

## **CONDITIONAL OPTION TO LEASE REAL PROPERTY**

**D.A. Arthur, Inc.**

This Agreement, executed this 4<sup>th</sup> day of January, 2022 between the CITY OF YAKIMA and the YAKIMA AIR TERMINAL - McALLISTER FIELD, a department of the City of Yakima, Washington, hereinafter referred to as "LESSOR" and D.A. Arthur, Inc., a corporation, hereinafter referred to as "LESSEE."

### **WITNESSETH:**

**WHEREAS**, LESSOR is a municipal corporation which owns and operates the Yakima Air Terminal - McAllister Field, hereinafter referred to as "Airport"; and

**WHEREAS**, LESSOR has property available for development as provided by this Agreement, and LESSEE desires an option to develop such property;

**NOW THEREFORE**, in consideration of the mutual promises contained herein and the benefit to be derived by each party, the parties agree as follows:

#### **1. PREMISES:**

LESSOR hereby grants to LESSEE an option to lease 58,890 square feet of raw land as that property is generally depicted on the drawing marked Exhibit "A", Parcel "A", which is attached hereto and by this reference made a part hereof, together with the right of ingress to and egress from the premises over and across common public access ways, herein referred to as the "Option Property." All of said Option Property is located within Yakima County, Washington, being a part of Yakima Air Terminal-McAllister Field.

#### **2. TIME AND MANNER OF EXERCISE:**

LESSEE may exercise the Option set forth in Section 1 as to all or any portion of the Option Property at any time during the term of this Option, subject to the terms and conditions set forth elsewhere herein, including the potential that the Option may lapse in the event LESSEE declines to exercise it during said term or upon receipt by LESSOR of a another prospective lessee's written offer to lease some or all of the property which constitutes Option Property.

LESSEE shall exercise the Lease Option provided herein by giving LESSOR written notice of LESSEE's intent to exercise the same, which notice shall state with particularity that portion of the Option Property for which the Option to lease is being exercised, including a legal description and survey thereof, accompanied by a drawing (to scale) depicting the desired leasehold and how it is situated relative to the remainder of the Option Property.

After LESSEE's initial exercise of the option right provided herein as to a portion of the Option Property, it shall be a condition of future exercise thereof that "target" portions of the Option Property must be contiguous to parcel(s) previously leased hereunder, such that the remainder of the Option Property, if not leased as permitted hereunder, shall be able to be utilized by LESSOR or other parties in a commercially-reasonable fashion. "Checkerboarding" shall not be permitted.

LESSOR and LESSEE shall execute a Lease Agreement generally in the form attached (Exhibit "B") within forty-five (45) calendar days after the exercise of the Option as set forth in this Section. If a Lease Agreement is not exercised within forty-five (45) calendar days, this Lease Option shall terminate and the property shall become subject to LESSOR leasing the subject property to other parties.

In the event LESSOR receives a third party request to lease a portion of or all the Option Property during the term of the Lease Option, LESSOR shall provide written notice of said third party request to LESSEE. LESSEE shall have fifteen (15) days from the date of said notice to enter into a lease agreement with LESSOR that includes at least the portion of property that is subject to the third party request. If LESSEE fails to enter into said lease agreement within the fifteen day option acceptance period the option opportunity shall terminate with respect to that portion of the Lease Option property that is subject to the request. Providing that LESSEE enters into a lease for at least that portion of the Lease Option property subject to the third party request within fifteen days of the notice date, LESSEE shall be entitled to the lease of said property in accordance with the terms of this Agreement.

### **3. TERM:**

The term of this option shall be for a period of two (2) years, beginning on January 1, 2022 and ending on December 31, 2024. This Option shall automatically be extended for an additional one (1) year term, ending December 31, 2025, so long as LESSEE has exercised its option to lease a portion of the Lease Option property during the initial two year term. If LESSEE fails to lease any portion of the Lease Option property during the initial term, this Lease Option shall automatically expire at the end of the initial term.

**4. CONSIDERATION:**

**A.** LESSEE promises and agrees to pay consideration to LESSOR in the amount of one thousand one hundred eighty-three dollars and ninety-one cents (\$1,183.91) per year (\$98.66) per month for the benefit of this Lease Option, payable in advance on the first day of each month during the initial term and any extensions hereto. Payments shall be made to the City of Yakima, Accounts Receivable, 129 N. 2<sup>nd</sup> St, Yakima, WA 98901.

This option shall automatically expire thirty (30) days after the failure of LESSEE to pay in advance any monthly option payment, despite ability of LESSOR to apply the deposit against said amount due.

**B.** In the event any payment is not received by LESSOR by the first calendar day of the month in which due, interest will accrue upon each such payment at the rate of 12% per month until paid in full, which LESSEE agrees to pay in addition to the monthly option sum due.

**C.** In addition to the rent payable above, LESSEE promises and agrees to pay, as the same become due and payable, all licenses, fees and taxes, including but not limited to the leasehold excise, required to be paid by LESSEE by reason of this Lease and by reason of LESSEE's use and occupancy of the leased premises and by reason of LESSEE's construction or ownership of improvements to the leased premises. LESSEE shall neither suffer nor permit the attachment of any lien or other encumbrance on the leased premises by reason of LESSEE's occupancy thereof. LESSEE agrees to indemnify LESSOR and shall hold LESSOR harmless from any such taxes and liens.

**5. DEPOSIT:**

Upon the commencement date of this Lease Option, LESSEE shall deposit with LESSOR a sum equal to one (1) month's option price as a guarantee of LESSEE's performance of this Option and the timely payment of the Option price provided for herein; and in the event LESSEE shall fail to pay the Option price as provided herein, or otherwise breaches this Option, then the Airport Director may apply such deposit, or any part thereof as may be necessary, to the payment of the delinquent Lease Option payment or to the payment of damages for such breach.

**6. SIGNS:**

No signs or other advertising matter or devices shall be used or displayed in or about the Option Property without the prior written approval of the Airport Director.

**7. ASSIGNMENT:**

LESSEE shall have the right to assign its interest in this Option to an affiliated entity owned or controlled by LESSEE or in a merger in which LESSEE is the surviving entity without LESSEE's consent, provided that LESSEE shall give LESSOR written notice of such assignment. Except as permitted in this paragraph, LESSEE shall not assign its rights in this Option without the prior written consent of LESSOR. LESSOR may withhold consent based upon the financial condition of the proposed assignee and/or material change in proposed use of the Option Property. Any assignee of this Option and/or LESSEE's rights hereunder shall assume LESSEE's obligations under this Option. Such assignment shall be in conformance with all Airport, local, state and federal laws, ordinances, rules, regulations and policies and the assignee shall comply with all laws, ordinances, rules, regulations and policies applicable to the use and operation of Airport property, facilities and operations as those laws, ordinances, rules, regulations and policies now exist or may hereafter become effective. Consent to assignment by LESSOR shall not be construed to be consent to any subsequent assignment.

**8. MISCELLANEOUS PROVISIONS:**

**A.** LESSOR may further develop or improve Airport property and facilities, excluding property under lease or lease option to LESSEE, regardless of the desire or views of LESSEE regarding any such development or improvement, and without interference or hindrance on the part of LESSEE and without liability to LESSEE, provided the operations of the LESSEE are not unreasonably interrupted.

**B.** LESSOR reserves the right, but shall not be obligated to LESSEE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in that regard.

**C.** After advance written notice to LESSEE, LESSOR reserves the right to take any action necessary or desirable by LESSOR to protect the operations of the Airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of the Airport Director, would limit the usefulness of the Airport or constitute a hazard to aircraft.

LESSEE shall limit the building area to that portion of the Option Property as defined by the Airport Layout Plan and to a height not to exceed thirty five (35) feet unless approved by Airport Director and the Federal Aviation Administration.

**D.** During time of war or national emergency, LESSOR shall have the right to lease the landing area or any part thereof to the United States of America for military use, and, if any such lease is executed, the provisions of this Option shall be suspended insofar as they are inconsistent with the provisions of the lease agreement with the

United States of America.

E. This Option shall be subordinate to the provisions of any existing or future agreement between LESSOR and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition to the expenditure of federal funds for the development of the Airport.

F. If the Option property or any interest therein is taken as a result of the exercise of the right of eminent domain, this Option shall terminate as to such portion as may be taken. If the portion taken does not feasibly permit the continuation of the operation of the facility by LESSEE, LESSEE shall have the right to terminate this Option. Such termination shall be effective as of the date LESSEE's operations cease. LESSEE shall be entitled to a portion of the award representing its interest in the Option Premises. LESSOR shall be entitled to the remainder of the award.

**9. TERMINATION AND FORFEITURE:**

The failure by LESSEE to pay the Option Price in the amounts and at the times specified herein, or the failure by LESSEE to otherwise comply with any term, provision or condition of this Option, shall constitute grounds for termination of this Option and forfeiture of all consideration paid by LESSEE to the time of termination.

This Option and tenancy shall terminate and consideration paid shall be forfeited for cause as specified above on written notice by LESSOR to LESSEE stating the amount of consideration in default or otherwise stating accurately the manner in which LESSEE fails or has failed to comply with this Option. LESSEE shall make full payment or otherwise comply with this Option in the manner specified in the notice within thirty (30) days (except three (3) days if default is due to failure to pay monetary sums) from LESSEE's receipt of such notice, otherwise this Option shall be terminated and all consideration and deposits shall be forfeited. Such notice shall be given in writing and served on LESSEE by personal delivery or mailed by certified mail with return receipt requested addressed to LESSEE at its address stated below LESSEE's signature to this Option or such other address as the parties may advise each other in writing. At any time following termination, for any reason, LESSEE covenants that he, and his successors and assigns, will, if requested by LESSOR, execute a disclaimer of interest relative to all of the Option Property not the object of an executed lease agreement, in order to ensure clear title to LESSOR therein.

**10. VENUE, ATTORNEY FEES:**

In the event of litigation to enforce the rights and obligations hereunder, venue shall lie in a court of competent jurisdiction in Yakima County, Washington and the prevailing party shall be entitled to its reasonable attorney fees in addition to court costs.



## **11. NON-DISCRIMINATION CLAUSE:**

To the extent required by law, LESSEE, for itself, its personal representative, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

**A.** No person, on the grounds of race, color, religion, sex, age, marital status, handicap or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in LESSEE's personnel policies and practices or in the use or operation of LESSEE's services or facilities.

**B.** LESSEE agrees that in the construction of any improvements on, over or under Airport land and the furnishing of services thereon, no person, on the grounds of race, color, religion, sex, marital status, handicap, age or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

**C.** LESSEE shall use the Option Property in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

**D.** It is the policy of the Department of Transportation that minority business enterprise as defined in 49 CFR Part 23, i.e., firms owned and controlled by minorities; firms owned and controlled by women and firms owned and controlled by financially disadvantaged persons; shall have the maximum opportunity to participate in the performance of Options as defined in 49 CFR Section 23.5. Consequently, this Option is subject to 49 CFR Part 23 as applicable.

LESSEE hereby assures that no person shall be excluded from participation in, denied the benefits of or otherwise discriminated against in connection with the award and performance of any contract, including leases and options, covered by 49 CFR Part 23 on the grounds of race, color, national origin or sex.

LESSEE hereby assures that it will include the above clauses in all sub-leases and cause sub-lessees to similarly include clauses in further sub-leases.

## **12. INTEGRATION:**

This document embodies the entire agreement between the parties with respect to the subject matter herein contained. No amendments or modifications hereof shall be enforceable unless in writing, signed by the party to be charged.

## **13. NOTICE:**

All notices allowed or required hereunder shall be effective if given in writing and served by personal delivery or delivered by certified mail, return receipt requested, at the address shown below unless a different address is designated by a party in writing:

If to LESSOR: **YAKIMA AIR TERMINAL - McALLISTER FIELD**  
2406 West Washington Avenue, Suite B  
Yakima, Washington 98903  
Phone: (509) 575-6149  
Fax: (509) 575-6185

If to LESSEE: **DA Arthur, Inc.**  
220 W Yakima Ave  
Yakima, Washington 98903  
Phone: (509) 952-7773

#### **14. AIRPORT SECURITY AND ACCESS CONTROL**

**A. Access to Non-Movement Area/Ingress and Egress.** LESSEE is granted only that vehicular and/or pedestrian access which is reasonably necessary to allow LESSEE access to the hangar ramp/apron once LESSEE is on Airport property. Vehicular access to and egress from Airport by the LESSEE shall be made into and out of only Airport Gate No. 2412, vehicle gate.

**B.** Vehicular or pedestrian access to any and/or all movement areas, whether active or inactive, is expressly prohibited by this Agreement. For the purpose of this Agreement, a movement area is any runway or taxiway utilized for taxiing, takeoffs, and landings of aircraft, exclusive of aircraft loading ramps, aircraft parking areas, and aircraft aprons and tie down spaces.

**C.** There will be one Authorized Signatory for airport security, airport ID, and access control for the entire lease area.

**D. Access Identification (ID).** Airport Administration will assign one (1) Yakima Air Terminal (YAT) identification card to the LESSEE's Authorized Signatory only. The cost of the badge is dependent on costs associated with the requisite and mandated background check.

**E.** A request by the LESSEE for an additional card(s) shall be made in writing stating through the Authorized Signatory providing the reason(s) or rationale why an additional card(s) is/are required. Any request for an additional card may or may not be approved by the Airport Director at his/her sole discretion. The minimum information required for the issuance of any additional card will include the name, local address, and contact phone number of the individual. The same fees outlined above are applicable for any additional badge. If any card is lost, stolen, or made

unusable for any reason, the LESSEE will pay the applicable fine and costs associated with the issuance of a new or replacement badge in effect at that time.

F. The control and monitoring of access is paramount to Airport security. Accordingly, only authorized users with access to the Airport granted pursuant to this Agreement may hold an ID card to access the Airport. Lost or stolen Airport-issued access cards shall be reported immediately by any means possible to Airport Administration, whereupon the loss or theft will be recorded, and the card will be made "inactive". "Reported immediately" means within twenty-four (24) hours or the next business day, not including weekends or holidays. A new card may then be issued by Airport Administration bearing a number different from the one lost or stolen.

G. Fraud and Intentional Falsification of Records.

(1) No person may make any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium.

(2) No person may make any fraudulent or intentionally false entry in any record or report that is kept, made or used to show compliance or exercise any privileges.

H. Security Responsibilities. No person may:

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure.

(2) Enter, or be present within a secured area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in such areas.

(3) Use, allow to be used, or cause to be used, any Airport-issued or Airport-approved identification medium that authorizes the access, presence, or movement of persons or vehicles in secured areas in any other manner than that for which it was used by the appropriate authority.

I. "Non-Movement Area Certification of Training – Application for Permit to Operate Ground Vehicles at the Yakima Air Terminal". Any person given vehicular access to the Airport shall be required to read, apply for and pass the test associated with the current edition of the Airport Driving Rules & Regulations document provided by the Airport to qualify for access to the Airport. A copy of the application and test will be kept in the LESSEE's File.



**J. Airport Safety and Security.** In the interest of Airport safety and security, in the event LESSEE fails to abide by this Agreement, the Airport Director of YAT is authorized by the Airport's Governing Authority, to immediately declare this Lease void, to cancel the same without any legal proceeding and take possession of the tie down.

**15. INDEMNIFICATION**

LESSEE agrees to release, indemnify, defend and hold harmless the LESSOR, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this Agreement or the acts, failures to act, errors or omissions of the LESSEE, or any of LESSEE'S agents or subcontractors, in performance of this Agreement, except for claims caused by the LESSOR'S sole negligence. The LESSOR'S right to indemnification includes attorney's fees and costs associated with establishing the right to indemnification hereunder in favor of the LESSOR.

The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

**16. INTEGRATION:**

This document embodies the entire lease option between the parties with respect to the subject matter herein contained. No amendments or modifications hereof shall be enforceable unless in writing, signed by the party to be charged.

**17. VENUE, ATTORNEY FEES:**

In the event of litigation to enforce the rights and obligations hereunder, venue shall lie in a court of competent jurisdiction in Yakima County, Washington. Each party shall pay its own attorney's fees and costs unless otherwise outlined in this Lease.

**28. WAIVER:**

Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed a waiver of any other right or power.

**29. MODIFICATION OR AMENDMENT:**

This Agreement shall not be amended or modified unless the amendment or modification is in writing and agreed to and signed by both parties.

**20. SEVERABILITY:**

Should any portion of this Agreement be found invalid by operation of law or by administrative or judicial decision, the terms and enforceability of the balance of this Agreement shall not be affected thereby, provided that the absence of the unenforceable provision does not render the performance of the remainder of the Agreement impossible.

Time is of the essence of this entire Option.

**LESSOR:**

**CITY OF YAKIMA**  
**YAKIMA AIR TERMINAL - McALLISTER FIELD**  
2406 West Washington Avenue, Suite B  
Yakima, Washington 98903  
(509) 575-6149  
(509) 575-6185 (fax)

\_\_\_\_\_  
Bob Harrison, City Manager


STATE OF WASHINGTON  
County of Yakima

I certify that I know or have satisfactory evidence that Bob Harrison signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the City Manager to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Notary Public  
Appointment Expires \_\_\_\_\_

**LESSEE:**

DA ARTHUR, INC.  
220 W. Yakima Ave  
Yakima, WA 98902  
Phone: (509) 952-7773

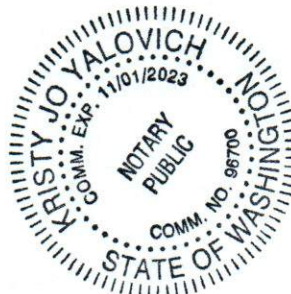
  
DA ARTHUR, INC.  
DANIEL A. DAY

12/1/21  
Date

STATE OF WASHINGTON  
County of Yakima

I certify that I know or have satisfactory evidence that Danny Day signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Owner of DA Arthur, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date 12-1-21  
By: Kristy Galovich  
Notary Public  
Appointment Expires 11-1-2023





# EXHIBIT A



**EXHIBIT "B"**

**CONDITIONAL OPTION TO LEASE REAL PROPERTY**

**TENANT DEVELOPMENT, LLC**

**EXHIBIT B – REAL PROPERTY AGREEMENT**

**EFFECTIVE DATE:** \_\_\_\_\_, 20\_\_

This Agreement, executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the THE CITY OF YAKIMA and the YAKIMA AIR TERMINAL - McALLISTER FIELD, an department of the City of Yakima, Washington, hereinafter referred to as "LESSOR" and D.A. Arthur, Inc., a corporation, hereinafter referred to as "LESSEE."

**WITNESSETH:**

**WHEREAS**, LESSOR owns and operates the Yakima Air Terminal - McAllister Field, hereinafter referred to as "Airport," and

**WHEREAS**, LESSOR has approved property available for lease as provided by this Lease, and LESSEE desires to occupy and use such property in accordance with this Lease,

**NOW THEREFORE**, in consideration of the mutual promises contained herein and the benefit to be derived by each party, the parties agree as follows:

**1. PREMISES:**

LESSOR does hereby lease and let unto LESSEE, and LESSEE does hereby lease and take from LESSOR, approximately \_\_\_\_\_ sq ft of land in the City of Yakima, Yakima County, Washington, as that property is depicted on the drawing marked Exhibit "A", attached hereto and by this reference made a part hereof, together with the right of ingress to and egress from the leased premises and the public use areas/facilities used in connection therewith, over designated Airport property and roadways, subject to rules and regulations governing the use of the Airport and as the same may be promulgated by LESSOR from time to time. The LESSOR may, at any time hereafter, provide a legal description of the premises and such description shall become a part of this Lease.

**2. TERM:**

The tenancy created by this Lease shall commence on \_\_\_\_\_, 20\_\_\_\_, and continue for a period of forty (40) years, and terminate on \_\_\_\_\_, 20\_\_\_\_, unless otherwise terminated as provided for herein.

LESSEE shall have the option to extend the term by one ten (10) year period (to wit, \_\_\_\_\_, 20\_\_\_\_; provided that LESSEE delivers to LESSOR not less than three-hundred sixty-five (365) days or one (1) calendar year before the expiration of the original term written notification of its intent to extend the term.

**3. RENT:**

D. LESSEE promises and agrees to pay rent to LESSOR at the then current aviation land rate per square foot of property leased shown in Exhibit A for the leased premises, made in advance on or before the 10th day of each month. Payments shall be made to the City of Yakima, Accounts Receivable, 129 N. 2<sup>nd</sup> St, Yakima, WA 98901. Any rental payments/fees past due shall accrue a delinquency charge of twelve percent (12%) per annum.

B. The lease rental rate as provided for above shall be subject to review and modification annually on the anniversary of this Lease and shall be set at the then current Aviation Rate.

**4. DEPOSIT:**

Upon execution of this lease by both parties, LESSEE shall deposit with LESSOR the amount of one month's rent plus leasehold tax as a guarantee of LESSEE's performance of this Lease and the timely payment of the rental provided for herein; and in the event LESSEE shall fail to pay the rental as provided herein, or otherwise breach this Lease, then the Airport Director may apply such deposit, or any part thereof as may be necessary, to the payment of rental or to the payment of damages for such breach or pursue any other remedies provided herein. This deposit shall be adjusted from time to time to reflect adjustments in the rent and/or leasehold tax.

**5. TAXES AND LIENS:**

In addition to the rent payable above, LESSEE promises and agrees to pay, as the same become due and payable, all licenses, fees and taxes, including but not limited to the leasehold excise, required to be paid by LESSEE by reason of this Lease and by reason of LESSEE's use and occupancy of the leased premises and by reason of LESSEE's construction or ownership of improvements to the leased premises. LESSEE shall neither suffer nor permit the attachment of any lien or other encumbrance on the leased premises by reason of LESSEE's occupancy thereof. LESSEE agrees to indemnify LESSOR and shall hold LESSOR harmless from any such taxes and liens.

**6. USE:**

LESSEE agrees to use the leased premises only for an aeronautical oriented activity or for any other use allowed by the Master Plan and the zoning of the property by the appropriate jurisdiction as approved by the LESSOR. The use of the property for any other purpose shall be deemed a material breach of this Lease constituting grounds for its termination. This provision shall apply to any assignment of this Lease, whether voluntary or due to mortgage foreclosure or for any other reason. Failure of the assignee to comply with this Section shall be reasonable cause for LESSOR to withhold approval or consent to assignment.

**7. UTILITIES:**

LESSEE shall be responsible for all utility services including, but not limited to, power, natural gas, water, sewer, internet, telephone, and garbage.

**8. PREMISES CONDITION:**

LESSEE has made a full inspection of the premises, is fully aware of its condition except with respect to environmental conditions and accepts the premises on an "AS-IS" basis. LESSEE agrees to pay for any improvements, repairs and/or modifications necessary to the operation of LESSEE's business.

**9. MAINTENANCE:**

LESSEE agrees to keep and maintain the premises in at least as good a condition as the condition of the premises at the beginning of LESSEE's occupancy, normal wear and tear excepted. LESSEE further agrees that LESSEE shall be responsible to maintain all leased areas, buildings, trade fixtures and other improvements, existing and future, in an attractive and usable manner as determined by the Airport Director and consistent with other properties at the Airport. Maintenance shall include, but not be limited to weed control, garbage and debris removal, ash removal, painting, snow removal and pavement maintenance.

**10. SIGNS:**

LESSEE, at LESSEE's own expense, may erect a sign(s) of a type, number and location suitable to LESSOR. No signs or other advertising matter or devices shall be used or displayed in or about the leased premises or upon any portion of the Airport without the prior written approval of the Airport Director.

**11. IMPROVEMENTS:**

All buildings, trade fixtures and other improvements to the leased property by LESSEE shall conform to applicable rules, regulations and codes, and LESSEE



shall procure all building and other permits therefore. All buildings trade fixtures and other improvements shall be designed with a view toward aesthetic considerations and installation shall not commence until plans and specifications therefore have been submitted to and approved in writing by the Airport Director, which approval shall not be unreasonably withheld. Approval of LESSEE's improvements shall be deemed granted twenty (20) days after submission in writing to the Airport Director if no response has been received by LESSEE.

LESSOR makes no representation or guarantee as to the suitability of the leased area for construction of buildings, roads, ramps, etc., and is not responsible for the costs of excavation and/or removal of any object found either above or below ground level except for hazardous materials and archaeological artifacts existing prior to tenancy.

## **12. REVERSION OF IMPROVEMENTS:**

Upon termination of this lease for any reason LESSOR may, at its option, either accept ownership of the improvements constructed or installed on the Premises, except for trade fixtures, or require LESSEE to remove such improvements within sixty (60) days of such termination. Such removal shall include removing the foundation, utilities and other land improvements and restoring the land to grade level. LESSOR shall notify LESSEE of its intent within sixty (60) days of the cancellation or expiration.

Prior to the expiration of this Lease, LESSEE shall remove all such trade fixtures and repair any damage to the premises caused by removal of trade fixtures to the reasonable satisfaction of the Airport Director. Fixtures not removed within sixty (60) days after termination become the property of the LESSOR unless other arrangements have been previously approved in writing by the Airport Director.

LESSEE shall, as additional consideration for grant of this Lease, insure that all liens, security interest and other encumbrances against said improvements and structures except those created or suffered by LESSOR, whether consensual or involuntary, shall be paid, discharged or satisfied prior to time for reversion thereof to LESSOR; and, in any event, the parties acknowledge that LESSOR shall not, by virtue of termination of the leasehold interest nor reversion of the structures or other improvements, be liable for any debt or encumbrance associated therewith, whether now existing or hereafter incurred, levied or attached.

## **13. LESSOR'S OPTION TO PURCHASE:**

LESSOR shall have the right of first refusal on all improvements or structures on the demised premises as hereinafter set forth. If at any time during the term, LESSEE shall receive a bona fide offer from a third person for the purchase of any or all improvements or structures on the demised premises, which offer LESSEE shall desire to accept, LESSEE shall promptly deliver to LESSOR a copy of such offer

and LESSOR may, within thirty (30) days thereafter, elect to purchase the demised premises on the same terms as those set forth in such offer.

If LESSOR shall not accept such offer with the time herein specified therefor, said right of refusal shall cease to exist, but this lease shall continue otherwise on all the other terms, covenants, and conditions in this lease set forth. This right of refusal shall be inapplicable to a transfer, by way of sale, gift or device, including a trust, to or for a party related to a LESSEE, or to any transfer, in whole or in part, from one such related party to another, but shall apply to any subsequent transfer to a third person. For the purpose of this Article, if the then LESSEE shall be an individual, a related party shall include a spouse, lineal descendant or spouse of such descendant, ancestor or sibling (whether by the whole or half blood), a partnership or limited liability company of which such owner is a member, a joint ownership or ownership in common, which includes the then LESSEE, or a corporation, the majority of whose shares is owned by the LESSEE, or any one or more of the foregoing parties. If the then LESSEE shall be a corporation, a related party shall include an affiliate, subsidiary or parent corporation, a successor by merger or consolidation, or the holder or holders of the majority of the shares of such corporation.

#### **14. REGULATIONS:**

LESSEE agrees to comply with all applicable laws, ordinances, rules, regulations and policies of all governmental authorities having jurisdiction over the Airport, including policies adopted by LESSOR, as such laws, ordinances, rules, regulations and policies apply to the use and operation of Airport property, facilities and operations as those laws, ordinances, rules, regulations and policies now exist or may hereafter become effective. LESSEE further agrees to accept responsibility for not allowing unauthorized persons access to the Airport Operations Area (AOA).

#### **15. SUBLETTING:**

LESSEE shall not sublet any part of the premises without the prior written approval of LESSOR, such approval not to be unreasonably withheld. Subleases shall give preference to aeronautical activities and shall comply with all laws, ordinances, rules, regulations and policies applicable to the use and operation of Airport property, facilities and operations as those laws, ordinances, rules, regulations and policies now exist or may hereafter become effective. A consent to sub-lease by LESSOR shall not be construed to be a consent to any subsequent sub-lease. The LESSOR, in determining whether or not to approve a sub-lease, shall consider the extent of the aeronautical activities performed on the premises.

Any income to LESSEE derived from sub-leasing shall be distributed to LESSOR in accordance with its policy on SUB-LEASING INCOME in effect at the time of the final execution of this Lease.

According to the policy on SUB-LEASING INCOME in effect at the time of this Lease, there is no requirement to share sub-lease income because this Lease is for land only.

**16. ASSIGNMENT:**

LESSEE shall not assign this Lease without the prior written approval of LESSOR. Such assignment shall be in conformance with all applicable Airport Board, local, state and federal laws, ordinances, rules, regulations and policies. LESSEE shall give preference to aeronautical activities and all assignees shall comply with all laws, ordinances, rules, regulations and policies applicable to the use and operation of Airport property, facilities and operations as those laws, ordinances, rules, regulations and policies now exist or may hereafter become effective. A consent to assignment by LESSOR shall not be construed to be a consent to any subsequent assignment.

**17. MISCELLANEOUS PROVISIONS:**

A. The parties agree that LESSOR, through its Airport Director or other person authorized by the Airport Director, may enter upon the leased premises at any reasonable time to make such inspections as LESSOR may deem necessary to the proper enforcement of any term, provision or condition of this Lease. No such entry or inspection by LESSOR is required by this provision, and the failure of LESSOR to enter and make inspection shall not alter the relationship of the parties and their respective rights and duties provided by this Lease. LESSEE shall be granted the right of quiet enjoyment upon performance of all terms of this Lease.

B. LESSOR may further develop or improve Airport property and facilities, regardless of the desire or views of LESSEE regarding any such development or improvement, and without interference or hindrance on the part of LESSEE and without liability to LESSEE, provided the operations of the LESSEE are not unreasonably interrupted.

C. LESSOR reserves the right, but shall not be obligated to LESSEE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in that regard.

D. LESSOR reserves the right to take any action necessary or desirable by LESSOR to protect the operations of the Airport against obstruction, or any other activity interfering with the efficient operation of the Airport, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of the Airport Director, would limit the usefulness of the Airport or constitute a hazard to aircraft.

E. During time of war or national emergency, LESSOR shall have the right to lease

the landing area or any part thereof to the United States of America for military use, and, if any such lease is executed, the provisions of this Lease shall be suspended insofar as they are inconsistent with the provisions of the lease agreement with the United States of America.

**F.** This Lease shall be subordinate to the provisions of any existing or future agreement between LESSOR and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition to the expenditure of federal funds for the development of the Airport.

**G.** If the leased premises or any interest therein is taken as a result of the exercise of the right of eminent domain, this Lease shall terminate as to such portion as may be taken. If the portion taken does not feasibly permit the continuation of the LESSEE's operations, LESSEE shall have the right to terminate this Lease. Such termination shall be effective as of the date LESSEE's operations cease. LESSEE shall be entitled to a portion of the award representing its interest in the premises. LESSOR shall be entitled to the remainder of the award.

**18. INDEMNITY/DUTY TO DEFEND:**

**A.** At no expense to LESSOR, LESSEE shall defend against and indemnify fully and release and save harmless the City of Yakima (which includes the Yakima Air Terminal—McAllister Field) and its elected and appointed officials, employees and agents, from any and all liability, damages, suits, claims, actions, judgements or decrees, made against the City of Yakima, the Yakima Air Terminal - McAllister Field, and its elected and appointed officials, employees and agents, including all expenses incidental to the investigation and defense thereof, including reasonable attorney fees, based on or arising from the occupancy or use of the leased premises by LESSEE or as a result of LESSEE'S operations at the Airport or from any other act or omission of LESSEE, its servants, employees, agents, invitees, independent contractors or any other entity, person, firm or corporation acting on behalf of LESSEE or under its direction, whether such claim shall be by LESSEE or a third party; provided, however, that LESSEE shall not be liable for any injury, damage or loss occasioned solely by the sole negligence of LESSOR, its agents or employees. LESSOR shall give to LESSEE prompt and reasonable notice of any such claims or actions and LESSEE shall have the right to investigate, compromise and defend the same to the extent of its interest. The City's right to indemnification includes attorney's fees and costs associated with establishing the right to indemnification hereunder in favor of the City.

**B.** LESSOR agrees to defend, indemnify and hold LESSEE harmless against and from any claim or liability arising from or alleged to arise from the presence of hazardous material or toxic waste on the subject leased premises at the inception of this Lease and the introduction to the premises of such materials due to LESSOR'S activities or under its control.



C. LESSEE shall keep and hold the City of Yakima, the Yakima Air Terminal - McAllister Field, and its elected and appointed officials, agents and employees, free and harmless from any and all claims and actions, loss, damage, expense or cost, including reasonable attorneys fees, incidental to the investigation and defense thereof, resulting from, arising out of, or caused by LESSEE resulting in any liability under the Federal Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; the Clean Water Act, 42 U.S.C. 1251 et seq.; the Washington Environmental Policy Act, RCW Ch. 43.21C; the Washington Water Pollution Control Act, RCW Ch. 90.48; the Washington Hazardous Waste Management Act, RCW Ch. 70.105; the Washington Model Toxic Control Act, RCW Ch. 70.105D, and the regulations promulgated there under, or under any applicable local or state environmental ordinance, statute, law, rule or regulation.

D. The provisions of this Section shall survive the expiration or termination of this Lease with respect to any event occurring prior to such expiration or termination.

## **19. INSURANCE:**

A. At all times during performance of the Lease, the LESSEE shall secure and maintain in effect insurance to protect the City and the LESSEE from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of this Lease. LESSEE shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The City reserves the right to require higher limits should it deem it necessary in the best interest of the public.

B. Commercial Liability Insurance. Before this Lease is fully executed by the parties, LESSEE shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. This insurance requirement can be satisfied with a combination of commercial general liability insurance and excess or umbrella liability insurance coverage. If LESSEE carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City of Yakima and the Yakima Air Terminal, its elected officials, officers, agents, and employees shall be named as additional insureds for such higher limits. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Lease. The policy and Endorsements shall name the City of Yakima and the Yakima Air Terminal, its elected officials, officers, agents, and employees as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice.

The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

C. LESSEE specifically agrees that insurance limits shall be reviewed at least every five (5) years and that LESSOR may make reasonable adjustments to the required limits.

## **20. DAMAGE OR DESTRUCTION:**

A. TENANT IMPROVEMENTS: In the event the construction in accordance with Section 12 - IMPROVEMENTS herein, or improvements thereto, is partially or totally damaged by fire or other casualty, the LESSEE shall repair or replace the same at its own expense. The new improvements shall be at least the same size, design and quality as that which existed prior to any damage or destruction. Both parties agree, however, that any insurance proceeds shall be first applied to the cost of repair or replacement of improvements.

LESSEE may elect not to repair or replace said construction or improvements. LESSEE shall advise LESSOR of its intent within thirty (30) days of the damage or destruction. If LESSEE elects not to repair or replace the improvements, this Lease shall be terminated. In such event, LESSOR may either accept ownership of the improvements or require LESSEE to remove the improvements and restore the Premises to a condition satisfactory to the LESSOR. The insurance proceeds shall be used for such restoration and the balance divided between the LESSOR and LESSEE as their interest bear in accordance with a straight line depreciation schedule. The straight line depreciation schedule shall be over the initial term of the lease and shall begin to run on the lease effective date. The amount so depreciated shall vest in the LESSOR. LESSOR shall notify LESSEE of its intent within thirty (30) days of receipt of LESSEE's notification. If LESSOR elects to have LESSEE remove the improvements, LESSEE shall have sixty (60) days to do so.

B. OTHER AIRPORT PROPERTY: In the event of damage or destruction of Airport property caused by the LESSEE, its agents, contractors, employees, aircraft or other equipment, LESSEE agrees to repair, reconstruct, or replace the affected property to the condition which existed prior to such damage or destruction, to the extent that same is not covered by insurance required under this Lease. LESSEE further agrees to cause such repair, reconstruction or replacement of affected property with due diligence.

## **21. DEFAULT, TERMINATION & FORFEITURE:**

A. The failure by LESSEE to pay rent in the amounts and at the times specified herein, or the failure by LESSEE to otherwise comply with any term, provision or condition of this Lease, shall constitute grounds for termination of this Lease and



forfeiture of all rent paid by LESSEE to the time of termination. This Lease and tenancy shall terminate and rent paid shall be forfeited for cause as specified above on written notice by LESSOR to LESSEE stating the amount of rent in default or otherwise stating accurately the manner in which LESSEE fails or has failed to comply with this Lease. LESSEE shall make full payment or otherwise comply with this Lease in the manner specified in the notice within thirty (30) days (except three (3) days if default is due to failure to pay rent) from LESSEE's receipt of such notice, otherwise this Lease and tenancy shall be terminated and rent forfeited. Such notice shall be given in writing and served on LESSEE by personal delivery or mailed by certified mail with return receipt requested addressed to LESSEE at its address stated below LESSEE's signature to this Lease or such other address as the parties may advise each other in writing. It is further agreed that after receipt of notices and as an additional condition to avoid forfeiture, LESSEE shall pay LESSOR's costs and expenses, including attorney's fees, for the preparation and service of such notice. Nothing contained herein shall release or diminish LESSEE's obligation to pay rent for the full term of this Lease save such amount as LESSOR recovers as rent from any subsequent lessee during the term of this Lease. Notices shall be deemed received three (3) days after mailing to LESSEE at the address below LESSEE's signature to this Lease or such other address as the parties may advise each other in writing.

**B.** As additional and not alternative remedy, optional with LESSOR and upon thirty (30) days written notice to LESSEE, should LESSEE be in default hereunder other than default in the payment of rent, LESSOR may cure or correct the same and the cost of such action by LESSOR shall immediately become due and payable from LESSEE, together with late fees on said sum at a rate of twelve percent (12%) per annum, and the non-payment of said sum by LESSEE shall be adequate grounds for LESSOR to invoke the other remedies as provided in this Lease.

**C.** Upon termination of this Lease for any reason, LESSEE shall immediately surrender the premises to the LESSOR in good condition and repair, ordinary wear and usage excepted; and LESSEE shall remove all of LESSEE'S personal property, trade fixtures, equipment or improvements removable by prior agreement with LESSOR from the premises and shall repair any damage to the premises caused by such removal. Any personal property of LESSEE, or anyone claiming under LESSEE, which shall remain upon the premises at the expiration or termination of this Lease shall be deemed to have been abandoned and may be retained by LESSOR as LESSOR'S property or disposed of by LESSOR in such manner as LESSOR sees fit without compensation to any party.

## **23. INSOLVENCY**

In the event LESSEE is declared bankrupt by a court of competent jurisdiction or in the event LESSEE makes an assignment for the benefit of creditors, or if a receiver otherwise is appointed for LESSEE, or in the event LESSEE's leasehold estate is subjected to execution to satisfy any judgement against LESSEE, then in that event

LESSOR may immediately or at any time thereafter without notice or demand enter into and upon the premises or any part thereof and repossess the same and expel LESSEE or any person upon the premises and remove their effects, and thereupon this Lease and the tenancy hereby created shall absolutely terminate, without prejudice to any remedies which might otherwise be available to LESSOR for collection of past due or future rent.

**23. VENUE, ATTORNEY FEES:**

In the event of litigation to enforce the rights and obligations hereunder, venue shall lie in a court of competent jurisdiction in Yakima County, Washington. Each party shall pay its own attorney's fees and costs unless otherwise outlined in this Lease.

**24. NON-DISCRIMINATION CLAUSE:**

To the extent required by law, LESSEE, for itself, its personal representative, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

**A.** No person, on the grounds of race, color, religion, sex, age, marital status, handicap or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in LESSEE's personnel policies and practices or in the use or operation of LESSEE's services or facilities.

**B.** LESSEE agrees that in the construction of any improvements on, over or under Airport land and the furnishing of services thereon, no person, on the grounds of race, color, religion, sex, marital status, handicap, age or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

**C.** LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

**D.** It is the policy of the Department of Transportation that minority business enterprise as defined in 49 CFR Part 23, i.e., firms owned and controlled by minorities; firms owned and controlled by women and firms owned and controlled by financially disadvantaged persons; shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR Section 23.5. Consequently, this Lease is subject to 49 CFR Part 23 as applicable.

Lessee hereby assures that no person shall be excluded from participation in, denied the benefits of or otherwise discriminated against in connection with the



award and performance of any contract, including leases, covered by 49 CFR Part 23 on the grounds of race, color, national origin or sex.

Lessee hereby assures that it will include the above clauses in all sub-leases and cause sub-lessees to similarly include clauses in further sub-leases.

## **25. AIRPORT SECURITY AND ACCESS CONTROL**

**A. Access to Non-Movement Area/Ingress and Egress.** LESSEE is granted only that vehicular and/or pedestrian access which is reasonably necessary to allow LESSEE access to the hangar ramp/apron once LESSEE is on Airport property. Vehicular access to and egress from Airport by the LESSEE shall be made into and out of only Airport Gate No. \_\_\_\_\_, vehicle gate.

**B.** Vehicular or pedestrian access to any and/or all movement areas, whether active or inactive, is expressly prohibited by this Agreement. For the purpose of this Agreement, a movement area is any runway or taxiway utilized for taxiing, takeoffs, and landings of aircraft, exclusive of aircraft loading ramps, aircraft parking areas, and aircraft aprons and tie down spaces.

**C.** There will be one Authorized Signatory for airport security, airport ID, and access control for the entire lease area.

**D. Access Identification (ID).** Airport Administration will assign one (1) Yakima Air Terminal (YAT) identification card to the LESSEE's Authorized Signatory only. The cost of the badge is dependent on costs associated with the requisite and mandated background check.

**E.** A request by the LESSEE for an additional card(s) shall be made in writing stating through the Authorized Signatory providing the reason(s) or rationale why an additional card(s) is/are required. Any request for an additional card may or may not be approved by the Airport Director at his/her sole discretion. The minimum information required for the issuance of any additional card will include the name, local address, and contact phone number of the individual. The same fees outlined above are applicable for any additional badge. If any card is lost, stolen, or made unusable for any reason, the LESSEE will pay the applicable fine and costs associated with the issuance of a new or replacement badge in effect at that time.

**F.** The control and monitoring of access is paramount to Airport security. Accordingly, only authorized users with access to the Airport granted pursuant to this Agreement may hold an ID card to access the Airport. Lost or stolen Airport-issued access cards shall be reported immediately by any means possible to Airport Administration, whereupon the loss or theft will be recorded, and the card will be made "inactive". "Reported immediately" means within twenty-four (24) hours or the next business day, not including weekends or holidays. A new card may then be

issued by Airport Administration bearing a number different from the one lost or stolen.

**G. Fraud and Intentional Falsification of Records.**

(1) No person may make any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium.

(2) No person may make any fraudulent or intentionally false entry in any record or report that is kept, made or used to show compliance or exercise any privileges.

**H. Security Responsibilities. No person may:**

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure.

(2) Enter, or be present within a secured area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in such areas.

(3) Use, allow to be used, or cause to be used, any Airport-issued or Airport-approved identification medium that authorizes the access, presence, or movement of persons or vehicles in secured areas in any other manner than that for which it was used by the appropriate authority.

**I. "Non-Movement Area Certification of Training – Application for Permit to Operate Ground Vehicles at the Yakima Air Terminal".** Any person given vehicular access to the Airport shall be required to read, apply for and pass the test associated with the current edition of the Airport Driving Rules & Regulations document provided by the Airport to qualify for access to the Airport. A copy of the application and test will be kept in the LESSEE's File.

**J. Airport Safety and Security.** In the interest of Airport safety and security, in the event LESSEE fails to abide by this Agreement, the Airport Director of YAT is authorized by the Airport's Governing Authority, to immediately declare this Lease void, to cancel the same without any legal proceeding and take possession of the tie down.

**26. INTEGRATION:**

This document embodies the entire Lease between the parties with respect to the

subject matter herein contained. No amendments or modifications hereof shall be enforceable unless in writing, signed by the party to be charged.

**27. WAIVER:**

Failure to enforce any provision of this Lease shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Lease shall not be deemed a waiver of any other right or power.

**28: MODIFICATION OR AMENDMENT:**

This Lease shall not be amended or modified unless the amendment or modification is in writing and agreed to and signed by both parties.

**28: SEVERABILITY:**

Should any portion of this Lease be found invalid by operation of law or by administrative or judicial decision, the terms and enforceability of the balance of this Lease shall not be affected thereby, provided that the absence of the unenforceable provision does not render the performance of the remainder of the Lease impossible.

Time is of the essence of this entire Lease

**LESSOR:**

**CITY OF YAKIMA**  
**YAKIMA AIR TERMINAL - McALLISTER FIELD**  
2406 West Washington Avenue, Suite B  
Yakima, Washington 98903  
(509) 575-6149  
(509) 575-6185 (fax)

\_\_\_\_\_  
Bob Harrison, City Manager

**STATE OF WASHINGTON**  
County of Yakima

I certify that I know or have satisfactory evidence that Bob Harrison signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the City Manager to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

By: \_\_\_\_\_

Notary Public

Appointment Expires \_\_\_\_\_

**LESSEE:**

Danny Day  
220 W. Yakima Ave  
Yakima, WA 98902  
Phone: (509) 952-7773

\_\_\_\_\_  
Danny Day

\_\_\_\_\_  
Date

STATE OF WASHINGTON  
County of Yakima

I certify that I know or have satisfactory evidence that Danny Day signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Owner of D.A. Arthur, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date \_\_\_\_\_  
By: \_\_\_\_\_  
Notary Public  
Appointment Expires \_\_\_\_\_



## Exhibit A

Parcel A  
58,890 sq. ft.  
Surgi Mark, Inc.  
Lease agreement

Parcel B  
28,208 sq. ft.  
Janet DeAtley Leduc  
Lease Amendment

Parcel C  
23,882 sq. ft.  
Common Taxi-Lane

Parcel D  
3,680 sq. ft.  
Janet DeAtley Leduc  
Lease Amendment

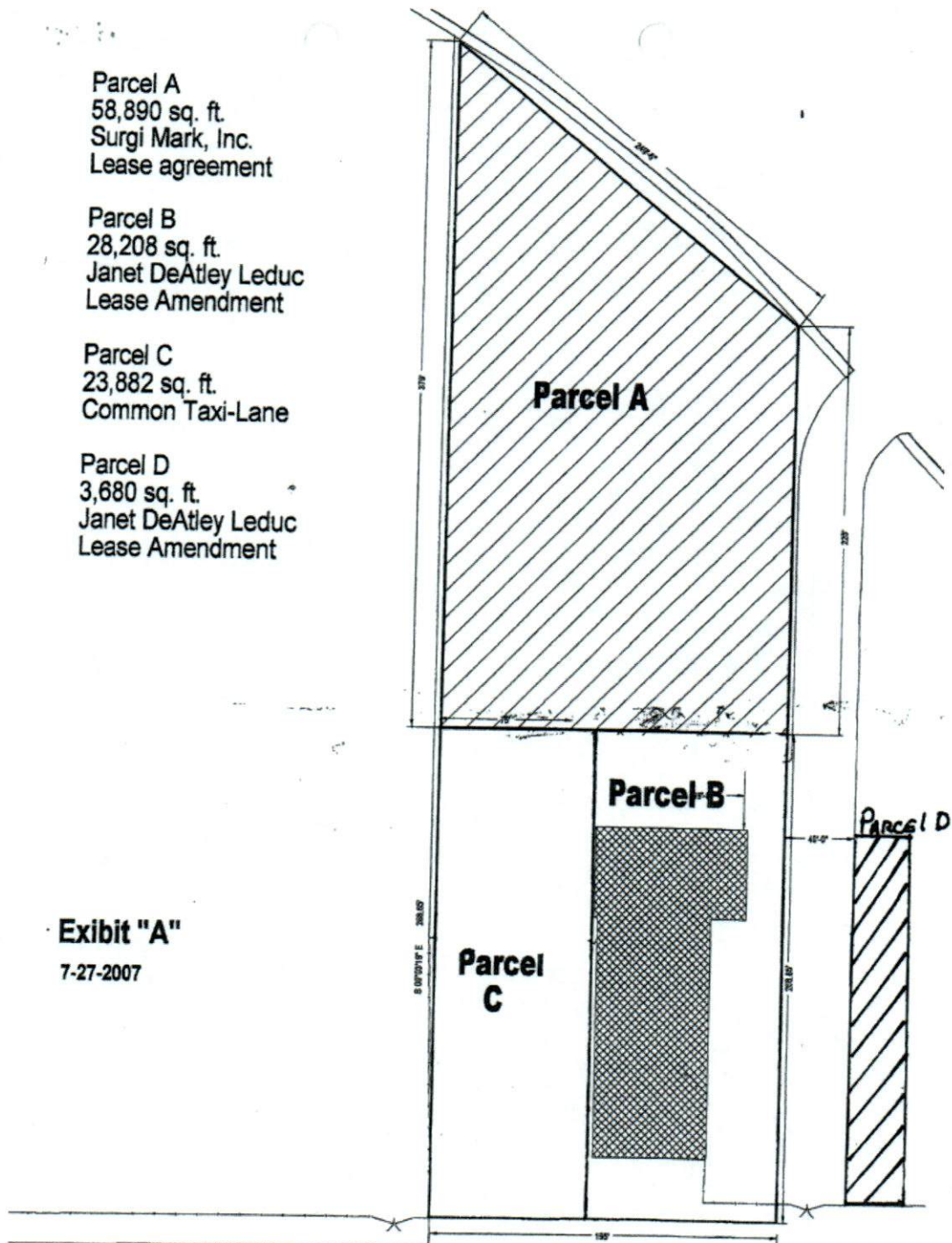


Exhibit "A"

7-27-2007