Chip Nevins
DPR 6(f) DNR ORD
August 20, 2013
Version #1

ORDINANCE _____

AN ORDINANCE relating to the SR 520, I-5 to Medina: Bridge Replacement and HOV Project; authorizing the Superintendent of Parks and Recreation to execute and accept from the State of Washington, Department of Natural Resources, on behalf of the City of Seattle, an Aquatic Lands Easement, an Aquatic Lands Lease and a Waterway Use Agreement at the Washington Park Arboretum.

WHEREAS, the Washington State Department of Transportation ("WSDOT") requires certain property owned by the City at East Montlake and McCurdy parks (the "City Property) and by the University of Washington near the Washington Park Arboretum (the "UW Property") for its SR 520, I-5 to Medina: Bridge Replacement and HOV Project (the "SR 520 Project"); and

WHEREAS, the property that WSDOT requires was developed with federal grant funds that make it subject to Section 6(f) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460*l*-8 ("Section 6(f)"); and

WHEREAS, Section 6(f) requires that property developed with Section 6(f) grant funds and converted from its approved recreational use be replaced by property of equal value and utility that is available for the same use; and

WHEREAS, all the property developed with Section 6(f) grant funds needs to be controlled by the City or UW; and

WHEREAS, the City and Washington State Department of Natural Resources (WADNR) have entered into several agreements that have given control of all WADNR property within 6(f) area to the City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation ("Superintendent") or his designee is hereby authorized, on behalf of the City of Seattle ("City"), to execute a Lease agreement ("Lease") substantially in the form of Attachment 1 and identified as "Aquatic Lands Lease" with the State of Washington, Department of Natural Resources and authorizing the City to construct, install, operate, maintain, replace and use two bridges with concrete surface,

multiple walking paths with woodchip surface, a raised wooden observation deck, and an overwater path with decking surface and support pilings.

Section 2. The Superintendent or his designee is further authorized, on behalf of the City, to execute an Easement agreement ("Easement") substantially in the form of Attachment 2 and identified as "Aquatic Lands Easement" with the State of Washington, Department of Natural Resources and authorizing the City to construct, install, operate, maintain, replace and use the site for park purposes including dirt and woodchip walking paths.

Section 3. The Superintendent or his designee is further authorized, on behalf of the City, to execute a Waterway Use agreement ("Waterway") substantially in the form of Attachment 3 and identified as "Waterway Use Agreement" with the State of Washington, Department of Natural Resources and authorizing the City to use the site for park purposes.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Aquatic Lands Lease
Attachment 2: Aquatic Lands Easement
Attachment 3: Waterway Use Agreement

Chip Nevins
DPR 6(f) DNR ORD ATT 1
August 16, 2013

When recorded, return to:
Seattle Department of Parks and Recreation
100 Dexter Ave N
Seattle, WA 98109

WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AQUATIC LANDS LEASE

Lease No. 22-086806

Grantor: Washington State Department of Natural Resources
Grantee(s): Seattle Department of Parks and Recreation
Legal Description: Section NE 21, Township 25 North, Range 04 East, W.M.
Assessor's Property Tax Parcel or Account Number: Not Applicable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: Not Applicable

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and Seattle Department of Parks and Recreation, a government agency/entity, ("Tenant").

BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Washington Park Arboretum, which is a harbor area located in King County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease. State has authority to enter into this Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

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SECTION 1 PROPERTY

1.1 Property Defined.

(a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property").

(b) This Lease is subject to all valid interests of third parties noted in the records of King County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.

(c) This Lease does not include a right to harvest, collect or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials.

(d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

1.2 Survey and Property Descriptions.

(a) Tenant prepared Exhibit A, which describes the Property. Tenant warrants that Exhibit A is a true and accurate description of the Lease boundaries and the improvements to be constructed or already existing in the Lease area. Tenant's obligation to provide a true and accurate description of the Property boundaries is a material term of this Lease.

(b) State's acceptance of Exhibit A does not constitute agreement that Tenant's property description accurately reflects the actual amount of land used by Tenant. State reserves the right to retroactively adjust rent if at any time during the term of the Lease State discovers a discrepancy between Tenant's property description and the area actually used by Tenant.

1.3 Inspection. State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property. Tenant inspected the Property and accepts it "AS IS."

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for Park purposes, (the "Permitted Use"), and for no other purpose. This is a water-dependent use. Exhibit B describes the Permitted Use in detail. The Permitted Use is subject to additional obligations in Exhibit B.

2.2 Restrictions on Permitted Use and Operations. The following limitations apply to the Property and adjacent state-owned aquatic land. Tenant's compliance with the following does not limit Tenant's liability under any other provision of this Lease.

(a) Tenant shall not cause or permit:
  (1) Damage to natural resources,
  (2) Waste, or
  (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.

(b) Tenant shall not construct new bulkheads or place hard bank armoring.

(c) Unless approved by State in writing, Tenant shall not cause or permit dredging on the Property. State will not approve dredging unless (1) required for flood control, maintenance of existing vessel traffic lanes, or maintenance of water intakes and (2) consistent with State's management plans, if any. Tenant shall maintain authorized dredge basins in a manner that prevents internal deeper pockets.

2.3 Conformance with Laws. Tenant shall, at all times, keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Tenant's use or occupancy of the Property.

2.4 Liens and Encumbrances. Unless expressly authorized by State in writing, Tenant shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Tenant's occupancy of the Property.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is Thirty (30) years (the "Term"), beginning on the 1st day of November, 2013 (the "Commencement Date"), and ending on the 31st day of October, 2043 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

3.2 Renewal of the Lease. This Lease does not provide a right of renewal. Tenant may apply for a new lease, which State has discretion to grant. Tenant must apply for a new lease at least one (1) year prior to Termination Date. State will notify Tenant within ninety (90) days of its intent to approve or deny a new Lease.

3.3 End of Term.

(a) Upon the expiration or termination of this Lease, Tenant shall remove Improvements in accordance with Section 7, Improvements, and surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

(b) Definition of Reasonable Wear and Tear.

(1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse of the Property by Tenant or any other person on the premises with the permission of Tenant.

(2) Reasonable wear and tear does not include unauthorized deposit of material prohibited under Paragraph 2.2 regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.

(c) If Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply.

(1) State shall provide Tenant a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Tenant to enter into a right-of-entry or other use authorization prior to the Tenant entering the Property if the Lease has terminated.

(2) If Tenant fails to remedy the condition of the Property in a timely manner, State may take steps reasonably necessary to remedy Tenant's failure. Upon demand by State, Tenant shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of material deposited improperly on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with the State's remedy.

3.4 Holdover.

(a) If Tenant remains in possession of the Property after the Termination Date, the occupancy will not be an extension or renewal of the Term. The occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, which either Party may terminate on thirty (30) days' written notice.

(1) The monthly rent during the holdover will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.

(2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.

(b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe the State all amounts due under RCW 79.02.300 or other applicable law.

SECTION 4 RENT

The Permitted Use does not require payment of rent pursuant to RCW 79.105.230.

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SECTION 5 OTHER EXPENSES

5.1 Utilities. Tenant shall pay all fees charged for utilities required or needed by the Permitted Use.

5.2 Taxes and Assessments. Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

5.3 Right to Contest. If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

5.4 Proof of Payment. If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Tenant to pay.

5.5 Failure to Pay. If Tenant fails to pay amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay Rent. Failure to pay rent is a default by the Tenant. State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

6.2 Late Charge. If State does not receive full rent payment within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars ($50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.3 Interest Penalty for Past Due Rent and Other Sums Owed.

(a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.

(b) If State pays or advances any amounts for or on behalf of Tenant, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance. This includes, but is not limited to, State's payment of taxes of any kind, assessments, insurance premiums, costs of removal

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and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

6.4 Referral to Collection Agency and Collection Agency Fees. If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

6.5 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

6.6 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

(a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.

(b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property or Improvements or (2) diminishing the value or utility of the Property or Improvements.

(c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.

(d) "Tenant-Owned Improvements" are Improvements authorized by State and (1) made by Tenant or (2) acquired by Tenant from the prior tenant.

(e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by the State.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Property: Two bridges with concrete surface, multiple walking paths with woodchip surface, a raised wooden observation deck, and an overwater path with decking surface and support pilings. The Improvements are Tenant-Owned Improvements.

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7.3 Construction, Major Repair, Modification, and Demolition.

(a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, demolition, and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair.

(b) All Work must conform to requirements under Paragraph 7.4. Paragraph 11.3, which applies to routine maintenance and minor repair, also applies to all Work under this Paragraph 7.3.

(c) Except in an emergency, Tenant shall not conduct Work, without State's prior written consent, which State will not unreasonably withhold.

(1) In determining whether to consent state may consider, among other items, (i) whether proposed Work would change the Permitted Use, expand overwater structures, or expand non-water dependent uses; (ii) the value of the Improvements before and after the proposed Work; (iii) such other factors as may reasonably bear upon the suitability of the Improvements to provide the public benefits identified in RCW 79.105.030 in light of the proposed Work.

(2) If the proposed Work does not comply with Paragraphs 7.4 and 11.3 State may nonetheless consent to the Work in writing or deny its consent or condition its consent on changes to the Work or Lease reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.

(3) Except in an emergency, Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications at least ninety (90) days before commencement of Work.

(4) State waives the requirement for consent if State does not notify Tenant of its grant or denial of consent within sixty (60) days of submittal.

(d) Tenant shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Tenant shall provide State with plans and specifications or as-builts of emergency Work.

(e) Tenant shall not commence or authorize Work until Tenant has:

(1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Tenant shall maintain the performance and payment bond until Tenant pays in full the costs of the Work, including all laborers and material persons. In lieu of a performance and payment bond Tenant may provide documentation satisfactory to DNR that sufficient expenditure allowances for the Work have been (i) made in the Tenant's Capital Improvement Program and budget adopted by Tenant's City Council and (ii) allocated to the Work.

(2) Obtained all required permits.

(f) Before completing Work, Tenant shall remove all debris and restore the Property to an orderly and safe condition. If Work is intended for removal of Improvements at End of Term, Tenant shall restore the Property in accordance with Paragraph 3.3, End of Term.

(g) Upon completing work, Tenant shall promptly provide State with as-built plans and specifications.

(h) State shall not charge rent for authorized Improvements installed by Tenant during this Term of this Lease. State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5, unless at the time State and Tenant or its successor execute such subsequent use authorization then existing laws and regulations permit State to authorize the permitted use of such Improvements, as identified in the subsequent use authorization, without charging rent for them.

7.4 Standards for Work.

(a) Applicability of Standards for Work

(1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five year period following the Commencement Date. Work has commenced if State has approved plans and specifications.

(2) If Tenant undertakes Work five years or more after the Commencement Date, Tenant shall comply with State's then current standards for Work.

(3) At Tenant's option, Tenant may ascertain State's current standards for Work as follows:

(i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Lease, Tenant shall request State to provide Tenant with then current standards for Work on State-owned Aquatic Lands.

(ii) Within thirty (30) days of receiving Tenant's request, State shall provide Tenant with current standards for Work, which will be effective for the purpose of State's approval of Tenant's proposed Work provided Tenant submits plans and specifications for State's approval within two (2) years of Tenant's request for standards. .

(iii) If State does not timely provide current standards upon Tenant's request, the standards under Paragraph 7.4(b) apply to Tenant's Work provided Tenant submits plans and specifications as required by Paragraph 7.3 within two (2) years of Tenant's request for standards.

(iv) If Tenant fails to (1) make a request for current standards or (2) timely submit plans and specifications to State after receiving current standards, Tenant shall make changes in plans or Work

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necessary to conform to current standards for Work upon State's demand.

(b) Standards for Work

(1) Tenant shall not install skirting on any overwater structure.

(2) Tenant shall not conduct in-water Work during time periods prohibited for such work under WAC 220-110-271, Prohibited Work Times in Saltwater, as amended, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).

(3) Tenant shall install unobstructed grating over at least 50 percent of the surface area of all new floats, piers, fingers, docks, and gangways; grating material must have at least 60 percent unobstructed open space.

7.5 Tenant-Owned Improvements at End of Lease.

(a) Disposition

(1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Lease unless State waives the requirement for removal.

(2) Tenant-Owned Improvements remaining on the Property on the expiration, termination or cancellation date shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership. If RCW 79.125.300 or 79.130.040 apply at the time this Lease expires, Tenant could be entitled to payment by the new tenant for Tenant-Owned Improvements.

(3) If Tenant-Owned Improvements remain on the Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Tenant shall pay State's costs.

(b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.

(1) State may waive removal of some or all Tenant-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Tenant re-leases the Property.

(2) If Tenant re-leases the Property, State may waive requirement remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.

(3) If Tenant does not re-lease the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:

(i) Tenant must notify State at least one (1) year before the Termination Date of its request to leave Tenant-Owned Improvements.

(ii) State, within ninety (90) days of receiving Tenant's notification, will notify Tenant whether State consents to some or all Tenant-

Owned Improvements remaining. State has no obligation to grant consent.

(iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.

(c) Tenant's Obligations if State Waives Removal.

(1) Tenant shall not remove Improvements if State waives the requirement for removal of some or all Tenant-Owned Improvements.

(2) Tenant shall maintain such Improvements in accordance with this Lease until the expiration, termination, or cancellation date. Tenant is liable to State for cost of repair if Tenant causes or allows damage to Improvements State has designated to remain.

7.6 Disposition of Unauthorized Improvements.

(a) Unauthorized Improvements belong to State, unless State elects otherwise.

(b) State may either:

(1) Consent to Tenant ownership of the Improvements, or

(2) Charge rent for use of the Improvements from the time of installation or construction and

(i) Require Tenant to remove the Improvements in accordance with Paragraph 7.3, in which case Tenant shall pay rent for the Improvements until removal, or

(ii) Consent to Improvements remaining and Tenant shall pay rent for the use of the Improvements, or

(iii) Remove Improvements and Tenant shall pay for the cost of removal and disposal, in which case Tenant shall pay rent for use of the Improvements until removal and disposal.

7.7 Disposition of Personal Property.

(a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.

(b) Tenant shall remove Personal Property from the Property by the Termination Date. Tenant is liable for damage to the Property and Improvements resulting from removal of Personal Property.

(c) State may sell or dispose of all Personal Property left on the Property after the Termination Date.

(1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Tenant to the State. State shall pay the remainder, if any, to the Tenant.

(2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

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SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

(a) "Hazardous Substance" means any substance that is now regulated or in the future becomes regulated under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*; Washington's Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW ; Washington's Sediment Management Standards, WAC Chapter 173-204; the Washington Clean Water Act, RCW 90.48, and associated regulations; and the federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and associated regulations, including future amendments to those laws and regulations.

(b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).

(c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care established under MTCA, RCW 70.105D.040.

8.2 General Conditions.

(a) Tenant's obligations under this Section 8 extend to the area in, on, under, or above:

(1) The Property and

(2) Adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances may arise from Tenant's use of the Lease Property.

(b) Standard of Care.

(1) Tenant shall exercise the utmost care with respect to Hazardous Substances.

(2) In relation to the Permitted Use, Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law, including – but not limited to – RCW 70.105D.040.

8.3 Current Conditions and Duty to Investigate.

(a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property or adjacent state-owned lands.

(b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances, provided, however, this Lease does not alter State's obligations to respond to requests for public documents under the Public Records Act, RCW 42.56. State will cooperate with Tenant's requests for public records and endeavor to provide the requested records promptly.

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(c) Tenant is responsible for conducting sufficient inquiries and gathering sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property or on adjacent lands to allow Tenant to meet Tenant's obligations under this Lease.

8.4 Use of Hazardous Substances.

(a) Tenant, its contractors, agents, employees, guests, invitees, or affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.

(b) Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, activities that:

(1) Result in a release or threatened release of Hazardous Substances, or

(2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Tenant's use of the Property.

(c) If use of Hazardous Substances related to the Permitted Use results in a violation of an applicable law Tenant shall submit to State any plans for remedying the violation and cleanup any contamination as required under Section 8.9.

8.5 Management of Contamination.

(a) Tenant, its contractors, agents, employees, guests, invitees, or affiliates shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Property.

(b) Tenant shall take reasonable steps to avoid or reduce: human or environmental exposure to contaminated sediments and mechanical or chemical disturbance of on-site habitat mitigation. For purposes of this Subsection 8.5(b) reasonable steps may include access restrictions, fish consumption advisories, and use restrictions and advisories for water bodies.

(c) Tenant, its contractors, agents, employees, guests, invitees, or affiliates shall not interfere with access by:

(1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and

(2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

(a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:

(1) A release or threatened release of Hazardous Substances that Tenant reports or is required to report to the Washington Department of Ecology;

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(2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence or release of any Hazardous Substance;
(3) Any lien or regulatory action arising from the foregoing;
(4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
(5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.

(b) Tenant's duty to report under Paragraph 8.6(a) extends to the Property, adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances arises from the Tenant's use of the Property, and any other property used by Tenant in conjunction with Tenant's use of the Property where a release or the presence of Hazardous Substances on the other property would affect the Property.

(c) Tenant shall provide State with copies of all documents concerning environmental issues associated with the Property, and submitted by Tenant to any federal, state or local authorities. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits (NPDES); Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

8.7 Indemnification.

(a) "Liabilities" as used in this Subsection 8.7 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments that are asserted by third parties against Grantor or that are incurred by Grantor in order to comply with applicable laws and regulations.

(b) Tenant shall fully indemnify, defend, and hold State harmless from and against any Liabilities that arise out of, or relate to:
(1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees occurring anytime Tenant uses or has used the Property;
(2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination resulting from any act or omission of Tenant, its contractors, agents, employees, guests, invitees, or affiliates occurring anytime Tenant uses or has used the Property.

(c) Tenant shall fully indemnify, defend, and hold State harmless for any Liabilities that arise out of or relate to Tenant's breach of obligations under Subsection 8.5.

(d) Third Parties.

(1) Tenant has no duty to indemnify State for acts or omissions of third parties unless Tenant fails to exercise the standard of care required by Paragraph 8.2(b)(2). Tenant's third-party indemnification duty arises under the conditions described in Subparagraph 8.7(d)(2).

(2) If an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Tenant failed to exercise care as described in Subparagraph 8.7(d)(1), Tenant shall fully indemnify, defend, and hold State harmless from and against any liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes any liabilities arising before the finding or holding in the proceeding.

(e) Tenant is obligated to indemnify under the Subsection 8.7 regardless of whether a permit or license authorizes the discharge or release of Hazardous Substances.

(f) Tenant's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Tenant must fulfill its indemnity obligations and nothing in this Lease may be considered as insuring that Tenant will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Licensee's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

8.8 Reservation of Rights.

(a) For any environmental liabilities not covered by the indemnification provisions of Subsection 8.7 or the cleanup provisions of Section 8.9, the Parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances that either Party may have against the other under law.

(b) This Lease affects no right, claim, immunity, or defense either Party may have against third parties, and the Parties expressly reserve all such rights, claims, immunities, and defenses.

(c) The provisions under this Section 8 do not benefit, or create rights for, third parties.

(d) The allocations of risks, liabilities, and responsibilities set forth above do not release either Party from, or affect the liability of either Party for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

8.9 Cleanup.

(a) If Tenant's Permitted Use, or Tenant's breach of its obligations under this Lease, results in contamination of the Property with Hazardous Substances, Tenant shall, at Tenant's sole expense, promptly take all actions necessary to report, investigate and remediate the Hazardous Substances in accordance with applicable law. Remedial actions may include, without limitation, treatment, removal, and containment.

(b) Tenant's obligation to undertake a cleanup under Section 8 is limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards under Environmental Laws.

(c) Tenant shall cooperate with the Department of Natural Resources in development of plans for remedial actions and Tenant shall not proceed with remedial actions without Department of Natural Resources approval of final plans, which shall not be unreasonably withheld, unless Tenant is ordered to proceed by a court or a regulatory agency with jurisdiction. Tenant's completion of remedial actions is not an implied release from or waiver of any obligation for Hazardous Substances under this Lease.

8.10 Sampling by State, Reimbursement, and Split Samples.

(a) Tenant shall conduct sediment sampling, if required, in accordance with Exhibit B.

(b) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.

(c) If such Tests, along with any other information, demonstrate the existence, release, or threatened release of Hazardous Substances arising out of Tenant's Permitted Use or any violation of Tenant's obligations under this Lease, Tenant shall promptly reimburse State for all costs associated with such Tests.

(d) State shall not seek reimbursement for any Tests under this Subsection 8.10 unless State provides Tenant written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, except when such Tests are in response to an emergency. Tenant shall reimburse State for Tests performed in response to an emergency if State has provided such notice as is reasonably practical and Tenant would be required to reimburse State under section (c).

(e) Tenant is entitled to observe State's collection of samples and obtain split samples of any Test samples obtained by State, but only if Tenant provides State with written notice requesting such samples within twenty (20) calendar days of the date of Tenant's receipt of notice of State's intent to conduct any non-emergency Tests. Tenant solely shall bear the additional cost, if any, of split samples. Tenant shall reimburse State for any additional costs caused by split sampling

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within thirty (30) calendar days after State sends Tenant a bill with documentation for such costs.

(f) Within sixty (60) calendar days of a written request (unless otherwise required pursuant to Paragraph 8.6(c), above), either Party to this Lease shall provide the other Party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Property performed by or on behalf of State or Tenant. There is no obligation to provide any analytical summaries or the work product of experts.

SECTION 9 ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not convey, transfer, or encumber any part of Tenant's interest in this Lease or the Property without State's prior written consent, which State shall not unreasonably condition or withhold.

(a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any conveyance, transfer, or encumbrance if it will result in a subdivision of the leasehold. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.

(b) State reserves the right to condition its consent upon:

(1) changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or

(2) the agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.

(c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.

(d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

9.2 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer does not constitute consent to any assignment or transfer.

9.3 Terms of Subleases.

(a) Tenant shall submit the terms of all subleases to State for approval.

(b) Tenant shall incorporate the following requirements in all subleases:

(1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
(2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;
(3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
(4) The sublease must terminate if this Lease terminates for any reason;
(5) The subtenant must receive and acknowledge receipt of a copy of this Lease;
(6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than the annual rent;
(7) The sublease must identify the rental amount subtenant is to pay to Tenant;
(8) The sublease must provide that there is no privity of contract between the subtenant and State;
(9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;
(10) The subtenant's permitted use must be within the scope of the Permitted Use; and
(11) The sublease must require the subtenant to meet all obligations of Tenant under Section 10, Indemnification, Financial Security, and Insurance.

9.4 Short-Term Subleases of Moorage Slips. Short-term subleasing of moorage slips for a term of less than one year does not require State's written consent or approval pursuant to Paragraphs 9.1 or 9.3. Tenant shall conform moorage sublease agreements to the sublease requirements in Paragraph 9.3.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

(a) Tenant shall indemnify, defend, and hold State, its employees, officers, and agents harmless from Claims arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.

(b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property and damages resulting from loss of use of the Property.

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(c) State shall not require Tenant to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.

(d) Tenant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.

(e) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

(f) Tenant's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Tenant must fulfill its indemnity obligations and nothing in this Lease may be considered as insuring that Tenant will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Tenant's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

10.2 Insurance Terms.

(a) Insurance Required.

(1) Tenant certifies that it is self-insured for all the liability exposures, including but not limited to employers' liability and business auto liability, and its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Tenant shall provide to State evidence of its status as a self-insured entity. Upon request by State, Tenant shall provide a written description of its financial condition and/or the self-insured funding mechanism. Tenant shall provide State with at least thirty (30) days' written notice prior to any material changes to Tenant's self-insured funding mechanism.

(2) All self-insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

(b) Waiver.

(1) Tenant waives all rights against State for recovery of damages to the extent self-insurance maintained pursuant to this Lease covers these damages.

(2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by self-insurance maintained pursuant to this Lease.

(c) Proof of Insurance.

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(1) Tenant shall provide State with a certification of self-insurance executed by a duly authorized representative of Tenant, showing compliance with insurance requirements specified in this Lease.
(2) The certification of self-insurance must reference the Lease number.
(3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such self-insurance or policies.
(d) Tenant must provide State no less than 30 days notice if Tenant's self-insurance program is cancelled or materially reduced.

(e) Adjustments in Insurance Coverage.
(1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
(2) Tenant shall provide a certification that meets the requirements of Section 10.2(c)(1) and demonstrates coverage in compliance with the Lease within thirty (30) days after State requires changes in the limits of liability.

(f) If Tenant fails to provide the certification described above within fifteen (15) days after Tenant receives a notice to comply from State, State may either:
(1) Deem the failure an Event of Default under Section 14, or
(2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Tenant's repayment.

(g) General Terms.
(1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
(2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.
(3) The Parties shall use any self-insurance or other insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.

10.3 Insurance Types and Limits.

(a) General Liability Insurance.
(1) Tenant shall maintain self-insurance with a limit of not less than Two Million Dollars ($2,000,000) per each occurrence and an aggregate limit of not less than twice any limit established for each occurrence.

(b) Workers' Compensation.
(1) State of Washington Workers' Compensation.
(i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident

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or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.

(ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

(2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.

(c) Employers' Liability Insurance.
Tenant shall maintain self-insurance that is equivalent to employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than Two Million Dollars ($2,000,000) each incident for bodily injury by accident or Two Million Dollars ($2,000,000) each employee for bodily injury by disease.

(d) Property Insurance.

(1) Tenant shall maintain self-insurance that is equivalent to property insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as an insured and a loss payee.

(2) Tenant shall maintain self-insurance that is equivalent to boiler and machinery insurance required by contract documents or by law, covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State) from loss or damage caused by the explosion of boilers, fired or unfired vessels, electric or steam generators, or pipes.

(3) In the event of any loss, damage, or casualty which is covered by one or more of the types of insurance described above, the Parties to this Lease shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Lease. The

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Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

(4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:

(i) Repair and restore damaged building(s) and/or Improvements to their former condition, or

(ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.

(e) Builder's Risk Insurance.

(1) Tenant shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Tenant, all contractors, and subcontractors in the work as loss payees. State must also be named an additional loss payee.

(2) Insurance described above must cover or include the following:

(i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;

(ii) The entire work on the Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;

(iii) Portions of the work located away from the Property but intended for use at the Property, and portions of the work in transit;

(iv) Scaffolding, falsework, and temporary buildings located on the Property; and

(v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.

(3) Tenant or Tenant'(s) contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.

(4) Tenant or Tenant'(s) contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Tenant, all contractors, and

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subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3)).

(f) Business Auto Policy Insurance.

(1) Tenant shall maintain self-insurance that is equivalent to business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than Two Million Dollars ($2,000,000) per accident. Such insurance must cover liability arising out of "Any Auto".

(2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

10.4 Financial Security.

(a) At its own expense, Tenant shall procure and maintain during the Term of this Lease a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Tenant shall provide Security in an amount equal to Five Hundred Dollars ($500.00), which is consistent with RCW 79.115.100, and secures Tenant's performance of its obligations under this Lease, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.

(b) All Security must be in a form acceptable to the State.

(1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Tenant may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.

(2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*

(3) Savings account assignments, if approved by State, must allow State to draw funds at will.

(c) Adjustment in Amount of Security.

(1) State may require an adjustment in the Security amount:

(i) At the same time as revaluation of the Annual Rent,

(ii) As a condition of approval of assignment or sublease of this Lease,

(iii) Upon a material change in the condition or disposition of any Improvements, or

(iv) Upon a change in the Permitted Use.

(2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.

(d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Lease because of the default.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

11.1 State's Repairs. This Lease does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Tenant's Repairs and Maintenance.

(a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.

(b) At Tenant's own expense, Tenant shall keep and maintain the Property and all Improvements in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.

(c) At Tenant's own expense, Tenant shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that any public authority may require. If a public authority requires work beyond the scope of routine maintenance and repair, Tenant shall comply with Section 7 of this Lease.

11.3 Limitations. The following limitations apply whenever Tenant conducts maintenance, repair or replacement.

(a) Tenant shall not use or install treated wood at any location above or below water, except that Tenant may use treated wood for above water structural framing.

(b) Tenant shall not use or install tires (for example, floatation or fenders) at any location above or below water.

(c) Tenant shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of flotation material into the water.

(d) Tenant shall not allow new floating structures to come in contact with underlying harbor area shorelands ("ground out"). Tenant must either (1) locate all new floating structures in water too deep to permit grounding out or (2) install stoppers sufficient to maintain a distance of at least 1.5 feet (0.5 meters) between the bottom of the floats and the substrate.

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SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

(a) In the event of damage to or destruction of the Property or Improvements, Tenant shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction without Tenant's written notice.

(b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and Improvements as nearly as possible to its condition immediately prior to the damage or destruction in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Demolition and Tenant's additional obligations in Exhibit B, if any.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Property unless State provides written notice to Tenant of each specific claim waived.

12.3 Insurance Proceeds. Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

12.4 Rent in the Event of Damage or Destruction. Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

12.5 Default at the Time of Damage or Destruction. If Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

(a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of the State, prevents or renders impractical the Permitted Use.

(b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

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13.2 Effect of Taking. If there is a taking, the Lease terminates proportionate to the extent of the taking. If this Lease terminates in whole or in part, Tenant shall make all payments due and attributable to the taken Property up to the date of taking. If Tenant has pre-paid rent and Tenant is not in default of the Lease, State shall refund Tenant the pro rata share of the pre-paid rent attributable to the period after the date of taking.

13.3 Allocation of Award.

(a) The Parties shall allocate the condemnation award based upon the ratio of the fair market value of (1) Tenant's leasehold estate and Tenant-Owned Improvements and (2) State's interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.

(b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

14.1 Default Defined. Tenant is in default of this Lease on the occurrence of any of the following:

(a) Failure to pay rent or other expenses when due;

(b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;

(c) Failure to comply with any other provision of this Lease;

(d) Commencement of bankruptcy proceedings by or against Tenant or the appointment of a trustee or receiver of Tenant's property.

14.2 Tenant's Right to Cure.

(a) A default becomes an "Event of Default" if Tenant fails to cure the default within the applicable cure period following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.

(b) Unless expressly provided elsewhere in this Lease, the cure period is sixty (60) days for failure to pay rent or other monetary defaults; for other defaults, the cure period is thirty (30) days.

(c) For nonmonetary defaults not capable of cure within sixty (60) days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Tenant must submit a cure schedule within thirty (30) days of a notice of default. The default is not an Event of Default if State approves the schedule and Tenant works diligently and in good faith to execute the cure. The default is an Event of Default if Tenant fails to timely submit a schedule or fails to cure in accordance with an approved schedule.

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14.3 Remedies.

(a) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise.

(b) If the Event of Default (1) arises from Tenant's failure to comply with restrictions on Permitted Use and operations under Paragraph 2.2 or (2) results in damage to natural resources or the Property, State may enter the Property without terminating this Lease to (1) restore the natural resources or Property and charge Tenant restoration costs and/or (2) charge Tenant for damages. On demand by State, Tenant shall pay all costs and/or damages.

(c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.

(1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.

(2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.

(3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.

(d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.

(e) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Tenant's breach or threatened breach of any provision of this Lease.

SECTION 15 ENTRY BY STATE

State may enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, or survey habitat and species. Tenant grants State permission to cross Tenant's upland and aquatic land property to access the Property. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

16.1 No Guaranty or Warranty.

(a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.

(b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.

(c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

16.2 Eviction by Third-Party. If a third-party evicts Tenant, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

SECTION 17 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Lease. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
SHORELINE DISTRICT
950 FARMAN AVE N
ENUMCLAW, WA 98022

Tenant: CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION
100 DEXTER AVE N
SEATTLE, WA 98109

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

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SECTION 18 MISCELLANEOUS

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant shall provide evidence satisfactory to State confirming these representations.

18.2 Successors and Assigns. This Lease binds and inures to the benefit of the Parties, their successors, and assigns.

18.3 Headings. The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

18.4 Entire Agreement. This Lease, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Lease merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

18.5 Waiver.

(a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment is not a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.

(b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

18.6 Cumulative Remedies. The rights and remedies under this Lease are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word "Tenant" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Tenant in the collective. The word "Party" means either or both State and Tenant, depending on the context.

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18.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

18.10 Applicable Law and Venue. This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

18.11 Statutory Reference. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded.

18.12 Recordation. At Tenant's expense and no later than thirty (30) days after receiving the fully-executed Lease, Tenant shall record this Lease in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number.

18.13 Modification. No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

18.14 Survival. Any obligations of Tenant not fully performed upon termination of this Lease do not cease, but continue as obligations of the Tenant until fully performed.

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18.15 Exhibits. All referenced exhibits are incorporated in the Lease unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION

Dated: _____, 20__

_____
By:
Title:
Address:
Phone:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__

_____
By:
Title:
Address:

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Approved as to form this
12 day of March, 2010
Janis Snoey, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF)
) ss
County of)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ (type of authority) of _____ (name of corporation) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 20__

_____
(Signature)

(Seal or stamp)

_____
(Print Name)

Notary Public in and for the State of Washington, residing at

_____

My appointment expires _____

DRAFT

INDIVIDUAL ACKNOWLEDGMENT

STATE OF)
) ss
County of)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: _____, 20__

(Seal or stamp)

_____
(Signature)

_____
(Print Name)

Notary Public in and for the State of Washington, residing at

_____

My appointment expires_____

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STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of)

I certify that I know or have satisfactory evidence that PETER GOLDMARK is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Commissioner of Public Lands, and ex officio administrator of the Department of Natural Resources of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 20__ _____
(Signature)

(Seal or stamp)

_____
(Print Name)

Notary Public in and for the State of Washington, residing at

_____

My appointment expires _____

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EXHIBIT A

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PLAN OF OPERATIONS
EXHIBIT B

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities
The site is a public park and natural area. It contains two bridges with concrete surface, multiple walking paths with woodchip surface, a raised wooden observation deck, and an overwater path with decking surface and support pilings.

B. Proposed Facilities. Tenant proposes no new facilities.

2. ADDITIONAL OBLIGATIONS

(a) Tenant shall replace existing treated wood, (decking, timbers, pilings, etc.) with non-toxic materials such as untreated wood, steel, concrete, or recycled plastic, or encased in a manner that prevents leaching of contaminants into surface water. Tenant may use non-creosote treated wood to replace above water structural framing. Replacement may occur under an ordinary maintenance or repair schedule, but all treated wood must be replaced by October 31, 2028.

(b) Tenant shall renovate or replace existing docks, rafts, floats, wharves and piers to provide 50 percent grated surface; grating material must have at least 60 percent functional open space. Replacement may occur under an ordinary maintenance or repair schedule, but replacement must be complete by October 31, 2028.

DRAFT

Chip Nevins
DPR 6(f) DNR ORD ATT 2
August 16, 2013

When recorded, return to:
Seattle Department of Parks and Recreation
100 Dexter Ave N
Seattle, WA 98109

WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AQUATIC LANDS EASEMENT

Easement No. 51-089835

Grantor: Washington State Department of Natural Resources
Grantee(s): Seattle Department of Parks and Recreation
Legal Description: Section NE 21, Township 25 North, Range 04 East, W.M.
Assessor's Property Tax Parcel or Account Number: Not Applicable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this Easement: Not Applicable

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and SEATTLE DEPARTMENT OF PARKS AND RECREATION, a government agency/entity ("Grantee"). State has authority to enter into this Easement under Chapter 43.12 RCW, Chapter 43.30 RCW, and Title 79 of the Revised Code of Washington (RCW).

THE Parties agree as follows:

SECTION 1 GRANT OF EASEMENT

1.1 Easement Defined.

(a) State grants and conveys to Grantee a nonexclusive easement, subject to the terms and conditions of this agreement, over, upon, and under the real property at Washington Park Arboretum: described in Exhibit A. In this agreement, the term "Easement" means this agreement and the rights granted; the term "Easement Property" means the real property subject to the easement.

(b) This Easement is subject to all valid interests of third parties noted in the records of King County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.

(c) This Easement does not include any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials.

(d) This Easement does not include the right to grant easements and franchises to third parties. State reserves the right to reasonably grant, condition, or approve all third party easements and franchises regardless of whether the third party's use is incidental to the Easement. State shall not unreasonably condition or deny third-party easements or franchises necessary for continuation of utilities, including communication systems.

1.2 Survey and Easement Property Descriptions.

(a) Grantee prepared Exhibit A, which describes the Easement Property. Grantee represents that Exhibit A is a true and accurate description of the Easement boundaries and the improvements to be constructed or already existing in the Easement area. Grantee's obligation to provide a true and accurate description of the Easement Property boundaries is a material term of this Easement.

(b) State's acceptance of Exhibit A does not constitute agreement that Grantee's property description accurately reflects the actual amount of land used by Grantee. State reserves the right to retroactively adjust fees if at any time during the Term State discovers a discrepancy between Grantee's property description and the area actually used by Grantee.

1.3 Condition of Easement Property. State makes no representation regarding the condition of the Easement Property, improvements located on the Easement Property, the suitability of the Easement Property for Grantee's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property, or the existence of hazardous substances on the Easement Property.

SECTION 2 USE

2.1 Permitted Use. Grantee shall use the Easement Property for Park purposes (the "Permitted Use"), and for no other purpose, including utilities unless specifically identified as part of the Permitted Use. The Permitted Use is described or shown in detail in Exhibit B.

2.2 Restrictions on Use.

(a) The limitations in this Paragraph 2.2 apply to the Property and adjacent state-owned aquatic land. Grantee's compliance with this Paragraph 2.2 does not limit Grantee's liability under any other provision of this Easement.

(b) Grantee shall not cause or authorize:
  (1) Damage to natural resources,
  (2) Waste, or
  (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.

2.3 Conformance with Laws. Grantee shall keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Grantee's use of the Easement Property.

2.4 Liens and Encumbrances. Grantee shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to its use of the Easement Property, unless expressly authorized by State in writing.

2.5 Interference with Other Uses.

(a) Grantee shall exercise Grantee's rights under this Easement in a manner that minimizes or avoids interference with the rights of State, the public or others with valid right to use or occupy the Easement Property or surrounding lands and water.

(b) To the fullest extent reasonably possible, Grantee shall place and construct Improvements in a manner that allows unobstructed movement in and on the waters above and around the Easement Property.

(c) Except in an emergency, Grantee shall provide State with written notice of construction or other significant activity on Easement Property at least thirty (30) days in advance. "Significant Activity" means any activity that may affect use or enjoyment by the State, public, or others with valid rights to use or occupy the Easement Property or surrounding lands and water.

(d) Grantee shall mark the location of any hazards associated with the Permitted Use and any Improvements in a manner that ensures reasonable notice to the public.

SECTION 3 TERM

3.1 Term Defined. The term of this Easement is thirty (30) years (the "Term"), beginning on the 1st day of November, 2013 (the "Commencement Date"), and ending on the 31st day of October, 2043 (the "Termination Date"), unless terminated sooner under the terms of this Easement.

3.2 Renewal of the Easement. This Easement does not provide a right of renewal. Grantee may apply for a new Easement, which State has discretion to grant. Grantee must apply for a new Easement at least one (1) year prior to Termination Date. State shall notify Grantee within ninety (90) days of its intent to approve or deny a new Easement.

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3.3 End of Term.

(a) Upon the expiration or termination of this Easement, Grantee shall remove Improvements in accordance with Section 7, Improvements, and surrender the Easement Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

(b) Definition of Reasonable Wear and Tear.

(1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse by Grantee or Grantee's contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.

(2) Reasonable wear and tear does not include any deposit of material prohibited under Paragraph 2.2(b) unless expressly permitted by State in writing and regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.

(c) If Easement Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply.

(1) State shall provide Grantee a reasonable time to take all steps necessary to remedy the condition of the Easement Property. State may require Grantee to enter into a right-of-entry or other use authorization prior to the Grantee entering the Easement Property to remedy any breach of this Paragraph 3.3.

(2) If Grantee fails to remedy the condition of the Easement Property in a timely manner, State may take any steps reasonably necessary to remedy Grantee's failure. Upon demand by State, Grantee shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Easement Property, lost revenue resulting from the condition of the Easement Property prior to and during remedial action, and any administrative costs associated with the remedial action.

SECTION 4 FEES

4.1 Fee. The Permitted Use does not require payment of rent pursuant to RCW 79.105.230.

SECTION 5 OTHER EXPENSES

5.1 Utilities. Grantee shall pay all fees charged for utilities required or needed by the Permitted Use.

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5.2 Taxes and Assessments. Grantee shall pay all taxes, assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Easement and the Permitted Use.

5.3 Failure to Pay. If Grantee fails to pay any of the amounts due under this Easement, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay. Failure to pay any fees or other expenses is a default by Grantee. State may seek remedies in Section 14 as well as late charges and interest as provided in this Section 6.

6.2 Late Charge. If State does not receive any payment within ten (10) days of the date due, Grantee shall pay to State a late charge equal to four percent (4%) of the unpaid or Fifty Dollars ($50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.3 Interest Penalty for Past Due Fees and Other Sums Owed.

(a) Grantee shall pay interest on the past due fee at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Fee not paid by the close of business day on the due date will begin accruing interest the day after the due date.

(b) If State pays or advances any amounts for or on behalf of Grantee, Grantee shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Grantee of the payment or advance. This includes, but is not limited to taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Paragraph 2.2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due.

6.4 Referral to Collection Agency and Collection Agency Fees. If State does not receive payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Grantee shall pay collection agency fees in addition to the unpaid amount.

6.5 No Accord and Satisfaction. If Grantee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

(a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, structures and fixtures.

(b) "Personal Property" means items that can be removed from the Easement Property without (1) injury to the Easement Property, adjacent state-owned lands or Improvements or (2) diminishing the value or utility of the Easement Property, adjacent state-owned lands or Improvements.

(c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Grantee.

(d) "Grantee-Owned Improvements" are Improvements made by Grantee with State's consent.

(e) "Unauthorized Improvements" are Improvements made on the Easement Property without State's prior consent or Improvements made by Grantee that do not conform with plans submitted to and approved by the State.

(f) "Improvements Owned by Others" are Improvements made by Others with a right to occupy or use the Easement Property or adjacent state-owned lands.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Easement Property: Dirt and woodchip walking paths, shown in Exhibit A as "Arboretum Waterfront Trail". The Improvements are Grantee-Owned Improvements.

7.3 Construction, Major Repair, Modification, and Demolition.

(a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification alteration, demolition and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair of Improvements and Easement Property.

(b) All Work must conform with State's standards for Improvements current at the time Grantee submits plans and specifications for State's approval. Paragraph 11.3 also applies to all Work under this Paragraph 7.3.

(c) Except in an emergency, Grantee shall not conduct any Work without State's prior written consent, which State will not unreasonably withhold.

(1) In determining whether to consent state may consider, among other items, (i) whether proposed Work would change the Permitted Use, expand overwater structures, or expand non-water dependent uses; (ii) the value of the Improvements before and after the proposed Work; (iii) such other factors as may reasonably bear upon the suitability of the Improvements to provide the public benefits identified in RCW 79.105.030 in light of the proposed Work.

(2) If the proposed Work does not comply with Paragraphs 7.4 and 11.3 State may nonetheless consent to the Work in writing or deny its consent or condition its consent on changes to the Work or Easement reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.

(3) Except in an emergency, Grantee shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Grantee and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Grantee shall submit plans and specifications at least ninety (90) days before commencement of Work.

(4) State waives the requirement for consent if State does not notify Grantee of its grant or denial of consent within sixty (60) days of submittal.

(d) Grantee shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Grantee shall provide State with plans and specifications or as-builts of emergency Work.

(e) Grantee shall not commence or authorize Work until Grantee has:

(1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Grantee shall maintain the performance and payment bond until Grantee pays in full the costs of the Work, including all laborers and material persons. In lieu of a performance and payment bond Tenant may provide documentation satisfactory to DNR that sufficient expenditure allowances for the Work have been (i) made in the Tenant's Capital Improvement Program and budget adopted by Tenant's City Council and (ii) allocated to the Work.

(2) Obtained all required permits.

(3) Provided notice of Significant Activity in accordance with Paragraph 2.5(c).

(f) Grantee shall preserve and protect Improvements Owned by Others, if any.

(g) Grantee shall preserve all legal land subdivision survey markers and witness objects ("Markers.") If disturbance of a Marker will be a necessary consequence of Grantee's construction, Grantee shall reference and/or replace the Marker in accordance with all applicable laws and regulations current at the time, including, but not limited to Chapter 58.24 RCW. At Grantee's expense, Grantee shall retain a registered professional engineer or licensed land surveyor to reestablish destroyed or disturbed Markers in accordance with U.S. General Land Office standards.

(h) Before completing Work, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of Work. If Work is intended for removal of Improvements at End of Term, Grantee shall restore the Easement Property in accordance with Paragraph 3.3, End of Term.

(i) Upon completing work, Grantee shall promptly provide State with as-built plans and specifications.

(j) State shall not charge rent for authorized Improvements installed by Grantee during this Term of this Easement. State may charge rent for such Improvements when and if the Grantee or successor obtains a subsequent use authorization for the Easement Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.4, unless at the time State and Grantee or its successor execute such subsequent use authorization then existing laws and regulations permit State to authorize the permitted use of such Improvements, as identified in the subsequent use authorization, without charging rent for them.

7.4 Grantee-Owned Improvements at End of Easement.

(a) Disposition.

(1) Grantee shall remove Grantee-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Easement unless State waives the requirement for removal.

(2) Grantee-Owned Improvements remaining on the Easement Property on the expiration, termination, or cancellation date become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.

(3) If Grantee-Owned Improvements remain on the Easement Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Grantee shall pay the costs of removal and disposal.

(b) Conditions Under Which State May Waive Removal of Grantee-Owned Improvements.

(1) State may waive removal of any or all Grantee-Owned Improvements whenever State determines that it is in the best interests of the State.

(2) If Grantee renews the Easement or enters into a new Easement, State may waive requirement to remove Grantee-Owned Improvements. State also may consent to Grantee's continued ownership of Grantee-Owned Improvements.

(3) If Grantee does not renew the Easement or enter into a new Easement, State may waive requirement to remove Grantee-Owned Improvements upon consideration of a timely request from Grantee, as follows:

(i) Grantee must notify State at least one (1) year before the Termination Date of its request to leave Grantee-Owned Improvements.

(ii) State, within ninety (90) days, will notify Grantee whether State consents to any or all Grantee-Owned Improvements remaining. State has no obligation to grant consent.

(iii) State's failure to respond to Grantee's request to leave Improvements within ninety (90) days is a denial of the request.

(c) Grantee's Obligations if State Waives Removal.

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(1) Grantee shall not remove Improvements if State waives the requirement for removal of any or all Grantee-Owned Improvements.
(2) Grantee shall maintain such Improvements in accordance with this Easement until the expiration, termination, or cancellation date. Grantee is liable to State for cost of repair if Grantee causes or allows damage to Improvements State has designated to remain.

7.5 Disposition of Unauthorized Improvements.

(a) Unauthorized Improvements belong to State, unless State elects otherwise.
(b) State may either:
(1) Consent to Grantee ownership of the Improvements, or
(2) Charge use and occupancy fee in accordance with RCW 79.105.200 of the Improvements from the time of installation or construction and
(i) Require Grantee to remove the Improvements in accordance with Paragraph 7.3, in which case Grantee shall pay use and occupancy fee for the Improvements until removal,
(ii) Consent to Improvements remaining and Grantee shall pay use and occupancy fee for the use of the Improvements, or
(iii) Remove Improvements and Grantee shall pay for the cost of removal and disposal, in which case Grantee shall pay use and occupancy fee for use of the Improvements until removal and disposal.

7.6 Disposition of Personal Property.

(a) Grantee retains ownership of Personal Property unless Grantee and State agree otherwise in writing.
(b) Grantee shall remove Personal Property from the Easement Property by the Termination Date. Grantee is liable for any damage to the Easement Property and to any Improvements that may result from removal of Personal Property.
(c) State may sell or dispose of all Personal Property left on the Easement Property after the Termination Date.
(1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Grantee to the State, and State shall pay the remainder, if any, to the Grantee.
(2) If State disposes of Personal Property, Grantee shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

(a) "Hazardous Substance" means any substance that is now regulated or in the future becomes regulated under the Comprehensive Environmental Response,

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Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*; Washington's Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW ; Washington's Sediment Management Standards, WAC Chapter 173-204; the Washington Clean Water Act, RCW 90.48, and associated regulations; and the federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and associated regulations, including future amendments to those laws and regulations.

(b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).

(c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care established under MTCA, RCW 70.105D.040.

8.2 General Conditions.

(a) Grantee's obligations under this Section 8 extend to the area in, on, under, or above:

(1) The Easement Property and

(2) Adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances may arise from Grantee's use of the Easement Property.

(b) Standard of Care.

(1) Grantee shall exercise the utmost care with respect to Hazardous Substances.

(2) In relation to the Permitted Use, Grantee shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law, including – but not limited to – RCW 70.105D.040.

8.3 Current Conditions and Duty to Investigate.

(a) State makes no representation about the condition of the Easement Property. Hazardous Substances may exist in, on, under, or above the Easement Property or adjacent state-owned lands.

(b) This Easement does not impose a duty on State to conduct investigations or supply information to Grantee about Hazardous Substances, provided, however, this Easement does not alter State's obligations to respond to requests for public documents under the Public Records Act, RCW 42.56. State will cooperate with Grantee's requests for public records and endeavor to provide the requested records promptly.

(c) Grantee is responsible for conducting sufficient inquiries and gathering sufficient information concerning the Easement Property and the existence, scope, and location of any Hazardous Substances on the Easement Property or on adjacent lands to allow Grantee to meet Grantee's obligations under this Easement.

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8.4 Use of Hazardous Substances.

(a) Grantee, its, contractors, agents, employees, guests, invitees, or affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.

(b) Grantee shall not undertake, or allow others to undertake by Grantee's permission, acquiescence, or failure to act, activities that:

(1) Result in a release or threatened release of Hazardous Substances, or

(2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Grantee's use of the Easement Property.

(c) If use of Hazardous Substance related to the Permitted Use results in a violation of an applicable law Grantee shall submit to State any plans for remedying the violation and cleanup any contamination as required under Section 8.9.

8.5 Management of Contamination.

(a) Grantee, its, contractors, agents, employees, guests, invitees, or affiliates shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Easement Property.

(b) Grantee shall take reasonable steps to avoid or reduce: human or environmental exposure to contaminated sediments and mechanical or chemical disturbance of on-site habitat mitigation. For purposes of this Subsection 8.5(b) reasonable steps may include access restrictions, fish consumption advisories, and use restrictions and advisories for water bodies.

(c) Grantee, its contractors, agents, employees, guests, invitees, or affiliates shall not interfere with access by:

(1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and

(2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Easement Property. Grantee may negotiate an access agreement with such parties, but Grantee may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

(a) Grantee shall immediately notify State if Grantee becomes aware of any of the following:

(1) A release or threatened release of Hazardous Substances that Grantee reports or is required to report to the Washington Department of Ecology;

(2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence or release of any Hazardous Substance;

(3) Any lien or regulatory action arising from the foregoing;

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(4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;

(5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Easement Property.

(b) Grantee's duty to report under Paragraph 8.6(a) extends to the Easement Property, adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances arises from the Grantee's use of the Easement Property, and any other property used by Grantee in conjunction with Grantee's use of the Easement Property where a release or the presence of Hazardous Substances on the other property would affect the Easement Property.

(c) Grantee shall provide State with copies of all documents concerning environmental issues associated with the Easement Property, and submitted by Grantee to any federal, state or local authorities. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits (NPDES); Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Easement Property.

8.7 Indemnification.

(a) "Liabilities" as used in this Subsection 8.7 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments that are asserted by third parties against Grantor or that are incurred by Grantor in order to comply with applicable laws and regulations.

(b) Grantee shall fully indemnify, defend, and hold State harmless from and against any Liabilities that arise out of, or relate to:

(1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees occurring anytime Grantee uses or has used the Easement Property;

(2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination resulting from any act or omission of Grantee, its contractors, agents, employees, guests, invitees, or affiliates occurring anytime Grantee uses or has used the Easement Property.

(c) Grantee shall fully indemnify, defend, and hold State harmless for any Liabilities that arise out of or relate to Grantee's breach of obligations under Subsection 8.5.

(d) Third Parties.

(1) Grantee has no duty to indemnify State for acts or omissions of third parties unless Grantee fails to exercise the standard of care required by Paragraph 8.2(b)(2). Grantee's third-party indemnification duty arises under the conditions described in Subparagraph 8.7(d)(2).

(2) If an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Grantee failed to exercise care as described in Subparagraph 8.7(d)(1), Grantee shall fully indemnify, defend, and hold State harmless from and against any liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes any liabilities arising before the finding or holding in the proceeding.

(e) Grantee is obligated to indemnify under the Subsection 8.7 regardless of whether a permit or license authorizes the discharge or release of Hazardous Substances.

(f) Grantee's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Grantee must fulfill its indemnity obligations and nothing in this Easement may be considered as insuring that Grantee will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Licensee's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

8.8 Reservation of Rights.

(a) For any environmental liabilities not covered by the indemnification provisions of Subsection 8.7 or the cleanup provisions of Section 8.9, the Parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances that either Party may have against the other under law.

(b) This Easement affects no right, claim, immunity, or defense either Party may have against third parties, and the Parties expressly reserve all such rights, claims, immunities, and defenses.

(c) The provisions under this Section 8 do not benefit, or create rights for, third parties.

(d) The allocations of risks, liabilities, and responsibilities set forth above do not release either Party from, or affect the liability of either Party for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

8.9 Cleanup.

(a) If Grantee's Permitted Use, or Grantee's breach of its obligations under this Easement, results in contamination of the Easement Property with Hazardous Substances, Grantee shall, at Grantee's sole expense, promptly take all actions necessary to report, investigate and remediate the Hazardous Substances in

accordance with applicable law. Remedial actions may include, without limitation, treatment, removal, and containment.

(b) Grantee's obligation to undertake a cleanup under Section 8 is limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards under Environmental Laws.

(c) Grantee shall cooperate with the Department of Natural Resources in development of plans for remedial actions and Grantee shall not proceed with remedial actions without Department of Natural Resources approval of final plans, which shall not be unreasonably withheld, unless Grantee is ordered to proceed by a court or a regulatory agency with jurisdiction. Grantee's completion of remedial actions is not an implied release from or waiver of any obligation for Hazardous Substances under this Easement.

8.10 Sampling by State, Reimbursement, and Split Samples.

(a) Grantee shall conduct sediment sampling, if required, in accordance with Exhibit B.

(b) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Easement Property at any time to determine the existence, scope, or effects of Hazardous Substances.

(c) If such Tests, along with any other information, demonstrate the existence, release, or threatened release of Hazardous Substances arising out of Grantee's Permitted Use or any violation of Grantee's obligations under this Lease, Grantee shall promptly reimburse State for all costs associated with such Tests.

(d) State shall not seek reimbursement for any Tests under this Subsection 8.10 unless State provides Grantee written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, except when such Tests are in response to an emergency. Grantee shall reimburse State for Tests performed in response to an emergency if State has provided such notice as is reasonably practical and Grantee would be required to reimburse State under section (c).

(e) Grantee is entitled to observe State's collection of samples and obtain split samples of any Test samples obtained by State, but only if Grantee provides State with written notice requesting such samples within twenty (20) calendar days of the date of Grantee's receipt of notice of State's intent to conduct any non-emergency Tests. Grantee solely shall bear the additional cost, if any, of split samples. Grantee shall reimburse State for any additional costs caused by split sampling within thirty (30) calendar days after State sends Grantee a bill with documentation for such costs.

(f) Within sixty (60) calendar days of a written request (unless otherwise required pursuant to Paragraph 8.6(c), above), either Party to this Easement shall provide the other Party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the

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Easement Property performed by or on behalf of State or Grantee. There is no obligation to provide any analytical summaries or the work product of experts.

SECTION 9 ASSIGNMENT

Grantee shall not assign any part of Grantee's interest in this Easement or the Easement Property or grant any rights or franchises to third parties without State's prior written consent, which State shall not unreasonably condition or withhold. State reserves the right to reasonably change the terms and conditions of this Easement upon State's consent to assignment.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

(a) Grantee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from Claims arising out of the use, occupation, or control of the Easement Property by Grantee, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.

(b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Easement Property and damages resulting from loss of use of the Easement Property.

(c) State shall not require Grantee to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.

(d) Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.

(e) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Grantee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

(f) Tenant's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Tenant must fulfill its indemnity obligations and nothing in this Easement may be considered as insuring that Tenant will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Licensee's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

10.2 Insurance Terms.

(a) Insurance Required.

(1) Grantee certifies that it is self-insured for all the liability exposures, including but not limited to employers' liability and business auto liability, and its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Grantee shall provide to State evidence of its status as a self-insured entity. Upon request by State, Grantee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Grantee shall provide State with at least thirty (30) days' written notice prior to any material changes to Grantee's self-insured funding mechanism.

(2) All self-insurance provided in compliance with this Easement must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

(b) Waiver.

(1) Grantee waives all rights against State for recovery of damages to the extent self-insurance maintained pursuant to this Easement covers these damages.

(2) Except as prohibited by law, Grantee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by self-insurance maintained pursuant to this Easement.

(c) Proof of Insurance.

(1) Grantee shall provide State with a certification of self-insurance executed by a duly authorized representative of Grantee, showing compliance with insurance requirements specified in this Easement.

(2) The certification of self-insurance must reference the Easement number.

(3) Receipt of such certification of self-insurance or policies by State does not constitute approval by State of the terms of such self-insurance or policies.

(d) Grantee must provide State no less than 30 days notice if Grantee's self-insurance program is cancelled or materially reduced.

(e) Adjustments in Insurance Coverage.

(1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.

(2) Grantee shall provide a certification that meets the requirements of Section 10.2(c)(1) and demonstrates coverage in compliance with the Lease within thirty (30) days after State requires changes in the limits of liability.

(f) If Grantee fails to provide the certification described above within fifteen (15) days after Grantee receives a notice to comply from State, State may either:

(1) Deem the failure an Event of Default under Section 14, or

(2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Grantee shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Grantee's repayment.

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(g) General Terms.

(1) State does not represent that coverage and limits required under this Easement are adequate to protect Grantee.

(2) Coverage and limits do not limit Grantee's liability for indemnification and reimbursements granted to State under this Easement.

(3) The Parties shall use any self-insurance or other insurance proceeds payable by reason of damage or destruction to Easement Property first to restore the Easement Property, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Grantee.

10.3 Insurance Types and Limits.

(a) General Liability Insurance.

(1) Grantee shall maintain self-insurance with a limit of not less than Two Million Dollars ($2,000,000) per each occurrence and an aggregate limit of not less than twice any limit established for each occurrence.

(b) Workers' Compensation.

(1) State of Washington Workers' Compensation.

(i) Grantee shall comply with all State of Washington workers' compensation statutes and regulations. Grantee shall provide workers' compensation coverage for all employees of Grantee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Grantee's use, occupation, and control of the Property.

(ii) If Grantee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Grantee shall indemnify State. Indemnity shall include all fines; payment of benefits to Grantee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

(2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Grantee to provide insurance coverage in some circumstances. Grantee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.

(c) Employers' Liability Insurance. Grantee shall maintain self-insurance that is equivalent to employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than Two Million Dollars ($2,000,000) each accident for bodily injury by accident or Two Million Dollars ($2,000,000) each employee for bodily injury by disease.

(d) Property Insurance.

(1) Grantee shall maintain self-insurance that is equivalent to property insurance covering all real property and fixtures, equipment, improvements and betterments (regardless of whether owned by Grantee or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as an insured and a loss payee.

(2) Licensee shall maintain self-insurance that is equivalent to boiler and machinery insurance required by contract documents or by law, covering all real property and fixtures, equipment, improvements and betterments (regardless of whether owned by Licensee or State) from loss or damage caused by the explosion of boilers, fired or unfired vessels, electric or steam generators, or pipes.

(3) In the event of any loss, damage, or casualty which is covered by one or more of the types of insurance described above, the Parties to this Easement shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Easement. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

(4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:

(i) Repair and restore damaged building(s) and/or Improvements to their former condition, or

(ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Easement Property of a quality and usefulness at least equivalent to, or more suitable than, damaged building(s) and/or Improvements.

(e) Builder's Risk Insurance.

(1) Grantee shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project. Such insurance must be written on a completed form and in an amount equal to the value of the completed Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Grantee, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3)).

(2) Insurance described above must cover or include the following:

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(i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;

(ii) The entire work on the Easement Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;

(iii) Portions of the work located away from the Easement Property but intended for use at the Easement Property, and portions of the work in transit;

(iv) Scaffolding, falsework, and temporary buildings located on the Easement Property; and

(v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.

(3) Grantee or Grantee'(s) contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.

(4) Grantee or Grantee's contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Grantee, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3)).

(f) Business Auto Policy Insurance.

(1) Grantee shall maintain self-insurance that is equivalent to business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than Two Million Dollars ($2,000,000) per accident. Such insurance must cover liability arising out of "Any Auto."

(2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

10.4 Financial Security.

(a) At its own expense, Grantee shall procure and maintain during the Term of this Easement a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Grantee shall provide Security in an amount equal to Zero Dollars ($0), which is consistent with RCW 79.105.330, and secures Grantee's performance of its obligations under this Easement, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Grantee's failure to maintain the Security in the required amount during the Term constitutes a breach of this Easement.

(b) All Security must be in a form acceptable to the State.

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(1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Grantee may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.

(2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*

(3) Savings account assignments, if approved by State, must allow State to draw funds at will.

(c) Adjustment in Amount of Security.

(1) State may require an adjustment in the Security amount:

(i) At the same time as revaluation, if any,

(ii) As a condition of approval of assignment or grant of any rights or franchises to third parties of this Easement,

(iii) Upon a material change in the condition or disposition of any Improvements, or

(iv) Upon a change in the Permitted Use.

(2) Grantee shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.

(d) Upon any default by Grantee in its obligations under this Easement, State may collect on the Security to offset the liability of Grantee to State. Collection on the Security does not (1) relieve Grantee of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Easement because of the default.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

11.1 State's Repairs. This Easement does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Easement Property, during the Term.

11.2 Grantee's Repairs and Maintenance.

(a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.

(b) At Grantee's sole expense, Grantee shall keep and maintain all Grantee-Owned Improvements and the Easement Property as it relates to the Permitted Use in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.

(c) At Grantee's own expense, Grantee shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any

Improvements on the Easement Property that any public authority requires because of the Permitted Use.

(d) Upon completion of maintenance activities, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of work.

11.3 Limitations. The following limitations apply whenever Grantee conducts maintenance, repair or replacement.

(1) Grantee shall not use or install treated wood at any location above or below water, except that Grantee may use treated wood for above water structural framing.

(2) Grantee shall not use or install tires (for example, floatation or fenders) at any location above or below water.

(3) Grantee shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of flotation material into the water.

(4) Grantee shall not allow new floating structures to come in contact with underlying shorelands ("ground out"). Grantee must either (1) locate all new floating structures in water too deep to permit grounding out or (2) install stoppers sufficient to maintain a distance of at least 1.5 feet (0.5 meters) between the bottom of the floats and the substrate.

(5) Tenant shall not construct new bulkheads or place hard bank armoring.

(6) Unless approved by State in writing, Tenant shall not cause or permit dredging on the Property. State will not approve dredging unless (1) required for flood control, maintenance of existing vessel traffic lanes, or maintenance of water intakes and (2) consistent with State's management plans, if any. Tenant shall maintain authorized dredge basins in a manner that prevents internal deeper pockets.

(7) Tenant shall not install skirting on any overwater structure.

(8) Tenant shall not conduct in-water Work during time periods prohibited for such work under WAC 220-110-271, Prohibited Work Times in Saltwater, as amended, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).

(9) Tenant shall install unobstructed grating over at least 50 percent of the surface area of all new floats, piers, fingers, docks, and gangways; grating material must have at least 60 percent unobstructed open space.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

(a) In the event of any known damage to or destruction of the Easement Property or any Improvements, Grantee shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction of the Easement Property or any Improvements without Grantee's written notice.

(b) Unless otherwise agreed in writing, Grantee shall promptly reconstruct, repair, or replace any Improvements in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Demolition, as nearly as possible to its condition immediately prior to the damage or destruction. Where damage to state-owned aquatic land or natural resources is attributable to the Permitted Use or related activities, Grantee shall promptly restore the lands or resources to the condition preceding the damage in accordance with Paragraph 7.3 unless otherwise agreed in writing.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Easement Property unless State provides written notice to Grantee of each specific claim waived.

12.3 Insurance Proceeds. Grantee's duty to reconstruct, repair, or replace any damage or destruction of the Easement Property or any Improvements on the Easement Property is not conditioned upon the availability of any insurance proceeds to Grantee from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph.10.2(g)(3).

SECTION 13 CONDEMNATION

In the event of condemnation, the Parties shall allocate the award between State and Grantee based upon the ratio of the fair market value of (1) Grantee's rights in the Easement Property and Grantee-Owned Improvements and (2) State's interest in the Easement Property; the reversionary interest in Grantee-Owned Improvements, if any; and State-Owned Improvements. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Easement Property or Improvements taken. If Grantee and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 REMEDIES AND TERMINATION

14.1 Breach.

(a) State may terminate this Easement upon Grantee's failure to cure a breach of its terms within sixty (60) days of State's written notice of breach.

(b) For nonmonetary breach not capable of cure within sixty (60) days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Grantee must submit a cure schedule within thirty (30) days of a notice of breach. State shall not terminate if State approves the schedule and Grantee works diligently and in good faith to execute the cure. State may terminate if Grantee fails to timely submit a schedule or fails to cure in accordance with an approved schedule.

(c) If breach arises from Grantee's failure to comply with restrictions on Permitted use under Paragraph 2.2, State may, without terminating this Easement, restore the natural resources or Property and charge Grantee restoration costs and/or charge Grantee damages. On demand by State, Grantee shall pay all costs and/or damages.

14.2 Termination by Nonuse. If Grantee does not use the Easement Property for a period of three (3) successive years, this Easement terminates without further action by State. Grantee's rights revert to State upon Termination by Nonuse.

14.3 Termination by Grantee. Grantee may terminate this Easement upon providing State with sixty (60) days written notice of intent to terminate. Grantee shall comply with Paragraph 3.3, End of Term.

14.4 Remedies Not Exclusive. The remedies specified under this Section 14 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Grantee's breach or threatened breach of any provision of this Easement.

SECTION 15 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Easement. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Shoreline District Aquatics
950 Farman Ave N
Enumclaw, WA 98022-9282

Grantee: SEATTLE DEPARTMENT OF PARKS AND RECREATION
100 Dexter Ave N
Seattle, WA 98109

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Easement number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

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SECTION 16 MISCELLANEOUS

16.1 Authority. Grantee and the person or persons executing this Easement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Easement, and that each and every person signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee shall provide evidence satisfactory to State confirming these representations.

16.2 Successors and Assigns. This Easement binds and inures to the benefit of the Parties, their successors, and assigns.

16.3 Headings. The headings used in this Easement are for convenience only and in no way define, limit, or extend the scope of this Easement or the intent of any provision.

16.4 Entire Agreement. This Easement, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Easement merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Easement Property.

16.5 Waiver.

(a) The waiver of any breach or default of any term, covenant, or condition of this Easement is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Easement. State's acceptance of payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.

(b) The renewal of the Easement, extension of the Easement, or the issuance of a new Easement to Grantee, does not waive State's ability to pursue any rights or remedies under the Easement.

16.6 Cumulative Remedies. The rights and remedies of State under this Easement are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

16.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Easement.

16.8 Language. The word "Grantee" as used in this Easement applies to one or more persons, as the case may be. The singular includes the plural, and the neuter includes the masculine and feminine. If there is more than one Grantee, their obligations are joint and several. The word "persons," whenever used, includes individuals, firms, associations, and corporations. The word "Parties" means State and Grantee in the collective. The word "Party" means either or both State and Grantee, depending on context.

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16.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Easement does not affect, impair, or invalidate any other provision of this Easement.

16.10 Applicable Law and Venue. This Easement is to be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Easement is in the Superior Court for Thurston County, Washington.

16.11 Recordation. At Grantee's expense and no later than thirty (30) days after receiving the fully-executed Easement, Grantee shall record this Easement in the county in which the Property is located. Grantee shall include the parcel number of the upland property used in conjunction with the Property, if any. Grantee shall provide State with recording information, including the date of recordation and file number.

16.12 Modification. No modification of this Easement is effective unless in writing and signed by the Parties. Oral representations or statements do not bind either Party.

16.13 Survival. Any obligations of Grantee not fully performed upon termination of this Easement do not cease, but continue as obligations of the Grantee until fully performed.

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16.14 Exhibits. All referenced exhibits are incorporated in this Easement unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

SEATTLE DEPARTMENT OF PARKS AND RECREATION

Dated: _____, 20__ _____

By:
Title:
Address:
Phone:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__ _____

By:
Title:
Address:

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Approved as to form this
16 day of June 2010
Janis Snoey, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF)
) ss
County of)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ (type of authority) of _____ (name of corporation) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

_____
(Signature)

_____
(Print Name)

Notary Public in and for the State of Washington, residing at

_____

My appointment expires

_____

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INDIVIDUAL ACKNOWLEDGMENT

STATE OF)
) ss
County of)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: _____

(Seal or stamp)

_____
(Signature)

_____
(Print Name)

Notary Public in and for the State of Washington, residing at

_____

My appointment expires

_____

DRAFT

Chip Nevins
DPR 6(f) DNR ORD ATT 2
August 16, 2013

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of)

I certify that I know or have satisfactory evidence that PETER GOLDMARK is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the PUBLIC LANDS COMMISSIONER of the Department of Natural Resources, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

_____
(Signature)

_____
(Print Name)

Notary Public in and for the State of Washington, residing at

_____

My appointment expires

_____

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EXHIBIT A

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EXHIBIT B

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities
The site is for park purposes. It contains a dirt and woodchip walking paths.

B. Proposed Facilities. Grantee proposes no new facilities

2. ADDITIONAL OBLIGATIONS

(a) Grantee shall replace existing treated wood, (decking, timbers, pilings, etc.) with non-toxic materials such as untreated wood, steel, concrete, or recycled plastic, or encased in a manner that prevents leaching of contaminants into surface water. Grantee may use non-creosote treated wood to replace above water structural framing. Replacement may occur under an ordinary maintenance or repair schedule, but all treated wood must be replaced by October 31, 2028.

(b) Grantee shall renovate or replace existing docks, rafts, floats, wharves and piers to provide 50 percent grated surface; grating material must have at least 60 percent functional open space. Replacement may occur under an ordinary maintenance or repair schedule, but replacement must be complete by October 31, 2028.

DRAFT

Chip Nevins
DPR 6(f) DNR ORD ATT 3
August 16, 2013

When recorded, return to:
Seattle Department of Parks and Recreation
100 Dexter Ave N
Seattle, WA 98109

WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

WATERWAY PERMIT

Permit No. 20-089909

Grantor: Washington State Department of Natural Resources
Grantee(s): Seattle Department of Parks and Recreation
Legal Description: Section NE 21, Township 25 North, Range 04 East, W.M.
Assessor's Property Tax Parcel or Account Number: Not Applicable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this Permit: Not Applicable

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting in its proprietary capacity through the Department of Natural Resources ("State"), and SEATTLE DEPARTMENT OF PARKS AND RECREATION, a government agency/entity ("Licensee").

BACKGROUND

Licensee desires to use the aquatic lands commonly known as Washington Park Arboretum, which is a waterway located in King County, Washington, from State, and State desires to authorize the Licensee's use of the property pursuant to the terms and conditions of this Permit and in accordance with Chapter 79.120 of the Revised Code of Washington (RCW). The intent of the Parties to create a license to use land, for a term of time, subject to any restrictions or reservations contained in this Agreement. State has authority to enter this Agreement under Chapter 43.12, Chapter 43.30 and Title 79 RCW.

THEREFORE, the Parties agree as follows:

SECTION 1 GRANT OF PERMISSION

1.1 Permission.

(a) Subject to the terms and conditions set forth below, State hereby grants Licensee a revocable, nonpossessory license to use the real property described in Exhibit A (the "Property"). In this agreement, the term "Permit" means this agreement and the rights granted. State may revoke this permission in accordance with Paragraph 14.4.

(b) This Permit is subject to all valid interests of third parties noted in the records of King County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.

(c) This Permit does not include a right to harvest, collect or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials.

(d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

1.2 Survey and Property Descriptions.

(a) Licensee prepared Exhibit A, which describes the Property. Licensee warrants that Exhibit A is a true and accurate description of the Permit boundaries and the improvements to be constructed or already existing in the Permit area. Licensee's obligation to provide a true and accurate description of the Property boundaries is a material term of this Permit.

(b) State's acceptance of Exhibit A does not constitute agreement that Licensee's property description accurately reflects the actual amount of land used by Licensee. State reserves the right to retroactively adjust fees if at any time during the term of the Permit State discovers a discrepancy between Licensee's property description and the area actually used by Licensee.

1.3 Inspection. State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Licensee's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property.

SECTION 2 USE OF PROPERTY

2.1 Permitted Use. Licensee shall use the Property for Park purposes, (the "Permitted Use"), and for no other purpose. This is a water-dependent use. Exhibit B describes the Permitted Use in detail. The Permitted Use is subject to additional obligations in Exhibit B.

2.2 Restrictions on Permitted Use and Operations. The following limitations apply to the Property and adjacent state-owned aquatic land. Licensee's compliance with the following does not limit Licensee's liability under any other provision of this Permit.

(a) Licensee shall not cause or authorize:
  (1) Damage to natural resources,
  (2) Waste, or
  (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.

(b) Licensee shall not construct new bulkheads or place hard bank armoring.

(c) Unless approved by State in writing, Licensee shall not cause or permit dredging on the Property. State will not approve dredging unless (1) required for flood control, maintenance of existing vessel traffic lanes, or maintenance of water intakes and (2) consistent with State's management plans, if any. Licensee shall maintain authorized dredge basins in a manner that prevents internal deeper pockets.

2.3 Conformance with Laws. Licensee shall, at all times, keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Licensee's use or occupancy of the Property.

2.4 Liens and Encumbrances. Unless expressly authorized by State in writing, Licensee shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Licensee's occupancy of the Property.

SECTION 3 TERM

3.1 Term Defined. The term of this Permit is five (5) years (the "Term"), beginning on the 1st day of November, 2013 (the "Commencement Date"), and ending on the 31st day of October, 2018 (the "Termination Date"), unless revoked or terminated sooner under the terms of this Permit.

3.2 Renewal of the Permit. This Permit does not provide a right of renewal. Licensee may apply for a new Permit, which State has discretion to grant. Licensee must apply for a new Permit at least one (1) year prior to Termination Date. State shall notify Licensee within ninety (90) days of its intent to approve or deny a new Permit.

3.3 End of Term.

(a) Upon the revocation, expiration, or termination of this Permit, Licensee shall remove Improvements in accordance with Section 7, Improvements, and surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

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(b) Definition of Reasonable Wear and Tear.

(1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse of the Property by Licensee or any other person on the premises with the permission of Licensee.

(2) Reasonable wear and tear does not include unauthorized deposit of material prohibited under Paragraph 2.2 and regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.

(c) If Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply.

(1) State shall provide Licensee a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Licensee to enter into a right-of-entry or other use authorization prior to the Licensee entering the Property if the Permit has terminated.

(2) If Licensee fails to remedy the condition of the Property in a timely manner, State may take steps reasonably necessary to remedy Licensee's failure. Upon demand by State, Licensee shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with State's remedy.

3.4 Remaining on the Property after the Termination Date.

(a) If Licensee remains on the Property after the Termination Date, the occupancy will not be an extension or renewal of the Permit. The occupancy will be a month-to-month occupancy, on terms identical to the terms of this Permit, which either Party may terminate on thirty (30) days' written notice.

(1) The monthly fee after the Termination Date will be the same fee that would be due if the Permit were still in effect and all adjustments in the fee were made in accordance with its terms.

(2) Payment of more than the monthly fee will not be construed to create a periodic occupancy longer than month-to-month. If Licensee pays more than the monthly fee and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Licensee ceases occupation of the Property.

(b) If State notifies Licensee to vacate the Property and Licensee fails to do so within the time set forth in the notice, Licensee will be a trespasser and shall owe the State all amounts due under RCW 79.02.300 or other applicable law.

3.5 Adjustment of Term Resulting from Licensee's Possession.

(a) If, for any reason whatsoever, State cannot allow use of the Property to Licensee on the Commencement Date, this Permit will not be void or voidable, nor will State be liable to Licensee for any loss or damage resulting from the delay. In

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such event, the date Licensee enters the Property will be the Commencement Date for all purposes, including the payment of fees.

(b) If Licensee enters the Property before the Commencement Date, the date of entry will be the Commencement Date for all purposes, including the payment of fees. If the Term commences earlier or later than the scheduled Commencement Date, the Termination Date adjusts accordingly.

SECTION 4 FEES

4.1 Fees. The Permitted Use does not require payment of rent pursuant to WAC 332-30-117 and RCW 79.105.230.

SECTION 5 OTHER EXPENSES

5.1 Utilities. Licensee shall pay all fees charged for utilities required or needed by the Permitted Use.

5.2 Taxes and Assessments. Licensee shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges, applicable or attributable to the Property, the improvements, or Licensee's use and enjoyment of the Property.

5.3 Right to Contest. If in good faith, Licensee may contest any tax or assessment at its sole cost and expense. At the request of State, Licensee shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

5.4 Proof of Payment. If required by State, Licensee shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Permit requires Licensee to pay.

5.5 Failure to Pay. If Licensee fails to pay amounts due under this Permit, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay Fee. Failure to pay fees is a default by the Licensee. State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

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6.2 Late Charge. If State does not receive full fee payment within ten (10) days of the date due, Licensee shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars ($50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.3 Interest Penalty for Past Due Fees and Other Sums Owed.

(a) Licensee shall pay interest on the past due fees at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.

(b) If State pays or advances any amounts for or on behalf of Licensee, Licensee shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Licensee of the payment or advance. This includes, but is not limited to, State's payment of taxes of any kind, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Permit, or other amounts not paid when due.

6.4 Referral to Collection Agency and Collection Agency Fees. If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Licensee shall pay collection agency fees in addition to the unpaid amount.

6.5 No Accord and Satisfaction. If Licensee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance of the fees or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

6.6 No Counterclaim, Setoff, or Abatement of Fees. Except as expressly set forth elsewhere in this Permit, Licensee shall pay fees and all other sums payable by Licensee without the requirement that State provide prior notice or demand. Licensee's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

(a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, structures and fixtures.

(b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property, or Improvements or (2) diminishing the value or utility of the Property, or Improvements.

(c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Licensee.

(d) "Licensee-Owned Improvements" are Improvements authorized by State and (1) made by Licensee or (2) acquired by Licensee from a previous occupant of the Property.

(e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Licensee that do not conform to plans submitted to and approved by the State.

(f) "Improvements Owned by Others" are Improvements made by Others with a right to occupy or use the Property or adjacent state-owned lands.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Property: No improvements are currently located on the Property.

7.3 Construction, Major Repair, Modification, and Demolition.

(a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, demolition and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair.

(b) All Work must conform to requirements under Paragraph 7.4. Paragraph 11.3, which applies to routine maintenance and minor repair, also applies to all Work under this Paragraph 7.3.

(c) Except in an emergency, Licensee shall not conduct Work without State's prior written consent, which State will not unreasonably withhold.

(1) In determining whether to consent state may consider, among other items, (i) whether proposed Work would change the Permitted Use, expand overwater structures, or expand non-water dependent uses; (ii) the value of the Improvements before and after the proposed Work; (iii) such other factors as may reasonably bear upon the suitability of the Improvements to provide the public benefits identified in RCW 79.105.030 in light of the proposed Work.

(2) If the proposed Work does not comply with Paragraphs 7.4 and 11.3 State may nonetheless consent to the Work in writing or deny its consent or condition its consent on changes to the Work or Permit reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.

(3) Except in an emergency, Licensee shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Licensee and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Licensee shall submit plans and specifications at least ninety (90) days before commencement of Work.

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(4) State waives the requirement for consent if State does not notify Licensee of its grant or denial of consent within sixty (60) days of submittal.

(d) Licensee shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Licensee shall provide State with plans and specifications or as-builts of emergency Work.

(e) Licensee shall not commence or authorize Work until Licensee has:

(1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Licensee shall maintain the performance and payment bond until Licensee pays in full the costs of the Work, including all laborers and material persons. In lieu of a performance and payment bond Tenant may provide documentation satisfactory to DNR that sufficient expenditure allowances for the Work have been (i) made in the Tenant's Capital Improvement Program and budget adopted by Tenant's City Council and (ii) allocated to the Work.

(2) Obtained all required permits.

(f) Before completing Work, Licensee shall remove all debris and restore the Property to an orderly and safe condition. If Work is intended for removal of Improvements at End of Term, Licensee shall restore the Property in accordance with Paragraph 3.3, End of Term.

(g) Upon completing work, Licensee shall promptly provide State with as-built plans and specifications.

(h) State shall not charge rent for authorized Improvements installed by Licensee during this Term of this Permit. State may charge rent for such Improvements when and if the Licensee or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5, unless at the time State and Licensee or its successor execute such subsequent use authorization then existing laws and regulations permit State to authorize the permitted use of such Improvements, as identified in the subsequent use authorization, without charging rent for them.

7.4 Standards for Work.

(a) Applicability of Standards for Work

(1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five year period following the Commencement Date [and to Proposed Facilities described in Exhibit B]. Work has commenced if State has approved plans and specifications.

(2) If Licensee undertakes Work five years or more after the Commencement Date, Licensee shall comply with State's then current standards for Work.

(3) At Licensee's option, Licensee may ascertain State's current standards for Work as follows:

(i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Permit, Licensee shall request

State to provide Licensee with then current standards for Work on State-owned Aquatic Lands.

(ii) Within thirty (30) days of receiving Licensee's request, State shall provide Licensee with current standards for Work, which will be effective for the purpose of State's approval of Licensee's proposed Work provided Licensee submits plans and specifications for State's approval within two (2) years of Licensee's request for standards. .

(iii) If State does not timely provide current standards upon Licensee's request, the standards under Paragraph 7.4(b) apply to Licensee's Work provided Licensee submits plans and specifications as required by Paragraph 7.3 within two (2) years of Licensee's request for standards.

(iv) If Licensee fails to (1) make a request for current standards or (2) timely submit plans and specifications to State after receiving current standards, Licensee shall make changes in plans or Work necessary to conform to current standards for Work upon State's demand.

(b) Standards for Work

(1) Licensee shall not install skirting on any overwater structure.

(2) Licensee shall not conduct in-water Work during time periods prohibited for such work under WAC 220-110-271, Prohibited Work Times in Saltwater, as amended, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).

(3) Licensee shall install unobstructed grating over at least 50 percent of the surface area of all new floats, piers, fingers, docks, and gangways; grating material must have at least 60 percent unobstructed open space.

7.5 Licensee-Owned Improvements at Termination of Permit.

(a) Disposition

(1) Licensee shall remove Licensee-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Permit unless State waives the requirement for removal.

(2) Licensee-Owned Improvements remaining on the Property on the expiration, termination or cancellation date become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.

(3) If Licensee-Owned Improvements remain on the Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Licensee shall pay State's costs of removal and disposal.

(b) Conditions Under Which State May Waive Removal of Licensee-Owned Improvements.

(1) State may waive removal of some or all Licensee-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Licensee renews the Permit or enters into a new Permit.

(2) If Licensee renews the Permit or enters into a new Permit, State may waive requirement to remove Licensee-Owned Improvements. State also may consent to Licensee's continued ownership of Licensee-Owned Improvements.

(3) If Licensee does not renew the Permit or enter into a new Permit, State may waive requirement to remove Licensee-Owned Improvements upon consideration of a timely request from Licensee, as follows:

(i) Licensee must notify State at least one (1) year or other before the Termination Date of its request to leave Licensee-Owned Improvements.

(ii) State, within ninety (90) days of receiving Licensee's notification, will notify Licensee whether State consents to some or all Licensee-Owned Improvements remaining. State has no obligation to grant consent.

(iii) State's failure to respond to Licensee's request to leave Improvements within ninety (90) days is a denial of the request.

(c) Licensee's Obligations if State Waives Removal.

(1) Licensee shall not remove Improvements if State waives the requirement for removal of some or all Licensee-Owned Improvements.

(2) Licensee shall maintain such Improvements in accordance with this Permit until the expiration, termination, or cancellation date. Licensee is liable to State for cost of repair if Licensee causes or allows damage to Improvements State has designated to remain.

7.6 Disposition of Unauthorized Improvements.

(a) Unauthorized Improvements belong to State, unless State elects otherwise.

(b) State may either:

(1) Consent to Licensee ownership of the Improvements, or

(2) Charge use and occupancy fee in accordance with RCW 79.105.200 for the Improvements from the time of installation or construction and

(i) Require Licensee to remove the Improvements in accordance with Paragraph 7.3, in which case Licensee shall pay use and occupancy fee for the Improvements until removal,

(ii) Consent to Improvements remaining and Licensee shall pay use and occupancy fee for the use of the Improvements, or

(iii) Remove Improvements and Licensee shall pay for the cost of removal and disposal, in which case Licensee shall pay use and occupancy fee for use of the Improvements until removal and disposal.

7.7 Disposition of Personal Property.

(a) Licensee retains ownership of Personal Property unless Licensee and State agree otherwise in writing.

(b) Licensee shall remove Personal Property from the Property by the Termination Date. Licensee is liable for damage to the Property and to any Improvements resulting from removal of Personal Property.

(c) State may sell or dispose of all Personal Property left on the Property after the Termination Date.

(1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Licensee to the State, and State shall pay the remainder, if any, to the Licensee.

(2) If State disposes of Personal Property, Licensee shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

(a) "Hazardous Substance" means any substance that is now regulated or in the future becomes regulated under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*; Washington's Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW ; Washington's Sediment Management Standards, WAC Chapter 173-204; the Washington Clean Water Act, RCW 90.48, and associated regulations; and the federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and associated regulations, including future amendments to those laws and regulations.

(b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).

(c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care established under MTCA, RCW 70.105D.040.

8.2 General Conditions.

(a) Licensee's obligations under this Section 8 extend to the area in, on, under, or above:

(1) The Property and

(2) Adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances may arise from Licensee's use of the Property.

(b) Standard of Care.

(1) Licensee shall exercise the utmost care with respect to Hazardous Substances.

(2) In relation to the Permitted Use, Licensee shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous

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Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law, including – but not limited to – RCW 70.105D.040.

8.3 Current Conditions and Duty to Investigate.

(a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property or adjacent state-owned lands.

(b) This Easement does not impose a duty on State to conduct investigations or supply information to Licensee about Hazardous Substances, provided, however, this Easement does not alter State's obligations to respond to requests for public documents under the Public Records Act, RCW 42.56. State will cooperate with Licensee's requests for public records and endeavor to provide the requested records promptly.

(c) Licensee is responsible for conducting sufficient inquiries and gathering sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property or on adjacent lands to allow Licensee to meet Licensee's obligations under this Easement.

8.4 Use of Hazardous Substances.

(a) Licensee, its contractors, agents, employees, guests, invitees, or affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.

(b) Licensee shall not undertake, or allow others to undertake by Licensee's permission, acquiescence, or failure to act, activities that:

(1) Result in a release or threatened release of Hazardous Substances, or

(2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Licensee's use of the Property.

(c) If use of Hazardous Substance related to the Permitted Use results in a violation of an applicable law Licensee shall submit to State any plans for remedying the violation and cleanup any contamination as required under Section 8.9.

8.5 Management of Contamination.

(a) Licensee, its, contractors, agents, employees, guests, invitees, or affiliates shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Property.

(b) Licensee shall take reasonable steps to avoid or reduce: human or environmental exposure to contaminated sediments and mechanical or chemical disturbance of on-site habitat mitigation. For purposes of this Subsection 8.5(b) reasonable steps may include access restrictions, fish consumption advisories, and use restrictions and advisories for water bodies.

(c) Licensee its, contractors, agents, employees, guests, invitees, or affiliates shall not interfere with access by:

(1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and

(2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Licensee may negotiate an access agreement with such parties, but Licensee may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

(a) Licensee shall immediately notify State if Licensee becomes aware of any of the following:

(1) A release or threatened release of Hazardous Substances that Licensee reports or is required to report to the Washington Department of Ecology;

(2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence or release of any Hazardous Substance;

(3) Any lien or regulatory action arising from the foregoing;

(4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;

(5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.

(b) Licensee's duty to report under Paragraph 8.6(a) extends to the Property, adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances arises from the Licensee's use of the Property, and any other property used by Licensee in conjunction with Licensee's use of the Property where a release or the presence of Hazardous Substances on the other property would affect the Property.

(c) Licensee shall provide State with copies of all documents concerning environmental issues associated with the Property, and submitted by Licensee to any federal, state or local authorities. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits (NPDES); Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

8.7 Indemnification.

(a) "Liabilities" as used in this Subsection 8.7 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments that are asserted by third parties against Grantor or that are incurred by Grantor in order to comply with applicable laws and regulations.

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(b) Licensee shall fully indemnify, defend, and hold State harmless from and against any Liabilities that arise out of, or relate to:

(1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Licensee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees occurring anytime Licensee uses or has used the Property;

(2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination resulting from any act or omission of Licensee, its contractors, agents, employees, guests, invitees, or affiliates occurring anytime Licensee uses or has used the Property.

(c) Licensee shall fully indemnify, defend, and hold State harmless for any Liabilities that arise out of or relate to Licensee's breach of obligations under Subsection 8.5.

(d) Third Parties.

(1) Licensee has no duty to indemnify State for acts or omissions of third parties unless Licensee fails to exercise the standard of care required by Paragraph 8.2(b)(2). Licensee's third-party indemnification duty arises under the conditions described in Subparagraph 8.7(d)(2).

(2) If an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Licensee failed to exercise care as described in Subparagraph 8.7(d)(1), Licensee shall fully indemnify, defend, and hold State harmless from and against any liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes any liabilities arising before the finding or holding in the proceeding.

(e) Licensee is obligated to indemnify under the Subsection 8.7 regardless of whether a permit or license authorizes the discharge or release of Hazardous Substances.

(f) Licensee's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Licensee must fulfill its indemnity obligations and nothing in this Easement may be considered as insuring that Licensee will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Licensee's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

8.8 Reservation of Rights.

(a) For any environmental liabilities not covered by the indemnification provisions of Subsection 8.7 or the cleanup provisions of Section 8.9, the Parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances that either Party may have against the other under law.

(b) This Easement affects no right, claim, immunity, or defense either Party may have against third parties, and the Parties expressly reserve all such rights, claims, immunities, and defenses.

(c) The provisions under this Section 8 do not benefit, or create rights for, third parties.

(d) The allocations of risks, liabilities, and responsibilities set forth above do not release either Party from, or affect the liability of either Party for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

8.9 Cleanup.

(a) If Licensee's Permitted Use, or Licensee's breach of its obligations under this Easement, results in contamination of the Property with Hazardous Substances, Licensee shall, at Licensee's sole expense, promptly take all actions necessary to report, investigate and remediate the Hazardous Substances in accordance with applicable law. Remedial actions may include, without limitation, treatment, removal, and containment.

(b) Licensee's obligation to undertake a cleanup under Section 8 is limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards under Environmental Laws.

(c) Licensee shall cooperate with the Department of Natural Resources in development of plans for remedial actions and Licensee shall not proceed with remedial actions without Department of Natural Resources approval of final plans, which shall not be unreasonably withheld, unless Licensee is ordered to proceed by a court or a regulatory agency with jurisdiction. Licensee's completion of remedial actions is not an implied release from or waiver of any obligation for Hazardous Substances under this Easement.

8.10 Sampling by State, Reimbursement, and Split Samples.

(a) Licensee shall conduct sediment sampling, if required, in accordance with Exhibit B.

(b) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.

(c) If such Tests, along with any other information, demonstrate the existence, release, or threatened release of Hazardous Substances arising out of Licensee's

Permitted Use or any violation of Licensee's obligations under this Lease, Licensee shall promptly reimburse State for all costs associated with such Tests.

(d) State shall not seek reimbursement for any Tests under this Subsection 8.10 unless State provides Licensee written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, except when such Tests are in response to an emergency. Licensee shall reimburse State for Tests

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performed in response to an emergency if State has provided such notice as is reasonably practical and Licensee would be required to reimburse State under section (c).

(e) Licensee is entitled to observe State's collection of samples and obtain split samples of any Test samples obtained by State, but only if Licensee provides State with written notice requesting such samples within twenty (20) calendar days of the date of Licensee's receipt of notice of State's intent to conduct any non-emergency Tests. Licensee solely shall bear the additional cost, if any, of split samples. Licensee shall reimburse State for any additional costs caused by split sampling within thirty (30) calendar days after State sends Licensee a bill with documentation for such costs.

(f) Within sixty (60) calendar days of a written request (unless otherwise required pursuant to Paragraph 8.6(c), above), either Party to this Easement shall provide the other Party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Property performed by or on behalf of State or Licensee. There is no obligation to provide any analytical summaries or the work product of experts.

SECTION 9 ASSIGNMENT

9.1 State Consent Required. Licensee shall not assign, convey, or transfer any right granted under this Agreement without State's prior written consent, which State shall not unreasonably condition or withhold.

(a) Licensee shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.

(b) State reserves the right to condition its consent upon:

(1) changes in the terms and conditions of this Agreement, including, but not limited to, the Annual Fees; and/or

(2) the agreement of Licensee or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Licensee or the transferee.

(c) Each permitted transferee shall assume all obligations under this Permit, including the payment of fees. No assignment, sublicense, or transfer shall release, discharge, or otherwise affect the liability of Licensee.

(d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Licensee for the violation of any term of this Permit.

9.2 Payments Following Assignment. The acceptance by State of the payment of fees following an assignment or other transfer does not constitute consent to any assignment or transfer.

9.3 Terms of Sublicenses.

(a) Licensee shall submit the terms of all sublicenses to State for approval.

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(b) Licensee shall incorporate the following requirements in all sublicenses:
  (1) The sublicense must be consistent with and subject to all the terms and conditions of this Permit;
  (2) The sublicense must provide that this Permit controls if the terms of the sublicense conflict with the terms of this Permit;
  (3) The term of the sublicense (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
  (4) The sublicense must terminate if this Permit terminates for any reason;
  (5) The Sublicensee must receive and acknowledge receipt of a copy of this Permit;
  (6) The sublicense must prohibit the prepayment to Licensee by the Sublicensee of more than the annual fees;
  (7) The sublicense must identify the fee amount Sublicensee is to pay to Licensee;
  (8) The sublicense must provide that there is no privity of contract between the Sublicensee and State;
  (9) The sublicense must require removal of the Sublicensee's Improvements and trade fixtures upon termination of the sublicense;
  (10) The Sublicensee's permitted use must be within the scope of the Permitted Use; and
  (11) The sublicense must require the Sublicensee to meet all obligations of Licensee under Section 10, Indemnification, Financial Security, and Insurance.

9.4 Short-Term Sublicenses of Moorage Slips. Short-term sublicensing of moorage slips for a term of less than one year does not require State's written consent or approval pursuant to Paragraphs 9.1 or 9.3. Licensee shall conform moorage sublicense agreements to the sublicense requirements in Paragraph 9.3.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

(a) Licensee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from Claims arising out of the use, occupation, or control of the Property by Licensee, its Sublicensee, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.

(b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to,

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physical injury to the Property and damages resulting from loss of use of the Property.

(c) State shall not require Licensee to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.

(d) Licensee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.

(e) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Licensee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

(f) Licensee's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Licensee must fulfill its indemnity obligations and nothing in this Permit may be considered as insuring that Licensee will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Tenant's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

10.2 Insurance Terms.

(a) Insurance Required.

(1) Licensee certifies that it is self-insured for all the liability exposures, including but not limited to employers' liability and business auto liability, and its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Licensee shall provide to State evidence of its status as a self-insured entity. Upon request by State, Licensee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Licensee shall provide State with at least thirty (30) days' written notice prior to any material changes to Licensee's self-insured funding mechanism.

(2) All self-insurance provided in compliance with this Permit must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

(b) Waiver.

(1) Licensee waives all rights against State for recovery of damages to the extent self-insurance maintained pursuant to this Permit covers these damages.

(2) Except as prohibited by law, Licensee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by self-insurance maintained pursuant to this Permit.

(c) Proof of Insurance.

(1) Licensee shall provide State with a certification of self-insurance executed by a duly authorized representative of Licensee, showing compliance with insurance requirements specified in this Permit.
(2) The certification of self-insurance must reference the Permit number.
(3) Receipt of such certification of self-insurance or policies by State does not constitute approval by State of the terms of such self-insurance or policies.
(d) Licensee must provide State no less than 30 days notice if Licensee's self-insurance program is cancelled or materially reduced.

(e) Adjustments in Insurance Coverage.
(1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
(2) Licensee shall provide a certification that meets the requirements of Section 10.2(c)(1) and demonstrates coverage in compliance with the Lease within thirty (30) days after State requires changes in the limits of liability.

(f) If Licensee fails to provide the certification described above within fifteen (15) days after Licensee receives a notice to comply from State, State may either:
(1) Deem the failure an Event of Default under Section 14, or
(2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Licensee shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Licensee's repayment.

(g) General Terms.
(1) State does not represent that coverage and limits required under this Permit are adequate to protect Licensee.
(2) Coverage and limits do not limit Licensee's liability for indemnification and reimbursements granted to State under this Permit.
(3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Permit, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Licensee.

10.3 Insurance Types and Limits.

(a) General Liability Insurance.
(1) Licensee shall maintain self-insurance with a limit of not less than Two Million Dollars ($2,000,000) per each occurrence and an aggregate limit of not less than twice the limit established for each occurrence.

(b) Workers' Compensation.
(1) State of Washington Workers' Compensation.
(i) Licensee shall comply with all State of Washington workers' compensation statutes and regulations. Licensee shall provide workers' compensation coverage for all employees of Licensee. Coverage must include bodily injury (including death) by accident

or disease, which arises out of or in connection with Licensee's use, occupation, and control of the Property.

(ii) If Licensee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Licensee shall indemnify State. Indemnity shall include all fines; payment of benefits to Licensee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

(2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Licensee to provide insurance coverage in some circumstances. Licensee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Licensee is responsible for all civil and criminal liability arising from failure to maintain such coverage.

(c) Employers' Liability Insurance. Licensee shall maintain self-insurance that is equivalent to employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than Two Million Dollars ($2,000,000) each incident for bodily injury by accident or Two Million Dollars ($2,000,000) each employee for bodily injury by disease.

(d) Property Insurance.

(1) Licensee shall maintain self-insurance that is equivalent to property insurance covering all real property and fixtures, equipment, improvements and betterments (regardless of whether owned by Licensee or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as an insured and a loss payee.

(2) Licensee shall maintain self-insurance that is equivalent to boiler and machinery insurance required by contract documents or by law, covering all real property and fixtures, equipment, improvements and betterments (regardless of whether owned by Licensee or State) from loss or damage caused by the explosion of boilers, fired or unfired vessels, electric or steam generators, or pipes.

(3) In the event of any loss, damage, or casualty which is covered by one or more of the types of insurance described above, the Parties to this Permit shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Permit. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

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(4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:

(i) Repair and restore damaged building(s) and/or Improvements to their former condition, or

(ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.

(e) Builder's Risk Insurance.

(1) Licensee shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Licensee, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3)).

(2) Insurance described above must cover or include the following:

(i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;

(ii) The entire work on the Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;

(iii) Portions of the work located away from the Property but intended for use at the Property, and portions of the work in transit;

(iv) Scaffolding, falsework, and temporary buildings located on the Property; and

(v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.

(3) Licensee or Licensee'(s) contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.

(4) Licensee or Licensee'(s) contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Licensee, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3).

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10.4 Financial Security.

(a) At its own expense, Licensee shall procure and maintain during the Term of this Permit a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Licensee shall provide Security in an amount equal to Zero Dollars ($0), which is consistent with RCW 79.105.330, and secures Licensee's performance of its obligations under this Permit, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Licensee's failure to maintain the Security in the required amount during the Term constitutes a breach of this Permit.

(b) All Security must be in a form acceptable to the State.

(1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Licensee may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.

(2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*

(3) Savings account assignments, if approved by State, must allow State to draw funds at will.

(c) Adjustment in Amount of Security.

(1) State may require an adjustment in the Security amount:

(i) At the same time as revaluation of the Annual Fees,

(ii) As a condition of approval of assignment or sublicense of this Agreement,

(iii) Upon a material change in the condition or disposition of any Improvements, or

(iv) Upon a change in the Permitted Use.

(2) Licensee shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.

(d) Upon any default by Licensee in its obligations under this Permit, State may collect on the Security to offset the liability of Licensee to State. Collection on the Security does not (1) relieve Licensee of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Permit because of the default.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

11.1 State's Repairs. This Permit does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Licensee's Repairs and Maintenance

(a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.

(b) At Licensee's own expense, Licensee shall keep and maintain the Property and all Improvements in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.

(c) At Licensee's own expense, Licensee shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that any public authority may require. If a public authority requires work beyond the scope of routine maintenance and repair, Licensee shall comply with Section 7 of this Permit.

11.3 Limitations. The following limitations apply whenever Licensee conducts maintenance, repair or replacement.

(a) Licensee shall not use or install treated wood at any location above or below water.

(b) Licensee shall not use or install tires (for example, floatation or fenders) at any location above or below water.

(c) Licensee shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of flotation material into the water.

(d) Licensee shall not allow new floating structures to come in contact with underlying submerged lands ("ground out"). Licensee must either (1) locate all new floating structures in water too deep to permit grounding out or (2) install stoppers sufficient to maintain a distance of at least 1.5 feet (0.5 meters) between the bottom of the floats and the substrate.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

(a) In the event of damage to or destruction of the Property or Improvements, Licensee shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction without Licensee's written notice.

(b) Unless otherwise agreed in writing, Licensee shall promptly reconstruct, repair, or replace the Property and any Improvements as nearly as possible to its condition immediately prior to the damage or destruction in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Demolition and Licensee's additional obligations in Exhibit B, if any.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Property unless State provides written notice to Licensee of each specific claim waived.

12.3 Insurance Proceeds. Licensee's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Licensee from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

12.4 Fees in the Event of Damage or Destruction. Unless the Parties agree to terminate this Permit, there is no abatement or reduction in fees during such reconstruction, repair, and replacement.

12.5 Default at the Time of Damage or Destruction. If Licensee is in default under the terms of this Permit at the time damage or destruction occurs, State may elect to terminate the Permit and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

In the event of condemnation, the Parties shall allocate the award between State and Licensee based upon the ratio of the fair market value of (1) Licensee's right to use the Property and Licensee-Owned Improvements and (2) State's interest in the Property; the reversionary interest in Licensee-Owned Improvements, if any; and State-Owned Improvements. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Property or Improvements taken. If Licensee and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT, REMEDIES, AND TERMINATION

14.1 Default Defined. Licensee is in default of this Permit on the occurrence of any of the following:

(a) Failure to pay Annual Fee or other expenses when due;
(b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
(c) Failure to comply with any other provision of this Permit;
(d) Commencement of bankruptcy proceedings by or against Licensee or the appointment of a trustee or receiver of Licensee's property.

14.2 Licensee's Right to Cure.

(a) A default becomes an "Event of Default" if Licensee fails to cure the default within the applicable cure period following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.
(b) Unless expressly provided elsewhere in this Permit, the cure period is ten (10) days for failure to pay fees or other monetary defaults; for other defaults, the cure

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period is thirty (30) days. State may extend the cure period for nonmonetary defaults if the default is not reasonably capable of cure within sixty (60) days.

14.3 Remedies.

(a) Upon an Event of Default, State may revoke or cancel this Permit. State shall provide Licensee sixty (60) days notice of cancellation.

(b) If the Event of Default (1) arises from Licensee's failure to comply with restrictions on Permitted Use and operations under Paragraph 2.2 or (2) results in damage to natural resources or the Property, State may enter the Property without terminating this Permit to (1) restore the natural resources or Property and charge Licensee restoration costs and/or (2) charge Licensee for damages. On demand by State, Licensee shall pay all costs and/or damages.

(c) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Permit or cause a forfeiture of fees or other charges Licensee is obligated to pay during the balance of the Term, unless (1) State gives Licensee written notice of termination or (2) a legal proceeding decrees termination.

(d) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Licensee's breach or threatened breach of any provision of this Permit.

14.4 Termination without Default

(a) State may revoke or cancel this Permit without cause upon at least ninety (90) days notice if State determines cancellation is necessary and in the best interests of State or a court of competent jurisdiction determines that Licensee's occupation of the area is contrary to law.

(b) If State cancels Permit without default, Licensee is entitled to refund of fee paid for any period beyond the Termination Date.

(c) If the State revokes or cancels the Permit, the date of revocation or cancellation is the Termination Date.

SECTION 15 ENTRY BY STATE

State retains full possessory rights, including the right of access to the Property for all purposes. State will exercise its right of access in a manner that will not unreasonably interfere with Licensee's Permitted Use of the Property. Licensee grants State permission to cross Licensee's upland and aquatic land property to access the Property.

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SECTION 16 DISCLAIMER

16.1 No Guaranty or Warranty.

(a) State believes that this Permit is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Licensee's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.

(b) State disclaims and Licensee releases State from any claim against State for any interference by others. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.

(c) Licensee is responsible for determining the extent of Licensee's right to possession and for defending Licensee's occupancy of the Property.

16.2 Eviction by Third-Party. If a third-party evicts Licensee, this Permit terminates as of the date of the eviction. In the event of a partial eviction, Licensee's payment obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Permit shall remain in full force and effect in all other respects.

SECTION 17 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Permit. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Shoreline District Aquatics
950 Farman Ave N
Enumclaw, WA 98022-9282

Licensee: CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION
100 Dexter Ave N
Seattle, WA 98109

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Permit number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

SECTION 18 MISCELLANEOUS

18.1 Authority. Licensee and the person or persons executing this Permit on behalf of Licensee represent that Licensee is qualified to do business in the State of Washington, that Licensee has full right and authority to enter into this Permit, and that each and every person signing on behalf of Licensee is authorized to do so. Upon State's request, Licensee shall provide evidence satisfactory to State confirming these representations.

18.2 Successors and Assigns. This Permit binds and inures to the benefit of the Parties, their successors, and assigns.

18.3 Headings. The headings used in this Permit are for convenience only and in no way define, limit, or extend the scope of this Permit or the intent of any provision.

18.4 Entire Agreement. This Permit, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Permit merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

18.5 Waiver.

(a) The waiver of any breach or default of any term, covenant, or condition of this Permit is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Permit. State's acceptance of a payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.

(b) The renewal of the Permit, extension of the Permit, or the issuance of a new Permit to Licensee, does not waive State's ability to pursue any rights or remedies under the Permit.

18.6 Cumulative Remedies. The rights and remedies under this Permit are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Permit.

18.8 Language. The word "Licensee" as used in this Permit applies to one or more persons and regardless of gender, as the case may be. If there is more than one Licensee, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Licensee in the collective. The word "Party" means either or both State and Licensee, depending on the context.

18.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Permit does not affect, impair, or invalidate any other provision of this Permit.

DRAFT

18.10 Applicable Law and Venue. This Permit is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Permit is in the Superior Court for Thurston County, Washington.

18.11 Statutory Reference. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded.

18.12 Recordation. At Licensee's expense and no later than thirty (30) days after receiving the fully-effective Permit, Licensee shall record this Permit in the county in which the Property is located. Licensee shall include the parcel number of the upland property used in conjunction with the Property, if any. Licensee shall provide State with recording information, including the date of recordation and file number.

18.13 Modification. No modification of this Permit is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

18.14 Survival. Any obligations of Licensee not fully performed upon termination of this Permit do not cease, but continue as obligations of the Licensee until fully performed.

DRAFT

18.15 Exhibits. All referenced exhibits are incorporated in the Permit unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION

Dated: _____, 20__

_____
By:
Title:
Address:
Phone:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__

_____
By:
Title:
Address:

DRAFT

Approved as to form
This 2 day of July, 2013
Terence Pruit, Assistant Attorney General

EXHIBIT A

DRAFT

PLAN OF OPERATIONS
EXHIBIT B

1. **DESCRIPTION OF PERMITTED USE**
   - A. **Existing Facilities.** The Property contains open water with no improvements.
   - B. **Proposed Facilities.** Licensee proposes no new facilities.

2. **ADDITIONAL OBLIGATIONS**

   None

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Form revised: December 12, 2012

FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Terry Dunning, 684-4860	Jeff Muhm, 684 8049

Legislation Title: AN ORDINANCE relating to the SR 520, I-5 to Medina: Bridge Replacement and HOV Project; authorizing the Superintendent of Parks and Recreation to execute and accept from the State of Washington, Department of Natural Resources, on behalf of the City of Seattle, an Aquatic Lands Easement, an Aquatic Lands Lease and a Waterway Use Agreement at the Washington Park Arboretum.

Summary and background of the Legislation: This legislation authorizes the Superintendent of Parks and Recreation to enter into three agreements related to the Washington State Department of Natural Resources Lands within the 6(f) boundary of the SR 520, I-5 to Medina: Bridge Replacement and HOV Project.

The route for the redevelopment of SR 520 from Medina to I-5 requires converting portions of the Arboretum Waterfront Trail and the Lake Washington Ship Canal Trail owned by the City and University of Washington (UW) from park property to highway use. The trail properties were originally purchased and developed with funds from the federal Land and Water Conservation Fund (LWCF); the City and UW were joint LWCF grant recipients for the trail projects. Section 6(f) of the LWCF Act requires property converted from park to non-park use be replaced with like property. The replacement property must have similar recreational value as the property taken out of park use and must be developed with park improvements consistent with the taken property, including, in this case, water access to the ship canal. Companion legislation deals with the conversion of a portion of the 6(f) properties and the replacement property.

This legislation refers to the remainder of the 6(f) project area. Two grants were awarded for the Ship Canal Waterside Trail and the Arboretum Waterfront Trail; in 1966 for construction of a boardwalk and water access facilities along Lake Washington in the Arboretum and East Montlake Park (the Arboretum Waterfront Trail) and in 1985 for reconstruction of the boardwalk segment of the Arboretum Waterfront Trail and installation of interpretive signs, along with construction of a new trail (the Ship Canal Waterside Trail) from the Arboretum Waterfront Trail through East Montlake Park to the Montlake Bridge. The total extent of park improvements developed with federal funds is referred to as the 6(f) project area and is depicted in Attachment A. There is a federal requirement that all property within the 6(f) project area be under the control of the sponsor for future management purposes. The three agreements with Washington State Department of Natural Resources give the City control over the State Aquatic Lands managed by DNR within the project area.

The following agreements, along with a brief description of each, are being authorized by this proposed legislation:

Aquatic Lands Easement: This agreement gives the City control over, upon, and under the real property at Washington Park Arboretum for Park purposes. The agreement allows the City to use the property as a public park at no cost. Improvements include dirt and woodchip walking paths. The agreement also obligates the City to replace all treated wood on the bridges, paths and observation deck and renovate or replace existing docks, rafts, floats, wharves and piers by October 31, 2028.

Aquatic Lands Lease: This agreement gives the City control of the aquatic lands within the Washington Park Arboretum, which is a harbor area located in King County, Washington, for Park purposes. The agreement allows the City to use the property as a public park and natural area at no cost. Improvements include two bridges with concrete surface, multiple walking paths with woodchip surface, a raised wooden observation deck, and an overwater path with decking surface and support pilings. The agreement also obligates the City to replace all treated wood on the bridges, patch and observation deck and renovate or replace existing docks, rafts, floats, wharves and piers by October 31, 2028.

Waterway Permit: This agreement allows the City to use the aquatic lands commonly known as Washington Park Arboretum, which is a waterway located in King County, Washington, from State for Park purposes at no cost. The Property contains open water with no improvements.

____ **This legislation creates, funds, or anticipates a new CIP Project.**

__X__ **This legislation does not have any financial implications.**

_____ **This legislation has financial implications.**

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No

b) **What is the financial cost of not implementing the legislation?**
The DNR agreements are a Federal requirement of the Land and Water Conservation Fund grants already received. If the City does not enter into these agreements we would be out of compliance with an unknown financial obligation to the City.

c) **Does this legislation affect any departments besides the originating department?**
No

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** There are no current alternatives.

e) **Is a public hearing required for this legislation?**
No

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No

g) **Does this legislation affect a piece of property?**
Yes; a map is included.

h) **Other Issues:**
None

List attachments to the fiscal note below:

City of Seattle
Office of the Mayor

September 10, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached Council Bill authorizing several agreements with the Washington State Department of Natural Resources (WADNR) related to the State's property in the Washington Park Arboretum.

These agreements are necessary for the City to satisfy its obligations to the Land and Water Conservation program's Section 6(f) requirements. The City is obligated to meet these requirements because it accepted LWCF grants on two occasions for the development of the Arboretum Lakeside Trail. The grant agreement requires that grantees control all the property within the project area. In this case, some of the property within the 6(f) project area is owned by WADNR. These agreements give control of these lands to the City of Seattle.

The discussion and work associated with this project has been ongoing for several years. These agreements and their implementation will satisfy our federal obligations related to the Land and Water Conservation program's Section 6(f) requirements. Should you have any questions, please contact Terry Dunning at 684-4860.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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Seattle, WA 98124-4749

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