



City Council Agenda Bill

20333

Bill Number

Subject: Consideration of a lease agreement of 707 Astor Street with Home Port Learning Center

Summary Statement: Home Port Learning Center is a nonprofit community organization that operates a transitional education program providing education, vocational training, and mentoring to adjudicated and at-risk youth. In 2003, Home Port began leasing the City-owned property at 707 Astor St. at market rate, but in 2007 requested an \$18,000 annual rent reduction in order to maintain its program in light of county funding cuts. Council approved the reduced rent through resolution, and since 2008 the City has continued the lease at reduced rent through modification to the original contract. A new 5-year lease has been proposed, continuing the reduced rent.

Previous Council Action: Authorization of previous contracts and contract modifications: 2003-0092, 2003-0092A, 2003-0092B, 2003-0092C, 2003-0092D, and 2003-0092E; and passing of Resolution No. 2007-30.

Fiscal Impact: Total reduction in potential City lease revenue is approximately \$23,040 per year.

Funding Source: General Fund

Attachments: Staff Memo
Lease Agreement

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Committee Briefing Vote Requested	3/10/2014	Vote to Approve	Katie Franks, Planning and Community Development	5 minutes

Recommended Motion: .

Council Committee:
Planning Committee

Agenda Bill Contact:
Katie Franks, Planning and Community Development, 360-778-8300

Reviewed By	Department	Date
<i>Jeffrey B. Thomas</i>	Planning	03/03/2014
<i>Amy B. Kraham</i>	Legal	03/04/2014
<i>Kelli J. Lenville</i>	Executive	03/04/2014

Memorandum

To: City Council

RE: Authorize Mayor Linville to enter into a lease agreement with Home Port Learning Center for 707 Astor Street at a reduced rent

Date: March 10, 2014

From: Mayor Linville, and Planning and Community Development

Staff Recommendation

The Planning and Community Development Department (PCDD) requests that Council authorize Mayor Linville to enter into a five-year lease agreement with Home Port Learning Center for the building at 707 Astor Street at a reduced rent. *Commercial Lease agreement is attached.*

Background

PCDD acquired the property at 707 Astor in December, 2001, primarily for the land, as part of a revitalization strategy for Old Town. Since March 2003, the City has leased the property, a 4800 square foot wood frame warehouse, to the Home Port Learning Center (Home Port), a non-profit community organization that operates a transitional education program providing education, vocational training, and mentoring to adjudicated and at-risk youth.

Prior Lease Agreement and Rent Reduction

Home Port initially leased the building from the City under a two-year term at a market rate (\$1,063.45 plus \$136.55 leasehold excise tax) for a total of \$1,200/month, or \$14,400/year. The lease provided an option to extend the agreement every two years, through modification. Home Port continued to lease at the market rate until August 2007, when they requested \$18,000 in annual rent reduction, affirming that it was crucial to the organization's ability to maintain its program. Council passed Resolution No. 2007-30, approving the reduced rent, and a new agreement was created for \$293.18/month, or \$3,518.16/year (\$125 plus \$168.18 leasehold excise tax). Since that time Council has authorized the Mayor to enter into modification 2003-0092C (1/1/08 - 12/31/10), and 2003-0092D (1/1/11 - 12/31/13), both of which continue the reduced rent pursuant to the 2007 Resolution.

Proposed 2014 – 2018 Lease Agreement

Home Port's current lease at \$363.80/month under City Contract #2003-0092D expired in December 2013 but was given a three-month extension to allow for a new agreement to be created. This extension expires March 31, 2014. A new lease agreement has created, as the

number of modifications allowed under the original lease have been exhausted. The new lease agreement term would run for five years, from April 1, 2014 to December 31, 2018. The reduced rent would be set at \$215/month to cover stormwater and sewer service fees. Leasehold excise tax would not be included in the rent, as Home Port has been given an exemption by the State Department of Revenue.

Public Benefit

BMC 4.88.010 directs Council to consider the best possible public benefit to the citizens of the City in lease negotiations. Home Port provides a substantial public benefit by offering education, job training and mentoring to adjudicated and at-risk youth, returning students to the workforce or to traditional schooling programs. In accomplishing this Home Port's programs help to reduce the burden on the local criminal justice system by preventing incarceration of at-risk youth. Additional benefit to the public are Home Port's vocational training programs that regularly provide a valuable community service through organized volunteer activities such as stream restoration, Maritime Heritage Park stewardship and marine cleanup projects.

Continued reduced rent for the Home Port Learning Center means that students and staff will continue to create positive activity in Old Town and Maritime Heritage Park, as well as keeping the building occupied until redevelopment can occur. These benefits come at very little cost to the City, as the lease stipulates that the City is not responsible for exterior repairs (See SECTION 9 – MAINTENANCE OF PREMISES, pgs. 6 & 7 of lease agreement). To off-set the loss of rent revenue to the City (\$23,040 per year) the lease stipulates that it be the Tenant's responsibility to maintain the roof surface, exterior walls, foundation and building structure in a good state of repair.

Home Port faces ongoing financial difficulty maintaining operations under prevailing market rate conditions, and the substantial public benefit provided by the organization would be lost without the reduced rent of 707 Astor Street allowed by the City.

COMMERCIAL LEASE

THIS COMMERCIAL LEASE (hereinafter "**Lease**") is made as of _____, 2014 by and between the **CITY OF BELLINGHAM**, a first class municipal corporation of the State of Washington ("**Landlord**"), and **HOME PORT LEARNING CENTER, INC.**, a duly qualified Washington non-profit corporation in good standing ("**Tenant**").

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

SECTION 1 – BASIC TERMS

1. **Lease Data; Exhibits.** The following definitions apply, except as otherwise specifically modified herein:
 - 1.1 **Leased Premises.** The real property depicted in **EXHIBIT A** (attached hereto and incorporated herein), buildings and other improvements located at 707 Astor Street, Bellingham, WA 98225. The agreed rentable area of the Leased Premises is a 4800 sq. ft. warehouse building, also known as the "Red Shed".
 - 1.2 **Rent Commencement Date.** April 1, 2014.
 - 1.3 **Primary Term.** April 1, 2014 through December 31, 2018.
 - 1.4 **Base Rent.** Commencing on April 1, 2014 and continuing through December 31, 2018, Tenant shall pay Base Rent each month in the amount of Two Hundred Fifteen Dollars (\$215) in accordance with Section 4.1., to cover the costs of the City's Surface and Stormwater Service charges. The City may make annual adjustments to the monthly Base Rent should there be an increase or decrease in the cost of Surface and Stormwater Service charges.

Landlord and Tenant acknowledge that fair market rent of the leased premises as of the Lease Commencement Date is Twenty Three Thousand Forty Dollars (\$23,040¹) annually and, accordingly, Leasehold Excise Tax will be calculated on said amount unless an exemption for said leasehold excise tax is obtained by Tenant and presented to landlord or unless the Washington State Department of Revenue Determines otherwise. See Section 6.3.
 - 1.5 **Security Deposit.** N/A.
 - 1.6 **Notice Addresses.**

Landlord: The City of Bellingham
 Planning and Community Development Department
 Attn: Katie Franks
 210 Lottie Street
 Bellingham, WA 98225

¹ Fair Market Rent is based on comparable City-owned Post Point / Fairhaven warehouse buildings leased for \$.40 per sq ft / month. 707 Astor is 4800 sq ft x \$.40 = \$192.00 per month, or \$2,304.00 annually.

With a Copy to: The City of Bellingham
Legal Department
Attn: City Attorney
210 Lottie Street
Bellingham, WA 98225

Tenant: Home Port Learning Center, Inc.
Attn: Steve Paus, Home Port Board President
707 Astor Street
Bellingham, WA 98225

- 1.7 **Use.** Tenant shall use and occupy the Leased Premises only for the purpose of a learning center, defined as a transitional education program serving at-risk youth of Whatcom County. In addition to typical classroom curriculum, Home Port Learning Center students use power and hand tools to build and restore boats, and other small-scale woodworking projects. See Section 5.1.

SECTION 2 - PREMISES

2. **Premises.** Landlord leases to Tenant, and Tenant leases from Landlord, those certain premises and rentable area referred to in Section 1.1 (the "**Leased Premises**"). Landlord reserves all air rights over the Leased Premises, the use of the exterior walls, the roof and the right to install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Leased Premises.

SECTION 3 - TERM

3. **Lease Term.** This Lease shall be in effect for the Primary Term identified in Section 1.3, commencing on April 1, 2014 (the "**Lease Commencement Date**") and expiring on December 31, 2018.

SECTION 4 - RENT

- 4.1 **Base Rent.** Commencing on the Rent Commencement Date, Tenant shall pay to Landlord in care of City Finance Director at City Hall, 210 Lottie Street, Bellingham, Washington 98225, without notice, set-off or deduction whatsoever, monthly Base Rent in the amount identified in Section 1.4. Monthly Base Rent shall be payable in advance on or before the first day of each month of the Lease term. Base Rent for partial months shall be prorated. If Tenant holds over, monthly Base Rent shall be recalculated as set forth in Section 16.2.
- 4.2 **Additional Rent.** All other sums to be paid or reimbursed by Tenant to Landlord, whether or not so designated, shall be deemed "**Additional Rent**" for the purposes of this Lease. If Tenant defaults in the performance of any of its obligations hereunder, Landlord may, but shall not be obligated to, perform such obligations, and the cost thereof to Landlord shall also be Additional Rent. Unless otherwise specifically provided herein, Tenant shall pay Landlord all Additional Rent upon demand and in no event later than the date on which the next monthly Base Rent payment hereunder is due and payable.

- 4.3 **Late Charge; Interest.** If Tenant fails to pay any amount due under this Lease within ten (10) days of the due date, a late charge equal to five percent (5%) of the unpaid amount shall be assessed and be immediately due and payable. In addition, interest shall accrue on the delinquent amount at a per annum rate which is the lesser of the highest interest rate permitted by applicable law or twelve percent (12%) per annum.

SECTION 5 - CONDUCT OF BUSINESS

- 5.1 **Use of Leased Premises.** Tenant shall continuously during the Lease term maintain and conduct on the Leased Premises a business only for the purposes and under the trade name identified in Section 1.7. Tenant shall not use or permit the use of the Leased Premises for any other business or purpose, or under any other name, without the prior written consent of Landlord.
- 5.2 **Public Benefit.** Tenant acknowledges that the aggregate Base Rent and Additional Rent constitute below "fair market rental value" for the Leased Premises. As additional consideration for and as condition as to Tenant's continued use of the Leased Premises, Tenant covenants to continue to provide the following public benefits:
- (a) Maintain a transitional experiential learning education program serving adjudicated and at-risk youth of Whatcom County, through which students acquire academic, vocational and work readiness skills;
 - (c) Reduce burdens on the local criminal justice system by preventing incarceration of at-risk youth and by returning successful students to the workforce or traditional school programs; and
 - (d) Regularly provide valuable community service through volunteer stream restoration and marine cleanup projects.
- 5.3 **Appearance of Leased Premises.** Tenant shall maintain the Leased Premises in a clean, orderly and neat appearance, permitting no offensive odors to be emitted from the Leased Premises and neither committing waste nor permitting any waste to be committed thereon. All garbage and refuse shall be kept in sealed containers which are removed at regular intervals. No sale, storage or display of merchandise by vending machine or otherwise, shall be permitted outside or in front of the Leased Premises or in the common areas. Tenant shall not conduct or permit to be conducted any auction, fire, bankruptcy or "going out of business" sale on or about the Leased Premises without the prior written consent of Landlord.
- 5.4 **Unlawful Use.** Tenant shall not use or permit the Leased Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance, rule or regulation ("**Applicable Laws**") or in any manner that may create a nuisance. Tenant shall promptly comply, at its sole expense, with, and obtain all licenses and permits required by Applicable Laws and with the requirements of any board of fire underwriters or similar body, relating to or affecting the condition, use or occupancy of the Leased Premises or the business conducted thereon.

5.5 Hazardous Materials

- (a) "**Hazardous Material**" shall mean any matter (whether gaseous, liquid or solid) which is or may be harmful to persons or property, and which may now or hereafter be regulated under any Applicable Laws pertaining to health, industrial hygiene or the environment, including, without limitation, any asbestos and/or asbestos containing materials. "Hazardous Material" shall not include ordinary cleaning and maintenance products which are used with due care and in strict compliance with applicable law (or Applicable Laws, as the case may be) and the instructions of the manufacturer of such products in the reasonable and prudent conduct of Tenant's business on the Leased Premises.
- (b) Tenant shall not store, use, sell, release, generate or dispose of any Hazardous Materials in, on or about the Leased Premises without the prior written consent of Landlord. With respect to any Hazardous Materials stored, used, generated or disposed of from the Leased Premises after obtaining the prior written consent of Landlord, Tenant shall (i) promptly, timely and completely comply with all governmental requirements for recording and recordkeeping; (ii) submit to Landlord true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authority; (iii) within five (5) days of Landlord's request, provide evidence satisfactory to Landlord that Tenant has complied with, and is in compliance with all Applicable Laws and (iv) comply with all Applicable Laws regarding the use, sale, transportation, generation, treatment and disposal of Hazardous Materials. Prior to the expiration and surrender of the Leased Premises by Tenant, Tenant shall remove any and all Hazardous Materials which Tenant, its employees, agents, contractors and/or sublessees have brought onto the Leased Premises after obtaining the prior written consent of Landlord. Tenant shall be solely responsible for and shall defend (with counsel acceptable to Landlord), indemnify and hold Landlord, its agents affiliates and employees harmless from and against all claims, costs, damages, judgments, penalties, fines, losses, liabilities and expenses, including attorneys' fees and costs, arising out of or in connection with Tenant's breach of its obligations contained in this Section 5.5 which arise during or after the Lease term as a result of such breach and any contamination that may result therefrom. Tenant shall be solely responsible for and shall defend (with counsel acceptable to Landlord), indemnify and hold Landlord, its agents, affiliates and employees harmless from and against any and all claims, costs, damages, lawsuits, penalties, liens, losses and/or liabilities, including attorneys' fees and costs, arising out of or in connection with removal, cleanup remediation and restoration work and materials necessary to return the Leased Premises and any other property of whatever nature to their condition existing prior to the appearance of Tenant's Hazardous Material on or about the Leased Premises; provided that Landlord's written approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as the actions would not potentially have any material adverse, long-term or short-term effect on the Leased Premises. Notwithstanding anything else set forth herein, Tenant's obligations under this Section 5.5 shall survive the expiration of this Lease.
- (c) Landlord shall have the right in its sole discretion to conduct an environmental audit utilizing a contractor of Landlord's choice at the end of the Lease term, upon the earlier termination of this Lease, upon Tenant's default hereunder or if Landlord

reasonably believes that Hazardous Materials are being stored, used, sold, generated, released or disposed of from the Leased Premises in violation of the terms of this Section 5.5. Tenant shall be responsible for the cost of the audit and any remedial, restorative or removal work if such audit discloses the existence, storage, disposal or other presence of Hazardous Materials occurring during the Lease term or attributable to Tenant, its employees, agents, contractors or sublessees. Failure of Landlord to conduct an environmental audit or to detect conditions attributable to Tenant, its employees, agents, contractors or sublessees, whether such audit is conducted or not, shall not operate as a release of Tenant of its liability as stated in this Lease or by operation of law. Tenant's obligations herein shall survive the expiration of this Lease.

- 5.6 **Liens and Encumbrances.** Tenant shall keep the Leased Premises free and clear of all liens and encumbrances arising from or out of its use and occupancy of the Leased Premises. If any lien is filed against the Leased Premises as a result of the action or inaction of Tenant or its employees, agents or contractors, Tenant shall upon demand provide Landlord with a bond in the amount required by law to remove the lien of record.
- 5.7 **Signs.** Without Landlord's written consent, Tenant shall not erect or place, or permit to be erected or placed, or maintain any signs, lettering or other advertising matter of any nature or kind whatsoever on the exterior walls, in the display windows or in the interior of the Leased Premises (if clearly visible from the exterior). Tenant agrees to abide by all sign criteria established by Landlord. All signs installed by Tenant shall be removed by it at its expense, and it shall repair all damage resulting from such installation or removal, both by the end of the Lease term or the earlier termination of the Lease.

SECTION 6 - UTILITIES AND OTHER CHARGES

- 6.1 **Utility Charges.** Tenant shall be responsible, and pay prior to delinquency, for all charges for utilities or services used or consumed on, or supplied to the Leased Premises, including the charges, if any, for installing meters for them. Meter locations and installation methods shall be subject to Landlord's prior approval. If Landlord elects to furnish any of the utilities, Tenant shall pay Landlord all charges levied by Landlord in accordance with rates established from time to time for the same. Landlord shall not be liable for an interruption of the supply of any such utilities to the Leased Premises.
- 6.2 **Licenses and Taxes.** Tenant shall pay when due all license, excise, business and occupation and other fees and taxes covering the business conducted on the Leased Premises and all personal property taxes levied with respect to all personal property located at the Leased Premises. If any governmental authority levies a tax or license fee on rents payable under this Lease or rents accruing from use of the Leased Premises or a tax or license fee in any form against Landlord or Tenant because of, or measured by or based upon income derived from the leasing or rental thereof or a transaction privilege tax, such tax or license fee shall be paid by Tenant, either directly, if required by law, or by reimbursing Landlord for the amount thereof upon demand. If any such amount is paid directly to the taxing authority by Landlord, Tenant shall reimburse Landlord no later than thirty (30) days after the receipt from Landlord of a written request for reimbursement.
- 6.3 **Leasehold Excise Tax.** Landlord and Tenant acknowledge that fair market rent of the leased premises as of the Lease Commencement Date is Twenty Three Thousand Forty Dollars (\$23,040) annually and, accordingly, Leasehold Excise Tax will be calculated on

said amount unless an exemption for said leasehold excise tax is obtained by Tenant and presented to landlord or unless the Washington State Department of Revenue Determines otherwise.

SECTION 7 – DEPOSIT

Section Intentionally Deleted.

SECTION 8 – CONDITION OF PREMISES; ALTERATIONS

- 8.1 **Condition of Leased Premises.** Tenant acknowledges that it has examined the Leased Premises and is in all respects familiar with the Leased Premises and the improvements therein and Tenant accepts the Leased Premises and the improvements therein "**as is**". Tenant further acknowledges that Landlord has made no representations and warranties to Tenant with respect to the Leased Premises, and that Landlord has no obligation to perform any work in the Leased Premises or to install any tenant improvements therein.
- 8.2 **Alterations by Tenant.** Tenant shall not make any alterations, additions or improvements in or to the Leased Premises costing more than Ten Thousand Dollars (\$10,000) without Landlord's prior written approval. All such alterations, additions and improvements shall be performed at Tenant's sole cost and expense by a contractor approved by Landlord and in a good and workmanlike manner, in accordance with all Applicable Laws, ordinances, rules and regulations, and in a manner (a) consistent with the plans and specifications submitted to and approved by Landlord and any conditions imposed by Landlord, (b) which includes acceptable insurance/bond coverage for Landlord's benefit and (c) which does not affect the structural integrity of the building. All such alterations, additions and improvements (expressly including, but without limitation, all light fixtures, heating, ventilation and air conditioning units and floor coverings), except trade fixtures and appliances and equipment not affixed to the Leased Premises, shall immediately become the property of Landlord without any obligation on its part to pay therefor, and shall not be removed by Tenant unless so directed by Landlord in connection with their installation or prior to the termination or expiration of this Lease.

SECTION 9 - MAINTENANCE OF PREMISES

- 9.1 **Maintenance and Repair by Tenant.** Tenant shall at all times throughout the Lease term keep the Leased Premises (including exterior doors and entrances, all windows and moldings and trim of all doors and windows, and all sidewalks adjacent to the Leased Premises) and all partitions, door surfaces, fixtures, equipment and appurtenances thereof (including lighting, plumbing [within the Leases Premises], electrical, security, heating, air conditioning and ventilating systems and fixtures) in good order, condition and repair. Without limiting the generality thereof, Tenant shall keep the glass of all windows, doors and showcases clean and presentable; replace immediately all broken glass in/on the Leased Premises; keep the Leased Premises free from vermin; paint or refinish the interior of the Leased Premises, and the store front and entrances at commercially reasonable intervals determined by Landlord; make all necessary repairs to, or replacements of, all door closure apparatus and mechanisms; keep all plumbing, electrical, heating, ventilating and other Leased Premises systems and fixtures clean and in a good state of repair; and keep all

utilities within the Leased Premises in a good state of repair. Tenant shall promptly remove all snow and ice and debris from the sidewalks adjacent to the Leased Premises.

Because the City acquired the property at 707 Astor for the land, not the improvements, the building is considered surplus, and repairs do not benefit the landlord. Therefore, it is the Tenant's responsibility to maintain the roof surface, exterior walls, foundation and building structure of the Leased Premises in a good state of repair, provided however that if the costs of such repairs/maintenance of the roof, exterior walls, foundation and/or building exceed what Tenant can afford (at Tenant's sole discretion), Tenant shall provide no less than 30 days prior notice to terminate this Lease. Upon such event, Tenant shall vacate the Premises on or before the date of termination set forth in Tenant's Notice to the City and all of the parties obligations set forth shall be terminated.

- 9.2 Failure to Maintain.** If Tenant fails to keep and maintain the Leased Premises in the condition set forth in Section 9.1, Landlord may, at its option, and as a non-exclusive remedy, put or cause the same to be put in the condition required thereunder, and Tenant shall pay Landlord the entire cost thereof upon demand.
- 9.3 Repairs by Landlord.** Landlord shall not be responsible for repair or maintenance work, and there shall be no abatement or reduction of rent arising by reason of Tenant's making of repairs, alterations or improvements to the building.

SECTION 10 - INSURANCE AND INDEMNITY

- 10.1 Indemnification.** Landlord shall not be liable for any injury to any person, or for any loss of or damage to any property (including property of Tenant) occurring in or about the Leased Premises from any cause whatsoever. Tenant shall indemnify, defend and save Landlord, its officers, agents, employees and contractors, harmless from all claims, losses, damages, fines, penalties, liabilities and expenses (including Landlord's personnel and overhead costs and attorneys' fees and other costs incurred in connection with such claims, regardless of whether claims involve litigation or bankruptcy) resulting from any actual or alleged injury to any person or from any actual or alleged loss of or damage to any property or any other damage or loss alleged to be attributable to Tenant's operation or occupation of the Leased Premises or caused by or resulting from any act or omission or breach of Applicable Laws by Tenant or any licensee, assignee, or concessionaire, or of any officer, agent, employee, guest or invitee of any such person in or about the Leased Premises or Tenant's breach of its obligations hereunder. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification provided for in this Section with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. Landlord shall not be liable for interference with light, air or view or for any latent defect in the Leased Premises. Tenant shall promptly notify Landlord of casualties or accidents occurring in or about the Leased Premises. Notwithstanding the foregoing if claims, losses, liabilities, damages, liens, costs and expenses so arising are caused by the concurrent negligence of both Landlord and Tenant, their employees, agents, invitees and licensees, Tenant shall indemnify Landlord only to the extent of Tenant's own negligence or that of its officers, agents, employees, guests or invitees. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Tenant's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the full extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent of their negligence. LANDLORD AND TENANT ACKNOWLEDGE

THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION 10.1 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

10.2 Insurance. At all times throughout the Lease term Tenant shall, at its own expense, maintain comprehensive or commercial general liability insurance with broad form and stop gap (employer's liability) endorsements in minimum limits of \$1,000,000 per occurrence and annual aggregate for property damage or loss and minimum limits of \$1,000,000 per individual and per occurrence for personal injuries and death, and \$250,000 for damage to rented premises, to indemnify both Landlord and Tenant against any such claims, demands, losses, damages, liabilities and expenses. Landlord shall have the right to periodically review the appropriateness of such limits in view of inflation, changing industry conditions and court decisions and to require an increase in such limits upon ninety (90) days prior written notice to Tenant. Landlord and any property manager identified by Landlord shall be named as additional insureds and shall be furnished with a certificate and a copy of such policy or policies of insurance prior to the Commencement Date and thereafter upon Landlord's request therefor, which shall bear an endorsement or endorsements naming the City as an additional insured and providing that such policy or policies shall not be canceled nor materially reduced in coverage or limits without thirty (30) days prior written notice to Landlord. Throughout the Lease term, Tenant shall also maintain at its own expense insurance covering its furniture, fixtures, equipment and inventory and all improvements which it makes to the Leased Premises in an amount equal to the full insurable value thereof, against fire and such other perils as are covered by an all risk policy (or subsequent equivalent) with plate glass endorsement, including and covering all glass on the Leased Premises. All insurance required under this Lease shall (a) be issued by insurance companies authorized to do business in the State of Washington and acceptable to Landlord; (b) be issued as a primary policy, or under the blanket policy, not contributing with and not in excess of coverage which Landlord may carry; (c) in the case of the liability policy, contain a contractual liability coverage endorsement covering Tenant's indemnification duty; and (d) have deductibles approved by Landlord. If Tenant fails to maintain such insurance, Landlord may immediately obtain such for Tenant's account as a non-exclusive remedy, and Tenant shall reimburse Landlord for the full expense thereof upon demand.

SECTION 11 - ASSIGNMENT AND SUBLETTING

11.1 Assignment or Sublease. Tenant shall not sublet the whole or any part of the Leased Premises, nor shall Tenant assign, transfer or encumber this Lease or any interest thereunder whether directly or by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of Landlord, which consent will not be unreasonably withheld. Each assignment to which there has been consent shall be by an instrument in writing in form satisfactory to Landlord, an executed copy of which shall be delivered to Landlord. As a material inducement to Landlord to execute and deliver this Lease, Tenant agrees it shall be reasonable under this Lease and under applicable law for Landlord to withhold consent to any proposed assignment, encumbrance or sublease if Landlord determines that any one or more of the following applies (without limitation as to other reasonable grounds for withholding consent): (a) Landlord is not reasonably assured that the proposed transferee will fully, completely and promptly perform all obligations of Tenant under this Lease, (b) either the net current assets or the tangible net worth of the proposed transferee, determined in accordance with general accepted accounting principles, consistently applied by Tenant's and the proposed transferee's respective independent certified public accountants, is less than the net current assets or tangible net worth of Tenant as of the date of this Lease or the date of the proposed transfer, whichever is

greater, (c) the transferee proposes to use the Leased Premises for any purpose other than the permitted uses under this Lease, (d) the proposed transferee fails to deliver to Landlord its written assumption of all of the obligations to be performed by Tenant under the Lease in connection with the portion of the Leased Premises which is the subject of the proposed transfer, or (e) if Tenant and all guarantors will not continue to remain liable on this Lease. No assignment or sublease shall release Tenant from primary liability on this Lease. In lieu of giving its consent to an assignment or sublease, Landlord may elect to terminate this Lease, effective upon thirty (30) days' prior written notice to Tenant. Any assignment or sublease without Landlord's prior written consent shall, at Landlord's option, be voidable.

If Tenant assigns its interest in this Lease or sublets the Leased Premises, Tenant shall pay to Landlord any and all consideration received by Tenant for such assignment, which exceeds the reasonable out of pocket costs incurred by Tenant in connection with such assignment, if any. Tenant shall also pay all reasonable legal fees and other costs incurred by Landlord in connection with Landlord's consideration of Tenant's request for approval of assignments or subleases.

- 11.2 Corporate Ownership; Partnership.** If Tenant is a corporation, then any transfer of this Lease by merger, consolidation or liquidation, or any change in the ownership of, or power to vote the majority of Tenant's outstanding stock, shall constitute an assignment for the purposes of this Section 11. If Tenant is a partnership or limited liability company, then any dissolution or termination of the partnership or limited liability company or change in a majority of the interests held by the general partners or members thereof shall constitute an assignment for purposes of this Section 11.
- 11.3 Assignment by Landlord.** If Landlord sells or otherwise transfers the Leased Premises, or if Landlord assigns its interest in this Lease, and such purchaser, transferee or assignee assumes Landlord's obligations hereunder arising thereafter, Landlord shall thereupon be relieved of all liabilities hereunder arising thereafter, but this Lease shall otherwise remain in full force and effect.

SECTION 12 - DESTRUCTION OF PREMISES

- 12.1 Partial Destruction.** If the Leased Premises are rendered partially untenantable by fire or other insured casualty, and if the damage is repairable within sixty (60) days from the date of the occurrence (with the repair work and preparations therefor to be done during regular working hours on regular work days), Landlord shall repair the Leased Premises, to the extent of the insurance proceeds available. Monthly Base Rent shall be abated in the proportion that the untenantable portion of the Leased Premises bears to the whole thereof for the period from the date of the casualty to the completion of the repairs, unless the casualty results from Tenant's negligence or its breach of the terms hereof. If thirty percent (30%) or more of the Leased Premises are damaged, Landlord may terminate this Lease as of the date of such damage or destruction by giving notice to Tenant within thirty (30) days thereafter of the election so to do.
- 12.2 Total Destruction.** If the Leased Premises are completely destroyed by fire or other casualty, or if they are damaged by uninsured casualty, or by insured casualty to such an extent that the damage cannot be repaired within sixty (60) days of the occurrence, or if the casualty occurs during the last year of the Lease term, Landlord shall have the option either to restore the Leased Premises or to terminate this Lease on thirty (30) days' written notice, effective as of any date not more than sixty (60) days after the occurrence. If this Section

becomes applicable, Landlord shall advise Tenant within (30) days after such casualty whether Landlord elects to restore the Leased Premises or to terminate the Lease. If Landlord elects to restore the Leased Premises, it shall commence and prosecute the restoration work with commercially reasonable diligence. For the period from the date of the casualty until completion of the repairs (or the date of termination of the Lease, if Landlord elects not to restore the Leased Premises), the monthly Base Rent shall be abated in the proportion that the untenable portion of the Leased Premises bears to the whole thereof, unless the casualty results from Tenant's negligence or its breach of the terms hereof.

SECTION 13- EMINENT DOMAIN

- 13.1 Total Taking.** If all of the Leased Premises are taken by eminent domain, this Lease shall terminate as of the date Tenant is required to vacate the Leased Premises and all Base Rent and Additional Rent shall be paid to that date. The term "**eminent domain**" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person.
- 13.2 Partial Taking.** If a taking of any part of the Leased Premises by eminent domain renders the remainder thereof unusable, in the reasonable judgment of Landlord, the Lease may, at the option of Landlord, be terminated by written notice given to Tenant not more than thirty (30) days after Landlord gives Tenant written notice of the taking, and such termination shall be effective as of the date when Tenant is required to vacate the portion of the Leased Premises so taken. If this Lease is so terminated, all rent shall be paid to the date of termination. Whenever any portion of the Leased Premises is taken by eminent domain and this Lease is not terminated, Landlord shall at its expense proceed with commercially reasonable dispatch to restore, to the extent of available proceeds and to the extent it is commercially reasonable and prudent to do so, the remainder of the Leased Premises to the condition it was in immediately prior to such taking, and Tenant shall at its expense proceed with all reasonable dispatch to restore its fixtures, furniture, furnishings, floor covering and equipment to the same condition they were in immediately prior to such taking. If this Lease is not terminated, the Base Rent payable hereunder shall be reduced from the date Tenant is required to partially vacate the Leased Premises in the same proportion that the area taken bears to the total area of the Leased Premises prior to taking.
- 13.3 Damages.** Landlord reserves all right to the entire damage award or payment for any taking by eminent domain or a transfer in lieu thereof, and Tenant waives all claim whatsoever against Landlord and/or the governmental authority exercising eminent domain for damages for termination of its leasehold interest in the Leased Premises or for interference with its business. Tenant shall, however, have the right to claim from the condemning authority all compensation that may be recoverable by Tenant on account of any moving costs or loss or damage to Tenant's merchandise, furniture, trade fixtures and equipment, provided, however, that Tenant may claim such damages only if they are awarded separately in the eminent domain proceeding and not as part, or in reduction, of Landlord's damages.

SECTION 14 - DEFAULT OF TENANT

- 14.1 Default.** Time is of the essence of this Lease. If Tenant fails to comply with any covenant, term or condition of this Lease or if a trustee or receiver is appointed for Tenant's assets, or if Tenant makes an assignment for the benefit of creditors, or if Tenant vacates or abandons the Leased Premises, and if such failure continues for or is not remedied within three (3)

days (or, if no default in the payment of rent is involved, within twenty (20) days) after notice in writing thereof given by Landlord to Tenant specifying the failure, then Landlord may, in its sole discretion:

- (a) Declare the term hereof ended and reenter the Leased Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or hereunder; or
- (b) Without declaring this Lease terminated, reenter the Leased Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid rentals and other charges, which have become payable, or which may thereafter become payable; or
- (c) Even though it may have reentered the Leased Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Leased Premises.

If Landlord reenters the Leased Premises under option (b) above, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rental or other charges thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Leased Premises, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease, and Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to the serving of such notices and such election is evidenced by written notice to Tenant) be deemed to be a termination of this Lease. If Landlord enters or takes possession of the Leased Premises, Landlord shall have the right, but not the obligation, to remove all or any of the personal property located therein and place the same in storage at a public warehouse at the expense and risk of Tenant and/or may sell or dispose of the same in any manner and without further notice to Tenant and the proceeds of such sale may be applied against any amounts owing under this Lease.

If Landlord elects to terminate this Lease pursuant to the provisions of options a. or c. above, Landlord may recover from Tenant as damages, the following:

- (i) The worth at the time of award of any unpaid rental which had been earned at the time of such termination; plus
- (ii) The worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus
- (iii) The worth at the time of award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus
- (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom,

including, but not limited to, any costs or expenses incurred by Landlord in (a) retaking possession of the Leased Premises, including reasonable attorneys' fees therefor, (b) maintaining or preserving the Leased Premises after such default, (c) preparing the Leased Premises for reletting to a new tenant, including repairs or alterations to the Leased Premises for such reletting, (d) leasing commissions, and (e) any other costs necessary or appropriate to relet the Leased Premises; plus

- (v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington.

As used in items (i) and (ii) above, the "**worth at the time of award**" is computed by allowing interest at the interest rate specified in Section 4.3 hereof. As used in item (iii) above, the "worth at the time of award" is computed by using a discount rate of four percent (4%).

For purposes of this Section 14.1 (and elsewhere within this Lease where applicable), the terms "rent" and "rental" shall be deemed to be the monthly Base Rent and all Additional Rent and other sums required to be paid by Tenant pursuant to the terms and conditions of this Lease. All such sums, other than the Base Rent, shall, for the purpose of calculating any amount due under the provisions of subparagraph (iii) above, be computed on the basis of the average monthly amount thereof accruing during the immediately preceding twelve (12) month period, except that if it becomes necessary to compute such rental before such a twelve (12) month period has occurred then such rental shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

14.2 Legal Expenses. If either party to this Lease consults an attorney in order to enforce any of the terms of this Lease, the prevailing party shall be entitled to reimbursement by the non-prevailing party of the prevailing party's reasonable costs and attorneys' fees, whether such costs and attorneys' fees are incurred with or without litigation, in a bankruptcy court (i.e., in a motion for assumption or rejection of the Lease, etc.), or on appeal.

14.3 Remedies Cumulative; Waiver. Landlord's remedies hereunder are cumulative, and not exclusive, and Landlord's exercise of any right or remedy shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy which Landlord may have under this Lease or at law or in equity, including the right to cure Tenant's default on Tenant's behalf and recover from Tenant upon demand all costs and expenses incurred by Landlord in connection therewith, including interest thereon at the rate stated in Section 4.3 from date incurred until paid. Neither the acceptance of rent nor any other acts or omissions of Landlord at any time or times after the happening of any default or breach by Tenant shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel, terminate or forfeit this Lease, or estop Landlord from promptly exercising any other option, right or remedy that it may have under any term or provisions of this Lease, or at law or in equity.

SECTION 15 - ACCESS BY LANDLORD; DEFAULT OF LANDLORD

- 15.1 Right of Entry.** Landlord and its agents shall have the right to enter the Leased Premises at any time to examine the same, and to show them to prospective purchasers or tenants, and to make such repairs, alterations, improvements or additions as Landlord may deem necessary or desirable. If Tenant is not personally present to permit entry and an entry is necessary or permissible, Landlord may enter the same by master key or may forcibly enter the same, without rendering Landlord liable therefor. Tenant shall not change the locks to the Leased Premises without first advising Landlord thereof and providing Landlord with a key.
- 15.2 Default of Landlord.** Landlord shall be in default hereunder only if Tenant serves upon Landlord a written notice specifying the alleged default and Landlord does not remedy the failure within forty-five (45) days following receipt thereof or, in the case of a failure which reasonably requires more than forty-five (45) days to cure, if Landlord has not commenced to remedy the same within forty-five (45) days following receipt of written notice thereof. Tenant shall not exercise any remedies available to it until the grace period provided for in this Section has elapsed.

SECTION 16 - SURRENDER OF PREMISES

- 16.1 Surrender of Leased Premises.** At the expiration or sooner termination of this Lease, Tenant shall return the Leased Premises to Landlord in the same condition in which received (or, if altered, then the Leased Premises shall be returned in such altered condition, unless otherwise directed by Landlord under Section 8.2), reasonable wear and tear excepted. Tenant shall remove all trade fixtures and appliances and equipment which do not become a part of the Leased Premises, but not including the heating, ventilation and air conditioning systems, however installed, and shall restore the Leased Premises to the condition they were in prior to the installation of said items. Tenant's obligation to perform this covenant shall survive the expiration or termination of this Lease. Landlord may place and maintain signs in conspicuous places on the Leased Premises for one hundred twenty (120) days prior to the expiration or earlier termination of this Lease advertising the Leased Premises' availability.
- 16.2 Holding Over.** If Tenant holds over after the expiration of the term hereof with Landlord's express prior written consent, such holding over shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein, except for Base Rent which shall be increased to one and one-half (1-1/2) times that in effect during the last month of the term hereof, which tenancy may be terminated by either party upon at least thirty (30) days' written notice to the other party, effective as of the last day of a calendar month. If Tenant holds over without Landlord's express prior written consent, such shall constitute a tenancy at will, terminable upon notice from Landlord at three (3) times the Base Rent payable during the last month of the term hereof, and Tenant shall be liable for all damages suffered by Landlord as a consequence of such holding over.

SECTION 17 - MISCELLANEOUS

- 17.1 Notices.** Any notices required in accordance with any of the provisions herein shall be delivered personally, sent by overnight courier or mailed by registered or certified mail to the addresses set forth in Section 1.6 or to such other address as a party shall from time to time advise in writing. If Tenant is a partnership, limited liability company or joint enterprise, any notice required or permitted hereunder may be given by or to any one partner or member thereof with the same force and effect as if given by or to all thereof. If

mailed, a notice shall be deemed received three (3) business days after the postmark affixed on the envelope by the United States Post Office.

- 17.2 Successors or Assigns.** All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and their respective heirs, administrators, executors, successors and permitted assigns.
- 17.3 Brokers' Commission.** Tenant agrees to indemnify and hold Landlord harmless from all liabilities and claims for brokerage commissions and finder's fees growing out of agreements which Tenant has made with brokers or finders.
- 17.4 Partial Invalidity.** If any term, covenant or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.
- 17.5 Recording.** Tenant shall not record this Lease or a memorandum hereof without the prior written consent of Landlord.
- 17.6 Force Majeure.** Landlord shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of terrorism, acts of civil or military authorities, fire, floods, windstorm, earthquake, strikes or other labor disturbances, civil commotion or disorder or war.
- 17.7 Tenant Defined.** When the term "Tenant" is used herein it shall mean each and every person, partnership or corporation who is mentioned as Tenant in this Lease or who executes this Lease as Tenant, other than in a representative capacity. If there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein.
- 17.8 Recycling.** Tenant will take reasonable steps to prevent the unnecessary generation of refuse through the choice and use of products and packaging and other materials in its business that minimize solid waste or that are durable, reusable or recyclable. If so required by Landlord, Tenant will provide or obtain recycling containers for use in its business by its employees and customers and will recycle acceptable materials in the recycling containers and will otherwise participate in any recycling program established by Landlord or required by applicable law.
- 17.9 Tenant's Authority.** Tenant warrants that its execution of this Lease has been duly authorized in accordance with its constituent documents.
- 17.10 Headings.** The headings in this Lease are for convenience only and do not in any way limit or affect the terms and provisions hereof.
- 17.11 Gender.** Wherever appropriate in this Lease, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.

17.12 Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

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

17.14 Entire Agreement - Applicable Law. This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of Landlord and Tenant concerning the Leased Premises, and supersede any other agreements or understanding, oral or written, between Landlord and Tenant. Any subsequent modification or amendment of this Lease shall be binding upon Landlord and Tenant only if in writing and signed by both. This Lease shall be governed by, and construed in accordance with the laws of the state of Washington without recourse to any principle of conflicts of laws. Venue in any lawsuit brought under this Lease shall be in the Superior Court of Whatcom County, Washington.

17.15 Execution by Landlord and Tenant. Landlord shall not be deemed to have made an offer to Tenant by furnishing Tenant with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between Landlord and Tenant until all parties hereto have executed this Lease and fully executed copies have been delivered to Landlord and Tenant.

TENANT

Dated _____, 2014

HOME PORT LEARNING CENTER, INC.

By _____

Name _____

Title _____

LANDLORD

THE CITY OF BELLINGHAM

Dated _____, 2014

Kelli Linville, Mayor

ATTEST:

Brian Henshaw, Finance Director

APPROVED AS TO FORM

DEPARTMENTAL APPROVAL

Office of the City Attorney

Jeffrey Thomas, Director

Planning & Community Development

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this this _____ day of _____, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the **HOME PORT LEARNING CENTER, INC.**, the non-profit corporation of the State of Washington that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said non-profit corporation of the State of Washington, for the purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

Signature

Print Name

NOTARY PUBLIC in and for the State of Washington, residing at

My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM__)

On this _____ day of _____, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared **KELLI LINVILLE**, known to me to be the Mayor of the **CITY OF BELLINGHAM**, the first class municipal corporation of the State of Washington that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said first class

municipal corporation of the State of Washington, for the purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

Signature_____

Print Name_____

NOTARY PUBLIC in and for the State of Washington, residing at

My commission expires _____

EXHIBIT A – Property Location Map

