

Filed for and return to:

City of Deer Park  
Attn: City Clerk-Treasurer  
P.O. Box F  
Deer Park, WA 99006

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of or any warranty contained in the document itself.

**Grantor(s):** City of Deer Park, a Washington Municipal Corporation  
**Grantee(s):** Mark A. and Ginger L. Williams, Husband and Wife  
**Reference Number(s) of Documents Amended or Released:** N/A  
**Abbreviated Legal Description:** A portion of Lots 12 and 13, Block 10, as per Assessor's Plat recorded in volume "R" of Plats, records of Spokane County.  
**Legal Description:** See attached Exhibit "A"  
**Assessor's Parcel Number(s):** 28021.0143

**MARK AND GINGER WILLIAMS  
SPECIAL USE PERMIT**

This Special Use Permit Agreement ("Agreement") is entered into by and between the City of Deer Park, a Washington municipal corporation ("City"), and Mark A. and Ginger L. Williams, husband and wife ("Applicant"). Sometimes the City and Applicant are collectively referred to as the "Parties" or individually as a "Party".

**I. RECITALS**

1.1 The Applicant applied for a Special Use Permit with the City pursuant to Deer Park Municipal Code ("DPMC") Chapter 18.84 for the purpose of using undeveloped City right-of-way known as the north extension of Washington Avenue as a driveway to serve the Applicant's property, Spokane County Assessor's Parcel No. 28021.0143 as described in the application for Special Use Permit No. 2019-05 on file with the City and as legally described in Exhibit "A" to this Agreement (the "Property").

{CDZ2102835.DOC;1/00003.010057/ }

SPECIAL USE PERMIT

Page 1 of 8

1.2 The Planning Commission held a duly noticed public hearing and following the public hearing recommended approval of the Special Use Permit as further described and conditioned in this Agreement.

1.3 The City and Applicant agree that the terms of this Agreement are a fair and reasonable alternative to requirement by the City for the Applicant to complete construction of full or half street right-of-way improvements to serve the proposed single family development of the Applicant's Property.

## II. AGREEMENT

Now, therefore, the City and Applicant agree as follows:

2.1 **Recitals.** The Recitals set forth above are, by this reference, incorporated in this Agreement as if set forth in full herein.

2.2 **Warranty of Title.** The Applicant warrants that the Applicant is the owner of the Property.

2.3 **Special Use Permit Granted.** The Applicant is provided non-exclusive use of a portion of undeveloped Washington Avenue for the purpose of installing and using an asphalt driveway to serve the single family residence to be constructed by the Applicant on the Property. The portion of Washington Avenue to be used by the Applicant pursuant to the terms of this Agreement is the area identified as "Proposed Asphalt Driveway" in Site Plan S-1 dated 9/30/19 and updated 10/23/19 on file with the City in Special Use Permit file No. 2019-05. The final location of the driveway shall be identified with an as-built survey provided by a licensed land surveyor, and shall be a maximum of twenty (20) feet in width and extend approximately 250 feet north from the northern edge of East 1<sup>st</sup> Street and located within the center portion of the North Washington Avenue right-of-way and shall not extend north of the Property.

2.4 **Non-exclusive Use.** The Applicant's use of the undeveloped City right-of-way pursuant to this Agreement shall be non-exclusive. Following construction of the Applicant's driveway, the use of the driveway shall not be exclusive to the Applicant.

2.5 **Term and Termination.** The Term of this Agreement shall be perpetual, but this Agreement may be terminated by the City in the event the Applicant fails to comply with the terms of this Agreement. In the event the City, or others with the permission of the City, construct improvements to the public right-of-way where the Applicant's driveway will be located pursuant to this Agreement, the Applicant shall be permitted to continue to use the right-of-way area as a driveway to the Applicant's Property until such time as the right-of-way improvements are completed. After completion of the right-of-way improvements to the then applicable City standards, the City and the Applicant may terminate this Agreement in writing.

2.12 **Fees.** The Applicant shall pay the City a one-time non-refundable fee of \$1,500.00 dollars prior to approval of this Agreement by the City and annually, beginning on or before April 1, 2021 and each year thereafter shall pay the City a Special Use Permit fee of \$100.00 dollars during the Term of this Agreement. The annual Special Use Permit fee may be adjusted by Resolution of the City Council from time to time but shall not be increased more than three percent in any one year during the Term of this Agreement.

2.13 **Covenant for Quiet Use.** Nothing contained in this Agreement shall imply or import a covenant on the part of the City for quiet enjoyment, and the City shall have no obligation to intervene in any dispute between the Applicant and third parties who may use the Applicant's improvements constructed within the City right-of-way.

2.14 **Access Rights.** The City, and its successors and assigns, shall have the perpetual right at all times to enter upon the right-of-way where the Applicant's driveway is located for all purposes deemed necessary by the City.

2.15 **Unauthorized Activities.** Any activities by the Applicant not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this Agreement, which may result in the termination of this Agreement by the City.

2.16 **Notices.** Any notices to be given hereunder by either Party may be affected either by personal delivery, in writing, or by mail, registered or certified, postage prepaid with return receipt requested. Notices delivered personally shall be deemed communicated as of actual receipt, mailed notices shall be deemed communicated three days following the date of mailing. All notices shall be sent to the following address, unless actual notice in writing of a different address for notices is received by the other Party.

If to the City:                      City of Deer Park  
   Attn: Community Service Director  
   P.O. Box F  
   Deer Park, WA 98806

If to Applicant:                      Mark and Ginger Willams  
   4307 N. Centennial Lane  
   Spokane, WA 99212

2.17 **Attorney's Fees.** In any action brought by either Party arising out of the existence of or to enforce or interpret this Agreement, the substantially prevailing Party shall, in addition to such other award and judgment entered by the court, be entitled to an award of reasonable attorney's fees and costs against the non-substantially prevailing Party.

2.18 **Venue.** Venue for any legal action arising out of this Agreement shall be in the Superior Court of the State of Washington in and for Spokane County.

2.19 **Recording-Successors and Assigns.** This Agreement shall be recorded by the City with the Spokane County Auditor, shall run with the Property, and shall be binding on the successors and assigns of the Parties.

2.20 **Entire Agreement.** This Agreement contains the entire Agreement between the Parties concerning the Applicant's use of the City right-of-way identified herein to serve the Applicant's Property with an asphalt driveway and this Agreement may only be modified by a subsequent written agreement signed by the Parties.

2.21 **Effective Date.** The Effective Date of this Agreement shall be the date it is approved by the City Council.

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APPROVED BY THE CITY COUNCIL OF THE CITY OF  
DEER PARK, WASHINGTON AT AN OPEN PUBLIC  
MEETING THE \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

By: \_\_\_\_\_  
MAYOR TIMOTHY VERZAL

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF SPOKANE     )

I certify that I know or have satisfactory evidence that Tim Verzal is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Deer Park to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC  
\_\_\_\_\_  
(Print Name)  
My Appointment Expires: \_\_\_\_\_

APPROVED BY APPLICANT:



Mark A. Williams

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Spokane )

I certify that I know or have satisfactory evidence that Mark A. Williams is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 25 June 2020

Notary Public  
State of Washington  
Debra L Cragun *ok*  
Commission No. 93531  
Commission Expires 06-05-2023



NOTARY PUBLIC

Debra L. Cragun

(Print Name)

My Appointment Expires: 06-05-2023

APPROVED BY APPLICANT:

*Ginger L. Williams*  
Ginger L. Williams

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Spokane )

I certify that I know or have satisfactory evidence that Ginger L. Williams is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 25<sup>th</sup> June 2020

Notary Public  
State of Washington  
Debra L. Cragun *DL*  
Commission No. 93531  
Commission Expires 06-05-2023

*Debra L. Cragun*  
NOTARY PUBLIC  
Debra L. Cragun  
(Print Name)  
My Appointment Expires: 06-05-2023

**EXHIBIT "A"**

THAT PORTION OF LOTS 12 AND 13, BLOCK 10, ASSESSOR'S PLAT NO. 11. AS PER PLAT  
RECORDED IN VOLUME "R" OF PLATS, PAGE 29, RECORDS OF SPOKANE COUNTY;  
BEGINNING AT A POINT 451.91 FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT 12;  
THENCE WEST 139.89 FEET;  
THENCE NORTH 150 FEET;  
THENCE EAST 139.89 FEET;  
THENCE SOUTH 150 FEET TO THE TRUE POINT OF BEGINNING;  
SITUATE IN THE CITY OF DEER PARK, COUNTY OF SPOKANE, STATE OF WASHINGTON

CITY OF DEER PARK  
DEER PARK MUNICIPAL CODE CHAPTER 18.84

APPLICATION FOR  
SPECIAL USE PERMIT

Date Received: 12/12/19 File Number: 2019-05  
Date Accepted: 12/13/19 By: JWK  
Total Fees: \$300.00 Receipt Number: 36497

**A. GENERAL INFORMATION**

**Name of Applicant:** Mark & Ginger Williams  
**Mailing Address:** 4307 N Centennial Ln, Spokane, WA 99212  
**Phone:** 509 290-1053 **Fax:** N/A

**Site Area of Proposed Use (Acres or Square Feet):** approximately 15,000 SqFt  
see attached Assessor Plat #11 showing the location of the undeveloped right of way (ROW) and applicant's property location

**Street Address:** residential lot due North/adjacent 104 N. Washington Ave

**Comprehensive Plan Designation:**

**Existing Zoning:** R2A

**Existing Use of City Property:** Washington Avenue unimproved right of way (ROW)

**Proposed Use of City Property:** Access drive to single family residence

**List Previous City Actions Involving This Property:** None Known

**B. INFORMATION AND MATERIALS – DPMC CHAPTER 18.84**

**Location of Proposed Project:** On Washington Avenue just north of the intersection of 1<sup>st</sup> Street  
**Section:** 2 **Township:** 28 **Range:** 42

see attached Assessor Plat #11 showing the undeveloped ROW and applicant's property location

**Name of Public Street(s) Providing Access:** Near the NE intersection of 1<sup>st</sup> Street and Washington Avenue in Deer Park.

**Width of Property Fronting on Public Street(s):** Applicants' property has about a 150 FT frontage on the ROW.

**Legal Description:** Parcel No.: 28021.0143

That portion of lots 12 and 13, Block 10, Assessor's plat no. 11, as per plat recorded in volume "R" of plats, page 29, records of Spokane County;

Beginning at a point 452.91 feet north of the southeast corner of said lot 12; thence west 139.89 feet; thence north 150 feet; thence east 139.89 feet; thence south 150 feet to the true point of beginning. Situate in the City of Deer Park, Count of Spokane, State of Washington.

See attached copy of Assessor Plat #11 with clarifying notes.

**Fully explain the nature of the special use permit requested.**

Install an access driveway for a single family residence on the owners/applicants property. Washington Avenue was never improved past its intersection with First Street going north from Crawford. Washington Avenue was only improved to the point of First Street. This special use permit would serve only this single residence.

The accompanying drawing shows the site plan showing the area in question and details of the proposed work. The intended driveway is to be about 14 feet in width, and hard surfaced (asphalt or concrete as required) and positioned nearly as shown in the drawing. The City has recently cleared trees along a path between the two sewer manhole covers located at the corner of Washington Avenue and First Street and the current Northern most end of Washington Avenue. The intent is to place the driveway along this cleared path. The current intended placement of a new house is about as shown on the drawing with the garage located on the northern side of the house.

The utilities are to be run either under the driveway or to either side as shown in the drawing. This includes the existing sewer pipe and the extension of the water line, gas line, and electrical service. The electrical service is to include the setting of a new electrical service pole at the NW corner of the street intersection as shown in the drawing. From that point, electrical service will go underground to the proposed residence. This has been reviewed by Avista and the City.

The existing trees in the right-of-way are largely to remain in as much as possible with the exception of the trees between the owners/applicants property and the right-of-way and the need to remove trees for the driveway and the utilities to serve the house.

The driveway is to be composed of asphalt over a bed of crushed gravel appropriate for the application.

**1. Explain why the special use activity would not have adverse influences on the affected City property, on surrounding public and private properties, and on the environment.**

The requested special use would really create no more or less of an impact than a conventional street on the surrounding properties.

**2. Explain what the special use requested will not cause damage to adjacent property, decrease property values, create excessive noises, or create other nuisances.**

Construction of the drive will not encroach on any adjacent properties. Once construction is complete, excessive noises will not be sustained nor encouraged because of its existence. No other nuisances should be created or encouraged due to this special use.

**3. Explain how adequate public and private facilities such as utilities, landscaping, parking spaces, and traffic circulation measures are or will be provided for the proposed special use.**

The applicant would have installed extensions to water, electrical, and natural gas utilities along Washington Ave to the property and to serve only the proposed residence on the property. No provisions are planned to provide any public amenities such as landscaping, parking, or traffic circulation.

**4. Explain how long the special use is intended to occupy the City's property, and to what extent the special use would diminish the City's use of said property for its municipal purposes.**

The special use is intended to occupy the City property until such time as the adjacent property to the north currently owned by Deborah Wiese would be developed and subdivided which may be required to develop/construct that part of the Washington Ave ROW to extend into that development. The special use permit would not limit the City's current use of the ROW. Currently, the City makes little use of the property other than access for utility (specifically sewer) maintenance.

**5. Explain how environmental impacts have been disclosed and measures have been ensured to reduce possible adverse impacts.**

There are no known or anticipated environmental impacts

**C. APPLICATION AUTORIZATION**

I, the undersigned, swear or affirm, under penalty of perjury, that the above responses are made truthfully and to the best of my knowledge. I further swear or affirm that I am the sole applicant for the special use permit on City property, and that no other usage of City property is represented or intended.

Signature: [Handwritten Signature] Date: 12/11/19

Name (Print): MARK WILLIAMS / GINGER WILLIAMS

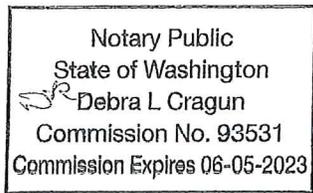
Address: 4307 Centennial Ln  
Spokane, WA 99212

Phone: 509 290 1053

State of Washington)

SS

County of Spokane )



Signed and sworn or affirmed before me on this 11<sup>th</sup> day of December  
2019, by [Handwritten Signature]

Notary Seal

Debra L. Cragun  
Notary Public in and for the State of Washington  
Residing at: Deer Park, WA  
My Appointment Expires: 06-05-2023



Measure [More Info](#)

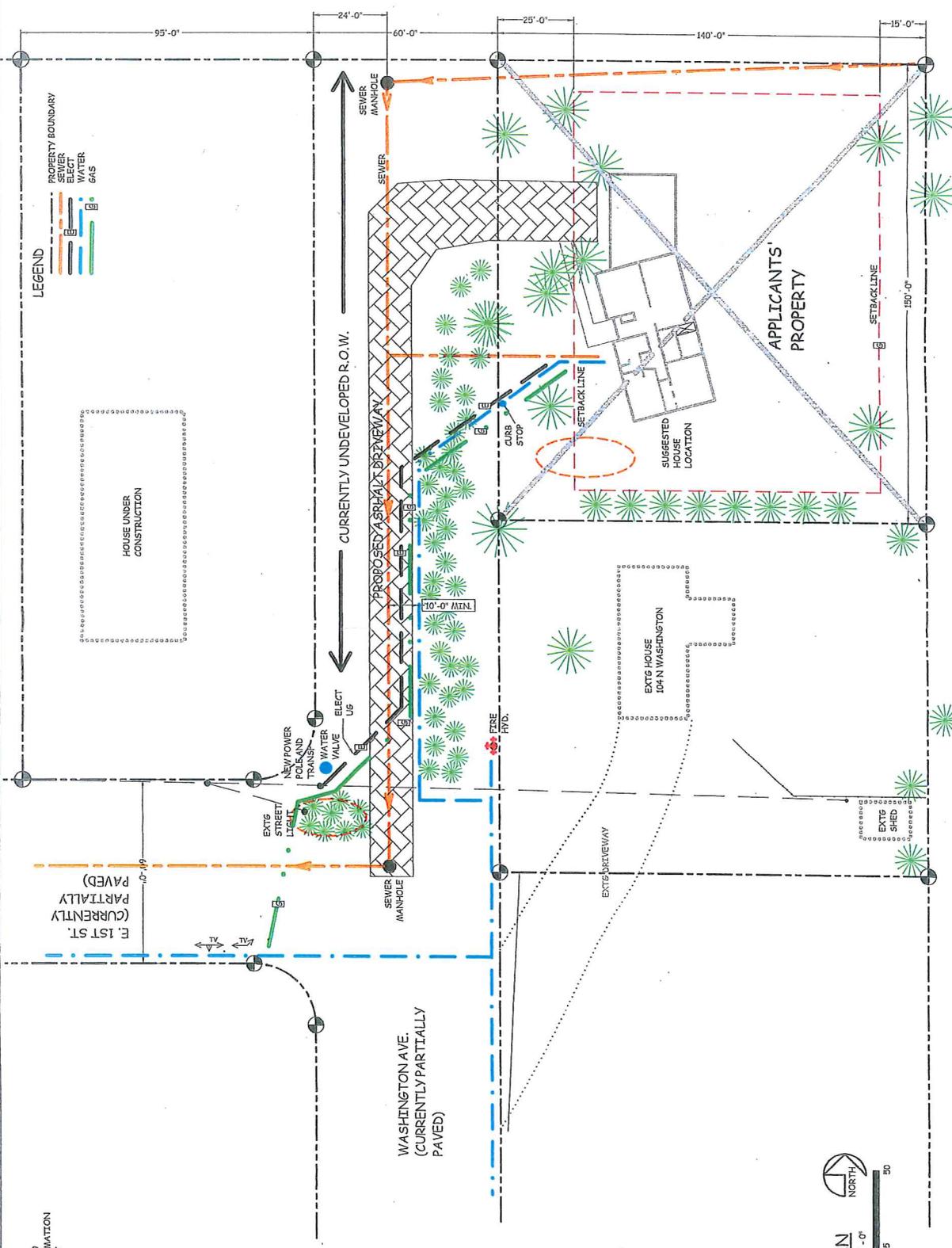


# SITE PLAN

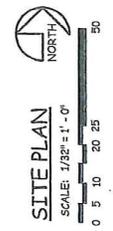
S-1

FILE: 20190812  
DATE: 9/20/19  
4307 N. CENTENNIAL AVE  
SPokane, WA 99212  
509 252 1033  
LABERMAN@VAHCO.COM

MARK & GINGER WILLIAMS' NEW RESIDENCE



UPDATED 10/23/19  
BASED ON INFORMATION  
FROM SITE VISIT



WASHINGTON AVE.  
(CURRENTLY PARTIALLY  
PAVED)

E. 1ST ST.  
(CURRENTLY  
PARTIALLY  
PAVED)

CURRENTLY UNDEVELOPED R.O.W.

PROPOSED DUPLEX DRIVEWAY

EXTG HOUSE  
104 N WASHINGTON

APPLICANTS'  
PROPERTY

SUGGESTED  
HOUSE  
LOCATION

EXTG DRIVEWAY

FIRE HYD.

EXTG SISED

SEWER  
MANHOLE

SEWER  
MANHOLE

WATER  
VALVE

ELECT  
UG

NEW POWER  
POLE AND  
TRANS.

EXTG STREET  
LIGHT

CURE STOP

10'-0" MIN.

SETBACKLINE

**STAFF REPORT**

TO: Deer Park Planning Commission                      PREPARED BY: Roger Krieger  
RE: Special Use Application 2019-05                      DATED: February 5, 2020  
TYPE: Planning Commission Approval                      LOCATION: 104 N. Washington

**GENERAL INFORMATION**

Applicant: Mark & Ginger Williams  
4307 N. Centennial Lane, Spokane, WA 99212

Status of Applicant: Owner

Requested Action/Purpose: Special Use Permit for approval for construction of a driveway within the N. Washington Avenue right-of-way, giving access to Tax Parcel 28012.0143.

Size: The roadway proposed would be located within the undeveloped N. Washington Avenue Right-of-way, which is 60 feet in width. The dimensions of the proposed hard surfacing improvements are 14 feet in width and extend approximately 220 North of First Street.

Physical Characteristics: Land is generally flat in character, a wastewater utility main is currently located within the right-of-way between First Street and Tax Parcel 28021.0154 and serves all of the City lands to the East of this location.

Transportation: The proposed driveway to the dwelling from First Street will be the only access to the lot, until such time as the right-of-way is improved with a City Street serving the parcel to the North.

Utilities and Services: Water – not provided in the noted right-of-way. Once building of the dwelling commences on the parcel, a water service will be installed with City forces from the main in First Street.

Wastewater – The wastewater collection main through this right-of-way services all areas to the East of this parcel, which includes the Golf Course area, Arcadia Heights and the Cedar Road Lift Station. This this right-of-way is not available for vacation, due the service area of the wastewater collection system. The lot for construction will be able to have sewer service from this utility main.

Power – Avista Utilities may require use of the right-of-way in the future.

Natural Gas – Avista Utilities may require use of the right-of-way in the future.

Telephone and Cable – Telephone cable as well as Comcast television may require use of the right-of-way in the future.

Existing Zoning: Residential 2A.

Surrounding Use/Zoning:

|        |  |
|--------|--|
| North: | Developed land, residential zoned R2A.   |
| West:  | Developed land, residential zoned R2A.   |
| South: | Developed land, residential zoned R2A.   |
| East:  | Undeveloped land, residential zoned R2A. |

Comprehensive Plan Designations: Single Family Residential.

**ANALYSIS**

There are some instances when the private sector needs to use city property for other uses other than what the property was initially intended for. A special use permit provides for consideration of factors affecting the suitability of the proposed activity. A use of platted undeveloped public right-of-way for private access to private property is an example of the intent of this code section of municipal code.

N. Washington Avenue was created and dedicated to the city with creation of the lots in this area and when First Street was extended to Crawford Avenue several years ago. Original layout of the lots should have also included construction of the roadway to the northern boundary of the parcels, similar to the roadway extended to Crawford Avenue. To date however, street improvements have not been completed. During development of Arcadia Heights in the early 1980's, wastewater service to that area from the end of the main on First Street and extended through this area with an easement, thus vacation of the right-of-way to adjacent owners is not recommended by city staff.

The site plan provided shows the preferred paved driveway location into the lot for development, this alignment follows the cleared access route the City has created for wastewater line maintenance and also leaves the buffer of small trees along the East side of the driving route. Property corners are present within the area, so improvements will be easily placed within the city right-of-way.

As noted within the application, the applicant understands the City's use of the right-of-way for continued use and maintenance of the wastewater line and acknowledges the future development to the north of his lot and impacts to the improvements he will place along the route.

**RECOMMENDATION**

The public hearing process will uncover issues of concern for application such as this in a residential neighborhoods. The application as submitted and reviewed appears to address elements of the ordinance, but specific approval by the Commission with final recommendation to the City Council is required on the request.

In granting any special use permit, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with the ordinance of the City and for Council concurrence in the agreement to be completed.

It is the recommendation of Staff that Special Use Permit request 2019-05, be heard at the public hearing process and final action on the application completed within the time limits of the ordinance and recommendation made to the City council for action with possible conditions as noted below:

Conditions for consideration:

1. As-built survey prepared showing all improvements within the right-of-way to adequately determine the final location of the driveway.
2. Positioning the driveway over the wastewater main and along the middle of the right-of-way area, thereby keeping clear of potential impacts to existing uses or green spaces in the area.
3. Building permits may be granted before all improvements are in place, but no occupancy of any structure is permitted until work within the public right-of-way is approved by the City.

**ATTACHMENTS**

1. Special Use Permit application 2019-05, dated December 12, 2019.
2. Special Use Permit Chapter 18.84.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND RECOMMENDATION**

**CITY OF DEER PARK  
SPECIAL USE PERMIT  
APPLICATION NO. 2019-05**

In regards to the findings requirements of Chapter 18.84 of the Deer Park Municipal Code, the Planning Commission of the City of Deer Park hereby finds and concludes the following with respect to Special Use Permit Application No. 2019-05:

1. The special use activity (~~will or~~ **will not**) be detrimental to the affected City property, surrounding public and private properties, and the environment, in that: The proposed use is within a unimproved dedicated street right-of-way where City improvements and local utility providers work could occur at any time.
  
2. The special use requested (~~will or~~ **will not**) cause damage to adjacent property, decrease property values, create excessive noises, or create other nuisances in that: A condition of approval will require a surveyor to provide a as-built survey of all improvements to assure they stay within the boundary of the right-of-way, the driveway is intended to access a single parcel and single family dwelling thus creating no other environmental concerns than any other typical dwelling.
  
3. Duration of the special use, or other characteristics of the special use, (~~will or~~ **will not**) diminish the City's use of said property for its municipal purposes in that: The continued location of the city wastewater collector main will not be impacted, nor future use of the right-of-way impeded as the applicant is aware of the future potential uses of the undeveloped right-of-way.

The Planning Commission of the City of Deer Park does hereby recommend to the City Council the following based upon the aforementioned findings and conclusions:

**Approval Option**

Special Use Permit Application No. 2019-05 is hereby recommended for approval subject to the following conditions:

1. Final location of the driveway shall be identified with a as-built survey provided by a licensed land surveyor, and shall be a maximum of twenty (20') feet in width, and extend approximately 250 feet North from the Northern edge of E. First Street, and within the center portion of the N. Washington Avenue right-of-way.

**Denial Option**

Special Use Permit Application No. \_\_\_\_\_ is hereby recommended for denial.

Adopted this 10th day of February, 2020.



\_\_\_\_\_  
Planning Commission Chair Person

ATTEST:



\_\_\_\_\_  
Planning Director

**CITY OF DEER PARK**  
**CLAIMS CERTIFICATION AND APPROVAL**

**Auditing Officer's Certification**

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein and that the Claim is a just, due and unpaid obligation against the *City of Deer Park*, and that I am authorized to authenticate and certify said Claims Checks numbered **38637 through 38661 including EFT Debits in the amount of \$123,664.15.**

\_\_\_\_\_  
City Clerk/Treasurer

**Council Approval**

We, the undersigned Council Members of the *City of Deer Park* approve the payment of Claims Checks **38637 through 38661 including EFT Debits in the amount of \$123,664.15 this 1<sup>st</sup> day of July 2020.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Vouchers 2nd Half June 2020

| Number | Vendor Name                               | Account Description                   | Amount      |
|--------|---|---------------------------------------|-------------|
| 38637  | Spokane County Auditor                    | Matthews Special Use Permit Recording | \$111.50    |
| 38638  | Washington Trust Bank                     | Central Services Supplies             | \$56.07     |
|        |   | Communications                        | \$157.61    |
|        |   | Professional Services                 | \$25.68     |
|        |   | Repair & Maintenance                  | \$341.44    |
|        |   | Supplies                              | \$65.66     |
|        |   | Check Total:                          | \$646.46    |
| 38639  | American Linen                            | Air Fresheners and Supplies           | \$321.02    |
|        |   | Mat Change Out                        | \$56.70     |
|        |   | Check Total:                          | \$377.72    |
| 38640  | Autozone                                  | Wastewater Lift Station Repair        | \$14.37     |
| 38641  | Centurylink                               | Communications                        | \$1,816.31  |
| 38642  | City of Deer Park                         | 12% Utility Tax to Gen/Street Funds   | \$18,854.70 |
| 38643  | City Service Valcon, LLC                  | Airport Terminal Maintenance          | \$16.00     |
|        |   | Airport Resale Fuel                   | \$16,024.50 |
|        |   | Check Total:                          | \$16,040.50 |
| 38644  | Clark Equipment Co. d/b/a Bob Cat Company | 2010 Takeuchi Skid Steer              | \$45,944.88 |
| 38645  | Concrete Plus LLC                         | Country Club Repair & Maintenance     | \$5,753.44  |
| 38646  | Darold Schultz                            | Airport Supplies                      | \$101.17    |
| 38647  | Ferguson Waterworks                       | R & M Structures Water Repair         | \$50.93     |
| 38648  | G and S Landscape                         | De-Icer Service                       | \$832.37    |
| 38649  | Harper, Donald                            | Travel/training                       | \$110.00    |
| 38650  | Inland Feed And Farm                      | Spraying Supplies                     | \$113.48    |
|        |   | Vehicle Fuel                          | \$350.60    |
|        |   | Check Total:                          | \$464.08    |
| 38651  | Jub Engineers, Inc.                       | FAA AIP #27 Taxilane/Apron Const.     | \$4,971.00  |
|        |   | Professional Services                 | \$265.50    |
|        |   | Subdivision DP Meadows Insp.          | \$331.06    |
|        |   | Treatment Lagoon Design               | \$4,122.16  |
|        |   | Check Total:                          | \$9,689.72  |
| 38652  | Les Schwab Tire Center                    | Airport Repair & Maintenance          | \$31.34     |
| 38653  | Oxarc Inc.                                | Water repair R & M Structures         | \$68.18     |
| 38654  | Prettyman's Septic Service                | Airport Portable Restroom ervices     | \$187.84    |
| 38655  | Quadient Leasing                          | Communications                        | \$346.54    |
|        |   | Folder/inserter                       | \$661.67    |
|        |   | Check Total:                          | \$1,008.21  |

|  |   |  |                     |
|--|---|--|---------------------|
| 38656  | Reliance Janitorial   | City Hall Janitorial Services          | \$535.00            |
| 38657  | Ricoh USA, Inc  | City Hall Copier                       | \$208.62            |
|  |   | Supplies                               | \$126.38            |
|  |   | Check Total:                           | \$335.00            |
| 38658  | Schultz's Aviation, LLC   | June 2020 Airport Management Contract  | \$9,441.67          |
| 38659  | Spokane County District Court   | Professional Services                  | \$1,594.16          |
| 38660  | Spokane County Treasurer/SCRAPS   | Spokane County Regional Animal Control | \$894.07            |
| 38661  | Vision Municipal Solutions LLC  | Service Call                           | \$204.09            |
| EFT Debit Acct.<br>Analysis Chge<br>May 2020 | Washington Trust Bank   | Professional Services                  | \$61.84             |
| EFT Debit<br>Combined Excise<br>Tax May 2020 | State of Washington   | Excise Tax Remittance                  | \$5,846.05          |
|  |   | Fuel Sales Tax                         | \$1,735.35          |
|  |   | Leasehold/sales Tax Remitt             | \$13.20             |
|  |   | Check Total:                           | \$7,594.60          |
| EFT Debit June<br>2020 Postage<br>Refill     | United States Postal Svc  | Communications                         | \$900.00            |
|  | <b>Grand Total</b>  |  | <b>\$123,664.15</b> |
|  | <b>Total Accounts Payable for Checks #38637 Through #EFT Debit June 2020 Postage Refill</b> |  |                     |

**CITY OF DEER PARK**  
**PAYROLL CERTIFICATION AND APPROVAL**

**Auditing Officer's Certification**

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services and/or the labor has been performed as described herein and is a just, due and unpaid obligation against the *City of Deer Park*, and that I am authorized to authenticate and certify said Payroll Checks numbered 13783 through 13815 including PFML and 941 Taxes in the amount of \$115,780.85.

\_\_\_\_\_  
City Clerk/Treasurer

**Council Approval**

We, the undersigned Council Members of the *City of Deer Park* approve the payment of Payroll Checks numbered 13783 through 13815 including PFML and 941 Taxes in the amount of \$115,780.85  
1st day of July 2020.

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## **DEER PARK AIRPORT LEASE AGREEMENT**

THIS LEASE AGREEMENT (hereinafter sometimes referred to as "Lease" or "Agreement") is made and entered into by and between the City of Deer Park, State of Washington, hereinafter referred to as "City" and Raymond and Heidi Thomas hereinafter referred to as "LESSEES."

### **WITNESS THAT**

WHEREAS, THE CITY OF DEER PARK is the owner of certain described real estate, more fully described below; and

WHEREAS, THE LESSEES desire to lease the certain described property for the purpose described herein;

NOW, THEREFORE, for and in consideration of the premises provided herein and the mutual covenants and agreements hereinafter contained and other valuable consideration, the parties hereto agree, for themselves, their successors and assigns, as follows:

#### **I. PREMISES**

The City of Deer Park hereby leases to LESSEES the parcel of land shown in Deer Park Municipal Airport Lease Plan 2018 Revision #6 (Dated 08/08/2018) and described as Lot #25 located at 1006 N. Cedar Rd. Deer Park Municipal Airport, Spokane County, Washington (hereinafter the "Premises" or "Leased Premises").

The City covenants and agrees that it is in lawful possession of the property, and has good and lawful authority to execute this Lease. The LESSEES hereby warrant that they have inspected the Premises and City has not made any promises, warranties, or statements other than as contained herein. LESSEES accept the Premises as is.

The City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the LESSEES, and without interference or hindrance.

The City reserves the right but shall not be obligated to the LESSEES, 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 LESSEES in this regard.

The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent the LESSEES from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

The City shall have the right to temporarily close the Airport or any of the facilities thereon for maintenance, improvement, or for the safety of the public.

It is understood and agreed to by LESSEES that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by the Airport Development Act, 49 U.S.C. 47101. et seq. and Section 308 of the Federal Aviation Act of 1958 as the same exist now or may hereafter be amended.

During the time of war or national emergency, the City shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if such Lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the government, shall be modified to be consistent with the provisions of the lease to the government and may be fully suspended at the option of the City.

This Lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for development of the Airport, by the provisions of the Airport Improvement Program, and as the program may be amended, or any other federal act, deed, grant agreement, or program affecting the operation or maintenance of the Airport now or in the future; provided however, that the City shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of LESSEES in and to the Premises and improvements thereon. Failure of the LESSEES or any occupant to comply with the requirements of any existing or future agreement between the City and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of LESSEES's rights hereunder.

## II. TERM

A. The Term of this Lease shall be for a period of 20 (twenty) years commencing from the 1st (First) day of July, 2020 and ending the 30<sup>th</sup> (Thirtieth) day of June 2040 unless otherwise terminated or canceled as provided in this document.

B. At the end of the term of this Lease, LESSEES shall have the option to apply for a new lease at the then current terms for new leases. The LESSEES shall be eligible for a new lease agreement on the Leased Premises provided LESSEES is in compliance with all terms, covenants, and conditions of this Lease and any amendments thereto.

## III. HOLDING OVER

If LESSEES, without the written consent of the City, shall hold over after the termination date or earlier termination of this Lease, LESSEES shall be deemed to be occupying the Premises as a month-to-month tenant whose tenancy may be terminated as provided by the laws of the State of Washington. During any such tenancy, LESSEES agrees to be bound by all of the terms, covenants, and conditions of this Lease, as far as they are applicable to a month-to-month tenancy and to pay monthly rent in the amounts designated by the City.

**IV. USE OF PREMISES**

A. LESSEES agree that the use of the Premises shall be limited to those airport-related activities authorized by the Federal Aviation Administration, City of Deer Park Zoning Regulations, Airport Minimum Business Standards and Airport Rules and Regulations as are presently in effect and may in the future be adopted, or as may otherwise be agreed to by the parties.

B. LESSEES shall provide proof of aircraft registration (or intent to register) with the State of Washington in accordance with RCW 47.68.250, as the same exists now or may hereafter be amended. The City is obligated by law to report to the Washington State Department of Transportation, Aviation Division the aircraft "N" number and owner name and address of those not yet registered.

C. It is clearly understood by the LESSEES that no right or privilege has been granted which would prevent any person, firm, corporation, or entity operating aircraft on the airport from performing any service on its own aircraft with its own employees (including, but not limited to, maintenance and repair) that it may choose to perform.

E. LESSEES shall be responsible for all costs associated with the construction including, but not limited to the building or structure, applicable landscaping, lighting and provision of or extension of all utilities to the building site. Utilities are to be installed to the City's specifications and those required by the local utility company.

**V. FINANCIAL OBLIGATION**

A. Commencing on the effective date of this Lease, LESSEES agree to pay rent to the City as calculated below:

| Rate    | Sq. Feet | Lease Total | Leasehold  | Total Annual | Semi-Annual |
|---------|----------|-------------|------------|--------------|-------------|
|         |          |             | Tax 12.84% |              |             |
| \$ 0.20 | 18000    | \$ 3,600.00 | \$ 462.24  | \$ 4,062.24  | \$ 2,041.12 |

The rental payment amount for any partial calendar months included in the Lease term shall be prorated on a daily basis. Annual payments, in advance, are preferred. Semi-annual payments shall be assessed an administrative fee of \$10 per payment. Rent not paid by the 10th of the month due shall be deemed delinquent, and a penalty of 10% of the amount due at that time shall be assessed against each delinquent installment.

B. No demand for rent need at any time be given, but it shall be the duty of the LESSEES to pay rentals, fees, charges, and billings as required under the provisions of this Lease.

C. Lease rates for the Leased Premises shall be adjusted annually. Adjustment shall be based upon the most immediate complete full previous year Consumer Price Index, Pacific Cities, West-B/C (Dec. 1996=100) for All Urban Consumers (CPI-U). City shall issue notice of intent to adjust the rental rates at least (30) days prior to the initiation of a rate increase. In the event this Consumer Price Index is no longer produced, then the next most geographically similar All Urban Consumers Index (CPI-U) shall be selected and applied by the City.

D. LESSEES shall keep all rental payments free from all claims, demands, or set-offs, of any nature, or by any person, corporation, or entity.

E. Installation, hook-up, and payment for utilities shall be the responsibility of the LESSEES. Utilities are to be installed to the City's specifications and those of the utility service provider.

## **VI. FAILURE TO COMPLY WITH FINANCIAL OBLIGATION**

Failure to pay amounts due or comply with any other of the financial obligations to the City under this Agreement shall entitle the City to re-enter and take possession of the Premises upon giving LESSEES ninety (90) days advance notice of intent to do so, if said monetary default has not been remedied within the ninety (90) day period after notice is sent.

## **VII. DISPOSITION OF BUILDINGS AND IMPROVEMENTS UPON LEASE EXPIRATION**

At least one hundred eighty (180) days prior to the expiration of this Lease, LESSEES shall notify the City regarding LESSEES's intent with respect to lease renewal or disposition of buildings and improvements on the Leased Premises. Upon termination for reasons other than default, the City and LESSEES shall agree upon one of the following three courses of action with respect to the disposition of LESSEES's buildings and improvements located at the Premises:

1. In the event that the LESSEES desire to continue occupying the Leased Premises, the LESSEES may request that the City grant a new lease agreement. If the City desires to continue to lease the Leased Premises with the existing improvements, the City may concur with this request. Any such request concurred with by the City must be accompanied by the lease renewal application fee then in effect. In the event the City concurs with the LESSEES's request to lease the Leased Premises, then the LESSEES shall be eligible for a new lease agreement for the Leased Premises provided the following conditions are met by the LESSEES:

- Good Repair: The Leased Premises and all improvements are in a state of good repair, including, without limitation, exterior paint, walls, roofs, doors, and any other items including those which are structural and/or aesthetic in nature.

- LESSEES are in compliance with all terms, covenants, and conditions of this Lease. The terms of the new lease agreement are subject to negotiation between the City and LESSEES. OR

2. At the end of the term of this Lease, the LESSEES may peacefully surrender the Leased Premises in a fully restored condition, including the removal of all improvements. Restoration of Leased Premises shall also include fine grading to allow for proper drainage into the appropriate drainage system. All components of the improvement removed from the Leased Premises shall be completely removed from the site and disposed of off airport at the sole cost of LESSEES. Removal of improvements and restoration of the Leased Premises shall be complete no later than thirty (30) calendar days after the expiration date of this Lease, unless the City agrees to an extension. OR

3. The City may agree to purchase the improvements from LESSEES at a price to be determined by the City and LESSEES. The City and LESSEES may agree to have an appraisal of the improvements completed to aid the City and LESSEES in their efforts to agree upon a purchase price. In the event the City and LESSEES are unable to agree upon a purchase price, the City may require LESSEES to comply with Option 2 above.

If the City and LESSEES are unable to agree upon any of the above three options, then option 2 shall, by default, apply upon termination of the Lease term.

Personal property left on the Leased Premises shall, at the option of the City, become exclusive property of the City, without liability for payment, if said personal property remains on the Leased Premises thirty (30) days after the termination of the Lease for any reason.

City, at its discretion, may extend the time period for resolution of these options. LESSEES shall be deemed to be occupying the Premises as a month-to-month tenant during any such extended period as per Article III of this Lease.

#### **VIII. INDEMNIFICATION AND INSURANCE BY LESSEES**

The LESSEES shall indemnify the City, its employees, the Airport Manager and its employees, and City elected and appointed officers from and against any and all claims, demands, cause of actions, suits or judgments, including attorney's fees, costs and expenses incurred in connection therewith and in enforcing the indemnity, for deaths or injuries to persons or for loss of or damage to property arising out of or in connection with the condition, use occupancy or LESSEES's maintenance of the Leased Premises or common areas or any improvements thereon; or by LESSEES's non-observance or non-performance of any law, ordinance or regulation applicable to the Leased Premises; or

incurred in obtaining possession of the Leased Premises after a default by the LESSEES, or after the LESSEES's default in surrendering possession upon expiration or earlier termination of the Term of the Lease, or enforcement of any covenants in this Lease. This includes, without limitation, any liability for injury to the person or property of LESSEES, its agents, officers, employees, or invitees. **The LESSEES specifically waive any immunity provided by Washington's Industrial Insurance Act. This indemnification covers claims by LESSEES' own employees.** This provision and waiver was specifically negotiated.

City shall indemnify LESSEES, its members, employees, and agents from and against any and all claims, demands, causes of action, suites or judgments, including attorney fees, costs and expenses incurred in connection therewith and in enforcing the indemnity, for death or injury to persons or for loss of or damage to property caused by the City's breach of any term of this Lease or the negligence of the City.

In the event of any claims made to, or suits filed against City, for which the above indemnity applies, City shall give LESSEES prompt written notice thereof and LESSEES shall defend or settle the same.

LESSEES, as a material part of the consideration to be tendered to City, waives all claims against City for damages to goods, wares, merchandise and loss of business, in upon or about the Leased Premises and for injury to LESSEES, its agents, employees, or invitees in or about the Leased Premises from any cause arising at any time, other than for City's sole negligence or willful misconduct.

From and after the commencement date of the initial term of this Lease and continuing for the initial term and any extension of this Lease, LESSEES shall insure the Leased Premises, at its sole cost and expense, against claims for bodily injury and property damage under a policy of general liability insurance, with aggregate limits of \$1,000,000 for bodily injury and property damage. Such policy shall name City as an additional insured. Before taking possession of the Leased Premises, the LESSEES shall furnish the City with a certificate evidencing the aforesaid insurance coverage.

The aforementioned minimum limits of policies shall in no event limit the liability of LESSEES hereunder. No policy of LESSEES's insurance shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to City by the insurer. LESSEES shall, at least thirty (30) days prior to the expiration of the policies, furnish City with renewals or binders.

The insurance required shall be issued by carriers acceptable to the City, and City's approval shall not be unreasonably withheld.

The LESSEES agrees that if LESSEES does not purchase and maintain such insurance, City may, but shall not be required to, procure such insurance on LESSEES's behalf and charge LESSEES the premiums together with a five percent (5%) administrative charge, payable upon demand.

In the event a fire or other casualty loss results in destruction of the building to the extent that LESSEES determines not to use insurance proceeds to repair or rebuild the hangar building, the proceeds of any insurance payment available to LESSEES shall first be used to restore the Premises to the condition they were in prior to construction of a building on the Leased Premises and the remaining insurance proceeds shall be the property of LESSEES.

LESSEES's construction contractor shall provide at least \$1,000,000 general liability insurance naming the City of Deer Park as an additional insured.

#### **IX. DAMAGE OR DESTRUCTION**

If the improvements on the Premises are partially or totally damaged by fire or other casualty, the LESSEES will repair or replace the damaged improvements (or similar) to meet existing building code at its sole expense within a reasonable period of time (not to exceed ninety (90) days from casualty or as weather and the permit process allow). All such construction shall be subject to the covenants, restrictions, and approval procedures as defined in the Airport Site Development Guidelines and City of Deer Park Building Department.

In the event LESSEES decide not to rebuild within a reasonable time, LESSEES shall restore the Leased Premises to a good and usable condition in conformity with the then current usage within ninety (90) days from the date that written notice to restore is received from the City.

City may, at its discretion, extend the period for rebuilding. LESSEES shall remain responsible for payment of rent and leasehold tax and shall comply with all terms and conditions of this Lease during this extended period.

If the LESSEES opts not to rebuild, upon payment of the remainder of the rent due under the Lease and removal of all improvements and restoration of the Leased Premises to the condition the Leased Premises were in at the time of commencement of this Lease, the City will agree to terminate the Lease.

#### **X. UTILITIES AND MAINTENANCE OF PREMISES**

LESSEES shall pay all charges for utility services furnished to the Premises, including, but not limited to, electricity, gas, telephone, water, sewage, garbage disposal, and janitorial services throughout the term of this Lease.

LESSEES shall, at its sole expense, keep and maintain the Premises in good repair and tidy condition. While not all inclusive, particular attention shall be focused on foundations, structural components, roofs, wall systems, doors, and electrical and water systems. Roofs and walls should be maintained to be free from leaks and damage and should be painted as necessary to maintain a tidy appearance.

In addition, LESSEES shall:

- (a) Not allow trash, garbage, rubbish or refuse to collect on the exterior of any building on the Premises;
- (b) Mow vegetation on Premises;
- (c) Keep Premises around building free from inoperable and junk equipment;
- (d) Not use Premises around hangar as long-term parking for vehicles or parking of equipment not then being used for the operation of aircraft or maintenance of Premises.

## **XI. ADVERTISING, LIGHTING, AND TRANSMISSIONS**

A. The LESSEES shall submit plans and obtain approval of the City before erecting, installing, or operating signs or other advertisements upon any portion of the Premises herein demised.

B. The installation or use on the Premises of any floodlights, neon lights, colored lights, or other means of lighting shall be subject to the express written approval of the Airport Manager. Any use of lighting or signage that may potentially impair a pilot's ability to distinguish between airport lights and other light, or that creates glare or distraction affecting pilot vision is prohibited. All lighting shall be shielded downward.

C. Any use that creates or causes interference with the operations of radio or electronic facilities at the airport or with radio or electronic communications shall be prohibited.

## **XII. CITY'S RIGHT OF CANCELLATION**

In addition to any conditions as specified herein and all other remedies available to the "City," this agreement shall be subject to cancellation by the City should any one or more of the following occur:

A. If LESSEES shall file a voluntary petition in bankruptcy or proceedings in bankruptcy instituted against the LESSEES are thereafter adjudicated, a bankruptcy pursuant to such proceedings, or a court shall take jurisdiction of the LESSEES's property and its assets pursuant to proceedings brought under the provision of the Federal Reorganization or Bankruptcy Act, or a receiver for the LESSEES's assets is appointed, or the LESSEES is divested of its rights, powers, and privileges under this Lease by other operation of law.

B. If LESSEES shall default, fail to perform, or breach any covenants, terms, or conditions of this Lease, the LESSEES shall be given written notice to correct or cure such default, failure to perform, or breach. If, within ninety days (90) from the date of such notice, the default, breach, or complaint shall not have been corrected in a manner

satisfactory to the City, the City shall have the right to immediately declare this Lease terminated and to proceed to evict LESSEES and may require LESSEES to remove all improvements to the Leased Premises or at the City's option keep or dispose of the improvements.

**.XIII. LESSEES'S RIGHT OF CANCELLATION**

In addition to all other remedies available to the LESSEES, this Lease shall be subject to cancellation by LESSEES should any one or more of the following occur:

A. The permanent abandonment or discontinuance in use of the Airport as an airport.

B. The issuance of any order, rule or regulation by the Federal Aviation Administration or any other federal agency or by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Airport for air transportation by LESSEES.

C. The breach by the City of any covenants, terms, or conditions of this Lease to be kept, performed and observed by the City and the failure to remedy such breach for a period of ninety (90) days after written notice from LESSEES of the existence of such breach.

D. The assumption of the United States Government, or any authorized agent of the same, of the operation, control or use of the Airport and its facilities in such manner as to substantially restrict the LESSEES from conducting its business or activity, if such restriction be continued for a period of (90) continuous days or more.

E. The occurrence of any event or events beyond the reasonable control of the LESSEES, including, but not limited to, any act of God or other supervening event which precludes the LESSEES from the use of the property for the purposes enumerated herein, or from the use of the airport facilities.

**XIV. ASSIGNMENT & SUBLETTING**

A. ASSIGNMENT: Except in the event of the death, disability, or incompetency adjudication of LESSEES (including both husband and wife, if LESSEES is a marital community), there shall be no right to assign this Lease. Any assignment of this Lease permitted by this provision shall contain a provision acknowledging that LESSEES or LESSEESs' estate shall remain liable to the City for compliance with all of the terms and conditions of this Lease for the Term of this Lease.

B. SUBLETTING: LESSEES shall have the right to sublease the subject Premises, with prior approval of the City as to proposed subLESSEES and proposed use, which approval shall not be unreasonably withheld. LESSEES shall submit a copy of sublease agreement to the City. Any such sublease agreement shall not conflict with the

terms and provisions of this Lease and LESSEES shall provide to the City notice of any intent to sublease at least thirty days prior to such sublease. Any sublease shall not relieve the LESSEES of any responsibility to perform any provisions of this Lease in the event LESSEES's subLESSEES fails to perform said provisions.

#### **XV. NON-DISCRIMINATION**

During the term of this Lease, LESSEES, for itself, its personal representatives, and successors in interest, as a part of the consideration hereof, do 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 excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination by LESSEES in the LESSEES's occupation, use, or construction upon the Leased Premises.

B. LESSEES shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Environmental Protection Agency, 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.

#### **XVI. PAYMENT OF TAXES AND FEES**

LESSEES shall pay all license, excise fees, permits, and taxes covering the business conducted on the Premises, and any taxes on the leasehold interest created by this Lease. LESSEES shall also be responsible for payment of any other statutory tax or other fiscal obligations imposed by applicable local, state, or federal law with respect to the LESSEES's agents, employees, property, or activities on the Premises.

#### **XVII. RIGHT TO ENTER PREMISES**

The City reserves the right to inspect the Premises and any improvements at any reasonable time for the purpose of ensuring compliance with rules and regulations governing the use of the Premises. The City shall make reasonable attempts to contact LESSEES first by telephone, and if no answer, by certified mail (according to the current information provided by the LESSEES) to arrange a convenient time for inspection. When immediate entry is deemed necessary for emergency purposes, if LESSEES is not present to permit such entry, the City, its agents and employees shall be permitted to enter the Premises and any improvements. The City's agents or employees shall not be liable for any civil or criminal claim or cause of action for damages because of entering the Premises or improvements at reasonable times and in a reasonable manner.

## **XVIII. LEGAL CLAIMS**

LESSEES shall promptly report to the City any claim or suit against LESSEES arising out of or in connection with the operation of LESSEES's business or activities at the airport. LESSEES is an independent contractor in every respect and not an agent of the "City."

## **XIX. LIENS AND ENCUMBRANCES**

LESSEES agree that they shall pay, or cause to be paid, all costs and expenses for work done and materials delivered to the Premises and improvements, during the Term, for improvement to the Premises. LESSEES shall keep the Premises free and clear of all liens. LESSEES agree to and shall indemnify, defend, and hold the City harmless from any liability, loss, damage, cost, attorney's fees, and all other expenses on account of claims of lien of laborers or material men, or others, for work performed or materials or supplies furnished to LESSEES for use on the Premises.

## **XX. LAWS, REGULATIONS, AND PERMITS**

LESSEES agree that the use of the Premises, including construction thereon, shall conform at all times to any applicable federal, state, county, municipal laws, statutes, ordinances, or regulations, which may affect said property or the use thereof.

## **XXI. HAZARDOUS SUBSTANCES**

### **A. Presence and Use of Hazardous Substances**

LESSEES shall identify and manage all hazardous substances and/or wastes according to The Washington State Department of Ecology Hazardous Wastes and Toxics Reduction Program (See Exhibit B). With respect to any such Hazardous Substances, LESSEES shall:

1. Comply promptly, timely, and completely with all governmental requirements for reporting, keeping, and submitting manifests, and obtaining and keeping current identification numbers;
2. Submit to the City true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;
3. Within five (5) days of the City's request, submit written reports to the City regarding LESSEES' use, storage, treatment, transportation, generation, disposal, or sale of Hazardous Substances and provide evidence satisfactory to the City of LESSEES compliance with the applicable government regulations;

4. Allow the City or the City's agent or representative to come on the Premises, pursuant to Article, XVII to check LESSEES compliance with all applicable governmental regulations regarding Hazardous Substances;

5. Comply with minimum levels, standards, or other performance standards or requirements which may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Premises, such levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease); and

6. Comply with all applicable governmental rules, regulations, and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances.

Any and all costs incurred by the City and associated with the City's inspection of LESSEES Premises and the City's monitoring of LESSEES compliance with this Article, including the City's attorneys' fees and costs, shall be additional rent and shall be due and payable to the City immediately upon demand by the City.

**B. Cleanup Costs, Default, and Indemnification**

1. LESSEES shall be fully and completely liable to the City and/or other regulatory agencies for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to LESSEES use, disposal, transportation, generation, and/or sale of Hazardous Substances, in or about the Premises.

2. LESSEES shall indemnify, defend, and hold the City harmless from any and all of the costs, fees, penalties, and charges assessed against, imposed upon, or incurred by the City (including but not limited to the City's actual attorneys' fees and costs) as a result of LESSEES use, disposal, transportation, generation, and/or sale of Hazardous Substances.

3. Upon LESSEES' default under this Article, in addition to the rights and remedies set forth elsewhere in this Lease, the City shall be entitled to the following rights and remedies:

- a. At the City's option, to terminate this Lease immediately; and/or
- b. To recover any and all damages associated with the default, including, but not limited to, cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by the City and other tenants of the airport, any and all damages and claims asserted by

third parties and the City's actual attorneys' fees and costs.

## **XXII. SEVERABILITY**

Nothing in this Lease shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Lease and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Lease affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

## **XXIII. SUCCESSORS**

This Lease is binding upon and benefits the heirs and successors of the LESSEES.

## **XXIV. TIME IS OF THE ESSENCE**

It is mutually agreed that time is of the essence in this Lease.

## **XXV. CONFLICT RESOLUTION**

All claims, disputes and other matters in controversy (herein called "dispute") arising directly or indirectly out of or related to this Lease, or the breach thereof, whether contractual or non-contractual, and whether during the term of or after the termination of this Lease, shall be resolved exclusively according to the procedures set forth in this Article XXV.

### **Mediation.**

Neither party shall commence an arbitration proceeding pursuant to the provisions of this Article XXV unless such party shall first give a written notice (a "Dispute Notice") to the other party in the same manner otherwise provided for notice in this Lease, setting forth with reasonable specificity the nature of the dispute. The Dispute Notice shall constitute a notice and demand for mediation. The parties shall attempt in good faith to resolve the dispute by non-binding mediation. If the parties cannot agree on the selection of a mediator within fifteen (15) days after delivery of the Dispute Notice, the Seattle, Washington office of JAMS shall select the mediator. If the dispute has not been resolved by mediation within sixty (60) days after delivery of the Dispute Notice, then the dispute shall be determined by arbitration in accordance with the provisions of this Article XXV below.

### **Arbitration.**

Any dispute that is not settled by mediation as provided in Section 8.1 shall be resolved by arbitration in the City of Spokane, State of Washington in accordance with

the JAMS Arbitration Rules in effect on the date of the Dispute Notice, by an arbitrator appointed by the Seattle, Washington office of JAMS. The judgment on the arbitration shall be entered in Spokane County Superior Court.

The arbitrator shall issue an award in writing specifying its findings of fact and conclusions of law. Each party shall pay one-half of the fees and costs of the arbitrator.

Upon the application by either party to Spokane County Superior Court for an order confirming, modifying or vacating the award, the court shall have the power to review whether, as a matter of law based on the findings of fact determined by the arbitrator, the award should be confirmed, or should be modified or vacated in order to correct any errors of the law that may have been made by the arbitrator. In order to effectuate such judicial review limited to issues of law, the parties agree (and shall stipulate to the court) that the findings of fact made by the arbitrator shall be final and binding on the parties and shall serve as the facts to be submitted to and relied on by the court in determining the extent to which the award should be confirmed, modified or vacated.

### **Costs and Attorneys' Fees.**

Except as otherwise specifically provided in this Lease, each party shall pay its own costs and attorney's fees incurred in any mediation, arbitration or any Spokane County Superior court hearing or further appeal or other litigation relating to or arising out of the existence of this Lease.

### **JAMS.**

References in this Lease to the Seattle, Washington office of JAMS shall be considered references to the Spokane office of JAMS in the event a Spokane office is available on the date of the Dispute Notice. In the event there is no Seattle or Spokane office of JAMS on the date of the Dispute Notice, the Spokane County Superior Court shall appoint the mediator referred to in the Mediation provisions of this Article XXV and the arbitration provisions shall be interpreted as eliminated and stricken from this Lease and either party may only resolve disputes through commencement of litigation in Spokane County Superior Court.

### **XXVI. VENUE**

It is hereby agreed and understood by both parties that the venue for any legal or equitable action arising out of the existence of this Lease shall be in the Superior Court of Spokane County, State of Washington.

### **XXVII. ENTIRE AGREEMENT**

This Lease constitutes the entire agreement of the parties, including Exhibits "A and B" (and any addendum). No other written or oral statements shall be a part of this

Lease. This Lease may only be modified by an agreement in writing signed by both parties.

**XXVIII. NOTICES**

All notices required herein shall be deemed to be properly served if hand delivered, or if sent by U.S. mail, postage prepaid, to the last address previously furnished by the parties hereto. LESSEES is obligated to notify the City of current address and phone numbers. Until hereafter changed by the parties in writing, notices shall be addressed as follows:

City: City of Deer Park  
Attn: Airport Manager  
E. 316 Crawford, PO Box F  
Deer Park, WA 99006  
(509)276-8802

LESSEES: Raymond and Heidi Thomas  
P.O. Box 791  
Deer Park, WA. 99006  
(509) 993-9843

Date of service of such notice shall be the date of postmark by the U. S. Post Office service.

**XXIX. ENCUMBRANCE OF LESSEES'S INTEREST**

The LESSEES may encumber, by Mortgage, Deed of Trust, or other proper instrument, its leasehold interest and estate in the Leased Premises, together with all improvements placed thereon by LESSEES, as security for any indebtedness of LESSEES.

The City will cooperate in a timely manner with any reasonable requests of LESSEES involving an attempt by the LESSEES to encumber LESSEES's leasehold interest and/or estate in the Leased Premises.

The execution of any such Mortgage, Deed of Trust, or other instrument, or the foreclosure or other proceedings thereunder, shall not relieve the LESSEES from its liability and obligations under this Lease.

Any holder of LESSEES's interest herein acquired through foreclosure or other proceedings shall acquire and possess only the rights and interests of LESSEES herein and shall be subject and subordinate to the rights and interest of City herein.

**XXX. INTERPRETATION**

This Lease has been submitted to the scrutiny of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration to or weight given to its being drafted by any party or its

counsel. Paragraph and Section headings are for convenience only and shall not be considered when interpreting this Lease. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and neuter genders.

**XXXI. NON-WAIVER OF COVENANTS**

Either party's failure to insist upon the strict performance of any provision of this Lease shall not be construed as depriving either party the right to insist on strict performance of such provision in the future. The subsequent payment of rent by the LESSEES or acceptance of rent by the City, whether full or partial payment, shall not be deemed a waiver of any preceding breach by either party of any term, covenant, or condition of this Lease, other than the failure of the LESSEES to pay the particular part of the rent accepted, regardless of either party's knowledge of the preceding breach at the time of the acceptance of that part of the rent.

**XXXII. COUNTERPARTS**

This Lease may be signed in counterparts, each of which shall be an original but all of which shall constitute one and the same document. Signatures transmitted by facsimile or electronically shall be deemed valid execution of this Lease, binding on the parties.

The parties hereto by their respective authorized signatures below approve and enter into this Lease effective the First day of January, 2020.

City of Deer Park

Lessees:

\_\_\_\_\_  
Timothy Verzal, Mayor

  
\_\_\_\_\_  
Raymond Thomas

Attest By:

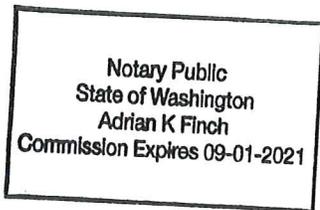
  
\_\_\_\_\_  
Heidi Thomas

\_\_\_\_\_  
Deby Cragun  
City Clerk/Treasurer

STATE OF Washington )  
 ) ss  
County of Spokane )

I certify that I know or have satisfactory evidence that Raymond + Heidi Thomas are the persons who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it as the LESSEES or authorized signatory for the LESSEES identified in this instrument, to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated June 16<sup>th</sup> 2020



Adrian K Finch  
(SIGNATURE)  
Adrian K Finch  
(TYPED OR PRINTED NAME)

Notary Public in and for the State of

WA, residing in Deer Park

My Commission Expires: 09-01-2021