

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

SPECIAL MEETING AGENDA REQUEST

TO: Board of County Commissioners

FROM: Mark McCauley, County Administrator

DATE: August 26, 2022

SUBJECT: Entry into a Lease between Jefferson County and Olympic Community Action Programs (OlyCAP) for the Caswell-Brown Village Site

STATEMENT OF ISSUE: In September 2021, Jefferson County entered into a Professional Services Agreement (PSA) with OlyCAP to manage properties acquired by the County to relocate the unhoused population then residing at the County Fairgrounds site. Since then, OlyCAP has exerted much effort under the PSA to provide for the unhoused population first by creating an emergency site on the property (Phase 1) and thereafter creating a longer-term solution (Phase 2). A Phase 3 is planned, and OlyCAP plans to apply for a grant with the Washington State Department of Commerce for funding to construct Phase 3.

To secure the grant from the Department of Commerce, OlyCAP must have control of the site for at least forty (40) years. Staff believes that a lease for at least forty-two (42) years is a desirable option to pursue. Forty-two (42) years will give OlyCAP time to complete the grant process with the Department of Commerce and the permitting process with the County.

A workshop with the BoCC was conducted on August 1, 2022, where the BoCC directed staff to present a lease document (without a lease purchase option) to OlyCAP. Subsequent negotiations have occurred, resulting in the draft lease attached to this Agenda Request. For its grant application with the Washington Department of Commerce, OlyCAP has requested that the lease document be finalized and approved by the County by the end of August 2022.

On Monday, August 22, 2022 this was discussed and a special meeting for Friday, August 26, 2022, was scheduled for continued discussion.

After the August 22, 2022 workshop, Public Works made useful suggestions on modifying the lease document, namely:

1. Moving the line defining the Leased Premises 5 feet inward from the Larry Scott Trail. This will facilitate working on the trail and add an additional buffer to the right-of-way.
2. The proposed parking lot already has been designed by PW. It would jut in a bit into the area just below the Larry Scott Trail. PW proposes removing the proposed parking lot from the Leased Premises. The proposed parking lot is shown on Exhibit 2, attached.
3. PW already has done design changes to the sharp corners on the Larry Scott Trail. These changes also are shown on Exhibit 2. The Leased Premises would be changed to reflect these coming changes to the Larry Scott Trail.

4. The lease will essentially cut off access to the adjoining and nearby properties owned by the County. The lease has been modified to give the County reasonable access to these properties from the entrance on Mill Road. I expect PW and OlyCAP would work out the location for access.

At the time of August 22, 2022 workshop OlyCAP's consultants hadn't weighed in on the draft lease. Since then they have had that opportunity. The version of the lease being considered today reflects the changes considered by OlyCAP's consultants,

ANALYSIS: A further revised draft lease agreement has been prepared, attached.

FISCAL IMPACT: The fiscal impact of this Agenda Request is unknown. However, if the lease is entered into, the County will effectively lose the rental or development value of the leased premises for 40 years. However, the gain will be a location to shelter the unhoused.

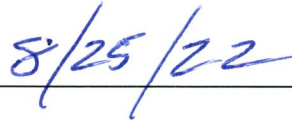
RECOMMENDATION: That the Board of County Commissioners review and approve the revised draft lease.

REVIEWED BY:



Mark McCauley, County Administrator

Date



8/25/22

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

REGULAR AGENDA REQUEST

TO: Board of County Commissioners

FROM: Mark McCauley, County Administrator

DATE: August 22, 2022

SUBJECT: Entry into Lease between Jefferson County and Olympic Community Action Programs (OlyCAP) for the Caswell-Brown Village Site

STATEMENT OF ISSUE:

In September 2021, Jefferson County entered into a Professional Services Agreement (PSA) with OlyCAP to manage properties acquired by the County to relocate the unhoused population then residing at the County Fairgrounds site. Since then, OlyCAP has exerted much effort under the PSA to provide for the unhoused population first by creating an emergency site on the property (Phase 1) and thereafter creating a longer-term solution (Phase 2). A Phase 3 is planned, and OlyCAP plans to apply for a grant with the Washington Department of Commerce for funding to construct Phase 3.

To secure the grant from the Department of Commerce, OlyCAP must have control of the site for at least forty (40) years. Staff believes that a lease for at least 40 years with an option to purchase for ten (10) years is a desirable option to pursue.

A workshop with the BoCC was conducted on August 1, 2022, where the BoCC directed staff to present a lease document (without a lease purchase option) to OlyCAP. Subsequent negotiations have occurred, resulting in the draft lease attached to this Agenda Request. OlyCAP's consultants have not completed review of the draft lease attached to this Agenda Request. For its grant application with the Washington Department of Commerce, OlyCAP has requested that the lease document be finalized and approved by the County by the end of August 2022.

ANALYSIS:

A revised draft lease agreement without an option to purchase has been prepared. The BoCC should attempt to satisfy OlyCAP's request to approve the lease document by the end of this month.

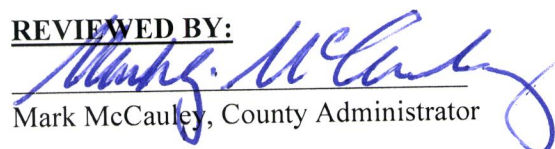
FISCAL IMPACT:

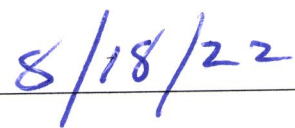
The fiscal impact of this Agenda Request is unknown. However, if the lease is entered into, the County will effectively lose the rental or development value of the leased premises for 40 years. However, the gain will be a location to shelter the unhoused.

RECOMMENDATION:

That the Board of County Commissioners review the revised draft lease and authorize the County Administrator to finalize the lease document by the end of August.

REVIEWED BY:


Mark McCauley, County Administrator


Date

**LEASE OF CERTAIN REAL PROPERTY BETWEEN JEFFERSON COUNTY AND
OLYPIC COMMUNITY ACTION PROGRAMS**

This Lease of Certain Real Property is made between Jefferson County, a municipal corporation under the laws of the State of Washington ("County") and Olympic Community Action Programs, a 501c.3. corporation (UBI Number:600 443 619, "OlyCAP") (collectively "Parties"). The Parties agree:

1. PROPERTY. The legal description for the Property follows:

That portion of the following described property lying Easterly of the right of way for State Highway S.R. 20:

Beginning at the Northeast corner of the Northwest ¼ of Section 16, Township 30 North, Range 1 West, W.M., Thence South 1,251 feet, more or less to the South line of the Northeast ¼ of the Northwest ¼ of said Section (correcting the legal description contained in the Deed from the Jefferson County Treasurer recorded July 26, 1945 under Auditor's File No. 104708); Thence West 1,387 feet; Thence North 1,251 feet, more or less, to the North line of Section 16; Thence East 1,387 feet to the point of beginning;

TOGETHER WITH that portion of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company's Railroad right of way as awarded to Marie Workman by order of judgement entered in Jefferson County Superior Court Case No. 87-2-00257-7

EXCEPT portion lying Northeasterly of the Southwesterly right of way for Glen Cove Road, (aka Mill Road)

Subject to:

1. Right of way for Glen Cove Road (aka Mill Road) and State Route 20, if any, and any easement rights of adjoining properties or the public to that portion of the land included within such road, as disclosed by Jefferson County Assessor.

2. Easement, including terms and provisions contained therein:

Recorded: January 28, 2000

Recording No.: 430803

In favor of: Jefferson County

For: Trail Easement

3. Trail Lease and the Terms and Conditions Thereof.

Lessor: Washington State Department of Transportation

Lessee: Jefferson County, a Political Subdivision

Term: The term of this Lease is Twenty-five (25) years with automatic renewal

Recorded: January 23, 2001

Recording No.: 440473

4. A recorded survey recorded August 29, 2001 under Recording No. 447248, said survey discloses the following matters:

Location of easement recorded under 430803, trail lease recorded under 440473 and State Hwy 20

~~Beginning at the Northeast corner or the Northwest ¼ of Section 16, Township 30 North, Range 1 West, W.M.,~~

~~thence South 1251 feet;~~

~~thence West 1387 feet;~~

~~thence North 1251 feet;~~

~~thence East 1387 feet to the point of beginning;~~

~~TOGETHER WITH that portion of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company's Railroad right-of-way as awarded to Marie Workman by order of Judgement enter in Jefferson County Superior Court Cause No. 87-2-00257-7.~~

~~EXCEPT portion lying Northeasterly of the Southwesterly right of way line for Glen Cove Road, (aka Mill Road).~~

Situate in the County of Jefferson, State of Washington.

Also known as Assessor tax parcel 001162001.

2. **LESSEE.** The Lessee is OlyCAP, 2120 Sims Way, Port Townsend, WA 98368.
3. **LESSOR.** The Lessor is Jefferson County, Washington, P.O. Box 1220, Port Townsend, WA 98368.
4. **DEFINITIONS.** When used in this Lease, these words and phrases have the meanings stated below:
 - a. "Additional Rent" means all amounts payable by OlyCAP under this Lease, except Base Rent, whether or not specifically designated as Additional Rent elsewhere in this Lease.
 - b. "Base Rent" means the base rent in Section 10.a.
 - c. "County" means Jefferson County, Washington a municipal corporation.
 - d. "Effective Date" means the Effective Date in Section 20.
 - e. "Emergency shelter" means a facility that provides a temporary shelter for individuals or families who are currently homeless. An emergency shelter may not require

occupants to enter into a lease or an occupancy agreement. Emergency shelter facilities may include day and warming centers that do not provide overnight accommodations.

- f. “Environmental Law” means any law or regulation relating to health, pollution, or protection of the environment, including but not limited to Hazardous Substances, whether federal, state or local.
- g. “Hazardous Substances” means contaminants, hazardous substances, hazardous wastes, pollutants, toxic substances or any other substances, the removal of which is required or the use of which is restricted, prohibited, or penalized by any Environmental Law, including but not limited to: (i) petroleum; (ii) asbestos; (iii) designated as a “hazardous substance” under Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1321) or listed in §307 of the Federal Water Pollution Control Act (33 U.S.C. §1317); (iv) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903); (v) defined as a “hazardous substance” under Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), as amended; (vi) defined as “oil” or a “hazardous waste”, a “hazardous substance”, a “hazardous material” or a “toxic material” wider any other law, rule or regulation applicable to the Property, including, without limitation, the Revised Code of Washington, as amended.
- h. “JCC” means the Jefferson County Code, as exists now or may be amended.
- i. “Lease” means this Lease of Certain Real Property.
- j. “Leased Premises” means the portion of the Property described in [Section 5](#) of this Lease as the Leased Premises.
- k. “Management Agreement” means the agreement dated September 10, 2021 between the Parties for OlyCAP to operate temporary facilities for emergency shelter for Unhoused Persons and any amendments to the Management Agreement.
- l. “OlyCAP” means the Lessee in [Section 2](#).
- m. “Parties” means the County and OlyCAP.
- n. “Party” means one of the Parties.
- o. “Permanent supportive housing” means subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing

arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter [59.18](#) RCW.¹

- p. "Permitted Uses" means the permitted and prohibited uses in [Section 7](#) of this Lease.
- q. "Property" means the property described in [Section 1](#) of this Lease.
- r. "Purpose of this Lease" means the purpose described in [Section 6](#) of this Lease.
- s. "Rent" means the total of Base Rent and Additional Rent.
- t. "RCW" means the Revised Code of Washington, as exists now or may be amended.
- u. "Rights-of-Way for Public Roads" means land, property or property interest, such as an easement, usually in a strip, as well as bridges, trestles or other structures dedicated to or otherwise acquired by the county for public motor vehicle transportation purposes, including, but not limited to, roads, streets, avenues and alleys, whether or not opened, improved or maintained for public motor vehicle transportation purposes.
- v. "Term of this Lease" means the term of this Lease described in [Section 8](#) of this Lease.
- w. "Transitional housing" means a facility that provides housing and supportive services to unhoused persons or unhoused families for up to two years and that has as its primary purpose facilitating the movement of homeless persons and families into independent living and permanent housing.²
- x. "U.S.C" means the United States Code, as exists now or may be amended.
- y. "Unhoused Person" means a person who meets the definition of a homeless person in RCW [36.70A.030\(19\)](#)³ or 42 U.S. Code [§ 11302](#).⁴
- z. "WAC" means the Washington Administrative Code, as exists now or may be amended.

5. LEASED PREMISES.

- a. The Leased Premises at the Property are the approximately 21.81 acres of unoccupied land southeast of the intersection of State Highway S.R. 20 and Mill Road, except the land occupied by the Larry Scott Trail and the and Right-of-Way for Public Roads

¹ This is the definition from RCW [36.70A.030\(19\)](#).

² This definition was adapted from [RCW 84.36.043\(2\)\(c\)](#) and WAC [458-16-320\(2\)\(c\)](#). Added to define new language in Section 6.

³ This is the Washington State definition of homeless person.

⁴ This is the federal definition of homeless person.

abutting the Leased Premises. The Leased Premises are shown on the diagram attached as **Exhibit 1**.

- b. While OlyCAP, or an assignee or subtenant approved by the County, is using and occupying the Leased Premises for the Permitted Uses and is not in default under this Lease, the County agrees not to lease the Leased Premises to any other person.
- c. The Leased Premises are provided to OlyCAP with any fixtures, chattels or leasehold improvements that exist at the Leased Premises on the Effective Date.
- d. The County reserves the right for itself and for all persons authorized by it, to inspect the Leased Premises, and such entry shall not be an interference with OlyCAP's possession under this Lease.

6. PURPOSE OF THIS LEASE.

OlyCAP has been performing the activities since September 10, 2021 required under the Management Agreement. The Leased Premises are leased to OlyCAP to take control of the Leased Premises solely for OlyCAP to develop or operate facilities for an emergency shelter,⁵ transitional housing⁶ and permanent supportive housing⁷ for Unhoused Persons at the Leased Premises as described in Phases 1-3 of the Management Agreement and which may include but is not limited to providing shelter, utilities, security fencing, parking, sanitary facilities, shower facilities, kitchen facilities, and community spaces.⁸

7. PERMITTED AND PROHIBITED USES.

- a. Subject to all the terms and conditions of this Lease, OlyCAP shall be permitted entitled to the exclusive use to use of the Leased Premises for the Purpose of this Lease.
- b. OlyCAP shall at all times during the Term of this Lease comply with Chapter [8.70 JCC](#), the County's noise ordinance and shall not create or allow for the creation of a nuisance as defined in JCC [19.10.015\(36\)](#) at the Leased Premises.
- c. Parking at the Leased Premises is at OlyCAP's own risk.
- d. No dogs that have been declared dangerous or potentially dangerous under Chapter [6.07 JCC](#) and no livestock, as defined in JCC [6.07.020\(22\)](#), may be kept in or about the Leased Premises.
- e. OlyCAP acknowledges the Larry Scott Trail, which transects the Property and is shown the diagram attached as **Exhibit 1**. To the fullest extent possible, OlyCAP agrees its operation of the Leased Premises shall **not** interfere with the use of the Larry Scott Trail

⁵ Defined above.

⁶ Defined above.

⁷ Defined above.

⁸ Korbie to provide Department of Commerce language from its standard easement document for possible modification of Section 6.

by members of the public. For the avoidance of doubt, resident, staff, and service vehicles routinely crossing the Larry Scott trail does not qualify as interference.

- f. OlyCAP acknowledges all Rights-of-Way for Public Roads⁹ abutting the Leased Premises and is shown the diagram attached as **Exhibit 1**. To the fullest extent possible, OlyCAP agrees its operation of the Leased Premises shall not interfere with use of Rights-of-Way for Public Roads. For the avoidance of doubt, resident, staff, and service vehicles routinely entering and exiting the property or routinely entering the right-of-way does not qualify as interference.

8. TERM OF THIS LEASE.

This Lease shall terminate 42 years after the Effective Date.

9. RENT.

- a. Base Rent. Subject to terms and conditions of this Lease, OlyCAP shall pay an annual base rent of ten dollars (\$10.00).
- b. Additional Rent. In addition to the Base Rent, OlyCAP shall pay as Additional Rent any amount the County must pay from fees or taxes arising from OlyCAP's activities.
- c. Payment of Rent. OlyCAP shall pay the Base Rent to the Jefferson County Treasurer at PO Box 1220, Port Townsend, WA 98368, or at such other place as the County may later designate.
- d. Late Payment Charge. OlyCAP shall be charged as Additional Rent \$1.00 if the Base Rent is not paid by the October 1st due date.
- e. No Waiver by County by Accepting Less than Full Payment of Rent. No acceptance by the County of any amount less than the full Base Rent and any Additional Rent owed will be taken to operate as a waiver by the County for the full Rent or to defeat or affect the rights and remedies of the County to pursue the full Rent.

10. PARKING.

OlyCAP employees and residents may park on the Leased Premises in parking areas identified by OlyCAP.

11. QUIET ENJOYMENT.

The County covenants that on paying the Rent and performing the covenants in this Lease, OlyCAP shall peacefully and quietly have, hold, and enjoy the Leased Premises for the Term of this Lease.

12. OVERHOLDING.

⁹ Defined above.

If OlyCAP continues to occupy the Leased Premises without the written consent of the County after the expiration or other termination of the Term of this Lease with no further written agreement, a new tenancy from month to month shall be created between the County and OlyCAP, subject to all the terms and conditions of this Lease, with a minimum monthly rental equal to twice the Base Rent and subject always to the other provisions of this Lease insofar as the same apply to a month-to-month tenancy and a tenancy from year to year shall not be created by implication of law. The new tenancy shall be terminable upon either Party giving 30-days written notice to the other Party.

13. INSPECTIONS AND LANDLORD'S RIGHT TO ENTER.

- a. During the Term of this Lease and any extension or renewal of this Lease, the County and its agents may enter the Leased Premises to inspect at all reasonable times. However, unless the County or its agents consider it is an emergency, the County must have given not less than 24 hours prior written notice to OlyCAP.
- b. OlyCAP acknowledges that the County or its agent may enter the Leased Premises at all reasonable times to show them to prospective purchasers, encumbrancers, lessees or assignees, and may also during the ninety days preceding the termination of the terms and conditions of this Lease, place upon the Leased Premises the usual notice to the effect that the Leased Premises are for Rent or Sale, which notice OlyCAP shall permit to remain on them.
- c. The County may inspect OlyCAP's work on the Leased Premises and OlyCAP's records relating to that work during normal business hours, with at least five (5) days' written notice, to identify the nature of the goods, compliance with this Lease, or compliance with any laws, regulations, or other rules.

14. ADDITIONAL RIGHTS ON REENTRY.

If the County reenters the Leased Premises or terminates this Lease, then:

- a. Notwithstanding any such termination or the Term of this Lease becoming forfeited and void, this Lease relating to the consequences of termination shall survive;
- b. The County may use such reasonable force as it may deem necessary to gain admittance to and retaking possession of the Leased Premises and OlyCAP releases the County from all actions, proceedings, claims and demands for and regarding any such forcible entry or any loss or damage in connection therewith or consequential;
- c. The County may expel and remove, forcibly OlyCAP, those claiming under OlyCAP and their effects, as allowed by law, without being taken or deemed guilty of any manner of trespass;
- d. If the County has removed any property of OlyCAP, the County may store such property in a public warehouse or at a place selected by the County, at the expense of OlyCAP. If the County determines in its sole discretion it is not worth storing such property given its value and the cost to store it, then the County may dispose of such

property in its sole discretion and use such funds towards any indebtedness of OlyCAP to the County. The County shall not be responsible to OlyCAP for the disposal of such property other than to provide any balance of the proceeds to OlyCAP after paying any storage costs and any amounts owed by OlyCAP to the County;

- e. The County may re-let the Leased Premises or any part of the Leased Premises for a term or terms which may be less or greater than the balance of the Term of this Lease remaining and may grant reasonable concessions in connection with such reletting including any alterations and improvements to the Leased Premises;
- f. After reentry, the County may procure the appointment of a receiver to take possession and collect rents and profits of the business of OlyCAP, and, if necessary to collect the rents and profits the receiver may carry on the business of OlyCAP and take possession of the personal property used in the business of OlyCAP, including inventory, trade fixtures, and furnishings, and use them in the business without compensating OlyCAP;
- g. After reentry, the County may terminate this Lease on giving 5 days' written notice of termination to OlyCAP. Without this notice, reentry of the Leased Premises by the County or its agents shall not terminate this Lease;
- h. OlyCAP shall pay to the County on demand:
 - i. All Rent, Additional Rent and other amounts payable under this Lease up to the time of reentry or termination, whichever is later; and,
 - ii. Reasonable expenses as the County incurs or has incurred in connection with the reentering, terminating, reletting, collecting sums due by OlyCAP, realizing upon assets seized; including without limitation, brokerage, fees and expenses and legal fees and disbursements and the expenses of keeping the Leased Premises in good order, repairing the same and preparing them for reletting.

15. DEFAULT.

- a. If OlyCAP is in default in the payment of any money, whether reserved or deemed as any part of the Rent or Additional Rent, and such default continues following any specific due date on which OlyCAP is to make such payment, or absent such specific due date, for the 30 days following written notice by the County requiring OlyCAP to pay the same then, at the option of the County, this Lease may be terminated upon 15-days' notice and the Term of this Lease shall then immediately become forfeited and void, and the County may without further notice or any form of legal process immediately reenter the Leased Premises or any part of the Leased Premises and in the name of the whole repossess and enjoy the same as of its former state anything in this Lease or in any statute or law to the contrary notwithstanding.
- b. Unless otherwise provided for in this Lease, if OlyCAP does not observe, perform and keep each and every of the non-monetary covenants, agreements, stipulations, obligations, conditions and other provisions of this Lease to be observed, performed and kept by OlyCAP and persists in such default, after 30 days following written notice

from the County requiring that OlyCAP remedy, correct or comply or, in the case of such default which would reasonably require more than 30 days to rectify, unless OlyCAP shall commence rectification within the said 30 days' notice period and thereafter promptly and diligently and continuously proceed with the rectification of any such defaults then, at the option of the County, this Lease may be terminated upon 30 days' notice and the Term of this Lease shall then immediately become forfeited and void, and the County may without further notice or any form of legal process immediately reenter the Leased Premises or any part of the Leased Premises and in the name of the whole repossess and enjoy the same as of its former state anything in this Lease or in any statute or law to the contrary notwithstanding.

- c. If and whenever:
 - i. OlyCAP's leasehold interest, or any goods, chattels or equipment of OlyCAP in the Leased Premises shall be taken or seized in execution or attachment, or if any writ of execution shall issue against OlyCAP or OlyCAP will become insolvent or commit an act of bankruptcy or become bankrupt or take the benefit of any legislation that may be in force for bankrupt or insolvent debtor or become involved in voluntary or involuntary winding up, dissolution or liquidation proceedings, or if a receiver shall be appointed for the affairs, business, property or revenues of OlyCAP; or,
 - ii. OlyCAP fails to commence, diligently pursue and complete OlyCAP's work to be performed under any agreement to lease pertaining to the Leased Premises or vacate or abandon the Leased Premises, or fail or cease to operate or otherwise cease to conduct business from the Leased Premises, or use or permit or suffer the use of the Leased Premises for any purpose other than as permitted in this clause, or make a bulk sale of its goods and assets not consented to by the County, or move or commence, attempt or threaten to move its goods, chattels and equipment out of the Leased Premises other than course of its business, then, and in each such case, at the option of the County, this Lease may be terminated without notice and the Term of this Lease shall then immediately become forfeited and void, and the County may without notice or any form of legal process immediately reenter the Leased Premises or any part of the Leased Premises and in the name of the whole repossess and enjoy the same as of its former state anything in this Lease or in any statute or law to the contrary notwithstanding.
- d. If the County has terminated this Lease under this Section 15, on the expiration of the time fixed in the notice this Lease and the right, title, and interest of OlyCAP under this Lease shall terminate in the same manner and with the same force and effect, except as to OlyCAP's liability, as if the date fixed in the notice of cancellation and termination were the end of this Lease.
- e. If OlyCAP is declared bankrupt or insolvent according to law; or, if any assignment shall be made of OlyCAP's property for the benefit of creditors, then OlyCAP shall be in default of this Lease.

16. DISTRESS.

- a. If and whenever OlyCAP is in default in payment of any money, whether reserved or deemed as any part of the Rent or Additional Rent, the County may, without notice or any form of legal process, enter upon the Leased Premises and seize, remove and sell OlyCAP's goods, chattels and equipment from the Leased Premises or seize, remove and sell any goods, chattels and equipment at any place to which OlyCAP or any other person may have removed them, as if they had remained and been distrained upon the Leased Premises, all notwithstanding any rule of law or equity to the contrary.
- b. OlyCAP knowingly waives and renounces the benefit of any present or future statute or law limiting or eliminating the County's right of distress.

17. IMPROVEMENTS.

Improvements to the Leased Premises after the Effective Date must be consistent with the Purpose of this Lease and after final permitting. OlyCAP shall solicit and consider comments from the County about the design of any improvements.

18. LANDLORD CHATTELS.

The County will supply no chattels.

19. ABANDONMENT BY OLYCAP.

- a. If during the Term of this Lease, OlyCAP abandons the Leased Premises or any part of the Leased Premises, the County may, at its option, enter the Leased Premises by any means without being liable for any prosecution for such entering, and without becoming liable to OlyCAP for damages or for any payment of any kind whatever, and may, at the County's discretion, as agent for OlyCAP, re-rent the Leased Premises, or any part of the Leased Premises, for the whole or any part of the then unexpired term, and may receive and collect all Rent payable by such re-renting, and, at the County's option, hold OlyCAP liable for any difference between the Rent that would have been payable under this Lease during the balance of the unexpired term, if this Lease had continued in force, and the net Rent for such period realized by the County with the re-renting.
- b. If the County's right of reentry is exercised following abandonment of the Leased Premises by OlyCAP, then the County may consider any personal property belonging to OlyCAP and left on the Leased Premises to also have been abandoned, in which case the County may dispose of all such personal property the County shall deem proper and is relieved of all liability.

20. EFFECTIVE DATE.

The Effective Date of this Lease is the date the last Party signs this Lease.

21. COMMISSIONER APPROVAL CONTINGENCY.

This Lease is contingent upon written approval by the Jefferson County Board of Commissioners.

22. TERMINATION.

Either Party for cause upon 90-days written notice may terminate this Lease.

23. SUBORDINATION AND ATTORNMENT.

- a. This Lease and OlyCAP's rights under this Lease shall automatically be subordinate to any mortgage or mortgages, or encumbrance resulting from any other method of financing or refinancing, now or afterwards in force against the Leased Premises or any part of the Leased Premises, as now or later constituted, and to all advances made or afterwards made upon such security; and, upon the request of the County, OlyCAP shall execute such documentation as reasonably may be required by the County to confirm and evidence such subordination.
- b. OlyCAP shall, if any proceedings are brought, whether in foreclosure or by way of exercising the power of sale or otherwise, under any other mortgage or other method of financing or refinancing made by the County regarding any portion of any structure on the Leased Premises, attorn to the encumbrancer upon any such foreclosure or sale and recognize such encumbrancer as the County under this Lease, but only if such encumbrancer will so elect and require.
- c. Upon the written request of OlyCAP, the County agrees to request any mortgagee or encumbrancer of the Property (present or future) to enter into a non-disturbance covenant for OlyCAP, whereby such mortgagee or encumbrancer shall agree not to disturb OlyCAP in its possession and enjoyment of the Leased Premises for so long as OlyCAP is not in default under this Lease.

24. ESTOPPEL CERTIFICATE AND ACKNOWLEDGMENT.

Whenever requested by the County, a mortgagee or any other encumbrance holder or other third party having an interest in the land or any part of the land, OlyCAP shall, within ten (10) days of the request, execute and deliver an estoppel certificate or other form of certified acknowledgement as to the Term of this Lease, the status and the validity of this Lease, the state of the rental account for this Lease, any incurred defaults by the County alleged by OlyCAP, and such other information as may reasonably be required.

25. LIENS.

- a. OlyCAP shall immediately upon demand by the County remove or cause to be removed and afterwards institute and diligently prosecute any action that pertains to the County or the Leased Premises, any builders' or other lien or claim of lien noted or filed against or otherwise constituting an encumbrance on any title of the County that results from an act or omission of OlyCAP.

- b. Without limiting the obligations of OlyCAP, the County may cause the same to be removed, in which case OlyCAP shall pay to the County as Additional Rent, such cost including the County's legal costs and reasonable attorney's fees.

26. CONDITIONS AND ACCEPTANCE OF LEASED PREMISES.

OlyCAP accepts the Leased Premises in its current condition and acknowledges that the Leased Premises is in good order and repair. By occupying the Leased Premises, OlyCAP conclusively shall be deemed to have accepted the Leased Premises as in the condition required by this Lease.

27. LESSEE'S ALTERATIONS, DAMAGES, AND WASTE.

- a. When it becomes (or, acting reasonably, should have become) aware of same, OlyCAP shall notify the County of any damage to or deficiency or defect in any part of the Leased Premises.
- b. OlyCAP covenants with the County that the County, its servants, agents and workmen may enter and view the state of repair of the Leased Premises and that OlyCAP shall repair the Leased Premises according to notice in writing received from the County, subject to the County's repair obligations.
- c. When seeking any approval of the County for OlyCAP repairs as required in this Lease, OlyCAP shall present to the County plans and specifications of the proposed work which shall be subject to the prior approval of the County, not to be unreasonably withheld or delayed.
- d. OlyCAP shall promptly pay all contractors, material suppliers and workmen to minimize the possibility of a lien attaching to the Leased Premises. Should any claim of lien be made or filed OlyCAP shall promptly cause the same to be discharged.
- e. If OlyCAP refuses or neglects to repair as soon as reasonably possible after written demand, the County may, but shall not be obligated to, undertake such repairs without liability to OlyCAP for any loss or damage that may occur to OlyCAP's merchandise, fixtures or other property or to OlyCAP's business by such reason, and upon such completion, OlyCAP shall pay, upon demand, as Additional Rent, the County's cost of making such repairs plus fifteen percent (15%) of such cost for overhead and supervision.
- f. OlyCAP agrees to reimburse the County for damages caused to the Leased Premises or the Leased Premises by the negligence of its employees, patrons and agents, but in no event shall this paragraph be construed as diminishing the Lessor's duty to make repairs as set forth in preceding paragraphs of this Lease, or as making Lessee responsible for the repair of normal wear and tear.

28. EMINENT DOMAIN AND EXPROPRIATION.

- a. If during the Term of this Lease, title is taken to the whole or any part of the Leased Premises by any competent authority under the power of eminent domain or by

expropriation, which taking, in the reasonable opinion of the County, does not leave a sufficient remainder to constitute an economically viable property, the County may at its option, terminate this Lease on the date possession is taken by or on behalf of such authority.

- b. Upon such taking, OlyCAP shall immediately deliver up possession of the Leased Premises.
- c. In the event of any such taking, OlyCAP shall have no claim upon the County for the value of its property or the unexpired portion of the Term of this Lease, but the Parties shall each be entitled to separately advance their claims for compensation for losing their respective interests and to receive and retain such compensation as awarded to each respectively.
- d. If an award of compensation made to the County specifically includes an award for OlyCAP, the County shall account for that award to OlyCAP and vice versa.

29. CONDEMNATION.

- a. A condemnation of the OlyCAP improvements or any portion of the Leased Premises shall result in termination of this Lease.
- b. The County shall receive the total of any consequential damages awarded because of the condemnation proceedings.
- c. In the event of any such condemnation, OlyCAP shall have no claim upon the County for the value of its property or the unexpired portion of the Term of this Lease, but the Parties shall each be entitled to separately advance their claims for compensation for losing their respective interests and to receive and retain such compensation as awarded to each respectively.
- d. If an award of compensation made to the County specifically includes an award for OlyCAP, the County shall account for that award to OlyCAP and vice versa.

30. CARE AND USE OF LEASED PREMISES.

- a. OlyCAP shall maintain at all times during the Term of this Lease, and at its own expense: (i) keep and maintain the Leased Premises in good repair and condition (ordinary wear and tear, damage by fire or casualty only excepted); and, (ii) use all reasonable precautions to prevent waste, damage or injury to the Property including the Leased Premises.
- b. OlyCAP shall dispose of any trash at the Leased Premises in a timely, tidy, proper, and sanitary manner.
- c. OlyCAP shall not engage in or permit any illegal trade or activity on or about the Leased Premises.

- d. OlyCAP shall comply with standards of health, sanitation, fire, housing, and safety as required by law.

31. RULES AND REGULATIONS.

In consultation with the County, OlyCAP shall develop rules and regulations for any person residing at the Leased Premises and shall enforce them.

32. SURRENDER THE LEASED PREMISES AT THE END OF THE TERM OF THIS LEASE.

- a. OlyCAP covenants to surrender the Leased Premises, at the expiration of the tenancy created in this Lease, in the same condition as the Leased Premises were in upon delivery of possession under this Lease, reasonable wear and tear, damage by fire or the elements, and unavoidable casualty excepted, and agrees to surrender all keys for the Leased Premises to the County at the place then fixed for payment of Rent and shall inform the County of all combinations to locks, safes and vaults, if any.
- b. All alterations, additions and improvements constructed or installed in the Leased Premises and attached to the floor, walls or ceiling, including any leasehold improvements, equipment, floor covering or fixtures (including trade fixtures), shall remain upon and be surrendered with the Leased Premises and shall become the absolute property of the County, unless the County requires removal of such items.
- c. If OlyCAP abandons the Leased Premises or if this Lease is terminated before the proper expiration of the Term of this Lease due to a default on the part of OlyCAP then as of the moment of default of OlyCAP all trade fixtures and furnishings of OlyCAP (whether or not attached to the Leased Premises) shall, except to the extent the County requires the removal of such items, become and be deemed to be the property of the County without indemnity to OlyCAP and as liquidated damages regarding such default but without prejudice to any other right or remedy of the County.
- d. Notwithstanding that any trade fixtures, furnishings, alterations, additions, improvements or fixtures are or may become the property of the County, OlyCAP shall immediately remove all or part of the same and shall make good any damage caused to the Leased Premises resulting from the installation or removal of such fixtures, all at OlyCAP's expense, should the County so require by notice to OlyCAP.
- e. If OlyCAP, after receipt of such notice from the County, fails to promptly remove any trade fixtures, furnishings, alterations, improvements and fixtures under such notice, the County may enter into the Leased Premises and remove from the Leased Premises all or part of such trade fixtures, furnishings, alterations, additions, improvements and fixtures with no liability and at the expense of OlyCAP, which expense shall immediately be paid by OlyCAP to the County.
- f. OlyCAP's obligation to observe or perform the covenants in this Lease shall survive the expiration or other termination of the Term of this Lease.

33. HAZARDOUS SUBSTANCES.

- a. OlyCAP shall not keep or allow others to keep any Hazardous Substances at the Leased Premises.
- b. OlyCAP represents and warrants it shall during the Term of this Lease conduct its operations on the Leased Premises in compliance with all applicable Environmental Laws.
- c. If during or after the Term of this Lease, the Leased Premises is found to be contaminated by any Hazardous Substance, OlyCAP shall defend, indemnify, and hold harmless the County for any investigation or the remediation of such contamination to the satisfaction of a lead regulatory agency and for the defense and indemnity of the County for any claims made related to the presence of any Hazardous Substance at the Leased Premises under the indemnity provision in this Lease.

34. DISASTER.

If the Leased Premises are destroyed or injured by fire, earthquake or other casualty to render the premises unfit for occupancy, and the County neglects or refuses to restore the Leased Premises to their former condition, then OlyCAP may terminate this Lease and shall be reimbursed for any Rent paid. If the Leased Premises are partially destroyed by fire, earthquake or other casualty, the Rent shall be Abated from the time of occurrence of such destruction or injury until the Leased Premises are again restored to their former condition, and any Rent paid by OlyCAP during the period of Abatement shall be credited upon the next installment(s) of Rent to be paid.

35. REMEDIES CUMULATIVE.

No reference to or exercise of any specific right or remedy by either Party will prejudice or preclude either Party from any other remedy whether allowed at law or in equity or provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but each Party may occasionally exercise any one or more of such remedies independently or in combination.

36. PERFORMANCE UPON DEFAULT.

If either Party fails to observe, perform or keep the provisions of this Lease to be observed, performed or kept by it and such failure is not rectified within the time limits specified in this Lease, the other Party may, but shall not be obliged to, at its discretion and without prejudice, rectify the default of that Party. Each Party may enter the Leased Premises to correct or remedy any default of the other Party and to remain until the default has been corrected or remedied; however, any expenditure by such Party incurred in any correction of a default of the other Party will not be deemed to waive or release such default or the Party's right to take any action as may be otherwise permissible under this Lease in the case of any default.

37. CONTROLLING LAW.

It is understood and agreed that this Lease is entered into in the State of Washington. This Lease shall be governed by and construed under the laws of the United States, the State of Washington, and the County of Jefferson, as if applied to transactions entered into and to be performed wholly within Jefferson County, Washington between Jefferson County residents. No Party shall argue or assert that any state law other than Washington law applies to the governance or construction of this Lease.

38. JURISDICTION AND VENUE.

Should either Party bring any legal action, each Party in such action shall pay for its own attorney's fees and court costs. The venue for any legal action shall be solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW 36.01.050.

39. ENTIRE AGREEMENT.

This Lease memorializes the entire agreement of the Parties and all parts of this Lease are listed in this Lease. No representation or promise not expressly contained in this Lease has been made. The Parties are not entering into this Lease based on any inducement, promise or representation, expressed or implied, which is not expressly contained in this Lease. This Lease supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, within the scope of this Lease.

40. LEGAL AND REGULATORY COMPLIANCE.

OlyCAP shall, in performing the services contemplated by this Lease, faithfully observe, and comply with all federal, state, and local laws, ordinances and regulations, applicable to the Leased Premises or OlyCAP's operations at the Leased Premises.

41. INDEMNITY.

- a. OlyCAP shall defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers (and their marital communities) harmless all loss and damage and all actions, claims, costs, demands, expenses, fines, liabilities, and suits of any nature for which the County will or may become liable, incur or suffer from a breach, violation, or nonperformance by OlyCAP of any covenant, term or provision hereof or for any builders' or other liens for any work done or materials provided or services rendered for alterations, improvements or repairs, made by or on behalf of OlyCAP to the Leased Premises, or for any injury occasioned to or suffered by any person or damage to any property, or for any wrongful act or omission, default or negligence by OlyCAP or any of its agents, concessionaires, contractors, customers, employees, invitees or licensees in or about the Leased Premises.
- b. Between the County and OlyCAP, the County shall not be liable for any damage caused by the Leased Premises by OlyCAP.

- c. Between the County and OlyCAP, the County shall not be liable for any loss, injury, or damage to persons or property for any acts or omissions at the Leased Premises by OlyCAP or its employees or agents or any persons not the agents or representatives.
- d. Between the County and OlyCAP, the County shall not be liable for any loss or damage caused by acts or omissions on the Leased Premises by any other person, their employees or agents or any persons that are not the agents or representatives of the County.
- e. All property kept or stored on or in the Leased Premises by OlyCAP shall be at the sole risk of OlyCAP.
- f. Should a court of competent jurisdiction determine this Lease is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of OlyCAP and the County, its officers, officials, employees, agents and volunteers (and their marital communities), OlyCAP's liability, including the duty and cost to defend shall be only for OlyCAP's negligence.
- g. It is further specifically and understood that the indemnification provided constitutes OlyCAP's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.
- h. The provisions of indemnity shall survive the expiration or termination of this Lease.

42. GENERAL LESSEE INSURANCE REQUIREMENTS.

- a. One of these methods shall evidence insurance coverage: (1) Certificate of insurance; or, (2) Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.
- b. Any deductibles or self-insured retention shall be declared to and approved by the County before the approval of this Lease by the County. At the option of the County, the insurer shall reduce or eliminate deductibles or self-insured retention, or OlyCAP shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- c. Failure of OlyCAP to take out or maintain any required insurance shall not relieve OlyCAP from any liability under this Lease, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations about indemnification of the County.
- d. OlyCAP's insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the Parties that the insurance policies so affected shall protect all the Parties and shall be primary coverage for all losses covered by the above described insurance.

- e. Insurance companies issuing OlyCAP's insurance policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of insurance policy.
- f. All deductibles in OlyCAP's insurance policies shall be assumed by and be at the sole risk of OlyCAP.
- g. Any judgments for which the County may be liable, over insured amounts required by this Lease, or any portion thereof, may be withheld from payment due, or to become due, to OlyCAP until OlyCAP shall furnish additional security covering such judgment as determined by the County.
- h. Any coverage for third party liability claims provided to the County by a "Risk Pool" created under Ch. 48.62 RCW shall be non-contributory regarding any insurance policy OlyCAP shall provide to comply with this Lease.
- i. The County may, upon OlyCAP's failure to comply with all provisions of this Lease relating to insurance, withhold payment or compensation otherwise due to OlyCAP.
- j. OlyCAP shall provide a copy of all insurance policies specified in this Lease.
- k. Written notice of cancellation or change in OlyCAP's insurance required by this Lease shall reference the project name and agreement number and shall be mailed to the County at the following address: Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368.
- l. OlyCAP's liability insurance provisions shall be primary and noncontributory regarding any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees, and agents.
- m. Any failure to comply with reporting provisions of the insurance policies shall not affect coverage provided to the County, its officers, officials, employees, or agents.
- n. OlyCAP's insurance shall apply separately to each insured against whom claim is made or suit is brought, except regarding the limits of the insurer's liability.
- o. OlyCAP shall include all sublessees as insured under its insurance policies or shall furnish separate certificates and endorsements for each sublessee. All insurance coverage for sublessees shall be subject to all the requirements stated in this Lease. The insurance limits mandated for any insurance coverage required by this Lease are not intended to be an indication of exposure nor are they limitations on indemnification.
- p. OlyCAP shall maintain all required insurance policies in force from the time services commence until services are completed. Certificates, insurance policies, and endorsements expiring before completion of services shall be promptly replaced.
- q. OlyCAP shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the

exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.

- r. Certificates of insurance as required by this Lease shall be delivered to the County within fifteen (15) days of execution of this Lease.
- s. The County shall be named as an “additional insured” on all insurance policies required by this Lease.
- t. OlyCAP shall furnish the County with properly executed certificates of insurance that, at a minimum, shall include: (1) The limits of overage; (2) The certificate holder as Jefferson County, Washington and its elected officials, officers, and employees with the address of Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368, and, (3) A statement that the insurance policy shall not be canceled or allowed to expire except on thirty (30) days prior written notice to the County.
- u. To the extent a certificate of insurance lists or refers to any endorsements solely by name, description or number it shall be the responsibility of OlyCAP to obtain and provide to the Jefferson County Risk Management complete copy of the texts of such endorsements.
- v. If the proof of insurance or certificate indicating the County is an “additional insured” to an insurance policy obtained by OlyCAP refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of OlyCAP to obtain the full text of that endorsement and forward that full text to the County.

43. REQUIRED LEASEE INSURANCE COVERAGES.

OlyCAP shall obtain and keep in force during the Term of this Lease, policies of insurance as follows:

- a. Worker’s Compensation Insurance for employees and covered volunteers in an amount or amounts that are not less than the required statutory minimum(s) as established by the State of Washington.
- b. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than \$500,000 each occurrence.
- c. General Commercial Liability Insurance in an amount not less than a single limit of one million dollars (\$1,000,000) per occurrence and an aggregate of not less than two (2) times the occurrence amount (\$2,000,000 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the contract specifications. The insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:

- d. Broad Form Property Damage, with no employee exclusion;
- e. Personal Injury Liability, including extended bodily injury;
- f. Broad Form Contractual/Commercial Liability – including completed operations;
- g. Premises – Operations Liability (M&C); and,
- h. Blanket Contractual Liability.
- i. Excess or Umbrella Liability Insurance (Over Primary) of two million dollars (\$5,000,000) per occurrence and two million dollars (\$5,000,000) in the aggregate, and shall provide coverage at least as broad as specified for the underlying coverages. Such policy or policies shall include as insureds those covered by the underlying policies, including additional insureds. Coverage shall be “pay on behalf,” with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another.

44. COVERAGE OF THE COUNTY BY THE WASHINGTON COUNTIES RISK POOL.

- a. The County has liability coverage under a memorandum of liability coverage with the Washington Counties Risk Pool.
- b. The County also has property coverage with the Washington Counties Risk Pool.
- c. During the Term of this Lease, the County shall maintain its liability and property coverage with the Washington Counties Risk Pool.

45. NO ASSIGNMENT.

Without the prior, express, and written consent of the County, OlyCAP shall not assign this Lease. Any assignment of this Lease without the prior written consent of the County shall be void and shall, at the County’s option, terminate this Lease. This Lease shall not be assignable by operation of law.

46. NO BULK SALE OF GOODS.

No bulk sale of goods and assets of OlyCAP may take place without first obtaining the written consent of the County, which consent shall not be unreasonably withheld if OlyCAP and the purchaser can provide the County with assurances, in a form satisfactory to the County, that OlyCAP’s obligations in this Lease shall continue to be performed and respected, in the manner satisfactory to the County, after completion of the said bulk sale.

47. BINDING ON SUCCESSORS AND ASSIGNS.

The covenants and agreements of this Lease shall be binding upon the heirs, executors, administrators, successors and assigns of all Parties.

48. MATERIAL TERMS.

To avoid doubt, all terms, conditions, and representations of this Lease are material terms.

49. TIME IS OF THE ESSENCE.

Time is of the essence in this Lease.

50. AMENDMENT OF THIS LEASE.

Any amendment or modification of this Lease or additional obligation assumed by either Party to this Lease with this Lease shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party.

51. SECTION HEADINGS.

The headings of the sections of this Lease are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the sections or this Lease.

52. REFERENCE TO SECTIONS IN THIS LEASE.

Any reference to a section in this Lease is a reference to a section of this Lease, unless clearly stated to the contrary.

53. LIMITS OF ANY WAIVER OF DEFAULT.

No consent by a Party to, or waiver of, a breach by either Party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either Party.

54. NO ORAL WAIVER.

No term or provision of this Lease will be waived by either Party, and no breach excused by either Party, unless such waiver or consent is in writing signed on behalf of the Party against whom the waiver is asserted. Failure of a Party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.

55. ORDER OF PRECEDENCE.

If there is an inconsistency in this Lease, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order: (a) Applicable state statutes and rules; (b) local laws and rules; and, (c) case law.

56. NO SEVERABILITY.

The terms of this Lease are not severable. If any provision of this Lease or applying this Lease to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Lease and the application this Lease shall not be enforceable.

57. SURVIVAL.

Those provisions of this Lease that by their sense and purpose should survive the term of this Lease shall survive the term of this Lease. Without limiting the generality of the preceding sentence, and to avoid doubt, the provisions that survive the term of this Lease include: (a) controlling law; (b) insurance; and, (c) indemnification.

58. PROVISIONS REQUIRED BY LAW ARE ADDED.

Any provision of law and any clause required by law to be in this Lease are made a part of this Lease and shall be read and enforced as though they were they were included in this Lease and as if omitted by mistake, if ever any such provision or clause is not included, or is not correctly inserted, this Lease shall be amended to add or correct such clause forthwith upon the request of any Party to another Party.

59. NO THIRD-PARTY BENEFICIARIES.

The Parties do not intend, and nothing in this Lease shall be construed to mean, that any provision in this Lease is to benefit any person or entity who is not a Party.

60. SIGNATURE IN COUNTERPARTS.

This Lease may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Lease at different times and places by the Parties shall not affect the validity of this Lease, so long as all the Parties execute a counterpart of this Lease.

61. FACSIMILE AND ELECTRONIC SIGNATURES.

The Parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.

62. ARMS-LENGTH NEGOTIATIONS.

The Parties agree this Lease has been negotiated at arms-length, with the assistance and advice of competent, independent legal counsel.

63. MAINTENANCE OF RECORDS.

Each Party shall maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either to perform this Lease. These records shall be subject to inspection, review or audit by personnel of both Parties, other personnel duly authorized by either Party, the Office of the State Auditor, and federal officials so authorized by

law. All books, records, documents, and other material relevant to this Lease will be retained for six years after expiration of agreement. The Office of the State Auditor, federal auditors, the Jefferson County Auditor, and any persons duly authorized by the Parties shall have full access and the right to examine these materials during this period. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. Records and other documents, in any medium, furnished by one Party to this Lease to the other Party, will remain the property of the furnishing Party, unless otherwise agreed.

64. PUBLIC RECORDS ACT.

Notwithstanding any provisions of this Lease to the contrary, to the extent any record, including any electronic, audio, paper or other media, must be kept or indexed as a public record under the Washington Public Records Act, Chapter 42.56 RCW (as amended), OlyCAP agrees to maintain all records constituting public records and to produce or assist the County in producing such records, within the time frames and parameters in state law. OlyCAP also agrees that upon receipt of any written public record request, OlyCAP shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Lease. This Lease, once executed, will be a “public record” subject to production to a third party if it is requested under the Washington Public Records Act, Chapter 42.56 RCW (as amended).

65. ATTACHMENTS.

Any document in this Lease identified as an attachment is part of this Lease and is incorporated by reference into this Lease.

66. REPRESENTATIONS.

The Parties shall represent to each other that each Party has the authority to enter the transaction contemplated by this Lease.

67. ADDRESSES FOR NOTICE.

- a. The address for service of OlyCAP is the OlyCAP Executive Director, 2120 Sims Way, Port Townsend, WA 98368; and,
- b. The address for service of the County is the County Administrator, P.O. Box 1220 Port Townsend, WA 98368, both during this tenancy and after it is terminated.

END OF LEASE AND OPTION TO PURCHASE CERTAIN REAL PROPERTY

SIGNATURES FOLLOW ON NEXT PAGE

JEFFERSON COUNTY WASHINGTON

OLYCAP

Board of County Commissioners
Jefferson County, Washington

By: _____
Heidi Eisenhour, Chair Date

By: _____
Cherish Cronmiller, Date
CEO

By: _____
Kate Dean, Commissioner Date

By: _____
Greg Brotherton, Commissioner Date

SEAL:

ATTEST:

Carolyn Gallaway Date
Clerk of the Board

Approved as to form only:

Philip C. Hunsucker Date
Chief Civil Deputy Prosecuting Attorney

EXHIBIT 1 – DRAWING OF LEASED PREMISES

