contractor is solely responsible for the payment of any and all deductibles or retentions under all of the insurance required herein unless the Owner specifically provides a written waiver to the Contractor.
- c. All Subcontractors and suppliers shall be required to meet the insurance requirements contained in section 1 above, except that the requirements for umbrella excess liability insurance shall be \$2,000,000 and the requirements for Pollution Liability Insurance shall no less than \$2,000,000 per occurrence and \$2,000,000 in the general aggregate, as applicable to its work and/or services; provided, however, that if a Subcontractor it wishes to retain is unable to obtain such requisite insurance coverages, the Contractor will obtain the Owner's prior written approval of any deviations in such insurance coverages prior to entering into a subcontract with such Subcontractor, which approval shall not be unreasonably withheld. Notwithstanding anything to the contrary contained herein, in no event shall any high hazard subcontractors carry less than a \$5,000,000 per occurrence/general aggregate per project umbrella or excess liability insurance policy. High Hazard Subcontractors including but not limited to the following trades: concrete, steel erection, elevator, exterior wall, roofing, masonry, electrical, plumbing, and HVAC.
- d. The policies shall be endorsed to require the carrier(s) to notify the Owner at least thirty (30) days prior to any cancellation or non-renewal of any required insurance (ten (10) days notice for cancellation due to non-payment of premium). No policies shall be written with deductibles in excess of \$25,000 unless authorized in writing in advance by the Owner.
- e. All certificates and policies of insurance and all notices required pursuant to this Exhibit must be sent to the attention of:
- f. Receipt and review by the Owner or any other Owner Party of any copies of insurance policies or insurance certificates, or failure to request such evidence of insurance, shall not relieve the Contractor of its obligation to comply with the insurance provisions of the Contract.

g. The insurance provisions of the Contract shall not be construed as a limitation on the Contractor's responsibilities and liabilities pursuant to the terms and conditions of the Contract, including, but not limited to, liability for claims in excess of the insurance limits and coverages set forth herein, unless specifically provided otherwise in the Contract.

3. Evidence of Insurance

Simultaneously with execution of the Contract, the Contractor shall file with the Owner one (1) valid/original certificate of insurance, including the required amendatory riders and endorsements, evidencing that all required insurance is in force, executed by an authorized representative of the insurance company. If specifically requested by Owner, the Contractor shall deliver to the Owner certified copies of the insurance policies required to be maintained pursuant to this Exhibit within ten (10) days of the Owner's request. If specifically requested by Owner, the Contractor shall deliver to the Owner within seven (7) days of the Owner's request, a certificate of the Contractor or its insurance agent stating that all premiums due with respect to such required policies have been paid currently and that such policies are in full force and effect, and if required, a copy of the receipt for the payment of premiums. Not later than ten (10) days prior to the expiration date of each of the required policies, the Contractor shall deliver to the Owner a certificate of insurance evidencing any and all renewal of coverage as required herein, together with evidence of payment of premium satisfactory to the Owner.

4. Tools and Equipment

The Contractor and its Subcontractors will be responsible for insuring their own tools and equipment other than those specifically insured by the Builder's Risk Insurance Policy maintained by the Owner. The contractor and its subcontractors at its sole expense shall furnish to Owner and Development Manager, Certificates of Insurance and other required documentation evidencing the following coverage: "All Risk" Property Insurance/Contractor Equipment Insurance on all equipment and tools intended to be used or become a temporary part of the project site.

5. Additional Insureds ("Owner Parties")

The following entities shall be included in the definition of "Owner Parties": The Owner, the Owner's lender(s), and all affiliated entities and each of their respective members, managers, partners, agents, officers, directors, shareholders, and employees. In addition, the Owner may notify the Contractor in writing of other entities it wishes to include as additional insureds. Upon such notification, the Contractor or Subcontractor, as applicable, shall name such entities as additional insureds and provide evidence of coverage to the Owner within five (5) working days of such request.

The Owner shall procure and maintain a Builder's Risk Insurance Policy providing property insurance upon the Work on a replacement cost basis. Such insurance shall be written on a completed value, "all risk" or "special causes of loss" form, shall conform to the insurance requirements of Owner's lender and shall insure the interests of the Owner, the Contractor, and all Subcontractors in the Work as their interests may appear. The Contractor shall pay all deductibles/self-insured retentions in connection with this insurance which shall be reimbursable as Cost of the Work. However, if the Contractor is responsible for the loss, the Contractor shall pay for the deductible and not seek reimbursement from Owner. The Contractor has the right to seek reimbursement from the responsible subcontractor(s) or subsubcontractor(s).

Any loss insured under the Builder's Risk Policy shall be adjusted and settled by the Owner, on behalf of the insureds. Any resulting settlement shall be made payable to the Owner and the Lender as "Loss Payee", on behalf of the insureds (as their interests may appear).

The Owner, Contractor and Development Manager (if applicable) waive all rights against (i) each other and any of their agents, consultants and employees, each of the other, and (2) contractors and subcontractors of every tier, the Architect, Architect's consultants, Lender, Owner's Representatives, Owner's separate contractors, if any, and any of their subcontractors, subsubcontractors, agents, consultants, and employees, for damages caused by fire or other causes of loss to the extent of actual recovery of any insurance proceeds under the builder's risk insurance obtained pursuant to this contract (but not including any deductible amount). The builder's risk policy shall provide such waivers of subrogation by endorsement or otherwise.

Unless otherwise agreed in writing, Owner shall secure and maintain builder's risk coverage until project completion and final acceptance and release of responsibility by contractor. The policy shall include the following:

a. Required limits:

i. Per project limit equivalent to one hundred percent (100%) of the replacement cost of the project with coinsurance waived, or the coverage shall contain an agreed amount endorsement acceptable to the Owner

b. Specific coverage items:

- i. Coverage written on an "All-Risk" or equivalent policy form
- ii. Coverage written to include interests of Owner, its affiliated or subsidiary companies, the contractor, and subcontractors of every tier. Owner shall be the First Named Insured.
- iii. Flood, earthquake, and mechanical breakdown perils included with sublimits that are typically available in the insurance marketplace for similar type projects.
- iv. Coverage for materials in transit or temporary storage \$500,000
- v. Policy per occurrence deductible "all other perils" not to exceed \$25,000, except water damage which shall not exceed \$100,000.



- vi. Wind and hail, flood, and earth movement deductibles shall be equal to those that are typically available for similar projects.
- vii. Policy shall be endorsed to waive any rights of subrogation against owner, its affiliated and subsidiary companies, contractor, and their respective officers, directors, employees, agents, and assigns.
- viii. Policy shall include lost rental income or business interruption coverage for 12 months. Owner shall provide the lost revenue amount which shall be based on lost revenue.
- ix. Policy shall be non-cancellable through completion of the project with an extension provision for a Pro-Rated Premium.
- x. Policy shall contain a minimum sublimit of \$100,000 limit for claim preparation expense

PRELIMINARY REPORT INFORMATION (#) EXCEPTION NUMBER PER PRELIMINARY REPORT

THE PROPERTY DESCRIPTION AND EXCEPTIONS ARE A PRELIMINARY REPORT PREPARED BY FIDELITY NATIONAL TITLE COMPANY OF OREGON WITH ORDER NO. 60222109503 AND AN EFFECTIVE DATE OF AUGUST 27, 2021 AT 08:00 AM.

GENERAL EXCEPTIONS 1-5 AND SPECIFIC ITEMS AND EXCEPTIONS 6, 7, 12-14 AND THOSE NOTED AS SUCH BELOW ARE NOT PLOTTABLE.

- RIGHTS OF THE PUBLIC TO ANY PORTION OF THE LAND LYING WITHIN STREETS, ROADS AND HIGHWAYS.
- EASEMENT(S) FOR THE PURPOSE(S) SHOWN BELOW AND RIGHTS INCIDENTAL THERETO, AS GRANTED IN A DOCUMENT:

DRAIN OR SEWER PIPELINE RECORDING DATE: MAY 24, 1949 RECORDING NO.: VOLUME 404, PAGE 307 SEE DOCUMENT FOR SPECIFICS

SURVEYOR'S NOTE: THE DOCUMENT GRANTS AN EASEMENT FOR A SEWER LINE CROSSING THE PROPERTY. THE GRANT CONTAINS A SUNSET CLAUSE STATING THAT RIGHTS OF THE EASEMENT SHALL REVERT TO THE GRANTOR IF THE LINE IS ABANDONED. THE CITY OF SALEM SHOWS THE SEWER LINE AS ABANDONED ON THEIR ON-LINE UTILITY MAPS. A REPLACEMENT LINE WAS CONSTRUCTED IN TURNER ROAD SE IN 1997. IT IS THE SURVEYOR'S OPINION THAT THIS EASEMENT NO LONGER BURDENS THE PROPERTY. IT IS SHOWN AT THE REQUEST OF THE CLIENT.

(10) EASEMENT(S) FOR THE PURPOSE(S) SHOWN BELOW AND RIGHTS INCIDENTAL THERETO, AS GRANTED IN A DOCUMENT:

PURPOSE: WATER PIPELINE RECORDING DATE: APRIL 27, 2000 RECORDING NO.: REEL 1686, PAGE 132

PORTION ADJACENT TO TURNER ROAD SE

(11) EASEMENT(S) FOR THE PURPOSE(S) SHOWN BELOW AND RIGHTS INCIDENTAL THERETO, AS GRANTED IN A DOCUMENT:

TELECOMMUNICATIONS CABLE SYSTEM RECORDING DATE: SEPTEMBER 10, 2013 RECORDING NO.: REEL 3542, PAGE 204

PORTION ADJACENT TO UNION PACIFIC RAILROAD RIGHT OF WAY

<u>SURVEYOR'S NOTE</u>: THE DOCUMENT DOES NOT CONTAIN A PLOTTABLE LOCATION OF THE EASEMENT, AND IS NOT SHOWN. THE DOCUMENT INDICATES THAT THE EASEMENT IS 20 FEET WIDE CENTERED ON TELECOMMUNICATION LINES EXISTING IN 2012, SEE THE DOCUMENT FOR PARTICULARS.

PROPERTY DESCRIPTION

BEGINNING ON THE NORTHEASTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY AT A POINT WHICH IS 1800.20 FEET SOUTH 89° 15' EAST AND 1124.95 FEET NORTH 21° 52' WEST AND 776.30 FEET NORTH 25° 03' WEST AND 638.20 FEET NORTH 32° 01' WEST AND 508.40 FEET NORTH 37" 39' WEST FROM THE SOUTHWEST CORNER OF THE JOHN BAUM DONATION LAND CLAIM IN TOWNSHIP 8 SOUTH, RANGE 2 WEST OF THE WILLAMETTE MERIDIAN IN MARION COUNTY, OREGON; THENCE NORTH 20° 26' EAST, 272.75 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF TURNER ROAD; THENCE SOUTH 69° 34' EAST ALONG THE SOUTHWESTERLY LINE OF TURNER ROAD, 971.10 FEET TO THE P.C. OF A 542.96 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE (THE CHORD OF WHICH BEARS SOUTH 48° 31' EAST, 390.04 FEET); A DISTANCE OF 398.85 FEET TO THE P.T. OF SAID CURVE; THENCE NORTH 62° 32' EAST, 30.00 FEET TO A POINT IN THE CENTER OF SAID TURNER ROAD; THENCE SOUTH 27° 28' EAST ALONG THE CENTER OF SAID TURNER ROAD, 93.00 FEET; THENCE SOUTH 62* 32'WEST, 888.90 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID RAILROAD RIGHT OF WAY; THENCE NORTHWESTERLY ALONG THE SAID RIGHT OF WAY LINE, 1005.45 FEET TO THE PLACE OF BEGINNING.

SAVE AND EXCEPT THE FOLLOWING, WHICH IS NOT HEREBY CONVEYED:

BEGINNING ON THE EASTERLY LINE OF THE SOUTHERN PACIFIC COMPANY RAILROAD RIGHT-OF-WAY AT A POINT WHICH IS 1800.20 FEET SOUTH 89° 15' EAST AND 1124.95 FEET NORTH 21° 52' WEST AND 776.30 FEET NORTH 25° 03' WEST AND 638.20 FEET NORTH 32° 01' WEST FROM THE SOUTHWEST CORNER OF THE JOHN BAUM DONATION LAND CLAIM IN TOWNSHIP 8 SOUTH, RANGE 2 WEST OF THE WILLAMETTE MERIDIAN IN MARION COUNTY, OREGON; THENCE NORTH 37° 39' WEST ALONG THE EASTERLY LINE OF SAID RAILROAD RIGHT-OF-WAY 508.40 FEET; THENCE NORTH 20' 26' EAST, 272.75 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF TURNER ROAD; THENCE SOUTH 69° 34' EAST ALONG THE SOUTHWESTERLY LINE OF SAID TURNER ROAD, A DISTANCE OF 686.55 FEET; THENCE SOUTH 2° 50' WEST A DISTANCE OF 245.35 FEET; THENCE NORTH 69' 34' WEST, 123.55 FEET; THENCE SOUTH 21' 50' WEST, 377.57 FEET TO THE EASTERLY LINE OF SOUTHERN PACIFIC COMPANY RAILROAD; THENCE NORTH 34° 37' 50" WEST ALONG SAID RIGHT-OF-WAY LINE 141.80 FEET TO THE PLACE OF BEGINNING.

BOUNDARY RESOLUTION

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE SOUTHERLY TANGENT ON THE WESTERLY RIGHT-OF-WAY LINE OF TURNER ROAD SE BETWEEN MONUMENTS (100), (101) AND (102) HOLDING THE RECORD BEARING PER SURVEY NUMBER 37285, MARION COUNTY SURVEY RECORDS.

THE NORTHERLY TANGENT ON THE WESTERLY RIGHT-OF-WAY LINE OF TURNER ROAD SE WAS ESTABLISHED BY HOLDING MONUMENTS (104). (106) AND (112) THIS LINE WAS THEN OFFSET 30.00 FEET NORTHEASTERLY TO ESTABLISH THE NORTHERLY CENTERLINE TANGENT. THE SOUTHERLY TANGENT ON THE WESTERLY RIGHT-OF-WAY LINE OF TURNER ROAD SE WAS ESTABLISHED BY HOLDING MONUMENTS (100), (101) AND 102 THIS LINE WAS THEN OFFSET 39.00 FEET EASTERLY TO ESTABLISH THE SOUTHERLY CENTERLINE TANGENT. RECORD CURVE INFORMATION WAS USED BETWEEN THE NORTHERLY AND SOUTHERLY TANGENTS TO ESTABLISH THE CENTERLINE OF TURNER ROAD SE. SAID CENTERLINE WAS THEN OFFSET THE RECORD DISTANCE OF 30.00 FEET SOUTHWESTERLY TO ESTABLISH THE EASTERLY BOUNDARY OF THE SURVEYED PROPERTY.

THE SOUTHERLY BOUNDARY OF THE SURVEYED PROPERTY WAS ESTABLISHED BY HOLDING MONUMENT (107) WITH THE RECORD DISTANCE OF 404.70 FEET NORTHERLY FROM MONUMENT 100 PER SURVEY NUMBER 22021.

THE WESTERLY BOUNDARY WAS ESTABLISHED HOLDING MONUMENT 107 AND 111. THE WESTERLY PORTION OF THE NORTHERLY BOUNDARY WAS ESTABLISHED HOLDING MONUMENTS (108), (109), (111) AND (112) FOR THE SOUTHERLY LINE OF REEL 3583, PAGE 278. A PARALLEL LINE TO THE SOUTHERLY LINE OF SAID REEL 3583, PAGE 278 WAS HELD FROM MONUMENT 104 SOUTHERLY THE RECORD DISTANCE OF 245.35 FEET TO ESTABLISH THE EASTERLY PORTION OF THE NORTHERLY BOUNDARY. A LINE FROM THE END OF THIS LINE TO MONUMENT (109) WAS HELD TO ESTABLISH THE REMAINDER OF THE NORTHERLY BOUNDARY.

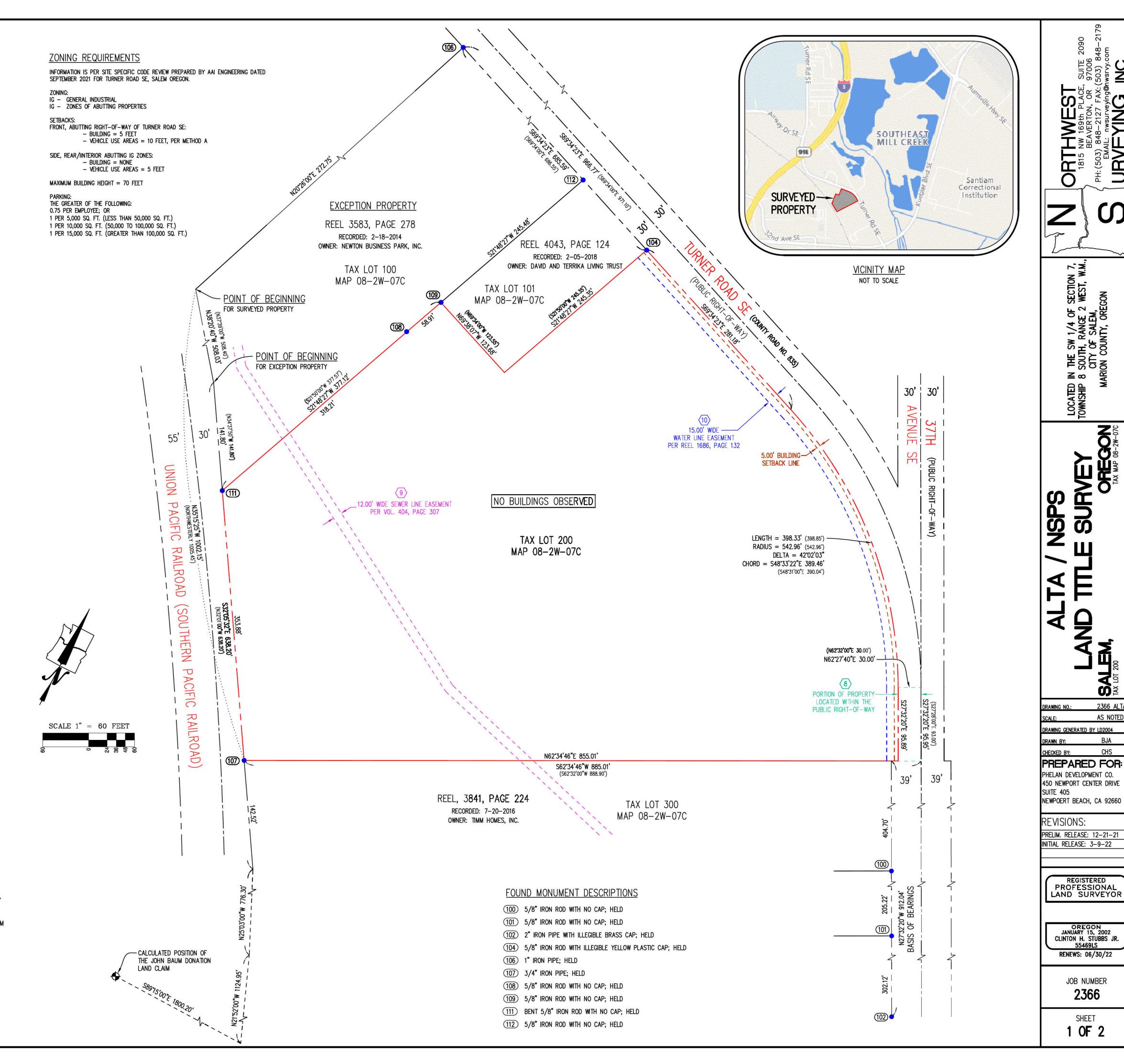
SURVEYOR'S CERTIFICATION

TO PHELAN DEVELOPMENT COMPANY; CRP/PDC SALEM TURNER ROAD OWNER, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY; AND FIDELITY NATIONAL TITLE COMPANY OF OREGON:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2-5, 6(a), 6(b), 8, 11(b), 13, 14, 16 AND 17 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON DECEMBER 16,

CLINTON H. STUBBS JR. OREGON P.L.S. NO. 55469

DATE OF PLAT OR MAP:



2366 ALTA

AS NOTED

BJA

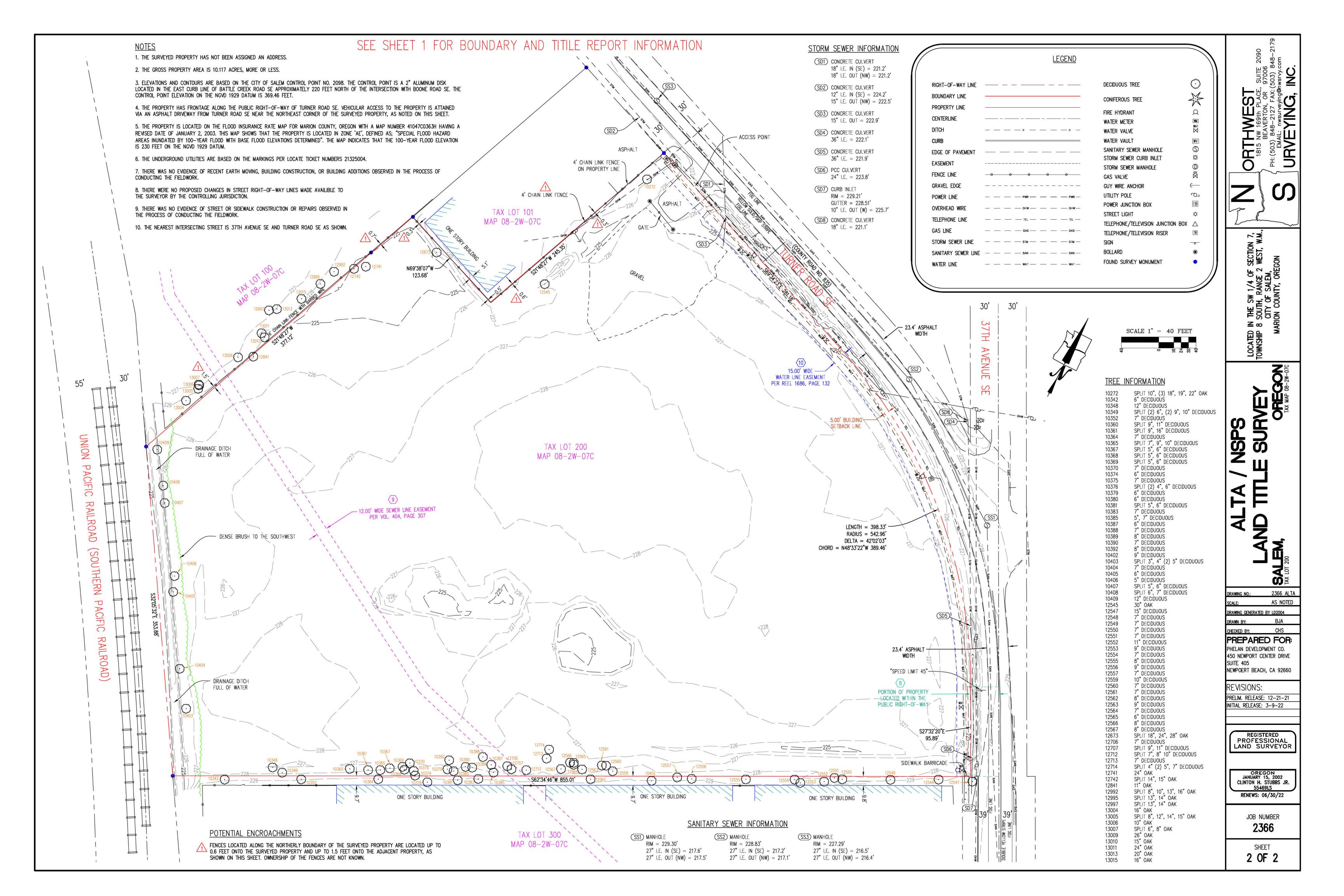


EXHIBIT C

PRE-DEVELOPMENT COSTS BUDGET

(see attached)



EXHIBIT D

DEVELOPER SERVICES

Sponsor shall oversee the development and construction of the Project through Completion as provided in <u>Section 4.1(b)</u>, including, but not limited to, the following:

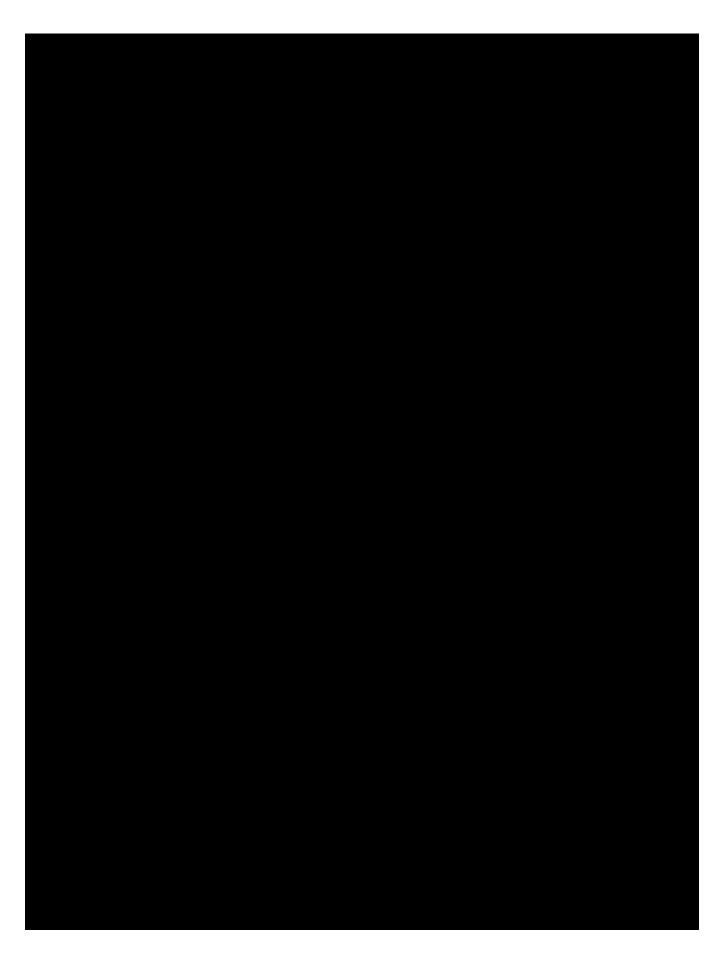
1. <u>Design and Engineering</u>. Sponsor shall solicit, obtain, or assist in obtaining, for the Company's benefit, all topographic and other surveys and all engineering studies (including, without limitation, soil tests and environmental assessments) as may be necessary or appropriate for the proper, efficient and prudent development and construction of the Project. Sponsor shall advise and assist the Company in selecting and contracting with, to the extent necessary for the Project, and once they are engaged, Sponsor shall supervise the Architect, a registered surveyor, civil engineer, soil testing engineer, environmental engineer, landscape architect and all other appropriate consultants and professionals for the Project. Sponsor shall assist the Company in negotiating appropriate contracts with all such professionals

Such design and engineering services may include:

- 1.1 site-planning and engineering, including subdivision of the property, layout and location of the buildings, together with all roadways, driveways and parking areas, exterior lighting and signage, utility lines, easements, irrigation systems, drainage systems and other amenities to be developed on the property;
- 1.2 landscape planning, including planning for all landscaping and tree planting required to provide a pleasing building site and to conform with applicable governmental requirements, ordinances or conditions;
- 1.3 development of complete architectural, structural, mechanical and electrical designs for the development, construction and operation of the Project;
- 1.4 development of complete construction documents and specifications for the development, construction and operation of the Project in conformity with applicable building codes and ordinances; and
- 1.5 interior design construction documents for interior finishes, floor and wall coverings, fixtures and color schemes to be installed in the Project.
- 2. <u>Change Orders.</u> Sponsor will recommend necessary, desirable, or monetarily beneficial changes to the Project Architect and the Company and review and advise the Company concerning requests for changes.
- 3. <u>Certificates, Permits and Licenses</u>. The Company acknowledges that a number of governmental permits and approvals must be applied for and obtained from various Governmental Entities that relate to the development, construction, use and operation of the Project. Sponsor will use commercially reasonable efforts to obtain or assist in obtaining such governmental permits and approvals for the Company's use and benefit. Sponsor shall, as soon as reasonably practical, prepare, or cause to be prepared, all appropriate applications for the











- d. Umbrella Excess Liability with limits of no less than \$25,000,000 each occurrence and \$25,000,000 aggregate providing following form excess over the General Liability, Automobile Liability and Employer's Liability policies described above. This insurance shall by its following form excess provisions or endorsement:
 - i. Protect the Owner, Development Manager (if applicable), and Owner Parties as additional insureds for both ongoing and completed operations of Contractor.
 - ii. Stipulate that such insurance is primary and is not contributing with, any other insurance carried by, or for the benefit of the additional insureds.
 - iii. Waive any and all right of subrogation against all of the Development Manager, and Owner Parties.
 - iv. Provide products and completed operations liability coverage, extending for a period not less than the later to occur of (i) ten (10) years after final completion of the entire Work or (ii) the applicable statute of repose for the jurisdiction where the Work is located. Additional insured status for the Owner Parties shall be provided during construction of the project and through the Completed Operations Period of a period not less than the later to occur of (i) ten (10) years after final completion of the entire Work or (ii) the applicable statute of repose for the jurisdiction where the Work is located.
- e. Crime or Fidelity Bond in the amount of \$1,000,000, including Wire Transfer Fraud coverage shall be maintained which insures against losses resulting from dishonest or fraudulent acts committed by any employees or agents of the Contractor.
- f. Pollution Liability Insurance for any and all claims for damages due to pollution incidents arising out of construction operations of the project in the amount of not less than \$2,000,000 per occurrence/aggregate. This insurance shall be maintained during the course of construction of the project and completed operations coverage for a period not less than the later to occur of (i) six (6) years after final completion of the entire Work or (ii) the applicable statute of repose for the jurisdiction where the Work is located.
 - i. Name the Owner Parties as additional insureds for both the ongoing and completed operations of the Contractor.
 - ii. Stipulate that such insurance is primary and is not contributing with, any other insurance carried by, or for the benefit of the additional insureds.
 - iii. Waive any and all right of subrogation against all of the Development Manager, and Owner Parties.

- iv. Provide coverage for mold, fungi, and bacteria related claims arising out of the construction of the project.
- v. Coverage shall be written on an occurrence basis. If occurrence based coverage forms are not available to the Contractor and coverage is written on a claims made policy form, the policy retroactive date is to be on or before the first date of operations are performed by the Owner Parties. Claims made coverage will include a six (6) year extended reporting period after final completion of the work.
- vi. Contactor is required to notify the Owner Parties of any claim or claims that erode the available aggregate limit by fifty percent (50%) or more. Owner Parties reserve the ability to require contractor to purchase additional coverage limits to restore the available limit of insurance to the amounts required in section (e) above.
- g. Professional Liability insurance for any and all claims for bodily injury, property damage, and/or financial damages as a result of wrongful acts arising out of the performance or failure to perform professional services in the amount not less than \$2,000,000 each claim/aggregate. The definition of professional services must be appropriate to include all professional services performed by or on behalf of the Contractor for the Owner Parties. For conventional owner/contractor relationships where there are no design services contemplated in the Contractor's scope of work, professional liability insurance of the Contractor is not required.
 - i. If written on a claims made policy form, the policy retroactive date is to be on or before the first date of professional services provided by Contractor to the Owner Parties.
 - ii. Contractor is required to maintain professional liability, when required, and shall cause all subcontractors that are providing Design Services to maintain professional liability coverage for the duration of the project and maintain coverage (or purchase an extended reporting period if coverage is not renewed) for a period not less than the later to occur of (i) Six (6) years after final completion of the entire Work or (ii) the applicable statute of repose for the jurisdiction where the Work is located.
 - iii. Contactor is required to notify the Owner Parties of any claim or claims that erode the available aggregate limit by fifty percent (50%) or more. Owner Parties reserve the ability to require contractor to purchase additional coverage limits to restore the available limit of insurance to the amounts required in section (f) above.

2. General Insurance Requirements

- a. Each insurance policy required under this section must be written through a carrier authorized to conduct business in the jurisdiction in which the project is located and such carrier must maintain an A.M. Best rating of no less than A-, VIII.
- b. The Contractor is solely responsible for the payment of any and all deductibles or retentions under all of the insurance required herein unless the Owner specifically provides a written waiver to the Contractor.
- c. All Subcontractors and suppliers shall be required to meet the insurance requirements contained in section 1 above, except that the requirements for umbrella excess liability insurance shall be \$2,000,000 and the requirements for Pollution Liability Insurance shall no less than \$2,000,000 per occurrence and \$2,000,000 in the general aggregate, as applicable to its work and/or services; provided, however, that if a Subcontractor it wishes to retain is unable to obtain such requisite insurance coverages, the Contractor will obtain the Owner's prior written approval of any deviations in such insurance coverages prior to entering into a subcontract with such Subcontractor, which approval shall not be unreasonably withheld. Notwithstanding anything to the contrary contained herein, in no event shall any high hazard subcontractors carry less than a \$5,000,000 per occurrence/general aggregate per project umbrella or excess liability insurance policy. High Hazard Subcontractors including but not limited to the following trades: concrete, steel erection, elevator, exterior wall, roofing, masonry, electrical, plumbing, and HVAC.
- d. The policies shall be endorsed to require the carrier(s) to notify the Owner at least thirty (30) days prior to any cancellation or non-renewal of any required insurance (ten (10) days notice for cancellation due to non-payment of premium). No policies shall be written with deductibles in excess of \$25,000 unless authorized in writing in advance by the Owner.
- e. All certificates and policies of insurance and all notices required pursuant to this Exhibit must be sent to the attention of:
- f. Receipt and review by the Owner or any other Owner Party of any copies of insurance policies or insurance certificates, or failure to request such evidence of insurance, shall not relieve the Contractor of its obligation to comply with the insurance provisions of the Contract.

g. The insurance provisions of the Contract shall not be construed as a limitation on the Contractor's responsibilities and liabilities pursuant to the terms and conditions of the Contract, including, but not limited to, liability for claims in excess of the insurance limits and coverages set forth herein, unless specifically provided otherwise in the Contract.

3. Evidence of Insurance

Simultaneously with execution of the Contract, the Contractor shall file with the Owner one (1) valid/original certificate of insurance, including the required amendatory riders and endorsements, evidencing that all required insurance is in force, executed by an authorized representative of the insurance company. If specifically requested by Owner, the Contractor shall deliver to the Owner certified copies of the insurance policies required to be maintained pursuant to this Exhibit within ten (10) days of the Owner's request. If specifically requested by Owner, the Contractor shall deliver to the Owner within seven (7) days of the Owner's request, a certificate of the Contractor or its insurance agent stating that all premiums due with respect to such required policies have been paid currently and that such policies are in full force and effect, and if required, a copy of the receipt for the payment of premiums. Not later than ten (10) days prior to the expiration date of each of the required policies, the Contractor shall deliver to the Owner a certificate of insurance evidencing any and all renewal of coverage as required herein, together with evidence of payment of premium satisfactory to the Owner.

4. Tools and Equipment

The Contractor and its Subcontractors will be responsible for insuring their own tools and equipment other than those specifically insured by the Builder's Risk Insurance Policy maintained by the Owner. The contractor and its subcontractors at its sole expense shall furnish to Owner and Development Manager, Certificates of Insurance and other required documentation evidencing the following coverage: "All Risk" Property Insurance/Contractor Equipment Insurance on all equipment and tools intended to be used or become a temporary part of the project site.

5. Additional Insureds ("Owner Parties")

The following entities shall be included in the definition of "Owner Parties": The Owner, the Owner's lender(s), and all affiliated entities and each of their respective members, managers, partners, agents, officers, directors, shareholders, and employees. In addition, the Owner may notify the Contractor in writing of other entities it wishes to include as additional insureds. Upon such notification, the Contractor or Subcontractor, as applicable, shall name such entities as additional insureds and provide evidence of coverage to the Owner within five (5) working days of such request.

The Owner shall procure and maintain a Builder's Risk Insurance Policy providing property insurance upon the Work on a replacement cost basis. Such insurance shall be written on a completed value, "all risk" or "special causes of loss" form, shall conform to the insurance requirements of Owner's lender and shall insure the interests of the Owner, the Contractor, and all Subcontractors in the Work as their interests may appear. The Contractor shall pay all deductibles/self-insured retentions in connection with this insurance which shall be reimbursable as Cost of the Work. However, if the Contractor is responsible for the loss, the Contractor shall pay for the deductible and not seek reimbursement from Owner. The Contractor has the right to seek reimbursement from the responsible subcontractor(s) or subsubcontractor(s).

Any loss insured under the Builder's Risk Policy shall be adjusted and settled by the Owner, on behalf of the insureds. Any resulting settlement shall be made payable to the Owner and the Lender as "Loss Payee", on behalf of the insureds (as their interests may appear).

The Owner, Contractor and Development Manager (if applicable) waive all rights against (i) each other and any of their agents, consultants and employees, each of the other, and (2) contractors and subcontractors of every tier, the Architect, Architect's consultants, Lender, Owner's Representatives, Owner's separate contractors, if any, and any of their subcontractors, subsubcontractors, agents, consultants, and employees, for damages caused by fire or other causes of loss to the extent of actual recovery of any insurance proceeds under the builder's risk insurance obtained pursuant to this contract (but not including any deductible amount). The builder's risk policy shall provide such waivers of subrogation by endorsement or otherwise.

Unless otherwise agreed in writing, Owner shall secure and maintain builder's risk coverage until project completion and final acceptance and release of responsibility by contractor. The policy shall include the following:

a. Required limits:

i. Per project limit equivalent to one hundred percent (100%) of the replacement cost of the project with coinsurance waived, or the coverage shall contain an agreed amount endorsement acceptable to the Owner

b. Specific coverage items:

- i. Coverage written on an "All-Risk" or equivalent policy form
- ii. Coverage written to include interests of Owner, its affiliated or subsidiary companies, the contractor, and subcontractors of every tier. Owner shall be the First Named Insured.
- iii. Flood, earthquake, and mechanical breakdown perils included with sublimits that are typically available in the insurance marketplace for similar type projects.
- iv. Coverage for materials in transit or temporary storage \$500,000
- v. Policy per occurrence deductible "all other perils" not to exceed \$25,000, except water damage which shall not exceed \$100,000.

- vi. Wind and hail, flood, and earth movement deductibles shall be equal to those that are typically available for similar projects.
- vii. Policy shall be endorsed to waive any rights of subrogation against owner, its affiliated and subsidiary companies, contractor, and their respective officers, directors, employees, agents, and assigns.
- viii. Policy shall include lost rental income or business interruption coverage for 12 months. Owner shall provide the lost revenue amount which shall be based on lost revenue.
- ix. Policy shall be non-cancellable through completion of the project with an extension provision for a Pro-Rated Premium.
- x. Policy shall contain a minimum sublimit of \$100,000 limit for claim preparation expense

issuance of all governmental permits and approvals, and comfort or assurance letters that are necessary to be obtained by the Company from Governmental Entities for the development, construction, use and operation of the Project. All such applications shall be completed by Sponsor in the name of the Company or its Subsidiary. To the extent such governmental permits and approvals are not required to remain with the Contractor or at the Project site, all such certificates, permits, and licenses shall be delivered to the Company upon receipt by Sponsor.

- 4. <u>Utilities</u>. Sponsor shall cause to be prepared all applications necessary to obtain commitments for water, sewer, electrical, gas, and telephone utility services (including fiber-optic cable) for the construction, use and operation of the Project. All such applications shall be completed by Sponsor in the name of the Company or its Subsidiary.
- 5. <u>Development and Construction Coordination</u>. Sponsor, acting as the Company's representative, shall coordinate and provide overall project direction for all design, engineering and construction professionals and their services rendered in connection with the Project, and Sponsor shall use its skill and judgment to oversee that such services are performed in conformance with the Business Plan, the Project Schedule, and such professionals' respective contracts. Sponsor shall advise and assist the Company in the performance and enforcement of its duties and rights under its contracts with all such persons or firms.
- 6. <u>Construction Loan Compliance</u>. Sponsor shall review the Construction Loan Financing Documents and shall cause the construction of the Project to comply in all material respects with such Construction Loan Financing Documents. Sponsor shall promptly notify Carlyle of any default or of any fact or circumstance that, with the giving of notice, passage of time or both, could result in a breach or default by the Company under such Construction Loan Financing Documents. Sponsor shall provide Carlyle with copies of all notices, disclosures, financial information, certificates and other material information provided by the Sponsor to the Lender of the Construction Loan.
- 7. Observations. Sponsor shall visit the Project and observe the progress of the Project as frequently as prudent construction supervision practice requires, but in any event not less than once per month, and shall submit a monthly written report to Carlyle, accompanied by the job meeting minutes generated as job meetings occur for such month prepared by the Contractor, commencing one week after construction of the Project has commenced and continuing until Completion. Sponsor shall use its skill and judgment to direct the Architect, the Contractor and other professionals to perform the services required under their respective contracts in such a manner that (a) the construction of the Project is in accordance with the Plans and in accordance with all applicable laws, codes and permits, (b) is consistent with the Project Schedule, and (c) the cost of such construction, including all labor and materials, is as contemplated by the Business Plan and accurately reported and accounted for by the Contractor.
- 8. <u>Construction Meetings</u>. Sponsor shall attend any construction meetings with respect to the Project as are necessary or desirable to properly discharge its duties as Sponsor. In addition, to the extent reasonably practicable, Sponsor shall give Carlyle not less than twenty-four (24) hours' prior notice (which may be delivered by email to such Person(s) as Carlyle may designate) of any regularly scheduled meeting with architects, designers, engineers, contractors or major subcontractors relating to the development and construction of the Project, and provide

one or more representatives of Carlyle the opportunity to attend and participate in any such construction meeting. If not less than twenty-four (24) hours' advance notice of a meeting is not reasonably practicable, then Sponsor shall provide to Carlyle email notice of any material matters discussed at the applicable meeting.

9. <u>Easements</u>. Sponsor shall obtain the approval of Carlyle prior to obtaining or granting any easements, dedications, and covenants that Sponsor considers necessary or appropriate for the construction or operation of the Project.

EXHIBIT E

INSURANCE CERTIFICATE

(see attached)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 2/14/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

This certificate does not confer rights to the certificate holder in lieu of such endorsement(s). **RODOCCER** InterVised 1381 **Sacramento CA 95865-5188 **Sacramento CA 95865-5188 **Sacramento CA 95865-5188 **Lecesser 0001094 Nasigera A Tries (Pick Circle)	IMPORTANT: If the certificate holder If SUBROGATION IS WAIVED, subject	t to th	ne ter	rms and conditions of th	e poli	cy, certain po	licies may r					
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