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08/10/2023 08:21:24 AM

Fee: \$112.00

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Recording Office*

RECORDING COVER SHEET (Please print or type)

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon, and does NOT affect the instrument. ORS 205.234

Returned at Counter

After recording return to: ORS 205.234(1)(c)

City of Merrill

1. Title(s) of the transaction(s)

ORS 205.234(1)(a)

Ground Lease

2. Direct party(ies) / grantor(s)

Name(s)

ORS 205.234(1)(b)

City of Merrill

3. Indirect party(ies) / grantee(s)

Name(s)

ORS 205.234(1)(b)

Shawn Cross

Kimberly Cross

Merrill Polar Bear

4. True and actual consideration:

ORS 205.234(1) Amount in dollars or other

\$ 0

Other:

5. Send tax statements to:

ORS 205.234(1)(e)

6. Satisfaction of lien, order, or warrant:

ORS 205.234(1)(f)

☐

FULL

☐

PARTIAL

7. The amount of the monetary obligation imposed by the lien, order, or warrant:

ORS 205.234(1)(f)

\$

8. Previously recorded document reference:

9. If this instrument is being re-recorded complete the following statement:

ORS 205.244(2)

"Rerecorded at the request of

to correct

previously recorded in book _____ and page _____, or as fee number _____."

CITY OF MERRILL

GROUND LEASE

1. This lease is entered into this 7TH day of June 2023, but is effective the 1ST day of JULY, 2023. The lease is made by and between CITY OF MERRILL, an Oregon municipal corporation (hereafter called the "Landlord") and Shawn and Kimberly dba the Merrill Polar Bear (hereafter called the "Tenant").

2. **PREMISES.** The "Premises" leased are described as follows:

Commencing at a point 40 feet east of the northwest corner of block 51 of Merrill Tracts, extending thence east along the north line of said block 51 a distance of 40 feet, thence south 100 feet, thence west 40 feet, thence north 100 feet, more or less, to the point of beginning.

Landlord and Tenant acknowledge that the Premises leased consists of approximately 4,000 square feet. Landlord and Tenant also acknowledge that property occupied by Tenant also includes property owned by the Merrill Park District. A survey diagram is attached hereto and by this reference incorporated herein describing the "Existing Lease Area" which is the subject of this lease and is described above. Tenant acknowledges and agrees that the only property leased by Landlord to Tenant is that area mapped as the "Existing Lease Area" and described in this agreement and that Landlord assumes no responsibility or liability with respect to property otherwise occupied by Tenant.

3. **TERM.** The term of this lease shall be for thirty (30) years commencing July 1, 2023 and terminating June 30, 2053 unless otherwise terminated in accordance with the terms of this agreement.

4. **RENT.** Tenant agrees to pay to the Landlord for the rental of said Premises the following:

4.1 Commencing on JULY 1, 2023 the monthly rental described below shall be \$200.00 per month. Payment shall be made on the first day of each month. Beginning on July 1, 2025, and occurring on the same date of each year thereafter until the expiration of the Term or earlier termination of this Lease, the Rent will be increased by three percent (3%) over the previous year's Rent.

4.2 Tenant agrees to make the payments called for herein promptly and pay when same come due. In addition, Tenant shall pay all taxes, assessments or other charges imposed against the Premises during the life of this lease as though Tenant was the owner in fee simple of said Premises; and Tenant further agrees to promptly pay, when same come due, all indebtedness incurred by Tenant's acts which might become a lien against the Premises.

5. INSURANCE CANCELLATION. Notwithstanding the provisions of paragraph 2 above, no use shall be made or permitted to be made of the Premises nor acts done which will cause the cancellation of any insurance policy covering said Premises or any building or other improvement constructed on the Premises.

6. BUILDINGS, STRUCTURES AND IMPROVEMENTS. Any buildings, structures or improvements placed on the land by Tenant during the life of this lease shall belong to Tenant and may be removed by Tenant from the Premises at any time prior to the termination of this lease; provided that the Premises be left as level and in as good of shape as the Premises were initially received; and provided further that failure to remove such buildings, structures or improvements within the time specified forfeits Tenant's right, title and interest thereto.

7. INDEMNITY; LIABILITY INSURANCE:

7.1 Indemnity. Tenant shall hold harmless Landlord from all damages arising out of any damage to any person or property occurring in, or on, or about the Premises except that Landlord shall be liable to Tenant for damages to Tenant arising out of any damage to any person or property occurring in, or about the Premises resulting from the acts or omissions of Landlord or its authorized representatives, and with respect to such damage Landlord shall hold harmless Tenant from all such damages.

7.2 Public Liability Insurance. Throughout the term of this Lease, Tenant shall at its sole cost, keep or cause to be kept in force, for mutual benefit of Landlord and Tenant combined bodily injury and property damages liability insurance with a minimum coverage of \$1 Million combined single limits for bodily injury and property damage with an aggregate limit of \$2 Million. Such insurance shall be issued by a company or companies licensed to do business in Oregon. On commencement of the term, Tenant shall deliver to Landlord certificates of insurance from insured's agent indicating that Tenant has complied with the provisions of this paragraph. Such policies shall also provide that they will not be cancelled or materially changed except after 10 days written notice to Landlord. Landlord shall be named an additional insured.

7.3 Waiver of Subrogation. Tenant and Landlords each waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss or damage to such waiving party or its property or the property of others under its control, where such loss or damage is insured against under any insurance policy at the time of such loss or damage.

7.4 Hold Harmless. Tenant shall indemnify, defend and hold Landlord harmless from any and all claims arising from Tenant's use of the Premises related to the conduct of its business or from an activity, work, or things which may be permitted or suffered by the Tenant in or about the Premises and shall further indemnify, defend and hold Landlord harmless from and

against all and any claims arising from any breach or default in the performance of any obligations on Tenant's part to be performed under the provisions of this Lease or arising out of any negligence of Tenant or any of its agents, contractors, employees, or invitees and from any and all costs, attorney's fees, expenses and liabilities incurred in the defense of any claims or any action or proceeding brought thereon. Tenant hereby assumes all risk of damage to property or injury to persons in or about the Premises against Landlord, except where said damages arise out of negligence of Landlord.

7.5 Exemption of Landlord from Liability. Unless caused by Landlord's neglect or intentional act, Tenant hereby agrees that Landlord shall not be liable for damage to the goods, wares, merchandise, or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Premises nor, unless through its negligence, shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors and invitees, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, or rain, sprinklers, wires, appliances, plumbing, air conditioning or electrical fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Premises or upon Tenant's buildings, structures, or improvements placed on the Premises, or from other source of places, and regardless of whether the cause of such damage or injury, or the means of repairing the same is inaccessible to Landlord or Tenant. Tenant accepts the Premises in their "AS IS" condition.

8. DEFAULT AND REMEDIES:

8.1 Defaults. The occurrence of any one or more of the following shall constitute a breach of this Lease by Tenant:

- a) The vacating or abandonment of the Premises by the Tenant.
- b) The failure by Tenant to make a payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period thirty (30) days after written notice thereof from the Landlord to Tenant.
- c) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in paragraph (b) above, where such failure shall continue for a period of sixty (60) days after written notice thereof from Landlord, to Tenant; provided, however, that if the nature of Tenant's default is such that more than one hundred twenty (120) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said sixty (60) day period and thereafter diligently prosecutes such cure to completion.
- d) The making by the Tenant of any general assignment, or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in case of a petition filed against Tenant, the same is dismissed

within sixty (60) days; the appointment of a trustee or receiver to take possession of substantially all of the Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of the Tenant's assets located on the Premises and/or attachment, execution or seizure of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

8.2 Remedies in Default. In the event of any such default by Tenant, Landlord may any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default or breach:

- (a) Terminate Tenant's rights to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall by reason of Tenant's default have remedies including, but not limited to the following:
 - (i) The cost of recovering possession of the Premises and the expense of reletting the Premises including necessary renovation and alteration of the Premises;
 - (ii) Reasonable attorney's fees, and any real estate commission actually paid;
 - (iii) The worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rent loss for the same period that Tenant proves could be reasonably avoided; and
 - (iv) Contract damages due to unexpected termination of this Lease. Unpaid installments of rent and any other sums due shall bear interest from the date the lease is deemed to be in default at the maximum rate permissible under state law.
- (b) Pursue any other remedy now or thereafter available to Landlord under the laws or decisions of the State of Oregon.

9. GENERAL PROVISIONS:

9.1 Waivers. No waivers by Landlord of any provisions hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provisions. Landlord's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of the Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any prior breach by Tenant.

9.2 Holding Over. If Tenant remains in possession of the Premises or any part thereof

after the expiration of the term hereof with or without the consent of Landlord, such occupancy shall be a tenancy from month to month.

9.3 *Attorney's Fees.* If either party named herein brings an action to enforce the terms hereof, declare rights hereunder, the prevailing party in any such action, on trial, or appeal, shall be entitled to reasonable attorney's fees to be paid by the losing party as fixed by the Court.

9.4 *Assignment.* Tenant's interest in this lease shall not be assigned except with the written permission of Landlord.

10. TENANT'S RIGHT OF FIRST REFUSAL. Should the Landlord during the Lease term or any extension thereof elect to sell all or any portion of the Leased Premises, Tenant shall have the right of first refusal with respect to any bonafide offer to purchase. Upon being provided written notice of such an offer, Tenant shall have 60 days to accept such offer. If Tenant does not accept the offer within 60 days Landlord shall be free to sell the Premises or a portion thereof to such third person in the accordance with the terms and conditions of the offer.

11. NOTICE. Whenever under these Lease provisions there is need for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be written and served either personally or sent by United States mail, postage prepaid, to the addresses set forth herein:

TO LANDLORD: City of Merrill
P.O. Box 487
Merrill, Oregon 97633

TO TENANT: Shawn and Kimberly Cross
P.O. Box 413
Merrill, Oregon 97633

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

LANDLORD: City of Merrill

By: Joanne Johnson

Printed: JOANNE JOHNSON

Title: MAYOR Pro Tem



CITY OF MERRILL
RECORDER'S OFFICE

DATE: 6-7-2023

RECEIVED BY: R. Hernandez

Date: JUNE 7, 2023

TENANTS: Shawn and Kimberly Cross, Owners of Merrill Polar Bear

By: Shawn L. Cross

Printed: Shawn

Title: Owner

Date: 6/7/2023

By: Kimberly D Cross

Printed: Kimberly D Cross

Title: Owner

Date: 6/07/2023

Attest:

By: Rayna Hernandez

Rayna Hernandez, City Recorder

Date: 6/07/2023

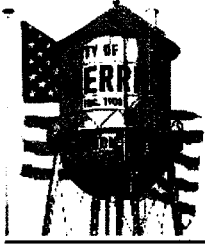


CITY OF MERRILL
RECORDER'S OFFICE

DATE: 6.7.2023

RECEIVED BY:

R. Hernandez



City of Merrill Recorder's Office

P.O. Box 487
301 East Second St
Merrill, Oregon 97633
Phone: 541-798-5808
Fax: (541) 798-0145
cityofmerrill@centurytel.net

Landlord: City of Merrill
P.O. Box 487
Merrill, Oregon 97633
Tenant: Shawn and Kimberly Cross
P.O. Box 413
Merrill, Oregon 97633

I, Shawn Cross, and I, Kimberly Cross, certify that the City of Merrill Ground Lease, signed June 6, 2023, executed the Lease on the day and year first above written.

Shawn Cross 8/09/2023 Kimberly D Cross 8-9-23
Shawn Cross Date Kimberly Cross Date

I, Joanne Johnson, Mayor Pro Tem of City of Merrill, certify that the City of Merrill Ground Lease, signed June 6, 2023, executed the Lease on the day and year first above written.

Joanne Johnson 8/9/23
Joanne Johnson, Mayor Pro Tem Date

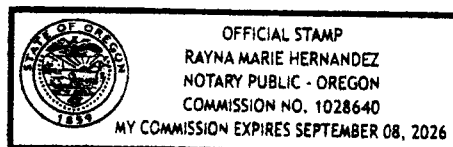
State of OREGON

County of Klamath

This record was acknowledged before me on (date) Aug. 9TH, 20 23 by (name(s)) of individual(s) Shawn Cross, Kimberly Cross, and Joanne Johnson.

Rayna Hernandez
Notary Public - State of Oregon

Official Stamp



Document Description This certificate is attached to page 6 of a City of Merrill Ground Lease (title or type of document), dated June 1, 2023, consisting of 6 pages.

June 7TH