

VOLUNTARY COMPLIANCE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2020 ("**Effective Date**"), by and between [BCC Eastern Washington LLC] ("**Property Owner**"), and the City of Cheney, a non-charter code city ("**City**"), jointly referred to as "**Parties.**"

BACKGROUND

A. The property which is the subject of this Voluntary Compliance Agreement ("**Agreement**") is identified as 216 F Street, Cheney, WA 99004 (the "**Property**").

B. The City of Cheney, through Titles 12, 18 and 19, has adopted uniform fire, building, and construction codes to provide for the orderly development of the City in conformance with state law, RCW Chapter 19.27.

C. The City of Cheney, through title 21, has adopted a zoning code for the purpose of identifying permitted uses within the City, pursuant to RCW 35.A.63.105.

D. On September 29, 2020, the City sent the Property Owner a "Notice and Order of Correction: Work Without Permit, Illegal Occupancy" for property located at 216 F Street, Cheney, WA 99004 ("**Correction Letter**"). See Attached Exhibit "A".

E. Along with the requirements set forth in the Correction Letter, the City identified that the Property has been used as a fraternity for "group living" (CMC 21.12.030(2)), which requires a conditional use permit pursuant to CMC Chapter 21.58 ("**Conditional Use Permit**").

F. To resolve the matters set forth in subsections D and E above, the Parties desire to enter into this Voluntary Compliance Agreement upon the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to come to a mutually agreement to remedy the violation as set forth in Exhibit "A" and promote the future health, safety and welfare of persons and property.

2. No Waiver. Nothing herein is deemed to be an admission or waiver of the Property Owner's right to seek administrative or judicial relief from any order, rule, ordinance, or other proceeding involving Property Owner's compliance, or lack thereof, with the Correction Letter and CMC Chapter 21.58 or any other zoning or compliance matter. Nor does this Agreement preclude the City from issuing any order or initiating any subsequent enforcement action for new code violations that relate to the Property.

3.

4. Hearing Examiner/ Subsequent Orders. By entering into this Voluntary Compliance Agreement, the Property Owner suspends the right to an administrative appeal of the Correction Letter as set forth CMC 1.28.030, and agrees to exercise good faith and best efforts to keep the property in compliance with the relevant zoning and fire codes

5. Property Owner Responsibilities. The Property owner agrees that it will keep the City informed about and proposed changes in the use or occupancy of the property and continue to make a good faith effort to develop a plan for compliance with the applicable fire code as the circumstances and current Covid -19 Federal and State situation develops and allows.

A. Within thirty (30) days of the Effective Date, the Property Owner shall: (i) cease to use the Property as a Fraternity including removing any markings, letters, signs or representations of any kind from the property that identify the use as a Fraternity; (ii), remove all references to the property being used as a Fraternity from websites including but not limited to the Delta Chi Eastern Washington Chapter webpage, social medial webpages, Barrister Capital Corporation (BCC) website; and (iii) cease all fraternity related activities on the property.

B. Within the Term (Section 8) and prior to using, advertising, or occupying the Property as a Fraternity, the Property Owner shall:

1. Submit a building application to the City Building Department to correct the matters as set forth in the Correction Letter and submit to the Planning Department a conditional use permit application (CMC 23.080.020) to occupy the Property as a Fraternity.

2. Complete all work and improvements required under the conditions of the Building Permit and Conditional Use Permit to obtain a certificate of occupancy from the City.

6. Notice to Occupants. The Property Owner shall give notice to all occupants living on the Property stating that the City has determined the occupancy as a Fraternity is noncompliant as set forth in the Correction Letter and as a result there cannot be any active Fraternity affiliation for the property and all Fraternity related activities, markings, letters or representations of any kind are prohibited.

Further, Property Owner, as of the Effective Date, does hereby consent to the Cheney Building Department and Cheney Fire Department entering and inspecting the Property, from time to time, following twenty-four (24) hours' advance written notice mailed by regular mail to the Owner and posting 72 hour advance notice to all residents.

7. Good Faith. During the Term of this Agreement, and any renewal thereafter, the Parties agree to cooperate in good faith to abide by and accomplish the matters set forth herein. "Good faith" means giving due consideration to the matter, applying reasonable and necessary persons and resources to evaluate the matter and provide a prompt and reasoned response to accomplish the matters herein.

Except for an emergency or an immediate threat to the public health and safety, the City, during the Term of this Agreement, shall not without notice, take any action against the Property Owner under state statutes or the City of Cheney Municipal Code (or ordinances). In the event the City identifies an immediate and significant risk to public health and safety or property resulting from a use or condition on the property, the Property Owner shall be immediately advised and be given a reasonable opportunity to cure the same. In the event the Property Owner does not reasonably cure the identified issues according to the "Good Faith" standard, the City may take all actions authorized by law.

8. Term. The Term of this Agreement shall be Two (2) years, commencing on the Effective Date and ending Twenty Four (24) months thereafter or upon completion of the matters herein, whichever shall occur first.

9. Consideration. The Parties are entering into this Voluntary Compliance Agreement for the purpose of enhancing the public health, safety and the use and enjoyment of the Property. To avoid further cost, expense and uncertainty this Agreement is voluntarily entered into by the Parties.

10. Limitation. Nothing contained herein shall prevent the Property Owner from allowing additional occupancies within the Property if said occupancies do not violate the matters set forth in the Correction Letter.

11. Compliance and Inspection. During construction of and upon completion of modifications to the Property, the City shall review and inspect the Property consistent with the City permitting process. The Property Owner will reasonably accommodate inspections of the Property. The Property Owner will be given opportunity to observe the inspections and all findings will be delivered to the Property Owner by mail.

12. Notice. A notice or other written communication by either party to this Agreement shall be in writing and shall be given or delivered by: regular mail, postage pre-paid, registered mail, or electronically by email (provided proof of delivery to the party is accepted in the email) (except a Notice of Default or Immediate Cure shall be sent by registered mail) to the following:

To the Property: Vaughn Roadruck
 216 F St.
 Cheney, WA 99004

With a copy to: J Jeffrey Broderick
Barrister Capital Corporation
President
P.O. Box 525

OR
J Jeffrey Broderick
164 N Park Pl Ste 550
Decatur, IL 62522-1950

And To
Paul Lawrence Law PLLC
201 N Ash St. Suite 200
Spokane, WA 99201

If to City: City Administrator, Mark Schuller
City of Cheney
609 2nd Street
Cheney, WA 99004
Email: mschuller@cityofcheney.org

13. Waivers. Performance of any obligation required of a party hereunder may be waived only through a written document signed by the Parties, which waiver shall be effective only with respect to the specific matter described therein.

14. Entire Agreement. This Agreement shall constitute the entire understanding between the Parties and supersede any and all prior oral or written representations with respect to the subject matter hereof.

15. Severability. In the event that any provision hereof is found invalid or unenforceable, the remainder of this Agreement shall remain valid and enforceable according to its terms.

16. Suspension of Agreement.

Forced Delay. Performance by the Property Owner shall not be deemed to be in default, and all performance and other duties specified in this Agreement shall be extended, where delays or defaults are due to: pandemic, war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, lack of transportation, governmental restrictions, regulations, order or priority, acts or omissions of the other party, or actus or failures to act of governmental authority after diligent best efforts to cause the governmental authority to

act. An extension of time for any such cause shall be for the period of the forced delay and shall commence to run from the time of the commencement of the cause. Notice by the party claiming such extension shall be sent to the other party upon the commencement of the cause.

17. Default; Remedies, Corrective Action, and Termination.

a. Default. The failure or refusal of a party to perform any of the terms, conditions or obligations during the term of this Agreement shall constitute a default.

b. Notice of Default. In the event of default, the non-defaulting party shall deliver written notice by certified mail to all the individuals named in section above. Said notice shall describe in detail the breach and propose steps to be taken to cure the breach, including a period of time for a cure which shall not be less than ten (10) business days ("**Notice of Default**"). Thereafter, the breaching party must either remedy the breach or cease performance under this Agreement. In the event the breaching party elects to continue performance, it shall either cure the breach or within three (3) business days from delivery of the Notice of Default provide a written response to the Notice of Default and immediately commence to cure the breach. If the cure or the statement of cure is satisfactory to the non-breaching party, the non-breaching party shall consent in writing to a continuation of performance, which consent shall not be withheld or delayed unreasonably. If the cure or attempt to cure is unsatisfactory, the non-breaching party may elect remedies.

c. Remedies Upon Default. Upon the occurrence of any event of default which is not cured or the terms of the Voluntary Compliance Agreement are not completed within the Term, and an extension has not been granted, any remedy or combination of remedies available at law or in equity, may be exercised by the non-breaching party: (1) termination of this Agreement with notice in writing; (2) notifying the Hearing Examiner of the default and commencing the administrative appeal of the Correction Letter; and/or (3) such other remedies available at law or equity. Such additional remedies may include, but are not be limited to, the City: (a) issuing infractions and/or violations; (b) commencing a suit for nuisance; (c) making application to a court for an injunction; and (d) pursuing other remedies provided by state law or City Ordinance.

CITY OF CHENEY

By _____
Mayor, Chris Grover

Attest:

By _____
City Clerk, Cynthia Niemeier

Approved as to form:

City Attorney, Stanley M. Schwartz

By: _____
Its:

By: _____
Its: