CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 118065

AN ORDINANCE relating to the Department of Parks and Recreation ("DPR"); authorizing the Superintendent to enter into a lease agreement with Cascade Bicycle Club to occupy and use a portion of Building 11 at Warren G. Magnuson Park.

WHEREAS, Cascade Bicycle Club has leased space at Warren G. Magnuson Park ("Magnuson Park") since 1999; and

WHEREAS, Cascade Bicycle Club currently leases space at Magnuson Park under a lease with the City which expired December 31, 2013 and is currently being extended on a month to month basis; and

WHEREAS, it is in the best interest of both DPR and Cascade Bicycle Club to enter into a long-term agreement to headquarter the Cascade Bicycle Club program in Magnuson Park in Building 11; 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 authorized to execute for and on behalf of the City a ten-year lease agreement with Cascade Bicycle Club to complete the necessary upgrades and occupy a section of Building 11 at Warren G. Magnuson Park, in the form of a Lease between the City of Seattle Department of Parks and Recreation and Cascade Bicycle Club which is attached to this ordinance as Attachment 1. The Superintendent is authorized to make such minor deletions and revisions to the Agreement as the Superintendent deems to be in the best interest of the City, consistent with the purposes of this ordinance.

Section 2. The Superintendent is authorized to extend the term of the Lease for up to four successive individual terms of five years each on the terms and conditions described in the Lease.

Section 3. 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 _____, 2014, and signed by me in open session in authentication of its passage this _____ day of _____, 2014.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2014.

_____

Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2014.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Magnuson Park Building 11 Lease between the City of Seattle Department of Parks and Recreation and Cascade Bicycle Club

MAGNUSON PARK BUILDING 11 LEASE

CASCADE BICYCLE CLUB

THIS LEASE ("Lease") is entered into this ____ day of _____, 2014, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("Parks", also referred to as "DPR") and the Superintendent thereof ("Superintendent"), and **CASCADE BICYCLE CLUB** ("Lessee") a not for profit corporation organized under the laws of the State of Washington.

RECITALS

WHEREAS, Cascade Bicycle Club has leased space at Warren G. Magnuson Park ("Magnuson Park") since 1999; and

WHEREAS, Cascade Bicycle Club leases space at Magnuson Park under a lease with the City which expired on December 31, 2013 and is now being extended on a month-to-month basis (the "pre-existing lease"); and

WHEREAS, it is in the best interest of both DPR and Cascade Bicycle Club to enter into a long-term agreement to headquarter the Cascade Bicycle Club program in Magnuson Park and develop a Cascade Center for Cycling;

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions and performances described herein, the parties hereby agree as follows:

AGREEMENT

IN CONSIDERATION of the mutual covenants contained herein, City and Lessee covenant and agree as follows:

1. **Summary Lease Data; Exhibits**. The following terms shall have the following meanings, except as otherwise specifically modified in this Lease:

1.1 Building. Building 11 at Warren G. Magnuson Park located at 7777 Sand Point Way NE, Seattle, King County, Washington 98115 situated on a portion of the real property legally described on Exhibit A.

1.2 Premises. A space agreed to comprise 9,050 square feet located on the first floor of the Building and as further described and depicted on the floor plan attached as Exhibit B.

1.3 Commencement Date; Rent Commencement Date. The Commencement Date refers the date when this Lease is last signed by an authorized representative of both parties

following an authorizing ordinance by Seattle City Council. The Rent Commencement Date is November 15, 2014.

1.4 Expiration Date. November 30, 2024 unless the Term of this Lease is extended pursuant to Section 3.2.

1.5 Rent and Additional Charges.

1.5.1 Rent: $15 per square foot of the Premises per year based on 9,050 rentable square feet (excluding the outbuilding), as more particularly described in Section 4.

Additional Charges: Whether or not so designated, all other sums due from Lessee under this Lease shall constitute Additional Charges, payable when specified in this Lease.

1.6 Security Deposit. None.

1.7 Notice Addresses.

To City: The City of Seattle
Department of Parks and Recreation
Magnuson Park
6310 NE 74th Street #109E
Seattle, WA 98109
Attention: Director

To Lessee: Cascade Bicycle Club
7400 Sand Point Way NE Suite 101S
Seattle, WA. 98115
Attention: Executive Director

1.8 Exhibits. The following exhibits are made a part of this Lease:

Exhibit A – Legal Description
Exhibit B – Lease Space
Exhibit C – Cascade Bicycle Club - Annual Public Benefit Plan to the City of Seattle
Exhibit D – Capital Improvement Categories

2. **Premises**.

2.1 Grant. City hereby leases to Lessee and Lessee hereby leases from City those certain Premises described in Section 1.

2.2 Condition. On the Commencement Date, City leases the Premises and Lessee accepts the Premises in its "as is" condition. City agrees to provide hazard material surveys completed to date. City does not warrant the accuracies of the surveys.

2.4 Parking. No parking rights are associated with this Agreement. Parking shall be available on a first come/first served, unreserved basis. Access to such public parking by Lessee and its employees and customers shall be governed by Park rules as the Superintendent may amend them from time to time.

2.5 Permitted Use. Lessee shall use the Premises for classrooms, meeting rooms, storage and administrative offices related to the general operations of Lessee as a nonprofit organization dedicated to promoting the use of bicycles through advocacy, education and bicycle focused events and activities (the "Permitted Use"). Additionally, Lessee's "Permitted Use" includes subleasing in compliance with Section 16.2. Lessee shall not use the Premises for any other purpose or make any use of the Premises that is inconsistent with the Permitted Use without the Superintendent's prior written consent.

2.6 Required Use. City's willingness to enter into this Lease is conditioned, in part, on Lessee's commitment to continue public benefits through bicycle-related public programming at Magnuson Park (the "Public Benefits"). Each year during the Term, Lessee shall provide a level of programming and Public Benefits that is consistent with those described in the Cascade Bicycle Club Annual Public Benefit Plan attached as Exhibit C (the "Public Benefits Plan"). On or before January 31, of each year during the Term, Lessee shall provide a report supported by documentation that, to the Superintendent's reasonable satisfaction, demonstrates that Lessee provided the Public Benefits required for the preceding year, as well as proposed updates and changes, if any, to the Public Benefit Plan for the current year. City shall be deemed to have approved the Public Benefits Plan and report and any modifications unless the Superintendent delivers written objections to the report and Public Benefit Plan within sixty (60) days. If the Superintendent delivers written objections within the sixty (60) day period, the Superintendent shall also specify subsequent actions to be taken by Lessee that will satisfy the Superintendent's concerns. Lessee's failure to provide the required Public Benefits will be a default under Section 20.

2.7 Common Areas. During the Term, Lessee and its licensees, invitees and customers shall have the non-exclusive right to use the lobbies, stairs, corridors, restrooms and other public areas of the Building (the "Common Areas") and public areas (indoors and outdoors) of Magnuson Park in common with City, the general public, and other Building occupants and their respective licensees, invitees, customers and employees. City shall at all

times have exclusive control and management of the Common Areas and Magnuson Park and no diminution thereof shall be deemed a constructive or actual eviction.

2.8 Special Events. Lessee shall not utilize the public areas of Magnuson Park for special events unless Lessee has obtained a Special Events Permit from DPR. In addition, recognizing that Magnuson Park has limited capacity to handle multiple events with large attendance, if Lessee promotes any event that it reasonably anticipates will draw more than fifty (50) people beyond its normal use and occupancy at one time, Lessee shall provide DPR with no less than thirty (30) days advance written notice. If the City reasonably determines that the event would conflict with other high-capacity events that have already been scheduled to take place at Magnuson Park at the same time, the City shall notify the Lessee within five (5) business days after receipt of the notice. Upon receipt of such notice the Lessee shall reschedule the event or limit the attendance at the event to less than fifty (50) people at one time.

2.9 Alterations. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any hallways, lobby areas, Common Areas and other improvements shown that are not within the Premises. Such increase, decrease, or change shall not materially interfere with Lessee's business as permitted in Subsection 2.5 Permitted Use. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to the Premises or to other parts of the Building in areas above the suspended ceiling surfaces, below the floor surfaces, within the walls and elsewhere in the Building; (ii) to alter or expand the Building; and (iii) to alter, relocate or substitute any of the Common Areas or public areas of Magnuson Park.

3. **Lease Term**.

3.1 Initial Term. This Lease shall be for an initial term beginning on the Commencement Date specified in Subsection 1.3 and ending on the Expiration Date specified in Subsection 1.4 ("Initial Term"), unless the Lease is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 below.

3.2 Extended Terms. Subject to the conditions in Section 3.3 below, Lessee shall have the option to extend the Initial Term of this Lease for up to four (4) successive individual extended term[s] of five (5) years each (each an "Extended Term") on the same terms and conditions set forth herein, except Rent which shall be as provided in 4.3. Provided that the conditions in Section 3.3 below are satisfied, Lessee may extend the Lease Term to include any Extended Term by giving City written notice of its intention to do so at least ninety (90) days prior to the last day of the then-current Term. As used in this Lease, the "Lease Term" or "Term" means the Initial Term, and any and all Extended Term[s] established by Lessee hereunder.

3.3 Conditions for Extended Terms. Lessee's right to any extension of the Initial Term is strictly conditioned upon Lessee making capital improvements to the Premises or Magnuson Park, or both, which are determined by the Superintendent to cost One Million Two

Hundred Fifty Thousand Dollars ($1,250,000), which may include hard and soft costs and the fair market value of donated labor. In order for improvements to be considered in satisfaction of the condition for an Extended Term, the improvements must be in compliance with all of the following requirements: (i) the improvements must be in addition to improvements made by Lessee under its Tenant Improvement Allowance (Section 10); (ii) the improvements must be completed no later than the end of the seventh (7) lease year of the Initial Term; (iii) the improvements must be approved in advance by the Superintendent; and (iv) the improvements must be completed in compliance with all requirements of this Lease, including Section 10. If Lessee fails to satisfy the conditions in Section 3.3 in the time required, Lessee's option to any Extended Term under this Lease shall automatically terminate. Additionally, Lessee may not validly exercise any option if Lessee has any uncured Default at the time Lessee provides notice to the City of Lessee's intention to extend.

3.4 Determination of Value. In determining the value of Lessee's improvements for purposes of satisfying the condition in Section 3.3, the Superintendent shall apply the following guidelines:

(i) the costs should be consistent with categories of expenses detailed on the Capital Improvement Categories on Exhibit D;

(ii) materials and services donated or provided in kind as part of Lessee's capital improvements to the Premises and Magnuson Park may be included as long as the materials and services are associated with improvements approved by the Superintendent, excluding improvements made as part of Lessee's Tenant Improvement Allowance;

(iii) in kind materials and services may be included so long as the materials and services are necessary and used to complete the Superintendent-approved improvements to the Premises and Magnuson Park. Excess inventory, surplus equipment, or services not actually used to make improvements to the Premises and Magnuson Park will not be included when determining the value of in kind contributions or donations for purposes of Section 3.3;

(iv) the Lessee must document and provide accounting to the Superintendent sufficient to track and record all monies expended on both the soft and hard costs of the improvements. The Lessee must also document and provide accounting to the City for all contributions received by Lessee in kind for goods, supplies, and services used in making the improvements, noting the source and valuation of the contribution along with such specific information about the services, goods, supplies or equipment as necessary for the Superintendent to evaluate the value or worth claimed for in kind donations or contributions compared to other similar products or services at fair market value based upon the industry standard applicable to the item or service;

(v) items and services provided in kind to the Lessee must be valued consistent with the value of the actual contribution made to the Lessee. For example, should an architect donate design or drafting services to the Lessee for purposes of making improvements to the

Premises, the architect must value the services at the same rate and on the same terms he or she would typically apply to a cash customer for substantially similar services, and Lessee may only claim value of such time and compensation as the architect would claim from a cash customer. As another example, if a lumber wholesaler were to donate lumber to the Lessee, the Superintendent will value the donation at whatever rate the wholesaler would otherwise have charged for the product, rather than what such materials might costs at a retail lumber location; and

(vi) Lessee's records of account and documents demonstrating the costs of the improvements are subject to the requirements under Section 10.5.

3.5 Excess Costs. Lessee shall be solely responsible for all costs of any Lessee improvements, regardless of whether the costs exceed the amount required under Section 3.3.

4. **Rent**.

4.1 Rent. Beginning on the "Rent Commencement Date", Lessee shall pay to City at the address and to the account specified by City, without notice or demand or any setoff or deduction whatsoever, in lawful money of the United States (a) the amount of Rent specified in Subsection 1.5 payable in twelve (12) equal monthly installments in advance on the 5th day of each month; and (b) Additional Charges as and when specified elsewhere in this Lease, but if not specified, then within ten (10) days after written demand. Rent and, if appropriate, as reasonably determined by City, Additional Charges shall be prorated on a daily basis for any partial month within the Lease Term, and for any partial initial month in the Lease Term shall be paid on the first day of the Lease Term.

4.2 Adjustments to Rental Fee. Beginning on the first anniversary of the Rent Commencement Date and annually thereafter until the expiration of the Initial Term, (each a "Fee Adjustment Date"), the Rent shall be adjusted upward by three percent (3%) of the Rent then due.

4.3 Rent for Extended Terms. The Rent for each Extended Term shall be fair market rent. As used in this Lease, "fair market rent" means the rate per square foot that a willing tenant would pay in an arms-length transaction for comparable space in the Building and in comparable buildings in comparable locations for a five (5) year term, determined according to the process in this Section. Within thirty (30) days after the Lessee provides notice to extend the Term under Section 3.2, the City will give Lessee written notice of the fair market rent taking into account the public benefit provided by The Cascade Bicycle Club. If Lessee disagrees with City's determination of fair market rent, Lessee must provide written objection specifying Lessee's proposed fair market rent within ten (10) days of receiving notice; otherwise, the amount specified by the City shall be the rent for the Extended Term. If Lessee objects to City's determination of fair market rent, the parties shall have an additional ten (10) days to negotiate the amount of fair market rent. If the parties do not agree on the fair market rent within ten (10) days following Lessee's objection, the rent will be determined by arbitration within the time

prior to the expiration of the then current Term. No later than thirty (30) days prior to the expiration of the then-current Term, Lessee and City shall each select one arbitrator who is a real estate broker licensed in the State of Washington who has been regularly engaged in the business of commercial leasing in the Puget Sound region for at least ten (10) years immediately preceding the appointment and shall provide notice to the other party. If either party fails to appoint an arbitrator within the time required, that party shall be deemed to have waived the right to appoint an arbitrator and the fair market rent shall be determined by the appointed arbitrator. Otherwise, each arbitrator will independently make her or his determination of the fair market rent. If the two arbitrators' determinations are not the same, but the higher of such two values is not more than one hundred five percent (105%) of the lower amount, then the fair market rent will be deemed to be the average of the two values. If the higher of such two values is more than one hundred five percent (105%) of the lower of them, then the two arbitrators will jointly appoint a third arbitrator within ten (10) days after the second of the two determinations described above has been rendered. The third arbitrator will independently make her or his determination of the fair market rent as soon as reasonably possible after appointment. The highest and the lowest determinations of value among the three arbitrators will be disregarded and the remaining determination will be deemed to be the fair market rent; provided, however, that in no event will the fair market rent be deemed to be less than the Rent due at the end of the then-current Term. Once the fair market rent is established for any Extended Term, Rent shall be adjusted annually as provided under Section 4.2.

4.4 Limitation on Rent Adjustments. Notwithstanding Subsection 4.3, during the Term and, if applicable any Extended Terms, in no event shall Rent be adjusted, upward or downward, more than twenty percent (20%) of the amount of Rent due as of the last day of the then-current Term (no cumulative cap).

5. **Late Charge; Interest**. If Lessee fails to pay the City any sum when due, such amount shall bear interest at the rate of twelve percent (12%) per annum from the date due until the date paid.

6. **Security Deposit**. **None**

7. **Lessee 's Operations**.

7.1 Use of Premises. Lessee shall use the Premises only for the Permitted Use. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee's business, and the compatibility of such business with the use of the remainder of the Building, Lessee shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without the Superintendent's prior written consent. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises, Building, and Common Areas as the City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Lessee's business for the Permitted Use. In the event of any conflict between the rules and regulations promulgated by City and the terms of this Lease, the terms of this Lease shall prevail. Lessee shall maintain the Premises in a clean, orderly and neat fashion and to a standard reasonably established by the Superintendent for the Building, permitting no objectionable odors to be emitted from the Premises. Lessee shall neither commit waste of the Premises nor permit any waste to be committed thereon. Lessee shall not permit any accumulation of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance in either the Premises or the Building, and Lessee shall not engage in or permit any action that will disturb the quiet enjoyment of any other occupant in the Building.

7.2 Compliance with Laws; Nondiscrimination.

7.2.1 General Obligation. Lessee shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community of which the Building is a part. Lessee shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises (provided that Lessee shall not be responsible for maintaining in compliance with laws those portions of the Building (including the Premises) that are City's responsibility to maintain under terms of this Lease).

7.2.2 Nondiscrimination. Without limiting the generality of Subsection 7.2.1, Lessee agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

7.3 Liens and Encumbrances. Lessee shall keep the Premises and Building free and clear of, and shall indemnify, defend and hold City harmless from, any and all, liens and encumbrances arising or growing out of any act or omission, or breach of this Lease or its use, improvement or occupancy of the Premises by Lessee or any of its principals, officers, employees or agents or subtenants. If any lien is so filed against the Premises or Building, Lessee shall either cause the same to be fully discharged and released of record within ten (10)

days after City's written demand therefore or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such necessary, in City's sole discretion.

7.4 Hazardous Substances. Lessee shall not, without City's prior written consent, keep on or about the Premises or Building any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefore, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all reasonable and necessary costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection 7.4, including City's attorneys' fees and costs, shall be Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefore, if Lessee's violation of this Subsection 7.4 is discovered as a result of such inspection or monitoring.

Lessee shall be fully and completely liable to City for any and all actual and required cleanup costs and expenses and any and all other reasonable charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises or Building during the Lease Term. Lessee's obligation for liability under this Section 7.4 shall not apply to any liability arising from Pre-existing Hazardous Substance present in or around the Premises or the Building as of the Commencement Date, PROVIDED that Lessee, any of its employees, officers, contractors, licensees, subtenants or invitees, do not commit any act or omission that disturbs or otherwise negligently causes a release of any Hazardous Substance to the environment in concentrations that exceed any applicable cleanup level under Ch.70.105.D RCW or any applicable local, state or federal environmental law or regulation. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's reasonable attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of known Hazardous Substances that arise on or about the Premises or Building during the Lease Term. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

8. **Utilities**.

8.1 General. So long as Lessee is not in default under this Agreement, the City shall furnish and pay for electricity, water, sewer, and garbage collection services to the Premises. Lessee shall be responsible for the cost of any telecommunications utilities or any other services necessary for Lessee's Permitted Use of the Premises. Lessee shall obtain the Superintendent's prior written consent before installing lights or equipment in the Premises that exceed the Premises standard mechanical loads. The Superintendent may refuse to grant consent unless Lessee agrees to pay (1) the costs incurred by the City for installation of supplementary air conditioning capacity or electrical systems as necessitated by Lessee's equipment or lights and (2) in advance, on the first day of each month during the Term, the amount estimated by the Superintendent as the excess cost of furnishing electricity or utility service for the operation of equipment or lights above normal building levels.

8.2 Refuse Collection; Recycling of Waste Materials. Lessee shall provide all necessary housekeeping and janitorial services for the Premises to a level consistent with other similar Parks facilities and operations and to the Superintendent's reasonable satisfaction. Lessee shall be responsible for proper storage and removal of trash, litter pickup and recycling consistent with City standards.

8.3 Interruption. City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Lessee or to relieve Lessee from any of Lessee's obligations hereunder or to give Lessee a right of action against City for damages. Lessee acknowledges its understanding that there may be City-planned utility outages affecting the Premises and that such outages may interfere, from time to time, with Lessee's use of the Premises. City shall provide Lessee with not less than forty- eight (48) hours' prior written notice of any City-planned electricity outage in the Premises. City has no obligation to provide emergency or backup power to Lessee. The provision of emergency or backup power to the Premises or to enable the equipment therein to properly function shall be the sole responsibility of Lessee. If utilities are interrupted at the Premises so as to render them unfit for their permitted uses, then the Rent for the year shall be abated for the duration of the disruption in the proportion that the number of days of the disruption bears to the number of days of the year.

9. **Licenses and Taxes**.

9.1 Taxes and Licenses. Without any deduction or offset whatsoever, Lessee shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes covering the business conducted on the Premises and all personal property taxes and other impositions levied with respect to all personal property located at the Premises; Lessee shall be

responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any governmental inspections or examinations relating to Lessee's use and occupancy of the Premises, and pay all taxes on the leasehold interest created by this Lease (*e.g.*, leasehold excise taxes).

9.2 Contests. Lessee shall have the right to contest the amount and validity of any taxes by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving Lessee of its covenant to pay any such taxes. City shall not be subjected to any liability or for the payment of any costs or expenses in connection with any such proceeding brought by Lessee, and Lessee hereby covenants to indemnify and hold City harmless from any such costs or expenses. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

10. **Improvements by Lessee, Tenant Improvement Allowance**.

10.1 Improvements. Lessee shall not make any alterations, additions or improvements in or to the Premises which exceed two thousand five hundred dollars ($2,500) in cost, without first submitting to City professionally prepared plans and specifications for such work and obtaining City's prior written approval thereof. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with the City approved plans and specifications and any conditions imposed by City in connection therewith, including prevailing wages; (b) is in conformity with first–class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises or the Building or any of the Premises' or Building's systems;(e) does not disrupt the business or operations of any other occupant of the Building; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises or the Building. Lessee shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and reimburse City for any and all expenses incurred in connection therewith. Except as provided in Section 14 with regard to concurrent negligence, Lessee shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) to the extent arising from or out of Lessee's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Lessee's breach of its obligations under terms of this Section 10. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and improvements. Notwithstanding the foregoing, Lessee shall remove all or any portion of its alterations and improvements on the expiration or termination of this Lease if City specifically so directs, in

writing, at the time of Superintendent's issuance of its approval thereof. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Lessee. Lessee shall complete design and construction of all improvements and alterations in compliance with all permitting and legal requirements, including but not limited to compliance with applicable building codes and shall comply with the Americans with Disabilities Act (ADA). Lessee expressly acknowledges that the provisions of the ADA may exceed requirements contained in building codes and other regulations and that in such instances, the ADA requirements shall control.

10.2 Tenant Improvement Allowance (TIA). The City will allow Lessee a Tenant Improvement Allowance of up $20 per square foot for that portion of the Premises comprising Offices 143 and 144 (1,100 square feet), and up to $10 per square foot for the remainder of the Premises (7,950 Sq. Ft.) (collectively, the "TIA"). The TIA will be in the form of an offset against Rent for actual costs associated with Lessee's pre-approved improvements. The TIA may include reasonable design fees, permitting fees and construction fees.

10.3 Superintendent's Approval of TIA. In order to qualify for an offset against Rent, Lessee shall identify which improvements it intends to submit for its TIA at the time Lessee seeks approval for improvements to the Premises under Section 10.1, and shall also include its proposed budget. The Superintendent shall indicate the total amount of budgeted construction costs that are potentially eligible for the TIA. Not later than six (6) months after Lessee completes its improvements which the Superintendent approved for the TIA, Lessee shall provide the Superintendent with an accounting of its actual costs associated with the capital improvements together with such supporting documentation as the Superintendent may reasonably request. The Superintendent shall certify the final amount of costs expended by Lessee in connection with such improvements and this amount shall constitute the amount of the TIA. Lessee shall remain solely responsible for all costs that exceed the TIA and for all costs that are not approved by the Superintendent. Once the Superintendent certifies the final amount of the TIA, Lessee may apply approved TIA by stating in its monthly rent payment the amount of Rent being offset. The Rent cannot be offset by more than 35% in any single month. For example, if the Rental Fee Due is $3,000 then the maximum offset amount is $1,050.

10.4 Prevailing Wage. As a condition of any TIA offset against Rent for construction, alterations, or improvements to the Premises, Lessee shall require its contractor to pay prevailing wages in accordance with Washington's Prevailing Wage Statute, RCW 39.12.

10.5 Recordkeeping and Reporting; Audit. Lessee shall keep true and complete books of account setting forth Lessee's expenditures relating to all TIA improvements, all improvements Lessee completes in satisfaction of the conditions under Section 3.3, and all public programming required under this Lease. City shall be allowed to inspect Lessee's books of account at Lessee's office upon five (5) business days' prior written notice to Lessee, and to procure audits thereof by an auditor at City's sole cost and expense. Lessee shall retain all books of accounting and any other

information that will affect the determination of the Rent or any Extended Term for a period of six (6) years after the last day of the period that such particular record covers.

11. **Care of Premises**.

11.1 General Obligation. Lessee shall take good care of the Premises and shall reimburse City for all damage done to the Premises that results from any act or omission of Lessee or any of Lessee's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, cracking or breaking of glass.

11.2 Custodial Service for Premises. Lessee shall at its own expense, at all times, keep the Premises and areas immediately adjacent thereto in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving such areas clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Lease; Lessee shall provide all necessary janitorial service to adequately maintain the inside of such areas using a company reasonably approved by City. Lessee shall be responsible for keeping the areas immediately adjacent to the perimeter of such areas free of litter and clean of spills resulting from Lessee's operations.

If, after City provides written notice to Lessee of Lessee's failure to comply with this Section, Lessee fails to take good care of such areas, City, at its option, may do so, and in such event, upon receipt of written statements from City, Lessee shall promptly pay the entire actual and reasonable cost thereof as an Additional Charge. City shall have the right to enter the Premises for such purposes. City shall not be liable for interference with light, air or view.

All normal repairs necessary to maintain the Building (including the structural aspects and exterior of the Premises), the Common Areas, and the heating, ventilation, utility, electric and plumbing, ballast and light replacement and other systems and equipment serving the Building (including the Premises) in a reasonably good operating condition, as determined by City, shall be performed by City at its expense. The foregoing sentence does not extend to maintenance occasioned by an act or omission of Lessee or its officers, agents, employees, or contractors. Except in the event of City's gross negligence or intentional misconduct, there shall be no abatement or reduction of rent arising by reason of City's making of repairs, alterations or improvements.

11.3 Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without City's Consent. City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. Lessee shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without City's prior, express, written consent. City's consent to the installation of any such art work may be granted, upon one or more conditions, or withheld in City's discretion

11.4 Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 11.3 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Lessee or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

12. **Signs and Advertising**.

12.1 Signs, Generally. Lessee shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises, without the Superintendent's prior written consent. Superintendent will cooperate with Lessee to allow for prominent signage for Lessee at the Premises consistent with the constraints of the historic designation of the Premises. Lessee shall remove all signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises.

12.2 On-Premises Signs. Lessee may install approved permanent exterior signage. Exterior signage shall include the Premises' name, Lessee's name and the Parks logo and shall be constructed in a style and size consistent with the Parks sign policy.

13. **Surrender of Premises**.

13.1 General Matters. At the expiration or sooner termination of the Lease Term, Lessee shall return the Premises to City in the same condition in which received on the Commencement Date (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by City pursuant to Section 10), reasonable wear and tear, casualty and condemnation damages not resulting from or contributed to by negligence of Lessee, excepted. Prior to such return, Lessee shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall Lessee remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. Lessee's obligations under this Section 13 shall survive the expiration or termination of this Lease. Lessee shall indemnify City for all damages and losses suffered as a result of Lessee's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

13.2 Cable and Wiring. Notwithstanding any provision to the contrary in this Lease and if the City so directs, on or by the Expiration Date, or if this Lease is terminated before the Expiration Date, within fifteen (15) days after the effective termination date, whichever is earlier, Lessee shall remove all voice and data communication and transmission cables and wiring installed by or for Lessee to serve any telephone, computer or other equipment located in that portion of the Premises, which wiring and cabling shall include all of the same located within the interior and exterior walls and through or above the ceiling or through or below the floor of such portion of the Premises or located in any Building equipment room, vertical or horizontal riser, raceway, conduit, channel, or opening connecting to the portion of the Premises to be vacated and surrendered to City as of such Expiration Date or earlier termination date. Lessee shall leave the mud rings, face plates and floor boxes in place.

14. **Indemnification; Release.**

14.1 Lessee's Indemnification. Except as limited by law or otherwise provided in this section, Lessee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and reasonable attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Lessee's occupation, use or improvement of the Premises, or that of any of its employees, agents, subtenants, or contractors, (ii) Lessee's breach of its obligations hereunder, or (iii) any negligent act or omission of Lessee or any employee, officer, agent, subtenant, licensee, invitee, assignee or concessionaire of Lessee, or invitee of any of the same in or about the Premises or Common Areas. Lessee's obligation to indemnify the City shall not apply to any claim or liability resulting from the sole negligence of the City or any of its employees, contractors, tenants, or agents. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees. As a result, the foregoing indemnity is specifically and expressly intended to constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City and to the extent necessary to provide City with a full and complete indemnity as provided under this Section. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. Lessee's obligation to defend and indemnify the City under this Section shall survive the expiration or termination of this Lease with respect to any claim or liability arising from acts, omissions, occurrences, or events occurring during the term. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 14.**

14.2 Lessee's Release of Claims. Lessee hereby fully and completely waives and releases all claims against City to the extent a loss or damage is covered by insurance for any losses or other damages sustained by Lessee or any person claiming through Lessee resulting from any accident or occurrence in or upon the Premises, including but not limited to any defect in or failure of Building equipment; any failure to make repairs; any defect, failure, surge in, or

interruption of Building facilities or services; any defect in or failure of Common Areas; broken glass; water leakage; the collapse of any Building component; or any act, omission or negligence of co-tenants, licensees or any other persons or occupants of the Building.

14.3 City's Release of Claims. City hereby fully and completely waives and releases all claims against Lessee to the extent a loss or damage is solely caused by City's (or its agents' or employees') negligence, willful misconduct or breach of this Lease.

14.4 City's Indemnification. Except as limited by law and subject to this Section 14.4, City hereby agrees to indemnify, defend and save Lessee and Lessee's agents, employees, and invitees harmless from any and all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Lessee's reasonable attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged loss or damage to, any property to the extent arising out of or in connection with the negligence of the City or the City's agents or employees. City's obligation to indemnify Lessee shall not apply to any claim or liability resulting from the sole negligence of the Lessee or any of its employees, contractors, subtenants, invitees or agents. The obligations in this Section 14.4 are not intended to and shall not be deemed to act as a waiver of City's immunity under RCW 4.24.210 as now or hereafter amended.

Lessee shall promptly notify the City of any actions, proceedings, claims or demands for which Lessee requests indemnification from the City. The city's obligation to defend and indemnify Lessee under this Section shall survive the expiration or termination of this Lease with respect to any claim or liability arising from acts, omissions, occurrences, or events occurring during the term. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 14.**

15. Insurance.

15.1 Lessee's Insurance Coverages and Limits. Lessee shall, at its sole cost and expense, maintain, and cause its Subtenant(s), if any, to maintain in full force and effect the following minimum limits of insurance throughout the entire Lease Term:

15.1.1 **Commercial General Liability (CGL)** written on an occurence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

$1,000,000 per Occurrence
$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal/Advertising Injury Liability
$ 1,000,000 Damage to Premises Rented to You

Employers Liability / Washington Stop
$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurence" policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Lessee, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Lessee as respects this Agreement, nor (2) construed as limiting the liability of any of Lessee's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

15.1.2 **Automobile Liability insurance** at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of $1,000,000 each accident for bodily injury and property damage.

15.1.3 **Workers' Compensation** insurance securing Lessee's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

15.1.4 **Umbrella or Excess Liability** insurance if and as necessary to maintain total CGL and Automobile Liability insurance limits of $5,000,000 Each Occurrence and be no less broad than coverages described above.

15.1.5 **Property Insurance** under which the Lessee's furniture, trade fixtures, equipment and inventory ("Business Personal Property") and all alterations, additions and improvements that Lessee makes to the Premises are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (excluding earthquake), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or

hereafter installed on the Premises;.(iv) loss from business interruption or extra expense, with sufficient coverage to provide for the payment of Rent and Additional Charge and other fixed costs during any interruption of Lessee's business. City shall be named as a loss payee as respects property insurance covering the alterations, additions and improvements under such policy.

15.1.6 **Pollution Legal Liability** is required if the Lessee will be using or storing hazardous materials or regulated substances, such as fuel. It is acceptable to add ISO endorsement CG 24 15 Limited Pollution Liability Extension or its equivalent to the CGL policy or obtain a separate pollution legal liability policy.

15.1.7 **Builder's Risk** during such time as Lessee is engaged in the performance of tenant improvements or other renovation of the Premises, the Lessee shall maintain in full force and effect "All Risks" Builder's Risk Property insurance or equivalent for the portion of the Premises under renovation, including fire and flood, on a replacement cost new basis subject to a deductible of no more than fifty thousand dollars ($50,000) each loss. It shall be Lessee's responsibility to properly coordinate with the City's Risk Management Division for the placement of Builder's Risk Property insurance prior to any new construction on, or structural alteration of, the Premises.

15.1.8 In the event that the City deems insurance to be inadequate to protect Lessee and the City, Lessee shall increase coverages and/or liability limits as the City shall deem reasonably adequate within sixty (60) days after the date of written notice.

15.2 City's Property Insurance Coverage and Limits.

15.2.1 City will maintain at its expense Property Insurance or self-insurance under which the Premises, excluding Lessee's Business Personal Property and tenant improvements, are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (including earthquake), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. City's Property Insurance currently is subject to a twenty-five thousand dollar ($250,000) deductible for most claims. Lessee shall be responsible to pay the deductible to the proportional extent to which the loss or damage is attributable to Lessee's negligent acts.

15.2.2 The City may change the terms of its insurance in Sections 15.2 at any time based on market conditions, with no compensation due to the Lessee.

15.3 General Requirements for Lessee's Insurance.

15.3.1 The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include "The City of Seattle, its officers, officials, employees, agents and volunteers" as additional insureds. Lessee's insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term "insurance" in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.

15.3.2 Coverage shall not be cancelled without forty-five (45) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.). The City and the Lessee mutually agree that for the purpose of RCW 48.18.290 (1) (e), for both liability and property insurance the City is deemed to be a "mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder."

15.3.3 Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A–:VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

15.3.4 Any deductible or self-insured retention ("S.I.R.") must be disclosed to, and shall be subject to reasonable approval by, the City. Lessee shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Lessee to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Lessee. If a deductible or S.I.R. for CGL or equivalent insurance is not "fronted" by an insurer but is funded and/or administered by Lessee or a contracted third party claims administrator, Lessee agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

15.4 Waiver of Subrogation. Unless such waiver would void the property insurance coverage to be provided pursuant to this section, the City and Lessee waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises.

15.5 Evidence of Insurance. On or before the Commencement Date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by Lessee:

15.5.1 Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and

15.5.2 A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;

15.5.3 A copy of the CGL insurance policy provision(s) documenting the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;

15.5.4 Pending receipt of the documentation specified in this Section 15, Lessee may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Original certification of insurance shall be issued to:

The City of Seattle
Department of Parks and Recreation
Magnuson Park
6310 NE 74th Street #109E
Seattle, WA 98109
Attention: Director

15.6 Assumption of Property Risk. The placement and storage of Lessee's Business Personal Property in or about the Premises shall be the responsibility, and at the sole risk, of Lessee.

15.7 Adjustments of Claims: The Lessee shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Lessee under this Agreement.

15.8 Lessee's Responsibility: The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Lessee's liability under the Lease.

16. **Assignment or Sublease.**

16.1 Except as expressly permitted under Section 16.2, Lessee shall not sublet or encumber the whole or any part of the Premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the prior written consent of Superintendent. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any

assignment or sublease, without Superintendent's prior written consent, at the Superintendent's option, shall be void. No assignment or sublease shall release Lessee from primary liability hereunder. Each assignment and sublease shall be by an instrument in writing in form satisfactory to Superintendent. If Lessee is a corporation, then any transfer of this Lease by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Lessee's outstanding voting stock, shall constitute an assignment for the purposes of this Lease. If Lessee is a partnership, then a change in general partners in or voting or decision-making control of the partnership shall also constitute an assignment.

16.2 Sublease Conditions. Notwithstanding the limitations in Section 16.1, Lessee is expressly permitted to sublease no more than thirty-five percent (35%)of the Premises to other organizations for the Permitted Use (bicycle related office, storage and meeting space).

17. **Assignment by City**. If City sells or otherwise transfers the Building, or if City assigns or sells its interest in this Lease, such purchaser, transferee, or assignee thereof shall be deemed to have assumed City's obligations under this Lease arising after the date of such transfer, and City shall thereupon be relieved of all liabilities under this Lease arising thereafter, but this Lease shall otherwise remain in full force and effect. Lessee shall attorn to City's successor, which assumes and agrees to perform all of City's obligations under this Lease.

18. **Destruction**. If the Premises or the Building are rendered partially or totally untenantable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence, then if insurance proceeds or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts) City shall repair the Premises (excluding Lessee's fixtures and improvements, which are subject to Section 15.4), and if applicable, the Building, with due diligence; otherwise City may elect to terminate this Lease. Rent and Additional Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole thereof, as the City determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within twenty-four (24) months from the date of the occurrence, City or Lessee may terminate this Lease upon sixty (60) days' written notice to the other. If thirty percent (30%) or more of the Building is destroyed or damaged, then regardless of whether the Premises are damaged or not, Lessee or the City may elect to terminate this Lease upon written notice to City. Termination by either party under the conditions in this Section shall be effected by giving written notice to the other party within sixty (60) days after the occurrence. In the event of damage by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Lessee for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Building or Premises.

19. **Eminent Domain**.

19.1 Taking. If all of the Premises are taken by Eminent Domain, this Lease shall terminate as of the date Lessee is required to vacate the Premises and all Rent and Additional Charges shall be paid to that date. The term "Eminent Domain" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person. If a taking of any part of the Premises by Eminent Domain renders the remainder thereof unusable for the business of Lessee, in the reasonable judgment of City, the Lease may, at the option of either party, be terminated by written notice given to the other party not more than thirty (30) days after City gives Lessee written notice of the taking, and such termination shall be effective as of the date when Lessee is required to vacate the portion of the Premises so taken. If this Lease is so terminated, all Rent and Additional Charges shall be paid to the date of termination. Whenever any portion of the Premises is taken by Eminent Domain and this Lease is not terminated, City, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds and to the extent it is reasonably prudent to do so, the remainder of the Premises to the condition they were in immediately prior to such taking, and Lessee, at its expense, shall proceed with all reasonable dispatch to restore its personal property and all improvements made by it to the Premises to the same condition they were in immediately prior to such taking, to the extent award is available therefore. The Rent and Additional Charges payable hereunder shall be reduced from the date Lessee is required to partially vacate the Premises in the same proportion that the Rentable Area taken bears to the total Rentable Area of the Premises prior to taking.

19.2 Award. Except as otherwise provided below, City reserves all right to the entire damage award or payment for any taking by Eminent Domain, and Lessee waives all claim whatsoever against City for damages for termination of its leasehold interest in the Premises or for interference with its business. Lessee hereby grants and assigns to City any right Lessee may now have or hereafter acquire to such damages and agrees to execute and deliver such further instruments of assignment as City, from time to time, may request. Lessee, however, shall have the right to claim from the condemning authority all compensation that may be recoverable by Lessee on account of any loss incurred by Lessee in relocated Lessee's business and moving Lessee's merchandise, furniture, trade fixtures and equipment and the cost or restoring its personal property and improvements made by it to the Premises.

20. **Default by Lessee**.

20.1 Definition. If Lessee violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Lease; or if Lessee files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Lessee's assets or if Lessee makes an assignment for the benefit of creditors, or if Lessee is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; then Lessee shall be deemed in default ("Default").

20.2 City Remedies. If Lessee has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within thirty (30) days after written notice thereof has been provided to Lessee, then City shall have the following nonexclusive rights and remedies at its option: (i) to cure such default on Lessee's behalf and at Lessee's sole expense and to charge Lessee for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (2) to terminate this Lease; provided, however, that if the nature of Lessee's obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then Lessee shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Lessee's failure to pay any Rent obligation or Lessee's abandonment or vacation of the Premises shall not be subject to any extension of the thirty (30) day cure period without the express written permission of the Superintendent.

20.3 Reentry by City Upon Termination. Upon the termination of this Lease, City may reenter the Premises, take possession thereof, and remove all persons therefrom, for which actions Lessee shall have no claim thereon or hereunder. Lessee shall be liable and shall reimburse City upon demand for all actual and reasonable costs and expenses of every kind and nature incurred in retaking possession of the Premises. If City retakes the Premises, City shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at any place selected by City, including a public warehouse, at the expense and risk of Lessee. City shall have the right to sell such stored property, after reasonable prior notice to Lessee or such owner(s), after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from Lessee to City; the balance, if any, shall be paid to Lessee.

20.4 Vacation or Abandonment. If Lessee vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (1) delivers a notice to Lessee's notice address set forth in Section 1.7 above demanding such reoccupancy and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing, Lessee shall be in default under this Lease.

20.5 City's Non-exclusive Remedies upon Termination due to Default of Lessee. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to the Default of Lessee, the liability of Lessee for all sums due under this Lease provided herein shall not be extinguished for the balance of the Term of this Lease. Lessee shall also be liable to City for any other amount (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such

use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Subsection 20.5 shall survive the expiration or earlier termination of this Lease.

21. **City's Remedies Cumulative; Waiver**. City's rights and remedies hereunder are not exclusive, but cumulative, and City's exercise of any right or remedy due to a default or breach by Lessee shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy that City may have under this Lease or by law or in equity. Neither the acceptance of rent nor any other act or omission of City at any time or times after the happening of any event authorizing the cancellation or forfeiture of this Lease shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive City of its right to cancel or forfeit this Lease, upon the written notice provided for herein, at any time that cause for cancellation or forfeiture may exist, or be construed so as to estop City at any future time from promptly exercising any other option, right or remedy that it may have under any term or provision of this Lease.

22. **Default by City.** City shall be in default if City fails to perform its obligations under this Lease within thirty (30) days after its receipt of notice of nonperformance from Lessee; provided, that if the default cannot reasonably be cured within the thirty (30) day period, City shall not be in default if City commences the cure within the thirty (30) day period and thereafter diligently pursues such cure to completion. Upon City's default, Lessee may pursue any remedies at law or in equity that may be permitted from time to time by the laws of the State of Washington.

23. **Termination for Convenience**. Notwithstanding anything else in this Lease to the contrary, City may, at any time and without liability of any kind to Lessee except as set forth in this Section 23, terminate this Lease for any or no reason for City's convenience, including but not limited to City's decision to use the Premises for a different public or private purpose. City may terminate under this Section 23 by giving two hundred seventy (270) days' prior written notice to Lessee. If City terminates for convenience, City will pay to Lessee a termination fee in the amount that is the greater of: (i)the dollar amount of the previous 12 months Rent from the notice date that the Lessee paid to the City; or (ii) the unamortized balance of the monies Lessee invests in the Premises (excluding those associated with the Tenant Improvement Allowance), (the "Lessee Investment Funds") as of the notice date. (Lessee Investment Funds shall be amortized over a twenty (20) year term without interest).

Said payment under (i) or (ii) of the immediately preceding sentence shall be paid by Lessor to Lessee no later than six (6) months prior to Lessee vacating the Premises under this Section 23.

If City exercises its right to terminate under this Section, in the Superintendent's discretion, the City may allow Lessee to accelerate the rate of its TIA Rent offset between the date of notice and termination, up to the full amount of Lessee's actually expended TIA costs. Additionally, within thirty (30) days of the effective termination date, City shall reimburse Lessee for any portion of Lessee costs actually expended under the Tenant Improvement Allowance that remain unapplied as of City's termination date. Nothing in this Section shall be construed to limit or amend City's

right to terminate this Lease under any other provision of this Lease, including termination for default (Section 20) or termination due to damage or destruction (Section 18) or termination due to Eminent Domain (Section 19), nor shall this Section be construed to obligate the City to pay a termination fee for termination under any other provision of this Lease.

24. **Attorneys' Fees**. If either party retains the services of an attorney in connection with enforcing the terms of this Lease, each party agrees to bear its own attorneys' fees and costs.

25. **Access by City**. City and its agents shall have the right to enter the Premises at any reasonable time to examine the same, and to show them to prospective purchasers, lenders or tenants, and to make such repairs, alterations, improvements, additions or improvements to the Premises or Building as City may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefore, except in the event of City's gross negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty of repair or other obligation not specifically stated in this Lease. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

26. **Holding Over**. Unless otherwise agreed in writing by the parties hereto, any holding over by Lessee after the expiration of the Lease Term, whether or not consented to by City, shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein. Either party may terminate any holdover tenancy by written notice delivered to the other party not later than one hundred-twenty (120) days prior to first day of the final month. If Lessee fails to surrender the Premises upon the expiration or termination of this Lease without City's written consent, Lessee shall indemnify, defend and hold harmless City from all losses, damages, liabilities and expenses resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure. Lessee's obligations under this paragraph shall survive expiration or termination of this Lease.

27. **Notices**. Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsection 1.7 hereof by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Notices shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to subsection (c), forty-eight (48) hours following deposit in the U.S. mail.

28. **Successors or Assigns**. All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 16 and 17, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

29. **No Partnership.** The City shall in no event be construed to be a partner, associate, or joint venturer of the Concessionaire or any party associated with the Concessionaire. The Concessionaire shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

30. **Authority and Liability**. Lessee warrants that this Lease has been duly authorized, executed and delivered by Lessee, and that Lessee has the requisite power and authority to enter into this Lease and perform its obligations hereunder. Lessee covenants to provide City with evidence of its authority and the authorization of this Lease upon request. All persons and entities named as Lessee herein shall be jointly and severally liable for Lessee's liabilities, covenants and agreements under this Lease.

31. **Brokers' Commission**. **None**

32. **Partial Invalidity**. If any court determines that any provision of this Lease or the application hereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

33. **Force Majeure**. Neither City nor Lessee shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to any cause beyond its reasonable control, including, but not limited to an act of Nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, civil commotion, delay in transportation, governmental delay, or war; provided, however, that the foregoing shall not excuse Lessee from the timely payment of Rent and Additional Charges due hereunder, when due.

34. **Counterparts**. This parties may execute this Lease in counterparts, which, taken together, constitute the entire Lease.

35. **Headings**. The section headings used in this Lease are used for purposes of convenience and do not alter in any manner the content of the sections.

36. **Context**. Whenever appropriate from the context, the use of any gender shall include any other or all genders, and the singular shall include the plural, and the plural shall include the singular.

37. **Execution by City and Lessee; Effective Date**. Neither City nor Lessee shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between City and Lessee until all parties hereto have executed this Lease and the appropriate legislative authority approves it.

38. **Time of Essence; Time Calculation Method**. Time is of the essence with respect to this Lease. Except as otherwise specifically provided, any reference in this Lease to the word "day" means a "calendar day"; provided, however, that if the final day for any action required hereunder is a Saturday, Sunday or City holiday, such action shall not be required until the next succeeding day that is not a Saturday, Sunday or City holiday. Any reference in this Lease to the word "month" means "calendar month."

39. **Continuous Operation**. N/A

40. **Standards**. Lessee recognizes that, although it is operating its facilities as an independent operator, Seattle Parks and Recreation is organized and exists for the purpose of maintaining park and recreation facilities for the use and enjoyment of the general public. Lessee, its agents and employees, will devote their efforts toward rendering courteous service to the public as though they were employees of the City, with a view of adding to the enjoyment of the patrons of this recreational facility.

Lessee shall operate and conduct the facilities on the Premises in a businesslike manner, and will not permit any conduct on the part of Lessee's employees, which would be detrimental to City's operations.

41. **City's Control of Premises and Vicinity**. All common and other facilities provided by City in or about the Premises are subject to the City's exclusive control and management by City. Accordingly, City may do any and all of the following (among other activities in support of Parks or other municipal objectives), all without incurring any liability whatsoever to Lessee:

41.1 Change of Vicinity. City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, landscaping, exhibit, service area, and parking areas in the vicinity of the Premises;

41.2 Traffic Regulation. City may regulate all traffic within and adjacent to the Premises, including the operation and parking of vehicles of Lessee and its invitees, employees, and patrons.

41.3 Display of Promotional Materials. City may erect, display, and remove promotional exhibits and materials and permit special events on property adjacent to and nearby the Premises.

41.4 Promulgation of Rules. City may promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any Parks property including, but not limited to, the Premises.

41.5 Change of Businesses. City may change the size, number, and type and identity of concessions, stores, businesses and operations being conducted or undertaken in the vicinity of the Premises.

42. **Lessee's Records**. N/A

43. **Miscellaneous**.

43.1 **Entire Lease; Applicable Law**. This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of City and Lessee concerning the Premises, and there are no other agreements or understanding, oral or written, between City and Lessee concerning the Premises. Any subsequent modification or amendment of this Lease shall be binding upon City and Lessee only if reduced to writing and signed by them. This Lease shall be governed by, and construed in accordance with the laws of the State of Washington.

43.2 **Negotiated Lease**. The parties to this Lease acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Lease reviewed by their respective legal counsel, and that the terms and conditions of this Lease are not to be construed against any party on the basis of such party's draftsmanship thereof.

43.3 **Abatement of Rent on Pre-Existing Lease**. The parties to this Lease agree that the term of the Pre-Existing Lease shall be extended until the date that is thirty (30) days after the Rent Commencement Date of this Lease. Beginning on the Rent Commencement Date and continuing through the Revised Expiration Date of the Pre-Existing Lease, the Use Fee for the Pre-Existing Lease shall be abated and no Use Fee will be due and owing from Lessee. During this time Lessee shall continue to have possession of the premises as set forth in the Pre-Existing Lease, but shall only pay Rent for the Premises as set forth in this Lease.

43.4 **No Personal Liability.** In no event shall any of the managers, members, officers, directors, attorneys, or employees acting on behalf of Lessee, or any successor in interest, be personally liable for any valid judgment or claim related to the Lease by the City against Lessee.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year indicated below.

CITY:	**LESSEE:**
THE CITY OF SEATTLE	**CASCADE BICYCLE CLUB**
By: _____	By: _____
Print Name/Title: _____	_____
Department of Parks and Recreation	_____

STATE OF WASHINGTON)
) ss. (Acknowledgement for City)
COUNTY OF KING)

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Department of Parks and Recreation of **THE CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

_____ _____
[Signature] *[Printed Name]*

NOTARY PUBLIC in and for the State of Washington residing at _____
.
My commission expires _____.

STATE OF WASHINGTON)
) ss. (Acknowledgement for _____)
COUNTY OF KING)

On this _____ day of _____, 20__, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____of _____, the entity that executed the foregoing instrument as _____; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

WITNESS my hand and official seal the day and year in this certificate above written.

_____ _____
[Signature] *[Printed Name]*

NOTARY PUBLIC in and for the State of Washington residing at _____.
My commission expires _____.

EXHIBIT A

Legal Description

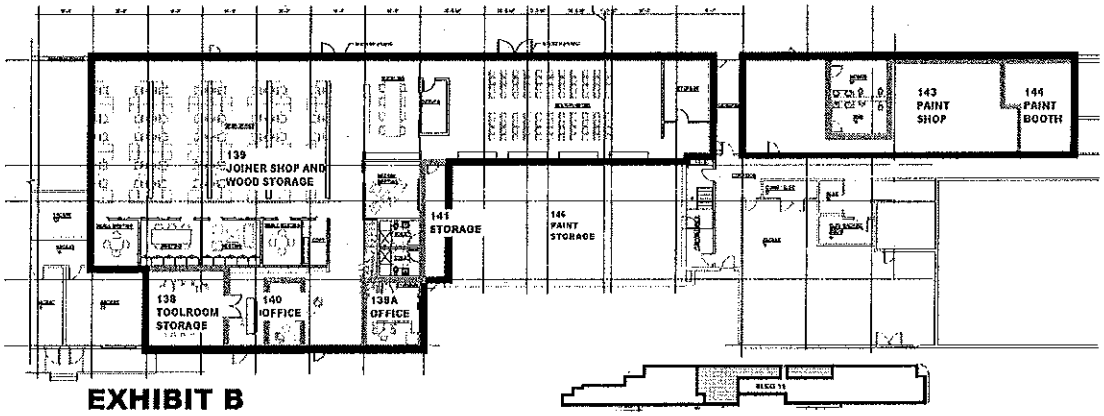
Bldg 11
W ½ Section 2, TWP 25N, RNG 04E, W.M.
PARCEL. 1 Lot A

Those portions of the southwest quarter (SW ¼) of the northwest quarter (NW ¼) of Section 2, TWP 25N, RNG 04E and Govt. Lots 1 and 2 in said Section, together with the 1st Class Shore Lands adjacent, abutting and attached thereto, as acquired by the U. S. Navy on behalf of the United States of America described as follows:

Commencing at the northwest corner of said Section 2, thence S89° 43' 27"E on the north line of said Section a distance of 528.79 feet to the east margin of Sand Point Way NE (formerly referred to as the James Kiefer County Rd. No. 1283), and the True Point of Beginning; thence S 30° 28' 08" E on said east margin a distance of 360.75 feet to a point of curvature in said east margin of which the radial center bears S 59° 31' 52" W at a distance of 2336.20 feet, thence continuing on said east margin on a curve concave to the south and west through a central angle of 16°31'03" an arc distance of 673.49 feet, thence S 13° 57' 05" on said east margin a distance of 225.43 feet, thence leaving said east margin S 30° 43' 19" E a distance of 199.50 feet, thence S 85° 28' 44" E a distance of 87.12 feet, thence S 71° 12' 22" E a distance of 46.87 feet, thence S 76° 54' 27" E a distance of 20.06 feet, thence S 62° 39' 42" E a distance of 33.69 feet, thence N 00° 01' 44" W a distance of 485.07 feet, thence N 89° 59' 11" E a distance of 252.00 feet, thence N 25° 28' 42" E a distance of 277.22 feet to the Inner Harbor Line of the Lake Washington Shore Lands as established by the State of Washington Commissioner of Public Lands and according to the Maps thereof on file in Olympia, Washington, thence N 50° 40' 00" W on said Inner Harbor Line a distance of 989.04 feet to the intersection with the north line of said Section 2, thence N 89° 43' 27" W on said north line a distance of 380.23 feet to the True Point of Beginning.

EXHIBIT B

LEASE SPACE



Magnuson Building 11		
Cascade Bicycle Club		
Rm. No.		**Area**
138	Office	400
139	Office	7050
139A	Office	230
140	Office	140
141	Hallway	130
143	Office	750
144	Office	350
Total Sq. Ft.		**9050**

EXHIBIT C

Cascade Bicycle Club
Annual Public Benefit to the City of Seattle

Seattle Citizens	Benefit Provided*
5,000 adults	Riding in annual Bike to Work Day event
5,000 adults	Riding in Bicycle Commute Challenge, a month-long event in May
5,000 youth	Participating in on-bicycle education and safety class with bicycles and curriculum provided by Cascade
2,500 people	Education and helmet fittings in parks and at farmer's markets
1,500 youth	Riding in annual Bike to School Day event
1,500 adults	Riding in volunteer led bicycle rides
50 youth	Participating in after-school bicycling clubs
15 adults	Trained to be community organizers

*Provided at no cost to participants

EXHIBIT D
Initial Capital Improvements Categories

SITEWORK:

Demolition

Parking lot improvements, pavement and repair

Site Lighting

Pedestrian Amenities

ADA Compliance & Repairs

Site Permits & Fees

Project Signage

Tenant Signage

Landscape Improvements

BUILDING CONSTRUCTION:

Environmental Remediation

Interior Repair

Electrical

ADA Compliance

Windows, Storefront, Canopies

Restroom

Interior Walls

Paint

Building Permits and Fees

Historic Preservation Review Fees

DESIGN FEES:

Architecture

Structural Engineering

Civil Engineering

Landscape Architecture

Graphic Design

Environmental Review

Specific Design and Engineering

DEVELOPMENT COSTS:

Project Management Costs

TENANT IMPROVEMENTS:

Tenant Building Improvements

(Not cash allowances or payments)

Form revised: March 27, 2014

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Eric Friedli/ 684-8369 Cheryl Fraser/ 684-7187	Forrest Longman /684-0331

Legislation Title: AN ORDINANCE relating to the Department of Parks and Recreation ("DPR"); authorizing the Superintendent to enter into a lease agreement with Cascade Bicycle Club to occupy and use a portion of Building 11 at Warren G. Magnuson Park.

Summary of the Legislation:
The proposed legislation authorizes the Department of Parks and Recreation (DPR) to enter into a ten-year lease agreement with Cascade Bicycle Club (CBC) to occupy and use a portion of Building 11 at Warren G. Magnuson Park (Magnuson Park) to operate a Bicycling Center. The Bicycling Center shall include support functions such as office space necessary to support the permitted use. The proposed agreement includes four options to extend for five-years each if CBC invests $1,250,000 (within 7 years) in improvements to the premises or Magnuson Park. The improvements would be pre-approved by the Superintendent. CBC will initially occupy 9,050 sq. ft. year round as their primary space for offices and bicycling oriented activities.

Building 11 transferred to City ownership from the Navy in 1999. At that time the building was in poor condition and in need of substantial upgrades. In 2005, DPR issued a request for proposals looking for someone to redevelop the building, fill it with a mix of parks and recreation and non-parks and recreation oriented tenants, all at no cost to the City. One proposal was received - Building 11 LLC (the LLC). The City entered into a lease agreement with the LLC in 2009. Insurmountable issues arose around implementing the 2009 Lease Agreement and the subsequent desire for amendments by the LLC. In February 2013, The City and the LLC entered into a settlement agreement whereby the LLC will complete certain renovations to the building and terminate the lease agreement in exchange for payments totaling $7,025,000.

In addition to work being completed by the LLC, CBC will make additional improvements to the first floor of the building that will be occupied by CBC. CBC will be allowed $101,500 tenant improvement allowance for enhancing the space for their occupancy.

Since March 2013, the City has been approached by various potential tenants interested in occupying portions of Building 11. CBC is one of those tenants. This agreement is the result of negotiations held during May 2013 through March 2014.

Background:

Please check one of the following:

____ **This legislation does not have any financial implications.**

_X_ **This legislation has financial implications.**

Appropriations: N/A

Fund Name and Number	Department	Budget Control Level*	2014 Appropriation	2015 Anticipated Appropriation
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**

Appropriations Notes:
None.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2014 Revenue	2015 Revenue
Park and Recreation Fund (10200)	Parks and Recreation	Income from Rent Payment	$10,181	$88,543
TOTAL			**$10,181**	**$88,543**

Revenue/Reimbursement Notes: CBC will pay $15.00 per square foot for the initial 12 months of their lease. Rent will increase by 3% per year each successive year, on the anniversary of the rent commencement date.

CBC will be allowed to offset its rent to fund up to $101,500 in tenant improvements to the building. The rent offset maximum is 35% each month until the tenant improvements are fully reimbursed. Estimated rent after tenant improvement allowance reduction each year is shown in Table 2.

Table 2: Estimated Rent Payment schedule

Year	Rent Due	Rent Paid	Offset Used
2014	15,663	10,181	5,482
2015	136,220	88,543	47,677
2016	140,307	91,966	48,341
2017	144,516	144,516	-
2018	148,851	148,851	-
2019	153,317	153,317	-
2020	157,917	157,917	-
2021	162,655	162,655	-
2022	167,535	167,535	-
2023	172,561	172,561	-
Total	1,399,542	1,298,042	$101,500

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:
N/A

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2014 Positions	2014 FTE	2015 Positions*	2015 FTE*
TOTAL	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Position Notes:
None.

Do positions sunset in the future? N/A

Spending/Cash Flow: N/A

Fund Name & #	Department	Budget Control Level*	2014 Expenditures	2015 Anticipated Expenditures
TOTAL	N/A	N/A	$29,955	$29,955

Spending/Cash Flow Notes:

DPR will pay utilities, common area maintenance and tenant management costs associated with this and other tenant agreements in the building. Based on experience with other buildings at Magnuson Park we estimate those costs to be $3.31 sq. ft. That is estimated at $29,955 in costs for 2014.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
Yes, as shown in Table 2 revenues continue to increase during the term of the agreement.

b) **What is the financial cost of not implementing the legislation?**
DPR will have to start searching for a different tenant or tenants to occupy the space. Rental revenue from these spaces would be delayed.

c) **Does this legislation affect any departments besides the originating department?**
No.

What are the possible alternatives to the legislation that could achieve the same or similar objectives?
Other than finding a similar tenant who can agree to similar terms, there are no feasible alternatives to the legislation that would achieve the same result.

d) **Is a public hearing required for this legislation?**
No.

e) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

f) **Does this legislation affect a piece of property?**
Yes - a map is included as Exhibit B in Attachment 1 of the ordinance.

g) **Other Issues:**
None.

List attachments to the fiscal note below:

Attachment A: Contract Summary Form

Attachment A

Seattle Department of Parks and Recreation

CONTRACT SUMMARY

Contracting Party/ Lessee/ Concessionaire/Other: Cascade Bicycle Club

Contract Title and Contract Type: Magnuson Park Building 11 Lease – Cascade Bicycle Club - Lease

Non-Profit____X__ or **For Profit** _____

New___X___ or **Renewal (or extension of existing Lease)** _____

Premises: 9,050 square feet in the first floor of Building 11

Term of Lease: 10 years plus four five-year extensions, if $1,250,000 is invested in tenant improvements to premises or Magnuson Park with the first 7 years of lease. Should tenant exercise all possible extensions the Lease will total 30 years.

Purpose of Lease Agreement (description of license): This agreement allows the Lessee to complete tenant improvements to Building 11 to occupy and manage the Cascade Bicycling Center and an expansion of the services they currently offer in a much smaller footprint in Building 138 at Magnuson Park.

Rent: Initially lessee will pay $15 per square foot for the first 12 months of their lease. The rent would be increased annually by 3% on the anniversary of the lease commencement date for the term of the initial lease period. Prior to the commencement of each extended term a market-rate study would be conducted. Any increase based the study would take effect at the beginning of the first year of each extended term with a 3% annual increase in the intervening years.

Adjustments to Rent (if any): Lessee will be allowed to offset rent to fund tenant required improvements to 7,950 sq ft of the premises up to $10 per sq ft ($79,500) and $20 per sq ft for 1,100 sq ft of the premises ($22,000), with a total allowable offset of $101,500. A maximum monthly offset of 35% is allowable in any given month.

Public Benefit (e.g., description of permitted use): Cascade Bicycle Club has been a partner of DPR since 1999, promoting healthy life styles and environmental responsibility. Per the agreement, they will provide a range of public benefits including bicycle safety education, helmet fittings and promoting healthy, safe cycling.

Maintenance: Lessee is responsible for all minor maintenance and custodial jobs within their premises. The City is responsible for exterior, structural and systems' building maintenance.

City of Seattle
Office of the Mayor

December 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 proposed Council Bill which authorizes the Superintendent of Parks and Recreation (DPR) to enter into a lease agreement with Cascade Bicycle Club (CBC) for the use of a portion of Building 11 at Warren G. Magnuson Park. The ordinance provides for a ten-year agreement with two options to extend for an additional five years each. An additional option of four –five year extensions is tied to CBC investing a minimum of $1,250,000 for improvements to the premises or to Magnuson Park. Those improvements would be pre-approved by the Superintendent.

Building 11 transferred to City ownership from the Navy in 1999. At that time the building was in poor condition and in need of substantial upgrades. Since that time the City has been trying to implement strategies to use the building and complete the necessary renovations for long term occupancy. CBC currently leases space in building 138 at Magnuson but wishes to expand its services and open a much larger Cascade Center for Cycling. Building 11 has the necessary square footage to accommodate a large cycling center and CBC has the funding capability to complete the necessary upgrades. DPR and CBC have a history of working together as partners in bicycling programs and services encouraging healthy life styles and safety while protecting the environment. This agreement is the result of negotiations held between CBC and the City.

Approval of this legislation will provide for the improvement to and occupancy of Building 11 and revenue to the City. Thank you for your consideration of this legislation. Should you have questions, please contact Eric Friedli at 684-8369.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

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TDD (206) 615-0476
mike.mcginn@seattle.gov