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Title: Police Facility Site Lease Ward(s): 1 Councilor(s): Bennett Neighborhood(s): CAND0

Attachments: 1. [Site Map](#), 2. [Proposed Lease](#), 3. [Replace Attachment 2: Proposed Lease with Commercial Lease and Option to Purchase response to City Edits, 4825-0337-2339, 6 FINAL CLEAN.pdf](#)

**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Kristin Retherford, Director - Urban Development Department

**SUBJECT:**  
title

Police Facility Site Lease

Ward(s): 1  
 Councilor(s): Bennett  
 Neighborhood(s): CAND0  
 end

**ISSUE:**

Shall the City Council authorize the City Manager to execute the attached lease with Shires Properties, LLC to secure the site of the proposed Police Facility?

**RECOMMENDATION:**  
recommendation

Authorize the City Manager to execute the attached lease with Shires Properties, LLC to secure the site of the proposed Police Facility.

body

**SUMMARY AND BACKGROUND:**

The City of Salem is proceeding with plans to construct a new police facility (Facility) to house the Salem Police Department and potentially the Willamette Valley 9-1-1 Center. On February 29, 2016, City Council selected the former O'Brien auto dealership site (Site) (Attachment 1) as its preferred location. The Site is currently listed for sale, and it is necessary to secure the site in anticipation of a bond referendum in November 2016.

**FACTS AND FINDINGS:**

Shires Properties, LLC (Seller), whose principals are Carol T. Shires and Scott T. Shires, is the owner of the Site. Staff and Seller have come to terms on a lease (Attachment 2) for the Site to secure it in anticipation of a purchase and sale agreement to be completed upon a successful voter referendum of a bond measure to finance the Facility in November 2016.

Until passing of the referendum, all costs associated with the project will come from the General Fund.

The substantive terms of the proposed lease are below.

Term: One year

Premises: 37, 320 sq. ft. in 3 buildings on 3.51 acres

Rate: Other valuable consideration

Expenses: Tenant responsible Tenant responsible for all normal operating expenses of property including taxes and insurance

- Insurance for site will be funded through the City of Salem's Risk Fund.
- Property taxes (estimated at \$58,227) can be exempted if Lease is in place by June 30, 2016 and exemption approved by Marion County
- Landlord to be responsible for all utility and maintenance expenses and tenant to reimburse landlord

Purchase Option: Option to purchase at terms mutually agreeable to buyer and seller

- Three month written notification
- \$100,000 option fee payable in two installments
- First installment of \$50,000 due at exercise of option or December 1, 2016, whichever is earlier, fee is not refundable and cannot be applied toward purchase price
- Second installment of \$50,000 due on March 1, 2017 if option has not been exercised, fee is not refundable but will be applied toward purchase price

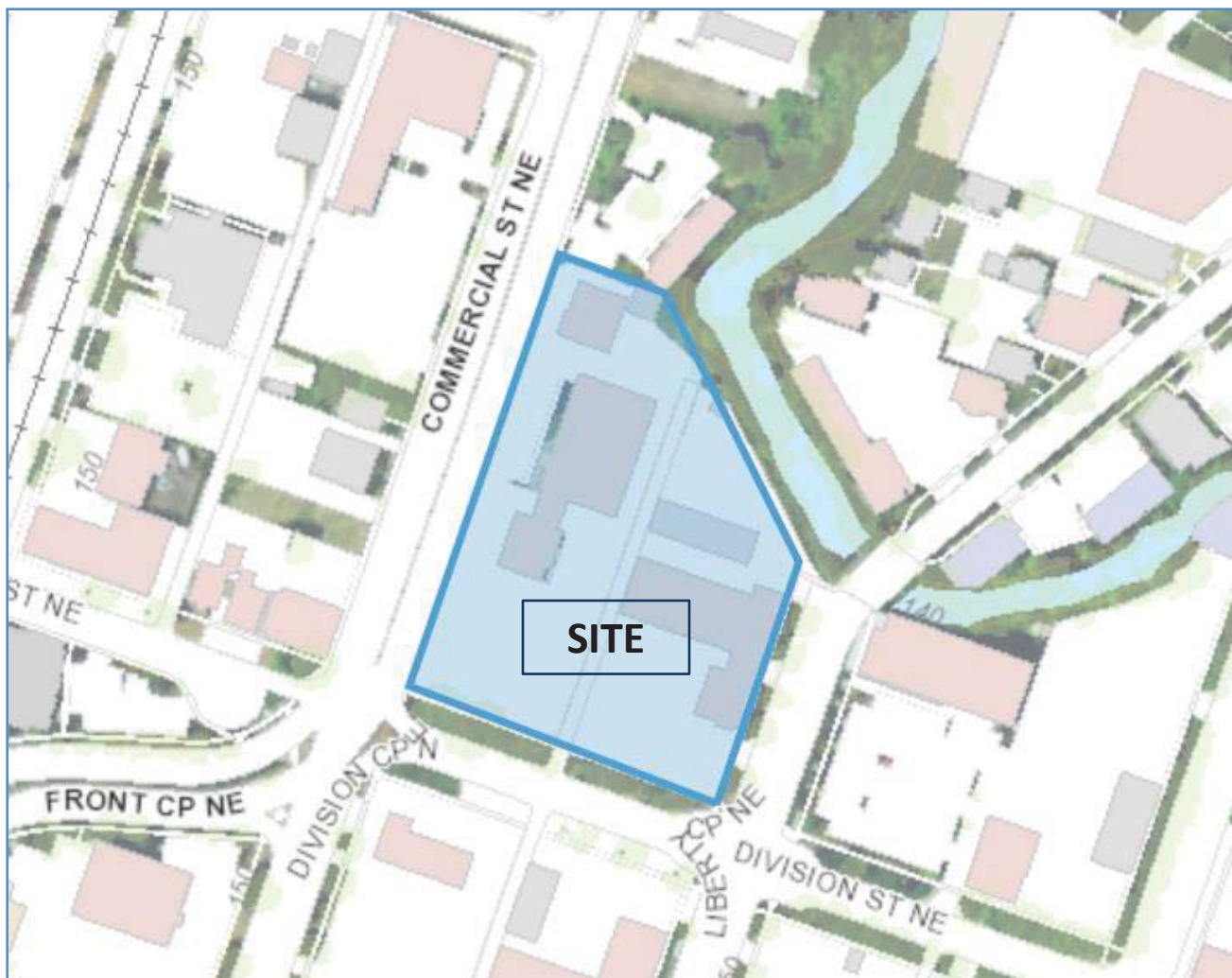
Clint Dameron  
 Real Property Services Manager

Attachments:

1. Site Map
2. Proposed Lease

06/27/2016

# SITE MAP



## COMMERCIAL LEASE AND OPTION TO PURCHASE

THIS COMMERCIAL LEASE AND OPTION TO PURCHASE (the "**Lease**"), made and entered into on June \_\_\_\_\_, 2016, is by and between **Shires Properties, LLC**, an Oregon limited liability company, herein referred to as "**Landlord**," and **City of Salem**, an Oregon municipal corporation, herein referred to as "**Tenant**."

In consideration of the covenants, terms, and conditions hereinafter contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

### 1. Grant of Lease

Landlord does hereby lease and demise to Tenant approximately Thirty-Seven Thousand Three Hundred Twenty (37,320) square feet of space in five buildings on approximately 3.51 acres located in Salem, Oregon, more particularly described as follows (the "**Premises**"):

- 1.1** 745 Liberty St NE (16,424 SF on 1.50 acres)
- 1.2** 703-709 Liberty St NE (0.16 acres)
- 1.3** 742-750 Commercial St NE (17,638 SF on 1.40 acres)
- 1.4** 818-828 Commercial St NE (0.23 acres)
- 1.5** 770 Commercial St SE (3,258 SF on 0.22 acres)

A map of the Premises is attached on **Exhibit A**.

### 2. Term of Lease

The term of the Lease shall commence and Tenant shall be entitled to possession on June 28, 2016, and the term shall extend to June 30, 2017 (the "**Lease Term**").

### 3. Consideration

No cash rental payment shall be made under this Lease. As consideration for this Lease, Tenant shall be responsible for all costs of utilities, insurance, property taxes and maintenance of the Premises, as described in this Lease.

### 4. Use of Premises

#### 4.1 Permitted Use

Tenant shall use the Premises solely for the purpose of vehicle parking, equipment storage and any other purpose approved in advance by Landlord in writing. Landlord's personal property items shall be allowed to remain in the building located at 745 Liberty Street NE. Landlord is responsible for maintaining insurance on its personal property and is solely responsible for loss or damage to its personal property.

## **4.2 Restrictions on Use**

In connection with the use of the Premises, Tenant shall:

- 4.2.1 Conduct its business in an orderly manner.
- 4.2.2 Refrain from violating any city, county, state or federal law, ordinance, regulation or order affecting the Premises or Tenant's use thereof. Tenant shall correct, at Tenant's own expense, any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance unless such changes are required because of Tenant's specific use.
- 4.2.3 Refrain from doing any activity which may make void or voidable any policy of fire insurance on the building on the Premises or which may cause any increase or additional premium to become payable for the said policy of fire insurance.
- 4.2.4 Refrain from committing any waste upon the Premises, or any nuisance or other act or thing which may be reasonably offensive to other tenants or owners or users of neighboring premises or would create a nuisance or damage the reputation of the Premises.
- 4.2.5 Refrain from storing on or discharging from or onto the Premises any Hazardous Materials (as hereinafter defined).
- 4.2.6 As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the United States Environmental Protection Agency as Hazardous Substances (40 CFR Part 302) and amendments thereto, petroleum products, or other such substances, materials and wastes that are or become regulated under any applicable local, state, or federal law.
- 4.2.7 Comply with all reasonable rules and regulations as may be adopted and published by Landlord for the use, safety, care, and cleanliness of the Premises and the common areas.

## **5. Hazardous Materials Indemnification**

To the extent permitted by the Oregon Tort Claims Act, Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Lease Term as a result of contamination by Hazardous Material as a result of Tenant's use or activities, or of Tenant's agents or contractors. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by

any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises caused or permitted by Tenant or its agents or contractors results in any contamination of the Premises, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises to the condition existing prior to the release of any such Hazardous Material to the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term on the Premises. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

## **6. Triple Net Lease**

It is the intent of the parties that this Lease shall be a triple net lease and Landlord shall not bear any expenses with respect to the same except as specifically described otherwise herein. Tenant shall be responsible for all expenses related to the normal operation of the Premises including, but not limited to, repairs, maintenance, insurance premiums, water, sewer, storm drain, electricity, gas, telephone, trash removal, landscape maintenance, security, real and personal property taxes, and janitorial services. Landlord shall be responsible for maintaining trash removal and landscape maintenance and shall invoice Tenant for actual costs of such services, pursuant to Section 7.3.

## **7. Maintenance and Repair**

### **7.1 Tenant's Maintenance**

Tenant shall be responsible for all maintenance associated with the interior of the buildings in an "as-is" condition.

### **7.2 Landlord's Maintenance**

Landlord shall be responsible for all maintenance, as Landlord deems necessary or at Tenant's reasonable request, associated with the roof, gutters, exterior walls, bearing walls, structural members, floors slabs, foundation, sidewalks, driveways, curbs, parking and landscaped areas, exterior water/sewer, gas and electrical services up to the point of entry to the Premises, all in an "as is" condition.

### **7.3 Reimbursement for Repairs**

Landlord shall make any necessary repairs to the Premises and shall charge the actual costs of such repairs to Tenant, with the sole exception that Tenant shall not pay for structural repairs identified in Section 7.2. Landlord shall submit an invoice for any repairs to Tenant, and Tenant shall reimburse Landlord for such expenditures within thirty (30) days of receipt of written request.

### **7.4 Landlord's Interference with Tenant**

Any repairs, replacements, alterations, or other work performed on or around the Premises by Landlord shall be done in such a way as to interfere as little as reasonably possible with use of the Premises by Tenant. Tenant shall have no right to any claim against Landlord for

any inconvenience or disturbance resulting from Landlord's activities performed in conformance with the requirement of this provision.

## **8. Utilities and Services**

Tenant shall pay, when due, all charges for electricity, gas, water, sanitary and storm sewage, garbage removal, janitorial services, telephone service, and any other utilities of any kind separately furnished to the Premises.

## **9. Taxes**

Tenant shall pay when due all taxes and assessments, (including assessments for benefits for public works or improvements, whether or not begun or completed prior to the commencement of the term of this Lease and whether or not to be completed within said term) levies, licenses and permit fees, charged for public utilities, and all governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which during the term of this Lease may have been, or may be assessed, levied, confirmed, imposed upon or become due and payable out of or in respect of, or become a lien on the Premises or any part thereof (hereinafter collectively referred to as "**taxes and assessments**"). Tenant may seek exemption from taxes and assessments as a public entity, and Landlord will cooperate with Tenant to obtain the exemption.

## **10. Liability Insurance**

Tenant agrees at Tenant's own expense to maintain during the term of this Lease public liability insurance in a company authorized to do business in Oregon satisfactory to Landlord (which approval will not be unreasonably withheld) with combined single limit of not less than One Million Dollars (\$1,000,000) for personal injury or death, and for property damage, and that Landlord will be one of the parties insured thereunder. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the Premises, whether or not related to an occurrence caused or contributed to by Landlord's negligence, and shall protect Landlord and Tenant against claims of third persons. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days written notice to Landlord and any mortgagee prior to any change or cancellation shall be furnished to Landlord and any mortgagee prior to Tenant's occupancy of the Premises and during the Lease to evidence renewals of the insurance.

## **11. Fire and Casualty Insurance**

Landlord shall keep the Premises and improvements insured at their full insurable value against fire and other risks covered by a standard insurance policy with an endorsement for extended coverage. Tenant shall reimburse Landlord for the cost of insurance within thirty (30) days of receipt of written request from Landlord. Tenant shall carry and bear the expense of insurance insuring the property of Tenant on the Premises against such risks. With the express written consent of Landlord, Tenant shall have the right to insure Premises and improvements under its own policy and cost in place of Landlord's policy.

## **12. Waiver of Subrogation**

The liability and casualty insurance policies to be obtained as provided in this Lease shall provide that the insurer waives all right of recovery by way of subrogation against Landlord and/or Tenant in connection with any damage covered by such policies.

## **13. Liens**

Tenant shall keep the Premises and the property on which the Premises are situated free from any liens arising out of any work performed, materials furnished, or obligations incurred by Tenant, and Tenant shall indemnify and hold Landlord harmless from all claims, demands, liabilities and expenses, including attorney's fees relating to such liens. If any mechanic's, laborer's, materialman's or other lien caused or charged to Tenant shall at any time be filed against the Premises, Tenant shall have the right to contest such lien or charge, provided, Tenant within thirty (30) days after notice of the filing thereof, will cause the same to be discharged of record or in lieu thereof to secure Landlord against said lien by depositing with Landlord, to be held in trust, cash or securities satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney's fees and other charges that could accrue as a result of foreclosure or sale under the lien.

## **14. Alterations and Improvements**

Tenant shall not make any alterations, additions or improvements in or to the Premises without first obtaining the written consent of Landlord. All alterations shall be made in a good and workmanlike manner and in compliance with all applicable laws and building codes. As used herein, alterations shall also include installation of communications wiring and link ups. All improvements, alterations and fixtures (excluding Tenant's trade fixtures) performed or installed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed unless the applicable Landlord's consent or work sheet specifically provides otherwise. Improvements and alterations installed by Tenant shall, at Landlord's option, be removed by Tenant and the Premises restored unless the applicable Landlord's consent or work sheet specifically provides otherwise. Tenant shall not place or permit to be placed any signs, advertisements or notices on the exterior of the Premises in places where such signs, advertisements or notices will be visible from any public street which will not first have been approved by Landlord.

## **15. Destruction of Premises**

In the event of destruction of the improvements on which the Premises are situated, whether by fire or other casualty, to the extent of fifty percent (50%) or more of the value of such improvements, Landlord may elect whether or not to reconstruct the Premises. If Landlord elects not to reconstruct, this Lease shall terminate as of the date of the fire or other casualty. If the Premises is partially destroyed and the damage so occasioned shall not amount to the extent above indicated, Landlord shall repair the same with all convenient speed and Tenant shall vacate, upon request, all or any part of the Premises which Landlord may require for the purpose of making such repairs.

## **16. Surrender of Premises**

Upon the termination of this Lease for any reason whatsoever, Tenant shall promptly vacate the Premises and deliver the same to Landlord broom clean and in as good order and repair as said Premises were at the commencement of this Lease, ordinary wear and tear and loss or damage by fire excepted.



Tenant shall deliver all keys to Landlord. All additions to or alterations of the Premises, whether installed by Landlord or by Tenant, including Tenant's trade fixtures, shall at once become part of the realty and belong to Landlord, unless the terms of Landlord's consent at the time of the addition or improvement provide otherwise, or unless Landlord requests that all or part of the additions, alterations or improvements be removed. Tenant agrees to restore any damage caused by the removal of any property Tenant is entitled to remove pursuant to this paragraph. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant together with interest at the legal rate from the date of Landlord's expenditure.

#### **17. Removal of Property**

If Tenant shall fail to remove any of Tenant's property of any nature whatsoever from the Premises at the termination of this Lease, or when Landlord has the right of reentry, Landlord may, at Landlord's option, remove and store said property without liability for the loss thereof or damage thereto, such storage to be for the account and at the expense of Tenant. If Tenant does not pay the cost of storing any such property after it has been stored for a period of thirty (30) days or more, Landlord may, at Landlord's option, sell, or permit to be sold, any or all of such property at public or private sale, in such manner and at such times and places as Landlord in Landlord's sole discretion may deem proper, without notice to Tenant, and shall apply the proceeds of such sales: first, to the costs and expense of such sale, including reasonable attorney fees actually incurred; second, to the payment of the costs or charges for storing any such property; third, to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and fourth, the balance, if any, to Tenant.

#### **18. Assignment and Subletting**

Tenant shall not, voluntarily or involuntarily or by operation of law, assign, mortgage or encumber all or part of this Lease, nor sublet, nor suffer or permit the Premises or any part thereof to be used by others, without the prior written consent of Landlord in each instance, or sublet the whole or any part of the Premises without first obtaining the Landlord's written consent. Tenant shall pay Landlord's costs, expert expenses and attorneys' fees incurred in reviewing any proposed sublease of assignment.

#### **19. Landlord's Right to Perform**

In the event that Tenant fails or refuses to pay, when due, any sum of money required to be paid in the performance or observance of any of the terms of this Lease on the part of Tenant to be performed or observed, Landlord may, at its option, without any obligation, however, on its part to do so, pay such sum of money, and thereafter such sum of money shall be repaid by Tenant to Landlord forthwith upon Landlord's making demand upon Tenant for such repayment, with interest thereon at the rate of twelve percent (12%) per annum from the date of the making of such payment by Landlord until the date of the making of the repayment to Landlord by Tenant.

#### **20. Access by Landlord**

Tenant will permit Landlord and Landlord's agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same, to determine Tenant's compliance with this Lease, for altering or improving the Premises, for making necessary repairs, or for showing the Premises to prospective purchasers or tenants.

## **21. Nonwaiver**

Waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or of any subsequent breach of the same or of any other term, covenant, or condition herein contained.

## **22. Indemnification**

Tenant shall defend and indemnify Landlord and save Landlord harmless from and against any and all claims, demands, liabilities, damages, costs, or expenses, including attorney fees, arising from any act, omission, or negligence of Tenant, or the officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors of Tenant in or about the Premises, or arising from any accident, injury, or damage, howsoever and by whomsoever caused, to any person or property, occurring in or about the Premises. Landlord shall have no liability to Tenant or to any third party for any loss or damage caused by third parties or by any condition of the Premises.

## **23. Default**

The following shall be events of default:

### **23.1 *Default in Payments of Charges Due***

Failure of Tenant to pay any charge within thirty (30) days after it is due.

### **23.2 *Default in Other Covenants***

Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within such thirty (30) day period, this provision shall be complied with if Tenant begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Landlord shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.

### **23.3 *Insolvency***

Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the Lease.

## **24. Remedies on Default**

### **24.1 Termination**

In the event of a default the Lease may be terminated at the option of Landlord by notice in writing to Tenant. Whether or not the Lease is terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default. If the Lease is terminated, Tenant's liability to Landlord for damages shall survive such termination and Landlord may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

### **24.2 Reletting**

Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant which Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

### **24.3 Damages**

In the event of termination on default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the Lease Term, the following amounts as damages:

- 24.3.1 The loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been, secured, up to and including the date of termination.
- 24.3.2 The reasonable costs of reentry and reletting including without limitation the cost of any clean up, refurbishing, removal of Tenant's property and fixtures, or any other expense occasioned by Tenant's failure to quit the Premises upon termination and to leave the Premises in the required condition, any remodeling costs, attorney fees, court costs, broker commissions, and advertising costs.
- 24.3.3 Any excess of the value of the rent and all of Tenant's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the date of award and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of the United States National Bank of Oregon, or its successors, in effect on the date of trial.
- 24.3.4 Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

**25. Right to Sue More Than Once**

Landlord may sue periodically to recover damages during the period corresponding to the remainder of the Lease Term, and no action for damages shall bar a later action for damages subsequently accruing.

**26. Remedies Cumulative**

The foregoing remedies shall be in addition to and shall not preclude any other remedy available to Landlord.

**27. Notices**

All notices under this Lease shall be in writing and delivered in person or sent by registered or certified mail to Landlord and Tenant at such addresses as are designated by the parties in writing. Notices mailed as aforesaid shall be deemed given on the date of such mailing.

**28. Successors and Assigns**

The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, personal representatives, and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

**29. Attorneys' Fees**

In the event Landlord obtains the services of an attorney, accountant and/or broker to review any assignment, sublease, modification or other transaction relating to this Lease proposed by Tenant, then Tenant shall reimburse Landlord for Landlord's reasonable attorneys' fees occasioned thereby. If Landlord employs the services of an attorney for assistance in enforcing its rights, regardless of whether or not a lawsuit is filed, Tenant shall reimburse the Landlord for any attorneys' fees incurred. In case any proceeding is instituted, including any bankruptcy or arbitration proceeding, arising directly or indirectly out of this agreement, the losing party shall pay to the prevailing party its reasonable attorneys' fees, together with all expenses, which may reasonably be incurred in taking such action, including, but not limited to, costs incurred in searching records, expert witness fees, anticipated post-judgment collection services, and including any such fees and costs incurred in any appeal of any proceedings. Such sums shall be in addition to all other sums provided by law.

**30. Covenant of Quiet Enjoyment**

If Tenant punctually and faithfully performs and observes all of the terms, covenants, provisions, and conditions contained in this Lease on the part of the Tenant to be performed and observed, Landlord covenants that Tenant should have control and management, and quiet and peaceable possession, of said Premises as Tenant during the term of this Lease.

**31. Relation of Parties**

Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or partnership or joint venture of any association between Landlord and Tenant and no provision contained in this Lease or any acts of the

parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

### **32. Acceptance of Premises "As Is"**

Tenant acknowledges that it accepts the Premises in their present condition, as is, including latent defects, without any commitments, representations or warranties, expressed or implied, unless they are in writing signed by Landlord. Tenant acknowledges that Tenant has ascertained, from sources other than Landlord, the applicable zoning, building, housing and other regulations, ordinances and laws, and the Tenant accepts the Premises with full awareness of these ordinances and laws as they may affect the present or future use of the Premises, and Landlord makes no representations with respect thereto.

### **33. Option to Purchase**

Landlord hereby grants to Tenant the exclusive right and option (the "**Option**") to purchase the Premises. The terms and conditions of the purchase and sale shall be negotiated by the parties and an agreement shall be mutually executed no later than ninety (90) days following Tenant's exercise of the Option.

#### **33.1 Consideration**

##### **33.1.1 Initial Consideration**

The initial consideration to be paid by Tenant to Landlord for the grant of this Option is Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "**Initial Consideration**"). The Initial Consideration shall be paid by Tenant to Landlord on or before December 1, 2016 or the date of the exercise of the Option, whichever is earlier. The Initial Consideration shall not be applied to the purchase price of the Premises.

##### **33.1.2 Second Consideration**

If Tenant has not exercised the Option on or before March 1, 2017, Tenant shall pay Landlord on that date an additional consideration Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "**Second Consideration**"). The Second Consideration shall be applied to the purchase price of the Premises.

#### **33.2 Option Term**

The Option shall commence on June 28, 2016 and, if not exercised, shall terminate at 11:59 p.m., Portland, Oregon, time on May 31, 2017 (the "**Option Term**"). If the Option is not timely exercised on or before the expiration of the Option Term, it shall automatically terminate without any notice to Tenant, or any other person, and all rights of Tenant under the Option shall immediately cease.

#### **33.3 Manner of Exercise**

The Option shall be exercised, if at all, by Tenant giving written notice to Landlord before the end of the Option Term. The Option may be exercised only with respect to the entirety of the Premises, and nothing contained herein shall be construed as permitting Tenant

to purchase less than all of the Premises pursuant to the Option. Upon exercise of the Option, the parties shall proceed in good faith to negotiate the purchase and sale agreement. The purchase and sale of the Premises shall close no later than ninety (90) days after the end of the Option Term.

## **34. Miscellaneous**

### **34.1 Interest on Late Payments**

Any amount due to Landlord by Tenant not paid within the time periods provided herein shall accrue interest at the rate of one percent (1%) per month.

### **34.2 Integration and Modification**

This Lease contains the entire agreement between the parties and any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Lease cannot be changed orally or terminated orally.

### **34.3 Headings**

The headings and titles in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

### **34.4 Interpretation**

All nouns and pronouns and any variations thereof shall be deemed to refer to the masculine, feminine neuter, singular or plural as the identity of the person or persons, firm or firms, corporation or corporations, entity or entities or any other thing or things may require. Both parties had input in the terms of this Agreement. Any rule of construction that a document is interpreted against its drafter is inapplicable.

### **34.5 Landlord Consent**

Any provision requiring Landlord's consent shall be interpreted such that Landlord may withhold consent in its sole discretion.

### **34.6 Severability**

If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision shall be valid and be enforced to the fullest extent permitted by law.

**34.7 Time of Essence**

Time is of the essence of the performance of each of Tenant's obligations under this Lease.

**34.8 Governing Law and Venue**

The parties hereby submit to jurisdiction in Marion County, Oregon and agree that any and all disputes arising out of or related to this Lease shall be litigated exclusively in the Circuit Court for Marion County, Oregon and in no federal court or court of another county or state. Each party to this Lease further agrees that pursuant to such litigation, the party and the party's officers, employees, and other agents shall appear, at that party's expense, for deposition in Marion County, Oregon.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**LANDLORD:**  
**Shires Properties, LLC**

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

Its: \_\_\_\_\_

**TENANT:**  
**City of Salem**

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

Its: \_\_\_\_\_



# EXHIBIT A

Map of the Premises

