

ORDINANCE No. 118075

mc

COUNCIL BILL No. 111181

Council Bill No. 111181, AN ORDINANCE relating to the Seattle Center Department; authorizing the execution of a lease agreement with Rico Burrito, Inc. for the sale of food in Center House.

The City of Seattle - I

REPORT OF

Honorable President:

Your Committee on _____

to which was referred the within Council Bill No. _____ report that we have considered the same and respectfully

3/27/96 Parks, Public Grounds

Full Council

COMPTROLLER FILE No. _____

Introduced: <u>MAR 2 5 1996</u>	By: <u>DONALDSON</u>
Referred: <u>MAR 2 5 1996</u>	To: <u>PARKS, PUBLIC GROUNDS AND RECREATION COMMITTEE</u>
Referred:	To:
Referred:	To:
Reported: <u>APR 1 - 1996</u>	Second Reading: <u>APR 1 - 1996</u>
Third Reading: <u>APR 1 - 1996</u>	Signed: <u>APR 1 - 1996</u>
Presented to Mayor: <u>APR 2 - 1996</u>	Approved: <u>APR 9 1996</u>
Returned to City Clerk: <u>APR 9 1996</u>	Published: <i>title</i>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

NO DISK

Committee

The City of Seattle--Legislative Department

REPORT OF COMMITTEE

Date Reported
and Adopted

Honorable President:

Our Committee on _____

which was referred the within Council Bill No. _____

report that we have considered the same and respectfully recommend that the same:

3/27/96 Parks, Public Grounds & Recreation 3-0 Do Pass

Full Council vote 9-0

Committee Chair

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ORDINANCE 118075

AN ORDINANCE relating to the Seattle Center Department; authorizing the execution of a lease agreement with Rico Burrito, Inc. for the sale of food in Center House.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Seattle Center Director and recommended by the Mayor, the Seattle Center Director is authorized to execute, for and on behalf of The City of Seattle, a lease agreement with Rico Burrito, Inc. substantially in the form of agreement attached hereto and identified as LEASE AGREEMENT BETWEEN THE CITY OF SEATTLE and RICO BURRITO, INC. under which said Lessee is authorized to use and occupy space 208 on the second floor of Center House for the sale of food during an initial term commencing on or before May 15, 1996, and expiring May 31, 2006. Provided, that the Seattle Center Director and the authorized representative of such lessee may, from time to time, by agreement (which shall not require City Council authorization), replace the parts of said agreement comprising the "Seattle Center Approved Plans for Lessee's Additions, Alterations & Improvements," "Personal Property Inventory," and "Rules & Regulations for Center House Tenants," Menu," and "City Improvements Inventory List."

Section 2. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 1 day of April, 1996, and signed by me in open session in authentication of its passage this 1 day of April, 1996.

Jan Pracco
President _____ of the City Council

Approved by me this 9 day of April, 1996.
Merrill B. Rice
Mayor

Filed by me this 9 day of April, 1996.
Janith E. Papp
City Clerk

(Seal)

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MEMO

To: Judith Pippin, City Clerk
From: Irene Perry, Contracts & Concessions *Irene Perry*
Subject: Seattle Center Files
Date: 5/17/96

Attached please find the following Agreement:

FILE NO.: to be advised
ORDINANCE NO.: 118075
NAME: Miguel Quintana, President
D/B/A: Rico Burrito, Inc.
NAME OF AGREEMENT: LEASE AGREEMENT
for Space No. , 2nd Floor, Center House
MAILING ADDRESS: 13019 S.E. 21st Place
Bellevue, WA 98005

FILED
CITY OF SEATTLE
96 MAY 29 PM 3:54
CITY CLERK

cc: Rico Burrito w/copy of Lease Agreement

(TRANSLTR.DOC)

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**LEASE AGREEMENT
BETWEEN THE CITY OF SEATTLE AND
RICO BURRITO, INC.**

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FILED
CITY OF SEATTLE
96 MAY 29 PM 3:54
CITY CLERK

**LEASE AGREEMENT
BETWEEN THE CITY OF SEATTLE AND
RICO BURRITO, INC.**

THIS LEASE is entered into by THE CITY OF SEATTLE (hereinafter called "City"), a municipal corporation of the State of Washington, acting by and through the Director of the Seattle Center Department, and RICO BURRITO CORPORATION (hereinafter called "Lessee"), a Washington Corporation and WITNESSES THAT:

PART A: SPECIAL COVENANTS & CONDITIONS OF LEASE

A-1 INITIAL TERM OF LEASE

The term of this Lease shall commence May 15, 1996, and shall expire May 31, 2006, unless terminated earlier pursuant to the provisions hereof.

A-2 PREMISES DESCRIPTION

a. Legal Description of Premises: In consideration of the payment of rent and Lessee's performance of and compliance with the other covenants, conditions, and terms of this Lease, City hereby leases to Lessee, and Lessee hereby leases from City, a portion of the building at Seattle Center located on the following property:

Lot 1-12, Block 46, D.T. Denny's Third Addition to North Seattle, according to plat recorded in Vol. 1 of Plats, Page 145, Records of King County, Washington, which portion is currently identified as Center House, second floor, space No. 208, the floor/site plan for which is attached hereto, labeled "Part C" (which portion hereinafter shall be referred to as the "Premises").

b. Approximate Area of Premises as of Term Commencement: 350 Square Feet, to be remeasured upon completion of demising walls.

A-3 MONTHLY BASE RENT

The Lessee shall remit to the City as the monthly rent, the following:

a. Monthly Amount Due Between May 15, 1996, and May 31, 2006:

One Thousand and Thirty-Six Dollars and no/100 (\$1,036.00)

b. CPI increase: The monthly base rent shall be increased effective each January 1st during the term hereof by the percentage increase (if any) in the Consumer Price Index for All Urban Consumers ("CPI-U" / 1982-84 = 100) Seattle Tacoma Metropolitan Area, as published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor, that occurred during the immediately preceding calendar year; Provided, that in the event of a change in the index base of (1982-84 = 100) or other modification of such index, the City shall apply whatever conversion factors are necessary to establish an adjusted CPI-U that produces the percentage increase in the CPI-U for each such annual period that would have been produced had no change been made in such index by its publisher; and in the event such index is discontinued, the Director shall select and use for such rent adjustment purpose a similar index that reflects consumer price changes.

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A-4 ANNUAL PERCENTAGE RENT

The Lessee shall also remit to the City, as part of the rent, ten percent (10%) of the Lessee's annual "adjusted gross receipts" (as defined in Section B-2) in excess of \$124,250.00. Provided, that for the periods between (a) the date the Lessee's obligation to pay rent commences and December 31st of the same calendar year, and (b) January 1st of the year in which this Lease expires or is terminated and the actual Lease expiration or termination date (if such date is other than December 31st), the dollar amount that must be exceeded before any Annual Percentage Rent is due and payable shall be prorated by dividing such dollar amount by 365 and multiplying the resulting quotient by the number of actual days in such partial lease year.

A-5 ADDITIONAL RENT

a. Minimum Monthly Promotional and Advertising/Public Programming Charge During Period Between May 15, 1996, and December 31, 1996: \$104.00.

b. Supplemental Promotion and Advertising/Public Programming Charge: The Supplemental Promotion and Advertising/Public Programming Charge shall be the difference (if any) between one percent (1%) of the Lessee's adjusted gross receipts in any calendar year and the aggregate Minimum Monthly Minimum Promotion and Advertising/Public Programming Charges paid by the Lessee during that calendar year.

c. Minimum Monthly Promotional and Advertising/Public Programming Charge Subject to Annual Increase: In the event that in any calendar year during the term hereof, the Lessee's adjusted gross receipts exceed the amount generated in the immediately preceding calendar year then the Minimum Monthly Promotional and Advertising/Public Programming Charge shall be increased to equal one percent (1%) of the immediately preceding year's adjusted gross receipts divided by twelve (12).

d. Tenants' Association Dues: \$750.00 per year.

e. Other Additional Rent: Any amounts due pursuant to Subsection B-3, B-5.j, B-6.e, B-10.b(4), and B-18.c hereof.

A-6 AMOUNT OF PERFORMANCE GUARANTEE

The amount of the performance guarantee required under Section B-4 hereof shall be Five Thousand Dollars and no/100 (\$5,000.00).

A-7 USE OF PREMISES BY LESSEE

The Premises shall be used by Lessee for the sale of Mexican fast food as outlined in Part G - Menu. Lessee may use the Premises for other purposes only with the prior, written approval of the Director.

A-8 LEASEHOLD ADDITIONS, ALTERATIONS & IMPROVEMENTS

a. Approved Construction Plans; Scheduled Commencement & Completion Dates: The alterations, additions and improvements described on the construction plans attached hereto as "Part D", hereof, have been approved by the Director. Lessee shall make a good faith effort to begin construction to renovate the Premises in accordance with such approved plans no later than April 1, 1996, and shall have such improvement work completed on or by May 15, 1996.

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b. Responsibility for Cost of Improvements; Documentation of Cost to be Provided to Director:
All additions, alterations, and improvements made to the Premises to make them fit for the use desired by Lessee shall be at no cost to the City. Within thirty (30) days after payment of the same, Lessee shall deliver to the Director a copy of every invoice from a contractor, subcontractor or supplier requesting payment for any work or material forming a part of an addition, alteration or improvement made by Lessee to the Premises consistent with plans approved by the Director therefor, identifying on such invoice the particular addition, alteration or improvement to which it is related.

A-9 CONTENTS OF LEASE

This Lease consists of the following parts, which are attached hereto and, by this reference, incorporated herein:

- | | |
|--------|--|
| PART A | Special Covenants & Conditions of Lease |
| PART B | General Terms & Conditions of Lease |
| PART C | Premises Floor Plan/Map |
| PART D | Seattle Center Approved Plans for Lessee's Additions, Alterations & Improvements |
| PART E | Personal Property Inventory |
| PART F | Rules and Regulations for Center House Tenants |
| PART G | Menu |
| PART H | City Improvements Inventory List |

These eight (8) parts constitute the complete and final expression of the intentions of the parties hereto. All prior and contemporaneous oral and written understandings between the parties regarding the subject matter of this Lease have been incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease by having their authorized representative(s) sign his/her/their name(s) in the spaces below:

LESSEE:

RICO BURRITO, INC.

By Miguel Quintana
Miguel Quintana, President

LESSOR:

THE CITY OF SEATTLE

By Virginia Anderson
Virginia Anderson, Director
Seattle Center Department

BUSINESS ADDRESSES FOR NOTICES:

LESSEE:

Mr. & Mrs. Miguel Quintana
Rico Burrito, Inc.
13019 S.E. 21st Place
Bellevue, WA 98005
PHONE NO.:

LESSOR:

Manager, Contracts & Concessions
Seattle Center Department
305 Harrison, Room 111
Seattle, WA 98109
PHONE NO.: 206-684-7114

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ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this 16th day of May, 1996, before me personally appeared Miguel Quintana to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged the same as a free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND AND SEAL the day and year first above written.

Irene F. Perry
Signature
IRENE F. PERRY
(Print or Type Name)
NOTARY PUBLIC in and for the State of Washington,
residing at Lynnwood WA
My appointment expires: 5-2-98

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this 16th day of May, 1996, before me personally appeared Virginia Anderson to me known to be the Director of the Seattle Center Department of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and, under oath, stated that she was authorized by ordinance to execute said instrument.

GIVEN UNDER MY HAND AND SEAL the day and year first above written.

Carolyn C. Gossard
Signature
CAROLYN C. GOSSARD
(Print or Type Name)
NOTARY PUBLIC in and for the State of Washington,
residing at Seattle
My appointment expires: 11/28/96

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LEASE AGREEMENT

PART B: GENERAL COVENANTS & CONDITIONS OF LEASE

B-1 TIME AND PLACE OF PAYMENT

- a. Due Date for Monthly Base or Adjusted Base Rent: The monthly base or adjusted base rent specified in Section A-4 hereof, and any leasehold taxes due pursuant to Section B-11.c hereof, are due and payable to the City, in advance, without setoff or deduction of any kind or nature or City invoice, on or before the first (1st) day of each month of the term hereof; *Provided*, that until the City notifies the Lessee of the amount of the annual CPI adjustment in the monthly base or adjusted base rent, the Lessee shall remit as a partial payment, the rental amount specified in this section or in the City's most recent rent increase notice, whichever is higher, and within seven (7) days after the date of the City's notice of the amount of each such annual increase and its invoice for the amount retroactively due, the Lessee shall remit such retroactive rent and thereafter remit on a monthly basis the newly adjusted base rent.
- b. Due Date for Percentage Rent: The percentage rent for each year of the Term hereof, and any leasehold taxes due pursuant to Section B-11.c hereof, are due and payable, without setoff or deduction of any kind or nature or City invoice, on or before February 1st of the immediately succeeding calendar year after the year in which the breakpoint is met or exceeded, unless such day is a weekend or City holiday, in which case such percentage rent shall be due and payable on the next succeeding Seattle Center business day. Such rent shall be submitted with a remittance report in a form subject to the Director's approval.
- c. Due Date for Minimum Monthly Promotion and Advertising/Public Programming Charge: The Lessee's Minimum Monthly Promotion and Advertising/Public Programming Charge shall be due and payable to the City, in advance, without setoff or deduction of any kind or nature or City invoice, on or before the first (1st) day of each month of the term hereof, unless such day is a weekend or City holiday, in which case such Minimum Monthly Promotion and Advertising/Public Programming Charge shall be due and payable on the next succeeding Seattle Center business day.
- d. Due Date for Supplemental Monthly Promotion and Advertising/Public Programming Charge: The Lessee's Supplemental Monthly Promotion and Advertising/Public Programming Charge for any year during the term hereof shall be due and payable to the City, without setoff or deduction of any kind or nature or City invoice, on or before February 1st of the immediately succeeding calendar year, except in the year in which this Lease expires or is terminated, with respect to which such Supplemental Monthly Promotion and Advertising/Public Programming Charge shall be due and payable as of the expiration or termination date, unless such day is a weekend or City holiday, in which case such Supplemental Monthly Promotion and Advertising/Public Programming Charge shall be due and payable on the next succeeding Seattle Center business day.

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e. Due Date for Tenant Association Dues: The Lessee's Tenant Association Dues for any year during the term hereof shall be due and payable to the City, without setoff or deduction of any kind or nature or City invoice, on or before January 1st; *Provided*, that for the first year of the term hereof, such dues shall be due and payable upon execution of this Lease. In the event the Term of this Lease does not commence on January 1st and end on December 31st, such dues shall be prorated.

f. Due Date for Reimbursements: Any reimbursement(s) of City expenditures for and on behalf of the Lessee including but not limited to the Lessee's prorated share of insurance premiums due pursuant to Subsection B-5.j and any reimbursement due pursuant to Subsections B-6.e, B-10.b(4) and B-18.c hereof shall be due and payable, without any set off or deduction of any kind or nature, within thirty (30) days after the date of the City's invoice therefor.

g. Place of Payment: All payments shall be delivered to The City of Seattle, Seattle Center Accounting Office, 305 Harrison Street, Seattle, Washington, 98109, or to such other address as the Director shall specify by notice to Lessee.

h. Delinquencies: All sums due and owing to the City shall be delinquent if not paid on or before the fifth (5th) day after the date due; in the event of any delinquency, the Lessee shall also owe to the City a service charge of Fifty Dollars (\$50.00), or such larger sum as is established by ordinance, each time such delinquency is invoiced plus interest on such delinquent sum at a rate of one and one-half percent (1½%), or such larger percent as is established by ordinance, per month from the date due to the date of payment.

i. Returned Check, Non-Sufficient Funds: In the event any payment or check for payment is returned for non-sufficient funds, the Lessee shall owe as an administrative charge an additional \$20.00, or such larger sum as is established by ordinance.

B-2 BOOKS AND RECORDS; "GROSS RECEIPTS" DEFINED

a. Keeping of Records: The Lessee shall keep true, accurate, complete and auditable records of all of the Lessee's gross receipts, which records shall be separate from all of the other business records of the Lessee.

b. Payment Reports: Lessee shall submit monthly a "Daily Gross Receipts Report", a "Remittance Report" and all cash register tapes for each day of business during the previous month, as required by Seattle Center Accounting, to the address in section B-1.g above.

c. Identification of Lessee's Fiscal Year: No later than ten (10) days after the date this Lease becomes effective, the Lessee shall identify, in a notice to the Director, the consecutive period of time that comprises the Lessee's "fiscal year," which period shall not be changed during the Term of this Lease without the written consent of the Director, whose consent may be withdrawn or conditioned in the exercise of the Director's discretion notwithstanding the provisions of Section B-21 hereof.

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d. Statement to Director Regarding Annual Gross Receipts: Not later than sixty (60) days after the end of any fiscal year of the Lessee during the Term of this Lease, the Lessee shall deliver to the Director a written statement identifying the amount of the Lessee's gross receipts in such fiscal year, which statement shall be certified as to its accuracy by a certified public accountant in the following manner:

"I have examined the definition of 'gross receipts' in the Lease between The City of Seattle and the Lessee, all relevant financial statements and income tax returns of the Lessee, and the Lessee's system of recording gross receipts. In my opinion, the attached statement of gross receipts for the period identified herein, accurately reflects the Lessee's gross receipts for the aforementioned period."

e. Definition of Gross Receipts: As used in this Lease, the term "gross receipts" means and includes the total income of the Lessee and every other person or entity conducting business in, on or from the Premises including but not limited to the proceeds from all retail and wholesale sales of food, beverages, merchandise, and services of any kind whatsoever, for cash, barter, exchange or credit, regardless of collections; sales from vending devices; mail or telephone orders received or filled on or from the Premises; all deposits not refunded to purchasers; orders taken although filled elsewhere; fees; commissions; catalog sales; and rental receipts. An installment or credit sale shall be deemed to have been made for the full price on the date of sale regardless of when payment is received. Subject only to the exclusions specified in the immediately following paragraph, the full amount received by the Lessee shall be included in its "gross receipts," regardless of whether (a) the Lessee was acting as a consignee, trustee or agent for a third party in connection with such sale or rental, or (b) the Lessee is entitled to retain the full amount received on such sale as the Lessee's own property.

The term "gross receipts" does not mean or include the amount of money refunded to and not merely credited to the account of customers who return or do not accept food, beverages, merchandise, or services sold or rented by Lessee; any exchange of merchandise between stores or the central warehouses of the Lessee where such exchange is made solely for the convenient operation of the Lessee's business and not for the purpose of consummating a sale made in, on, or from the Premises; returns to shippers or manufacturers; any discount allowed by the Lessee to customers; the Washington State Sales Tax and any other tax imposed by any government agency directly on sales; and all admission taxes collected by the Lessee. (Business and occupation taxes are not taxes imposed directly on sales and shall not be deducted from the amount of "gross receipts" reported to the City.)

B-3 AUDIT

The Lessee shall permit the City, from time to time, as the City Auditor, Director, or either's functional successor deems necessary, to inspect and audit in King County, Washington, at any and all reasonable times, all books and records pertaining to the

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Lessee's gross receipts to verify the amount of gross receipts generated by the Lessee on or from the Premises, and shall supply the City with, or shall permit the City to make, a copy of any such books and records and any portion thereof, upon the request of the City Director of Finance, the Director, or either's functional successor or designee. The Director shall notify the Lessee of the amount of any over or underpayment found. Any overpayment shall be a credit against any rent or additional rent subsequently due or, at the Lessee's option, shall be refunded to the Lessee. In the event of an underpayment, the Lessee shall pay to the City, as additional rent, the amount of such underpayment plus the cost incurred by the City in auditing the Lessee's books and records. The Lessee shall ensure that the City's right to inspect, audit and copy the Premises user's books and records is a condition of any sublease or other arrangement under which any other person or entity is permitted to use or occupy the Premises.

B-4 PERFORMANCE GUARANTEE

The Lessee shall deliver to the City, Seattle Center Accounting Office at the City address referenced in Subsection B-1.c hereof, within five (5) days after the Lessee's execution of this Lease, as a performance guarantee, the sum specified in Section A-7 hereof. Said performance guarantee constitutes additional consideration for the City's execution of this Lease and shall be fully earned by the City as of the commencement date of this Lease, and may be commingled with other City funds and invested to generate additional earnings for the City's benefit as the City desires. The City may (but shall not be required to) use, apply or retain all or any part of this performance guarantee for the payment of any rent or additional rent or any sum alleged to be or actually in default, or for the payment of any amount that the City may expend by reason of any alleged or actual default by the Lessee, or to compensate the City for any other loss or damage that the City may have suffered by reason of any alleged or actual Lessee default. If any portion of said performance guarantee is so used or applied, the Lessee, within seven (7) calendar days after the date of notice thereof, shall deliver to the City, the Seattle Center Accounting Office, additional cash in the amount sufficient to restore the performance guarantee to the amount set forth in Section A-7 hereof. If the Lessee fully and faithfully performs every provision of this Agreement to be performed by it, the performance guarantee or any balance thereof after any application of the same by the City hereunder shall be refunded to the Lessee within forty-five (45) days after the expiration or earlier termination of this Lease. The Lessee shall have no right to contest any withdrawal, use, retention or application by the City of any portion of such performance guarantee at the time of the City's taking such action; *Provided*, that nothing herein shall prejudice the Lessee's right to demand through arbitration or litigation the refund of such portion if, and only if, the Lessee has fully complied with and satisfied all of its obligations hereunder. The Lessee waives prior notice and opportunity for a hearing on any withdrawal, use, application, or retention by the City of such performance guarantee or any portion thereof.

B-5 LIABILITY

a. Indemnification: The Lessee shall indemnify and hold the City harmless from any and all losses, claims, actions, damages, costs and expenses (including attorneys' fees) suffered by any person or entity by reason of or resulting from any negligent, reckless or intentional act or omission of the Lessee or any of its agents,

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employees, contractors, or invitees in connection with use or occupancy of the Premises, including trademark, patent, and copyright infringement; and except in connection with or collateral to the demolition, construction, alteration, addition, improvement, repair, or maintenance of the Premises or the moving thereto and therefrom, any concurrent, negligent act or omission of the Lessee or any of its officers, employees, agents, or invitees, and of the City or any of its officers, employees, agents, or invitees. In the event any suit or action is brought against the City, the Lessee, upon notice of the commencement thereof, shall defend the same, at no cost and expense to the City, and promptly satisfy any final judgment adverse to the City or to the City and the Lessee jointly; *Provided*, that in the event the Director determines that one or more principles of governmental or public law are involved, the City retains the right to participate in such action. Nothing contained in this section shall be construed as requiring the Lessee to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or any of its officers, employees, or agents. Notwithstanding any provision to the contrary herein, in the event any bodily injury or damage to property results from or arises out of any construction, alteration, repair, addition to, subtraction from improvement to, or maintenance of, any excavation, building, structure, project, development or improvement attached to real estate, including moving and demolition in connection therewith, that has been undertaken or performed by or on behalf of the Lessee, the indemnification provided pursuant to this subsection shall be limited to the extent of the negligence of the Lessee and those acting by or for the Lessee. The indemnification provided in this subsection shall survive the expiration or earlier termination of this Agreement.

b. Liability Insurance: Unless the City secures and maintains such insurance for itself and the Lessee's benefit pursuant to Subsection B-5 hereof, the Lessee shall secure and maintain in full force and effect at all times during the Term of this Lease, at no cost or expense to the City, one or more policies of commercial general liability insurance as required below:

(1) Liability Limits: The limitations of liability shall not be less than One Million Dollars (\$1,000,000), per occurrence, Combined Single Limit (bodily injury and property damage) and One Million Dollars (\$1,000,000) Annual Aggregate with a deductible or self-insurance retention of no more than Two Thousand Five Hundred Dollars (\$2,500) for property damage, only; *Provided*, that in the event the Director deems such insurance to be inadequate to fully protect the interests of the City and the Lessee hereunder, the Lessee shall increase said coverage limits to such amounts as the Director shall deem reasonably adequate to provide such protection, which increase shall be completed within sixty (60) days after the date of notice that the Lessee's insurance coverage is deemed to be inadequate. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Lessee from liability in excess of such coverage.

(2) Coverage: Coverage shall be provided for liability for any injury, death, damage and/or loss of any sort sustained by any person, organization or corporation (including the Lessee and any of its officers,

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employees and agents) in connection with or arising out of any act or omission of (a) the Lessee; or (b) any of the Lessee's officers, employees, agents, assigns or invitees; or (c) the Lessee and City or any of their officers, employees, agents, assigns, or invitees, jointly, upon the Premises; and for any activity performed by the Lessee under this Lease and shall include, but need not be limited to the following types (described in insurance industry terminology):

- (a) Premises operations liability (O, L & T or M & C);
- (b) Blanket contractual liability;
- (c) Broad form property damage;
- (d) Independent contractor (O & CP.);
- (e) Automobile liability for owned, leased, hired or non-owned vehicles;
- (f) Products and/or completed operations;
- (g) Personal injury, including coverages A, B, and C with no employee exclusion;
- (h) Fire legal liability.

All such insurance shall provide coverage on a "per occurrence" rather than on a "claims made" basis, and shall be primary to any other insurance that may be valid and collectible. The Lessee is not required to provide insurance coverage against City's sole negligence.

c. Fire and Extended Coverage: Unless the City secures and maintains such insurance for itself and the Lessee's benefit pursuant to Subsection B-5 hereof, the Lessee shall secure and maintain at all times during the Term of this Lease, at no cost or expense to the City, one or more policies of fire, and extended coverage equal to not less than ninety percent (90%) of the value of the Lessee's additions, alterations and improvements to the Premises, which value shall be determined by the Director, from time to time, and identified in a notice to the Lessee. Under such insurance, any loss payment shall be made payable to the City, which shall hold the same in trust for the rebuilding, repairing, replacing or restoring of the Premises, including all improvement, additions and alterations thereto.

d. Business Interruption Insurance: The Lessee shall secure and maintain during the Term of this Lease, business interruption insurance with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of the Lessee's business because of fire or other cause.

e. Authorized Carriers: The insurance described in Subsections B-5.b and B-5.c shall be obtained from one or more insurance companies duly authorized to issue such policies in the State of Washington, and having a rating of at least "A", as rated in Best's Key Rating Guide or a successor or substitute rating service accepted by the Lessee and Director.

f. Naming of City As Additional Insured: The City shall be named as an additional insured in the policies to be secured under Subsections B-5.b and B-5.c, hereof, by an endorsement declaring that the coverages provided by such policy to

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the City or any other named insured shall not be terminated, reduced or otherwise changed as to face value without providing at least thirty (30) days prior written notice to the following:

Seattle Center Director	Risk Manager
Seattle Center Department	Finance Department
The City of Seattle	The City of Seattle
305 Harrison	750 Arctic Bldg.
Seattle, WA 98109	Seattle, WA 98104

or to such other addressees and addresses as the City may hereafter specify.

g. Evidence of Insurance: The Lessee shall deliver to City's Risk Manager, or such official's functional successor or designee(s), a copy of all policies required under Subsections B-5.b and B-5.c, hereof, and all endorsements thereto or other evidence to the reasonable satisfaction of the City's Risk Manager that the Lessee has secured or renewed and is maintaining insurance as required by this Lease, as follows:

- (1) On or before the first Premises use by the Lessee or any of its sublessees under this Lease; and
- (2) Within seven (7) calendar days prior to the expiration or renewal date of each such insurance policy; and
- (3) Within seven (7) calendar days after the Lessee's receipt of a written request therefor.

h. Assumption of Risk: The placement and storage of personal property in the Premises or any other Seattle Center facility shall be the responsibility, and at the sole risk, of the Lessee.

i. No Entry onto Premises upon Failure to Insure: The Director shall notify the Lessee whenever the Director has a reasonable belief that the Lessee has failed to secure or maintain insurance as required by this Lease. Notwithstanding any other provision of this Lease, after its receipt of any such notice, the Lessee shall not enter upon any Seattle Center facility until the Lessee has secured and is maintaining insurance as required by this Lease.

j. City May Secure Insurance at Lessee's Cost: Notwithstanding any other provision hereof, in the event the Director determines, after consultation with the Lessee, that the City can secure and maintain commercial general liability and fire, and extended insurance coverage at a lower cost than the City's Center House Lessees generally can secure and maintain the same, for equal or superior coverage, and the Director further determines to secure and maintain such insurance coverage, then upon at least thirty (30) days' prior notice to the Lessee, and from and after the commencement date of the insurance coverage secured by the City, the Lessee shall not be obligated to secure and maintain the insurance

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coverage required by, or to otherwise comply with the provisions of, Subsections B-5.b, B-5.c, B-5.e, B-5.f or B-5.g hereof, but shall be obligated to pay to the City, as additional rent, the Lessee's prorated share of the insurance premium for such insurance coverage, in the amount determined by the Director in the exercise of such official's reasonable discretion.

B-6 PREMISES IMPROVEMENTS, ADDITIONS, AND ALTERATIONS

- a. Acceptance of Premises: Lessee accepts the Premises in their condition as of the commencement date of the term hereof. The City disclaims all representations, statements, and warranties, expressed or implied, with respect to the condition of the Premises or the use and occupancy authorized other than those contained in this Lease.
- b. Prior Approval of Plans & Specifications Required: The Lessee shall submit to the Director, for approval, schematic designs, design development drawings, and final working drawings and specifications for the construction on the Premises of improvements, additions, and alterations to convert the Premises to the condition desired by the Lessee for the operation of its business. All such designs, drawings and plans for work affecting, in any way, the structural, mechanical or electrical systems of the building of which the Premises forms a part or having a cost in excess of Two Thousand Dollars (\$2,000) shall be prepared by a licensed architect or engineer, who shall have affixed to the same his/her signature and seal. No change shall be made to any electrical wiring or plumbing in the Premises or any utility service to or from the Premises as of the commencement date of this Lease and at any time subsequent thereto, other than a change made by a properly licensed electrician or plumber. No demolition, remodeling, or construction work shall begin on any improvement, addition, or alteration on the Premises or to any utility service connecting with the Premises or any portion thereof, or to any other City facility, until after the Director has approved the same and all other required authorizations have been secured for such work. If any improvement, addition or alteration to the Premises is begun, the portion of the Premises that is subjected to such change must be made accessible for disabled people as required by applicable law.
- c. No Representation or Liability Created by Approval: The approval of any plans and specifications by the Director shall not constitute an opinion or representation by the City as to their completeness; design sufficiency; compliance with any law, ordinance, rule or regulation; or their adequacy for other than the Seattle Center's own purposes. No such approval shall create or form the basis of any liability on the part of the City or any of its officers, employees, or agents for any injury or damage resulting from any inadequacy or error therein or any failure to comply with any applicable law, ordinance, rule or regulation.
- d. Work Inconsistent with Approved Plans & Specifications: No improvement, alteration, or addition shall be constructed, placed, or erected on the Premises except in accordance with the Seattle Center-approved plans and specifications attached hereto as "Part D." Immediately following the Lessee's receipt of notice by the City of any non-approved improvement, addition, or alteration in, on, or being made to the Premises, the Lessee shall either desist from the occupation,

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use, and operation of such improvement, addition, or alteration; and remove it from the Premises or make it consistent with such approved plans and specifications.

e. Changes in City Facilities, Utilities or Services: In the event an improvement, addition, or alteration made or desired to be made by the Lessee requires or would require any change in any facility, utility or service provided by the City, the Lessee shall pay, as additional rent, any costs incurred by the City in making such change or otherwise in connection therewith.

f. Work at Lessee's Expense:

(1) All improvements, additions, and alterations made to the Premises to convert the same to the condition desired by Lessee for the operation of its business, shall be at the expense of the Lessee, and at no expense to the City unless otherwise specifically agreed upon in writing.

(2) In the event any activity or omission of the Lessee results in damage to City property or any other lessee's Premises or property, and the City undertakes emergency repair or cleanup activity, the Lessee shall be liable for the full cost of such City work.

g. Improvements, Additions & Alterations and Fixtures Become City Property: All improvements, additions, and alterations made to, and fixtures installed on, the Premises shall become the property of the City upon the expiration or termination of this Agreement except for those items specified by the Director by written notice to the Lessee. All improvements, additions, alterations and fixtures not identified in such Director's notice shall remain in, and be surrendered with the Premises as a part thereof without molestation, disturbance or injury.

h. No Liens or Encumbrances: The Lessee shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Premises. At the request of the Director, the Lessee shall deliver to the Director written proof of the payment of any item that could be the basis of such a lien, if not paid.

i. Construction Bond: Prior to commencing any alteration, addition or improvement work on the Premises, the Lessee shall file with the Director a good and sufficient corporate surety bond subject to approval by the City Attorney as to form and surety, conditioned upon the completion and installation of said addition, alteration or improvement as described in plans submitted to and approved by the Director and City and in accordance with the provisions of this Lease and all licenses, permits, ordinances, statutes, regulations and laws governing the making of said improvement, and further conditioned upon the payment of all persons supplying labor and material for the making of said addition, alteration and improvement, and upon the making of said addition, alteration, and improvement without cost and expense to the City; *Provided*, however, that the Director may waive or reduce this surety bond requirement if, in the opinion of the Director, such surety bond coverage either is unavailable or available only at a cost deemed by the Director to be unreasonable under the circumstances.

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j. Construction Liability Insurance: The Lessee shall require its general contractor to furnish and maintain during the full period of the making of any part of any physical addition, alteration or improvement to the Premises, at no cost to the City, a policy of public liability and property damage insurance issued by an insurance company licensed to do business in the State of Washington, protecting the Lessee and the City from any and all claims for damages for personal injury, including death, and for property loss or damage that may arise from any activity related to the making of said addition, alteration or improvement, whether such activity is by the Lessee, its contractor(s), any subcontractor, or by anyone directly or indirectly employed by or under contract to any of them. Said policy shall provide coverage in the following minimum amounts: One Million Dollars (\$1,000,000) Combined Single Limit, One Million Dollars (\$1,000,000) Annual Aggregate. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Lessee from liability in excess of such coverage. The above insurance limits will be reviewed annually by the parties to assure that coverage is reasonable. The Lessee shall adjust the above insurance limits after such review if it is determined by the Director that any increase is reasonable and justifiable based on changed legal or economic conditions. Such policy shall name The City of Seattle as an additional insured and provide that the terms thereof cannot be modified or terminated without thirty (30) days' prior written notice to the City, all in the manner and form required by the City's Risk Manager or such official's successor. Evidence of such insurance must be provided to the City, consistent with the requirements of Subsection B-5.g hereof, prior to the commencement of work. All such insurance shall be primary to any insurance maintained by the City.

k. Delivery of "As-Built" Drawings: Immediately after the completion of each improvement, addition, or alteration to the Premises, the Lessee shall deliver to the Director a complete set of reproducible 24" x 36" drawings reflecting the final "as-built" condition of said improvement, addition or alteration, together with either the original or a copy of all maintenance and operation manuals necessary for the repair and maintenance of any architectural, mechanical or electrical building system or piece of equipment installed on the Premises that is all or part of such improvement, addition or alteration.

l. Testing of Premises: The Lessee may make such tests, borings and other minor disturbances of the Premises as may be necessary to develop designs and plans for all required or desired improvements, additions and alterations to the Premises, including installations and modifications to accommodate changes in trade fixtures intended for use on the Premises. A report of the findings and results of each such test or boring shall be submitted to the Director within thirty (30) days after the date such findings and results are obtained.

B-7

COVENANTS REGARDING OPERATION OF LESSEE'S BUSINESS

a. Obligation to Open for Business: The Lessee shall open for business within sixty (60) days after the date the Premises are made available to the Lessee for the constructions of its initial improvements, additions, and alterations, or sixty (60) days after the City's approval of plans and issuance of building permit, whichever is later.

b. Business Hours: The Lessee shall not leave the Premises unoccupied or vacant, but shall open and maintain its operation therein ready for the transaction of business with the public on such days and during such minimum operating hours as may be designated by the Director, from time to time, with the exception of temporary closures for such period as may be necessary for repairs, redecorating, or circumstances beyond the Lessee's control.

c. Maximization of Gross Receipts: The Lessee shall carry on its business with diligence and efficiency, making the Lessee's best efforts to produce the maximum amount of gross receipts as defined in Section B-2 hereof.

d. Personnel: The Lessee shall employ courteous, competent, and efficient help in such numbers, skills, and experience as to properly conduct its activities on the Premises. The Lessee shall have on the Premises, at all times it is open for business, a qualified representative authorized to represent the Lessee in dealings with the City, and shall keep the Director informed of the identity of such person.

e. Business Name: The Lessee shall not change the name by which it carries on its business without the written consent of the Director whose consent shall not be unreasonably withheld.

f. Fixtures, Furnishings, and Trade Equipment: All fixtures, furnishings, and trade equipment installed on the Premises shall be of high quality, of a modern type, and either new or completely reconditioned. Temporary or portable concession facilities shall be of the same quality as those permanently installed. Cash registers shall be a non-resetting type with a cumulative total and shall be subject to the approval of the Director.

g. Personal Property Inventory: During the last two (2) weeks of June of each year during the Term of this Lease, the Lessee shall inventory all of its personal property on the Premises other than merchandise offered for sale or rent to the public, and furnish the Director with a copy of a written inventory report itemizing the same. The personal property inventory most recently filed by the Lessee is attached hereto as "Part E."

h. Deliveries: All deliveries shall be made to a delivery location or entrance designated by the Director and shall be completed prior to 11:00 a.m. or the Director's specified deadline when special arrangements have been made with the Director.

i. No Nuisances or Objectionable Activity: The Lessee shall not permit any excessive or objectionable noise, odor, dust, vibration or similar substance or condition to remain on or be emitted from the Premises; shall not interfere with access from the Seattle Center or any part thereof, including the Premises, or with the traffic thereon; shall not create any nuisance in or adjacent to the Seattle Center; and shall not do anything on the Seattle Center that will create a danger to life or limb.

j. No Use of Common Areas: Neither the Lessee nor any of its officers, employees, or invitees shall use the common areas of Seattle Center (those areas designated by the Director as being for the general and shared use by Seattle

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Center tenants and their employees and invitees, City employees, and Seattle Center visitors, and not within the exclusive control of any tenant or licensee, which areas include but are not limited to public walkways, hallways, corridors, elevators, escalators, stairways, lounges, general seating areas, and restrooms) to meet governmental requirements peculiar to the Lessee's operations on the Premises or otherwise (such as the location for any sign or signboard) without the express written approval of the Director. Whenever the Lessee, or any of its officers, employees, or invitees requires any equipment, separate area(s) or special facility to satisfy any such governmental requirement, such equipment, area(s), and facility shall be located within the Premises at the Lessee's sole expense.

k. Illumination of Premises: The Premises and all fixtures, furnishings, and trade equipment thereon shall be effectively illuminated during all hours the Lessee is open for business.

l. Fire Extinguisher Within Premises: During the term of this Lease, the Lessee shall secure, maintain and install in the Premises, in a prominent location, a 2A-10BC class fire extinguisher or an alternative approved by the Fire Marshall, and the Lessee shall instruct all of its employees regarding its appropriate use. Such fire extinguisher shall be recharged not less than once a year and immediately following any use.

m. No Use of Prohibited Food-Serving Material: The Lessee shall not serve or permit any other person or entity to serve on the Premises any food or beverage in any plastic or polystyrene foam food or beverage container or any other type of food or beverage serving container that is hereafter legally prohibited.

n. Tenants' Association: The Lessee shall join and thereafter maintain full membership in an association established for Tenants of Center House.

o. Objectionable Merchandise or Material: Notwithstanding any other provision of this Lease, the Lessee shall not display or offer for sale or rent, or allow to be displayed or offered for sale or rent, on the Premises, any merchandise or other material that is unsafe; that portrays the City or Seattle Center or any aspect thereof in an incorrect, misleading, or unfavorable manner; that depicts or suggests in words, symbols, illustrations, or other forms, any act of violence, or any lewd, immoral, or obscene activity; or that is inconsistent with the image of a first-class, family-oriented retail and entertainment development, or is otherwise inappropriate for a family-oriented recreation and entertainment facility such as Seattle Center; or that may create a substantial litter or other maintenance problem at Seattle Center; all of which shall be determined by the Director in the exercise of such official's sole discretion.

p. Core and Key Change: The lessee shall obtain from the City, and pay in advance of delivery, the then current Seattle Center charge for, whatever number of lock cores, padlocks and keys are desired for all doors in and to the Premises. In the event, upon the expiration or earlier termination of this Lease, the Lessee

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returns to the City all of the keys it obtained for the doors and padlocks on and to the Premises, the City shall refund to the Lessee all of the aggregate charges paid for all the lock cores and keys, but not otherwise.

B-8 UTILITY SERVICES AND PARKING

a. Extent of City Service: The City shall provide basic utility service including but not limited to sewer, water, and heating for such location. The Lessee shall pay, before delinquency, all fees and charges for the installation, change, and relocation of any point or means of service by any utility or waste line or system.

b. Limitation on City Liability Regarding Utility Service: The City shall not be liable for the interruption of any utility service when such interruption is caused by maintenance work, or when the interruption is not due to City negligence.

c. Special Services and Facilities Subject to Prior City Approval, and at Lessee's Cost: The Lessee, directly or through a third party, may install, secure, maintain and repair, at no expense to the City, any utility service related to the Lessee's operations and its use of the Premises that is not provided or maintained by the City. Any special utility or waste disposal facility, item of equipment, or service beyond that provided to the Premises by the City, must be installed only in accordance with plans and specifications approved by the Director and other appropriate City officials, in writing, in advance of such installation. The Lessee shall not install on the Premises any fixture, furnishing, or trade equipment that exceeds the capacity of any utility or waste facility for such location. The Lessee shall pay, before delinquency, all fees and charges for the installation, change, and relocation of any point or means of service by any utility or waste line or system. The Lessee shall make arrangements with the utility service provider for the separate metering, where possible, of such service and the direct billing to the Lessee for the delivery of such service.

d. Cooperative Parking: As of the commencement date of this Lease, the Seattle Center has a "Cooperative Parking Status" under Title 23 of the Seattle Municipal Code. Accordingly, unless otherwise specifically provided herein, the City does not provide any parking that is specifically for or associated with the Premises (including but not limited to that required by or for the Lessee's staff, suppliers or customers), and whatever general, non-reserved parking the City makes available for Seattle Center tenants and their respective staffs, suppliers, and customers shall be shared on a first-come, first-served basis.

B-9 ADVERTISING & PUBLICITY

a. Prohibited Promotion & Other Material; Removal of Same: The Lessee shall not display, post, or distribute any sign, symbol, advertising of any nature, or any printed material (including but not limited to posters) on any part of the Seattle Center, including but not limited to the Premises, except after receiving written permission therefor from the Director; and may undertake such activity only in or on location(s) approved by the Director. On or before the expiration or termination date of this Lease, whichever is earlier, or in the case of unauthorized material, on or before the date specified in the Director's notice to remove the same, the

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Lessee shall remove, at no expense to the City, all such signs, symbols, advertising and printed material; and correct any unsightly condition, and repair any damage or injury to City property caused by such signs, symbols, advertising and printed material, and the removal thereof. In the event any such unauthorized material is not removed from City property by the date required herein, such material may be treated as Lessee property subject to removal and storage pursuant to Subsection B-18.c hereof.

b. Use of Photos & Similar Materials: Each party hereto may make photographs, video tapes, and motion pictures of the Premises and the activity, people, displays and exhibits thereon; *Provided*, that in the event such visual material is to be used for commercial advertising purposes, prior to making the same, the Lessee shall obtain the written approval of the Director for such use, which approval may be conditioned upon, among other things, the payment by the Lessee to the City of additional consideration; and prior to the use of any such photography, video tape, or motion picture, a written release shall be obtained from every individual identifiable in the same.

B-10 MAINTENANCE, CLEANING & REPAIR

a. City Responsibilities: The City shall maintain, clean and repair the exterior and structural aspects of the Premises as well as the Seattle Center common areas as defined in Subsection B-7 hereof, but not the interior or window areas of Premises except as indicated in Part A hereof. Such maintenance, cleaning and repairing shall be to the ordinary standard of work performed on other, major use facilities at Seattle Center, to keep the same in good condition, normal wear and tear and damage and destruction by fire or other extraordinary casualty excepted. In connection therewith, the City shall remove garbage and other refuse from locations designated by the Director for such purpose, and repair potable water, sewer, and storm water lines connecting with similar lines on the Premises. In undertaking such maintenance, the City shall make a good faith effort to not unreasonably interfere with the Lessee's business on the Premises. The Lessee waives all claims for damages, including for any loss of business, resulting from City maintenance, cleaning and repair work except to the extent of City negligence and the City's unreasonable interference with the Lessee's use of the Premises.

b. Lessee's Responsibilities: Except as indicated in Part A hereof, the Lessee, at its own cost and expense, shall keep the Premises and all real property improvements, alterations, and additions thereto, and the Lessee's personal property at all times and otherwise in good repair and in a neat, clean, and sanitary condition, except for the effects of normal wear and tear and damage by fire or other unavoidable casualty. In carrying out such responsibilities, the Lessee, among other things, shall:

- (1) Clean all glass in the windows, doors, display cases, and equipment on the Premises at least once a month, and replace any such glass immediately after it becomes cracked or broken;

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- (2) Generally repaint all painted surfaces at least once every five (5) years, and spot-paint any surface area that has become chipped, spotted, faded, or otherwise unattractive immediately after such condition has been discovered;
- (3) Keep all drainage pipes free and open;
- (4) Have all plumbing and plumbing fixtures inspected at least once every quarter; repair all damage resulting from any plumbing fixture, any equipment connected to plumbing, or pipe not installed in the Premises by the City or caused by the Lessee's failure to keep such fixture or pipe in good operating condition; and in the event of any failure by the Lessee to satisfy this repair obligation within four (4) hours after receipt of notice from the Director of any such damage, the City reserves the right to undertake such repair, the cost of which shall be reimbursed by the Lessee;
- (5) Maintain and periodically clean at least once every three (3) months, all exhaust system duct work on the Premises and its connection with the City's common duct system, to eliminate all risk of fire;
- (6) Clean all grease traps on the Premises on a regularly scheduled basis but at least once every three (3) months;
- (7) Remove, periodically, in a timely and careful manner, to all areas designated by the Director, all debris generated by or peculiar to the Lessee's operations on the Premises;
- (8) Replace, from time to time, worn or irreparably damaged trade equipment, furnishings and fixtures with other material satisfying the requirements of Subsection B-7.f hereof;
- (9) Prevent the presence of vermin, insects, and other pests on the Premises by, among other actions, contracting with an independent pest control company for the performance of pest control services in the Premises not less frequently than once every two (2) weeks; and by providing to the Director, within thirty (30) days after the commencement date of this Lease, written documentation that such service has been contracted for, and within 24 hours of the bi-weekly performance of such service, written documentation that such service has been performed on the Premises; and
- (10) At least once per month, remove all dust, grit and dirt from, and otherwise clean and perform necessary maintenance work on, any rolling grille located on the Premises.

In the event the Lessee fails to satisfy, in a timely manner after its receipt of notice from the Director of the need for such work, any of the obligations specified in this subsection, the City reserves the right (but shall have no obligation) to undertake such work. In the event the City undertakes such work for the Lessee pursuant to this subsection, the Lessee shall pay the City, as

additional rent under to Subsection A-5(b) hereof, reimbursement of the actual expenses incurred by the City in undertaking such work (including but not limited to Seattle Center labor and project management) plus an administrative charge of \$250.00.

B-11 COMPLIANCE WITH LAW

a. General Requirements: The Lessee, at no cost to the City, shall perform and comply with all applicable, current and future laws of the United States and the State of Washington; the Charter and Municipal Code of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. The Lessee shall use its best efforts to ensure that every person it admits to the Premises similarly performs and complies with the same. Whenever the Lessee or its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it or any person admitted to the Premises, the Lessee shall immediately desist from and/or prevent or correct such violation.

b. Licenses & Other Authorizations: The Lessee, at no cost to the City, shall secure and maintain in full force and effect during the term of this Lease, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

c. Taxes: The Lessee shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Premises, including but not limited to taxes arising out of the activity or business conducted on the Premises; taxes levied on its property, equipment and improvements on the Premises; and taxes on the Lessee's interest in this Lease and any leasehold interest deemed to have been created thereby under RCW Ch. 82.29A; and in the event the State of Washington makes any demand upon the City for payment of leasehold excise taxes resulting from the Lessee's occupancy of the Premises or withholds funds due to the City to enforce collections of leasehold excise taxes, the Lessee shall remit the taxes demanded together with any interest and penalties associated therewith or, at no expense to the City, contest such collection action and indemnify the City for all sums expended by, or withheld by the State of Washington from the City in connection with such taxation.

d. Nondiscrimination & Affirmative Action: The Lessee agrees to comply with all state and local laws prohibiting discrimination with regard to creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap.

Consistent with that obligation, in the event the Lessee has three (3) or more employees during the term of this Lease, the following provisions of Seattle Municipal Code 20.44.040 shall be deemed to be incorporated herein:

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During the performance of this Lease, the Lessee agrees as follows:

"The Lessee will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Lessee will take affirmative action to ensure what applicants are employed, and that employees are treated during employment without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscriminatory clause. The Lessee will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to these provisions; *Provided*, nothing herein shall prevent an employer from giving preference in employment to members of his/her immediate family.

"The Lessee will, upon request of the Director of the City's Department of Administrative Services or such official's functional successor or designee(s) (hereinafter referred to as "DAS Director") furnish to the DAS Director on such form as may be provided therefor, a report of the affirmative action taken by the Lessee in implementing the terms of this provision, and will permit access to the Lessee's records of employment, employment advertisements, application forms, other pertinent data and records requested by the DAS Director for the purpose of investigation to determine compliance with these provisions.

"If, upon investigation, the DAS Director determines that there is probable cause to believe that the Lessee has failed to comply with any of the terms of these provisions, the Lessee shall be so notified in writing. The Director shall give the Lessee an opportunity to be heard, after ten days notice. If the Director concurs in the findings of the DAS Director, then the Director may suspend or terminate this Lease and evict the Lessee in accordance with law.

"Failure to comply with any of the terms of these provisions shall be material breach of this Lease."

The foregoing provision shall be inserted in all sub-leases entered into under this Lease.

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e. Women's and Minority Business Enterprise Utilization:

(1) Incorporation of Ordinance: This Agreement incorporates by reference Seattle Municipal Code ("SMC") Ch. 20.46A (the "Women's & Minority Business Utilization ["WMBE"] Ordinance"). The purpose of Seattle's WMBE Program is to provide a prompt remedy for the effects of past discrimination. The failure of the Lessee or any subcontractor of the Lessee to comply with any of the requirements of S.M.C. Ch. 20.46A shall be a material breach of contract.

(2) Lessee's Obligations: During the Term of this Lease, the Lessee shall:

(a) Meet the minority business enterprise ("MBE") and women's business enterprise ("WBE") set-asides established for this Agreement, if any;

(b) Make affirmative efforts to utilize WMBEs in performing the Lessee's obligations under this Agreement, whether as subcontractors, suppliers, or in any other capacity;

(c) Require that all subcontractors make affirmative efforts to utilize WMBEs in the performance of this Agreement;

(d) Maintain records reasonably necessary for monitoring compliance with the provisions of S.M.C. Ch. 20.46A, and submit such information as may be requested by the DAS Director or such official's functional successor or designee(s) in order to monitor and enforce compliance; and

(e) Require that subcontractors maintain records reasonably necessary for monitoring the subcontractor's compliance with the provisions of S.M.C. Ch. 20.46A, and that the subcontractors submit such information as may be requested by the DAS Director or such official's functional successor or designee(s) in order to monitor and enforce compliance.

(3) Liquidated Damages for Breach: The City, in general, and its WMBE Program in particular, are damaged when a contract, or a portion of a contract, to be performed by a WBE or MBE is not actually performed by a WBE or MBE in compliance with S.M.C. Ch. 20.46A. Because the actual amount of such damage is not reasonably calculable, the City and the Lessee agree and stipulate that liquidated damages equal to the unmet dollar amount of any WBE or MBE set-aside (if any) will fairly compensate the City for resulting delays in carrying out the purpose of the WMBE Program, the costs of meeting utilization targets through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation.

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f. Recycling of Waste Materials: The Lessee, at no cost to the City, shall collect, sort and separate into such categories as may be legally required, all solid waste products on the Premises, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped or removed from the Seattle Center at such minimum frequency as is specified by the Director. The City reserves the right to refuse to collect or accept from the Lessee any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require the Lessee to arrange for the collection of the same at the Lessee's sole cost and expense using a contractor satisfactory to the City. The Lessee shall pay all costs, fines, penalties, and damages that may be imposed on City or the Lessee as a consequence of the Lessee's failure to comply with the provisions of this subsection.

g. Environmental Standards:

(1) Definitions: For the purpose of this subsection, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

(a) "Laws or Regulation" shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction of which the Lessee has knowledge), now or hereafter in effect including but not limited to the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Re-authorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, and the Solid Waste Disposal Act.

(b) "Hazardous Substances" shall mean any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any federal, state, or local statute, ordinance, or regulation relating to environmental protection, contamination or cleanup.

(2) Restrictions on Lessee Activities: The Lessee shall not cause to occur upon the Premises or permit the Premises to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process Hazardous Substances except in compliance with all applicable Laws and Regulations. The Lessee shall provide the Director with the Lessee's USEPA Waste Generator Number (if any), and with a copy of every Material Safety Data Sheet (MSDS), Generator Annual Dangerous Waste Report, environmentally related regulatory permit or approval (including every revision or renewal thereof) and any correspondence the

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Lessee receives from, or provides to, any governmental unit or agency in connection with the Lessee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.

(3) Correction of Violations: If the Lessee violates any of the terms of this section concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, the Lessee shall promptly take such action as is necessary to mitigate and correct the violation. If the Lessee does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in place of the Lessee (for which purpose the Lessee hereby appoints the City as its agent), to come onto the Premises and to take such action as the City deems necessary to ensure compliance or to mitigate the violation. If the Director has a reasonable belief that the Lessee is in violation of any law or regulation, or that any action or inaction of the Lessee presents a threat of violation or a threat of damage to the Premises, the City reserves the right to enter onto the Premises and take such corrective or mitigating action as the Director deems necessary. All costs and expenses incurred by the City in connection with any such action shall become immediately due and payable by the Lessee upon presentation of an invoice therefor.

(4) Testing: The Lessee shall provide the City with access to the Premises to conduct an annual environmental inspection in January of each year of the term hereof or at such other time(s) as may be mutually agreed upon. In addition, the Lessee shall permit the City access to the Premises at any time, upon reasonable notice, for the purpose of conducting environmental testing at the City's expense. The Lessee shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Director's written consent, which shall not be unreasonably withheld. The Lessee shall promptly inform the Director of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to the Lessee, and the Lessee shall provide a written copy of the same to the Director within thirty (30) days after the preparation of any such material.

(5) Removal of Hazardous Substances Prior to Vacation of Premises: Prior to vacation of the Premises, in addition to all other requirements under this Lease, the Lessee shall remove any Hazardous Substances placed on the Premises during the term of this Lease or the Lessee's possession of the Premises, and shall demonstrate such removal to the Director's reasonable satisfaction.

(6) Reimbursement of City Costs: In addition to any remedy provided above, the City shall be entitled to full reimbursement from the Lessee whenever the City incurs any cost resulting from the Lessee's violation of any of the terms of this Subsection B-11.g, including, but not limited to, the cost of clean-up or any other remedial activity, fines, penalties assessed directly

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against the City, injuries to third persons or other property, and loss of revenue resulting from an inability to re-lease or market the Premises due to its environmental condition as the result of the Lessee's violation of the terms of this Lease (even if such loss of revenue occurs after the expiration or earlier termination of this Lease).

(7) Indemnification: In addition to all other indemnities provided in this Lease, and notwithstanding the expiration or earlier termination of this Lease, the Lessee agrees to and shall defend, indemnify and hold the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises resulting from a violation of the terms of this section, or the migration of any Hazardous Substance from the Premises to other property or into the surrounding environment that is the result of a violation of the terms of this section, whether (a) made, commenced or incurred during the term of this Lease, or (b) made, commenced or incurred after the expiration or termination of this Lease if arising out of an event occurring during the term of this Lease.

B-12 CITY'S CONTROL OF BUILDINGS, GROUNDS & ACTIVITIES

Notwithstanding any other provision of this Lease, the City, without liability of any kind, may:

- a. Physical Appearance: Increase, reduce or change, in any manner and any extent whatsoever, the number, appearance, dimensions, and location of any and every Seattle Center walkway, landscaping element, parking, service area, and building (including the Center House Building as defined in Subsection B-10.a hereof) as desired by the City;
- b. Traffic & Parking Regulation: Regulate all traffic within and adjacent to the Seattle Center; and restrict or prohibit the parking on City-owned or leased property of motor vehicles owned or operated by the Lessee or any of its officers, employees, agents, suppliers, and invitees;
- c. Admission Charges: Impose a reasonable charge for admission to the Seattle Center and any of the facilities therein, including parking facilities;
- d. Promotions & Events: Erect, display and remove promotional exhibits and materials and permit special events on the Seattle Center grounds and in or at any or every building and facility thereof including but not limited to the common areas of the Center House Building;
- e. Rules & Regulations: Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of Seattle Center;

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f. Hours of Operation: Determine the days and hours that the Seattle Center and the various business operations therein will be open to the public;

g. Other Businesses & Operations: Change the size, number, and type and identity of other businesses and operations being conducted or undertaken at Seattle Center; and authorize other lessees, licensees, and the sponsors of special events at Seattle Center, directly or indirectly, to offer for sale food and beverages, and for sale or rent any merchandise and service, including any that may be identical or similar to that offered by the Lessee;

h. Signage: Place "For Rent" or similar signs in the Premises for thirty (30) days prior to the expiration or termination date of this Lease, whichever is earlier.

i. Interference: Interfere with light, air or view, or the Lessee's operations or use and occupancy of the Premises, either in connection with or as a result of operations by or for City in the construction of any public work or its subsequent use and occupancy, or the repair and maintenance of any City facility or improvement. The City will make a good faith effort, however, to minimize such interference to the extent it is reasonably economical for the City to do so.

B-13

CITY ACCESS TO, & INSPECTION, REPAIR & IMPROVEMENT OF PREMISES & OTHER PROPERTY

a. Access to Premises: The Lessee shall provide the City and its contractors and consultants, their subcontractors, subconsultants and agents with access to the Premises at all reasonable times to inspect the same and to make any inspection, repair or improvement deemed necessary by the Director, but this right of access shall not impose on the City any obligation to make any repair, alteration, addition, or improvement except as specifically provided herein.

b. Permitted Interference With Lessee's Operations: In inspecting, and in making repairs, alterations, additions, and improvements, the City may erect barricades and scaffolding in and outside of the Premises, and may otherwise interfere with the conduct of the Lessee's business and operations where such action is reasonably required by the nature of the City's work; and such interference shall not be deemed to be a breach or default under this Lease.

c. Suspension of Lessee's Operations and Obligation to Pay Monthly Base Rent: In the event such inspection, repair, alteration, addition, or improvement work necessitates the temporary suspension of the Lessee's business or operations in, on, or from the Premises, the Director shall notify the Lessee of such necessity and the anticipated beginning and ending dates of such suspension. Monthly Base or Adjusted Base Rent due to City pursuant to Section A-4 hereof shall be prorated during each month in which the Lessee's business or operations are required by City to be suspended pursuant to this subsection, and the Lessee shall have no obligation to pay such prorated rent during the period that the

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Lessee's business or operations are suspended; such cancellation of the obligation to pay the prorated Monthly Base or Adjusted Base Rent shall constitute the totality of relief available, and the Lessee waives all claims for damages and for any injury to and interference with its operations or business and losses occasioned by any such suspension.

d. City's Retention & Use of Key to Premises: The Lessee shall provide the Director with a key with which to unlock all of the doors in, upon, and about the Premises, excluding the Lessee's vaults, safes, and files, for each of the aforesaid purposes. The City shall have the right to use any and all means that the Director deems proper to open said doors in an emergency, in order to obtain entry to the Premises, without liability to the Lessee except for any failure to exercise due care for the Lessee's property. Any entry to the Premises obtained by the City by any of said means, or otherwise, shall not be construed or deemed to be an eviction of the Lessee or a forcible or unlawful entry into, or a detainer of, the Premises or any portion thereof.

B-14

ASSIGNMENTS, SUBLEASES & OTHER INTEREST TRANSFERS

a. Director's Prior Written Consent Required for Assignment & Subleases: No purported assignment, sublease or other transfer of the Premises or any portion thereof or of any aspect of the Lessee's interest in this Lease shall be effective without the prior written consent of the Director whose consent shall not be unreasonably withheld. Every proposed sublease, assignment, or other interest-transferring agreement shall be submitted to the Director for review and approval or disapproval after execution by the proposed subtenant, assignee, or transferee, and not less than fourteen (14) calendar days prior to the commencement date of the proposed sublessee's, assignee's, or transferee's intended use of any portion of the Premises under such agreement or the assumption of any right or interest in any portion of the Premises or this Lease. No assignment or sublease of this Lease, with or without the Director's consent, shall release or relieve the Lessee of or from any of the obligations on the Lessee's part to be kept and performed under this Lease, and the Lessee shall remain jointly and severally liable for the performance of all obligations of the Lessee hereunder regardless of any (i) agreement that modifies any of the rights or obligations of the parties to this Lease; (ii) stipulation that extends the time within which an obligation under this Lease is to be performed; (iii) waiver of the performance of any obligation under this Lease; or (iv) failure to enforce any obligation under this Lease. Every assignment and sublease shall be subject to all the terms and provisions of this Lease.

b. Lease Interests Not Transferable by Action of Law or Court: Neither this Lease, nor any right, privilege, or other interest conferred by this Lease shall pass to any trustee or receiver in bankruptcy or to any receiver or assignee for the benefit of creditors; nor shall this Lease or any rights, privilege, or interest be transferable by operation of law or proceeding of any court.

c. Change of Lessee's Organizational Structure or Ownership Constitutes Assignment: If the Lessee is a partnership, limited or general, a withdrawal of a general partner, or change, voluntary or involuntary, by operation of law or otherwise, or a general partner thereof, shall be deemed an assignment. If the

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Lessee is a corporation, the merger, consolidation, or liquidation of the Lessee or any change in the ownership of or power to vote thirty-three and one-third percent (33 1/3%) or more of its capital stock, as held as of the date of execution of this Lease, shall be deemed as assignment.

d. Lessee's Authorization to Use Premises Constitutes Assignment or Sublease: In the event the Lessee in any manner permits anyone to occupy all or any portion of the Premises for any purpose including but not limited to the conduct of any business or other activity, whether or not business-related, not within the intent of this Lease or any sublease, such permission shall be deemed an assignment or sublease, as deemed appropriate by the Director. Every sublease shall require the sublessee to submit to the Director and the Lessee not more than ten (10) days after the end of each month during the term of its sublease and the month after the expiration or earlier termination of such sublease, a written statement identifying the amount of gross receipts generated by such sublessee on and from the portion of the Premises used and occupied by such sublessee during the immediately preceding month. In the event of any assignment of this Lease, the Lessee shall cause to be delivered to the Director simultaneously with such assignment an instrument, in writing, executed by the assignee, in which the assignee shall assume and agree to perform all of the terms and provisions of this Lease on the Lessee's part to be kept and performed that theretofore have not been fully performed.

B-15 EXCUSE & SUSPENSION OF OBLIGATIONS (FORCE MAJEURE)

Whenever a party's performance under this Lease is prevented by an act of nature; war or war-like operations; civil commotion; riot; labor dispute including a strike, lockout, or walkout; sabotage; Federal or State regulation or control; or other condition beyond the reasonable control of such party, performance of such affected obligation shall be suspended, but only for the duration of such condition. The existence of more than one (1) such condition on a given day shall result in only a one (1) day extension.

B-16 DAMAGE OR DESTRUCTION

a. Report of Damage or Destruction: The Lessee shall submit a written report to the Director, in care of the Contracts and Concessions Office, regarding the circumstances of any damage to the Premises, within twenty-four (24) hours after its discovery.

b. Rent Obligation in Event of Damage or Destruction: In the event the Premises are destroyed by fire or other casualty not occasioned by an act or omission of the Lessee, or are damaged so extensively as to render the Premises unusable, the Lessee's obligation to pay rent shall be suspended until the Premises are made usable; but in the event only a portion of the Premises are damaged or destroyed by fire or other casualty not occasioned by an act or omission of the Lessee and the remainder of the Premises remains usable, the Lessee shall pay only a prorated rent that is proportionate to the extent of the Premises that remains usable for the purposes identified in Section A-8 hereof.

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c. Rebuilding, Repair & Restoration: In the event that insurance proceeds payable to the City will provide sufficient funds to enable the City to rebuild, repair and restore the Premises after their damage or destruction, and neither the Lessee nor the City elects to terminate this Lease pursuant to Subsection B-16.d hereof, the City shall diligently prosecute such rebuilding, repair, and restoration. Upon the rebuilding, repair and reconstruction of the Premises, the Lessee shall immediately re-occupy the Premises and again pay rent and additional rent for the right granted herein to use and occupy such area through the expiration or termination date of this Lease, whichever is earlier.

d. Termination Rights in Event of Damage or Destruction:

(1) By Lessee: Notwithstanding any other provision in this Lease to the contrary, in the event that fifty percent (50%) or more of the Premises is damaged or destroyed by fire or other casualty not occasioned by an act or omission of the Lessee, the Lessee may terminate this Lease by providing notice thereof to the Director.

(2) By City: Notwithstanding any other provision in this Lease to the contrary, in the event that fifty percent (50%) of the Center House Building on which the Premises are located is destroyed or is so damaged by fire or other casualty as to be untenable or unusable, or if the City desires to discontinue the Lessee's operations because of substantial destruction of the Center House Building or other part of Seattle Center, regardless of whether the Premises are destroyed, damaged, or otherwise, the City may terminate this Lease by providing prior written notice thereof to the Lessee.

(3) Notice of Termination: Any notice of termination pursuant to this section shall be provided within sixty (60) days after the occurrence of the damage or destruction and shall specify the effective date of such termination.

B-17 **DEFAULT & BREACH**

a. Default & Breach by Lessee: The following acts and omissions shall constitute a default and material breach of this Lease by the Lessee:

- (1) The failure to remit rent or additional rent due and payable to the City, before such sum become delinquent;
- (2) The failure to comply with all of the requirements of Section B-5 hereof, regarding insurance; or
- (3) The violation of any law, Charter provision, ordinance, rule, regulation, governmental authority's order or directive; or
- (4) The abandonment or vacating of the Premises; or

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(5) After the Lessee's receipt of notice of any deduction from the Lessee's Performance Guarantee for a City use or application, or the failure of the Lessee to deliver cash as required by Section B-4 hereof, to restore the Performance Guarantee to its original amount; or

(6) The repeated failure to perform or the violation of any single condition or covenant of this Lease on two or more occasions in any twelve (12) month period; or

(7) The assignment of the Lessee's interest in this Lease without the prior written consent of the Director; or the use of any sublease without the prior written consent of the Director; or the filing of a voluntary or involuntary petition in bankruptcy, or for reorganization or an arrangement; or the adjudication of the Lessee as being bankrupt or insolvent; or the appointment of a receiver of or for the Lessee if such appointment, adjudication or similar order or ruling remains in force or unstayed for a period of thirty (30) days; or

(8) The failure to perform or the violation of any other condition or covenant of this Lease where such default or deficiency in performance was not remedied within a reasonable time.

b. City's Notice of Default & Breach: The Director shall provide written notice to the Lessee in the event the Lessee commits any act or omission specified in Subsection B-17.a hereof, specifying the nature of the act or omission, the reasonable number of days (but not more than sixty (60) days) after the date of the notice within which such failure must be corrected or the violation must be ceased or remedied to avoid termination, and the City's intention to terminate this Lease in the event such act or omission has not been corrected within such stated period. The notice shall also describe special procedures (if any) provided by law, Charter, ordinance, rule, or regulation permitting the Lessee to have a hearing on such failure or violation.

c. Remedies: In the event the Lessee fails to correct, remedy, or cease such failure or violation within the time specified in the Director's notice, the City may thereafter terminate this Lease without any further proceedings, re-enter the Premises, lease and license others to use said Premises during any portion of the period of use remaining under this Lease had it not been terminated, and receive rent, additional rent and license fees therefor; *Provided*, that notwithstanding such termination and re-entry, the Lessee's liability for the rent and additional rent to be paid to the City hereunder shall not be extinguished, and the Lessee shall pay to the City the difference between said rent and additional rent and the sum the City receives for the use of the Premises by one or more other users during the period beginning on the date the Lessee's rights under this Agreement are terminated and ending on the scheduled expiration date of this Lease. Such payment shall be made monthly, within fifteen (15) days after the date of the City's invoice to the Lessee. Such termination and payments shall not relieve the Lessee from liability to the City for any damages caused by the Lessee's default and breach and expenses incurred in the leasing or relicensure of the Premises.

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d. Criteria for Substitute Tenant: The City's obligation to mitigate damages after a default by the Lessee under this Lease that results in the City's regaining possession of all or part of the Premises shall be satisfied in full if the City undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

- (1) The City shall have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until the City obtains full and complete possession of the Premises including, without limitation, the final and unappealable legal right to re-let the Premises free of any claim of the Lessee.
- (2) The City shall not be obligated to offer the Premises to any prospective tenant when other Premises in the Center House suitable for that prospective tenant's use are currently available, or will be available within the next three months.
- (3) The City shall not be obligated to lease the Premises to a Substitute Tenant for a rental less than the current fair market rental then prevailing for similar in comparable shopping centers in the same market area as the Center House.
- (4) The City shall not be obligated to enter into a new lease under terms and conditions that are unacceptable to the City under the City's then current leasing policies for comparable space in the Center House.
- (5) The City shall not be obligated to enter into a lease with any proposed Substitute Tenant that does not have in the Director's reasonable opinion, sufficient financial resource or operating experience to operate the Premises in a first-class manner.
- (6) The City shall not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a Substitute Tenant unless:
 - (a) The Lessee pays any such sum to the City in advance of the City's execution of a lease with such Substitute Tenant (which payment shall not be in lieu of any damages or other sums to which the City may be entitled to as a result of the Lessee's default under this Lease); or
 - (b) The City, in the Director's sole discretion, determines that any such expenditure is financially justified in connection with entering into any lease with such Substitute Tenant.
- (7) The City shall not be obligated to enter into a lease with any Substitute Tenant whose use would:
 - (a) Disrupt the tenant mix or balance of the Center House building;

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- (b) Violate any restriction, covenant, or requirements contained in the lease of another tenant of the Center House building;
 - (c) Adversely affect the reputation of the Seattle Center or Center House building;
 - (d) Be incompatible with the operation of the Center House building as a first-class shopping center.
- e. Default by City: The City shall not be in default of any obligation to perform under this Lease unless the City fails to perform such obligation within a reasonable time, which time shall not extend more than thirty (30) days after written notice by the Lessee to the Director specifying the particular obligation that the City has failed to perform; *Provided*, however, that if the nature of the City's obligation is such that more than thirty (30) days are required for performance, then the City shall not be in default if the City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

B-18 SURRENDER OF PREMISES; HOLDING OVER

- a. Surrender & Delivery: Upon the expiration or termination date of this Lease, whichever is earlier, the Lessee shall surrender the Premises and promptly deliver to the Director all keys the Lessee, and any of its officers, agents, and employees have to the Premises or any other part of the Seattle Center.
- b. Removal of Lessee's Property: Prior to the expiration date of this Lease, or in the event this Lease is terminated, within fifteen (15) days after the termination date, whichever is earlier, the Lessee shall remove, at its sole expense, all trade equipment and personal property owned or installed by the Lessee in, on, or from the Premises, as well as those improvements, alterations and additions to the Premises that are specified in the Director's notice provided pursuant to Subsection B-6.g hereof. In performing such removal work, the Lessee shall take due care to not unreasonably injure or damage the Premises, and shall make such repairs to the Premises as shall be necessary to restore the same to their condition as of the commencement date of this Lease, ordinary wear and tear and improvements, additions, and alterations, approved by the City excepted.
- c. Storage of Lessee's Property: In the event the Lessee fails to remove personal property and the improvements, alterations and additions specified in the Director's notice on or by the time specified in such notice, the City may, but shall not be required to remove such material from the Premises and store the same, all at the Lessee's expense; and in the event the City removes or arranges for the storage of such material, the City shall be reimbursed its costs therefor, including any administrative costs, which reimbursement shall constitute a claim upon the Lessee or, at the City's option, may be invoiced to the Lessee or deducted from the Performance Guarantee provided pursuant to Section B-4 hereof.
- d. Hold-over Use & Occupancy of Premises: In the event the Lessee, with the Director's consent, holds over after the date the Term expires or is terminated, whichever is earlier, the resulting use and occupancy shall be on a monthly basis,

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during which time the Lessee shall be bound by all of the provisions of this Lease other than the amount of the monthly base or adjusted base rent specified in Section A-3, which amount shall be the greater of the amount charged for the month immediately preceding the expiration or termination date, whichever is earlier, or the fair market value for the Premises. If, however, the Lessee holds over, without Director's consent, after the expiration or termination date of this Lease, whichever is earlier, whether by failing to remove its personal property or any addition, alteration or improvement specified by the Director, or otherwise, the Lessee shall pay to the City, as liquidated damages, twice the amount of the most recently applicable periodic and percentage rents specified in Sections A-3 and A-4, hereof, and shall be bound by all of the other provisions of this Lease.

e. No Claim for Removal: In no event shall the Lessee make any claim or demand upon the City nor shall the City be liable for any inconvenience, annoyance, disturbance, or loss of business or any other damage suffered by the Lessee arising out of removal operations under Subsections B-18.b and B-18.c hereof.

f. Inspection Upon Surrender of Premises: Immediately following the vacating of the Premises and the surrender of the same to the City, a representative of the Lessee shall inspect the Premises with the Director to determine the condition of the Premises and whether or not the Lessee is then eligible for the return of the Performance Guarantee provided pursuant to Section B-9 hereof, and if not then eligible, what actions must be taken by the Lessee to establish eligibility for the future return of such deposit. The results of such inspection shall be summarized by the Director on a Premises inspection report, a copy of which shall be provided to the Lessee.

B-19 NOTICES

All notices from either party to the other shall be in writing and delivered or mailed, postage prepaid, to the intended recipient at the address specified on the signature page of Part A, hereof, or to such other address as may be specified, from time to time, by either party, by notice to the other party.

B-20 NO RELATIONSHIP ESTABLISHED

The City shall in no event be construed to be a partner, associate, or joint venturer of the Lessee, or any party associated with the Lessee. The Lessee is not an agent of City for any purpose whatsoever. The Lessee shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

B-21 DEFINITION AND AUTHORITY OF "DIRECTOR"

The term "Director," as used throughout this Lease in regard to permission, warrant, consent, approval, rights, interpretation, and discretionary matters, shall mean the Director of the City's Seattle Center Department or such official's functional successor or designee; *Provided*, that the action of the Director pursuant to or in implementation of this Lease does not constitute any official action by any other City Department or official

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that may be required by law, ordinance, rule or regulation before the Lessee may rightfully commence, suspend, enlarge, or terminate any particular undertaking or may obtain or exercise any particular right or privilege under this Lease. Any approval, consent or permission required of the Director by this Lease may be granted, conditioned or withheld by the Director in the exercise of such official's sole discretion.

B-22 AMENDMENTS

No modification or amendment of the terms hereof shall be effective unless in writing and signed by authorized representative of each of the parties hereto. The parties hereto expressly reserve the right to modify this Lease from time to time, by mutual agreement.

B-23 NO WAIVER

Nothing other than a written document signed personally by the Director and specifically declaring a City intent to waive a particular breach or default by the Lessee shall constitute a waiver of such breach or default. No such document shall waive the Lessee's failure to fully comply with any term or condition of this Lease not specifically referenced therein, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. No waiver by either party shall be construed to be, or operate as, a waiver of any subsequent default in full performance of any provision of this Lease. The payment or acceptance of rent, additional rent, or other compensation, whether after a default or from a sublessee or assignee, shall not be deemed to constitute consent to or acceptance of such default or acceptance of defective or incomplete performance in the future or any such subtenancy or assignment.

B-24 REMEDIES CUMULATIVE

Rights under this Lease are cumulative; failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. Each party shall also have any other remedy given by the law. The use of one remedy shall not be taken to exclude or waive the right to use another.

B-25 JOINT & SEVERAL LIABILITY

In the event the Lessee is composed of more than one person, entity, or corporation, each of the persons, entities, and corporations composing the Lessee shall be jointly and severally liable under this Lease.

B-26 USE OF LANGUAGE

Terms used in the neuter gender include the masculine and feminine; and terms used in the singular or plural include the other, as the context may require.

B-27 CAPTIONS

The titles of sections are for convenience only and do not define or limit the contents.

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B-28 INVALIDITY OF PARTICULAR PROVISIONS

Should any term, provision, condition, or other portion of this Lease or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this Lease or the application of such term or provision to person or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and shall continue in full force and effect.

B-29 GOVERNING LAW & VENUE

This Lease shall be interpreted and construed using Washington Law. The venue for any action under this Lease shall be in the Superior Court of the State of Washington for King County.

B-30 BINDING EFFECT

The provision, covenants, and conditions contained in this Lease apply to bind the parties, their legal heirs, representatives, successors, and assigns.

B-31 NO BROKER

The Lessee represents and warrants that there is no claim for any brokerage commission or finder's fee in with connection the execution of this Lease.

B-32 ACKNOWLEDGMENT OF NEGOTIATED LEASE

The parties to this Lease acknowledge that it is a negotiated lease, 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.

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PART E

Smith & Greenleaf Company
 19015 65th Avenue South
 Kent, Washington 98032
 (206) 656-8000

FORMAL BID

C U S T O M E R

CASH SALES

S H I P T O

MIGUEL QUINTANA
 305 HARRISON
 SEATTLE, WASHINGTON
 98109
 448-5252

FOB: SEATTLE
 Ship Via: OUR TRUCK
 Customer Ref: MIGUEL
 Required: 01/29/96

<u>B1#</u>	<u>Item Id #</u>	<u>DESCRIPTION</u>	<u>U/M</u>	<u>Quantity</u>	<u>Price</u>	<u>Extension</u>
		KITCHEN EQUIPMENT LIST				
*	SM50 GMS	NAT GAS MILD STEEL POT 35 TO 50lbs FAT CAPACITY WITH CASCADE FLITER SYTEM BUILT IN	EA	1.00	2529.90	2,529.90
*	P12TG4-26	U S RANGE 4 OPEN BURNERS 12" GRIDDLE THERMOSTAT CONTROL S/S FRONT AND SIDES HIGH SHELF IF NEEDED LESS THERMOSTAT FOR GRIDDLE DEDUCT \$190.00 ADD FOR CASTERS \$175.00	EA	1.00	1813.95	1,813.95
*	BS-R	U S RANGE, RANGE MOUNTED SALAMANDER BROILER	EA	1.00	1223.90	1,223.90
	TRU-T-49	REFRIGERATOR WITH CASTERS	EA	1.00	2019.65	2,019.65
	DLK-E400-3048	ECONOMY WORKTABLE 30 X 48	EA	1.00	140.95	140.95
	TRU-TUC-48	UNDEPCOUNTER UNIT	EA	1.00	1323.85	1,323.85
	TRU-TWT-48	WORK TOP REFER	EA	1.00	1356.90	1,356.90
	TRU-TSSU48-12	REFRIGERATED SANDWICH TABLE	EA	1.00	1487.95	1,487.95
*	DUKE-305	5 PAN NAT. GAS STEAM TABLE	EA	1.00	847.95	847.95
*	DUKE-E305	5 PAN ELECTRIC STEAM TABLE	EA	1.00	907.30	907.30
	DLK-576	ALUMINUM SPILLAGE PAN	EA	5.00	36.88	184.40
	SSP-1C-23x23L	SINGLE TUB SINK, LEFT DRAINBOARD	EA	1.00	418.76	418.76
*	CSW-1	SCOTSMAN UNDERCOUNTER ICE MAKER	EA	1.00	1126.45	1,126.45

CONTINUED

2/21/96

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CONTINUED: Customer Ref: **PART E**
MIGUEL
CASH SALES

MIGUEL QUINTANA
PAGE: 2

<u>BI#</u>	<u>Item Id #</u>	<u>DESCRIPTION</u>	<u>U/M</u>	<u>Quantity</u>	<u>Price</u>	<u>Extension</u>
	TRU-T-49F	REACH-IN FREEZER, W/ CASTERS	EA	1.00	2584.95	2,584.95
	TRU-T-23F[HR]	REACH-IN FREEZER W/CASTERS HINGED R	EA	1.00	1878.95	1,878.95

THESE PRICES ARE FOB DELIVERED TO YOU
UNCREATING SETTING IN-PLACE NOT INCLUDED

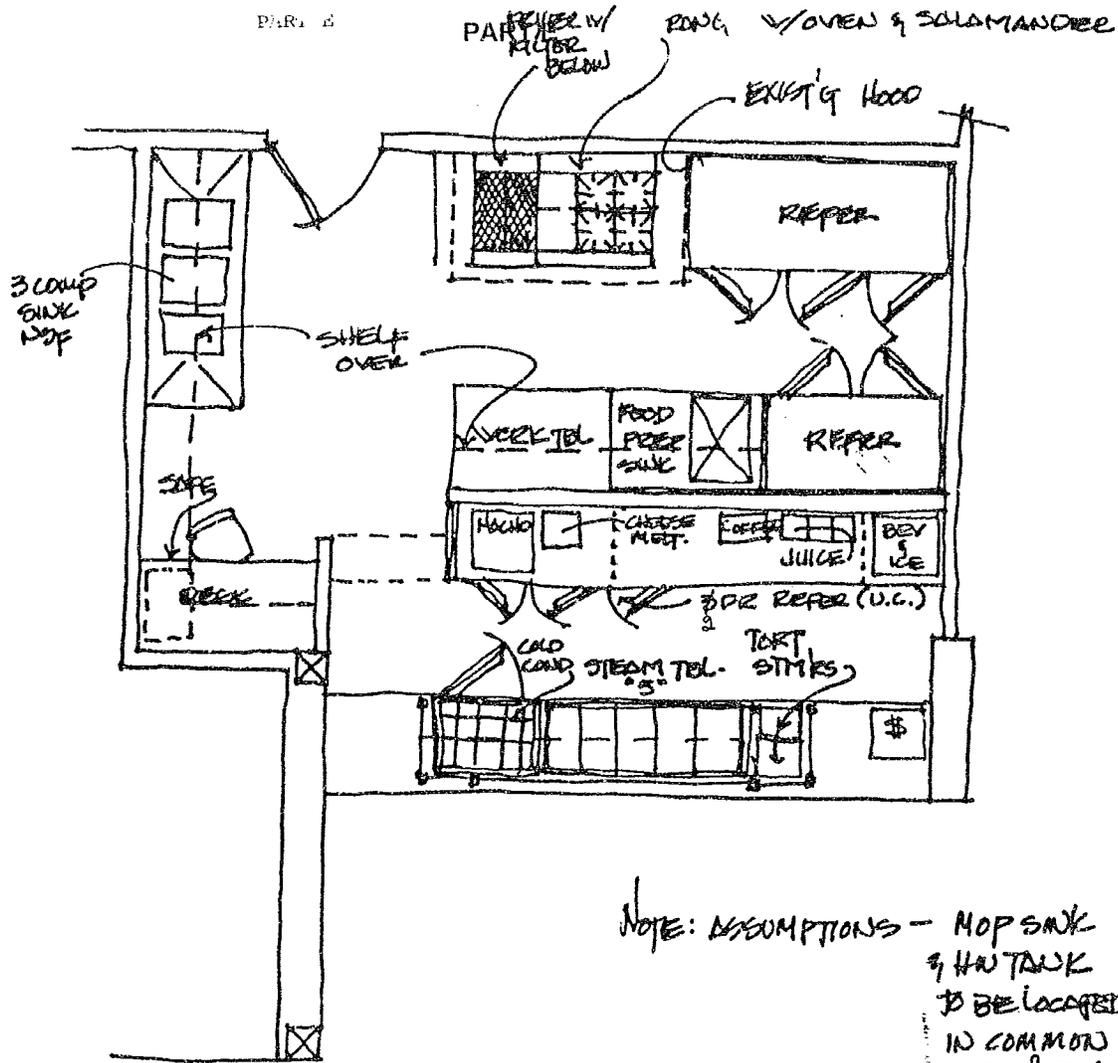
THANK YOU

BID TOTAL: 15.00

19,845.81

2/21/96

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NOTE: ASSUMPTIONS - HOP SINK
 & HOT TANK
 TO BE LOCATED
 IN COMMON
 UTILITY RM

SCALE 1/4" = 1'-0"

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<p>Pico Europeo @ SEATTLE CENTER</p>	<p>PRELIMINARY floor plan #4</p>	<p>The Medical Consultants Sue Gentry</p>
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LEASE AGREEMENT

PART F: RULES AND REGULATIONS FOR CENTER HOUSE TENANTS

1. The common areas, entrances to Center House, passages, elevators, vestibules, stairways, corridors or halls shall not be obstructed or used for any purpose other than ingress and egress. Access to any area(s) not for the use of the general public shall, in all cases, be in the control of the City. Nothing contained herein shall be construed to prevent such access by persons with whom Lessees normally deal in the ordinary course of business unless such persons are engaged in illegal activities. Lessee shall not enter mechanical rooms, air handler rooms, telephone switch gear rooms, electrical closets, janitorial closets, or go up on to the catwalk of Center House without prior written consent of the Director. All public areas such as the south courtyard, monorail bridge, park and other public areas forming a part of Center House, if any, shall be under the sole and absolute control of the City, who shall have the exclusive right to regulate and control these areas.
2. On legal holidays and when the Center House is closed each day, access to Center House, or to the halls, corridors, elevators or stairways in Center House, or to the Seattle Center, may be refused unless the person seeking access is known to the person or employee of Seattle Center in charge and has a pass or is properly identified. The City shall furnish such passes to persons for whom any Lessee requests the same in writing. Each Lessee shall be responsible for all persons for whom he requests passes and shall be liable to the City for all acts of such persons. The City shall in no case be liable for damages for any error with regard to the admission to or exclusion from Center House during the continuance of the same by closing the doors or otherwise, for the safety of Lessee and protection of property in Center House. The City reserves the right to exclude or expel from Center House any person, who, in the judgment of the City is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of Center House.
3. Heating or air conditioning and ventilation service is provided during the days Center House is open to the public. Currently, Center House is closed to the public on Thanksgiving Day, Christmas Day, and New Year's Day.
4. No awning or other projections shall be attached to the outside walls of Center House and no window shades, blinds, or drapes or other window coverings shall be hung in the Premises without the prior written consent of the Director.
5. Canvassing, soliciting and peddling by Lessees or outsiders is prohibited in Center House, and each Lessee shall cooperate to prevent same.
6. Every Lessee shall pay for the inclusion of its name and location in all Center House directories which listing shall be on a standard form determined by the Director.
7. The Lessee's Premises shall not be used for anything other than specifically defined in the lease. The Lessee's Premises shall not be used for lodging or sleeping or for any immoral or illegal purposes.
8. No firearms or explosives are allowed into Center House.

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9. Under no circumstances shall Lessee:
- a) Make or permit to be made any unseemly or disturbing noises, sounds or vibrations, or otherwise disturb or interfere with occupants of Center House or those having business with them whether by the use of any musical instrument, radio, cassette deck or compact disc player, unusual noise, or in any other way.
 - b) Use toilets, wash basin and other plumbing fixtures for any purpose other than those for which they were constructed, and no seeping, rubbish rags or other substances shall be thrown therein. All damage resulting from any misuse of such fixtures shall be borne by the Lessee who, or whose employees, agents, visitors, or licensees, shall have caused the same.
 - c) Leave windows open and/or unlocked. Lessee shall see that all windows in the Premises are closed and securely locked before leaving Center House each day.
 - d) Bring or keep in the Premises any inflammable, combustible or explosive fluid, chemical, or substance nor do or permit anything to be done in the Premises, or bring or keep anything therein which shall in any way increase the rate of fire insurance on Center House or on the property kept therein, or obstruct or interfere with the rights of other Lessees, or in any way injure or annoy them, or conflict with the regulations of the Fire Department or the fire ordinances and laws, or with any insurance policy upon Center House or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.
 - e) Leave water or plumbing fixtures on. Lessee shall insure that all valves and water systems are entirely shut off before Lessee or Lessee's employees leave Center House. Lessee shall observe strict care and caution to insure that electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage. Lessee shall make good all injuries sustained by other Lessees or occupants of Center House, or sustained by the City as a result of Lessee's default or carelessness.
 - f) Overload the floor or the elevators or in any way violate the integrity of Center House.
10. Food Quality Control. All food sold or offered for sale on or from the Premises shall be first quality, wholesome and pure and shall conform in all respects to federal, state, and municipal laws, ordinances and regulations. The Lessee shall ensure that:
- a) Meat, poultry and aquatic food must have been inspected by the United State Department of Agriculture ("USDA") or the Seattle-King County Department of Public Health or the functional successor of either such entity before its use on the Premises.
 - b) No food having a shelf life indicated by code is used after the end of the code period unless properly preserved prior to that period's ending and that all code tables are provided, upon request, to any employee of the Seattle-King Country Department of Public Health or its successor.
 - c) All food is stored in properly working refrigeration units, heat units, and dry storage units, as appropriate.
 - d) If any food containing any sulfite is used or offered for sale in or from the Premises, a written notice of the fact of such sulfite use or presence in such food is displayed at the point of sale for such food, in a prominent location easily seen by a potential food purchaser.

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11. Lessee's Menu. Initial food and beverage menu and/or products list indicating size, portion and price structure, shall be submitted to the Director for approval. The Lessee shall not make or allow to be made any misrepresentation as to the kind, quality, weight, or price of food sold or offered for sale from the premises. The Lessee shall ensure that no food is sold or offered for sale at a price different from that displayed or advertised on the food menu approved by the Director. Changes to the foregoing, whether in size, portion, price or otherwise, may not be made without the prior, written approval of the Director whose approval shall not be unreasonably withheld.
12. "Food" means any nutritive material in solid or liquid form, without limitation, that is sold, given without charge, included as an ingredient in any other edible item offered for sale, or dispensed or distributed by the Lessee in any manner in or from the Premises to any person or entity unless the Director authorizes the Lessee to offer for sale at a particular event either or both of such otherwise excluded types of nutritive material.
13. Recycling of Waste Materials. The Lessee, at no cost of the City, shall collect, sort and separate into such receptacles as may be legally required, all solid waste products on the premises, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped or removed from the Seattle Center at such minimum frequency as is specified by the Director. The City reserves the right to refuse to collect or accept from the Lessee any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require the Lessee to arrange for the collection of the same at the Lessee sole cost and expense using a contractor satisfactory to the City. The Lessee shall pay all costs, fines, penalties, and damages that may be imposed on the City or the Lessee as a consequence of the Lessee's failure to comply with the provisions of this subsection.

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BURRITOS

All are filled with rice, beans, cheese and choice of

- *Shredded chicken
- *Chicken Chile Verde
- *Ground Beef
- *Picadillo

Topped with lettuce and tomatoes.....\$3.99
 Add sour cream and guacamole\$1.00

RICO BURRITOS

- *Chicken or Beef Fajita
 - * Carne or Pollo Asado..... \$4.99
- add sour cream and guacamole.....\$1.00

SOFT TACOS

6 " Flour or corn tortilla filled with rancho beans your choice of

- *Shredded Chicken
- *Ground Beef.....\$1.99

RICO SOFT TACOS

Same as above but with your choice of

- *Carne Asada
- *Pollo Asado
- *Al Pastor
- *Lengua.....\$2.50

COMBINATIONS

Served with Rice and Beans

- #1 Two Crispy Beef Tacos.....\$4.99
- #2 Two Cheese Enchiladas.....\$5.25
- #3 One Soft Taco.....\$4.50
- #4 One Beef Taco & One Cheese Enchilada.....\$4.50

VEGETERIAN

*Veggie Burrito

12" Wheat tortilla filled with black beans, rice, cheese and topped with lettuce and our specialty salsa\$3.99
 Add sour cream and guacamole.....\$1.00

*Veggie Soft Taco

6" Corn tortilla filled with rice,beans, lettuce, cheese and tomatoes.....\$1.99

*Veggie Tostada

Crispy tortilla topped with rice,beans,lettuce cheese and salsa.....\$2.99

*Vegetarian Taco Salad

A bed of chips filled with black beans, lettuce,cheese, salsa and sour cream.....\$3.99

A LA CARTE

- Beef Crispy Taco.....\$1.25
- 12" Cheese Quesadilla topped with lettuce and sour cream.....\$2.99
- 12" Chicken or Beef Quesadilla topped with lettuce and sour cream.....\$3.99
- 6" Cheese Enchilada.....\$1.50
- 6" Chicken or Beef Enchilada.....\$1.80
- Chicken or Beef Tostada
A crispy tortilla filled with Chicken or Beef and topped with lettuce and tomatoes.....\$2.99
- Nachos Chicos.....\$1.99
Just chips and cheese sauce
- Rico Nacho
Twice the chips, beans, cheese, sour cream and salsa.....\$4.50
Add meat.....\$.75
- Taco Salad Delux with Chicken or Beef
A bed of chips with meat lettuce cheese, sour cream and salsa.....\$4.99

SIDE ORDERS

- Chips and Salsa.....\$1.50
- Rice and Beans.....\$2.75
- Sour Cream.....\$.50
- Guacamole.....\$.99
- Rice **OR** Beans.....\$1.99
- 2 Tortillas.....\$.59

DRINKS

- COKE, DIET COKE, SPRITE, OR ORANGE.....\$.89 & \$.99
- Snapple **OR** Jarritos.....\$1.50
- Iced Tea.....\$1.00

AGUAS FRESCAS

- Horchata, Jamaica, Tamarindo.....\$1.00

PART G

JUST FOR KIDS

Bean and Cheese Burrito with chips.....\$2.50

Small Cheese Quesadilla.....\$2.50

Beef Crispy Taco.....\$1.25

Soft Taco with Beef or Chicken with cheese
and chips...\$1.99

Kid Size Drink.....\$.65
COKE, DIET COKE, SPRITE OR ORANGE



March 18, 1996

The Honorable Jan Drago
President, Seattle City Council
1100 Municipal Building
Seattle, Washington 98104

Via: Mayor's Office

Attention: Tom Tierney, Director
Office of Management and Planning

Subject: CENTER HOUSE LEASES

Dear Councilmember Drago:

I am pleased to forward to the City Council legislation authorizing three lease agreements for spaces on the second floor of Center House.

These leases mark another significant step in the redevelopment of Center House, a process that began four years ago with the creation of a Center House Master Plan. A key focus of the Master Plan was the renovation of the food and retail business in Center House, which was declining in both appearance and revenues. Developed with the assistance of retail consultants, the plan recommended an improvement in overall quality, fewer total businesses, an emphasis of food over retail, and better use of both commercial and public spaces.

Last summer we brought 13 long-term lease agreements to the City Council for new and expanded retail spaces in Center House. City capital funds provided for the basic build-out of the new spaces and leveraged over \$2 million in private investment for tenant improvements, in exchange for long-term leases. As a result of these and other improvements, the second floor of Center House has been dramatically transformed.

The City's investment in Center House is now providing additional pay-off. A number of existing tenants, having seen the turnaround in Center House, are investing in significant tenant improvements in exchange for long-term leases similar in terms to the leases signed last summer. The lease agreements we are bringing to you at this time are for:

- Cafe Loc
- Consolidated Restaurants (Quincy's and Steamers)
- Rico Burrito

305 Harrison Street
Seattle, WA
206-465-4695

Victoria Anderson
Director
Norman B. Rice
Mayor

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The Honorable Jan Drago
March 18, 1996
Page 2

These businesses are investing over \$500,000 in their spaces. These improvements should be completed in time for summer. At the same time, the Center is using remaining capital funds to continue to make improvements to the food court level, including removal of the escalator, and reconfiguration of the north end stairway to provide for better circulation.

The basic terms of these new Center House leases follow the model we established last year:

- Long-term leases (generally 10 years), based on the significant capital improvements which the tenants are investing in their spaces.
- A base rent of \$35.50 per square foot, which includes a common area factor for the cost of maintenance, janitorial services, heating and cooling, etc.
- Annual CPI increases to the base rent.
- A percentage of gross revenues above a break point, in addition to the base rent. The break point is based on historical or projected sales. Generally, the percentage is 8% for retail and 10% for food.

There are some variations to these basic lease terms, based on the size and past performance of individual businesses. The rent structure, which we established last year, is both more competitive and easier to administer than the previous system. The new structure provides a guaranteed base rent, and at the same time simplifies the process for determining rent and evens out the revenue flow during the year.

We are working on several more Center House leases which we hope to bring to the City Council in the near future. We are delighted to continue the transformation of Center House and to see the public investment in Center House leverage additional private dollars to further upgrade this vitally important part of Seattle Center. If you would like any additional information regarding the Center House lease legislation, please call Ned Dunn at 684-7212.

Sincerely,



Virginia Anderson

Attachments

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City of Seattle

Executive Department—Office of Management and Planning

Thomas M. Tierney, Director
Norman B. Rice, Mayor

March 14, 1996

The Honorable Mark Sidran
City Attorney
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING DEPARTMENT: Seattle Center

SUBJECT: AN ORDINANCE relating to the Seattle Center Department; authorizing the execution of a lease agreement with Rico Burrito, Inc. for the sale of food in Center House.

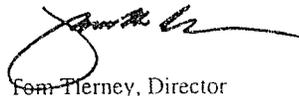
Pursuant to the City Council's S.O.P. 100-01-, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Jeanette Martin at 684-8071.

Sincerely,

Norman B. Rice
Mayor

by



Tom Tierney, Director

legis:martin35

Enclosure

96-062



Handwritten: 3-25-96

COPY RECEIVED
96 MAR 14 AM 11:53
SEATTLE CITY ATTORNEY

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**LEASE AGREEMENT
BETWEEN THE CITY OF SEATTLE AND
RICO BURRITO, INC.**

THIS LEASE is entered into by THE CITY OF SEATTLE (hereinafter called "City"), a municipal corporation of the State of Washington, acting by and through the Director of the Seattle Center Department, and RICO BURRITO, INC. (hereinafter called "Lessee"), a Washington Corporation and WITNESSES THAT:

PART A: SPECIAL COVENANTS & CONDITIONS OF LEASE

A-1 INITIAL TERM OF LEASE

The term of this Lease shall commence May 15, 1996, and shall expire May 31, 2006, unless terminated earlier pursuant to the provisions hereof.

A-2 PREMISES DESCRIPTION

a. Legal Description of Premises: In consideration of the payment of rent and Lessee's performance of and compliance with the other covenants, conditions, and terms of this Lease, City hereby leases to Lessee, and Lessee hereby leases from City, a portion of the building at Seattle Center located on the following property:

Lot 1-12, Block 46, D.T. Denny's Third Addition to North Seattle, according to plat recorded in Vol. 1 of Plats, Page 145, Records of King County, Washington,

which portion is currently identified as Center House, second floor, space No. 208, the floor/site plan for which is attached hereto, labeled "Part C" (which portion hereinafter shall be referred to as the "Premises").

b. Approximate Area of Premises as of Term Commencement: 350 Square Feet, to be remeasured upon completion of demising walls.

A-3 MONTHLY BASE RENT

The Lessee shall remit to the City as the monthly rent, the following:

a. Monthly Amount Due Between May 15, 1996, and May 31, 2006:

One Thousand Thirty-Six Dollars and no/100 (\$1,036.00)

b. CPI increase: The monthly base rent shall be increased effective each January 1st during the term hereof by the percentage increase (if any) in the Consumer Price Index for All Urban Consumers ("CPI-U" / 1982-84 = 100) Seattle Tacoma Metropolitan Area, as published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor, that occurred during the immediately preceding calendar year; Provided, that in the event of a change in the index base of (1982-84 = 100) or other modification of such index, the City shall apply whatever conversion factors are necessary to establish an adjusted CPI-U that produces the percentage increase in the CPI-U for each such annual period that would have been produced had no change been made in such index by its publisher; and in the event such index is discontinued, the Director shall select and use for such rent adjustment purpose a similar index that reflects consumer price changes.

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A-4 ANNUAL PERCENTAGE RENT

The Lessee shall also remit to the City, as part of the rent, ten percent (10%) of the Lessee's annual "adjusted gross receipts" (as defined in Section B-2) in excess of \$124,250.00. Provided, that for the periods between (a) the date the Lessee's obligation to pay rent commences and December 31st of the same calendar year, and (b) January 1st of the year in which this Lease expires or is terminated and the actual Lease expiration or termination date (if such date is other than December 31st), the dollar amount that must be exceeded before any Annual Percentage Rent is due and payable shall be prorated by dividing such dollar amount by 365 and multiplying the resulting quotient by the number of actual days in such partial lease year.

A-5 ADDITIONAL RENT

a. Minimum Monthly Promotional and Advertising/Public Programming Charge During Period Between May 15, 1996, and December 31, 1996: \$104.00.

b. Supplemental Promotion and Advertising/Public Programming Charge: The Supplemental Promotion and Advertising/Public Programming Charge shall be the difference (if any) between one percent (1%) of the Lessee's adjusted gross receipts in any calendar year and the aggregate Minimum Monthly Minimum Promotional and Advertising/Public Programming Charges paid by the Lessee during that calendar year.

c. Minimum Monthly Promotional and Advertising/Public Programming Charge Subject to Annual Increase: In the event that in any calendar year during the term hereof, the Lessee's adjusted gross receipts exceed the amount generated in the immediately preceding calendar year then the Minimum Monthly Promotional and Advertising/Public Programming Charge shall be increased to equal one percent (1%) of the immediately preceding year's adjusted gross receipts divided by twelve (12).

d. Tenants' Association Dues: \$750.00 per year.

e. Other Additional Rent: Any amounts due pursuant to Subsection B-3, B-5.j, B-6.e, B-10.b(4), and B-18.c hereof.

A-6 AMOUNT OF PERFORMANCE GUARANTEE

The amount of the performance guarantee required under Section B-4 hereof shall be Five Thousand Dollars and no/100 (\$5,000.00).

A-7 USE OF PREMISES BY LESSEE

The Premises shall be used by Lessee for the sale of Mexican fast food as outlined in Part G - Menu. Lessee may use the Premises for other purposes only with the prior, written approval of the Director.

A-8 LEASEHOLD ADDITIONS, ALTERATIONS & IMPROVEMENTS

a. Approved Construction Plans; Scheduled Commencement & Completion Dates: The alterations, additions and improvements described on the construction plans attached hereto as "Part D", hereof, have been approved by the Director. Lessee shall make a good faith effort to begin construction to renovate the Premises in accordance with such approved plans no later than April 1, 1996, and shall have such improvement work completed on or by May 15, 1996.

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b. Responsibility for Cost of Improvements: Documentation of Cost to be Provided to Director:
 All additions, alterations, and improvements made to the Premises to make them fit for the use specified by Lessee shall be at no cost to the City. Within thirty (30) days after payment of the same, Lessee shall deliver to the Director a copy of every invoice from a contractor, subcontractor or supplier requesting payment for any work or material forming a part of an addition, alteration or improvement made by Lessee to the Premises consistent with plans approved by the Director therefor, identifying on such invoice the particular addition, alteration or improvement to which it is related.

A-9 CONTENTS OF LEASE

This Lease consists of the following parts, which are attached hereto and, by this reference, incorporated herein:

- PART A Special Covenants & Conditions of Lease
- PART B General Terms & Conditions of Lease
- PART C Premises Floor Plan/Map
- PART D Seattle Center Approved Plans for Lessee's Additions, Alterations & Improvements
- PART E Personal Property Inventory
- PART F Rules and Regulations for Center House Tenants
- PART G Menu
- PART H City Improvements Inventory List

These eight (8) parts constitute the complete and final expression of the intentions of the parties hereto. All prior and contemporaneous oral and written understandings between the parties regarding the subject matter of this Lease have been incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease by having their authorized representative(s) sign his/her/their name(s) in the spaces below:

LESSEE:

RICO BURRITO, INC.

By _____
 Miguel Quintana, President

LESSOR:

THE CITY OF SEATTLE

By _____
 Virginia Anderson, Director
 Seattle Center Department

BUSINESS ADDRESSES FOR NOTICES:

LESSEE:

Mr. & Mrs. Miguel Quintana
 Rico Burrito, Inc.
 13019 S.E. 21st Place
 Bellevue, WA 98005
 PHONE NO.:

LESSOR:

Manager, Contracts & Concessions
 Seattle Center Department
 305 Harrison, Room 111
 Seattle, WA 98109
 PHONE NO.: 206-684-7114

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LEASE AGREEMENT

PART B: GENERAL COVENANTS & CONDITIONS OF LEASE

B-1 TIME AND PLACE OF PAYMENT

a. Due Date for Monthly Base or Adjusted Base Rent: The monthly base or adjusted base rent specified in Section A-4 hereof, and any leasehold taxes due pursuant to Section B-11.c hereof, are due and payable to the City, in advance, without setoff or deduction of any kind or nature or City invoice, on or before the first (1st) day of each month of the term hereof; *Provided*, that until the City notifies the Lessee of the amount of the annual CPI adjustment in the monthly base or adjusted base rent, the Lessee shall remit as a partial payment, the rental amount specified in this section or in the City's most recent rent increase notice, whichever is higher, and within seven (7) days after the date of the City's notice of the amount of each such annual increase and its invoice for the amount retroactively due, the Lessee shall remit such retroactive rent and thereafter remit on a monthly basis the newly adjusted base rent.

b. Due Date for Percentage Rent: The percentage rent for each year of the Term hereof, and any leasehold taxes due pursuant to Section B-11.c hereof, are due and payable, without setoff or deduction of any kind or nature or City invoice, on or before February 1st of the immediately succeeding calendar year after the year in which the breakpoint is met or exceeded, unless such day is a weekend or City holiday, in which case such percentage rent shall be due and payable on the next succeeding Seattle Center business day. Such rent shall be submitted with a remittance report in a form subject to the Director's approval.

c. Due Date for Minimum Monthly Promotion and Advertising/Public Programming Charge: The Lessee's Minimum Monthly Promotion and Advertising/Public Programming Charge shall be due and payable to the City, in advance, without setoff or deduction of any kind or nature or City invoice, on or before the first (1st) day of each month of the term hereof, unless such day is a weekend or City holiday, in which case such Minimum Monthly Promotion and Advertising/Public Programming Charge shall be due and payable on the next succeeding Seattle Center business day.

d. Due Date for Supplemental Monthly Promotion and Advertising/Public Programming Charge: The Lessee's Supplemental Monthly Promotion and Advertising/Public Programming Charge for any year during the term hereof shall be due and payable to the City, without setoff or deduction of any kind or nature or City invoice, on or before February 1st of the immediately succeeding calendar year, except in the year in which this Lease expires or is terminated, with respect to which such Supplemental Monthly Promotion and Advertising/Public Programming Charge shall be due and payable as of the expiration or termination date, unless such day is a weekend or City holiday, in which case such Supplemental Monthly Promotion and Advertising/Public Programming Charge shall be due and payable on the next succeeding Seattle Center business day.

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e. Due Date for Tenant Association Dues: The Lessee's Tenant Association Dues for any year during the term hereof shall be due and payable to the City, without setoff or deduction of any kind or nature or City invoice, on or before January 1st; *Provided*, that for the first year of the term hereof, such dues shall be due and payable upon execution of this Lease. In the event the Term of this Lease does not commence on January 1st and end on December 31st, such dues shall be prorated.

f. Due Date for Reimbursements: Any reimbursement(s) of City expenditures for and on behalf of the Lessee including but not limited to the Lessee's prorated share of insurance premiums due pursuant to Subsection B-5.j and any reimbursement due pursuant to Subsections B-6.e, B-10.b(4) and B-18.c hereof shall be due and payable, without any set off or deduction of any kind or nature, within thirty (30) days after the date of the City's invoice therefor.

g. Place of Payment: All payments shall be delivered to The City of Seattle, Seattle Center Accounting Office, 305 Harrison Street, Seattle, Washington, 98109, or to such other address as the Director shall specify by notice to Lessee.

h. Delinquencies: All sums due and owing to the City shall be delinquent if not paid on or before the fifth (5th) day after the date due; in the event of any delinquency, the Lessee shall also owe to the City a service charge of Fifty Dollars (\$50.00), or such larger sum as is established by ordinance, each time such delinquency is invoiced plus interest on such delinquent sum at a rate of one and one-half percent (1½%), or such larger percent as is established by ordinance, per month from the date due to the date of payment.

i. Returned Check, Non-Sufficient Funds: In the event any payment or check for payment is returned for non-sufficient funds, the Lessee shall owe as an administrative charge an additional \$20.00, or such larger sum as is established by ordinance.

B-2 BOOKS AND RECORDS; "GROSS RECEIPTS" DEFINED

a. Keeping of Records: The Lessee shall keep true, accurate, complete and auditable records of all of the Lessee's gross receipts, which records shall be separate from all of the other business records of the Lessee.

b. Payment Reports: Lessee shall submit monthly a "Daily Gross Receipts Report", a "Remittance Report" and all cash register tapes for each day of business during the previous month, as required by Seattle Center Accounting, to the address in section B-1.g above.

c. Identification of Lessee's Fiscal Year: No later than ten (10) days after the date this Lease becomes effective, the Lessee shall identify, in a notice to the Director, the consecutive period of time that comprises the Lessee's "fiscal year," which period shall not be changed during the Term of this Lease without the written consent of the Director, whose consent may be withdrawn or conditioned in the exercise of the Director's discretion notwithstanding the provisions of Section B-2.1 hereof.

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d. Statement to Director Regarding Annual Gross Receipts: Not later than sixty (60) days after the end of any fiscal year of the Lessee during the Term of this Lease, the Lessee shall deliver to the Director a written statement identifying the amount of the Lessee's gross receipts in such fiscal year, which statement shall be certified as to its accuracy by a certified public accountant in the following manner:

"I have examined the definition of 'gross receipts' in the Lease between The City of Seattle and the Lessee, all relevant financial statements and income tax returns of the Lessee, and the Lessee's system of recording gross receipts. In my opinion, the attached statement of gross receipts for the period identified herein, accurately reflects the Lessee's gross receipts for the aforementioned period."

e. Definition of Gross Receipts: As used in this Lease, the term "gross receipts" means and includes the total income of the Lessee and every other person or entity conducting business in, on or from the Premises including but not limited to the proceeds from all retail and wholesale sales of food, beverages, merchandise, and services of any kind whatsoever, for cash, barter, exchange or credit, regardless of collections; sales from vending devices, mail or telephone orders received or filled on or from the Premises; all deposits not refunded to purchasers; orders taken although filled elsewhere; fees; commissions; catalog sales; and rental receipts. An installment or credit sale shall be deemed to have been made for the full price on the date of sale regardless of when payment is received. Subject only to the exclusions specified in the immediately following paragraph, the full amount received by the Lessee shall be included in its "gross receipts," regardless of whether (a) the Lessee was acting as a consignee, trustee or agent for a third party in connection with such sale or rental, or (b) the Lessee is entitled to retain the full amount received on such sale as the Lessee's own property.

The term "gross receipts" does not mean or include the amount of money refunded to and not merely credited to the account of customers who return or do not accept food, beverages, merchandise, or services sold or rented by Lessee; any exchange of merchandise between stores or the central warehouses of the Lessee where such exchange is made solely for the convenient operation of the Lessee's business and not for the purpose of consummating a sale made in, on, or from the Premises; returns to shippers or manufacturers; any discount allowed by the Lessee to customers; the Washington State Sales Tax and any other tax imposed by any government agency directly on sales; and all admission taxes collected by the Lessee. (Business and occupation taxes are not taxes imposed directly on sales and shall not be deducted from the amount of "gross receipts" reported to the City.)

B-3

AUDIT

The Lessee shall permit the City, from time to time, as the City Auditor, Director, or either's functional successor deems necessary, to inspect and audit in King County, Washington, at any and all reasonable times, all books and records pertaining to the

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Lessee's gross receipts to verify the amount of gross receipts generated by the Lessee on or from the Premises, and shall supply the City with, or shall permit the City to make, a copy of any such books and records and any portion thereof, upon the request of the City Director of Finance, the Director, or either's functional successor or designee. The Director shall notify the Lessee of the amount of any over or underpayment found. Any overpayment shall be a credit against any rent or additional rent subsequently due or, at the Lessee's option, shall be refunded to the Lessee. In the event of an underpayment, the Lessee shall pay to the City, as additional rent, the amount of such underpayment plus the cost incurred by the City in auditing the Lessee's books and records. The Lessee shall ensure that the City's right to inspect, audit and copy the Premises user's books and records is a condition of any sublease or other arrangement under which any other person or entity is permitted to use or occupy the Premises.

B-4 PERFORMANCE GUARANTEE

The Lessee shall deliver to the City, Seattle Center Accounting Office at the City address referenced in Subsection B-1.c hereof, within five (5) days after the Lessee's execution of this Lease, as a performance guarantee, the sum specified in Section A-7 hereof. Said performance guarantee constitutes additional consideration for the City's execution of this Lease and shall be fully earned by the City as of the commencement date of this Lease, and may be commingled with other City funds and invested to generate additional earnings for the City's benefit as the City desires. The City may (but shall not be required to) use, apply or retain all or any part of this performance guarantee for the payment of any rent or additional rent or any sum alleged to be or actually in default, or for the payment of any amount that the City may expend by reason of any alleged or actual default by the Lessee, or to compensate the City for any other loss or damage that the City may have suffered by reason of any alleged or actual Lessee default. If any portion of said performance guarantee is so used or applied, the Lessee, within seven (7) calendar days after the date of notice thereof, shall deliver to the City, the Seattle Center Accounting Office, additional cash in the amount sufficient to restore the performance guarantee to the amount set forth in Section A-7 hereof. If the Lessee fully and faithfully performs every provision of this Agreement to be performed by it, the performance guarantee or any balance thereof after any application of the same by the City hereunder shall be refunded to the Lessee within forty-five (45) days after the expiration or earlier termination of this Lease. The Lessee shall have no right to contest any withdrawal, use, retention or application by the City of any portion of such performance guarantee at the time of the City's taking such action; *Provided*, that nothing herein shall prejudice the Lessee's right to demand through arbitration or litigation the refund of such portion if, and only if, the Lessee has fully complied with and satisfied all of its obligations hereunder. The Lessee waives prior notice and opportunity for a hearing on any withdrawal, use, application, or retention by the City of such performance guarantee or any portion thereof.

B-5 LIABILITY

a. Indemnification: The Lessee shall indemnify and hold the City harmless from any and all losses, claims, actions, damages, costs and expenses (including attorneys' fees) suffered by any person or entity by reason of or resulting from any negligent, reckless or intentional act or omission of the Lessee or any of its agents,

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employees, contractors, or invitees in connection with use or occupancy of the Premises, including trademark, patent, and copyright infringement; and except in connection with or collateral to the demolition, construction, alteration, addition, improvement, repair, or maintenance of the Premises or the moving thereto and therefrom, any concurrent, negligent act or omission of the Lessee or any of its officers, employees, agents, or invitees, and of the City or any of its officers, employees, agents, or invitees. In the event any suit or action is brought against the City, the Lessee, upon notice of the commencement thereof, shall defend the same, at no cost and expense to the City, and promptly satisfy any final judgment adverse to the City or to the City and the Lessee jointly; *Provided*, that in the event the Director determines that one or more principles of governmental or public law are involved, the City retains the right to participate in such action. Nothing contained in this section shall be construed as requiring the Lessee to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or any of its officers, employees, or agents. Notwithstanding any provision to the contrary herein, in the event any bodily injury or damage to property results from or arises out of any construction, alteration, repair, addition to, subtraction from improvement to, or maintenance of, any excavation, building, structure, project, development or improvement attached to real estate, including moving and demolition in connection therewith, that has been undertaken or performed by or on behalf of the Lessee, the indemnification provided pursuant to this subsection shall be limited to the extent of the negligence of the Lessee and those acting by or for the Lessee. The indemnification provided in this subsection shall survive the expiration or earlier termination of this Agreement.

b. Liability Insurance: Unless the City secures and maintains such insurance for itself and the Lessee's benefit pursuant to Subsection B-5 hereof, the Lessee shall secure and maintain in full force and effect at all times during the Term of this Lease, at no cost or expense to the City, one or more policies of commercial general liability insurance as required below:

(1) Liability Limits: The limitations of liability shall not be less than One Million Dollars (\$1,000,000), per occurrence, Combined Single Limit (bodily injury and property damage) and One Million Dollars (\$1,000,000) Annual Aggregate with a deductible or self-insurance retention of no more than Two Thousand Five Hundred Dollars (\$2,500) for property damage, only; *Provided*, that in the event the Director deems such insurance to be inadequate to fully protect the interests of the City and the Lessee hereunder, the Lessee shall increase said coverage limits to such amounts as the Director shall deem reasonably adequate to provide such protection, which increase shall be completed within sixty (60) days after the date of notice that the Lessee's insurance coverage is deemed to be inadequate. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Lessee from liability in excess of such coverage.

(2) Coverage: Coverage shall be provided for liability for any injury, death, damage and/or loss of any sort sustained by any person, organization or corporation (including the Lessee and any of its officers,

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employees and agents) in connection with or arising out of any act or omission of (a) the Lessee; or (b) any of the Lessee's officers, employees, agents, assigns or invitees; or (c) the Lessee and City or any of their officers, employees, agents, assigns, or invitees, jointly, upon the Premises; and for any activity performed by the Lessee under this Lease and shall include, but need not be limited to the following types (described in insurance industry terminology):

- (a) Premises operations liability (O, L & T or M & C);
- (b) Blanket contractual liability;
- (c) Broad form property damage;
- (d) Independent contractor (O & CP.);
- (e) Automobile liability for owned, leased, hired or non-owned vehicles;
- (f) Products and/or completed operations;
- (g) Personal injury, including coverages A, B, and C with no employee exclusion;
- (h) Fire legal liability.

All such insurance shall provide coverage on a "per occurrence" rather than on a "claims made" basis, and shall be primary to any other insurance that may be valid and collectible. The Lessee is not required to provide insurance coverage against City's sole negligence.

c. Fire and Extended Coverage: Unless the City secures and maintains such insurance for itself and the Lessee's benefit pursuant to Subsection B-5 hereof, the Lessee shall secure and maintain at all times during the Term of this Lease, at no cost or expense to the City, one or more policies of fire, and extended coverage equal to not less than ninety percent (90%) of the value of the Lessee's additions, alterations and improvements to the Premises, which value shall be determined by the Director, from time to time, and identified in a notice to the Lessee. Under such insurance, any loss payment shall be made payable to the City, which shall hold the same in trust for the rebuilding, repairing, replacing or restoring of the Premises, including all improvements, additions and alterations thereto.

d. Business Interruption Insurance: The Lessee shall secure and maintain during the Term of this Lease, business interruption insurance with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of the Lessee's business because of fire or other cause.

e. Authorized Carriers: The insurance described in Subsections B-5.b and B-5.c shall be obtained from one or more insurance companies duly authorized to issue such policies in the State of Washington, and having a rating of at least "A", as rated in Best's Key Rating Guide or a successor or substitute rating service accepted by the Lessee and Director.

f. Naming of City As Additional Insured: The City shall be named as an additional insured in the policies to be secured under Subsections B-5.b and B-5.c, hereof, by an endorsement declaring that the coverages provided by such policy to

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the City or any other named insured shall not be terminated, reduced or otherwise changed as to face value without providing at least thirty (30) days prior written notice to the following:

Seattle Center Director	Risk Manager
Seattle Center Department	Finance Department
The City of Seattle	The City of Seattle
305 Harrison	750 Arctic Bldg.
Seattle, WA 98109	Seattle, WA 98104

or to such other addressees and addresses as the City may hereafter specify.

g. Evidence of Insurance: The Lessee shall deliver to City's Risk Manager, or such official's functional successor or designee(s), a copy of all policies required under Subsections B-5.b and B-5.c, hereof, and all endorsements thereto or other evidence to the reasonable satisfaction of the City's Risk Manager that the Lessee has secured or renewed and is maintaining insurance as required by this Lease, as follows:

- (1) On or before the first Premises use by the Lessee or any of its sublessees under this Lease; and
- (2) Within seven (7) calendar days prior to the expiration or renewal date of each such insurance policy; and
- (3) Within seven (7) calendar days after the Lessee's receipt of a written request therefor.

h. Assumption of Risk: The placement and storage of personal property in the Premises or any other Seattle Center facility shall be the responsibility, and at the sole risk, of the Lessee.

i. No Entry onto Premises upon Failure to Insure: The Director shall notify the Lessee whenever the Director has a reasonable belief that the Lessee has failed to secure or maintain insurance as required by this Lease. Notwithstanding any other provision of this Lease, after its receipt of any such notice, the Lessee shall not enter upon any Seattle Center facility until the Lessee has secured and is maintaining insurance as required by this Lease.

j. City May Secure Insurance at Lessee's Cost: Notwithstanding any other provision hereof, in the event the Director determines, after consultation with the Lessee, that the City can secure and maintain commercial general liability and fire, and extended insurance coverage at a lower cost than the City's Center House Lessees generally can secure and maintain the same, for equal or superior coverage, and the Director further determines to secure and maintain such insurance coverage, then upon at least thirty (30) days' prior notice to the Lessee, and from and after the commencement date of the insurance coverage secured by the City, the Lessee shall not be obligated to secure and maintain the insurance

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coverage required by, or to otherwise comply with the provisions of, Subsections B-5.b, B-5.c, B-5.e, B-5.f or B-5.g hereof, but shall be obligated to pay to the City, as additional rent, the Lessee's prorated share of the insurance premium for such insurance coverage, in the amount determined by the Director in the exercise of such official's reasonable discretion.

B-6

PREMISES IMPROVEMENTS, ADDITIONS, AND ALTERATIONS

a. Acceptance of Premises: Lessee accepts the Premises in their condition as of the commencement date of the term hereof. The City disclaims all representations, statements, and warranties, expressed or implied, with respect to the condition of the Premises or the use and occupancy authorized other than those contained in this Lease.

b. Prior Approval of Plans & Specifications Required: The Lessee shall submit to the Director, for approval, schematic designs, design development drawings, and final working drawings and specifications for the construction on the Premises of improvements, additions, and alterations to convert the Premises to the condition desired by the Lessee for the operation of its business. All such designs, drawings and plans for work affecting, in any way, the structural, mechanical or electrical systems of the building of which the Premises forms a part or having a cost in excess of Two Thousand Dollars (\$2,000) shall be prepared by a licensed architect or engineer, who shall have affixed to the same his/her signature and seal. No change shall be made to any electrical wiring or plumbing in the Premises or any utility service to or from the Premises as of the commencement date of this Lease and at any time subsequent thereto, other than a change made by a properly licensed electrician or plumber. No demolition, remodeling, or construction work shall begin on any improvement, addition, or alteration on the Premises or to any utility service connecting with the Premises or any portion thereof, or to any other City facility, until after the Director has approved the same and all other required authorizations have been secured for such work. If any improvement, addition or alteration to the Premises is begun, the portion of the Premises that is subjected to such change must be made accessible for disabled people as required by applicable law.

c. No Representation or Liability Created by Approval: The approval of any plans and specifications by the Director shall not constitute an opinion or representation by the City as to their completeness; design sufficiency; compliance with any law, ordinance, rule or regulation; or their adequacy for other than the Seattle Center's own purposes. No such approval shall create or form the basis of any liability on the part of the City or any of its officers, employees, or agents for any injury or damage resulting from any inadequacy or error therein or any failure to comply with any applicable law, ordinance, rule or regulation.

d. Work Inconsistent with Approved Plans & Specifications: No improvement, alteration, or addition shall be constructed, placed, or erected on the Premises except in accordance with the Seattle Center-approved plans and specifications attached hereto as "Part D." Immediately following the Lessee's receipt of notice by the City of any non-approved improvement, addition, or alteration in, on, or being made to the Premises, the Lessee shall either desist from the occupation,

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use, and operation of such improvement, addition, or alteration and remove it from the Premises or make it consistent with such approved plans and specifications.

e. Changes in City Facilities, Utilities or Services: In the event an improvement, addition, or alteration made or desired to be made by the Lessee requires or would require any change in any facility, utility or service provided by the City, the Lessee shall pay, as additional rent, any costs incurred by the City in making such change or otherwise in connection therewith.

f. Work at Lessee's Expense:

(1) All improvements, additions, and alterations made to the Premises to convert the same to the condition desired by Lessee for the operation of its business, shall be at the expense of the Lessee, and at no expense to the City unless otherwise specifically agreed upon in writing.

(2) In the event any activity or omission of the Lessee results in damage to City property or any other lessee's Premises or property, and the City undertakes emergency repair or cleanup activity, the Lessee shall be liable for the full cost of such City work.

g. Improvements, Additions & Alterations and Fixtures Become City Property: All improvements, additions, and alterations made to, and fixtures installed on, the Premises shall become the property of the City upon the expiration or termination of this Agreement except for those items specified by the Director by written notice to the Lessee. All improvements, additions, alterations and fixtures not identified in such Director's notice shall remain in, and be surrendered with the Premises as a part thereof without molestation, disturbance or injury.

h. No Liens or Encumbrances: The Lessee shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Premises. At the request of the Director, the Lessee shall deliver to the Director written proof of the payment of any item that could be the basis of such a lien, if not paid.

i. Construction Bond: Prior to commencing any alteration, addition or improvement work on the Premises, the Lessee shall file with the Director a good and sufficient corporate surety bond subject to approval by the City Attorney as to form and surety, conditioned upon the completion and installation of said addition, alteration or improvement as described in plans submitted to and approved by the Director and City and in accordance with the provisions of this Lease and all licenses, permits, ordinances, statutes, regulations and laws governing the making of said improvement, and further conditioned upon the payment of all persons supplying labor and material for the making of said addition, alteration and improvement, and upon the making of said addition, alteration, and improvement without cost and expense to the City; *Provided*, however, that the Director may waive or reduce this surety bond requirement if, in the opinion of the Director, such surety bond coverage either is unavailable or available only at a cost deemed by the Director to be unreasonable under the circumstances.

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j. Construction Liability Insurance: The Lessee shall require its general contractor to furnish and maintain during the full period of the making of any part of any physical addition, alteration or improvement to the Premises, at no cost to the City, a policy of public liability and property damage insurance issued by an insurance company licensed to do business in the State of Washington, protecting the Lessee and the City from any and all claims for damages for personal injury, including death, and for property loss or damage that may arise from any activity related to the making of said addition, alteration or improvement, whether such activity is by the Lessee, its contractor(s), any subcontractor, or by anyone directly or indirectly employed by or under contract to any of them. Said policy shall provide coverage in the following minimum amounts: One Million Dollars (\$1,000,000) Combined Single Limit, One Million Dollars (\$1,000,000) Annual Aggregate. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Lessee from liability in excess of such coverage. The above insurance limits will be reviewed annually by the parties to assure that coverage is reasonable. The Lessee shall adjust the above insurance limits after such review if it is determined by the Director that any increase is reasonable and justifiable based on changed legal or economic conditions. Such policy shall name The City of Seattle as an additional insured and provide that the terms thereof cannot be modified or terminated without thirty (30) days' prior written notice to the City, all in the manner and form required by the City's Risk Manager or such official's successor. Evidence of such insurance must be provided to the City, consistent with the requirements of Subsection B-5.g hereof, prior to the commencement of work. All such insurance shall be primary to any insurance maintained by the City.

k. Delivery of "As-Built" Drawings: Immediately after the completion of each improvement, addition, or alteration to the Premises, the Lessee shall deliver to the Director a complete set of reproducible 24" x 36" drawings reflecting the final "as-built" condition of said improvement, addition or alteration, together with either the original or a copy of all maintenance and operation manuals necessary for the repair and maintenance of any architectural, mechanical or electrical building system or piece of equipment installed on the Premises that is all or part of such improvement, addition or alteration.

l. Testing of Premises: The Lessee may make such tests, borings and other minor disturbances of the Premises as may be necessary to develop designs and plans for all required or desired improvements, additions and alterations to the Premises, including installations and modifications to accommodate changes in trade fixtures intended for use on the Premises. A report of the findings and results of each such test or boring shall be submitted to the Director within thirty (30) days after the date such findings and results are obtained.

B-7

COVENANTS REGARDING OPERATION OF LESSEE'S BUSINESS

a. Obligation to Open for Business: The Lessee shall open for business within sixty (60) days after the date the Premises are made available to the Lessee for the constructions of its initial improvements, additions, and alterations, or sixty (60) days after the City's approval of plans and issuance of building permit, whichever is later.

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b. Business Hours: The Lessee shall not leave the Premises unoccupied or vacant, but shall open and maintain its operation therein ready for the transaction of business with the public on such days and during such minimum operating hours as may be designated by the Director, from time to time, with the exception of temporary closures for such period as may be necessary for repairs, redecorating, or circumstances beyond the Lessee's control.

c. Maximization of Gross Receipts: The Lessee shall carry on its business with diligence and efficiency, making the Lessee's best efforts to produce the maximum amount of gross receipts as defined in Section B-2 hereof.

d. Personnel: The Lessee shall employ courteous, competent, and efficient help in such numbers, skills, and experience as to properly conduct its activities on the Premises. The Lessee shall have on the Premises, at all times it is open for business, a qualified representative authorized to represent the Lessee in dealings with the City, and shall keep the Director informed of the identity of such person.

e. Business Name: The Lessee shall not change the name by which it carries on its business without the written consent of the Director whose consent shall not be unreasonably withheld.

f. Fixtures, Furnishings, and Trade Equipment: All fixtures, furnishings, and trade equipment installed on the Premises shall be of high quality, of a modern type, and either new or completely reconditioned. Temporary or portable concession facilities shall be of the same quality as those permanently installed. Cash registers shall be a non-resetting type with a cumulative total and shall be subject to the approval of the Director.

g. Personal Property Inventory: During the last two (2) weeks of June of each year during the Term of this Lease, the Lessee shall inventory all of its personal property on the Premises other than merchandise offered for sale or rent to the public, and furnish the Director with a copy of a written inventory report itemizing the same. The personal property inventory most recently filed by the Lessee is attached hereto as "Part E."

h. Deliveries: All deliveries shall be made to a delivery location or entrance designated by the Director and shall be completed prior to 11:00 a.m. or the Director's specified deadline when special arrangements have been made with the Director.

i. No Nuisances or Objectionable Activity: The Lessee shall not permit any excessive or objectionable noise, odor, dust, vibration or similar substance or condition to remain on or be emitted from the Premises; shall not interfere with access from the Seattle Center or any part thereof, including the Premises, or with the traffic thereon; shall not create any nuisance in or adjacent to the Seattle Center; and shall not do anything on the Seattle Center that will create a danger to life or limb.

j. No Use of Common Areas: Neither the Lessee nor any of its officers, employees, or invitees shall use the common areas of Seattle Center (those areas designated by the Director as being for the general and shared use by Seattle

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Center tenants and their employees and invitees, City employees, and Seattle Center visitors, and not within the exclusive control of any tenant or licensee, which areas include but are not limited to public walkways, hallways, corridors, elevators, escalators, stairways, lounges, general seating areas, and restrooms) to meet governmental requirements peculiar to the Lessee's operations on the Premises or otherwise (such as the location for any sign or signboard) without the express written approval of the Director. Whenever the Lessee, or any of its officers, employees, or invitees requires any equipment, separate area(s) or special facility to satisfy any such governmental requirement, such equipment, area(s), and facility shall be located within the Premises at the Lessee's sole expense.

k. Illumination of Premises: The Premises and all fixtures, furnishings, and trade equipment thereon shall be effectively illuminated during all hours the Lessee is open for business.

l. Fire Extinguisher Within Premises: During the term of this Lease, the Lessee shall secure, maintain and install in the Premises, in a prominent location, a 2A-10BC class fire extinguisher or an alternative approved by the Fire Marshall, and the Lessee shall instruct all of its employees regarding its appropriate use. Such fire extinguisher shall be recharged not less than once a year and immediately following any use.

m. No Use of Prohibited Food-Serving Material: The Lessee shall not serve or permit any other person or entity to serve on the Premises any food or beverage in any plastic or polystyrene foam food or beverage container or any other type of food or beverage serving container that is hereafter legally prohibited.

n. Tenants' Association: The Lessee shall join and thereafter maintain full membership in any association established for Tenants of Center House.

o. Objectionable Merchandise or Material: Notwithstanding any other provision of this Lease, the Lessee shall not display or offer for sale or rent, or allow to be displayed or offered for sale or rent, on the Premises, any merchandise or other material that is unsafe; that portrays the City or Seattle Center or any aspect thereof in an incorrect, misleading, or unfavorable manner; that depicts or suggests in words, symbols, illustrations, or other forms, any act of violence, or any lewd, immoral, or obscene activity; or that is inconsistent with the image of a first-class, family-oriented retail and entertainment development, or is otherwise inappropriate for a family-oriented recreation and entertainment facility such as Seattle Center; or that may create a substantial litter or other maintenance problem at Seattle Center; all of which shall be determined by the Director in the exercise of such official's sole discretion.

p. Core and Key Change: The lessee shall obtain from the City, and pay in advance of delivery, the then current Seattle Center charge for, whatever number of lock cores, padlocks and keys are desired for all doors in and to the Premises. In the event, upon the expiration or earlier termination of this Lease, the Lessee

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returns to the City all of the keys it obtained for the doors and padlocks on and to the Premises, the City shall refund to the Lessee all of the aggregate charges paid for all the lock cores and keys, but not otherwise.

B-8 UTILITY SERVICES AND PARKING

a. Extent of City Service: The City shall provide basic utility service including but not limited to sewer, water, and heating for such location. The Lessee shall pay, before delinquency, all fees and charges for the installation, change, and relocation of any point or means of service by any utility or waste line or system.

b. Limitation on City Liability Regarding Utility Service: The City shall not be liable for the interruption of any utility service when such interruption is caused by maintenance work, or when the interruption is not due to City negligence.

c. Special Services and Facilities Subject to Prior City Approval, and at Lessee's Cost: The Lessee, directly or through a third party, may install, secure, maintain and repair, at no expense to the City, any utility service related to the Lessee's operations and its use of the Premises that is not provided or maintained by the City. Any special utility or waste disposal facility, item of equipment, or service beyond that provided to the Premises by the City, must be installed only in accordance with plans and specifications approved by the Director and other appropriate City officials, in writing, in advance of such installation. The Lessee shall not install on the Premises any fixture, furnishing, or trade equipment that exceeds the capacity of any utility or waste facility for such location. The Lessee shall pay, before delinquency, all fees and charges for the installation, change, and relocation of any point or means of service by any utility or waste line or system. The Lessee shall make arrangements with the utility service provider for the separate metering, where possible, of such service and the direct billing to the Lessee for the delivery of such service.

d. Cooperative Parking: As of the commencement date of this Lease, the Seattle Center has a "Cooperative Parking Status" under Title 23 of the Seattle Municipal Code. Accordingly, unless otherwise specifically provided herein, the City does not provide any parking that is specifically for or associated with the Premises (including but not limited to that required by or for the Lessee's staff, suppliers or customers), and whatever general, non-reserved parking the City makes available for Seattle Center tenants and their respective staffs, suppliers, and customers shall be shared on a first-come, first-served basis.

B-9 ADVERTISING & PUBLICITY

a. Prohibited Promotion & Other Material: Removal of Same: The Lessee shall not display, post, or distribute any sign, symbol, advertising of any nature, or any printed material (including but not limited to posters) on any part of the Seattle Center, including but not limited to the Premises, except after receiving written permission therefor from the Director; and may undertake such activity only in or on location(s) approved by the Director. On or before the expiration or termination date of this Lease, whichever is earlier, or in the case of unauthorized material, on or before the date specified in the Director's notice to remove the same, the

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Lessee shall remove, at no expense to the City, all such signs, symbols, advertising and printed material; and correct any unsightly condition, and repair any damage or injury to City property caused by such signs, symbols, advertising and printed material, and the removal thereof. In the event any such unauthorized material is not removed from City property by the date required herein, such material may be treated as Lessee property subject to removal and storage pursuant to Subsection B-18.c hereof.

b. Use of Photos & Similar Materials: Each party hereto may make photographs, video tapes, and motion pictures of the Premises and the activity, people, displays and exhibits thereon; *Provided*, that in the event such visual material is to be used for commercial advertising purposes, prior to making the same, the Lessee shall obtain the written approval of the Director for such use, which approval may be conditioned upon, among other things, the payment by the Lessee to the City of additional consideration; and prior to the use of any such photography, video tape, or motion picture, a written release shall be obtained from every individual identifiable in the same.

B-10 MAINTENANCE, CLEANING & REPAIR

a. City Responsibilities: The City shall maintain, clean and repair the exterior and structural aspects of the Premises as well as the Seattle Center common areas as defined in Subsection B-7 hereof, but not the interior or window areas of Premises except as indicated in Part A hereof. Such maintenance, cleaning and repairing shall be to the ordinary standard of work performed on other, major use facilities at Seattle Center, to keep the same in good condition, normal wear and tear and damage and destruction by fire or other extraordinary casualty excepted. In connection therewith, the City shall remove garbage and other refuse from locations designated by the Director for such purpose, and repair potable water, sewer, and storm water lines connecting with similar lines on the Premises. In undertaking such maintenance, the City shall make a good faith effort to not unreasonably interfere with the Lessee's business on the Premises. The Lessee waives all claims for damages, including for any loss of business, resulting from City maintenance, cleaning and repair work except to the extent of City negligence and the City's unreasonable interference with the Lessee's use of the Premises.

b. Lessee's Responsibilities: Except as indicated in Part A hereof, the Lessee, at its own cost and expense, shall keep the Premises and all real property improvements, alterations, and additions thereto, and the Lessee's personal property at all times and otherwise in good repair and in a neat, clean, and sanitary condition, except for the effects of normal wear and tear and damage by fire or other unavoidable casualty. In carrying out such responsibilities, the Lessee, among other things, shall:

- (1) Clean all glass in the windows, doors, display cases, and equipment on the Premises at least once a month, and replace any such glass immediately after it become cracked or broken;

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(2) Generally repaint all painted surfaces at least once every five (5) years, and spot-paint any surface area that has become chipped, spotted, faded, or otherwise unattractive immediately after such condition has been discovered;

(3) Keep all drainage pipes free and open;

(4) Have all plumbing and plumbing fixtures inspected at least once every quarter; repair all damage resulting from any plumbing fixture, any equipment connected to plumbing, or pipe not installed in the Premises by the City or caused by the Lessee's failure to keep such fixture or pipe in good operating condition; and in the event of any failure by the Lessee to satisfy this repair obligation within four (4) hours after receipt of notice from the Director of any such damage, the City reserves the right to undertake such repair, the cost of which shall be reimbursed by the Lessee;

(5) Maintain and periodically clean at least once every three (3) months, all exhaust system duct work on the Premises and its connection with the City's common duct system, to eliminate all risk of fire;

(6) Clean all grease traps on the Premises on a regularly scheduled basis but at least once every three (3) months;

(7) Remove, periodically, in a timely and careful manner, to all areas designated by the Director, all debris generated by or peculiar to the Lessee's operations on the Premises;

(8) Replace, from time to time, worn or irreparably damaged trade equipment, furnishings and fixtures with other material satisfying the requirements of Subsection B-7.f hereof;

(9) Prevent the presence of vermin, insects, and other pests on the Premises by, among other actions, contracting with an independent pest control company for the performance of pest control services in the Premises not less frequently than once every two (2) weeks; and by providing to the Director, within thirty (30) days after the commencement date of this Lease, written documentation that such service has been contracted for, and within 24 hours of the bi-weekly performance of such service, written documentation that such service has been performed on the Premises; and

(10) At least once per month, remove all dust, grit and dirt from, and otherwise clean and perform necessary maintenance work on, any rolling grille located on the Premises.

In the event the Lessee fails to satisfy, in a timely manner after its receipt of notice from the Director of the need for such work, any of the obligations specified in this subsection, the City reserves the right (but shall have no obligation) to undertake such work. In the event the City undertakes such work for the Lessee pursuant to this subsection, the Lessee shall pay the City, as

additional rent under to Subsection A-5(b) hereof, reimbursement of the actual expenses incurred by the City in undertaking such work (including but not limited to Seattle Center labor and project management) plus an administrative charge of \$250.00.

B-11 COMPLIANCE WITH LAW

a. General Requirements: The Lessee, at no cost to the City, shall perform and comply with all applicable, current and future laws of the United States and the State of Washington; the Charter and Municipal Code of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. The Lessee shall use its best efforts to ensure that every person it admits to the Premises similarly performs and complies with the same. Whenever the Lessee or its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it or any person admitted to the Premises, the Lessee shall immediately desist from and/or prevent or correct such violation.

b. Licenses & Other Authorizations: The Lessee, at no cost to the City, shall secure and maintain in full force and effect during the term of this Lease, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

c. Taxes: The Lessee shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Premises, including but not limited to taxes arising out of the activity or business conducted on the Premises; taxes levied on its property, equipment and improvements on the Premises; and taxes on the Lessee's interest in this Lease and any leasehold interest deemed to have been created thereby under RCW Ch. 82.29A; and in the event the State of Washington makes any demand upon the City for payment of leasehold excise taxes resulting from the Lessee's occupancy of the Premises or withholds funds due to the City to enforce collections of leasehold excise taxes, the Lessee shall remit the taxes demanded together with any interest and penalties associated therewith or, at no expense to the City, contest such collection action and indemnify the City for all sums expended by, or withheld by the State of Washington from the City in connection with such taxation.

d. Nondiscrimination & Affirmative Action: The Lessee agrees to comply with all state and local laws prohibiting discrimination with regard to creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap.

Consistent with that obligation, in the event the Lessee has three (3) or more employees during the term of this Lease, the following provisions of Seattle Municipal Code 20.44.040 shall be deemed to be incorporated herein:

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During the performance of this Lease, the Lessee agrees as follows:

"The Lessee will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Lessee will take affirmative action to ensure what applicants are employed, and that employees are treated during employment without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscriminatory clause. The Lessee will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to these provisions; *Provided*, nothing herein shall prevent an employer from giving preference in employment to members of his/her immediate family.

"The Lessee will, upon request of the Director of the City's Department of Administrative Services or such official's functional successor or designee(s) (hereinafter referred to as "DAS Director") furnish to the DAS Director on such form as may be provided therefor, a report of the affirmative action taken by the Lessee in implementing the terms of this provision, and will permit access to the Lessee's records of employment, employment advertisements, application forms, other pertinent data and records requested by the DAS Director for the purpose of investigation to determine compliance with these provisions.

"If, upon investigation, the DAS Director determines that there is probable cause to believe that the Lessee has failed to comply with any of the terms of these provisions, the Lessee shall be so notified in writing. The Director shall give the Lessee an opportunity to be heard, after ten days notice. If the Director concurs in the findings of the DAS Director, then the Director may suspend or terminate this Lease and evict the Lessee in accordance with law.

"Failure to comply with any of the terms of these provisions shall be material breach of this Lease."

The foregoing provision shall be inserted in all sub-leases entered into under this Lease.

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e. Women's and Minority Business Enterprise Utilization:

(1) Incorporation of Ordinance: This Agreement incorporates by reference Seattle Municipal Code ("SMC") Ch. 20.46A (the "Women's & Minority Business Utilization ["WMBE"] Ordinance"). The purpose of Seattle's WMBE Program is to provide a prompt remedy for the effects of past discrimination. The failure of the Lessee or any subcontractor of the Lessee to comply with any of the requirements of S.M.C. Ch. 20.46A shall be a material breach of contract.

(2) Lessee's Obligations: During the Term of this Lease, the Lessee shall:

(a) Meet the minority business enterprise ("MBE") and women's business enterprise ("WBE") set-asides established for this Agreement, if any;

(b) Make affirmative efforts to utilize WMBEs in performing the Lessee's obligations under this Agreement, whether as subcontractors, suppliers, or in any other capacity;

(c) Require that all subcontractors make affirmative efforts to utilize WMBEs in the performance of this Agreement;

(d) Maintain records reasonably necessary for monitoring compliance with the provisions of S.M.C. Ch. 20.46A, and submit such information as may be requested by the DAS Director or such official's functional successor or designee(s) in order to monitor and enforce compliance; and

(e) Require that subcontractors maintain records reasonably necessary for monitoring the subcontractor's compliance with the provisions of S.M.C. Ch. 20.46A, and that the subcontractors submit such information as may be requested by the DAS Director or such official's functional successor or designee(s) in order to monitor and enforce compliance.

(3) Liquidated Damages for Breach: The City, in general, and its WMBE Program in particular, are damaged when a contract, or a portion of a contract, to be performed by a WBE or MBE is not actually performed by a WBE or MBE in compliance with S.M.C. Ch. 20.46A. Because the actual amount of such damage is not reasonably calculable, the City and the Lessee agree and stipulate that liquidated damages equal to the unmet dollar amount of any WBE or MBE set-aside (if any) will fairly compensate the City for resulting delays in carrying out the purpose of the WMBE Program, the costs of meeting utilization targets through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation.

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f. Recycling of Waste Materials: The Lessee, at no cost to the City, shall collect, sort and separate into such categories as may be legally required, all solid waste products on the Premises, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped or removed from the Seattle Center at such minimum frequency as is specified by the Director. The City reserves the right to refuse to collect or accept from the Lessee any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require the Lessee to arrange for the collection of the same at the Lessee's sole cost and expense using a contractor satisfactory to the City. The Lessee shall pay all costs, fines, penalties, and damages that may be imposed on City or the Lessee as a consequence of the Lessee's failure to comply with the provisions of this subsection.

g. Environmental Standards:

(1) Definitions: For the purpose of this subsection, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

(a) "Laws or Regulation" shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction of which the Lessee has knowledge), now or hereafter in effect including but not limited to the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Re-authorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, and the Solid Waste Disposal Act.

(b) "Hazardous Substances" shall mean any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any federal, state, or local statute, ordinance, or regulation relating to environmental protection, contamination or cleanup.

(2) Restrictions on Lessee Activities: The Lessee shall not cause to occur upon the Premises or permit the Premises to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process Hazardous Substances except in compliance with all applicable Laws and Regulations. The Lessee shall provide the Director with the Lessee's USEPA Waste Generator Number (if any), and with a copy of every Material Safety Data Sheet (MSDS), Generator Annual Dangerous Waste Report, environmentally related regulatory permit or approval (including every revision or renewal thereof) and any correspondence the

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Lessee receives from, or provides to, any governmental unit or agency in connection with the Lessee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.

(3) Correction of Violations: If the Lessee violates any of the terms of this section concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, the Lessee shall promptly take such action as is necessary to mitigate and correct the violation. If the Lessee does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in place of the Lessee (for which purpose the Lessee hereby appoints the City as its agent), to come onto the Premises and to take such action as the City deems necessary to ensure compliance or to mitigate the violation. If the Director has a reasonable belief that the Lessee is in violation of any law or regulation, or that any action or inaction of the Lessee presents a threat of violation or a threat of damage to the Premises, the City reserves the right to enter onto the Premises and take such corrective or mitigating action as the Director deems necessary. All costs and expenses incurred by the City in connection with any such action shall become immediately due and payable by the Lessee upon presentation of an invoice therefor.

(4) Testing: The Lessee shall provide the City with access to the Premises to conduct an annual environmental inspection in January of each year of the term hereof or at such other time(s) as may be mutually agreed upon. In addition, the Lessee shall permit the City access to the Premises at any time, upon reasonable notice, for the purpose of conducting environmental testing at the City's expense. The Lessee shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Director's written consent, which shall not be unreasonably withheld. The Lessee shall promptly inform the Director of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to the Lessee, and the Lessee shall provide a written copy of the same to the Director within thirty (30) days after the preparation of any such material.

(5) Removal of Hazardous Substances Prior to Vacation of Premises: Prior to vacation of the Premises, in addition to all other requirements under this Lease, the Lessee shall remove any Hazardous Substances placed on the Premises during the term of this Lease or the Lessee's possession of the Premises, and shall demonstrate such removal to the Director's reasonable satisfaction.

(6) Reimbursement of City Costs: In addition to any remedy provided above, the City shall be entitled to full reimbursement from the Lessee whenever the City incurs any cost resulting from the Lessee's violation of any of the terms of this Subsection B-11.g, including, but not limited to, the cost of clean-up or any other remedial activity, fines, penalties assessed directly

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against the City, injuries to third persons or other property, and loss of revenue resulting from an inability to re-lease or market the Premises due to its environmental condition as the result of the Lessee's violation of the terms of this Lease (even if such loss of revenue occurs after the expiration or earlier termination of this Lease).

(7) Indemnification: In addition to all other indemnities provided in this Lease, and notwithstanding the expiration or earlier termination of this Lease, the Lessee agrees to and shall defend, indemnify and hold the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises resulting from a violation of the terms of this section, or the migration of any Hazardous Substance from the Premises to other property or into the surrounding environment that is the result of a violation of the terms of this section, whether (a) made, commenced or incurred during the term of this Lease, or (b) made, commenced or incurred after the expiration or termination of this Lease if arising out of an event occurring during the term of this Lease.

B-12 CITY'S CONTROL OF BUILDINGS, GROUNDS & ACTIVITIES

Notwithstanding any other provision of this Lease, the City, without liability of any kind, may:

- a. Physical Appearance: Increase, reduce or change, in any manner and any extent whatsoever, the number, appearance, dimensions, and location of any and every Seattle Center walkway, landscaping element, parking, service area, and building (including the Center House Building as defined in Subsection B-10.a hereof) as desired by the City;
- b. Traffic & Parking Regulation: Regulate all traffic within and adjacent to the Seattle Center; and restrict or prohibit the parking on City-owned or leased property of motor vehicles owned or operated by the Lessee or any of its officers, employees, agents, suppliers, and invitees;
- c. Admission Charges: Impose a reasonable charge for admission to the Seattle Center and any of the facilities therein, including parking facilities;
- d. Promotions & Events: Erect, display and remove promotional exhibits and materials and permit special events on the Seattle Center grounds and in or at any or every building and facility thereof including but not limited to the common areas of the Center House Building;
- e. Rules & Regulations: Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of Seattle Center;

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f. Hours of Operation: Determine the days and hours that the Seattle Center and the various business operations therein will be open to the public;

g. Other Businesses & Operations: Change the size, number, and type and identity of other businesses and operations being conducted or undertaken at Seattle Center; and authorize other lessees, licensees, and the sponsors of special events at Seattle Center, directly or indirectly, to offer for sale food and beverages, and for sale or rent any merchandise and service, including any that may be identical or similar to that offered by the Lessee;

h. Signage: Place "For Rent" or similar signs in the Premises for thirty (30) days prior to the expiration or termination date of this Lease, whichever is earlier.

i. Interference: Interfere with light, air or view, or the Lessee's operations or use and occupancy of the Premises, either in connection with or as a result of operations by or for City in the construction of any public work or its subsequent use and occupancy, or the repair and maintenance of any City facility or improvement. The City will make a good faith effort, however, to minimize such interference to the extent it is reasonably economical for the City to do so.

B-13

CITY ACCESS TO, & INSPECTION, REPAIR & IMPROVEMENT OF PREMISES & OTHER PROPERTY

a. Access to Premises: The Lessee shall provide the City and its contractors and consultants, their subcontractors, subconsultants and agents with access to the Premises at all reasonable times to inspect the same and to make any inspection, repair or improvement deemed necessary by the Director, but this right of access shall not impose on the City any obligation to make any repair, alteration, addition, or improvement except as specifically provided herein.

b. Permitted Interference With Lessee's Operations: In inspecting, and in making repairs, alterations, additions, and improvements, the City may erect barricades and scaffolding in and outside of the Premises, and may otherwise interfere with the conduct of the Lessee's business and operations where such action is reasonably required by the nature of the City's work; and such interference shall not be deemed to be a breach or default under this Lease.

c. Suspension of Lessee's Operations and Obligation to Pay Monthly Base Rent: In the event such inspection, repair, alteration, addition, or improvement work necessitates the temporary suspension of the Lessee's business or operations in, on, or from the Premises, the Director shall notify the Lessee of such necessity and the anticipated beginning and ending dates of such suspension. Monthly Base or Adjusted Base Rent due to City pursuant to Section A-4 hereof shall be prorated during each month in which the Lessee's business or operations are required by City to be suspended pursuant to this subsection, and the Lessee shall have no obligation to pay such prorated rent during the period that the

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Lessee's business or operations are suspended; such cancellation of the obligation to pay the prorated Monthly Base or Adjusted Base Rent shall constitute the totality of relief available, and the Lessee waives all claims for damages and for any injury to and interference with its operations or business and losses occasioned by any such suspension.

d. City's Retention & Use of Key to Premises: The Lessee shall provide the Director with a key with which to unlock all of the doors in, upon, and about the Premises, excluding the Lessee's vaults, safes, and files, for each of the aforesaid purposes. The City shall have the right to use any and all means that the Director deems proper to open said doors in an emergency, in order to obtain entry to the Premises, without liability to the Lessee except for any failure to exercise due care for the Lessee's property. Any entry to the Premises obtained by the City by any of said means, or otherwise, shall not be construed or deemed to be an eviction of the Lessee or a forcible or unlawful entry into, or a detainer of, the Premises or any portion thereof.

B-14 ASSIGNMENTS, SUBLEASES & OTHER INTEREST TRANSFERS

a. Director's Prior Written Consent Required for Assignment & Subleases: No purported assignment, sublease or other transfer of the Premises or any portion thereof or of any aspect of the Lessee's interest in this Lease shall be effective without the prior written consent of the Director whose consent shall not be unreasonably withheld. Every proposed sublease, assignment, or other interest-transferring agreement shall be submitted to the Director for review and approval or disapproval after execution by the proposed subtenant, assignee, or transferee, and not less than fourteen (14) calendar days prior to the commencement date of the proposed sublessee's, assignee's, or transferee's intended use of any portion of the Premises under such agreement or the assumption of any right or interest in any portion of the Premises or this Lease. No assignment or sublease of this Lease, with or without the Director's consent, shall release or relieve the Lessee of or from any of the obligations on the Lessee's part to be kept and performed under this Lease, and the Lessee shall remain jointly and severally liable for the performance of all obligations of the Lessee hereunder regardless of any (i) agreement that modifies any of the rights or obligations of the parties to this Lease; (ii) stipulation that extends the time within which an obligation under this Lease is to be performed; (iii) waiver of the performance of any obligation under this Lease; or (iv) failure to enforce any obligation under this Lease. Every assignment and sublease shall be subject to all the terms and provisions of this Lease.

b. Lease Interests Not Transferable by Action of Law or Court: Neither this Lease, nor any right, privilege, or other interest conferred by this Lease shall pass to any trustee or receiver in bankruptcy or to any receiver or assignee for the benefit of creditors; nor shall this Lease or any rights, privilege, or interest be transferable by operation of law or proceeding of any court.

c. Change of Lessee's Organizational Structure or Ownership Constitutes Assignment: If the Lessee is a partnership, limited or general, a withdrawal of a general partner, or change, voluntary or involuntary, by operation of law or otherwise, or a general partner thereof, shall be deemed an assignment. If the

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Lessee is a corporation, the merger, consolidation, or liquidation of the Lessee or any change in the ownership of or power to vote thirty-three and one-third percent (33 1/3%) or more of its capital stock, as held as of the date of execution of this Lease, shall be deemed as assignment.

d. Lessee's Authorization to Use Premises Constitutes Assignment or Sublease: In the event the Lessee in any manner permits anyone to occupy all or any portion of the Premises for any purpose including but not limited to the conduct of any business or other activity, whether or not business-related, not within the intent of this Lease or any sublease, such permission shall be deemed an assignment or sublease, as deemed appropriate by the Director. Every sublease shall require the sublessee to submit to the Director and the Lessee not more than ten (10) days after the end of each month during the term of its sublease and the month after the expiration or earlier termination of such sublease, a written statement identifying the amount of gross receipts generated by such sublessee on and from the portion of the Premises used and occupied by such sublessee during the immediately preceding month. In the event of any assignment of this Lease, the Lessee shall cause to be delivered to the Director simultaneously with such assignment, an instrument, in writing, executed by the assignee, in which the assignee shall assume and agree to perform all of the terms and provisions of this Lease on the Lessee's part to be kept and performed that theretofore have not been fully performed.

B-15 EXCUSE & SUSPENSION OF OBLIGATIONS (FORCE MAJEURE)

Whenever a party's performance under this Lease is prevented by an act of nature; war or war-like operations; civil commotion; riot; labor dispute including a strike, lockout, or walkout; sabotage; Federal or State regulation or control; or other condition beyond the reasonable control of such party, performance of such affected obligation shall be suspended, but only for the duration of such condition. The existence of more than one (1) such condition on a given day shall result in only a one (1) day extension.

B-16 DAMAGE OR DESTRUCTION

a. Report of Damage or Destruction: The Lessee shall submit a written report to the Director, in care of the Contracts and Concessions Office, regarding the circumstances of any damage to the Premises, within twenty-four (24) hours after its discovery.

b. Rent Obligation in Event of Damage or Destruction: In the event the Premises are destroyed by fire or other casualty not occasioned by an act or omission of the Lessee, or are damaged so extensively as to render the Premises unusable, the Lessee's obligation to pay rent shall be suspended until the Premises are made usable; but in the event only a portion of the Premises are damaged or destroyed by fire or other casualty not occasioned by an act or omission of the Lessee and the remainder of the Premises remains usable, the Lessee shall pay only a prorated rent that is proportionate to the extent of the Premises that remains usable for the purposes identified in Section A-8 hereof.

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c. Rebuilding, Repair & Restoration: In the event that insurance proceeds payable to the City will provide sufficient funds to enable the City to rebuild, repair and restore the Premises after their damage or destruction, and neither the Lessee nor the City elects to terminate this Lease pursuant to Subsection B-16.d hereof, the City shall diligently prosecute such rebuilding, repair, and restoration. Upon the rebuilding, repair and reconstruction of the Premises, the Lessee shall immediately re-occupy the Premises and again pay rent and additional rent for the right granted herein to use and occupy such area through the expiration or termination date of this Lease, whichever is earlier.

d. Termination Rights in Event of Damage or Destruction:

(1) By Lessee: Notwithstanding any other provision in this Lease to the contrary, in the event that fifty percent (50%) or more of the Premises is damaged or destroyed by fire or other casualty not occasioned by an act or omission of the Lessee, the Lessee may terminate this Lease by providing notice thereof to the Director.

(2) By City: Notwithstanding any other provision in this Lease to the contrary, in the event that fifty percent (50%) of the Center House Building on which the Premises are located is destroyed or is so damaged by fire or other casualty as to be untenable or unusable, or if the City desires to discontinue the Lessee's operations because of substantial destruction of the Center House Building or other part of Seattle Center, regardless of whether the Premises are destroyed, damaged, or otherwise, the City may terminate this Lease by providing prior written notice thereof to the Lessee.

(3) Notice of Termination: Any notice of termination pursuant to this section shall be provided within sixty (60) days after the occurrence of the damage or destruction and shall specify the effective date of such termination.

B-17

DEFAULT & BREACH

a. Default & Breach by Lessee: The following acts and omissions shall constitute a default and material breach of this Lease by the Lessee:

- (1) The failure to remit rent or additional rent due and payable to the City, before such sum become delinquent;
- (2) The failure to comply with all of the requirements of Section B-5 hereof, regarding insurance; or
- (3) The violation of any law, Charter provision, ordinance, rule, regulation, governmental authority's order or directive; or
- (4) The abandonment or vacating of the Premises; or

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(5) After the Lessee's receipt of notice of any deduction from the Lessee's Performance Guarantee for a City use or application, or the failure of the Lessee to deliver cash as required by Section B-4 hereof, to restore the Performance Guarantee to its original amount; or

(6) The repeated failure to perform or the violation of any single condition or covenant of this Lease on two or more occasions in any twelve (12) month period; or

(7) The assignment of the Lessee's interest in this Lease without the prior written consent of the Director; or the use of any sublease without the prior written consent of the Director; or the filing of a voluntary or involuntary petition in bankruptcy, or for reorganization or an arrangement; or the adjudication of the Lessee as being bankrupt or insolvent; or the appointment of a receiver of or for the Lessee if such appointment, adjudication or similar order or ruling remains in force or unstayed for a period of thirty (30) days; or

(8) The failure to perform or the violation of any other condition or covenant of this Lease where such default or deficiency in performance was not remedied within a reasonable time.

b. City's Notice of Default & Breach: The Director shall provide written notice to the Lessee in the event the Lessee commits any act or omission specified in Subsection B-17.a hereof, specifying the nature of the act or omission, the reasonable number of days (but not more than sixty (60) days) after the date of the notice within which such failure must be corrected or the violation must be ceased or remedied to avoid termination, and the City's intention to terminate this Lease in the event such act or omission has not been corrected within such stated period. The notice shall also describe special procedures (if any) provided by law, Charter, ordinance, rule, or regulation permitting the Lessee to have a hearing on such failure or violation.

c. Remedies: In the event the Lessee fails to correct, remedy, or cease such failure or violation within the time specified in the Director's notice, the City may thereafter terminate this Lease without any further proceedings, re-enter the Premises, lease and license others to use said Premises during any portion of the period of use remaining under this Lease had it not been terminated, and receive rent, additional rent and license fees therefor; *Provided*, that notwithstanding such termination and re-entry, the Lessee's liability for the rent and additional rent to be paid to the City hereunder shall not be extinguished, and the Lessee shall pay to the City the difference between said rent and additional rent and the sum the City receives for the use of the Premises by one or more other users during the period beginning on the date the Lessee's rights under this Agreement are terminated and ending on the scheduled expiration date of this Lease. Such payment shall be made monthly, within fifteen (15) days after the date of the City's invoice to the Lessee. Such termination and payments shall not relieve the Lessee from liability to the City for any damages caused by the Lessee's default and breach and expenses incurred in the leasing or relicensure of the Premises.

d. Criteria for Substitute Tenant: The City's obligation to mitigate damages after a default by the Lessee under this Lease that results in the City's regaining possession of all or part of the Premises shall be satisfied in full if the City undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

(1) The City shall have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until the City obtains full and complete possession of the Premises including, without limitation, the final and unappealable legal right to re-let the Premises free of any claim of the Lessee.

(2) The City shall not be obligated to offer the Premises to any prospective tenant when other Premises in the Center House suitable for that prospective tenant's use are currently available, or will be available within the next three months.

(3) The City shall not be obligated to lease the Premises to a Substitute Tenant for a rental less than the current fair market rental then prevailing for similar in comparable shopping centers in the same market area as the Center House.

(4) The City shall not be obligated to enter into a new lease under terms and conditions that are unacceptable to the City under the City's then current leasing policies for comparable space in the Center House.

(5) The City shall not be obligated to enter into a lease with any proposed Substitute Tenant that does not have in the Director's reasonable opinion, sufficient financial resource or operating experience to operate the Premises in a first-class manner.

(6) The City shall not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a Substitute Tenant unless:

(a) The Lessee pays any such sum to the City in advance of the City's execution of a lease with such Substitute Tenant (which payment shall not be in lieu of any damages or other sums to which the City may be entitled to as a result of the Lessee's default under this Lease); or

(b) The City, in the Director's sole discretion, determines that any such expenditure is financially justified in connection with entering into any lease with such Substitute Tenant.

(7) The City shall not be obligated to enter into a lease with any Substitute Tenant whose use would:

(a) Disrupt the tenant mix or balance of the Center House building;

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- (b) Violate any restriction, covenant, or requirements contained in the lease of another tenant of the Center House building;
- (c) Adversely affect the reputation of the Seattle Center or Center House building;
- (d) Be incompatible with the operation of the Center House building as a first-class shopping center.

e. Default by City: The City shall not be in default of any obligation to perform under this Lease unless the City fails to perform such obligation within a reasonable time, which time shall not extend more than thirty (30) days after written notice by the Lessee to the Director specifying the particular obligation that the City has failed to perform; *Provided*, however, that if the nature of the City's obligation is such that more than thirty (30) days are required for performance, then the City shall not be in default if the City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

B-18 SURRENDER OF PREMISES; HOLDING OVER

a. Surrender & Delivery: Upon the expiration or termination date of this Lease, whichever is earlier, the Lessee shall surrender the Premises and promptly deliver to the Director all keys the Lessee, and any of its officers, agents, and employees have to the Premises or any other part of the Seattle Center.

b. Removal of Lessee's Property: Prior to the expiration date of this Lease, or in the event this Lease is terminated, within fifteen (15) days after the termination date, whichever is earlier, the Lessee shall remove, at its sole expense, all trade equipment and personal property owned or installed by the Lessee in, on, or from the Premises, as well as those improvements, alterations and additions to the Premises that are specified in the Director's notice provided pursuant to Subsection B-6.g hereof. In performing such removal work, the Lessee shall take due care to not unreasonably injure or damage the Premises, and shall make such repairs to the Premises as shall be necessary to restore the same to their condition as of the commencement date of this Lease, ordinary wear and tear and improvements, additions, and alterations, approved by the City excepted.

c. Storage of Lessee's Property: In the event the Lessee fails to remove personal property and the improvements, alterations and additions specified in the Director's notice on or by the time specified in such notice, the City may, but shall not be required to remove such material from the Premises and store the same, all at the Lessee's expense; and in the event the City removes or arranges for the storage of such material, the City shall be reimbursed its costs therefor, including any administrative costs, which reimbursement shall constitute a claim upon the Lessee or, at the City's option, may be invoiced to the Lessee or deducted from the Performance Guarantee provided pursuant to Section B-4 hereof.

d. Hold-over Use & Occupancy of Premises: In the event the Lessee, with the Director's consent, holds over after the date the Term expires or is terminated, whichever is earlier, the resulting use and occupancy shall be on a monthly basis,

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during which time the Lessee shall be bound by all of the provisions of this Lease other than the amount of the monthly base or adjusted base rent specified in Section A-3, which amount shall be the greater of the amount charged for the month immediately preceding the expiration or termination date, whichever is earlier, or the fair market value for the Premises. If, however, the Lessee holds over, without Director's consent, after the expiration or termination date of this Lease, whichever is earlier, whether by failing to remove its personal property or any addition, alteration or improvement specified by the Director, or otherwise, the Lessee shall pay to the City, as liquidated damages, twice the amount of the most recently applicable periodic and percentage rents specified in Sections A-3 and A-4, hereof, and shall be bound by all of the other provisions of this Lease.

e. No Claim for Removal: In no event shall the Lessee make any claim or demand upon the City nor shall the City be liable for any inconvenience, annoyance, disturbance, or loss of business or any other damage suffered by the Lessee arising out of removal operations under Subsections B-18.b and B-18.c hereof.

f. Inspection Upon Surrender of Premises: Immediately following the vacating of the Premises and the surrender of the same to the City, a representative of the Lessee shall inspect the Premises with the Director to determine the condition of the Premises and whether or not the Lessee is then eligible for the return of the Performance Guarantee provided pursuant to Section B-9 hereof, and if not then eligible, what actions must be taken by the Lessee to establish eligibility for the future return of such deposit. The results of such inspection shall be summarized by the Director on a Premises inspection report, a copy of which shall be provided to the Lessee.

B-19 NOTICES

All notices from either party to the other shall be in writing and delivered or mailed, postage prepaid, to the intended recipient at the address specified on the signature page of Part A, hereof, or to such other address as may be specified, from time to time, by either party, by notice to the other party.

B-20 NO RELATIONSHIP ESTABLISHED

The City shall in no event be construed to be a partner, associate, or joint venturer of the Lessee, or any party associated with the Lessee. The Lessee is not an agent of City for any purpose whatsoever. The Lessee shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

B-21 DEFINITION AND AUTHORITY OF "DIRECTOR"

The term "Director," as used throughout this Lease in regard to permission, warrant, consent, approval, rights, interpretation, and discretionary matters, shall mean the Director of the City's Seattle Center Department or such official's functional successor or designee; *Provided*, that the action of the Director pursuant to or in implementation of this Lease does not constitute any official action by any other City Department or official

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that may be required by law, ordinance, rule or regulation before the Lessee may rightfully commence, suspend, enlarge, or terminate any particular undertaking or may obtain or exercise any particular right or privilege under this Lease. Any approval, consent or permission required of the Director by this Lease may be granted, conditioned or withheld by the Director in the exercise of such official's sole discretion.

B-22 AMENDMENTS

No modification or amendment of the terms hereof shall be effective unless in writing and signed by authorized representative of each of the parties hereto. The parties hereto expressly reserve the right to modify this Lease from time to time, by mutual agreement.

B-23 NO WAIVER

Nothing other than a written document signed personally by the Director and specifically declaring a City intent to waive a particular breach or default by the Lessee shall constitute a waiver of such breach or default. No such document shall waive the Lessee's failure to fully comply with any term or condition of this Lease not specifically referenced therein, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. No waiver by either party shall be construed to be, or operate as, a waiver of any subsequent default in full performance of any provision of this Lease. The payment or acceptance of rent, additional rent, or other compensation, whether after a default or from a sublessee or assignee, shall not be deemed to constitute consent to or acceptance of such default or acceptance of defective or incomplete performance in the future or any such subtenancy or assignment.

B-24 REMEDIES CUMULATIVE

Rights under this Lease are cumulative; failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. Each party shall also have any other remedy given by the law. The use of one remedy shall not be taken to exclude or waive the right to use another.

B-25 JOINT & SEVERAL LIABILITY

In the event the Lessee is composed of more than one person, entity, or corporation, each of the persons, entities, and corporations composing the Lessee shall be jointly and severally liable under this Lease.

B-26 USE OF LANGUAGE

Terms used in the neuter gender include the masculine and feminine; and terms used in the singular or plural include the other, as the context may require.

B-27 CAPTIONS

The titles of sections are for convenience only and do not define or limit the contents.

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B-28 INVALIDITY OF PARTICULAR PROVISIONS

Should any term, provision, condition, or other portion of this Lease or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this Lease or the application of such term or provision to person or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and shall continue in full force and effect.

B-29 GOVERNING LAW & VENUE

This Lease shall be interpreted and construed using Washington Law. The venue for any action under this Lease shall be in the Superior Court of the State of Washington for King County.

B-30 BINDING EFFECT

The provision, covenants, and conditions contained in this Lease apply to bind the parties, their legal heirs, representatives, successors, and assigns.

B-31 NO BROKER

The Lessee represents and warrants that there is no claim for any brokerage commission or finder's fee in with connection the execution of this Lease.

B-32 ACKNOWLEDGMENT OF NEGOTIATED LEASE

The parties to this Lease acknowledge that it is a negotiated lease, 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.

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**LEASE AGREEMENT
BETWEEN THE CITY OF SEATTLE AND
RICO BURRITO, INC.**

**PART C
Premises Floor Plan/Map**

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
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3/25/96

**LEASE AGREEMENT
BETWEEN THE CITY OF SEATTLE AND
RICO BURRITO, INC.**

**PART D
Seattle Center Approved Plans for Lessee's Addi-
tions, Alterations & Improvements**

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LEASE AGREEMENT
BETWEEN THE CITY OF SEATTLE AND
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PART E
Personal Property Inventory

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LEASE AGREEMENT

PART F: RULES AND REGULATIONS FOR CENTER HOUSE TENANTS

1. The common areas, entrances to Center House, passages, elevators, vestibules, stairways, corridors or halls shall not be obstructed or used for any purpose other than ingress and egress. Access to any area(s) not for the use of the general public shall, in all cases, be in the control of the City. Nothing contained herein shall be construed to prevent such access by persons with whom Lessees normally deal in the ordinary course of business unless such persons are engaged in illegal activities. Lessee shall not enter mechanical rooms, air handler rooms, telephone switch gear rooms, electrical closets, janitorial closets, or go up on to the catwalk of Center House without prior written consent of the Director. All public areas such as the south courtyard, monorail bridge, park and other public areas forming a part of Center House, if any, shall be under the sole and absolute control of the City, who shall have the exclusive right to regulate and control these areas.
2. On legal holidays and when the Center House is closed each day, access to Center House, or to the halls, corridors, elevators or stairways in Center House, or to the Seattle Center, may be refused unless the person seeking access is known to the person or employee of Seattle Center in charge and has a pass or is properly identified. The City shall furnish such passes to persons for whom any Lessee requests the same in writing. Each Lessee shall be responsible for all persons for whom he requests passes and shall be liable to the City for all acts of such persons. The City shall in no case be liable for damages for any error with regard to the admission to or exclusion from Center House during the continuance of the same by closing the doors or otherwise, for the safety of Lessee and protection of property in Center House. The City reserves the right to exclude or expel from Center House any person, who, in the judgment of the City is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of Center House.
3. Heating or air conditioning and ventilation service is provided during the days Center House is open to the public. Currently, Center House is closed to the public on Thanksgiving Day, Christmas Day, and New Year's Day.
4. No awning or other projections shall be attached to the outside walls of Center House and no window shades, blinds, or drapes or other window coverings shall be hung in the Premises without the prior written consent of the Director.
5. Canvassing, soliciting and peddling by Lessees or outsiders is prohibited in Center House, and each Lessee shall cooperate to prevent same.
6. Every Lessee shall pay for the inclusion of its name and location in all Center House directories which listing shall be on a standard form determined by the Director.
7. The Lessee's Premises shall not be used for anything other than specifically defined in the lease. The Lessee's Premises shall not be used for lodging or sleeping or for any immoral or illegal purposes.
8. No firearms or explosives are allowed into Center House.

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9. Under no circumstances shall Lessee:

- a) Make or permit to be made any unseemly or disturbing noises, sounds or vibrations, or otherwise disturb or interfere with occupants of Center House or those having business with them whether by the use of any musical instrument, radio, cassette deck or compact disc player, unusual noise, or in any other way.
- b) Use toilets, wash basin and other plumbing fixtures for any purpose other than those for which they were constructed, and no seeping, rubbish rags or other substances shall be thrown therein. All damage resulting from any misuse of such fixtures shall be borne by the Lessee who, or whose employees, agents, visitors, or licensees, shall have caused the same.
- c) Leave windows open and/or unlocked. Lessee shall see that all windows in the Premises are closed and securely locked before leaving Center House each day.
- d) Bring or keep in the Premises any inflammable, combustible or explosive fluid, chemical, or substance nor do or permit anything to be done in the Premises, or bring or keep anything therein which shall in any way increase the rate of fire insurance on Center House or on the property kept therein, or obstruct or interfere with the rights of other Lessees, or in any way injure or annoy them, or conflict with the regulations of the Fire Department or the fire ordinances and laws, or with any insurance policy upon Center House or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.
- e) Leave water or plumbing fixtures on. Lessee shall insure that all valves and water systems are entirely shut off before Lessee or Lessee's employees leave Center House. Lessee shall observe strict care and caution to insure that electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage. Lessee shall make good all injuries sustained by other Lessees or occupants of Center House, or sustained by the City as a result of Lessee's default or carelessness.
- f) Overload the floor or the elevators or in any way violate the integrity of Center House.

10. Food Quality Control. All food sold or offered for sale on or from the Premises shall be first quality, wholesome and pure and shall conform in all respects to federal, state, and municipal laws, ordinances and regulations. The Lessee shall ensure that:

- a) Meat, poultry and aquatic food must have been inspected by the United State Department of Agriculture ("USDA") or the Seattle-King County Department of Public Health or the functional successor of either such entity before its use on the Premises.
- b) No food having a shelf life indicated by code is used after the end of the code period unless properly preserved prior to that period's ending and that all code tables are provided, upon request, to any employee of the Seattle-King County Department of Public Health or its successor.
- c) All food is stored in properly working refrigeration units, heat units, and dry storage units, as appropriate.
- d) If any food containing any sulfite is used or offered for sale in or from the Premises, a written notice of the fact of such sulfite use or presence in such food is displayed at the point of sale for such food, in a prominent location easily seen by a potential food purchaser.

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11. Lessee's Menu. Initial food and beverage menu and/or products list indicating size, portion and price structure, shall be submitted to the Director for approval. The Lessee shall not make or allow to be made any misrepresentation as to the kind, quality, weight, or price of food sold or offered for sale from the premises. The Lessee shall ensure that no food is sold or offered for sale at a price different from that displayed or advertised on the food menu approved by the Director. Changes to the foregoing, whether in size, portion, price or otherwise, may not be made without the prior, written approval of the Director whose approval shall not be unreasonably withheld.
12. "Food" means any nutritive material in solid or liquid form, without limitation, that is sold, given without charge, included as an ingredient in any other edible item offered for sale, or dispensed or distributed by the Lessee in any manner in or from the Premises to any person or entity unless the Director authorizes the Lessee to offer for sale at a particular event either or both of such otherwise excluded types of nutritive material.
13. Recycling of Waste Materials. The Lessee, at no cost of the City, shall collect, sort and separate into such categories as may be legally required, all solid waste products on the premises, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped or removed from the Seattle Center at such minimum frequency as is specified by the Director. The City reserves the right to refuse to collect or accept from the Lessee any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require the Lessee to arrange for the collection of the same at the Lessee's sole cost and expense of a contractor satisfactory to the City. The Lessee shall pay all costs, fines, penalties, and damages that may be imposed on the City or the Lessee as a consequence of the Lessee's failure to comply with the provisions of this subsection.

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LEASE AGREEMENT
BETWEEN THE CITY OF SEATTLE AND
RICO BURRITO, INC.

PART G
Menu

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3/25/96

LEASE AGREEMENT
BETWEEN THE CITY OF SEATTLE AND
RICO BURRITO, INC.

PART H
City Improvements Inventory List

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TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

JUSTIN PALLEN

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE

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STATE OF WASHINGTON - KING COUNTY

66734
City of Seattle, City Clerk

-ss.

No. ORDINANCE 11

City of Seattle
TITLE ONLY PUBLICATION
 The full text of the following ordinance, passed by the City Council on April 1, 1996, and published here by title only, will be mailed, at no cost, upon request for two months after this publication. For further information, contact the Seattle City Clerk at 624-8344.

ORDINANCE 118072
 AN ORDINANCE relating to the transfer of land in the I-90 Redevelopment Project area; authorizing the acceptance of the deed to Parcel 37, from the State of Washington, Department of Transportation; authorizing the sale of approximately 1.8 acres of such land to HomeSight for development of housing for sale to first-time home buyers; authorizing a contract for sale of land and deeds; and ratifying and confirming prior acts.

ORDINANCE NO. 118073
 AN ORDINANCE relating to the Department of Parks and Recreation; accepting a donation to The City of Seattle of certain real property located adjacent to the Duwamish Head Greenbelt, legally described as portions of Government Lot 6, Section 19, Township 24 North, Range 3 East, W. 4th in King County, Washington, from H. A. and Margaret J. Winquist, husband and wife, authorizing payment of certain costs in connection with the donation; and placing the property under the jurisdiction of the Department of Parks and Recreation for open space, park and recreation purposes.

ORDINANCE NO. 118074
 AN ORDINANCE relating to the Department of Parks and Recreation, increasing the expenditure allowance in the 1996 budget of the Department of Parks and Recreation, recalling a portion and ratifying and confirming prior acts, all by a three-fourths vote of the City Council.

ORDINANCE NO. 118075
 AN ORDINANCE relating to the Seattle Center Department; authorizing the execution of a lease agreement with Rico Burrito, Inc. for the sale of food in Center House.

ORDINANCE NO. 118076
 AN ORDINANCE relating to the Seattle Center Department; authorizing the execution of a lease agreement with Cafe Loc, Inc. for the sale of food in Center House.

Publication ordered by JUDITH PIPPIN, City Clerk.
 Date of official publication in Daily Journal of Commerce, Seattle, April 12, 1996. 4/12(66734)

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT: 118072-118076 7/6

was published on
04/12/96

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

 Subscribed and sworn to before me on
 04/12/96

Notary Public for the State of Washington, residing in Seattle

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