

**Subject: Resolution #769 – Authorizing Lease Agreement with Chapter 13 Standing Trustee Michael G. Malaier for Space in Ruston School Building**

**Dept. Origin: Mayor’s Office**  
**Prepared by: Jennifer Robertson, City Attorney’s Office**  
**For Agenda of: June 20, 2023**  
**Exhibits: Resolution #769 with Exhibit 1**

Initial & Date

**Proposed Council Action:**

Adopt Resolution #769.

**Concurred by Mayor:** \_\_\_\_\_  
**Approved by City Planner:** \_\_\_\_\_  
**Approved as to form by City Atty:** JSR 6-9-23  
**Approved by Finance Director:** \_\_\_\_\_  
**Approved by Department Head:** \_\_\_\_\_

**INFORMATION / BACKGROUND**

The City Council authority to lease real property.<sup>1</sup> The City has leased portions of the Ruston School to various entities. The City entered into a listing agreement with Neil Walter Company to market the space in the School Building. The broker brought The Office of the Chapter 13 Standing Trustee, W.D. Washington, Tacoma Division, Michael G. Malaier, Chapter 13 Standing Trustee to the City to lease a portion of the vacant space, namely Suite 101. That lease is attached to Resolution No. 769.

This new lease encompasses 2,014 square feet, or 12.8% of the building. The City Attorney’s office prepared the proposed lease, which includes the City’s standard insurance and indemnity provisions to protect the City.

The lease base rent amount is \$17/square foot per year, triple net with an escalation each year in the amount of three percent for any year which the tenant extends. There are two five-year options. In addition, the tenant has requested an option to expand if Suites B05, B03 or B04 become available. The starting monthly base rent will be \$2,853.16 per month.

In addition to the monthly base rent, the Standing Trustee Michael G. Malaier will pay for its proportional share (12.8%) of the costs of the building called “common area maintenance” or “CAM” and its proportionate share of the common utilities. Currently this is estimated to be \$841.31 per month. The Tenant will also pay leasehold excise tax.

<sup>1</sup> RCW 35.27.010.

The proposed Lease is attached to Resolution #769 and has been signed by the Standing Trustee Michael G. Malaier and “approved as to form” by the City Attorney’s Office.

**FISCAL CONSIDERATION**

If the Council approves the lease, it will generate base rent of \$ 2,853.16 per month plus \$841.31 (estimate) per month in CAM charges for the City for the first year of the lease with a three percent escalation in each subsequent year.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

Approve Resolution #769

MOTION: I move to approve Resolution #769 authorizing the Mayor to execute a 36-Month Lease Agreement with Extensions with The Office of the Chapter 13 Standing Trustee, W.D. Washington, Tacoma Division, Michael G. Malaier, Chapter 13 Standing Trustee, substantially in the form attached to the Resolution.

**RESOLUTION NO. 769**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A 36-MONTH LEASE AGREEMENT WITH EXTENSIONS WITH THE OFFICE OF THE CHAPTER 13 STANDING TRUSTEE, W.D. WASHINGTON, TACOMA DIVISION, MICHAEL G. MALAIER, CHAPTER 13 STANDING TRUSTEE FOR SPACE IN THE RUSTON SCHOOL BUILDING.**

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**WHEREAS**, RCW 35.27.010 provides that the City Council authority to lease real property; and

**WHEREAS**, the City has leased portions of the Ruston School to various entities in the past; and

**WHEREAS**, the City Council finds it in the public interest to authorize the Mayor to execute the new proposed Lease Agreement with The Office of the Chapter 13 Standing Trustee, W.D. Washington, Tacoma Division, Michael G. Malaier, Chapter 13 Standing Trustee for the Suite 101 space in the Ruston School Building for a 36-month period with two 60-month extensions which Agreement is attached to this Resolution as Exhibit “1”; **NOW, THEREFORE,**

**THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The Mayor is hereby authorized to execute the Lease Agreement between the City of Ruston and The Office of the Chapter 13 Standing Trustee, W.D. Washington, Tacoma Division, Michael G. Malaier, Chapter 13 Standing Trustee for use of space at the Ruston School building located at 5219 N. Shirley Street, Ruston, Washington as generally described and substantially in the form attached hereto as Exhibit “1”.

**RESOLVED** this 20th day of June, 2023.

**APPROVED:**

\_\_\_\_\_  
Bruce Hopkins, Mayor

**ATTEST/AUTHENTICATED:**

\_\_\_\_\_  
Judy Grams, City Clerk

FILED WITH THE CITY CLERK: \_\_\_\_\_

PASSED BY THE CITY COUNCIL: \_\_\_\_\_

RESOLUTION NO.: 769

**EXHIBIT “1”**  
**Lease Agreement between**  
**City of Ruston**  
**and**  
**Chapter 13 Standing Trustee**  
**Michael G. Malaier**

**Lease Agreement  
Between  
City of Ruston and Office of the Chapter 13 Standing Trustee, W.D.  
Washington, Tacoma Division [Michael G. Malaier, Chapter 13  
Standing Trustee]**

**THIS LEASE AGREEMENT** (the "Lease") is entered into and effective as of February 1, 2024 between the City of Ruston, a Washington municipal corporation ("Landlord") and The Office of the Chapter 13 Standing Trustee, W.D. Washington, Tacoma Division ("Tacoma Chapter 13 Trustee's Office"), a fiduciary trust operation established by the United States Bankruptcy Court for the Western District of Washington governed by applicable federal and state laws, including but not limited to 11 U.S.C. §§105 and 1302, and 28 U.S.C. §959. The United States Department of Justice appointed Michael G. Malaier as Chapter 13 Standing Trustee ("Trustee") on October 1, 2015 pursuant to 28 C.F.R. §58.2 et seq. ("Appointment Order"), and Trustee has and will continue to serve in such capacity and operate the Tacoma Chapter 13 Standing Trustee's Office in such capacity until the Appointment Order is rescinded by the United States Bankruptcy Court or a superseding Order appointing successor trustee is entered. Hereinafter, the Tacoma Chapter 13 Standing Trustee's Office and the Trustee (but not Michael G. Malaier individually) are referred to collectively as the "Tenant." The Parties agree that the terms of this Lease shall be binding upon the successor, if any, of each of them. Tenant's mailing address at the time this Agreement is executed is 2122 Commerce Street, Tacoma WA 98402-3002. Landlord and Tenant agree as follows:

**1. LEASE SUMMARY**

**1.1 Leased Premises.** The leased commercial real estate (the "Premises") consists of a portion of the real property commonly known as 5219 N. Shirley Street, Ruston, WA, and also referred to as the Ruston School House or the "Building", (the Tenants leased portions of the Building are hereinafter referred to as the "Premises"). Tenant shall have the exclusive right to use the Premises, and such Premises consists of spaces on the Main Floor:

Space:  
Suite 101

Size of Space:  
2,014 Square Feet in size

**Total Square Footage of Premises 2,014 Square Feet in size**

These Premises are shown in the drawing attached hereto as Exhibit "A" and incorporated herein by this reference. The total square footage of the Building is 15,717 square feet. The total square footage of the Leased Premises is 2,014 square feet, which is 12.8% of the Building. Attached hereto as "Exhibit B" and incorporated herein by this reference is a drawing of Tenant's Space. Attached hereto as "Exhibit C" and incorporated herein by this reference is a drawing of Common Areas, Lower Level. Attached hereto as "Exhibit D" and incorporated herein by this reference is a drawing of Common Areas, Second Floor.

**1.2 Lease Commencement Date.** The term of this Lease shall be for a period of thirty-six (36) months and shall commence on February 1, 2024 ("Commencement Date").

**1.3 Lease Termination Date.** The term of this Lease shall terminate at midnight January 31, 2027 or such earlier or later date as provided in Section 3 ("Termination Date").

**1.4 Extensions.** There are options for two five-year (60 month) extensions under the terms contained in Section 3 below.

**1.5 Base Rent.** The base monthly rent shall be \$17.00 (rounded) per square foot annually (\$34,237.93 annually, or \$2,853.16 per month) ("Base Rent") as adjusted as described in Section 4.3 below. Rent shall be payable at Landlord's address shown in Section 1.8 below or such other place designated in writing by Landlord. The rent after the first year shall increase by three percent (3%) per year such that the base rent for months 13-24 shall be \$35,265.06 annually, or \$2,938.76 per month and for months 25-36 shall be \$36,323.01 annually, or \$3,026.92 per month. The base rent shall increase by three percent (3%) annually commencing February 1<sup>st</sup> of each year. For any additional extensions granted under this Lease shall also increase by three percent (3%) per year, including a three percent (3%) increase upon such extension.

**1.6 Permitted Use.** The Premises shall be used only for a "Business/Administration Office" during the Lease term. No other use or purpose shall be permitted without the prior written consent of Landlord.

**1.7 Notice and Payment Addresses.**

Landlord:

City of Ruston  
Attn. Mayor  
5219 N. Shirley Street  
Ruston WA 98407

Tenant:

Office of the Chapter 13 Standing Trustee, W.D.  
Washington, Tacoma Division  
2122 Commerce Street  
Tacoma WA 98402-3002

However, after commencement of the Lease, the Tenant's address shall be  
5219 N. Shirley Street, Suite 101  
Ruston WA 98407

**1.8 Security Deposit.** Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$3,694.47 to be held as a security deposit pursuant to Section 28 below. The security deposit shall be in the form of cash.

**2. PREMISES.**

**2.1 Lease of Premises.** Landlord leases to Tenant, and Tenant leases from Landlord the Premises upon the terms specified in this Lease.

**2.2 Acceptance of Premises.** Except as specified elsewhere in this Lease, Landlord makes no representations or warranties to Tenant regarding the Premises or the Property, including the structural condition of the Premises or the condition of any or all mechanical, electrical, and other systems on the Premises. Except as otherwise provided herein, Tenant shall be responsible for performing any work necessary to bring the Premises into a condition

satisfactory to Tenant. By signing this Lease, Tenant acknowledges that it has had an adequate opportunity to investigate the Premises and Building; acknowledges responsibility for making any corrections, alterations and repairs to the Premises; and acknowledges that the time needed to complete any such items shall not delay the Commencement Date. The Building being approximately 100 years old, Tenant understands that the Property is not fully accessible under the American's with Disabilities Act. Tenant has had ample opportunity to inspect the Premises and the Property and accepts the same "AS IS" and agrees that Landlord is under no obligation to make any improvements to the Property or Premises.

**2.3 Public Access.** The Tenant acknowledges that Landlord is a City and that the Ruston School House is a public building that is open to the public and is used by the City for public meetings, community events, a police station, office space and other public uses. The Tenant agrees to refrain from any activities or use that inhibits the public uses of the building or inhibits the public access for such uses.

### 3. TERM.

**3.1 Term.** The term of this Lease shall commence on the Commencement Date specified in Section 1. The first "lease term" shall commence on the Commencement Date and shall end on the date which is thirty-six (36) months from the Commencement Date.

**3.2 Options for Extension.** Provided that Tenant fully performs all of its obligations set forth in this Lease during the initial term of this Lease and is not in breach of the Lease, Tenant shall have the two options to extend the Lease term for a period of sixty (60) months with the increases in base rent as outlined in Section 4.4. The Landlord shall have the right to approve, deny or condition any extension in its sole discretion. Any request for extension by Tenant shall be in writing no later than ninety (90) calendar days prior to the expiration of the then on-going Lease term.

**3.3 Landlord's Right to Terminate Upon Acceptance of Offer to Purchase Property.** Notwithstanding any other provisions in this Lease, if Landlord accepts an offer to purchase the Property, then Landlord shall have the right to terminate this Lease upon one-hundred and eighty (180) days' notice to Tenant.

**3.4 Landlord's Right to Terminate for Failure to maintain a business license or file tax returns.** Notwithstanding any other provisions in this Lease, if Tenant fails to maintain a Ruston business license or file tax returns (including payment of any taxes due) with the City of Ruston during the term of this Lease as required by Section 7, then Landlord shall have the right to terminate this Lease upon thirty (30) days' notice to Tenant.

### 4. RENT.

**4.1 Payment of Rent.** Tenant shall pay Landlord without notice, demand, deduction, or offset, in lawful money of the United States, the monthly Base Rent stated in Section 1 in advance on or before the first day of each month during the Lease term beginning on the Commencement Date, and shall also pay any other additional payments due to Landlord ("Additional Rent"), including Utilities and Other Charges as set forth in Section or elsewhere in this Agreement (collectively the "Rent") when required under this Lease. Payments for any partial month at the beginning or end of the Lease shall be prorated. All payments due to Landlord under this Lease, including late fees and interest, shall also constitute Additional Rent, and upon failure



of Tenant to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay rent.

**4.2 Interest and Late Fee on Unpaid Rent.** If Tenant fails to timely pay Rent and is more than 5 days late, a penalty in the amount of \$250 shall be assessed along with interest at the rate of one percent per month on the unpaid amount. Unpaid penalties shall be added to the overdue rent and shall also accrue interest if such penalties remain unpaid for more than 30 days.

**4.3 Triple Net Lease.** This Lease is what is commonly called a 'Net, Net, Net' or "triple-net" or "NNN" Lease, which means that, except as otherwise expressly provided herein, Landlord shall receive all Base Rent free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to Base Rent, Tenant shall pay to the Parties respectively entitled thereto, or satisfy directly, all Additional Rent and other impositions, insurance premiums, repair and maintenance charges, building utilities, and any other charges, costs, obligations, liabilities, requirements, and expenses which arise with regard to the Building, building grounds or Premises or may be contemplated under any other provision of the Lease during its term including maintenance, repairs or improvements to the Common Areas, building structure and building systems, including exterior amenities such as parking area maintenance and repair, including striping or restriping of the parking area, landscape maintenance and repairs, including sprinkler system, access lighting, replacing or adding new plantings and grass maintenance as well as any property management fees. The only building costs that are not subject to a prorate share by the Tenant are any costs and expenses expressly made the sole obligation of Landlord in this Lease.

The parties have calculated these charges for the year prior to the Commencement Date of this Lease (2023) which include utilities as described in Section 7. The NNN charges for 2022 equaled \$78,872.79 for the building, including utilities paid by Landlord, which amounts to a proportionate share of \$10,095.72 for the 2,014 square foot space for 12 months. Thus, the Tenant's estimated NNN charges would be \$841.31 per month in the first year of the lease.

The \$841.31 monthly is the estimated amount for 2024 and shall be due and payable each month of the Lease Year with the Rent payment, without the need for the City to invoice, until adjusted as described below.

Common Area Expense shall not include the following: (1) expenses for the defense of the Landlord's title to the Property; (2) depreciation and amortization of the Premises or Building or financing costs, including interest and principal amortization of debts; (3) charitable, lobbying, special interest or political contributions; (4) attorneys' fees, accounting fees and expenditures incurred in connection with tax contests or negotiations, disputes and claims of other tenants or occupants of the Premises or Building or with other third parties unrelated to Tenant in any manner (i.e. not a subsidiary, contractor, employee, consultant, customer, etc.) except as specifically provided in this Lease; (5) the cost of capital improvements; (6) services not offered to all tenants of the Premises or Building; (7) costs incurred in renovating and preparing vacant space for lease to other tenants in the Building; (8) costs incurred solely because of lease violations by Landlord or other tenants in the Building; (9) repairs or work because of casualty losses insured or required to be insured by Landlord; costs, fines, or penalties, incurred because Landlord violates any governmental law, rule, or regulation; or (10) costs of services that relate to any property of Landlord other than the Building and the land upon which it sits, including the grounds, parking lots and landscaping.

**4.3.1 Adjustments to NNN charges.** By February 28<sup>th</sup> of each year (starting in 2024), the Landlord shall provide Tenant with an accounting of the Common Area Expenses (also sometimes called CAM charges) from the prior year and the adjusted monthly payments from Tenant for the current year shall be based on the prior year's accounting. If there are additional expenses that were not covered by the estimated monthly charges, then Tenant shall pay the unpaid portion within 30 days after Tenant's receipt of written notice from Landlord of the same. If the expenses were less than was estimated, then the Landlord shall credit Tenant any overpayment in adjusting the next year's charges, except that in the event the Term has expired or this Lease has otherwise been terminated and no additional Common Area Expenses will be payable for the following year, the overpayment will be promptly refunded to Tenant. The adjusted payment of NNN charges will begin on April 1<sup>st</sup> and be due with the monthly Rent Payment. The NNN charges include Landlord paid utilities as described in Section 7.

**4.4 Adjustments to Base Rent.** The Parties agree that the monthly base rent shall be \$2,853.16 per month for the first year of the Lease. Thereafter, the base monthly rent shall be increased on the first day of the second year of the Lease by three percent (3%) and shall be increased by three percent (3%) per year for any and all successive years of the Lease or any extensions thereof.

**4.5 State Leasehold Excise Tax.** In addition to Base Rent and Additional Rent as described above, Tenant shall also pay to Landlord in advance on or before the first day of each month of the Lease term: (i) the State Leasehold Excise Tax (currently 12.84 percent) on the Premises defined in Section 1.1 above based on the value of the Base Rent. (\$366.35) The Base Rent is consistent with the fair market value for office space in this market and was determined by good faith negotiation of the parties.

**Definitions.** For purposes of this Section 4, the following definitions shall apply:

**"Excise Taxes."** Pursuant to RCW 82.29A, Landlord must collect from Tenant and pay to the Washington Department of Revenue leasehold excise taxes. This amount due the Landlord from the Tenant will be the current rate as described by the Washington Department of Revenue.

**4.6 Additional Rent.** In addition to Base Rent, all other sums to be paid or reimbursed by Tenant to Landlord, whether or not so designated, shall be "Additional Rent" for the purposes of this Lease. If Tenant defaults in the performance of any of its obligations hereunder, Landlord may, but shall not be obligated to, perform such obligations, and cost thereof to Landlord shall also be additional rent. Unless otherwise specifically provided herein, Tenant shall pay Landlord all additional rent upon demand, and in no event later than the date on which the next rent payment hereunder is due and payable.

**4.7 Default.** If any sums payable by Tenant to Landlord under this Lease are not received within five (5) business days after their due date, Tenant shall be in Default under this Lease and Landlord shall have all remedies contained herein or under existing law. All such unpaid sums shall be subject to late fees and interest as described in Section 4.2 above.

**4.8 Less Than Full Payment.** Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims. Any portion that remains to be paid by Tenant shall be subject to late charges and default interest provisions of Section 4.2 as well as Sections 17 and 18 (Default and Remedies).

## **5. USES.**

**5.1 Permitted Use.** The Premises shall be used only for the Permitted Use specified in Section 1 above, and for no other business or purpose without the prior written consent of Landlord which consent may be withheld for any reason. No act shall be done on or around the Premises that is unlawful or that will increase the existing rate of insurance on the Premises, or cause the cancellation of any insurance on the Premises. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance. Tenant shall not do or permit anything to be done on the Premises which will obstruct or interfere with the rights of other tenants or occupants of the Premises, or their employees, officers, agents, servants, contractors, customers, clients, visitors, guests, members of the public or other licensees or invitees or to injure or annoy such persons.

**5.2 No Unlawful Use.** Tenant shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community of which the Premises or Real Property is a part, or in any manner which is not in the best interests of the Tenants of the Real Property. Tenant shall promptly comply, at its sole cost and expense, with all laws, ordinances, and regulations now in force or hereafter adopted or relating to or affecting the condition, use or occupancy of the Premises.

## **6. COMPLIANCE WITH LAWS.**

Tenant shall not cause or permit the Premises to be used in any way which violates any law, ordinance, or governmental regulation or order. Tenant shall be responsible for complying with all laws applicable to the Premises as a result of the Permitted Use, and Tenant shall be responsible for making any changes or alterations as may be required by law, rule, regulation, or order for Tenant's Permitted Use at its sole cost and expense.

## **7. UTILITIES, TAXES & OTHER CHARGES.**

### **7.1 Utilities, Taxes and Services.**

**7.1.1 Landlord's Responsibility.** Landlord shall provide the Premises the following services: water, natural gas, electricity, and sewer for the Premises seven (7) days per week, twenty-four (24) hours per day, and Landlord shall also provide janitorial service to common areas of the Building once per week, exclusive of holidays, and solid waste services once per week. If water and electricity services are not separately metered to the Premises, Tenant shall pay its proportionate share of all charges for any utilities that are jointly metered based on the ratio which the rentable square feet of the Premises bears to the total rentable square feet served by the joint meters. These are included in the CAM charges as outlined in Section 4 above. Notwithstanding the foregoing, if Tenant's use of the Premises incurs utility charges which are above those usual and customary for the

Permitted Use, Landlord reserves the right to require Tenant to pay a reasonable additional charge for such usage. It shall be Landlord's responsibility to invoice Tenant such Additional Rent for such utilities and service charges, and Landlord shall furnish Tenant with actual invoice derived from the utility or service providers as proof of such costs. Tenant shall pay such Additional Rent within 30 days of its receipt of such invoice from Landlord. In any year in which the utilities and operating expenses exceed the adjusted usual and customary amount, Tenant shall be responsible for reimbursing Landlord, twelve and eight tenths percent (12.8%) of the excess utilities and operating expenses.

In addition, Tenant agrees to keep the temperature of the Premises at such level as may be reasonably required by Landlord to protect the Building and prevent the dissipation of heat or air conditioning in the areas adjacent to the Premises.

Tenant shall furnish all other utilities (including, but not limited to, telephone, Internet, and cable service if available) and other services which Tenant requires with respect to the Premises, and shall pay, at Tenant's sole expense, the cost of all utilities separately metered to the Premises and of all other utilities and other services which Tenant requires with respect to the Premises, except those to be provided by Landlord as described above. Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of utilities due to any cause whatsoever, and Rent shall not abate as a result thereof.

At the time this Lease initially entered into, the "usual and customary" utilities for the Building (water, sewer, electricity, natural gas, solid waste, alarm service, management services and janitorial services) are included in the CAM charges listed in Section 4 above.

**7.1.2 Interruption.** Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of such services due to any cause whatsoever, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements, or due to accident, strike or conditions or events beyond Landlord's reasonable control shall be deemed an eviction of Tenant or to relieve Tenant from any of Tenant's obligations hereunder or to give Tenant a right of action against Landlord for damages.

**7.2 Licenses and Taxes.** Tenant shall be liable for, and shall pay throughout the term of this Lease, all license and excise fees and occupation taxes covering the business conducted on the Premises and all personal property taxes levied with respect to all personal property located at the Premises, including payment of all leasehold taxes. If any governmental authority levies a tax or license fee on rents payable under this Lease or rents accruing from use of the Premises or a tax or license fee in any form against Landlord or Tenant because of or measured by or based upon income derived from the leasing or rental thereof, or a transaction privilege tax, such tax or license fee shall be paid by Tenant, either directly if required by law, or by reimbursing Landlord for the amount thereof upon demand. The Tenant shall maintain a current business license for the City of Ruston, pay all applicable business and occupation taxes, and all applicable excise taxes as per the Ruston Municipal Code. Excise tax fees will be billed to the tenant on a quarterly basis with remittance due to the City of Ruston in 30 days from billing date by the City of Ruston. Failure to maintain a business license, timely file tax returns or pay any outstanding taxes due to Ruston shall constitute a

breach of this Agreement and shall permit the Landlord to terminate this Lease under Section 3 above.

**7.3 Alarm Service.** Landlord shall be responsible for and shall promptly pay all charges for alarm services based the usual and customary alarm service expenses. In any year in which the alarm services exceed this usual amount Tenant shall be responsible for reimbursing Landlord twelve and eight tenth percent (12.8%) of the excess alarm services charges. Such reimbursement shall be considered "Additional Rent" and shall be due and payable as described above. In addition to the excess alarm fees, the Tenant will be charged for false alarm responses at the rate of \$65.00 per call after the initial three (3) per calendar year. These fees will be billed to the Tenant on a quarterly basis with remittance due to the City of Ruston in 30 days from billing date by the City of Ruston.

## **8. ALTERATIONS.**

**8.1 By Tenant; in General.** Except as listed in 8.3 below, Tenant shall not make any alterations, additions or improvements in or to the Premises without first submitting to Landlord professionally prepared plans and specifications for such work and obtaining Landlord's prior written approval thereof, in addition to any permits required. (Tenant has no planned alterations at the time of Lease execution except as listed in 8.3 below.)

Tenant covenants that it will cause all such alterations, additions and improvements to be performed at Tenant's sole cost and expense by a contractor approved by Landlord and in a manner which: (a) is consistent with the Landlord-approved plans and specifications and any conditions imposed by Landlord in connection therewith; (b) is in conformity with commercial standards; (c) includes acceptable insurance coverage for Landlord's benefit; (d) does not affect the structural integrity of the Building; and (e) does not invalidate or otherwise affect the construction and systems' warranties then in effect with respect to the Real Property. Tenant shall secure all governmental permits and approvals, as well as comply with all other applicable governmental requirements and restrictions. Tenant shall indemnify, defend and hold Landlord harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorney's fees, but without waiver of the duty to hold harmless) arising from or out of the performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Tenant's breach of its obligations under the terms of this Section in a manner consistent with Section 14 below. This provision shall survive termination.

Tenant shall pay, when due, or furnish a bond for payment (in a form and amount satisfactory to the City) all claims for labor or materials furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's' liens against the Premises or any interest therein.

All alterations, additions and improvements (expressly including all light fixtures, heating, ventilation and air conditioning units and floor coverings), except trade fixtures and appliances and equipment not affixed to the Premises, shall immediately become the property of Landlord without any obligation on its part to pay therefore. These improvements shall be left in the Building and in the Premises after termination of the tenancy.

**8.2 By Landlord.** Landlord agrees that it will undertake the following alterations prior to the Tenants occupancy at Landlord's expense:

**8.2.1** Construct six offices within the space.

- 8.2.2 Paint all of the walls and install new carpet in the space.
- 8.2.3 Remove the accordion style demising wall.
- 8.2.4 Replace all doors to the space with solid core wood doors.
- 8.2.5 Remove one of the kitchenettes and update the remaining kitchenette to provide space for a the Tenant to place a refrigerator.

## **9. MAINTENANCE AND REPAIRS; SURRENDER.**

**9.1 General Appearance; Maintenance of Premises.** Tenant shall maintain the Premises in a clean, orderly and neat fashion to conform with the high standards of the Real Property, permitting no odors to be emitted from the Premises and neither committing waste nor permitting any waste to be committed thereon. Tenant shall not burn any trash in or about the Premises or permit any accumulation of trash. Tenant shall store trash, refuse and waste material so as not to constitute a health or fire hazard or nuisance, in adequately covered containers which are located within the Premises which are not visible to the general public or in areas designated by Landlord.

**9.2 Maintenance and Repair.** The Tenant agrees at all times, from and after delivery of possession of the premises to the Tenant, and at its own cost and expense, to repair and maintain the Premises in good and tenantable condition, except for the roof, load bearing and exterior walls, drains, gutters, downspouts of the Building, the repairs to which shall be the responsibility of the Landlord. All other maintenance and repair of the Premises shall be the sole responsibility of the Tenant.

### **9.3 Failure to Maintain.**

**9.3.1 By Tenant.** If Tenant fails to keep and maintain the Premises in the condition set forth in this Section, Landlord may, at its option, put or cause the same to be put in the condition required hereunder, and in such case, upon receipt of written statements from Landlord, Tenant shall promptly pay the entire cost thereof as additional rent. Landlord shall have the right to enter the Premises for the purpose of making such repairs upon Tenant's failure to do so.

**9.3.2 By Landlord.** If Landlord fails to keep and maintain the elements under Landlord's responsibly, then Tenant shall notify Landlord in writing of the need for repair including adequate detail for Landlord to understand the specific repairs requested. Landlord shall have five (5) days from the receipt of such notice to commence repair. In the event Landlord does not commence repair, then Tenant shall have the right to withhold further payments of Rent or Additional Rent until the repairs are made. Tenant may choose to make such repairs, or contract to make such repairs, and subtract the reasonable costs of such repair from any Rent or Additional Rent due, or to be due, to Landlord.

**9.4 Surrender of Premises.** At the expiration or termination of this Lease, Tenant shall return the Premises to Landlord in the same condition in which originally received (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by Landlord under terms of the Lease), reasonable wear and tear excepted. In the event the Landlord requests removal of improvement, then Tenant shall complete such removal prior to return of the Premise and repair any damages caused by such removal. In no event shall Tenant remove floor coverings; heating, ventilating and air conditioning equipment; lighting equipment or fixtures; wall coverings; window coverings; or other operating equipment or

decorations unless otherwise directed by Landlord. Tenant's obligation to perform this covenant shall survive the expiration or termination of this Lease.

#### **10. ACCESS AND RIGHT OF ENTRY.**

After twenty-four (24) hours' notice from Landlord (except in cases of emergency, when no notice shall be required), Tenant shall permit Landlord and its agents, employees and contractors to enter the Premises at all reasonable times to make repairs, inspections, alterations or improvements, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease. After reasonable notice to Tenant, Landlord shall have the right to enter the Premises for the purpose of (a) showing the Premises to prospective purchasers or lenders at any time, and to prospective tenants within one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term; and, (b) for posting 'for lease' signs within one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term.

#### **11. SIGNAGE.**

Tenant shall obtain Landlord's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Prior to placement of any signage, Tenant shall obtain Landlord's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Tenant shall install any approved signage at Tenant's sole expense and in compliance with all applicable laws. Tenant shall not damage or deface the Premises in installing or removing signage and shall repair any injury or damage to the Premises caused by such installation or removal. In addition, Tenant shall have the right to add its signage to the existing monument sign located on Shirley Street near the main entrance to the building, provided it can do so within the existing space limitations on the sign monument. No banners or signs shall be hung from the building at any time.

#### **12. COMMON AREAS**

**12.1 Definition.** The term "Common Areas" means all areas, facilities and building systems that are provided and designated from time to time by Landlord for the general, nonexclusive use and convenience of Tenant with other tenants and/or the general public and which are not leased or held for the exclusive use of a particular tenant. To the extent that such areas and facilities exist within the Property, Common Areas include hallways, entryways, stairs, elevators, driveways, walkways, terraces, docks, loading areas, restrooms, trash facilities, parking areas and garages, roadways, pedestrian sidewalks, landscaped areas, security areas, lobby or mall areas, common heating, ventilating and air conditioning systems, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Tenant shall comply with reasonable rules and regulations concerning the use of the Common Areas adopted by Landlord from time to time, including not restricting public access or ingress/egress in these areas. The public areas where access must be maintained are shown on Exhibit B which is attached hereto and incorporated herein by this reference. Without advance notice to Tenant and without any liability to Tenant, Landlord may change the size, use, or nature of any Common Areas, erect improvements on the Common Areas or convert any portion of the Common Areas to the exclusive use of Landlord or selected tenants, so long as Tenant is not thereby deprived of the substantial

benefit of the Premises. Landlord reserves the use of exterior walls and the roof, and the right to install, maintain, use, repair and replace pipes, ducts, conduits, and wires leading through the Premises in areas which will not materially interfere with Tenant's use thereof.

**12.2 Use of the Common Areas.** Tenant shall have the non-exclusive right, in common with such other tenants to whom Landlord has granted or may grant such rights, to use the Common Areas. Tenant shall abide by rules and regulations adopted by Landlord from time to time and shall use its best efforts to cause its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, to comply with those rules and regulations, and not interfere with the use of Common Areas by others. No trash, boxes, or equipment may be stored at any time in any of the common areas, except mail for pickup by the main entrance.

**12.3 Maintenance of Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair. In performing such maintenance, Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises.

**12.4 Parking Lot Usage.** The Building has two parking lots located adjacent to the Building, the North parking lot and the South parking lot as well as ample street parking. Tenant is granted access to both parking lots and may utilize the lot for daily use of its employees and customers, provided that such use does not prevent other tenants or users of the building from being able to also use such parking lots. Parking spaces are not designated but should be available at all times. In no event shall Tenant use these parking spaces for overnight or long-term parking. In addition, no parking of trailers, recreational vehicles, campers, boats, oversize vehicles, or construction equipment shall be allowed at any time.

### **13. DESTRUCTION OR CONDEMNATION.**

**13.1 Damage and Repair.** If the Premises are partially or wholly damaged, whether or not it is rendered untenable, by fire or other insured casualty, then Landlord may, at its option and at its sole discretion: (a) terminate this Lease as provided herein, or (b) restore the Premises to their previous condition to the extent required below; provided, however, if such casualty event occurs during the last six (6) months of the Lease term (after considering any option to extend the term timely exercised by Tenant) then either Tenant or Landlord may elect to terminate the Lease.

If Landlord fails to notify Tenant of its election to restore the Premises, or if Landlord is unable to restore the Premises within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease upon twenty (20) days' written notice to Landlord unless Landlord, within such twenty (20) day period, notifies Tenant that it will in fact restore the Premises or actually completes such restoration work to the extent required below, as applicable. If Landlord restores the Premises under this Section, the base monthly rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole Premises, provided that there shall be a rent abatement only if the damage or destruction of the Premises did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. In such case, then there shall be no rent abatement during the repair period. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of



the Premises. Landlord shall have no obligation to carry insurance of any kind for the protection of Tenant or any alterations or improvements paid for by Tenant (regardless of who may have completed them); Tenant's furniture; or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, all Landlord's restoration obligations hereunder shall not include any obligation to repair any damage thereto or replace the same.

**13.2 Condemnation.** If the Premises are made untenable by eminent domain, or conveyed under a threat of condemnation, this Lease shall automatically terminate as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises and all Rents and other payments shall be paid to that date. If the condemning authority takes a portion of the Premises that does not render the Premises untenable, then this Lease shall continue in full force and effect for the reduced area. The Rent shall be reduced consistent with the proportional reduction in the area rented and shall be effective on the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises and Tenant shall make no claim for the value of its leasehold.

#### **14. INSURANCE & INDEMNIFICATION.**

**14.1 Indemnification / Hold Harmless.** Tenant shall defend, indemnify, and hold harmless the Landlord, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Tenant's use of Premises, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted, or suffered by Tenant in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the Landlord. This provision (and any other indemnification provision in this Lease) survives termination of the lease, regardless of reason for termination.

**14.2 Insurance.** The Tenant shall procure and maintain for the duration of the Lease, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Tenant's operation and use of the leased Premises. Tenant shall further procure and maintain for the duration of the Lease insurance for Tenant's own personal property.

**14.2.1 No Limitation.** Tenant's maintenance of insurance as required by this Lease shall not be construed to limit the liability of the Tenant to the coverage provided by such insurance, or otherwise limit the Landlord's recourse to any remedy available at law or in equity.

**14.2.2 Minimum Scope of Insurance.** Tenant shall obtain insurance of the types described below:

- a. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01, or on a substitute form providing equivalent coverage, and shall cover premises and contractual liability. The Landlord shall be named as an insured on Tenant's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.
- b. Property insurance shall be written on an all risk basis.

**14.2.3 Minimum Amounts of Insurance.** Tenant shall maintain the following insurance limits:

- a. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- b. Property insurance shall be written covering the full value of Tenant's property and improvements with no coinsurance provisions.

**14.3 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

- a. The Tenant's insurance coverage shall be primary insurance as respect the Landlord. Any Insurance, self-insurance, or insurance pool coverage maintained by the Landlord shall be excess of the Tenant's insurance and shall not contribute with it.
- b. The Tenant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Landlord.

**14.4 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

**14.5 Verification of Coverage.** Tenant shall furnish the Landlord with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Tenant.

**14.6. Waiver of Subrogation.** Tenant and Landlord hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

**14.7 Landlord's Property Insurance.** The Landlord shall purchase and maintain during the term of the lease all-risk property insurance covering the Building for their full replacement value without any coinsurance provisions.

## **15. ASSIGNMENT AND SUBLETTING.**

Tenant shall not assign, sublet, mortgage, encumber or otherwise transfer any interest in this Lease (collectively referred to as a "Transfer") or any part of the Premises, without first obtaining Landlord's written consent which may be withheld for any reason, provided, however, that if the Tenant has a successor as the Court-Appointed Standing Chapter 13 Trustee, the Landlord's written consent shall not be unreasonably withheld, conditioned, or delayed. No Transfer shall relieve Tenant of any liability under this Lease notwithstanding Landlord's consent to such Transfer. Consent to any Transfer shall not operate as a waiver of the necessity for Landlord's consent to any subsequent transfer. In connection with each request for consent to a Transfer, Tenant shall pay the reasonable cost of processing same, including attorneys' fees, upon demand of Landlord up to a maximum of \$2,000. If Tenant is a partnership, limited liability company, corporation, or other entity, any transfer of this Lease by merger, consolidation, redemption or liquidation, or any change in the ownership of, or power to vote, which singularly

or collectively represents a majority of the beneficial interest in Tenant, shall constitute a Transfer under this Section.

As a condition to Landlord's approval, if given, any potential assignee or sub-lessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor, if required, for the payment of Rent and performance of all terms of this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases and assumption agreement or documents.

## 16. LIENS.

Tenant is not authorized to subject the Landlord's assets to any liens or claims of lien. Tenant shall keep the Premises free from any liens created by or through Tenant. Tenant shall indemnify and hold Landlord harmless from liability for any such liens including, without limitation, liens arising from any Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall, within 10 days after Landlord's demand, at Tenant's expense, either remove the lien or furnish to Landlord a bond in form and amount and issued by a surety satisfactory to Landlord, indemnifying Landlord and the Premises against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.

## 17. DEFAULT.

**17.1 Tenant's Default.** The following occurrences shall each constitute a default by Tenant (an "Event of Default):

**17.1.1 Failure to Pay.** Failure by Tenant to pay any sum, including Rent of any type, due under this Lease following three (3) days' notice from Landlord of the failure to pay.

**17.1.2 Vacation/Abandonment.** Vacation by Tenant of the Premises (defined as an absence for at least fifteen (15) consecutive days without prior notice to Landlord), or abandonment of the Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Premises shall not be subject to any notice or right to cure.

**17.1.3 Insolvency.** Tenant's insolvency or bankruptcy (whether voluntary or involuntary), or appointment of a receiver, assignee or other liquidating officer for Tenant's business; provided, however, that in the event of any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within sixty (60) days after its institution or commencement.

**17.1.4 Levy or Execution.** The taking of Tenant's interest in this Lease or the Premises, or any part thereof, by execution or after process of law directed against Tenant, or attachment of Tenant's interest in this Lease by any creditor of Tenant, if such attachment is not discharged within fifteen (15) days after being levied.

**17.1.5 Disruptive Uses/Emergency Response.** If the 911 calls for nonmedical reasons to Tenant or on behalf of Tenant's customers exceed four (4) per calendar year from the Ruston School at 5219 N. Shirley St., Ruston, WA, then such shall be considered an

“event of default.” The first year this occurs, the Tenant shall pay a penalty in the amount of \$500 per 911 call in excess of four (4). If this happens for a second year, then such occurrence shall entitle the Landlord to terminate the Lease under Section 18 or exercise any other applicable remedies hereunder.

**17.1.6 Other Non-Monetary Defaults.** The breach by Tenant of any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section or elsewhere in this Lease, which breach continues for a period of thirty (30) days after notice by Landlord to Tenant of the breach.

**17.1.7 Failure to Take Possession.** Failure by Tenant to take possession of the Premises on the Commencement Date or failure by Tenant to commence any Tenant’s Work in a timely fashion.

**17.2 Landlord’s Default.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event less than sixty (60) days after notice by Tenant to Landlord. If Landlord fails to commence cure any such default within the 60 days, Tenant’s sole remedy shall be to give notice of termination of this Lease, with unearned rent being prorated to the date of termination.

**17.3 Notice Periods.** Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.

## **18. REMEDIES.**

Landlord shall have the following remedies upon an Event of Default and material breach of the Lease. Landlord’s rights and remedies under this Lease shall be cumulative, and none shall exclude any other right or remedy allowed by law.

**18.1 Termination of Lease.** Landlord may terminate Tenant’s interest under the Lease by providing a notice of termination in writing to the address listed in Section 1.8 above. The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount equal to the Rent and other sums that would have been owing by Tenant under this Lease for the balance of the Lease term. Landlord shall be entitled to either collect damages from Tenant monthly on the days on which rent or other amounts would have been payable under the Lease, or alternatively, Landlord may accelerate Tenant’s obligations under the Lease and recover from Tenant: (i) unpaid rent which had been earned at the time of termination; (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided; (iii) the amount by which the unpaid rent for the balance of the term of the Lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant’s failure to perform its obligations under the Lease, or which in the ordinary course would be likely to result from the Event of Default.

**18.2 Re-Entry and Re-letting.** Upon Notice of Default as described in Section 17 above, Landlord may, but is not required to, continue this Lease in full force and effect and without demand or notice, re-enter and take possession of the Premises or any part thereof, expel the Tenant from the Premises and anyone claiming through or under the Tenant, and remove the

personal property of either. Tenant will pay Landlord the Rent and other sums which would be payable under this Lease if repossession had not occurred.

**18.3 Waiver of Redemption Rights.** Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Premises or to have a continuance of this Lease for the Lease term or any extension thereof.

**18.4 Nonpayment of Additional Rent, Penalties or Interest.** All costs which Tenant is obligated to pay to Landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of Rent, and Landlord shall have the same rights it has with respect to nonpayment of Rent.

**18.5 Failure to Remove Property.** If Tenant fails to remove any of its property from the Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent.

## **19. NON-WAIVER.**

Landlord's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of Tenant. The acceptance by Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any previous breach by Tenant.

## **20. HOLDOVER.**

If Tenant shall, without the written consent of Landlord, remain in possession of the Premises and fail to return them to Landlord after the expiration or termination of the term, the tenancy shall be a holdover tenancy and shall be on a month-to-month basis, which may be terminated according to Washington law. During such tenancy, Tenant agrees to pay to Landlord 150% of the rate of rental last payable under this Lease, unless a different rate is agreed upon by Landlord. All other terms of the Lease shall remain in effect. Tenant acknowledges and agrees that this Section does not grant any right to Tenant to holdover, and that Tenant may also be liable to Landlord for any and all damages or expenses which landlord may have to incur as a result of Tenant's holdover.

## **21. NOTICES.**

All notices under this lease shall be in writing and effective either when delivered in person or via overnight courier to the other party or three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section 1. The addresses for notices and payment of

rent set forth in Section 1 may be modified by either party only by written notice delivered in conformance with this Section.

## **22. COSTS AND ATTORNEYS' FEES.**

If Tenant or Landlord engage the services of an attorney to collect monies due or to bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or other payments, or possession of the Premises, the losing party shall pay the prevailing party its reasonable attorneys' fees and costs in such action, whether in mediation or arbitration, at trial, on appeal, and in any bankruptcy proceeding.

## **23. TRANSFER OF LANDLORD'S INTEREST.**

This Lease shall be assignable by Landlord without the consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for collateral purposes only, upon the assumption of this Lease by the transferee, Landlord shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, including any liability for any retained security deposit or prepaid rent, for which the transferee shall be liable, and Tenant shall attorn to the transferee. This section does not diminish or infringe upon Landlord's right to terminate upon acceptance of an offer to purchase the property in accordance with Section 3.3.

## **24. LANDLORD'S LIABILITY.**

Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord but are made and intended for the purpose of binding only the Landlord's interest in the Premises, as the same may from time to time be encumbered. In no event shall Landlord or its elected officials, appointed officials, employees, contractors or volunteers, as the case may be, ever be personally liable hereunder.

## **25. HAZARDOUS MATERIAL.**

As used herein, the term "Hazardous Material" means any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States Government, due to its potential harm to the health, safety or welfare of humans or the environment. Landlord represents and warrants to Tenant that, to Landlord's knowledge without duty of investigation, there is no Hazardous Material on, in, or under the Premises as of the Commencement Date except as may otherwise have been disclosed to Tenant in writing before the execution of this Lease. If there is any Hazardous Material on, in, or under the Premises as of the Commencement Date which has been or thereafter becomes unlawfully released through no fault of Tenant, then Landlord shall indemnify, defend and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including without limitation sums paid in settlement of claims. Attorneys' fees, consultant fees and expert fees, incurred or suffered by Tenant either during or after the Lease term as the result of such contamination. Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about or disposed of on the Premises by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, except with Landlord's prior consent and

then only upon strict compliance with all applicable federal, state and local laws, regulations, codes and ordinances. If Tenant breaches the obligations stated in the preceding sentence, 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 the value of the Premises; damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, or elsewhere; damages arising from any adverse impact on marketing of space at the Premises; and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees incurred or suffered by Landlord either during or after the Lease term.

These indemnifications by Landlord and Tenant include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, whether or not required by any federal, state or local governmental agency or political subdivision, because of Hazardous Material present in the Premises, or in soil or ground water on or under the Premises. Tenant shall immediately notify Landlord of any inquiry, investigation or notice that Tenant may receive from any third party regarding the actual or suspected presence of Hazardous Material on the Premises.

Without limiting the foregoing, if the presence of any Hazardous Material brought upon, kept or used in or about the Premises by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, results in any unlawful release of any Hazardous Materials on the Premises or any other property, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises or any other property to the condition existing prior to the release of any such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval may be withheld at Landlord's sole discretion. The provisions of this Section shall survive expiration or termination of this Lease.

## **26. QUIET ENJOYMENT.**

So long as Tenant pays the Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.

## **27. MERGER.**

The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing sub-tenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such sub-tenancies.

## **28. SECURITY DEPOSIT.**

Upon execution of this Lease, Tenant shall deliver to Landlord the security deposit specified in Section 1 above. Landlord's obligations with respect to the security deposit are those of a debtor and not of a trustee, and Landlord may commingle the security deposit with its other funds. If Tenant breaches any covenant or condition of this Lease, including but not limited to the payment of Rent, Landlord may apply all or any part of the security deposit to the payment of any sum in default and any damage suffered by Landlord as a result of Tenant's breach. Tenant acknowledges, however, that the security deposit shall not be considered as a measure of Tenant's damages in case of default by Tenant, and any payment to Landlord from the security

deposit shall not be construed as a payment of liquidated damages for Tenant's default. If Landlord applies the security deposit as contemplated by this Section, Tenant shall, within five (5) days after written demand therefor by Landlord, deposit with Landlord the amount so applied. If Tenant complies with all of the covenants and conditions of this Lease throughout the Lease term, the security deposit shall be repaid to Tenant without interest within thirty (30) days after the surrender of the Premises by Tenant in the condition required by Section 9 of this Lease.

## **29. GENERAL.**

**29.1 Heirs and Assigns.** This Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.

**29.2 Brokers' Fees.** Landlord agrees to a collective brokerage commission of five percent (5%) of the monthly base rental for the first term (36 months) of the lease term which amounts to \$5,291.30 such commission to be paid to Theron Meier of Neil Walter Company. No additional commissions are due for any extension of this Agreement. No other commissions are due to any party on this Lease.

**29.3 Entire Agreement.** This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Premises. No prior or contemporaneous agreements or understandings pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended to except in writing signed by Landlord and Tenant

**29.4 Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.

**29.5. Force Majeure.** Time periods for either Party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the Party's performance is prevented due to circumstances beyond such Party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife. Provided, however, that notice of the event creating force majeure shall be provided to the other Party within thirty (30) days of the start of such occurrence or such claim shall be waived.

**29.6 Governing Law; Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of Washington. The jurisdiction and venue for any proceeding shall be in Pierce County Superior Court, Washington.

**29.7 Memorandum of Lease.** Neither this Lease nor any memorandum or 'short form" thereof shall be recorded without Landlord's prior consent

**29.8 Submission of Lease Form Not an Offer.** One Party's submission of this Lease to the other for review shall not constitute an offer to lease the Premises. This Lease shall not become effective and binding upon Landlord and Tenant until it has been ratified by the City Council of the City of Ruston and fully signed by both Parties.

**29.9 No Light, Air or View Easement.** Tenant has not been granted an easement or other right for light, air or view to or from the Premises. Any diminution or shutting off of light, air or view



by any structure which may be erected on or adjacent to the Premises shall in no way effect this lease or the obligations of Tenant hereunder or impose any liability on Landlord.

**29.10 Authority of Parties.** Each Party signing this Lease represents and warrants to the other that it has the authority to enter into this Lease, that the execution and delivery of this Lease has been duly authorized, and that upon such execution and delivery, this Lease shall be binding upon and enforceable against the party on signing. Landlord acknowledges that Michael G. Malaier executes this Lease, on behalf of Tenant, solely in his capacity as Standing Chapter 13 Trustee, and not in his individual capacity.

**29.11 Time.** "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business in the state where the Premises are situated. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Lease.

**29.12 Limitation on Liability.** Landlord agrees that Michael G. Malaier is entering this Lease solely in his capacity as Chapter 13 Standing Trustee, and that he shall not be individually liable for Tenant's obligations under this Lease.

### **30. OPTION TO LEASE ADDITIONAL SPACE.**

Tenant is interested in expanding the space leased in the Building and has expressed interest in leasing Suites B05, B06, B03 and B04 if they become available in the future. Landlord agrees that should those spaces become available prior to commencement of this Lease or during the term of this Lease, that Landlord will offer such space to Tenant at least fifteen (15) days prior to advertising it to the market or listing it with a broker. Tenant shall have those 15 days to notify Landlord that Tenant would like to commence negotiations with Landlord for the additional space. If Tenant exercises this option, then the Parties will discuss the terms of such additional leased space. Assuming that Landlord and Tenant agree that Tenant may rent the additional space, Tenant will be required to enter into a new lease agreement or an amendment of this Agreement for such additional space on terms and conditions agreed to by the Parties at that time. In such case, no broker's fees shall be paid by Landlord and Tenant shall pay the then-applicable or market rate of rent for the additional space, including applicable NNN and leasehold tax. Apart from providing Tenant with 15 days' advanced notice of the availability of the space, Landlord is under no obligation to rent the additional space to Tenant and Tenant is under no obligation to rent the additional space from Landlord.

### **31. EXHIBITS AND RIDERS.**

The following exhibits and riders are made a part of this Lease, and the terms thereof shall control over any inconsistent provision in the sections of this Lease:

**Exhibit A** – Drawing of the Premises, with Tenant's lease areas shown.

**Exhibit B** – Drawing of Tenant's Space

**Exhibit C** – Drawing of Common Areas, Lower Level

**Exhibit D** – Drawing of Common Areas, Second Floor

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands the date first above written.

**LANDLORD: CITY OF RUSTON**

**TENANT: THE OFFICE OF THE CHAPTER 13  
STANDING TRUSTEE, W.D. WASHINGTON,  
TACOMA DIVISION**

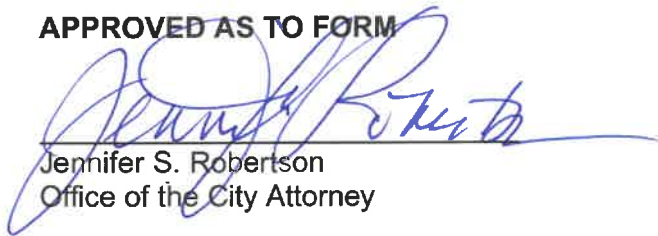
\_\_\_\_\_  
By: Bruce Hopkins  
Its: Mayor

  
By: Michael G. Malaier *Ch. 13 Trustee*  
Title: Chapter 13 Standing Trustee

**ATTEST**

\_\_\_\_\_  
Judy Grams, City Clerk

**APPROVED AS TO FORM**

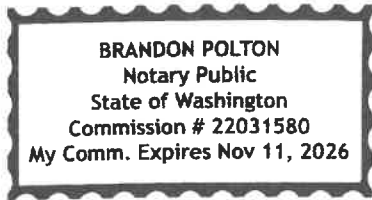
  
Jennifer S. Robertson  
Office of the City Attorney

TENANT'S NOTARY BLOCK

STATE OF WASHINGTON )  
 ) ss.  
County of Pierce )

On this day before me personally appeared to me to be **Michael G. Malaier** as Chapter 13 Standing Trustee who executed the within and foregoing instrument, and acknowledged said instrument to be his free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN under my hand and official seal this 2nd day of June, 2023.



Brandon Polton  
Printed Name: Brandon Polton  
NOTARY PUBLIC in and for the State  
of Washington, residing at Tucuman.  
My Commission Expires: Nov 11, 2026.

**LANDLORD'S NOTARY BLOCK**

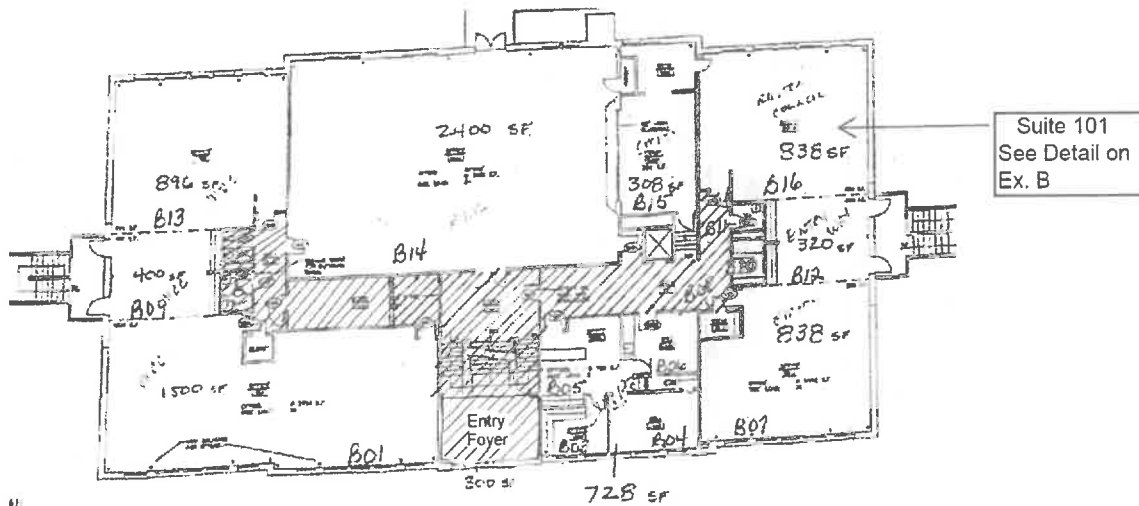
STATE OF WASHINGTON )  
 ) ss.  
County of Pierce )

On this day before me personally appeared **Bruce Hopkins**, to me known to be the Mayor of the **City of Ruston**, Washington, and who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

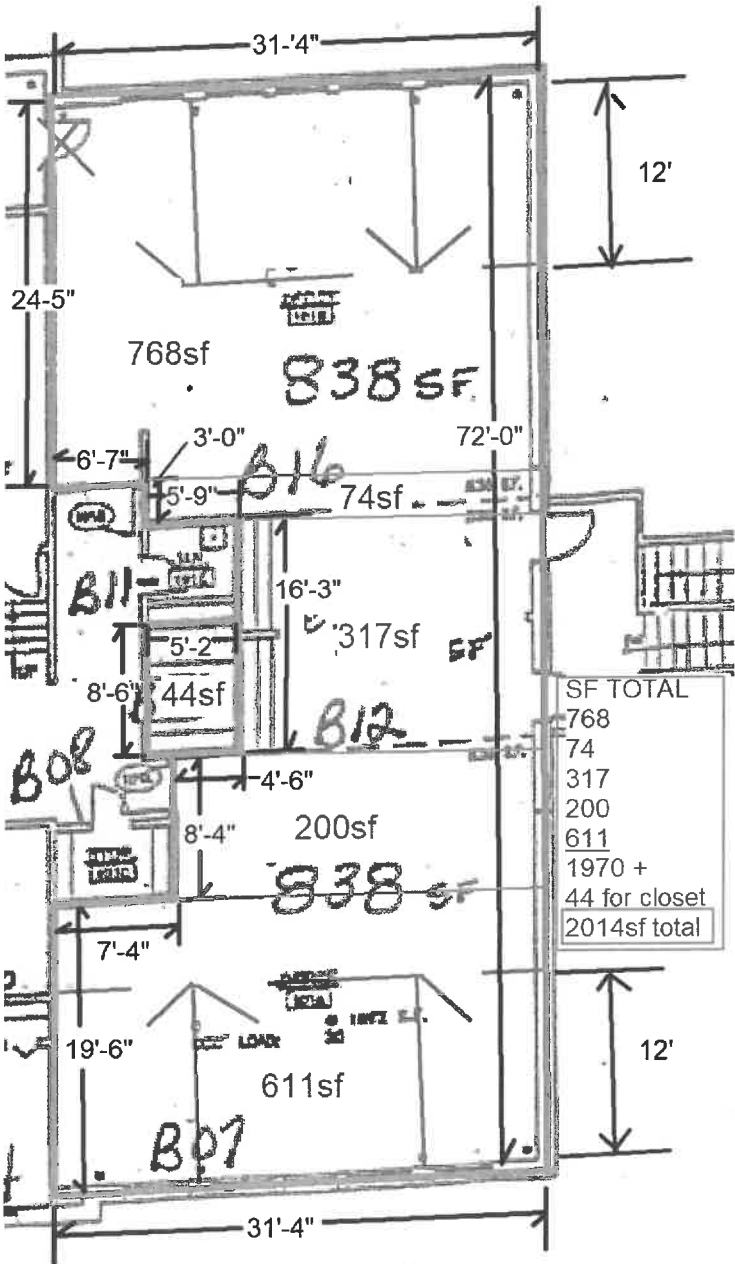
**GIVEN** under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

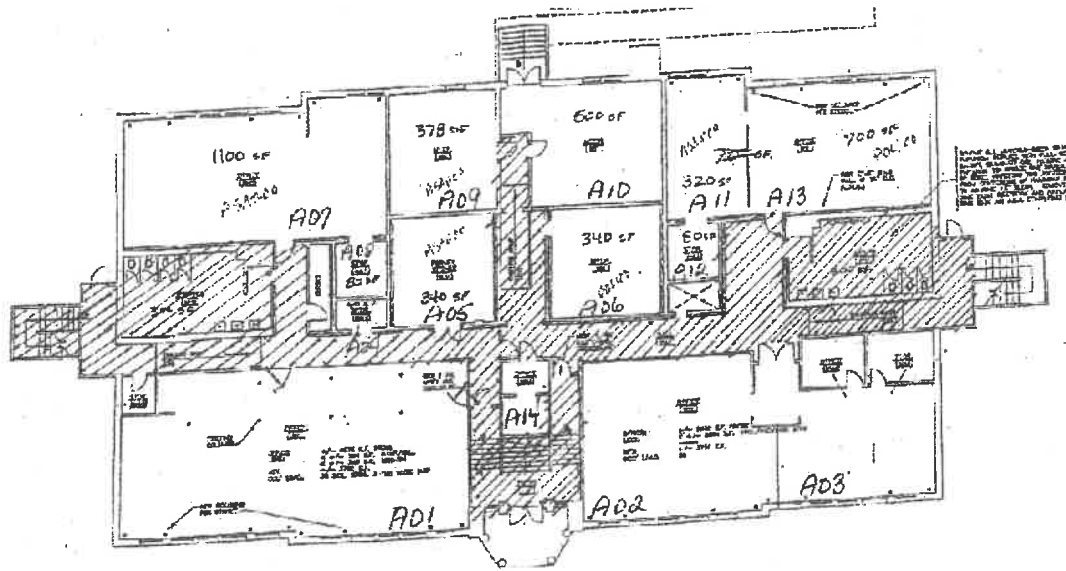
**Exhibit A – Drawing of the Premises, with Tenant's lease areas shown.**



# Exhibit B – Drawing of Tenant's Space



# Exhibit C – Drawing of Common Areas, Lower Level



 = Common Area

Lower Level Common Area

# Exhibit D – Drawing of Common Areas, Second Floor

