

# CHEHALIS CITY COUNCIL AGENDA

CITY HALL

350 N MARKET BLVD | CHEHALIS, WA 98532

Dennis L. Dawes, Position at Large  
Mayor

Terry F. Harris, District 1, Mayor Pro Tem  
Daryl J. Lund, District 2  
Dr. Isaac S. Pope, District 4

Anthony E. Ketchum Sr., District 3  
Chad E. Taylor, Position at Large  
Robert J. Spahr, Position at Large

## Regular Meeting of Monday, October 8, 2018 5:00 p.m.

1. Call to Order. (Mayor)
2. Pledge of Allegiance. (Mayor)

### PROCLAMATIONS / PRESENTATIONS

3. City Championship Award to Rep. Richard DeBolt. (Carl Schroeder, Association of Washington Cities)

### SPECIAL BUSINESS

4. Twin Transit Update. (Derrick Wojcik-Damers, General Manager)

### CITIZENS BUSINESS

This is an opportunity for members of the audience to address the council on matters not listed elsewhere on the agenda. Speaker identification forms are available at the door and may be given to the city clerk prior to the beginning of the meeting.

ITEM	ADMINISTRATION RECOMMENDATION	PAGE
<b>CONSENT CALENDAR</b>		
5. <u>Minutes of the Regular City Council Meeting of September 24, 2018.</u> (City Clerk)	APPROVE	1
6. <u>Vouchers and Transfers – Accounts Payable.</u> (City Manager, Finance Director)	APPROVE	3
7. <u>Vouchers and Transfers – Payroll.</u> (City Manager, Finance Director)	APPROVE	4

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ITEM	ADMINISTRATION RECOMMENDATION	PAGE
<b>CONSENT CALENDAR</b>		
8. <u>Master Ground Lease Agreement with Rich Development Enterprises, LLC for Airport Tracts 7A, 8, and 9 (Located Along I-5 Between Dutch Bros. Coffee and I-5 Toyota) (City Manager, Community Development Director, Airport Operations Coordinator)</u>	APPROVE	5
9. <u>Ground Lease Agreement with U-Haul Co. of Washington (City Manager, Community Development Director, Airport Operations Coordinator)</u>	APPROVE	39
10. <u>Accept North Market Grind and Inlay Project as Complete and Authorize Release of Retainage After All Statutory Requirements Have Been Met. (City Manager, Public Works Director, Street/Storm Superintendent)</u>	APPROVE	68
11. <u>Accept Chamber Way Grind and Inlay Project as Complete and Authorize Release of Retainage After All Statutory Requirements Have Been Met. (City Manager, Public Works Director, Street/Storm Superintendent)</u>	APPROVE	70

ITEM	ADMINISTRATION RECOMMENDATION	PAGE
<b>NEW BUSINESS</b>		
12. <u>Ordinance No. 992-B, First and Final Reading – Amending Chehalis Municipal Code Title 5 Relating to Business Licensing. (City Manager, Community Development Director)</u>	SUSPEND RULES/PASS	71

ITEM	ADMINISTRATION RECOMMENDATION	PAGE
<b>ADMINISTRATION AND CITY COUNCIL REPORTS</b>		
13. <u>Administration Reports.</u>	INFORMATION ONLY	- - -
a. City Manager Update. (City Manager)		
1. Report on Recent Facility Improvements		
14. <u>Councilor Reports/Committee Updates. (City Council)</u>	INFORMATION ONLY	- - -

<b>EXECUTIVE SESSION</b>		
15. Pursuant to RCW 42.30.110(1)(g) – Review Performance of a Public Employee.		

**THE CITY COUNCIL MAY ADD AND TAKE ACTION ON OTHER ITEMS NOT LISTED ON THIS AGENDA.  
NEXT REGULAR CITY COUNCIL MEETING IS MONDAY, OCTOBER 22, 2018.**

September 24, 2018

The Chehalis city council met in regular session on Monday, September 24, 2018, in the Chehalis city hall. Mayor Dennis Dawes called the meeting to order at 5:00 pm with the following council members present: Terry Harris, Tony Ketchum, Daryl Lund, Dr. Isaac Pope, Bob Spahr, and Chad Taylor. Staff present included: Jill Anderson, City Manager; Caryn Foley, City Clerk; Bill Hillier, City Attorney; Trent Lougheed, Community Development Director; Brandon Rakes, Airport Operations Coordinator; Chun Saul, Finance Director; and Glenn Schaffer, Police Chief. Members of the news media in attendance included Will Rubin from *The Chronicle*.

1. **Proclamation – Senior Center Month**. Mayor Dawes read and presented a proclamation declaring September as Senior Center Month. Ron Averill accepted the proclamation on behalf of Lewis County Seniors.

2. **Recognition of David Hartz and Allyn Roe**. David Hartz and Allyn Roe were both recognized for their leadership roles on the Chehalis Community Renaissance Team (CCRT). Mayor Dawes read and presented proclamations to both men, and Andy Skinner, Vice President of the Renaissance Board, presented each with a plaque.

3. **Chehalis Basin Strategy Update**. Andrea McNamara Doyle, Director of the Office of Chehalis Basin (OCB), provided an update on recent progress of the group. She stated the Chehalis Basin Strategy (CBS) covers the entire 2700 miles of the Chehalis River, running through eight counties. The basin is a fertile and bucolic region with extreme flooding. It is an abundant region of natural resources and aquatic species, but has challenges with struggling aquatic species. Harvest has been limited by poor runs over the last 30 years and habitat productivity degraded. The CBS is attempting to address these issues with a holistic approach. Ms. Doyle stated the mission of the OCB was to aggressively pursue an integrated strategy and funding to address these issues through projects relating to habitat restoration, local flood reduction, and large-scale flood reduction. One large-scale proposal is the flood retention facility above Pe Ell. Strategy development has moved into project-specific review and the public has an opportunity comment on some of the next big steps, including the aquatic species restoration plan, final design of the North Shore Levee; a report on the Newaukum sub-basin feasibility, draft basin-wide flood proofing strategy, and the flood retention facility above Pe Ell. Ms. Doyle distributed a focus sheet on the environmental review process. The public comment period runs September 28 – October 29. Two public meetings on the Final EIS will be held on October 16 from 5:00 to 8:00 pm at Montesano City Hall and on October 17 from 5:00 to 8:00 pm at Centralia College. There will be another comment period after the draft environmental review documents are prepared. 2019 will be when the project-specific environmental review will be happening, and then in early 2020 the public will get another chance to comment. It's at that point that the Chehalis Basin board will have the information available to them, along with the Flood Control Zone District, to make a decision about moving forward on the flood control facility.

4. **Consent Calendar**. Councilor Spahr moved to approve the consent calendar comprised of the following:

- a. Minutes of the regular city council meeting of September 10, 2018;
- b. September 14, 2018 Claim Vouchers No. 123593-123739 and Electronic Funds Transfer No. 82018 in the amount of \$409,525.19;
- c. Reject bid for the Shaw Aquatics Center Pool Resurfacing Project; and
- d. Resolution No. 7-2018, first and final reading – declaring city property to be surplus.

The motion was seconded by Councilor Lund and carried unanimously.

5. **Ordinance No. 991-B, Second and Final Reading – Amending the 2018 Adopted Budget**. City Manager Anderson stated a detailed report was provided at the last meeting, and staff was recommending passage of the ordinance.

Councilor Harris moved to pass Ordinance No. 991-B on second and final reading. The motion was seconded by Councilor Pope and carried unanimously.

6. **Audit Requirements for Recipients of Lodging Tax Funding**. Councilor Harris stated it was recently brought to the city's attention that the system the council developed a few years ago to help protect both the city and the entities that request lodging tax funds may have been a little bit of a knee-jerk reaction to the incident that happened at the Historical Museum. The audit requirement was to ensure that organizations were being run properly. He stated audits are very expensive and some of the non-profit groups don't have those kinds of funds. Beyond that, the city already requires the organization's:

September 24, 2018

- Total budget
- Current IRS filing (Form 990, 990-EZ, or 990-N)
- Balance Sheet or Statement of Assets, Liabilities, and Fund Balance
- Income Statement or Profit and Loss Statement
- Bank statements to confirm existence of cash balances and to coincide with financial statements
- Statement signed by the President and Treasurer that the documents presented are true and correct
- Verification of current registration with the Secretary of State Corporations Division and Charities Division, and IRS tax exempt status

Councilor Harris stated that because of the above-noted requirements, there has been a request to discontinue the audits.

Tom Bradley, a local CPA, addressed the council regarding the issue. Mr. Bradley stated that from the beginning he thought requiring small organizations to have an audit was overkill. He thought the financial documents the city requires with the application provide detailed information. Furthermore, the funds received through the lodging tax program are reimbursable and require invoices to show how the money was spent. He thought those items were a pretty good audit check.

Councilor Spahr asked who could perform audits. Mr. Bradley stated they have to be done by a firm that does those types of engagements, which he does not. Generally, those are larger firms. There used to be sole practitioner in the area, but that individual retired. Another local firm is doing some small audits, but they are still very expensive – around \$10,000 to \$12,000, while a review can run \$6,000 to \$8,000.

Mayor Dawes asked if the financial information the city was asking for was cumbersome. Mr. Bradley indicated it shouldn't be. He stated the list of documents was something he recommended to the council. The items required show that an organization's books and tax filings are up to date.

Councilor Harris stated the financial information submitted has primarily been reviewed by Caryn Foley. He asked if the council was interested in having a council subcommittee review the documents since it was the council asking for the information. It was suggested that the lodging tax advisory committee review the information.

Councilor Spahr moved that the City Council discontinue the requirement that organizations that receive Chehalis tourism funding over an extended period greater than five years be required to have an external audit. The motion was seconded by Councilor Pope and carried unanimously.

**7. Administration Reports.** City Manager Anderson stated that at the last meeting staff asked council to approve asking members of the public to participate in a public program for information regarding flood protection. Staff identified Duane Taylor and Ken Frazier to participate on the committee. A formal request for appointment will come before the council at an upcoming meeting.

**8. Councilor Reports/Committee Updates.** Mayor Dawes reminded council members to turn in their city manager evaluations to the City Clerk by Wednesday. Mayor Dawes attended the following: .09 committee meeting; a meeting with Japanese representatives looking at potentially locating in the Port of Chehalis; and Business After Hours at Linex.

There being no further business to come before the council, the meeting was adjourned at 5:51 pm.

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Dennis L. Dawes, Mayor

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Caryn Foley, City Clerk

Approved:  
Initials: \_\_\_\_\_

**CITY OF CHEHALIS CITY COUNCIL  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Chun Saul, Finance Director  
Michelle White, Accounting Tech II

**MEETING OF:** October 8, 2018

**SUBJECT:** Vouchers and Transfers

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**ISSUE**

City Council approval is requested for Vouchers and Transfers dated September 28, 2018.

**DISCUSSION**

The September 28, 2018 claim vouchers have been reviewed by a committee of three councilors prior to the release of payments. The administration is requesting City Council approval for Claim Vouchers No. 123740-123871 in the amount of \$653,825.80 dated September 28, 2018, which includes the transfer of:

- \$150,256.60 from the General Fund
- \$2,396.05 from the Dedicated Street Fund – 4% Sales Tax
- \$69,825.00 from the Transportation Benefit District Fund
- \$6.00 from the 1982-93 Community Development Block Grant Fund
- \$17,630.28 from the Public Facilities Reserve Fund
- \$52,969.06 from the Wastewater Fund
- \$52,161.22 from the Water Fund
- \$8,241.57 from the Storm & Surface Water Utility Fund
- \$299,501.76 from the Airport Fund
- \$838.26 from the Firemen’s Pension Fund

**RECOMMENDATION**

It is recommended that the City Council approve the September 28, 2018 Claim Vouchers No. 123740-123871 in the amount of \$653,825.80.

**SUGGESTED MOTION**

I move that the City Council approve the September 28, 2018 Claim Vouchers No. 123740-123871 in the amount of \$653,825.80.

**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Chun Saul, Finance Director  
Betty Brooks, Payroll Accountant

**MEETING OF:** October 8, 2018

**SUBJECT:** Payroll Vouchers and Transfers

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**ISSUE**

City Council approval is requested for Payroll Vouchers and Transfers dated September 28, 2018.

**DISCUSSION**

The administration requests City Council approval for Payroll Vouchers No. 40510-40563, Direct Deposit Payroll Vouchers No. 9933-10040, Electronic Federal Tax and DRS Pension/Deferred Comp Payments No. 201-204 dated September 28, 2018 in the amount of \$877,777.37, which include the transfer of:

- \$602,746.62 from the General Fund
- \$8,473.06 from the Arterial Street Fund
- \$101,082.76 from the Wastewater Fund
- \$108,665.93 from the Water Fund
- \$24,148.99 from the Storm & Surface Water Utility Fund
- \$30,765.09 from the Airport Fund
- \$1,894.92 from the Firemen's Pension Fund

**RECOMMENDATION**

It is recommended that the City Council approve the September 28, 2018 Payroll Vouchers No. 40510-40563, Direct Deposit Payroll Vouchers No. 9933-10040, Electronic Federal Tax and DRS Pension/Deferred Comp Payments No. 201-204 in the amount of \$877,777.37.

**SUGGESTED MOTION**

I move that the City Council approve the September 28, 2018, Payroll Vouchers No. 40510-40563, Direct Deposit Payroll Vouchers No. 9933-10040, Electronic Federal Tax and DRS Pension/Deferred Comp Payments No. 201-204 in the amount of \$877,777.37.

**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Trent Lougheed, P.E., Community Development Director  
Brandon Rakes, Airport Operations Coordinator

**MEETING OF:** October 8, 2018

**SUBJECT:** Master Ground Lease Agreement with Rich Development Enterprises, LLC for Tracts 7A, 8, and 9

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**ISSUE**

The Chehalis-Centralia Airport has been working with Rich Development Enterprises, LLC, to prepare a lease for Tracts 7A, 8, and 9. These parcels are located on property managed by the airport and are located along I-5 between Dutch Bros. Coffee and I-5 Toyota.

**INTRODUCTION**

Rich Development specializes in single tenant, mid-sized, and multi-tenant retail commercial developments. Their Offer to Lease Tracts 7A, 8, and 9 was previously approved by the City Council on June 11, 2018.

**TERMS OF THE PROPOSAL**

Upon receipt of the initial offer, a determination of market rent was ordered by the City. This analysis was used to negotiate the proposed Offer to Lease (also known as a Letter of Intent) and the lease agreement that is before the Council. Rich Development is prepared to sign the lease, which includes provisions for the following:

- Deposit to the City of \$100,000 upon mutual execution of the lease
- Lease term of ten (10) years with ten (10), five (5)-year renewal options
- Time for developer to complete due diligence of one hundred twenty (120) days following the Effective Date
- Contingency clauses
- Rent amount and commencement date

The acceptance of the lease by both parties will allow Rich Development to begin developing the property and leasing the property to tenants that would include retail stores and restaurants.

The City Attorney has reviewed the terms and conditions of the agreement.

**FISCAL IMPACT**

If the lease agreement is approved, the City would receive lease revenue that would be restricted for the operation of the Chehalis-Centralia Airport and sales tax revenue from any retail activity. Sales tax revenues would be used to fund the City's general operations, including the provision of police and fire services.

**RECOMMENDATION**

It is recommended that the City Council approve the lease agreement for Tracts 7A, 8, and 9 between the City of Chehalis and Rich Development Enterprises, LLC, and authorize the City Manager to execute the agreement.

**SUGGESTED MOTION**

I move that the City Council approve the lease agreement for Tracts 7A, 8, and 9 between the City of Chehalis and Rich Development Enterprises, LLC, and authorize the City Manager to execute the agreement.



**AFTER RECORDING RETURN TO:**

Mr. Brandon L. Rakes  
Chehalis-Centralia Airport  
PO Box 1344  
Chehalis, WA 98532

**Parcel Numbers:** 005605827001, 005605082008, and 005605082009

**MASTER GROUND LEASE  
(Chehalis, Washington)**

**THIS MASTER GROUND LEASE ("Lease")** is made and entered into as of the effective date set forth in Section 1 by and between **CITY OF CHEHALIS, a municipal corporation, operator of the Chehalis-Centralia Airport ("Landlord")**, and **Rich Development Enterprises, LLC, a California limited liability company, or its assignee ("Tenant")**. Landlord and Tenant are sometimes hereinafter each singularly referred to as a **"Party"** and collectively referred to as the **"Parties."**

**SECTION 1 - FUNDAMENTAL LEASE TERMS**

For convenience, this Section 1 summarizes certain fundamental economic and business terms of this Lease. If these fundamental terms conflict with the balance of the Lease, the latter shall control.

- Effective Date:** As stated in Section 21.19 below
- Landlord:** City of Chehalis  
Chehalis-Centralia Airport  
P.O. Box 1344  
Chehalis, Washington 98532
- Tenant:** Rich Development Enterprises, LLC, or its assignee
- Lease Term:** Ten (10) years with ten (10) five (5) year option periods, as stated in Section 3.1
- Rent:** See Section 4
- Title Insurance Liability Amount:** Two Million Eight Hundred Twenty-Six Thousand One Hundred Seventy-Three Dollars (\$2,826,173.00) to be increased at the request of Tenant upon Reappraisal of the Property as provided in Section 4.3.
- Deposit:** One Hundred Thousand Dollars (\$100,000.00) cash or wire transfer, upon the mutual execution of this Lease as provided in Section 4.1a, below
- Leased Premises:** The portion(s) of the Property (hereinafter defined) on which Landlord (or its affiliate) has developed or is in the process of development with Improvements (hereinafter defined).

**SECTION 2 - DEMISE OF PROPERTY**

**2.1 Property.** For and in consideration of Tenant's covenant to pay the rental and other sums for which provision is made in this Lease, and the performance of the other obligations of Tenant hereunder Landlord leases to Tenant, and Tenant leases from Landlord, that certain real property consisting of up to

approximately 706,543 square feet more or less, which real property is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, for Tenant, its subtenants, licensees, concessionaires, customers, invitees, and employees, but not including any mineral rights, water rights, or any other right to excavate or withdraw minerals, gas, oil, or other material, except as specially granted herein; subject to easements and encumbrances of record as of the date hereof as noted in the records of Lewis County, Washington. Said property and rights leased hereby are hereinafter referred to as the "**Property**". The Property and conceptual planned development of the Property as prepared by Tenant's engineer or architect are depicted on the site plan attached hereto as Exhibit "B" and incorporated herein by this reference ("**Site Plan**") and are subject to written acceptance and approval of said Site Plan by Landlord, as amended, before commencement of construction on the Property by Tenant. The final layout of the Improvements shall be set out in a final Site Plan prepared by Tenant and reviewed and approved by Landlord as the pre-development and leasing of the Property proceed.

## **2.2 Removed**

**2.3 Development.** Tenant is authorized to fill the Property and to construct one or more structures (herein, "**Improvements**") on the Property, provided that (a) any such improvement is within the Building Areas of the Site Plan, as amended by Tenant and approved by the Landlord, (b) each improvement is constructed in compliance with all applicable codes, and (c) Landlord has approved in writing all plans and schematic drawings for the Improvements, and all filling and grading plans, 100 year Flood Plain mitigation plans; drainage plans, location of utilities, access and traffic circulation routes, such approvals not to be unreasonably withheld, delayed or conditioned. Tenant shall also obtain Landlord's consent, which consent shall not be unreasonably withheld, delayed or conditioned prior to any utilities or fill being installed or placed on the Property by the Tenant. Tenant's failure to submit said plans to Landlord for its written approval shall constitute a breach of this Lease and Landlord may, in addition to other remedies provided herein, discontinue all Tenant's work under this Lease until Tenant has provided plans for Landlord's review and written approval. Tenant shall not meet the obligations of this subsection by submitting plans to other governmental bodies having jurisdiction over the Property, but shall separately submit said plans to Landlord prior to submitting to governmental agencies. Tenant shall have no claim against Landlord for any such work stoppage that occurs due to Tenant not submitting the plans required herein. The developed portions of the Property along with the Improvements thereto are hereinafter referred to as the "**Shopping Center.**"

**2.4 Tenant's Work.** Upon the Expiration of the Due Diligence Period, Tenant shall have the right to construct the Improvements on the Property. Tenant will be responsible for all other aspects of development of the Shopping Center including finalizing all leases, construction bidding and all construction oversight. Tenant shall plan, design and perform its development work in accordance with civil engineering standards established and required by the City of Chehalis for each development action including but not limited to filling and grading plans, 100-year flood mitigation plans, plans for streets, utilities, building and other improvements and shall obtain all required governmental permits, inspections and approvals, through the normal City of Chehalis practices and procedures for same. Tenant shall pay all costs associated with said development action. The Landlord shall use reasonable efforts to expedite the review, comment and approval of such permits, inspections and approvals.

## **SECTION 3 - LEASE TERM**

**3.1 Term.** This Lease shall become legally binding on the Effective Date (as defined in Section 21.19 hereof) and shall expire on the last day of the Tenth (10th) Lease Year, subject to rights to extend (the "**Term**"). Tenant shall have the right to extend the lease for Ten (10) additional Five (5) year terms by giving Landlord notice of extension not more than one (1) year, and not less than ten (10) days prior to the end of the then-existing term. For purposes of this Lease, the term "**Lease Year**" shall mean each twelve (12)-month period commencing on the Rent Commencement Date (hereinafter defined) and each anniversary thereof. See also Section 4.5.

## **SECTION 4 – RENT**

**4.1a Tenant Deposit.** On the Effective Date of this Lease, as defined herein, Tenant shall pay Landlord by payment of a cashier's check or wire transfer payable to Chehalis-Centralia Airport, a One Hundred Thousand Dollar (\$100,000.00) deposit (the "**Deposit**"). Said Deposit shall be deposited into a separate interest bearing account with federally insured national bank, and the Deposit and all interest shall be returned to Tenant upon the Rent Commencement Date or if this Lease is terminated by Tenant pursuant to the contingencies outlined in Section 4.1b.

**4.1b Contingencies.** After the expiration of the Due Diligence Period (hereafter defined), Tenant shall have the right to terminate the Lease by written notice to Landlord, under the following circumstances:

- (1) **Title.** Any new title exception or survey matter that is unacceptable to Tenant and materially different from the preliminary title report on the Property supplied to Tenant during the Due Diligence period, subject to Landlord's right to cure any matter disapproved by Tenant within 30 days following receipt of Tenant's notice of disapproval.
- (2) **Government Approvals.** Tenant's development plan for the development of Phase 1 of the Property has not been approved by all Governmental agencies prior to June 30, 2019, or the conditions of approval issued by the Governmental agencies in response to Tenant's development plan are materially inadequate or economically infeasible to develop Phase 1 of the Property as represented, in Tenant's sole discretion.
- (3) **Building Permit.** Tenant is unable to obtain a building permit for the development of the Phase 1 of the Property on conditions acceptable to Tenant by September 30<sup>th</sup>, 2019.
- (4) **Tenant Leasing.** Tenant shall have failed to execute leases representing a minimum of 70,000 SF of leasable building area of the Property ("**Phase 1**").
- (5) **Financing.** Tenant shall have been unable to secure a construction loan satisfactory to Tenant for the construction of the Improvements to Phase 1 on or before September 30, 2019.

**4.1c Rent.** For each Lease Year, on the monthly basis described herein, Tenant shall pay to Landlord at P. O. Box 1344, Chehalis, Washington, 98532, or such other place as Landlord shall designate in writing, in United States dollars, the annual amount ("**Rent**"), as described in Sections 4.2, 4.3 and 4.4 hereof. Rent shall consist of the "Leased Premises Rent" and the "Remainder Rent", both hereinafter defined.

**4.2 Payment of Rent.** Beginning upon the Rent Commencement Date as described in section 4.2a, the annual "**Leased Premises Rent**" shall be the product of Forty Cents (\$0.40) (the "**Base Rent**") multiplied by the net usable square footage of land comprising each Phase of the Property, as defined below; The total annual Leased Premises Rent payable shall be determined by multiplying the net usable area of the land developed in each phase of development of the Property (each a "**Phase**") by the Base Rent. Each undeveloped Phase of the Property (determined by the undeveloped area of Property) will be charged a non-refundable deposit equal to 20% of the Base Rent collected annually (the "**Remainder Rent**"). The Remainder Rent will be held by Landlord in a separate interest bearing account and, along with accrued interest will then be applied by Landlord to the Leased Premises Rent upon completion of future Phases of the Shopping Center, when developed by Tenant or its affiliate. The amount of the Remainder Rent to be credited by Landlord towards a future Phase(s) of the Shopping Center shall be designated by Tenant through written notice to Landlord.

**4.2a Rent Commencement Date.** The Rent for Property shall commence on the date that the Minimum Annual Rent shall commence from any Subtenant of Phase 1 of the Property (the "**Rent Commencement Date**"), provided however that the Rent Commencement Date for Phase 1 of the Property shall not be later than the date ("**Deadline Date**") that is eighteen (18) months after the date a building permit is issued for the development of Phase 1 of the Property. Tenant shall pay on the first day of each calendar month 1/12<sup>th</sup> of the annual Rent set forth herein subject to (i) Reappraisal, (ii) Escalation of Rent after Appraisal, and (iii) Phase Rent Separation, as set forth in Subsections 4.3, 4.4 and 4.5 of this Lease. If payment is not received by the tenth day of the month for which that Rent is due, a late fee of five percent (5%) will be assessed to the balance owing. See also Section 4.5

**4.2b Development Plan.** Should Tenant elect to proceed with the development of Phase 1 of the Property following the Due Diligence Period (hereafter defined), then Tenant will be required to fill the Property to the line and grade necessary to satisfy 100-year Flood Plain mitigation plans in order to develop Phase 1 of the Shopping Center. The Property may be developed in one (1) Phase or as many as three (3) Phases, as selected by Tenant. Phase 1 will, at a minimum include the approximate [9-acre Tract 7A] portion of the Property. Each subsequent Phase [(Tracts 8 & 9)] shall commence construction within eighteen (18) months following Rent Commencement Date of the prior Phase, and the Rent Commencement Date for each subsequent Phase shall occur on the date that that the Minimum Annual Rent shall commence from any Subtenant of that Phase of the Property. Tenant may elect to increase the size of the leased land (within Tracts 7A, 8, & 9) to be developed in any Phase. The total Leased Premises Rent payable shall be determined by the usable area of land developed in each Phase multiplied by the Base Rent. See also Section 4.5.

**4.3 Reappraisal Rent Adjustments.** On each twentieth anniversary of the Rent Commencement for each Phase of the Property of this Lease, the Base Rent for such Phase shall be adjusted to compensate for changes in fair market rental value of same. The adjustment, as determined by appraisal, shall be limited to a one percent (1%) increase or decrease from the Rent existing immediately prior to the first day of the 20<sup>th</sup> year (the "**Adjustment Cap**"). It is understood and agreed by both parties that the appraisal will be based upon fair rental value for vacant, retail zoned, unimproved land exclusive of all Tenant Improvements made to the Property after the Effective Date of this Lease. Landlord shall engage an independent appraiser (MAI) to appraise the Property. If Tenant disagrees with the value of Landlord's appraiser, Tenant may, at its expense, obtain a separate independent appraisal (MAI) for Landlord's consideration. If Landlord and Tenant cannot agree on the fair market rental value of the Property, the appraisers shall select a third independent appraiser (MAI) who shall perform a separate independent appraisal of the Property, and the average of the two (2) closest appraisals shall be the fair market rental value for the Property, and the new annual Base Rent for this Lease, which shall be binding upon both parties to this Lease, provided that the Base Rent so determined shall not be less than the Base Rent payable prior to an Appraisal Date, nor more than Adjustment Cap. The cost of a third appraiser shall be borne equally by the two parties.

**4.4 Fixed Escalations of Rent After Appraisal.** The Base Rent shall, commencing on the fifth (5<sup>th</sup>) anniversary and the tenth (10<sup>th</sup>) anniversary, and the fifteenth (15<sup>th</sup>) anniversary, and again on the twentieth (20<sup>th</sup>) anniversary of the Rent Commencement Date hereof, be increased by ten percent (10%) of the Base Rent then in effect. Then, on the twentieth (20<sup>th</sup>) anniversary of the Effective Date hereof, the Base Rent shall be adjusted based on changes in Fair Market Rental Value as determined by appraisal pursuant to the procedures set forth in Section 4.3 above.

Then, on the twenty fifth (25<sup>th</sup>) anniversary, the thirtieth (30<sup>th</sup>) anniversary, the thirty fifth (35<sup>th</sup>) anniversary, , and again on the fortieth (40<sup>th</sup>) anniversary of the Rent Commencement Date hereof, the Base Rent shall be increased by ten percent (10%) of the Base Rent then in effect. Then, on the fortieth (40<sup>th</sup>) anniversary of the Effective Date hereof, the Base Rent shall be adjusted based on changes in Fair Market Rental Value as determined by appraisal pursuant to the procedures set forth in Section 4.3 above.

Then, on the forty fifth (45<sup>th</sup>) anniversary, the fiftieth (50<sup>th</sup>) anniversary, and the fifty fifth (55<sup>th</sup>) anniversary of the Rent Commencement Date hereof, the Base Rent shall be increased by ten percent (10%) of the Base Rent then in effect.

**4.5 Phase Rent Calculation.** The parties acknowledge and agree that the timing and make-up of future Phase(s) after Phase 1 are unknown, and that subject to the time limitations set forth in Section 4.2(b) above, the development and Rent Commencement Date(s) of future Phases of the Property may be significantly delayed from the development and Rent Commencement Date of Phase 1. Consequently, the parties agree that the Rent Commencement Date, Lease Years, Lease Term, Reappraisal Rent Adjustments (under Section 4.3), and Fixed Escalation Adjustments (under Section 4.4), shall following the Rent Commencement Date for Phase 1, be restructured separately on a Phase by Phase basis such that each Phase shall be completely separate and stand alone from each other Phase. The parties agree that at Tenant's request and Tenant's sole cost (including, without limitation, the cost of Landlord's legal counsel), this Lease shall be split into separate new leases for each Phase in which the Tenant's obligations to Landlord for each Phase shall be separated and isolated from Tenant's obligations for each other Phase. The parties shall perform such separation in good faith and using the terms of this Lease as the controlling document and drafting guide.

## SECTION 5 - TAXES

**5.1 Leasehold Taxes.** Tenant shall pay to Landlord, at the time Rent payments are made hereunder, the Leasehold Tax established and defined in Chapter 82.29A, Revised Code of Washington. Any delinquent taxes shall be a debt to Landlord, and in the event any penalties or interest are due because of the failure of Tenant to timely pay the Leasehold Tax, such penalties and/or interest shall be payable by Tenant to Landlord.

### **5.2 Taxes and Assessments.**

(a) The term "**Taxes**" as used herein shall mean all ad valorem taxes and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property and Tenant's use and enjoyment thereof, including Assessments as defined below. Tenant shall pay when due its prorated share of all Taxes commencing with the Rent Commencement Date and continuing throughout the Term. Nothing in this Lease shall prevent Tenant from protesting, contesting, seeking modification, or adjudicating the imposition of any "Taxes" as defined herein.

(b) On or prior to the Rent Commencement Date, Landlord shall pay all then-outstanding Assessments levied or imposed against the Property through the Rent Commencement Date. The term "**Assessments**" as used herein shall mean all assessments for public improvements or benefits which heretofore or shall during the Term be assessed, levied, imposed upon, or become due and payable, or a lien upon the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Neither Party shall cause nor suffer the imposition of any Assessment upon the Property without the prior written consent of the other. In the event any Assessment is proposed which affects the Property, Tenant shall promptly notify Landlord of such proposal after Tenant has knowledge or receives notice thereof. Tenant shall pay its prorated portion of the total amount of all Assessments levied with respect to the Property and the leasehold estate created hereby for the tax year in which the Rent Commencement Date occurs and the tax year when the Term expires without extension by Tenant. In no event shall Landlord be obligated to pay any Assessment or any portion thereof levied or created during the Term, irrespective of whether such Assessment or any portion thereof was specifically allocated to the Property or Landlord's reversionary interest therein, except for the tax year in which the Rent Commencement Date occurs and the tax year when the Term expires without extension by Tenant. Assessments may be paid in installments as permitted by the terms of the Assessments.

**5.3 Payment Date and Proof.** All payments to Landlord by Tenant (except Leasehold Tax which shall be paid at the time each rental payment is made hereunder) for Taxes and/or Assessments shall be made by Tenant on or before five (5) days before the last day on which such payments or any installments thereof permitted hereunder may be made without penalty or interest. Tenant shall furnish to Landlord receipts or other appropriate evidence establishing the payment of such amounts. Tenant may comply with

this requirement by retaining a tax service to notify Landlord when the Taxes have been paid.

**5.4 Failure to Pay.** In the event Tenant fails to pay any of the Taxes, expenses or amounts specific in this Section 5, Landlord may, but shall not be obligated to do so, pay any such amount, and the amounts so paid shall immediately be due and payable by Tenant to Landlord and shall thereafter bear interest at the maximum rate allowed by law. Landlord shall provide Tenant with not less than ten (10) days notice of Landlord's intent to pay unpaid amounts as authorized by this Section prior to making any such payment. Such notice shall disclose the rate of interest to be applied by Landlord against the unpaid amounts. Any failure to pay any expense or amount specified or any other amount to be paid by Tenant under the terms of this Lease shall be a material default hereunder by Tenant, and such default (subject to the notice provisions hereof) shall entitle Landlord to pursue all remedies specified in Section 16 of this Lease.

**5.5 Personal Property Taxes.** Tenant shall pay all personal property taxes assessed on Tenant's personal property on the Property. If Landlord has paid any such tax as required by the applicable taxing authority, Tenant shall reimburse Landlord upon Tenant's receipt of paid invoices for such taxes, provided Landlord shall use reasonable efforts to give Tenant notice of any such tax prior to paying same.

**5.6 Proration of Taxes.**

(a) Tenant shall reimburse Landlord within thirty (30) days after Tenant receives from Landlord an invoice for the amount of all Real Estate Tax payments made by Landlord for which Tenant is liable pursuant to Section 5.0 hereof. Each invoice shall be accompanied by a computation of the amount payable.

(b) If the Term shall expire on any date other than the last day of a tax fiscal year, the amount payable by Tenant during the tax fiscal year in which such termination occurs shall be prorated on the basis which the number of days from the commencement of said tax fiscal year to and including said termination date bears to 365. A similar proration shall be made for the tax fiscal year in which the Term commences.

**5.7 Separation Of Taxes.** As the boundary lines between Phase 1 and the remaining Phase(s) of the Property are ascertained, and upon request by Tenant, Landlord shall cooperate with Tenant in (i) causing the parcels of land comprising the Property to be re-subdivided such that the actual boundaries of the parcels match boundary lines of the Phases of the Property, and (ii) causing the re-subdivided parcels to be separately assessed by the tax assessor.

**SECTION 6 - SUBLEASES**

**6.1 Subleases.** It is understood between the parties that Tenant will be subleasing portions of the Property to end user/tenants as the Property is developed. All subleases shall conform to and shall be subject to the terms and conditions of this Lease, and shall conform to and be subject to the then-effective recorded Easements, Covenant, and Restrictions ("ECR"), a draft version of which is attached hereto as **Exhibit "F"** and incorporated herein by this reference. Appropriate sublease attornment and non disturbance agreements must be executed by Landlord, Tenant and the applicable subtenant prior to occupancy by any subtenant, in substantially the form attached hereto as **Exhibit "G"** and incorporated herein by this reference, and Landlord shall expedite its review, negotiation and finalization of each such attornment and non-disturbance agreement. Tenant shall provide Landlord with a copy of its proposed form shop sublease for approval to ensure the form sublease is consistent with this Lease. Each sublease shall include language stating that any conflict between the language in a sublease and the Lease shall be decided on the language of the Lease. Tenant shall immediately provide Landlord copies of all subleases as they are executed. Failure of Tenant to provide such copies within 10 days following Tenant's receipt of Landlord's written request for same, shall constitute a material breach of this lease and all provisions of this Lease and at law shall be available to Landlord. For the subleases of portions of the Property which are not drafted on Tenant's form shop sublease, such leases shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned, and which shall be deemed to be given should Landlord fail to respond to Tenant's request for such approval within ten (10) days following Landlord's receipt of such request.

## SECTION 7 - UTILITIES

**7.1 Utility Usage.** Tenant shall pay the applicable utility companies or governmental agencies directly for all utilities consumed on the Property by Tenant. Landlord shall not take, or permit any person claiming under Landlord or any such occupant to take, any action which shall interrupt or interfere with any electric, water, sewage, or telephone service to the Property and hold Tenant harmless therefrom.

## SECTION 8 - POSSESSION AND USE

**8.1 Date.** Tenant shall have exclusive possession of the Property upon the day following the last day of the Due Diligence Period (hereafter defined). Following the Effective Date, Tenant, its employees, agents and contractors, shall have a license to enter the Property to perform due diligence investigations and studies on the Property including, without limitation, Phase I and Phase II environmental surveys, soils tests, land surveys, and topographical surveys, all at Tenant's sole cost and expense. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all actions, claims, damages, liens, liability, costs and expenses including, without limitation reasonable attorney's fees arising from any such entry into the Property.

**8.2 Due Diligence.** Tenant shall have one hundred twenty (120) days following the Effective Date, subject to extension as provided herein, to review the feasibility of developing the Property (including, without limitation the source and cost of required site fill material), research the zoning and building codes and requirements, review title, survey and any easements, covenants or restrictions (the "**Due Diligence Period**"). Tenant shall have the right to terminate the Lease upon written notice to Landlord prior to the expiration of the Due Diligence Period. Landlord shall within Ten (10) days from the Effective Date (as defined in Section 21.19) provide Tenant with true, correct and complete copies of all reports and materials in Landlord's possession (including, but not limited to surveys, appraisals, inspections, tests, evidence of the absence of hazardous materials and satisfactory soils) that may enable Tenant to properly evaluate the economic feasibility of developing the Property. Tenant shall have the right to extend the Due Diligence Period for an additional Thirty (30) days upon written notice to Landlord.

**8.3 Permitted Use.** The Property is leased to Tenant for the sole purpose of constructing, maintaining, and operating the Improvements referred to in Section 10 below, in the location depicted on the Site Plan as ultimately approved by Landlord, Tenant's conceptual version of which is shown in **Exhibit "B"**, attached and incorporated herein; and no Improvements, fixtures or any other use, temporary or permanent, shall be made, constructed, or placed in areas designated on said Site Plan and the ECR for vehicle parking, ingress, and egress. The Improvements on the Property may be used for any lawful use, subject to ECR and the prohibited uses stated therein. Tenant shall use commercially reasonable efforts to diligently market the rental of the Improvements and the Property in the event any Improvement is vacated for any reason whatsoever.

## SECTION 9 - ASSIGNMENT

**9.1 Assignment.** Except as otherwise provided herein, Tenant shall not assign, transfer, nor otherwise alienate this Lease, or any interest therein without Landlord's prior written consent, and such consent shall not be unreasonably withheld, delayed or conditioned. Any assignee or subtenant shall be bound by the terms of this Lease. Tenant shall also not hypothecate or mortgage Tenant's leasehold interest in this Lease, except as authorized by Section 20 below.

**9.2 Permitted Assignments.** Notwithstanding Section 9.1 or Section 20.1, Tenant shall have the right to assign, transfer, or otherwise alienate this Lease or any interest therein to an affiliate(s) of Landlord and to another Qualified Developer without Landlord's consent. A Qualified Developer is a person or entity that is able to (i) fill the Property to satisfy 100-year Flood Plan mitigation plan, and (ii) to develop a minimum 70,000 SF Shopping Center within Phase 1 of the Property.

**9.3 Phase Assignments.** As part of the separation of this Lease into separate leases for each Phase of the Property as described in Section 4.5, Tenant shall also have the right to assign its rights under

this Lease on a Phase by Phase basis to affiliates of Landlord such that each Phase of the Property shall be governed solely by separate leases. Upon any such assignment by Tenant, Tenant shall be automatically released from further liability for performance of the obligations of such assignee(s) under the replacement lease(s).

## **SECTION 10 - IMPROVEMENTS CONSTRUCTED BY TENANT AND OPERATION**

**10.1 Construction.** Tenant intends during the Term of this Lease, and, subject to the approvals stated in Section 2.3 above, is authorized by Landlord, to construct and renovate Improvements on the Property. The entirety of the Improvements to be constructed by Tenant is referred to herein as the "**Project**". Tenant's Improvements shall be constructed within the Building Areas of the Property as shown on the mutually approved, final Site Plan, as amended from time to time with the prior written approval of Landlord, which approval shall not be unreasonably withheld, delayed or conditioned, and no temporary or long term improvements will be constructed in the area designated for vehicular ingress, egress, access or parking in the Site Plan. At any time and from time to time during the Term, Tenant may make, at its sole cost and expense, changes and alterations to the Project or any part thereof, with the prior written consent of Landlord, which consent shall not be unreasonably withheld so long as such changes and alterations are in compliance with the then-effective building and design code. All plans and specifications required by Rich Development Enterprises, LLC, and/or its affiliates shall be deemed to be approved by Landlord. Such changes and alterations to the Project and shall further be subject to the following conditions:

a. The plans or specifications for such initial construction, changes or alterations, including amendments of such plans or specifications, shall be submitted to Landlord for its approval, which approval shall not be unreasonably withheld if the plans and specifications are in compliance with the then-effective building and design code. All plans and specifications required by Rich Development Enterprises, LLC, shall be deemed to be approved by Landlord.

b. Tenant, at Tenant's expense, must contract with appropriate civil engineering firms for construction monitoring inspections of the filling, compaction and grading activities necessary to comply with the 100-year flood mitigation plans. All engineering visits must be logged and provided monthly in report format with findings to the Landlord. In addition, upon request, Landlord shall be copied on all other civil engineering reports the Tenant receives during the Due Diligence Period.

c. If required by applicable law (not by Landlord), Tenant shall provide Landlord, at Tenant's expense, with a performance and payment bond, pursuant to Section 10.3 below, in an amount not less than Tenant's estimated cost of such construction, changes or alterations based on Tenant's selected general contractor(s) bid(s). No change or alteration shall be undertaken until Tenant shall have procured and paid for all required governmental permits, licenses, and authorizations therefor. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Upon request, Tenant shall furnish to Landlord a complete set of "as built" plans (or field-marked construction drawings) for the Project upon completion of construction on a Phase by Phase basis. In the event Tenant fails to provide Landlord with said "as built" plans, upon 30 days prior written notice to Tenant, Landlord may contract for any services necessary to accomplish the same and Tenant shall reimburse Landlord for the actual, itemized, reasonable costs thereof, such reimbursement to be made within thirty (30) days of Tenant's receipt of Landlord's billing. Tenant's failure to timely pay said costs shall constitute a breach under this Lease.

### **10.2 Fixtures and Equipment.**

a. **Project.** In constructing the Project upon the Property, Tenant and its sublessees may place or install in the Project such personal property, trade fixtures, business equipment and furnishings (the "**Business Equipment**") as Tenant or such sublessees shall deem desirable for the conduct of business therein. The Business Equipment used in the conduct of business by Tenant and the sublessees (as distinguished from actual Improvements, fixtures and equipment used in connection with the operation and maintenance of the Property, including plumbing fixtures, electrical fixtures, lighting, cabling, flooring, the foregoing collectively the "**Building Fixtures**") placed by Tenant on or in the Project shall not become part



of the realty, even if nailed, screwed, or otherwise fastened to the Improvements or buildings of the Project, but shall retain their status as personal property and may be removed by the Tenant and its sublessees at any time. Notwithstanding Subsection 10.7 below, the Building Fixtures constructed or installed upon the Property shall be deemed to become part of the real property and, upon the Termination Date shall become the sole and exclusive property of Landlord, free of any and all claims of Tenant or any person or entity claiming by or through the Tenant. In the event Tenant does not remove its personal property and the Business Equipment which it is permitted by this Subsection 10.2 to remove from the Project within ninety (90) days following the Termination Date, the Landlord may treat said Business Equipment as abandoned and retain the Business Equipment and treat the trade fixtures as part of the Property. Tenant shall promptly reimburse the Landlord for the actual, itemized, reasonable cost to repair any physical damage caused to the Property by the removal of personal property and trade fixtures whether removal is by the Tenant, reasonable wear and tear excluded.

b. Tenant's Work. Tenant may perform such work as necessary, subject to the terms of this Lease and ECR, to improve the Property as Tenant deems appropriate subject however to the final Site Plan approved by the parties, as amended from time to time also as approved by both parties, and the coordination of the shopping center development with Landlord and other tenants in the shopping center, if any.

c. Signage. Tenant may install signage on the Property and on any shopping center pylon and monument signs, in accordance with the Signage Criteria for the Project prepared by Tenant a form approved by Tenant, which approval shall not be unreasonably withheld, delayed or conditioned, subject to the ECR and Federal Aviation Administration (FAA) requirements, if any.

### **10.3 Mechanics and Labor Liens.**

a. Tenant agrees that it will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Property for work or materials furnished to Tenant in connection with any construction, improvements, maintenance, or repair thereof made by Tenant or its agents upon the Property. Tenant shall cause any such claim or lien to be fully discharged within thirty (30) days after the date of filing thereof; provided, however, that in the event Tenant, in good faith, disputes the validity or amount of any such claim of lien, and if Tenant shall give to Landlord such security or mechanics lien bonds as Landlord may reasonably require to ensure payment thereof and prevent any sale, foreclosure, or forfeiture of the Property or any portion thereof by reason of such nonpayment. Tenant shall not be deemed to be in breach of this Subsection 10.3, so long as Tenant is diligently pursuing a resolution of such dispute. Upon entry of final judgment resolving the dispute if litigation or arbitration results therefrom, Tenant shall discharge said lien within the time limits specified above.

b. Tenant shall provide Landlord with evidence of Tenant's financial ability to complete the construction of any improvement and to pay for all work performed in or materials furnished for construction of the Project on a Phase by Phase basis. Such evidence of financial ability may consist of a loan commitment or will fund letter from a bank or other institutional lender reasonably approved by Landlord, sufficient to complete the construction of the applicable Phase of the Project. If required by law, Tenant shall also post a surety bond issued by a corporate surety acceptable to the Landlord in an amount equal to the cost of each off-site improvement required as a condition to the City's approval of the Project, said bond to be deposited with Landlord and to remain in effect until said improvement shall have been constructed and insured as provided in this Lease, and the entire cost of the improvement shall have been paid in full, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and materialmen.

**10.4 Development Rights.** Tenant shall not undertake any development of the Property other than to construct the Project and the changes and alterations thereto approved by Landlord in accordance with Subsection 10.1 above. Tenant shall not represent to any person, governmental body, or other entity that Tenant is the owner of the Property, nor shall Tenant execute any petition, application, permit, plat, or other document on behalf of Landlord as the "owner" of the Property without Landlord's express written consent, which consent shall not be unreasonably withheld. Landlord shall join in and/or execute any

petition, application, permit, plat, and other land use document requested by Tenant and which is reasonably necessary for the development of the Project or any Phase of same. Tenant shall notify the Landlord in writing of any proposed or pending governmental action of which Tenant becomes aware which affects the Property, its zoning, or the right to develop the Property for any future use, unless such governmental action is initiated by Landlord. Tenant's Project shall conform with the requirements of this Lease and Tenant shall cooperate with Landlord on any coordinated development effort such as, but not be limited to, infrastructure development, security requirements, access, surface water runoff, and access to all facilities. No development of Tenant shall conflict with the overall management and use of the Airport facility, including but not limited to, conflicts with FAA requirements for setback and height restrictions in addition to FAA requirements described in **Exhibit "E"**, by this reference incorporated herein.

**10.5 Hold Harmless.** Tenant shall indemnify, protect, and hold harmless Landlord, its agent, contractor, representative and the Property from and against all claims and liabilities arising by virtue of or relating to construction of the Project or repairs made at any time to the Project (including repairs, restoration, and rebuilding), except to the extent arising from the acts or omissions of Landlord, its employees, agents, contractors and consultants. Tenant shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work and will maintain its books and records in the state of Washington, with respect to all aspects of such work and materials, and will make them available for inspection by Landlord or its representatives within 10 days following written request by Landlord.

**10.6 Permits and Compliance With Codes.** All building and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Project and any subsequent improvements, repairs, replacements or renewals to the Property or Project shall be acquired as required by applicable laws, ordinances or regulations by and at the sole cost and expense of Tenant. Tenant shall cause all work on the Property during the Term to be performed in accordance with all applicable laws, directions and regulations of all governmental agencies and representatives of such agencies having jurisdiction. Tenant, in addition to the requirements herein to comply with all laws, directions and ordinances as provided in this Lease, shall also be responsible to comply with City of Chehalis Ordinance 829B which create special benefit areas and establish costs to be paid to the City prior to the issuance of any development permits. Tenant's responsibility to comply shall include the assumption and payment of all costs incurred to comply with said Ordinances and Landlord shall have no responsibility thereto. Tenant shall comply with the overall development plans of Airport property, true, correct and complete copies of which shall be supplied to Tenant as part of the documents and materials provided by Landlord under Section 8.2 hereof.

**10.7 Ownership of Improvements.** During the Term of this Lease, the Project and all other Improvements constructed by Tenant, including, without limitation, all additions, alterations, and improvements thereto or replacements thereof and all appurtenant fixtures, machinery, and equipment installed therein, shall be the property of Tenant. At the expiration or earlier Termination of this Lease, the Project and all improvements, additions, alterations, and improvements thereon and thereto or replacements thereof, and all appurtenant fixtures, machinery, and equipment installed therein, excluding the Business Equipment, shall then become the property of Landlord.

**10.8 Control and Indemnification.** During the Term of this Lease, Tenant shall have exclusive control and possession of the Property, and Landlord shall have no liabilities, obligations or responsibilities whatsoever with respect thereto or with respect to any plans or specifications submitted to Landlord pursuant to this Lease. Landlord's approval of any such plans and specifications shall not render Landlord liable therefor, and Tenant hereby covenants and agrees to indemnify, defend, and hold the Landlord harmless from and against any and all claims arising out of or from the use of such plans and specifications during the Term of this Lease.

**10.9 Landlord's Reservation to Withhold Additional Leases from Tenant.** Landlord reserves the right to withhold the negotiation of any additional leases for property other than the Property with Tenant if Tenant is not in compliance with all the terms and conditions of this Lease or in compliance with the codes of governmental authorities as provided in paragraph 10.6 above. Landlord shall not unreasonably withhold the negotiation of or the entering into additional leases with Tenant but shall not be obligated to commit any

other property for development to Tenant if, at its sole discretion, determines Tenant is not in compliance to Landlord's reasonable interpretation of the requirements of this Lease or governmental requirements.

**10.10 Landlord Termination Right For Future Phases.** Under Section 4.2, Tenant is required to commence construction of future Phases of the Property within 18 months following the Rent Commencement Date of Phase 1 or the next succeeding Phase, whichever is applicable. In the event Tenant is unable to (1) achieve the necessary preleasing of any future Phase of the Property so as to make the development of same economically viable, or (2) obtain suitable construction financing sufficient to pay for the construction cost of the Improvements to such Phase, or (3) obtain the necessary discretionary or ministerial governmental approvals, licenses and permits necessary to construct and use same, in each event within the required deadline, then Tenant may by written notice to Landlord terminate this Lease as to such future Phase(s), in which event Tenant shall no further right, title, leasehold interest in or to such future Phase(s) and no further obligations under this Lease with regard to such future Phase. No such termination shall affect this Lease as it pertains to Phase 1 or any previously developed Phase of the Property

## SECTION 11 – MAINTENANCE AND REPAIRS

**11.1 Maintenance.** Tenant covenants it shall maintain (i) the developed portions of the Property and Improvements thereon, including common areas, during the Term of this Lease in a clean and first-class condition, and (ii) the undeveloped portions of the Property in a rough graded condition, fenced or unfenced, regularly mowed and trash collected and removed, both at its sole cost and expense. Tenant may, by sublease or other agreement with subtenants, assign or otherwise transfer some or all of this responsibility, or may contract with reputable firms for maintenance, but in the event subtenants or contractors do not meet this obligation Tenant shall perform the maintenance or cause it to be performed. Notwithstanding the provisions of this Lease for default by Tenant, in the event Tenant fails to maintain the Property and Improvements thereon, Landlord reserves the right at any time after not less than 60 days prior written notice to Tenant, to cause the maintenance to be performed and recover the actual, itemized reasonable costs thereof from Tenant within thirty (30) days of Tenant's receipt of Landlord's itemized statement and demand therefor. The term "**Maintenance**" as used in this lease shall include but not be limited to: maintaining landscape and lawn areas by replacement of beauty bark, plants, mowing, weed control and fertilization, parking area markings and parking surfaces, lighting, maintenance, repair and periodic resurfacing of pavement, application of pavement sealant, pavement striping; regularly removing trash and debris from the Property whether such trash and debris occurs in public access areas or behind the building improvements at dumpster locations, loading ramps or along the fill slopes of the Property; and maintenance shall include, without limitation, the neat and orderly organization of equipment parking, staging and storage and the temporary storage of construction materials, soil and construction debris, whether or not Tenant may intend to use such material at a later time during or after construction, to convey a pleasing landscape of neatness and orderliness to customers and invitees of the Shopping Center and adjacent Airport properties. The term "**Maintenance**" as used herein shall also include any other maintenance typically provided for on shopping center properties. The maintenance of Improvements shall include periodic inspections by qualified persons to determine and perform needed repair or replacement of exterior paint, signage, gutters, drains and parking lot(s).

## SECTION 12 - TENANT'S INDEMNITY; LIABILITY AND CASUALTY INSURANCE

**12.1 Indemnity.** Landlord shall have no responsibility for or control with respect to any aspect of the Property or any activity conducted thereon from and after the Effective Date. Tenant shall indemnify and hold harmless Landlord from any and all liability, damage, expense, cause of action, suits, claims, or judgments by any reason whatsoever caused, arising out of the use, occupation, and control of the Property by Tenant, its subtenants, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or grossly negligent act of Landlord or Landlord's agents, contracts or employees.

**12.2 Acquisition of Insurance Policies.** Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, from and after the commencement of any construction on the Property, the insurance described in this section (or its then available equivalent), issued by an

insurance company or companies licensed to do business in the state of Washington covering and protecting Tenant.

**12.3 Types of Required Insurance.** Tenant shall procure and maintain the following:

(a) **Commercial General Liability Insurance.** Commercial general liability insurance covering claims with respect to injuries or damages to persons or property sustained in, on, or about the Property and the Project and the appurtenances thereto, including but not limited to the sidewalks and alleyways adjacent thereto, with limits of liability no less than the following:

Bodily injury and property damage liability: One Million and no/100 Dollars (\$1,000,000.00) each occurrence, Two Million and no/100 Dollars (\$2,000,000.00) aggregate. Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 12 for the Property and the Project.

(b) **Physical Property Damage Insurance.** Physical damage insurance covering all real and personal property, excluding property paid for by sublessees or paid for by Tenant for which sublessees have reimbursed Tenant, located on or in, or constituting a part of, the Property (including but not limited to the Project) in an amount equal to at least one hundred percent (100%) of replacement cost of all such property. Such insurance shall afford coverage for damages resulting from (i) fire; (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the state of Washington; (iii) explosion of steam and pressure boilers and similar apparatus located in the Project; (iv) flood damage if the Property is located within a 100 year flood zone, and (v) rent abatement insurance in the amount of 100% of the rents received by Tenant from the subtenants of the Property for a period of not less than 12 months. Tenant shall not be required to maintain insurance for war risks; provided, however, if Tenant shall obtain any such coverage then, for as long as such insurance is maintained by Tenant, Landlord shall be entitled to the benefits of (i) the first sentence of Section 12.4 hereof, and (ii) Paragraph (c) of Section 12.4. Tenant may cause individual building(s) within the Property to be so insured by their respective subtenants as long as all buildings within the Property are covered by such insurance carried either by Tenant or by such subtenant(s).

(c) **Builder's Risk Insurance.** During construction of the Improvements to any Phase of the Project and during any subsequent restorations, alterations, or changes in the Project that may be made by Tenant either (i) requiring a building permit, or (ii) at a cost in excess of Fifty Thousand and no/100 Dollars (\$50,000.00) per job, contingent liability and all builder's risk insurance in an amount not less than One Million and no/100 Dollars (\$1,000,000.00) each occurrence, Two Million and no/100 Dollars (\$2,000,000.00) aggregate and otherwise reasonably satisfactory to Landlord. The Tenant may elect to provide the Builder's Risk Insurance described in this Section 12.3(c) or such coverage may be provided by the Tenant's contractor, at the Tenant's option.

(d) **Workmen's Compensation Insurance.** Workmen's compensation and employer's liability insurance with respect to any work by employees of Tenant on or about the Property.

**12.4 Terms of Insurance.** The policies required under Section 12.3(a) and (c) shall name Landlord as an additional insured and Tenant shall provide to Landlord certificates of insurance and copies of policies obtained by Tenant hereunder promptly upon the request of Landlord. Further, all policies of insurance described in Section 12.3 shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that Landlord may carry.

(b) Contain an endorsement providing that such insurance may not be materially changed, amended, or canceled with respect to Landlord, except after thirty (30) days prior written notice to Landlord.

(c) Contain an endorsement of express waiver of any right of subrogation by the insurance company against Landlord and Landlord's elected or appointed officials, agents, contractor, representative,

and employees.

(d) Provide that all proceeds under the insurance policies required under Sections 12.3 (a) and (c) shall be paid jointly to Landlord and Tenant.

**12.5 Landlord's Acquisition of Insurance.** If Tenant at any time from and after the commencement of construction fails to procure or maintain such insurance or to pay the premiums therefor, upon 10 days prior written to Tenant Landlord shall have the right to procure substitute insurance as Landlord deems reasonably appropriate and to pay any and all premiums thereon, and Tenant shall pay to Landlord within 30 days following Tenant's receipt of Landlord' statement and demand therefor, the full amount so paid and expended by Landlord, together with interest thereon at the rate provided herein from the date of such expenditure by Landlord until repayment thereof by Tenant. Any policies of insurance obtained by Landlord covering physical damage to the Property or Project shall contain a waiver of subrogation against Tenant if and to the extent such waiver is obtainable and if Tenant pays to Landlord on demand the additional costs, if any, incurred in obtaining such waiver.

**12.6 Application of Proceeds of Physical Damage Insurance.** In case of any insurance policies as described in Section 12.3(b) (Physical Property Damage Insurance), the application of insurance proceeds from damage or loss to property received from Tenant's lender shall be determined in accordance with this Lease and, in the event of any repair, replacement, restoration, or rebuilding, the proceeds of the insurance collected shall be applied to the cost of such work upon certificate of progress and/or completion by the licensed architect or engineer in charge of the work. Any amounts payable to Tenant or any affiliate of Tenant for work or services performed or materials provided as part of any such repair, replacements, restoration, or rebuilding shall not exceed competitive rates for such services or materials, and Tenant shall, upon request of Landlord, make available to Landlord and its representatives at Landlord's offices all books and records of Tenant relating to such work, services, and materials.

**12.9 Insurance Surveyor.** The determinations required herein shall be made by an independent qualified insurance surveyor selected by the parties, whose decision shall not be subject to arbitration. If the parties cannot agree on the insurance surveyor within thirty (30) days after the date of such damage or destruction, then the same shall be appointed by the Presiding Judge of the Superior Court of Lewis County, Washington, upon the application of either party.

## **SECTION 13 - DAMAGE OR DESTRUCTION**

### **13.1 Effect of Damage or Destruction.**

(a) In the event of any damage to or destruction of the Property or any Improvements thereon from any cause whatsoever, Tenant shall promptly give written notice thereof to Landlord. Tenant shall promptly repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction unless either (i) Landlord and Tenant mutually agree in writing that such repair and restoration are not feasible, or (ii) the damage or destruction is caused by an event not required to be insured by Tenant under this Lease and exceeds 10% of the replacement cost of the applicable property or Improvements. All such repair and restoration shall be performed in accordance with the requirements herein. Unless this Lease is so terminated by mutual agreement, there shall be no abatement or reduction in rent during such repair and restoration. Any insurance proceeds payable by reason of such damage or destruction shall be made available pay the cost of such reconstruction; provided, however, in the event Tenant is in default under the terms of this Lease beyond any applicable cure period at the time such damage or destruction occurs, and subject to the rights of Tenant's leasehold mortgagee under Section 20, Landlord may elect to terminate this Lease and Landlord shall thereafter have the right to retain all insurance proceeds payable as a result of such damage or destruction. Funds of Insurance in excess of the cost of such reconstruction shall be paid to Tenant provided, however, Landlord shall have a lien on Tenant's share of such proceeds to the extent Tenant has failed to pay any moneys to Landlord under the Terms of this Lease but only to the extent excess proceeds are available.

(b) In the event such damage or destruction occurs within the last ten (10) years of the Term of

this Lease, and if such damage or destruction cannot be substantially repaired within one hundred eighty (180) days, Tenant may elect by written notice to Landlord, not more than ninety (90) days after the date of such damage or destruction, to either (i) terminate this Lease, or (ii) repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction or construct thereon such other improvements as may be approved by Landlord, which approval shall not be unreasonably withheld as long as the value of the Property is not reduced thereby. In the event Tenant fails to provide such notice to Landlord, this Lease shall continue in full force and effect. In the event Tenant elects to terminate this Lease, the Term of this Lease shall terminate on a date specified in such notice, and any insurance proceeds payable shall be allocated between Landlord and Tenant pro-rata based upon the unexpired Term of the Lease as specified herein and subject to Landlord's claim against Tenant's share of such proceeds in an amount equal to sums due from Tenant hereunder. In the event Tenant elects to restore the Property, any insurance proceeds payable by reason of such damage or destruction shall be made available to Tenant to pay the costs of such reconstruction and any funds remaining shall be allocated to Tenant.

## SECTION 14 - CONDEMNATION

**14.1 Total Taking.** If all the Property is taken by the power of eminent domain exercised by any governmental or quasi-governmental authority by judgment or settlement in lieu of judgment, this Lease shall terminate as of the date Tenant is required to vacate the Property, and all minimum rent, adjustments, and other rentals and charges due hereunder shall be paid to that date. The term "eminent domain" shall include the taking or damaging of property by, through, or under any governmental or quasi-governmental authority by judgment or settlement in lieu of judgment and any purchase or acquisition in lieu thereof. At such time as this Lease is separated into leases for each Phase of the Property, this provision shall be applied on a Phase by Phase basis rather than on the Property as a whole.

**14.2 Partial Taking.** If more than ten percent (10%) of the Property shall be taken or appropriated, this Lease may, at the option of Tenant, be terminated by written notice given to Landlord not more than ninety (90) days after Landlord and Tenant receive notice of the taking or appropriation, and such termination shall be effective as of the date when Tenant is required to vacate the portion of the Property so taken. If this Lease is so terminated, all adjustments and other charges due hereunder shall be paid to the date of termination. Whenever any portion of the Property is taken by eminent domain and this Lease is not terminated, Tenant shall, utilizing all condemnation awards received by Tenant proceed with all reasonable dispatch to restore, to the extent that it is reasonably prudent to do so, the remainder of the Property to the condition it was in immediately prior to such taking. From the date Tenant is required to vacate that portion of the Property taken, the Leased Premises Rent payable hereunder shall be reduced in the same proportion that net unusable area taken bears to the total net usable area of the Property prior to taking. At such time as this Lease is separated into leases for each Phase of the Property, this provision shall be applied on a Phase by Phase basis rather than on the Property as a whole.

**14.3 Damages.** In the event of a partial taking which does not result in the termination of this Lease and which does result in a "single award" (defined below), the award shall first be made available to Tenant to enable Tenant to restore the Property and the Improvements, fixtures, furnishings, etc., located thereon, and the excess award shall be divided among Tenant and Landlord in the manner described below with respect to a total taking. In the event of a total taking, or a partial taking that does result in termination of the Lease, if the judgment, order, or decree entered in such condemnation proceeding shall not yield separate awards to Landlord and Tenant but rather shall provide for the payment of a lump sum with respect to the Property (herein called "**single award**") as compensation for the respective interests of Landlord and Tenant, then the single award shall be divided between Landlord and Tenant in the ratio as nearly practicable, which (a) the then fair market value of Landlord's reversionary interest in the Property, exclusive of Improvements made by Tenant and the subtenants of the Property, to (b) the then fair market value of Tenant's interest in the remainder of the Term of this Lease (including extension options) and the Improvements made by Tenant and the subtenants of the Property. Tenant shall also have the right to claim from the condemning authority all compensation that may be recoverable by Tenant on account of any loss incurred by Tenant in moving or removing Tenant's merchandise, furniture, trade fixtures, and equipment, for damage to Tenant's business, for Tenant's goodwill and for the value of Tenant's leasehold interest under this Lease including any extension options.

## SECTION 15 - SELF HELP

**15.1 Self Help.** If either Party defaults in the performance of any obligation (including obligations to reimburse or pay money hereunder) imposed on it by this Lease and does not cure such default within thirty (30) days after written notice from the other Party specifying the default (or if such Party does not within said period commence and diligently proceed to cure such default other than an obligation to pay money), the other Party, without waiver of or prejudice to any other right or remedy it may have, shall have the right, at any time thereafter, to cure such default for the account of the defaulting Party, if applicable, and the defaulting Party shall reimburse the other party within 30 days following its receipt of an itemized invoice for any amount paid and any expense or contractual liability so incurred (which, in the case of a monetary default, shall be the amount of money owed by the defaulting Party). If Landlord is the defaulting Party and fails to reimburse Tenant within thirty (30) days after invoice Tenant shall have the right to offset the amount due thereunder, together with Default Interest, against Rent and other charges due from Tenant to Landlord under this Lease until Tenant has been completely reimbursed for its expenses.

In emergencies, or where necessary to prevent injury to persons or damage to property, either Party may cure a default by the other before the expiration of the prescribed notice period, but after giving such written or oral notice to the other Party as is practical under the circumstances.

If Tenant exercises its right of set-off as set forth in this Lease, and a court of competent jurisdiction issues a final, non-appealable order pursuant to which Landlord is found not to have been in default hereunder, then Tenant shall not be in default hereunder, but shall have sixty (60) days from the date of such final, non-appealable order in which to pay to Landlord those funds determined by the court to have been inappropriately set-off.

## SECTION 16 -- DEFAULT

### **16.1 Breach by Tenant.**

(a) **Breach and Default.** In the event of any breach of any provision of this Lease by Tenant, the breach shall be deemed a default entitling Landlord to the remedies hereinafter set forth after Landlord has delivered to Tenant notice of the alleged breach and a demand that the same be remedied immediately, provided that if the breach pertains to payment of Rent, Tenant shall not be in default if it shall cure the default within 30 days following receipt of notice, and if the breach pertains to a matter other than payment of Rent, as described in Section 4.2, Tenant shall not be in default after receipt of the notice if Tenant shall promptly commence to cure the default and shall cure the default within ninety (90) days after receipt of the notice; provided, further, if such default is nonmonetary in nature and is not reasonably susceptible of being cured in said ninety (90) days Tenant shall commence to cure such default within said period and diligently pursue such action to completion. If a breach has been cured within the grace periods permitted by this Section, it shall no longer constitute a breach or default.

(b) **Right of Re-entry.** In the event of a default that remains uncured pursuant to the applicable cure periods provided hereinabove, Landlord, in addition to any other rights or remedies that it may have, shall have the immediate right of re-entry. Should Landlord elect to re-enter or take possession of the leased Property, it may either terminate this Lease or, from time to time, without terminating this Lease, relet the leased Property or any part thereof for the account and in the name of Tenant or otherwise, for any such Term or terms and conditions as Landlord in its sole discretion may deem advisable with the right to complete construction of or make alterations and repairs to the Improvements. Tenant shall pay to Landlord, as soon as ascertained, the cost and expenses incurred by Landlord in such reletting, completion of construction, or in making such alterations and repairs. Rentals received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness, other than rent, due hereunder from Tenant to Landlord; second, to the payment of rent due and unpaid hereunder and to any other payments required to be made by Tenant hereunder and the residue, if any, shall be held by Landlord and applied in payment of future rent or damages in the event of termination as the same may become due and payable hereunder, and the balance, if any, at the end of the Term of this Lease shall be paid to Tenant. Should such rentals

received from time to time from such reletting during any period be less than that agreed to be paid during that period by Tenant hereunder, Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid for that period. At any time after such re-entry, whether or not Landlord shall have collected any periodic deficiencies as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the difference between the rent for the period to the date upon which the Term would have ended but for the default of Tenant and the then fair and reasonable rental value of the Property for the same period, which shall in no event exceed the limit prescribed under RCW Section 2A-504(b), or one (1) year's Rent, whichever is less.

(c) Reletting. No such reletting of the Property by Landlord shall be construed as an election on its part to terminate this Lease unless a notice of such intention to be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach, provided that it has not been cured. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedy it may have, it may recover from Tenant all damages it may incur by reason of such breach, subject to the limit prescribed under RCW Section 2A-504(b), or one (1) year's Rent, whichever is less.

**16.2 Remedies Upon Landlord's Default.** In the event Landlord shall at any time be in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Landlord hereunder and any such default shall continue for a period of thirty (30) days after written notice to Landlord, or if such default is incapable of being cured in a reasonable manner within thirty (30) days, if Landlord has not commenced to cure the same within said thirty (30)-day period or does not thereafter diligently prosecute the same to completion, Tenant shall be entitled, at its election, to exercise, concurrently or successively, any one or more of the following rights, in addition to all remedies otherwise provided in this Lease and otherwise available at law or in equity under the laws of the United States or the state of Washington:

(a) To bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement devolving upon Landlord, without terminating this Lease; and/or

(b) To terminate this Lease upon thirty (30) days' written notice to Landlord, without waiving Tenant's rights to damages for Landlord's failure to perform its obligations hereunder. In the event Tenant elects to terminate this Lease as aforesaid, all rights and obligations of Tenant, and of any successors or assigns, shall cease and terminate, except that Tenant shall have and retain full right to sue for and collect all amounts for the payment of which Landlord shall then be in default and all damages to Tenant by reason of any such breach.

In the event that either Landlord or Tenant commences any suit for the collection of any amounts for which the other may be in default or for the performance of any other covenant or agreement hereunder, each Party shall be responsible for its own respective costs and expenses, including, but not limited to, all attorneys' fees and expenses incurred in enforcing such obligations and/or collecting such amounts.

**16.3 Remedies Cumulative.** All remedies of Landlord or Tenant herein created or remedies otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other, provided that in no event shall Landlord have the right to (a) be awarded consequential damages for Tenant's default or (b) accelerate rental reserved hereunder without offsetting against such amount the present value of the fair market rental value of the Property for the balance of the Term, and subject to the limit prescribed under RCW Section 2A-504(b), or one (1) year's Rent, whichever is less. Except as limited herein above, all rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord or Tenant shall deem necessary.

## SECTION 17 - QUIET POSSESSION



**17.1 Quiet Possession.** Landlord covenants that it has full right, power, and authority to make this Lease. Landlord covenants that Tenant, so long as Tenant is not in default hereunder and subject to the provisions of this Lease, shall have quiet and peaceful possession of the Property during the entire Term of this Lease.

## **SECTION 18 - SUBORDINATION**

**18.1 Landlord's Right to Mortgage.** Landlord may mortgage its interest in the Property, provided such mortgage expressly provides that the rights and interests of the mortgagee thereunder are subject and subordinate to the rights and interests of Tenant hereunder and to the rights of any Leasehold Mortgagee under any Leasehold Mortgage then or thereafter existing. Should Landlord sell, convey, or transfer its interest in the Property, or should any mortgagee of Landlord succeed to Landlord's interest through foreclosure or deed in lieu thereof, Tenant shall attorn to such succeeding party as its landlord under this Lease promptly upon any such succession, provided such succeeding party assumes all of Landlord's duties and obligations under this Lease, including without limitation the covenant of quiet enjoyment. Such succeeding party shall not be liable for any of Landlord's obligations and duties hereunder prior to its assumption of Landlord's duties and obligations hereunder, except that Tenant shall be entitled to any offsets or defense which may have arisen prior to such succeeding party's assumption, which such offsets or defenses are specifically provided herein or are otherwise permitted by law.

## **SECTION 19 - RESERVED**

## **SECTION 20 - LEASEHOLD MORTGAGES**

**20.1 Leasehold Mortgages Authorized.** Landlord, subject to the provisions of this Lease, consents to Tenant mortgaging or otherwise encumbering Tenant's leasehold estate to an Institutional Investor (as hereinafter defined) under one or more leasehold mortgages and receiving a Purchase Money Leasehold Mortgage upon a sale and assignment of the leasehold estate created by this Lease and any new lease for a particular Phase of the Project. This Lease may be assigned as security for such Purchase Money Leasehold Mortgage(s) or Institutional Investor Leasehold Mortgage(s). Except as specifically authorized in this Section 20 with respect to Purchase Money Leasehold Mortgage(s), and Institutional Investor Leasehold Mortgage(s), Tenant shall not have the right to collaterally assign, hypothecate, mortgage, or otherwise pledge the leasehold estate created hereby without Landlord's express written consent, which consent may be withheld by Landlord in the exercise of its reasonable business judgment.

### **20.2 Notice to Landlord.**

(a) If upon a sale and assignment of the leasehold estate Tenant may, on one or more occasions, take back a Purchase Money Leasehold Mortgage for a Term not beyond the Termination Date for so long as Tenant holds such instrument; or if Tenant shall mortgage Tenant's leasehold estate to an Institutional Investor for a Term not beyond the Termination Date and if the holder of such Leasehold Mortgage shall provide Landlord with notice of such Leasehold Mortgage, together with a true copy of such Leasehold Mortgage and the name and address of the mortgagee, Landlord and Tenant agree that, following receipt of such notice to Landlord, the provisions of this Section 20 shall apply in respect to each such Purchase Money Leasehold Mortgage or such Leasehold Mortgage held by an Institutional Investor. In addition to the foregoing requirements, any Purchase Money Leasehold Mortgage or Institutional Investor Leasehold Mortgage shall contain a statement which disclaims any interest or lien against Landlord's fee interest in the Property and which states that Landlord shall have no personal liability whatsoever in connection with said mortgage or the instruments and obligations secured thereby.

(b) In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignment of such mortgage, notice of the new name and address shall be provided to Landlord; provided, however, any such assignee shall be an Institutional Investor as defined herein.

(c) Landlord shall promptly, upon receipt of a communication purporting to constitute the notice provided for by Section 20.2(a) above, acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided by Section 20.2(a) above, or, in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 20.2(a), and specify the specific basis of such rejection.

(d) After Landlord has received the notice provided for by Section 20.2(a) above, Tenant shall, with reasonable promptness, provide Landlord with copies of the note or other obligation secured by such Leasehold Mortgage and any other documents pertinent to the Leasehold Mortgage as reasonably specified by Landlord. Tenant shall thereafter, in a like manner, also provide Landlord from time to time with a copy of each amendment or other modification or supplement to such instruments. All recorded documents shall be accompanied by the appropriate certification of the appropriate official of the recording office as to their authenticity as true and correct copies of official records, and all nonrecorded documents shall be accompanied by a certification by Tenant that such documents are true and correct copies of the originals. From time to time upon being requested to do so by Landlord, Tenant shall also notify Landlord of the date and place of recording and other pertinent recording data with respect to such instruments as have been recorded.

### **20.3 Definitions.**

(a) The term "Institutional Investor" as used in this Section 20 shall refer to any reputable and solvent (i) savings bank; (ii) commercial bank; (iii) trust company; (iv) credit union; (v) insurance company; (vi) petroleum company; (vii) college; (viii) university; (ix) real estate investment trust; or (x) pension fund. The term "Institutional Investor" shall also include other reputable and solvent lenders of substance which perform functions similar to any of the foregoing and which have assets in excess of Fifty Million and no/100 Dollars (\$50,000,000.00) at the time the Leasehold Mortgage loan is made.

(b) The term "Leasehold Mortgage" as used in this Section 20 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Tenant's leasehold estate is mortgaged, encumbered, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation which is held by an Institutional Investor.

(c) The term "Leasehold Mortgagee" as used in this Section 20 refers to the Institutional Investor which is the holder of a Leasehold Mortgage in respect to which the notice provided for by Section 20.2(a) has been given and received and as to which the provisions of this Section 20 are applicable.

**20.4 Consent of Leasehold Mortgagee Required.** No cancellation, surrender, or modification of this Lease shall be effective as to any Leasehold Mortgage unless consented to in writing by such Leasehold Mortgagee; provided, however, that nothing in this Section 20.4 shall limit or derogate from Landlord's rights to terminate this Lease in accordance with the provisions of this Section 20.

**20.5 Default Notice.** Landlord, upon providing Tenant any notice of: (i) default under this Lease, or (ii) a termination of this Lease, or (iii) demand to remedy a claimed default, shall contemporaneously provide a copy of such notice to every Leasehold Mortgagee of which Landlord has received notice under Section 20.2(a). From and after such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance the additional periods of time specific in Sections 20.6 and 20.7 to remedy, commence remedying, or cause to be remedied the defaults specified in any such notice. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option, and does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

### **20.6 Notice to Leasehold Mortgagee.**

(a) Anything contained in this Lease to the contrary, notwithstanding if any default shall occur

which entitled Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate at least forty-five (45) days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least sixty (60) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money. The provisions hereof shall apply if, during such 45-day or 60-day Termination Notice Period, any Leasehold Mortgagee shall:

- (1) Notify Landlord of such Leasehold Mortgagee's desire to cure the default and nullify such notice; and
- (2) Pay or cause to be paid all Rent and other payments then due and in arrears under this Lease as specified in the Termination Notice to such Leasehold Mortgagee and which may become due during such 45-day or 60-day period; and
- (3) Comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee; provided, however, that such Leasehold Mortgagee shall not be required during such 60-day period to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge, or encumbrance against Tenant's interest in this Lease or the Property junior in priority to the lien of the mortgage held by such Leasehold Mortgagee.

(b) Any notice to be given by Landlord to a Leasehold Mortgagee pursuant to any provision of this Section 20 shall be deemed properly addressed if sent to the Leasehold Mortgagee who served the notice referred to in Section 20.2(a) unless notice of change or mortgage ownership has been given to Landlord pursuant to Section 20.2(b).

#### **20.7 Procedure on Default.**

(a) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 20.6, the specified date for the termination of this Lease as fixed by Landlord in its Termination Notice shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall, during such six-month period:

- (1) Pay or cause to be paid the Rent, and other monetary obligations of Tenant under this Lease as the same become due, and continue to perform all of Tenant's other obligations under this Lease, excepting (i) obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in this Lease or the Project junior in priority to the lien of the mortgage held by such Leasehold Mortgagee, and (ii) past nonmonetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee; and
- (2) If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence. If such Leasehold Mortgagee is enjoined or stayed from taking such steps, the Leasehold Mortgagee shall use its commercially reasonable efforts and diligence to seek relief from such injunction or stay.

(b) If at the end of such six-month period such Leasehold Mortgagee is complying with Section 20.7(a), this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee continues to comply with the provisions of Section 20.7(a) above, and is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgagee or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 20.7(b), however, shall be construed to extend this Lease beyond the original Term, nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured.

If the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) If a Leasehold Mortgagee is complying with Section 20.7(a) upon (i) the acquisition of Tenant's leasehold estate herein by such Leasehold Mortgagee or any other purchasers at a foreclosure sale or otherwise, and (ii) the discharge of any lien, charge, or encumbrance against Tenant's interest in this Lease or the Property which is junior in priority to the lien of the Leasehold Mortgagee held by such Leasehold Mortgagee and which Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided, however, that such Leasehold Mortgagee or its designee or any other such party acquiring Tenant's leasehold estate created hereby shall agree in writing to assume all obligations of Tenant hereunder arising following the date of its acquisition of Tenant's leasehold estate, subject to the provisions of this Section 20.

(d) For the purposes of this Section 20, the making of a Leasehold Mortgage shall not be deemed to constitute a complete assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created. The Leasehold Mortgagee prior to foreclosure of the Leasehold Mortgage or other entry into possession of the leasehold estate shall not be obligated to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder. The purchaser (including any Leasehold Mortgagee) at any sale of this Lease and the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgagee, or the assignee or transferee (including the Leasehold Mortgagee) of this Lease and the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee within the meaning of this Section 20, and shall be deemed to have agreed to perform all of the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

(e) Any Leasehold Mortgagee of the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure, or other proceedings may, upon acquiring Tenant's leasehold estate, without further consent of Landlord, sell and assign the leasehold estate on such terms and to such persons and organizations as are acceptable to such Mortgagee; provided, that such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease and the assignee has previously been approved in writing by Landlord, which approval shall not be unreasonably withheld.

(f) Notwithstanding any other provisions of this Lease, any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of the foreclosure of any Leasehold Mortgage, shall be deemed to be a permitted sale, transfer, or assignment of this Lease and of the leasehold estate hereby created.

(g) Tenant shall not transfer, sell, or assign any redemption right from any foreclosure sale to any person which is not approved by the Landlord in accordance with the provisions of Section 9 above. Upon any sale or transfer, after the transfer is completed, Tenant is relieved from any and all of its obligations under this Lease.

**20.8 New Lease.** In the event of the Termination of this Lease as a result of Tenant's default, Landlord shall within 30 days following such termination provide each Leasehold Mortgagee with written notice that this Lease has been terminated, together with a statement of all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("**New Lease**") of the Property (or applicable Phase of the Property) with such Leasehold Mortgagee or its designee for the remainder of the Term of this Lease, effective as of the date of Termination, at the rent and upon the terms, covenants, and conditions (including all escalations of rent, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

(a) Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives Landlord's Notice of Termination of this Lease given pursuant to this Section 20.8.

(b) Such Leasehold Mortgagee, or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such Termination, and, in addition thereto, all reasonable out-of-pocket expenses which Landlord shall have incurred by reason of such Termination and the execution and delivery of the New Lease, and which have not otherwise been received by Landlord from Tenant or other party-in-interest under Tenant. Upon the execution of such New Lease, Landlord shall allow to the tenant named therein as an offset against the sums otherwise due under this Section 20.8 or under the New Lease an amount equal to the net income derived by Landlord from the Property during the period from the date of Termination of this Lease to the date of the beginning of the Lease Term of such New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 20.8, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and the Leasehold Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due plus interest as allowed by law.

(c) Such Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which said Leasehold Mortgagee was notified by Landlord's Notice of Termination and which are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee.

**20.9 New Lease Priorities.** If more than one Leasehold Mortgagee shall request a New Lease pursuant to Section 20.8, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. Landlord, without liability to Tenant or any Leasehold Mortgagee with an adverse claim may rely upon a mortgagee's title insurance policy or preliminary commitment therefore, issued by a reasonable title insurance company doing business within the state of Washington as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

**20.10 Leasehold Mortgagee Need Not Cure Specified Default.** Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of right hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee, including but not limited to the default referred to in Section 16 hereof, in order to comply with the provisions of Sections 20.6 or 20.7 or as a condition of entering into a New Lease provided for by Section 20.8 above.

**20.11 Eminent Domain.** Tenant's share, as provided in this Lease, of the proceeds arising from an exercise of the power of eminent domain shall, subject to the provisions this Lease, be disposed of as provided for by any Leasehold Mortgage.

**20.12 Casualty Loss.** A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and the Leasehold Mortgage shall so provide; except that the Leasehold Mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Tenant pursuant to the provisions of this Lease.

**20.13 Arbitration/Legal Proceedings.** Landlord shall give each Leasehold Mortgagee prompt notice of any arbitration or legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the Parties hereto do hereby consent to such intervention. In the event any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Leasehold Mortgagee notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of arbitration. In the event Tenant shall fail to appoint an arbitrator after notice from Landlord as provided in Section 20 hereof, a Leasehold Mortgagee (in order of seniority if there be more than one) shall have an

additional period of thirty (30) days after notice by Landlord that Tenant has failed to appoint such arbitrator to make such appointment, and the arbitrator so appointed shall thereupon be recognized in all respects as if he had been appointed by Tenant. In the event a Leasehold Mortgagee commences any judicial or nonjudicial action to foreclose its Leasehold Mortgage or otherwise realize upon its security granted therein, written notice of such proceeding shall be provided to Landlord at the same time notice thereof is given to Tenant.

**20.14 No Merger.** So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Property and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord, by Tenant, or by a third party, by purchase or otherwise.

**20.15 Estoppel Certificate.** Landlord shall, without charge, any time and from time to time hereafter, but not more frequently than twice in any one-year period (or more frequently if such request is made in connection with any sale or mortgaging of Tenant's leasehold interest or subletting by Tenant), within fifteen (15) days after written request of Tenant to do so, certify by written instrument duly executed and acknowledged to any Mortgagee or purchaser, or proposed Mortgagee or proposed purchaser, or any other person, firm, or corporation specified in such request: (i) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (ii) as to whether the Lease remains in full force and effect; (iii) as to the existence of any default hereunder; (iv) as to the existence of any offsets, counterclaims, or defenses hereto on the part of Tenant; and (v) as to the commencement and expiration dates of the Term of this Lease. Any Leasehold Mortgagee and any other holder of any indebtedness secured by Tenant's leasehold estate shall provide Landlord, upon Landlord's written request, a statement as to (i) the current amount secured by the Leasehold Mortgage held by such Leasehold Mortgagee, (ii) whether any default exists under said Leasehold Mortgage, and (iii) whether there exist any offsets, claims, or disputes with respect to said Leasehold Mortgage and the instruments secured thereby.

**20.16 Notices.** Notices from Landlord to the Leasehold Mortgagee shall be mailed to the address furnished Landlord pursuant to Section 20.2, and those from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 21 hereof. Such notices, demands, and requests shall be given in the manner described in Section 20 and Section 21 and shall in all respects be governed by the provisions of those Sections.

**20.17 Erroneous Payments.** No payment made to Landlord by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided it shall have made demand therefore not later than one (1) year after the date of its payment.

## SECTION 21 – MISCELLANEOUS

**21.1 Holding Over.** In the event of Tenant's continued occupancy of the Property after the expiration of the Term, or any earlier termination provided or permitted by this Lease, such tenancy shall be deemed a month-to-month tenancy at the same monthly Rent as during the last month of the Term which ended just prior to such holding over. All other covenants, provisions, obligations, and conditions of this Lease shall remain in full force and effect during such month-to-month tenancy.

**21.2 Non-Waiver of Default.** No acquiescence by either Party to any default by the other Party shall operate as a waiver of its rights with respect to the same or any other breach or default, whether of the same or any other covenant or condition. No waiver shall be effective unless it is in writing and signed by the Party giving the waiver.

**21.3 Recording.** This Lease shall not be recorded. The parties shall execute, acknowledge, and deliver to each other duplicate originals of a short form or memorandum of this Lease ("**Memorandum of**

Lease") in substantially the form of Exhibit "C" attached hereto and incorporated herein, describing the Property and setting forth the Term of this Lease. The Memorandum of Lease shall be recorded at Landlord's expense.

**21.4 Notice.** Any notice, request, offer, approval, consent, or other communication required or permitted to be given by or on behalf of either Party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e. Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other Party as follows:

If to Tenant: Rich Development Enterprises, LLC  
Attn: Joseph W. Rich  
1000 North Western Avenue, Suite 200  
San Pedro, CA 90732

With a copy to: Rich Development Enterprises, LLC  
Attn. Gregory Vena  
1590-D Rosecrans Avenue #208  
Manhattan Beach, CA 90266

And a copy to: Buckner, Robinson & Mirkovich  
3146 Red Hill Avenue, Suite 200  
Costa Mesa, CA 92626  
Attention: William D. Buckner, Esq.  
Re: 1061.142.01

If to Landlord: Chehalis-Centralia Airport  
P.O. Box 1344  
Chehalis, Washington 98532

Copy to: Hillier, Scheibmeir, Vey & Kelly, P.S.  
P.O. Box 939  
Chehalis, Washington 98532  
Attention: William T. Hillier

or at such other address as may be specified from time to time in writing by either Party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

**21.5 Successors and Assigns.** All covenants, promises, conditions, representations, and agreements herein contained shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors (including subtenants), and assigns.

**21.6 Partial Invalidity.** If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**21.7 Interpretation.** In interpreting this Lease in its entirety, any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either Party hereto. This Lease shall be construed without regard to any presumption or other rule requiring construction against the drafting Party. This Lease, along with all documents referenced herein, shall constitute the entire agreement between the parties and any amendments must be in writing signed by both parties.

**21.8 Headings, Captions, and References.** The section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof", "hereunder", and "herein" shall refer to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The terms "Include", "Includes", and "Including" incorporate the concept that such inclusion is "without limitation". The use of the masculine or neuter genders herein shall include the masculine, feminine, and neuter genders, and the singular form shall include the plural when the context so requires.

**21.9 Brokerage Commissions.** It is hereby understood that neither Landlord, nor Tenant has Brokerage representation in this transaction and that no brokerage commission is payable.

**21.10 Insolvency.** If (i) a receiver or trustee is appointed to take possession of all or substantially all of the assets of Tenant, or if (ii) any action is taken or suffered by Tenant pursuant to an insolvency, bankruptcy, or reorganization act, or if (iii) Tenant makes a general assignment for the benefit of its creditors, and if such appointment or assignment continues for a period of thirty (30) days, it shall, at Landlord's option, constitute a default by Tenant and Landlord shall be entitled to the remedies set forth herein.

**21.11 Governing Law.** This Lease shall be construed under the laws of the state of Washington. Venue for any dispute shall be in Lewis County, Washington.

**21.12 No Diminution of Value.** To the extent that any sublease between Tenant and a sublessee provides for the establishment of one or more view corridors for the benefit of a sublessee or Tenant which restricts or burdens the Property or other real property owned by Landlord, such restrictions or burdens shall not be taken into account in connection with any appraisal of the Property or other real property owned by Landlord and shall not result in a diminution of fair market value or fair market rental value for purposes of establishing a rent to be paid by Tenant or the adjustment of rent to be paid by Tenant.

**21.13 Execution of Documents.** Landlord and Tenant shall each cooperate with the other and execute such documents as the other Party may reasonably require or request so as to enable it to conduct its operations, so long as the requested conduct or execution of documents does not derogate from or alter the powers, rights, duties, and responsibilities of the respective Parties hereunder.

**21.14 Conditions Subsequent.** Tenant's obligations hereunder are conditioned upon satisfaction of the following conditions subsequent as and when specified below:

(a) Title Insurance. Landlord shall provide Tenant a leasehold title policy (1975 Form), issued by Title Guarantee Company of Lewis County, insuring Tenant's leasehold interest in the amount specified in Article I on an ALTA form acceptable to Tenant and showing only the Permitted Exceptions, which title insurance policy must be issued on or before the date which is thirty (30) days after the Effective Date. Landlord shall furnish Tenant, within 30 days following the Effective Date, a commitment for title insurance, as hereinafter defined. The title insurance commitment shall provide for deletion of the standard printed exceptions and shall provide such other coverage as Tenant shall request to insure to Tenant's satisfaction against title defects revealed in the commitment, whether or not such matters are Permitted Exceptions. The cost of the title insurance policy, including the extended coverage and corrective endorsements, shall be paid by Landlord. Tenant shall have until the later of the end of the Due Diligence Period, or thirty (30) days after receipt of the title insurance commitment ("**Title Review Period**") together with legible copies of all documents referred to in the commitment (either as exceptions or requirements), and the Survey (as hereinafter defined), within which to review the commitment, the Survey, and such title documents and to advise Landlord of any objections to title. If Tenant's title objections are not resolved to Tenant's satisfaction during the Title Review Period, then Tenant shall have the right to terminate this Lease upon written notice to Landlord, and the Parties shall be relieved of all further obligations or liabilities hereunder.

**21.15 Hazardous, Toxic, or Harmful Substances.** Tenant shall not cause or permit any hazardous material (as hereinafter defined) to be brought upon, kept, or used in or about the Property by



Tenant, its agents, employees, contractors, or invitees, without the prior written consent of Landlord, except such materials that are normally used or sold in typical retail shopping centers. Tenant agrees that handling and storage of such materials and substances shall occur safely and in compliance with all applicable federal, state, and local laws and regulations. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Property placed there following the Effective Date and caused or permitted by Tenant results in contamination of the Property or any adjacent property, then Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses, and sums paid in settlement of claims, reasonable attorneys' fees, consultant fees, and expert fees) which arise during or after the commencement of construction on the Property as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material present in the soil or ground water on or under the Property and/or adjacent property. Without limiting the foregoing, if the presence of any hazardous material on the Property placed there following the Effective Date and caused or permitted by Tenant results in any contamination of the Property and/or adjacent property, Tenant shall promptly take all actions at its sole expense as are necessary to return the Property and/or adjacent property to the condition existing prior to the introduction of any such hazardous material to the Property and/or adjacent property, provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property and/or adjacent property. As used herein, the term "**hazardous material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by local governmental authority, the state of Washington or the United States government. Nothing contained herein shall be deemed or construed to limit the liability of Tenant to Landlord hereunder for the breach of any covenant of Tenant under this Section. The provisions of this Section shall survive the expiration or earlier Termination of this Lease and Tenant's surrender of the Property to Landlord for a period of 4 years.

**21.16 Force Majeure.** Whenever a party is required to perform an act under this Lease by a certain time, said time shall be deemed extended (unless specifically provided elsewhere in this Lease) so as to take into account events of "Force Majeure." "Force Majeure" is any of the following events that prevents, delays, retards or hinders a Party's performance of its duties hereunder, such as an Act of God; fire; earthquake; flood; war; explosion; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; transportation failure; strikes; lockouts; condemnation; requisition; acts and failure to act of governmental, civil, military or naval authorities or any other cause, whether similar or dissimilar to the foregoing, not within such Party's control. Notwithstanding, anything in this Lease to the contrary. Force Majeure shall not include a Party's lack of, or inability to procure, moneys to fulfill its commitments and obligations under this Lease.

**21.17 Estoppel Certificate.** Tenant agrees within a reasonable period of time after request therefore from Landlord to execute in recordable form and deliver to Landlord the Estoppel Certificate. Landlord agrees to give Tenant a comparable estoppel certificate within a reasonable period of time after request therefore from Tenant.

**21.18 Approval.** Any approval required from Landlord hereunder shall not be unreasonably withheld, or conditioned, and shall be timely delivered. Any request by Tenant for approval shall be sent by certified mail, return receipt requested and shall be deemed approved unless Landlord within thirty (30) days provides written notice to Tenant of the disapproval of the request, together with the reasons therefore.

**21.19 Effectiveness.** This Lease shall not be deemed effective for any purpose or binding on either Party hereto unless and until the date this Lease is signed by both Parties and a fully executed copy is delivered to and received by both Parties ("Effective Date").

**21.20 Right of First Refusal.** Landlord hereby grants to Tenant the right of first refusal to purchase the Property ("the "**Refusal Right**") in the event Landlord shall receive an offer to purchase some or all of the Property which it shall desire to accept. Landlord shall provide Tenant with written notice of any such

offer along with a true, correct and complete copy of the offer (the "**Notice of Offer**"). Tenant shall exercise the Refusal Right by written notice to Landlord within thirty (30) days from the date that Tenant receives the Notice of Offer from Landlord (hereinafter the "**Notice Date**"). Upon Tenant's failure to elect to exercise the Refusal Right within thirty (30) days after the Notice Date, Landlord shall thereafter have the right to proceed with the sale on the same terms and conditions contained in the Notice of Option, provided that the transfer of the Property in connection with such transaction is consummated within six (6) months of the Notice Date. If the Property is transferred in accordance with the foregoing, Tenant's Refusal Right shall not terminate, but shall run with title to the Property and bind Landlord's successors and assigns. In the event that Tenant shall elect to exercise the Refusal Right, as soon as reasonably possible after such exercise, Landlord and Tenant shall enter into a purchase and sale agreement (the "**Purchase Agreement**") for the Property, which Purchase Agreement shall be upon all of the terms and conditions of the Notice Of Offer, or such other additional or different terms and conditions as Landlord and Tenant shall mutually agree. In the event that Tenant does not timely exercise its Refusal Right, or if Tenant provides notice that it will not exercise its Refusal, then Tenant's Refusal Right shall lapse as to the offer provided in the Notice of Offer for a period of six (6) months from the Notice Date, but shall be revived after the expiration of such six (6) month period if the Property is not sold upon the terms of the Option Notice, and shall at all times remain in full force and effect as to all other and future offers to purchase the Property or any portion thereof.

IN WITNESS WHEREOF, this Lease has been executed as of the date written above.

**LANDLORD:**

**CITY OF CHEHALIS**

By \_\_\_\_\_  
Name: Mrs. Jill Anderson  
Its: City Manager  
Date: \_\_\_\_\_

**TENANT:**

**Rich Development Enterprises, LLC**

By \_\_\_\_\_  
Name:  
Its:  
Date: \_\_\_\_\_

INSERT NOTARY

## LIST OF EXHIBITS

Exhibit A	Legal Description of Property
Exhibit B	Site Plan
Exhibit C	Memorandum of Lease
Exhibit D	Estoppel Certificate
Exhibit E	Compliance with Federal Aviation Administration (FAA) Requirements

**Exhibit "A"**  
**Legal Description**

**LEGAL DESCRIPTION**

A partial legal description taken from the Lewis County assessor's website for each parcel is as follows:

**Tract 7A:** 005605827001 Section 30 Township 14N Range 02W PT SE SE TR 7A

**Tract 8:** 005605082008 Section 19 Township 14N Range 02W PT E2 E2 SE TR 8

**Tract 9:** 005605082009 Section 19 Township 14N Range 02W Pt NE NE SE TR 9

**EXHIBIT "B"**  
**SITE PLAN**

**EXHIBIT "C"**  
**Memorandum of Lease**

Date: \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY OF CHEHALIS, CHEHALIS-CENTRALIA AIRPORT ("Landlord"), and Rich Development Enterprises, LLC, and/or assigns. ("Tenant") are parties to that certain Lease dated \_\_\_\_\_, 20\_\_\_\_, ("Lease") for certain real property consisting of land and Improvements ("Property") located in the city of Chehalis, county of Lewis, state of Washington, and more fully described on Exhibit "A" attached hereto.

The undersigned \_\_\_\_\_ of Tenant certifies that to the best of his or her actual knowledge, the following statements are true and correct as of the date hereof.

Tenant has entered into occupancy of the Property described in the Lease;

The Lease is in full force and effect and has not been assigned, modified, supplemented, or amended in any way, except as follows:

The Rent Commencement Date of the Lease is \_\_\_\_\_, 20\_\_\_\_;

The Lease Term shall expire on \_\_\_\_\_, 20\_\_\_\_; provided, however, that Tenant may have additional options to extend the Lease Term as provided therein;

Current annual Rent is \_\_\_\_\_;

All conditions precedent of Tenant's obligations as set forth in the Lease have been satisfied or waived;

Tenant has not received notice of, and has no actual knowledge of the existence of, any defaults under the Lease by either Landlord or Tenant;

No rents have been paid in advance of (1) month except \_\_\_\_\_;

Tenant has not assigned or mortgaged its interest in the Lease, in whole or in part, or sublet all or part of the Property except \_\_\_\_\_; and

There have been no amendments or modifications to the Lease except \_\_\_\_\_.

EXECUTED as of the date first written above.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT

**EXHIBIT "D"**  
**Estoppel Certificate**

**EXHIBIT "E"**

**COMPLIANCE WITH FEDERAL AVIATION ADMINISTRATION REQUIREMENTS**

The Tenant, for itself, its successors-in-interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any Improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that the Tenant shall use the Property in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

9933163v3



**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Trent Lougheed, P.E., Community Development Director  
Brandon Rakes, Airport Operations Coordinator

**DATE:** October 8, 2018

**SUBJECT:** Ground Lease Agreement with U-Haul CO. of Washington — Replaces Tuffree Enterprises Lease

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**ISSUE**

The Chehalis-Centralia Airport owns a piece of property along the north edge of the U-Haul building previously leased to Tuffree Enterprises. A lease needs to be established to replace the lease that terminated upon the sale of the property to U-Haul.

**INTRODUCTION**

U-Haul purchased the old K-Mart building from Tuffree Enterprises earlier this year. The property includes an approximate 25-foot by 524-foot section of land that is leased from the airport to provide adequate access and parking on the north edge of the building. The previous lease with Tuffree Enterprises automatically terminated upon the completion of the sale. U-Haul wishes to re-establish a lease with the same terms as existed with Tuffree Enterprises.

**TERMS OF THE PROPOSAL**

For convenience, this section summarizes the fundamental terms of the Lease.

- Tenant: U-Haul CO. of Washington, A Washington corporation d/b/a U-Haul Moving and Storage of Chehalis Centralia and/or assigns.
- Lease Term: Twenty-Five (25) Years
- Annual Rent: \$13,000.00
- Deposit: \$5,000.00

**FISCAL IMPACT**

If the proposed Lease is accepted the City would receive lease revenue that would be restricted for the operation of the Chehalis-Centralia Airport.

**RECOMMENDATION**

It is recommended that the City Council approve the Lease Agreement between the City of Chehalis and U-Haul CO. of Washington, A Washington corporation d/b/a U-Haul Moving and Storage of Chehalis Centralia and/or assigns and authorize the City Manager to execute said agreement.

**SUGGESTED MOTION**

I move that the City Council approve the Lease Agreement between the City of Chehalis and U-Haul CO. of Washington, A Washington corporation d/b/a U-Haul Moving and Storage of Chehalis Centralia and/or assigns and authorize the City Manager to execute said agreement.

**AFTER RECORDING RETURN TO:**  
Mr. Brandon L. Rakes  
Chehalis-Centralia Airport  
PO Box 1344  
Chehalis, WA 98532

**Parcel Number:** 005605-082-004

**GROUND LEASE  
(Chehalis, Washington)**

**THIS GROUND LEASE** ("Lease") is made and entered into as of the effective date set forth in Section 1 by and between **CITY OF CHEHALIS, operator of the Chehalis-Centralia Airport ("Landlord")**, and **U-Haul CO. of Washington, a Washington corporation d/b/a/ U-Haul Moving and Storage of Chehalis Centralia ("Tenant")**. Landlord and Tenant are sometimes hereinafter each singularly referred to as a "Party" and collectively referred to as the "Parties."

**SECTION 1 - FUNDAMENTAL LEASE TERMS**

For convenience, this Section 1 summarizes certain fundamental economic and business terms of this Lease. If these fundamental terms conflict with the balance of the Lease, the latter shall control.

**Effective Date:** As stated in Section 21.18 below

**Landlord:** City of Chehalis  
Chehalis-Centralia Airport  
P.O. Box 1344  
Chehalis, Washington 98532

**Tenant:** U-Haul CO. of Washington, a Washington corporation d/b/a/ U-Haul Moving and Storage of Chehalis Centralia and/or assigns.

**Lease Term:** Twenty Five Years (25), as stated in Section 3.1, below

**Rent:** See Section 4

**Title Insurance Liability Amount:** Sixty-Four Thousand Dollars (\$64,000.00) to be increased at the request of Tenant upon Reappraisal of the Property as provided in Section 4.3.

**Deposit:** \$5,000.00 upon execution of this document as provided in Section 4.1a, below

**SECTION 2 - DEMISE OF PROPERTY**

**2.1 Property.** For and in consideration of Tenant's covenant to pay the rental and other sums for which provision is made in this Lease, and the performance of the other obligations of Tenant hereunder Landlord leases to Tenant, and Tenant leases from Landlord, that certain real property consisting of 12,694 square feet more or less, which real property is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference for Tenant, its customers, invitees, and employees, but not including any mineral rights, water rights, or any other right to excavate or withdraw minerals, gas, oil,

or other material, except as specially granted herein; subject to easements and encumbrances of record as of the date hereof as noted in the records of Lewis County, Washington. Said property and rights leased hereby are hereinafter referred to as the "Property". The Property is depicted on the site plan attached hereto as Exhibit "B" and incorporated herein by this reference ("Site Plan").

**2.2 Removed**

**2.3 Development.** Tenant is authorized to use the Property in its developed condition existing on the Effective Date of this Lease and to maintain existing improvements thereon.

**2.4 Tenant's Work Removed**

**2.5 Landlord's Work Removed**

**SECTION 3 - LEASE TERM**

**3.1 Term.** This Lease shall become legally binding on the Effective Date (as defined in Section 21.18 hereof) and shall expire on the last day of the twenty-fifth (25th) Lease Year, provided that, in the event the existing U-Haul store building is vacated and no longer operated for business purposes or demolished or the property planned for redevelopment this Lease shall terminate immediately regardless of any remaining Term and Tenant shall have no recourse nor be eligible for compensation for such termination for any reason whatsoever. For purposes of this Lease, the term "Lease Year" shall mean each twelve (12)-month period commencing on the Effective Date and each anniversary thereof.

**SECTION 4 – RENT**

**4.1a Accrued Rent.** Tenant or Tenant's predecessor has occupied and used the Property since a prior lease of the Property expired on April 11, 2018. Notwithstanding Subsection 4.1b, below, Tenant shall pay to Landlord on the Effective Date of this Lease for the period from April 11, 2018 to the Effective Date based on a rent of \$13,000.00 per year, prorated to the Effective Date, plus leasehold excise tax based on 12.84 percent of the accrued rent amount. No other damages shall be due from Tenant or Tenant's predecessor to Landlord for occupying the Property without property rights. Notwithstanding Subsection 12.1 of this Lease, Tenant shall indemnify and hold harmless Landlord for any claims that have or shall be made relating to the Property during the accrued rent period as defined in this Subsection.

**4.1b Deposit.** On the Effective Date of this lease, as defined herein, Tenant shall deposit with Landlord a check payable to Chehalis-Centralia Airport in the amount of \$5,000.00. The deposit shall not be refundable nor apply to rent as provided in this Section.

**4.1c Rent.** For each Lease Year, Tenant shall pay to Landlord at P. O. Box 1344, Chehalis, Washington, 98532, or such other place as Landlord shall designate in writing, in United States dollars, the annual amount ("Rent"), as described in Sections 4.2, 4.3 and 4.4 hereof.

**4.2 Payment of Rent.** Commencing on the Effective Date of this Lease (the "Rent Commencement Date"), Tenant shall pay on the first day of each Lease Year, in advance, the annual rent (Rent) subject to Reappraisal and Escalation of Rent after Appraisal as set forth in Subsections 4.3 and 4.4 of this Lease.

**Annual Rent: \$13,000 plus Leasehold Excise Tax**

**4.3 Reappraisal.** On each tenth anniversary of the Effective Date of this Lease the Rent will be adjusted to fair market value based on the fair market value of the Property, as determined by appraisal, multiplied by landlord's capitalization rate of ten percent (10%) to determine the new annual rent. It is understood by both parties that the appraisal will be based upon vacant unimproved land exclusive of all Tenant owned improvements made to the Property either before or after the Effective Date of this Lease

and paid for by Landlord. Landlord shall engage an independent appraiser (MAI) to appraise the Property. If Tenant disagrees with the value of Landlord's appraiser, Tenant may, at its expense, obtain a separate independent appraisal (MAI) for Landlord's consideration. If Landlord and Tenant cannot agree on the fair market value of the Property, the appraisers shall select a third independent appraiser (MAI) to review the two appraisals and to set the fair market value for the Property and apply the Landlord's capitalization rate of ten percent (10%), as provided above, to set the new annual rental for this Lease, which shall be bidding upon both parties to this Lease, provided that the rent so determined shall not be less than the rent payable to an Appraisal Date. The cost of a third appraiser shall be borne equally by the two parties.

**4.4 Escalation of Rent After Appraisal.** The Rent shall, commencing on the fifth (5<sup>th</sup>) anniversary of the Effective Date hereof, and every fifth (5<sup>th</sup>) anniversary thereafter, be increased by ten percent (10%) of the rent then in effect, until a new Rent is determined by appraisal pursuant to the procedures set forth in Subsection 4.3 above. (As an example, the escalation of Rent as provided in this subsection 4.4 will apply at the fifth (5<sup>th</sup>) anniversary of this Lease but shall not apply on the tenth (10<sup>th</sup>) anniversary because at each ten-year anniversary the rent will be adjusted in accordance with Subsection 4.3, above).

## SECTION 5 - TAXES

**5.1 Leasehold Taxes.** Tenant shall pay to Landlord, at the time Rent payments are made hereunder, the Leasehold Tax established and defined in Chapter 82.29A, Revised Code of Washington. Any delinquent taxes shall be a debt to Landlord, and in the event any penalties or interest are due because of the failure of Tenant to timely pay the Leasehold Tax, such penalties and/or interest shall be payable by Tenant to Landlord.

### **5.2 Taxes and Assessments.**

(a) The term "Taxes" as used herein shall mean all taxes and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property and Tenant's use and enjoyment thereof, including Assessments as defined below. Tenant shall pay when due its prorated share of all Taxes commencing with the Rent Commencement Date and continuing throughout the Term. Nothing in this Lease shall prevent Tenant from protesting, contesting, seeking modification, or adjudicating the imposition of any "Taxes" as defined herein.

(b) On or prior to the Rent Commencement Date, Landlord shall pay all then-outstanding Assessments levied or imposed against the Property. The term "Assessments" as used herein shall mean all assessments for public improvements or benefits which heretofore or shall during the Term be assessed, levied, imposed upon, or become due and payable, or a lien upon the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Neither Party shall cause nor suffer the imposition of any Assessment upon the Property without the prior written consent of the other. In the event any Assessment is proposed which affects the Property, Tenant shall promptly notify Landlord of such proposal after Tenant has knowledge or receives notice thereof. Tenant shall pay its prorated portion of the total amount of all Assessments levied with respect to the Property and the leasehold estate created hereby. In no event shall Landlord be obligated to pay any Assessment or any portion thereof levied or created during the Term, irrespective of whether such Assessment or any portion thereof was specifically allocated to the Property or Landlord's reversionary interest therein. Assessments may be paid in installments as permitted by the terms of the Assessments.

**5.3 Payment Date and Proof.** All payments to Landlord by Tenant (except Leasehold Tax which shall be paid at the time each rental payment is made hereunder) for Taxes and/or Assessments shall be made by Tenant on or before five (5) days before the last day on which such payments or any installments thereof permitted hereunder may be made without penalty or interest. Tenant shall furnish to Landlord receipts or other appropriate evidence establishing the payment of such amounts. Tenant may comply with this requirement by retaining a tax service to notify Landlord when the Taxes have been paid.

**5.4 Failure to Pay.** In the event Tenant fails to pay any of the expenses or amounts specific in this Section 5, Landlord may, but shall not be obligated to do so, pay any such amount, and the amounts so paid shall immediately be due and payable by Tenant to Landlord and shall thereafter bear interest at the maximum rate allowed by law. Landlord shall provide Tenant with not less than ten (10) days notice of Landlord's intent to pay unpaid amounts as authorized by this Section prior to making any such payment. Such notice shall disclose the rate of interest to be applied by Landlord against the unpaid amounts. Any failure to pay any expense or amount specified or any other amount to be paid by Tenant under the terms of this Lease shall be a material default hereunder by Tenant, and such default (subject to the notice provisions hereof) shall entitle Landlord to pursue all remedies specified in this Lease, including the right to terminate this Lease and thereafter pursue the remedies available pursuant to law.

**5.5 Personal Property Taxes.** Tenant shall pay all personal property taxes assessed on Tenant's personal property on the Property. If Landlord has paid any such tax as required by the applicable taxing authority, Tenant shall reimburse Landlord upon Tenant's receipt of paid invoices for such taxes, provided Landlord shall use reasonable efforts to give Tenant notice of any such tax prior to paying same.

#### **5.6 Proration of Taxes.**

(a) Tenant shall reimburse Landlord within thirty (30) days after Tenant receives from Landlord an invoice for the amount of all Real Estate Tax payments made by Landlord for which Tenant is liable pursuant to Section 5.0 hereof. Each invoice shall be accompanied by a computation of the amount payable.

(b) If the Term shall expire on any date other than the last day of a tax fiscal year, the amount payable by Tenant during the tax fiscal year in which such termination occurs shall be prorated on the basis which the number of days from the commencement of said tax fiscal year to and including said termination date bears to 365. A similar proration shall be made for the tax fiscal year in which the Term commences.

### **SECTION 6 - SUBLEASES**

**6.1 Subleases.** All subleases shall conform to and shall be subject to the terms and conditions of this master Ground Lease, and shall conform to and be subject to the then-effective Easements, Covenant, and Restrictions ("ECR"). To the extent required by the FAA, all subleases are subject to FAA approval. Appropriate attornment and non-disturbance agreements must be executed by the parties prior to occupancy by any subtenant. Tenant shall provide Landlord with a copy of its proposed sublease for approval to ensure the proposed sublease is consistent with this Master Lease. Each sublease shall include language stating that any conflict between the language in a sublease and the Master Lease shall be decided on the language of the Master Lease. Tenant shall immediately provide Landlord copies of all subleases as they are executed. Failure of Tenant to provide such copies shall constitute a material breach of this lease and all provisions of this Lease and at law shall be available to Landlord.

### **SECTION 7 - UTILITIES**

**7.1 Utility Usage.** Tenant shall pay the applicable utility companies or governmental agencies directly for all utilities consumed on the Property by Tenant. Landlord shall not take, or permit any person claiming under Landlord or any such occupant to take, any action which shall interrupt or interfere with any electric, water, sewage, or telephone service to the Property and hold Landlord harmless therefrom.

### **SECTION 8 - POSSESSION AND USE**

**8.1 Date.** Tenant shall have possession of the Property upon the Effective Date.

**8.2 Inspection.** Tenant has inspected the property and accepts the property in its current condition.

**8.3 Permitted Use.** The Property is leased to the Tenant for the sole purpose of operating and maintaining the existing improvements on the Property or performing alterations as provided in this Lease, and no other improvements, fixtures or improvements, or any other use, temporary or permanent, shall be made, constructed, or placed on the Property, without Landlord's approval. The improvements on the Property may be used for parking and shunting of U-Haul equipment, employee parking, and other related uses.

## SECTION 9 - ASSIGNMENT

**9.1 Assignment.** Unless otherwise provided herein, Tenant shall not assign, transfer, nor otherwise alienate this Lease, or any interest therein without Landlord's prior written consent, and such consent shall not be unreasonably withheld. Any assignee or subtenant shall be bound by the terms of this Lease. Tenant shall also not hypothecate or mortgage Tenant's interest in this Lease, except as authorized by Section 20 below.

### **9.2 Permitted Assignments Removed.**

## SECTION 10 - IMPROVEMENTS CONSTRUCTED BY TENANT AND OPERATION

**10.1 Construction.** At any time and from time to time during the Term, Tenant may make, at its sole cost and expense, changes and alterations to the Project or any part thereof, with the prior written consent of Landlord, which consent shall not be unreasonably withheld so long as such changes and alterations are in compliance with the then-effective building and design code. All plans and specifications required by Accord, Inc., Tenant's franchisor, shall be deemed to be approved by Landlord. Such changes and alteration to the Project and shall further be subject to the following:

a. The plans or specifications for such initial construction, changes or alterations, including amendments of such plans or specifications, shall be submitted to Landlord for its approval, which approval shall not be unreasonably withheld if the plans and specifications are in compliance with the then-effective building and design code. All plans and specifications required by Accord, Inc., Tenant's franchisor, shall be deemed to be approved by Landlord.

b. Tenant, at Tenant's expense, must contract with appropriate civil engineering firms for construction monitoring inspections of filling and grading activities, utility installation, and pavement. All engineering visits must be logged and provided monthly in report format with findings to the Landlord. In addition, Landlord shall be copied on all other civil engineering reports the Tenant receives.

c. If required by applicable law, and not by Landlord in Landlord's discretion, Tenant shall provide Landlord, at Tenant's expense, with a performance and payment bond, pursuant to Section 10.3 below, in an amount not less than the projected cost of such construction, changes or alterations. No change or alteration shall be undertaken until Tenant shall have procured and paid for all required permits, licenses, and authorizations. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Tenant shall furnish to Landlord a complete set of "as built" plans for the Project upon completion of construction. In the event Tenant fails to provide Landlord with said "as built" plans, Landlord may contract for any services necessary to accomplish the same and Tenant shall reimburse Landlord for the costs thereof including Landlord's administrative costs, such reimbursement to be made within thirty (30) days of Tenant's receipt of Landlord's billing. Tenant's failure to pay said costs shall constitute a breach under this Lease.

### **10.2 Fixtures and Equipment.**

**Project.** In constructing the Project upon the Property, Tenant may place or install in the Project

such personal property, trade fixtures, business equipment and furnishings (the "Business Equipment") as Tenant shall deem desirable for the conduct of business therein. The Business Equipment used in the conduct of business by Tenant (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the Property, including plumbing fixtures, electrical fixtures, lighting, cabling, flooring, the foregoing the "Building Fixtures") placed by Tenant on or in the Project shall not become part of the realty, even if nailed, screwed, or otherwise fastened to the Improvements or buildings of the Project, but shall retain their status as personal property and may be removed by the Tenant at any time so long as Tenant is not in default under this Lease. Notwithstanding Subsection 10.7 below, the Building Fixtures constructed or installed upon the Property shall be deemed to become part of the real property and, upon the Termination Date shall become the sole and exclusive property of Landlord, free of any and all claims of Tenant or any person or entity claiming by or through the Tenant. In the event Tenant does not remove its personal property and the Business Equipment which it is permitted by this Subsection 10.2 to remove from the Project within ninety (90) days following the Termination Date, the Landlord may treat said Business Equipment as abandoned and (i) retain the Business Equipment and treat the trade fixtures as part of the Property, or (ii) have the Business Equipment and trade fixtures removed and stored at Tenant's expense. Tenant shall promptly reimburse the Landlord for any damage caused to the Property by the removal of personal property and trade fixtures whether removal is by the Tenant or the Landlord.

### **10.3 Mechanics and Labor Liens.**

a. Tenant agrees that it will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Property for work or materials furnished to Tenant in connection with any construction, improvements, maintenance, or repair thereof made by Tenant or its agents upon the Property. Tenant shall cause any such claim or lien to be fully discharged within thirty (30) days after the date of filing thereof; provided, however, that in the event Tenant, in good faith, disputes the validity or amount of any such claim of lien, and if Tenant shall give to Landlord such security as Landlord may reasonably require to ensure payment thereof and prevent any sale, foreclosure, or forfeiture of the Property or any portion thereof by reason of such nonpayment. Tenant shall not be deemed to be in breach of this Subsection 10.3, so long as Tenant is diligently pursuing a resolution of such dispute. Upon entry of final judgment resolving the dispute if litigation or arbitration results therefrom, Tenant shall discharge said lien within the time limits specified above.

b. Tenant shall provide Landlord with evidence of Tenant's financial ability to complete the construction of any improvement and to pay in full claims of all persons for work performed in or materials furnished for construction. If required by law, Tenant shall also post a surety bond issued by a corporate surety acceptable to the Landlord in an amount equal to the cost of each improvement, said bond to be deposited with Landlord and to remain in effect until said improvement shall have been constructed and insured as provided in this Lease, and the entire cost of the improvement shall have been paid in full, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and materialmen.

**10.4 Development Rights.** Tenant shall not undertake any development of the Property other than to construct the Project and the changes and alterations thereto approved by Landlord in accordance with Subsection 10.1 above. Tenant shall not represent to any person, governmental body, or other entity that Tenant is the owner of the Property, nor shall Tenant execute any petition, application, permit, plat, or other document on behalf of Landlord as the "owner" of the Property without Landlord's express written consent, which consent shall not be unreasonably withheld. Landlord shall join in and/or execute any petition, application, permit, plat, and other land use document requested by Tenant and which is reasonably necessary for the development of the Property. Tenant shall notify the Landlord in writing of any proposed or pending governmental action of which Tenant becomes aware which affects the Property, its zoning, or the right to develop the Property for any future use, unless such governmental action is initiated by Landlord. Tenant's project shall conform with the requirements of this Lease and shall cooperate with Landlord on any coordinated development effort such as, but not be limited to, infrastructure development, security requirements, access, surface water runoff, and access to all facilities. No development of Tenant shall conflict with the overall management and use of the Airport facility, including but not limited to, conflicts with FAA requirements for setback and height restrictions in



addition to FAA requirements described in Exhibit "E", by this reference incorporated herein.

**10.5 Hold Harmless.** Tenant shall indemnify, protect, and hold harmless Landlord, its agent, contractor, representative and the Property from and against all claims and liabilities arising by virtue of or relating to construction of the Project or repairs made at any time to the Project (including repairs, restoration, and rebuilding). Tenant shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work and will maintain its books and records in the state of Washington, with respect to all aspects of such work and materials, and will make them available for inspection by Landlord or its representatives as requested.

**10.6 Permits and Compliance With Codes.** All building and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Project and any subsequent improvements, repairs, replacements or renewals to the Property or Project shall be acquired as required by applicable laws, ordinances or regulations by and at the sole cost and expense of Tenant. Tenant shall cause all work on the Property during the Term to be performed in accordance with all applicable laws, directions and regulations of all governmental agencies and representatives of such agencies having jurisdiction. Tenant, in addition to the requirements herein to comply with all laws, directions and ordinances as provided in this Lease, shall also be responsible to comply with City of Chehalis Ordinances 817-B and 818-B which create special benefit areas and establish costs to be paid to the City prior to the issuance of any development permits. Tenant's responsibility to comply shall include the assumption and payment of all costs incurred to comply with said Ordinances and Landlord shall have no responsibility thereto. Tenant shall comply with the overall development plans of Airport property.

**10.7 Ownership of Improvements.** During the Term of this Lease, the Project and all other Improvements constructed by Tenant, including, without limitation, all additions, alterations, and improvements thereto or replacements thereof and all appurtenant fixtures, machinery, and equipment installed therein, shall be the property of Tenant. At the expiration or earlier Termination of this Lease, the Project and all improvements, additions, alterations, and improvements thereon and thereto or replacements thereof, and all appurtenant fixtures, machinery, and equipment installed therein, shall then become the property of Landlord.

**10.8 Control and Indemnification.** During the Term of this Lease, Tenant shall have exclusive control and possession of the Property, and Landlord shall have no liabilities, obligations or responsibilities whatsoever with respect thereto or with respect to any plans or specifications submitted to Landlord pursuant to this Lease. Landlord's approval of any such plans and specifications shall not render Landlord liable therefore, and Tenant hereby covenants and agrees to indemnify, defend, and hold the Landlord harmless from and against any and all claims arising out of or from the use of such plans and specifications.

**10.9 Landlord's Reservation to Withhold Additional Leases from Tenant.** Landlord reserves the right to withhold the negotiation of any additional leases with Tenant if Tenant is not in compliance with all the terms and conditions of this Lease or in compliance with the codes of governmental authorities as provided in paragraph 10.6 above. Landlord shall not unreasonably withhold the negotiation of or the entering into additional leases with Tenant but shall not be obligated to commit any other property for development to Tenant if, at its sole discretion, determines Tenant is not in compliance to Landlord's reasonable interpretation of the requirements of this Lease or governmental requirements.

**10.10 First Right of Refusal to Purchase Abutting Property of Tenant.** Upon the effective date of this lease Tenant grants Landlord a right of refusal to purchase Tenant's abutting property (Lewis County Tax Parcel 5665-110-003) for a period equal to the Term of this Lease. In the event Tenant elects to sell either all or a portion of said property, Tenant shall give Landlord written notice of its intent to sell in the terms and conditions of the offer and Landlord shall have one hundred twenty (120) days to respond in writing to Tenant to either accept, reject or to make a counter offer to purchase the property. Landlord shall diligently investigate the purchase including but not limited to appraisal or other confirmation of price and to seek such approvals as Landlord may be required to obtain in order to make an offer to purchase

Tenants property. If Landlord rejects said offer, or fails to respond in said one hundred and twenty (120) day period, Tenant shall have no further obligation to present another right of first refusal and Tenants obligations thereunder shall terminate as to the specific parcel or portion thereof identified in the offer. Landlord's right of first refusal to purchase as provided herein shall not prevent Tenant from granting easements on Tenant's property to itself or third parties for utilities, drainage, or for other purposes and Tenant shall have no obligation to provide either notice or opportunity to Landlord regarding the granting of easements.

## **SECTION 11 – MAINTENANCE AND REPAIRS**

**11.1 Maintenance.** Tenant covenants it shall maintain the Property and Improvements thereon, if any, during the Term of this Lease at its sole cost and expense. Tenant may, by sublease or other agreement with subtenants, assign or otherwise transfer this responsibility, or may contract with reputable firms for maintenance, but in the event subtenants or contractors do not meet this obligation Tenant shall perform the maintenance or cause it to be performed. Notwithstanding the provisions of this Lease for default by Tenant, in the event Tenant fails to maintain the Property and Improvements thereon, Landlord reserves the right at any time after written notice to Tenant, to cause the maintenance to be performed and recover the costs thereof from Tenant within thirty (30) days of incurring the expense thereof. The term "Maintenance" as used in this lease shall include but not be limited to: maintaining landscape and lawn areas by replacement of beauty bark, plants, mowing, weed control and fertilization, parking area markings and parking surfaces, lighting, replacement of pavement, application of pavement sealant, pavement striping; regularly removing trash and debris from the Property whether such trash and debris occurs in public access areas or behind the building improvements at dumpster locations, loading ramps or along the fill slopes of the Property; and maintenance shall include, without limitation, the neat and orderly organization of equipment parking, staging and storage and the temporary storage of construction materials, soil and construction debris, whether or not Tenant may intend to use such material at a later time during or after construction, to convey a pleasing landscape of neatness and orderliness to customers and invitees of the Shopping Center and adjacent Airport properties. The Term "Maintenance" as used herein shall also include any other maintenance typically provided for on shopping center properties. The maintenance of Improvements shall include periodic inspections by qualified persons to determine and perform needed repair or replacement of heating, ventilating and air conditioning facilities; exterior paint, signage, plate glass, gutters, drains and electrical fixtures and facilities.

## **SECTION 12 - TENANT'S INDEMNITY; LIABILITY AND CASUALTY INSURANCE**

**12.1 Indemnity.** Landlord shall have no responsibility or control with respect to any aspect of the Property or any activity conducted thereon from and after the Effective Date. Tenant shall indemnify and hold harmless Landlord from any and all liability, damage, expense, cause of action, suits, claims, or judgments by any reason whatsoever caused, arising out of the use, occupation, and control of the Property by Tenant, its invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or grossly negligent act of Landlord or Landlord's agents or employees.

**12.2 Acquisition of Insurance Policies.** Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, from and after the commencement of any construction on the Property, the insurance described in this section (or its then available equivalent), satisfactory to landlord (acting responsibly) covering and protecting tenant issued by an insurance company or companies licensed to do business in the state of Washington covering and protecting Tenant.

**12.3 Types of Required Insurance.** Tenant shall procure and maintain the following:

(a) Commercial General Liability Insurance. Commercial general liability insurance covering claims with respect to injuries or damages to persons or property sustained in, on, or about the Property and the Project and the appurtenances thereto, including but not limited to the sidewalks and alleyways adjacent thereto, with limits of liability no less than the following:

Bodily injury and property damage liability: One Million and no/100 Dollars (\$1,000,000.00) each occurrence, Two Million and no/100 Dollars (\$2,000,000.00) aggregate.

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 12 for the Property and the Project.

(b) **Physical Property Damage Insurance.** Physical damage insurance covering all real and personal property, excluding property paid for by sublessees or paid for by Tenant for which sublessees have reimbursed Tenant, located on or in, or constituting a part of, the Property (including but not limited to the Project) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire; (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the state of Washington; (iii) explosion of steam and pressure boilers and similar apparatus located in the Project; and (iv) flood damage if the Property is located within a flood plain. Tenant shall not be required to maintain insurance for war risks; provided, however, if Tenant shall obtain any such coverage then, for as long as such insurance is maintained by Tenant, Landlord shall be entitled to the benefits of (i) the first sentence of Section 12.4 hereof, and (ii) Paragraph (c) of Section 12.4.

(c) **Builder's Risk Insurance.** During construction of the Project and during any subsequent restorations, alterations, or changes in the Project that may be made by Tenant at a cost in excess of Ten Thousand and no/100 Dollars (\$10,000.00) per job, contingent liability and all builder's risk insurance in an amount reasonably satisfactory to Landlord. The Tenant may elect to provide the Builder's Risk Insurance described in this Section 12.3(c) or such coverage may be provided by the Tenant's contractor, at the Tenant's option.

(d) **Workmen's Compensation Insurance.** Workmen's compensation and employer's liability insurance with respect to any work by employees of Tenant on or about the Property.

**12.4 Terms of Insurance.** The policies required under Section 12.3(a) shall name Landlord as additional insured and Tenant shall provide to Landlord certificates of insurance and copies of policies obtained by Tenant hereunder promptly upon the request of Landlord. Further, all policies of insurance described in Section 12.3 shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that Landlord may carry.

(b) Contain an endorsement providing that such insurance may not be materially changed, amended, or canceled with respect to Landlord, except after thirty (30) days' prior written notice from insurance company to Landlord.

(c) Contain an endorsement of express waiver of any right of subrogation by the insurance company against Landlord and Landlord's elected or appointed officials, agents, contractor, representative, and employees.

(d) Expressly provide that Landlord shall not be required to give notice of accidents or claims and that Landlord shall have no liability for premiums.

(e) Provide that all proceeds shall be paid jointly to Landlord and Tenant.

**12.5 Landlord's Acquisition of Insurance.** If Tenant at any time from and after the commencement of construction fails to procure or maintain such insurance or to pay the premiums therefore, Landlord shall have the right to procure substitute insurance as Landlord deems appropriate and to pay any and all premiums thereon, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord, together with interest thereon at the rate provided herein from the date of such expenditure by Landlord until repayment thereof by Tenant. Any policies of insurance obtained by Landlord covering physical damage to the Property or Project shall contain a waiver of

subrogation against Tenant if and to the extent such waiver is obtainable and if Tenant pays to Landlord on demand the additional costs, if any, incurred in obtaining such waiver.

**12.6 Insurance Money and All Other Funds Held in Trust.** All insurance money shall be received by the Trustee of Insurance and shall be held in trust and, except as provided otherwise in subsection 12.7, shall be applied in accordance with the provisions of this Lease.

**12.7 Application of Proceeds of Physical Damage Insurance.** In case of any insurance policies as described in Section 12.3 (Physical Property Damage Insurance), the application of insurance proceeds from damage or loss to property shall be determined in accordance with this Lease and, in the event of any repair, replacement, restoration, or rebuilding, the proceeds of the insurance collected shall be applied to the cost of such work upon certificate of progress and/or completion by the licensed architect or engineer in charge of the work. Any amounts payable to Tenant or any affiliate of Tenant for work or services performed or materials provided as part of any such repair, replacements, restoration, or rebuilding shall not exceed competitive rates for such services or materials, and Tenant shall, upon request of Landlord, make available to Landlord and its representatives at Landlord's offices all books and records of Tenant relating to such work, services, and materials.

**12.8 Powers and Duties of Trustee of Insurance. Removed**

**12.9 Insurance Surveyor.** The determinations required herein shall be made by an independent qualified insurance surveyor selected by the parties, whose decision shall not be subject to arbitration. If the parties cannot agree on the insurance surveyor within thirty (30) days after the date of such damage or destruction, then the same shall be appointed by the Presiding Judge of the Superior Court of Lewis County, Washington, upon the application of either party.

**SECTION 13 - DAMAGE OR DESTRUCTION**

**13.1 Effect of Damage or Destruction.**

(a) In the event of any damage to or destruction of the Property or any Improvements thereon from any cause whatsoever, Tenant shall promptly give written notice thereof to Landlord. Tenant shall promptly repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction unless Landlord and Tenant mutually agree in writing that such repair and restoration are not feasible. All such repair and restoration shall be performed in accordance with the requirements herein. Unless this Lease is so terminated by mutual agreement, there shall be no abatement or reduction in rent during such repair and restoration. Any insurance proceeds payable by reason of such damage or destruction shall be made available pay the cost of such reconstruction; provided, however, in the event Tenant is in default under the terms of this Lease beyond any applicable cure period at the time such damage or destruction occurs. Landlord may elect to terminate this Lease and Landlord shall thereafter have the right to retain all insurance proceeds payable as a result of such damage or destruction. Funds of Insurance in excess of the cost of such reconstruction shall be paid to Landlord and Tenant pro-rata based upon the unexpired Term of the Lease, with Tenant receiving the fraction thereof which is equal to the then remaining Term divided by the original Term of this Lease, and Landlord receiving the remainder; provided, however, Landlord shall have a lien on Tenant's share of such proceeds to the extent Tenant has failed to pay any moneys to Landlord under the Terms of this Lease and if proceeds are available.

(b) In the event such damage or destruction occurs within the last ten (10) years of the Term of this Lease, and if such damage or destruction cannot be substantially repaired within one hundred eighty (180) days, Tenant may elect by written notice to Landlord, not more than ninety (90) days after the date of such damage or destruction, to either (i) terminate this Lease, or (ii) repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction or construct thereon such other improvements as may be approved by Landlord. In the event Tenant fails to provide such notice to Landlord, this Lease shall continue in full force and effect. In the event Tenant elects to

terminate this Lease, the Term of this Lease shall terminate on a date specified in such notice. Any insurance proceeds payable shall be allocated between Landlord and Tenant pro-rata based upon the unexpired Term of the Lease as specified herein and subject to Landlord's claim against Tenant's share of such proceeds in an amount equal to sums due from Tenant hereunder. In the event Tenant elects to restore the Property, any insurance proceeds payable by reason of such damage or destruction shall be made available to Tenant to pay the costs of such reconstruction and any funds remaining shall be allocated between Landlord and Tenant as stated herein above.

## SECTION 14 - CONDEMNATION

**14.1 Total Taking.** If all the Property is taken by the power of eminent domain exercised by any governmental or quasi-governmental authority by judgment or settlement in lieu of judgment, this Lease shall terminate as of the date Tenant is required to vacate the Property, and all minimum rent, adjustments, and other rentals and charges due hereunder shall be paid to that date. The term "eminent domain" shall include the taking or damaging of property by, through, or under any governmental or quasi-governmental authority by judgment or settlement in lieu of judgment and any purchase or acquisition in lieu thereof.

**14.2 Partial Taking.** If more than ten percent (10%) of the Property shall be taken or appropriated, this Lease may, at the option of Tenant, be terminated by written notice given to Landlord not more than thirty (30) days after Landlord and Tenant receive notice of the taking or appropriation, and such termination shall be effective as of the date when Tenant is required to vacate the portion of the Property so taken. If this Lease is so terminated, all adjustments and other charges due hereunder shall be paid to the date of termination. Whenever any portion of the Property is taken by eminent domain and this Lease is not terminated, Tenant shall at its expense proceed with all reasonable dispatch to restore, to the extent that it is reasonably prudent to do so, the remainder of the Property to the condition it was in immediately prior to such taking, and Tenant shall at its expense proceed with all reasonable dispatch to restore its fixtures, furniture, furnishings, leasehold improvements, floor coverings, and equipment to the same condition they were in immediately prior to such taking. From the date Tenant is required to vacate that portion of the Property taken, the Ground Rent payable hereunder shall be reduced in the same proportion that area taken bears to the total area of the Property prior to taking.

**14.3 Damages.** In the event of a partial taking which does not result in the termination of this Lease and which does result in a "single award" (defined below), the award shall first be made available to Tenant to enable Tenant to restore the Property and the improvements, fixtures, furnishings, etc., located thereon, and the excess award shall be divided among Tenant and Landlord in the manner described below with respect to a total taking. In the event of a total taking, or a partial taking that does result in termination of the Lease, if the judgment, order, or decree entered in such condemnation proceeding shall not yield separate awards to Landlord and Tenant but rather shall provide for the payment of a lump sum with respect to the Property (herein called "single award") as compensation for the respective interests of Landlord and Tenant, then the single award shall be divided between Landlord and Tenant in the ratio as nearly practicable, which (a) the then fair market value of Landlord's interest in the Property, exclusive of improvements made by Tenant, to (b) the then fair market value of Tenant's interest in the remainder of the Term of this Lease (including extension options) and the improvements made by Tenant. Tenant shall also have the right to claim from the condemning authority all compensation that may be recoverable by Tenant on account of any loss incurred by Tenant in removing Tenant's merchandise, furniture, trade fixtures, and equipment or for damage to Tenant's business; however, Tenant may claim such damages only if they are awarded separately in the eminent domain proceeding and not as part of Landlord's damages.

## SECTION 15 - SELF HELP

**15.1 Self Help.** If either Party defaults in the performance of any obligation (including obligations to reimburse or pay money hereunder) imposed on it by this Lease and does not cure such default within twenty (20) days after written notice from the other Party specifying the default (or if such Party does not

within said period commence and diligently proceed to cure such default other than an obligation to pay money), the other Party, without waiver of or prejudice to any other right or remedy it may have, shall have the right, at any time thereafter, to cure such default for the account of the defaulting Party, if applicable, and the defaulting Party shall reimburse the other party upon invoice for any amount paid and any expense or contractual liability so incurred (which, in the case of a monetary default, shall be the amount of money owed by the defaulting Party). If Landlord is the defaulting Party and fails to reimburse Tenant within ten (10) days after invoice Tenant shall have the right to offset the amount due thereunder, together with Default Interest, against Rent and other charges due from Tenant to Landlord under this Lease until Tenant has been completely reimbursed for its expenses.

In emergencies, or where necessary to prevent injury to persons or damage to property, either Party may cure a default by the other before the expiration of the prescribed notice period, but after giving such written or oral notice to the other Party as is practical under the circumstances.

If Tenant exercises its right of set-off as set forth in this Lease, and a court of competent jurisdiction issues a final, non-appealable order pursuant to which Landlord is found not to have been in default hereunder, then Tenant shall not be in default hereunder, but shall have sixty (60) days from the date of such final, non-appealable order in which to pay to Landlord those funds determined by the court to have been inappropriately set-off.

## SECTION 16 – DEFAULT

### 16.1 Breach by Tenant.

(a) Breach and Default. In the event of any breach of any provision of this Lease by Tenant, the breach shall be deemed a default entitling Landlord to the remedies hereinafter set forth after Landlord has delivered to Tenant notice of the alleged breach and a demand that the same be remedied immediately, provided that if the breach pertains to a matter other than payment of rent, as described in Section 4.2, Tenant shall not be in default after receipt of the notice if Tenant shall promptly commence to cure the default and shall cure the default within ninety (90) days after receipt of the notice; provided, further, if such default is nonmonetary in nature and is not reasonably susceptible of being cured in said ninety (90) days Tenant shall commence to cure such default within said period and diligently pursue such action to completion. If a breach has been cured within the grace periods permitted by this Section, it shall no longer constitute a default.

(b) Right of Re-entry. In the event of a default that remains uncured pursuant to the applicable cure periods provided herein, Landlord, in addition to any other rights or remedies that it may have, shall have the immediate right of re-entry. Should Landlord elect to re-enter or take possession of the leased Property, it may either terminate this Lease or, from time to time, without Terminating this Lease, relet the leased Property or any part thereof for the account and in the name of Tenant or otherwise, for any such Term or terms and conditions as Landlord in its sole discretion may deem advisable with the right to complete construction of or make alterations and repairs to the Improvements. Tenant shall pay to Landlord, as soon as ascertained, the cost and expenses incurred by Landlord in such reletting, completion of construction, or in making such alterations and repairs. Rentals received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness, other than rent, due hereunder from Tenant to Landlord; second, to the payment of rent due and unpaid hereunder and to any other payments required to be made by Tenant hereunder and the residue, if any, shall be held by Landlord and applied in payment of future rent or damages in the event of termination as the same may become due and payable hereunder, and the balance, if any, at the end of the Term of this Lease shall be paid to Tenant. Should such rentals received from time to time from such reletting during any period be less than that agreed to be paid during that period by Tenant hereunder, Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid for that period. At any time after such re-entry, whether or not Landlord shall have collected any periodic deficiencies as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the difference between the rent for the period to the date upon which the Term would have ended but for the default of Tenant and the then fair

and reasonable rental value of the Property for the same period. Nothing contained herein shall limit or prejudice the right of Landlord to prove for and obtain as liquidated damages by reason of such default, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceeds in which, such damages are to be provided, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

(c) Reletting. No such reletting of the Property by Landlord shall be construed as an election on its part to terminate this Lease unless a notice of such intention to be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach, provided that it has not been cured. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedy it may have, it may recover from Tenant all damages it may incur by reason of such breach.

**16.2 Remedies Upon Landlord's Default.** In the event Landlord shall at any time be in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Landlord hereunder and any such default shall continue for a period of thirty (30) days after written notice to Landlord, or if such default is incapable of being cured in a reasonable manner within thirty (30) days, if Landlord has not commenced to cure the same within said thirty (30)-day period or does not thereafter diligently prosecute the same to completion, Tenant shall be entitled, at its election, to exercise, concurrently or successively, any one or more of the following rights, in addition to all remedies otherwise provided in this Lease and otherwise available at law or in equity under the laws of the United States or the state of Washington:

(a) To bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement devolving upon Landlord, without terminating this Lease; and/or

(b) To terminate this Lease upon thirty (30) days' written notice to Landlord, without waiving Tenant's rights to damages for Landlord's failure to perform its obligations hereunder. In the event Tenant elects to terminate this Lease as aforesaid, all rights and obligations of Tenant, and of any successors or assigns, shall cease and terminate, except that Tenant shall have and retain full right to sue for and collect all amounts for the payment of which Landlord shall then be in default and all damages to Tenant by reason of any such breach.

In the event that either Landlord or Tenant commences any suit for the collection of any amounts for which the other may be in default or for the performance of any other covenant or agreement hereunder, each Party shall be responsible for its own respective costs and expenses, including, but not limited to, all attorneys' fees and expenses incurred in enforcing such obligations and/or collecting such amounts. All remedies of Tenant herein created or remedies otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as Tenant shall deem necessary.

**16.3 Remedies Cumulative.** All remedies of Landlord or Tenant herein created or remedies otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other, provided that in no event shall Landlord have the right to (a) be awarded consequential damages for Tenant's default or (b) accelerate rental reserved hereunder without offsetting against such amount the present value of the fair market rental value of the Property for the balance of the Term. Except as limited herein above, all rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord or Tenant shall deem necessary.

## SECTION 17 - QUIET POSSESSION

**17.1 Quiet Possession.** Landlord covenants that it has full right, power, and authority to make

this Lease. Landlord covenants that Tenant, so long as Tenant is not in default hereunder and subject to the provisions of this Lease, shall have quiet and peaceful possession of the Property during the entire Term of this Lease.

## **SECTION 18 - SUBORDINATION**

**18.1 Landlord's Right to Mortgage.** Landlord may mortgage its interest in the Property, provided such mortgage expressly provides that the rights and interests of the mortgagee thereunder are subject and subordinate to the rights and interests of Tenant hereunder and to the rights of any Leasehold Mortgagee under any Leasehold Mortgage then or thereafter existing. Should Landlord sell, convey, or transfer its interest in the Property, or should any mortgagee of Landlord succeed to Landlord's interest through foreclosure or deed in lieu thereof, Tenant shall attorn to such succeeding party as its landlord under this Lease promptly upon any such succession, provided such succeeding party assumes all of Landlord's duties and obligations under this Lease, including without limitation the covenant of quiet enjoyment. Such succeeding party shall not be liable for any of Landlord's obligations and duties hereunder prior to its assumption of Landlord's duties and obligations hereunder, except that Tenant shall be entitled to any offsets or defense which may have arisen prior to such succeeding party's assumption, which such offsets or defenses are specifically provided herein or are otherwise permitted by law.

## **SECTION 19 - RESERVED**

## **SECTION 20 - LEASEHOLD MORTGAGES**

**20.1 Leasehold Mortgages Authorized.** Landlord, subject to the provisions of this Lease, consents to Tenant receiving a Purchase Money Leasehold Mortgage upon a sale and assignment of the leasehold estate created by this Lease or the mortgaging or otherwise encumbering Tenant's leasehold estate to an Institutional Investor (as hereinafter defined) under one or more leasehold mortgages. This Lease may be assigned as security for such Purchase Money Leasehold Mortgage(s) or Institutional Investor Leasehold Mortgage(s). Except as specifically authorized in this Section 20 with respect to Purchase Money Leasehold Mortgage(s), and Institutional Investor Leasehold Mortgage(s), Tenant shall not have the right to collaterally assign, hypothecate, mortgage, or otherwise pledge the leasehold estate created hereby without Landlord's express written consent, which consent may be withheld by Landlord in the exercise of its reasonable business judgment.

### **20.2 Notice to Landlord.**

(a) If upon a sale and assignment of the leasehold estate Tenant may, on one or more occasions, take back a Purchase Money Leasehold Mortgage for a Term not beyond the Termination Date for so long as Tenant holds such instrument; or if Tenant shall mortgage Tenant's leasehold estate to an Institutional Investor for a Term not beyond the Termination Date and if the holder of such Leasehold Mortgage shall provide Landlord with notice of such Leasehold Mortgage, together with a true copy of such Leasehold Mortgage and the name and address of the mortgagee, Landlord and Tenant agree that, following receipt of such notice to Landlord, the provisions of this Section 20 shall apply in respect to each such Purchase Money Leasehold Mortgage or such Leasehold Mortgage held by an Institutional Investor. In addition to the foregoing requirements, any Purchase Money Leasehold Mortgage or Institutional Investor Leasehold Mortgage shall contain a statement which disclaims any interest or lien against Landlord's fee interest in the Property and which states that Landlord shall have no personal liability whatsoever in connection with said mortgage or the instruments and obligations secured thereby.

(b) In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignment of such mortgage, notice of the new name and address shall be provided to Landlord; provided, however, any such assignee shall be an Institutional Investor as defined herein.

(c) Landlord shall promptly, upon receipt of a communication purporting to constitute the notice



provided for by Section 20.2(a) above, acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided by Section 20.2(a) above, or, in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 20.2(a), and specify the specific basis of such rejection.

(d) After Landlord has received the notice provided for by Section 20.2(a) above, Tenant shall, with reasonable promptness, provide Landlord with copies of the note or other obligation secured by such Leasehold Mortgage and any other documents pertinent to the Leasehold Mortgage as specified by Landlord. Tenant shall thereafter, in a like manner, also provide Landlord from time to time with a copy of each amendment or other modification or supplement to such instruments. All recorded documents shall be accompanied by the appropriate certification of the appropriate official of the recording office as to their authenticity as true and correct copies of official records, and all nonrecorded documents shall be accompanied by a certification by Tenant that such documents are true and correct copies of the originals. From time to time upon being requested to do so by Landlord, Tenant shall also notify Landlord of the date and place of recording and other pertinent recording data with respect to such instruments as have been recorded.

### **20.3 Definitions.**

(a) The term "Institutional Investor" as used in this Section 20 shall refer to any reputable and solvent (i) savings bank; (ii) commercial bank; (iii) trust company; (iv) credit union; (v) insurance company; (vi) petroleum company; (vii) college; (viii) university; (ix) real estate investment trust; or (x) pension fund. The term "Institutional Investor" shall also include other reputable and solvent lenders of substance which perform functions similar to any of the foregoing and which have assets in excess of Fifty Million and no/100 Dollars (\$50,000,000.00) at the time the Leasehold Mortgage loan is made.

(b) The term "Leasehold Mortgage" as used in this Section 20 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Tenant's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation which is held by an Institutional Investor.

(c) The term "Leasehold Mortgagee" as used in this Section 20 refers to the Institutional Investor which is the holder of a Leasehold Mortgage in respect to which the notice provided for by Section 20.2(a) has been given and received and as to which the provisions of this Section 20 are applicable.

**20.4 Consent of Leasehold Mortgagee Required.** No cancellation, surrender, or modification of this Lease shall be effective as to any Leasehold Mortgage unless consented to in writing by such Leasehold Mortgagee; provided, however, that nothing in this Section 20.4 shall limit or derogate from Landlord's rights to terminate this Lease in accordance with the provisions of this Section 20.

**20.5 Default Notice.** Landlord, upon providing Tenant any notice of: (i) default under this Lease, or (ii) a termination of this Lease, or (iii) demand to remedy a claimed default, shall contemporaneously provide a copy of such notice to every Leasehold Mortgagee. From and after such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance the additional periods of time specific in Sections 20.6 and 20.7 to remedy, commence remedying, or cause to be remedied the defaults specified in any such notice. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option, and does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

### **20.6 Notice to Leasehold Mortgagee.**

(a) Anything contained in this Lease to the contrary, notwithstanding if any default shall occur which entitled Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease

unless Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate at least forty-five (45) days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least sixty (60) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money. The provisions hereof shall apply if, during such 45-day or 60-day Termination Notice Period, any Leasehold Mortgagee shall:

- (1) Notify Landlord of such Leasehold Mortgagee's desire to nullify such notice; and
- (2) Pay or cause to be paid all rent, additional rent, and other payments then due and in arrears as specified in the Termination Notice to such Leasehold Mortgagee and which may become due during such 45-day or 60-day period; and
- (3) Comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee; provided, however, that such Leasehold Mortgagee shall not be required during such 60-day period to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge, or encumbrance against Tenant's interest in this Lease or the Property junior in priority to the lien of the mortgage held by such Leasehold Mortgagee.

(b) Any notice to be given by Landlord to a Leasehold Mortgagee pursuant to any provision of this Section 20 shall be deemed properly addressed if sent to the Leasehold Mortgagee who served the notice referred to in Section 20.2(a) unless notice of change or mortgage ownership has been given to Landlord pursuant to Section 20.2(b).

#### **20.7 Procedure on Default.**

(a) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 20.6, the specified date for the termination of this Lease as fixed by Landlord in its Termination Notice shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall, during such six-month period:

- (1) Pay or cause to be paid the minimum rent, percentage rent, and other monetary obligations of Tenant under this Lease as the same become due, and continue to perform all of Tenant's other obligations under this Lease, excepting (i) obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in this Lease or the Project junior in priority to the lien of the mortgage held by such Leasehold Mortgagee, and (ii) past nonmonetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee; and
- (2) If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence. If such Leasehold Mortgagee is enjoined or stayed from taking such steps, the Leasehold Mortgagee shall use its best efforts to seek relief from such injunction or stay.

(b) If at the end of such six-month period such Leasehold Mortgagee is complying with Section 20.7(a), this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee continues to comply with the provisions of Section 20.7(a) above, and is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgagee or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 20.7(b), however, shall be construed to extend this Lease beyond the original Term, nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such

foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) If a Leasehold Mortgagee is complying with Section 20.7(a) upon (i) the acquisition of Tenant's estate herein by such Leasehold Mortgagee or any other purchasers at a foreclosure sale or otherwise, and (ii) the discharge of any lien, charge, or encumbrance against Tenant's interest in this Lease or the Property which is junior in priority to the lien of the Leasehold Mortgagee held by such Leasehold Mortgagee and which Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided, however, that such Leasehold Mortgagee or its designee or any other such party acquiring Tenant's leasehold estate created hereby shall agree in writing to assume all obligations of Tenant hereunder, subject to the provisions of this Section 20.

(d) For the purposes of this Section 20, the making of a Leasehold Mortgage shall not be deemed to constitute a complete assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created. The Leasehold Mortgagee prior to foreclosure of the Leasehold Mortgage or other entry into possession of the leasehold estate shall not be obligated to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder. The purchaser (including any Leasehold Mortgagee) at any sale of this Lease and the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgagee, or the assignee or transferee (including the Leasehold Mortgagee) of this Lease and the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee within the meaning of this Section 20, and shall be deemed to have agreed to perform all of the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

(e) Any Leasehold Mortgagee of the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure, or other proceedings may, upon acquiring Tenant's leasehold estate, without further consent of Landlord, sell and assign the leasehold estate on such terms and to such persons and organizations as are acceptable to such Mortgagee; provided, that such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease and the assignee has previously been approved in writing by Landlord, which approval shall not be unreasonably withheld.

(f) Notwithstanding any other provisions of this Lease, any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of the foreclosure of any Leasehold Mortgage, shall be deemed to be a permitted sale, transfer, or assignment of this Lease and of the leasehold estate hereby created.

(g) Tenant shall not transfer, sell, or assign any redemption right from any foreclosure sale to any person which is not approved by the Landlord in accordance with the provisions of Section 9 above. Upon any sale or transfer, after the transfer is completed, Tenant is relieved from any and all obligations.

**20.8 New Lease.** In the event of the Termination of this Lease as a result of Tenant's default, Landlord shall, if such Leasehold Mortgagee shall have waived in writing its rights under Sections 20.6 and 20.7 within thirty (30) days after such Leasehold Mortgagee's receipt of notice required by Section 20.6, provide each Leasehold Mortgagee with written notice that this Lease has been terminated, together with a statement of all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("New Lease") of the Property with such Leasehold Mortgagee for the remainder of the Term of this Lease, effective as of the date of Termination, at the rent and upon the terms, covenants, and conditions (including all escalations of rent, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

(a) Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives Landlord's Notice of Termination of this Lease given pursuant to this Section 20.8.

(b) Such Leasehold Mortgagee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such Termination, and, in addition thereto, all reasonable expenses which Landlord shall have incurred by reason of such Termination and the execution and delivery of the New Lease, and which have not otherwise been received by Landlord from Tenant or other party-in-interest under Tenant. Upon the execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 20.8 or under the New Lease an amount equal to the net income derived by Landlord from the Property during the period from the date of Termination of this Lease to the date of the beginning of the Lease Term of such New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 20.8, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and the Leasehold Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due plus interest as allowed by law, and such obligation shall be adequately secured.

(c) Such Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which said Leasehold Mortgagee was notified by Landlord's Notice of Termination and which are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee.

**20.9 New Lease Priorities.** If more than one Leasehold Mortgagee shall request a New Lease pursuant to Section 20.8, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. Landlord, without liability to Tenant or any Leasehold Mortgagee with an adverse claim may rely upon a mortgagee's title insurance policy or preliminary commitment therefore, issued by a reasonable title insurance company doing business within the state of Washington as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

**20.10 Leasehold Mortgagee Need Not Cure Specified Default.** Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of right hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee, including but not limited to the default referred to in Section 16 hereof, in order to comply with the provisions of Sections 20.6 or 20.7 or as a condition of entering into a New Lease provided for by Section 20.8 above.

**20.11 Eminent Domain.** Tenant's share, as provided in this Lease, of the proceeds arising from an exercise of the power of eminent domain shall, subject to the provisions this Lease, be disposed of as provided for by any Leasehold Mortgagee.

**20.12 Casualty Loss.** A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and the Leasehold Mortgagee shall so provide; except that the Leasehold Mortgagee may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Tenant pursuant to the provisions of this Lease.

**20.13 Arbitration/Legal Proceedings.** Landlord shall give each Leasehold Mortgagee prompt notice of any arbitration or legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the Parties hereto do hereby consent to such intervention. In the event any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Leasehold Mortgagee notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of arbitration. In the event Tenant shall fail to appoint an arbitrator after notice from Landlord as

provided in Section 20 hereof, a Leasehold Mortgagee (in order of seniority if there be more than one) shall have an additional period of thirty (30) days after notice by Landlord that Tenant has failed to appoint such arbitrator to make such appointment, and the arbitrator so appointed shall thereupon be recognized in all respects as if he had been appointed by Tenant. In the event a Leasehold Mortgagee commences any judicial or nonjudicial action to foreclose its Leasehold Mortgage or otherwise realize upon its security granted therein, written notice of such proceeding shall be provided to Landlord at the same time notice thereof is given to Tenant.

**20.14 No Merger.** So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Property and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord, by Tenant, or by a third party, by purchase or otherwise.

**20.15 Estoppel Certificate.** Landlord shall, without charge, any time and from time to time hereafter, but not more frequently than twice in any one-year period (or more frequently if such request is made in connection with any sale or mortgaging of Tenant's leasehold interest or permitted subletting by Tenant), within fifteen (15) days after written request of Tenant to do so, certify by written instrument duly executed and acknowledged to any Mortgagee or purchaser, or proposed Mortgagee or proposed purchaser, or any other person, firm, or corporation specified in such request: (i) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (ii) as to whether the Lease remains in full force and effect; (iii) as to the existence of any default hereunder; (iv) as to the existence of any offsets, counterclaims, or defenses hereto on the part of Tenant; and (v) as to the commencement and expiration dates of the Occupancy Period of this Lease. Any Leasehold Mortgagee and any other holder of any indebtedness secured by Tenant's leasehold estate shall provide Landlord, upon Landlord's written request, a statement as to (i) the current amount secured by the Leasehold Mortgage held by such Leasehold Mortgagee, (ii) whether any default exists under said Leasehold Mortgage, and (iii) whether there exist any offsets, claims, or disputes with respect to said Leasehold Mortgage and the instruments secured thereby.

**20.16 Notices.** Notices from Landlord to the Leasehold Mortgagee shall be mailed to the address furnished Landlord pursuant to Section 20.2, and those from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 21 hereof. Such notices, demands, and requests shall be given in the manner described in Section 20 and Section 21 and shall in all respects be governed by the provisions of those Sections.

**20.17 Erroneous Payments.** No payment made to Landlord by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided it shall have made demand therefore not later than one (1) year after the date of its payment.

## SECTION 21 – MISCELLANEOUS

**21.1 Holding Over.** In the event of Tenant's continued occupancy of the Property after the expiration of the Term, or any earlier termination provided or permitted by this Lease, such tenancy shall be deemed a month-to-month tenancy at the same monthly Rent as during the last month of the Term which ended just prior to such holding over. All other covenants, provisions, obligations, and conditions of this Lease shall remain in full force and effect during such month-to-month tenancy.

**21.2 Non-Waiver of Default.** No acquiescence by either Party to any default by the other Party shall operate as a waiver of its rights with respect to the same or any other breach or default, whether of the same or any other covenant or condition. No waiver shall be effective unless it is in writing and signed by the Party giving the waiver.

**21.3 Recording.** This Lease shall not be recorded. The parties shall execute, acknowledge, and

deliver to each other duplicate originals of a short form or memorandum of this Lease ("Memorandum of Lease") in substantially the form of Exhibit "C" attached hereto and incorporated herein, describing the Property and setting forth the Term of this Lease. The Memorandum of Lease shall be recorded at Landlord's expense.

**21.4 Notice.** Any notice, request, offer, approval, consent, or other communication required or permitted to be given by or on behalf of either Party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e. Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other Party as follows:

If to Tenant: C/O Amerco Real Estate Company  
Attn. Leasing Department  
2727 N. Central Avenue, Suite 500  
Phoenix, AZ 85004

If to Landlord: Chehalis-Centralla Airport  
P.O. Box 1344  
Chehalis, Washington 98532

Copy to: Hillier, Scheibmeir, Vey & Kelly, P.S.  
P.O. Box 939  
Chehalis, Washington 98532  
Attention: William T. Hillier

or at such other address as may be specified from time to time in writing by either Party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

**21.5 Successors and Assigns.** All covenants, promises, conditions, representations, and agreements herein contained shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors (including subtenants), and assigns.

**21.6 Partial Invalidity.** If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**21.7 Interpretation.** In interpreting this Lease in its entirety, any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either Party hereto. This Lease shall be construed without regard to any presumption or other rule requiring construction against the drafting Party. This Lease, along with all documents referenced herein, shall constitute the entire agreement between the parties and any amendments must be in writing signed by both parties.

**21.8 Headings, Captions, and References.** The section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof", "hereunder", and "herein" shall refer to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The terms "Include", "Includes", and "Including" incorporate the concept that such inclusion is "without limitation". The use of the masculine or neuter genders herein shall include the masculine, feminine, and neuter genders, and the singular form shall include the plural when the context so requires.

**21.9 Brokerage Commissions.** Landlord and Tenant each warrants and represents to the other

that there are no brokers' or finders' fees or any real estate commissions due to any broker, agent, or other party in connection with the negotiation or execution of this Lease, or on behalf of either of them, other than the Broker identified in Article 1. Tenant shall pay all brokerage commissions and expenses to Broker pursuant to a separate agreement between Tenant and Broker. Each Party shall indemnify the other with respect and compensation, commissions, fees, or other sums claimed to be due or owing with respect to the representations made by landlord or Tenant, as applicable.

**21.10 Insolvency.** If (i) a receiver or trustee is appointed to take possession of all or substantially all of the assets of Tenant, or if (ii) any action is taken or suffered by Tenant pursuant to an insolvency, bankruptcy, or reorganization act, or if (iii) Tenant makes a general assignment for the benefit of its creditors, and if such appointment or assignment continues for a period of thirty (30) days, it shall, at Landlord's option, constitute a default by Tenant and Landlord shall be entitled to the remedies set forth herein, which may be exercised by Landlord without prior notice or demand upon Tenant.

**21.11 Governing Law.** This Lease shall be construed under the laws of the state of Washington. Venue for any dispute shall be in Lewis County, Washington.

**21.12 Execution of Documents.** Landlord and Tenant shall each cooperate with the other and execute such documents as the other Party may reasonably require or request so as to enable it to conduct its operations, so long as the requested conduct or execution of documents does not derogate from or alter the powers, rights, duties, and responsibilities of the respective Parties. However, should Landlord request Tenant to provide an estoppel certificate ("Estoppel Certificate") in a form other than as provided as Exhibit "D", Landlord shall pay Tenant's reasonable attorneys' fees incurred. Nothing herein shall be deemed to imply a requirement that Tenant execute an Estoppel Certificate different from Exhibit "D".

**21.13 Conditions Subsequent.** Tenant's obligations hereunder are conditioned upon satisfaction of the following conditions subsequent as and when specified below:

(a) Title Insurance. Landlord shall provide Tenant a leasehold title policy (1975 Form), issued by Title Guarantee Company of Lewis County, insuring Tenant's leasehold interest in the amount specified in Article I on an ALTA form acceptable to Tenant and showing only the Permitted Exceptions, which title insurance policy must be issued on or before the date which is thirty (30) days after the Effective Date. Landlord shall furnish Tenant, during the Inspection Period, a commitment for title insurance, as hereinafter defined. The title insurance commitment shall provide for deletion of the standard printed exceptions and shall provide such other coverage as Tenant shall request to insure to Tenant's satisfaction against title defects revealed in the commitment, whether or not such matters are Permitted Exceptions. The cost of the title insurance policy, including the extended coverage and corrective endorsements, shall be paid by Landlord. Tenant shall have until the later of the end of the Inspection Period, or thirty (30) days after receipt of the title insurance commitment ("Title Review Period") together with legible copies of all documents referred to in the commitment (either as exceptions or requirements), and the Survey (as hereinafter defined), within which to review the commitment, the Survey, and such title documents and to advise Landlord of any objections to title. If Tenant's title objections are not resolved to Tenant's satisfaction during the Title Review Period, then Tenant shall have the right to terminate this Lease upon written notice to Landlord, and the Parties shall be relieved of all further obligations or liabilities hereunder.

**21.14 Hazardous, Toxic, or Harmful Substances.** Tenant shall not cause or permit any hazardous material (as hereinafter defined) to be brought upon, kept, or used in or about the Property by Tenant, its agents, employees, contractors, or invitees, without the prior written consent of Landlord, except such materials that are normally used or sold in the course of Tenant's business. Tenant agrees that handling and storage of such materials and substances shall occur safely and in compliance with all applicable federal, state, and local laws and regulations. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Property caused or permitted by Tenant results in contamination of the Property or any adjacent property, then Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs,

liabilities, or losses (including, without limitation, diminution in value of the Property and/or adjacent property, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property and/or adjacent property, damages arising from any adverse impact on marketing of the Property and/or adjacent property, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the commencement of construction on the Property as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material present in the soil or ground water on or under the Property and/or adjacent property. Without limiting the foregoing, if the presence of any hazardous material on the Property caused or permitted by Tenant results in any contamination of the Property and/or adjacent property, Tenant shall promptly take all actions at its sole expense as are necessary to return the Property and/or adjacent property to the condition existing prior to the introduction of any such hazardous material to the Property and/or adjacent property, provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property and/or adjacent property. As used herein, the term "hazardous material" means any hazardous or toxic substance, material or waste which is or becomes regulated by local governmental authority, the state of Washington or the United States government. Upon expiration or earlier Termination of this Lease, Tenant shall duly execute and deliver to Landlord a certificate (the "Hazardous Waste Certificate") in a form approved by Landlord. Nothing contained herein shall be deemed or construed to limit the liability of Tenant to Landlord hereunder for the breach of any covenant of Tenant under this Section. The provisions of this Section shall survive the expiration or earlier Termination of this Lease and Tenant's surrender of the Property to Landlord.

**21.15 Force Majeure.** Whenever a party is required to perform an act under this Lease by a certain time, said time shall be deemed extended (unless specifically provided elsewhere in this Lease) so as to take into account events of "Force Majeure." "Force Majeure" is any of the following events that prevents, delays, retards or hinders a Party's performance of its duties hereunder: Act of God; fire; earthquake; flood; war; explosion; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; transportation failure; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities or any other cause, whether similar or dissimilar to the foregoing, not within such Party's control. Notwithstanding, anything in this Lease to the contrary. Force Majeure shall not include a Party's lack of, or inability to procure, moneys to fulfill its commitments and obligations under this Lease.

**21.16 Estoppel Certificate.** Tenant agrees within a reasonable period of time after request therefore from Landlord to execute in recordable form and deliver to Landlord the Estoppel Certificate. Landlord agrees to give Tenant a comparable estoppel certificate within a reasonable period of time after request therefore from Tenant.

**21.17 Approval.** Any approval required from Landlord hereunder shall not be unreasonably withheld, or conditioned, and shall be timely delivered. Any request by Tenant for approval shall be sent by certified mail, return receipt requested and shall be deemed approved unless Landlord within thirty (30) days provides written notice to Tenant of the disapproval of the request, together with the reasons therefore.

**21.18 Effectiveness.** This Lease shall not be deemed effective for any purpose or binding on either Party hereto unless and until the date this Lease is signed by both Parties and a fully executed copy is delivered to and received by both Parties ("Effective Date").

IN WITNESS WHEREOF, this Lease has been executed as of the date written above.



LANDLORD:

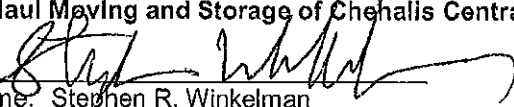
CITY OF CHEHALIS



By \_\_\_\_\_  
Name: Mrs. Jill Anderson  
Its: City Manager  
Date: \_\_\_\_\_

TENANT:

U-Haul CO. of Washington, a Washington corporation dba  
U-Haul Moving and Storage of Chehalis Centralia

By   
Name: Stephen R. Winkelman  
Its: Assistant Secretary  
Date: 9/27/18

## LIST OF EXHIBITS

Exhibit A	Legal Description of Property
Exhibit B	Site Plan
Exhibit C	Compliance with Federal Aviation Administration (FAA) Requirements
Exhibit D	Memorandum of Lease

**EXHIBIT "A"**  
**Legal Description of Property**

That portion of the Northwest One-Quarter of the Northeast One-Quarter of Section 30, Township 14 North, Range 2 West of the Willamette Meridian in Lewis County, Washington, described as follows:

Beginning at the Southwest corner of said subdivision; thence S 89° 56' 10" E 165.00 feet along the south line thereof to the Northeast corner of Lot one (1) of Chehalis Land and Timber Company's First Subdivision; thence N 00° 03' 42" E 668.36 feet parallel with the west line of said Southwest One-Quarter of the Northeast One-Quarter to the true point of beginning; thence continuing N 00° 03' 42" E 577.04 feet; thence N 36° 39' 13" E 100.66 feet to a point (hereinafter referred to as point "A" ) on the north line of said Southwest One-Quarter of the Northeast One-Quarter that is 225.00 feet S 89° 54' 05" E from its northwest corner; thence N 36° 39' 13" E 31.12 feet; thence along a line parallel with the south line of said Northwest One-Quarter of the Northeast One-Quarter S 89° 54' 05" E 503.00 feet to the Westerly right of way line of Frontage Road Number 17; thence along said right of way line S 19° 51' 27" W 26.56 feet to said south line; thence leaving said right of way line N 89° 54' 05" W 512.56 feet to the point of beginning and containing 0.29 acres of land, more or less.

**EXHIBIT "B"**  
**Memorandum of Lease**

Date: \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY OF CHEHALIS, CHEHALIS-CENTRALIA AIRPORT ("Landlord"), and U-Haul CO. of Washington, a Washington corporation dba U-Haul Moving and Storage of Chehalis Centralia and/or assigns. ("Tenant") are parties to that certain Lease dated \_\_\_\_\_, 20\_\_\_\_, ("Lease") for certain real property consisting of land and Improvements ("Property") located in the city of Chehalis, county of Lewis, state of Washington, and more fully described on Exhibit "a" attached hereto.

The undersigned \_\_\_\_\_ of Tenant certifies that to the best of his or her actual knowledge, the following statements are true and correct as of the date hereof.

Tenant has entered into occupancy of the Property described in the Lease;

The Lease is in full force and effect and has not been assigned, modified, supplemented, or amended in any way, except as follows:

The Rent Commencement Date of the Lease is \_\_\_\_\_, 20\_\_\_\_;

The Lease Term shall expire on \_\_\_\_\_, 20\_\_\_\_; provided, however, that Tenant may have additional options to extend the Lease Term as provided therein;

Current annual Rent is \_\_\_\_\_;

All conditions precedent of Tenant's obligations as set forth in the Lease have been satisfied or waived;

Tenant has not received notice of, and has no actual knowledge of the existence of, any defaults under the Lease by either Landlord or Tenant;

No rents have been paid in advance of (1) month except \_\_\_\_\_;

Tenant has not assigned or mortgaged its interest in the Lease, in whole or in part, or sublet all or part of the Property except \_\_\_\_\_; and

There have been no amendments or modifications to the Lease except \_\_\_\_\_.

EXECUTED as of the date first written above.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT

**EXHIBIT "C"**

**COMPLIANCE WITH FEDERAL AVIATION ADMINISTRATION REQUIREMENTS**

The Tenant, for itself, its successors-in-interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any Improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that the Tenant shall use the Property in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Rick Sahlin, Public Works Director  
Don Schmitt, Street/Storm Superintendent

**MEETING OF:** October 8, 2018

**SUBJECT:** Acceptance and Closeout of the North Market Boulevard Grind and Inlay Project

---

**ISSUE**

The North Market Boulevard Grind and Inlay Project is complete. It is recommended that the City Council accept the project as complete and release the retainage to Lakeside Industries, Inc., after all statutory requirements have been met.

**DISCUSSION**

In April 2018, Lakeside Industries was awarded the North Market Boulevard Grind and Inlay Project in the amount of \$74,000. The project consisted of a two-inch grind and inlay within the parking area along the two-block stretch of downtown.

There was one change order added to the project in the amount of \$3,300 which included sealing the joint edges, as that was not included in the original bid request. A copy of that change order is included. That brought the total construction cost to \$77,300 for the project, which was under the not-to-exceed budget of \$81,400.

**FISCAL IMPACT**

The project cost of \$77,300 is funded by the Transportation Benefit District Fund, as this was a project identified for 2018.

**RECOMMENDATION**

The administration recommends that the City Council accept the North Market Grind and Inlay Project as complete and authorize the release of retainage after all statutory requirements have been met.

**SUGGESTED MOTION**

I move that the City Council accept the North Market Grind and Inlay Project as complete and authorize the release of retainage after all statutory requirements have been met.

**CONTRACT CHANGE ORDER (CO)**

City of Chehalls

AGENCY

Project No. \_\_\_\_\_

Market Blvd Grind and Inlay

PROJECT TITLE

CO No. \_\_\_\_\_

1

PROPOSAL REQUEST

TO: Lakeside Industries, Inc. (CONTRACTOR)

CO REQUEST DATE: 6/18/2018

Change Order Description:

Place joint seal on all edge seams

Reason for Change     DESIGN ERRORS     DESIGN OMISSIONS     AGENCY     LATENT CONDITIONS     CODE REQUIREMENTS     VALUE ENGINEERING

EXPLANATION: Joint seal omitted from original scope of work

DATE CO REQUIRED: \_\_\_\_\_  
(14 days from Request Date, unless other date agreed to)

CHANGE ORIGINATED BY: Contractor

CO REQUESTED BY: City of Chehalls

CONTRACTOR PROPOSAL

**WE AGREE TO PERFORM ALL CHANGE IN THE WORK DESCRIBED IN THE CO REQUEST FOR:**

**CONTRACT SUM:**

- NO CHANGE
- INCREASE
- DECREASE



Three thousand three hundred and 00/100 dollars    \$ 3,300.00  
(WASHINGTON STATE SALES TAX NOT INCLUDED)

In accordance with the General Conditions, Cost Estimate Detail Sheet(s) are attached hereto.

**CONTRACT TIME:**

- NO CHANGE
- INCREASE
- DECREASE



\_\_\_\_\_ CALENDAR DAYS

The foregoing amount covers everything required in connection with the change. All other provisions of the contract remain in full force and effect.

We understand that this change order constitutes authorization to proceed with the specified changes in the work.

Lakeside Industries, Inc.  
CONTRACTOR

BY [Signature]  
SIGNATURE

6/21/18  
DATE

APPROVAL

Owner accepts this CO and authorizes the performance of the changes specified

[Signature]  
OWNER

7-13-18  
DATE

**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Rick Sahlin, Public Works Director  
Don Schmitt, Street/Storm Superintendent

**MEETING OF:** October 8, 2018

**SUBJECT:** Acceptance and Closeout of the Chamber Way Grind and Inlay Improvements Project

---

**ISSUE**

The Chamber Way Grind and Inlay Improvements Project is complete. It is recommended that the City Council accept the project as complete and release the retainage to Lakeside Industries, Inc., after all statutory requirements have been met.

**DISCUSSION**

In May 2018, bids were solicited for the Chamber Way Grind and Inlay Improvements Project. Lakeside Industries submitted the low bid of \$73,500 and was awarded the project. The project consisted of a two-inch grind and inlay on a portion of the dead end stretch of NW Chamber Way. It also included new traffic signal loops and new pavement markings. Lakeside Industries completed the project per the bid amount of \$73,500.

**FISCAL IMPACT**

The project cost of \$73,500 is funded by the Transportation Benefit District Fund as one of its 2018 projects.

**RECOMMENDATION**

The administration recommends that the City Council accept the Chamber Way Grind and Inlay Improvements Project as complete and authorize the release of retainage after all statutory requirements have been met.

**SUGGESTED MOTION**

I move that the City Council accept the Chamber Way Grind and Inlay Improvements Project as complete and authorize the release of retainage after all statutory requirements have been met.



**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Trent J. Lougheed, P.E., Community Development Director

**MEETING OF:** October 8, 2018

**SUBJECT:** Ordinance No. 992-B, First and Final Reading – Amending Chehalis Municipal Code Title 5 Relating to Business Licensing

---

**ISSUE**

***Petition to Amend Title 5 of the Chehalis Municipal Code pertaining to business licenses and to add an additional chapter pertaining to Special Events.***

The Washington State Legislature passed [HB2005](#) in 2017 mandating that cities shall partner with Washington State to issue business licenses. Chehalis is required to complete this process by the end of 2018.

In addition, the Washington Cities Insurance Authority (WCIA) has requested that we update our code for special events to ensure complete coverage for the city and minimize risks to the public at large.

Both of these changes affect Chapter 5.04 of the Chehalis Municipal Code.

**DISCUSSION**

Washington State is mandating the change to have the State Department of Revenue administer city business licenses, which provides online application options. It also allows companies doing business in multiple cities to easily obtain business licenses for every city they do business in. (For example, plumbers and roofing companies.)

The existing code simply states “No person shall engage in business in the City without first obtaining a license for such business issued by the city as provided herein.” The proposed ordinance provides for the following:

- Persons or businesses with less than \$2,000 annual value of products, gross proceeds or income and does not maintain a place of business within the City can obtain their permit at

no cost. (For example, those renting temporary tenant spaces with a registered business address outside of the City.)

- Provides definition as to what constitutes “business”
- Lists many samples of activities requiring business licenses
- Lists exceptions that do not require a business license

### ***Special Event Permitting***

WCIA recently did an audit of the city’s permitting and during that audit it was determined that the city does not have complete coverage for special events, such as parades and other events that utilize city streets.

The addition of Section 5.04.140 relating to Parades, Athletic Events, and Other Special Events specifies requirements of special events permitting as required for coverage under WCIA. The proposed ordinance provides for the following:

- Provides definition as to what constitutes “special events”
- Lists many samples of activities requiring special event permits
- Lists exceptions that do not require a permit
- Provides application submittal requirements
- Lists grounds for denial of applications
- Conditions of Permit
- Process of Appeal
- Insurance Requirements
- Fees
- Violations and Revocations

The Planning Commission unanimously voted 5 to 0, to recommend that the City Council adopt updates for both the administering of business licenses and requirements for special events.

### **FISCAL IMPACT**

None by this action. The Washington State Department of Revenue will issue the majority of business licenses for Chehalis. There will be no charge to the City of Chehalis for this service.

### **RECOMMENDATION**

It is recommended that the City Council pass Ordinance No. 992-B on the first reading to amend:

- CMC Title 5.04.020 Relating to administering business licenses; and
- CMC Title 5.04.140 (new section) relating to special events

**SUGGESTED MOTION**

I move that the City Council pass Ordinance No. 992-B on the first reading.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF CHEHALIS, WASHINGTON, AMENDING SECTION 5.04.020 OF THE CHEHALIS, MUNICIPAL CODE PROVIDING FOR BUSINESS LICENSE REQUIREMENTS; AND CREATING A NEW SECTION 5.04.140 OF THE CHEHALIS MUNICIPAL CODE DEALING WITH PARADES, ATHLETIC EVENTS AND OTHER SPECIAL EVENTS; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.

THE CITY COUNCIL OF THE CITY OF CHEHALIS, WASHINGTON, DOES ORDAIN AS FOLLOWS:

*(The ~~strikethrough~~ format is used to indicate text proposed to be deleted, and underline format for text proposed to be added.)*

**Section 1:**

**5.04.020 License required.**

No person shall engage in business in the city without first obtaining a license for such business issued by the city as provided herein.

(1) For purposes of the license by this chapter, any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than \$2,000 and who does not maintain a place of business within the city, shall obtain a business license from the Washington Department of Revenue, at no cost. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

(2) This section sets forth examples of activities that constitute engaging in business in the City and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the City without having to pay a business license fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1). If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

(3) Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker, or

another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

- (a) All current and future business license holders.
- (b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.
- (c) Soliciting sales.
- (d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
- (e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.
- (f) Soliciting, negotiating, or approving franchise, license, or other similar agreements.
- (g) Collecting current or delinquent accounts.
- (h) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.
- (i) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.
- (k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, and veterinarians.
- (l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
- (m) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.
- (n) Investigating, resolving, or otherwise assisting in resolving customer complaints.
- (o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.
- (p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

**(4) If a person, or his/her employee, agent, representative, independent contractor, broker, or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license.**

- (a) Meeting with suppliers of goods and services as a customer.**
- (b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.**
- (c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.**
- (d) Renting tangible or intangible property as a customer when the property is not used in the City.**
- (e) Attending, but not participating in a "trade show" or "multiple vendor event".**
- (f) Conducting advertising through the mail.**
- (g) Soliciting sales by phone from a location outside the City.**

**(5) A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (4).**

**The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the license fee under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.**

## **Section 2:**

# **Section 5.04.140 PARADES, ATHLETIC EVENTS, AND OTHER SPECIAL EVENTS**

## **DEFINITIONS**

- A. "Special Events" include any activity which is to be conducted on public property or on a public right-of-way; any event held on private property which would have a direct significant impact on traffic congestion; or traffic flow to and from the event over public streets or right-of-way; or which would significantly impact public streets or right-of-way near the event; or which would significantly impact the need for City-provided emergency services, such as police, fire, or medical aid. It is**

presumed that any event on private property which involves an open invitation to the public to attend or events where the attendance is by private invitation of 100 or more people are each presumed to be an event that will have a direct significant impact on the public streets, right-of-way or emergency services. Special events might include but are not limited to: fun runs/walks, athletic competitions, auctions, bike-a-thons, public fundraisers, parades, carnivals, festivals, shows or exhibitions, film/movie events, circuses, block parties, and fairs.

- B. “Special Events protected under the First and Fourteenth Amendments” include any event involving political or religious activity intended primarily for the communication or expression of ideas.
- C. “Use” shall mean to construct, erect, or maintain in, on, over, or under any street, right-of-way, park, or other public place, any building, structure, sign, equipment, or scaffolding, to deface any public right-of-way by painting, spraying, or writing on the surface thereof, or to otherwise occupy in such a manner as to obstruct the normal public use of any public street, right-of-way, park, or other public place within the City, including a use related to special events.

#### PERMIT REQUIRED

A special event permit or authorization from the City is required for any event in a park, public place, or on private property where it will significantly impact public sidewalks, roadways, or services. A safety plan is required to be submitted with a special event permit. Such special event permit and safety plan shall be in addition to any street or park use, or other regular permits as may be required by ordinance.

Event permit applications for use of public parks must be made to and approved by the city’s recreation department; however, any impact to the right-of-way occasioned by the use of the parks may also require a right-of-way permit.

Primary traffic routes through the city such as Market Boulevard, Chehalis Avenue, State Street, Main Street, and National Avenue, as well as primary traffic routes around the core downtown business area will only be considered for closure when the event is organized by a recognized community organization and the event serves a broader community purpose. For example, the summer festival organized by local non-profit organizations and the holiday parade held by the Chamber of Commerce.

When such an event will be an exercise of rights protected by the First and Fourteenth Amendments to the United States Constitution, the application shall be processed promptly, without charging a fee for political or religious activities or imposing terms or conditions that infringe upon constitutional freedoms, and in a manner that respects the liberty of applicants and the public.

A special event permit may not be required for the following:

- A. Parades, athletic events, or other special events that are fully sponsored or conducted in full by the City of Chehalis (A review process through the DRC may still be applicable in these instances)
- B. Funeral and wedding processions
- C. Groups required by law to be so assembled
- D. Gatherings of 30 or fewer people in a City park, unless merchandise or services are offered for sale or trade
- E. Temporary sales conducted by businesses, such as holiday sales, grand opening sales, or anniversary sales
- F. Garage sales and rummage sales by private property owners on private property per CMC 5.04.090
- G. Other similar events and activities which do not directly affect or use City services or right-of-way property

Any person desiring to sponsor a parade, athletic event, or special event should apply for a special event permit by filing an application with the City at least 28 days prior to the date on which the event is to occur.

Waiver of Application Deadline: Upon a showing of good cause or at the discretion of the DRC or City, the City shall consider an application that is filed after the filing deadline if there is sufficient time to process and investigate the application and obtain police and other City services for the event. Good cause can be demonstrated by the applicant showing that the circumstance that gave rise to the permit application did not reasonably allow the participants to file within the time prescribed, and the event is for the purpose of exercising rights under the First and/or Fourteenth Amendments of the United States Constitution.

#### GROUNDNS FOR DENIAL OF APPLICATION

The City may deny an application for a special event permit if:

- A. The applicant provides false or misleading information;
- B. The applicant fails to complete the application or to supply other required information of documents or the applicant declares or shows an unwillingness or inability to comply with the reasonable terms or conditions contained in the proposed permit;
- C. The proposed event would conflict with another proximate event, interfere with construction or maintenance work in the immediate vicinity, or unreasonably infringe upon the rights of abutting property; or



- D. The proposed event would unreasonably disrupt the orderly or safe circulation of traffic and would present an unreasonable risk of injury or damage to the public.
- E. There are not sufficient safety personnel or other necessary City staff to accommodate the event.

In the event subsection C or D, above applies, the City shall offer the applicant the opportunity to submit an alternative date or place for the proposed event before denying the application.

### PERMIT CONDITIONS

The City may condition the issuance of a special event permit by imposing reasonable requirements concerning the time, place, and manner of the event, and such requirements as are necessary to protect the safety and rights of persons and property, and the control of traffic.

The following conditions apply to all special event permits:

- A. Alteration of the time, place, and manner of the event proposed on the event application
- B. Conditions concerning the area of assembly and disbanding of an event occurring along a route
- C. Conditions concerning accommodation of pedestrians or vehicular traffic, including restricting the event to only a portion of the street or right-of-way

Conditions on special event permits not protected under the First and Fourteenth Amendments of the U.S. Constitution include, but are not limited to:

- D. There shall be no items thrown from roadway to sidewalk, this includes candy during a parade
- E. Requirements for the use of traffic cones or barricades
- F. Requirements for the provision of first aid or sanitary facilities
- G. Requirements for use of event monitors and providing notice of permit conditions to event participants
- H. Restrictions on the number and type of vehicles, animals, or structures at the event, and inspection and approval of floats, structures, and decorated vehicles for fire safety
- I. Compliance with animal protection ordinances and laws

- J. Requirements for use of garbage containers, cleanup, and restoration of City property
- K. Restrictions on the use of amplified sound and compliance with noise ordinance, regulations, and laws including but not limited to CMC 7.04.130
- L. Notice to residents and/or businesses regarding any activity which would require a street closure. It shall be the responsibility of the applicant to notify impacted property and/or business owners who would be affected
- M. Restrictions on the sale and/or consumption of alcohol
- N. Elimination of an activity which cannot be mitigated to a point as to ensure public safety and welfare, or which causes undue liability risk to the City
- O. Requirements regarding the use of City personnel and equipment
- P. Compliance with any other applicable federal, state, or local law or regulation

#### APPEAL PROCEDURE

The applicant shall have the right to appeal the denial of a permit or a permit condition. The applicant shall also have the right to appeal the amount of fees or clean-up deposits imposed pursuant to section FEES FOR CITY SERVICES and CLEANUP DEPOSITS, or a determination by the City that the applicant's insurance does not comply with the requirements specified in Section INSURANCE. If an applicant wishes to appeal the DRC decision, a written notice shall be given to the DRC listing the reasons approval for the permit should be granted. The DRC shall review at the next meeting and issue a decision. Should the applicant wish to appeal the DRC decision a written Notice of Appeal shall be filed with the City Council within three (3) business days after receipt or personal delivery of a notice of denial or permit conditions from the City. The written Notice of Appeal shall set forth the specific grounds for the appeal and attach any relevant documents for consideration. The City Council shall hear the appeal on the record provided from the designated City official and upon public comment given at the scheduled hearing before the Council. The hearing shall be scheduled no later than thirty (30) days after receipt of a timely and proper Notice of Appeal. Public comment at the appeal hearing shall be limited to three (3) minutes per individual and fifteen (15) minutes each for appellant and City respondent. The decision of the City Council is final.

If there is insufficient time for a timely appeal to be heard by the City Council prior to the date on which the event is scheduled, the applicant may, at its own option, request that the designated City official schedule the appeal before the City Manager. The City Manager, or designee, shall hold a hearing no later than five (5) business days after the filing of the appeal and will render a decision no later than one (1) business day after hearing the

appeal. If the appeal is requested and heard before the City Manager, the City Manager's decision is final. There is no further appeal to the City Council.

## FEES, INDEMNIFICATION AGREEMENT, AND INSURANCE

No indemnification agreement or insurance requirement shall be imposed when prohibited by the First and Fourteenth Amendment to the United States Constitution. Political or religious activity intended primarily for the communication or expression of ideas shall be presumed to be a constitutionally protected event.

### INDEMNIFICATION AGREEMENT

Prior to the issuance of a permit for a special event not protected under the First and Fourteenth Amendments of the U.S. Constitution, the permit applicant and authorized officer of the sponsoring organization must agree to reimburse the City of Chehalis for any costs incurred by it in repairing damage to City property and indemnify, defend, and hold the City of Chehalis, its officers, employees, volunteers, and agents harmless from all causes of action, claims, or liabilities occurring in connection with the permitted event, except those which occur due to the City's sole negligence.

### INSURANCE

The following insurance shall be required in connection with the issuance of a permit for a special event not protected under the First and Fourteenth Amendments of the U.S. Constitution.

- Commercial General Liability insurance with minimum limits of \$1,000,000 per occurrence and
- \$2,000,000 general aggregate unless waived by the City

The Community Development department is authorized and directed to require written proof of such insurance prior to permit issuance. The insurance policy shall be written on an occurrence basis, shall name the City of Chehalis as an additional insured using ISO form CG 20 26, or coverage at least as broad, shall be written for a period not less than twenty-four (24) hours prior to the event and extending for a period not less than twenty-four (24) hours following the completion of the event. The applicant shall provide the City of Chehalis and all Additional Insureds for this event with written notice of any policy cancellation within two business days of their receipt of such notice.

### FEES FOR CITY SERVICES WHEN NEEDED OR DETERMINED BY DRC

- A. Upon approval of an application for a permit for a special event not protected under the First and Fourteenth Amendments of the U.S. Constitution, the DRC shall

provide the applicant with a statement of the estimated cost of providing City of Chehalis personnel and equipment. The applicant/sponsor of the event shall be required to prepay these estimated costs for City services and equipment ten (10) days prior to the special event. City services and equipment may include the use of police officers and public employees for traffic and crowd control, pickup and delivery of traffic control devices, picnic tables, extraordinary street sweeping, and any other needed, requested, or required City services and the cost of operating the equipment to provide such services.

- B. If the actual cost for City services and equipment on the date (s) of the event is less than the estimated cost, the applicant/sponsor will be refunded the difference by the City in a timely manner. If the actual cost for City services and equipment on the date(s) of the event is greater than the estimated cost, the applicant/sponsor will be billed for the difference.
- C. Permit fees and fees for the use of City services and equipment may be waived in part or in full by the City if in review of the application it is found that the event is of sufficient public benefit to warrant the expenditure of City funds without reimbursement by the applicant/sponsor and would not result in the private financial gain of any individual or "for profit" entity.

#### CLEANUP DEPOSITS

The applicant/sponsor of an event, not protected under the First and Fourteenth Amendments of the U.S. Constitution, involving the sale of food or beverages for immediate consumption, erection of structures, horses or other large animals, water aid stations, or any other event likely to create a substantial need for cleanup, may be required to provide a cleanup deposit prior to the issuance of a special event permit.

The cleanup deposit may be returned after the event if the area used for the permitted event has been cleaned and restored to the same condition as existed prior to the event.

If the property used for the event has not been properly cleaned or restored, the applicant/sponsor shall be billed for the actual cost by the City for cleanup and restoration. The cleanup deposit shall be applied toward the payment of the bill.

#### REVOCAION OF PERMITS

Any permit issued under this ordinance may be summarily revoked by the City at any time when, by reason of disaster, public calamity, riot, or other emergency or exigent circumstances, the City determines the safety of the public or property requires such immediate revocation. The City may also summarily revoke any permit issued pursuant to this ordinance if the City finds that the permit has been issued based upon false information or when the permittee exceeds the scope of the permit or fails to comply with any condition of the permit. Notice of such action revoking a permit shall be delivered in writing to the permittee by personal service or certified mail at the address specified by the

permittee in the application or by any means approved by the applicant, such as email or telephone.

**VIOLATION – PENALTY**

- A. **It shall be unlawful for any person to sponsor or conduct a special event requiring a special event permit pursuant to this ordinance unless a valid permit has been issued and remains in effect for the event. It is unlawful for any person to participate in such an event with the knowledge that the sponsor of the event has not been issued a required, valid permit or with knowledge that a once valid permit has expired or been revoked.**
  
- B. **The special event permit authorizes the permittee/sponsor to conduct only such an event as is described in the permit, and in accordance with the terms and conditions of the permit. It is unlawful for the permittee/sponsor to willfully violate the terms and conditions of the permit, or for any event participant with knowledge thereof to willfully violate the terms and conditions of the permit or to continue with the event if the permit is revoked or expired.**
  
- C. **Any person or organization violating the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a penalty of a fine of not more than five hundred dollars, or by imprisonment of not more than ninety days, or both such fine and imprisonment.**

**Section 3:**

**SAVINGS CLAUSE**

**If any section, sentence, clause, phrase, part, or portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.**

**Section 4:**

The effective Date of this ordinance shall be the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

PASSED by the City Council of the city of Chehalis, Washington, and APPROVED by its Mayor at a regularly scheduled open public meeting thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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Mayor

Attest:

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City Clerk

Approved as to form and content:

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City Attorney

*City of Chehalis Planning Commission*  
**Agenda**

**SUMMARY**

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Application(s):     #PFA-2018-009

Report Date:         July 23, 2018

Prepared by:         City of Chehalis, Community Development Department.

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**Request:**

To amend the Chehalis Municipal Code to comply with recently passed legislation and to comply with insurance requirements.

**Applicable Regulations :**

Chehalis Municipal Code (CMC):

§ Chehalis Municipal Code Chapter 5.04

§ Section 5.04.020

§ Create new Section 5.04.140

**Analysis:**

The Washington State Legislature passed [HB2005](#) in 2017 mandating that cities shall partner with Washington state to issue business licenses. Chehalis is required to complete this process by the end of 2018. In addition, the Washington Cities Insurance Authority has requested that we update our code for special events to ensure complete coverage for the City of Chehalis and minimize risks to the public at large. Both of these changes affect Chapter 5.04 of the Chehalis Municipal Code.

**Documents:**

- Petition for Amendment application
- HB 2005 as signed by Governor Inslee
- Chapter 5.04 Business Licenses
- Copy of new proposed application forms for business licenses and special events

**BACKGROUND**

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There are two segments to this Code Amendment:

1. Currently the Chehalis Municipal Code says that no person shall engage in business in the city without first obtaining a license for such business issued by the city. Currently when a new business is started, they first obtain a state business license and then each business must obtain a license for each jurisdiction that they do business in. This change will allow all new businesses to obtain a City of Chehalis license directly from the Washington State Department of Revenue at the same time that they apply for a new state license. Or, if they have a change in business and need to obtain a license for the City of Chehalis, they can simply go online and obtain it with this new process. The fees will be transferred to the City at no charge from the state.

Since its inception, the city has required that each license be renewed annually. With this change, renewals will now be administered by the Washington State Department of Revenue. All current businesses will renew their license through the same system at the Washington State Department of Revenue instead of at the city. The fees will then be transmitted to the city at no charge from the state.

This change will not apply to special licenses or temporary licenses which will continue to be administered by the City of Chehalis. These licenses include, but are not limited to: Locksmith, Pawnbroker, Burglar Alarm installer, Hulk Haulers, Second hand dealers, taxi cabs, food trucks, and requires a background check before license issuance.

2. In addition to this mandate, the Washington Cities Insurance Authority (WCIA) has completed an audit of our permitting and determined that we currently do not have complete coverage for special events that occur in the city. These types of events include road closures for parades and block parties. The WCIA has recommended that we update our policy. Because the policy in effect is not within the Chehalis Municipal Code, it is felt that this update to the special events policy should be incorporated into the Code and the logical place is within the business license chapter. A new section, 5.04.140 is proposed to be added to the current code. This will codify this policy.

**Application**

PFA-2018-009

**Date Application Submitted**

July 16, 2018

**Date Application Deemed Complete**

July 16, 2018

**Status**

DRC review: July 19, 2018

Planning Commission review: 9/11/18

City Council: September 2018

**Public Notice:**

Notice was published in The Chronicle newspaper on Saturday August 25, 2018

Notice was sent to both KELA and KITI radio stations.

**Chehalis Development Review Committee (DRC) Review/Recommendation Date:**

July 19, 2018

**DRC FINDINGS OF FACT**

1. This change is mandated by the state.
2. This change is recommended by WCIA.

**DRC REVIEW/RECOMMENDATION**

The DRC reviewed this request on July 19, 2018. It was recommended that this code amendment be approved and progress to the next step in the approval process.



# **City of Chehalis Planning Commission**

## **Meeting Minutes**

September 11, 2018

### **I. Call to order**

Scott Blinks called to order the regular meeting of the City of Chehalis Planning Commission at 6:02 p.m. on September 11, 2018 at the City of Chehalis Council Chambers room at 350 N. Market Blvd., Chehalis, WA.

### **II. Roll call**

The following persons were present: Scott Blinks, Gerald Lord, Kyle McKerricher, Jeff Mecca, and Pat Soderquist .

Absent: David Fitzpatrick

This was a public hearing open to the public for comments. No member of the public came to the meeting. No public comments were received.

### **III. Agenda item: Petition for Amendment PFA-2018-009**

- a) Petition to amend the current CMC Chapter 5 for business licenses.

The Washington State Legislature passed [HB2005](#) in 2017 mandating that cities shall partner with Washington state to issue business licenses. Chehalis is required to complete this process by the end of 2018. In addition, the Washington Cities Insurance Authority has requested that we update our code for special events to ensure complete coverage for the City of Chehalis and minimize risks to the public at large. Both of these changes affect Chapter 5.04 of the Chehalis Municipal Code.

- b) Scott Blinks made a motion for the commission to vote. Jerry Lord seconded the motion to vote.
- c) The vote was: **5** ayes 0 nays.
- d) The Commission recommends adoption by the City Council.

### **IV. Conclusion:**

- a) The first code change is mandated by Washington State. The second change comes from the Washington Cities Insurance Authority.

### **V. Adjournment**

Scott Blinks adjourned the meeting at 6:22 P.M.

Minutes submitted by: Deborah King, Permit Technician Community Development  
Dept. City of Chehalis