

Resolution No. 2025

A RESOLUTION PROVIDING FOR THE LEASE OF REAL PROPERTY LOCATED AT 1440 INDUSTRIAL WAY, LONGVIEW, COWLITZ COUNTY, WASHINGTON.

WHEREAS, the City of Longview ("City") has the statutory authority to dispose and lease of utility property under RCW 35.94; and

WHEREAS, the City purchased the property located at 1440 Industrial Way, Longview, Cowlitz County, Washington, as set forth in Exhibit A attached hereto and incorporated herein by this reference (the "Property"), for future expansion of the Utility Operations Center; and

WHEREAS, that certain real property is currently occupied by a commercial tenant who wishes to continuing leasing the building on a month-to-month basis; and

WHEREAS, that certain real property is not currently being used or immediately needed for City utility purposes and is therefore temporarily available for lease; and

WHEREAS, the City Council finds that leasing the Property will benefit City utility customers.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Longview as follows:

1. The above-stated paragraphs are adopted and incorporated as if restated herein; and
2. Based upon the findings and recommendations of the City Manager of said City, the real property located at 1440 Industrial Way, Longview, Cowlitz County, Washington, as set forth in Exhibit A is declared to be temporarily surplus to the needs of the City utilities and can be leased until such time as it is needed for expansion of the Utility Operations Center or for other utility purposes. The initial rental for the lease of the property shall be in the amount of Two Thousand Thirty Eight and 28/100 Dollars (\$2,038.28), plus leasehold excise tax in the amount of Two Hundred Sixty One and 72/100 Dollars (\$261.72) per month.
3. That it is deemed to be for the common benefit of the City's utility customers to lease the real property in accordance with the terms of the Lease – 1440

Industrial Way, attached hereto as Exhibit B and incorporated herein by reference.

4. That the City Manager is authorized to sign any and all documents necessary to carry out a lease agreement.

PASSED by the City Council of Longview, Washington, and approved by its Mayor this 24th day of May, 2012.

Mayor

ATTEST:

City Clerk

Exhibit A

Location Map for 1440 Industrial Way Lease

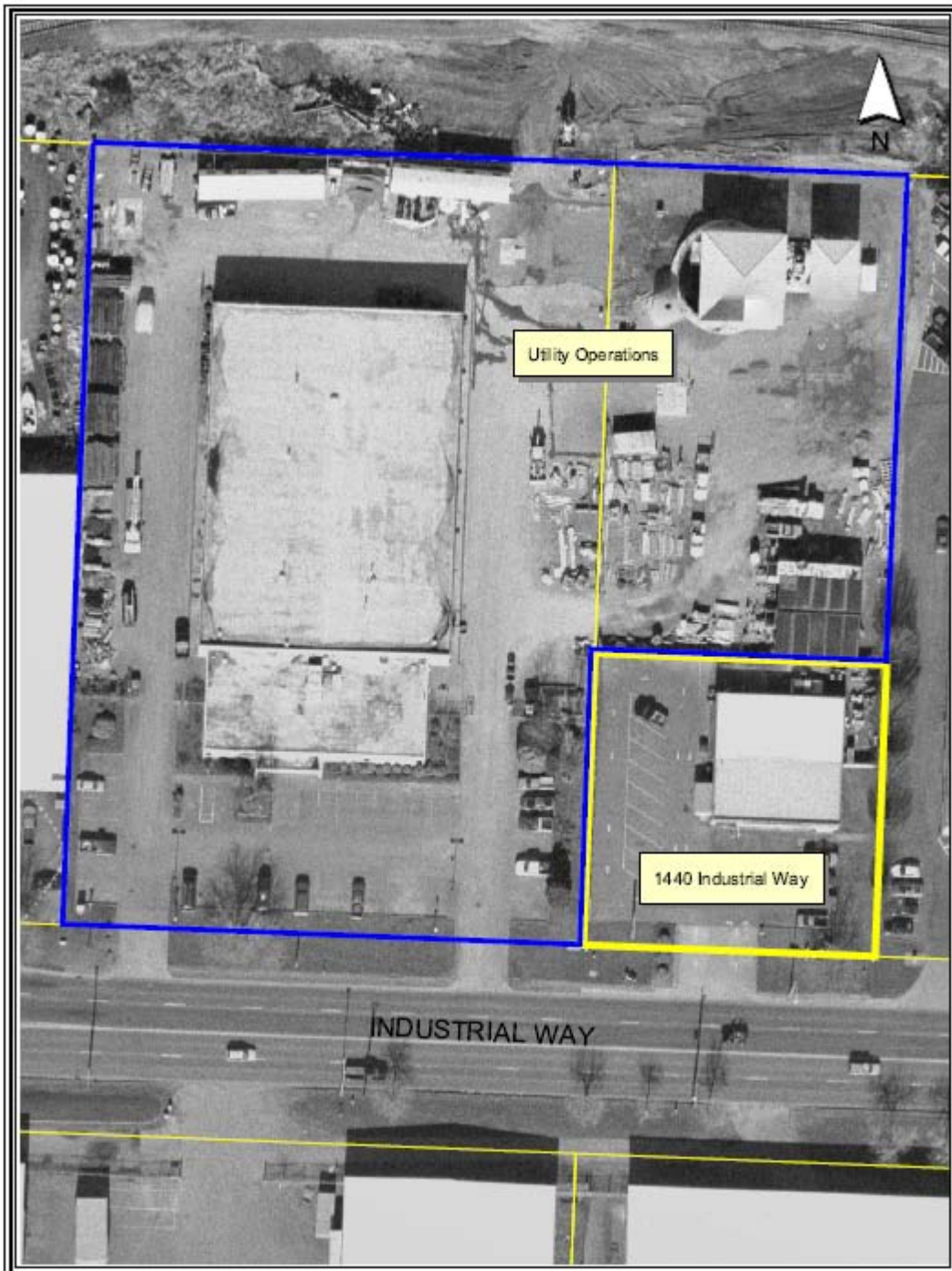


Exhibit B

LEASE
1440 Industrial Way

THIS LEASE, made and entered into this ____ day of _____
_____, 2012, by and between THE CITY OF LONGVIEW, a municipal
corporation of the State of Washington, hereinafter called "City", and
Julie Thompson, doing business as Old School Choppers, hereinafter
called "Tenant" for that property commonly known as 1440 Industrial
Way, in the City of Longview, Washington (the "Premises");

W I T N E S S E T H :

That City purchased the Premises on May 11, 2012 while it was
listed for sale with a commercial real estate broker; and

That Tenant first leased the Premises from the previous owner on
February 1, 2008, and desires to continue leasing such Premises; and

That in consideration of the rents and covenants herein reserved
and contained on the part of the Tenant to be paid and performed, the
City does hereby demise and lease unto said Tenant the real property
situated in Cowlitz County, Washington described as follows (the
"Premises"):

Lot 22A, Block 2, Columbia Industrial Park;

Parcel No. 031530231;

1440 Industrial Way, Longview, WA.

To have and to hold on a month-to-month basis for an indefinite
term commencing May 12, 2012, subject to the needs of the City for the

use of the Premises, and subject to such additional and modified terms, including rental, as the parties may agree. Either party may terminate this lease at any time, for convenience or without cause, by giving the other party written notice thirty (30) days before the party intends the Premises to be vacated; the parties shall be required to follow the terms of this lease, including any payments due hereunder, for such thirty (30) day period.

The terms and conditions of this Lease are as follows:

1. The Tenant shall pay to the City as rental for said Premises, due June 1, 2012, and each month thereafter, monthly rental in the amount of Two Thousand Thirty Eight and 28/100 Dollars (\$2,038.28), plus leasehold excise tax in the amount of Two Hundred Sixty One and 72/100 Dollars (\$261.72) per month, calculated at the rate of 12.84%, for a total monthly payment of Two Thousand Three Hundred and 00/100 Dollars (\$2,300.00). All such rental and excise tax shall be payable on or before the first day of each month, except that Tenant may pay such monthly rental and excise tax in two equal installments payable on or before the first (1st) day and the sixteenth (16th) day of each month. City may increase such rental and excise tax payments upon giving Tenant written notice ninety (90) days in advance of the effective date of such increased payments.

2. It is agreed that Tenant shall furnish and provide all heat, electricity, water, garbage and all other utilities and services for the leased Premises, and it is covenanted and agreed that Tenant will pay promptly and before the same shall be delinquent as such utility and service bills, and that Tenant will not permit any liens to attach to said property because of Tenant's failure to pay said obligations.

3. Tenant agrees that said Premises shall be used for the sole and exclusive purpose of operating a motorcycle and accessories sales and repair facility, along with related purposes, as permitted by the zoning code of the City, and Tenant shall not use said Premises for any other purposes, nor shall Tenant permit any unlawful or offensive use of said Premises or waste thereof. Tenant shall not use the Premises or any part thereof for any unlawful purpose or in any manner contrary to any law or ordinance of the City.

4. This Lease shall not be assignable by Tenant, or by operation of law, without the prior written consent of the City, and Tenant shall not sublet said Premises or any part thereof without a like consent.

5. All signs or symbols posted or displayed on the exterior of said leased Premises by Tenant shall be subject to the approval of the City or its agents, which approval shall not be arbitrarily withheld. Any such signs or symbols shall be erected so as not to damage said building, shall conform to the Sign Code of the City, and shall be removed upon termination of this Lease.

6. Tenant will allow the City or City's agents, access, at all reasonable times during normal business hours, to the Premises for the purpose of inspection of the building or of making repairs, additions or alterations to the Premises or any other property owned by or under the control of the City, but this right shall not be construed as an agreement on the part of the City to make any repairs. The City shall have the right to enter the Premises at any time to make emergency repairs necessary to protect the property from further damage or to protect the health and safety of the public; City shall make reasonable attempts to notify Tenant at the time of making such entry. The City shall have the right to place

and maintain "For Rent" signs in a conspicuous place on the Premises for thirty (30) days prior to the termination or expiration of this lease.

7. The Premises have been inspected and are accepted by Tenant in their present condition. Tenant will, at all times, keep the Premises in a neat, clean and sanitary condition, and will replace any glass in all windows and doors in the event that such glass shall become cracked or broken, and, except for reasonable wear, tear and damage by a fire or other unavoidable casualty, will at all times preserve said Premises in as good condition as the same now exists, or in as good condition as said Premises are placed by Tenant, reasonable wear, tear and damage by the elements and acts of God alone excepted. All repairs to the Premises shall be at Tenant's sole cost and expense, except outside walls (not including, however, glass windows or doors), roof, foundation, electrical wiring, plumbing, heating and air conditioning, which shall be the obligation of the City. At the expiration or sooner termination of this Lease, or any extension or renewal hereof, Tenant will quit and surrender the Premises without notice, and in a neat and clean condition, and will deliver up all keys belonging to the City or to the City's agents.

8. Tenant shall indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Tenant's uses of the Premises or common areas, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted, or suffered by Tenant in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

9. The Tenant shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Tenant's operation and use of the leased Premises.

Tenant shall obtain insurance of the types described below:

(A) Commercial General Liability Insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover the Premises and contractual liability. The City shall be named as an insured on Tenant's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises form CG 20 11 or a substitute endorsement providing equivalent coverage.

(B) Property insurance shall be written on an all risk basis.

Tenant shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

2. Property insurance shall be written covering the full value of Tenant's property and improvements with no coinsurance provisions.

The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

(A) The Tenant's insurance coverage shall be primary insurance as respects the City of Longview. Any insurance, self-insurance, or insurance pool coverage maintained by the City of Longview shall be excess of the Tenant's insurance and shall not contribute with it.

(B) The Tenant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

All Insurance is to be placed with insurers with a current A. M. Best rating of not less than A:VII. Tenant shall furnish the City with original certificates and amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Tenant.

Tenant and the City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance or in connection with the Premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

10. City shall purchase and maintain during the term of this Lease, all-risk property insurance covering the Building for its full replacement value without any coinsurance provisions.

11. In the event the Premises are destroyed or damaged by fire, earthquake or other casualty to such an extent as to render the same untenable in whole or in substantial part, it shall be optional with the City to rebuild or repair the same; and, after the happening of any such casualty, Tenant shall give the City immediate notice thereof. The City shall have not more than thirty (30) days after the date of such notification to notify Tenant in writing of City's intentions to rebuild or repair the Premises, or

the part so damaged, and if the City elects to rebuild or repair the Premises, the City shall prosecute the work of such rebuilding or repairing without unnecessary delay, and during such period the rent of the Premises shall be abated in the same ratio that that portion of the Premises rendered for the time being unfit for occupancy shall bear to the whole of said leased Premises. If the City shall fail to give the notice aforesaid, Tenant shall have the right to declare the Lease terminated by written notice served upon the City.

12. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

13. Tenant will not make, or permit to be made, any changes or alterations whatsoever in the demised Premises without the prior written consent of the City in each instance. All improvements to the Premises other than removable trade fixtures shall immediately become the property of the City, but the Tenant shall have the privilege to use them so long as this Lease remains in full force and effect and the Tenant is not in default hereunder.

14. Tenant shall not cause or permit any hazardous substance to be spilled, leaked, or disposed of, or otherwise released on or under the Premise. Tenant may use, store, or otherwise handle on the Premise only those hazardous substances typically used or sold in the prudent and safe operation of the Tenant's business. Tenant may store such

hazardous substances on the Premise only in quantities necessary to satisfy Tenant's reasonable anticipated needs. Tenant shall comply with all environmental laws and exercise the highest degree of care in the use, handling, and storage of hazardous substances and shall take all practicable measures to minimize the quantity and toxicity of hazardous substances used, handled, or stored on the Premise. Upon the expiration or termination of this Lease, Tenant shall remove all hazardous substances from the Premise. The term environmental law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term hazardous substance shall mean any hazardous, toxic, infectious or radioactive substance, material, or waste as defined or listed by any environmental law and shall include, without limitation, petroleum oil and its fractions.

15. It is expressly understood and agreed that time is of the essence of this Lease. If any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if Tenant shall violate or default in any of the covenants and agreements herein contained, then the City may cancel this Lease upon giving the notice required by law, and re-enter said Premises, but not withstanding such re-entry by the City, the liability of the Tenant for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and Tenant covenants and agrees to make good to the City any deficiency arising from re-entry and reletting of the Premises at a lesser rental than agreed to herein. Tenant shall pay such deficiency each month as the amount thereof is ascertained by the City.

16. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be Cowlitz County, Washington.

17. In the event of any entry in, or the taking possession of, the demised Premises as aforesaid, the City shall have the right, but not the obligation, to remove from the Premises all personal property located therein and may place the same in storage at a public warehouse at the expense and risk of the owners thereof.

18. The covenants, agreements and conditions herein contained shall extend to and be obligatory upon and inure to the benefit of not only the City and the Tenant, but also upon their successors and assigns.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

TENANT

CITY OF LONGVIEW

JULIE THOMPSON
Manager

By _____
ROBERT J. GREGORY, City

APPROVED AS TO FORM:

ATTEST

James J. McNamara
City Attorney

By _____
City Clerk

