

IMPORTANT NOTICE

Until further notice, City Council meetings will be restricted to Council and staff.

The City of Chehalis wishes to do its part to implement social distancing and slow the transmission rate of COVID-19, while still meeting the requirements of the Open Public Meetings Act RCW 42.30.

Citizens may live stream the May 26, 2020, meeting beginning at 5:00 pm using the following link:

<https://www.ci.chehalis.wa.us/citycouncil/live-streaming-and-demand-viewing-city-council-meetings>

Citizens wishing to provide public comments in general and on agenda items must submit comments by 2:00 pm on the day of the meeting. All comments received will be read by the Mayor under the Citizens Business portion of the meeting agenda. Please use the following form to submit comments – <https://www.ci.chehalis.wa.us/contact>.

If you have any questions about live streaming the meeting or submitting a comment, please contact City Clerk Caryn Foley at cfoley@ci.chehalis.wa.us or 360-345-1042.

**The City truly appreciates the community's cooperation
and patience during this challenging time.**

CHEHALIS CITY COUNCIL AGENDA

CITY HALL
350 N MARKET BLVD | CHEHALIS, WA 98532

Dennis L. Dawes, Position at Large Mayor	Anthony E. Ketchum Sr., District 3 Chad E. Taylor, Position at Large, Mayor Pro Tem Robert J. Spahr, Position at Large	Jerry Lord, District 1 Daryl J. Lund, District 2 Dr. Isaac S. Pope, District 4
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Regular Meeting of *Tuesday, May 26, 2020* 5:00 p.m.

1. Call to Order. (Mayor)

PROCLAMATIONS / PRESENTATIONS

2. Recognition of Don Schmitt – Public Works Street/Stormwater Superintendent. (Mayor)

CITIZENS BUSINESS

This is an opportunity for members of the audience to address the council on matters not listed elsewhere on the agenda. Citizens wishing to provide public comments in general and on agenda items must submit comments by 2:00 pm on the day of the meeting using the form available at <https://www.ci.chehalis.wa.us/contact>.

ITEM	ADMINISTRATION RECOMMENDATION	PAGE
CONSENT CALENDAR		
3. <u>Minutes of the Regular City Council Meeting of May 11, 2020.</u> (City Clerk)	APPROVE	1
4. <u>Vouchers and Transfers – Accounts Payable in the Amount of \$334,042.41 Dated May 15, 2020.</u> (City Manager, Finance Director)	APPROVE	3
5. <u>Engineering Services Agreement with RB Engineering in the Amount of \$75,310 for Design and Construction Services for the Snively Avenue 16th Street to Railroad Water and Sewer Replacement Project.</u> (City Manager, Public Works Director)	APPROVE	4
6. <u>Consideration of Offer to Lease Tract 5A and Associated Non-Exclusive Lease Commission Agreement, Located Between Sonic and I-5 at 625 NW Arkansas Way.</u> (City Manager, Public Works Director, Airport Operations Coordinator)	APPROVE	16

ITEM	ADMINISTRATION RECOMMENDATION	PAGE
NEW BUSINESS		
7. <u>Code Inspector/Fire Marshal Position.</u> (City Manager, HR/Risk Manager)	APPROVE	50

ITEM	ADMINISTRATION RECOMMENDATION	PAGE
ADMINISTRATION AND CITY COUNCIL REPORTS		
8. <u>Administration Reports.</u>	INFORMATION ONLY	---
a. City Manager Update – Emergency Fire Station. (City Manager)		
9. <u>Councilor Reports/Committee Updates.</u> (City Council)	INFORMATION ONLY	---

**THE CITY COUNCIL MAY ADD AND TAKE ACTION ON OTHER ITEMS NOT LISTED ON THIS AGENDA.
NEXT REGULAR CITY COUNCIL MEETING IS MONDAY, JUNE 8, 2020.**

May 11, 2020

The Chehalis city council met in regular session on Monday, May 11, 2020, in the Chehalis city hall. Mayor Dennis Dawes (present in the council chambers) called the meeting to order at 5:00 pm with the following council members present telephonically: Tony Ketchum (joined call at 5:05 pm); Jerry Lord, Daryl Lund, Dr. Isaac Pope; Bob Spahr; and Chad Taylor. Staff present in the council chambers included: Jill Anderson, City Manager; Caryn Foley, City Clerk; and Andrew Hunziker, Parks & Facilities Manager. City Attorney Erin Hillier was present telephonically. Due to orders from the Governor's office relating to COVID-19, members of the public and the press were restricted from the meeting room, but were able to view the meeting via live streaming and were provided a process for submitting comments prior to the meeting.

1. **Proclamation – National Public Works Week**. Mayor Dawes read a proclamation designating May 17-23 as National Public Works Week.

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

- a. Minutes of the regular City Council meeting of April 27, 2020;
- b. April 30, 2020 Claim Vouchers No. 128890 – 128993 in the amount of \$501,221.78;
- c. April 30, 2020, Payroll Vouchers No. 41271-41297, Direct Deposit Payroll Vouchers No. 12028-12133, Electronic Federal Tax and DRS Pension/Deferred Comp Payments No. 291-294 in the amount of \$764,626.80;
- d. Change Order No. 3 in the amount of \$19,054.35 for the Shaw Aquatics Center Pool Resurfacing Project; and
- e. Authorize City Manager to sign early renewal of agreement for lease of train engine with the Chehalis-Centralia Railroad & Museum.

The motion was seconded by Councilor Lund and carried unanimously.

3. **Administration Reports**.

a. **City Manager Update**. City Manager Anderson reported staff continues to evaluate the stay at home order and how the reopening phases would effect the city. The city's organic waste site at Stan Hedwall Park is now available to city residents by permit. Information is available by calling 360-748-0271. The RV disposal site is also open. The open spaces at Hedwall are open for non-organized family/individual activities because it has the space for social distancing. Penny Playground equipment installation will begin May 20. Staff continues to evaluate operational modifications by phone, on-line, and by appointment. People are encouraged to call city hall for additional information on how to get their needs met for city services at 360-345-1042. Staff is evaluating the pool and whether or not we are able to comply with social distancing requirements. City Manager Anderson thanked the council, staff, residents, and businesses for adapting to new ways of doing things.

4. **Councilor Reports/Committee Updates**.

a. **Councilor Taylor**. Councilor Taylor asked for an update on matters relating to the fire department.

City Manager Anderson stated Lewis County Fire District 6 provided 60-day notice to the city to discontinue the station sharing agreement. Staff is looking at a variety of options for an emergency station, including an evaluation of the old fire station and some of the sites previously reviewed in 2017. The city has until July 5 to vacate the District 6 station and she expected to have some proposals at the next council meeting. Staff continues to process information regarding the potential purchase of property for a new fire station. She stated the options for a temporary station that will be brought to council will have the pros and cons of each of the options, none of which are without cost or risk. The most important thing is that the city keep the firefighters safe and be able to provide services to our community.

Councilor Pope stated there was one other thing that should be included in the evaluation of a site. He stated there was a lack of trust and integrity with some people in dealing with this situation. The old fire station was found to have a great deal of problems he thought to go back and reassess its use was a waste of money.

Mayor Dawes stated he heard what Councilor Pope was saying and had a lot of agreement with him. He thought the cost of putting up an emergency fire station should be compared to the cost of what it would take to move the firefighters back into

May 11, 2020

the station on Park Street. He stated a temporary station would be taken down, but at least if it was an equal cost and it was put back into the old fire station it would add value to that for the ultimate disposal after a new fire station was built.

Councilor Taylor stated it sounded to him that the working conditions for the city's firefighters wasn't going very well. He didn't want to create any liability for the city by not working or moving fast to relocate the firefighters.

Mayor Dawes felt the council should be focused on a physical location for the firefighters.

b. **Mayor Dawes.** Mayor Dawes stated he was working with the Business Recovery Center group and asked them to look at working with the Chehalis Community Renaissance Team and the Lewis County Now group to share information and avoid duplication of efforts. He stated he would continue to participate because he thought it was important to get the business community up and running as quickly as possible. Mayor Dawes attended a special mayors' meeting in Mossyrock and all were in agreement to work together with Lewis County and they have asked the county to give the mayors an opportunity to weigh-in on anything they send to the state relating to a waiver of the Governor's phases in an effort to show a united front. Mayor Dawes sent a written invitation to the Governor to meet with Lewis County mayors and a commissioner. He thought it was important for the Governor to hear directly from us and not filtered through his staff.

Mayor Dawes stated there would be no executive session and he announced the next regular council meeting was Tuesday, May 26 due to the Memorial Day holiday on May 25.

There being no further business to come before the council, the meeting was adjourned at 5:22 pm.

Dennis L. Dawes, Mayor

Caryn Foley, City Clerk

Approved:
Initials: _____

**CHEHALIS CITY COUNCIL MEETING
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: May 26, 2020

SUBJECT: Vouchers and Transfers – Accounts Payable in the Amount of \$334,042.41

ISSUE

City Council approval is requested for Vouchers and Transfers dated May 15, 2020.

DISCUSSION

The May 15, 2020 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. 128994 – 129126 and Electronic Funds Transfer Nos. 42020 and 52020 in the amount of \$334,042.41 dated May 15, 2020 which includes the transfer of:

- \$ 92,056.06 from the General Fund
- \$ 48.09 from Dedicated Street Fund – 4% Sales Tax
- \$ 11,500.00 from Transportation Benefit District Fund
- \$ 2,235.81 from the LEOFF 1 OPEB Reserve Fund
- \$ 11,109.38 from the 2011 G.O. Bond Fund
- \$ 45,469.47 from the Public Facilities Reserve Fund
- \$ 33.36 from the Garbage Fund
- \$ 60,931.04 from the Wastewater Fund
- \$ 33,795.09 from the Water Fund
- \$ 6,543.87 from the Storm & Surface Water Utility Fund
- \$ 80,320.24 from the Airport Fund

RECOMMENDATION

It is recommended that the City Council approve the May 15, 2020 Claim Vouchers No. 128994 – 129126 and Electronic Funds Transfer Nos. 42020 and 52020 in the amount of \$334,042.41.

SUGGESTED MOTION

I move that the City Council approve the May 15, 2020 Claim Vouchers No. 128994 – 129126 and Electronic Funds Transfer Nos. 42020 and 52020 in the amount of \$334,042.41.

**CHEHALIS CITY COUNCIL MEETING
AGENDA REPORT**

TO: The Honorable Mayor and City Council

FROM: Jill Anderson, City Manager

BY: Trent Lougheed, Public Works Director

MEETING OF: May 26, 2020

SUBJECT: Engineering Services Agreement with RB Engineering in the Amount of \$75,310 for Design and Construction Services for the Snively Avenue 16th Street to Railroad Water and Sewer Replacement Project

ISSUE

The concrete sewer main that serves a portion of Snively Avenue was built in the 1950s and has deteriorated to the point that residential sewer connections to that section of the main sewer line could fail in the near future. In addition, the watermain, which was built in the 1960s, has had multiple breaks and is requiring increasing levels of maintenance. Therefore, it is proposed that the City proceed with a project to replace the sewer and water mains for Snively Avenue between 16th Street to the Railroad using the respective utility reserve funds to pay for the project. The first step in the project is to engage an engineering firm to design the project.

BACKGROUND

The concrete sewer main that serves Snively Avenue between 16th Street and the Railroad is estimated to have been built in the 1950s. Two sewer mains serve this section of roadway; each flowing away from the crown of the street near 1500 Snively Avenue, then flowing in both directions towards the intersection of 16th Street and at the railroad tracks. Sewer main depths range between eight and ten feet.

This section of the sewer system appears on the infiltration and inflow strategic plan from 2010, which recommended rehabilitation or replacement. The following are the issues current to the sewer mains:

- 727 16th Street was previously dug up and reconnected to the main sewer line
- 1475, 1441, and 1481 Snively Avenue need rehabilitated sewer connections
- 1500, 1520, 1542, 1531, 1553, and 1562 Snively Avenue are expected to have complaints failing sewer connections to the main sewer line in the near future
- Collection crews routinely flush the main sewer lines out to keep them operational
- Manholes are old brick and mortar structures in need of replacement

The ground is clayey soil with an oiled chip seal mat roadway surface. The curb and gutter are separating from the roadway, which is allowing stormwater to drain into sewer line connections. The proposed project will include replacement of the curb and gutter and driveway approaches between the curb and sidewalk.

In this area of the water system is 8" and 6" cast iron pipe installed in 1960. The City has been required to repair the water mains in this area many times. The pipe material is called Universal and is unfortunately a type of pipe where there is no give or flex because of the two-bolt machined end with no type of pipe gaskets. Usually after a very cold winter, the City will have main breaks due to movement with ground thawing. Since the sewer needs replacement, it is recommended that the water main be replaced as well, which will result in a new roadway surface.

Gas and other utilities will be contacted to inform them of the work to see so they can schedule replacement of their facilities if needed.

DISCUSSION

The City selected RB Engineering from the Engineering Services Roster due to their experience and success with other City projects. The scope of services for the project will include:

- Project management
- Survey and base mapping
- Geotechnical report with soil borings
- Design and preparation of construction drawings with specifications (will include construction cost estimate)
- Bid-call services
- Construction engineering and management
- Related reimbursable expenses

A complete Scope of Work and definition of tasks can be found in the attached Proposal.

FISCAL IMPACT

The project will be billed on a Time & Material basis with a total cost of engineering services not-to-exceed \$75,310 and includes subconsultants and geotechnical testing. It is recommended that the City Council also authorize the City Manager signatory authority for an additional \$7,500 in case of unforeseen tasks/expenses during this phase. Therefore, the total impact to the City will be up to \$82,810 by this action.

This project was not identified in the 2020 budget, but recent events have caused a more urgent need for the improvements, therefore, budget adjustments will be needed to the water and wastewater budgets to reflect the associated expenditures.

Based on the estimates provided in the proposal, design fees will be split evenly between the utilities, and there are sufficient funds in the reserves to pay for the design and construction of the project. Although no construction cost estimate has been prepared to date, based on known factors we estimate the total project cost between \$300,000 – \$500,000.

RECOMMENDATION/COUNCIL ACTION DESIRED

The administration recommends that the City Council:

- Award the Contract for Engineering and Construction Services for the Snively Avenue – 16th Street to Railroad Utility and Roadway Reconstruction Project to RB Engineering in the amount not-to-exceed \$75,310, and
- Authorize an additional contingency budget of \$7,500 and authorize the City Manager to execute amendments to the Scope of Work that do not exceed a total project cost of \$82,810.

SUGGESTED MOTION

I move that the City Council:

- Award the Contract for Engineering and Construction Services for the Snively Avenue – 16th Street to Railroad Utility and Roadway Reconstruction Project to RB Engineering in the amount not-to-exceed \$75,310, and
- Authorize an additional contingency budget of \$7,500 and authorize the City Manager to execute amendments to the Scope of Work that do not exceed a total project cost of \$82,810.



DESIGN → PERMIT → MANAGE

May 14, 2020

Trent Lougheed
Community Development Director
City of Chehalis
1321 S Market Blvd
Chehalis, WA 98532
tlougheed@ci.chehalis.wa.us

Re: SW Snively Ave Utility Improvement Project – Engineering Services
RBE No. 20041

Dear Trent:

RB Engineering (RBE) appreciates the opportunity to provide this scope of work for your project. The following has been prepared based on our understanding of the proposed project. RBE will bill on a Time and Materials, Not to Exceed basis for this project.

Task 20 – Surveying Services

For this task RBE will provide a qualified licensed surveyor to conduct onsite topographic surveying for the project.

Surveyor Services

1. Perform field topographic surveying
2. Provide Right-of-Way limits.

Client Responsibilities

- Provide any available utility as-built drawings for location of side sewers and water main.

Assumptions

- This task does not include field construction as-built or staking work.

Deliverables

- Site Topographic Survey Map.

Task 30 – Project Management and Permitting

This task includes RBE's management of the project through permitting and design. It also includes all coordination with sub-consultants and project owner.

RBE Services

1. Coordinate with Surveyor during field topographic and/or boundary survey services.
2. Conduct walk through to verify utility locate and completeness of topographic survey.
3. Coordinate with the review agency to discuss preliminary site and design plans.
4. Coordinate with dry utility companies that include PUD, phone, cable and gas services.
5. Prepare for and attend review agency meetings.

Client Responsibilities

- Review conceptual designs and provide feedback on project at 60% and 90% design.

Task 40 – Special Reports

This task includes sub-consultants RBE has partnered with to achieve project approval.

RBE Sub-Consultant Services

1. Prepare Geotechnical Report based on road cores.

Client Responsibilities

- Provide access for consultant field work.

Assumptions

- Geotechnical Consultant will provide 4 core samples for the work area up to a depth of 6 feet.

Task 60 – Construction Documents

This task includes development of the final civil engineering construction documents, specifications and technical reports required to achieve construction permits for the project.

RBE Services

1. Prepare final road geometric design and alignment.
2. Prepare a set of construction plans that includes the following estimated sheets:

C0.1	Civil Cover Sheet
C0.2	Project Data and Notes
C0.3	Existing Topography and Utilities
C1.0	SW Snively Ave Sewer Plan and Profile – 40 Scale
C1.1	Sewer Details and Notes
C2.0	SW Snively Ave Water Main Plan and Profile – 40 Scale
C2.1	Water Standard Details and Notes
C3.1	SW Snively Ave. Road Plan and Profile – 20 Scale
C3.2	SW Snively Ave Road Plan and Profile – 20 Scale
C3.3	16 th Street Intersection and Curb Ramp Details – 10 Scale
C3.4	Residential Driveway Details – 10 Scale
C3.5	Road Standard Details and Notes
C3.6	Road Standard Details and Notes
C5.1	Temporary Erosion and Sedimentation Control Plan – 40 Scale
C5.2	T.E.S.C. Details and Notes

3. Prepare the Bid Specification Documents, Bidders Instructions and Project Material Specifications.
4. Conduct final review of design plans and reports.
5. Plot plans and print and bind reports for final submittal package.

Client Responsibilities

- Meet with RBE to review and comment on design plans during final design development.
- Pay for all permit applications and plan review fees; provide signatures as needed.

Assumptions

- Engineer's Joint Contract Documents Committee general conditions and bidding forms.
- No street lighting design or construction will be required.

Deliverables

- Review Agency approved Civil Construction Drawings.
- Final Bid Specification Documents.

Task 70 – Project Bidding Services

This task includes RBE's assistance to the client in soliciting construction bids to qualified site work contractors.

RBE Services

1. Distribute bid documents.
2. Provide responses to bidder questions during the bid process.
3. Prepare addenda if needed to address questions.
4. Attend bid opening and review for completeness.

Client Responsibilities

- Coordinate and publish bid notice.
- Provide responses to bidder questions during the bid process.
- Issue addenda if needed to address questions.
- Conduct bid opening and open bids, review for completeness.
- Review bids for accuracy and completeness.
- Prepare notice of award, request construction bond and insurance certificate.
- Prepare final contract for signatures.
- Issue notice to proceed.

Assumptions

- Hard copies of construction documents will be billed at RBE's current rates, and paid by the bidding contractors.

Task 80 – Construction Engineering and Management

This task includes RBE's management of the project through construction.

RBE Services

1. Setup construction project forms.
2. Attend pre-construction meeting.
3. Attend Contractor bi-weekly meetings.
4. Review contractor submittals.
5. Review and reply to RFI's.
6. Review inspection and testing reports by third party testing company.
7. Conduct onsite inspections as needed.
8. Prepare Change Orders and Field Orders
9. Project coordination with contractor's surveyor and review site staking.
10. Conduct final walk through with contractor, client and create punch list letter.
11. Complete Record Drawings from contractor markups and submit to client and review agency.

Client Responsibilities

- Contract directly with construction testing firm for compaction and special testing.
- Approve recommended field orders.
- Approve change orders.
- Review and process contractor pay requests.
- Provide staff for construction inspection services.

Assumptions

- Contractor will provide all construction staking as part of the construction bid.

Deliverables

- RBE Inspection Reports.
- Electronic copy of all construction documentation.
- Final record drawings in electronic and hard copy for client and review agency.

Task 90 – Reimbursable Expenses**RBE Services**

- Full size plotting – \$3.00 per sheet
- Full size scanning – \$1.75 per sheet
- Report binding materials – Cost plus 15%
- Agency fees paid by RBE – Cost plus 15%
- Sub-consultant fees paid by RBE – Cost plus 15%
- Overnight mailing and shipping – Cost plus 15%

RBE Task Summary Sewer T&M Not to Exceed Fee

Task	Description of Work	RBE Fee
10	Pre-Application Services	Not Included
20	Surveying Services	See Subconsultant Below
30	Project Management	\$2,500
40	Special Reports	See Subconsultant Below
50	Preliminary Design	Not Included
60	Construction Documents	\$9,600
70	Project Bidding	\$1,000
80	Construction Management	\$4,000
90	Reimbursable Expenses	\$100

RBE Total Fee Sewer Design = \$17,200

RBE Task Summary Water T&M Not to Exceed Fee

Task	Description of Work	RBE Fee
10	Pre-Application Services	Not Included
20	Surveying Services	See Subconsultant Below
30	Project Management	\$2,500
40	Special Reports	See Subconsultant Below
50	Preliminary Design	Not Included
60	Construction Documents	\$9,900
70	Project Bidding	\$1,000
80	Construction Management	\$4,000
90	Reimbursable Expenses	\$100

RBE Total Fee Water Design = \$17,500

RBE Task Summary Road and Storm T&M Not to Exceed Fee

Task	Description of Work	RBE Fee
10	Pre-Application Services	Not Included
20	Surveying Services	See Subconsultant Below
30	Project Management	\$2,500
40	Special Reports	See Subconsultant Below
50	Preliminary Design	Not Included
60	Construction Documents	\$20,200
70	Project Bidding	\$1,000
80	Construction Management	\$6,000
90	Reimbursable Expenses	\$200

RBE Total Road Design = \$29,900

List of Sub-Consultant Fees

Task	Description of Work	Sub-Consultant Fees
20	Surveying Services - Foresight	\$5,660
40	Geotechnical Report	\$5,050

Total Sub-Consultant Fee = \$10,710

Total Project Not-to-Exceed Fee =	\$75,310
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2020 RBE Billing Rates

Item	Employee Description	Hourly Rate
1	Principal Engineer	\$150
2	Project Engineer	\$130
3	Project Manager	\$120
4	Design Engineer	\$110
5	Sr. Design Technician	\$100
6	Design Technician	\$95
7	Draftsman	\$85
8	Permit Coordinator	\$70
9	Office Clerical Staff	\$50

Work Not Included in RBE Contract Scope of Work

1. Boundary Survey
2. Final Platting Process
3. Building Flood Elevation Certification
4. SEPA Environmental Checklist
5. JARPA Shorelines Application
6. Washington State Fisheries HPA Permit
7. Wetland Analysis or Report
8. Archeological Site Review and Report
9. Traffic Trip Generation
10. Level 1 or 2 Traffic Study
11. Building Permit Coordination, Application or Submittal
12. Landscape and Irrigation Design Plans

Schedule

We anticipate a design period of 2 months with anticipated milestone dates below based receiving a signed agreement to begin by end of May:

90% Constructing Drawings and Specifications	July 22, 2020
Final Bid Documents	August 3, 2020
Advertise for Bid	Second Week of August, 2020

If you find this scope of work acceptable, please sign the attached work authorization contract and return a copy to us. We can begin project progress upon receipt of your signed contract. I look forward to working with you on this project. If you have any questions, please call me at (360) 740-8919.

Sincerely,

Robert Balmelli PE

Digitally signed by Robert Balmelli PE
DN: C=US,
E=robertb@rbengineers.com, O=RB
Engineering, CN=Robert Balmelli PE
Date: 2020.05.15 10:55:48-07'00'

Robert W. Balmelli PE
President

Enclosure(s): Work Authorization Contract, Brochure, Firm Profile, Business Card

This fee proposal and scope of work are based on information available at this time. There may be a point in the future when the scope of work may change based on survey findings, or requirements stipulated by the City, County, or State. At that time, you will be given an opportunity to decide how you would like to proceed. Your options will be to stop work or to authorize the revised scope and associated costs. Fee estimates shown are accurate for 60 days following date of proposal.



DESIGN → PERMIT → MANAGE

Work Authorization Contract (WAC)

RBE Project No.: 20041

Client Information: Trent Lougheed
City of Chehalis

Address: 1321 S Market Blvd
Chehalis, WA 98532

Phone Number: (360) 345-2227

Email: tlougheed@ci.chehalis.wa.us

Project Name: SW Snively Ave Utility Improvement

Project Location: SW Snively – From SW 16th to SW Pacific Ave

Legal Owner of Property: City of Chehalis

Legal Description of Property: N/A

Tax Parcel #: N/A

County: Lewis

Description of Work: See Attached Engineering Services Letter Dated *May 14, 2020*

Total Project Not-to-Exceed Fee Amount: \$75,310 T&M

What do you want to name your project? Please list here: _____

Please check your preferred method to receive information and invoicing:
USPS _____ Email _____

CLIENT AUTHORIZATION: Your signature below signifies your agreement to the scope of work, terms, and conditions set forth on this contract and the referenced proposal letter, and also accepts responsibility for payment of this account.

Signature _____

Date _____

Title _____

RB Engineering, Inc. Acceptance of Contract

Signature _____

Date 5-14-20

Title President

BILLING: RBE will bill for all work in progress each month. Payment of the entire amount billed is due within 20 days. In the event that payment is not made, this agreement shall be considered in default. Interest at the rate of 1-1/2% per month will be added to unpaid accounts beginning 20 days from the date of invoice. If an account becomes more than 5 days delinquent (25 days from the date of invoice), all work on the project will be stopped and not rescheduled until the entire balance on the account is paid in full. In the event that a lawsuit is necessary to enforce any obligation, client agrees that venue for such suit shall be Lewis County, Washington at the option of RBE. All expenses incurred to lien or collect any delinquent amounts including, but not limited to, collection fees, reasonable attorney's fees, witness fees, court costs, charges at current billing rates for time, transportation and subsistence shall be paid by client in addition to the delinquent amount.

ESTIMATED COST: The costs outlined in this contract are an estimate only, based upon the circumstances presented by the client and perceived by RBE at the time of contract preparation. They are not a guarantee that the costs will not exceed the amount of this estimate. RBE is hereby authorized to exceed the estimated costs by up to 10% without prior written notice to the client if circumstances encountered in the performance of RBE obligations result in an overrun, unless the contracted amount is noted as not to exceed the estimated cost or Not-to-Exceed Fee.

ADDITIONAL SERVICES: RBE will perform additional services beyond the basic scope of work upon the client's request. No extra work will be undertaken without prior authorization. Revisions to work completed or in progress requested by the client or his agents, through no fault of RBE, will be considered extra services for which additional compensation is due. If a written proposal and authorization are required for the additional services, this should be addressed at the time the work is requested.

OTHER SERVICES AND SUPPLIES: Charges for services, equipment, and facilities not furnished directly by RBE and any unusual items of expense not customarily incurred in our normal operations may be charged at cost plus 15%.

CANCELLATION OF CONTRACT: This contract may be canceled at any time by either party with 15 days written notice. Upon cancellation, for any reason, the client shall pay for all services provided through the date work is stopped in accordance with RBE's normal payment terms.

LIMITS OF PROFESSIONAL LIABILITY: RBE performs its professional services with that degree of care and skill ordinarily exercised under similar circumstances by members of the civil engineering profession. The client agrees to limit RBE's liability to the client, owner, and to all construction contractors and sub-contractors on the project, to the total aggregate liability of RBE to all those named to an amount not to exceed RBE's total fee for services rendered on the project. This limitation on liability shall apply to all foreseeable claims, including claims of negligence, breach of contract, or breach of warranty.

In the event the client shall make a claim against RBE, at law or otherwise, for any alleged act of negligence, including errors, omission, or other act arising out of the performance of the professional services, any claim of breach of contract or any claim of breach of warranty, and the client fails to prove such claim, the client shall pay all costs, including reasonable attorney's fees, which are incurred by RBE defending such claim.

HAZARDOUS WASTE: The client shall indemnify and hold harmless RBE from all claims, damages, losses, and expenses incurred by the client, the owner of the property, and its agents, in regard to any hazardous wastes on site. Client, owner, and its agents accept full responsibility for notification of appropriate agencies in regard to any hazardous wastes on site. RBE is expressly relieved from any obligation to discover or report hazardous wastes.

REUSE OF DOCUMENTS: All documents, including software, maps, drawings, and specifications prepared by RBE pursuant to this agreement are instruments of service with respect to the project. RBE reserves the right to reuse any and all information generated on this project to assist RBE in any future work. The documents are not intended or represented to be suitable for reuse other than for the use intended by owner or others on any subsequent work on the project or on any other project. Any reuse of documents without verification or appropriate adaptation by RBE for the specific purpose intended will be at the client's sole risk and without liability or legal exposure to RBE. Client shall indemnify and hold harmless RBE from all claims, damages, losses, and expenses, including attorney's fees arising out of any action or litigation from unauthorized reuse of documents. Client agrees to compensate RBE at RBE's prevailing rate for any verification or adaptation of documents.

OWNERSHIP AND USE OF DOCUMENTS: Control documents, calculations, research, base maps, software, drawings, and specifications as instruments of service are and shall remain the property of RBE whether the project for which they are made is executed or not. The client shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with client's use and occupancy of the

project. Copies of documents shall be provided at the expense of the client. Submission or distribution to meet official regulatory requirements, or for other purposes in connection with the project, shall not be construed as publication in derogation of RBE's rights.

In the event that the project is stopped for any reason, client shall not be entitled to receive any documents if there is any outstanding balance. Documents shall be released to client only upon payment in full. Copies of documents shall be provided at the expense of the client.

COMPLIANCE WITH CODES: RBE exercises usual and customary professional care and prepares instruments of service in compliance with codes and requirements identified by government agencies. RBE's duty to comply with changed codes and requirements extends only until the time the instruments of service are prepared.

ACCEPTANCE: RBE's acceptance of this contract is not a guarantee of governmental agency approval. We will endeavor to obtain such approvals on our client's behalf, but have no control over procedures required or laws that must be followed, and cannot be held responsible for governmental agency actions.

**CHEHALIS CITY COUNCIL MEETING
AGENDA REPORT**

TO: The Honorable Mayor and City Council

FROM: Jill Anderson, City Manager

BY: Trent Lougheed, P.E., Public Works Director
Brandon Rakes, Airport Operations Coordinator

MEETING DATE: May 26, 2020

SUBJECT: Consideration of Offer to Lease Tract 5A and Associated Non-Exclusive Lease Commission Agreement, Located Between Sonic and I-5 at 625 NW Arkansas Way

ISSUE

The Chehalis-Centralia Airport has received an offer to lease Tract 5A by SERJ Car Wash, LLC (DBA Glint Car Wash) for construction of a carwash. This parcel is located on property managed by the Airport and is located along NW Arkansas Way between Sonic and I-5.

INTRODUCTION

Rune Harkestad, Vice President of Kidder Mathews, approached the Airport on behalf of his client, SERJ Car Wash, LLC (SERJ) in early April of this year regarding the potential of leasing property for development, and ultimately submitted an offer to lease Tract 5A. This tract totals approximately 1.08 gross acres of land.

SERJ has worked with the City previously. They currently own and operate the Sonic in Chehalis, as well as several other locations. They are expanding their business to include car wash facilities and would like to locate this facility next to the Chehalis Sonic.

TERMS OF THE PROPOSAL

Upon receipt of the initial offer, it was compared to a determination of market rent that was received by the City in December of 2019. This information was used to negotiate the final lease that has been submitted for consideration at this time. SERJ has agreed to the current offer to lease, which includes provisions for the following:

- Deposit to the City
- Time for developer to complete its due diligence work
- Contingency clauses
- Inspection provisions
- Rent amount and commencement date
- Length of the term of a future lease and extension clauses
- Non-exclusive lease commission agreement with Rune Harkestad of Kidder Mathews

The execution of the lease by both parties will guide both parties in a process to develop the property.

Inspection Provisions

Section 8.2 of the Lease sets forth terms of inspection. In some contracts this is called a feasibility or due diligence period. This section is of particular importance because it clarifies that after the 180-day inspection period, the tenant must commence improvement construction and operations on the property within 30 days or be in breach. The specifics of the clause ensure that the tenant as well as the City has clear parameters for ending the project or moving forward.

8.2 Inspection. *Tenant will commence inspection of the Property on the Effective Date, in order to determine form and nature of fill to be required and allowed, whether pilings and related improvements will be needed before fill and constructing the remaining Improvements. Tenant has one hundred eighty (180) days from the Effective Date during which to complete that inspection (the last day of that inspection period defined herein to be the "Inspection Completion Date"). Upon Inspection Completion Date, Tenant shall immediately commence improvement construction and operations on the property as identified in Section 10 below. Failure to commence improvement construction and operations within 30 days after Inspection Completion Date will be considered a breach by the Tenant.*

In the event that Tenant shall determine within its sole discretion prior to the Inspection Completion Date that Tenant's Improvements and Tenant's plans for the Property are for any reason not feasible, then Tenant shall give such notice to Landlord and this Lease shall terminate, and the Tenant deposit described in Section 4.1(a) shall be returned to Tenant.

FISCAL IMPACT

If the proposed lease is accepted, the City would receive annual lease revenue of \$47,000.04 that would be restricted for operation of the Airport. Sales tax revenue from any retail activity would be used to fund the City's general operations, including the provision of police and fire services. The City of Chehalis, Chehalis-Centralia Airport would also be responsible for paying the commission to Rune Harkestad of Kidder Mathews totaling approximately \$26,980.71.

RECOMMENDATION

It is recommended that the City Council approve acceptance of the lease agreement for Tract 5A, by SERJ Car Wash, LLC as well as the associated Non-Exclusive Lease Commission Agreement, and authorize the City Manager to execute related documents.

SUGGESTED MOTION

I move that the City Council approve acceptance of the Lease for Tract 5A, by SERJ Car Wash, LLC as well as the associated Non-Exclusive Lease Commission Agreement, and authorize the City Manager to execute related documents.

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

Parcel Number: 005605825001

**GROUND LEASE
(Chehalis, Washington)**

THIS GROUND LEASE ("Lease") is made and entered into as of the effective date set forth in Section I by and between **CITY OF CHEHALIS, operator of the Chehalis-Centralia Airport ("Landlord")**, and **SERJ Car Wash, LLC. Dba Glint Car Wash ("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 I 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 2.1.9 below

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

Tenant: SERJ Car Wash, LLC. Dba Glint Car Wash and/or assigns.

Lease Term: Twenty-Five (25) years with three (3) ten (10) year option periods, as stated in Section 3.1

Rent: See Section 4

Title Insurance Liability Amount: Four Hundred Seventy Thousand Dollars (\$470,000.00) to be increased at the request of Tenant upon Reappraisal of the Property as provided in Section 4.3.

Deposit: \$15,230.70 by cashier's check, 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 47,045 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 and planned development 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") upon written acceptance and approval of said Site Plan by Landlord and before commencement of construction on the Property by Tenant.

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, (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. Tenant shall also obtain Landlord's consent, which consent shall not be unreasonably withheld, 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 governmental bodies 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.

2.4 Tenant's Work. Tenant shall plan, design and perform it's 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. Tenant shall pay all costs associated with said development action.

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 21.19 hereof) and shall expire on the last day of the twenty-fifth (25th) Lease Year, subject to rights to extend. Tenant shall have the right to extend the lease for three (3) additional ten (10) year terms by giving Landlord notice of extension not more than one (1) year prior to the end of the then-existing term, 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 Effective Date and each anniversary thereof.

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 payable to Chehalis-Centralia Airport a fifteen thousand two hundred thirty and 70/100 dollars (\$15,230.70) deposit which shall be credited towards payment of rent as described in Section 4.2.

4.1b 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.

4.2 Payment of Rent. Commencing on the date Tenant commences retail commercial use of any portion of the Property ("retail commercial use" defined as selling products on or from the Property), but not

later than that date which is either: (i) eighteen (18) months after the Inspection Completion Date (defined in Section 8.2 herein) in the event that Tenant commencing filling the Property as described in Section 2.4 herein within twelve (12) month after the Inspection Completion Date; or (ii) in the event Tenant does not commence to fill the Property as described in Section 2.4 herein within twelve (12) months after the Inspection Completion Date then on that date which is twelve (12) months after the Inspection Completion Date (the "Rent Commencement Date"), Tenant shall pay on the first day of each calendar month the monthly amounts of Rent set forth herein subject to Reappraisal and Escalation of Rent after Appraisal as set forth in subsections 4.3 and 4.4 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 ten percent (10%) will be assessed to the balance owing.

\$47,000.04 / 12 months = \$3,916.67 per month, plus Leasehold Excise Tax

4.3 Reappraisal. On each twentieth anniversary of the Effective Date of this Lease the Rent will be adjusted to fair market rental value, which annual Rent is deemed to be a sum equal to Ten Percent (10%) of the fair market value of the Property, as determined by appraisal. It is understood and agreed by both parties that the appraisal will be based upon fair rental for vacant unimproved land exclusive of all Tenant owned 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 value of the Property, the appraisers shall select a third independent appraiser (MAI) to review the two appraisals and set the fair market value for the Property, to set the new annual rental for this Lease, which shall be binding upon both parties to this Lease, provided that the rent so determined shall not be less than the rent payable prior 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 (5th) anniversary of the Effective Date hereof, and again on the tenth (10th) anniversary of the Effective Date hereof, and again on the fifteenth (15th) anniversary of the Effective Date hereof, be increased by ten percent (10%) of the Rent then in effect. Then, after the Rent is determined by appraisal pursuant to the procedures set forth in Section 4.3 above, on the twentieth (20th) anniversary of the Effective Date hereof, and on the twenty fifth (25th) anniversary of the Effective Date hereof, and on the thirtieth (30th) anniversary of the Effective Date hereof, and on the thirty fifth (35th) anniversary of the Effective Date hereof, be increased by ten percent (10%) of the Rent then in effect. Then, after the Rent is determined by appraisal pursuant to the procedures set forth in Section 4.3 above on the fortieth (40th) anniversary of the Effective Date, on the on the forty fifth (45th) anniversary of the Effective Date hereof, and on the fiftieth (50th) anniversary of the Effective Date hereof be increased by ten percent (10%) of the Rent then in effect,

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. It is understood between the parties that Tenant may be subleasing a portion of the Property as the Property is developed. 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 requirements. 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 will commence inspection of the Property on the Effective Date, in order to determine form and nature of fill to be required and allowed, whether pilings and related improvements will be needed before fill and constructing the remaining Improvements. Tenant has one hundred eighty (180) days **from the Effective Date** during which to complete that inspection (the last day of that inspection period defined herein to be the "Inspection Completion Date"). **Upon Inspection Completion Date, Tenant shall immediately commence improvement construction and operations on the property as identified in Section 10 below. Failure to commence improvement construction and operations within 30 days after Inspection Completion Date will be considered a breach by the Tenant.**

In the event that Tenant shall determine within its sole discretion **prior** to the Inspection Completion Date that Tenant's Improvements and Tenant's plans for the Property are for any reason not feasible, then Tenant shall give such notice to Landlord and this Lease shall terminate, and the Tenant deposit described in Section 4.1(a) shall be returned to Tenant.

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 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 and 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. 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. 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 another Qualified Carwash Operator without Landlord's consent. A Qualified Carwash Operator is a person or entity that is authorized to own and operate a carwash.

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 2.2 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 Site Plan and no temporary or long term improvements will be constructed in the area designated for 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. 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.

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.

a. 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.

b. Tenant's Work. Tenant may perform such work as necessary, subject to the terms of this Lease and ECR, to prepare the Property as Tenant deems appropriate subject however to the Site Plan and the coordination of shopping center development with Landlord and other tenants in the shopping center.

c. Signage. Tenant may install signage on the Property and on any shopping center pylon, in a form acceptable to Tenant, subject to the ECR and Federal Aviation Administration (FAA) requirements.

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.

SECTION 11 – MAINTENANCE AND REPAIRS

11.1 Maintenance. Tenant covenants it shall maintain the Property and Improvements thereon, including common areas, 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), 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) 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 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.

12.9 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.

(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 of 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 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 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: SERJ Car Wash, LLC Dba Glint Carwash
Attention: Jasmin Patel
1500 E. Katella Ave. Suite #5
Orange, CA 92867

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

Copy to: Hillier, Scheibmeir, Kelly & Satterfield, P.S.
Attention: Erin L. Hillier
P.O. Box 939
Chehalis, Washington 98532

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. Each Party shall indemnify the other with respect to compensation, commissions, fees, or other sums claimed to be due or owing with respect to the representations made by Landlord or Tenant, as applicable. Rune Harkestad of Kidder Mathews represented the Tenant and Landlord. Landlord will pay a commission in accordance with a separate Non-Exclusive Lease Commission Agreement.

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 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. 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".

21.14 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, 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.

21.15 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 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.

21.16 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: 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.

21.17 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. In the event of any offer acceptable to Landlord at any time or times during the original or extended term hereof, for the sale of the Property the Landlord, prior to acceptance thereof, shall give the Tenant, with respect to each such offer, written notice thereof and a copy of said offer including the name and address of the proposed purchaser ;and Tenant shall have the option and right of first refusal for sixty (60) days after receipt of such notice within which to elect to purchase or lease the Property, as the case may be, on the terms of said offer. If Tenant shall elect to purchase the Property pursuant to the option and first refusal herein granted, it shall give notice of such election within such sixty (60) day period. Tenant's failure at any time to exercise its option under this paragraph shall not affect this lease and the continuance of Lessee's rights and options under this and any other paragraph herein.

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

LANDLORD:

CITY OF CHEHALIS

By _____
Name: Jill Anderson
Its: City Manager
Date: _____

TENANT:

SERJ Car Wash, LLC. Dba Glint Car Wash

By _____
Name: _____
Its: _____
Date: _____

DRAFT

Acknowledgments

State of _____)

) ss.

County of _____)

On _____, 20__ before me _____, a Notary Public in and for said State, personally appeared _____ [] personally known to me, or [] proved to me on the basis of satisfactory evidence, to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Notary Public

My Commission Expires: _____

State of _____)

) ss.

County of _____)

On _____, 20__ before me _____, a Notary Public in and for said State, personally appeared _____ [] personally known to me, or [] proved to me on the basis of satisfactory evidence, to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Notary Public

My Commission Expires: _____

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

DRAFT

EXHIBIT "A"
Legal Description of Property

Tract 5A Amended BSP AF 3449004

DRAFT

**EXHIBIT "B"
SITE PLAN**

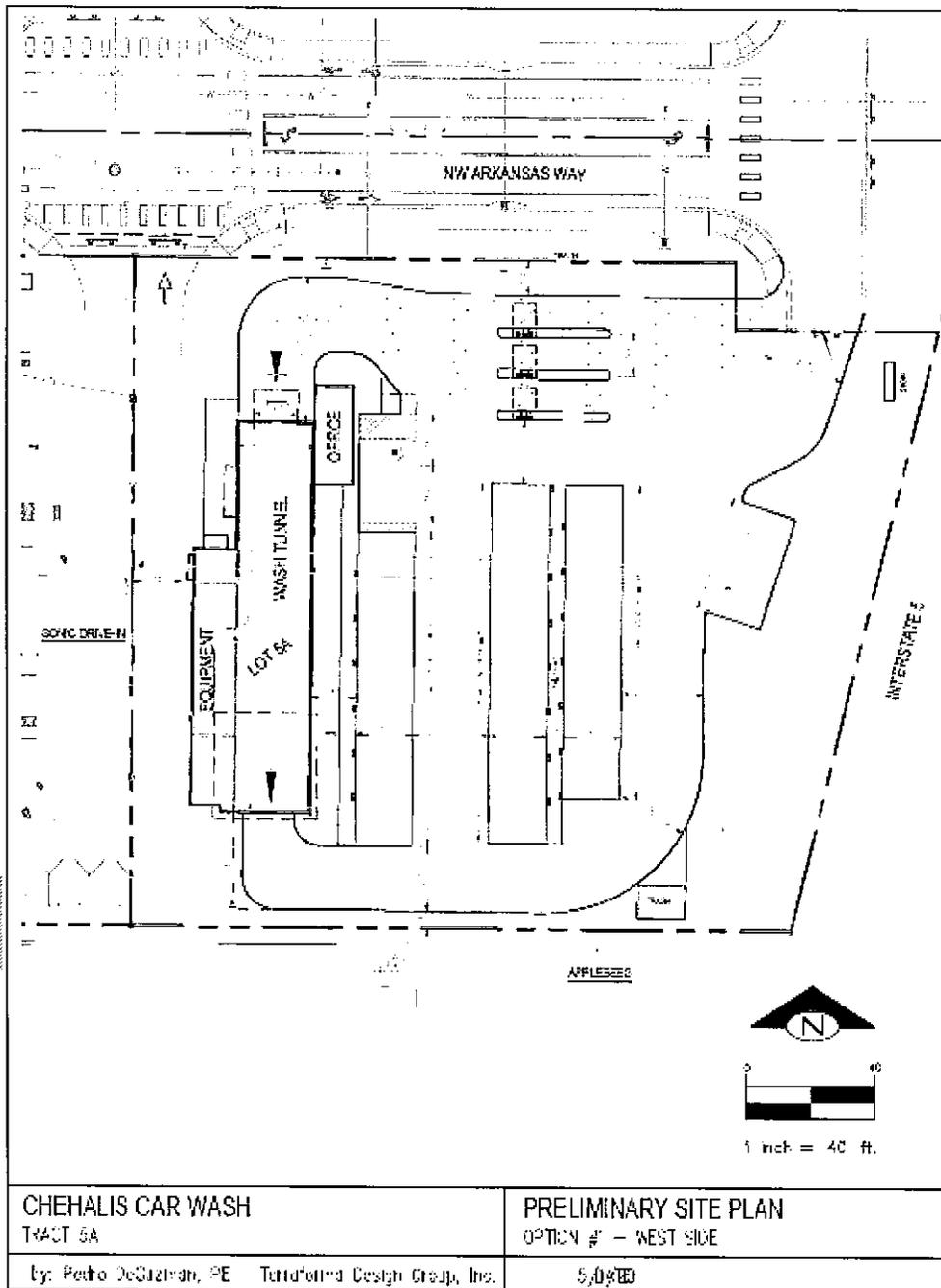


EXHIBIT "C"
Memorandum of Lease

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

Date: _____

TO: _____

CHEHALIS-CENTRALIA AIRPORT GOVERNING BOARD ("Landlord"), and SERJ Car Wash, LLC dba Glint Car Wash 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 "1" 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 "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.

DRAFT

9933163v3

NON-EXCLUSIVE LEASE COMMISSION AGREEMENT
(Chehalis, Washington)

THIS LEASE COMMISSION AGREEMENT ("Agreement") is made, entered into, and executed this _____ day of _____, 2020 by and between **CITY OF CHEHALIS - CHEHALIS CENTRALIA AIRPORT ("Lessor")** and **("Broker") Rune Harkestad of Kidder Mathews.**

PRELIMINARY STATEMENTS

A. Lessor desires to lease commercial retail land it controls as described in Exhibit A ("the Property") and to have the Property marketed to prospective Tenants by a real estate broker who will be compensated through a commission paid as defined in this agreement.

B. Broker represents SERJ Car Wash, LLC and shall be compensated a commission paid as defined in this agreement.

TERMS OF THE AGREEMENT

IN CONSIDERATION of the mutual covenants of the parties and other good and valuable consideration, Lessor and Broker agree as follows:

1. Broker provided services to execute lease with SERJ Car Wash, LLC.
2. Lease Commissions:
 - a. Computation of Commissions: Commission shall be the amount of deposit received by the Landlord from the tenant executed lease and then the first 3 months of rent paid by tenant to landlord. Landlord will not pay Broker until deposit is made and then Broker shall receive Deposit form Landlord. Broker shall not receive first three months of rent for Commission until Landlord has collected first three months of rent.
 - b. Time of Payment. Landlord will not pay Broker until deposit is made by Tenant and Commission agreement is executed and then Broker shall receive Deposit form Landlord. Broker shall not receive first three months of rent for Commission until Landlord has collected first three months of rent from tenant.
3. Broker fully understands this is not an exclusive agreement and similar agreements can be offered to other real estate brokers.
4. This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest.

To indicate their agreement to the above, the parties or their authorized representatives or officers have signed this Agreement.

LESSOR:
CITY OF CHEHALIS - CHEHALIS CENTRALIA AIRPORT

BROKER:

By: _____
Jill Anderson

By: _____
Rune Harkestad

Its: City Manager

Its: Broker

EXHIBIT "A"
Legal Description of Property

Tract 5A Amended BSP AF 3449004

**CHEHALIS CITY COUNCIL MEETING
AGENDA REPORT**

TO: The Honorable Mayor and City Council

FROM: Jill Anderson, City Manager

BY: Judy Schave, HR/Risk Manager

MEETING OF: May 26, 2020

SUBJECT: Code Inspector/Fire Marshal Position

ISSUE

In 2011, a decision was made to leave the positions of Assistant Fire Chief/Fire Marshal and Building Official unfilled when they became vacant. The job duties of these two positions were absorbed within their departments as a way of managing the financial aspect of the economic downturn that began in 2008. In recent years, the City has contracted with the Riverside Fire Authority for Fire Marshall services; however, the RFA is no longer able to make those services available on a contract basis. The City now has a unique opportunity to gain some much-needed assistance related to these two positions by creating a part-time Code Inspector/Fire Marshal position.

DISCUSSION

The Administration is proposing a non-represented, part-time code inspector/fire marshal whose job duties would be focused on code compliance and fire prevention activities. In 2012, the City entered into an interlocal agreement (ILA) with Riverside Fire Authority (RFA) for fire code inspections and enforcement services. This agreement, which was extended and last updated in 2018, was mutually beneficial for both jurisdictions; however, in July 2019, the City received notice that RFA Chief Richard Mack, who was the sole source that fulfilled the deliverables of the Fire Marshal services agreement, would be retiring during the first quarter of 2020. It was for this reason, RFA Chief Mike Kytta requested to terminate the ILA effective December 31, 2019. Since this time, City staff has provided some of the fire marshal and code enforcement duties to the extent of their credentials.

The responsibilities of the proposed position would include:

Code Inspector:

This position determines compliance with all local building codes, ordinances, and regulations and prepares and reviews a variety of studies, reports, and related information as directed for decision making process pertaining to building plan review and building inspections with an emphasis in fire safety. This position performs a variety of duties related to the enforcement of the fire code and requires a thorough knowledge of the International Building Code/IBC, International Residential Code/IRC, International Fire Code/IFC, International Property Maintenance Code, IPMC, Uniform Plumbing Code, UPC, International Mechanical Code/IMC, International Fuel Gas Code/IFGC, and other applicable codes as adopted by the City.

Fire Marshal:

This position directly oversees and manages fire prevention activities conducted by the City, including plan review process, community education, fire code inspection/enforcement, permit issuance, training

of department's employees in the relevant areas of fire prevention and is responsible for the overall administration of the fire prevention programs and services.

FISCAL IMPACT

In recognition of the level of responsibility and knowledgeable expertise associated with this position, the administration is recommending a flat rate of \$46.50 per hour, less legally required or authorized deductions. The limit on the annual work hours would make the position ineligible for retirement benefits and health insurance benefits would be limited if the employee elects to have coverage, again due to the part-time hours associated with the position. The annual impact of adding a part-time Code Inspector/Fire Marshal considering working 78 hours per month would amount to approximately \$46,000.

RECOMMENDATION

It is recommended that the City Council approve the creation of the Code Inspector/Fire Marshal position at a flat rate of \$46.50 per hour, less legally required or authorized deductions.

SUGGESTED MOTION

I move that the City Council approve the creation of a Code Inspector/Fire Marshal position to be added to the 2020 Salary Schedule.