

## LEASE EARLY TERMINATION AGREEMENT

This LEASE EARLY TERMINATION AGREEMENT ("Termination Agreement") is between the City of Olympia, a municipality organized under the laws of the State of Washington ("Lessor Assignee"), and Stanley & Utterback PLLC ("Lessee"), jointly referred to as "the Parties." This Termination Agreement shall not be effective until the "Effective Date" (as defined in Paragraph 11.15 below).

### RECITALS

Lessor Assignee is the purchaser of the leased property described in the Lease Agreement (Triple Net Lease) between Don Hovancsek ("Lessor Assignor") and Stanley & Utterback PLLC ("Lessee"), effective September 11, 2017. A copy of said Lease Agreement (Triple Net Lease) is attached hereto as Exhibit "A" and is incorporated herein by reference. Lessor Assignee and Lessee are herein jointly referred to as "the Parties."

The leased property is commonly located at 2828 Martin Way E, Olympia, Washington, in Thurston County, Washington, consisting of a single-story professional office building and common areas, including parking, as shown in the Lease Agreement (Triple Net Lease) attached hereto and by this reference incorporated herein.

Lessor Assignee acquired the leased property for future municipal purposes for the citizens and residents of the City of Olympia. Lessee and Lessor Assignee have mutually negotiated terms that will terminate Lessee's Lease Agreement (Triple Net Lease) with Lessor Assignee.

The signatories to this Termination Agreement acknowledge they are authorized to execute this agreement and associated documents, and to correct scrivener's errors and other errors or omissions that are otherwise in substantial conformance with this Termination Agreement.

The Parties now enter into this Termination Agreement to memorialize the terms and conditions under which the Lease Agreement (Triple Net Lease) attached hereto as Exhibit "A" shall terminate.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Early Termination of Lease Agreement (Triple Net Lease).** The Parties agree the Lease Agreement (Triple Net Lease), attached as Exhibit "A" hereto, shall terminate on March 31, 2019, and that Lessee shall vacate the premises by said date.

**2. Amendment of Rent.** The Parties agree that in consideration for early termination of the Lease Agreement (Triple Net Lease), Lessee shall pay no rent to Lessor Assignee for the months of November and December 2018, and January, February, and March 2019.

**3. Additional Consideration.** As additional consideration for early termination of the Lease Agreement (Triple Net Lease), Lessor Assignee agrees to pay to Lessee as follows:

3.1 Early termination fee. An early termination fee to reimburse Lessee for incidental expenses associated with early termination of the Lease Agreement (Triple Net Lease) in the sum of Fifteen Thousand Dollars and No Cents (\$15,000.00);

3.2 Moving expenses. Moving expenses reimbursement in the sum of Six Thousand Five Hundred Dollars and No Cents (\$6,500.00); and

3.3 Business interruption. Business interruption expenses for seven days at the rate of \$4,475 per day for a total of Thirty-One Thousand Three Hundred Twenty-Five Dollars and No Cents (\$31,325.00).

**4. Utilities.** Lessee shall pay all onsite utilities including water, sewer, electricity, solid waste, natural gas, internet, etc., through the end of this Termination Agreement on February 28, 2019.

**5. Maintenance and Repairs.** Lessee shall be responsible for any and all minor repairs to the portion of the office building occupied by Lessee upon the leased premises, including but not limited to appliances, water heater, laundry washer-dryer, furnace, air conditioning, electrical, plumbing, roof, carpet, sinks, showers, kitchen appliances and fixtures, interior and exterior paint, flooring or walls, doors or windows, screens, or window coverings, landscaping, rodents or pest control.

**6. Insurance and Hold Harmless Agreement.** Lessee shall defend, indemnify and hold Lessor Assignee, its agents, officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees, arising out of or resulting from the acts, errors or omissions of Lessee under this Termination Agreement and the Lease Agreement (Triple Net Lease), except for injuries and damages caused by the sole negligence of Lessor Assignee

6.1 Concurrent negligence. Should a court of competent jurisdiction determine that this Termination Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Lessee and the Lessor Assignee, its officers, officials, agents, employees, and volunteers, the Lessee's liability, including the duty and cost to defend, hereunder shall be only to the extent of Lessee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Lessee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties to this Termination

Agreement. The provisions of this section shall survive the expiration or termination of this Termination Agreement and the Lease Agreement (Triple Net Lease).

6.2 Insurance. All other terms and conditions of Paragraph 11 of the Lease Agreement (Triple Net Lease) shall remain in full force and effect through the end of the lease term in this Termination Agreement.

7. **Signage.** Lessee will be permitted to maintain temporary signage consistent with the local municipal code, advertising the new location for Lessee's business, Olympia Podiatry Clinic, in a window of the office building until June 30, 2019.

8. **Other terms and conditions of Lease Agreement.** The Parties agree that all other terms and conditions of the Lease Agreement (Triple Net Lease) are in full force and effect, other than as modified or amended by this Termination Agreement.

9. **Notices.** Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "Notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express, UPS, USPS or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such Notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given twenty-four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given forty-eight (48) hours after the deposit thereof in the United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To Lessor: Steven R. Hall, City Manager  
City of Olympia  
601 4<sup>th</sup> Ave E  
Olympia, WA 98501  
Email: [shall@ci.olympia.wa.us](mailto:shall@ci.olympia.wa.us)

With a copy to: Mark Barber, City Attorney  
City of Olympia  
601 4<sup>th</sup> Ave E  
Olympia, WA 98501  
Email: [mbarber@ci.olympia.wa.us](mailto:mbarber@ci.olympia.wa.us)

To Lessee: Stanley & Utterback PLLC, d/b/a Olympia  
Podiatry Clinic  
Jerod Stanley, Managing Member  
2828 Martin Way E  
Olympia, WA 98506  
Email: [olympiapodiatry@gmail.com](mailto:olympiapodiatry@gmail.com)

Any party hereto may change its address for receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

**10. Event of Default.** In the event of a default under this Termination Agreement by Lessee (including a breach of any representation, warranty or covenant set forth herein), Lessor Assignee shall be entitled, in addition to all other remedies, to seek monetary damages and specific performance of Lessee's obligations hereunder or termination of this Termination Agreement.

**11. Miscellaneous.**

11.1 Applicable law. This Termination Agreement shall in all respects be governed by the laws of the State of Washington.

11.2 Further assurances. Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder to carry out the intent of the Parties hereto.

11.3 Modification or amendment, waivers. No amendment, change or modification of this Termination Agreement shall be valid unless in writing and signed by all of the Parties hereto. No waiver of any breach of any covenant or provision in this Termination Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Termination Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

11.4 Successors and assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assigns, if applicable. No assignment shall be permitted by Lessee of this Termination Agreement.

11.5 Entire agreement and no third party beneficiaries. This Termination Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Termination Agreement to any person, firm or corporation other than the immediate Parties.

11.6 Attorneys' fees. Should either party bring suit to enforce the terms of this Termination Agreement, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

11.7 Construction. Captions are solely for the convenience of the Parties and are not a part of this Termination Agreement. This Termination Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it.

11.8 Partial Invalidity. If any term or provision of this Termination Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Termination Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Termination Agreement shall be valid and be enforced to the fullest extent permitted by law.

11.9 Survival. The covenants, agreements, obligations to indemnify, representations and warranties made in this Termination Agreement shall survive unimpaired. The Parties agree this Termination Agreement shall not be recorded.

11.10 Time. Time is of the essence of every provision of this Termination Agreement.

11.11 Risk of loss. All of Lessee's personal property of any kind or description whatsoever that is on the leased Property shall be at Lessee's sole risk of loss. Lessor Assignee shall not insure Lessee's personal property of whatever kind or nature. Any such property insurance must be obtained by Lessee.

11.12 Force majeure. Performance by Lessee or Lessor Assignee of their obligations under this Termination Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

11.13 Recitals. The Recitals set forth above are incorporated by this reference into this Termination Agreement and are made a part hereof.

11.14 Counterparts. This Termination Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one Termination Agreement; but in making proof of this Termination Agreement, it shall not be necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Termination Agreement may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically scanned signature, where permitted by law, shall be deemed to be an original signature for all purposes. All executed counterparts of this Termination Agreement shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same Termination Agreement.

**LESSEE:**

**STANLEY & UTTERBACK, PLLC**

*Jerod Stanley*  
Jerod Stanley, Managing Member

Date: 12/12/18

**LESSOR  
ASSIGNEE:**

**CITY OF OLYMPIA**, a Washington  
municipal corporation

Steven R. Hall, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

*Mark Barber*  
Mark Barber, City Attorney

Date: 12/12/2018

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

I certify that I know or have satisfactory evidence that **Jerod Stanley**, is the person who appeared before me, and is the Managing Member of Stanley & Utterback PLLC, and that said person acknowledged that he signed this instrument, and on oath stated that he is authorized to execute this instrument, and acknowledged it as his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 12<sup>th</sup> day of December 2018.



Tiffany Cox  
Signature  
Name (typed or printed): Tiffany Cox  
NOTARY PUBLIC in and for the State of  
Washington  
Residing at Olympia WA  
My appointment expires: 4-29-20

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

I certify that I know or have satisfactory evidence that **Steven R. Hall**, is the person who appeared before me, and as City Manager for the City of Olympia, Washington, on behalf of said municipal corporation and with authority to sign same, acknowledged that he signed this instrument, and on oath stated that he was authorized to execute this instrument, and acknowledged it as his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

\_\_\_\_\_  
Signature  
Name (typed or printed): \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_