

ORDINANCE No. 119545

(via) Law Department

COUNCIL BILL No. 112737

The City of Seattle--Legislative

REPORT OF COMMITTEE

AN ORDINANCE relating to the Seattle Center Department, authorizing the execution of the First Amendment to the Lease Agreement with The Children's Museum.

Honorable President:

Your Committee on _____

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

7/14/99 pass 3-0 (via)

7-19-99 Full Council: Pass

COMPTROLLER FILE No. _____

Introduced: <i>6-21-99</i>	By: <i>Licata</i>
Referred: <i>6-21-99</i>	To: <i>Culture, Arts and Parks</i>
Referred:	To:
Referred:	To:
Reported: <i>7-19-99</i>	Second Reading:
Third Reading: <i>7-19-99</i>	Signed: <i>7-19-99</i>
Presented to Mayor: <i>7-19-99</i>	Approved:
Returned to City Clerk: <i>JUL 26 1999</i>	Published: <i>1 page TLO.</i>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

(via)

Committee Chair

Law Department

The City of Seattle--Legislative Department

Date Reported
and Adopted

REPORT OF COMMITTEE

Department,
Amendment to the
m.

Honorable President:

Your Committee on _____

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

7/14/99 pass 3-0 (LH)
7-19-99 Full Council: Passed 9-0

and
99

(LH) (LH)

Committee Chair

SMEAD 73 YSP 17117

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ORDINANCE 119545

AN ORDINANCE relating to the Seattle Center Department, authorizing the execution of the First Amendment to the Lease Agreement with The Children's Museum.

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, an Amendment to the Lease Agreement with The Children's Museum substantially in the form of agreement attached hereto and identified as AMENDMENT TO LEASE AGREEMENT BETWEEN THE CHILDREN'S MUSEUM AND THE CITY OF SEATTLE.

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 19th day of July, 1999, and signed by me in open session in authentication of its passage this 19th day of July, 1999.

[Signature]
President of the City Council

Approved by me this 23rd day of July, 1999.

[Signature]
Paul Schell, Mayor

Filed by me this 26th day of July, 1999.

[Signature]
acting City Clerk

(SEAL)

Attachment Amendment to Lease Agreement Between The Children's Museum and The City of Seattle

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**THEATRE LEASE AGREEMENT
BETWEEN THE CITY OF SEATTLE AND
THE CHILDREN'S MUSEUM**

THIS LEASE is entered into as of November 3, 1998, 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 ("Director"), and THE CHILDREN'S MUSEUM (hereinafter called "Lessee"), a Washington nonprofit corporation.

RECITALS

The City and Lessee are parties to a Lease Agreement executed by Lessee on December 26, 1995 and by the City on January 10, 1996 ("Museum Lease"), for the space on the first floor of the Seattle Center House in which Lessee currently operates *The Children's Museum* ("Museum Space"). Pursuant to the Museum Lease, Lessee was granted an option to lease the adjacent theatre space on the first floor of the Seattle Center House (the "Premises"). By letter to the Director dated November 2, 1998, Lessee informed the City that Lessee was exercising its option to lease the Premises.

The City and Lessee intend that Lessee's use of the Premises be consistent with both the Seattle Center Vision Statement, a copy of which is attached hereto as Part D and incorporated herein by reference and ("Seattle Center Vision Statement"), and the mission statement, educational belief statement and performance studio mission statement of Lessee, copies of which are attached hereto as "Part E" and incorporated herein by reference (collectively, "Lessee's Mission Statement").

AGREEMENT

Therefore, the parties agree as follows:

PART A: SPECIAL COVENANTS & CONDITIONS OF LEASE

A-1 INITIAL TERM OF LEASE; OPTIONAL EXTENSION; EARLY TERMINATION

- a. **Initial Term:** The initial term of this Lease shall commence effective as of November 3, 1998, and shall expire October 30, 2003, unless terminated earlier pursuant to the provisions hereof ("Term").
- b. **Review and Optional Extension:** On or before May 1, 2003, the Director shall review the use of the space to determine if the use is consistent with the City's intended use of the space and the goals of Seattle Center and report to the City Council on whether additional conditions or rent adjustments are recommended. On or before May 30, 2003

ATTACHMENT

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the Director shall provide notice to Lessee either granting or denying to Lessee the option to extend the Term of this Lease for one (1) additional five (5) year period ending October 30, 2008, on such additional proposed terms and conditions ("Extended Term"). Within ninety (90) days after Lessee's receipt of such notice, Lessee either shall exercise such option by giving notice to the Director of such exercise, or shall be deemed to have foregone such option. Notwithstanding any other provision hereof, Lessee shall have no authority to exercise such option, and any purported exercise of such option shall be void and of no effect, if Lessee fails to cure (i) any breach that occurred prior to the expiration of such ninety-day option exercising period, by the end of such period, and (ii) any breach that occurred prior to the commencement of such Extended Term by December 30, 2001.

c. Expiration of Lease: Notwithstanding the foregoing, unless earlier terminated or otherwise agreed in writing, this Lease will terminate on October 30, 2003.

d. No Default under Museum Lease: In no event shall a default under this Lease be considered to be a default under the Museum Lease, nor shall early termination of this Lease cause or be grounds for an early termination of the Museum Lease, it being the intention of the parties that Lessee's obligations under this Lease shall be separate and distinct from Lessee's obligations under the Museum Lease.

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 commonly known as the Seattle Center House and 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 the "Seattle Center House Theatre" or "Space No. 101," 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: Approximately 16,000 square feet of space.

c. Non-exclusive License to Use Center House Building Common Areas: City hereby grants to Lessee and its officers, employees, agents, customers and invitees non-exclusive rights during the Term or Extended Term of this Lease, to use Center House Building common areas (as defined in Subsection B-7(j) hereof) as well as the restrooms adjacent to the Premises.

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MONTHLY BASE RENT

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

a. Monthly Amount Due for November 1998:

One Thousand One Hundred Fourteen and 75/100 Dollars (\$1,114.75).

b. Monthly Amount Due Between January 1, 1999, and December 31, 1999:

Two Thousand Two Hundred Ninety-Four and 15/100 Dollars (\$2,294.15).

c. CPI increase: The monthly base rent shall be increased effective each January 1st during the Term and any Extended Term hereof (commencing January 1, 2000) by the percentage increase (if any) in the Consumer Price Index for All Urban Consumers ("CPI-U" / 1982-84 = 100) Seattle-Tacoma-Bremerton, WA 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.

d. Pro-Rating of Actual Rent: In the event this Lease expires or is terminated on a day other than the last day of a month, the monthly base rent for the month in which such expiration or termination occurs shall be prorated by dividing the applicable rent by thirty (30) and multiplying the resulting quotient by the number of days in such month that preceded and included the expiration or termination date. (For example, if this Lease were terminated effective June 20, 2004, and the monthly rent in 2004, as adjusted by the CPI were \$2,400.00, the rent for June 2004 would be calculated as follows: $\$2,400 \div 30 = \$80 \times 20 = \$1,600.$)

e. Credit Against Rent for Gated Days: The City and Lessee acknowledge that on the days that certain events are held at the Seattle Center, admission fees will be charged to the public for admission to the Seattle Center. These admission fee days are referred to hereinafter as "Gated Days." If the number of Gated Days exceed seven (7) in any calendar year, then Lessee's base or adjusted monthly rent for the month in which the eighth (8th) or any succeeding Gated Day occurs shall be reduced as follows:

- (1) For Gated Days 8, 9 and 10, no base or adjusted monthly rent will be charged for each such day.

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(2) For Gated Days 11 and above, no base or adjusted monthly rent will be charged for each such day, and in addition, Lessee shall receive a credit for an amount equal to the revenue from admissions, memberships and store sales that is lost as a consequence of the eleventh (11th) and succeeding Gated Days. For the purpose of calculating such revenue loss, Lessee's revenue for each such Gated Day shall equal the difference between (i) the total amount of paid admissions, memberships and store sales on such Gated Day and (ii) the average of the aggregate paid admissions, memberships and store sales for the same day of the week during the immediately preceding three (3) months. Lessee shall deliver to the Director along with any invoice for the granting or applying of any such credit, a written copy of all documentation used to support such claim including detailed accounting records of Lessee's receipts for each subject three (3) month period. Regardless of the occurrence of any Gated Day, nothing in this Subsection shall relieve Lessee from the obligation of paying any additional rent that may be due to the City under this Lease.

A-4 ANNUAL PERCENTAGE RENT

Except for any additional rent based on subleases of the Premises, as provided in Subsection A-5.d below, no rent shall be payable based on any fixed percentage of Lessee's gross or net receipts or fund raising activities.

A-5 ADDITIONAL RENT

- a. Utility Service Charges: Effective January 1, 1999, Lessee shall pay, before delinquency and as additional rent, the City's charges for supplying to the Premises pursuant to Section 8 hereof, water service (excluding HVAC-related water) and electricity service, and all fees and charges incurred for the installation, change, and relocation, at Lessee's request, of any point or means of service by any City utility or waste line or system serving the Premises.
- b. Repair, Restoration, Maintenance & Clean-Up Service Charges: Lessee shall pay, before delinquency, whatever amount is required to fully reimburse the City for the cost of repair and maintenance work performed by the City on behalf of Lessee pursuant to Subsections B-6.f(2) or B-10.b hereof.
- c. Tenants' Association Dues: Lessee shall not be required to pay any 'Tenants' Association Dues except as required under the Museum Lease.
- d. Additional Rent Based on Subleases: Lessee shall pay to the City, as additional rent, fifty percent (50%) of all net receipts generated by any sublease of the Premises for a use that is inconsistent with Lessee's Mission Statement, in the form attached as Part E of this Lease, which is incorporated herein by this reference. As used in this Subsection, "net receipts" means all gross receipts (as defined in Section B-2 below) which are actually

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received by Lessee, less a reasonable reserve for repair or replacement of theatre equipment and tenant improvements (in such amounts as Lessee and the City may agree from time to time), all actual out-of-pocket expenses incurred by Lessee with respect to the sublease (if any), a pro-rata share of rent due under this Lease and all taxes, utilities, insurance, janitorial and other operating expenses incurred by Lessee for the Premises during the sublease term (which are not reimbursed by the sublessee). (For example, if Lessee subleases the Premises to a third party for fifteen days in June 2004 for the production of a program that is inconsistent with Lessee's Mission Statement and Lessee receives \$3,000 in gross receipts with respect to such sublease, but incurs \$200 in out-of-pocket expenses in preparing the Premises for the sublease, the monthly rent at that time is \$2,400, and monthly taxes, utilities, insurance, janitorial and other operating expenses total \$1,000, the additional rent would be \$550, calculated as follows: \$3,000 - prorated rent of \$1,200 (50% of \$2,400) - out-of-pocket expenses of \$200 - prorated operating expenses of \$500 = \$1,100 ÷ 2 = \$550). Notwithstanding the foregoing, no additional rent will be payable with respect to any sublease prior to June 1, 2000.

A-6

USE OF PREMISES BY LESSEE

The Premises shall be used by Lessee for the presentation of theatrical and other presentations and performances related to Lessee's operation of *The Children's Museum* or otherwise consistent with Lessee's Mission Statement, in the form attached as Part E of this Lease, which is incorporated herein by this reference, for business offices of Lessee; for meetings of Lessee's Board of Directors, staff and other personnel associated with Lessee; for educational classes; for fund-raising endeavors; for technical production and rehearsal activities and other theatre-related activities of Lessee; for the preparation and sale of food and non-alcoholic beverages in connection with such authorized activities; and for the activities of the sublessees of Lessee; provided that such activity, whether by Lessee or one of its sublessee's, must be consistent with the Seattle Center Vision Statement. The Lessee shall give preference to groups based in Seattle when subleasing the space. The City acknowledges that Lessee also may use the Premises for its business offices for *The Children's Museum*, and the City consents in advance to such use. Lessee may use the Premises for other purposes only with the prior, written approval of the Director.

A-7

REQUIRED CONDITIONS OF USE AND OCCUPANCY

a. Preservation of Performance Facility: Regardless of the improvements, alterations and additions Lessee makes in and to the Premises, Lessee shall preserve and maintain within that space, a theatrical/musical performance facility seating at least 199 audience members (or such larger or smaller number as may be approved or required by the Seattle Fire Marshall) as well as appropriate and necessary stage, backstop, dressing room, technical space (including but not limited to sound and lighting control booths), other support facilities, and public lobby space to make the Premises reasonably usable for a wide variety of theatrical and musical performances.

b. Portions of Premises Reserved for Event or Festival Purposes on Certain Dates: Notwithstanding any other provision hereof, the City reserves and remains the right to use, and to authorize third parties to use, as described more fully below, the stage apron and seating area of the Main Auditorium and the Public Lobby (as identified on attached Part C; collectively, the "House") during the dates identified below and in Subsection A-7.5 hereof, in connection with the following events/festivals sponsored or co-sponsored by the Seattle Center:

- (1) "Northwest Folklife Festival" (Friday through Monday of Memorial Day weekend);
- (2) "Bumbershoot Festival" (Friday through Monday of Labor Day weekend);
- (3) "International Children's Festival" (on up to seven (7) consecutive days during the month of May that are identified in a Directors notice delivered to Lessee not later than ninety (90) days prior to the first date of each such intended use);
- (4) "Artspring" (for one (1) day, on a date that is identified in a Director's notice delivered to Lessee not later than ninety (90) days prior to the first date of each such intended use);

plus, for each of the events/festivals listed in subsections (1), (2), (3) and (4) above, not more than one (1) move-in day immediately before each such use period and not more than one (1) move-out day immediately following each such use period, but only if deemed by such event or festival's producers to be necessary; and

- (5) "ArtsEdge" (for three (3) consecutive days during the month of June that are identified in a Directors notice delivered to Lessee not later than ninety [90] days prior to the first date of each such intended use), plus (if deemed by ArtsEdge producers to be necessary), not more than three (3) move-in days immediately before each use period and not more than one (1) move-out day immediately following each use period. Lessee agrees that if ArtsEdge is disbanded or discontinued, the three days allotted to that event (but not the three move-in days) shall be added to the other City-reserved dates covered by Subsection A-7.c (such that the City will be entitled to reserve use of the House for eight additional dates per year, plus move-in and move-out days as provided in Subsection A-7.c).

For purposes of this Lease, a "move-in day" shall mean the twenty-four hour period beginning at noon on the day immediately prior to the first day of the applicable event or festival as specified herein; and a "move-out day" shall mean a period until 9:00 a.m. on the day after the last day of the event or festival as specified hereby. If any of the events or festivals listed in this Subsection is renamed or is otherwise reconstituted, and such successor event or festival is scheduled to occur during generally the same time period as its predecessor event or festival and the activities of the renamed or reconstituted event or

festival proposed for the House are compatible with the children and family programs of Lessee, then the opportunity to use the House shall continue and be exercisable for such renamed or reconstituted event or festival notwithstanding such renaming or reconstituting. The Director shall also provide twelve (12) months' prior notice to Lessee if the dates of any of the events/festivals identified in this Subsection will occur on dates different from those specified for the same above. In such event, Lessee and Director shall cooperate to determine mutually agreeable alternative dates for such event or festival's use. Any such re-scheduling shall not expand the number of days approved for the applicable event or festival use of the House.

c. Other City-Reserved Dates: The City further reserves use of the House during each year throughout the Term and any Extended Term of this Lease and any extension thereof, for up to five (5) additional dates, plus up to one (1) move-in date immediately preceding and up to one (1) move-out date immediately following each such additional date, for children's activities that are compatible with the general goals and Lessee's Mission Statement and the Seattle Center Vision Statement. Unless such quantity of prior notice is waived by Lessee, the Director shall give Lessee at least one hundred eighty (180) days' prior notice of each such proposed use date. The City's use of the House on such additional dates shall be contingent on approval by Lessee, which approval shall not be unreasonably withheld or delayed unless Lessee has already scheduled another use for the Premises. Lessee and the City agree to provide each other with as much advance notice of events scheduled for the Premises and to cooperate with each other to resolve any scheduling conflicts, provided that Lessee shall not be required to cancel or reschedule an already scheduled event.

d. Conditions of City Event or Festival Use of House: Use of the House by the City pursuant to Subsection A-7.b or by any producer of a event or festival approved by Lessee pursuant to Subsection A-7.c shall be exclusive of Lessee's use except as provided in this Subsection. Lessee's personnel shall have unlimited access to the Premises to monitor the activities and use of the House by the City, the event or festival producers, and their invitees. During all such use periods, Lessee (or its sublessee) shall have the right to maintain in the Premises its theatre production sets and other theatre equipment, as it deems appropriate, but the House (stage apron and seating area of the Main Auditorium and the Public Lobby) shall only contain the theatre seats and traditional lobby furniture to facilitate full event or festival use. Event or festival use shall be compatible with Lessee's use, which shall be reasonably determined by Lessee. Except as expressly provided in this Section, any such use by the City or an event or festival producer shall be on an "AS IS" basis, and Lessee shall not have any obligation to reconfigure any portion of the Premises except the House, as described in this Subsection.

e. Use of Theatre Equipment; Reimbursement of Costs: Use of the House by the City or any such event or festival producer shall not give the City or any such producer the right to use of any of Lessee's equipment therein except for the then-existing light plot and lights and soft goods; provided, that lights shall not be re-focused or moved. In the event any such event or festival use requires operation of any of Lessee's equipment, such

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equipment shall be operated by qualified personnel designated by the Director, subject to Lessee's supervision, or, at the election of Lessee, by Lessee's personnel. The City shall reimburse, or shall contractually obligate such event and festival producer to reimburse within thirty (30) days after the date of Lessee's invoice therefor, Lessee's direct costs for such operation or supervision; provided that the City (only) shall not be charged for any use of Lessee's equipment or the House if such equipment and the House are returned to Lessee in the same condition as received by the City. Lessee's direct costs may include wages for Lessee's personnel, at the rates normally paid by Lessee for such work, including overtime rates, if applicable, as well as out of pocket costs.

f. City Cleaning, Repair, and Reimbursement for Utility Use. For all dates reserved pursuant to Subsections A-7.b and A-7.c hereof, including move-in, move-out and cleanup dates, the City shall, or shall contractually obligate the event or festival producer to, reimburse Lessee within thirty (30) days after the date of Lessee's invoice, for Lessee's actual expenses for utilities, supplies, perishable items, and labor provided to the House during such City or event or festival use. In addition, by the end of the move-out day, the City shall perform, or shall enforce its contract with the event or festival producer to perform, the necessary clean-up of the House and repair of any portion thereof and all improvements and Lessee's property therein that has been damaged in connection with or as a result of such City or event or festival producer's use, which repair shall be to the condition such Premises, improvements, and Lessee's property were in at the outset of such City or event or festival producer's use; provided, that if a longer period of time is required for such repair work, that work shall be completed as quickly as is reasonably possible.

g. City Responsibility for Damage. The City acknowledges that members of the public will be in attendance at the Premises during the use periods reserved for the City and its event or festival producers under Subsections A-7.b and A-7.c and that the City shall be responsible for providing supervision to protect the Premises from damage and all such members of the public from injury. The City shall be responsible for, and shall indemnify, defend and hold Lessee harmless from, any and all losses, damages, suits, and claims of any nature whatsoever made against or incurred by Lessee or any other person arising out of use of the House by the City or any of its event or festival producers, or arising out of activities permitted by the City during such use periods (including without limitation payment and performance of obligations of event or festival producers under Subsections A-7.e, A-7.f or A-7.g hereof). The City shall also require the applicable event or festival producer to secure and maintain during the period of its use of the House under this Lease, public liability insurance coverage against personal injury and property damage that names Lessee as an additional insured and is otherwise in the form and in the amounts reasonably required by Lessee, and to provide to Lessee not less than seven (7) days prior to the first scheduled event or festival activity in the Premises, evidence that such insurance has been secured and is being maintained. The indemnification provided for in this paragraph shall survive any termination or expiration of this Lease and shall be in addition to the indemnification provided under other sections of this Lease.

h. Use of House and Lessee Equipment at No Cost to City or Event or Festival Producers. All use of the House and of Lessee equipment pursuant to this Subsection A-7 shall be at no cost to the City or to event or festival producers except as provided in Subsections A-7.e, A-7.f and A-7.g hereof.

i. Limitation on Event or Festival Use. Lessee shall be entitled to require that any event or festival producer using the Premises pursuant to Subsections A-7.b or A-7.c deposit with Lessee in cash or immediately available funds such sum as Lessee, in its reasonable discretion, may determine appropriate to cover the direct costs expected to be incurred by Lessee in connection with such event or festival. The failure to deliver such deposit shall constitute good cause for Lessee to deny use of the House to such event or festival producer. If the amount deposited with Lessee is greater than the actual direct costs incurred by Lessee, the surplus will be returned to the producer within thirty (30) days after the end of the event. If the amount deposited with Lessee is less than the actual direct costs incurred by Lessee, the producer will reimburse Lessee for the difference within thirty (30) days after the date of Lessee's invoice therefor. If Lessee, without good cause, has not been paid amounts due under this Subsection or Subsection A-7.e, A-7.f or A-7.g hereof in connection with a use by an event or festival producer, Lessee may deny subsequent use of the Premises to such event or festival producer until the amounts in arrears have been paid and Lessee has received adequate security or other assurance of payment and performance by such event or festival producer.

j. Coordination of Programming With Seattle Center "Winterfest" Activities: Before Lessee schedules or books any activity or performance to occur in the House between the day after Thanksgiving through the next succeeding January 7th (i.e., during the period of any Seattle Center "Winterfest"), Lessee shall consult with the Director regarding any such proposed activity or performance to facilitate coordinated and supporting advertising and to enhance the quality and quantity of Seattle Center "Winterfest" activities, among other objectives.

A-8

CONDITION OF PREMISES

The parties acknowledge that (i) the prior tenant of the Premises (The Group Theatre) did not clean or repair the Premises or remove all of its furniture, fixtures, equipment and other personal property when it abandoned possession of the Premises; and (ii) some furniture, fixtures, equipment and other personal property that belongs to the City is unusable, obsolete, inoperative or otherwise not wanted by Lessee. Accordingly, the City agrees to remove, at its expenses, all such unwanted furniture, fixtures, equipment and other personal property, to clean the Premises, and to perform such repairs as may be reasonably required to return the Premises to a clean, sanitary and safe condition, including without limitation removing certain paint and other potentially hazardous materials from the work-shop area of the Premises. Lessee agrees to cooperate with the City in such endeavors and to assist in identifying any furniture, fixtures, equipment or other personal property or materials to be removed from the Premises, and the City agrees, from time to time until December 31, 1999, upon notice from Lessee, to remove

from the Premises any such furniture, fixtures, equipment or other personal property or materials. Subject to the foregoing, Lessee accepts the Premises in their current condition.

EQUIPMENT PROVIDED TO LESSEE

A-9

- a. Included Equipment: Attached hereto as "Part F" is an itemized list of theatre, office and other equipment ("Equipment") included with the Premises, which list identifies the respective owners of the Equipment, and has been reviewed and approved by the City and Lessee. The City leases the City-owned Equipment to Lessee, for the Term and Extended Term hereof, at no additional charge. Except as otherwise provided in Part E, the City owns or has caused the Equipment to be leased to Lessee, and is fully authorized to do so, and the City agrees to indemnify, defend and hold Lessee harmless from and against any adverse claims to the Equipment. Lessee agrees to release, indemnify, defend and hold the City harmless from any claims, damages, losses or liability arising out of or connected with Lessee's use of the Equipment. Lessee is hereby authorized to affix tags or notices to the Equipment to identify the City's or other entity's ownership interest therein. Except as set forth in this Subsection or Part F, the City makes no representations or warranties whatsoever regarding the Equipment, and Lessee assumes all risks with respect to the fitness of the Equipment for its intended use.
- b. Repair and Maintenance: Lessee shall keep in good working order and repair each item of Equipment and shall return all such items of Equipment to the City upon expiration or earlier termination of this Lease, in good working order, reasonable wear and tear excepted, unless otherwise agreed by the City in writing; provided that Lessee shall not be required to repair or replace any Equipment that has reached the end of its useful life or becomes inoperable through no fault of Lessee or its sublessees or invitees. Notwithstanding the foregoing, Lessee shall replace every theatrical instrument lamp within the Premises, whether installed in City-owned or Lessee-owned equipment or otherwise, as soon as is reasonable after such item burns out or is broken.
- c. The City's Responsibilities: In addition to the City's responsibilities specified in Subsections A-8, A-9 and B-10.a, the City shall clean, repair and maintain the public restroom facility that is adjacent to both the Premises and Museum Space, the exterior entrance to the Premises and the Building.
- d. Replacement or Exchange of Equipment: The City acknowledges that some of the lighting components or other Equipment may not be well suited for the Premises and agrees that Lessee shall be authorized to exchange such components or Equipment for more suitable components or equipment, subject to the City's prior written approval, which will not be unreasonably withheld.
- e. Use of Equipment by Third Parties: The City acknowledges that the standard practice in the Seattle theatre community is to lease or loan equipment among organizations as needed from time to time, and the City hereby agrees that Lessee shall be authorized to engage in such practice, and shall be entitled to retain any consideration

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from the Premises any such furniture, fixtures, equipment or other personal property or materials. Subject to the foregoing, Lessee accepts the Premises in their current condition.

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EQUIPMENT PROVIDED TO LESSEE

- a. Included Equipment: Attached hereto as "Part F" is an itemized list of theatre, office and other equipment ("Equipment") included with the Premises, which list identifies the respective owners of the Equipment, and has been reviewed and approved by the City and Lessee. The City leases the City-owned Equipment to Lessee, for the Term and Extended Term hereof, at no additional charge. Except as otherwise provided in Part E, the City owns or has caused the Equipment to be leased to Lessee, and is fully authorized to do so, and the City agrees to indemnify, defend and hold Lessee harmless from and against any adverse claims to the Equipment. Lessee agrees to release, indemnify, defend and hold the City harmless from any claims, damages, losses or liability arising out of or connected with Lessee's use of the Equipment. Lessee is hereby authorized to affix tags or notices to the Equipment to identify the City's or other entity's ownership interest therein. Except as set forth in this Subsection or Part F, the City makes no representations or warranties whatsoever regarding the Equipment, and Lessee assumes all risks with respect to the fitness of the Equipment for its intended use.
- b. Repair and Maintenance: Lessee shall keep in good working order and repair each item of Equipment and shall return all such items of Equipment to the City upon expiration or earlier termination of this Lease, in good working order, reasonable wear and tear excepted, unless otherwise agreed by the City in writing; provided that Lessee shall not be required to repair or replace any Equipment that has reached the end of its useful life or becomes inoperable through no fault of Lessee or its sublessees or invitees. Notwithstanding the foregoing, Lessee shall replace every theatrical instrument lamp within the Premises, whether installed in City-owned or Lessee-owned equipment or otherwise, as soon as is reasonable after such item burns out or is broken.
- c. The City's Responsibilities: In addition to the City's responsibilities specified in Subsections A-8, A-9 and B-10.a, the City shall clean, repair and maintain the public restroom facility that is adjacent to both the Premises and Museum Space, the exterior entrance to the Premises and the Building.
- d. Replacement or Exchange of Equipment: The City acknowledges that some of the lighting components or other Equipment may not be well suited for the Premises and agrees that Lessee shall be authorized to exchange such components or Equipment for more suitable components or equipment, subject to the City's prior written approval, which will not be unreasonably withheld.
- e. Use of Equipment by Third Parties: The City acknowledges that the standard practice in the Seattle theatre community is to lease or loan equipment among organizations as needed from time to time, and the City hereby agrees that Lessee shall be authorized to engage in such practice, and shall be entitled to retain any consideration

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received by Lessee with respect to such lease or loan; provided that Lessee shall be responsible for any damage to such Equipment. In the event such leased or loaned Equipment is damaged or lost, Lessee agrees to indemnify, defend and hold the City harmless from any claims, losses, costs or expenses related to the damage, loss or recovery of such Equipment.

f. Lessee-Owned Equipment: The City agrees that any furniture, fixtures or equipment purchased or otherwise obtained by Lessee shall remain the property of Lessee and may be removed from the Premises by Lessee at the expiration or termination of this Lease.

A-10 PERSONNEL

a. Lessee shall have the right to use its own admissions, stage and sound personnel or volunteers for its productions on the Premises. Lessee's personnel shall supervise the admissions personnel of every sublessee that is other than a nonprofit performing arts organization or school. The City acknowledges that Lessee's personnel are not union members, and acknowledges that, as of the date of exercise of the option and as of the date of execution of the Lease, that no union has historically or traditionally enjoyed jurisdiction over the Premises with respect to its long term lessees, and that the Premises is not and has not been the subject of any present or past labor agreement which requires or would require the long term lessee of the Premises to employ union members.

b. If for any reason (i) any union asserts jurisdiction over the Premises or any City-owned equipment at the Premises (except during City-reserved dates pursuant to Section A-7 above), or (ii) Lessee is required to employ union members for operation of the Premises, and if Lessee determines that any resulting union requirements will significantly impair Lessee's ability to operate the Premises or to carry out Lessee's Mission Statement, then upon request by Lessee, the City agrees to meet with Lessee and to negotiate, in good faith, possible modification of the rent or other terms of this Lease. If, in such event, the parties are unable to agree upon mutually acceptable modifications to this Lease, notwithstanding any other provision of this Lease, Lessee shall have the right to terminate this Lease upon sixty (60) days written notice to the Director.

A-11 SIGNAGE

a. Existing Signs and Directories: The City acknowledges that Lessee intends to change the name of the Premises from "The Group Theatre" but has not yet determined the new name. Until such time as Lessee determines a new name for the Premises, existing Seattle Center signs and directories referring to the Premises shall not be removed or changed, and in no event shall any signs or directories referring to the Premises be combined with signs or directories referring to *The Children's Museum* (it being understood that the intent is to keep the identities of the two facilities separate). Upon notice from Lessee of the new name for the Premises, the City shall modify Seattle Center signs and directories, without charge to Lessee, to reflect the new name decided upon by

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Lessee. Lessee acknowledges that once the City has so modified the Seattle Center signs and directories, any additional name change shall be made only upon payment by Lessee of the full cost of such sign and directory modification.

b. Additional Signs. The City agrees that Lessee may erect signs for the Premises at or near the stairwell in the Seattle Center House and adjacent to the Northeast entrance to the Premises; provided that such signs conform to the site standards for Seattle Center and Lessee receive the City's prior approval of the plans and specifications for such signs, which approval will not be unreasonably withheld.

c. Reader Board Usage: Lessee shall be provided with the opportunity from time to time to advertise performances or events at the Premises on the Seattle Center reader boards located at Fifth Avenue and Mercer Street and at First Avenue and Thomas Street, and on banners on the Mercer Street overpass, as such advertising spaces are available, but not less than one week per calendar quarter. Lessee and the City shall cooperate to determine reasonably acceptable dates for such advertising opportunities.

**A-12 CONSULTATION REQUIRED BEFORE CITY ACTIVITY
NECESSITATING SUSPENSION OF LESSEE'S USE OF PREMISES**

Notwithstanding any provision to the contrary in Section B-13, before the City commences any inspection, repair, alteration, addition or improvement work that will necessitate the temporary suspension of Lessee's business or operations in, on or from the Premises, the City shall consult with Lessee regarding the work and the anticipated impact on Lessee's business and operations, and shall make a good faith effort to minimize such impact by work schedule adjustments or other measures to the extent the same can be accomplished without a cost increase to the City.

A-13 ATTENDANCE AND SAFETY STANDARDS

The Seattle Fire Marshall or his or her designee shall have the authority to determine, in the reasonable exercise of his or her discretion, the number of persons that may be admitted to, and safely and freely move about in, the Premises. Neither Lessee nor any of its sublessees shall sell or issue tickets or credentials for admission to the Premises in an aggregate number that exceeds, nor admit to the Premises more people than, the number so determined by the Fire Marshall. Lessee shall not permit any chair or moveable seat or other obstruction to be erected or placed in any passageway or fire exit. Sidewalks, grounds, entries, passages, vestibules, halls, elevators, abutting streets and all ways of access to the Premises shall not be obstructed by Lessee or any of its sublessees or used for any purpose other than for ingress and egress to the Premises, without the prior written consent of the City, which will not be unreasonably withheld.

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A-14

CONTENTS OF LEASE

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

PART A	Special Covenants and Conditions of Lease
PART B	General Terms and Conditions of Lease
PART C	Premises Floor Plan/Map
PART D	Seattle Center Vision Statement
PART E	Lessee's Mission Statement, Educational Belief Statement and Performance Studio Mission Statement
PART F	Personal Property Inventory

These six (6) 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:

THE CHILDREN'S MUSEUM

By _____
Cynthia Captain
Executive Director

Address for Notices:

The Children's Museum
Attention: Executive Director
305 Harrison Street
Seattle, WA 98109-4645

LESSOR:

THE CITY OF SEATTLE

By _____
Virginia Anderson, Director
Seattle Center Department

Address for Notices:

Director, Seattle Center Department
The City of Seattle
305 Harrison Street
Seattle, WA 98109-4645



May 25, 1999

The Honorable Sue Donaldson, President
Seattle City Council
1100 Municipal Building
Seattle, Washington 98104

Via: Dwight Dively, Director, Executive Services Department

Subject: LEASE AGREEMENT WITH THE CHILDREN'S MUSEUM
FOR THEATRE SPACE IN CENTER HOUSE

Dear Councilmember Donaldson:

I am pleased to forward to the City Council legislation regarding a lease agreement with The Children's Museum for the theatre space on the first floor of Center House formerly occupied by the Group Theatre. The Children's Museum's lease with the City for their museum space on the first floor of Center House included an option to lease the adjacent theatre space should it become available. The Children's Museum has decided to exercise that option.

The term of the attached lease for the theatre space is the same as the existing lease for the museum space. The Children's Museum will pay the same rental rate that applied to the Group Theatre, with annual CPI adjustments. Additional information about the basic terms of the theatre lease is included below.

Since The Childrer's Museum and the City are entering into a separate lease agreement for the theatre space, the current lease for the museum space is being amended to remove the language which references The Children's Museum's option rights for the theatre space. We are also taking this opportunity to update the insurance and WMBE language in the museum lease. So there are two pieces of legislation regarding The Children's Museum lease of theatre space in Center House:

1. Authorizing the lease of the theatre space.
2. Authorizing a first amendment to the museum space lease.

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Councilmember Sue Donaldson
May 25, 1999
Page 2

The basic terms of the Theatre Lease Agreement are as follows:

- The term is the same as the term of the lease for the museum space, which expires September 30, 2010, with an option for an additional fifteen-year term.
- The rental rate for the theater space will be the same as it was for the Group Theatre, with annual CPI increases. Annual rent for 1999 is \$27,530. The theatre lease agreement is retroactive to December 1, 1998.
- Seattle Center may receive additional rent from subleasing of the theatre space by The Children's Museum. The Center will receive 50% of the net proceeds generated by uses of the theatre space that fall outside the Mission Statement of the Children's Museum.
- Seattle Center will have free use of the theatre space for the following community events and festivals: Northwest Folklife Festival, Bumbershoot, International Children's Festival, artsEdge, and Artspring, as well as five additional days for children related activities.

We are pleased that The Children's Museum is committed to continuing a theatre use in Center House and to providing opportunities for other community theatre groups and festivals to use the space. I recommend your approval of the attached legislation.

If you would like any additional information regarding the lease of theatre space in Center House, please call Pat Morosic at 684-7114 or Ned Dunn at 684-7212.

Sincerely,


Virginia Anderson

Attachments

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**AMENDMENT TO LEASE AGREEMENT
BETWEEN
THE CHILDREN'S MUSEUM
AND
THE CITY OF SEATTLE**

THIS AMENDMENT is entered into as of December 1, 1998, by THE CITY OF SEATTLE (hereinafter called the "City"), a municipal corporation of the State of Washington, acting by and through the Director of the Seattle Center Department, and THE CHILDREN'S MUSEUM (hereinafter called "Lessee"), a Washington nonprofit corporation.

RECITALS

A. The City and Lessee are parties to a Lease Agreement executed by Lessee on December 26, 1995 and by the City on January 10, 1996 ("Museum Lease"), for the space on the first floor of the Seattle Center House in which Lessee currently operates *The Children's Museum* ("Museum Space").

B. Pursuant to the Museum Lease, Lessee was granted an option ("Option") to lease the adjacent theatre space on the first floor of the Seattle Center House ("Theatre Space"). Lessee has exercised its Option and the parties will be entering into a separate lease agreement for the Theatre Space.

C. The parties now desire to amend the Museum Lease to delete the references to Option and the Theatre Space, and to make certain other amendments to the Museum Lease as set forth below.

AGREEMENT

Therefore, the parties agree as follows:

1. DELETION OF MEETING SPACE

Subsection A-2.c of the Museum Lease is hereby deleted in its entirety.

2. TENANT'S ASSOCIATION DUES

Section A-5.c of the Museum Lease is hereby amended to add the following at the end of the existing provision:

Such Tenant's Association Dues shall be increased effective each January 1st during the Term and any Extended Term hereof (commencing January 1, 2000) by the percentage increase (if any) in the Consumer Price Index for All Urban Consumers ("CPI-U" / 1982-84 = 100) Seattle-Tacoma-

200540.0004\549611.3

04/27/99

ATTACHMENT

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Bremerton, WA 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.

DELETION OF OPTION

Section A-6 of the Museum Lease is hereby deleted in its entirety.

4. LIABILITY INSURANCE

Subsections B-5.b through B-5.g, B-5.i and B-5.j of the Museum Lease are hereby deleted and replaced with the following provisions. Existing Subsection B-5.h remains as part of the Museum Lease (as amended herein), but is hereby renumbered as Subsection B-5.c.

b. Liability Insurance: Unless the City secures and maintains such insurance for itself and Lessee's benefit pursuant to Section B-5 hereof, 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. Evidence of such insurance, shall be delivered to the address set forth below.

(1) Commercial General Liability Insurance: A policy of Commercial General Liability Insurance, written on an insurance industry standard occurrence form (CG 00 01) or equivalent, including all the usual coverages known as:

- Premises/Operations Liability
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual Liability
- Independent Contractors Liability
- Stop Gap/Employers Contingent Liability
- Liquor Liability/Host Liquor Liability*
- Fire Damage Legal Liability
- Elevator & Hoist Liability*

* These coverages are only required when this lease agreement includes exposures to which these specified coverages respond.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage -

\$2,000,000	General Aggregate
\$2,000,000	Products & Completed Operations Aggregate
\$1,000,000	Personal & Advertising Injury
\$1,000,000	Each Occurrence
\$100,000	Fire Damage

Stop Gap Employers Liability

\$ 1,000,000	Each Accident
\$ 1,000,000	Disease - Policy Limit
\$ 1,000,000	Disease - Each Employee

A deductible or self-insured retention of no more than Two Thousand Five Hundred Dollars (\$2,500) for property damages only. The cost of any claim payments falling within the deductible shall be the responsibility of Lessee.

- (2) **Business Automobile Liability:** A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent.

Such policy(ies) must provide the following minimum limit:
Bodily Injury and Property Damage - \$1,000,000 per accident

- (3) **Worker's Compensation:** A policy of Worker's Compensation. As respects Workers' Compensation insurance in the state of Washington, Lessee shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. If Lessee is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Lessee shall so certify by providing a copy of the state Certificate of Self-Insurance, and setting forth the limits of any policy of excess insurance covering its employees.

- (4) **Property Insurance:** A policy of Property Insurance covering all furniture, fixtures, equipment and inventory located on the Premises and all improvements which the City or Lessee makes to the Premises in an amount equal to replacement cost thereof, against (a) loss from the perils of fire, and other risks of direct physical loss, not less broad than provided

by the insurance industry standard "Causes of Loss - Special Form (CP 10 30), (b) Loss or damage from water damage, or sprinkler systems now or hereafter installed in on the premises; (c) Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage; (d) Business Interruption or Extra Expense, with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of Lessee's business because of fire or other cause.

(5) Additional Insured and Changes of Coverage and Limits: Such insurance, as provided under subsections (1), (2) and (4) above, shall be endorsed to include the City, its officers, elected officials, employees, agents and volunteers as additional insureds, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City at the following addresses:

Seattle Center Director	Risk Manager
Seattle Center Department	Finance Department
The City of Seattle	The City of Seattle
305 Harrison	600 Fourth Avenue
Seattle, WA 98109	Seattle, WA 98104

In addition, Lessee's insurance shall be primary, as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with Lessee's insurance.

(6) Coverage and/or Limits: Coverage and/or limits may be altered or increased as necessary, to reflect type of or exposure to risk. The City shall have the right to periodically review the appropriateness of such limits in view of inflation and/or changing industry conditions and to require a reasonable increase in such limits upon ninety (90) days prior written notice.

(7) Evidence of Insurance: The following documents must be provided as evidence of insurance coverage:

- A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.
- A copy of the endorsement naming the City as an Additional Insured, showing the policy number, and signed by an authorized representative of the insurance company on Form CG2026 (ISO) or equivalent.

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- A copy of the "Endorsements Form List" to the policy or policies showing endorsements issued on the policy, and including any company-specific or manuscript endorsements.
 - A copy of an endorsement stating that the coverages provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City.
 - A copy of a "Separation of Insureds" or "Separability of Interests" clause, indicating essentially that - except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (for Commercial General Liability and Business Automobile Liability Insurance).
- (8) All policies shall be subject to approval by the City's Risk Manager as to the insuring company (which must be rated A-: VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington surplus lines broker), form and coverage, and primary to all other insurance.
- (9) If Lessee fails to maintain such insurance, the City may do so, and Lessee shall reimburse the City for the full expense thereof upon demand. Lessee shall not keep or use in or about the Premises any article which is prohibited by the City's insurance policy. Lessee shall pay as an expense reimbursement any increase in the City's premiums for insurance during the term of this Lease that results from Lessee's use of the Premises, or such prorated share of the insurance premium as determined by the Director in the exercise of the Director's reasonable discretion.
- (10) Waiver of Subrogation. Neither the City nor Lessee shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or tangible personal property of the other occurring in or about the Premises or Building, even though such loss or damage might have been occasioned by the negligence of such party, its' agents or employees, if such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required under the terms of this Lease to be covered by insurance procured by the party suffering the loss.
- (11) Self-Insurance: Should Lessee be self-insured, under subsections (1) or (2) above, a letter from the Corporate Risk Manager, or appropriate Finance Officer, is acceptable - stipulating if actuarially funded and fund

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limits; plus any excess declaration pages to meet the contract requirements. Further, this letter should advise how Lessee would protect and defend the City as an Additional Insured in their self-insured layer, and include claims handling directions in the event of a claim.

5. VISUAL ARTISTS RIGHTS ACT

New Subsections B-7.k and B-7.l are hereby added to the Museum Lease as follows; existing Subsections B-7.k through B-7.o remain part of the Museum Lease but are renumbered as Subsections B-7.m through B-7.q respectively.

k. Reservation of Rights by City; Prohibition against Installation or Integration of any Work of Visual Art on Premises without Director's Consent. The City reserves to and for itself the right to approve or disapprove the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended ("Act"), and to approve or disapprove of each and every agreement regarding any such installation or integration. Lessee shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without the prior express written consent of the Director. The Director's consent to the installation of any such work of visual art may be granted, granted upon one or more conditions, or withheld in the Director's discretion; provided, however, that the Director's consent to the installation by or for Lessee of any such work of visual art shall not be required if (1) such work of visual art (a) weighs less than fifty (50) pounds, and (b) is of a size and has such dimensions and material composition that may be moved through an open 32" x 78" or larger doorway, and (c) is to be installed on the floor, a piece of furniture, or similar surface without further anchoring of any kind or nature, or on a wall using no more than two picture hooks and wire; all so that it is removable from the Premises without its destruction, distortion, mutilation or other modification by reason of such removal; or (2) Lessee delivers to the Director an appropriately executed waiver, for the benefit of the City and its successors and assigns as the owner of the Premises, of the artist's right of integrity regarding such work of visual art, in a form that satisfies both the Director and the requirements of 17 U.S.C. § 106A(e), as the same now exists or is hereafter modified. The Director also shall not withhold consent to the installation on or in the Premises by or for Lessee of any work of visual art to which the artist has executed, for the benefit of the City and in the form and manner specified by the Director, a consent agreement of the type contemplated by 17 U.S.C. § 113(d)(1), as the same now exists or is hereafter amended. In the event the creator of any work of visual art presently installed on or in the Premises by or for Lessee has not executed a waiver, or such creator and the City have not executed a consent agreement, each as described above, Lessee shall ensure that, prior to removing or allowing the removal from the Premises of any such work of visual art, (x) such creator is given both notice, as contemplated by 17 U.S.C. § 113(d)(2), of the intended removal of such work of visual art, and the time required by that statutory provision to respond to such notice, and (y) Lessee takes whatever other action(s) as may

be required by the Act to avoid the filing or lodging against the City as owner of the Premises of any claim, action or suit alleging a violation of the Act and arising out of any act or omission of or for Lessee or any of its officers, employees or agents.

l. Lessee's Indemnification of City against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend and hold the City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration by Lessee, or its officers, employees, agents, sublessees or licensees, of any work of visual art on or in the Premises except to the extent such claim, suit, action or cause of action arises from or relates to condition(s) imposed by the Director for such installation or integration; (b) the destruction, distortion, mutilation or other modification of any visual work of art that results by reason of its removal by Lessee, or its officers, employees, agents, sublessees or licensees; (c) any breach of Lessee's obligations under Subsection B-7.k of this Lease; or (d) any violation of the Act by Lessee, or its officers, employees, agents, sublessees or licensees. Except as otherwise provided herein, Lessee's indemnification obligations under this Subsection shall exist regardless of whether the Director or any other person employed by the City has knowledge of such installation, integration or removal or has consent to such action or is not required to give prior consent to such action, and shall survive the expiration or earlier termination of this Lease.

6. **NONDISCRIMINATION AND WMBE UTILIZATION**

Subsection B-11.d of the Museum Lease is hereby deleted and replaced with the following:

d. Nondiscrimination and WMBE Utilization - General: Notwithstanding any other provision in this Lease, City women- and minority-owned business (WMBE) utilization requirements shall not be applicable from and after December 3, 1998, and no minimum level of WMBE subtenant, consultant, contractor or supplier participation shall be required as a condition of the City's execution of this Lease.

(1) Nondiscrimination: Lessee shall not create barriers to open and fair opportunities for WMBEs to participate in all City contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with contractors and suppliers, Lessee shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

(2) Record-keeping: Lessee shall maintain, for at least twelve (12) months after the expiration or earlier termination of this Lease, relevant records and

information necessary to document Lessee's utilization of WMBEs and other businesses as contractors and suppliers under this Lease and in its overall public and private business activities. Lessee shall also maintain all written quotes, bids, estimates, or proposals submitted to Lessee by all businesses seeking to participate as contractors or suppliers under this Lease. The City shall have the right to inspect and copy such records.

(3) Affirmative Efforts to Utilize WMBES: The City encourages the utilization of minority owned businesses ("MBEs") and women-owned businesses ("WBEs") (collectively, "WMBEs"), in all City contracts. The City encourages the following practices to open competitive opportunities for WMBEs:

- (a) Attending a pre-solicitation conference, if scheduled by the City, to provide project information and to inform WMBEs of Lessee contracting and subcontracting opportunities.
- (b) Placing all qualified WMBEs attempting to do business in the City of Seattle on solicitation lists, and providing written notice of contracting and subcontracting opportunities to WMBEs capable of performing the work, including without limitation all businesses on any list provided by the City, in sufficient time to allow such businesses to respond to the written solicitations.
- (c) Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses including WMBEs.
- (d) Establishing delivery schedules, where the requirements of this Lease permit, that encourage participation by WMBEs.
- (e) Providing WMBEs that express interest with adequate and timely information about plans, specifications, and requirements of this Lease.
- (f) Utilizing the services of available minority community organizations, minority contractor groups, local minority assistance offices, The City of Seattle, and other organizations that provide assistance in the recruitment and placement of WMBEs.

(4) Sanctions for Violation: Any violation of the mandatory requirements of the provisions of Subsections B-11.d(1) and (2) shall be a material breach of contract for which Lessee may be subject to damages and sanctions provided for by the Lease and by applicable law.

Subsection B-11.e of the Museum Lease is hereby deleted in its entirety.

7. SCOPE OF AMENDMENT

Except as expressly amended herein, all of the terms and conditions of the Museum Lease are incorporated herein by reference and remain in full force and effect.

LESSEE:

THE CHILDREN'S MUSEUM

By

Cynthia Captain
Executive Director

Address for Notices:

The Children's Museum
Attention: Executive Director
305 Harrison Street
Seattle, WA 98109-4645

LESSOR:

THE CITY OF SEATTLE

By

Virginia Anderson, Director
Seattle Center Department

Address for Notices:

Director, Seattle Center Department
The City of Seattle
305 Harrison Street
Seattle, WA 98109-4645

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TIME & DATE STAMP

6/16/99

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:

Neil Linton

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE



C. S. 20.28

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STATE OF WASHINGTON - KING COUNTY

108478

City of Seattle, City Clerk

-ss.

No.

& 119565 ORD

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: 119544-47, 61, 62

was published on

07/30/99

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

07/30/99

Notary Public for the State of Washington, residing in Seattle

Affidavit of Publication

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinance, passed by the City Council on July 18, 1999, 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 624-3344.

ORDINANCE NO. 119544

AN ORDINANCE relating to the 1999 adopted budget; reducing the expenditure allowances of the Department of Neighborhoods and the Executive Department; Strategic Planning Office and reappropriating a like amount to the 1999 budget of the Planning Commission.

ORDINANCE NO. 119545

AN ORDINANCE relating to the Seattle Center Department, authorizing the execution of the First Amendment to the Lease Agreement with The Children's Museum.

ORDINANCE NO. 119546

AN ORDINANCE relating to the Seattle Center Department, authorizing the execution of a theater lease agreement under which The Children's Museum may use and occupy the Seattle Center House Theatre for presentation of theatrical and other presentations and performances.

ORDINANCE NO. 119547

AN ORDINANCE relating to Seattle Public Utilities; authorizing the execution of a purchase and sale agreement with The Trust for Public Land for sale of certain City property located in Chelan County, Washington; ratifying and confirming certain authority granted by Ordinance 118639 and Resolution 29657 with respect to sale of said property; and authorizing the conveyance of said property; execution of closing documents; and acceptance and deposit of funds in connection with the sale.

ORDINANCE NO. 119551

AN ORDINANCE relating to funding the acquisition of certain property and property rights for facilitating Seattle Center redevelopment as authorized by Ordinance 118643 and 118648; increasing expenditure allowances in the 1999 budget of the Seattle Center Department; appropriating money from the Seattle Center General Donation Fund and the Seattle Center Operating Fund; accepting a donation from the Kravitz Foundation; repealing Section 3 of Ordinance 118643; and ratifying and confirming prior acts, all by a three-fourth vote of the City Council.

ORDINANCE NO. 119552

AN ORDINANCE relating to the Neighborhood Planning Early Implementation Fund; authorizing the Department of Neighborhoods; Department of Design, Construction and Land Use; Strategic Planning Office; and SEATEAN to enter into agreements for the provision of certain neighborhood planning goods and services; reducing the expenditure authority from Finance General by \$300,000 and increasing the expenditure authority of these departments and offices by a total of \$300,000.

ORDINANCE NO. 119545

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by JUDITH PIP-PIN, City Clerk.
PIN, City Clerk
In Director, official publication, The Daily Journal of Commerce, Seattle, July 20, 1999.
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