

AGENDA

**WEST RICHLAND CITY COUNCIL
Special Meeting
Monday, October 7, 2019
5:30 p.m.**

**Municipal Services Facility Conference Room
3100 Belmont Blvd.
West Richland, WA**

- 1. Meeting Called to Order**
- 2. Roll Call**
- 3. Motion to Authorize the Mayor to Execute Purchase & Sale Agreement with Port of Kennewick for Raceway Property**
- 4. Adjournment**

WEST RICHLAND AGENDA ACTION ITEMS

| <i>AGENDA ITEM:</i> | 3a | <i>TYPE OF ACTION NEEDED</i> | | | |
|----------------------|---|------------------------------|---|-----------------------|--|
| <i>MEETING DATE:</i> | October 7, 2019 | <i>Execute Contract</i> | X | <i>Consent Agenda</i> | |
| <i>SUBJECT:</i> | Motion to Authorize Mayor to execute Purchase and Sale Agreement with Port of Kennewick – 92+ acre raceway property | <i>Pass Resolution</i> | | <i>Public Hearing</i> | |
| | | <i>Pass Ordinance</i> | | <i>1st Discussion</i> | |
| <i>Prepared by:</i> | Roscoe C. Slade III, PW Director <i>RS</i> | <i>Pass Motion</i> | X | <i>2nd Discussion</i> | |
| <i>Reviewed by:</i> | Brent Gerry, Mayor <i>BG</i> | <i>Other</i> | | <i>Other</i> | |

2019/2020 STRATEGIC FOCUS AREA:

SFA #2 – Provide and Maintain High Quality and Cost-Effective Infrastructure

Goal #1 – Construct planned infrastructure essential for a growing community.

Objective #1 – Secure funding for design, permitting and construction of a new police facility.

ATTACHMENTS:

- Real Estate Purchase and Sale Agreement with Port of Kennewick
- Deed of Trust
- Promissory Note

BACKGROUND INFORMATION:

On December 5, 2017, City Council approved a Needs Assessment for a new West Richland Police Facility to be conducted by Integrus Architecture. The intent of the assessment was to determine the need, size, site requirements, population/staffing projections and cost estimates for a new police facility. Simultaneously, an independent citizens group, the Police Facility Assessment Committee (PFAC), was formed to research and make recommendations to city council on the need, size, cost, area location and financing options for a new police facility.

On May 15, 2018, Integrus representatives presented the Needs Assessment report to city council. The assessment reflected the need for a new police facility, an approximate sizing of 22,000 square feet and a cost of approximately \$12 million.

On June 19, 2018, PFAC representative, Jon Wierschke, presented the PFAC recommendations for a new police facility. The PFAC also recommended that the new facility be approximately 22,000 square feet in size and the new facility cost be placed at \$12.5 million to allow for land acquisition costs. Both PFAC and Integrus Architecture recommended voter approved financing through a voter approved bond.

Both Integrus and PFAC recommended a five acre parcel be secured for the proposed facility and that the location of the new police facility be located on the Bombing Range Road corridor between Keene Road and Paradise Way.

On December 18, 2018, City Council passed Resolution 48-18 relating to proposed new police facility and providing for a voted bond ballot proposition for the April 23, 2019 Special Election and authorize the Mayor to sign the Engagement Letter for professional services with Foster Pepper, LLC for bond council services. The bond ballot proposition for a new police facility would authorize the City to acquire land, construct, and equip a new police facility and provide for safety and technology improvements and issue no more than \$12,465,000.00 of general obligation bonds maturing within 30 years.

After voter approval of the new police facility bond proposition (61.24% voted to approve), the Police Chief and Public Works Director began working on securing a 5 acre parcel of land owned by the Bureau of Land Management, Lots 142 and 143 of Section 8, meeting the location recommendations of both Integrus and PFAC. Prior to moving forward with acquiring the property from BLM, staff wanted to solicit public input from the nearby residents.

On June 6, 2019, the Police Chief and Public Works Director held an open house with neighborhood residents located near Lots 142 and 143 of Section 8 to discuss the new police facility and to solicit public input on the proposed location. The open house was attended by over 40 neighborhood residents. Staff was also presented with a petition signed by over 140+ other neighborhood residents who were not able to the open house, but who were also opposed to using Lots 142 and 143 of Section 8 for the new police facility. Various concerns were discussed relating to additional traffic and the proposed police facility just simply not fitting into an established single family residential neighborhood.

Over the next two months, staff worked diligently to identify other possible 5 acre parcels meeting the recommendations of Integrus and PFAC; unfortunately the majority of the property along the Bombing Range Road corridor between Keene Road and Paradise Way is already developed. Staff began the process to identify possible 5 acre parcels west of Bombing Range Road. Unsuccessful attempts were made to secure property along the Belmont Blvd corridor between Keene Road and Paradise Way.

The City staff approached the Port of Kennewick staff at the end of July 2019 about the possibility of purchasing the former Tri-City Raceway property for West Richland's new police facility and using the remainder of the property for economic development purposes similar to the model used with the Municipal Services Facility at the Belmont Business District.

SUMMARY:

On September 24, 2019, Port of Kennewick Commissioners approved the terms of the attached purchase and sale agreement, deed of trust and promissory note excluding the purchase price of the 92+ acre property. The Port of Kennewick had ordered an appraisal and wanted to see the appraisal before establishing the purchase price.

Initially, the City of West Richland proposed \$1,250,000 in Rural County Capital Funds be transferred from West Richland's account to the Port of Kennewick's account based on a previous appraisal completed for the Port in August 2016 estimating the property value at \$1,750,000 (and approximately \$500k worth of water rights being transferred off of the property). This appraisal was for dry-land (without the water rights) and had already factored in the transfer of the water rights off the property; this was not clear at the time to City staff.

The Port's latest appraisal dated September 30, 2019 estimates the market value of the property to be \$3,000,000 but notes that there are not nearby comps (property sales) and assumes the raceway improvements have all been demolished and removed.

RECOMMENDATION:

Staff recommends revising the City's previous \$1,250,000 offer to \$1,816,000 (Benton County's assessed value) plus 2% Port's Art Policy, plus reimbursement of Port staff time up to \$20,000 and plus half of the closing costs and authorize the Mayor to sign and execute the attached Purchase and Sale Agreement, Deed of Trust and Promissory Note.

ALTERNATIVES:

As amended by Council.

FISCAL IMPACT (Indicate amount, fund and impact on budget):

Total expenditure of \$1,872,320 + ½ of closing costs.

Revenue:

\$1,316,000 – West Richland's portion of Benton County Rural County Capital Funds

\$556,320 + ½ closing costs from undedicated General Fund Cumulative Fund

MOTION:

I move to authorize the Mayor to execute the Real Estate Purchase and Sale Agreement, Deed of Trust, Promissory Note, and other documents with the Port of Kennewick for the purchase of 92+ acres of the Port's raceway property.

REAL ESTATE PURCHASE AND SALE AGREEMENT

1. **PARTIES.** THIS AGREEMENT is made and effective on the _____ day _____, 2019, by and between the

**Port of Kennewick
a Washington Municipal Corporation
350 Clover Island Drive, Suite 200
Kennewick, Washington 99336**

hereinafter "Seller", and

**City of West Richland
a Washington Municipal Corporation
3100 Belmont Blvd., Suite 100
West Richland, WA 99353**

hereinafter "Purchaser".

Collectively referred to as the "Parties".

2. **PROPERTY.** The Seller agrees to sell, and the Purchaser agrees to purchase, upon the terms and conditions herein specified, that certain real property located in Benton County, State of Washington, legally described in Exhibit "A" attached hereto and incorporated hereby reference (hereinafter referred to as the "Property"). The Property includes 18 acre-feet of water rights. The Parties acknowledge that the water rights allocated to the Property are currently under review and confirmation of the availability of such rights is pending. If the 18 acre-feet of water rights are not available for transfer with the Property, Purchaser agrees that the purchase shall proceed without inclusion of water rights.

Tax Parcel Nos.: See Exhibit "A" attached.

3. **PURCHASE PRICE.** The total purchase price is **One million eight hundred sixteen thousand (\$1,816,000)** The Purchase Price, shall be paid by a Promissory Note and secured by a Deed of Trust of even date in forms mutually acceptable to the Parties. Additionally, the Parties shall enter into an interlocal agreement of even date with Benton County, Washington confirming the Purchaser's transfer of Rural County Capital Funds ("RCCF") allocated to Purchaser equal to the full Purchase Price **minus \$556,320 cash paid at closing**. Such interlocal agreement shall be in a mutually acceptable form between the Parties and Benton County. In addition to the Purchase Price, Purchaser agrees to pay

Seller in cash at closing an additional amount identified by Seller not to exceed 2% of the Purchase Price in compliance with the Seller's Art Policy.

4. EARNEST MONEY. Purchaser shall make no earnest money deposit.

5. TITLE INSURANCE. The Seller shall provide Purchaser with a standard form owner's policy of title insurance in the amount of the purchase price. The title policy to be issued shall contain no exceptions other than those provided in said standard form plus encumbrances or defects approved by Purchaser as provided below.

As soon as reasonably possible after escrow is opened Purchaser shall be furnished with a preliminary commitment therefore issued by Benton Franklin Title Company. Said preliminary commitment shall include legible copies of all documents forming the basis for any special exception set forth.

6. SELLER'S CONTINGENCIES.

6.1 Seller's amendment of its Comprehensive Scheme of Harbor Improvements allowing for the sale of the Property.

6.2 It is the intention of the Parties that this restriction will help minimize duplication of efforts with the Port's Columbia Gardens Wine Village being developed with assistance of the City of Kennewick. Additionally, the pursuit of larger-scale wineries may assist the Red Mountain AVA by allowing valuable vineyard land there to be preserved for grape growing while the Racetrack Site would offer Red Mountain vintners the ability to utilize the Project Area for supportive ancillary activities such as processing, treatment, barrel-making and repair, barrel and case goods storage and other activities which may not be desirable for location within the AVA. Finally, siting larger-scale wineries within the Project Area will assist the City in amortizing the capital and operational costs of its winery effluent treatment system much more efficiently than if the Project Area were to be built out by smaller, boutique wineries with substantially smaller effluent outputs.

Therefore, the statutory warranty deed transferring the property to the City shall include the following restriction:

Limitation on Property Use. For a period of five years from Closing, the City shall:

Refrain from leasing or selling the site or portions thereof for winery uses with an initial stated production goal of less than 10,000 cases annually.

6.3 The City shall assume all current leases and rental agreements at Closing, as follows.

a. Derek Alexander Farms, Inc. lease dated January 1, 2017.

b. Sand and Sage Sports Car Club rental agreement dated January 1, 2009.

7. PURCHASER'S CONTINGENCIES. Purchaser's obligation to purchase the Property shall be contingent upon the following:

7.1 Condition of Title. Title is to be free of all encumbrances or defects except those approved by Purchaser. The Purchaser shall be considered to have accepted the condition of title unless the Purchaser provides notice of specific written objections within ten (10) business days after Purchaser's receipt of a preliminary commitment as provided for above. If the Seller is not able to provide title in accordance with the Purchaser's written objections prior to closing, this Agreement shall terminate and earnest money shall be refunded.

7.2 Approval of Seller's Disclosure Statements. Purchaser shall have ten (10) business days to review Seller's Disclosure Statements. This contingency shall be deemed waived or satisfied unless Purchaser provides written notice to the contrary within said ten (10) business days. If Purchaser provides such notice, this Agreement shall terminate and the earnest money shall be refunded.

7.3 Feasibility Determination/Environmental Due Diligence. For a period of 45 days from the date of this Agreement, Purchaser may engage consultants or engineers of the Purchaser's choosing to conduct surveys, site studies and tests of the Property, as the Purchaser deems necessary. The Purchaser or its agents shall have the right to enter the Property at reasonable times to make such tests, inspections, studies and other investigations as the Purchaser may require, at the Purchaser's expense and risk. During its investigation of the Property, Purchaser shall also have the right to determine if the Property is suitable for Purchaser's contemplated use. Purchaser and its agents shall have full access to the Property for the purpose of conducting Purchaser's inspections and evaluation. Purchaser's feasibility study shall include environmental due diligence. The Purchaser shall indemnify and hold the Seller harmless from any loss, damage or claim arising out of the Purchaser's access to the Property for purposes of making tests, inspections, studies and other investigations. This contingency shall be deemed waived or satisfied unless Purchaser provides written notice to the contrary within said 45 days, in which case this Agreement shall terminate, and earnest money shall be refunded. If this transaction fails to close due to a default by Purchaser, Purchaser shall immediately deliver to Seller copies of any studies or inspections, appraisals or surveys and any and all information which either the Purchaser or Purchaser's consultants have obtained in connection with the feasibility study.

Seller hereby grants Purchaser and its/his agents to go upon the property for purposes of inspection and Purchaser hereby agrees to defend, indemnify and hold Seller harmless from any injury to person or property while performing such inspections.

7.4 Survey. A survey has been conducted on the Property and a copy of all

survey documents and data will be provided to the Purchaser. This contingency shall be deemed waived or satisfied unless Purchaser provides written notice to the contrary within ten (10) business days after Purchaser's receipt of all survey documents and data.

8. CONDITION OF PROPERTY/"AS IS" SALE. Except as otherwise expressly set forth in this Agreement, Seller makes no representations or warranties and shall not in any way be liable for any representations or warranties, including, without limitation, representations and warranties concerning (a) the physical condition of the Property (including, without limitation, the environmental condition, condition of the soils and groundwater conditions); (b) the Property's suitability for Purchaser's intended use; (c) any applicable building, zoning or fire laws or regulations or compliance therewith or any required permits of any governmental entities or agencies or compliance therewith; (d) the availability or existence of any water, sewer or other utilities (public or private). Purchaser acknowledges that Purchaser is relying on its own examination and inspection of the physical condition of the Property and all matters relating thereto. Seller shall have no obligation to make any repairs to the Property, and Purchaser shall accept the property in its "as is" condition at closing. Purchaser shall assume, as of closing, the responsibility for and risk of all defects and conditions of the Property, including any defects and conditions that cannot be observed by casual inspection.

9. RISK OF LOSS. Risk of loss or damage to the Property or any part thereof prior to closing shall be assumed by the Seller. If such loss or damage occurs prior to closing, this Agreement shall terminate and the earnest money shall be returned to the Purchaser.

10. CLOSING.

10.1 Closing Agent. This transaction shall be closed by Benton Franklin Title Company ("Closing Agent").

10.2 Closing Costs. Closing costs shall be allocated as follows:

| Seller | Purchaser |
|-------------------------|---------------------|
| Excise Tax | Recording Fees |
| Title Insurance Premium | ½ Closing Fee Costs |
| ½ Closing Fee Costs | |

Purchaser shall pay Seller at Closing an amount up to Twenty Thousand Dollars (\$20,000.00) as reimbursement for Seller's actual legal fees and administrative costs incurred for this transaction.

As noted above in Paragraph 3, Purchaser shall also pay Seller at Closing an amount not to exceed two percent (2%) of the Purchase Price per Seller's Art Policy.

Other incidental closing costs shall be paid and/or allocated in accordance with local practice.

10.3 Items to be Prorated. Taxes and assessments for the current year, water and other utilities, if any, constituting liens shall be prorated as of date of closing.

10.4 Closing Date - Possession. This transaction shall be closed when all contingencies have been satisfied but in any event no later than December 6, 2019. "Closing" shall be the date on which all documents are recorded and funds are available for disbursement.

10.5 Conveyance. At Closing Seller shall deliver to Purchaser i) a Statutory Warranty Deed that includes the deed restriction set forth in Paragraph 6.2 above, but otherwise free of any encumbrance or defect except as permitted herein, or otherwise accepted by Purchaser, and ii) Assignment of Lease for each of the leases identified in Paragraph 6.4.

10.6 Assignment. Neither this Agreement nor the rights hereunder shall be assigned without the prior written consent of Seller.

11. Notices. All notices required by this Agreement shall be considered properly delivered when (1) personally delivered, (2) when transmitted by facsimile or email showing date and time of transmittal, or (3) sent by regular overnight courier, delivered or mailed by U.S. registered or certified mail, return receipt requested, and, if mailed, shall be considered delivered three (3) business days after deposit in such mail. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct:

Purchaser: City of West Richland
3100 Belmont Blvd., Suite 100
West Richland, WA 99353
Phone No.:(509)967-3431
Fax No.:(509)967-5706

Seller: Port of Kennewick, a Municipal Corporation
350 Clover Island Drive, Suite 200
Kennewick, WA 99336
Attn: Tim Arntzen, Chief Executive Officer
Phone No.: (509) 586-1186
Fax No.: (509) 582-7678

With copy to: Lucinda J. Luke
Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010

Phone No.: (206) 607-4111
Fax No.: (206)467-8215
Email: luke@carneylaw.com

12. MISCELLANEOUS.

12.1 Default Remedies. If either party defaults under this Agreement, the non-defaulting party may seek specific performance of this Agreement, damages or any other remedy available at law or equity.

12.2 Dispute Resolution/Attorney's Fees. In the event of any claim or dispute arising under this Agreement, the parties agree to submit the same to arbitration at a location to be mutually agreed upon in Benton County, Washington. In the event the parties are unable to promptly agree upon an arbitrator, the same shall be selected by the presiding judge for the Benton County Superior Court at the request of, and upon seven (7) days' notice from either party.

The arbitrator so appointed shall be a retired superior court judge or an attorney having at least ten years' experience in matters similar to the subject of the claim or dispute.

The court may establish the ground rules by which the initial arbitrator fees are to be paid. The mandatory arbitration rules, as implemented in Benton County Superior Court, shall be binding as to procedure. The arbitrator shall determine an award of reasonable attorneys' fees to the substantially prevailing party. If any suit or other proceeding is instituted by either party that is alleged not to come within the foregoing agreement for arbitration, the substantially prevailing party as determined by the court or in the proceeding shall be entitled to recover its reasonable attorneys' fees and all costs and expenses incurred.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Pacific [Daylight] Time.

12.5 Governing Law and Venue. This Agreement shall be governed by and construed according to the laws of the State of Washington. Jurisdiction and venue of any suit arising out of or related to this Agreement shall be exclusively in Benton County Superior Court, Benton County, State of Washington.

12.6 Authority to Execute Agreement. Each of the undersigned represents and warrants that, if not signing on his own behalf, he has the authority to bind the entity for which he/she is executing this Agreement.

12.7 Entire Agreement. There are no verbal or other agreements which modify or affect this Agreement, and Purchaser and Seller acknowledge that this Agreement constitutes the full and complete understanding between Purchaser and Seller.

12.8 Amendments. This Real Estate Purchase and Sale Agreement may be amended or modified only by a written instrument executed by Seller and Purchaser.

12.9 Broker Compensation. Both Purchaser and Seller warrant to the other that it has not incurred a brokerage commission for which the other party would be responsible. Except as specifically disclosed herein, neither party has had any other contact or dealings regarding said property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplating this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based upon any other contract, dealings or communication, the party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend and hold harmless the other party from and against any liability, cost or damages, including attorney's fees and costs, arising out of that claim.

12.10 Obligations to Survive Closing. The obligations contained herein shall survive closing.

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

Port of Kennewick,
a Washington Municipal Corporation
By Authority of its Board of Commissioners

By: _____
Tim Arntzen, Chief Executive Officer

City of West Richland,
a Washington Municipal Corporation
By Authority of its City Council

By: _____

Printed Name & Title: _____

ACKNOWLEDGEMENTS

State of Washington)
)ss:
County of Benton)

On this day personally appeared before me Tim Arntzen to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this ____ day of _____, 2019.

Notary Public in and for the State of
Washington
Residing at: _____
My Commission Expires: _____

State of Washington)
)ss:
County of Benton)

On this day personally appeared before me _____, to me known to be the _____ of City of West Richland, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the use and purpose therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this _____ day of _____, 2019.

Notary Public in and for the State of
Washington
Residing at: _____
My Commission Expires: _____

EXHIBIT A
(Legal Description & Survey)

1-1197-101-2751-002

PROMISSORY NOTE

\$ _____

[DATE]

FOR VALUE RECEIVED, without grace, the undersigned does hereby promise to pay to the Port of Kennewick, or order, the principal sum of _____ and 00/100 Dollars (\$ _____), without interest at or before the date of maturity which date shall be April 15, 2023.

Said principal is to be paid pursuant to an Interlocal Agreement between the Port of Kennewick, City of West Richland, and Benton County. However, if any balance remains unpaid at April 15, 2023 such remaining balance shall become immediately due and owing and shall be paid by the City of West Richland to the Port of Kennewick in one cash lump sum on or before such date.

If default be made in the payment of this note, or any part thereof, then the principal sum shall at once become due and collectible without notice, time being of the essence of this contract. After maturity this note shall bear interest at the highest rate permitted by law.

In the event this note is referred to an attorney for collection the undersigned shall pay all costs and attorney fees necessitated thereby.

This note is secured by a deed of trust of even date hereof, executed and delivered by the undersigned to the said Payee, covering certain real estate described therein, situated in the County of Benton, State of Washington.

This contract is to be construed in all respects and enforced according to the laws of the State of Washington.

The undersigned has signed this note as a maker and not as a surety.

City of West Richland,
a Washington Municipal Corporation
By Authority of its City Council

By: _____

Printed Name& Title: _____

WHEN RECORDED RETURN TO:

Lucinda J. Luke
CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104

DEED OF TRUST

THIS DEED OF TRUST, made this ____ day of September, 2019, between City of West Richland, Washington, GRANTOR, whose address is 3100 Belmont Blvd., Suite 100, West Richland, Washington 99353, Benton Franklin Title Insurance Company, TRUSTEE, whose address is 510 N. Colorado Street, Suite B, Kennewick, Washington 99336, and Port of Kennewick, Washington, BENEFICIARY, whose address is 350 Clover Island Drive, Suite 200, Kennewick, Washington 99336.

WITNESSETH:

Grantor hereby bargains, sells and conveys to Trustee in Trust, with power of sale, the following described real property in Benton County, Washington:

Tax Parcel No. See Exhibit "A" attached hereto and incorporated herein by reference

which real property is not used principally for agricultural or farming purposes, together with all the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof.

This deed is for the purpose of securing performance of each agreement of Grantor herein contained, and payment of the sum of _____ and 00/100 Dollars (\$ _____) without interest, in accordance with the terms of a promissory note of even date herewith, payable to Beneficiary or order, and made by Grantor, and all renewals, modifications and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of their successors or assigns, together with interest thereon at such rate as shall be agreed upon.

To protect the security of this Deed of Trust, Grantor covenants and agrees:

1. To keep the property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property.

2. To pay before delinquent all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.

3. To keep all buildings now or hereafter erected on the property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first to the Beneficiary, as its interest may appear, and then to the Grantor. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. To pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.

6. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured by this Deed of Trust.

IT IS MUTUALLY AGREED THAT:

1. In the event any portion of the property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligation.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

3. The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto, on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

4. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of the Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of the sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be distributed to the persons entitled thereto.

5. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor had or had the power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrancers for value.

6. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

7. In the event of the death, incapacity, disability or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

8. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as Beneficiary herein.

9. Except for the building of Grantor's new police station on the property, if Grantor, without written consent of Beneficiary, (a) conveys, (b) sells, (c) leases, (d) assigns, (e) contracts to convey, sell, lease or assign, (f) grants an option to buy the property, (g) permits a forfeiture or foreclosure or trustee or sheriff's sale of any of the Grantor's interest in the property or this deed of trust, Beneficiary may at any time thereafter either institute an interest rate on the balance of the

